

Government Relations, Ethics, and Transparency Committee on 2021-06-29 9:00 AM

Meeting Time: 06-29-21 09:00

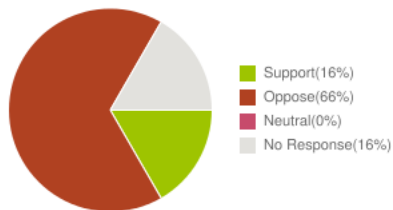
eComments Report

Meetings	Meeting Time	Agenda Items	Comments	Support	Oppose	Neutral
Government Relations, Ethics, and Transparency Committee on 2021-06-29 9:00 AM	06-29-21 09:00	6	6	1	4	0

Sentiments for All Meetings

The following graphs display sentiments for comments that have location data. Only locations of users who have commented will be shown.

Overall Sentiment



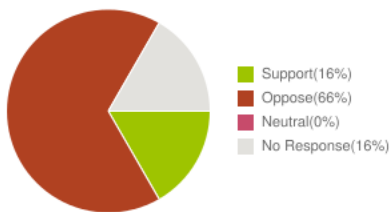
Government Relations, Ethics, and Transparency Committee on 2021-06-29 9:00 AM
06-29-21 09:00

Agenda Name	Comments	Support	Oppose	Neutral
GREAT-2(16) NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (LANAI PLANNING COMMISSION) (GREAT-2(16))	1	1	0	0
GREAT-36 CC 21-242 CONSTRUCTION ON LOWER HONOAPIILANI ROAD (NAPILI) (GREAT-36)	5	0	4	0

Sentiments for All Agenda Items

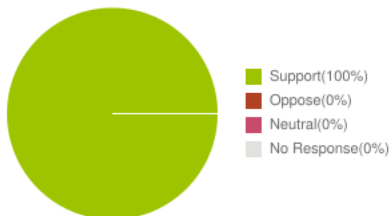
The following graphs display sentiments for comments that have location data. Only locations of users who have commented will be shown.

Overall Sentiment



Agenda Item: eComments for GREAT-2(16) NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (LANAI PLANNING COMMISSION) (GREAT-2(16))

Overall Sentiment



Guest User

Location:
Submitted At: 9:17am 06-28-21

Aloha,

This is testimony on item GREAT-02, sub-item 16 (re: L_na_i Planning Commission).

I SUPPORT the nomination of Zane Dela Cruz to the L_na_i Planning Commission. Zane grew up on L_na_i, graduated from L_na_i High and Elementary School, has worked in several jobs around the community, and helped with his parents' small business that they owned for many years. Now, he works with the Conservation Department caring for the land and its native species. He is an extremely bright young man, and has a good understanding of both the community and the natural resources of this island. He approaches problems in a very logical way, and quickly understands nuance and complexities of issues. I am confident that he would bring his

best to the Planning Commission and thoughtfully consider the matters brought before them.

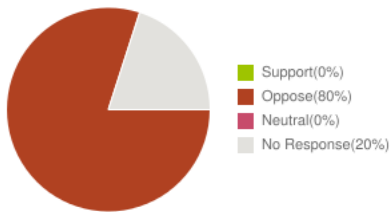
Mahalo,
Rachel Sprague

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Rachel S. Sprague, Ph.D.
P.O. Box 631160
L_na_i City, HI 96763

Agenda Item: eComments for GREAT-36 CC 21-242 CONSTRUCTION ON LOWER HONOAPIILANI ROAD (NAPILI) (GREAT-36)

Overall Sentiment



Guest User

Location:

Submitted At: 10:39am 06-29-21

WRITTEN TESTIMONY: CHRISTOPHER SALEM

RE: CONSTRUCTION ON LOWER HONOAPIILANI ROAD (NAPILI)

Dating back to the shores of Montana Beach, citizen driven complaints have revealed a pattern of abuse of discretionary authority and negligent administration of the delegated duty to uphold the Shoreline Management Area ("SMA") rules and environmental laws pursuant to HRS §205A. Millions of dollars of citizen driven complaints and costly legal disputes in Maui County have been the direct result.

Two decades later, the damaging pattern continues right before our eyes along the pristine shores of Napili Bay. The massive Brown development, which citizens were denied of their rights to public hearings and environmental preservation, was exempted from SMA by the staff of the Planning Department. Director Michele Mclean alleges she would not have issued the exemption despite her name being signed by a staff member on the SMA Permit exemption.

Consequently, questions and debates have arisen about where the duty lies to ensure the adopted SMA rules are honored and enforced. Allegations have been made that Planning Department has the "sole authority" to enforce violations of environmental rules adopted by the Maui County Planning Commission. The County Charter speaks otherwise. The Supreme Court ruling this week raises serious questions of whether the County Council should replace the Planning Commission as the SMA rule making authority.

At a community protest meeting in Napili attended by Planning Director McLean and Deputy Planning Director Hart, the citizens were informed that the decision to issue a SMA Permit violation notice to Brown Development would be a collective one between the Mayor, Corporation Counsel, Planning Director, and the County Council.

A summary of the alleged violations and false representations by the Developer Brown is attached. For the record, this violation summary was forwarded to Mayor Victorino, Council Member Tamara Paltin, the Chair of the Council Planning Committee, and Planning Director Mclean. No County from official either branch of County government has responded to a written request to review and opine on the findings and conclusions. Local attorneys, representing the impacted property owners and community members, have agreed with the findings

and conclusions.

Which raises a parallel question; When a questionable act or decision by a Director or Department is discovered, under the Maui County Charter, which branch of government is responsible for an investigation of citizens' or County employee complaints and to declare whether the decisions are consistent with adopted County laws and ordinances?

Guest User

Location:

Submitted At: 8:56am 06-29-21

How can our County Council just stand by as the Planning Dept. allows Greg Brown to continue construction on his Monster Hotel in Napili, knowing full well that the community's rights under the Coastal Zone Management Act were violated in the same manner as the Supreme Court just ruled happened at Kahoma Village?

In order to get an exemption from SMA permits and avoid community review, Brown's project was originally submitted as a single-family home. By ordinance, single-family homes on Maui can be no taller than 30ft.

A letter Planning Director McLean sent Greg Brown on March 12th warns: "If the structure is used for any purpose other than a single-family home, the basis for the Department's SMA exemption would be invalidated and, therefore, the SMA exemption would be rescinded."

Brown's structure has two separate wings each with 4 bedrooms with full baths and walk-in closets and two of everything; two full kitchens, two pools, two hot tubs, two "media rooms" with full baths and walk-in closets, two "dens" with full master baths and walk-in closets, two living rooms, two dining rooms, two staircases, with a central lobby and elevator for ADA compliance, and it towers almost 50 ft above original grade. The plans show just under 7,500 sq ft of living space which is just under the limit for allowed SMA exemptions, but there's an additional 2000 sq ft that are unlabeled on the plans. No professional I have shown the plans to consider this a single-family home.

If the project continues, because our rights had been violated yet again, citizens will eventually sue and win, just like we did at Oluwalu, Montana Beach, Palama Drive and now at Kahoma, and by then the County will be financially liable.

Our charter forbids the County Council from telling a Department Director specifically how to do their job but, to mitigate financial loss, the charter does empower the Council to investigate and determine whether a Director is abiding by existing ordinances.

If a violation is determined, what could a Director do but accept responsibility and make their own choice to correct it? That's how our Charter sets the checks and balances to protect the community.

Unfortunately, this is the exact point where Corporation Counsel typically intimidates Council Members by claiming if they initiate any action that ultimately determines that a Director did act outside their authority it will expose the County to litigation and that they will be "on their own" to defend themselves if, as individuals, they are held personally responsible for any resulting settlement costs. Several past Council Members have personally told me about Corp Counsel's intimidation, including Mike Victorino.

The resulting settlement costs from future litigation will only grow every day that Greg Brown's project is allowed to proceed. Rescinding the exemption now so the losses fall to those consultants paid to violate their professional stamps and not the County, is our best course of action today.

Nicholas Drance

Location:

Submitted At: 1:10pm 06-28-21

Government Relations, Ethics and Transparency Committee Meeting

June 29, 9AM

Testimony provided by Nick Drance

I attended the meeting with residents and Michelle McClean and her Assistant Director. A couple of us videotaped the meeting which you may be interested in seeing. Here are the takeaways I got.

Obstacles to an action plan are:

- The Planning Department needs specific suggestions from residents (which could also be our elected representatives) on solving the problem.

They might be:

- The structure should be torn down.
- The structure should be lowered to the official height limit.
- The developer must make changes that guarantee to the county that the structure will only be used as a residence and no part of it would be used as a short-term rental.

Penalties

- Some believe that the developer deliberately deceived the Planning Department, essentially submitting misleading fraudulent plans. If a review of the plans and any subsequent changes reasonably indicate that fraud occurred, appropriate legal action should be taken.

Solutions

Personally, my suggestion would be to immediately form an agreement with the developer to engage in independent mediation and let the mediator make a determination on these issues. Otherwise, some form of a stay order might be created so that no further work can be done until the County investigates the matter, which would likely take 2-3 years.

The standard penalty should be applied.

In any case, no one is above the law. It became clear to me from my standpoint, that the management and organization of the Planning Department as it exists today, de facto enables some developers to game the system. Obviously most developers don't do this, but I have a feeling that when it happens, sometimes it an egregious violation.

Will this happen again?

Case in point is while in that meeting we learned that the 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 it oversight on every permit impossible. That essentially means there are actually countless Department Directors able to function independently. This is an untenable situation.

That causes another problem. The Director indicated that the potential cost of litigation cost to taxpayers plays a major role in determining the way forward. This means that a developer can deliberately deceive the County knowing that there is a good chance that something less than 100% conformity to the law is possible and likely. If a developer is caught doing the wrong thing, he or she to some extent, holds the cards.

I've been told that an audit of the Department has been requested by some several times, to no avail. The current thinking by many is that not only will there be many situations like this but that currently, there likely exists others. All of this is problematic however, it should be noted again, that no one is above the law and if we let something slide in one area but not the other, we are complicit. There must be a safeguard against impropriety or clerical errors that result in significant consequences.

Mahalo nui,
Nick

Bradley Salter

Location:

Submitted At: 9:42am 06-28-21

Law Office of

Bradley D. Salter
24 Malialani Place, Lahaina, HI 96761
Phone: (808) 298-7873 - Fax: (808) 669-0800
Licensed in California and Hawaii since 1978

June 16, 2021

Dear Committee Members;

I am writing regarding to oppose the issuance of the building permit and exemption of the SMA, the obvious breach of public trust that has arisen over the SMA exemption and the Developer "Brown's" obvious mis-application and possible, intentional misrepresentation of the facts surrounding that exemption.

The action that should be taken is to revoke the permit and remove the construction at Mr. Brown's expense for the reasons I have enumerated below:

The SMA exemption and building permit should not have been granted based on the following;

1. While the property is in a Hotel District, it is zoned Residential therefor, Residential Zoning limitations including height limits, must apply.
2. In order to build what Mr. Brown has attempted, he would have had to apply for a zoning change to Hotel Zoning which likely would have triggered an SMA and other requirements and no doubt been under greater scrutiny. Had the developer's architects respected that this property is not zoned Hotel without going through the change in zoning perhaps this would not have happened. Does some responsibility fall upon the Architects who stamped the plans?
3. Residential height limit is 30 feet. Mr. Brown has attempted and misled the Planning Department in his application to believe that he is entitled to build to the Hotel zoning height of 45".
4. Another neighbor had the property under contract and attempted to rezone the property several years ago to allow for hotel zoning, to no avail and they spent upwards of \$1million in the attempt to do so and his plan was rejected.
5. The home was obviously not built as a second home and it is obviously and apparent that the home was built with the idea of putting as many heads on beds as possible and in doing so, violates the Maui County Regulations for zoning of this type.
Even Mr. Brown's attorneys have indicated that this home was built for Vacation Rental and that was not applied for in his permit application.
6. For all of the above reasons, this home is completely inappropriate in this neighborhood, is in opposition to the Napili Community Plan and is a blatant attempt to usurp County Regulations to suit Mr. Brown's own agenda.

Respectfully Submitted

/Brad Salter/

Brad Salter

Jeff Ueoka

Location:

Submitted At: 2:22pm 06-25-21

Please see attached written testimony.

PAUL R. MANCINI*
JAMES W. GEIGER
THOMAS D. WELCH, JR.

MANCINI, WELCH & GEIGER LLP
A LIMITED LIABILITY LAW PARTNERSHIP

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*A LAW CORPORATION

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June 25, 2021

Via e-mail to great.committee@mauicounty.us

The Honorable Michael J. Molina
Chair, Government Relations, Ethics and Transparency Committee
Council of the County of Maui
200 South High Street
Wailuku, Hawaii 96793

Re: GREAT-36

Dear Chair Molina and Members of the GREAT Committee,

I represent Greg Brown, the owner of the entity which owns the home that is being constructed at the corner of Lower Honoapiilani Road and Hui Drive in Napili. The property, in which "hotel" use is permitted, was originally purchased with the idea of building a large vacation home for periodic use by Greg, his family, and extended family (his wife is from Maui and her mother is a resident of Napili) with the idea that the home would be utilized as a vacation rental when not in use by Greg and his family.

The planning and permitting process took over two (2) years with the Planning Department working closely with my client to ensure that the plans and specs for the home complied with all State laws and County ordinances. The SMA application was thoroughly vetted by the Planning Department, and after extensive reviews and revisions, the Special Management Area ("SMA") permit exemption was properly granted in accordance with State law. Greg was issued a building permit after a complete review of the plans by the Planning Department and as with the SMA application, the Staff Planners with the Planning Department were thorough and conscientious in their review of the application, and a building permit was issued.

Throughout the review process Greg complied with the requests of the Planning Department as it was always his intent to comply with the law. All construction to date has been in strict conformance with the SMA approval and building permits.

After construction commenced, Greg was surprised to learn of the community opposition to the construction of his home, as he had studied the area and felt that the home, while large, “fit” into the area.

Upon discovery of the community’s concerns, Greg reached out to the community and the Planning Department. After conversations with an officer of the Napili Bay and Beach Foundation and the Planning Department, it was determined that the primary concern was the height of the building as approved by the County. We believe the misunderstanding regarding the height is based on the fact that the design standards of the zoning district simply limit structures to two (2) stories, without a specific height limit. The home per the County-approved construction plans exceeds 35 feet, when including the elevator and stairway shafts, however it is not more than two (2) stories, and therefore is in compliance with the zoning. While it is our position that the home is in full compliance with all laws, permits and approvals, Greg is cognizant of the community’s concerns and would like to see them addressed. He also does not want to be in a bitter and protracted legal dispute with the County regarding the home, so he would prefer to reach an understanding with the County regarding the height of the home.

Since discovering the Community’s concerns, around March of 2021, Greg has been working with the Planning Department through our office in trying to reach an understanding regarding the height and the use of the building. During this period he has intentionally slowed construction of the home. Unfortunately he is now approaching a point that he needs to decide between a) completing construction in accordance with the County approved building permits; or b) changing the design to reduce the height of the home.

Greg, at his own expense and at the Planning Department’s urging, recently had a licensed surveyor confirm in writing that the as-built height of the building today is under 35 feet. However, if Greg moves forward with construction of the rooftop amenities, stairways, and elevator shaft, as permitted by the County approvals, the height will exceed 35 feet. Greg is willing to redesign the home minimizing the protrusions above 35 feet to see-through type railings, the elevator shaft, and minimal rooftop utility/support structures, provided he is granted assurances that the home will be allowed to be utilized as a vacation rental as allowed by the current zoning.

While we understand that the community also has concerns regarding the home being used as a vacation rental, we feel that vacation rentals are prevalent throughout this area and the use of this home as a vacation rental would not affect the character of the neighborhood and is a permitted use per the zoning. Our hope is that Greg’s willingness to reduce the height of home to address the community’s concerns will soften the community’s stance regarding the vacation rental issue.

While it was originally his intent to enjoy the home with his family, at this point he does feel that his presence will allow the community to move past these issues, so he is planning on selling the home upon completion of construction. Our hope is that if the County and Greg can reach some type of understanding regarding the height, the new owner, can have a fresh start with the community, potentially being accepted into it.

Please do not interpret this as a threat or ultimatum, however as previously stated, we believe that the home has the proper permits and approvals, and if a resolution with the County is not reached in early July, we will advise Greg that he should move forward with the building as planned and permitted. Again, it is not Greg’s desire to move forward without addressing the

concerns of the community, however it has been months and we have not been able to reach an understanding with the County, therefore we can no longer advise him that it is in his best interests to continue to attempt to work out a resolution with the County on something that he is legally permitted to do.

I truly look forward to working with the County, the Administration and the Council, to reach some type of understanding which minimizes the expense to the taxpayers, respects the community's wish to have the height of the building lowered, and allows the home to be used like other properties in the immediate vicinity, as a vacation rental, granting a new owner some certainty in regards to use.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey Ueoka', with a stylized, flowing script.

Jeffrey Ueoka