



Wednesday, October 31, 2018, 1:30 p.m.

Kualoa-Heeia Ecumenical Youth (KEY) Project, Pavilion, 47-200 Waihee Road,
Kaneohe, Hawaii, 96744

To: Kaiulani Sodaro, Chair and Members of the Planning Commission

Dear Chair Sodaro and members;

Please accept this testimony of Save O'ahu's Neighborhoods. Save O'ahu's Neighborhoods (SONHawaii'i) was formed in 2005 to educate people and influence the Honolulu County Government and the State of Hawai'i to preserve O'ahu's residential-zoned housing and eliminate the problems created by short-term rentals in residential and apartment zoning and the disastrous effect they bear on rental prices, homelessness, loss of community, and crime.

STR = any short-term rental, B&B or TVU

Briefly (details to follow), SON Hawaii'i:

Opposes DPP's Revised Omnibus bill (establishes permanent permitting BEFORE proving enforceability)

1. Dodges the Planning Commission's September 19 trigger of Council supermajority
2. Allows & encourages TVUs in apartment & mixed-use zoning
3. Allows & encourages B&Bs in apartment and residential zoning

In Detail

Oppose DPP 'Omnibus - revised 10/19/18'

Attempt by the DPP and administration to bypass the Planning Commission – This is the same identical title and description as the 'Omnibus' unanimously rejected by the Planning Commission at its September 19 hearing. That rejection triggered a 6-3 Council supermajority requirement to pass that title and description into law. This new 'softened' version was designed to garner a "recommended" from the Planning Commission to avoid the supermajority requirement pass the same title and description into law. As we know from 2008-2010 experience with the Council, that the same title and description can then be CD'ed back to its original August language or anything else that fits the title and description, but without the 6-3 supermajority requirement. Don't let them get away with this dodge.

Cart before the horse – Establishes a permitting scheme for TVUs and B&Bs before even trying the new advertising enforcement.

False promises of substantial fines – Lists very stiff fines preceded with “the Notice of Violation **may** require.....”. “May require” also includes the option of “probably not require” – as has been the standing practice of the DPP for twenty years. See Analysis of DPP Motivation below.

Analysis of advertising regulation

So let’s analyze what will likely become case law. Advertisements never give the actual address of the offered property and often will not divulge its actual address until the client arrives. This will force the DPP to somehow identify the property address and the owner through intensive investigation, that they have been unable to master. The Acting Director has stated that identifying the property and the offender will be a problem. Even if they force one Internet platform to provide addresses, new Internet Platforms will appear and disappear in the ether. There are for-hire services that the DPP could hire if they had the money, but even those services will have to keep morphing to keep up with the platforms trying to evade them.

Follow this scheme to get an idea of how scofflaws will beat the advertising regulations. An illegal STR operator places an ad for “Aloha Heaven” on big name American-based Internet platform ‘A’ clearly stating that the property is only available for stays of 30 days or more (no permit required). Then the same Illegal operator posts another ad on Internet platform ‘B’ based in Venezuela (or Botswana or Vietnam or Bulgaria) offering the same “Aloha Heaven” for any length of stay, posting a calendar of the days available.

The DPP, expending significant effort, somehow identifies the property advertised on the platform ‘B’ Venezuela-based server and cites and fines the violator. The violator appeals to the Zoning Board of Appeals and loses. The violator then challenges the fines in state court, stating that they did place the ad on the American-based platform (legal 30 day +) but lies and claims they did not place the ad on Internet Platform B and that they cannot be held responsible for the acts of others – that such Internet piracy is rampant and they cannot be held responsible for the acts of others. The court agrees because the DPP does not have the talent, subpoena power nor the resources to chase down international money transfers and prove that the violator placed the ad.

Such Internet piracy for vacation rental advertisements, once rampant, has curtailed but still exists. The practice is that the pirating party also advertises the STR and when they get a prospective client they go to the actual operator and cut a deal for a percentage.

Having lost the one case above, the corporation counsel will advise the DPP not to enforce the advertising restrictions.

Changing Internet platform names and ownership, location of servers, chasing credit card purchases across international boundaries, etc will ultimately limit the threat of advertising enforcement. All fines imposed by the DPP and upheld by the Zoning Board of Appeals are challengeable in state court and ultimately in federal courts, which operate in a different legal

world. Internet sites exist on a server somewhere owned by someone. When threatened with legal actions, that server can easily move across the world to a more welcoming country.

What will ultimately work?

Ultimately, effective enforcement will have to include local investigations and the easiest of all solutions – sting operations where the enforcement agent sitting in an air conditioned office has a phone with a changing mainland number, a special credit card number, and a changing mainland email address.

Analysis of DPP motivation and Direction

The DPP blames the law for its ineffectiveness in enforcing the LUO against STRs. This may be true to some extent, but is not the main reason for the failure. Good professional planners do not make good enforcement agents and are of a nature to avoid confrontation. They are not backed up by the administration that either lacks the political willpower to help enforcement or is actively undermining enforcement. They are not backed up by a Corporation Counsel office that reports to the administration and seems unable to follow through on simple enforcement such as foreclosing and collecting the fines due.

Add this to recent well-publicized events where \$600,000 + accrued fines have been settled for peanuts.

The message taken by the thousands of illegal operators is clear “Do whatever you want” because there is no intention of effective enforcement.

The DPP is good at issuing permits – create a new form, take in some fees, issue permit – easy.

Proven Effective Enforcement BEFORE Considering Permitting

This is such a simple concept to grasp and is the only possible way to determine the terms of permitting. All the enforcement schemes in all but 17-52 are untried and unproven. It would be completely foolhardy to grant new property rights through permits then HOPE that MAYBE some enforcement technique MIGHT work.

“Proven Effective” is defined here as closing most of the thousands of existing illegal STRs.

Thanks for this opportunity to testify.

Larry Bartley
Executive Director
Save O‘ahu’s Neighborhoods