

**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM D.2  
JUNE 26, 2018**

**2. MR. WILLIAM SPENCE, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code to prohibit or suspend the processing of an application for land use on a parcel that is the subject of a pending enforcement action by the Planning Department. (D. Raatz) (Public Hearing conducted on June 12, 2018)**

Mr. David Raatz: Thank you Mr. Director, Chair and Commission Members. For the record, I'm David Raatz, Administrative Planning Officer with the Department of Planning. And this item D-2, we're again asking you to sit in your capacity as advisor to the Maui County Council on a proposed land use ordinance. The bill before you has a purpose clause on Page 1 that states, the purpose of this ordinance is to prohibit the Planning Department's processing of an application for land use on a parcel, excuse me, on a parcel where there is a pending enforcement action by the Department. The operative proposed new language to be placed in Title 19 of the County Code is on Page 2 of the bill, it the underscored sentence which reads, an application shall be deemed incomplete if it is for or relates to land use on a parcel where there is an unresolved enforcement action for a violation of the Comprehensive Zoning Ordinance pursuant to Chapter 19.530. Chapter 19.530 is our general enforcement chapter in the County Code.

We did have the public hearing on this item back on June 12<sup>th</sup>. The discussion at that time focused to a significant degree on the question of how this proposed prohibition would apply in the sense that the current bill says it's a parcel specific prohibition. There was some discussion about should that be a project specific prohibition, perhaps even an applicant specific prohibition. Corporation Counsel mentioned the word lot might be a better term than parcel based on definitions in Title 19. There was some discussion about comprehensive property or excuse me, condominium property regimes, CPRs. In that case, could there be or should there be a unit specific prohibition, maybe some combination of these various types of standards. And we would welcome again, any comments or recommendations to the Council that the Planning Commission has. Thank you.

Mr. Robinson: Thank you. At this time, we'll open the floor for public testimony for Item D-2. Is there anybody in the audience that would like to testify on this item, please step forward? Seeing none, public testimony is closed. Commissioners do we have any questions for David on this item? Commissioner Carnicelli.

Mr. Carnicelli: David have you guys reworked any of the language based on like you know, the conversation we had last time, do you guys have wording or you know, have you reworked this at all based on that? Do you have a recommended amendment to the original language?

Mr. Raatz: Thank you for the question. We don't at this time. We're still going through the planning commission review process with the three commissions. Lanai just last week recommended approval as drafted. We're going back to Molokai tomorrow and I don't...until we finish that process with the three commissions, we'll probably just be dealing with what we've submitted.

Mr. Carnicelli: Okay.

Mr. Robinson: So, so David it's you know, the last time you were here we expressed concerns about a major project that might have four, five permits going on at one time and if they were, you know with one, it would stop the other four. A hotel being built or remodeled with guests inside of it. I mean, and we pull their permits, we pull their C.O., where we're moving, we're moving visitors. So how does this not affect it if we grant this? I mean, I guess we want to be fair to all, I mean, are you looking at it to be arbitrary?

Mr. Raatz: Definitely not looking to be arbitrary. We're trying to come up with a fair and objective standard the best we can. And this bill is limited in scope in the sense that it wouldn't apply to every possible permit that an applicant might need to proceed with a project. It's dealing with permits that are processed through the Department of Planning and obviously we deal a lot with development, but we wouldn't be dealing with Public Works related permits or any other County agency. So basically they have to get right with us before we'll grant them something new is the concept in this bill that we're putting forward.

Mr. Robinson: Can you give an example of that because right now a short-term rental he can't have two properties. So he can't right with you to go get another one, right? 'Cause only one person's allowed one STRH each. So if they use a fictitious or they use a different entity I understand they go...(inaudible)...bush, so how is...can you clarify how in a real life situation how that could help us?

Mr. Raatz: Well, there's a variety of possible violations of Title 19, and again, I don't have a specific case, but it's basically the concept that we're trying to propose here that if we're in the process of enforcing a Title 19 violation, we just don't think we should have...devote the resources to processing a new application on the same parcel.

Mr. Robinson: I'm looking for leverage.

Mr. Spence: Exactly.

Mr. Robinson: Commission? Commissioner Carnicelli.

Mr. Carnicelli: Thank you Chair. So is I like what you brought up though 'cause you're going...I mean, say a hotel, I don't think a C.O. is gonna get pulled, you know, they're not going suddenly lose their Certificate of Occupancy, but there's gonna be a balance between not issuing a new permit to somebody that's already in violation which is really what we're trying to do. We're trying to codify that. And at the same time, you know, what if there's two TMKs, we talked about that before, right. So I think that there's something that the Council needs to address in that we don't want it to be overarching but yet we also want to catch the bad guys. So where is that line in the sand I think is really what we're trying to get to here rather than just saying, okay this language is good, done it's you know what is the definition with which we're going to try to cast the net over. That's the tricky part which I think what we said lot or something like that last time. Is it owner? You know, like Chair Robinson is saying, you know you got a property over here that you got multiple violations on but you're doing something, you know on the other side of the island, you

know, does that...is it just the word applicant, you know, come into play? But then even then it's like okay, if just set up a different entity. So anyways I'm getting all convoluted in the back and forth but it's like what is the net that we cast to try to get and accomplish what we want to get accomplished.

Mr. Robinson: And I'll give Corp. Counsel a chance but a perfect example is a lot of people have different partners.

Mr. Carnicelli: Right.

Mr. Robinson: You know you have people that are...he's in 17 different entities 'cause he brings one special talent. And so if there's a NOV in one of his talents that he's in partners with all these different developments, you know, so it's you know...Corp. Counsel if you'd like to chime in?

Mr. Galazin: Yeah, thank you. And forgive me, Dave if this was something that was discussed at the last meeting that I was not at, but the way that it's drafted right now in terms of incomplete application if it relates to a land use where there's an unresolved enforcement action does that obviate the need to have that in there if the application is to resolve the actual underlying violation?

Mr. Raatz: Thank you for that question. It did come up briefly last time but it's good to reiterate. Our intent certainly would not be deny, to deny anybody the ability to fix an unresolved violation through the means of issuing a new permit. So if this goes forward we probably want to spell that out in expressed terms that we want to help people with any type of permit that would help them resolve an outstanding violation with the caveat that any accrued fines or fees wouldn't be waived by that action.

Mr. Robinson: Commissioner La Costa.

Ms. La Costa: Thank you Chair. Has there been a resolution to the CPRd properties that are happening all over ag land?

Mr. Raatz: I'm not sure what you mean by resolution if you can be more specific?

Ms. La Costa: When we're talking about the permits and not allowing them. So if you have a CPR parcel and Johnny on A Parcel has a violation but Suzie on B Parcel wants to build a garage which she can do will that affect Suzie's ability because that is all on one parcel and has that been ascertained.

Mr. Raatz: Thank you for that question. After you raised that issue at the last meeting we did give some consideration to that issue and if the body recommends we could address that similar to how it's down in Chapter 19.65 for short-term rental homes where it generally talks about lots but it says if you're in a CRP instead we'll look at condominium units instead of lots. It's the appropriate measure. So if the body desires, we could draft this so that the prohibition would be unit specific as opposed to lot or parcel specific when you have condominium property regime.

Mr. Robinson: Commissioner Carnicelli.

Mr. Carnicelli: But a CPR is a state issued designation not a county issued designation.

Mr. Raatz: That's correct. It's a form of ownership.

Mr. Carnicelli: It's not a subdivision. It's not a dividing of anything.

Mr. Raatz: Correct.

Mr. Carnicelli: It's just that the only thing it's dividing of is ownership.

Mr. Raatz: That's correct.

Mr. Carnicelli: You know so...and as much as I hate to say this, you know when you buy a CPR property you're kinda marrying the person that you're on the other side of the CPR with. So as much as I understand that you know, where do you draw the line, for me I'm gonna say that you know the CPR doesn't count 'cause again it's a state thing. It's only ownership. It's not an actual subdivision.

Mr. Raatz: Thank you.

Mr. Robinson: Are we opening ourselves up for litigation for people having to litigate themselves out of bad partnerships because a partner has a violation at some other condo? You know I mean if you're a timeshare owner, you're one 1/52<sup>nd</sup>

Ms. La Costa: Fifty.

Mr. Robinson: So if a guy owns multiple condos or multiple timeshares...I mean, again this is you know, it seems to me more complicated than it is trying to keep it simple. I know we're trying to go for leverage but are we gonna make just a big mess of it? Corp. Counsel?

Mr. Galazin: Yeah, Chair thank you. You know if you stick with parcel CPR, you know generally it's gonna be taxed as its own TMK parcel. In that case, that would take care of part of the issue that you describe there. And again, I would strongly caution against making it applicant specific. I would recommend that it be specific to the parcel involved because an applicant may own a parcel, may be even buy a parcel that has an unresolved issue on it, receive an NOV, you know a our Notice of Warning for it because there's an unresolved issue and also want to build something or do a development on another part of the island and you don' want to discourage that and there's been some case law out there not specifically addressing it within the state but I think that would be somewhat analogous that would preclude a body from assessing or withholding a permit for one person if they have an unsolved violation on an unrelated property. That's more in the building permit aspect that applies but it is something to consider and I think Chair, you're right to bring up that we could find ourselves...either the County would find itself in litigation or you would find people, the buyers, sellers in litigation with each other.

Mr. Robinson: Commissioner La Costa?

Ms. La Costa: Thank you Chair. So David when we're talking along the lines of CPR look at all the thousands of units that we have on condominiums and I know this was referenced earlier. So if someone is doing an illegal activity in a condominium, who is responsible? Is the AOA because they manage it? Is the...and if they're all fee simple owned, is the owner and how does that affect everyone else if it's on the same parcel, it just happens to be a condominium of that same parcel. So those are the things that are concerning when we talk about whole parcels and you could have 250 owners on one parcel with a condominium.

Mr. Raatz: Yeah, thank you. Our enforcement actions are against individuals. Say somebody has a permit and they're violating the conditions that's the entity that we would enforce against. We typically unless the AOA for some reason were the actual permit holder we wouldn't be involved with him directly.

Ms. La Costa: If it's on the same parcel though and it's gone bi-parcel everyone in that condominium will be affected because they're all on the same parcel. They just have separate unit numbers.

Mr. Raatz: That's correct if this bill goes forward.

Ms. La Costa: With the parcels, yeah.

Mr. Raatz: Yeah.

Mr. Robinson: Commissioners? Yeah, is I think violations are supposed to be independent in its nature to penalize without having to go through penalize something else. I think the financial, financial stability of any project you know is singular and it should be singular and the enforcement should be singular and the violation penalty should be singular. And if you have to go and grab somewhere else to help have leverage then that means your enforcement and your law is not strong enough to begin with and I think it's just a can of worms. Commissioner Carnicelli.

Mr. Carnicelli: I'm gonna agree. I'm convinced. So I retract my other statement. And unless anybody else has other questions. I'll just put a motion on the floor to recommend as noted with the Commission's comments if that makes sense rather than as recommended by staff, I'll just say as noted with our recommendations. That's the motion.

Mr. Robinson: Do we have a second?

Mr. Castro: I'll second that.

Mr. Robinson: Second by Castro. Discussion? Director.

Mr. Spence: So what I'm hearing from the Commission is they're expressing a concern about enforcing on...I mean, just like if you had a 50-unit condo, we enforce on the individual condo owner, but the same would be true of a CPRd ag property, you would want to enforce on the individual CPR owner not on both of the owners is that what I'm hearing?

Mr. Robinson: And I think what we're trying to express is that if you don't have enough power and leverage then you need to get more power and leverage on that individual property and that individual violation instead of trying to grab it from somewhere else and I think that's the best way to fix your problem not trying to, trying to add on. Is that right Commissioners?

Mr. Carnicelli: Yeah, I mean, is for me. I think like what you even said is I want to give enough leeway to wordsmith it as you need rather than saying okay, we're just gonna recommend it as staff wrote initially. So based on the comments from Molokai which you'll get and us then yeah, just rewrite and that's the intent of the motion I guess.

Mr. Robinson: Wait, are you recommending that? You're recommending that they get this leverage or you're recommending –

Mr. Carnicelli: Yeah, no, no, like what you said. I'm saying what you said.

Mr. Robinson: Not recommending this leverage.

Mr. Carnicelli: I'm recommending that they get the leverage.

Mr. Robinson: Yeah, the—

Mr. Carnicelli: Of what you said. I don't want to...whatever you said is I'm good with.

Mr. Robinson: David, what did you hear if we're going to put that as forth of the Commission?

Mr. Raatz: I understood the Chair's statement that you would be recommending that we not move forward or not have the Council adopt this legislation and that we look at other means to shore up our enforcement capabilities if that's needed.

Mr. Carnicelli: Are you saying no recommendation at all?

Mr. Robinson: No, is we're saying we think this is a bad...this is not a good fix. This isn't fixing anything. It's making it...it's gonna fix one and mess up others, but it's your motion. Commissioner Hudson.

Mr. Hudson: Thank you Chair. The concept of enforcement is a very good concept. Are there faults with this? Yes there are. Do some of the faults have to be worked out? Yes they do. But I agree with the motion to push it through and start letting people do some wordsmithing. I would support a motion to not make any recommendation to the County which is our other alternative. Thank you.

Mr. Robinson: Thank you. Commissioner La Costa.

Ms. La Costa: Thank you Chair. So David when you said that Lanai approved it, it was approved as written and that has to do with the parcel versus the owner?

Mr. Raatz: That's correct.

Ms. La Costa: Thank you.

Mr. Robinson: Commissioners you have any input. This is recommendation so it doesn't have to be a majority that way we heard from Commissioner Hudson, heard from Commissioner Carnicelli, anybody else would like to add on before we move on? Commissioner Kahu Hill.

Kahu Hill: I just wanted to, just really be listening to Corp. Counsel and also if someone was fined or something happened on a property that they might not be able to do something on...(inaudible)...another parcel or to invest or do something else and I think that could be a problem.

Mr. Robinson: Director.

Mr. Spence: Just for clarification Commissioners, I'm hearing...is the concern over CPRd properties or is the concern about, I mean, the away that I think about this if a property owner, forget the CPR for a second, just a regular homeowner builds a building without any permits and then comes in for another building permit for a swimming pool or something like that, what we're being able to say here is now you have to deal with the illegal structure first then you can get your permit for your swimming pool. So that's dealing one property owner. But what I'm hearing from this Commission is a concern over punishing one CPR owner for the violations of somebody else is that clear? Those are two different things to me.

Mr. Carnicelli: Yes, if I could try to clarify my own motion. Yes, what you said is CPR Lot A, CPR Lot B, CPR Lot B has a violation, A is not affected.

Mr. Spence: Right. Don't punish.

Mr. Carnicelli: Don't punish A because B's naughty. And so that' is how I'm looking at this.

Mr. Robinson: And I'm looking at broader. A developer has 15 lots that he's building, and one of the homes that he's developing is a NOV but the other 14 may not. Do we prevent him from building 14 homes because one is bad? I mean is it applicant or is it that lot, I mean if it's lot specific, right and I think that's what you're looking at. If it's lot specific and his building permit is incorrect and then he wants to come back and get some other type on top of it, well you can't get that other, you can't get the C.O. until you finish that building permit. But if he wants to go and build another home are you saying that you're gonna prevent him from building a second home?

Mr. Raatz: Not as the bill is currently drafted. If we went to an applicant specific standard then yes, that prohibition would--

Mr. Robinson: But we're saying lot specific.

Mr. Raatz: That's the way it's currently drafted.

Mr. Robinson: Lot, lot, unit. Right, lot, unit, whatever specific. As low as a denomination as we could get is what we're looking for. Yes, Commissioner La Costa.

Ms. La Costa: Thank you Chair. Without putting anyone's words in anyone's mouth that that were to say lot specific expect for those lots and/or properties that are covered under the CPR because that's...(inaudible)...

Mr. Robinson: You could put that as your own words because we can add nine if we want. That's fine.

Ms. La Costa: I'll add those, thank you.

Mr. Galazin: Chair?

Mr. Robinson: Yes, Corp.

Mr. Galazin: And thank you Chair. I think really tying it into how Real Property Tax Division handles it because they deal with CPR units and they're able to tax them individually and so I think that it be pretty easy to fix the language to affect the intent that you're hoping to achieve without unfairly punishing somebody who may not be involved on the property. So if you know, Dave and his staff are able to create some language that basically mirrors what is within the different tax structure I think it may be one way of addressing it. I think it's more of a language fix that can be easily done as long as your concerns are transmitted along with whatever recommendation you make to Council then those concerns can be addressed at that time and probably pretty easily fixed.

Mr. Robinson: Call for the vote. All those in favor of the motion. It's pretty long.

Mr. Spence: Could we clarify what the motion is.

Kahu Hill: Could you please clarify what the motion is?

Mr. Robinson: Go ahead David take a shot.

Mr. Raatz: Well, I think it's to approve the bill, recommend approval of the bill with amendments to tighten up language to take into account CPR units and to have the lowest common denominator unit, parcel, lot, wherever the case may be and that would be the prohibition and not have it apply more broadly.

Mr. Robinson: All those in favor, please raise your right hand. We have six ayes. Thank you.

Mr. Raatz: Thank you.

Mr. Spence: Thank you.

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**It was moved by Mr. Carnicelli, seconded by Mr. Castro, then**

**VOTED: To Recommend Approval to the County Council of the Proposed Amendments to Title 19 of the Maui County Code as Noted with the Commission’s Amendments/Recommendations  
(Assenting – L. Carnicelli, S. Castro, A. Hall, L. Hudson, C. Tackett, P.D. La Costa)  
(Excused – T. Gomes)**

Mr. Robinson: Moving on.

Mr. Spence: Thank you, Commissioners. I’ve long held the opinion that owner A should not suffer the sins of owner B.

Submitted by,

Carolyn Takayama-Corden  
Secretary to Boards & Commissions II