

Great Committee

From: Mike J. Molina
Sent: Tuesday, June 29, 2021 11:02 AM
To: Great Committee
Cc: Tasha A. Kama; Nick Drance
Subject: FW: Testimony attached, as requested
Attachments: Napili Structure- GREAT Committee.docx

Aloha GREAT committee,

Please see the attached testimony.

Mike

From: Nick Drance <nick@themaumiracle.org>
Sent: Tuesday, June 29, 2021 10:35:08 AM
To: Mike J. Molina <Mike.Molina@mauicounty.us>
Cc: Tasha A. Kama <Tasha.Kama@mauicounty.us>
Subject: Testimony attached, as requested

Aloha. Here is a copy of my final testimony. Oral testimony given is bolded. It was edited for brevity to fit in 3 minutes.
Mahalo,
Nick



Nick Drance
Kihei, HI 96753



Government Relations, Ethics and Transparency Committee Meeting
June 29, 9AM
Testimony provided by Nick Drance
GREAT-36
(Oral testimony is bolded)

Aloha Chair and Committee.

I attended the meeting with about 25 or 30 residents, Michelle McClean and her Assistant Director at the job site. Residents involved assert impropriety on one level or another. A couple of us videotaped the meeting which you may be interested in seeing. Here is the information I got there and subsequently. I hope they are helpful to you.

Here are what I see as some obstacles to an action plan are:

The developer is not acting in good faith

The developer's attorney has indicated in written testimony, that if your determination is not made in early July, he will advise his client to move forward as planned and permitted and that you shouldn't take that as a threat. I think that and the contents of the letter in general tells a lot about who and what both residents and the county are working with here.

I'm told that this developer is experienced and knowledgeable. Numerous revisions should not have been necessary under *normal design circumstances*. I also understand that currently the plans are such that subsequent modifications appear pre-planned. My sense is that changes we made that still allowed for easy subsequent modification and that subject came up repeatedly in the job site meeting. Director McClean indicated that unless an issue is completely black and white and not subjective at all, the risk of litigation cost eliminated things like suspecting pre-planned subsequent modification.

The back and forth and number of revisions to the original plans submitted turned a straightforward project into an unmanageable situation by regular department staff without management involvement which didn't happen. I don't know if this is why the staff member was on leave. **The organizational structure appears to be flawed.**

It's interesting to observe this situation. As a businessman, I can see that the developer's attorney is on the defensive. He knows his client is in the wrong. His testimony shows that. So much prior communication in the process should have resolved this such that there was no controversy at this point. Something is wrong..

The threat of a July deadline for you is unprofessional. Only someone in the wrong or at least willing to circumvent proper procedure would do that. It's obviously not possible for a determination to be made in that time. Given that, when a determination is made, something must surely change and the cost to the developer will increase significantly. Legally, by assuming his position, he relinquished his future right to litigate, de-facto. Knowing the risks, they proceeded. The attorney made a fatal mistake.

The obstacle here is that the developer's attorney has shown that his client is not and has not, been acting in good faith.

The Planning Department feels like they are behind the 8 ball

The Planning Department Director at the meeting indicated that specific suggestions from residents are essential for resolution. Right out the gate, that sounds like compromise to the law is required. It's completely understandable because in the private sector, this would be dealt with by executive management, which appears to be you. **It's understandable in an administrative entity but doesn't seem right in the big picture.**

Suggestions to remedy the problem made at the meeting and on social media range from tearing the structure down to lowering it to the official height limit without exceptions. Obviously, this issue will stay in the public eye until it is resolved.

- Some considerations appear subjective technicalities on the surface. For example, in cases where multiple changes occurred in the same or adjacent space send a red flag. **Does that beg the question of improper intent? In other words, fraud? This is the assertion by residents.**

At the meeting, people pointed out a space designated as a wet bar vs. a kitchen. That was one of a few areas in the blueprints brought to the meeting, where the plans provide for undetected and easy circumvention of permitting requirements in the future.

- **The developer indicated his intention to use the property as a short-term rental. Is the property zoned and permitted for that? Is it zoned currently for hotel use as asserted? When was that established? The area appears to be residential.**
- **Given the numerous changes to the plans over two years, is the original SMA exemption still appropriate?**

Immediate solutions

Because the Planning Department is so concerned with the cost to taxpayers of potential litigation, it seems Corporation Council could review the facts and make *preliminary* comment.

Perhaps, as an early step, independent mediation might be considered to help both parties avoid excessive legal fees. The developer says the height requirement is unclear and that code dictates and either-or situation between the two-story limit and final height...and that exception for an elevator shaft, etc. above the proper height does not apply. I find that hard to believe. It seems obvious that the intent to deceive is present, but, on the surface, some items may be, arguably subjective.

Long term solutions

While in that meeting we learned that the Planning Department staff member involved was on leave the Department Director indicated that she was unaware of the situation. She indicated that the number of staff members in the department, made oversight impossible for the majority of what goes on there. That's like having countless Department Directors able to function independently, each having a lot of control. It looks like the structure of the department needs a look at.

That causes another problem. **So, once a problem is discovered, the fear of costly litigation plays a big role in how the issue is resolved. To some extent, the developer feels they the cards** because of that. In some cases, a compromise after the fact, might be expected by the developer. particularly when these things are resolved within the department alone. **Public outrage put this particular case in the day of light**, but some members of the public have long insisted that there are many inappropriate situations like this .

I've been told that an audit of the Department has been requested by some several times. It's my understanding that according to the Charter, the Council provides oversight over the Departments and submits findings to the Mayor. If the Mayor does not allow an audit, he then, he is responsible for whether our laws are followed. An audit should merely be an administrative decision, not a political one. Because this affects taxpayers so directly, it is a hot button for a lot of people. **An audit seems logical and reasonable, despite the other problems that might cause.** If policy or organizational changes need to be made in the department, which again, according to the Charter is a main part of your responsibility, getting an audit seems reasonable.

Mahalo nui,
Nick

Note: After reading existing testimony, it is asserted that full approvals have already been granted and according to the developer's attorney, it is in their legal right to proceed. Were approvals for the structure as it exists or was approval based on inaccurate plans despite numerous revisions? Is it possible that this developer is unfamiliar with the rules and so omitted some details by accident? That does not appear to be the case with this developer.

Do the plans clearly indicate the total height of the structure, including the elevator and stairway shaft?