

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM D.1
JUNE 26, 2018**

D. UNFINISHED BUSINESS

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code to allow for the temporary extension of any State Special Permit, Conditional Permit, Bed and Breakfast Home Permit, Short-Term Rental Home Permit or County Special Use Permit while an application for the permit's extension or renewal is being processed, unless the applicant causes substantial delay in processing. (D. Raatz) (Public hearing conducted on June 12, 2018)**

Mr. David Raatz: Thank you Director. Good morning Chair and Commission Members. Item D-1, this bill was subject to a public hearing before this body back on June 12th. And again, the bill would establish a grace period for a permitholder who submitted a timely renewal application unless that permitholder has caused or is causing a substantial delay in the processing of the application.

We've identified four issues that have come up both before this body and the other two planning commissions that have considered the bill. I can just briefly go over those if you'd like Chair and then we can continue on with the discussion?

Mr. Robinson: Please.

Mr. Raatz: So one is a question, should the grace period that this bill would establish be for an indefinite duration which is how it's currently drafted or should there be a specific limit that the County has to process the renewal before the grace period would expire? On that point, we do think it's appropriate to have it indefinite the way it's currently drafted but we'd welcome a different recommendation just because it would be hard to establish a one size fits all limit for how long it should take to process renewal applications. So that's point one, the duration of the grace period, indefinite or a set period.

Point two or question two, there was a fair amount of discussion before this body on the standard of substantial delay. So again the applicant would lose the grace period or the grace period would expire if the applicant is causing a substantial delay in the processing. And this body was talking about whether there should be a set duration, how much time would be considered a substantial delay. We went back and did a little research and we acknowledge substantial delay, leave some room for interpretation but it is a common legal standard. Courts have employed it without regarding it as too vague or unfair, but again we would welcome any recommendations this body might have if you have a different view point.

Point three, was a drafting or formatting question that came up back on June 12th. Currently the bill amends several different sections of Title 19, the different types of permits that do have expiration dates and a question came up would it be more efficient from a drafting standpoint to just put this principle in a general section of Title 19. And again we're would welcome the body's viewpoint. That does seem to have some merit, you know, particularly in the future the Council establishes different types of permits. We wouldn't have to worry about going into those different

elements of Title 19 if this is just a standard that applies generally throughout Title 19.

Finally another question that's come up is would this bill have the effect of limiting any entities existing authority for processing or approving renewal applications and would this change the standard that applies. And the answer to that is no, we're not intending to look at the substance of how you get a permit renewed or extended. But we're just saying while that question is being reviewed whether it be by the Planning Director or the Planning Commission or the Council, the applicant would have a grace period with that underlying permit would remain in effect.

So with that Chair, thank you very much. We would welcome your comments or questions. Again ultimately we're asking you to sit in your role as an advisor to the County Council and we'll transmit your recommendations up to the Council.

Mr. Robinson: Thank you. At this time, we're gonna take public testimony on this item. Is there anybody in the audience wish to testify on this? Aloha. Aloha, please...

Ms. Francine Aarona: I asked if this was going to come up because I have three kids at home with husband driving them nuts, but anyway...

Mr. Robinson: Please state your name and you have three minutes.

Ms. Aarona: Francine Aarona.

Mr. Robinson: Aloha.

Ms. Aarona: Aloha. Also Aunty Mopsy Protect Paia. Have to put that in. Whenever you speak about vacation rentals, special use permit it triggers a flag in my brain and I've been out of commission for a while but surprisingly enough I just read about Title 19 and the audit done in 2016, this is 2018. It wasn't a great review just going on different elements of that audit. But anyway the word, "amendment" has a...well, it sends a red flag because anytime you amend something to whatever is going on and forgive me David if I'm out of the box as far as explanation of the bullet points, but whenever you talk about amendments you talk about amending something that is already in position. So my question is don't we have something in place that takes care of these renewals? I mean they are renewal. They're stamp date. So that date means something. They met the qualifications the date is in. Of course, everybody has to do their homework. They have to go through this application again or to renew this thing. The people still maintain their operation. How does that affect their ongoing process and whatever we're doing as long as they're legal.

The other thing that triggers me is that there are permits in there that are in violation. Now in amending this to put them on hold to say give them more time to make money and whatever that triggers another area of concern. So what I'm saying and thank you for all the discussion this morning because that's something for a resident like me to listen to. And it's so important that the community comes and digests everything that you do because I respect all of you doing such hard work. It takes a lot to sit there because you are our sounding block. You're the one that we rap first. We give it to you and you have to listen to us and you have to take it all in for whatever

it's worth. So I just have a big concern on this that you take a look at doing all these amendments and see what's in place. Who's gonna benefit by it these illegal violation permits that are there? Are they—

Ms. Takayama-Corden: Three minutes.

Ms. Aarona: --just gonna carry on? So that's my big thing as far as the amendments. Thank you so much.

Mr. Robinson: Any questions from the Commission? Aloha, thank you.

Ms. Aarona: Thank you.

Mr. Robinson: Anybody else like to have public testimony? Hi, aloha. Please state your name you have three minutes.

Ms. Zandra Amaral Crouse: Aloha kakahiaka kuu mau hoaloha. Good morning my friends. I simply want to say I'm glad to see this on the floor.

Mr. Carnicelli: State your name.

Ms. Amaral Crouse: Zandra Amaral Crouse. Zandra comes from the missionary handbook, Amaral from my daddy and Crouse from my dear husband who is serving overseas. But I'm glad to see...I just want to say, I'm glad to see this on the floor because it opens the discussion to you guys and gives us the public mana`o on what comes out of this body and I really thank you. I thank you all. Mahalo.

Mr. Robinson: Mahalo. Any other public testimony? Seeing none, public testimony is closed. Commission, open up for any questions for David. Commissioner La Costa.

Ms. La Costa: Thank you Chair. Thank you David. I have still major concerns about the non-definition of both, substantial delay and the indefinite period. If I have heard once, I've heard a thousand times why bother go get a permit when it takes so long because everyone keeps shuffling it from time to time. People do not feel represented. They do not feel worked for. And those, those periods must be definitive in order for the public to have trust that once they go to the expense and the time 'cause it is a lot of work having done a building permit myself to have an expectation from the Planning Department or whomever the departments are that they are done timely and not just tossed out there and then get put on the bottom, put on the bottom, put on the bottom. So both indefinite and substantial delay need to be defined in my estimation.

Mr. Robinson: And David is, is we're not talking about building permits though, we're talking about—

Ms. La Costa: No, we're just...(inaudible)...

Mr. Robinson: --yeah, the renewals.

Ms. La Costa: --how much time that I had, so...

Mr. Robinson: Well, building permits is another three-day conference, yeah, so but, but on top of that.

Ms. La Costa: But the permit process is what...(inaudible)...

Mr. Robinson: Yes.

Ms. La Costa: Sorry.

Mr. Robinson: Okay. Any other comments Commissioners? Commissioner Carnicelli.

Mr. Carnicelli: So David if you would please address Aunty Mopsy's concerns about, you know, a permitholder that has a permit but may also be illegal or in violation at that time and how that figures into this please?

Mr. Raatz: I would say that issue is not directly addressed in this bill but in D-2, our next item we get into that principle and you know, it's possible we could do some mixing and matching of some of the same elements in both bills. But yes, we're stilling here now that is regarded by me at least is a different category.

Mr. Robinson: Yeah, I think Commissioners I think what we're looking at here is the word, "indefinite". You know it's the, and David you can correct me if I'm wrong but that's what you guys are looking for. You're looking for an indefinite extension on permits that people have applied for and the Department is asking for as long as time as possible to process those permits. Not people having a definite time to reapply but they've applied for their renewal and you want to be able to take your time until you get to...well, I mean, I mean, but really I want to take it away from the applicant but it's really us asking for that internal time is that correct?

Mr. Spence: Thank you Mr. Chairman. It's not...we're not looking to untimely process permits or time extensions. A lot of times an applicant will be timely in requesting a renewal and for a myriad of reasons they cannot be processed within that 90-day time period. So what we're looking at is at no fault of the applicant we're requesting additional time to process their renewal application. There's things that are...I mean, if something has to be reviewed by the Department of Health or DLNR, I mean that may take six or eight months to do. Their permit is technically expired already but it's no fault of the Department and it's no fault to the applicant. So that's what we're looking to be able to hold an application open for that applicant. So it's just not automatically done and they have to go reapply and go through this whole process again.

Mr. Robinson: Do we have any discussion or a motion? Commissioner Carnicelli?

Mr. Carnicelli: I guess at this point I mean if nobody has any other questions maybe it's appropriate just to put a motion on the floor so we have something to discuss.

Mr. Robinson: If you wish.

Mr. Carnicelli: So I'll go ahead and make a motion to approve as recommended by Staff. We'll just start there.

Mr. Robinson: We have a motion to approve.

Mr. Hudson: I'll second it.

Mr. Robinson: Second by Commissioner Hudson. For discussion on the motion, speak to the motion?

Mr. Carnicelli: Yeah, so you know we put this substantial delay on the applicant verbiage but you just said something Director that I think may be appropriate and that is to maybe put...okay, if you're going to go to this indefinite thing because it's at Department of Health or DLNR or whoever you need to hear back from and they're not...at no fault of the Department, you know we have no fault of the applicant, but what if...like rather than okay you know, it be nice for us we have our own trigger date, right we have a 120 days. We have to do something otherwise it's approved. We probably don't want to do that because we want to get some sort of...but if it's outside the Department's hands then maybe we give them more time. But if it's internal, you know, maybe it's just like hey you guys gotta move?

Mr. Robinson: Any other Commissioners? Commissioner Hudson.

Mr. Hudson: I would like to speak to the motion too. This is a recommendation to County Council.

Mr. Carnicelli: Right.

Mr. Hudson: So we don't have a final say on this and as we learned earlier today, we can put comments from other people, it doesn't have to be unanimous decision going to County Council. I'm concerned about substantial delay. I understand that the legal verbiage is okay, but I'm still concerned about substantial delay with an individual who delays, and delays, and delays, and delays. I don't like that. So I concur with that. I'm good with the delay caused by the departments because having worked for the County for 30 something years sometimes these things take a long time and I don't think it's right for us to hold the applicant accountable for something that the County delays and I think we hold...the accountability should be with the applicant. Thank you.

Mr. Robinson: You're welcome. Any other Commissioners?

Mr. Spence: Can I make a comment Mr. Chair?

Mr. Robinson: Director.

Mr. Spence: Okay, thank you. One delay that especially for...pertaining to renewals, your permit renewals, it depend...you have to read the way that the condition is on each one of the types of permits. Some of them are renewed through the Department, some of them are renewed through

the Commission, and sometimes you know we can experience delays again, this is another thing that at no fault of the applicant we may have a hard time getting something on your agenda. It may be full, you may have something controversial on it, you may have quorum issues, again, this is...we're looking at being able to honor some of these, you know efforts in going through the permitting process without burdening them with something that is just not their fault. So this is not an unusual situation that there will be delays because something that's outside the applicant's responsibility or outside of their ability to deal with or even out...you know there are things that are outside of the Department's ability to deal with. You know we may be dealing with a State agency or something so, we're just trying to help our applicants out with this is a pretty standard practice within the Department already. We are just codifying it.

Mr. Robinson: Okay. Commissioner La Costa.

Ms. La Costa: Thank you Chair. I know I sound like a, you know, I'm beating a dead horse but there has to be some accountability and timeline set on this for both parties, both the applicants have to have some kind of timeline, the substantial delay portion and the indefinite period for the different departments. If those parameters are set then the expectation is in order to do it properly then you will do your job and they will do theirs and they will do the other person so there are not indefinite delays. And I do understand how things come up, but I think that leaving that open is someone could go three, four, five, six, seven, eight, ten years and never have their day in court if you will because indefinite delays pops in or you could be, can be accused of a substantial delay if it's not determined and defined.

Mr. Robinson: Commissioners? Commissioner Carnicelli?

Mr. Carnicelli: So David I just want to...even though the motion on the floor is to approve as recommended, the dynamic, the four items that you listed will also be transmitted with this particular recommendation, correct?

Mr. Raatz: Thank you for that question. Yes, we will give the Council a full report on the range of issues that are raised by all the commissions and regardless of what the bill that we actually put forward looks like, we'll let them know the various concerns were raised.

Mr. Carnicelli: Okay, if I could Chair?

Mr. Robinson: Yes.

Mr. Carnicelli: So you know as the testifier had stated, you know Title 19 was made in 1959 or 1960 whichever one it was. It's a patch of a patch, of a patch, of a patch, of a patch. This is codifying something that's just been in practice. I think that trying to make it general might make a lot of sense. You know, rather than...'cause then also and we're gonna come back with another patch that we found some place else or something like that. I think that that just really makes a lot of sense.

And then also to tie into the next item with this item is in the process I think that it's also important that people know and understand that if something is found along the way, this permit does....you

know, isn't automatically, you know, granted. So I think that that's also important that the public understands and knows that. It's not like okay, you know you're okay until your renewal, but it's like well, you're okay until you're not. So I think that that's also important that that's stated. Thank you. Thank you Chair.

Mr. Robinson: Commissioners? Is, you know, I'm of the thought that everything affects everything and so if we make something indefinite then who does that affect? Well, it affects the applicant not being able to reinvest, to retro whatever they want to do because they're not sure because their permit's holding up and when you have short-term rentals, when you have a cap, the person who's next on the list wanting to apply can't get theirs because they're waiting in line from somebody who already has one. I don't agree with the word, "indefinite" unless it's no taxes indefinitely you know. But other than that, can't we come with some reasonable time frame that we think we should be able to get something done like a year, 18 months? I mean, we have a 120 days, you know. I mean, and that's where I think, you know, I say when the people look to us, they look to us to say, be reasonable. Indefinite is not reasonable. We understand there's circumstances, we understand there could be a ... (inaudible)... out somewhere. I mean, after a year I think we're gonna, we're gonna... they come back to the Commission and ask for something differently. And that's, I'm going to you guys Commissioners is indefinite is a blank slate. So you know, so I think if we're gonna do recommendation we gotta think of something. Let's us think of something reasonable. Commissioner Carnicelli.

Mr. Carnicelli: So okay, with this being transmitted to, and maybe this is way too much work for the Department to do, but I think it be appropriate to see how long it actually does take. I mean, if we had something quantitative, you know, and say like okay well these permits take six months typically. Oh here's an anomaly that's you know, 18 years or you know whatever it is, but I mean to come with the data. I'm saying like this is the typical what happens and not. So it's not just this well, we don't know so let's just make it indefinite.

Mr. Robinson: Director.

Mr. Spence: It's hard to say because each case is different. I mean, the second bill here is in regards to violations and we...

Mr. Robinson: But that's...but that's a different bill so we can yeah—

Mr. Spence: It's a different bill, but sometimes when we go into renewals of bills we will find a violation and so what does it take for that renewal to come into compliance so we can issue a renewal?

Mr. Robinson: But if we have that, then there's no fault of the applicant is now triggered.

Mr. Spence: Yeah,--

Mr. Robinson: So, so, yeah, I mean, you know what I'm saying so in the—

Mr. Spence: Okay.

Mr. Robinson: --next one we're gonna be able to take care of that.

Mr. Spence: Yeah, you can. Yeah, the...but again—

Mr. Robinson: A year Director? Can we go a year?

Mr. Spence: You know the Commission is free to make a recommendation.

Mr. Robinson: No, but I mean as reasonable as do 95 percent of the renewals happen within a year?

Mr. Spence: Oh absolutely.

Mr. Robinson: That's what I'm saying.

Mr. Spence: Absolutely, more...probably more like 98 percent.

Mr. Robinson: Commissioner Kahu Hill.

Kahu Hill: Aloha. I also have an issue with that indefinitely as Chair Robinson spoke of and if something happens 90 percent of the time within a year, I think looking at that whether it's 12 months or 18 months maybe something we might want to consider. It's a very big word and I think we're all sitting here to be fair. That's one of the things we do on the commission. So I'm just chiming in.

Mr. Robinson: Commissioner Tackett.

Mr. Tackett: So do we have an average time for something like that?

Mr. Spence: No. It's easy to say the renewals are issued within a year. I can't say, it just varies case to case that's why we were going for indefinite. We know when something is the cause, the applicant and when it is not. We request information and get no response for three, four, five six months. We know that the cause is by the applicant. We also know if the delay is the cause of an agency outside of our control. It could be a federal agency, it could be a state agency, even sometimes county, we're just not in control of those things. So that's why we say indefinite. If this Commission wishes to put a timeframe on this, and I'm sorry I interrupted, that's your purview.

Mr. Robinson: Proposed. We're proposing. We can't put it, we can propose it.

Mr. Spence: You can propose that.

Mr. Robinson: Recommend it.

Mr. Spence: We're, I think we're gonna be okay with that. There should be maybe some language that says, I don't know...Dave is more the legal mind than I am. Preponderance of the evidence.

Mr. Robinson: Commissioner Tackett.

Mr. Tackett: So the way I was thinking of it is, is perhaps if you took all the variables out, if you took the person that was trying to get the permit, if you took their delays out, if you took all the people that could theoretically delay your function out, how quickly could you do one and then if you added a couple months onto that, you could come up with a number and then you could come up with verbiage that said that none of that stuff is relevant if it's things that is causing this delay beyond your control, you know. So that's just...I think what everybody's trying to get to is that, that number.

Mr. Robinson: Yes, so Commissioners is can we agree that indefinite is unacceptable as a Commission?

Ms. La Costa: Correct.

Mr. Robinson: So I think David, I think that's the first thing and then can we maybe recommend the Council look at a year?

Mr. Carnicelli: I will take that as a friendly amendment if the seconder is okay with that?

Mr. Hudson: I'm good with that.

Mr. Robinson: So, so David what I hear and we'll take a vote on it is I hear that that we think indefinite is unacceptable and that we'd like the Council to look at looking at year and then you guys can then have some data or study to support or move that.

Mr. Raatz: Okay, and the only thing I would just raise not to complicate things further but let's say there is a one-year deadline established what happens if that deadline isn't met?

Mr. Robinson: That's up to the Council, right? So I mean, I mean, we gotta get somewhere from indefinite. Commissioner Carnicelli.

Mr. Carnicelli: So that I'm gonna say, I'm gonna put what happens to us into this and say if within a year then it's automatically approved, right? So it's not like they...like if the County drags their feet and it doesn't happen in a year, I don't suddenly lose my permit what the County did. It's just like no it's no different than what we do here. We have a 180, 120 days to act otherwise it's approved. So if the County doesn't get their act together in a year then it's automatically reapproved. That's, that's what I will place as part of—

Mr. Robinson: Yeah, and again, and this is recommendations so we can all have different points of view. It doesn't have to be a unanimous vote. So David please add that for Commissioner Carnicelli. Commissioner La Costa.

Ms. La Costa: Thank you Chair. I also would like to have something in there about substantial delay and have a timeframe on that because again that goes against the applicant. So put their

feet to fire if the County's feet to fire is being done.

Mr. Robinson: Well, well, the applicant it is only if it's no fault of their own otherwise they do have time, they do have a time limit and it can be adjusted.

Ms. La Costa: Okay, but it's talking about substantial delay. We haven't defined what substantial delay is and that's important is it 30 days, 60 days, 90 days?

Mr. Robinson: Well, we're looking at a year right now.

Ms. La Costa: No, that's the indefinite portion. I'm looking at the substantial delay which to me, maybe they're one in the same and I'm being a blond I'm not sure, but just saying—

Mr. Robinson: Okay, is David you got that?

Mr. Raatz: Yes.

Mr. Robinson: Okay. Commissioners, would anybody like to add anything else? Yeah, so we don't need to vote, right? We're just, we're giving our recommendations?

Mr. Galazin: ...(inaudible)...motion to recommend.

Mr. Robinson: Motion to recommend. All those that agree with what was stated raise your right hand. We have six ayes.

Mr. Raatz: Thank you very much.

Mr. Robinson: Thank you David.

It was moved by Mr. Carnicelli, seconded by Mr. Hudson, then

∩VOTED: To Recommend Approval to the County Council of the Proposed Amendments to Title 19 of the Maui County Code to Allow Temporary Extension of Permit While an Application for Extension or Renewal is Being Process Unless the Applicant Causes Substantial Delay in Processing with the Recommendations Made by the Commission During the Discussion of the Motion.

**(Assenting – L. Carnicelli, L. Hudson, A. Hill, C. Tackett, S. Castro,
P.D. La Costa)**

(Excused – T. Gomes)

Submitted by,

Carolyn Takayama-Corden
Secretary to Boards & Commissions II