GET Committee

From: Mike J. Molina
Sent: Wednesday, January 30, 2019 2:02 PM
To: GET Committee
Subject: FW: Opposition to appointment of Michele McLean and Patrick Wong

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From: Laurie & Jake Rohrer <ljr@ululoa.com>
Sent: Wednesday, January 30, 2019 2:00 PM
To: Kelly King <Kelly.King@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Tasha A. Kama <Tasha.Kama@mauicounty.us>; Riki Hokama <Riki.Hokama@mauicounty.us>; Alice L. Lee <Alice.Lee@mauicounty.us>; Mike J. Molina <Mike.Molina@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Yukilei Sugimura <Yukilei.Sugimura@mauicounty.us>
Subject: Opposition to appointment of Michele McLean and Patrick Wong

Dear Council:

I am Jake Rohrer, a resident of Haiku whose property is adjacent to the North Shore Zipline. I would like to add my voice to the disapproval of Michele McLean and Patrick Wong as Planning Director and Corporation Counsel.

I have had a running exchange of emails with Ms. McLean, expressing my thoughts, opinions and outrage at the tactics used by those County employees involved in the "private, one-sided, closed door" settlement with applicant Derek Hoyte and D & S Ventures. Ms. McLean responded with calm and measured explanation, expressing regrets and admitting mistakes, and promising to support the community ". . . from this point forward." I urged her to right the wrongs that have been done, however, according to attorney Anthony Ranken, given this opportunity she has declined to change her position.

Unfortunately, I haven't the time needed to fully address what I see as a gross miscarriage of justice but I am going to quote below some of the points I made to Ms. McLean. The idea that the applicant himself hides behind a bevy of Honolulu lawyers from the largest law firm in the state of Hawaii opens many questions. After twice being defeated by unanimous votes at the planning commission, what has taken place that suddenly propels Hoyte to victory? I don't like to suggest that County employees have been intimidated or strong-armed by the mighty Cade-Schutte law firm, but given the closed-door aspect of the settlement that silenced the voices of those struggling to regain the peace of their neighborhood, I have no other answers.

About a week ago, applicant Hoyte chanced to run into my brother, Peter, at the Hanzawa store in Haiku. Peter is involved in litigation with Hoyte over the zipline which straddles his property line. Hoyte, beaming a nasty smile at Peter, told him with a sneer that he no longer needs a special use permit to run his zipline and unceremoniously gave Peter the "finger." Though the character of the applicant is not necessarily a question for you to consider, maybe it should be.

Thank you for taking the time to hear me out. In order not to burden you with too much reading material, below are some quotes from Michele's e-mails to me, and my reactions:

From her 12/20/18 e-mail: "Settlements in general are often confidential. Certainly the discussions that lead up to them are confidential, and the agreements often are, too. It can be difficult to settle otherwise. . . . If we had not prevailed -- which we thought was a real possibility due to procedural and other flaws on the County's part -- then D&S would have continued to operate without any of the mitigation that they are now required to provide, and that we can enforce. . . . There are aspects to it that I do not like and am not proud of, and am sincerely sorry for, but overall I made the call that it was the most prudent approach for the County to take."

From her 1/8/19 e-mail: ". . . there are certainly aspects to the settlement agreement that I wish I had approached differently. First and foremost among them would have been consulting with the neighbors before signing it. I would not have been able to disclose the settlement terms but I would have gotten valuable input and, more importantly, you folks would have had the chance to give input and know what was going on. I am very sorry that I did not do this. I still believe, though, that the agreement is better for the County and for the neighbors than to have let the BVA and MPC processes play out; I firmly believe that the results of those proceeding -- if adverse to the applicant -- would have been appealed to circuit court one way or another, and the County would have been directed to either issue the permit or take the proceedings back to the BVA and/or MPC, where the whole thing would have started all over again. This would have gone on for years and years, all the while the zipline would be allowed to continue operating with no restrictions whatsoever (because the court would not issue an injunction while the applicant was still exercising its due process rights). I agree that the restrictions could have been more rigorous, another aspect of the agreement that I regret.

MY REACTIONS:

I appreciate Michele admitting that she made a mistake, but that doesn't help when she is doing nothing to correct it.

I do not buy the idea that a settlement like this has to be confidential or that the affected members of the community must not be allowed to know the details.

Michele assured our attorney that the procedural flaws had been corrected in the second round of Planning Commission proceedings – in fact she urged him not to file a Petition to Intervene on our behalf because the County had the situation under control. What she seems to be saying is the County just didn't have the stomach to litigate against a big Honolulu law firm.

The idea that the County imposed any enforceable mitigation measures is laughable. Almost all of the "conditions" agreed to by D&S are just designed to make their "historic preservation" angle look good; it's lipstick on a pig. They still promote their zipline on the web as a thrill ride, and that's what it is.

The few conditions relating to "sound attenuation" are really nothing that D&S isn't already doing. They say they have a little sign on one platform to "keep your voices down" but the conditions the County supposedly "required" of them – actually D&S's attorneys wrote them -- make no attempt to prevent terrified zipliners from screaming once they launch, which D&S has twice admitted in writing is "uncontrollable." No form of the word "scream" appears anywhere in the conditions, in the settlement letters, or in the settlement agreement.

Lastly, Ms. McLean says "I agree that the restrictions could have been more rigorous, another aspect of the agreement that I regret." She appears to be acknowledging that the settlement was a bad one because the restrictions should have been more rigorous, but in that case why doesn't she admit that she made the wrong decision in accepting the settlement, why doesn't she help us win our BVA appeal, and then once that's done she can go back to the drawing board and renegotiate – or litigate. She has given up her leverage to get anything more out of D&S unless the

settlement decision is reversed, and yet she and her attorney are standing in our way, opposing our requests for documents or access to witnesses, refusing meaningful cooperation of any kind, and apparently trying to prevent us from reversing the settlement decision.

If you have more time to read, I have reprinted below some of the salient points I made to Michele in our e-mail correspondence.

Yours truly,

Jake Rohrer

The county's handling of the North Shore Zipline resolution (Maui News, Dec. 12) feels like betrayal, an undeserved abandonment of victimized Maui citizens in favor of tourist industry dollars. Secret meetings behind closed doors with undisclosed participants and a "confidential" settlement between zipline operators and the county stinks to high heaven. Who will look the zipline neighbors in the eye and tell them that it was permissible for the zipline to barge into their neighborhood, unpermitted and unannounced, disrupting daily lives with the noise and nuisance of thrill-seeking adventure enthusiasts who shatter the peace of the pastoral countryside? Who will tell them that inclusion of ziplines in the history of Camp Maui is not a transparent ruse invented to appease code requirement and keep the zipline in business? Anxious to convince the world that his 17-acre zipline is *not* a zipline, the owner/operator now touts his enterprise as "Maui's Largest WWII historic site," ignoring the nearby 40-plus acre 4th Division Marine Memorial Park, established for public use and recreation. Likewise, the North Shore Zipline was established for just what it is--a zipline for commercial profit, boasting seven "Costa Rican-style eco adventure" ziplines up to 900 feet in length. How history-relevant is that? Now they seek to legitimize its existence on the backs of the soldiers whose training they self-servingly claim included ziplines. Oh, really? Have they no shame?

On the thinnest of threads the Planning Director bought into the questionable idea that ziplines were known to be included as part of the WWII Marine training course at Camp Maui and therefore qualify as historical remnants to be included under the primary permitted use of preserving, restoring and rehabilitating the Camp Maui site. Nothing in the operator's website or on-line Maui military history refers to ziplines in use as military training at Camp Maui. The idea is used as a self-justification to patronize undeserving opportunists who hide behind a bevy of lawyers from one of Hawaii's largest law firms. The Maui Planning Commission previously declared that historic preservation seemed secondary to the zipline operation, an obvious conclusion. How did this get turned around? The idea that the primary purpose of the North Shore Zipline is guided historical tours is absurd.

To my great dismay, a week or so ago, I learned that County attorney Koa Holiona, pouring kerosene on the betrayal fire, entered into the record a *stipulation* that historic preservation is a principal use of the North Shore Zipline property, which, if allowed to stand, simply ends the matter. Who appointed Mr. Holiona in this capacity? John Rapacz, who I understand reports to you, was also officially present. According to attorney Anthony Ranken, significant evidence to the contrary provided by him was largely ignored and cross examination of those supporting the zipline position was limited to a friendly and unrevealing discourse. I am a layman and I do not understand how one attorney represents both sides or why there was no case in opposition to the zipline was presented, or indeed, what's with all the secret, one-sided hearings; is this a matter of National security?

We are apparently asked to believe that ziplining is a secondary principal use of the property, buttressed by some hazy and unproven claim of historic relevance. What would an income audit disclose as the principal use of this property? D & S has poured what must be a king's ransom into legal arguments and expert witnesses, supporting any claim that would keep them in business. Historic preservation disintegrates in the face of common sense and a mountain of evidence to the contrary. Does anyone--anyone at all--truly believe that historic preservation is anything but a sham to skirt County regulations? What are the motives behind the "softball" approach by Holiona and (I assume) Rapacz? Whom do they serve?

Years ago there was a hard fought legal case brought by neighbors of an egg hatchery on Makani Road in Makawao. Acres of chickens produced a horrific stink that on occasion invaded a neighboring subdivision. As I recall the courts held for the hatchery, operating within zoned (ag) regulations. But foremost they reasoned that the hatchery was there first, before the subdivision existed. Apply such reasoning to D & S and the North Shore Zipline: the zipline neighbors--all of them, some for decades and generations--were likewise there first, long before the zipline existed. They were invaded without notice or care, the peace they had known taken from them. The invader wasn't a business offering historic tours that added a zipline. It was and always has been, foremost and primarily, a profitable (thrill-ride) zipline, now attempting after-the-fact to add historic relevance, faux-patriotic and self-serving, in order to exist. How would Solomon decide this dispute?

I truly hope that the wheel's still in spin and that those so empowered will respond with clear-headed justice and right the wrongs that have been done.

Jake Rohrer / Haiku