

Reviving B&B's

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Oahu residents don't like wealthy overseas investors buying our rural lands and building vacation rentals with no license, no regulation and no enforcement of our zoning laws. Regardless whether the investor is Genshiro Kawamoto or Gary Franger.

Overseas investors should be compelled to get a license before they start their rental ventures. The city needs to provide fair and reasonable zoning ordinances and licensing procedures to make sure this happens. The city needs to provide equal licensing opportunities to local homeowners who are renting their homes without the proper licenses. It is only through licensing that we will get control of what is happening in our neighborhoods as a result of the Internet.

"Revising the B&B Bill" from (*Star-Bulletin* Weds. 7/15) cuts to the core of the argument against restrictive zoning that has plagued Oahu neighborhoods for the past 20 years. All of the "neighbors" who were quoted in the article live in Kailua. None of them were in any way impacted by a wedding held at the Franger Estate in June, except in their rhetoric against B&B's.

Was a complaint report filed with the Hauula police in regards to traffic, noise and parking problems if any that occurred at the wedding in June? Or, was the fact of the wedding revealed in the Franger Estate web site? The property has not even opened and Kailua Neighborhood Board member Linda Ure is already complaining about noise, traffic and parking problems that she may never experience as she does not live in Hauula.

According to law, the purpose of zoning is to protect public health, safety, and welfare. For a zoning resolution to be legal, it must be wholly in the concept of general welfare. This means the zoning resolution must: secure a public purpose, be reasonable, not be confiscatory, and be consistent.¹

The "public purpose" is to prevent landowners or tenants from using their site to the detriment of the general welfare of the community at large. ¹ This is the claim of those who oppose licensing for B&B's and vacation homes. Actions that have no bearing on public health, safety, and general welfare are outside the scope of zoning.

One might reasonably ask, "What public purpose is secured by banning weddings at a private residence in Hauula?"

Is it reasonable for Kailua residents to complain of parking problems in Hauula when there's plenty of room for parking on the Franger Estate?

Have there ever been any independent third-party studies to document traffic problems caused by vacation homes or B&B's? Has an EPS determined that these homes negatively impact our communities?

Is it reasonable and consistent to allow licensed vacation rentals in one home and to declare them illegal for an identical home close by?

Is the public safety and general welfare of Hauula secured by eliminating the jobs and income that vacation homes provide in their neighborhood?

Is there anyone in any prison anywhere in Hawaii that has ever committed a crime while staying at a B&B or vacation rental? Our prisons are full of local residents, not middle-class American families like Barak Obama's who want to enjoy a family vacation away from the noise, traffic and parking issues sometimes associated with hotels and resorts.

When these visitors are denied the rentals they want, they will go elsewhere for their vacation. This is happening in large numbers as fewer and fewer visitors arrive at our shores. Driving visitors out of Hauula will not force them to stay in Waikiki regardless of the needs of our hotel workers and the state visitor industry. Why would Kailua residents want to take jobs away from the people in Hauula?

Mr. Franger is NOT building a hotel or developing a resort on his property. He is building two single-family residences that ADD to the supply of residential housing on Oahu. Construction of these residences has been permitted. Construction income makes housing affordable for many local residents. Hotels and resorts cause traffic and parking problems due to their density. This is not the case at the Franger Estate.

Restrictions on rentals REDUCE the number of rentals available. How has this eased the shortage of affordable rentals over the past 20 years? Hawaii property owners know that long-term rental rates can hardly cover the cost of the mortgage, taxes, insurance and maintenance of a property even with a large down payment.

Are restrictions on short-term rentals confiscating the economic value of lands zoned for single-family residences? Would additional jobs be created if these restrictions were lifted? Would these jobs add to the general welfare of our communities?

Zoning regulation must be reasonable. For example, the size and location of signs may be regulated, but to ban them completely is considered unreasonable.¹ Nonetheless, B&B and vacation rentals are restricted from any form of signage. To more easily identify these properties, the most reasonable thing the Council could do is to require them to post a sign on the property with their license number.

Zoning must not be confiscatory. If land is regulated to the extent it cannot be used for anything of economic value, the effect is to take the land.¹ Farming and ranching on the Franger property are unprofitable and would not generate enough income to cover the cost of the land in 100 years. Neither would renting these residences long-term cover the cost of their construction. The courts have

ruled that confiscatory regulations have exceeded the boundaries of power and are unconstitutional.

Zoning is defined as the division of a jurisdiction into districts to enable the regulation of land according to the nature and use of the land in order to promote the orderly development of the area, and the protection of public health, safety and general welfare. Zoning permits the enjoyment of all property rights, so long as the owner does not infringe upon or impair the exercise of the same rights of others.¹

Barbara Marshall carried a one-page document she showed at her Three Talk meetings. The document showed that 80% of Hawaii residents were in favor of owner-occupied B&B's in a study conducted by the HTA. Barbara won reelection by 80%. This was four times the number of votes that were secure by her only opponent who opposed B&B's. This is a greater percentage than voted for Mayor Hannemann or the train.

In the most recent election to fill her seat, 70% of Kailua voted for the three candidates that were identified by Keep It Kailua as favoring additional B&B licenses. Those candidates who opposed licensing together received 30% of Kailua's vote.

These election results speak for themselves. The only question is: When will the zoning laws in the City and County of Honolulu return property rights to homeowners and allow the jobs and prosperity that B&B's and vacation rentals have brought to Kailua.

Liberty is freedom. Liberty is the quality or state of being free from any arbitrary or despotic internal or external control.

Recently Supreme Leader, Ayatollah Ali Khamenei declared the election in Iran to be valid. The Guardian Council confirmed the Ayatollah's findings.

Like the Ayatollah, the City does not need to prove that its zoning secures a public purpose, is reasonable, not confiscatory, and consistent.

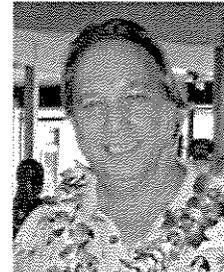
The only question then is when does democracy kick in? When will the city repeal outdated, unenforceable, unreasonable and confiscatory zoning restrictions that undermine the general welfare of our island community? Why doesn't the city use fair and reasonable licensing as a way of regulating, enforcing and controlling the invasion of our neighborhoods?

Most likely we will see more licensing when the city moves to implement its new "commercial residential" zoning program. These zoning changes will increase the taxes on the portion of residential properties that are used for commercial purposes. Many folks consider this fair and reasonable.

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1. *Ohio State University Fact Sheet*, Community Development, Rural Zoning
Purpose and Definition: CDFS-300 - In 1947, the Ohio General Assembly passed enabling legislation that allows cities, villages, counties, and townships to establish zoning.