

MINUTES

PLANNING COMMITTEE

October 26, 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 26, 2016, at 8:31 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 Kualii (*present at 8:39 a.m.*)
Honorable Mason K. Chock
Honorable JoAnn A. Yukimura, Ex-Officio Member
Honorable Mel Rapozo, Ex-Officio Member

The Committee proceeded on its agenda item as follows:

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

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

Committee Chair Chock: A motion to approve is on the table.

Councilmember Hooser moved to amend Bill No. 2634 as circulated, as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Kaneshiro.

Committee Chair Chock: Thank you.

Councilmember Hooser: This is an amendment that was suggested by Councilmember Yukimura, and as she is not on the Committee, I am happy to introduce it for her.

Committee Chair Chock: Councilmember Yukimura, do you want to explain the amendment?

Councilmember Yukimura: Thank you. At the end of our last Committee Meeting, I offered to work on a possible amendment given the concerns that were raised during our discussion. I think we were mainly concerned about the impact of multi-family units in low density neighborhoods and how they might be

well-integrated rather than cause issues. We were somewhat concerned about aesthetics and form, so with the help of Yvette Sahut from our staff, we have looked at the possibility—with this amendment, projects that are in areas zoned R-1 through R-6 where form-based codes have not been adopted are limited to twelve (12) attached multi-family units. This is put forth basically, as a framework for considering amendments. We could change the twelve (12) units to fifteen (15) or thirty (30), depending on what we think is appropriate. At our last Committee Meeting, we learned that at fifty (50) units, there is a trigger for additional review. Right now, this Bill would allow or outright permit this attached multi-family format to happen. The concern seemed to be centered around the low density places. Thank you to the Planning Department, for they have been looking at this amendment. With your permission, Committee Chair Chock, can we have them come forward to give their insights and concerns about the amendment?

Committee Chair Chock: Are there any initial questions for the introducer? Councilmember Kaneshiro.

Councilmember Kaneshiro: Just to understand the amendment, if you are building thirteen (13) or fourteen (14) units, then is it still not possible?

Councilmember Yukimura: It would maybe take a Use Permit.

Committee Chair Chock: Yes, anything after twelve (12) units.

Councilmember Yukimura: It would not be possible as an outright permitted use. The intention is that there would be some other level of scrutiny.

Council Chair Rapozo: I have a clarification question.

Committee Chair Chock: Council Chair Rapozo has a question for clarification.

Councilmember Kaneshiro: I am not seeing that.

Council Chair Rapozo: No, go ahead.

Committee Chair Chock: I am sorry.

Councilmember Kaneshiro: The one you are changing is the one that just said that if you have a multi-family or single-family attached dwellings, then you are permitted to do it, and you basically put a limit on it. I guess I just need clarification on that.

Councilmember Yukimura: I see what you are saying, that the way it is written right now, it is outright denied.

Councilmember Kaneshiro: If you have thirteen (13) or fourteen (14) units.

Councilmember Yukimura: Yes.

Committee Chair Chock: And that is it.

Councilmember Yukimura: We could change the limit if you want thirteen (13) or fourteen (14), or twenty (20) units. We could change the number twelve (12). I just put it out as a marking point to start with.

Committee Chair Chock: There is a clarification question here, and then Councilmember Hooser.

Council Chair Rapozo: That is the same concern I have. Right now, you would be outright prohibited, meaning no Use Permit. You would have to create another section...

Councilmember Yukimura: We could.

Council Chair Rapozo: ...to address that and then put a "U" in the block.

Councilmember Yukimura: Yes.

Council Chair Rapozo: That would allow for a Use Permit. Right now, it does not allow for a Use Permit.

Councilmember Yukimura: And it is very difficult to make amendments in a chart form. That is why we had to almost invent the "Not Applicable (NA)" because we want it to apply in R-10 and R-20 districts. If we did this row system without the "NA," then it would mean that it is not allowed in R-10 and R-20 either. I find it really awkward to do a law by chart, but acquiescing to a chart format, this is what we tried. Yes, if you want to do a Use Permit, you are right, Council Chair Rapozo, we would probably have to do another row with a "U."

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: That was the same question or point that I had.

Committee Chair Chock: Why do we not have the Planning Department come up and they can clarify this further?

There being no objections, the rules were suspended.

Committee Chair Chock: Good morning, Ka'āina.

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

Committee Chair Chock: Council Vice Chair Kagawa.

Councilmember Kagawa: Ka'aina, plain and simple, what is the difference between the Bill without the amendment and with the amendment? What are the changes and what is the amendment trying to change?

Mr. Hull: The original Bill without the amendment is essentially allowing multi-family unit construction in all residential zoning districts, period. They would be able to take advantage of the option. The proposed amendment would, in effect, allow multi-family construction in the R-6 zoning designation and below, not to exceed twelve (12) units. As correctly addressed in the earlier discussion, anything more than twelve (12) under the way it is proposed, would be prohibited.

Councilmember Kagawa: If a person had a single-family home and wanted to do a multi-family dwelling, but could not because of the fifty percent (50%) lot coverage restriction or what have you, would they not be able to do it under the amendment?

Mr. Hull: Under the proposed amendment, if you are looking at those smaller lots that would only qualify for two (2) or maybe three (3) units, they would still be able to construct a multi-family unit.

Councilmember Kagawa: The amendment affects under...

Mr. Hull: Essentially under twelve (12) units.

Councilmember Kagawa: It does not affect under twelve (12) units, but it does over twelve (12)?

Mr. Hull: Exactly, yes.

Councilmember Kagawa: The amendment disallows that?

Mr. Hull: Correct.

Councilmember Kagawa: Okay. Thank you.

Committee Chair Chock: We have a follow-up here.

(Councilmember Kualii was noted as present.)

Councilmember Kaneshiro: I think it also says "where form-based codes have not been adopted."

Mr. Hull: Yes, it does state that. I had a discussion with Councilmember Yukimura earlier, that the Department would strongly advise that that language not be included. That is just because if a form-based code is adopted in one of the community plans, it would ultimately supersede or override this chart, and in fact, that has already happened with the South Kua'i Community Plan. The form-based code and the respective transects have overlaid R-4 and R-6 designations, and they allow for duplexes and apartment type of units

being constructed in what is R-4 and R-6, therefore, it automatically overrides it. Is it conflictual with other laws? No, it is not. It is just having that statement is not only unnecessary, but can be hard to interpret.

Committee Chair Chock: Council Chair Rapozo.

Council Chair Rapozo: Thank you. How many communities have adopted form-based codes?

Mr. Hull: Only one (1) at this time.

Council Chair Rapozo: Okay. Now, what happens to any community that does not have adopted form-based codes? Would this apply?

Mr. Hull: That would not apply.

Council Chair Rapozo: Then what?

Councilmember Yukimura: Then it is limited.

Mr. Hull: Under the proposed amendment, it would be limited to twelve (12) units.

Councilmember Yukimura: May I?

Council Chair Rapozo: It says, "Multiple family..."—this is what is permitted, "Multiple family and single family attached dwellings where form-based codes have been adopted as part of the community plan or the project..."—or the project, I see. Okay. Now, if someone has a three (3) acre parcel, R-6, and they wanted to build a fourteen (14) unit, then they would not be able to do that?

Mr. Hull: No, they would not.

Council Chair Rapozo: Unless the form-based codes...

Mr. Hull: Have been adopted.

Council Chair Rapozo: ...adopted it and allowed it?

Mr. Hull: Yes.

Council Chair Rapozo: Okay. Thank you.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: Where would you find a three (3) acre parcel in an R-6? I guess you could in an R-1, but a three (3) acre parcel would only allow three (3) units in R-1. I do not know if you are unduly restricting those areas. It is only if you are in an R-6, then a three (3) acre parcel would allow eighteen (18) units. I know the Planning Department has been looking to see where there might

be those large lots that have that kind of zoning, and I do not know if all of the data is in right now, but that would help us determine how many would be affected by this proposal or how many neighbors in an R-6 would be affected by an eighteen (18) unit multi-family dwelling. Those are our concerns.

I just wanted to say something about the form-based code, that actually what Ka‘āina said is already done without this language regarding form-based code. My concern is just notice to members of the public who are reading the law and how we assist them in navigating the law. I suggested, and maybe it is not for this Bill, but that in the chapter that includes this table, it clearly says “if your property in a form-based code area, then go to this section, not to this chart” to help them navigate, and that would then take care of this, too, with this particular language.

Committee Chair Chock: Okay. Councilmember Kaneshiro.

Councilmember Kaneshiro: Ka‘āina, is it counterproductive that we are in a housing crisis, we are trying to make it easier for people to build, simplify it a little bit, allow people that did not have their property...I think there was a limitation for any property recorded prior to 1980, which was before I was born. For the past thirty-five (35) years, no one could do it. This Bill is trying to make it easier and allow people to do it. Is it counterproductive to then say, “Yes, let us make it easier and then let us restrict how many they can build?”

Mr. Hull: At the end of the day, in analyzing the original Bill and the intent of it, the Department is in complete agreement just because of the fact that we have been looking at the housing crisis that we are in the midst of and we know that multi-family construction is not only cheaper, but is particularly aimed in general purchases to our local families. There was a Department of Business, Economic Development & Tourism (DBEDT) study commissioned back in 2014 on Kaua‘i’s housing inventory, and it addresses the fact that multi-family construction units average out at about three hundred twenty thousand dollars (\$320,000) on a sale. Single-family construction units averages out to about five hundred twenty thousand dollars (\$520,000). The online rental rates of multi-family units during the time of that study were coming in at about one thousand three hundred dollars (\$1,300) and one thousand nine hundred dollars (\$1,900) for single-family units. Multi-family construction is cheaper and is aimed at the local families. When you take that scenario and pair it with the fact that for the past thirty-five (35) years we have a prohibition on multi-family construction in the vast majority of our residentially zoned lands, about ten percent (10%) of our residentially zoned lands can take advantage of multi-family construction. Ninety percent (90%) of our residentially zoned lands cannot take advantage of a type of construction that generates cheaper rents, cheaper sales, and is aimed at local families. The attempt to at least take away that prohibition is the first step we need to begin addressing and accepting the fact that some of our regulations are pricing local families off of this island.

Committee Chair Chock: Council Chair Rapozo.

Council Chair Rapozo: It is kind of a related question. Councilmember Kualii and myself have been meeting with the Housing Agency to

try to identify some parcels on County land to possibly create some multi-family units. I am now wondering because the zoning may be smaller or R-4, but you would obviously get the most “bang for your buck” if you put more units.

Mr. Hull:

Yes.

Council Chair Rapozo: I am wondering if this may impair the County’s efforts. It seemed like a good thing, but now that the questions are coming up, I am thinking if it would impair the County’s efforts in affordable housing when we have smaller plots of land and not the big three (3), four (4), or five (5) acres. It is smaller areas where we may just be limited and then it is not going to be cost-effective to build. Is that...

Mr. Hull: It depends on the partnership that the County Housing Agency would take with a developer. All of the partnerships are done in order to build those types of housing units. If the Housing Agency is able to sign-on as a co-applicant, they can actually apply for what is called a “project development” in which you can waive virtually every standard.

Council Chair Rapozo:

Okay.

Mr. Hull: But if for some reason the County Housing Agency is not able to sign-on with the developer as a co-applicant, although it provided the land, they agree with the proposals, and will ease the burdens, then this indeed would restrict and prevent that developer from doing some types of housing.

Council Chair Rapozo: Yes. I do not envision too many developers coming in on their own to develop affordable housing because that is just not going to happen. But the partnerships such as Kalepa Village, Rice Camp, and all of that, the project development would resolve that problem?

Mr. Hull:

Yes.

Council Chair Rapozo:

Okay. Thank you.

Committee Chair Chock:

Councilmember Yukimura.

Councilmember Yukimura: Ka’āina, I do not disagree with the main intention of this law. My question is, how much of the essence of the law is going to be affected by this restriction that just tries to make sure we integrate large parcels that are going to be developed in small areas? This amendment is trying to achieve the goals of the Bill without unintended consequences that come back to bite us afterwards.

Mr. Hull: I think there is definitely some credit to the fact that form and massing can be an impact. The overall impact on infrastructure, population, noise, parking, or what have you...regardless of it being a twelve (12) unit complex or twelve (12) separate single-family dwellings, in fact, with the twelve (12) unit complex, the more you bring it together, the less impacts it has on

infrastructure. There is still the same amount of people living there, but there could potentially be the form and character impact. It is hard to really address that because of the fact the matter is by mandating that you cannot have a certain amount of units above a certain number could limit the ability of a landowner or developer from putting them all together to provide open space on the rest of the property. It would prevent them from providing a larger park area, or there are some communities coming up in other areas of the Country where they are providing farming activities for the tenants or people living in the apartment complex. Restricting and saying that they have to actually spread these things out, could prevent them from doing that as well.

Councilmember Yukimura: Well, if it is a Use Permit process, at least there is some scrutiny. You can still possibly get to that end because we are not just thinking about the landowner. We are thinking about the neighbors and the neighborhood. Form and character do affect it. We are not just affecting the project, we are talking about how it is affecting the surrounding community and neighborhood.

Mr. Hull: Yes. I would not encourage the Council to go down a path of a Use Permit to go above and beyond a certain number just because Use Permits are geared towards those types of uses that are not generally permissible in a particular zoning designation.

Councilmember Yukimura: Well, this is not permitted right now.

Mr. Hull: Well, the density is not, but the use is. Residentially zoned lands are for residential uses.

Councilmember Yukimura: Right.

Mr. Hull: If you are going to go down the realm of saying that you have to have a public hearing at a certain level, it would probably be more appropriate to approach it from the Class IV Zoning Permit level as opposed to the Use Permit level, just because a Class IV Zoning Permit level, as it is currently imposed on fifty (50) units or more specifically deals with the design of a particular set of structures as opposed to the use, which the use is what this zoning district is set to do.

Councilmember Yukimura: Okay, that is fine. The reason for this amendment is that we do not know because we do not have the data of how many parcels and how many neighborhoods would be affected by this. It is kind of a way of starting slowly, especially allowing the one (1), two (2), and three (3) unit projects to move ahead, which we believe are the bulk of this Bill. We are not stopping any of that by putting this limitation. Then, if people come forward and say, "Hey, I want to build, I am limited here, and what I am going to do is not going to affect the form and character of the neighborhood," then we can further allow it. But right now without knowing the impacts, it is kind of a safety thing to go slowly but move ahead.

I just want to ask about your figures about multi-family construction being cheaper. I believe that is true at the smaller unit level. I think when it comes to twenty (20) or so units, I know that three (3) stories will cause more problems or actually, more costs. I hear it will be more expensive. I want to ask you if your figures apply to larger numbers in terms of saying that multi-family construction is cheaper because with my Affordable Housing Advisory Committee, that is not the feedback that I am getting.

Mr. Hull: I can say that is just my recollection of the DBEDT study that was commissioned a year or two (2) ago concerning housing. I would have to go back to the study itself to see exactly what projects that study was taking into account. I do recall the study also pointing out that there has not been a single multi-family project on Kaua'i since 2010.

Councilmember Yukimura: That is not true. We have Pa'anau Village Apartments and Kalepa Village Apartments. We have been doing those projects.

Mr. Hull: The study was done in 2014. I am just saying that in the four (4) years since 2010, nothing had actually been constructed.

Councilmember Yukimura: Well, 2008 was the crash.

Mr. Hull: Yes.

Councilmember Yukimura: There was almost no construction going on anywhere, except really expensive single-family country estates.

Mr. Hull: Yes, that is the predominant type of development that we are seeing. In discussions with the Housing Agency, the private sector, the developers, and the Board of Realtors, we understand that for the most part, multi-family unit construction is cheaper and is aimed a local families, yet, there is very little desire to do so because of the return on investment on it. We were trying to look and see how we can get these people to build the multi-family units as opposed to looking at the fact of the matter that on the market, it is far more lucrative to invest in a large scale single-family house that would be put on the market for the second homebuyer from another place.

Councilmember Yukimura: And that is...

Mr. Hull: So trying to bring these people to the table to see how we can get to construct is one (1) issue that we are having, but above and before we even address that, we have to take the prohibition away.

Councilmember Yukimura: That is why I support the basic thrust. Can you please make the DBEDT study available to us?

Mr. Hull: Yes.

Councilmember Yukimura: Thank you.

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: Good morning. I did not think there was a prohibition. I thought it just required a Use Permit.

Mr. Hull: No, it is a prohibition.

Councilmember Hooser: Today?

Mr. Hull: Today.

Councilmember Hooser: Under today's law?

Mr. Hull: Today's law, yes.

Councilmember Hooser: Okay. It seems like the conversation we had the last time we talked about it, there was a Use Permit. I had asked how many people had applied for a Use Permit, and no one had applied.

Mr. Hull: Yes, that is because they cannot apply.

Councilmember Hooser: Okay.

Mr. Hull: Currently, the way you have to read this chart is it will either have a "U," "P," or be blank. "U" means a Use Permit, "P" means outright permitted, and a blank means there is an outright prohibition on it. There are some cases with those lots that were created prior to 1980 that still can, but for any of those lots subsequent to 1980, it is a prohibition.

Councilmember Hooser: Okay, so you can do a Use Permit for lots created prior to 1980?

Mr. Hull: Hold on a second.

Councilmember Hooser: My recollection of the last discussion was that Use Permits were...

Mr. Hull: Yes, you can do a Use Permit for those lots prior to 1980, and anything after 1980, is an outright prohibition.

Councilmember Hooser: Okay. You mentioned that most multi-family units are used for local residents, but when I think about the Kōloa, Po'ipū, or Princeville areas, I do not think that is the case in those particular geographical areas. It seems like most of the residential in Po'ipū...

Mr. Hull: When you look at the type of development in the market schemes that have been going on today...

Councilmember Hooser: ...most of those would seem to be a vacation rental-type issues. Is that correct?

Mr. Hull: No. I would be in agreement that traditionally back in the 1960s, 1970s, and even up to the 1980s, it was very standard for transient vacation or resort types of development to take on the condominium type of development regime. We can see in the past ten (10) to fifteen (15) years that the development regime within the second home or the transient accommodation market is very different now. It is much more geared at the large-scale single-family dwellings and, in fact, the vast majority of the development currently occurring in the Po'ipū area, which is arguably the most exploding types of transient accommodations and/or second housing markets. Those developers are not even taking advantage of their full density. They are not building out to full capacity because it is far more lucrative on the market to go after the five thousand (5,000) or six thousand (6,000) square foot mansion on a larger property as opposed to putting in multi-family units and in particular, multi-family units that are connected together. I am in agreement that previously and for several years back in the 1960s, 1970s, and 1980s that was a development pattern that happened, but that is not the way that development patterns are occurring today.

Councilmember Hooser: Right. I guess the only place I see local residents in multi-family homes would primarily be in Kapa'a and Līhu'e.

Mr. Hull: No, there is a fairly large multi-family unit development in Kōloa on the south shore.

Councilmember Hooser: Right, Pa'anau Village Apartments. I am in support of the "crawl, walk, run" and not just jump in one hundred percent (100%). As a compromise, we could allow units exceeding twelve (12) with a Use Permit? That would be one (1) path we could take which would still allow them to go through. With the Use Permit, is it possible to deny the permit?

Mr. Hull: Correct.

Councilmember Hooser: With the Class IV Zoning Permit, is it also possible to deny?

Mr. Hull: Yes.

Councilmember Hooser: This might be for the County Attorney, and I do not know if we want to do that now or not, but if this Bill passes into law, do we create additional entitlements for landowners?

Mr. Hull: No.

Councilmember Hooser: We expand their ability of use of the property. We give them value that they do not have now, which I would say is an entitlement. My question is, if there are unintended consequences and we decided to change it later, is that a taking as opposed to putting a sunset on something?

Mr. Hull: No because if you decide to change it, you would be putting it back to what it essentially was. Back in 1980, a prohibition was

put. Previously, the landowner could utilize the option of construction multi-family dwelling units prior to 1980. In 1980, the Council came in and said, "No. We are going to prohibit allowing this type of construction in these residential areas," therefore you are just returning it back to what it originally was.

Councilmember Hooser: Okay. I guess I can ask the County Attorney when we are done with the Planning Department. Thank you.

Committee Chair Chock: Councilmember Kaneshiro, followed by Councilmember Kagawa.

Councilmember Kaneshiro: We are hearing words such as "entitlement," "extra value," "impacts," and "unknowns," but the fact of the matter is these properties are already zoned to build single-family units. They can go and build a single-family unit, they can build forty (40) single-family units, or they can build fourteen (14) single-family units on this property and all this Bill is allowing is for them to combine them if they want. What does this do? Basically, if somebody can build sixteen (16) units, they are going to build sixteen (16) single-family units because they are prohibited to build more than that in multi-family units. What is the difference? They are already able to build. We are not increasing density. The decision they are going to make is, does this Bill hinder me from building multi-family units or do I just go and build the single-family unit, which is already approved to do?

Mr. Hull: Yes, there is no difference aside from the fact that it allows the units to be next to each other.

Committee Chair Chock: Councilmember Kagawa.

Councilmember Kagawa: Councilmember Yukimura talked about working with the Planning Department to come up with this amendment and I am kind of confused because you just said that you would prefer consistency with zoning, which is in the original Bill. If it is Residential, you have a consistent way of treating all residential properties. This amendment seems to try and pass legislation based on a fear of some unknown consequence. She has not said what subdivision could be impacted negatively given that. It is just fear of the unknown that someone will get hurt. I cannot see passing an amendment with a fear of the unknown. What is the Planning Department's recommendation, approve or deny this amendment, and for what reason? Do you believe in the fear of the unknown as well?

Mr. Hull: Concerning the first part of the language concerning form-based code, I can recommend that should not be included in the proposal. As far as the twelve (12) units, I cannot officially state a recommendation on the floor. I can say we have concerns with it, but I would not be able to state an official recommendation at this time.

Councilmember Kagawa: As Councilmember Hooser pointed out, there may be some negative impacts based on the overall bill. Some people may not want their neighbor to have two (2) houses attached together instead of having it

separate as our current law allows. Yes, there may be disagreement individually by a neighbor not wanting it, but it does not matter whether it is more than twelve (12) or one (1). There may be dissatisfaction. It is just either you are for allowing options for the public or not, right?

Mr. Hull: Yes.

Councilmember Kagawa: I do not think we should be passing amendments based on fears of individual opinions or what have you. We should have amendments based on what is actually out there and prove to me negative impacts? I do not see that in that amendment. I am surprised that the Planning Department has worked on this amendment.

Mr. Hull: No. I would not characterize it as Councilmember Yukimura working with us.

Councilmember Yukimura: And I did not say that.

Mr. Hull: She did submit it to us to review and I did give her a call to express some concerns.

Councilmember Kagawa: Does the Planning Department agree that this amendment is helpful or not?

Mr. Hull: Like I said, I can officially say that the first portion concerning form-based code could do a disservice to the layperson in trying to interpret the Code. Concerning the second portion about twelve (12) units, I would say that we have some concerns, but to give an official recommendation today, I would not be able to do that. I can say though, Councilmember Kagawa, that should a property be able to construct multi-family units, there is actually some precedence of looking at construction of multi-family units at a higher level within or next to R-6 or lower zoning, which are the developments that happened in Puhi, Halelani Village at Puhi and Ho'okena at Puhi. R-10 and R-20 should have a much higher density, but of course we are also allowed to construct multi-family units. I was having this conversation with Councilmember Yukimura in the sense that those were constructed abutting and right within an R-6 and previously built out single-family dwelling residents. The Department has not received any complaints or any issues with that type of development.

Councilmember Kagawa: Ka'āina, what would you call a situation where you have house with a rental in the house with a rice cooker or appliance or what have you? Would that qualify for a multi-family dwelling?

Mr. Hull: If they had a separate unit with kitchen facilities...

Councilmember Kagawa: You can call it a "wet bar" or whatever and they wanted to turn it into a private area to rent to a local family. Would that qualify for a multi-family dwelling whereas now, it is illegal?

Mr. Hull: Yes, if they have the density. If they have the density and they came in to apply, we would have to deny it because it is a multi-family unit in R-6 or lower. If this Bill was passed as-is, then we could approve that permit for an actual multi-family dwelling unit.

Councilmember Kagawa: The fact of the matter is a lot of our single-family dwellings such as Hanamā'ulu, Puhī, and Kapahi already are multi-family dwellings that perhaps this law could give them a change to legalize, right?

Mr. Hull: Correct.

Councilmember Kagawa: Thank you.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: Let us be clear that we are not prohibiting one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), or twelve (12) units from being multi-family. This amendment does not affect that. I think the reason, and correct me if I am wrong Ka'āina, that you folks are not able to give a definitive position on the amendment because we do not have the data to know how this amendment is really going to affect people, but you can get the data if you are given enough time, right?

Mr. Hull: Well, I think there are two (2) issues at hand, Councilmember Yukimura. One issue is, how many properties would this amendment affect?

Councilmember Yukimura: Correct.

Mr. Hull: That is one (1) issue. Say there are a large number of properties that it would in fact affect, the other issue at hand is should we be restricting the development to say only twelve (12) units and above and beyond that, you start having to break the buildings apart and spread them apart across the property. That is why I am saying I am having a little bit of concern about officially recommending for or against this amendment because of the fact that there is some concern to say should the developer or the property owner be able to bring all of those units together in one (1) area to preserve a larger portion of the property for open space purposes and/or for reduction of cost purposes. Will that potential form and mass be overly impactful above and beyond the benefits that it could create by reducing cost or by providing further open space?

Councilmember Yukimura: Okay. If there are five (5) properties on the island like that, to require a Use Permit because the other adjacent owners might be affected, might not be a problem. If there were fifty (50) or one hundred (100), then this amendment would be having a bigger impact, would it not? If we had the data, we would know whether potential adjacent properties might feel that it is a negative effect or not because we would know what we are talking about.

Mr. Hull: Okay.

Councilmember Yukimura: We do not know at this point. I am really sorry that Vice Chair Kagawa has to attack my position as a fear of unknown, but all I am trying to do is try to understand what the impacts of this Bill will be on a variety of situations so that we do not have unintended consequences. I think it is a reasonable question to ask. I am really sorry that it is turning into that kind of negativity.

The question I first want to ask is, the whole issue of 1980 is not affected because that is addressed in other parts of this amendment, and I am not trying to change that, correct? So we are not affecting that one. Now, the question about Visitor Destination Areas (VDAs) does come in because I am discovering the impacts of allowing vacation rentals as a permitted use in VDAs, and we are going to have to address it at some point because that is affecting the affordable housing in VDAs. Projects like the Sandpiper in Princeville, which have been a source of affordable housing, are now turning into Airbnbs and other units. They are actually causing the eviction of long-term tenants. What is the impact of this Bill, which allows multi-family units now, consolidation? Will they not then become VDAs? There is this huge incentive now...

Mr. Hull: Councilmember Yukimura, I just want to clarify that in no way or shape is this Bill proposing to expand or turn other areas in Visitor Destination Areas.

Councilmember Yukimura: But it is going to affect residential areas in VDAs.

Mr. Hull: Insofar as any further construction in that...

Councilmember Yukimura: Correct, and now those other constructions can be used as Transient Vacation Rentals (TVRs).

Mr. Hull: Well, regardless of it being having a connective wall or not, it can be used as a Transient Vacation Rental.

Councilmember Yukimura: Correct, but combined with our permitting of TVRs as an outright permitted use in VDAs, we are actually having a problem that is removing affordable housing from VDAs in areas that are close to jobs and resources. We are causing unintended consequence of our TVR bills is that it is causing the loss of affordable housing in VDAs.

Mr. Hull: I think that definitely could be an issue for a separate topic just because you would have to go in and amend...the TVR is an outright permitted use in the VDA. That is what the Code says. If anybody comes into the Department and asks for a TVR Zoning Permit...

Councilmember Yukimura: They do not have to. They will just ask for a Residential permit to build residences. That is right. They will just say, "I am going to build a rental unit."

Committee Chair Chock: I want to get us back on track for this. I understand that you have a concern that is connected to it, but it is a separate subject if we are going to handle it.

Councilmember Yukimura: Excuse me, but the converging...

Committee Chair Chock: I understand what you are saying. Do you have a question to continue on this amendment?

Councilmember Yukimura: Yes. The question is, will this Bill combined with what we are allowing now in Visitor Destination Areas cause a loss of affordable housing rather than an increase in affordable housing, which is the purpose of this Bill?

Mr. Hull: In my position as the Deputy Planning Director, I can say that it is my viewpoint that this Bill will have virtually no impact on an increase or decrease in transient accommodations in the Visitor Destination Area.

Councilmember Yukimura: What is the basis of your conclusion?

Mr. Hull: Based on this is concerning how you construct a structure, what you are addressing is how you use a structure. The desire to use structures, connected or not, in the VDA as a TVR is incumbent upon that landowner. Whether or not it is single-family construction or multi-family construction, the density does not change the same. Of course there is a strong desire to put any type of dwelling unit in the VDA into transient accommodation uses because it is far more profitable.

Councilmember Yukimura: Correct.

Mr. Hull: Whether or not it is connected or detached, there is a strong preponderance for property owners to do that and take advantage of that entitlement. Being able to construct single-family units into attached units, I do not anticipate that having any impact on the increase or decrease of transient accommodation uses in the VDA.

Councilmember Yukimura: Okay. Do you not think that this Bill will allow developers or landowners who have an entitlement to build so many units in an R-1, R-4 or R-6 area to be able to more cheaply construct a multi-family unit, so they will now construct a multi-family unit and it will turn into vacation rentals in VDAs?

Mr. Hull: That is why I was addressing...

Councilmember Yukimura: Is that not the whole dynamic of it being cheaper? Then, it will have an impact on the form and character of surrounding areas.

Mr. Hull: Councilmember Yukimura, that is why I was addressing former comments. Previously in the VDA, that type of construction was prevalent, but what we are seeing now in the VDA with large tracts of land that can construct more than one (1) unit, those landowners primarily are not taking advantage of their own density. They can construct three (3), four (4), or sometimes five (5) units and they will only construct one (1). Put aside multi-family or single-family, they are not even taking advantage of their density. Why? It is because right now in the current market trends, and it has been for several years, it is far more lucrative to construct that larger scale mansion and either put it onto the market for second homebuyers or put it into the transient accommodation usage.

Councilmember Yukimura: Okay. Do you not agree, though, that the landscape is changing now because we are coming out of the 2008 crash and now that we are allowing vacation rentals as an outright permitted use in VDAs and with the influx of Airbnbs and those kinds of shared economy, there might be a whole different movement or reverse trend back toward multi-family use? We are in a shifting economic time.

Mr. Hull: All I can say is that is not what we have been seeing.

Committee Chair Chock: Council Chair Rapozo.

Council Chair Rapozo: I just want to try and get back to this amendment.

Committee Chair Chock: Thank you.

Council Chair Rapozo: Would you recommend removing "NA?"

Mr. Hull: Yes.

Council Chair Rapozo: I do not see the difference.

Mr. Hull: The "NA" is supposed to be blank.

Council Chair Rapozo: Right, so the "NA" should be removed because it is just confusing.

Mr. Hull: If you look at the proposal, you should not have "NA," it should just be blank.

Council Chair Rapozo: "NA" is NA. It is just not permitted. I do not see it anywhere else in the chart. Then, you recommended that the form-based code section be taken out and you are not sure about the number. I just wanted to clarify a couple of things. Councilmember Kagawa or someone brought up Hanamā'ulu, but if they do not have the density and only have a density of one (1) unit, then they cannot come in and get a separate rental unit, right?

Mr. Hull: Well, no property has a density of one (1) unit. A property can either qualify for two (2) units or an Additional Dwelling Unit (ADU).

Council Chair Rapozo: Okay. As long as they have the density is my point.

Mr. Hull: Yes.

Council Chair Rapozo: The other confusing part I have is, and I agree with your comments about the Use Permit, that you are not changing the use. The use is Residential. That is what it is. But yet for the units prior to 1980, you are requiring a Use Permit?

Mr. Hull: Yes, and that was put in, and quite honestly, it was a mistake. It should have been put to the Class IV Zoning Permit level.

Council Chair Rapozo: Right. If we are going to fix something, let us fix it all over the place. I agree with your analysis, that we should not be using a Use Permit if there is no change in use. The use is still the same. I am not on the Committee, so I cannot do any amendments, but I am hoping the Committee members are listening. Are you recommending that if we change the Use Permit and go to the Class IV Zoning Permit, that we would fix the part in there that says prior to 1980, we go through the Use Permit and fix it so that we could all use the Class IV Zoning Permit process?

Mr. Hull: Well, under...

Council Chair Rapozo: To provide the public hearing. I think that is the key.

Mr. Hull: Under Councilmember Kaneshiro's original proposal as well as being kept in Councilmember Yukimura's amendment is that that whole thing be stricken or removed.

Council Chair Rapozo: The pre-1980?

Mr. Hull: Yes.

Council Chair Rapozo: Oh, okay.

Mr. Hull: So that they are all just treated equally.

Council Chair Rapozo: Okay. I did not go that far. Okay. I got it. Thank you.

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: We are doing a lot of talking here and I want the public to be clear, but the amendment as proposed would still allow the average

person who wants to build a duplex, triplex, or quadplex and has the density to do it, it is not going to keep anyone from doing that, but it caps it at twelve (12) units, right?

Mr. Hull: Correct.

Councilmember Hooser: Okay. I think it is wise and prudent to look at potential unintended consequences. For example, I know people who live in Molokoa whose property backs up to Grove Farm Company, Inc. land that is entitled R-4.

Mr. Hull: I do not know off the top of my head.

Councilmember Hooser: Okay. I know that when those people bought or built their homes, they were expecting neighborhoods behind them, not multi-family units. If I owned one (1) of those lots and someone plopped a thirty (30) unit or even a twelve (12) unit multi-family home right behind my multi-family project, I would not be a happy camper depending on the parking and where the facilities are. I think there are real impacts and form and character are not potential. It is real. There will be form and character impacts, period. Going back to the VDA for a second because I think that is a relevant area to talk about, right now in those areas it could very well be planned for residential use and someone could build a twenty (20) or thirty (30) unit multi-family hotel in a VDA and put in tennis courts, swimming pools, and all of the amenities that everyone is going to share in an area that is now designated or expected to be a residential area. That is possible, right?

Mr. Hull: I want to be very clear, Councilmember Hooser, that is possible today.

Councilmember Hooser: Okay.

Mr. Hull: That is not a function or would not be a consequence of this Bill. It is a consequence of the fact that that is currently an illegal entitlement in the VDA today.

Councilmember Hooser: No. To be clear, I understand you can build thirty (30) houses in that residential VDA and vacation rent all thirty (30) houses. My point is you could build a thirty (30) unit multi-family structure and have the resulting facilities to support those thirty (30) units, which would essentially be a hotel, as opposed to thirty (30) separate houses. So is that correct?

Mr. Hull: It is correct to say that there could be a thirty (30) unit complex or there could also be thirty (30) units. As far as the resulting tennis courts and swimming pools that accompany a hotel, the same accommodations can be provided for the thirty (30) single-family dwelling transient accommodations.

Councilmember Hooser: Right. The point I am trying to make is it changes the character and the form of the area significantly. I think that is a valid concern that the Council should address when considering implementing a measure

that could have very far-reaching impacts. We have not really studied what the difference between the impacts in the different areas are going to be. We have had a couple of meetings on it, but there are unintended consequences and I think it is prudent for us to examine those.

Mr. Hull: No, definitely. I am in agreement with your analysis on the residential. But to start throwing the VDA, and I think we should be very clear that this is not going to affect whether or not transient accommodations occur. Any attempt to bring this into the conversation further convolutes and brings in a resultant fear that is unnecessary in the discussion of trying to provide more affordable opportunities for property owners.

Councilmember Hooser: Okay. I agree it does not affect whether or not you can conduct a VDA operation. My point is the form and character of the development would be significantly different.

Mr. Hull: And that...

Councilmember Hooser: That is the point. Are there any assurances or requirements for affordability for any of these projects? No, right? I answered my own question.

Mr. Hull: Well, I would say that in fact, there are assurances for that. Currently, if you construct over ten (10) units, which both the original Bill as well as the amendment would allow for multi-family construction of more than ten (10) units, there already are assurances that you get kicked into the Affordable Housing Ordinance in which you have to provide a certain amount of affordable housing units in the development.

Councilmember Hooser: Over how many units?

Mr. Hull: Over ten (10) units.

Councilmember Hooser: Over ten (10) units, okay. The twelve (12) unit cap perhaps should be a ten (10) unit cap?

Mr. Hull: That would be up to you folks as policymakers.

Councilmember Hooser: Okay. Thank you.

Committee Chair Chock: Councilmember Kaneshiro.

Councilmember Kaneshiro: I do not think I have a question right now. I might have forgotten it already.

Committee Chair Chock: Councilmember Yukimura. No?
Councilmember Hooser.

Councilmember Hooser: I have a question for the County Attorney when we are done with the Planning Department.

Committee Chair Chock: Okay. Are there any more questions for the Planning Department? You can come up. There is another microphone here. Are there any other questions for Ka‘āina? Why do you not stay there, Ka‘āina? We have a question for the County Attorney.

Councilmember Hooser: I had asked the question earlier, but I thought the answer was better coming from the County Attorney rather than the Planning Department. In my mind, we are adding additional value. We are giving the landowners other options. If we do this and then later decide that we want to take that away, is that a taking?

JODI A. HIGUCHI, Deputy County Attorney: Just by making the amendment...

Councilmember Hooser: Actually on the Bill itself, not just the amendment.

Ms. Higuchi: I am sorry, the Bill itself. You have to look at the final discretionary action. In this case, it would be when a permit is issued. At the point when a permit is issued, that is where there is an entitlement in hand by a property owner. The Bill will not immediately entitle landowners to additional value. It is only after a permit is issued, whether it is through an over-the-counter permit that is issued or through a Use Permit or Class IV Zoning Permit, if that is how it is amended or structured.

Councilmember Hooser: Okay. To restate, if I was a property owner and I purchased land under the law that says I am allowed to build multi-family units; twelve (12) or twenty (20) units, and then the Council changed the law to say, “No, you cannot build multi-family anymore. You have to build single-family homes,” that is not a taking?

Ms. Higuchi: Hawai‘i case law did kind of account for it. It is a blended vested rights and equity type of analysis. The equity considerations, which include investments and those types of things, is taken into account, but typically, that is up until the point of when you get a permit. So that is the line that was sort of drawn by the courts. There are other jurisdictions that does not have that kind of line. It is more looking at the equity, the fairness, and all of that. I think in Hawai‘i, we are looking at once you have the permit issued.

Councilmember Hooser: Okay. Thank you.

Committee Chair Chock: Ka‘āina, take out the form-based code, take out the “NA,” anything that exceeds twelve (12) would go through the Class IV Zoning Permit process automatically. Is that correct?

Mr. Hull: That is not what is proposed right now.

Committee Chair Chock: Right. How would we make that happen?

Mr. Hull: You would have to amend the residential section of the Comprehensive Zoning Ordinance (CZO).

Committee Chair Chock: A separate section?

Mr. Hull: Yes.

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

Councilmember Kaneshiro: Ka'āina, I think we have spent a lot of time talking about residential housing, R-1 through R-6. If I was to build two (2) acres of R-20, forty (40) units, is that outright permitted?

Mr. Hull: Correct.

Councilmember Kaneshiro: But yet we are pounding on these lands zoned R-1 through R-6?

Mr. Hull: Correct.

Councilmember Kaneshiro: With this amendment limiting to twelve (12) units, we are basically forcing somebody that can build more units to build single-family, and is that supposed to be better? If somebody is entitled to build twenty (20) units and we limit it to twelve (12), then they can build twelve (12) units together and then they have to build eight (8) units single-family around. Does that make it any better? Why have a limit on it?

Mr. Hull: Yes, that is correct.

Councilmember Kaneshiro: The limit of twelve (12) units is kind of arbitrary. Why twelve (12)? Are we trying to make it so that we see more single-family houses? I do not know who that question was for. Maybe that question is for Councilmember Yukimura.

Committee Chair Chock: Yes, the question is why twelve (12)?

Councilmember Yukimura: I can answer that.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: First of all, they cannot do it right now. We are saying "you can do it, but only if you do not exceed twelve (12)," and that is because we do not know where the large parcels are. We know they are in R-1 through R-6 because that is what we are talking about, and we know that there is character in R-6 and low density that sometimes is impacted by larger developments. So we are just saying "where this might happen, we do not want to allow it as a permitted use without first taking a look at where it is; what is going to

happen; and whether balancing all of the considerations is a good thing to do.” That is basically it because we do not know where they are. One (1) of the questions is, how long will it take to get that data? We are facilitating TVRs in VDAs because they will come under this category of R-1, R-4, R-6, and Residential.

Committee Chair Chock: Okay. Are there any other questions for the Planning Department or the County Attorney?

Council Chair Rapozo: I have just one (1) and it is a follow-up to Councilmember Kaneshiro’s.

Committee Chair Chock: Council Chair Rapozo.

Council Chair Rapozo: In the scenario that he talked about, you would be limited to a twelve (12) unit building and let us say you had density for thirty (30) units because you are R-6 and had five (5) acres, could you do a twelve (12) unit building, another twelve (12) unit building, and an eight (8) unit building; or would you have to do one (1) twelve (12) unit and then the remainder in single-family?

Councilmember Yukimura: Are you asking me?

Council Chair Rapozo: I am asking Ka’āina.

Councilmember Yukimura: Okay.

Mr. Hull: The way I would read this would be that it would be one (1) twelve (12) unit structure and then thereafter, single-family structures.

Council Chair Rapozo: Right, you would be limited to that one (1) multi-family structure.

Mr. Hull: Yes.

Council Chair Rapozo: Which would...yes. I see the unintended consequences coming if you pass this amendment. That is the way I look at it. I think the consequences are not what is going to happen if it passes and all of this. I agree with you about the VDA issue, that they got the entitlement now. I think what I am seeing is the unintended consequences to prohibit some possible affordable housing projects with this amendment. Thank you.

Committee Chair Chock: Councilmember Kagawa.

Councilmember Kagawa: Ka’āina, a lot of people have the ten thousand (10,000) square foot minimum required for the ADU right now. Does the ADU qualify for the multi-family dwelling option, or does the ADU still have to be separate?

Mr. Hull: Actually, they do. Because the ADU law was passed after the multi-family prohibition for R-6 and below and there is language that is overriding, if you have a property that qualifies for only one (1) dwelling, for educational purposes, you are allowed an ADU on properties that qualify for only one (1) dwelling unit. If you have R-2, half an acre, then you qualify for one (1) dwelling unit. You can actually construct that ADU connected to the property because it was passed subsequent.

Councilmember Kagawa: Okay.

Mr. Hull: Now, if you have a property that is R-2, same zoning and same place, but is one (1) acre in size, therefore it qualifies for two (2) dwelling units, while his next door neighbor can attach his ADU because he qualifies for two (2) dwelling units. His two (2) dwelling units actually have to be separated. It is a strange conundrum in the law and we see it often where people have come into complain that we can only permit them to construct two (2) single-family dwellings on their property while their next door neighbor can take advantage of the multi-family construction, but that is only for the ADU.

Councilmember Kagawa: Second question, Councilmember Hooser talked about Grove Farm Company, Inc., the Molokoa parcel, and how that might anger residents abutting their property because when the residents purchased their homes, they knew that they were buying single-family residential lots, but there is potential with what Grove Farm Company, Inc. can do and how that would impact them. The fact of the matter is that any time we pass any change, such as this Bill, which basically allows owners to do something different, it is a change because it was not allowed when I bought my property twelve (12) years ago. Committee Chair Chock's proposal to have the Lihu'e district allow ARUs for lots under three thousand four hundred (3,400) square feet could anger residents as well because the previous law was ten thousand (10,000) square feet. So any time these zoning changes take place, there could be people that are disgruntled about the changes being made, right?

Mr. Hull: Correct.

Councilmember Kagawa: We are trying to solve the affordable housing crisis. We talked about Grove Farm Company, Inc. and what they may do with that property in trying to build affordable housing, but having these types of options makes it more enticing for developers to try and meet what the County taxpayers want as affordable, right? Affordable single-family homes may be five hundred thousand dollars (\$500,000) like Honolulu, but whereas if we have multi-family dwelling types, that may allow at least affordable rentals that are nearer to what affordable really is, right?

Mr. Hull: Yes. I would be in complete agreement with that in the sense that...and I want to be clear, too, because there are a lot of misconceptions when the term "affordable" is used. Sometimes it is being used within a very specific housing context with specific ratios. When talking from the zoning side, there has been a number of zoning proposals, including this one, that is really more addressing the affordable by design. Multi-family is designed in a

manner in which it is more affordable to produce and is generally more affordable to either rent or sell. It does not necessarily meet the specific ratios set by the United States Department of Housing and Urban Development (HUD) or the Housing Agency, but affordable by design. Indeed, right now with the prohibition on it, developers are not only unwilling, they are unable to try and provide these opportunities.

Councilmember Kagawa: Try and answer this question, and I do not know if it is even answerable, what is the big deal about the number of twelve (12), or ten (10), or whatever the magic number is to prevent unintended consequences in the eyes of Councilmember Yukimura and Councilmember Hooser? What is the big deal with the number ten (10) or twelve (12)? What is the big deal from the Planning Department's perspective?

Mr. Hull: We can see where the concern comes from because it is a question of do they want that form or mass of a larger structure near their property line per se. That is why the Department is saying that we have concerns to say that is necessarily an overall, just a negative impact because by doing that, you could create far more open space on that land, which some of the abutting property owners may actually enjoy more than having that more sprawling type of single-family homes all over the place. It is hard for us to say indeed, to have anything beyond twelve (12) will, in fact, be a negative impact.

Councilmember Kagawa: Is the concern with the whole Bill that with this type of change, it is not wanted in the residential neighborhoods? It is not just the twelve (12) or ten (10), right? I do not know. I have difficulties with the amendment.

Committee Chair Chock: Councilmember Yukimura, followed by Councilmember Hooser.

Councilmember Yukimura: The impact of one (1) or two (2) houses becoming multi-family is very different, is it not, from thirty (30) houses becoming multi-family, visually and form and character?

Mr. Hull: Correct, potentially.

Councilmember Yukimura: There is no controls on these units being affordable, so a developer could go into Kapahi, make a multi-family structure, and make it essentially second homes, right? Long-term, not short-term, so it would not be those prohibited TVRs. But there are so many second homes now. I meet people all over this island who have a home here, have a home in California, and some of them have a home in Connecticut as well. There is no prohibition. Everybody talks about, "Well, oh, we cannot prevent them from having affordable housing," but it might not be affordable housing. It might be second homes. It might be very wealthy apartments and for that, we are going sacrifice form and character that affects the surrounding neighborhoods. There is no magic in twelve (12). I just used it because I needed the number, but we can discuss where it should be. We are just talking about where you cross the line from one (1) or two (2) units that we really think will more likely be affordable because it will be smaller and the impact

is different, versus forty (40) units or anything under fifty (50), because right now under our present law, fifty (50) is where the scrutiny starts. Is that an unintended consequence we want to ignore?

Committee Chair Chock: Is that a question?

Councilmember Yukimura: Yes.

Committee Chair Chock: Councilmember Hooser, followed by Council Chair Rapozo.

Councilmember Hooser: I was going to ask the Planning Department to justify my position, which seems to be what we are doing now, so perhaps we just need to move on because we can ask if thirty (30) units behind my house in Molokoa affect me more than an ARU? The answer is yes, and I believe it is not potentially yes, but yes, if it is multi-family. We have had these discussions. I suggest we move on.

Committee Chair Chock: Okay. Council Chair Rapozo.

Council Chair Rapozo: I have a question for the attorney. When we create bills, there has to be some rationale nexus when we put a number like twelve (12). There has to be because you are allowing someone or you are giving some class of people or some group of people an entitlement and you are denying another. Do we not need a rationale nexus somewhere in there? How did you come to the number twelve (12)? I just figured we would start there. Do we have to, because you are going to be taking away a potential entitlement from somebody that have the same rights today, and then we are going to say, "No, you got the pass and you do not," and we chose the number twelve (12) as the line in the sand? Now, when that person who is not entitled or basically cannot do it come up and we get sued, how do we justify the number twelve (12)? I am only asking this because we had this discussion on numerous bills in the past as it related to putting numbers in. It is unfair to ask you that on the floor, and I can appreciate that. It sounds like we are not ready anyway, but maybe not. I do not know.

Councilmember Yukimura: How did we set fifty (50)?

Council Chair Rapozo: The question is not about twelve (12), the question is what the nexus is. Do we need to have a nexus? Do we need to clarify why twelve (12) is the number and not fourteen (14), or ten (10), or twenty (20), or whatever?

Ms. Higuchi: I think, yes. Some of that is sort of the policy decision. When we are looking at legislation like this, there has to be some rhyme or reason. The nexus and proportionality question, yes, that comes into play when we are looking at exactions or conditions related to a permit. Yes, some of it has to be recommended as, there should be good policy supporting any legislation, in general.

Council Chair Rapozo: Okay. Thank you.

Councilmember Yukimura: I have a follow-up.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: Well, we set ten (10) for affordable housing and we set fifty (50) for project development or whatever it is. It does not have to be scientifically-based, right? It can be based on where the impact leads from a fairly minor impact to a larger impact, I would guess. We have set it. We have set these figures.

Committee Chair Chock: Okay.

Councilmember Yukimura: The question is, we are not taking away. We are talking about giving. We are not talking about taking away. We are talking about giving this right of multi-family and whom we give it to.

Committee Chair Chock: What is the question?

Councilmember Yukimura: Do we not look at being cautious when we give because can we take back? That was the question. How much will it cost to take back if we decide that it was not a good idea in the public interest later? Yes?

Ms. Higuchi: Yes, I am not the expert on the policy discussions. In general, like I said, there should be some basis for any proposed legislation.

Councilmember Yukimura: Should there not be more caution in giving than in taking because of what it will take to take away later, and whether it is possible to even take away?

Mr. Hull: I will just interject and remind everyone that thirty-six (36) years ago back in 1980, it was taken away and for thirty-six (36) years, it has never been tested.

Committee Chair Chock: Okay. Thank you for the answer. Councilmember Kualii has a follow-up.

Councilmember Kualii: When you spoke earlier about entitlements only occurring when the permit is issued, in essence, this Bill as it has come forward without the amendment, is really not actually giving an entitlement. It is giving the potential for an entitlement, and what it is giving is an incentive for owners of properties now who have density and are not building because of costs to build more cautious and efficiently by sharing walls and what have you, right? So, it can be taken back because all the Bill does is give the incentive for cost-savings for a certain type of building and if we undo the Bill, anyone who has not acted on it, sought a permit, and gotten an entitlement would not be entitled going forward or have the potential for entitlements going forward?

Ms. Higuchi: Right. Again, the equity considerations do come into play and that is the reliance on any proposed legislation and also any

investments. The key is when does that matter and when is it then a vested right, and that is when you have the permit issued. That is what the courts have said. So just by nature of changing legislation at this point, it is not really affecting anyone's entitlement unless they have a permit in hand. They have their entitlement, which is that permit and that is a property right. I agree with you, yes.

Councilmember Kualii: Thank you.

Committee Chair Chock: Councilmember Yukimura has a question.

Councilmember Yukimura: But by creating the potential for an entitlement, you are creating a greater problem in taking it away then you would if you did not create the potential? Is it not? Are we not doing that?

Ms. Higuchi: Sorry, I am not fully following.

Councilmember Yukimura: If you create the potential for entitlement, you are creating a problem for the County if it wants to take it away, right?

Ms. Higuchi: Again, I think that comes into play if somebody already has a permit. If the Bill was passed and somebody had a permit, and then subsequently it was changed, they have that right already in hand.

Committee Chair Chock: Okay. Thank you.

Ms. Higuchi: I hope that answers the question.

Councilmember Kaneshiro: Again, we hear all of these scary words, "entitlement," but is it really entitling somebody if they could build six (6) single-family units and then we say, "Oh, you can build six (6) units that are connected?" At the end of the day, they were able to build six (6) units, period. I am sure it will create more questions.

Committee Chair Chock: Thank you, Councilmember Kaneshiro.

Councilmember Kaneshiro: Sorry.

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: Since in my mind we are creating an entitlement, we are allowing landowners/developers to build cheaper and make more money possibly, is it possible to address some of the unintended consequences to say this does not apply to the VDA? Since we acknowledge the VDA is the VDA and highly likely to be used as vacation rentals, is it possible to amend this measure so multi-family units do not apply in the VDA?

Ms. Higuchi: Yes.

Councilmember Hooser: Does the Planning Department have any comments on that?

Mr. Hull: Yes, you would just have to draft the proposal. I would turn to the Office of the County Attorney to look for guidance as to whether or not that constitutes a substantive change, but aside from that, of course that language can be crafted.

Councilmember Hooser: In terms of the Planning Department's policy perspective, would they support that policy change?

Mr. Hull: I could not answer that on the floor today. We would have to do a bit of an analysis and look at specific properties within the VDA and the potential impacts. I just cannot officially give a recommendation of yay or nay on the spot right now.

Councilmember Hooser: Okay. Thank you.

Committee Chair Chock: Here we are with where I think we are on this Bill. It seems to me there are some aspects of this amendment that may need work from a perspective. The options would be for us to move it forward or not move it forward, kill it, or have it deferred if there are some other considerations such as the VDA, the amendment in the residential section, whatever it may be. I am going to go ahead and take public testimony first, and we can come back to this discussion. Do we have anybody registered?

ALLISON S. ARAKAKI, Council Services Assistant I: We have one (1) registered speaker. The first registered speaker is Matthew Bernabe.

MATTHEW BERNABE: Matt Bernabe, for the record. Good morning, everybody. I am just curious with this number twelve (12). I think it is scientific. I think they are saying if an R-6 is allowed to have two (2), if you split them and have two (2) family units, you cannot exceed twelve (12) because six (6) times two (2) is twelve (12). I do not know. Maybe that is it. I was not going testify on that. What I am going testify on was and is, I said it before, we need to go vertical. Recently, we heard Mr. Kawakami talk about it. As leaders, we might have to make serious choices. Look at Rice Street. On Rice Street, they have an apartment complex that is not out of place. It houses so much more people than if we went and put that amount of people in houses. If you have Legos all over your kid's room, you are going to probably have a lot of surface area taken up. If you stack those Legos, you could get a lot more people in there. I am all for reducing the rubbish by putting them under one (1) roof. We all know we have a dump problem. If you want to go and create individual homes, here is the consequence that no one is talking about, there is exponentially more rubbish when you do individual homes. We have eighty-two (82) units by Kintaro Japanese Restaurant, which is in a VDA, so obviously we had a bad deal. We only received ten (10) years of forty-one (41) units of affordable homes. But if that same area was somewhere in the rolling hills where the roof was capped with the top of the ridgeline, we have areas to plan this smartly. It may not be four (4) stories, but it would at least be three (3) or two (2) stories. Housing is a real issue. I am glad you folks are talking about it. I actually support having a bigger density under one (1) roof. It only makes sense. My sister owns a house behind the apartment complex in Līhu'e and you cannot tell the difference. It did not take away the scenic view as bad as people say. I testified

that I rode my motorbike a couple of years back in O'ahu after one of my daughter's tournaments with the O'ahu people in Helemano. They have a building in the country that you would not even know where you were, it houses hundreds of people, and it is rural. It looked fine. I made a point to say, "Wow, this is a pretty nice place that you folks have out here." I popped out of the bushes and I was like, "Oh, this is out here?" So it can be done with smart planning. I am running out of time. I would also like to say that it is not a very popular thing to block somebody's view, but when you use up all of the surface land, they also grumble about that. This is a serious issue that we have to address. Thank you.

Committee Chair Chock: Thank you. Anyone else wishing to testify?

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

Committee Chair Chock: Committee members, I would like to focus the discussion on the amendment and what the options are. I can tell you that as it is currently written, I cannot support it. I would support one, what I heard was a request for more study if that is what can be done; and two, a resubmittal. I do have some concerns on what that threshold is, but ultimately, I am supportive of this Bill in its entirety. That is where I am. Does anyone else have any comments? Councilmember Kaneshiro.

Councilmember Kaneshiro: I will not be voting for the amendment. Again, you heard my concerns. Where did this number come from? We are in a housing crisis and we are trying to make it easier for people to build, but yet, we shoot ourselves in the foot by adding more things to make it harder for them to build. We are saying, "Yes, it is cheaper to build together, but you can only build this much and then the rest to be single-family." I am not going to be voting for this and I am ready to vote on the main motion, too. That is where I am at.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: I think there are some assumptions here that we need to examine with more public and expert feedback. I want to see the DBEDT study. I do believe that construction of multi-family is cheaper for fewer units, but as it gets bigger and more units, the construction is more expensive. I do not know for sure, but we need to examine it because there is a predominant assumption here that it is always cheaper. If it is cheaper and we make these multi-family units, is that cheapness passed on? Is that savings passed on in affordable housing, or will it be used for very high-priced housing? There is no real control over that. I do not believe we should give these incentives where it does not result in affordable housing. I think there is also going to be a major problem in VDAs where through our unintended consequences of our TVR legislation, we are causing the displacement of affordable housing in Visitor Destination Areas. This will add to it because it will incentivize development of residential properties. I am in favor of the basic thrust of this Bill. I always have been. I do not believe my amendment is affecting the major thrust. I believe it is just trying to make sure that we do not have any unintended consequences and it affects just a small portion of this Bill. So I would ask that we continue to at least verify our assumptions, and

if I am wrong and the assumptions that the Planning Department and you all are making are correct, then let us move ahead. But if the assumptions are not correct, then we need to examine what the potential unintended consequences will be.

Committee Chair Chock: Does anyone else have any comments? No?

Council Chair Rapozo: I am not on the Committee, so I will go last.

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: I would encourage the Committee to defer this. Issues came up today that were not discussed last week. The VDA question was one of them. As I think about this, I support the underlying principle of allowing landowners, specifically small landowners, who want to build a duplex or an additional unit and save money because it is likely if small owners do this, then it will be affordable and will be used for local residents. The underlying measure is just too much of a broad-brush for me and there are too many unintended consequences, some of which we just learned about today. I would like to have it examined more and have more discussion. I support the amendment's principle in terms of limiting it to smaller developments. There is a huge difference between a thirty (30) unit multi-family project built behind your house versus a two (2) unit, three (3) unit, or four (4) unit project. It potentially is a huge windfall to developers and landowners. You could cluster your multi-family units on the rim of the valley so that everybody gets a view, and that is not going to be affordable housing. That is going to be more expensive housing. If you cluster multi-families so they have an ocean view, it raises the cost of housing in those areas. It does not decrease the cost of housing. Developers and landowners are there to earn a profit, and that is what they are going to be aiming towards. There is no assurances whatsoever that this will result in more affordable housing. I am hopeful, but certainly, the smaller scale is pretty clear in which that can happen. But the larger-scale, the broader-brush, there is just too much and too many unanswered questions. I think this bears further discussion and I think we should take the time we need to act prudently and think about those potential consequences. Thank you.

Committee Chair Chock: Councilmember Kagawa.

Councilmember Kagawa: We are trying to solve an affordable housing problem, which I think is the goal. I have my fear about the overall effect of passing something like this that basically gives an option instead of having a separate unit that instead you save a lot of big-time costs. The cost of doing the foundation, the utilities, and everything makes everything. It is probably half of the house just to do the groundwork, and to give the option to just do remodeling to the existing or just do an add-on with a roof, the infrastructure and the utilities are all there. So it is huge savings and a lot of it is already out there from the 1980s. I read Eddie Sarita's minutes when he was a councilmember. Councilmember was the Mayor when a lot of people were complaining that, "Wow, these people next door to me are all illegal. What are you folks going to do?" Nothing. What did the County do for all of those years? Nothing. Now, this will give the option of people in Hanamā'ulu, Puihi, and Kapahi do it by the rules and build a unit that can house their families, their relatives, or can be a side income of rental, legally. Not everybody is okay

with breaking the law for thirty (30) or forty (40) years. Some people want to do things legally and now, this will legally give a chance for a lot of residents to do it legally like their neighbors have been illegally doing for forty (40) years. Let us get over the fallacy that this is not happening. This has been happening for a very long time. It is saving money, making ends meet, housing your family, and having privacy at an affordable cost. It has been done for many years on Kaua'i. Some is not even going to be compatible. They have more than two (2) units. Some even have five (5) units. I have been there. I am not the police or the Planning Inspector. It is not my job. I guess for the past thirty (30) years, a lot of people here that were in office did not do a thing about it. What are we going to do? Are we going to say, "Okay, only those who are illegal can do it? You can keep doing it. We are not going to bother you. But for the rest of you, no." I just want to move forward. I think if we have been doing it for a while, I see it as making sense. We are not adding density. If you have a chance for another affordable unit, then why are we going to worry if you have a chance to build more than twelve (12) units? What is the difference between one (1) and twelve (12) having the same opportunity in the same zoned lot? I do not see it. What is good for one (1) or two (2) for the same zone and density is equal for the rest. The fear is whether this Bill is good or not, allowing multi-family attached density. It changes the look of Kaua'i and changes our residential outlook. Of course it changes. So you vote "no" if that fear makes you not want to support it. I am feeling a little bit of that because I want to keep our rural character, but then again when I read Eddie Sarita's minutes, I see what is out there, and I think about what we have done with not inspecting those that have been illegal, then maybe this law can help more people to comply or at least we know that a lot of them are now in compliance once we pass this. So it is just options for our local people. That is what it is. Yes, maybe some TVR owners will make out, but do we say, "Oh, TVR owners, we are so worried about you that we are going to cut off our locals chance from housing their families and friends?" I do not let the rich dictate the way I decide for the locals that need the help. If I think like that, then nothing gets done. Thank you, Committee Chair Chock.

Committee Chair Chock: Does anyone else have any other comments?
Councilmember Kualii'i.

Councilmember Kualii'i: I do think that this is an important bill and we should keep working on it. As far as the amendment, I accept and respect the Planning Department's information and all the information provided today. I do not see how we came up with the number twelve (12). The density is what it is for all of the different properties, and to arbitrarily pick the number twelve (12), whether someone has density of fifty (50) or one hundred (100), it kind of skews it. It seems like if we were going to try to limit the amount that could be attached versus having to be single-family, that it should probably be a percentage to the already approved density. So maybe something like where you have density for two (2) to forty-nine (49) units, you can do seventy-five percent (75%) as attached. Then, from fifty (50) to one hundred (100) units, fifty percent (50%) so that maybe the much larger density would be allowed a smaller percentage; if you wanted to do a limitation like that. I would not support the amendment. As far as the overall Bill, I think to alleviate some concerns about potential unintended consequences, it would be good to have a little bit more information. Some of the questions that were asked today, maybe the Planning Department could come back to us. I think

we have to keep working on this because the potential for providing more housing, affordable and otherwise, is important. We are so behind in our supply of housing as far as what people need. Thank you.

Committee Chair Chock: Thank you. Does anyone else have any other comments? Councilmember Yukimura.

Councilmember Yukimura: No, I will let Council Chair Rapozo go first.

Committee Chair Chock: Council Chair Rapozo.

Council Chair Rapozo: Thank you. I am non-member of the Committee, but I wanted to clarify one thing because if you just listen to today's discussion, I can see how members of the public would be concerned that the lot next to their house is going to have thirty (30) or forty (40) unit structure. That is not going to happen. I think people have to understand that in order for you to get a thirty (30) unit structure, you would need R-6 and five (5) acres. Five (5) acres, not the next door lot. We are talking five (5) acres of residential land and if, in fact, you were R-4, you would need over seven (7) acres. It is huge, vast land. It is not going pop-up in your neighbor's yard. That is what I got today. If you are listening to this, I can see the fear, "Oh, my God. If they pass this, the next door lot is going to have a big condominium or vacation rental." No. You need the acres to put up that many units. Let us just get that clear. We are talking about extra units. We are talking about no increases in density. We are talking about a VDA discussion. What in the world? Why are we putting that in with this discussion? Remember when we had the TVR discussion, everybody said, "That is where it belongs. It does not belong in residential. It belongs in VDA." Okay. That is the VDA. Whether you like it or you do not like, it is the Visitor Destination Area. If somebody wants to take advantage of a multi-family development to create whatever they want to create, God bless them. That is where they belong. I think to mix that up, and I think Councilmember Kagawa said it best, if you are going to let those few people that might come up and build a couple of vacation rentals, time shares, or whatever the heck they want to build, that is fine. That is where they belong. Let us not compromise our efforts in affordable housing because we are worried about what they are going to do. They are going to do what they want to do regardless of what we do. The VDA discussion is a separate discussion. If you folks want to go mess around with the VDA and take away more people's rights there, that is say separate discussion. Right now, if you are a local resident living in the VDA, you are protected by the property tax caps. I do not care what they build. They can build a ten million dollar (\$10,000,000) mansion. You are protected by the property tax cap. Again, let us not put this unnecessary fear in the people watching that, "Oh my God." No. The sky is not falling. We have measures in place to protect our homeowners. The second homeowners, sorry, you pay the price. But our residents that live in their homes get the benefit of a cap. This Bill does not affect that. I do not care what they build in the VDA. My biggest point is the Bill as it is presented without the amendment, works for me. In the discussions that Councilmember Kualii and I have been having with the Housing Agency, there are some possibilities out there. Do you know what? This makes it even more reachable, in fact, I am kind of excited to go back to meet with the Housing Agency and say, "Do you know what? Now we can actually go and do this private-public partnership."

We can actually make this happen rather than worry so much about what can happen and then we give away there opportunity. This is a wonderful opportunity. There is no density increase. Again, if you are going to see a forty (40) acre unit development in your neighborhood, you better have about eight (8) acres separating you and them. Do you know what I am saying? That is just how this Bill is draft. Do not worry about Molokoa or one (1) more Līhu'e Townhouse coming up next to you, Councilmember Kagawa. That is not going to happen because I do not think that lot is about seven thousand (7,000) or eight thousand (8,000) square feet. You are not going to get forty (40) units. You need acres, five (5) acres. If anybody that going to get five (5) acres of land and put their complex right up to the property line of their neighbor, is stupid. They are not going to do that. They are going to make it in a nice area. Do you know what? If they want to put swimming pools, palm trees, cabanas, and whatever the heck they want, that is their right. Do not throw away the baby with the bathwater. We have to look at studies now and then another three (3), four (4), five (5) months, or six (6) months from now we revisit this, and all in this time we could probably work towards an agreement with somebody to get some housing built. I say we move on. I suggest that we move on. Thank you.

Committee Chair Chock: Thank you. Councilmember Yukimura.

Councilmember Yukimura: The argument that Council Chair Rapozo just made could have been made also about the Līhu'e ARU Bill. If we had allowed that to proceed and then worked on other parts, we might have allowed a lot of good things to happen for affordable housing. We are not talking about real property taxes. We are talking about the form and character of neighborhoods. People who live in VDAs in Princeville and in Kōloa/Po'ipū are wanting to live in good communities. So how the form and character of neighborhoods are affected is a really important issue and there is a difference. The Deputy Planning Director said himself that there is a difference between one (1) unit, two (2), or three (3) units, and greater numbers in terms of impact. This amendment does not stop the bulk of this Bill from taking effect, the really good parts of this Bill. It is very specialized to a small number of lots where there might have these impacts. If we are willing to work on this amendment, the intention could let us have our cake and eat it, too. It could let us have everything we want, affordable housing, but not the negative impacts that might come from this Bill. It is the difference between being able to discern and really allow the bulk of the Bill to happen and not allow the potential negative impacts to happen, which is the best of all worlds in working on this amendment. What I hear is we are not wanting to stop these larger developments, we are just wanting them to have additional scrutiny to make sure that their potential negative impacts will be alleviated, so the Class IV Zoning Permit is a way to do that. It may only be five (5) properties. We do not know, but it could affect neighborhoods and others. If we just have the foresight to include that kind of mechanism, we can make this Bill the best possible bill and achieve all of the things that we are wanting to happen. That is it.

Committee Chair Chock: Does anyone else have any other comments? As I said before, I support this amendment on principle to try and address form and character. The reason why I cannot support it is one, I need to know what and why for the number. I think there is more information that we need to obtain in order to

make that decision. Twelve (12) might be it, but I just have not heard enough work to be done between the Planning Department and what is being proposed. The second is that it is clear that it may not be the right place for form-based code.

Councilmember Yukimura: Make an amendment.

Committee Chair Chock: Then the "NA" portion should be taken out as well. As I said before, there is more good that the overall main Bill can do than not, and that is why I support it. I am open to deferring, specifically for answering some of the questions and if there is more interest to work on it further. With that, I need to take the vote on the amendment.

The motion to amend Bill No. 2634 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1 was then put, and failed by a vote of 1*:4 (**Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Hooser was noted as silent, but shall be recorded as an affirmative vote for the motion; Councilmembers Kagawa, Kaneshiro, Kualii and Committee Chair Chock voting no*).

Committee Chair Chock: The motion does not pass.

Councilmember Hooser: Before we move on, I was going to make a motion to defer, but I just wanted to say some quickly.

Committee Chair Chock: Okay.

Councilmember Hooser: To be clear, I supported the intent of the amendment, but it needed further amendments and I sensed that there was not the votes here to pass it, which is why I voted silent. I believe we do need additional questions answered and additional discussion.

Councilmember Hooser moved to defer Bill No. 2634.

Committee Chair Chock: Do I have a second? I need a second on the request for a deferral. The motion for a deferral does not pass.

The motion to defer Bill No. 2634 was then put, and failed for a lack of a second.

Committee Chair Chock: That brings us back to the main motion. Is there any further discussion? Councilmember Kagawa.

Councilmember Kagawa: Thank you, Committee Chair Chock. I agree with the form and character issues. Those changes are the main ones for me. Even with the ARU Bill, the form and character changes a lot. You go from ten thousand (10,000) square feet to three thousand four hundred (3,400) square feet. Are you kidding me? It is like one-third (1/3) the size of what had been allowed for all of these years from the 1960s or 1970s. That is far worse to me in changing rural character because where you had no chance of putting an ADU under ten thousand (10,000), you could put one for as small as three thousand four

hundred (3,400) square feet, you could put two (2) units. That is far more damaging and they got that from the Līhu'e Community Plan, which approved that, right? So that just worries me more because the Līhu'e Community Plan also approved of the Rice Street, Hardy Street, and 'Eiwa Street changes which I totally disagreed with. Maybe we need to scrutinize what comes out of the Līhu'e Community Plan and that group better.

Regarding this Bill, I am just hoping that we can somehow address affordable housing in a way that will get immediate results. I think the affordable housing crisis is, as I said earlier at the political forums, it is a nationwide problem that we have where you have market values all over the world going up at such a high rate and you have incomes that are not growing. How do you balance that? It is a nationwide problem. Something needs to be done. As I said, my daughter looked into applying for one of those Honolulu apartments. Five hundred thousand dollars (\$500,000) affordable was the affordable rate. She cannot qualify for a five hundred thousand dollar (\$500,000) loan with the job that she recently got. She is working. Affordable should be where one (1) parent is working and one (1) parent is not working. She is working and she does not qualify for the loan. How is that affordable? It is unbelievable that five hundred thousand dollars (\$500,000) is the cheapest affordable you can get in Honolulu. If we do not allow different ways of developers or owners creating houses instead of just standard single-family housing on ten thousand (10,000) square feet, those are least going to be five hundred thousand dollars (\$500,000) with probably income values less on Kaua'i than Honolulu, we are almost giving no chance for our true people in need to get affordable housing. Now with this Bill, we are taking a chance. We are taking a dive. Yes, we may be changing form and character, which may upset some, but are we going to wait for the nationwide solving of this issue or are we going to try and get some inventory built as soon as possible, or even allow some that are illegal to legal and get some that wanted to be legal and have not been legal to come on-board, add inventory for rentals, and add inventory for the local families to live more comfortably? I do not think everybody should be forced to be crammed because the government does not listen to the needs that are out there. I mean, get out there in the community and walk around. There are people crunched up in houses and really suffering. Now, will this Bill solve all of the suffering? No. Will it help? I hope so. I hope it helps. I hope it gives more privacy and more space to many families who are working three (3) or four (4) jobs and still cannot buy their own house separately. This is the only way they are going to have to live for now. Hopefully, as I said, we will be able to solve some of the problems out there, ease some of the suffering out there, and that is why I commend Councilmember Kaneshiro and Committee Chair Chock for pushing forth this Bill. I think like anything, even ARUs, I may be open to that. I want it to be island-wide. Like anything, we have to give and take sometimes to get results. With affordable housing, the nation is not doing nothing and the State is not really doing anything, what are we going to do? Are we going to do nothing too, or are we going to try? I am going vote to try. Thank you.

Committee Chair Chock: Anyone else have any other comments?
Councilmember Kaneshiro.

Councilmember Kaneshiro: We heard a lot of scary words. We heard “TVR,” “VDA,” “entitlements,” “extra value,” “impacts,” and “unknowns.” I think this happens with any development. Let me repeat, we are not increasing density, so these properties can build forty (40) single-family units right now and we are scrutinizing if they can combine them. I think people are going to say, “Well, what do the single-family units look like?” You have to step back. We are in a housing crisis, we are all saying that we need more houses for Kaua‘i, and all this is doing is allowing flexibility to allow the option to put the units together if you have the density and the density is already there. That is all we are doing. I hear a lot of the concerns. But again, we are trying to create housing. We are trying to promote housing. That is all we are trying to do. I think as we are trying to do this, it is kind of counterproductive to say, “Oh, yes, someone can go and build all of these single-family houses, but if they connect the units they have to do more or they have to be restricted on this.” We are talking about R-1 through R-6. These are parcels that need more acres. We are not even talking about R-10 or R-20, ten (10) units per acre or twenty (20) units per acre, which are outright permitted right now. We are scrutinizing R-1 through R-6, which you need five (5) acres to do. Again, we have to take a step back and say, “What we are we trying to do?” We are in a housing crisis. All we are saying is that we are giving the developer the flexibility to say, “Do I want to build all single-family or do I want to build them together?” I do not need to be a realtor to know if I am building houses together, I probably cannot get the price of a single-family house. If I am building all of the units together, you are building to the consumer. Does it make sense to build it up against the houses and then keep nine (9) acres of open space away from houses? No. I think the people that are going to buy are going to say, “Why are you putting us right next to this house?” They are going to want to spread it out or put it in the open area. These are big lots. Again, I think we heard a lot of scary things, but in reality, all we are trying to do is trying to promote housing. That is it. Then, I think we shoot ourselves in the foot any time we say, “Yes, let us do that, but oh, let us put all of these restrictions and make them go through a Use Permit and do all of this.” We are kind of fizzling out what we are trying to do. We are trying to make it easier, we are trying to make it a little more flexible for people to build, and that is all this Bill does. Again, this Bill does not increase density. The density is already there. It allows somebody who wants to build to say, “Should I build it together or do I want to keep it separate,” and that is it. It is as simple as that, so I will be voting for it.

Committee Chair Chock: Thank you. Does anyone else have any other comments? Councilmember Yukimura.

Councilmember Yukimura: It pleases me to no end that people are realizing the desirability of multi-family housing because that has been my awareness and my goal for many years. That is why you see Kalepa Village Apartments, Pa‘anau Village Apartments, Kolopua Apartments, and our elderly housing at Rice Camp. The amendment and my concerns are not to try to stop multi-family. I am in support of this. All I am trying to do is offset what might be some negative impacts. You can say, “Oh, well, those impacts, you have to live with them.” Well, do you know what? Affecting the rural character and preserving the rural character of Kaua‘i is the main goal of our General Plan. If we can promote affordable housing and protect the rural character of our island, why should we not try to do that? We get really caught up in, well, density is not the only issue. Yes, I

am not arguing about density and providing affordable housing, that is a given. But if we just go single issue and forget everything else, that is when we begin to destroy our community. If it is fairly easy to address the negative impacts, then we need to do that as good policymakers, and that is all that I have been trying to do. If we would spend some time and give value to trying that, I believe we can find a really creative solution that will give us both affordable housing and protect the character of our neighborhoods and our island.

Committee Chair Chock: Thank you. Does anyone else have any further comments? Councilmember Kualii.

Councilmember Kualii: I will just say that I appreciate all of the information from the Planning Department today. I read through the minutes from the July Planning Commission Meeting and learned a lot from there, too. I appreciate their work as well. Even though I am not maybe one hundred percent (100%) ready to go forward, I am pretty close. I think it is really important that we do move forward and that we keep moving forward because of the critical need for housing. I will support this and do whatever I need to do before the next meeting to be able to support it then as well. I think we are moving in the right direction and I trust the Planning Department to keep us on-track and to make this Bill work the best way that it can. Going forward, when they are working with it, if there are any amendments or any changes that we need to do, we can do. I also think, too, that if we have such a big problem with the whole idea, the reassurance from the County Attorney on the entitlement versus the incentive and cost-savings and basically encouraging developers to build more housing, can be undone. I am going to support the Bill today in Committee.

Committee Chair Chock: Councilmember Hooser.

Councilmember Hooser: I am not going to support this as it is written. I think it needs to be amended, it needs to be discussed more, and we need more information. I believe that there are unintended consequences and that there are still many unknowns which are significant. It has been characterized as helping local people, and Councilmember Yukimura's amendment would do that. Regular people who want to join two (2) houses together in the most efficient manner could do it, and that is what was proposed up to twelve (12) units. Regular people do not even do twelve (12) units. Regular people might add a second unit onto their home. Local people would add a second unit perhaps a third or fourth unit if they had a big lot. Councilmember Yukimura's amendment fully supports local people, local residents, people building homes affordably on their own lots. What is really the problem is not people building affordable, it is developers and large landowners and what they are going to do with it. Councilmember Yukimura's amendment preserves the affordability factor and makes it highly more likely that these would be affordable. There is no requirements for affordability in the Bill. We like to bandy that word around and everybody talks about we need more affordable housing, and we do, but developers are going to build to the market. Developers are going to look at a piece of land and they are going to build so they can make the most money they possibly can, and they will either choose single-family homes or multi-family homes to make the most money that they can. That is what developers do. To kid ourselves and think that we are going to have

developers running around saying, "Oh, let us build more affordable units here," no. They are going to build to the market and they are going to charge as high of a price as they can. That is the way the market works and we should understand that. There are no assurances. We could put provisions in here to increase the likelihood of affordable housing and the likelihood of them being for local residents. I think we should have that conversation to do it, otherwise it is a possible windfall to large landowners and to developers who just want to maximize their profits with no assurances for local people or local residents. It is like local people and local residents are being used as a guise to make it easier to develop and make money for larger developers and larger landowners. There are many unintended consequences. I think we need many more answers to our questions to further support the likelihood that these would be, in fact, affordable units that are built for local people and local residents. Thank you.

Committee Chair Chock: Does anyone else have any further comments? First of all, I just want to thank Councilmember Yukimura for the amendment. I think the questions that she is trying to answer are important questions on form and character. While the process is painful and often meanders, I think that it is still worth us having the discussion. How do we mitigate any of the concerns that it might have? I think that, in general, everyone is very supportive of what the potential might be for additional housing on the island, let alone affordable. Let us just talk about the need for housing. I see this Bill similarly as Vice Chair Kagawa has mentioned to the ARU Bill in the sense that it tries to accomplish that. For those reasons, I will be supporting this. I was and am still supportive of continuing to work on this. I would have supported a deferral to try and answer or address some of the questions. Short of a few of the words here, which were minor in the amendment, I would have probably supported it as well. Although I think that if we can get more information from our Planning Department on if there are any red hot spots that we need to be looking at and then looking at how we address those. It is not too late. I think the question about how we want our TVRs in the VDA to look is the question. This is where this body is today, so because of it and we do not have the support to continue to work on it, I will not let something that is good go to the wayside. I think this is still a good Bill and I will be supporting it.

Council Chair Rapozo: Just process wise, next week's Council Meeting agenda is pretty heavy. It sounds like there may be some potential amendments coming up, so just to let you know, if there is going to be...and a deferral would have taken us to an extra week. If it is going to be another intensive session, then I would suggest that if it cannot be handled within half an hour or so, that we would look at referring it back to the Committee. But hopefully we can get some amendments that everybody agrees on next week and we can get it out at the full Council.

Committee Chair Chock: Thank you, Council Chair Rapozo. I think at least from my perspective, the need to really vet this thoroughly with Ka'āina on any amendments prior to coming here is what I would like to request to happen and get us to it quickly. Councilmember Yukimura.

Councilmember Yukimura: I think we would be really better off if we could refer it back to Committee and work on it.

Committee Chair Chock: Okay.

Councilmember Yukimura: I have already asked Yvette to work on another amendment based on the input from today.

Councilmember Kagawa: May I ask a question?

Committee Chair Chock: Yes.

Councilmember Kagawa: What is your amendment planning to do?

Councilmember Yukimura: It would take out the reference to form-based code; it would remove the "NA," and it would designate a Class IV Zoning Permit for developments that are over twelve (12) or we could set it wherever we want to in R-1, R-4, and R-6 districts.

Councilmember Kagawa: So we are still at the twelve (12) number?

Councilmember Yukimura: No. I have always said from the outset that we can change that number. I just has to set a number. We can do it at twelve (12), fifteen (15), twenty (20), or thirty (30).

Councilmember Kagawa: Okay. Alright.

Committee Chair Chock: This is what I would like to do, and as I said before, I am supportive of moving in that direction. I want it properly vetted ahead of time, so if we need more time, we can still refer back to the Committee if that is how we want to accomplish it.

Councilmember Kagawa: I will support that. I think with next week's agenda being very long, even if we project it not taking long, it will. I can sense some arguments about what the number should be. I think we should just keep this Bill in Committee if we are going to go that far.

Committee Chair Chock: What is the motion then?

Councilmember Hooser moved to defer Bill No. 2634.

Committee Chair Chock: A deferral would take us to the next Committee Meeting.

Councilmember Kagawa seconded the motion to defer Bill No. 2634.

Council Chair Rapozo: When is that? November 8th or 9th?

Committee Chair Chock: There is no meeting then.

Council Chair Rapozo: Oh. When is it?

Committee Chair Chock: December 7th.

Council Chair Rapozo: December 7th.

Committee Chair Chock: We will have plenty time to vet the Bill.

The motion to defer Bill No. 2634 was then put, and unanimously carried.

Committee Chair Chock: The motion to defer passes. This concludes the business of the Planning Committee.

There being no further business, the meeting was adjourned at 10:34 a.m.

Respectfully submitted,



Allison S. Arakaki
Council Services Assistant I

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



MASON K. CHOCK, PL Committee

(October 26, 2016)

FLOOR AMENDMENT

Bill No. 2634, A Bill For An Ordinance To Amend Chapter 8, Kaua'i County Code 1987, As Amended, To Allow Multiple Family Dwelling Units In All Residential Zoning Districts (Kaua'i County Council, Applicant)

Introduced By: GARY L. HOOSER (by request)

1. Amend Bill No. 2634, SECTION 1, to read as follows:

“SECTION 1. Findings and Purpose. The Council of the County of Kaua'i finds that there is a shortage of primary dwelling units in the current housing inventory stock for Kaua'i.

Currently the Comprehensive Zoning Ordinance prohibits the construction of multiple family dwelling units in the Residential Zoning Districts (R-1 through R-6) without a Use Permit. The Use Permit process serves as a deterrent to the construction of multiple family dwelling units.

Through economies of scale, multiple family dwelling units allow for reduced construction cost to density ratios. Additionally, through denser development patterns, multiple family dwelling units provide for a more efficient use of County and State infrastructure.

The primary market for multiple family dwelling units within the residential zoning districts is the local and workforce population, in particular new home buyer families and the elderly population.

To more efficiently provide for Kauai's housing needs, the County of Kaua'i should facilitate the construction and development of multiple family dwellings in all residential zoning districts

The purpose of this ordinance is to allow for the construction of multiple family dwelling units in all residential zoning districts.”

2. Amend Bill No. 2634, SECTION 2, to read as follows:

“SECTION 2. Chapter 8 of the Kaua'i County Code 1987, as amended, is hereby amended by amending Table 8-2.4 Table of Uses, Sections 8-2.4(a)(1) through 8-2.4(f)(19), to read as follows:

“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		
8-2.4(a)(1)	Single family detached dwellings	P	P							
8-2.4(a)(2)	Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger	P	P							
[8-2.4(a)(3)]	[Two (2) multiple family dwelling units or two (2) single family attached dwelling units upon a parcel of record as of June 30, 1980]	[P]	[P]							
[8-2.4(a)(4)]	[Notwithstanding subsection (3) above, multiple family and	[P]	[P]							

Sec.	USE	ZONING DISTRICT								
		Residential		RR	Commercial		Industrial		AG	O
		R-1 to R-6	R-10 to R-20		CN	CG	IL	IG		
	single family attached dwellings developed pursuant to a Federal, State or County housing program]									
[8-2.4(b)] 8-2.4(b)(1)	Multiple family and single family attached dwellings [are permitted in districts R-10 and R-20 in addition to those types of residential uses and structures permitted under Subsection (a) above]	NA	P							
8-2.4(b)(2)	<u>Multiple family and single family attached dwellings where form based codes have been adopted as part of the community plan or the project does not exceed twelve (12) units in R-1 to R-6 zoning</u>	P	NA							
8-2.4(c)	Public and private parks and home businesses are permitted in all districts	P	P							
8-2.4(d)	Adult family boarding and family care homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements provided, however, that the Planning Director may require a use permit for such applications that may create adverse impacts to the health, safety, morals, convenience and welfare of the neighborhood or community that the proposed use is located	P	P							
8-2.4(e)	Transient vacation rentals, provided they are located within the designated Visitor Destination Areas established pursuant to Article 17 of this Chapter. These uses are prohibited in non-VDA areas	P	P							
8-2.4(f)(1)	Botanical and zoological gardens	U	U							
8-2.4(f)(2)	Cemeteries, mortuaries and crematoriums	U	U							
8-2.4(f)(3)	Churches, temples, and monasteries	U	U							
8-2.4(f)(4)	Clubs, lodges and community centers	U	U							
8-2.4(f)(5)	Diversified and specialized agriculture and nurseries	U	U							
8-2.4(f)(6)	Dormitories, guest and boarding houses; but not hotels and motels	U	U							
8-2.4(f)(7)	Golf courses	U	U							
8-2.4(f)(8)	Medical and nursing facilities	U	U							
8-2.4(f)(9)	Museums, libraries and public services and facilities	U	U							
8-2.4(f)(10)	Private and public utilities and	U	U							

Sec.	USE	ZONING DISTRICT								
		Residential		RR	Commercial		Industrial		AG	O
		R-1 to R-6	R-10 to R-20		CN	CG	IL	IG		
	facilities, other than maintenance and storage of equipment, materials, and vehicles									
8-2.4(f)(11)	Project developments in accordance with Article 10 of this Chapter	U	U							
8-2.4(f)(12)	Retail shops and stores	U	U							
8-2.4(f)(13)	School and day care centers	U	U							
8-2.4(f)(14)	Transportation terminals and docks	U	U							
[8-2.4(f)(15)]	[Three (3) or more multiple family dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or the R-6 District]	[U]	[P]							
[8-2.4(f)(16)]	[Three (3) or more single family attached dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4 or the R-6 District]	[U]	[P]							
8-2.4(f)(17) <u>15</u>	Residential care homes	U	U							
8-2.4(f)(18) <u>16</u>	Adult family group living home	U	U							
8-2.4(f)(19) <u>17</u>	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District"	U	U							

KEY: U = Use Permit Required

P = Permitted Use or Structure (Zoning Permit may be required)

NA = Not Applicable"

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

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