

GET Committee

From: Mark Hyde <markghyde@gmail.com>
Sent: Thursday, January 24, 2019 3:59 PM
To: GET Committee
Subject: Testimony re Director Candidates Wong and McLean
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Please find written testimony relative to your committee's consideration of the suitability of appointment of Pat Wong and Michelle McLean to Corporation Council and Director of Planning positions.

Mark Hyde

To: Governance, Transparency and Ethics Committee
From: Mark Hyde
Date: January 24, 2019
Re: Proposed Director Appointments:
Pat Wong - Corporation Counsel
Michelle McLean - Planning Director

I have concerns about two proposed appointments to county director posts: Pat Wong to Corporation Counsel and Michelle McLean to Director of Planning. My concerns are based on first hand experiences shared below.

Pat Wong - Corporation Counsel

1. Lack of Clarity of Duty and to Whom the Duty is Owed

Article 8, Chapter 1, section 8-2.3, subsection 2 of the County Charter makes it the duty of Corporation Counsel to represent all aspects of County government, including the County Council, yet out of necessity the Council had to gain approval to access legal counsel services from Council Services staff instead due to inadequacy of representation and/or unavailability of unbiased legal advice from Corporation Council.

2. Inability to Uphold County Ethics Rules

Approximately two years ago the Maui News reported that Mayor Arakawa's annual Financial Disclosure Statements failed to reveal the existence of a solar farm lease of a portion of his Kula farm, a lease that also required the lessee to develop an improved access road extending from the adjacent county road to the back of the mayor's property set aside for the solar farm.¹

An ethics complaint seeking to remedy this nondisclosure was filed with the Board of Ethics, bearing in mind that during the existence of the lease the mayor was the County's chief executive officer with broad responsibilities including that for county energy policy and directives.

The complaint came before the Board of Ethics with a representative of Corporation Counsel present. During the proceedings, Corporation Counsel's representative asked where such an interest would be disclosed on the Financial Statement form even though the form unambiguously contains space for such - in two places: at Item 2, captioned "Other Earnings, Income or Other Compensation in Any Form," which is where the value of the roadway improvement should have been displayed, and at Item 6, captioned "Real Property Interests of Any Kind in the State of Hawaii" where

¹ The solar farm was never built but the undisclosed lease presented an obvious conflict in interest as the mayor went about county business, including aggressive pursuit of a clean energy agenda for the county, including solar energy.

the existence of the lease should have been listed. (Emphasis added.) Textbook law: leases are interests in real property. Further, having a lessee construct a roadway improvement from a county road into the interior of a lessor's real property creates value.

Despite the above, the Board of Ethics, with a Corporation Counsel attorney present (actively engaged in the hearing and arguing against disclosure), found no violation or need for the mayor to amend his Financial Disclosure Statements.

This is absurd: County Chief Executive Officer + mayoral interest in and power to affect county energy policy + an undisclosed solar farm lease on the mayor's land + undisclosed improved access road provided by the lessee = baseline violation of the reason we have Financial Disclosure Statements².

3. Mega Mall Mess

Corporation Council failed and refused to uphold state law requiring counties and their officers to enforce Hawaii State Land Use Commission orders, thus forcing citizens to have to file costly (and successful) litigation with the State Land Use Commission which, after a contested case hearing, found that the proposed development of a 500,000 square foot retail shopping center and 250 unit housing development on the 88 acre site did not comply with the LUC's 1995 order requiring development of a 123-lot light industrial park.³

The case wasn't even close: A man/woman on the street could tell you without doubt that a 500,000+ square foot retail shopping center + a 250 unit housing development proposed by the developers (supported by the county) is substantially different from the 123-lot light industrial park - in use and impact on the community approved by the LUC. Yet, throughout the proceedings Corporation Council attorneys stood with the developer, failing in their duty to enforce state law. Was this due to politics or just bad lawyering? In either case, it reflects poorly on Mr. Wong's suitability for additional appointment to the county's chief legal office.

Michelle McLean - Director of Planning

1. Mega Mall Mess

² Based on communication with then chair of the County Council, Mike White, I ascertained that the chair was unaware of the mayor's non-disclosed interest, Mr. White adding that the Council relies on Financial Disclosure Statements to become aware of internal conflicts of interest.

³ The mega retail project also violated the explicit provisions of the Kihei-Makena Community plan which called for light industrial development of the site and only incidental retail use associated with the light industrial park.

I don't know what role the candidate had, if any, in the Mega Mall case and in the Department's failure to enforce the state Land Use Commission's 1995 Order. If she was an advocate for the rogue development, I question her ability to serve the County of Maui in accordance with the rule of law. This merits Council Committee inquiry.

2. Wailea Golf LLC.

Last fall Wailea Golf LLC filed for Planning Commission approval for Planned Development Step 1 status for approximately 37 acres of mostly golf course land south of Kaukahi Street just south of the Wailea Development.

Only after objection to PD1 status was raised by a member of the public did Ms. McLean reveal in open session (not disclosed in the moving papers presented to the Planning Commission and to the public) that the Planning Department had invited the owner, Wailea Golf LLC, to bring such a petition to the Planning Commission in an effort to address an earlier error by the Planning Department, one where it illegally moved a small amount of hotel zoning from a parcel north of Kaukahi Street also owned by Wailea Golf LLC, onto the subject 37 acre parcel. The earlier "swap" was illegal and it remains illegal despite the after-the-fact PD1 ruse.

After Planning Director McLean revealed the basis for the action (attempted cleanup of an earlier Department error) did Wailea Golf LLC's representative reveal to the Planning Commission that the owner had no intent to develop the property. Here's the rub: the county code only authorizes PD1 status when an owner has development intent, which cements that the whole matter before the Planning Commission was a scheme and a ruse by the Department to obfuscate an earlier department gaffe, then engage in a cover-up by means of a false PD1 application in the hope that no one would notice.

It is my considered opinion that the ruse will not work, but that isn't why I am bringing this incident to your attention. Rather, I ask whether what I have described above is the kind of transparency in government sought by this Council Committee as articulated in the Countywide Policy Plan? And is it the kind of behavior you want and expect from the County's chief planning officer?