

MINUTES

PLANNING COMMITTEE

February 17, 2016

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Mason K. Chock, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, February 17, 2016, at 8:43 a.m., after which the following Members answered the call of the roll:

Honorable Gary L. Hooser
Honorable Arryl Kaneshiro
Honorable Ross Kagawa
Honorable KipuKai Kualī'i
Honorable Mason K. Chock
Honorable JoAnn A. Yukimura, Ex-Officio Member
Honorable Mel Rapozo, Ex-Officio Member

Excused: Honorable KipuKai Kualī'i

There being no objections, the meeting recessed at 8:43 a.m., and convened in the Budget & Finance Committee.

The meeting reconvened at 9:47 a.m., and proceeded as follows:

Committee Chair Chock: I believe we will be having a Housing item later in the day. Is that correct?

Councilmember Yukimura: If we can take our caption break now, I would appreciate it. I have an amendment I am preparing for the Additional Dwelling Unit (ADU) Bill.

Committee Chair Chock: Okay, we will take our caption break now so that Councilmember Yukimura can prepare her amendment and come back to this.

Councilmember Yukimura: Thank you.

There being no objections, the meeting recessed at 9:47 a.m.

The meeting reconvened at 10:04 a.m., and proceeded as follows:

The Committee proceeded on its agenda item as follows:

Bill No. 2601 A BILL FOR AN ORDINANCE AMENDING SUBSECTION 8-15.1(d), KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO ADDITIONAL DWELLING UNIT ON OTHER THAN RESIDENTIALLY ZONED LOTS (This item was Amended to Bill No. 2601, Draft 1, and Deferred to March 16, 2016.)

Councilmember Kagawa moved for approval of Bill No. 2601, seconded by Councilmember Kaneshiro.

Councilmember Kagawa moved to amend Bill No. 2601 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1, seconded by Councilmember Kaneshiro.

Committee Chair Chock: Councilmember Kagawa.

Councilmember Kagawa: This is requested by the Planning Department who wanted to have that amendment performed before the Planning Commission, but did not have it, so they wanted to include it. It just takes out “and for administrative costs for contested case proceedings related to ADU re-certifications.” It is regarding the regulatory fee.

Committee Chair Chock: Okay. Any questions? Councilmember Yukimura, do you have a question of the introducer?

Councilmember Yukimura: Yes.

Committee Chair Chock: Okay.

Councilmember Kagawa: Sorry, I forgot the last one that says, “Any moneys remaining in the ADU Re-certification Fund on December 15, 2024, shall be transferred and deposited into the General Fund.” It takes out that section as well. Again, this was requested by the Planning Department, so if you have any questions, you can ask Mr. Dahilig.

Committee Chair Chock: I will suspend the rules and ask Mr. Dahilig to come up. Councilmember Yukimura, you have the floor.

There being no objections, the rules were suspended.

Councilmember Yukimura: Thank you. I just want to understand what is being proposed here. It looks to me, and please correct me if I am wrong, that administrative costs for contested-case proceedings relating to ADU re-certifications will not be included in this fund or will not be levied?

MICHAEL A. DAHILIG, Planning Director: For the record, Michael Dahilig. Just to be clear, Councilmember Yukimura, you are asking the question concerning what has been highlighted?

Councilmember Yukimura: Right, just what this proposed amendment would do.

Mr. Dahilig: Okay. What the amendment aims to do is in the process of the previous amendments to the Bill that were passed about one year and a half (1.5) ago, there were some residual language that related to whether or not there was a continuing re-certification program and whether or not there were fees that was attached to that. So what we are attempting to do, because a pot of money has already been collected, is to clarify what that now can be used for going forward because no more new moneys will be deposited into the fund, as well as no new re-certification will occur as a consequence of the way the legislation is written right now. That is just meant to slightly repurpose the funds in light of the absence of a re-certification program that was initially entertained in previous iterations.

Councilmember Yukimura: I see. Okay. Basically, you are eliminating administrative costs for ADU re-certifications.

Mr. Dahilig: That is correct.

Councilmember Yukimura: The other brackets at the end, “Any moneys remaining shall be transferred and deposited into the General Fund”—you are not going to do that anymore. You are going to use up the money?

Mr. Dahilig: Pretty much. Just off the top of my head, it is two hundred thirteen (213) times two hundred fifty dollars (\$250), so comparatively, it is not a large special fund that has been created, so our intent is to try to exhaust the thing and zero-out the fund.

Councilmember Yukimura: Okay. It is mainly a housekeeping issue.

Mr. Dahilig: We would characterize that and agree with that characterization.

Councilmember Yukimura: Okay. Thank you.

Committee Chair Chock: Any other questions for Mr. Dahilig? Members, I wanted to get through this amendment today and maybe introduce the other amendment. I know that we have a one opinion that has come in for some questions that was shared, a shared County Attorney opinion, but there are other opinions that are out there. I have not had a request to defer this, so if you still want to introduce your amendment after this, that is fine also. I think we will be moving in the direction of a deferral at this time. Further questions?

Councilmember Yukimura: I do not have any more questions of Director Dahilig right now, but I may want to get his thoughts on the proposed amendment.

Committee Chair Chock: Let us take care of this amendment first. Mr. Dahilig, please hang around in case we need to ask you questions. I will call the meeting back to order. Council Chair Rapozo.

There being no objections, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: I just had a comment. I did have a chance to speak to County Attorney Mauna Kea Trask during the first item and I just anticipate the opinions that you have requested very shortly. We did get the opinion from Mr. Dahilig and he has expressed his “okay,” as well as the Deputy County Attorney that wrote it, to release that it, so it would be available to the public for discussion; however, there is some concern that, in the opinions that Committee Chair Chock had requested, the opinion for Mr. Dahilig was broad and the opinions that are being worked on for Committee Chair Chock is going to be more specific. I would like the opportunity to have both of those opinions released so we can have the open discussion here on the floor so that the public has an opportunity to hear the reasons. One of my main concerns is really the ability of this Council to put a time limit on the right to have this ADU to really restrict speculation. I am led to believe that that is part of the opinion that is forthcoming. I have asked Mr. Trask if he had an issue with us releasing those opinions, but he has not reviewed it yet, but at the end of the day, it is really up to the Council. So what I want to do is ask for a deferral. I am not a committee member, but I do have some discussion. Committee Chair, I would ask that we defer this for two (2) weeks, and then I will ask Staff to post an item to release the attorney’s opinion that is forthcoming, provided we get that opinion before the posting deadline, so that we can vote on the release of that opinion prior to the discussion in two (2) weeks so that we will be free to discuss both opinions or the multiple opinions. I

think it is important that the public understand why we can and cannot do certain things. That would be my suggestion.

Committee Chair Chock: Thank you very much. Councilmember Kagawa.

Councilmember Kagawa: I just wanted to ask that we vote on the amendment first. I have similar agreements with Council Chair Rapozo in that I want to see all of the amendments because I think it was brought forward by the public that why do we not try to stop the permits if it is sold and I think that is a legitimate amendment that this Council could support, but whether if legally we can, we need to see all of the opinions. I would be hesitant to move forward until we see all of the amendments, as you stated, Council Chair.

Committee Chair Chock: Thank you. Any further discussion on the amendment if there is nothing else about the County Attorney opinion? Mr. Bernabe, if you want to speak on the amendment, you can speak now.

There being no objections, the rules were suspended.

MATTHEW BERNABE: Matthew Bernabe for the record. I would just like to start with a clarification question. This, pertaining to the agricultural lots, is that there is finite of grandfathered permits that we are discussing with this, correct? Okay. My question is for non-agricultural ADUs, is this Bill carried over or is there an existing Bill similar? It is pretty open-ended. I understand it and I agree with it. I am just asking if this is transferable over to other ADU areas that are not agricultural that is specific to these finite numbers. That was my first question. Since I noticed the contracting part of people to do these jobs—I know it is a little off topic, but we just got off with the cap and I did not get to mention how I remember them coming multiple times with people from out-of-state to come and do my assessment. The question now lies, since we are understaffed, as we have heard, is there any way of getting those reports to be able to reference each other? They kind of correlate each other if you ask me. If you add on an ADU unit, the Real Property Tax Assessment Division is going to have to go out there and do an assessment themselves. Is there any inner-communications when they jive on this same line? That is all I wanted to bring up. Thank you very much.

Committee Chair Chock: Thank you. I think you saw by the nods of the heads on your first question. We can address the other questions offline. Would anyone else like to testify at this time? Second time? We will call the meeting back to order. Further discussion on the amendment? Members?

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to amend Bill No. 2601 as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment 1 was then put, and carried by a vote of 4:0:1 (*Councilmember Kualii was excused*).

Committee Chair Chock: The amendment passes. Would you like to introduce your amendment at this time?

Councilmember Yukimura: I do not know if I am going to introduce it today, but I would like to have a discussion about the concept and get feedback about it. If the Bill is going to be deferred, I can work on the amendment for the next meeting.

Committee Chair Chock: Okay. We are in discussion now, so why do we not move forward in that direction?

Councilmember Kagawa: I am not sure, but would one way be to introduce it, and then we can withdraw it after?

Councilmember Yukimura: It is not ready for circulation.

Councilmember Kagawa: Okay.

Councilmember Yukimura: May I just talk about it conceptually?

Committee Chair Chock: Yes.

Councilmember Yukimura: It is very out-of-the-box idea, but I think if it will help achieve the purpose of the law that we passed removing ADUs from agricultural lands, but grandfathering in the ADUs that had been taken to a certain extent prior to the passage of the law, it uses the concept of transfer development rights and it is based on the original purpose of the ADU Bill that said we do not want increased density on our agricultural lands, basically unrelated agricultural/residential; residential unrelated to agricultural operations. What it does is it says if a unit is sold, and I know there has been a lot of concern about it being sold, that it would have the right to be transferred into an urban area and get two (2) or three (3) units entitlement in an urban area. What it does is it allows for the removal, and this is totally voluntary based on incentive, but it allows for the removal from agricultural land to an urban area and has more density, in an area where we want more density and where more density will not be detrimental in any way. It has to be okay by the Planning Commission. It is completely voluntary, but it uses the power of transferring development rights into urban areas where we say we want density, we are trying to be more compact because we know that is an easier and cheaper kind of development to support with roads, sewers, water, and so forth. We want it off our agricultural lands if it is not related to agriculture. If a family wants to keep it there, they can. But if they sell it, the buyer can then move it off of agricultural land.

Committee Chair Chock: Thank you.

Councilmember Yukimura: I would love to have any questions or thoughts about it.

Committee Chair Chock: Council Chair Rapozo.

Council Chair Rapozo: I am a non-committee member, but I am assuming that is the amendment that you are contemplating. I would ask that we definitely have that reviewed legally because I think we would need a whole new bill for that. This Bill right here is just to remove a sunset date. That is a whole new process, so I would ask that before we introduce that amendment, that we would have the attorneys take a look at it because I believe that would require a whole new bill. I believe that goes beyond what the scope of what this amendment was. Real quick, for Matthew's question about the tax—if someone builds a new unit on the property and if a change in the property is due to the owner and it increases the value, then that assessment resets to market value, so they would no longer enjoy that assessment cap. They would reset to whatever the market value is at the time that improvement was made. That is what was in the Assessment Cap Bill. I just wanted to answer his question before we forget. Thank you.

Committee Chair Chock: Okay.

Councilmember Kagawa: If I could clarify what kind of amendment I would be looking at if the County Attorney's opinion says that we can take away the rights to have the ADU should a sale occur, I would say that my amendment would say that that would occur at 2024, so at least a lot of these local families that may decide that it is in the best interest to sell their property, they have the option from now until 2024 to put that ADU prior to their sale. So they have a lot of time, so that is why I feel that amendment is reasonable; however, if you decide to sell and do not put the ADU prior to 2024, then you would lose that right if you just sell your property. I think that is the amendment I am looking at, is that the previous Council, two (2) years ago, decided to give that ten (10)-year extension, which was upon a previous ten (10)-year extension, giving it twenty (20) years, so I am looking at protecting those rights to have that ADU within the twenty (20)-year period, eight (8)-year period from now, and if they decide not to and a sale occurs, then they would lose that right. That is where my amendment is heading. I do not even know if the County Attorney is going to rule if that type of amendment is legal or not, so that is why I want to wait until we receive all of the opinions from the County Attorney. Thank you.

Committee Chair Chock: Councilmember Yukimura.

Councilmember Yukimura: I agree with the Chair that this amendment could be seen as needing a separate bill; however, by removing the sunset date, you are making it a completely market unit, and my amendment would address this issue of a market unit with an incentive rather than a penalty. It is an incentive to move it to another place where it is more desirable. I think it is related to the Bill. I did propose this when this Bill came up for transfer to the Planning Commission. I raised that with Deputy Planning Director Ka'aina Hull. I do not know if he was Deputy at that time, but anyway, he was representing the Planning Department. I was hoping that the Planning Department would look at it and try to use it at the Planning Commission level so it would be fully vetted, but that did not happen. As the discussion is going and as I am looking at the legal opinions, I think there is a desire here, probably by the majority of this Council, to not allow these units to become speculative. We also have to remember the original purpose of this ban on agricultural ADUs, which was to limit to density the limit on agricultural lands because increased density increases the speculative value of agricultural land, especially if it is not tied tightly to agricultural use like our farm worker housing is. This is a way through an incentive process through a pretty well-known land use tool, but we have to improvise and make it applicable to our particular circumstances. I would like to have the Planning Department's input about how to craft it better. Even if we need a separate bill, we could just let the law stand with the sunset date and receive the Bill to remove the sunset date, and then we could bring in this new bill, which would actually achieve what this present Bill wants to achieve, but with some additional incentives that if there is going to be speculation, have it done in a way that benefits our overall community planning.

Committee Chair Chock: Okay. Thank you. Any further discussion?
Council Chair Rapozo.

Council Chair Rapozo: Real quick, unlike any normal bill, I am not disagreeing with Councilmember Yukimura, it is just that the process is that it has to go back to Planning. It is not something that we can just receive, create a new bill, and have a discussion and pass it. Any of these Planning bills have to go back to the Planning Department through the Planning Commission, so this is not something that can be done relatively quickly. Although I do want to have that discussion, I just do not believe we can have that discussion with the current bill because it is a substantial change and it is thinking outside the box, but it is

creative and I would like to have that discussion, but I think we need to make sure that the discussion is legal and in conformance with the Sunshine Law. This Bill as posted, as written, is really to do one thing, which is remove the sunset date. I think we need to be careful. I think the intent is to defer anyway, so that will give us time to send over something to the County Attorney. I would feel more comfortable if, in fact, that is the direction that Councilmember Yukimura is going, that it is drafted in a new bill and be sent over to the Planning Department and Planning Commission for review.

Committee Chair Chock: Thank you. Go ahead.

Councilmember Yukimura: I just want to say that I do not think there is a prohibition on the discussion. This is an alternative and alternatives should be discussed, just like we discussed the real property tax assessment, even though that was not the subject of the Tax Cap Bill. I think the Chair is right that it possibly cannot be a legitimate amendment, and then we would authorize or direct that a new bill be made, but we can discuss it. I do not believe there is a prohibition on discussing it.

Committee Chair Chock: Absolutely. Councilmember Kagawa, did you have something else?

Councilmember Kagawa: Yes. I think Council Chair's "words of wisdom" struck me in that I think any significant amendment...if I make a significant change to this Bill, such as changing the permits transferring should a sale occur, I think we should send it to the Planning Commission for their review again. We constantly, here at the Council, ask the Planning Commission to work with us so things are smoother, so I think we should do the same. I see us as working together, trying to protect the County's interest by making sure that we make good, sound decisions that do not get us in lawsuits and what have you. I would recommend that we do not rush through any significant change that we make. We have until 2024. Some of us feel that we agree with the Planning Commission that perhaps the sunset date was not necessary, but we will see how the votes fall. I do not think we should rush through this at all. Thank you.

Committee Chair Chock: We have our County Attorney and our Planning Director here, so my hope is that we can move in that direction with any potential amendment or new bill that Councilmember Yukimura is entertaining. I like the idea and direction that it is moving, but I think we have to start in building a foundation and where we should begin is the first question, and how it is going to be accomplished is also the other question. I also think that we are going to find that we are going to be limited in how it is we can approach this problem that we are experiencing. It is apparent after thirty (30) years of Council deferring the sunset that this has been an avenue for them to consider. I do understand the request to see all of the opinions and we will get that together and have it distributed and made public so that we can have the discussion on the floor moving forward. With that, I will entertain a motion to defer at this time.

Councilmember Kaneshiro moved to defer Bill No. 2601, as amended to Bill No. 2601, Draft 1, to the March 16, 2016 Planning Committee Meeting, seconded by Councilmember Kagawa, and carried by a vote of 4:0:1 (*Councilmember Kualii was excused*).

Committee Chair Chock: Motion passes. This concludes the business of the Planning Committee. The Committee is adjourned.

There being no further business, the meeting was adjourned at 10:27 a.m.

Respectfully submitted,


Codie K. Yamauchi
Council Services Assistant I

APPROVED at the Committee Meeting held on March 30, 2016:



MASON K. CHOCK, PL Committee

(February 17, 2016)

FLOOR AMENDMENT

Proposed Draft Bill (No. 2601), Relating to Additional Dwelling Unit on Other Than Residentially Zoned Lots

Introduced by: ROSS KAGAWA (By Request)

Amend Subsection 8-15.1(d)(8) in Proposed Draft Bill (No. 2601) to read as follows:

“(8) Where a regulatory fee has been paid, the fee payment shall be deposited to the “ADU Re-certification Fund.” There is hereby established and created a fund to be known as the “ADU Re-certification Fund.” The fees collected pursuant to this subsection are hereby deemed appropriated upon receipt, and may be expended by the Department of Planning for the hiring of persons employed on a fee, contract, or piecework basis, or independent contractors to assist in conducting inspections[, and for administrative costs for contested case proceedings related to ADU re-certifications]. The maximum number of persons that may be hired with these fees shall be determined by the Budget Ordinance. The fees may also be expended for materials, supplies, and equipment that facilitate inspections, and for payment of overtime to conduct inspections. [Any moneys remaining in the ADU Re-certification Fund on December 15, 2024, shall be transferred and deposited into the General Fund.]”

(Material to be deleted is bracketed.)

V:\AMENDMENTS\2015\ADU Remove Sunset RK AO_cy.docx