

March 22, 2022

MEMO TO: Michael J. Molina, Chair
and Members of the Government Relations, Ethics, and
Transparency Committee

F R O M: Tamara Paltin, Councilmember 

SUBJECT: **CONSTRUCTION ON LOWER HONOAPIILANI ROAD (NAPILI)**
(GREAT-36)

The following questions have been generated based on inquiries I have received from the public related to construction on property located at 5385 Lower Honoapiilani Road, Napili, Maui, Hawaii, and identified for real property tax purposes as tax map key (2) 4-3-002:057. May I please ask for the Committee's consideration of posing them in writing to the respective agencies.

Department of Planning

1. What were the setback measurements taken during site visits?
2. What tsunami hazards were considered when approving the Special Management Area ("SMA") permit?
3. Is a 45-foot-tall structure allowed under either Section 19.60.030, Maui County Code (Precise Plan for Napili Bay Civic Improvement District), or Section 19.14.050, Maui County Code (Development Standards for the H-1 Hotel District)?
4. The SMA application shows estimated valuation of \$15,000 for existing use "Single Family Dwelling/Short Term Rental" with Proposed Action of "Construct a terrace wall on west property line; outer wall is 36'-48' tall, 18" wide and 210' long; Inner wall is 6-7' tall, 18" wide and 580' long. Outer wall nor inner wall retain more than 36" of earth." The SMA assessment states: "1.A. In the event of a conflict or FMV may be verified by the Director of Public Works. In the event of a conflict between the estimates of the applicant and the Director of PW, the higher estimate amount shall be used by the director for the purposes of an assessment of the proposed action." Is the estimated value reasonable? Was the Department of Public Works consulted to verify the value for the length and height of the walls?

5. DPW/DSA: BP 20200048 shows value at \$2,000,000. SMA application shows value at \$15,000. Which value should be used to determine which application is appropriate—SMA Exemption, SMA Minor, or SMA Major permit?
6. Is there a definition of a “Media Room” in the Maui County Code or elsewhere?
7. An email from the Planning Director to Christopher Salem, dated July 9, 2021, relating to a government records request, states: “Reports of Planning investigations. NOW to be sent for wall not having a SMA permit. DSA/DPW is aware and might investigate & cite wall not having a building permit. ATF & SMA approvals need to resolve the violations. Planning Staff to be instructed to consider impact of wall on mauka views. Developer stated it is not a retaining wall, so Planning can’t require height be lowered. . . The only outstanding thing . . . is measuring the pad height. We’ve ordered a tool to do this . . .”
 - a. Has the tool been ordered?
 - b. Has the pad height been measured and documented?
 - c. What was the outcome of the impact of the wall on mauka views?
 - d. If it is not a retaining wall, then what is it classified as?
8. An email from Christopher Salem to the Mayor’s Chief of Staff, with the Planning Director copied, dated July 29, 2021, cited an SMA Permit Notice of Warning stating that “there were one or more violations.” What were the specific violations?
9. Receipt Number 21-0008049 issued on September 1, 2021, for APN: 2430020570000, Permit: SMX 20210301 shows an After-the-Fact Permit: 10% of Projected Value amount paid \$1,000. If \$15,000 is the value, is a \$1,000 payment sufficient?
10. Correspondence from Mancini, Welch & Geiger, dated December 7, 2021, states: “The Planning Department employees who reviewed these plans are more than competent . . .” Why was this project reviewed by a Plans Review Supervisor rather than a Plans Reviewer? In other words, what elevated the project to a higher level of review?

11. Correspondence from Mancini, Welch & Geiger, dated December 7, 2021, states: “The Planning Departments position regarding transient vacation rental uses on this property also is suspect as it is inconsistent with prior approvals and authorizations issued by the Department.” What are the dates of the prior approvals and authorizations? For what purposes were they granted?
12. Over the years, the owner has indicated the proposed use as “Short Term Rental.” Section 3 of the Short-Term Rental Home (STRH) Permit application, relating to Basic Qualifications & Standards (Abbreviated), states: “The construction of homes used for short-term rental must have been completed at least five (5) years prior to the date of the STRH application. Permits are held in the name of an individual(s) who holds legal title to the property. Permit-holders must hold title for at least five (5) years as of September 27, 2018. In some cases, the property may be owned by a trust, LLC, LLP or corporation which must be family-owned (see 19.65.030(G) for details).” On November 26, 2021, Ordinance 5300 (2021) took effect, with changes to the duration of construction and ownership from five to 15 years. Please explain how this component was or was not considered when approving any or all permits.
13. Can SMA Major get an SMA exemption?

Department of Public Works

1. How much grading or grubbing qualifies as an “excavation?”
2. Correspondence from Mancini, Welch & Geiger, dated December 7, 2021, states: “County building inspectors have conducted inspections on the property and confirmed that the home is being built in accordance with the approved plans.” Please provide the inspection dates.
3. The Department lifted the Stop Work Order for Permit G20190075 on February 7, 2022, and for Permits B20200447 and B20200448 on February 8, 2022. What were the steps taken to lift the Stop Work Order? What are the documented actions that show compliance with law and resolution of violations?
4. Should the Board of Ethics review the project approval and lifting of the Stop Work Order?

5. Did the Department review the Drainage Report? Was it offset on property?

Department of the Corporation Counsel

1. Building Permit B2020/0448 was entered on May 14, 2019, and issued on May 19, 2020. Construction commenced, and questions on the validity of the approved plans were brought to the attention of the Department of Planning in March 2021. After numerous months, the Stop Work Order was issued in December 2021. Under Chapter 16.26B, Section 105.4, Maui County Code, relating to Validity of Permit, "The issuance or granting of a permit or approval of construction documents shall not be construed to be a permit for, or an approval of, a violation of any of the provisions of the Maui County Code. Permits presuming to give authority to violate or cancel the provisions of the Maui County Code shall not be valid." Could the application for Building Permit B20200448 be considered fraud?

Thank you for your consideration.

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