Meeting of the Planning Commission
Minutes
January 30, 2008

The Planning Commission held a meeting on Wednesday, January 30, 2008, at 1:36 p.m. at the City Council Committee Meeting Room, Room 205, Second Floor, 530 South King Street, Honolulu, Hawaii. Commissioner Karin Holma, Chair, presided.

PRESENT:	Karin Holma, Chair Beadie K. Dawson Vicki Gaynor Andrew M. Jamila Jr. Rodney Kim Kerry Komatsubara Richard Lim (left at 3:30; returned at 3:48; left at 4:13)
ABSENT:	James Pacopac, Vice Chair
COMMISSION STAFF:	Patty Kalapa
CORPORATION COUNSEL:	Winston Wong
DPP REPRESENTATIVES:	Kathy Sokugawa, Division Chief Elizabeth Chinn, Branch Chief Mike Friedel, Branch Chief

RECEIVED
Nov 6 3 50 PM '08
CITY CLERK
HONOLULU, HAWAII

UNFINISHED BUSINESS

TWO (2) BILLS TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO BED AND BREAKFAST HOMES

TWO (2) BILLS TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO THE REGULATION OF CERTAIN VISITOR ACCOMMODATIONS

QUESTIONS FROM THE COMMISSION

GAYNOR: Elizabeth, we've heard a lot of testimony in the last couple of times that we've come together. I wonder if you would just briefly remind us about how this bill came about.

CHINN: In 2005, the City Council initiated what was adopted as City Council Resolution 05-187, a proposal to remove the prohibition for bed and breakfast uses which have been prohibited since the last LUO amendment in 1989. The City Council's version also removed regulation of it as a land use except to allow it as a home occupation subject to getting a bed and breakfast operator's permit.

We are very concerned about the type of permit and what we identify as concerns where the Council version would allow a bed and breakfast under their bill any place where a dwelling was allowed, as well as allowing them in the country and agricultural districts. They would also add more rooms beyond what's now allowed through the nonconforming use certificate which limits the use to two rooms. Where we are in

DEPT. COM. 812
RELATED TO BILLS 6, 7, 8 & 9 (2008)

common agreement is if there's a bed and breakfast operation, it must be operated by someone who is a full-time permanent resident of that dwelling where the bed and breakfast is operated.

We spent a lot of time weighing the issues, looking at other cities and counties to see how they regulated this use. Overwhelmingly, other cities retained regulations under the zoning code. We utilized a mechanism that's already available in our zoning code called a Conditional Use Permit to offer that as an option in lieu of the home operator's permit which is permitted by the Council version. With ours, there's a discretionary public hearing. Like the Council's version, we would ask people for our version within 300 feet and the Council's version within 500 feet, so see if they object. There are different percentages of objection in our version. If the majority of the owners object, the permit would be automatically denied. To be approved, it still would have to meet all of the other criteria to grant a Conditional Use Permit, including that the use is appropriate for the site and any impacts can be mitigated, etc.

We were given the resolution whose intent was to no longer prohibit bed and breakfast, but to allow it as a home occupation. We were concerned about the methods of regulation, the processing, and creating a completely new permit which the department was still charged with administering. We felt that we already had a tool within our zoning tool box, the Conditional Use Permit Minor, and offered that as the option to regulate bed and breakfasts, but remove the prohibition. One key thing which we have and which Council's version does not have is a separation distance where you can not have any new bed and breakfasts within 500 feet of an existing bed and breakfast of which there are 57 right now that operate with a nonconforming use certificate.

GAYNOR: We're dealing with two separate bills, two separate issues, and a whole concept of enforcement. I'm trying to separate them in my mind, so I'm interested in knowing what kind of enforcement problems you have now with bed and breakfasts.

CHINN: If they don't have a nonconforming use certificate and if a home is being operated as a bed and breakfast, it is in violation of the zoning code. If our inspectors go out and verify that it appears that there are bed and breakfast operations and bed and breakfast guests, they will issue a Notice of Violation to the owner who typically has 30 days in which to resolve the violation. If the bed and breakfast operation still continues after that 30 days, then a Notice of Order is issued which starts the daily fine process. My colleague, Mike Friedel, could better answer any enforcement question you have, but I'll be glad to answer the general ones.

Of recent years, we have used our discretion, which we're allowed under the law to impose fines beginning at $1,000 a day. Some stop their operation after receiving a Notice of Violation; some contest the Notice of Order because only the Notice of Order is appealable at the Zoning Board of Appeals, not the violation. It's gone both ways. Some people stop and the notice has been cleared or we've gone to the Notice of Order. Some have been stopped and then paid their fines to settle their outstanding account after they cease their operation, some have taken us to ZBA, others have taken us to court, and there was one case in court where the City's actions were upheld, and he was found to be operating an illegal bed and breakfast.

GAYNOR: I'm interested in knowing why you want to exclude Ag land.

CHINN: I was here on Monday before the Agricultural Task Force. There is some concern state wide that on Agricultural lands, especially in the State Ag, that the uses are extremely restrictive. The County of Hawaii does not even allow home occupations in a

dwelling on Ag land because they feel that's not explicitly allowed under Chapter 205, Hawaii Revised Statutes.

We allow home occupations because we feel it's a dwelling, but overriding...As I've been before the City Council Zoning Committee and before the Ag Task Force, there is serious concern now about the erosion and the taking out of Agricultural lands for purely Agricultural uses. I've been to the Ag Task Force and the Zoning Committee a number of times in the last few months where the issue of gentlemen's estates has come up. Because this is ongoing discussion, because there are bills at the State legislature to protect Agriculture, to identify Agriculture, we felt that if we were to expand bed and breakfast, now is not the time to let it into the Agricultural district. We should see how it works out in the residential where historically they have been because there are so many issues associated with Ag that the department is working with right now.

GAYNOR: It seems to me that one of the biggest concerns about bed and breakfasts is that we're putting them into residential neighborhoods next to neighbors who are complaining about how they disrupt the neighborhood. It almost seems like the more appropriate place to put them is in Ag lands where your neighbor isn't right on top of you.

CHINN: That is true if you're talking just about the impact, but many times on Ag lands there is infrastructure, the roads may be narrow, and there may be a deficiency in the waste water if you want to add rooms to have the bed and breakfast home. What all the counties and the State have been grappling with for the last five years is the whole issue of uses, protection, and preservation of Agricultural lands. Given that context and disregarding the immediate impacts on neighbors, on the policy level we felt it was just not an appropriate time to recommend an extension of this use onto Agricultural lands.

GAYNOR: I understand that. Again, we are talking about a Conditional Use Permit. People would have to come to you and ask you and prove to you they have the infrastructure in place and that that use isn't the primary use on their Ag property. I was just curious about that.

DAWSON: I wanted to talk to you about enforcement. Some of the testimony that we have heard has been that enforcement is not very efficient as far as bed and breakfast disturbances are concerned. What kind of an enforcement staff does the City have?

CHINN: May I see if Mr. Friedel is here? Mike, are you here?

FRIEDEL: I'm Mike Friedel; I'm with the Code Compliance Branch, the enforcement arm of the Department of Planning and Permitting. Could you restate your question?

DAWSON: Some of the testimony we have heard is that the department is not able to provide monitoring and enforcement to the satisfaction of neighbors. My question was what kind of staff do we have? Are we short staffed or do we have enough?

FRIEDEL: Currently, the branch that does the enforcement is the Residential Code Enforcement Branch. It has 13 inspectors. The inspectors do more than just the enforcement against vacation rental. They do a number of other activities such as sidewalk, litter, dilapidated homes, just a variety of things. They have quite a few things on their plate, but enforcement against vacation rentals is one of their issues. I was surprised that a lot of people complained that enforcement has not been effective. For

that reason, I looked at the statistics from 2000 up to the present of our enforcement initiatives. Initially, between 2000 and 2005, that would probably be an appropriate statement. We didn't have very many notices of violation or orders issued in those years, although we responded to complaints. But the complaints weren't as frequent either.

On the order of Notices of Violation, the infraction has been identified but no order or fines have been assessed. It's been averaging between 2000 and 2005, anywhere from five to eleven or twelve Notices of Violation. The Notices of Order that resulted from that Notice of Violation, that is if they weren't corrected in the due process and it moved onto the next level of enforcement, were only up to about five. Most of those were corrected, and the fines were small. At the time, we were only assessing the lower end of the spectrum. The Director has the authority to assess a fine anywhere between $50 and $1,000. He has that discretion in reviewing the appropriateness of the fine. We were asked to use the upper level of that enforcement arm simply to send a message out and to try to get a handle on the neighborhood complaining that was getting out of control.

In 2005 to the present, the number of complaints that we received from our department was less than ten per year that we had on file. Between 2005 and the present, it went from 51 in 2005 to 138 in 2006 and 112 in 2007. Those complaints resulted in Notices of Violation being issued for 33, 60, and then 56 in those three years. The Notice of Violations that did not get corrected and moved onto a Notice of Order went from 8 to 30 to 22 each of those three years. The enforcement had somewhere between five and ten times the amount of the previous year in that window from 2000 up to the present. It's probably as much as eight times more per year than we've issued previously.

The action groups responsible for turning most of the information in for the enforcement because they're trying to get a handle and clean up their neighborhoods have been very complimentary that we have been trying to get this thing taken care of. I think early on, the complaint was probably founded, but I think more recently it's not as founded, and I actually believe that the enforcement initiatives are well in place and have become very effective. That's because of the community groups that are working with us and the amount of fines we are assessing. I think the word is out. One could argue that the people who are conducting illegal vacation rentals have adjusted their tactics and have become even more discrete making it more difficult. That might support an argument that we're not doing as much because maybe when our inspectors go out, somehow we can't verify it because they've hardened their defense, and it's very difficult.

DAWSON: Mike, I suspect that some of your numbers may be higher because the testimony we heard was not from 2005. It was recently. What we were hearing was that in many cases, neighbors simply didn't get a response. They got tired of calling in, and they stopped calling in. It was a nuisance to call in and not get a response. But having said that, are there any vacant positions or is there funding to take on more monitoring staff, more enforcement staff?

FRIEDEL: There currently is not funding to take on additional staff. I believe there may be one or two vacant positions due to retirees that have not been filled yet.

DAWSON: That may help alleviate some of the strain if those positions were filled or if there is additional funding for adequate enforcement. Clearly, you have your hands full on this and I'm sure that with the unlicensed bed and breakfasts, that makes it even twice as hard.

Elizabeth, when you were talking about excluding Ag lands for the good reasons that you stated, you said there was an erosion that took place. Could you explain what that was?

CHINN: There is some sentiment among certain City Council members, on the farmers themselves, the Farm Bureau, that there's been more and more land on Oahu in the last few years which has come in for two-acre subdivisions on which there is very little agricultural use and just the building of what they call gentlemen's estates, just a big house for someone to live there on Ag land. Some of this Ag land is in the prime Ag area and has sparked an interest among Council members and the agricultural community. That's what I meant by the erosion. I get calls from L.A. They're looking at buying this 1,000-acre site and we can build 1,000 houses, right? I said, "Not necessarily." I've really been getting these calls in the last few years. Both with the perception and the actual subdivisions, some people feel there's a reduction in available agricultural land.

DAWSON: You're implying by erosion that there's a creeping in of other uses onto Ag land?

CHINN: That's correct.

JAMILA: Mike, at the last meeting there was a gentleman that said he was reported on because they thought he was running an illegal bed and breakfast but yet it was his family who came from the mainland. Is there a percentage from your inspectors after they go out and come back? Do you have a percentage of exaggerated reports that were made or untrue reports where the inspectors went out there and found that it wasn't true? Did they happen to make a disclaimer on your status board to let you know that they went and checked so and so property and found out that it wasn't a bed and breakfast, but just a mom and pop letting their children from the mainland stay there? Subsequently, the man said that it was just his family rotating from the mainland that just happened to be staying there every third month or something. Do the inspectors have any motion on looking into that and making a report and saying it wasn't, but it was just family rotating back and forth?

FRIEDEL: I don't have the answer to that question here in front of me, but I certainly can find out. I would like to say that there are a number of Notices of Complaint that we process that sometimes even move as far as a Notice of Violation because when the inspector conducted his site visit, he talked to the people who were staying there, and they didn't respond to his questions in a way that he was able to determine whether or not they were, in fact, relatives that were staying with the family members or whether the people who owned the home were there and he couldn't distinguish it. There have been occasions where we found out that the owner was there and there were, in fact, family members visiting with them. In those cases, we dismissed those violations.

But there are equally as many where someone may not be at the home they're at, and they've turned their home over to their relatives to come and occupy it when they weren't there. That's sometimes very difficult to determine whether or not they are, in fact, relatives or not because then you take them just based on what they say. We've had to do some further investigation. On that second scenario, we would have issued a citation and moved forward until they could provide the evidence we need to be conclusive that it was, in fact, not a violation.

JAMILA: Mike, can you explain to all of us the enforcement powers of each inspector? Say there is an electric gate; can they enter on the property? Do they have to be invited? What are their powers of doing their job? Can they actually go on the property if there are no walls or gates? Can they just walk through all the properties that are open or if there's a gated fence, can they actually go in it, over it, around it?

FRIEDEL: First of all, all inspectors are supposed to be wearing their badge. If it's not a gated community and there's no guarded access, their procedures are to go to the door and ring the door bell, identify them self and what their purpose is. It it's gated or secured, then they're supposed to find out how they can contact the owner, and they're supposed to call that owner before they enter the property. They're not supposed to just climb a fence or anything like that. Illegal entry should not occur.

JAMILA: I was told outside the meeting that when a car came through the gate, the inspector went through. Is that legal too?

FRIEDEL: You're saying a gated community, the gate opened up and the inspector went in while it was open?

JAMILA: Yes.

FRIEDEL: If he approached the door and rang the door bell and said who he was, I don't think he's in violation. But if it's locked, on my own practice, I would not. I would find out how to get a hold of him and call first because it's locked for a reason.

JAMILA: I just want to give you a scenario. There's a lane and there's a gate around it with four vacation rentals. It's clear that you have to have a combination to get in there. They said that when the gate opened, they drove in and that's when the inspector happened to just walk on. It's just three houses, but I don't know if you'd call it a gated community. It's just maybe a private lot.

FRIEDEL: The inspector is doing his best to enforce the code. If he feels very confident just from what he's observed from the outside that there's a violation, he's going to try to confirm it. In my opinion, if the gate is locked and it's coded to get in, he should find the name or number of the person that owns it and call them first. I think that's a due courtesy. A lot of times they don't get those return calls, though, so there's a problem. I've also heard on occasions where inspectors have seen the vacationers leave the property in the gated community and go out the back of the property to the beach. Then they approach them on the beach, and there's been some argument about that too. They've identified themselves, showed their badge and told them if they could ask them some questions. On some occasions, they've identified that they were short term vacationers, and then they would proceed on. For others, they that didn't get the information they needed and they just had to move on.

JAMILA: Mike, thank you. Your job of enforcement isn't easy, and I want to commend your Division for doing all you can.

FRIEDEL: One of the biggest problems is that many times the inspectors, when you're asking if we have enough numbers of inspectors, I don't think it's as much a number as the issue of how long the day is. Vacationers, they're not going to sit around the house and wait for inspectors to come knocking on their door. They're usually up and out with the crack of dawn, and they're out having a good time as you or I would. They don't return until late at night. Inspectors don't do overtime, and they don't work night time hours. And they have other duties, as I mentioned. Enforcement against vacation rentals is probably one of about ten different duties that they're responsible for. Most of those other duties have to be conducted during day light hours. We don't go out at night time.

DAWSON: Are you saying that enforcement is 8 to 4?

FRIEDEL: No, enforcement is 7 to 5.

DAWSON: You have no rotating shifts so that they can cover hours...

FRIEDEL: If you're asking about rotating shifts, then the answer to your other question would be that no, we're not sufficiently staffed.

LIM: Mike, are there plans to expand the infrastructure of areas where you anticipate higher levels of uses to accommodate...due to the passage of this proposal?

CHINN: I think I can answer that better than Mike. There are no plans to expand the infrastructure. As with all Conditional Use Permits, if one comes in, we'll look to see if the infrastructure at that particular site will be sufficient to accommodate this incremental increase in use. But just like for ohana housing and these uses, the City has all these other infrastructure needs that they need to fix first. Expansion, except in limited areas, is generally not on the board today.

LIM: Do you have a set of guidelines in place or thresholds, milestones, benchmarks, criteria?

CHINN: I have to say that's not our department. There are certain other functional plans implemented by other City departments for sewer expansion, for water expansion, for road widening. We comment on them, but we cannot take the lead because it's not quite within our realm of responsibility.

LIM: If this thing were to expand as it seems to have expanded or to continue at this rate, wouldn't you anticipate that there would be greater usage?

CHINN: We anticipate that there might be greater usage and if it's like one a block, under the City's DPP version, we feel that the impact is not that great. If every single house were doing it, that might be a different story. Just like ohana housing, while certain areas of the island are deemed an additional ohana unit eligible, we look at each specific case to see if that site within the eligible area gets it if the street is wide enough, the sewer capacity is there, the water is there, etc. We would use the same level of analysis or a similar level of analysis when reviewing the Conditional Use Permit for the bed and breakfast. Say someone's neighbors love them and there's no opposition, we will still be reviewing that CUP against the CUP criteria which includes infrastructure sufficiency.

LIM: Given that there's already obvious demand and that you intend to make this change, would it be prudent to set up guidelines and criteria? If nothing else, to improve the efficiency and adequacy of your handling of the matter?

CHINN: We would welcome any feedback. We just use a general...where we look at sufficiency of infrastructure to support that use. If it cannot accommodate it, we cannot approve that permit.

FRIEDEL: Furthermore, the infrastructure for the bed and breakfast residential homes, it was already determined at the time the residential use was established. These people are just letting out a bedroom. It's no different whether they have children in that

bedroom or guests coming in. Even though it's possible that homes that just have a husband and wife may now have guests who would equate to children, the capacity already should exist there because the infrastructure was established at the time the zoning was established.

LIM: Are there criteria that establish limits on the level of occupancy per unit?

CHINN: Only by housing code. The City's housing code has a maximum number of people per square footage for bedrooms and don't allow sleeping in non ventilated rooms or rooms that are too low.

LIM: And based on your studies, has this impacted the level of usage relative to what a normal family would use versus a vacation rental? In other words, a normal family wouldn't necessarily maximize the use of those dwellings, right?

CHINN: We really can't address that because we've had situations that we hear about in the news where 20 people occupy a dwelling, so I really don't know in that instance.

KIM: All your figures given to us from 2005 to the present of the complaints filed, how many were involving unlicensed bed and breakfasts?

FRIEDEL: Just about all of the complaints we get are for vacation rentals that were not on our list of approved nonconforming use certificates which is what they're required to have to conduct the use legally. And most of those complaints weren't against places that were conducting bed and breakfast operations, but rather transient vacation use. No one was there to watch over them and make sure that they were observing practices that were protecting the rights of the neighbors. Very seldom do we get a complaint about a bed and breakfast operation.

KIM: Assuming this new bill will be enacted or passed, would you anticipate that you would have to increase your staff?

FRIEDEL: I would say if the bill was adopted in those particular locations that have been awarded a Conditional Use Permit; I don't think the enforcement against complaints for those personnel will be a problem because they run the risk of losing their permit. But those that weren't fortunate enough to get a Conditional Use Permit because of the density restriction of being no closer than 500 feet from another such use and they continue to decide to conduct that use under ground, it's going to be the same problem that we have currently. I don't know if it's any more intense, maybe even less if we're giving out some permits, but it's still going to require the verification. I think our staff could currently address that issue, and we just have to monitor it and see how it turns out with the increased numbers.

KIM: Do you have any estimate as to the number of unlicensed bed and breakfast activity?

FRIEDEL: There was a study for how many unlicensed transient vacation use, whether it be B & B or transient use in the State. The number in the County of Oahu was just short of 2,000, which ironically is just a little under what the initial number of nonconforming use certificates was when we issued them back in 1990. We issued

somewhere between 2,500 and 2,600. The study said that they anticipated, I think it was 1,980 uses conducted on Oahu. Some of those will be permitted, and most of them won't be.

KIM: Elizabeth, part of the provision in the proposed bill is that the applicant would have to have the approval of the neighbors in a certain area – 300 feet I believe. What if there's an even number of neighbors, and it comes out two and two? What happens?

CHINN: Then it's the Director's discretion. The way we've written the bill is only where there's a majority will there be an automatic denial. If it's a 50/50, it doesn't meet the majority, so it will go through the same level of review and Director discretion.

KIM: Does that mean then those who would be opposing it, which would be an equal number, would lose their right to object?

CHINN: They voice their objection, but we work on a simple majority mostly in this country, so we had to find a practical method. They still have rights to contest the permit if the Director were to approve it. But the Director would take into account their objections in making a decision. If only 50% object and if he weighs the factors, he may still deny. If he looks at the objections and finds that they can be mitigated by our conditions, (like too much noise, we impose a quiet time and then the operator would get cited if there's noise after that time) he may go for approval if those objections can be mitigated through the imposition of conditions.

KIM: My reading of it is that the applicant must obtain the majority approval of the neighbors. So if he's not able to get that majority, then shouldn't that be denied?

CHINN: It's set up so that if a majority of neighbor's object, then it's denied. We're following the lead from the Council Bill. But to get approved, he doesn't have to go out physically and actually get the majority of the neighbors to approve if some people mutter under their breath, but they don't voice any objection. Or if just one person objects out of his ten neighbors, then we review his application against all the typical Conditional Use Permit criteria. He doesn't have to go out and actually get 51% to say, "I support you." If 51% oppose, then the track goes to automatic denial.

GAYNOR: Mike, you talk about staffing for enforcement, but Elizabeth what about staffing for permitting?

CHINN: It depends on how it comes in. The way the Council version is written, we would be inundated because anyone could apply. We would need more staff. Luckily, the Council version has this time lag between the time the bill is approved and when the first application can come in. Under our version, we would have to wait and see. Since our version requires that they make the presentation to the neighborhood board, we would get a better handle unless everybody is rushing to their neighborhood board and the neighborhood board may not schedule them for a month or two. We feel that this is our normal CUP process for churches, schools and daycare. It would give a more orderly feel to us, and we would be better able to evaluate whether we would have to hire people on contract if we believe there would be an inundation.

DAWSON: You made one statement earlier that the standards that are set coexist with the ordinance that was passed some time ago. At the time the ordinance was passed

allowing bed and breakfast and transient vacation units, standards were set at that time. Could you describe that time?

FRIEDEL: The standards for the civil fines?

DAWSON: No. How long ago was that?

FRIEDEL: The ordinance for the use?

DAWSON: Yes. The standards, you say, were set at that time for infrastructure.

FRIEDEL: Oh, infrastructure for the homes. That's part of the building permit process and for any subdivision. Bob Tsumitomo is here; I don't know if he would like to make any comments on subdivision and how they verify if the infrastructure can support the growth. He's the one that ordinarily would address that as part of the subdivision process.

DAWSON: My question would be if the subdivision was built 40 years ago, then does that mean when you evaluate the infrastructure that may or may not support additional density in that area that you're looking at an infrastructure that's 40 years old?

FRIEDEL: I believe that the infrastructure will support a three-bedroom home, as an example, in 1940 the same way it would support that three-bedroom home use currently. The current provisions of the bed and breakfast rules, which will allow additional bed and breakfast use, should not change significantly the infrastructure load on these neighborhoods because it's already been established that it can support a residential home with "X" number of family members.

DAWSON: I'm having trouble understanding that. I believe the City has been notified by the Federal agencies that unless it does do a massive repair and restructure of its infrastructure, particularly where sewers are concerned, that they would be facing massive fines. So when you tell me that you're measuring a standard according to something that was built 40 or 60 years ago and that if it was good then, it ought to be good now, I don't find that very credible.

CHINN: May I answer that a different way? Mike is saying that under our proposal, the use would only be allowed in residential districts. There are two ways infrastructure is assessed. In the past, it's based on zoning. If you have a R-5 Residential District, the agency that does the water and sewer lines would look at this and say, "It's 5,000 square feet; they support one dwelling. Therefore, that's basically what it's sized at." Now if they have big lots in that R-5 zoning area, say they are 7,500 to 10,000 square feet, they may say, "We can get up to two units on this lot, so we will now look at sizing our infrastructure accordingly based on the lot sizes in this zoning area before we build." Bob can answer current subdivision, but current subdivision looks at what's being proposed and all the necessary infrastructure to support that subdivision.

KOMATSUBARA: Elizabeth, if we were to pass this bill, the DPP version, and Conditional Use Permits were granted, does the permit run with the land?

CHINN: No. Unlike most of our Conditional Use Permits, knowing the sensitivity and perceived impacts of this use, we built into Article 5 the authority to allow the Director

to give only a one or two year permit and to review after one or two years accordingly. Typically, Conditional Use Permits will run with the land, but for this specific category of Conditional Use Permit, the Director will have the authority right from the start to limit it to one or two years or to require as a condition of approval that it be reviewed annually or every two years.

KOMATSUBARA: What about the non conforming uses?

CHINN: Non conforming uses have a special status under the law. If they are non conforming, they get to continue to exist. Under our bill, the way it would operate is non conforming uses could come in for what's called the Existing Use Permit to remove their non conformity so that if they want to add a closet in the bedroom, they can then do so. Right now, they cannot. They cannot expand that dwelling in any form or manner to accommodate the bed and breakfast use. As an existing use, if the use permit were granted, they wouldn't remove the non conforming aspect of it, but we would not impose a time limitation on them because they have a special status as a grandfathered use.

KOMATSUBARA: But if I had a non conforming use and I sold my house, I could not sell it with the special use?

CHINN: Yes, you could. When you get an Existing Use Permit, the use is no longer considered non conforming. The Existing Use Permit is the mechanism to take it out of non conforming. Say you're one of the 57 bed and breakfast operators today, today you can sell that house. The certificate goes with that house. The same would apply if our bill were to pass. There would no longer be a certificate, and the 57 would have one of two options. They are just a non conforming use, their non conformity being established on the basis that they got the non conforming use certificate last year or the year before. They are subject to all the non conforming use provisions, the 10% repair only, no expansion of the use, no expansion of hours, etc. If they want to take it out of that status, the zoning code allows that mechanism of the existing use permit.

KOMATSUBARA: If I were to sell my house with a non conforming use, I probably could sell it for more?

CHINN: We've heard from the realtors that houses with non conforming use certificates for bed and breakfasts do sell for more.

KOMATSUBARA: We heard some testimony from people in the community saying they're concerned about the impact on real property taxes. I think it has some merit.

CHINN: On the other hand, some people buy houses with the B & B non conforming use certificate, but they love the location and they want to live there, so it takes another prior B & B out of the current B & B, they let their non conforming use certificate lapse, and the use is gone.

KOMATSUBARA: How do you explain for a person who doesn't have a B & B and he lives next to someone who has a B & B and they sell their house for a higher price because they sell it with that entitlement...Obviously, it affects the valuation of his house, right, because it's based on comparable sales.

CHINN: I'm not a realtor. All I can provide is hearsay. But the fact that there are only 57 B & B non conforming use certificates puts a premium on those 57 homes. That would not necessarily be the case with a non conforming use certificate, if we propose it, because we could void it after a year.

KOMATSUBARA: Going back to the Conditional Use Permit, let's say it's granted for two years. If I sell it after one year, I would sell it with the right to continue under the CUP for one year?

CHINN: That would be correct.

HOLMA: Commissioners, any further questions? Thank you Elizabeth and Mike. You did an outstanding job presenting this. Commissioners, the first proposal is to amend Chapter 21 relating to Resolution 05-187, the City Council's version of the bill. Can I have a motion on that?

DAWSON: We're talking about both provisions, and I'm getting a little confused about which is which. Elizabeth, could you distinguish the two bills once again?

CHINN: Yes. The "a" bill is the original version introduced by City Council Resolution and attached to their resolution, so it's verbatim what they adopted. It is to regulate bed and breakfasts as a home occupation as long as you get the operator's permit. The Council bill spells out the content of the application, the processing of the application, who can vote against the application, when and where the Director is required to provide a list as soon as someone asks for it if they oppose it. It's the same thing as in Resolution 05-186, the display, the advertising and the enforcement provisions.

Our bill is "b." Our bill retains it as a land use, but we would allow it in single-family residential districts only with a Conditional Use Permit Minor as one of those Conditional Use Permit Minors that require a mandatory presentation to the neighborhood board before they can submit an application to the department and where the department has the discretion to hold a public hearing should the neighbors or the neighborhood board want one. Like the Council bill, it allows for automatic denial if a certain percentage oppose, in writing, the granting of the bed and breakfast permit.

We don't set up specific provisions for enforcement because we would use our current enforcement provisions. The Council version had to because it took it out of the zoning code and put it in Chapter 41, ROH. They had to create from top to bottom the whole thing from submitting the application to enforcement. Ours is still within the parameters of the zoning code, so we would use our current existing enforcement authority to enforce this like we do any other use. Setting it up as a Conditional Use Permit Minor, we establish standards and criteria in Article 5, including the 500 foot separation distance, the two rooms maximum, the requirement for the two parking spaces, and the fact that they haven't have exterior doors leading out of the bedrooms and some other criteria.

DAWSON: Neither a or b leaves the prohibition in place?

CHINN: Correct. A and b both will repeal the prohibition.

HOLMA: The proposal to amend the Land Use Ordinance relating to 05-187, version "a", the City Council's version. Can I have a motion on that?

MOTION: It was moved to deny the City Council's version "a" relating to 05-187, on motion by Ms. Dawson, seconded by Mr. Jamila and carried.

AYES: HOLMA, DAWSON, GAYNOR, JAMILA, KIM, KOMATSUBARA, LIM
NOES: NONE
ABSENT: PACOPAC

MOTION: It was moved to approve the DPP version "b" relating to 05-187, on motion by Mr. Jamila, seconded by Mr. Kim.

DISCUSSION:

DAWSON: I think that we brought up a whole number of issues starting with the enforcement, the difficulties of granting the Conditional Use Permits, and the number of unlicensed units that exist now. Whether or not we pass this, you know they are going to continue to exist. I find it disingenuous that we would approve the DPP version number "b" and simply hope for the best. It doesn't come with any funding for enforcement. It doesn't come with any plans to update the standards for the infrastructure, and it doesn't take much analysis to realize that infrastructure is a huge issue in our community. We're in trouble now, and approving this gets us deeper into trouble. I would like to see DPP come up with another version or some other measure other than to remove the prohibitions which is what it essentially does. It gives different terms, but it still removes the prohibitions. It opens the flood gates, and I think that's very dangerous.

HOLMA: I have the following discussion and comments. First, I want to thank everyone who came to testify. Everyone was very articulate, and you raised very good points that were well thought out. After giving a careful consideration, I am also voting against this motion. I am persuaded by the following:

1. First, every neighborhood board who has voted on this issue has voted against legalizing bed and breakfast.

2. Legalizing bed and breakfast is spot zoning without the legal process involved, and it's difficult for me to justify the legalization of mini resort use in a residential area. If there is a community need or a benefit for such use, then there is sometimes a case to be made for spot zoning, but in this case I don't see much evidence of a community need or benefit. The people, and I appreciate all of your testimony who testified in favor of bed and breakfast, you mostly own bed and breakfast. I appreciate that you have benefits, but the people who don't have bed and breakfasts don't have those same benefits. If bed and breakfasts are legalized, I think Elizabeth explained to us today that the permit does expire, but I would find it hard to believe that a seller who owned a bed and breakfast and is selling a property wouldn't make some sort of representation that that property was a bed and breakfast and there would be some expectation on behalf of the buyer that he or she was going to be able to use that property for bed and breakfast. As a result, I think it will artificially raise property values and property taxes. Those people who do not have bed and breakfasts and who have been able to make their mortgage payment or their tax payment, may not be able to do so in the future.

3. I think this is a really slippery slope that could become an even bigger problem.

There is a lot of money to be made in bed and breakfasts, and for us to think that allowing more of them will not result in something uncontrolled could be a serious problem.

For these reasons, I'm voting against this proposal.

GAYNOR: Karen, I just want to say that I don't disagree with anything that you said. Those of us that have worked closely with DPP in the past know that frequently what the Council wants to do when there is a problem is create a new regulation. What's happening at DPP is I think they are overwhelmed trying to regulate everything that the Council is asking them to regulate. I think what's going to happen is the people that want to be operators in areas where they know they're not going to get the support of their neighborhood board and their neighbors are not going to come in and ask to be regulated. They're simply going to continue to do what they're doing now. I understand that the Council person who introduced this Bill to begin with is frustrated, she has a huge problem on her hands that she's trying to get some resolution on, and I just don't think that either one of these bills does it.

JAMILA: After great thought and seeing the hearings...It's all about the truthfulness. I agree with Beadie. We will be back at this later on and trying to make it conform because if your neighbor is not truthful, they're still going to operate out of the box, and what do you do? You'll be calling DPP. I only like the second one because of the part where they'd have to go to the neighborhood board and try to get some kind of conformity or an approval. The bottom line is if your neighbor is not truthful and they don't come to the neighborhood board...Like Karin said, they know they're not going to get approved anyway, and they are still going to operate out of the box and still collect whatever income that is not being fair to the rest of the people that have conformed. Karin, in listening to you, it kind of changes my mind about also approving the "b" portion. Like I said, I only thought that because of the statement that they'd have to get approval from the neighborhood boards, but after you said if they can't get it, they're still going to operate...People are people and they have bills to pay, so they're still going to do what they have to do to pay their mortgages and their land tax.

HOLMA: I think Vicki said that, but I agree with that too.

KIM: This is not for me to be contrary, but I seconded the motion mainly to get the thing on the table for discussion. I echo what the Chair person said. I think once we start with an exception to the zoning rule, it's a very slippery slope. While there are some merits to the DPP bill, the problem of enforcement and as Beadie said, of opening it up, I think is going to cause more problems down the line. I think if the Council or DPP come up with some other ideas, we certainly would look at it, but right now I think it's a real problem. I live in Wahiawa; I don't have any bed and breakfasts. I have wild chickens and roosters. I would be voting against this.

KOMATSUBARA: I, too, will be voting against. This was difficult. When I first heard of this issue, I was in favor of the B & B's because I've traveled; I've eaten in Kailua and frequented their shops once and awhile. I think the B & B's have added a lot to that community. You have a lot of good restaurants; you have a lot of good shops in part because you had that different kind of mix that the B & B's bring. I think the B & B's do add something to the community but at the same time, they do take away from those others. That's part of the problem.

When you look at the equities, you have someone who bought in a residential area; they bought with that understanding. True, this is an industry that makes a lot of money, so there's going to be a lot of pressures, but I think what we should realize is the market is asking for more resort development maybe. Maybe that's a controversial subject, but that's what happens when you place a cap on something. People figure some way to get it out. Maybe people don't want to hear that, but I think that's what we're facing. I've gone to B & B's; I like it. I can see why a lot of people like it. But we don't have any mixed use districts that allow B & B's, from the very beginning, to mix in with the residential usage. It's a tough decision. Where do you start this; how do you start this? Personally, I think when you look at Kailua, it's a natural. Everybody wants to be there; they want to go to the beach. They like being in Lanikai. But we don't have a mechanism to allow this to happen fairly for those people who bought originally as residential land. For that reason, I'm voting against it.

HOLMA: Commissioners, any other discussion or comments? The motion on the table is to approve the recommendation. All in favor say aye. All opposed, raise your hand.

AYES:	NONE
NOES:	HOLMA, DAWSON, GAYNOR, JAMILA, KIM, KOMATSUBARA, LIM
ABSENT:	PACOPAC

MOTION: It was moved to deny DPP's version "b" relating to 05-187, on motion by Ms. Gaynor, seconded by Mr. Komatsubara and carried unanimously.

AYES:	HOLMA, DAWSON, GAYNOR, JAMILA, KIM, KOMATSUBARA, LIM
NOES:	NONE
ABSENT:	PACOPAC

HOLMA: Now are the two bills to amend Chapter 21 related to 05-186 regarding the transient vacation units. Commissioners, does anybody have any questions for DPP? Mike, are you still here? I've got a question for you.

FRIEDEL: Yes.

HOLMA: Do you have a copy of your version in front of you?

FRIEDEL: I apologize; I didn't bring it with me.

HOLMA: You've got to make an amendment to your version.

CHINN: I have a copy of his version.

HOLMA: On page 3 of your version, Section 3, this new section 21-4.110-3. Shouldn't this section read, subsection a, "If an advertisement does not have the information required by Section...the owner, operator, proprietor, or rental agent of the transient vacation unit being advertised shall, within 7 days after receiving a notice of violation...I think that language needs to be in your proposal because there's no reference in this section to "notice of violation" or "receipt of notice of violation."

FRIEDEL: I believe you're right because we intended to have a seven day due process.

HOLMA: Right. After receipt of notice of the violation, right?

FRIEDEL: Yes.

GAYNOR: Just because we've heard so much cross testimony on these two bills and it gets to be a little confusing if you don't step back every once and awhile and sort out the difference. We aren't doing anything here other than passing a bill that forces everybody that has a non conforming use certificate to place their address in their advertisements for the unit. We're not allowing any new use or anything. All we're saying is that if you have a non conforming use and you're advertising to rent, you must place the address of the unit in your ad.

FRIEDEL: And the certificate number. We're trying to distinguish between those that have the certificates and those that do not.

MOTION: It was moved to deny the City Council's version "a" relating to 05-186, on motion by Mr. Kim, seconded by Ms. Gaynor and carried unanimously.

AYES:	HOLMA, DAWSON, GAYNOR, JAMILA, KIM, KOMATSUBARA, LIM
NOES:	NONE
ABSENT:	PACOPAC

MOTION: It was moved to approve the DPP version "b" with a change on page 3, Section 3, Sec. 21-4.110-3, subsection (a). After "the owner, operator, proprietor, or rental agent of the transient vacation unit being advertised shall, within 7 days," add "after receiving a notice of violation." The motion was made by Mr. Komatsubara, seconded by Mr. Jamila, and carried unanimously.

AYES:	HOLMA, DAWSON, GAYNOR, JAMILA, KIM, KOMATSUBARA, LIM
NOES:	NONE
ABSENT:	PACOPAC

PUBLIC HEARING

BILL TO AMEND CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO TRANSIT-ORIENTED DEVELOPMENT

To establish as special districts, transit-oriented development regulations which are based upon adopted neighborhood transit-oriented development plans.

BILL TO AMEND CHAPTER 21, REVISED ORDINANCE OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO MULTI-FAMILY DWELLINGS, PARKING AND HOTELS

a.	Resolution 05-06, CD1	Reduces parking standard for multi-family dwellings near transit stations.

b.	Resolution 05-32	Reduces parking requirement by 50 percent (50%) for lots within a quarter-mile of a transit center.
c.	Resolution 06-273	Allow hotels under a conditional use permit if within one (1) mile of a transit center.

Public hearing notice published in the Honolulu Star Bulletin on January 18, 2008.

Kathy Sokugawa gave a power point presentation on the Transit-Oriented Development Bill.

QUESTIONS FROM THE COMMISSION

HOLMA: What's going to determine the boundaries for each TOD for Special Use?

SOKUGAWA: The neighborhood planning process. One of the comments was, "How big is a TOD planning area?" Typically, they are a quarter mile to a half mile.

DAWSON: Who do you envision leading the neighborhood plan, the Neighborhood Board or the City staff? I notice that on the comments you received and the Department commented on, these are all institutional staffers that were responding to it. And yet, in the bill, it makes it very clear that you have to have buy-in from the people who live there, the businesses that are there. Who is going to lead the neighborhood plan?

SOKUGAWA: Part of the reason why we started Waipahu even before this bill was up for adoption is like a demonstration project. This is how we see the enabling bill being implemented. We see primarily our department being the lead in terms of convening the community, coming up with the recommendations, and holding the meetings. But we have said to developers or major landowners, "If you want to do it as a partnership with us or take the lead, that's okay too." The key thing is they all go to City Council for recognition.

DAWSON: Isn't the key thing that you want to try to get residents to participate in this and give their opinions on what they want in the neighborhood plan and whether they even want this in their neighborhood?

SOKUGAWA: We would be the keepers of the parameters of the planning process. The process has to be open and inclusive; it has to represent all types of stakeholders. If a landowner wanted to do it and only talks to their tenants, that wouldn't qualify. They'd have to comply with the requirements of this bill if it were adopted. We feel we have been complying with it through the Waipahu planning process that we're undergoing now.

To have these people listed is one thing. It's just amazing how much the DOE staff people have been very interested in the Waipahu planning process and come to our meetings. We can't force them. We have made attempts to contact all stakeholders. If they chose not to participate, that is an issue, but we haven't found a good reason if people chose not to come.

DAWSON: Are the neighborhood boards considered...

SOKUGAWA: They are very interested. Several neighborhood boards are participating actively in the Waipahu planning process. I heard this rumor that other

communities are kind of jealous because, "How come Waipahu gets all this attention, and we didn't get selected?"

HOLMA: I need to make a disclosure. My law firm represented Hunt Development and its acquisition of the property at the UH campus. I don't know if we're representing Hunt; that wasn't my case. I don't know if we're representing them with respect to TOD's, but I make that disclosure. Does anyone have a problem with my participation in this?

KOMATSUBARA: No.

DAWSON: One of the things that is stressed in the plan that's been put forward so far is that these TOD's are going to stress mid to high density. High density seems to be a more operative word than mid because I see it repeated so many times. This is of some concern to me primarily because many of these TOD's are going to be in neighborhoods that are already congested. I don't know whether there are going to be condemnations or what. In order to get high density in these, you're going to have to have development move in on these, and that is some concern to me.

You stress safety, but high density often means more people, it's less friendly to families, it certainly isn't friendly to children and children biking in the area. You stress bicycles, but I don't see a place for them in these TOD's. If you happen to live here as a family, it seems like a very perilous place for a family to be. My concern is the intensity with which high density is being stressed in TOD's. I understand the good reasons for it – to prevent urban sprawl, to consolidate infrastructure. All of these are very, very good reasons. I need to disclose my own ignorance on this. I thought that mass transit was about moving people from one area to another efficiently. This plan tells me that the whole transit scheme, if you will, is for developers. It's all about development, and I'm very distressed about this.

I've been in development work myself, but I don't think it's very honest to our community to tell them that we're working on a mass transit that's going to help them go back and forth more easily. It's going to go from Kapolei to Ala Moana initially and then perhaps later on to Waikiki and to Manoa to the university. I think that what we're not telling people is that we're making room for more density. I don't expect our local residents to sell their homes and go live over here. They're not going to sell their cars so that they can come over here. Even people who do live in these areas, unless they are foreigners or newcomers from the mainland who don't feel they need a car...Virtually everyone in Hawaii has got a car. And yet the plan calls for doing away or limiting parking in this area very stringently.

If this is for the Hawaii residents, they've all got friends and family on the North Shore, Windward, Hawaii Kai, Waimanalo, and while they may be users of the mass transit system, they're going to have cars. They've got to have cars because there are no plans for feeder lines. Almost every one of those districts that you visited; it's not a single line. It's a single line and it's got feeders all over the place. These people, if they want to go somewhere, you ride out to Kapolei; we've got to have a car, a bus, or a taxi. It doesn't have the utility. It talks about being mobile. It's only mobile from point "a" to point "b."

I think some of this reflects my own lack of understanding of the transit system, and I apologize for that. But I think that I'm not hearing from the City a more honest presentation which is this is not all about transportation. This is about development. Every single one of these TOD's (24 of them), they're going to be enormous opportunities for probably mostly mainland developers. They're calling now to say, "How are you doing? We're ready to come in." These are for mainland developers to come in

and make money. That money's not going to stay here in Hawaii; it's going to go back to the mainland to wherever these developer headquarters are.

I think that any kind of an honest presentation whether it's in a neighborhood plan or whether it's the City Council's plan or the department's plan, it has to be more honest. We're only hearing the benefits of it; we're not hearing the negatives of it. You know how to do swat planning where you tell the positives and the negatives all along the way because that's how you plan. You can't plan if you don't know what the negatives are. If everything looks positive, then you're only going to make those assumptions. But you have to look at both sides of the equation.

I've been through this material. It took a long time, and I'm very annoyed at the department for giving this to us at such a late date and then telling us that they want us to approve this by the early part of the year, which is now, without giving us an appropriate time. I need education on it because I obviously don't understand it all. But I see a lot of problems that aren't being ferreted out here.

You say you aren't going to have any parking, well everybody's got to have a car. Not everybody, but most people will want a car to get around. Maybe Monday to Friday they'll either walk to work or they'll take the transit to work, but cars are still going to be a necessity. The condos, the apartments and so forth that are going to be in the TOD are not going to have parking spaces, parking requirements or limited parking requirements. Where do these people keep their cars? It's probably going to cost an arm and a leg to park in some commercial lot.

GAYNOR: I don't think anybody expects you to respond to all of this today. I do want to present a view point from a Commissioner that comes from a real different experience from Beadie. That is that I worked so many years on the Ewa plain, and I know what is coming. I know what is being planned in the Second City, the number of homes, the amount of commercial development, what's going to happen at Waiawa. And these are not things that are coming before the Council for approval now. These are things that are on the long-range planning map plans. A lot of them are already approved.

For those of us who do frequently have to commute between downtown and Ewa, there are a lot of us that can say we never drive west of Bishop Street more than three or four times a year. But for those of us that get in our cars and drive out there and drive back at any time of the day, any day of the week, I don't care if it's Monday morning or Saturday evening. Unless we're going to say, "no more growth period, we're not going to issue one more building permit, we're not going to build one more home," we have to acknowledge that the face of Honolulu will change with transit. We are going to have to be able to move people around. And people will give up their cars when it takes two and a half hours to go twenty-five miles. We're already getting there.

A lot of these people that are the people moving to the Second City are the people that have no choice. They've got to get in their cars, they've got to come into town to work, and they've got to work regular working hours 8:30 to 5:00. They have no flexibility. I think we begin by addressing that we've got to be able to move people around, and then we've got to do the good planning that goes with it. I think I agree with Beadie that I'm not ready to give you a vote today. It was a lot of material that we were given. I think we need some time to digest it and come back and ask you some more questions.

I think the City has done a lot of work in the last couple of years. They've heard a lot of people, aside from Beadie, talk about the same things. I think hearing it again from a Planning Commissioner only reinforces that the community outreach and the community involvement that needs to be done around transit and all the good planning that needs to be done for it is going to be extensive. Getting people out of their living rooms to your meetings is going to be the biggest challenge because even though you talk about it and

talk about it and talk about it, two years down the road you're going to have people say, "I never heard anything about this. How come?" It's just a slightly different perspective from people that are friends and neighbors in the same community. Beadie lives probably three miles away from me.

HOLMA: I also wish we had gotten this stuff earlier, but as I understand what's in front of us today, this isn't nearly like what we've been dealing with in the last three months. Really what DPP is asking us to do is to approve their request to start planning. Kathy, there are these resolutions, is that what's Council is going to do is make specific little things all along? Is that what we're going to see? Here's this Resolution 05-006 reduce parking, then the hotels and all of these things.

SOKUGAWA: That's what they've done so far. What we're saying is let's taking it all up at one time. These were things that they incrementally asked us to look at, so we're saying, "Let's deal with it all together." You have our report. We're saying that we're not comfortable with supporting them at this time because they haven't met with the community. We don't know what the community will say, and each community may say something different. We want to go through the planning process. It may be that some communities support their ideas, but we want to go through this comprehensive process and not just take any ad hoc bill out to the community one at a time.

LIM: Is this basically, you're seeking authorization to begin the formal planning process?

SOKUGAWA: We've already kind of started without it with the Waipahu Plan, but we're just showing you that this is how we expect to do the whole program. Waipahu is a demonstration of our commitment to that planning process. We are not committed to zoning regulations, per se, at this time because we want to go through a planning process with all stakeholders in the community.

LIM: Even if we approve this, you'll be back again?

SOKUGAWA: Oh, definitely.

HOLMA: That's my next question. What are you coming back to us for?

SOKUGAWA: With the LUO amendments after the plan is adopted to do LUO amendments whether it's parking regulations or different height limits or different densities or different setbacks or how to deal with safer communities in terms of land use standards. We'll come back with those. All of those LUO amendments will come back to you.

LIM: Do you have time constraints where you need something approved today?

SOKUGAWA: If we don't get this bill approved by City Council this year during this budget cycle, they will not approve any money for transit.

HOLMA: When does the year end?

SOKUGAWA: May. It needs three readings; it's a Bill for an Ordinance.

DAWSON: I notice that 650 makes it very clear that this ordinance to regulate development around the stations is the thing that has to come first. That's what the whole presentation is about. It's putting that into place. The reason for that, as I understand it, is that there's an infrastructure map and there is putting transit station funds into the budget that cannot occur until this ordinance takes place. It's like the chicken and the egg, which comes first. We've got to do this ordinance first.

My concern, Kathy, is that we don't have enough time. Waipahu is lucky because they've had a commercial person there guiding them. None of the places that you visited are in a restricted island community like we are except maybe Vancouver is a huge island. They don't have our geographical restrictions which are very hard for us. How can we pass this ordinance without any time to have neighborhood meetings, neighborhood board meetings?

I can't see the department coming up with all of these plans. There's a lot of good in what's happening in this. But if you don't have buy-in from the communities, you're never going to have the support for it. They're going to be rushing to their councilmen and saying, "We don't want it." Like the people in Waipahu, they're ready to support this. They understand it; they know it, and they've got their own little neighborhood plan. They see the vision. There are twenty-four neighborhood stations that have to be put into place. How long has Waipahu been working?

SOKUGAWA: Since September of last year.

HOLMA: Beadie, what I'm hearing you say is you may be opposed to this because of other reasons. I'm not sure if delaying this vote one month, that's not going to give you any assistance in dealing with this. My guess is you're going to deny this whether it's today or a month from now. They are here with a proposal to us. If the Commissioners want to postpone it a week or a month because they want to study this more, that makes sense. But what I'm hearing you say is that you don't want to approve this from month to month to month. That, we're not going to do. They are here with it; we are either going to make a decision one way or the other now, but it's not going to be a year from now. That's what I'm hearing you say.

DAWSON: Not quite. How long a time do you anticipate it will take for these various people to come up with their neighborhood plan? What is the timing of that?

SOKUGAWA: For all of the stations?

DAWSON: Yes.

SOKUGAWA: It depends on how much funding we get. We hope to have all of the plans done before the transit station arrives in their neighborhood.

DAWSON: If the Land Use Ordinance is amended according to this, the terms are written out in this. As I mentioned, I'm concerned about a lot of the terms -- the high density, the lack of cars. In approving this amendment right now in order to get things going, we're approving all of these terms.

HOLMA: We're only advisory on this. It's going to City Council.

SOKUGAWA: You have to take action before it can go to City Council.

HOLMA: We're not just making a decision.

DAWSON: I understand that, but as Kathy said, if we need time to make our decision, it's not going to go up to Land Use for the actual amendment. Is that correct? Until we take an advisory position on this.

SOKUGAWA: You need to take a vote on what's before you which is this proposal, and then you come back.

ENG: Henry Eng, Director of Planning and Permitting. I think a point of clarification might be worthwhile here. What we're proposing is to set up a process that enables all of these things to be considered. We are not making any commitment to reducing parking, eliminating parking or increasing densities. We're just simply setting forth a process, and we're using Waipahu as the first instance as a pilot project. This does not change anything in the way of zoning. It just sets up a process by which we can get community input which we think is invaluable in doing the plans that we need to do and getting those standards that concern you so very much.

SOKUGAWA: This is not a very good photo, but on the right, this is a map for Waipahu. One of the stations is right here on Farrington Highway. The colored areas are the proposed TOD areas. The uncolored areas, which are mostly single-family, are going to stay single-family. My apologies because I said the "d" word density. The irony is that the consultants are going to propose less density than they're already permitted. It's more than what they have today, but less than what the zoning already allows which, to me, makes no sense but that's what they're recommending. It's more intense use.

We tried to be very careful in the bill not to say more density because that's the "d" word and that may not actually be true because in Waipahu they're asking for less density than the zoning already provides. It can be more intense uses around the station. As Henry said, this bill does not say a word about standards, about parking, about landscaping. It just says these are topics that need to be considered in the planning process. Come up with a recommendation and then translate them in a later process to a zoning amendment which comes before you.

LIM: Given that we're not really approving anything...We're only approving a process which I think we all agree on. I move that we close the discussion and call for the vote.

GAYNOR: I think we have to have a public hearing.

HOLMA: Is there anyone who has signed up to testify on this matter?

Public testimony:

1. CLIFF SLATER, Chair of Honolulu Traffic.com, testified in opposition to the Transit-Oriented Development Bill. Mr. Slater made the following comments:

    a. The big thing about TOD's is that there are no very detailed descriptions of other TOD's. When I was in Portland three years ago, I found that every single TOD was heavily subsidized. Even the developers are not making any money. They just announced a week ago that the third developer at Beaverton Round in Portland had just gone bankrupt.

b. If you haven't been, you have to go to places like Portland and Fruitvale. Fruitvale is heavy with police and the retail space is virtually empty. It's very important if you can possibly get the funds to do it, to visit these places and talk to the people both pro and con.

c. You've got the operating costs and the operating subsidies close to 100 million dollars a year on top of what we're already subsidizing the bus. It seems like we've got a hugely subsidized transit system being built so that we can subsidize developers.

QUESTIONS FROM THE COMMISSION

DAWSON: Developers can always make money; they know how to skin a cat. If instead of providing incentives to developers, would our system work better if we gave incentives to residents? We give them subsidies to come and live in these areas, to move into these areas so that they'll be able to use the transit system. How are we going to get them out of their homes and into these? I don't know that we have the ridership. I understand it's going to take awhile to get ridership. But if we offered those incentives to the people who are going to live in these TOD's, might our plan be more successful?

SLATER: The problem is that the kind of places that they envision for TOD's as we see in Portland, reduce parking. You should go there because you see the cars parked in the fire lanes and the cars parked on the sidewalks because it was maybe a building where only 2/3 of a parking space was allowed per apartment. They park on the sidewalk. No one's getting rid of their cars.

DAWSON: But we could pay them to get rid of their cars.

SLATER: You don't have that much money.

DAWSON: I know, but incentives to have people move in, incentives to not have a car. I don't know how that works.

SLATER: If were to give incentives, I think it should be the tele-commuting. There are now about five cities where tele-commuting is a greater percentage of the population than is commuting by public transportation. That is growing. Public transportation use as a percentage of the population is declining in virtually every community in the country. You want to go with things that are getting the job done that are increasing, not the things that are declining. Public transportation is an old technology. It just doesn't work for anybody any more.

JAMILA: My thing about the TOD's is the security for the riders being that there's a mass of people being let off at one time and different hours of the evening. You mentioned that at one of the TOD's there were no merchants, but a great show of police force. Why was that?

SLATER: I don't know of a bus system that has its own police force. Every rail line has transit police. Crime goes with the rail transit.

JAMILA: I like what you said about visiting. Henry, can we do a site visit so we can get a better picture?

2. MITCHELL NAKAGAWA, Executive Director of the Hawaii Bicycling League, testified in support of the Transit-Oriented Development Bill. Mr. Nakagawa made the following comments:

   a. We support the concept of the Transit Oriented Development zones. From what we are seeing being presented at the TOD presentations and workshops, there is a lack of any reference to bicycling – bicycling parking, safety and bike lanes accessibility.

   b. In our bike ed program, we have nearly a fifth of the 80,000 students that we've reached. That's nearly 16,000 children that we're bringing out onto adjacent roads in these neighborhoods. We're promoting safe bicycling as a way to bring the family unit together.

   c. There is nothing in Section 21 that states anything about bicycle parking which we would like to see. We are interested in bicycle safety, bicycle parking, bicycle accessibility, storage, and rights. At the very least we'd like to see bicycle safety, parking and accessibility mentioned in these.

   d. We'd like to add some language that incorporates the design of inter-governmental objectives. We're talking about feeder bus routes, bicycle routes, trips by pedestrians.

3. JACKIE BOLAND, AARP, testified in support of the Transit-Oriented Development Bill. (written testimony attached)

4. MICHELLE MATSON, Waikiki Area Residents Association, testified in opposition to the Transit-Oriented Development Bill. Ms. Matson made the following comments:

   a. We initiated a carrying capacity study advocacy. That was turned into a bill that was passed by the City Council in 2006. The Planning and Permitting Department was given one year to come forward with a new, updated, revised carrying capacity study just for Waikiki. The Department of Planning and Permitting never came forward with their study.

   b. What about the infrastructure for the proposed hotels along transit lines and the Transit Oriented Development with higher density? How do we get past the outdated, antiquated infrastructure that has not been evaluated for its capacity and future growth?

HOLMA: What is a carrying capacity study?

MATSON: Infrastructure, the load on the infrastructure, the sewers, the roads, the beaches, and the water. Waikiki has had its share of problems as we all know.

5. BOB LOY, Outdoor Circle, testified in opposition to the Transit-Oriented Development Bill. Mr. Loy made the following comments:

   a. The resolutions for which you've been asked to hurry up and pass along

really haven't been made available for public scrutiny. We think it's one example of how this process is being pushed at too rapid of a rate.

b. We would urge this body to stress to the Department of Planning and Permitting that if these things are going to get done, they need to be scrutinized for more than a day or two.

6. URSULA RETHERFORD, testified in opposition to the Transit-Oriented Development Bill. Ms. Retherford stated that this is not about moving people; it's about development. If the rail transit goes through, it is going to bankrupt our State.

Written testimony received:

1. WILLIAM HONG, Hawaii Building and Construction Trades Council, submitted testimony in support of Resolution 06-273. (testimony attached)

2. DAVID A. MILLER, Urban Land Institute, submitted testimony in support of the Transit-Oriented Development Bill. (testimony attached)

It was moved to close the public hearing, on motion by Ms. Gaynor, seconded by Mr. Lim.

DISCUSSION

DAWSON: I think the material that we have received has raised so many issues for consideration. I'd like to keep the public hearing open so that we can hear from other people. I would like to hear more from staff. I think there's more that we can learn on this. I think this is a blockbuster issue, and if we approve this, it moves the transit system forward without knowing what it's doing, not fully understanding where it's going.

I would like to have more time to hear discussion on it from the staff. Mr. Eng's testimony was extremely helpful because he put a lot of things in perspective for me, but there's so much more that we need to know about it. This is huge; this is the biggest development that has ever taken place in the State of Hawaii. They say five billion, but we know that it's going to be upwards of ten billion. That's going to fall on the taxpayer. I just don't think that we can very quickly say, "Okay, let's get the processing going." We need more information. I'd like more input from Kathy because I know she has a wealth of information that would help us.

HOLMA: I appreciate your position. I just didn't hear one other commissioner say we're walking into this blindly. That's what I want to know. If somebody doesn't feel prepared, then that's fine, but in any event the motion is to close. Commissioner Jamila, do you have any discussion?

JAMILA: I just wanted to clarify one more time if Mr. Eng could give his position. If you could repeat it one more time, Mr. Eng, just what we're taking action on for everyone here present.

ENG: The proposal is to establish a procedure by which we can continue working with the community to find out what the community needs to support what needs to be done. With regard to the three City Council resolutions, we are recommending no action on those because we don't believe that it represents a comprehensive look at things. I

think what we are proposing would be comprehensive, would be all inclusive, by virtue of the fact of what we've been doing in Waipahu.

DAWSON: You say that the proposal is going to make room for more community input before it goes any further?

ENG: The proposal would change the Land Use Ordinance to formally establish this process of going to the community. Many of the things that Kathy showed in her power point are representative examples of what TOD can include. They do not have to include those things here. It's up to the community. That's what we believe in. I think the Mayor believes in that also.

DAWSON: How long will we have for these discussions to take place in the neighborhood? According to this, this bill has to be transmitted to the City Council in early 2008.

ENG: This bill is enabling. This would change the Land Use Ordinance to establish the procedure by which we will formally work with each community. Kathy indicated that there are a large number of variables as to how quickly or how slowly we move. Waipahu is just the first. We want to get this into the Land Use Ordinance to establish that process.

DAWSON: I feel it's unfortunate that the State legislature is holding a threat over the City's head by threatening to take away funds unless they move by a certain time. That, I don't think advances anything, certainly not for the transit system. It just means everybody is going to stampede everybody into doing something so that they don't lose the money. That's what the legislature is doing which I think is unfortunate, but I want some assurance that there will be time for these discussions.

ENG: Oh, yes. There will be for each and every location that we work on. There will be the same process that we're going through in Waipahu. Waipahu, as Kathy mentioned, is a pilot.

LIM: Correct me if I'm wrong, but by us approving this proposal today, are we not, in fact, allowing you to have more time and be more effective in terms of the planning process as opposed to if we were to hold this up, it might retard your ability to do planning?

ENG: It certainly wouldn't advance it. It would validate what we have been doing in Waipahu and what we want to continue doing. We're looking for that expression of validation through this Land Use Ordinance amendment.

JAMILA: By taking action, it's not like we're approving the transit building tomorrow. We're approving a process of going to the neighborhoods that are going to be impacted and to get their grassroots approach of ideas to see how they plan this, whether they are for or against.

ENG: That's correct.

GAYNOR: Henry, I just want to say that I think we all recognize a lot of money is going to be spent on this project. I just hope that DPP gets the kind of funding that they're

going to need to do their job because I know the staff wants to do it right. I think they can do it right, but I just hope that all of the money doesn't go into bringing consultants from the mainland at the expense of not allowing you folks to do a good job.

ENG: Consultants is one way, but we are looking for people. I think Kathy knows that I'm looking very hard. We're actually getting very aggressive using web sites just to attract qualified people.

HOLMA: There is a motion pending. The motion is to close the public hearing. Any other discussion? All in favor?

AYES:	HOLMA, GAYNOR, JAMILA, KIM, KOMATSUBARA, LIM, DAWSON (with reservations)
NOES:	NONE
ABSENT:	PACOPAC

MOTION: It was moved to approve the Bill to Amend Chapter 21, Revised Ordinances of Honolulu 1990 (The Land Use Ordinance), relating to transit-oriented development, on motion by Mr. Kim, seconded by Mr. Komatsubara and carried.

AYES:	HOLMA, DAWSON, GAYNOR, JAMILA, KIM, LIM, KOMATSUBARA
NOES:	NONE
ABSENT:	PACOPAC

MOTION: It was moved to recommend denial of Resolution 05-06, on motion by Ms. Dawson, seconded by Mr. Lim and carried.

AYES:	HOLMA, DAWSON, GAYNOR, JAMILA, KIM, LIM, KOMATSUBARA
NOES:	NONE
ABSENT:	PACOPAC

MOTION: It was moved to recommend denial of Resolution 05-32, on motion by Ms. Dawson, seconded by Mr. Jamila and carried.

AYES:	HOLMA, DAWSON, GAYNOR, JAMILA, KIM, LIM, KOMATSUBARA
NOES:	NONE
ABSENT:	PACOPAC

MOTION: It was moved to recommend denial of Resolution 06-273, on motion by Ms. Dawson, seconded by Mr. Jamila and carried.

AYES:	HOLMA, DAWSON, GAYNOR, JAMILA, KIM, LIM KOMATSUBARA
NOES:	NONE
ABSENT:	PACOPAC

HOLMA: Commissioners, I know it's been a long day. I need to ask to amend the agenda for two things. One, we need to amend the agenda so we can approve the minutes for the last meeting, and the second thing is I need to request an Executive Session meeting, a quick one, to discuss a personnel issue.

MOTION: It was moved to amend the agenda to approve the minutes of January 16, 2008, and to request an Executive Session to discuss a personnel issue. The motion was made by Chair Holma, seconded by Ms. Gaynor and carried unanimously.

HOLMA: On the approval of the minutes from the January 16th meeting, you should have received a copy of that. Did you have a chance to look at that? Is it two copies?

GAYNOR: No, it's two separate.

HOLMA: Two separate, right? One was on Waimanalo and one was the continued hearing on the bed and breakfast. Can I have a motion to approve the transcript relating to Waimanalo? Never mind, we're not doing that one. Can I have a motion to approve the minutes from the January 16th meeting relating to the bed and breakfast and the transient vacation units?

MOTION: It was moved to approve the minutes of January 16, 2008, relating to bed and breakfast and transient vacation units, on motion by Ms. Gaynor, seconded by Mr. Kim and carried unanimously.

The Commissioners, except for Richard Lim, went into Executive Session.

ADJOURNMENT The meeting was adjourned at 4:37 p.m.

Respectfully submitted,

Patty Kalapa
Secretary-Reporter