

KULA COMMUNITY ASSOCIATION
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The vision of the Kula Community Association is to preserve open space, support agriculture, maintain a rural residential atmosphere, and to work together as a community. The specific purpose of this association is to improve the quality of life for the residents of Kula, to promote civic welfare, and generally to benefit the community of Kula.

Kula Community Association
POSITION STATEMENT
Bed & Breakfasts and Vacation Rentals

September 21, 2005

The Board of the Kula Community Association wishes to commend the County Council for dealing with the "Vacation Rental" issue. Current county regulations are not able to deal with the present situation satisfactorily and revisions to the various ordinances are much needed and long overdue.

The lack of enforcement of the current ordinances and the lack of compliance with the current community plans have created an inequitable and confusing situation for various communities on the island. This leads to a reliance on "it's-who-you-know" political climate, shady practices and an erosion of trust in our County government.

Therefore, it is our hope that this issue can be addressed in a comprehensive and expeditious manner, while maintaining the integrity of the planning process.

The Board of the Kula Community Association (KCA) has no direct financial interest in this issue. We have no intention of prohibiting vacation rentals per se as we acknowledge the contributions they make to the Maui community. We believe in the community planning process and have historically supported enforcement of existing ordinances and community plans.

Any new regulations or any amendments to the existing B&B ordinance should address the issues raised below. Despite the many items we discuss below, we request that **a revised B&B and Vacation Rental ordinance be very quickly passed, and thereafter, rapidly implemented and enforced.** These recommendations are the result of lengthy and careful deliberations by the Board and do not include the details of our rationale in reaching them. However, we look forward to share with the Council the considerations and logic behind our recommendations below.

1. PLANNING: GENERAL AND COMMUNITY PLANS UPDATES

During the 1960's Maui made a decision to concentrate on "high-end" and "resort destination" tourism (the "free-and independent" traveler as opposed to the group tours of Waikiki). It was the era when Kaanapali and Wailea were being developed with up-scale hotels and condos and tourist accommodations were limited to the areas specifically

zoned for the purpose. The present community plans, passed in the 1990's, continued to include the provisions of that era. Beginning at that time, and with minimal public discussion, time-shares and vacation rentals emerged and spread over the entire island.

The KCA Board requests that in the preparation of the upcoming General Plan and Community Plans, there be an active scrutiny of the types and mix of tourism that Maui wishes to encourage: selective up-scale hotels; time-shares; investor-owned vacation rentals; family operated B&B's, etc

Until that discussion takes place, we urge the Council to approve a conservative B&B and vacation rental ordinance, a law which will hold the line and not encourage expansion. Furthermore, a provision should be made so that the ordinance now proposed shall expire in 5 or so years; and a new ordinance in total conformance with community plans shall be promulgated once the new General and Community Plans are adopted.

2. INTENT AND PURPOSE

The Board of the Kula Community Association understands the need to enable Maui families and residents with an ability to increase their household income. Since we are doubtful of any overall benefits to be derived by the general public from non-Maui County owners and investor-operated vacation rentals, and because the community as a whole has not embraced this sector of the tourism industry as a desirable economic engine for Maui County through the planning process, the ordinance should include **provisions for only on site, family-run operations.**

Therefore, the primary purpose of the revised ordinance should facilitate local families to supplement their income, rather than create a new industry promoting economic development and diversification.

3. DEFINITIONS

The **terms for this industry** have become confusing with the use of the words: "Short-Term Rentals"; "Bed and Breakfast"; "Vacation Rentals"; "time-shares"; "Transient Vacation Rentals"; and "condos". There should be clear simple definitions with distinctions that describe the rights and obligations of each term. Our suggestions are:

"**Short-term rentals**" describe all units rented for less than 180 days. The Transient Accommodation Tax (TAT) applies to all these units. While there are various types of short-term rentals (including "condo rentals", "time-shares", and "hotel rooms"), our KCA recommendations only refer to B&B's and vacation rentals.

- A "**Bed and Breakfast**" is a "short-term rental" in a single-family home or ohana unit that should be able to serve breakfast only. Kitchen facilities in rented space are not allowed.
- A "**Vacation Rental**" is a "short-term rental" in a single-family home or ohana unit that serves NO meals. There may be kitchen facilities in each rental unit.

The term "**Transient Vacation Rental**" is not needed and is a term not to be used.

4. ADDITIONAL DEFINITIONS

An “Owner” must have a 50% or more share in the ownership of the property on which a B&B or vacation rental is located. For Federal Income Tax purposes, the “Owner” must declare the Maui B&B or vacation rental property as their primary residence.

A “Resident Manager” is a person who lives on the property, but is not an owner

A “Property Manager” or “Property Management Company” is a person or entity that does not live or is not on the property.

An “Absentee Owner” is a property owner who does not live on the property.

5. OWNER PRESENCE

All “Bed and Breakfasts” and “Vacation Rentals” should be operated with the owner living on the property, available to monitor the situation and to respond to complaints from neighbors. These activities should be thought of as a way for a family to enhance its income and NOT as the investment opportunity of an “Absentee Owner”.

“Absentee Owners” should not be allowed to have a B&B or Vacation Rental.

6. AFFORDABLE HOUSING

Since many units have been converted from long-term housing to Vacation Rentals, local residents are often denied the ability to rent or buy “affordable” units. The KCA Board is concerned and asks that the ordinances be written so as to make it difficult to reduce the supply of affordable long term rental units.

7. REGISTRATION AND PERMITS

It appears the County does not know the present number or location of all of Maui’s B&B’s and Vacation Rentals. This means that the County, State and Federal governments are potentially losing large amounts of tax revenues (Excise Taxes, Property Taxes, Transient Accommodation Taxes, State Income Taxes, and Federal Income Taxes). The burden of supporting government programs is falling on honest tax-paying residents who must make up the difference.

All B&B’s and Vacation Rentals, whether legally constructed or permitted or not, should be immediately registered with the County within 60 days of the passing of the ordinance, even prior to the granting of permits. Such registered units should be reviewed first for a permit under the new ordinance. B&B’s and Vacation Rentals which do not register should be fined, and placed last on the list to be permitted.

All B&B’s and vacation rentals should have a permit. The permit number should be posted on premises and cited in all advertising (including web-sites). Efforts should be made to eliminate out-of-state / part time resident owners of B&B’s and vacation rentals.

To encourage solicitation of neighborhood support and the use a positive vs. complaint oriented approach, the ordinance shall require that the applicant get a minimum of 51% of the neighbors within 500 feet to agree in writing to the B&B or vacation rental application.

8. PERMIT APPLICATION PROCESS - STREAMLINED AND COORDINATED

There are many County and State departments involved in **monitoring the operation and taxation of B&B's and Vacation Rentals**: Fire, Health, Planning, Finance, Public Works, Police, etc. The enforcement should be coordinated and centralized in one office, entitled the "Visitor Accommodations Permit Office," that has representation and connections to each of the relevant County and State departments. Hopefully, a central office would reduce paperwork, make for one-stop registering and permitting, allow for more efficient inspecting, etc.

9. PERMIT APPLICATION PROCESS - REASONABLY BURDENSOME

The permit application process should be as clear, objective, expedient, transparent and efficient as possible. Nevertheless, the process should be sufficient to ensure that neighbors, communities, visitors, and the general public are protected in areas such as, health, safety, parking, traffic, noise, general nuisance etc.

10. LEGALITY – SAFETY AND HEALTH OF STRUCTURE

It should be made certain that each B&B or Vacation Rental unit is **a structure that is permitted legally and has been certified for occupancy**, e.g. adequate bathrooms, safe exits, no extra kitchens. The original application should contain a floor plan and other information to satisfy the inspectors that the property is legal for the number of units being rented. This information should be shared with the County property tax assessment office. Any changes made to the structure must be reported by the owner to both the permitting agency and, prior to utilizing the changed structure, to the property tax assessment office.

11. PARKING

Adequate guest parking should be provided and required for each unit on the property only and not on the local streets.

12. DENSITY WITHIN NEIGHBORHOODS

There should be some **numerical limit on the total number of Vacation Rentals and B&B's in a neighborhood**, and these may be different for various zoning areas, e.g., perhaps, an absolute maximum within a defined area or a certain percentage of properties on any street.

13. FAIRNESS

Since B&B's and Vacation Rentals are commercial businesses they should be **playing on a level field with existing tourist accommodations**. For example in our community, Kula Lodge has been limited to a few units and went through rigorous legal review to construct additional units. Until now, this has not been true for B&B's and vacation rentals.

Furthermore, all tourist accommodations, (B&B's, vacation rentals, time-shares, condo rentals and hotels) should be paying similar kinds of taxes and fees and be subject to similar permitting and operating processes. The taxes and fees should include:

- Transient Accommodation Tax and General excise taxes;

And if there are more than two B&B's or vacation rentals on a property,

- No homeowner exemptions for B&B and vacation rental properties;
- No special agricultural property tax assessment, if operated as a B&B or Vacation Rental;
- No special County "agricultural water rates" for B&B's and vacation rentals;

14. TAXATION (A SPECIAL CLASSIFICATION)

Within the property tax classification there should be a special class for B&B's and Vacation Rentals, if there are more than two B&B's or vacation rentals on a property, . These properties should be taxed at rates comparable to properties with businesses (or comparable with apartment properties), not at the more favorable residential property tax rates.

15. TAX COMPLIANCE

It should be made clear which specific tax payments must be verified by the Planning Director or "Visitor Accommodation Office" during the permitting process. We recommend the use of Individual Federal tax return to establish residency and rental income accuracies.

To aid enforcement, tax information should be submitted annually, or for multi-year permits made available to inspectors within 20 days of a request.

16. STATUS OF EXISTING UNITS

The KCA Board does not advocate the shutting down of all short term B&B's and vacation rentals, nor do we support the legitimizing of all current practices as desirable. We acknowledge the contributions short term B&B's and vacation rentals make to Maui's families. Just because these ordinances need to be updated, is not an excuse to "open the floodgate" and allow for the instant legalization of existing illegal vacation rentals. Each unit should, after first being registered, go through the permitting process.

The ordinance shall make provisions to bring all existing units under its jurisdiction. The ordinance may include a clause that gives immunity to all registered resident owner units within the 60 day time frame for any fines and penalties, but not for any taxes they may owe due to prior operations.

All non-resident owners who are presently operating B&B's or vacations rentals must cease operations within 60 days since they will be illegal and not be able to be registered or permitted. The owners of these illegal short-term rentals will then have the option to convert their B&B's and vacation rentals into long-term rentals. This may increase the supply of units for those seeking affordable housing.

17. SELF-FINANCING OF B&B AND VACATION RENTAL OPERATIONS

Permit Application Fees need to be made sufficient to reflect the true costs of permitting, county management, and enforcement of B&B's and Vacation rentals. There are three components of costs which may serve as a basis for the permit application fees:

- funds needed to process the permit applications;
- funds needed to manage / enforce the ordinance; and
- funds needed to provide special public facilities and services to occupant guests.

Enforcement of the ordinance would be made much easier and smoother, if the fees paid were adequate to support enforcement of the activity. Furthermore, since the visitors in B&B's and Vacation Rentals place increased demands (greater than those of the general public) on public parks, beaches, and highways, the government should get adequate revenues to pay for these "free to visitors" public facilities.

The permit application fee shall be determined on a per rental unit basis.

18. ENFORCEMENT

The ordinance should clearly indicate that the **County has the enforcement authority and the obligation** (citing a basis in health and safety) to regulate the number of units being rented and their operations, as well as to cite and fine violators. Enforcement should be facilitated by the sharing of permit and tax information among the several levels of the government. The ordinance should not rely solely on neighbors having to complain about their neighbors. The County (along with the State) should be pro-active in checking B&B and Vacation Rental ads, and in conducting tax audits. However, it should be possible for residents to supply information on ordinance violations through an anonymous hotline or website.

19. NUISANCE TO NEIGHBORS

The police should be empowered to issue citations in the event of a nuisance or parking violation originating in a B&B or vacation rental. Thereafter, the citation should be handled by the "Visitor Accommodations Permit Office" which should be authorized in the ordinance to take appropriate action, or to issue fines and penalties. Appeals of administrative decisions could be heard by the Board of Variances and Appeals or a similar public board.

20. AGRICULTURAL LAND USE DISTRICTS

Agricultural land is treated by our Hawai'i State Constitution, the State General Plan, and our Maui County General Plan with special concern. Therefore, this ordinance must be written to reflect these concerns. It should attempt to protect these lands, prevent their misuse, and limit the excessive expansion of the B&B's and vacation rentals into the agricultural land use district. We also recognize the value of allowing families to supplement their farm income.

With those concerns in mind, the KCA Board recommends that because of the shortage of long-term rentals and the precarious financial position of many farms, we should facilitate the ability of farm families to supplement their incomes with **long-term rentals**.

At this time the Board of the Kula Community Association recommends that there be no B&B's or vacation rentals on agricultural district lands; long-term rentals should be allowed.

After a full discussion in the upcoming update of the General Plan and the Community Plans, there may be a possibility of allowing up to two B&B's or vacation rentals on a parcel in the Agricultural Land Use District. The General Plan and the Community Plans may wish to require a "special use permit" and utilize the following, as guidelines:

- No parcel of agricultural land should have more than two B&B's and/or vacation rental units;
- If Agricultural land is ever subdivided, there shall be no B&B or vacation rentals allowed on any of the additional parcels created; and
- Agricultural land which has been subdivided after 1997 (the year that the present B&B ordinance was adopted) shall continue not to have any B&B's or vacation rentals.

21. HISTORICAL BUILDINGS

To protect a building on the historical registry the proposed ordinance should not include such a building. If they are to be considered, it should only be done if carefully scrutinized and processed.

22. MAXIMUM LIMITS ON UNITS / GUESTS

Under this ordinance, there should be an absolute maximum of 6 B&B or vacation rental units on any parcel of land (TMK), and a limit of 3 units (in addition to the rooms utilized by the family) within any structure. We propose that on each property parcel that there should be absolute limits placed not only on the number of units, but also on the number of guests. The present ordinance describes three permit levels. We recommend:

Type I Permit - Properties with 1-2 units – 6 guests maximum

Type II Permit - Properties with 3-4 units – 10 guests maximum

Type III Permit - Properties with 5-6 units – 15 guests maximum

Note: The guest limits should be as enforceable as the unit limits.

Each community plan can place a limit on the number of units or restrict vacation rentals entirely in its district.

23. NON-TRANSFERABLE PERMIT

B&B and Vacation Rental permits shall not be transferable to a new owner of the property who must apply for a permit and present the relevant tax information. A new owner should not assume that they will automatically receive a permit, since others in the neighborhood may be ahead of them in requesting a permit.

24. NEED FOR ORDINANCES

Revisions to this ordinance are much needed and long overdue. Despite our many recommendations, the Board of the Kula Community Association requests that a revised B&B and vacation rental ordinance should be passed very quickly, and thereafter, strictly enforced without any further delay.