

MINUTES

PLANNING COMMITTEE

October 12, 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, October 12, 2016, at 11:05 a.m., after which the following Members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Ross Kagawa (*not present from 11:08 a.m. to 11:47 a.m.*)
Honorable Arryl Kaneshiro
Honorable Mason K. Chock
Honorable JoAnn A. Yukimura, Ex-Officio Member
Honorable Mel Rapozo, Ex-Officio Member (*not present from 12:37 p.m. to 12:52 p.m.*)

Excused: Honorable KipuKai Kuali'i

Minutes of the September 28, 2016 Planning Committee Meeting.

Upon motion duly made by Councilmember Kaneshiro, seconded by Councilmember Hooser, and carried by a vote of 4:0:1 (*Councilmember Kuali'i was excused*), the September 28, 2016 Planning Committee Meeting was approved.

The meeting proceeded as follows:

Bill No. 2634 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, TO ALLOW MULTIPLE FAMILY DWELLING UNITS IN ALL RESIDENTIAL ZONING DISTRICTS (*Kaua'i County Council, Applicant*) **(This item was Deferred.)**

Councilmember Kagawa moved to approve Bill No. 2634, seconded by Councilmember Kaneshiro.

Committee Chair Chock: Do we have any questions for the Administration? I know that there was one. I will suspend the rules at this time. Mike, can you come up? I am going to ask Mike to address one of the testimonies that came in regarding the multi-family dwelling unit, so he has a copy of that as well. Councilmember Hooser.

There being no objections, the rules were suspended.

Councilmember Hooser: Thank you. Good morning.

MICHAEL A. DAHILIG, Planning Director: Good morning.

Councilmember Hooser: This measure on surface seems straightforward and simple, but at the same time there is something about it that is not quite settling for me, so maybe you can shed some light on that. It is my understanding that the existing law requires a use permit if someone wants to build a multi-family dwelling and it is zoned R-1 through R-6, residential property. Is that correct?

Mr. Dahilig: That is correct.

Councilmember Hooser: Okay. I have a couple of questions, but I will start with that one. The use permit requires a public hearing and it allows the Planning Department or Planning Commission, if you would, to put restrictions on or things like that. The question is how many use permit applications for multi-family homes come in every year that would fall under this category? How many are we waiving?

Mr. Dahilig: Since my tenure as Director, I have not seen a single multi-family use permit request come before the Planning Commission.

Councilmember Hooser: Okay. It kind of also begs the question of what kind of concerns would the Planning Commission have, but no one is coming forward and asking for it. Is that correct?

Mr. Dahilig: Just in response, statistically, I am not aware and to my recollection have not seen an applicant come forward to the Planning Commission that has asked for a use permit for a multi-family dwelling in R-6 or below.

Councilmember Hooser: What is the difference between a multi-family dwelling and single-family attached?

Mr. Dahilig: So a multi-family dwelling shares structural elements, whereas an attached dwelling appears from a façade standpoint to be a single structure, but there is, in fact, two (2) dwellings that are there. They are independently, structurally independent of each other. So "attached" means that they look like one (1) structure, but structurally they are constructed so that they are two (2) individual buildings.

Councilmember Hooser: Okay. If this measure before us was passed into law and an individual developer owned, say one (1) acre zoned R-4; would that allow this individual to develop a four-plex?

Mr. Dahilig: That is correct.

Councilmember Hooser: Even if it was in the middle of what would most consider a standard residential area?

Mr. Dahilig: That is correct.

Councilmember Hooser: Yes. So it could be in any town, any residential area; if there is a remnant one-acre lot, a four-plex could be there instead of four (4) single-family homes?

(Councilmember Kagawa was noted as not present.)

Mr. Dahilig: If this were to pass into law, that is how we would apply the law.

Councilmember Hooser: Okay. What if it was ten (10) acres? Does the same logic go forward?

Mr. Dahilig: Ten (10) acres at R-4.

Councilmember Hooser: So ten (10) acres at R-4, they could build a forty-unit multi-family project?

Mr. Dahilig: That is correct.

Councilmember Hooser: Even though it was in the middle of what would be traditionally detached single-family homes?

Mr. Dahilig: I think the word “traditionally” is...when the Bill came down, we took a look at why there is this restriction in place. I think looking at it from a traditional standpoint, we are more so looking at it from a legislative history standpoint. We were able to uncover that prior to 1980, but when the Comprehensive Zoning Ordinance (CZO) was adopted in 1972, these types of structures were, in fact, allowed all the way between R-1 to R-20. In 1980, there was a restriction in place where everything R-6 and below was carved out because there was a concern at that time that these units were becoming vacation rentals. So the form and character elements in what created the restriction were not necessarily what dictated the restriction, rather it was the potential abuse of the use that led to the Council passing that restriction from R-6 to below. I can see that there may be perceived incompatibilities with the form and character of how a structure may be built, but as far as we can tell, the organic nature of where this restriction came from in the first place had nothing to do with form and character and was more use-related.

Councilmember Hooser: Okay. If this law was passed today, it would apply to...we have different community plans for different communities.

Mr. Dahilig: That is correct.

Councilmember Hooser: So it would apply to everyone?

Mr. Dahilig: That is correct.

Councilmember Hooser: I will use an example—I live in Wailua Homesteads and there are some fairly dense subdivisions, R-4, and there are some R-2, and pockets of vacant land that are zoned different things, R-2 or R-4. There

might be five (5) acres, two (2) acres. If this passed into law, people could put multi-family up to the density allowed without a public hearing and without any restrictions.

Mr. Dahilig: Yes.

Councilmember Hooser: Those are all the questions that I have for now. For what it is worth, these raised some concerns for me and I am going to have a hard time passing something like this without further review. Thank you.

Committee Chair Chock: Councilmember Kaneshiro.

Councilmember Kaneshiro: In relation to Wailua Houselots where this Bill does not increase density, so if someone has a house, they have the opportunity to either build a separate house or a connected house. What is the difference? To me, there is no difference.

Mr. Dahilig: Again, understanding the distinction between form and character and use, and the restriction that is currently in the law is a use restriction. It is not a form and character restriction, at least as far as we can tell when the Ordinance No. 388 was passed. Our understanding, given the preamble of the bill is the measure is intended to try to address some of the housing needs that are out there. We can clearly confirm, at least from our read and the Planning Commission's read, that this does not increase density. One of the concerns that we have always had with addressing the housing issues on-island is that we know not one solution is going solve the problem. We had likened the bill to providing a different path to homeownership for those who already have, let us say dwelling lots, but do not have the requisite income to construct the actual vertical dwelling. So it is a situation where they may be "land-rich or cash-poor." In this circumstance, what it does is it allows, we believe, the opportunity for a family to pair with their adult kids to actually share the mortgage of constructing what would be necessarily a single-family home, but it could be split in half to create a multi-family unit. We think that the difference is that it allows for cheaper construction, because the costs can be shared and allows for equity to be pooled so that a family that has many generations can actually construct the requisite density on the property without having to automatically seek the kind of cause for a single-family home.

Committee Chair Chock: He has a follow-up, if you do not mind.

Councilmember Hooser: I have a quick follow-up.

Committee Chair Chock: Is that okay?

Councilmember Kaneshiro: Yes.

Councilmember Hooser: I understand the logic, especially as it applies to a two-unit project, but there is no limitation on this the way this law is written. Is that correct? It could be one thousand (1,000) acres zoned R-4 or five hundred (500) acres zoned R-4, which the General Plan and all of the work,

historically, has gone into saying, "This is where single-family homes should be," and it could create all multi-family in that area without any community review or input.

Mr. Dahilig: That is a possibility. The form and character elements for each of the districts will still apply, regardless of how the density is constructed. For instance, height and building footprints would not be increased. There is still form and character regulations if somebody were to say taken a ten-acre, R-4 parcel and construct a forty-plex. The form and character compatibility elements would still apply in this situation. If the concern is that having the potential for that type of construction is a form and character issue, there are things that we could suggest to try to limit form and character. As stated previously, Councilmember, we have analyzed this from a standpoint of where was the organic regulation starting from, and was it form and character versus use in nature?

Councilmember Hooser: Okay.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: So you are saying that this Bill does not affect density, but in the discussions here, it appears that it can affect form and character, right? It could allow a forty-unit multi-family building in an R-4 area.

Mr. Dahilig: It could.

Councilmember Yukimura: I think we all agree that we want to support and facilitate two (2) units being built together as one (1), either attached or as a multi-family dwelling, for the reasons you suggested like sharing mortgage and just being cheaper. This Bill may have unintended consequences of allowing something that really majorly affects a neighborhood if there were this situation of a large lot that is zoned R-4, let us say, and then have a large building, one (1) single building containing many units, right?

Mr. Dahilig: It depends on the characteristic of impact that you are describing. A lot of these situations...let us say you are taking an R-4, ten-acre parcel; you are allowed to build forty (40) dwelling units. So whether they are forty (40) dwelling units of single-family versus forty (40) dwelling units of multi-family, you are going to have forty (40) households.

Councilmember Yukimura: Does not affect density, correct.

Mr. Dahilig: So anything that is related from a standpoint of societal impacts that relate to usage, we would not see this Bill affecting that, because in either situation, you are going to add forty (40) households to a vacant R-4, ten-acre parcel. So the discussion, at least in our analysis when it relates to impacts, really relate to form and character compatibility, versus anything related to things like traffic and noise. In fact, the situation like this could create reductions in some of the more utility service types of infrastructure requirements. For instance, instead of forty (40) meters, you are dealing with one (1) larger meter.

You are dealing with less septic because you have to tie into an area. These are the types of things that we would consider the usage impacts to be a wash, and if there are concerns related to the bill is really whether you want a community to look like it has a multi-family structure or not in an area that has single-family structures.

Councilmember Yukimura: So under the existing law, not in this Bill, but under the existing law, if you had a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or R-6 district and you wanted to do three (3) or more multiple family dwelling units on this parcel, you have to get a use permit, but that is being taken out by this Bill. So that use permit would require a public hearing?

Mr. Dahilig: That is correct.

Councilmember Yukimura: If we pass this Bill, it is obviating the requirement of a public hearing.

Mr. Dahilig: Right. What we are obviating from a public hearing standpoint, because the density that is allowed has already been established by law by the adoption of zoning maps...

Councilmember Yukimura: Adoption of zoning?

Mr. Dahilig: Zoning maps. For instance, because the maps are considered law, the notion of whether you can come in and reduce density or the like because something is zoned R-4 in a ten-acre parcel, we cannot supersede that because that is already entitled by law, based on the actions of this body. So the public hearing that would be conducted based off of the use permit and what would be lost as a consequence of that public input would really relate to things concerning form and character, versus usage.

Councilmember Yukimura: The fact that we are moving towards form-based code is saying that we are not only concerned about the hard mechanics of zoning; we are concerned about form and character, too. It seems like you are saying that the main issue here is zoning and density and not form and character.

Mr. Dahilig: I think that is the balancing act, as a body, that the Council needs to weigh; whether the form and character elements in contrast with some of the desire to build and add to the housing stock for residents, whether those two (2) things are balanced appropriately. I think when you look at this particular Bill, we see it as reverting back to what was the previous policy of the County before 1980 and that the elements leading to, again, the restrictions were not form and character related.

Councilmember Yukimura: But we do not want to go backwards, we want to go forward, and as we go forward, we want to really pay attention to form and character because that is what preserves a sense of place and that is what is aesthetically better. I do not know that we want to just accept it because that is how it used to be.

Mr. Dahilig: I think that is, in effect, the trade-off. The permit, in and of itself, is called a “use permit.” So it is not a zoning permit where you are dealing with how things look. You are dealing with a use, in and of itself. So that is why when you go through a process, you will see a Class IV zoning permit, you will see a zoning permit, and you may see an Special Management Area (SMA) permit or even a variance permit. Organically, in and of itself, the restriction that was imposed by the Council is usage-related.

Councilmember Yukimura: As I understand the use permit, the use permit and the reason there is a public hearing is because you are concerned about the impacts on surrounding properties. So you are concerned about the impact that the use will have, which is not allowed outright because it has impacts that need to be concerned about and that is why you have a public hearing.

Mr. Dahilig: That is where I would agree. In looking at what gets lost if this Bill was to be approved, but the discussion, in and of itself, is not whether you are or are not allowing forty (40) households in that scenario to be put on the property.

Councilmember Yukimura: Correct.

Mr. Dahilig: That is set by law.

Councilmember Yukimura: Correct.

Mr. Dahilig: So the impacts of whether you are going to create more traffic or not, and as much as it may come up through a use permit hearing, are still going to remain the same because you are going to have forty (40) households generating forty (40) units worth of traffic, worth of waste, and worth of water usage.

Councilmember Yukimura: Right.

Mr. Dahilig: If form and character is a concern, that is something that can be addressed, we believe, but we think that given the organic synthesis of where this restriction came from in the first place, it did not have anything to relate to any of these form and character concerns. I do see it as relevant.

Councilmember Yukimura: It is like Rice Camp where there is a two-story and a three-story right next to a single-family house, maybe about ten (10) feet away—they are being affected. They could see the sky and they could see things and now it is a very different feel in the neighborhood where they live. That is the potential impacts we might have on people, neighbors, and they will not have any way to have a say-so in it if we do away with the use permit hearing.

Mr. Dahilig: If I could just respond back, in this scenario, the consequence of let us say a forty-unit multi-family dwelling, if the concern is massing, is that this actually would have the opposite effect because now you have,

let us say, a footprint of less than an acre for forty (40) units, but on the reverse side, you actually have nine (9) acres of open space.

Councilmember Yukimura: It depends who you are talking about. If you are talking about the neighbor that is the distance away then that is true; the neighbor that is right next to that forty-unit building is different.

Committee Chair Chock: I think the question is about what we can do to support form and character and strengthen it. We have a follow-up question and a few other questions, if I could come back to you afterwards.

Councilmember Yukimura: Sure.

Committee Chair Chock: Councilmember Kaneshiro.

Councilmember Kaneshiro: Just stepping back a little, we are getting so tied up in the details that we are talking about sight impacts. What is preventing somebody now, say they can build forty (40) single-family units or they can build one forty-unit complex? What is preventing them from building a two-story single-family unit that is the same height as a multi-family unit? They still have to follow the same restrictions.

Mr. Dahilig: Nothing would prevent a similar massing construction based off of what the zoning is in that area.

Councilmember Kaneshiro: So it is no different. They can build the same structure, but longer or the same height. I think we are getting kind of tied up in the details. I think to take a step back, we are in a housing crisis; what are we trying to do or what are we trying to accomplish with this? We are trying to make it more flexible for people to be able to build. We are trying to encourage building. Will us putting more restrictions on how it looks help? Do we make them get use permits, go through the use permit process, and help people want to encourage building? I just want to reiterate that if you did not have a parcel of record prior to 1980, you cannot do multi-family. You cannot do two (2), three (3), or any. That is why we are trying to get rid of it. If you are doing something now, you have the ability to. Also prior to that, R-10 to R-20 does not have a use permit. They are permitted. We are talking about smaller projects and we are trying to make it harder for them to do as compared to a bigger project. I just want to take a step back and ask ourselves, "What are we trying to accomplish?" We are not adding any density. If someone can build forty (40) single-family houses, they can build forty (40) altogether. What do you get clumping them together? You get more open space. You do not get a cluster. You have all of your utilities going one way. It is a trade-off, but what are we trying to do? We are just trying to loosen our grip. That is what I thought the intent of this was, to just allow anybody that is building the flexibility. Do I want to build a multi-family or do I want to build a single-family that is spread out?

Committee Chair Chock: So let us try and encourage the questions since we have the Administration up front. I will go to Council Chair Rapozo.

Council Chair Rapozo: Thank you. I think it was kind of answered, but I wanted to make sure that I understand this because there are some valid concerns that I share. The only difference between what is available today or what is authorized today and what this Bill would do is a public hearing if they decide to build more than three (3) units. I think that is what I heard Councilmember Yukimura read.

Mr. Dahilig: The term "multi-family" is defined as "anything more than one (1)," so it would be two (2).

Council Chair Rapozo: Right, but I thought I heard that the three (3) units trigger the public hearing? Is that what you read, Councilmember Yukimura? I swear that is what I heard you read.

Councilmember Kaneshiro: The Bill as of right now, if you have a parcel of record prior to 1980 and you wanted to build more than three (3) units, you would have to go through a use permit; so a parcel of record prior to 1980.

Council Chair Rapozo: Okay. So the lots now, let us say somebody acquired the lot five (5) years ago or ten (10) years ago, and keep in mind that ten (10) acres is huge; ten (10) acres is massive. So it is unlikely that you will be right up against somebody else's home. Right now, if I own ten (10) acres without this Bill, what would it take for me to build a forty-unit apartment complex?

Mr. Dahilig: You would have to come in for a use permit.

Council Chair Rapozo: Okay, and with this Bill, I would not?

Mr. Dahilig: With this Bill, you would not.

Council Chair Rapozo: I just basically start building?

Mr. Dahilig: Yes.

Council Chair Rapozo: Okay. Thank you.

Councilmember Yukimura: Can I clarify? May I?

Committee Chair Chock: It is a follow-up?

Councilmember Yukimura: Yes.

Committee Chair Chock: Okay, because Councilmember Hooser is waiting for a new question. Let us take your follow-up first.

Councilmember Yukimura: Well, this is the section that Council Chair was referring to, the three (3) or more. In a parcel of record, as of June 30th in R-1, R-2, R-4, or R-6, this is a grandfather provision, right?

Mr. Dahilig: Yes.

Councilmember Yukimura: It is for parcels of record as of June 30, 1980.
How many are we talking about?

Mr. Dahilig: Parcels of record as to June 1980?

Councilmember Yukimura: Yes.

Mr. Dahilig: We would have to count and do it manually.

Councilmember Yukimura: You do not know, okay. What it is saying right now is that a use permit is required and this Bill that is under consideration would take away the use permit requirement.

Mr. Dahilig: The operative...

Councilmember Yukimura: For lands that are from R-1 to R-6, I am sorry.

Mr. Dahilig: Yes, so when you look at what is being bracketed out on page 3 of the Bill, the three-unit reference specifically relates to those lots of record before 1980.

Councilmember Yukimura: Right.

Mr. Dahilig: So it creates this window where lots before 1980 can still build a duplex, but cannot build a triplex without a use permit. That is what the operative language here is. So it created a small grandfathering window for those that are between 1972 and 1980, it creates another class of people that are from 1980 and beyond, with the one caveat that if you are trying to build more than a duplex and you have a lot prior to 1980, then you would have to come in for a use permit.

Councilmember Yukimura: Okay, so it actually makes sense to remove the use permit. But it then also refers to R-10 and R-20, which it does not really apply because these are about dwelling units that are in R-1, R-2, R-4, or R-6, right? The second column does not even apply.

Mr. Dahilig: It does not, but given the structure of...since we migrated to a table of uses, regulatory scheme versus one that was textual, the redundancy has no effect.

Councilmember Yukimura: So the Bill proposes to remove this section entirely, basically?

Mr. Dahilig: Section 8-2.4(b)?

Councilmember Yukimura: Yes.

Mr. Dahilig: Actually, it proposes to...do you see where the bracketed out phrase, "are permitted in districts R-10 and R-20," so it will clean up the redundancy that you are describing.

Councilmember Yukimura: It basically takes it out entirely.

Mr. Dahilig: Yes.

Councilmember Yukimura: Wait...no...

Mr. Dahilig: So there are brackets before the word "are" all the way to above in Section 8-2.4(b).

Councilmember Yukimura: Right, so you are just removing it?

Mr. Dahilig: Yes, and adding in column R-1 to R-6, we are adding a "P."

Councilmember Yukimura: By its definition, it applies only from R-1 to R-6.

Mr. Dahilig: I guess the Euclidean code that was constructed by the Council over the years has created this bright line between R-6 and R-10. When we came up with a table of uses as part of Ordinance No. 935, what made the most sense was to continue to maintain that Euclidean distinction for many other regulations because that seemed to follow a pattern throughout the entire CZO that R-6 and below had a certain set of regulations and things that had R-10 and above seemed to have a certain set of regulations. So that carried on throughout the whole table of uses as a distinction.

Councilmember Yukimura: Okay. I have other questions, but I will wait.

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: It is my understanding that if this was passed into law, multi-family and single-family attached dwellings would be a permitted use in R-1 through R-6.

Mr. Dahilig: R-1 through R-20.

Councilmember Hooser: Right.

Mr. Dahilig: Yes.

Councilmember Hooser: Okay. What would approximately be the largest parcel of land in Līhu'e that is currently zoned, but not developed? I want to say it is one thousand (1,000) units or so possible.

Mr. Dahilig: It could very well be right across the street.

Councilmember Hooser: Right. In theory, those one thousand (1,000) units, which would be R-4, one thousand (1,000) single-family homes, could be clustered and one thousand (1,000) multi-family home units?

Mr. Dahilig: Not necessarily. They would have to now go through what is called a zoning permit, versus a use permit. The density unit counts matter in terms of threshold of permitting. So once you cross that fifty-unit threshold, even though it may not require a use permit anymore, it would kick a Class IV zoning permit, which would go to a public hearing. There are four (4) classes of zoning permits, as you are aware. The public scrutiny would kick in immediately at fifty (50) units because that is still maintained in the code as a public hearing-needed permit. So if it is anything between one (1) unit versus two (2) to ten (10) units, those would be over-the-counter permits. Eleven (11) through forty-nine (49) units would then require a Class III, which is a commission disapproval unit. If you start getting into those levels of fifty (50) and above, we do recognize, and the code recognizes, that there are elements of once you start congregating that many units together, so that would be triggered into a public hearing before the Planning Commission.

Councilmember Hooser: So it would be a permitted use, but it would require a public hearing to put in...it would still allow a multi-family, but it would have more design, potential restrictions.

Mr. Dahilig: Yes. The constitutional genre of law essentially is that we cannot deny a zoning permit because it is vested by law, but we can mitigate.

Councilmember Hooser: So in those circumstances, there could be one thousand (1,000) multi-family, round numbers, but with the design there might be mitigation in terms of the form and character.

Mr. Dahilig: That mitigation would be done in a public forum.

Councilmember Hooser: Right. I guess my point is that with large projects like this, it would still dramatically change the character of what everyone would expect to be a single-family, one thousand (1,000) units. Let us say there were fifty (50)—the developer, could in theory, do a fifty-unit rental project or something and cluster it on one side where the infrastructure was and essentially avoid the subdivision rules. They would not have to subdivide it because they are just building it. Is that correct?

Mr. Dahilig: That is correct.

Councilmember Hooser: Okay. I think during the subdivision process, there are also some checks and balances or some opportunity for public exactions or requirements. Is there not?

Mr. Dahilig: The subdivision process is mainly a process of dividing up fee interests in real estate. So inasmuch as there are elements that

have the subdivision process go through the public process, what tends to be raised are elements of whether it conforms with form and character again. For instance, you have the one-time subdivision rule for Agriculture lands. Those are the type of things that would be applied from a form and character standpoint in the subdivision process. In terms of how a vertical structure is constructed, what you would be predisposed to in a subdivision situation is an urban sprawl type of situation where you have fifty (50) units distributed over a large amount of land. In this circumstance, there would not be that because to divide fee interest, you would have to go through the Condominium Property Regime (CPR) process.

Councilmember Hooser: Right, so both the CPR and if it was a rental project would essentially avoid the subdivision process.

Mr. Dahilig: They would not need it.

Councilmember Hooser: They would not need it because it is clustered?

Mr. Dahilig: The word "avoid" is more an issue of what type of product you are trying to develop and how you want the fee interest to be conveyed. So they have a choice to build something that would require a subdivision or not, and I would also caveat that you can also avoid the subdivision process by going through a CPR and still building single-family style homes. As we have seen with gentlemen farms across the island, the subdivision process is not a control for form and character.

Councilmember Hooser: I support in principle what we are trying to accomplish if it was not truly for these very small projects. I am concerned about these one thousand (1,000) units, even five hundred (500) or even fifty (50), just plucked here and there. In my mind, it could very well equate to a windfall for large developers who no longer have to go through the subdivision process and have to put in all of those roads and sewers, and that is a tremendous cost of developing that large subdivision, which is zoned for now and planned for now. This would allow a developer to build the same number of units, but clustered on one side. I guess it is about the scale.

Mr. Dahilig: I understand the concern you are raising that you could come in and build a thousand-unit multi-family structure. The control that is being proposed here is an agency hearing. That type of situation will still trigger an agency hearing, so I would not necessarily agree that constructing something that would look like a monstrous one thousand (1,000) unit project would go unfettered by the public, because even though it is a different permit, the same agency hearing would go before the Planning Commission and they would still have to go through public input, there is still opportunity for intervention and contested-case hearings. Those rights would not be tampered as a consequence of it; it would just be a different permit that would be allowed because of the unit threshold that is being proposed in that scenario.

Committee Chair Chock: I feel like a lot more questions are being generated here and I know that we do not have a full committee today, so I am

inclined for us to just mention that if there is more work to be done, some protective measures that are being discussed or want to be talked about further, then we would move towards vetting as much as we can, in terms of what are possibilities and then coming back to this committee item. I need a five (5) minute recess. We are going to come back with a follow-up question from Council Chair Rapozo in five (5) minutes. Thank you.

There being no objections, the meeting recessed at 11:42 a.m.

The meeting reconvened at 11:47 a.m., and proceeded as follows:

(Councilmember Kagawa was noted as present.)

Committee Chair Chock: Thank you for the break. We have a follow-up question here from Council Chair Rapozo.

Council Chair Rapozo: I had a short discussion with Mike during the break, but I wanted to make sure that we get this clear for the record. So one (1) unit requires a Class I, which is over-the-counter. From two (2) to ten (10) units is a Class II and that is over-the-counter. Then from eleven (11) to forty-nine (49) units would be a Class III permit, but that does not assure a public meeting or commission meeting.

Mr. Dahilig: It does not ensure a public meeting. What happens in a Class III scenario is as we intake the permit, we have to route it to all the agencies, like we would in a Class IV permit style. So the decision as you see from a scrutiny standpoint starts to get larger as the density units start increasing. We would be required to at least route to the Department of Water and the Department of Public Works, as well as places like the State Historic Preservation Division (SHPD), et cetera. So there would be larger oversight from a peer agency to agency type of review. What happens is then I will make a decision administratively that can be challenged by the Planning Commission individually, so if three (3) commissioners decide that they do not agree with my decision then they can pull it onto the commission agenda. I also, on my own election, can choose to put something on the commission agenda if it is a Class III permit, so I can run it to an agency hearing as well. There is also a situation where if the commissioners do not disapprove of the permit, the permit will become approved after thirty (30) days of that review time. The code applies the Class III permit scrutiny across different zones, so this applies also for Commercial, Industrial, and based on the threshold and/or intensity of the development, there are different thresholds that are there. This is a uniform process across the board.

Council Chair Rapozo: Okay, and that is how it is right now?

Mr. Dahilig: That is how it is right now.

Council Chair Rapozo: This Bill would not change it, right?

Mr. Dahilig: No, it would not change that.

Council Chair Rapozo: Even if this Bill passes and someone wants to build twelve (12) units, they would still have to go for a Class III.

Mr. Dahilig: That is correct.

Council Chair Rapozo: So it does not circumvent any process currently?

Mr. Dahilig: No.

Council Chair Rapozo: Except for the use permit?

Mr. Dahilig: Yes, except for the use permit.

Council Chair Rapozo: Okay. Thank you.

Committee Chair Chock: Outside of the mechanisms we have to address form and character issues, are there other means that this body might consider to address the concern?

Mr. Dahilig: I think the concern first needs to be looked at from a standpoint of what are the across the board form and character elements and if those are not enough in a situation that you are now providing for the construction of this type of dwelling unit. There are already form and character regulations littered throughout the code, and these are part and parcel apart from the use, so things like setbacks, height and color in certain circumstances, and where your front door is located. Those are things that apply already across the board from a form and character regulation standpoint. Whether the Council looks at that set of form and character regulations and in this particular scenario wants to carve out something, that would probably involve more discussion. I think the discussion first needs to start with what are the form and character regulations and would that already address some of the things that are coming up. I cannot think to my mind, off the top of my head, what some of those could or could not be, but again as previously mentioned, whether you build a single-family house or a multi-family dwelling, if the form and character code is twenty (20) feet, both structures have to be twenty (20) feet. If it is lot coverage of ten percent (10%), both lot coverages still have to be ten percent (10%). There are controls already in place.

Committee Chair Chock: Okay. Thank you. Councilmember Yukimura.

Councilmember Yukimura: I want to go back just for a moment to the Chair's questions about the Class I to Class IV zoning permits, especially regarding public notice. Class I and Class II, there is nothing printed on the Planning Commission's agenda, right?

Mr. Dahilig: No.

Councilmember Yukimura: That all happens at the counter or at the Planning Department, basically through you.

Mr. Dahilig: That is correct.

Councilmember Yukimura: For Class III, are they always published or is it circulated just to the Planning Commissioners and then they individually tell you if they object, and then it goes on the agenda?

Mr. Dahilig: Well, there is no public posting of these; however, if we do have members of the public that wish to request copies of it prior to approval, we have to abide by that because that is in the code. Those are the requested...

Councilmember Yukimura: But often, people do not notice until there is action on the land. So if they start an eleven-unit or a forty-nine-unit development, it is too late, not that many people look at every agenda to see what is on it. At least with Class IV zoning permits, it is published and people are given notice that there is a proposed development; whereas with the Class III, it is not put on the agenda as a Class III application. Is it?

Mr. Dahilig: It is not. Again, the design of the class zoning permit system, we are the only county that has this process, but I think its wisdom is that based off of the intensity of development, the more intense you get, the more scrutiny you need to have. Personally, I do not have a problem with the tiered system because I think it generally achieves that. Where I think the concern that you may be raising is where the thresholds lie, because as each zoning area defines a certain threshold for a certain permit, that is a level of intensity that by law the Council has already said, "Look, eleven (11) homes, that is getting up there. We need to have a little bit more scrutiny."

Councilmember Yukimura: Right.

Mr. Dahilig: If the concern here is related to the level of intensity, that is where maybe the Council may want to look at from a big picture standpoint. Right now as it presently sits and based on the way that the Bill is written, the tiered system would still be applied, based on the preexisting triggers.

Councilmember Yukimura: I do not have any problem with the tiered system. It makes logical sense or it makes sense. I just wanted to know how much notice there is for a Class III zoning permit. Does it get on the agenda or not?

Mr. Dahilig: The only way that it gets on the agenda is either at my election or at the election of three (3) Planning Commissioners who disagree with the finding.

Councilmember Yukimura: Okay. Thank you for being clear.

Committee Chair Chock: Does anyone else have a question?
Councilmember Hooser.

Councilmember Hooser: This conversation is a good conversation because it really stirs the brain, if you would, and the thoughts of impacts and unintended consequences, as well as intended consequences. The General Plan, if I remember correctly, many of the community descriptions talk about keeping the village feel, the small rural character, so it makes me wonder how having a forty-unit apartment building in the middle of a residential area or otherwise single-family homes jives with the General Plan. It seems like the General Plan, whatever it says, does not matter if this passes. People can build these kinds of structures wherever they have the zoning, regardless of the General Plan.

Mr. Dahilig: I guess I would have to look at how the General Plan addresses form and character and massing. What is already imputed in the county code is consistency with the General Plan, as it relates to the form and character regulations. That already is in there as part of the consistency considerations. Whether something like this would deviate from what was intended in the form and character regulations that are currently and presently in the code, I have not, again as stated previously, taken the analysis that far. If that is a policy consideration, certainly that consistency element, we can research for the Council if that is what you would like.

Councilmember Hooser: Okay. Thank you.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: I am just trying to understand the Bill and I see that basically we are removing this grandfather provision with lots of record as of June 30, 1980. On page 1 of the Bill, we are also removing...there is again the reference of "parcel of record as of June 30, 1980." That is identified in Section 8-2.4(a)(3) and also Section 8-2.4(a)(4). So we are basically removing these sections that refer to those grandfathered lots. The only other thing that we are doing in this Bill is really on page 2, Section 8-2.4(b), which is we are taking away the restriction to R-10 and R-20 and we are allowing multi-family and single-family attached dwellings in R-1 and R-6 areas. That is basically what this Bill is doing.

Mr. Dahilig: That is the effect. In analyzing this again, what tends to be a better explanation for this is a reversion prior to Ordinance No. 388.

Councilmember Yukimura: Ordinance No. 388 was the 1980 law?

Mr. Dahilig: Yes. It essentially is a reversion back to what the law was previously.

Councilmember Yukimura: Okay, but I am trying to understand the impacts of the reversion back.

Mr. Dahilig: Yes, and I would agree with that analysis, too.

Councilmember Yukimura: Okay. I was just in Waimea Town the other day and there are several multi-family apartment buildings right on the *makai* side of Waimea Town; they are part of the town, really a short distance from the library and right by Ishihara Market. They are really compatible. I do not feel any horror at multi-family units in that context and they are providing long-term housing there. I can see how multi-family would work. I do not know how many units there were there. One is a three-story building with about ten (10) on each floor, so it is like a thirty-unit building. That is one of the consequences that could happen. It is a visualization of what could happen in a rural town. Now if it happens in a neighborhood like Wailua Homesteads, it is a little different. In Waimea Town, it is close to services. One, it is right next from Ishihara Market and two (2) blocks away from Big Save, so it works. But for a more rural neighborhood, would that be okay to the Planning Department in terms of the impacts and the overall Planning goals?

Mr. Dahilig: Just from a regulatory standpoint, when you look at use regulations as compared to form and character regulations, I tend to pay particular focus and scrutiny to those that are related to the use because that creates the most anthropologic impact to an area. If it becomes an issue of comparative policy where you are trying to weigh permitting and allowing more housing units in an area as compared to whether or not it may create a visual impact—let us say that the massing may be a little bit more than usual, but still within the code—I would say that my conclusion would lend me to look at how to allow for the usage given the need for housing that all of us are seeing at this point. Again, that is how I would apply the law. If I was given the discretion as it pertains to each of the class zoning thresholds that are there, because each threshold allows me a certain degree of discretion to add or not add the conditions, and as it gets more intense, the commission and the public have greater weigh-in. If it was one of these more smaller types of situations, as you may be referring to within my discretionary threshold, I would lend to not consider as much the form and character elements if it was looking at elements of trying to provide more housing stock on the island. Again, that is only within the amount of authority that I am given under the law.

Councilmember Yukimura: When you are talking about more housing units, you are not talking about more housing units in numbers, because we are talking about the same number of housing, whether it is forty (40) single-family houses or forty (40) multi-family houses, you are just talking about giving incentive to the developer. I am told by housing experts that a multi-family unit, which has many units, is actually more expensive to build than single-family units of the same number, but I can see when there are smaller numbers, like two (2), three (3), or four (4), maybe you can get real economies of scale so that the per unit price is cheaper.

Mr. Dahilig: Right. As mentioned previously, we know that the housing solutions are not one-dimensional. These are things that in certain situations may or may not help somebody. If we are asked, “How would this help somebody,” I think as we reiterated previously, this would alieve some situations where families are “land-rich and cash-poor.” So it provides a path to home construction because we are able to pool equity. Is it a scenario that is going to solve the whole situation? No. But I think, as I have said, in some conversations

with the Council, we believe that a multifaceted approach towards providing housing paths of opportunity provides our best chance at trying to tackle the housing situation, versus something that is one-dimensional.

Committee Chair Chock: Councilmember Kaneshiro.

Councilmember Kaneshiro: For me, I am just trying to keep it reasonable and paint the correct picture. Is it reasonable for us to say there is going to be a forty-unit apartment complex in Wailua Houselots based on the type of housing that is there and the amount of zoning? I would think that the zoning there would be like R-2 or R-4. I am not exactly sure. Maybe R-6? Is it right to say that we are going plop a huge apartment building in the middle of Wailua Houselots, based on the character and type of zoning there?

Mr. Dahilig: When we talk about regulations, we always tend to look at it from a standpoint of, "What is the worst that can happen?" I think that is always a good approach when you are trying to figure out where you may create a loophole or an unintended consequence. I have to concede that, that is a possibility that somebody can come in and say, "I want to build a forty-plex in the middle of Wailua Houselots because I have ten (10) acres of R-4." They are entitled to do that, but it is not unfettered. As you start getting into the higher density counts, the department is going to have a say in how that form and character looks because now it is a higher level of discretionary permit, but not a commission discretionary permit. You have the opportunity for the Department of Public Works to weigh-in, as well as the Department of Water to weigh-in and other agencies. That scenario can happen. I do not want to say that it cannot, but it becomes a business decision and it becomes something that is under higher scrutiny because of the way our tiered zoning permit system works.

Councilmember Kaneshiro: When you are looking at it, will it be very uncharacteristic? You are talking about an R-1 to R-6, so you could put six (6) units per one (1) acre. If there is a forty-unit complex that is going to go up, it is going to be on a very big parcel; it is not going to be condensed into one (1) small parcel that has everything within it, right? They need the acres in order to build that many units.

Mr. Dahilig: Yes, the density count is based on acreage, so we have no control over how that works. If the fear is that you are going to end up with a very, very tall, condensed structure in the middle of Wailua Houselots, that would not be the case because you have form and character regulations that require building heights to be, let us say, at one-story or two (2) stories. These would not be things that would be taller in nature; rather they would still have to conform to the same form and character standards that single-family homes already have to apply with.

Councilmember Kaneshiro: The setbacks from your neighbor would be the same as if they built a single-family house next to it.

Mr. Dahilig: That is correct.

Councilmember Kaneshiro: Thank you.

Committee Chair Chock: Any further questions?

Councilmember Yukimura: Yes. The question is not whether something is reasonable; it is whether it is possible to happen, because if it is possible and it happens, do we want it to happen or is it something we want to prevent from happening by amendments or whatever? We want these single-family units to be able to put into a duplex or into a four-plex—we want that to happen. We may not want a forty-unit building to happen in a neighborhood. If this law allows it, we might have to amend it accordingly. I guess I have a question in terms of amending? Can we amend the text of our ordinances just by amending the table?

Mr. Dahilig: Yes.

Councilmember Yukimura: We can?

Mr. Dahilig: Yes.

Councilmember Yukimura: Okay.

Committee Chair Chock: Let me go to another question.
Councilmember Hooser.

Councilmember Hooser: So right now using the Houselots, the Homesteads, or any neighborhood, if someone wanted to build a forty-unit apartment building, today they would have to get a use permit?

Mr. Dahilig: Yes.

Councilmember Hooser: And that use permit would require the neighbors to be notified by letter?

Mr. Dahilig: Yes.

Councilmember Hooser: So the neighbors that live within so many feet would actually get a letter in the mail saying, "Someone has applied for a use permit. Give us your thoughts on this."

Mr. Dahilig: Yes.

Councilmember Hooser: If this were to pass into law, there would be no such requirement?

Mr. Dahilig: That is correct.

Councilmember Hooser: Okay. That is number one. The Bill says...in its beginning it says that the use permit process serves as a deterrent, but yet no one...or in recent memory anyway, no one has even tried. So it is not as if

people were applying and getting onerous requirements or being rejected by use; it is just that no one is applying for it.

Mr. Dahilig: I think one difficulty is the monetization of carrying costs anytime you want to develop something. What may be a deterrent is the amount of time it actually takes to go through the use permit process. Again, I am just generalizing based off of comments that we always get about, "Why do I have to go through this? Why do I have to go through that? What can I not just build this?" It is a real cost to developers that want to construct something that if they have to go through the extended regulatory process, they have to add between six (6) months to a year to obtain one of these permits.

Councilmember Hooser: But no one is actually utilizing this process at the present time?

Mr. Dahilig: In response to the statement in the Bill that says "deterrence," it is hard for us to track deterrence if people do not want to engage in the process and apply. I have no statistics that would indicate people that have been either turned off by it, that have (inaudible) our department, or have read the code and said, "I do not want to do it."

Councilmember Hooser: So we are kind of assuming that more people would come in if there was not a use permit requirement or we are assuming that it is a deterrent?

Mr. Dahilig: What I will say is that there has always been interest, and as you see from some of the other policy discussions that are coming up regarding how do we handle the housing issues, has been things that are Additional Dwelling Units (ADUs), attached dwellings, and these types of things. These are things that give us indication that there is and has always been interest in wanting to look at sharing equity to build and construct a home. We do have questions along the lines of, "Can I build a duplex," right? Presently under the code, they cannot do that. The scenarios, albeit the discussion on the forty-unit possibilities, we do not get many of those things, but I do say that in due diligence requests that we get to our department, we do get a lot of these, "Can I add a second unit? Can I add an ADU? Can I add a mother-in-law unit?" I think that already triggers a discussion of flexibility with the multi-family restrictions in the code.

Councilmember Hooser: I just have a few more questions. I know we have talked about this a lot, but in the situation of the forty (40) units, under the present law, a use permit is required, so people would be notified in public.

Mr. Dahilig: Yes.

Councilmember Hooser: Then if the Planning Commission chose to, they could put requirements on that project.

Mr. Dahilig: That is correct.

Councilmember Hooser: They could have future road widening setbacks if they wanted to, take land to make the road better, they could do design requirements, and put all kinds of requirements on that if they wanted to.

Mr. Dahilig: Well, those requirements would naturally have to follow, let us say it was a road widening situation; because I have to refer a Class III permit over to the Department of Public Works, they will tell me, "You need to include a condition that requires a roadway setback." Again, as the intensity of development increases, there are more checks and balances with these infrastructure and societal impacts that get interwoven by requirement in the code that requires me to add those conditions in there. So roadway reserved items would be taken care of, Department of Water items would be taken care of in a forty-unit scenario, like you are raising. Would it go through to a full-blown public process? Not unless either I elect or three (3) commissioners decide to pull the permit to the floor.

Councilmember Hooser: But a use permit process allows the County, the public, if you would, more leverage to ask for things because it is not entitled use, right?

Mr. Dahilig: I think that is where the discussion of where the thresholds lie because let us say you go through a subdivision process; it is public, but it is not discretionary, and you carve up a ten-acre, R-4 parcel, up into forty (40) units—that type of scenario, once you want to start constructing the single-family homes, you are at all over-the-counter permits, so you have a subdivision process that is not discretionary, that cannot go through a contested-case hearing, and is purely administrative. The public can weigh-in, but at the end of the day, these are more formulaic in nature because of what the Engineering Division or what the Department of Water says. Then they would go through single-family. In effect, going to the scenario of subdivision and single-family homes actually decreases the ability for public input at a meaningful level because there is no opportunity for intervention.

Committee Chair Chock: Thank you. We are at 12:15 p.m. and we are going to break at 12:30 p.m. I want to get to public testimony for those that have to leave. We have one follow-up from Council Chair Rapozo on this. I just want to remind us that if we have any amendments or proposing to look at amendments, then I will defer this item to have that work done so that we can come back to it in committee again. Council Chair Rapozo.

Council Chair Rapozo: I think in looking at agenda, we could probably wrap this up. I would suggest that we go until 1:00 p.m., but with the commitment that we get through the agenda. If not, then we are going to have to take the break. My question is more for the public because I do not want the people in Wailua Houselots tonight to start calling us up saying, "What are you folks doing bringing in a forty-unit apartment into the Houselots?" I think the Houselots is a bad example because you need two (2) things: zoning and acreage.

Mr. Dahilig:

Right.

Council Chair Rapozo: I think we all know that in Wailua Houselots, we do not have ten (10) acres of residential land anywhere in Wailua Houselots that could accommodate a forty-unit apartment building.

Mr. Dahilig: Off the top of my head...

Council Chair Rapozo: I am talking about the Houselots.

Mr. Dahilig: Yes...

Council Chair Rapozo: I do not want to freak out the people on this island, and it is kind of what Councilmember Kaneshiro was talking about earlier, that you need the zoning and the acreage. You need ten (10) acres to put anything of significance, like a forty-unit structure or sixty-unit structure. You need the ten (10) acres.

Mr. Dahilig: That is correct.

Council Chair Rapozo: And you need the Class IV.

Mr. Dahilig: Class III.

Council Chair Rapozo: For sixty (60) units?

Mr. Dahilig: For forty (40). For sixty (60), yes, you would.

Council Chair Rapozo: Well, if you had an R-6...that is why I am just using the example of forty (40) to sixty (60).

Mr. Dahilig: Yes, sorry.

Council Chair Rapozo: If you had a sixty-unit with the same acreage, ten (10) acres just different zoning, then it would trigger the Class IV.

Mr. Dahilig: That is correct.

Council Chair Rapozo: I just do not want the people to get paranoid thinking, "What are they doing," because really, the intent was to try to get extra units built. My question was just that you need the zoning and the acreage.

Mr. Dahilig: That is correct.

Council Chair Rapozo: Ten (10) acres is a lot. That is a huge parcel.

Mr. Dahilig: These days, yes.

Council Chair Rapozo: Especially in the Wailua Houselots, because that is where I live.

Mr. Dahilig: Yes.

Council Chair Rapozo: Thank you.

Committee Chair Chock: Any further questions before public testimony? Seeing no one, are there any registered speakers?

CODIE K. YAMAUCHI, Council Services Assistant I: Yes, we have one (1) registered speaker, Anne Punohu.

ANNE PUNOHU: *Aloha.* My name is Anne Punohu. I was confused, and then I was not and then I was, so I am not sure where I am right now. I think that the intent of Councilmember Kaneshiro's Bill was to do something really good. I do not want us to, again, "throw the baby out with the bathwater." I think that it has good intent, but what I heard in the last few minutes is that there are really some unintended consequences that we cannot really have happen with this Bill, and I do not think that was Councilmember Kaneshiro's intent either. So this is why this process is so great—it educates me and it educates you. I can see where there are loopholes that all of you need to clear up. I will expect some amendments coming out of this Council in order to clear those up. Let us do what the Bill was intended to do, which is to grandfather in those older units so that they could—(inaudible) house at one point, I think we had twenty (20) or thirty (30) people in that house on an average day and that was with everybody in the garage partying every night. People are very squished up. I think that local families need to be able to expand and be able to make extra units for their family members. I can see that as very valuable because they are not trying to fight out in the community for what little is out there. However, when we gave our apartment complexes to condominium timeshare regimes, we took all of those units out of the inventory. I am not in objection to apartment buildings, as long as they are small, under ten (10) units or eight (8) units. I can see that as very viable. However, what Councilmember Yukimura is saying where you have an apartment building here, a little house here, and an apartment building here, that is a no-no. When they hear the process of public input, maybe deterred in some way—that is very disturbing to me. I do not think that we should be taking out the checks and balances. For R-1 and R-2, it is probably okay because it is just somebody in the neighborhood who wants to expand their back property and put their family in those units. However, my bottom line is always going to be on these issues, one hundred percent (100%) from now on. I am just going to protest in general by saying that none of these bills should be passed with the word "rental" in them until we have passed a comprehensive rental cap or agreement in this County. That is something that I have been working on. I have been looking across the country to see if I could find something that was comparable that could be used in the County in order to introduce it or ask Chair if he would be willing to do that. But we need that as a piggyback to all of these bills. There needs to be some sort of mechanism in all of these rental bills that says in the future if we pass rent control or some form of it or rental caps, that that can be imposed upon any bills that are passed at this time. However, I just want to support the intent of the Bill and support closing the loopholes and amendments being written. *Mahalo.*

Committee Chair Chock: Anyone else? No. Matt?

MATTHEW BERNABE: Matthew Bernabe, for the record. I would like to start by saying that we do need inventory homes because that way we will not have to raise as much taxes on the citizens that are here. But we talk about the consequences down the line and there is something that I want to say—at my house, I teach my kids: do we make the stir fry and then put on the rice or do we make the rice and then cook the stir fry? In this context, I am talking about solid waste. In speaking of Wailua Houselots, I have two (2) neighbors where one put a new house in and the other one broke the house down and put up a really big house. I am fine with that, but I watched this process and they generated so much rubbish that when I go to the dump and I see evidences of reconstruction projects that have really good wood, sinks, and toilets sitting in our landfill and not ending up at Ahukini at the Materials Resource Facility (MRF) building that we just subleased a little part to Reynolds Recycling—I want to see some serious discussion on mitigation of the waste, not only produced by the homes that will be occupied, but by all the projects that will build these homes. This is important. To me, this is just as important as the water source, the roads, the sidewalks, and way more important than bicycle routes within that community. I really am for the homes. I never realized how many people were struggling for rentals because I own my house, but I have close friends that when they had their homes sold and I saw the stress of them really physically looking for a place and then not finding one. That was when I realized how serious this issue is. Let us not just say for talking points that we need ten thousand (10,000) houses and we need so many affordable—let us get the holistic discussion down. We have serious problems with some of our infrastructure. It is known; we are known for it. So when we talk about these houses, I would like to hear more from not just the Council, but from the Administration and departments on all aspects of a community. Thank you.

Committee Chair Chock: Thank you. Would anyone else like to testify? Anyone for a second time? If not, I will call the meeting back to order. Further discussion? Councilmember Yukimura.

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

Councilmember Yukimura: In general, I am a real advocate for multi-family and more clustered, but I think we have to think about all of the consequences that might be possible under this Bill. Chair, you are in Wailua Houselots, so if there was a two-acre lot, which there are, I think, in Wailua Houselots—they have some pretty big lots—and it is R-4, so you can have eight (8) units, so you have an eight-unit multi-family building; would that be alright is the question? That is what we are enabling here. We are going below R-10 to R-6, R-4, R-2, and R-1 and we are saying, “You can build.” I do not think anybody will have objections to two (2) houses becoming one (1) or maybe even four (4) houses becoming one (1), but would it be okay in our neighborhoods to have eight (8) or ten (10)? I think we could set a limit and say something like not more than twenty (20) units, because the Class III permit does not really give that much protection; you do not have to know about it. Once you get to fifty (50), you do have the protection of a Class IV zoning permit, which allows notice and allows a public hearing so that people will be able to speak about it. I am just thinking in my mind of whether there would be an appropriate amendment to protect against an

unintended, undesirable consequence. In general, I like the Bill. I like the approach of choice flexibility and something that might facilitate the building of more housing. I am just putting it out for discussion and thought.

Committee Chair Chock: Okay. Councilmember Kaneshiro.

Councilmember Kaneshiro: For me, I think we probably painted the worst picture possible, but we have to step back and put it into perspective. This Bill is not increasing density. Is there a difference between a property that can build forty (40) single-family units or forty (40) units connected? That is the question. We are not adding density. Same lot size, same everything; is there a difference between putting forty (40) units all over, or clustering it in a spot? Same restrictions: same height restriction, same lot coverage restriction, and same setback restriction. By clustering, you add more open space. Is that something we want to look at? Is that something reasonable? All we are doing is allowing flexibility. If you look at the value of these houses—for me, it is pretty common sense. What is more valuable? A single-family house or an apartment unit? I think if I am a developer and developing, I would rather build all single-family houses because I will get more value out of them. All we are doing is giving the person who is building it flexibility. If they decide they want to build clustered housing, why not let them? It is cheaper housing for the people that are going to build into it, and we are in a housing crisis. That is what we want...we want people to be building. Again, it is not adding. If we were adding density...if my neighbor could build two (2) houses and we are adding fifteen (15) houses, I could see a change, but we are saying that if my neighbor is allowed to build two (2) houses, I am giving them the option to either build two (2) separate houses or two (2) houses connected. We have to put it into perspective. It is the same number of houses, no matter where you cut it. It is like looking at Legos—you put out ten (10) Legos and you say, “How do you want it? Do you want the Legos spread out through the same boundary or do you want the Legos connected?” You cannot make it higher because they have the same height restriction. How do you want it? I think that is the perspective that we have to take it back to. We can think of this big monster, but the perspective is that there is the same height restriction and same setback. You can build a single-family house next to your neighbor with the same looking building. For me, it is just taking that step back. The intent of this was to allow flexibility. If you have a lot that was recorded after 1980, you cannot do any of it, period, not even with a use permit. This was only for lots prior to 1980. Now, we are saying that if you have the density, we will allow you the flexibility. Again, R-10 and R-20—they all are permitted without a use permit. Are we going to make it more difficult for somebody to build a house? Say they have three (3) acres of R-1 and they want to build three (3) units together—should we make them go through the whole use permit if they were already permitted before 1980? If it is after 1980, you cannot do it. All we are trying to do is allow people the flexibility. I think Councilmember Yukimura is going to say I have my information wrong, but it says, “Only units upon a parcel of record as of June 30, 1980.” All of them say that.

Councilmember Yukimura: May I?

Committee Chair Chock: My understanding is that we are providing our comments here and we have a line of people who want to speak, so I am going to

ask you that you come back around. Councilmember Kaneshiro still has the floor, unless he is done. Okay. I am going to go to Council Chair Rapozo and we can come back around.

Council Chair Rapozo: Thank you. Obviously, I do not vote today, but I think it is a good bill. I think the question was asked about the Wailua Houselots, an eight-unit apartment building being built. Again, you would need a two-acre parcel at R-4. I do not know if there are available, empty lots of two (2) acres in Wailua Houselots. My lot is seven thousand (7,000) square feet, but that has been subdivided, so I do not know where you would find two (2) acres. Even if you did, I would not object to an eight-unit apartment building. My daughter is looking for a place to live and I want her to find a place to live, but there is just nothing available. An eight-unit apartment...if we had enough of these around the island, I think we would improve or increase inventory and I think this is just one mechanism in, I guess you could say, "incentivizing" or making it easier for people. The moment you say "use permit" on this island, you can think...you may as well just say that it is a six-month process, eight (8) months if it is good. The moment you try to do something like that, it just extends the process. I do have some concerns about abuse, but the planets would have to line up perfectly for someone to abuse this. Again, you would have to have the right zoning and the acreage. I do not know how much of that exists, and I plan to look into that. I think at the end of the day, we are trying to get people to produce homes. I would love to see an eight-unit, ten-unit, or twelve-unit building where we can put twelve (12) young, small families. Right now, it is crazy. It is just not available. I am looking for some loopholes, but I do not see it. Like I said, if somebody has ten (10) acres of land and they want to build up a forty-unit apartment building, then God bless them. It has to be Residential; it is not on Agricultural; it cannot be Resort; it cannot Timeshare; it cannot be Vacation Rentals. You are providing forty (40) units of housing. Chances are, or we would hope anyway, that it would be for an affordable market, but obviously we do not have control over that at this point. If I had to vote today, I would definitely support it and unless something drastic comes up, I will be supporting this when it gets to the Council. Thank you.

Committee Chair Chock: Thank you. Anyone else? Councilmember Kagawa.

Councilmember Kagawa: I think I would prefer this Bill a lot more than the Lihu'e Additional Rental Units (ARUs) Bill, which limited the ARUs to be only performed in the Lihu'e district, and the difference with the ARU Bill was that it would allow ARUs on lots as small as three thousand four hundred (3,400) square feet, six hundred (600) square feet less than our current law allows, because our current law allows ADUs on ten thousand (10,000) square feet. The second part that I love the most is that this Bill would allow the whole island to take advantage of more housing opportunities for local families, primarily those in need of affordable housing. The question always comes, and it is not only Kaua'i; it is statewide and nationwide; how are the different governmental agencies handling affordable housing? That is really a global question. That is a nationwide question, because of the market values that just skyrocketed and incomes that have not skyrocketed. I look at one real example when it comes to my daughters. They live in Honolulu and one is starting to work, and there are a lot of condominiums that

are “affordable” now and opened to residents of Honolulu and the affordable amount is five hundred thousand dollars (\$500,000); five hundred thousand dollars (\$500,000) is considered affordable for a resident in Honolulu. That tells me that this is a bigger problem that we must tackle nationwide in order to bring the affordable values down. I am relying on our Housing Agency to come up with some solutions to this Council that we can really start tackling this issue, not just piecemeal it here and there. This is something that if we pass it, it will open up more inventory and opportunities for local families that want to provide housing for the next generations. We hear the problems. “My kids cannot come back. They have a house in Las Vegas. They cannot afford Kaua‘i prices.” How do we fix that problem and have our youth be able to come back? I think if you want to get a quick solution, this is the type of solutions that are going to be available for our residents to possibly take care of. You talk about, “What is going to be the effect?” I read the minutes from the early ‘80s where Eddie Sarita talked about Puhī and Hanamā‘ulu, which was already in existence. The things that are available to the public in this Bill has been ongoing in Puhī and Hanamā‘ulu from the ‘70s and ‘80s. There are not only two (2) units; there are up to five (5) units in some houses. I am not kidding. I have been there. All we are doing is we are going to be allowing other areas of the island to have two (2), not five (5). I do not know how we are going to get a handle on some of the past things. I do not want to put people out of housing, but I am just saying what is in this Bill is already flourishing in Puhī and Hanamā‘ulu. It is just a way of making ends meet, how are we going to house our families that do not want to move from here, that want to live here and make their small incomes and still continue to live here; not move to the mainland or move to some other area where they can get cheaper housing? Kaua‘i is the best place to live. How are we going to take care of our local families? This is one solution. I think this is the fairest solution. It is already out there. It is just going to be allowing it to open up. Is it the perfect solution? The perfect solution would be keeping our density the same, keeping the housing restrictions the same, and spreading it out. But is the infrastructure there? We do not know yet. I think this is a quick solution. The infrastructure is there. I am going to support it. Thank you.

Committee Chair Chock: Thank you. Councilmember Hooser.

(Council Chair Rapozo is noted as not present.)

Councilmember Hooser: If this was about allowing people to build a duplex or triplex faster, easier, and cheaper to house their family and local residents then I would be supportive of it. But this measure is not about affordable housing. This measure does not target any one, any price point, but merely gives benefits equally to developers and property owners around the island. So the person building on Hanalei Bay gets the same benefit of the person building in Puhī. It gives the developers who want to build forty (40) units added value and it gives them the opportunity to make more money. There is no requirement that those forty (40) units have to be affordable; there is no requirement whatsoever. I do not think “affordable” is mentioned in the measure and that is an underlying problem, which if we are going to help a small amount of people and add value, then let us do that. But if we are just going to have a broad-brush and give benefits to every developer and landowner in the County, I think that is dangerous, especially

when we get nothing back. We are giving public benefits to developers and getting no guarantee of any public benefit back. There is no target that they must build affordable, there is no target about the design, or anything at all. Yes, the density, the setbacks, and the height limitations are the same, but you get a forty-unit project of the same height that stretches for a long distance so you could have a much increased mass and no public notice. Right now, the law says that if someone wants to build a forty-unit project next to you, they have to give you notice and get a use permit. You would be notified that this is going to be behind your house and you would be able to provide public input. This is broad-brush, affecting far too many areas of the island. I will be looking for an amendment to limit it to the smaller scale, which is what I thought was originally proposed. I did not realize that it would apply to properties of all sizes. If there were some assurances that it would be affordable or be used primarily for local residents then it would be different. If it was a smaller scale, it would be much different. I do not believe that various communities around the island that are concerned about growth, development, and good planning are really aware of the impacts of this measure, and I think they should be made aware of it and hopefully they are watching today or the newspaper will do a report on it. The General Plan treats most of our communities differently. Each community has its own personality and its own plan and much of those plans revolve around the rural nature of our communities. This has the potential of circumventing the General Plan and all of the work that those people have done. I would like to see us move forward with a much scaled back proposal that deals primarily with duplexes or triplexes. I cannot support this today.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: There are five (5) basic changes that are being proposed by this law and of the five (5), four (4) of them refer to property that were parcels of record as of June 30, 1980. You will see that two (2) of them are on page 1 and two (2) of them are on page 3. The one that does not refer to parcels of record in 1980, which thus means it refers to every parcel on this island, is the section on page 2, Section 8-2.4 that says that multi-family and single-family attached dwellings are basically permitted and the existing law says that they are permitted in districts of R-10 and R-20, but now they will be permitted in R-1 and R-6, as well as R-10 and R-20. So these are not restricted to parcels of record in 1980. I stand to be corrected. I do not mind discussion.

Councilmember Kaneshiro: My only clarification is 8-2.4(b) was always in here. It says, "Multiple family and single-family attached dwellings are permitted in districts R-10 through R-20, in addition to those types of residential uses and structures permitted under Subsection (a) above," and in the section for R-1 to R-6, there is nothing there; it was left blank. If you had R-1 or R-6, unless you had a parcel on record prior to 1980, you could not do multi-family.

Councilmember Yukimura: Right, and now you are permitting it on every parcel, so it is not just limited to parcels of record in 1980. I do not have any objections to removing the sections on the parcels of record. To me, the core issue is this one and I am pretty much in favor of it, except for the possibility of it being placed in someplace inappropriate with numbers under fifty (50), which means that

they will not be covered by a use permit. I just want to say that is my main concern. I like the bulk of the Bill. I am not on the committee, so I do not vote today, but I will look at some amendments.

Committee Chair Chock: Thank you. We have to do a tape change in a few minutes, but let me just be real quick in saying that this is an important bill. Just like the ARU Bill was important, this is just as important, if not more, along the lines of trying to get the housing that we need on this island. If I had to vote on it today, this is how I would move forward on it. Are there concerns? Absolutely. I think that this could use more work. How? I am not clear. I am thinking that there are a couple of ways as mentioned, like we have to look at the threshold and the process and where public input can be included in it. I would support a deferral today to work on it, especially if it is already coming from members. That is what I was looking for, which is a commitment from members who are willing to work on it to come up with some of the solutions, I think, are concerns around the whole table. With that being said, if this is going to move forward, I would not hold it back as well as this point. Committee members, how would you like to move forward?
Councilmember Kaneshiro.

Councilmember Kaneshiro: For me, I am comfortable with it. I hear this whole monster of forty-unit complex. To me, that is an issue of planning or density and how we planned it to begin with. We are not adding density. If they can build forty (40) units, then they can build forty (40) units. It is either going to be forty (40) units single-family or they can combine it in any direction they want. If people are saying, "I do not want to see forty (40) units"—it is not this Bill's fault; it is the density of the property. I am comfortable with it. It is simply just giving that person the ability to say, "Do I want to build all single-family houses or do I want to be able to combine it?" For me, I think the majority of the Bill is to help the smaller people that had one (1) additional density. Maybe they did not have enough room to build another single unit and would have to pay higher Facilities Reserve Charge (FRC) costs. They could just combine the units.

Committee Chair Chock: I know where everyone stands already, but what I need is a motion. If the motion is to defer, we will vote for that. If not, we are going to move on the main motion. What is the pleasure of this committee?

Councilmember Kagawa: Councilmember Yukimura said that she would have maybe some amendments prepared. Councilmember Hooser also talked about having some possible amendments that would make him feel more comfortable about it. I think we have already grinded out all the nuts and bolts today and I do not see why we cannot have the amendments and vote it up or down next week. If we feel like the amendments need to be thoroughly discussed then we can come back to committee, but I do not see any problem with trying to get this done, because I am pretty comfortable with the Bill as-is.

Committee Chair Chock: Okay. We have to take a recess now. We are way over the tape change time. Recess for five (5) minutes.

There being no objections, the meeting recessed at 12:47 p.m.

The meeting reconvened at 12:52 a.m., and proceeded as follows:

(Council Chair Rapozo was noted as present.)

Committee Chair Chock: Welcome back. There is consensus that we want to continue to work on this, so I will entertain a motion to defer.

Councilmember Kaneshiro moved to defer Bill No. 2634, seconded by Councilmember Kagawa, and carried by a vote of 4:0:1 *(Councilmember Kualii was excused).*

There being no further business, the meeting was adjourned at 12:52 p.m.

Respectfully submitted,



Codie K. Yamauchi
Council Services Assistant I

APPROVED at the Committee Meeting held on December 7, 2016:



MASON K. CHOCK, PL Committee