

Resolution

No. 22-159

AUTHORIZING A COUNCIL COMMITTEE TO CONDUCT A
FORMAL INVESTIGATION OF THE DEPARTMENT OF
PLANNING AND THE DEPARTMENT OF PUBLIC WORKS
RELATED TO THE COUNTY'S ISSUANCE OF
DEVELOPMENT APPROVALS FOR REAL PROPERTY
LOCATED AT 5385 LOWER HONOAPI'ILANI ROAD,
NAPILI, MAUI, HAWAII

WHEREAS, Section 3-6(3) of the Revised Charter of the County of Maui (1983), as amended, authorizes the Council to "conduct investigations of" . . . "the operation of any department or function of the county"; and

WHEREAS, as a part of a formal investigation, the Council is authorized by Section 78-9, Hawaii Revised Statutes, to compel persons elected, appointed, or employed by the County "to testify or answer any question regarding" . . . "the government, property, or affairs" of the County; and

WHEREAS, questions have been raised by concerned members of the public about whether there were violations of the Maui Planning Commission's Special Management Area, or SMA, rules or the Comprehensive Zoning Ordinance in the County's issuance of development approvals for the approximately half-acre property located at 5385 Lower Honoapi'ilani Road, Napili, Maui, Hawaii, known as the Greg Brown Development; and

WHEREAS, the Council's Government Relations, Ethics, and Transparency Committee, or GREAT Committee, has met to evaluate some of the questions about the Greg Brown Development on the following dates: June 29, 2021; November 16, 2021; November 24, 2021; March 15, 2022; March 22, 2022; March 24, 2022; and May 24, 2022; and

WHEREAS, the GREAT Committee's work has been illuminating and effective, but it has not included public testimony or statements under oath or affirmation, which may be part of a formal investigation authorized by resolution; and

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WHEREAS, on March 22, 2022, Planning Director Michele Chouteau McLean told the GREAT Committee that “the complaints from the community were that the building was in violation of SMA rules and zoning, and the community was ultimately proven to be correct”; and

WHEREAS, the Council is concerned that the Department of Planning may be issuing SMA permits on behalf of the Maui Planning Commission without confirming the accuracy of applicants’ development valuations, as required by Section 12-202-12(d)(1) of the Commission’s SMA rules; and

WHEREAS, by correspondence dated May 10, 2022, the County Auditor transmitted to the Council copies of Spire Hawaii LLP’s “Assessment of the Department of Planning’s Zoning and Administrative Enforcement Division”; and

WHEREAS, at pages 35-36 of its Assessment, Spire Hawaii LLP stated that the Department of Planning’s policy “memoranda were not codified or converted to administrative rules” or included in standard operating procedures and that “policies in these memoranda can also be superseded by instructions sent verbally or by email”; and

WHEREAS, the Department of Public Works approved a building permit for the Greg Brown Development that allows the construction of a swimming pool in the project’s setback area, which appears to be in violation of Section 19.14.050, Maui County Code; and

WHEREAS, the Greg Brown Development building permit plans and application applied hotel development standards to a single-family residence permit exemption in apparent contravention of the Section 12-202-12(d)(1)(B), Maui Planning Commission’s SMA rules; Section 19.60.030, Maui County Code, “Napili Bay Civic Improvement District”; and the West Maui Community Plan land-use designation for the Greg Brown Development; and

WHEREAS, the Council is concerned that the Planning Director may not have followed the established process for SMA enforcement after alleged SMA permit violations were brought to the Department of Planning’s attention; and

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WHEREAS, the Planning Director sent a Notice of Warning to the Greg Brown Development and cited certain violations but omitted additional apparent violations, such as a swimming pool in a setback area and the use of hotel development standards to a residential application; and

WHEREAS, on May 12, 2022, the Board of Variances and Appeals' meeting agenda included an appeal of the Planning Director's decision to treat a building permit for the Greg Brown Development as valid;

WHEREAS, the Council is concerned that the Department of Planning may be failing to review private developers' civil engineering drawings to confirm that construction related to SMA-permit mitigation and infrastructure are incorporated into the plans; and

WHEREAS, the Council is further concerned that the Department of Planning may be failing to keep records and perform field inspections of citizens' complaints on SMA permits and to issue appropriate Notice of Warnings and Notices of Violation; and

WHEREAS, the Council is also concerned that the Department of Planning may be making false representations on the compliance of developers' SMA permits; and

WHEREAS, the Council finds that to be fully informed of the relevant facts and circumstances pertaining to this matter, a formal investigation including public testimony or statements under oath or affirmation is required; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it authorizes the Planning and Sustainable Land Use Committee to conduct a formal investigation of the Department of Planning and Department of Public Works related to the County's issuance of development approvals for real property located at 5385 Lower Honoapi'ilani Road, Napili, Maui, Hawai'i;
2. That a formal investigation of the Department of Planning and Department of Public Works is required to determine whether County departments acted outside their authority and whether any corrective legislation or other remedies are warranted;

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3. That during the formal investigation of the departments, the Planning and Sustainable Land Use Committee may summon the following County officers and employees to appear or testify before the Committee:
 - a. Department of Planning:
 - (1) Planning Director.
 - (2) Deputy Planning Director.
 - (3) Zoning Administration and Enforcement Division Administrator;
 - b. Department of Public Works:
 - (1) Director of Public Works.
 - (2) Deputy Director of Public Works.
 - (3) Development Services Administrator.
 - (4) Assistant Development Services Administrator.
 - (5) Building Plans Examiners;
4. That on lawful notice of process, the Planning and Sustainable Land Use Committee may summon any person who is necessary to complete the formal investigation, whether they are elected, appointed, or employed in the County;
5. That the Planning and Sustainable Land Use Committee may request in writing other persons, including former County employees, to voluntarily appear and give testimony or statements under oath or affirmation during the formal investigation;
6. The formal investigation may be conducted on the Greg Brown Development located at 5385 Lower Honoapi'ilani Road, Napili, Maui, Hawai'i, inclusive of all permits issued on the project;
7. That the Planning and Sustainable Land Use Committee must prepare and submit its findings and recommendations to the Council by November 4, 2022; and
8. That certified copies of this Resolution be transmitted to the Planning Director, the Director of Public Works, the Corporation Counsel, and the Mayor.

INTRODUCED BY:

Kelly T. King
KELLY TAKAYA KING