

Community Plan & Zoning Land Use Conflicts Briefing

The Problem

Certain concerned citizen groups on Maui have recently sought to challenge projects on the basis that the community plans provide for more restrictive uses than the corresponding zoning designations. Ultimately, one of these challenges could reach the Hawaii Supreme Court, which could, absent clarifying legislation, determine that more expansive uses allowed in the corresponding zoning are not allowed if not specifically enumerated in the in the community plan land use descriptions. If the Hawaii Supreme Court makes such a nonconformity ruling, then a significant number of existing uses on Maui would in effect be nonconforming structures and uses, because the uses are allowed by the zoning, but not specifically enumerated in the corresponding community plan definition.

A finding of non-conformity would impact a significant number of properties in the areas community plan designated as light industrial and hotel to name a few. Many if not all of these uses can be assumed to have some degree of secured debt attached to them as well as property insurance that would be put at risk if a catastrophic event (such as a fire or a hurricane) were to impact the uses, in addition to a significant impact on County property tax revenues.

Proposed Solution

Corrective legislation will shortly be heard before the Maui County Council Planning Committee (June 18) that would address this inconsistency between our zoning code and the General Plan, by establishing that permitted land uses are governed by the language in the zoning code. As a landowner owning property that could be directly impacted by a bad judicial non-conforming ruling decision on these inconsistencies I am asking for your support when this legislation is heard by the Maui County Council.

Background on Problem

Community Plan Designations Differ from Zoning

Certain Land Use Categories used in all Maui Community Plans differ from the allowed uses in the corresponding zoning. The following are just a few examples:

Hotel

Community Plan Land Use Description: "This applies to transient accommodations which do not contain kitchens within individual units. Such hotel facilities may include permissible accessory uses primarily intended to serve hotel guests."

Maui County Zoning Code Chapter 19.14 establishes the permitted uses including not only hotels, but also apartment-hotels, and any use permitted in the residential and apartment districts. The uses permitted under Chapter 19.14 certainly include accommodations that contain kitchens within the individual units.

Light Industrial

Community Plan Land Use Description: "This is for warehousing, light assembly, service and craft-type industrial operations."

Maui County Zoning Code Chapter 19.24 establishes the permitted uses within M-1 Light Industrial District to include a long list of uses that include any use permitted within a B-1, B-2, or B-3 business district, as well as specifically providing for apartments.

Heavy Industrial

Community Plan Land Use Description: "This is for major industrial operations whose effects are potentially noxious due to noise, airborne emissions or liquid discharges."

Maui County Zoning Code Chapter 19.26 establishes the permitted uses within the M-2 Heavy Industrial District to include any permitted uses within B-1, B-2, B-3 business, and M-1 light industrial districts. Are these possible uses compatible with the Community Plan description?

Business/Multifamily

Community Plan Land Use Descriptions of "Business/Multi-Family (BMF)", "Business/Commercial (B)", and "Business/Industrial (BI)" similarly differ from the permitted uses specified in Chapters 19.16, 19.17, and 19.18 for B-1, B-2, and B-3 business districts.

Multi-Family

Community Plan Land Use Description: "This includes apartment and condominium buildings having more than two dwellings."

The Comprehensive Zoning Provisions provide for a "tiered" or Euclidean approach to permitted uses that are not specifically stated in the Community Plan definitions. Thus, the zoning code, except in certain instances, allows for less intense uses such as retail in areas zoned light industrial. The Community Plan use descriptions are silent as to whether less intense uses are allowed, and if read literally, could be interpreted as not including such less intensive uses.

FOR MORE INFORMATION: Contact Charlie Jencks
Charliej@pacificrimland.com.