

MINUTES

PLANNING COMMITTEE

April 13, 2016

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, Līhu'e, Kaua'i, on Wednesday, April 13, 2016, at 8:44 a.m., after which the following Members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable KipuKai Kuali'i
Honorable Mason K. Chock
Honorable JoAnn A. Yukimura, Ex-Officio Member
Honorable Mel Rapozo, Ex-Officio Member

Minutes of the January 20, 2011 Planning Committee Meeting.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Kaneshiro, and unanimously carried, the Minutes of the January 20, 2011 Planning Committee Meeting was approved.

Minutes of the November 9, 2011 Planning Committee Meeting.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Kaneshiro, and unanimously carried, the Minutes of the November 9, 2011 Planning Committee Meeting was approved.

Minutes of the November 23, 2011 Planning Committee Meeting.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Kaneshiro, and unanimously carried, the Minutes of the November 23, 2011 Planning Committee Meeting was approved.

Minutes of the March 16, 2016 Planning Committee Meeting.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Kaneshiro, and unanimously carried, the Minutes of the March 16, 2016 Planning Committee Meeting was approved.

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

CR-PL 2016-02: on Bill No. 2609 A BILL FOR AN ORDINANCE AMENDING
CHAPTER 8, KAUA'I COUNTY CODE 1987,
AS AMENDED, RELATING TO
HOMESTAYS (**Received for the Record.**)

Bill No. 2619 A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUA'I
COUNTY CODE 1987, AS AMENDED, RELATING TO
HOMESTAYS (*Restricting Homestays to the Visitor Destination*)

Areas County of Kaua'i, Applicant (This item was Deferred to the May 11, 2016 Committee Meeting.)

Councilmember Kagawa moved for approval of Bill No. 2619 on second and final reading, seconded by Councilmember Kualii.

Committee Chair Chock: At this time, I would like to suspend the rules and have Ka'aina Hull, Deputy Planning Director, up.

Councilmember Kagawa: Committee Chair?

Committee Chair Chock: Yes.

Councilmember Kagawa: At this point, if we have amendments do we want to amend and then have Mr. Hull discuss the amendments as well as the Bill?

Committee Chair Chock: Actually, yes, I forgot we had amendments from the Planning Department. Let us introduce the amendments and then have a discussion and ask questions, if possible.

Councilmember Kaneshiro: I have a quick housekeeping amendment.

Councilmember Kaneshiro moved to amend Bill No. 2619 as circulated, as shown in the Floor Amendment, which is attached hereto as Attachment, seconded by Councilmember Kagawa.

Committee Chair Chock: I know it is the Planning Department's amendment, so to speak. Do you want to expand on the amendment?

There being no objections, the rules were suspended.

KA'AINA HULL, Deputy Planning Director: The draft amendment is by request to cleanup in that the "P" as in permitted for the "Table of Uses" was not inserted for the Residential District for Homestay operations...I am sorry, not Residential, but "Resort District," was not establish in the draft ordinance that we submitted to the Council. It is housekeeping in a sense that the Resort district is within the Visitor Designation Areas (VDA) and under the land use table established within the Comprehensive Zoning Ordinance (CZO), it has to either have a "P" for permitted or "U" for use permit or blank if it is prohibited, so if we left it blank, it would technically prohibit Homestays in the Resort district, which is somewhat incongruous with the intent of the ordinance to allow them outright within the VDA. It is just a cleanup measure.

Committee Chair Chock: Okay. Any questions about the amendment? It is self-explanatory and much needed. Thank you for that clarification. Let us take other questions as well, in addition to the amendments, since he is here. Councilmember Hooser.

Councilmember Hooser: I want to get back to basics. What makes a homestay illegal? Is there a law that says, "It is against the law to have homestays, short-term vacation rentals?"

Mr. Hull: Currently under Chapter 11 of the Kaua'i County Code 1987, as amended, a Homestay operation require a use permit to operate in virtually all zoning designations: in Resort, Residential, Commercial, and

Agricultural. They are currently allowed within these districts under the existing law; however, they have to get a use permit. They are illegal if they had not obtained a use permit for the subject property.

Councilmember Hooser: And the definition of a homestay is twenty-nine (29) days or less?

Mr. Hull: Yes, correct, it is twenty-nine (29) days.

Councilmember Hooser: I mean I see that referenced in the Bill. So a person can rent for thirty (30) days without a use permit.

Mr. Hull: For more than thirty (30) days, correct.

Councilmember Hooser: Or for thirty (30) days. It says, "Twenty-nine (29) days or less."

Mr. Hull: Thirty (30) days or more.

Councilmember Hooser: Okay. Therefore, you would not need a use permit anywhere in the county to rent for thirty (30) days or more.

Mr. Hull: Correct.

Councilmember Hooser: Do we know...

Mr. Hull: Sorry, I would like to correct that statement, Councilmember Hooser. Technically, for rental of rooms over thirty (30) days does not require a use permit. (Inaudible).

Councilmember Hooser: Right, so rooms within a home, right?

Mr. Hull: Right.

Councilmember Hooser: I noticed the second provision, "Homestays shall be limited to no more than one (1) homestay operation per lot of record." So what about multifamily buildings when we have ten (10), thirty (30), or hundred (100) units; is that one (1) lot?

Mr. Hull: One (1) lot on record. If you have a multifamily dwelling unit, it would require that only one (1) homestay be allowed within that multifamily dwelling unit.

Councilmember Hooser: So a condominium project with three hundred (300) or four hundred (400) units in it, would allow one (1) homestay.

Mr. Hull: One (1) Homestay.

Councilmember Hooser: Was that the intent? I understand when you are looking at a single-family home, but when you are looking at a multifamily, oceanfront condominium and there are people who live there and they want to rent out the rooms. So, that is what it says. It would be limited to one (1), regardless of how many people there are. Okay. I noticed that it is allowed in general Commercial and neighborhood commercial within the VDA...

Mr. Hull: Within the VDA.

Councilmember Hooser: What about outside the VDA. For example, if you had a place in the Līhu'e with a restaurant and the office downstairs and a place upstairs, can you do Homestay there?

Mr. Hull: Not on this draft ordinance, no.

Councilmember Hooser: Was that a conscious decision or was that just...put everything in the VDA...

Mr. Hull: It was a conscious decision to essentially align the Homestay ordinance with the Transient Vacation Rentals (TVR) ordinance, which essentially states that nontraditional transient accommodations be solely allowed within the VDA.

Councilmember Hooser: Do you know how many existing Homestay operations that have been in existence for ten (10) years...how many will be shut down because of this ordinance?

Mr. Hull: I cannot comment on that.

Councilmember Hooser: You cannot comment or we do not know?

Mr. Hull: Essentially, we do not know.

Councilmember Hooser: Okay.

Mr. Hull: That number fluctuates as far as how many Homestay operations are in existence today that do not have use permits...that have use permits are approximately sixteen (16) to twenty (20) right now. People who are operating without use permits goes back to the discussion we had with the Airbnb, the shared economy, that is evolving around here and throughout the world. Traditionally, you had a Homestay operator and TVR operator that continuously operated their operation twenty-four/seven (24/7) throughout the year with avenues like Airbnb or VRBO, these house shine websites. Many of these operations occur when the owner feels like renting out a room or two (2).

Councilmember Hooser: Right.

Mr. Hull: The next several months, they may not. To actually categorize how many are out there and operate within the timeframe that is not possible to actually accomplish and achieve given the avenues that are available to homeowners.

Councilmember Hooser: That is why I framed the question, they have been operating for ten (10) years that was pre-Airbnb, you know people that have a track record. You have heard from a lot of them. So, that was my question. Basically, we pass this law, but what kind of tangible impacts does it have on people that have been doing this for a while?

Mr. Hull: Unless a homeowner is willing to somewhat self-report to the County, we are unable to track that.

Councilmember Hooser: And how many have...

Mr. Hull: In the sense of, "How many have roughly self-reported via the willingness to pay the transient accommodations tax, but the unwillingness to obtain the use permit," that delves around their number of thirty (30) to forty (40) roughly.

Councilmember Hooser: So thirty (30) or forty (40) have self-reported...

Mr. Hull: Self-reported in a sense that...

Councilmember Hooser: ...that they are paying their TAT. So the County has access to who pays their TAT and who does not, so we know fairly certainly that there are less than forty (40) B&B operations.

Mr. Hull: That were paying their real property tax or their transient accommodations tax, correct. Does the department anticipate that there are additional ones out there that were not self-reporting or paying those taxes—we do anticipate that as well.

Councilmember Hooser: But if you were looking to identify those that were making a "good faith" effort to be good citizens and whatnot, pay their taxes and operate their business, there would be less than forty (40). So those forty (40) would be potentially directly impacted by passing this ordinance.

Mr. Hull: Most of those have actually been notified via a zoning compliance notice and either have opted to shut down or have applied for use permits.

Councilmember Hooser: Okay, but the number is forty (40), it is not like four hundred (400). I am just trying to get a scale on the impacts of the problem.

Mr. Hull: Again, Councilmember Hooser, I would be hesitant to say the scale of the impacts when we are only referring to those that have self-reported via paying their taxes when you are asking the impacts of shutting down operations. We do anticipate several others out there that are not self-reporting.

Councilmember Hooser: My focus is on those that have been operating for many years, paying their taxes, that have not had any complaints and thought they were okay, and now all of a sudden they are not okay. So, I am wondering the impacts on those people. I keep hearing the number forty (40) or less. Thank you.

Councilmember Kagawa: I have a follow-up. You said that if the homestay rented for thirty (30) days or more, they would not need a Homestay use permit.

Mr. Hull: Under the eyes of the department and land use in general, essentially it would be considered a long-term rental.

Councilmember Kagawa: If they were to operate in the business of renting to visitors for periods of thirty (30) days or more, they could operate without needing a use permit?

Mr. Hull: Correct. They would probably do so with the Housing Agency's blessing given the...

- Councilmember Kagawa: Yes, but would they be required to pay TAT?
- Mr. Hull: No.
- Councilmember Kagawa: No TAT because they are thirty (30) days over and beyond...
- Mr. Hull: Actually, I would have to stand off on that question, Councilmember Kagawa...
- Councilmember Kagawa: You are not sure?
- Mr. Hull: Yes. You may want to check with the State or Real Property.
- Councilmember Kagawa: Where did we get that language?
- Mr. Hull: The twenty-nine (29) days or less?
- Councilmember Kagawa: Yes.
- Mr. Hull: We actually derived that from looking at a large volume of rental agreements in which it appears that the majority of rental agreements are actually month-to-month as opposed to six (6) months or a yearlong.
- Councilmember Kagawa: But that thirty (30) day number follows that transient accommodations tax language?
- Mr. Hull: That is why I am saying, Councilmember Kagawa, that we would have to double check on that. I am not quite sure. The real purpose of the "thirty (30) days" was that it aligned...it would not force long-term rental units into this use permit process when in fact they do not function as a B&B. You have people who are renting units or rooms on a month-to-month basis. In the event that we had language that said six (6) months or eight (8) months, that would then force those rental units into being categorized as homestays when, in fact, operationally they are not.
- Councilmember Kagawa: Okay.
- Committee Chair Chock: Council Chair Rapozo, followed by Councilmember Yukimura.
- Council Chair Rapozo: "Lot of record," what does that mean? Is that the tax map key (TMK)? Is the condominium multiuse family...let us say the condominium that Councilmember Hooser talked about, does all units have one (1) lot of record?
- Mr. Hull: Generally, a multifamily unit would be multiple family units on a single lot of record.
- Council Chair Rapozo: Okay.
- Mr. Hull: I do not think that was the intention of the department when we drafted this.

Council Chair Rapozo: Yes, that may have to be looked at and I would ask that you have somebody take a look at that to clarify, because obviously that would be discrimination, in my opinion. The other thing is that the Bill says nothing of any opportunity for a variance or anything like that. Is there some other rule in the ordinance some place currently that provides for variances or is it ordinance specific?

Mr. Hull: Under Chapter 8 of the Kaua'i County Code 1987, as amended, which is the overall land use ordinance, there is a variance process which would be technically applicable, should this draft ordinance apply or be passed. But the variance process is very stringent. It does not have the same parameters as use permit where you just have to demonstrate compatibility. You have to demonstrate that your particular property because of various conditions, is being deprived of the rights that other property owners can take advantage of. The likelihood of this draft ordinance passed of an individual getting a B&B through the variance process is very minimal. The litmus test of demonstrating that they are being derived a privilege other property owners can do when in fact other property owners cannot have Homestays.

Council Chair Rapozo: Well, the other property owner in a VDA would be...

Mr. Hull: Correct.

Council Chair Rapozo: So you do believe that process would be a possibility for the existing operators that may have conditions that are conducive? Maybe the neighbors enjoy it or maybe they are compatible with the neighborhood that they are in?

Mr. Hull: Generally, within that limits, they have to demonstrate within the same zoning designations and same overlays. Being that the VDA is a different designation, it would not hold much (inaudible), but that is not to say that an applicant could not apply for that process.

Council Chair Rapozo: And then the Planning Department would look at it on a case-by-case basis.

Mr. Hull: Correct.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: If you allow a variance then the next neighbor can say, "I would like the same privilege as the one who has the variance," and it can snowball into that whole...I remember when there was an issue of a variance to the four (4) story height limit in Po'ipū where a hotel wanted to go eight (8) stories, if the variance had been granted, then all the other hotels could come in and say, "I am entitled to the same privilege."

Mr. Hull: Correct.

Councilmember Yukimura: So that is one (1) of the problems with the variance process, with respect to the homestays needing a special use permit. Where in the code does that say that homestays need a special use permit?

Mr. Hull: Currently?

Councilmember Yukimura: Yes.

Mr. Hull: Technically, we have to bifurcate it for a technical sake...special permits are permits for the agriculture district and use permits are general county permit...

Councilmember Yukimura: Excuse me, I am talking about...thank you.

Mr. Hull: The use permit process and there was some confusion, I think you are talking about previous to the recent adoption of the definition.

Councilmember Yukimura: Correct.

Mr. Hull: There was some confusion when just looking right at the code as far as where does it state that. So the way that the code is set up is it defines what a homestay is...even previous to the recent adoption by the Council of the definition of homestay that further tightened it, there was always, since the inception of the CZO in 1972, the definition of homestays, which is a transient accommodation operating on site with the owner living in the residence. When you look at the land use table, there are a series of outright permitted uses listed for each zoning district. In the Residential district, the primary...first, the only thing that is outright permitted are Residential uses. After they list the permanent uses for the various zoning districts, it will list those uses allowed via a use permit. There is a series of things listed for each respective district and then at the very bottom of the use permit section of the table it states, "At any use that the Director finds similar in nature to those listed in the use permit section," in which this Director and virtually every single director prior to him have (inaudible) like in the Residential section there is an ability to get lodges or dormitories in the Residential district via use permit. They have interpreted homestays as similar in nature to the lodge or dormitory and have reviewed it via the use permit process. To go back to the outright permitted section, there actually is no director's discretion for interpretation to something similar in nature to, so it has to be specifically listed as outright permitted in that zoning district for us to give the over the counter Class I zoning approval. If it is not specifically listed as permitted, then it is not outright permitted in that respective district.

Councilmember Yukimura: But that takes interpretation of the code, so was there a written director's decision explaining all that you explained, that people can go to and say, "Okay, this is a use permit?" How was the requirement of a use permit clearly established by the Planning Department?

Mr. Hull: I am not aware of a specific written policy that was adopted.

Councilmember Yukimura: Because I understand that on Hawai'i island, at least while Chris Yuen was director, he would issue these director's decisions or I forget what it is called, but it was a written, documented explanation or interpretation and application of the code. Do you have anything like that?

Mr. Hull: Not to my knowledge of the director actually adopting a specific policy determination concerning homestays; however, the County Council in 2008 did adopt a TVR ordinance, which did codify the findings and purpose

that a homestay does require a use permit. That is the only specific codified language adopted that I am aware of.

Councilmember Yukimura: I think people did go in and ask to apply for a use permit and they were told that it was not needed.

Mr. Hull: I know that contention has been made, but we have not found any demonstrable evidence of that happening.

Councilmember Yukimura: Just the same way there is not any demonstrable evidence that prior to 2008 there was a clear requirement for a use permit?

Mr. Hull: Given the fact that there were several use permit applications reviewed and either approved, denied, or withdrawn upon the Planning Commission and array of different Planning Directors that made that interpretation.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: I can see...I guess it is called a "slippery slope." You rent out a room because you need extra money and so you put a long-term resident in there, and then later on someone says, "Can I stay there for a week or two (2)," all of a sudden you are doing it, and there is no law against it...no clear law saying that you are not allowed to rent short-term rentals and this goes on over time without any explicit direction. It sounds like only in 2008, was there something in writing. Prior to this ordinance that was passed relatively recently, that was the first explicit, if you would, ordinance requiring a use permit. Is that correct?

Mr. Hull: Correct and Councilmember Hooser, that is the nature.

Councilmember Hooser: Did you say, "Correct?"

Mr. Hull: For 2008, as far as written.

Councilmember Hooser: No, this ordinance that was passed most recently was the first explicit ordinance requiring use permit for homestays or B&B.

Mr. Hull: I would not characterize it that way. I would characterize the CZO was adopted in 1972 as clearly requiring the use permit for homestay operations.

Councilmember Hooser: Homestay operations in 1972?

Mr. Hull: Correct.

Councilmember Hooser: Okay, because I thought you said that it listed permitted uses, but it also explicitly prohibited homestays in 1972.

Mr. Hull: In 1972, prohibit homestays, so the 1972 ordinance, which is the CZO, lists specific permitted uses and only those specifically listed permitted uses are outright permitted in the respective zoning district.

Councilmember Hooser: Okay.

Mr. Hull: Homestay's is not anywhere located in any zoning district as an outright permitted use; however, the code recognizes uses in various districts that can be given a use permit and it also gives the director the authority to find uses similar in nature to those listed in the use permit section to also review them via the use permit process. That is the nature of land use. You cannot list every single land use within the table. There are an array of different things. Everything from homestays to nuclear power plants that are not specifically listed, but the director will find it to be similar in nature to a certain use that is listed in the use permit section of a respective zoning district, it can be reviewed then.

Councilmember Hooser: Was the ability to rent a room in your house long-term a permitted use, explicitly?

Mr. Hull: It would be considered a residential use within the Residential zoning district and would therefore be an outright permitted use.

Councilmember Hooser: It was explicit though in the CZO?

Mr. Hull: It is explicit in that residential uses are outright permitted in the Residential zoning district.

Councilmember Hooser: Okay. It is a little confusing. Thank you.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: Did you say that the homestay was actually defined in the 1972 code?

Mr. Hull: Yes.

Councilmember Yukimura: Can you provide that wording and cite, not right now, but subsequent to this meeting?

Mr. Hull: Yes. To that point, Councilmember Yukimura, that is why we came back to you on the first stab. We are finding that former TVR operations were exploding the 1972 definition and there was a loophole in that definition section. When we came to you the first time, it was essentially to primarily fix that originally adopted the 1972 definition, but we can provide you with that.

Councilmember Yukimura: That 1972 definition continued up to the time of this new bill or law that you introduced.

Mr. Hull: Yes.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Further questions? No. If not, I am going to public testimony and then we can vote on the amendments and the Bill. Do we have any registered speakers?

SAM LEE: Good morning Committee Chair Chock and members. My name is Sam Lee, speaking in favor of Bill No. 2619. In reading Bill No. 2619, we understand that the Council has gone a long ways towards trying to shed light upon, clarify, or to tighten whatever term one prefers to use with respect to development requirements for the homestay operation. If this Bill passes, homestays will be restricted to the VDA, and we appreciate the effort that went into thinking about it and writing these conditions into the Bill. We have couple suggestions that you might consider to allow for additional clarification. Probably the most important of the five (5) or six (6) conditions that I am speaking about has to do with the requirement that a Department of Health (DOH) approved septic be installed on the property. However, the language does not specify when that system needs to be available and functional. We are saying that to answer any future questions about when the septic needs to be installed prior to the time operating permit is granted. Another what might seem to be innocuous point regards guest parking. The language that the Council has suggested requires one (1) separate paid parking stall per guest bedroom. We are suggesting that that be nailed down a little tighter by asking that it be clarified to the point that the paved parking must be located on the permitted property. Thank you.

Committee Chair Chock: Thank you. Next speaker.

MATTHEW BERNABE: Matt Bernabe for the record. I support Bill No. 2619. Under "C," as the speaker who spoke before me talked about language tightening, I am curious when you say that it has to be available twenty-four, seven (24/7). Is that by phone contact or is that literally that it has to be present? The way I see it is if you make that a mandatory and I work at a B&B, so I understand that B&Bs are only responsible for breakfast. They do not do lunch or dinner. They can, but that is not what it is about. The other thing about B&Bs is that the whole point is to come and go freely, have some interaction, but yet not have that much interaction. When you say twenty-four, seven (24/7), that means they cannot have another job and so that goes from an augmenting income...say they are farmers and the farm is so big that some of these folks have them on agriculture land, but their farm is so big that they are on the other end. I am curious, if you want them to augment and not be a fulltime industry, that language constricts them. It has to be around the property so much that they cannot go and work their regular job and just have guest once a month. Now, they have to go full-blown. To me, it is saying, "Let us go and get this larger," or is that just a phone call? If it is just a phone call, better yet. I like "E" a lot, but I think as part of a mechanism that could make the Planning Department's enforcement a lot easier is if the signed copy of this, of all guest and the dates that they are there, because this is talking about they have to acknowledge that they know where the tsunami zone is if applicable, curfews, and all the ordinances that we all have to adhere by, such as noise and whatnot. If you want the Planning Department to micromanage someone better than they are, this is a mechanism here that says if you have guest from the 21st to the 24th, they sign this acknowledging that they understand the curfews and all the rules associated with living in that area, and you hand that over the Planning Department and now they have a physical reference that they can cross against transient accommodations tax or any other part of the process so that you can see if it is truthful and they will be able to say, "Look, these folks are not doing this or that." If a complaint comes in, they will be able to identify that either they were acknowledged or not. That is just food for thought.

Committee Chair Chock: Thank you. Oh, clarifying question?

Councilmember Yukimura: Yes.

- Committee Chair Chock: Okay.
- Councilmember Yukimura: Matt, on your part about “D,” can you...
- Mr. Bernabe: No, “E.” “E” is about having all of the curfews and all the rules that they have to know.
- Councilmember Yukimura: No, I am talking about the twenty-four, seven (24/7) contact.
- Mr. Bernabe: Oh, the twenty-four, seven (24/7), I am curious about that.
- Councilmember Yukimura: Can you restate how you see this as a requirement that the person stays at home?
- Mr. Bernabe: I am saying that the language is not specific. If you read the whole thing...okay, are you accountable to the neighbors, to the Planning Department, or to the guest for twenty-four, seven (24/7)? Who are you accountable for and how do you need to be accounted for? Do you need to be physically there? Do you need to have a number of guests? Do you need to be accountable to the neighbors, the County...who is accountable and how do you need to be accounted for is my question.
- Councilmember Yukimura: It reads like you have to have contact. The people have to be able to contact you.
- Committee Chair Chock: Okay, thank you.
- Councilmember Yukimura: Thank you.
- Committee Chair Chock: Next speaker.
- ALEXIS BOILINI: I am Alexis Boilini from Marjories Kaua‘i Inn. I am actually going to talk off the cuff now because this is the 1972 CZO and it does not have a definition of homestay or B&B. This is the 1984 General Plan that says you need to define B&B. This is the 1998 General Plan that says again, you must define the term B&B. This is the 2005 and I have the 2000, I also have the synopsis under the County Code that also says the same thing. It also says when you say “shall,” the word shall means...in the 1972 says, the word shall is mandatory. In all of these, it does not say “you might want to define a B&B, you may define a B&B,” it says, “You shall define the term B&B facility.” That is all I have to say.
- Committee Chair Chock: Thank you.

BILL COWERN: Bill Cowern, Lāwa‘i. My father had a saying that “figures do not lie, but liars figure.” Sometimes I think that applies to the law, really. All I wanted to talk about this morning was just a little bit of discussion from a layman’s standpoint, on the generalities of a bill like this and what I think the Council should be concerned about. In the past year, we have been in a little verbal contest with the County. If there is one (1) thing that I have learned, it is that there is an awful lot of existing law concerning zoning. The municipalities, counties, or cities that seem to do reasonably well is when they pass something that might look like a taking, but it is on a piece of land that has not been developed yet. They seem

to do reasonably well on things like that. If there is a potential of development and that has stopped, that seems to be something that is not always found in the positive for the County, but in many cases it is, or a municipality. Where they do not do very well is where there is existing uses. There is a lot of precedent for that. I would recommend that the County look at it carefully, as you look at bills like this about the existing zoning rights and uses, and how they have been adjudicated in the past. That is all I have to say.

Committee Chair Chock: Thank you.

LORNA HOFF: Hello Councilmembers. My husband sends his kind regards to you all. I am getting emotional. Anyway, I am going to read this which John wrote up. Just a brief statement of the real history of one (1) small agricultural operation. Fifty (50) years ago, the Hoff family moved to Kaua'i on March 1, 1966. In 1970, we leased ten (10) acres in Lāwa'i, agriculture zoned land, and began raising horses, cows, and dairy cows. We obtained ownership of the ten (10) acres in 1983. Prior to that point, we began a south shore lawn service and a nursery, moved on to creating an agricultural subdivision. We CPR four (4) primary farmworkers resident dwellings for our labors and ourselves. Our family is still a landscaping agricultural, state-licensed contracting business with twenty plus (20+) employees. Since 1974, we operated (inaudible) state-license general contractor as well as a license landscaping ornamental gardener fencing contracting business. Forty-two (42) years of paying taxes, creating jobs, and working to preserve Kaua'i. We operated in a continued lawful use for fifty (50) years and have been grandfathered approximately nine (9) to twelve (12) times as have other B&B, Homestay, and farm stay owners, up until April 14, 2015. Suddenly, a new (inaudible) politics decides to redefined an age-old, world recognized practice of grandfathering. This is legal in our opinion. If the law is to be changed, the Legislature does that. That is their job. Counties cannot make that change. The Hoff family can only hope that our County Council can recognize the importance of grandfathering and a more responsible understanding of the system. *Mahalo* and *aloha*. I just wanted to add that Mr. Hull mentioned that you can rent over thirty (30) days long-term and it was in Residential use with the Residential district. I went in to get permitting, and I mentioned that before for long-term renting, and talked to Bambi in the Planning Department and he told me that there were no permits. I said, "How am I to know that there is a permitting process," and he said, "Check out the website," and I did and there is nothing on there that is helpful. I am wondering can you long-term rent on agricultural use? I do not know. Anyway, thank you very much.

Committee Chair Chock: Anyone else? Ms. Sakamoto, followed by Glenn.

TINA SAKAMOTO: Good morning, my name is Tina Sakamoto. I am speaking in support of Bill No. 2619 to restrict the homestay commercialism to the proper zone area, the VDA, with strict, enforceable rules. I am also in support of Sam Lee's suggestions of having a sewage or septic system in place prior to the permitted use. I would also ask you to consider, being that the homestay has to have the home exemption, that a compromise would be that they would have the home exemption, but not enjoy the Homestead tax rate, but be charged at the vacation rental rate, which it would apply since that is actually what it is. One (1) quick word on grandfathering in, I spoke last time about the loophole letting one (1) in followed by many more, and if it is an unpermitted illegal use, those Homestays should not be allowed to be grandfathered. Thank you.

Committee Chair Chock: Thank you. Mr. Mickens.

GLENN MICKENS: Thank you, Committee Chair Chock and BC. For the record, Glenn Mickens. I think before you pass this Bill or any other bill, as Council Chair Rapozo said, you are going to have to do a lot more research. You heard a lot of very good testimony today that basically confuses the entire issue. I think you are going to have to get these things straight. You cannot keep on "ready, fire, aiming." You are going to get this in place and they are going to find that it is unlawful to do this or that. I think everybody made a great statement. You, members of the Council, do not want to see neighborhoods just overrun with noise and everything else that is going to happen. Somebody pointed out, you do not even know how many Homestays are out there at this stage of the game; ten percent (10%) or fifty percent (50%) that Councilmember Yukimura said? We do not even know that number. I think you are going to have to find that out and a lot of other questions. Anyway, this Bill may be okay, but before it is passed I hope you will consider doing more research on it. Thank you.

Committee Chair Chock: Would anyone else like to testify? Mr. Hart.

BRUCE HART: For the record, Bruce Hart. I am going to agree with Mr. Mickens that this is premature. Again, there is no provision for noise. A provision for noise is going to require a noise abatement ordinance. It is the only way that it is going to be enforceable. There are good people who are going to oversee their B&B or whatever and they are not going to have noise, but they are going to be people who do not oversee it and there will be noise. In regards to parking, you are going to require that the people that stay in these, whether it is VDA or it is not, to have off-street parking. What about the residential? There is no enforcement of on-street parking there. I live on a street where there is illegal parking everywhere and it is not enforced. There has to be some provision for that. I do not think a lot of us that live in residential...I personally would not mind a B&B next to me if it was regulated and enforced. I do not want to have to go over to the B&B and have to talk to the owner. I do not want to be put in that position anymore. Do not pass bills that we cannot enforce. Thank you.

Committee Chair Chock: Would anyone else like to testify for the first time? How about a second time? Mr. Lee, followed by Ms. Boilini.

Mr. Lee: I have one (1) final comment to make regarding the Council's suggested conditions. The language now reads with respect to permit renewals that "the Planning Department may conduct inspections prior to renewal. We are suggesting that maybe "may" should be changed to "shall conduct random inspections of properties for compliance." The fundamental issue regarding transient vacation units (TVUs) used has lacked the proper level of enforcement and I think not requiring random inspections of permit renewal requests is going to take us down that road again. Thank you.

Committee Chair Chock: Thank you.

Ms. Boilini: I am much calmer now. Number one, I wanted to say there was no required notice given for the existing long-term B&B and homestays before they were given cease and desist notices. When we questioned that right off the bat in March, the statement was made that they did not have to send out required sixty (60) days notices. Would you send a notice to a drug dealer for a drug bust? Would you alert a white-collar criminal that sixty (60) days is required when you send out a violation? The TVRs were given provisional certificates upon application while waiting for the permit process to proceed and that opportunity was

not afforded to us. The bill that you are voting on today, and you are working on presently, is too restrictive for classic B&B. We are much different from homestays. We are a business. I know you do not want to believe that, but we are a business. The Internal Revenue Service (IRS) calls me a business and the IRS calls me a bed & breakfast. There is nothing in any of the applications for the continuous use of a B&B that has been in operation waiting for twenty-three (23) years. The CZO today does not include B&B on a list of structures that require a use permit nor did the ordinance. Now today, the CZO does define or include a transient vacation rental. What is really interesting to me is that suddenly the Planning Department is trying to put us all under this transient vacation definition when before we were alternate vacation rentals, if you remember. You cannot call us one (1) thing one (1) day and when we come in and try to get a permit, send us away and say you are not a TVR, you are a B&B, and now start calling us a TVR. You cannot call me white today, black tomorrow, and then white a week from today. Again, I want to say that the B&B are not defined and it really is important when you are writing this to please check with the B&B owners because it really is an important accommodation to try and preserve. We are the ones that...our demographic are people that come and they want to have a breakfast, they want to sit and talk story with other guests on a daily basis, and there are only about four (4) of the classic B&B left and only a very small handful of continuing operating B&B or homestays that are trying to complete this permit process. Thank you.

Committee Chair Chock: Thank you. Anyone else for a second time?
Mr. Hart.

Mr. Hart: Something occurred to me just now. There was mention that in some cases you might hire a manager at a B&B and then it was said that you cannot hire a manager. I am wondering about whether I was a LCC or a corporation. In other words the house was owned by a corporation or the house was owned by a LCC. Who would be the owner?

Committee Chair Chock: Thank you. Anyone else? Last chance to speak.

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

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: I have a question for the Planning Department.

Committee Chair Chock: Okay. I will suspend the rules and call up the Planning Department.

There being no objections, the rules were suspended.

Councilmember Hooser: I am looking at Bill No. 2619 and I need some clarification. If this was passed into law as it is, does this make bed & breakfast an outright permitted use in the VDA?

Mr. Hull: Correct.

Councilmember Hooser: So, no permit is required?

Mr. Hull: It also lays out a renewal and tracking process for homestays in the VDA.

Councilmember Hooser: But nowhere does it say prior to doing a homestay you have to get a permit.

Mr. Hull: Under the general guidelines or regulations of the CZO, they are required to get a Class I zoning permit.

Councilmember Hooser: Because it does not say anything here. It just goes into...you can operate under these conditions, but it does not say you have to get a permit. I have asked the question before about multifamily condominiums and one of the requirements is that, "Each bedroom used for homestays shall require one (1) additional paved and designated off-street parking." So if you had a condominium project with three hundred (300) units and they wanted to do homestays within those units, people who live there full-time, they would have to provide an additional off-street parking according to the way the ordinance is written.

Mr. Hull: To that point Councilmember Hooser, on the original point of the single lot that came up not the intention of the Department, so we would be amendable to removing that requirement to allow for multifamily units to apply for the permit for homestays; however, when you are looking at the parking, what we generally see with homestay operations is that it is an individual transient or a couple renting the room. If you have four (4) rooms and accommodations, you are going to want at least have one (1) parking stall per room to ensure you are not having too many impacts for on-street parking.

Councilmember Hooser: This applies, let us say, Pono Kai in Kapa'a, it is a condominium and there are quite a few people that live there fulltime. If they wanted to do a Homestay, number one, they would have to get a permit. Number two, they would have to provide an off-street parking in addition to all the other parking stalls that are in Pono Kai.

Mr. Hull: Correct, and the way that those are set up is that those units are required to have two (2) parking stalls per unit for dwelling purposes for the people habitating there.

Councilmember Hooser: So they would have to have a third one.

Mr. Hull: They would have to have a third and potentially fourth, fifth, or sixth depending on how many rooms they want put into operation.

Councilmember Hooser: Okay. Could that be offsite? I am just wondering how practically it is going to work.

Mr. Hull: Under the zoning ordinance, there is a mechanism in which you cannot provide off-street parking on the subject property that in agreement can be done with a neighboring property up to three hundred (300) feet away, in which that parking stall or parking area meeting the operator's respective needs has to be dedicated in perpetuity to facilitate those parking units. There is a mechanism to do that in a different site, it just is not on the public right-of-way.

Councilmember Hooser: Okay. And the provision in the owner of the homestay is to provide the names of contact information that neighbors are adjacent to, I understand. Again, from a residential perspective there are neighbors on both sides, but in a condominium multifamily perspective, neighbors may be transient in nature.

Mr. Hull: Whether it is a condominium or multifamily, notification of the association would be sufficient.

Councilmember Hooser: Okay.

Mr. Hull: I also speak to a previous statement that I made, I actually did misspeak when I said the definition was in the code of 1972, the previous speaker was correct. Actually, the definition was not specifically adopted until around 2008, I believe, however that still does not negate the fact that there is still no outright permitted section for transient types of accommodations, via B&Bs, homestays, TVRs, or what have you. There always has been since 1972 the ability to apply for a use permit for dormitories or guest houses, which since that time the directors have interpreted similar in nature to a Homestay or B&B and that is why the use permit has been triggered. Unless it can be demonstrated that prior to now at some point there was homestay or B&B or what have you listed as an outright permitted use in the section of outright permitted uses, there is no way you can allow those as an outright permitted use for the Class I zoning permit.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: If you say that you do not have any objections to removing per lot of record, then that means that "homestays shall be limited to no more than one (1) homestay operation per lot of record," so when you say, "limited to no more than one (1) homestay operation," that means they can have three (3) to five (5) rooms?

Mr. Hull: Correct.

Councilmember Yukimura: Okay. What was your purpose of limiting it to per lot of record?

Mr. Hull: Yes, originally it was to limit it per lot of record for homestays located outside the VDA.

Councilmember Yukimura: And so you are not suggesting any limit on number of rooms that can be rented out?

Mr. Hull: Not in the VDA. The limit to that would be that they have the appropriate infrastructure requirements, which would be off-street parking and septic systems.

Councilmember Yukimura: And they are going to get this through a Class I zoning permit?

Mr. Hull: Much in the same way that the TVR is an outright permitted use in the VDA.

Councilmember Yukimura: So there is no public hearing. How do you determine what conditions to put on the permit based on specifics of the conditions or situation of each application?

Mr. Hull: There would not be any...well, on a case-by-case situation we could analyze them, but we would not be anticipating putting addition conditions of approval on anybody that comes in for a homestay permit in the VDA. We would require them to operate under the parameters as laid out in the draft ordinance, should the draft ordinance be adopted, such as off-street parking, contact information to be for an individual operating a homestay business to be provided, that the person be resided on site, those types of scenarios. Above and beyond that within the VDA, we are saying this is a transient accommodation area, so to outright allow transient accommodations.

Councilmember Yukimura: Therefore, in Princeville, you can take a lot, make a single-family house, put ten (10) bedrooms in it, live in it, and run it – that would be okay?

Mr. Hull: Correct.

Councilmember Yukimura: And without any conditions or public hearing or anything.

Mr. Hull: Correct, much in the same way you can put a hotel within that same area without any...

Councilmember Yukimura: But that requires a Class IV zoning permit, a public hearing, and conditions.

Mr. Hull: At a certain level, but there are certain hotel units that are not going to necessarily require review in the resort district.

Councilmember Yukimura: Can you give me an example?

Mr. Hull: Say it is in the Special Management Area, then you would require a use permit for the SMA purposes, but in the Resort district, you have outright transient uses as outright permitted. The only reason that sometimes these larger scale hotels will trigger public hearings in the Resort district is because they are either in the SMA or they are on a property that is over one (1) acre in size and that requires an automatic bump up to the public hearing level.

Councilmember Yukimura: I am sort of surprised that a fairly large operation with a lot of rooms would be a Class I zoning permit that has...I mean that is what you give for the building of a wall, right?

Committee Chair Chock: Okay, so we are at a need for a caption break. We will take that ten (10) minute break and then come back to the question.

There being no objections, the Committee recessed at 10:30 a.m.

The Committee was called back to order at 10:42 a.m., and proceeded as follows:

Committee Chair Chock: We are back from our break. Councilmember Yukimura, you have the floor for a question. If not, we can come back to you.

Council Chair Rapozo: I have a question.

Committee Chair Chock: Mr. Hull might have answered your question, is that what I am hearing?

Council Chair Rapozo: Yes, she was done and I was next.

Committee Chair Chock: Yes, I was not sure if Councilmember Yukimura was done.

Mr. Hull: Can I just clarify something? I know we were in line of questioning of the Resort district and under the CZO, motels and hotels are an outright permitted use in the Resort district. You only see public hearings when they go over a certain room limit, such as more than twenty-five (25) rooms or you see them in the SMA. If a proprietor came to the Planning Department with a Resort zoning designation and asked for a hotel for up to ten (10) to fifteen (15) units, it would be an over-the-counter permit process. Essentially, that is the way the zoning code is laid out. It was laid out to say the purpose of the Resort district is to have hotel, motel, and transient accommodations types of uses and therefore they are outright permitted under these parameters.

Councilmember Yukimura: But it would have to be in Resort zoning.

Mr. Hull: Correct.

Councilmember Yukimura: Because on a single-family lot, you could have a home with ten (10) bedrooms.

Mr. Hull: Correct.

Councilmember Yukimura: And then under this bill, you would be allowed to operate it as a homestay as an over-the-counter permit.

Mr. Hull: Correct.

Councilmember Yukimura: If neighbors have complaints, they would not be able to really show up or even know that it was being proposed because there is no public hearing or publication of it. But if they complained afterwards, you could probably revoke the permit at the point of renewal a permit, but that would a pretty bad thing to do after somebody has relied on a permit, gotten it, was not given conditions, and then the neighbors came and complained. I am not sure that is the best way to do planning and permitting. Thank you.

Committee Chair Chock: Council Chair.

Council Chair Rapozo: The only conditions would be what is in the B&B ordinance.

Mr. Hull: Correct. Under the Class I zoning permit, Council Chair, there is the ability for the department to add additional conditions of approval, but rarely does that happen because of the fact that these are outright permitted uses.

Council Chair Rapozo: Right, but what I am saying is whatever the case is, the only way that it will be revoked is if they violated a condition.

Mr. Hull: Correct.

Council Chair Rapozo: So, tough for them. They know what the conditions are and if they violate it to a point where the neighbors are being bothered, then they lose their permit.

Mr. Hull: Right.

Council Chair Rapozo: That is what the rule is for. The other thing too when someone buys into the VDA, they are buying into that zone that allows for that kind of development, which is different from buying into a Residential area expecting to have a full-time neighbor and you find out that you do not. It is a different thing. The question I have is why in Section "c," this would be page 5—I know we run into problems with TVRs because of this. "Upon renewal, the Planning Department may initiate re-inspection...and may withhold approval a renewal application." Why would that not be shall?

Mr. Hull: That was taken directly from the transient vacation rental ordinance.

Council Chair Rapozo: Right and that is a flawed part of the TVR bill because what is happening is you have these units that do not look like when it got approved because the changes had been made, but because the Council in their wisdom...I was not here...removed that requirement for the physical inspection, which gave that owners the opportunity to expand and do all kinds of things. Do you have a problem if I propose an amendment next week that would change "may" to "shall?"

Mr. Hull: To give a little background. This language was taken was from the TVR ordinance in the way in which nonconforming use certificate TVRs are monitored. Those are the TVRs outside of the VDA. We are saying for homestays within the VDA, they should be monitored in the same manner. Can we anticipate a fair amount of units coming on line in the VDA and because it is easier to say, "Yes, we can," but tentatively, Council Chair, I would say that we would not necessarily have a problem with that, but should there be an exorbitant amount that come out that essentially necessitate us always going out there on an annual basis, that we may have to come back and have a discussion of resources at that point.

Council Chair Rapozo: I could probably live with the "may" in the first, but definitely not in the second. If you have a B&B operator that has some violations that you folks have uncovered while you do your re-inspection and let us say that we will give you the flexibility and not made it a mandatory inspection, but subject to resources. If you come across a property that is in violation of whatever code or condition, why would we not withhold? Why should that not be a "shall?" In other words, if you are in violation, your renewal will be withheld until the violations have been resolved.

Mr. Hull: I would say that we have no objection to that. In fact, much of the way we operate today is very similar to that. I would say that you would also want to check with your counsel on that as well to say, "Can you withhold approval, ordinance wise, for one (1) use when there may be other violations

for a particular other way?" I think it is good practice, but I think you may want to check with legal counsel on that.

Council Chair Rapozo: I know we did in the past and I disagreed with that County Attorney's opinion, I mean, we write the law here. We set the law. If we say that if you have an outstanding violation for whatever it is, then you are going to holdback...of course I do not agree with that opinion. We can send it across again, but regardless we do not have to agree with the attorney. When we are writing this law, we are going to dictate what happens. I cannot imagine us allowing a B&B operator, a TVR operator, a business operator, or whatever kind of operator to continue to operate and function while they have existing County violations.

Mr. Hull: From a land use perspective, quite frankly, it is a good practice mechanism. I completely agree with you on that.

Council Chair Rapozo: Thank you.

Committee Chair Chock: I know we have one (1) amendment today and it sounds like we have another one as well. I want to also ask the Councilmembers that if there are additional considerations, then I would say that we ask our questions today and we continue to work on this Bill. Let us continue the discussion in Committee at another date.

Councilmember Yukimura: I have another question for Mr. Hull.

Committee Chair Chock: Sure.

Councilmember Yukimura: Pursuing that scenario I brought up of a single-family home with many rooms and there is a big noise problem, what is the provision that would be considered violated in this Bill?

Mr. Hull: There is a noise ordinance that is regulated by the Department of Health and there is nuisance issues that are all related to the Police Department's enforcement. There is a section under page 3, subsection "e," which states, "The homestay operator shall provide a list of requirements and information entitled...that shall provide essential information to the visitor and shall seek to reduce negative impacts on the surrounding neighborhood." To a certain degree, it falls into there. The regulation of noise is a particularly sticky issue. Generally, we rely on the Department of Health for the enforcement of that statute.

Councilmember Yukimura: But I am thinking that it is very important, and it might be aligned with what the Chair was saying regarding tying it to the permits so that you can revoke the permit, not rely on separate enforcement mechanisms, but actually revoke the permit because it is a conditional permit that homestays be operated in a way that does not disturb their neighbors. I just wanted to make sure that there are really clear, strong provisions in the homestay law itself.

Mr. Hull: Noise is an issue, but when you get into the nitty-gritty of regulating noise and actually removing a land use entitlement pursuant to a noise violation, it requires things like having a doing business as (DBA) monitor and having somebody onsite to monitor the decibel level of a particular property. Then you go further and beyond that when you are called before a court to demonstrate that it was verified that the decibel was at a certain level. Was the decibel monitor calibrated correctly and all of these things come into play, which is why the monitoring of noise is...the Department is not against it, in philosophy and

principle, but as far as the regulatory resources necessary to begin monitoring operations at that level, is at a much wider scale than just somebody walking out to their property and saying, "Yes, it is noisy."

Councilmember Yukimura: Well the whole premise of use permits is compatibility with neighborhood and you allow people to come in and you sometimes withhold permits...do not issue permits if neighbors complains. Should the same thing not be grounds for revocation of permit? Should we not make that clear in this law?

Mr. Hull: That is the thing, Councilmember Yukimura, this is not for a use permit. This is to allow for these operations to occur in the VDA as an outright permitted use.

Councilmember Yukimura: Well if that really interferes with our ability to regulate homestays so that they do not cause problems, we should make it a use permit.

Mr. Hull: If that is the prerogative of the Council, I do not think...

Councilmember Yukimura: I am asking the Planning Department how you justify doing it as an outright permit and say that you will have enough ability to regulate to offset the negative impacts of homestays and make them useful, constructive operations.

Mr. Hull: In the manner in which other transient accommodations are outright permitted in there and are not subject to further regulatory mechanisms, such as noise or further use permit type of parameters, in a sense that transient vacation rentals are outright permitted in this area. Resort units are outright permitted in this area. Motel units are outright permitted in this area. Hotel units are outright permitted in this area. In essence, you have all of those type of uses, which for the most part, have been going along relatively smoothly without an overwhelming response of complaints against these operations in the VDA for say noise. To allow another type of transient accommodation use in which, in fact, you have the homeowner onsite, the department does not anticipate an overwhelming impact from that, but at the end of the day, if it is the prerogative of this Council to put other types of further regulations on the homestays despite the other operations and uses not being required to be subject to those, that would be the product of this Council.

Councilmember Yukimura: Hotels and motels are in certain zonings, but the single-family transient vacation rental and the single-family homestays are in Residential single-family areas. That is where the potential conflict comes. I am thinking that the Planning Department would like to plan carefully so that the regulations would be set up, so that if there are problems that we would be able to regulate them. Enforcement of TVRs and homestays are one of the key issues. If we could be assured that there could be really good enforcement, we could allow them more easily, but if the enforcement issues have not been thought through than they are more difficult. So, you do not even want to allow anything. But the fact is we are allowing them in TVR areas and we are responsible for making sure that they work well there. Princeville is a TVR area now remember, that is a lot of single-family. I do not know about Kōloa and Po'ipū, but I think homestays are likely to be in single-family areas, right?

Mr. Hull: Correct.

Councilmember Yukimura: How are you able to regulate? I think Council Chair's question about being able to stop something until it is resolved...I mean stop the use until it is resolved—is along the same lines. How are you going to give effective enforcement? If noise is an issue? How is revocation of the permit allowed or going to be done when noise is an issue?

Mr. Hull: Councilmember Yukimura, I will just say that if there is an intent to regulate homestays in the VDA with a use permit process, while the department recognizes an incongruity with the TVR ordinance, the department will not object to an amendment requiring use permits for homestays in the VDA. I can leave it at that.

Committee Chair Chock: Okay.

Councilmember Yukimura: What if you just said that you had a lot of conditions, you make really explicit that not creating noise disturbance to neighbors is part of your general provisions for homestays, so that if you have a complaint about noise at point of renewal of homestays, you are able to revoke the permit based on the fact that "General provisions of homestays have been violated."

Mr. Hull: Well when you look at outright permitted uses in general, that is not an outright permitted use. If they are not operating within the parameters that that outright permitted use is allowed in a particular zoning area, the only thing we can enforce on is where they are violating that. You cannot revoke the ability to have homestays on the property because should this pass, much in the same way that TVRs are outright permitted in the VDA, we cannot go in and say you can no longer have a TVR on this property. If they are operating a TVR in a manner that violates the law, we have to say that you have to get into compliance with the way those TVRs are run, but you cannot "willy-nilly" go in and say, "You can never have a TVR on this property." That is the same thing would apply for the homestay because it would be an outright permitted use, so that is an outright permitted land entitlement that you get when you own that property.

Councilmember Yukimura: Okay, and what if you say, "Get in compliance," and they do not, then what?

Mr. Hull: We would issue the fines on the portion in which they are not in compliance with.

Councilmember Yukimura: "Fines on the portion which they are not in compliance with." What do you mean by that?

Mr. Hull: If a homestay is outright permitted in the VDA, we cannot issue a fine for operating a homestay because it is outright permitted. Now, if they are operating a homestay that does not meet the requirement, say that they have a septic system, that specific section that they are operating a homestay absent a septic system, is what is specifically sited. I am just saying that you cannot remove forever the ability to have a homestay on a property should this draft ordinance be passed.

Councilmember Yukimura: I am asking you the question based on your statement that you cannot revoke; therefore, I am asking what are the other remedies?

Committee Chair Chock: Can I interject? I think I have heard him say it three (3) times, it is a special use permit, and if that is the direction that we would like to go to, that is what we have within our purview.

Councilmember Yukimura: I am also asking whether there are other ways to do it and you are saying there is not, that there is no way to revoke a permit even though you have requirement for renewal of permit. Why do you even have a requirement of permit?

Mr. Hull: Councilmember Yukimura, I am not saying you cannot revoke the permit. I am saying that you cannot revoke the land use entitlement.

Councilmember Yukimura: I am not talking about revoking the land use entitlement. I am talking about revoking the permit.

Mr. Hull: We can do that if they are not meeting the conditions of the draft ordinance. When you are talking about saying you cannot have a homestay on a property, if this draft ordinance is passed, the department would not have the ability to say...should they operate their homestay in an inappropriate manner, one that is not congruent with the law, we can cite them and we can revoke that permit, but we cannot revoke the ability to ever have a homestay on that property again.

Committee Chair Chock: Okay. It sounds like this is an issue and is something that we can continue to work on. I would like to expand the conversation and there are a lot of other questions. Let us move on a little bit from this and we can come back to it. Councilmember Hooser and then Councilmember Kualii.

Councilmember Hooser: To get clarity, the Bill as presented, makes it an outright permitted use. I understand that if the Bill is passed, we cannot take that away. Another option would be to not make it an outright permitted use and require people to get a use permit, and the fact that they live in the VDA would be one (1) element that weighs in the discussion of getting a use permit. So a person that lives in VDA might get more points, if you would, or be more inclined to get an approval with a use permit than somebody outside of the VDA. It would just be other criteria that get evaluated.

Mr. Hull: Not in this draft ordinance.

Councilmember Hooser: Not in this draft ordinance, but with a use permit you could also evaluate...it is ten (10) rooms and there is an old folks home next door and you can make an informed decision on whether that is an appropriate place for this use to the use permit process, but not to this permit process. This is an outright permitted use and it does concern me now that the Councilmembers brought up that Princeville and their residential areas have many hotels all over the place with no oversight, apparently.

Mr. Hull: Correct. The key distinguishing factor for a use permit is to determine compatibility with the surrounding area. If you are looking at legislation that outright permits a particular use, the ultimate saying or the intent of that legislation would say, "This is a compatible use, period, for that area." If there is some concern that, no, it may not be outright compatible with all the areas, then you have the discussion of whether or not it should be allowed via use permit.

Through the use permit process, which is a public hearing process/agency comment; the Planning Commission would determine whether or not that particular use is compatible in a respective area.

Councilmember Hooser: The use permit process allows a more informed decision to look at the circumstances and then deciding whether it is appropriate as opposed to a blanket approval. Thank you.

Committee Chair Chock: Council Chair has a follow-up.

Council Chair Rapozo: So the Resort designation "RR" means "Resort?"

Mr. Hull: Yes.

Council Chair Rapozo: And there is a number after the RR.

Mr. Hull: Yes.

Council Chair Rapozo: Which tells you how many units per acre, correct?

Mr. Hull: Correct.

Council Chair Rapozo: In the residential area of Princeville, what is the designation? Is it typically RR...

Mr. Hull: I am not sure off the top of my head. There should be some RR-10s and you should have some RR-20s.

Council Chair Rapozo: Okay, so RR-10 would mean you could have ten (10) units per acre. RR-20, which more than likely, is a hotel. The residential side on the resort...I see Councilmember Yukimura shaking her head so maybe I am not correct, I do not know, and that is why I am asking. I am trying to figure out a way that you could carve out the residential areas of a resort area. In other words, like Princeville, because it did not dawn on me until I began thinking, you can put up a ten (10) room B&B right between two (2) families in Princeville. Is there something to carve out of RR-20...I do not know how those numbers operate and maybe Councilmember Hooser can answer that.

Councilmember Hooser: I believe that most of residential areas are probably R-4.

Council Chair Rapozo: RR-4?

Councilmember Hooser: Just R-4. "RR" means that it is a hotel, but the residential is just one (1) "R."

Council Chair Rapozo: Okay. So there would be a way to carve out basically within the VDA any designated R-4s...I think you know where I am trying to go with this.

Mr. Hull: Yes.

Council Chair Rapozo: I am trying to create that process for the residential parts of the VDA.

Mr. Hull: Yes. It is actually quite easy. The way that the land use table is structured is you have Residential R-1 to R-6, Residential R-10 to R-20, and then you have RR. Right now, there is listed proposed permitted in all of those segments and if there was a desire to have the use permit process for the Residential district at a certain density capacity, you would just insert the "U" for "use permit process," in there.

Council Chair Rapozo: Yes, I see it in the amendment. I am sorry, I missed it. That might be a solution for those units that we want to create the process, change the "P" to a "U."

Mr. Hull: Correct.

Council Chair Rapozo: Thank you.

Committee Chair Chock: Councilmember Kualii.

Councilmember Kualii: Is it okay to move to a separate topic?

Councilmember Yukimura: I have a follow-up on that.

Committee Chair Chock: Councilmember Yukimura, you have a follow-up on that?

Councilmember Yukimura: Yes. Does RR-10 mean twenty (20) units?

Mr. Hull: RR-10 can have ten (10) dwelling units and then under the code, if it is a motel or a hotel unit which generally does not incorporate a kitchen, you count those as double the amount of dwelling units. RR-10 can have ten (10) units with kitchens in them or twenty (20) hotel units without kitchens.

Councilmember Yukimura: Okay, thanks for the clarification. And RR-20, is the same, too...it is forty (40)?

Mr. Hull: Correct.

Councilmember Yukimura: I just want to get that clear. The other way to address the problem without a use permit is to just say that "homestays are limited to three (3) bedrooms" or something like that.

Mr. Hull: That is also another...

Councilmember Yukimura: That may be the easier way to do it, but we should address it instead of just letting it go. The other question is if homestays are an outright permitted use, why are we requiring a permit?

Mr. Hull: Do you want me to answer that?

Councilmember Yukimura: Yes.

Mr. Hull: Essentially, for a change in use, you do require a Class I zoning permit period under the code. Furthermore, in subjecting them to these conditions, as well as the removal, we can monitor these. These types of conditions were not imposed upon the TVRs within the VDA and if for no other purpose (inaudible) pulling a permit for tracking purposes, we got a lot of questions and queries from the community and the Council about what is the count in the VDA. Under the ordinance that passed for the TVRs, we were unable to track it, and so we are saying we want to be able to...for those in the VDA, but outside of the VDA, we are definitely tracking those and there is a renewal process and a certification process. We are saying in recognizing a need to track these units, as well as go through a renewal process to review and ensure that they are meeting the standards recommended that they operate under, that is what the permitting process would be.

Councilmember Yukimura: That is why if they are not meeting the standards that they were operated under they can be revoked.

Mr. Hull: The permit itself.

Councilmember Yukimura: And the permits without a permit—they cannot operate.

Mr. Hull: Correct.

Councilmember Yukimura: So if we put in a standard of noise and they are not meeting the standard of noise, then you can revoke the homestay permit.

Mr. Hull: If that is the prerogative of this Council...I was trying to caution was that...

Committee Chair Chock: Okay, we can work on that.

Mr. Hull: ...it takes some type of a superhero enforcement to really bury down noise. I am not Ian Jung.

Committee Chair Chock: Councilmember Kualii has been patiently waiting.

Councilmember Kualii: On the development standard on the septic system, you just have the language that, "Shall be serviced," with an "ed," past tense, "By a septic system." There was testimony that was concerning whether it is an insulation or an upgrade that it be completed before operations be allowed to start or continue. Does that language of, "Shall be serviced," with the "d" cover all of that or did you need further language to clarify?

Mr. Hull: In our eyes, we would have to see. The applicant would have to demonstrate that they have a septic system prior to us approving the permit, under this language.

Councilmember Kualii: Prior to approving the permit...so if they are in existence and you do not know about it, and then you find out about it—you ask for them to provide that proof.

Mr. Hull: Correct.

Councilmember Kualii: And that is how you enforce it.

Mr. Hull: Correct.

Councilmember Kualii: And if they do not provide that proof, you talked about there being a fine so you can fine them on the particular violation, but not stop...

Mr. Hull: No, so if they were operating the homestay without the Class I zoning permit and it was also demonstrated that they did not have a septic system, then the route into compliance is to get a Class I zoning permit for a homestay operation which they could not get without a septic system. We would essentially fine them for the homestay operation there.

Councilmember Kualii: They would not have a permit or if they had one, you would revoke it, and you would stop operations?

Mr. Hull: Correct.

Councilmember Kualii: And the attorney's that help to draft this that the, "Shall be serviced," with a "D," covers that?

Mr. Hull: Correct.

Councilmember Kualii: According to that law. The other question about parking along the same lines, we heard testimony that talked about on the property, but you gave that clarification, in answering Councilmember Hooser, about there is an opportunity away from the property, but it has to be three hundred (300) feet offsite.

Mr. Hull: Correct.

Councilmember Kualii: But not on a public right-of-way. Assuming there is a willing neighbor or other property that is allowing this to happen, but it does say, "Paved." "Paved and designated off-street parking," so paved obviously is paved. Does designated means with signage stating, "There is this parking here, on this vacant lot, for that homestay down the road," or three hundred (300) feet away. Does that designated mean...

Mr. Hull: No, just designated in a sense that it is serving the...

Councilmember Kualii: It is allocated for that purpose.

Mr. Hull: It is allocated for that purpose, correct.

Councilmember Kualii: You talked about how, "It shall require one (1) additional," so by "additional," they are saying beyond the parking that is on the property for the owner and current residence, and you said that what is required now is two (2) for a dwelling.

Mr. Hull: Yes.

Councilmember Kualii: That is in the Class I zoning permit for Residential.

Mr. Hull: In the Residential section, yes.

Councilmember Kualii: And that two (2) required dwelling just means garage, carport, paved parking of some sort...

Mr. Hull: They have to have an area that can accommodate two (2) vehicles onsite.

Councilmember Kualii: For example, at home, I have a two-car garage, but there is a driveway and another concrete area where we play basketball. So, two (2) cars can actually park in the garage and two (2) cars can park behind those cars, is that considered four (4) parking stalls?

Mr. Hull: No.

Councilmember Kualii: No, because there would have to be no cars parked behind it.

Mr. Hull: It is required to have the ability to access the parking stall without being blocked in by another.

Councilmember Kualii: Okay. Therefore, two (2) means two (2) and garage and the whole driveway for it. Okay. Thank you.

Committee Chair Chock: Can you give the reasoning behind that egress and ingress?

Mr. Hull: Just to ensure that there are actual parking stalls available for the guest to use because an applicant can come in and say, "I have a very thick driveway and can accommodate four (4) cars," but if we see that it blocks them in more often than not that results in them not actually parking there, results in the guest or operator parking on-street.

Committee Chair Chock: So it just depends and it is sort of a call that you folks have to make if that driveway is big enough or not.

Mr. Hull: Correct. If it can accommodate both parking as well as egress/ingress.

Committee Chair Chock: Okay. Councilmember Hooser.

Councilmember Hooser: I am going to revisit our earlier discussion because I think this is an important topic, we were talking about the "RR" and about a permitted use in the VDA. Everyone acknowledges that in a residential area, we used Princeville as an example, just to have flat out permitted use that as long as you are following these rules you can have ten (10) rooms and it does not matter who lives next door. I think there were some red flags that have been raised on that, which brings me back to the use permit process as a better way to evaluate where these units would go and where they would not go. That begs the question that if you are going to evaluate whether or not those residential homes are appropriate or not in Princeville, why not just use that as part of the criteria and evaluate them island-wide. There are areas that no neighbors are going to be disturbed. There are commercial areas. There are other areas that we could take and look at, stand back and look at, and say, "Okay, it has not changed the character of the neighborhood, there are no old folks homes next door," and then evaluate them like a use permit

process and then grant the permit or not. If you are going to be doing that in Princeville or other residential areas in the VDA, why would that same criteria not just be extended out to other areas? With the VDA being part of the...you have a checklist that asks: is it congested; is it going to change the character of the neighborhood, et cetera, and the VDA would give them points, I would think, but it would not exclude everyone. If you are going to do a use permit process there, what is the difference of doing it at other places?

Mr. Hull: To be clear, the Department did initiate the first bill that was just recently received by the Council, which did allow them...

Councilmember Hooser: The Department did initiate...

Mr. Hull: We did initiate that and that was our stab, essentially at saying, if you are going to entertain homestays, they need to be further broken down to certain operating parameters, but the use permit process can be considered an appropriate route outside of the VDA.

Councilmember Hooser: Okay. So the Department is open to that if the Council, in their wisdom, decided to go down that path?

Mr. Hull: Like I said, we initiated the first ordinance, but that was somewhat looking at the policy set forth under the TVR ordinance that directed the County to go back and look at homestay operations being permitted...or how to further review and permit homestay operations via the use permit process. The Department did not object to that previous bill, we introduced it. There was also discussion about should it be restricted only to the VDA for which the Department also does not object to, so we also drafted this to get it to you folks in a bit more timely manner. Now, the General Plan does actually state that the County should consider looking into how to have use permits for homestay operations, period. We are not saying inside the VDA or outside the VDA and that was the discussion of the first draft bill. The Department would say that since the adoption of the General Plan, the pendulum has swung in a sense that with these new technologies and websites available to the public and homeowners, that transient accommodations have had significant impacts on residential areas in particular, as well as the promotion of agricultural lands for agricultural production which is why we can support a position. To a certain degree, that aligns all non-traditional transient accommodations into a single area, which would be the VDA.

Councilmember Hooser: Okay. Thank you.

Committee Chair Chock: Councilmember Kaneshiro.

Councilmember Kaneshiro: I know we have been hammering on this issue a lot and I am still a little confused, but there is a use permit and this has a homestay zoning permit and there is an application. I am getting confused between a homestay zoning permit and the application. The application is what you fill out and if it is accepted, you get a home use permit.

Mr. Hull: There is a single zoning permit application for all uses and structures proposed here on the island of Kaua'i. If it requires getting a use permit or a Class IV zoning use permit, there are a series of additional documents, evaluations, and studies that are required to be attached to that zoning permit application. That ultimately gets forwarded to the Planning Commission for their review and action. If it is something as simple as an outright permitted use, all that

is required essentially from the Planning Department side is that same application and attached to it, a plot plan and an elevation plan depicting the structure and then within that plot plan depicting the use that would occur on that property. Generally, that is how Class I or outright permitted uses are reviewed. Under this, additional documentation also has to be provide concerning the homestay operators list for requirements, demonstration that they are benefiting from the 5(a)11, so this lays out the additional documents that will have to be attached to that zoning permit application. They will provide the plot plan elevation, the use, and these documents here and if it is all in order, the Planning Department signs off on the approval portion of that application and that constitutes for the zoning permit – they are approved.

Councilmember Kaneshiro: Okay. Thank you.

Councilmember Yukimura: I have a follow-up.

Committee Chair Chock: Yes, please.

Councilmember Yukimura: Are you not describing the difference between...I am trying to find the right words...mandatory and discretionary permits?

Mr. Hull: I think you are referring to ministerial.

Councilmember Yukimura: Thank you. Class I, II, and III are ministerial permits. They have certain criteria and if the criteria are met, the official has to issue the permit. The Class IV permit is a discretionary permit, so that requires a judgement and a decision by a body.

Mr. Hull: Correct.

Councilmember Yukimura: But all the permits have conditions. Say if one of the conditions of the ministerial permits gets violated...certainly you would go through the process of asking for compliance, but if compliance is not given, arguably you could revoke that permit.

Mr. Hull: The permit itself could be revoked, correct.

Councilmember Yukimura: Yes, so if we include noise as a standard for this permit and do not make it a use permit or a discretionary permit, we make it a ministerial permit, but the conditions for that permit includes not disturbing your neighbors through noise, then you could revoke it. I am thinking you could. We can check with the attorneys.

Mr. Hull: If that is the prerogative of the Council, you can put that. I just caution the sense that when we go through revoking then ultimately what happens is of course generally is an appeal. An appeal will be (inaudible) to the Planning Commission and more than likely handed over to a hearings officer. We have to demonstrate how that operation was, in fact, violating the noise portion of the ordinance. Without specific parameters laid out and the specific resources in the department to determine that noise component was violated, it becomes very tricky to enforce.

Councilmember Yukimura: That is why it would be very important to clarify the noise standards. I do not think they have to be decibel standards. I think

they can be based on neighbor complaints or those types of things if it is a compatibility issue. It would be about crafting that standard correctly in the law.

Mr. Hull: Yes. I will leave it at that.

Committee Chair Chock: Okay. Any further questions? I am moving to defer this on the fact that we have some outstanding concerns and maybe some legal guidance needed for potential amendments. We still have one (1) amendment on the floor today that I would like to pass today, but are there further questions before we defer?

Councilmember Kagawa: I am wondering before we defer, are we going to have a few moments to share? I did not ask much questions, but I have some thoughts that I would like to share as I am listening to the line of questioning and the direction that this has taken.

Committee Chair Chock: Sure. If there are no further questions, we can go into discussion.

The meeting was called back to order, and proceeded as follows:

Committee Chair Chock: I would like to vote on the amendment, unless we have more discussion on the amendment first.

Councilmember Kualii: That was just a typographical omission, right?

Committee Chair Chock: Do you have another amendment?

Councilmember Kualii: No, this one here.

Committee Chair Chock: The one we are voting on, yes. With that, any further discussion on the amendment?

The motion to amend Bill No. 2619 as circulated, as shown in the Floor Amendment, which is attached hereto as Attachment was then put, and unanimously carried.

Committee Chair Chock: I will open it up for discussion. I know Councilmember Kagawa, you want to speak first.

Councilmember Kagawa: It is ironic how I was at the Waimea High School Hall of Honor celebration and I had one (1) of my friends come up to me and she said that her and her husband have been recently going through hell with a vacation rental located next to their house in Kekaha. I asked her if it was along the beach and along the main highway, and she said, "No, it is much in the interior of Kekaha." That surprised me because everybody tells me about how bad Kekaha has turned into, especially the beachfront, with all vacation rentals. All the old time local homeowners have sold and they have probably made a nice profit, but it has turned into a VDA, if you want to call it that. That front, anyway. Her complaint was about the noise and lack of respect by the neighbor when she calls him...so it sounds like it is a B&B – they rent a house, he lives in a smaller house adjacent. She said that she have called the police numerous times and they go there and waste their time and tell the neighbors to be quiet and they be quiet and the next week it happens again. I really do not think the noise thing can be handled by Planning and Police as far as

proving it and kicking them out. I think the way we try and regulate this is we need to get a handle of the big picture and then once we get a handle on the big picture in the VDA, those that are outside the VDA that have permits, like the TVRs that were grandfathered in, I think we work with the Planning Department and right now I think they are in the process of trying to determine which are the nonconforming TVRs that they can get out of the TVR market. Right now, what I see is we have all of the bad decisions from 2008 and beyond, we have a chance right now to put a lid on it while we try to figure out how we are going to proceed with the nonconforming. I am hearing some thoughts like, "Well, let us look at opening it up," and I see that as taking off the cover and letting all of the disease spread again. It is concerning for me because we already had a huge mistake in 2008 and I do not want to go back here and create more problems for a Council that will be here in the future that will say, "Wow, the Council in 2016 knew the situation was bad from 2008, creating all of this havoc for B&Bs that really are not part of the TVRs," but nonetheless they are all vacation rentals. To open up the window for more problems to occur, I do not want to see a future Council eight (8) years from now saying, "I wish the Council in 2016 had some brains. We already had a problem and you are going to open up the problem more, instead of trying to contain the problem now, restrict it to VDAs, let the Planning Department try and get a handle on the TVRs." Once we get a handle on all the *pilikia* that happened in 2008, then maybe this Council or the future Council can be more open to seeing if we can have a process that works with the homestays and B&Bs. As far as agricultural lands, agricultural, to me are a little different. We are not talking about residential properties, although a lot of agricultural properties are residential, but I think with agricultural, first, we need to look at if it is farmable. Does it need to have a supplement? Bill Cowern has been a farmer forever. We all know Bill from way back with his timber business and everything and he is a longtime resident, been doing B&B a longtime, and it has been supplementing his income so he can remain being a farmer. That is another issue. What I am talking about are residential areas that are being spoiled by allowing mixed use like vacation rentals in there and I think we have to get a handle on it. Thank you, Chair.

Councilmember Yukimura: I want to say that in 2008, as crazy as the discussion was, the bill was really important because it declared that TVRs were illegal outside VDA areas and if that had not passed, they would be proliferating to this day. The problem was in the enforcement, to enforce that law that you are not supposed to have VDAs outside the VDA, unless you were legally operating at the time of the passage of the law, which is the grandfather law. If we did not pass the 2008 law, that declaration, that TVRs were illegal outside the VDA, we would have a greater problem today. I think that is saying that we may need to do that right now and stop any new development of B&B outside the VDA and get some time to actually establish what could be a well-regulated system if we do decide to allow some on a limited basis. As everyone has said, the problem is in the numbers. In 'Anini Beach, if ten percent (10%) were TVRs, they probably would not be that much of a problem, but when they proliferate, they destroy a neighborhood. That is absolutely true. In Kekaha, if that is happening with the issue that Councilmember Kagawa has raised, they should not be calling the police, they should be calling the Planning Department because either it is a TVR with a permit grandfathered in, and that should be revoke or if they do not comply...or it is a homestay that is illegal and does not have a permit. That is the power of regulation. The mistake that was made in 2008, we did not declare a moratorium while we were processing the law. This proposed bill may have the effect of doing that, but it will be the wrong thing unless we figure out a right way of allowing it and enforcing it properly—my thought. I think we also have to create a class for those who have operated with a sensible permit from the government, because there was no enforcement or anything. Those who have been paying their

taxes and have been doing everything in good faith. We have to find a way to allow them to operate and I am going to be working on an amendment for that.

Councilmember Yukimura: I actually think we are making some progress even though we are going to be deferring the Bill. The conversation was a good one and I think everyone acknowledges that if we can focus on what we agree on, I think we all agree that the homestay/B&B use needs to be regulated. Too many of them change the character of neighborhoods and if there are no noise, parking, and other types of restrictions, there are consequences that are not good ones. Therefore, we all agree that there needs to be regulation. The question is how much regulation; how tough, strong, or what class needs to be regulated? I also agree that we need to draw a line in the sand and say, "Okay, we do not want anymore. We do not want this industry to grow until we are clear about the impacts." I am more than happy to go down that path, but also agree that we should look going forward and not going backwards. As the Planning Department spoke that there may be forty (40) at the most, people who have been operating and trying to be forthright, pay their taxes, and comply with the law, many of those who have been doing it for years, if not decades without complaints. Many of them think that they are complying and doing their best to comply. I would like to see a solution crafted where we could move forward and end this festering issue and end lawsuits that are if not happening now will be happening in the future and be fair. Being fair and put in place good public policy. So those are the two (2) criteria that I would like to support. Certainly, this Bill as written, in my opinion, does not accomplish that and I am happy to see that we are deferring it. Thank you.

Councilmember Kualii: I agree that we have some work to do. Part of it for me is I want to get some clarity on what has happened in the past and how we are using different words to describe things. I think one of the most important phrases is grandfathering and I heard it say that grandfathering already exists. It is a constitutional right and a guiding principle. If you have that right, you can invoke it. When we talk about grandfathering in the past of what happened with TVRs, I do not know if that was grandfathering because this Council would not had to take any action to provide grandfathering. It was more like an amnesty, if you will. Maybe I need to get more clarity from the Planning Department, but if the Council took an action to provide something, a nonconforming use permit or to make legal what is illegal as long as you get it in place before a certain time, and then now everybody else that follows cannot because it would be illegal. That in a sense seems unfair of course, but I think we need to...I need to especially know the difference between grandfathering and amnesty and how it was really done and what are people asking us to do now because I do not think we have to do anything for grandfathering. If you did things how you are supposed do, you have that right. We all want to be fair and understanding that people were trying to operate in good faith, that is fine, of course, but we all have responsibilities to our neighbors, to our community, and to how we operate. We, as the Council, have responsibilities to both sides of our community; the people that are operating and the neighbors that are being affected. We have to balance that the best we can and do the best that we can. We definitely have some work to do.

Committee Chair Chock: Councilmember Kaneshiro.

Councilmember Kaneshiro: I am glad we are deferring it. I think it is very important for us to completely understand our decision and its affects. For me in particular, my questions to the Planning Department at this time will be a use permit versus an application or homestay zoning permit—more clarification versus the pros and cons for those and how it affects the different zoning districts such as Resort, R-

I to R-6. I need a little more clarification on that. Something that came to mind was the property tax class. What is this going to be taxed as? Does it need to be addressed now? Will it be addressed separately? That is where my questions are going to be, along those lines, and hopefully we can have some clarification on that as we move forward.

Committee Chair Chock:

Council Chair.

Council Chair Rapozo: Thank you, again, as a non-Committee member. The impact to a person living in a residential area, it does not matter if it is a TVR or a B&B because it has the same impacts. You still get the change in guests, traffic, and noise. The only difference is that the law says that in a B&B, the owner has to live in the house. Yes, that may curb some of the problems or it may not. At the end of the day, it is similar impacts to the neighbors. It is just the way it is. It is not the neighborhood like we knew it where everybody knew everybody; it is a changing neighborhood every week. I do not understand and this is something that we have to all look at is creating one (1) ordinance that governs all of these alternative accommodations. So, you will have a section for TVRs, B&Bs, or whatever else, because they all create similar impacts to the neighborhoods and that is something that we have to be looking at versus this piecemeal thing that you say the TVRs can do this, but the B&Bs cannot or the B&Bs can and the TVRs cannot. We have to put this under one (1) umbrella because again the impacts are the same. Maybe the tax ramifications might be different, maybe the permitting ramifications might be different, but at the end of the day, it is all of the same when it comes to the neighbors. Like Councilmember Kagawa's complaint that you had from Kekaha. It did not matter if it was a B&B or TVR. The fact of the matter is you have new people coming in every week or sometimes more than once a week and they are creating some issues. You cannot call the Planning Department at eleven o'clock (11:00 p.m.) at night. Who is going to answer? If you have noise at night, you cannot wait until the morning to call and say, "Hey, we have noisy neighbors." Everything has to be defined and the impacts have to be identified and addressed, whether it is noise, rubbish, or whatever the case may be. We saw the advertisement for the B&B that has a marijuana friendly *lanai* that you can go on it and smoke your dope. That causes a problem for neighbors. I do not care if it is a B&B or TVR because that smoke or noise is the same impact. I do not understand why we are not looking to consolidate all of these types of alternative accommodations under one (1) ordinance because we have so many parallel and so many commonalities that it just makes sense. I am not suggesting that we do it now because I believe we have to stop the bleeding right now. The biggest thing that is bugging me right now is over the years I have heard the complaints from B&B operators that when they had gone up to get their permits they were told, "You do not need to right now. We are working on that later." I know for a fact because I was here in 2008 when we talked about dealing with the B&Bs later because it is not like a TVR. I am not sure what the Planning Department employees told these people that are operating and paid their taxes and I cannot say today that they are not being truthful; I do not know that. The question is we do not have any evidence that occurred, but do we have evidence to show that that did not occur. Mr. Hull talked about the fact that there are applications, denials, approvals back than that it was obviously a common practice that permits were required, but did everyone get that memorandum? That is what is bugging me today. I would feel more comfortable if there was a process in place that the Planning Department can take a look at these existing operations and make a determination on a case-by-case basis of whether or not they are able to continue. I do not know of every case, but I know one (1) thing, I will not support a bill that will allow new B&Bs to be popping up everywhere. I just will not. I already talked about the problems people are currently having finding rentals and we keep talking about preserving the culture in the

neighborhoods—opening it up for new B&Bs is not going to do that. It will do the opposite. I think there is a lot of work need to be done and a lot of discussion to be had. “2008, we made the fatal mistake of taking care of the people that were already and unfortunately right now the same thing exists. Right now if I wanted to go...all of a sudden say, “I can go get a B&B. I never did it before because I knew you needed a use permit. I am prohibited.” But the guy that was doing it illegally all this time without the permit can continue? That is not fair. We have a lot to look at. We need to understand that there may be some circumstances out there today, and I believe there are, of people that in good faith continued their B&Bs and only to be told today that they cannot. Thank you.

Committee Chair Chock: I concur with a lot about what has been said around the table. It has been a rough ride, especially for those who have been trying to get into compliance and are in contested hearing. I encourage exploration of establishing class, as Councilmember Yukimura has talked about. If there is way to assist some of these owners who have been trying to work with our system. I am also not against the special use permit process moving forward; however, I think what this provides is an opportunity to stop, take a break, and get a handle on what it is we are really dealing with because it seems to me that we just do not have a handle on it. We need our Planning Department to be able to get to a point where they can see clearly, they can get a footing, and then we can move forward appropriately. I am glad that we are deferring it because I think there are a lot of outstanding questions that need to be answered and obviously some amendments that need to be addressed. I am looking forward to doing that, whether it be the tax class questions or anywhere from the parking questions or the noise questions, too. With that, I will entertain the motion to defer. I think the question might be how long we need. Our attorney was here. I thought he might be able to give is an indication if he can get back to us in two (2) weeks, which would make it April 27th, but if we need more time, do you have a suggestion?

Councilmember Kagawa: I have a suggestion. Let us go a month from now.

Committee Chair Chock: What is the date on that?

Councilmember Kagawa: May 11th.

Committee Chair Chock: May 11th.

Councilmember Kagawa: The Planning Department has heard a lot of the concerns. They can be a little bit more ready. I think two (2) weeks is quite quick. We will get the same, “I do not knows,” to certain questions. Maybe a month will give us a little more of a productive meeting.

Committee Chair Chock: Thank you for the suggestion.
Councilmember Yukimura.

Councilmember Yukimura: I can see Council Vice Chair’s point, but the point of “stopping the bleeding,” is important. There is a certain amount of need to act soon. Can we defer it just to the next...the 27th and if I do not have amendments ready or nobody else has, then we will defer it for another month. I would actually like to try to get something done in two (2) weeks.

Committee Chair Chock: What I am hearing though is it might be a separate proposal that you are suggesting in terms of “stopping the bleeding” portion?

Councilmember Yukimura: No. To me, “stopping the bleeding” by not allowing any new development of B&Bs, but also addressing the issue of those who have been operating for really long time and are now stopped.

Committee Chair Chock: One of the things that I am concerned about is the attorney because we have not been able to get...they have been really bogged down with work and our requests.

Councilmember Yukimura: Do we have some outstanding requests to them about this Bill?

Committee Chair Chock: Yes, and out of this meeting we will have some news ones. That is why I am a little bit concerned about keeping it within two (2) weeks and I think we could use more vetting. I am going to ask that we actually move it for another month. Thank you for the consideration, Councilmember Yukimura. Yes, Councilmember Hooser.

Councilmember Hooser: With the issue of working towards fairness or grandfathering or whatever we want to call that, I believe there are many ways to get down to that result. The term “grandfathering” may or may not be the right term, but with help from the attorneys, I am sure we could craft language that would allow...the equivalent to happen in a legal manner, if it was the will of the majority of this Council to do so. Thank you.

Committee Chair Chock: Okay. It sounds like we need the month and we can be proactive in the meantime and try and get some of those structural needs for however we can deliver what the Council’s interest is.

Councilmember Hooser: I have one (1) more question. So the intent that I am hearing is that we will consult with the attorney between now and then and there will be amendments to put on the table on that day to hopefully move us to some conclusion.

Committee Chair Chock: Yes.

Councilmember Hooser: Thank you.

Committee Chair Chock: Thank you. More discussion?

Councilmember Kagawa: I just wanted to add that I had in depth discussions with the Planning Department regarding grandfathering and basically they said that opens up flood gates big time. I do not even know if we go that way, but...

Committee Chair Chock: Yes, I do not think that is the term that we are talking about and it may not even be within our purview since we are currently dealing with the fact that they may not be legal in order to be applicable for grandfathering. Any further discussion?

Councilmember Yukimura: Yes. I am not a voting member of this Committee, but I will have an amendment that perhaps someone can introduce by the 11th.

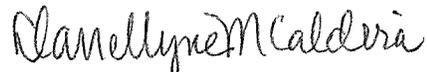
Committee Chair Chock: Okay, thank you.

Upon motion duly made by Councilmember Kualifi, seconded by Councilmember Kaneshiro, and unanimously carried, Bill No. 2619, as amended to Bill No. 2619, Draft 1, was deferred to the May 11, 2016 Committee Meeting.

Councilmember Chock: Motion carried. This concludes the business of the Planning Committee.

There being no further business, the meeting was adjourned at 11:49 a.m.

Respectfully submitted,



Darrellyne M. Caldeira
Council Services Assistant II

APPROVED at the Committee Meeting held on June 29, 2016:



MASON K. CHOCK
Chair, Planning Committee

(April 13, 2016)

FLOOR AMENDMENT NO. 1

Bill No. 2619, A Bill For An Ordinance Amending Chapter 8, Kaua'i County Code 1987, As Amended, Relating To Homestays

Introduced By: ARRYL KANESHIRO (By Request)

Amend Bill No. 2619 by amending Section 2 of Bill No. 2619 to read as follows:

“SECTION 2. Chapter 8, Article 2, Section 8-2.4 of the Kaua'i County Code 1987, as amended, is hereby amended by adding two uses to the “Table of Uses” to read as follows:

“ARTICLE 2. DESIGNATION OF DISTRICTS, METHOD AND EFFECT OF ESTABLISHMENT OF DISTRICTS, AND ZONING MAPS

Table 8-2.4 TABLE OF USES											
Sec.	USE	ZONING DISTRICT									
		Residential			RR	Commercial		Industrial		AG	O
		R-1 to R-6	R-10 to R-20	CN		CG	IL	IG			

<u>8-2.4(u)(1)</u>	<u>Homestay</u>									
<u>8-2.4(u)(2)</u>	<u>Homestay located in the Visitor Destination Area (VDA), pursuant to Article 18 of this Chapter</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>				

(Material to be deleted is bracketed. New material is underscored.)
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