

## GET Committee

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**From:** Rick Markham <mrkham@aol.com>  
**Sent:** Sunday, May 31, 2020 10:23 PM  
**To:** GET Committee  
**Subject:** GET 11(10) COUNTY OF MAUI V. MARKHAM (Construction Shed Case)  
**Attachments:** COM v. Markham GET 10 Construction Shed.pdf

Dear GET Committee Chair and members:

Thank you for this opportunity. I really am grateful for your time and want to make this right. I am here today to settle!

I am attaching below a brief history of my construction shed. The written evidence show that the permit was obtained, that the department of public works commonly waives the fines, except for the initial fine, once the compliance is reached.

I do feel responsible as ultimately I should have followed up on the people I hired for this job but hoping for a fair settlement to make this right and move forward!

Aloha,  
Rick Markham  
Cell 8082762847



This was a zoning enforcement case for failure to obtain a building permit on a 200 square ft. construction shed that was gifted to me from Maui Baseyard. Before placing it on my property I inquired and was told by the zoning inspector that I could remove it after construction or apply for an after the fact permit if I wanted to keep it because my property allowed for another structure. Through a series of three separate applications, in 2009, 2011, and 2018, it took twelve (12) years for the County to issue an after-the-fact permit (ATF) on April 2, 2019. The plans were drafted by Jim Niess and in 2009, I paid the consultant who worked with Jim Niess to get the after the fact permit for me. In 2011, I received the notice of warning for failure to have a building permit and I followed up with the guy that I hired. He said that the plans would have to be re-stamped by Jim Niess because of some changes in the code. On August 9, 2011, the County issued a Notice of Violations (the "NOV"). The guy that I hired reapplied with a new set of plans re-stamped by Jim Niess. I did not file a formal appeal with the BVA because I was always successful in closing other permits with help of professionals. I was so overwhelmed dealing with the financial crisis that hit the economy that this permit application slipped my attention. Some time went by, and the hired guy disappeared on me. As I later found out (2019) all of the communication for additional submissions was sent to his address in Haiku. On September 15, 2017, the County filed a lawsuit against me to enforce the NOV (At the same time I was served with the lawsuit on my Nalu Kai case). I immediately set up a meeting with the former Mayor Arakawa and met with him and Will Spence, Pat Wong, Brian Bilberry and Keith Reagan. I was assured that we will find a resolution and was asked to work with Randy Piltz and Brian Bilberry which I did. I asked whether I should remove the shed or re-apply for an after the fact permit with no response for months. Mid 2018 I hired Mikal Torgerson to help me finalize the permit. Mikal "met with every County Department that had a hold on the issuance of these permits, in order to ensure they had the information they needed in order to lift their hold. I was told by Russ Higa in the beginning that although the SMA had been submitted in 2011, they hadn't gotten to reviewing it, and that it was "in his to do stack" and he would get to it when he could. Repeated phone calls, emails and office visits established a pattern of Mr. Higa avoiding me, and telling me that he would "get to it when he would get to it". Finally, in March of 2019 we were asked to re-apply which we did and were able to close the permit on April 2, 2019, now in compliance. Mikal said that "In my twenty five years of practicing architecture, this ATF permit ranks among the most time consuming and frustrating projects that I've worked on." On April 3, 2019, I contacted Wayne Kitamura of the Public Works Department outlining compliance and Wayne said that I will have to pay \$500 initial fine and that the daily fines will be substantially reduced. On or about April 16, 2019, I made a deal with Wayne Kitamura for \$3,100 but I was informed that it was rejected by Corporation Counsel. Mayor called on May 1, 2019 and told me to agree to pay 50k to resolve it, which I did. Corporation Counsel rejected 50k and on May 11, 2019 I agreed to resolve my fines for \$75k as proposed by Corp. Counsel. The County Council bumped it to \$350k (some questions were addressed during the executive session, Bilberry later disclosed that the council members were convinced that the shed is used for short term rental-IT IS NOT), then the shed case was consolidated into a global offer with the Nalu Kai Lodge for 500k in September of 2019 (while negotiating the terms of this offer, the Mayor agreed to settle my Nalu Kai case for \$7,500). When we requested the enforcement of the Mayor's settlement of \$7,500 on the Nalu Kai Lodge settlement discussions ceased. From approx. August 9, 2011 the county was "billing" me at \$1k per day for the lack of the building permit. The judgment obtained against me on April 16, 2020 is for almost \$2.6 million. Over the years, I was assured that it was customary to stay the assessment and/or waive the fines upon receiving the permit.

MR. MARKHAM IS IN COMPLIANCE

# BUILDING PERMIT

## DEVELOPMENT SERVICES ADMINISTRATION DEPARTMENT OF PUBLIC WORKS, COUNTY OF MAUI

BUILDING PERMIT NO.: B 2019-0363 DATE ISSUED: APRIL 02, 2019  
OWNER: MARKHAM,RICK LESSEE/TENANT:  
ADDRESS: 343 HANA HIGHWAY TMK: (2) 2-6-008:001  
PAIA, HAWAII 96779  
BUILDER: OWNER BUILDER  
FOR: 3RD DWELLING \*\*AFTER-THE-FACT\*\*  
CONSTRUCTION TYPE: V-B OCCUPANCY GROUP: R-3

This permit shall expire and become null and void if work authorized under this permit is not started within 1 year from date of issuance or if authorized under this permit is suspended or abandoned at any time after work is commenced for a period of 1 year. Revisions/changes to approved drawings will require approval by the building inspector. An additional building permit may be required. Electrical and plumbing permits are issued separately. This permit shall be posted in a conspicuous place on the job site during the progress of work as required by law.

THE STAMPED JOB SITE PLANS SHALL BE AVAILABLE DURING INSPECTIONS.

  
FOR BUILDING OFFICIAL

### INSPECTION CARD: BUILDING OFFICIAL USE ONLY

Certificate of Occupancy or Release Letter required upon completion of construction work authorized by this permit:

Select One:	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	or	<input type="checkbox"/> YES, refer to CO Application #:
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REQUIRED BUILDING INSPECTIONS [Inspection requests: email: <a href="mailto:dsa.building@mauicounty.gov">dsa.building@mauicounty.gov</a> ]		
1.	Foundation/concrete slab or under-floor	Approved by: _____ Date: _____
2.	Framing	Approved by: _____ Date: _____
3.	Lath or gypsum board	Approved by: _____ Date: _____
4.	Final	Approved by: _____ Date: _____

ELECTRICAL PERMIT NO. _____ ELECTRICAL CONTRACTOR: _____		
REQUIRED ELECTRICAL INSPECTIONS [Inspection requests: email: <a href="mailto:dsa.electrical@mauicounty.gov">dsa.electrical@mauicounty.gov</a> ]		
1.	Rough-in Partly/slab or trench	Approved by: _____ Date: _____
2.	Rough-in Partly/ceilings and walls	Approved by: _____ Date: _____
3.	Rough-in Complete/service	Approved by: _____ Date: _____
4.	Final	Approved by: _____ Date: _____

PLUMBING PERMIT NO. _____ PLUMBING CONTRACTOR: _____		
REQUIRED PLUMBING INSPECTIONS [Inspection requests: email: <a href="mailto:dsa.plumbing@mauicounty.gov">dsa.plumbing@mauicounty.gov</a> ]		
1.	Rough-in Partly/waste, drain, piping, stub up	Approved by: _____ Date: _____
2.	Rough-in Complete/vent through roof	Approved by: _____ Date: _____
3.	Final	Approved by: _____ Date: _____

# MIKAL TORGERSON'S WRITTEN TESTIMONY ON HIS PERMITTING EFFORTS



March 15, 2019

To whom it may concern;

I write this letter in an effort to summarize the efforts I've made on behalf of Rick Markham to seek an After the Fact Building Permit (ATF) for a small cottage placed at 343 Hana Highway in Paia, HI. Mr. Markham hired me to assist in the acquisition of the subject ATF in mid-2018. At that time, I was given documentation from the Maui County Building Department (DSA) along with planning documents that showed that the ATF and associated Shoreline Management Area Assessment (SMA) had been applied for in 2011 by architect, James Niess.

In my efforts to get these permits closed, I met with every County Department that had a hold on the issuance of these permits, in order to ensure they had the information they needed in order to lift their hold. I was told by Russ Higa in the beginning that although the SMA had been submitted in 2011, they hadn't gotten to reviewing it, and that it was "in his to do stack" and he would get to it when he could. Repeated phone calls, emails and office visits established a pattern of Mr. Higa avoiding me, and telling me that he would "get to it when he would get to it". During this intervening time, I worked with DSA to get the building permit submitted in 2011 approved. I was asked to submit an entirely new building permit application which I did in late June of 2018. After review of the exact same drawings that were submitted in 2011, an entirely different set of issues were raised by multiple County departments, and I worked with DSA Engineering, the Department of Environmental Management and Maui County Water to resolve these and get each department to lift their hold. From June 2018 until March 2019, I continued to try to get an update on the SMA status, and couldn't get an answer. Finally in early March, I was told by Mr. Higa that the original SMA submitted in 2011 was incomplete, and although it took eight years to be told this, we would now need to submit an entirely new SMA application, which I did within days.

We have had to move the historic sewer clean out to satisfy the Department of Waste Water, that the drive access was suitable to HDOT and most recently were required to prove that the original residential structure built on the property in 1927 was an existing non-conforming structure despite the fact that it was constructed long before the building department, or even the state of Hawaii were in existence. This latest hurdle was proven to the satisfaction of the Maui County Assessor's office along with Wayne Kitamura of the Building Inspections department on Wednesday the 13 of March. The last remaining hold on the subject ATF Building Permit is from Susan Watanabe of DSA Plans Review. Once Mr. Kitamura is able to have a conversation with Ms. Watanabe, she is expected to release her hold on the permit, and it will proceed to final processing (clerical) for the permit card to be issued. Unfortunately Ms. Watanabe is out this week until next Monday; however I fully expect the issued permit card in hand by next week.

It is worth noting that the very same department that is fining Mr. Markham on a daily basis to presumably motivate him to get the proper permits is the same one that has caused the most significant delays in gaining the issuance of the permit. The ZAED division of the Planning Department sat on the SMA application from 2011 until March of 2019 without notifying us that there was a deficiency in the application. In fact, despite my repeated requests for an update, it took me nine months to be told that I should simply submit an entirely new SMA. Once I was told to do so, I submitted a new application to the Current Planning Division, and gained approval within two weeks!

Additionally, had the subject tiny house been left on the trailer that it arrived on, the building department wouldn't even issue a permit for the subject structure, and there likely wouldn't have been an RFS in the first place. While the County certainly has a compelling reason for ensuring that structures built on our island are properly permitted and meet the Code, I can't help but observe that a mountain has been made of this manini house with the fines likely exceeding the property value and Mr. Markham spending more on my fees that it would have cost to build such a tiny house from scratch. In my twenty five years of practicing architecture, this ATF permit ranks among the most time consuming and frustrating projects that I've worked on, however I am pleased to report that we are in fact at the finish line.

I am available by phone, email or in person to answer any further questions that you might have.

Mikal

Sincerely,

A handwritten signature in black ink, appearing to read "Mikal", written over a light blue horizontal line.

Mikal Torgerson  
Architect, MA, LLC



**THE PURPOSE OF THE FINE IS TO GET INTO COMPLIANCE NOT TO PUNISH  
PER MICHELE MCLEAN TESTIMONY**

27

1 (Witness sworn.)

2 MR. REVERE: May I have Exhibit D-83, please.

3 DIRECT EXAMINATION

4 BY MR. REVERE:

5 Q. Good afternoon, Ms. McLean.

6 The fines, as far as fines are concerned for Code

7 violations, the purpose of fines is not to make money for the

8 County, it's to encourage compliance. Correct?

9 A. That's the department's primary interest, yes.

10 Q. And the idea is they might be used to scare people, but

11 they're not intended to be a money maker for the County.

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**ONCE COMPLIANCE IS REACHED THE DAILY FINES ARE WAIVED  
PER STATEMENTS FROM THE DEPARTMENT OF PUBLIC WORKS  
THE EXAMPLES BELOW SHOW THAT THE FINE OF OVER \$1M  
LEAVING ONLY THE \$500.00 INITIAL FINE**

ALAN M. ARAKAWA  
Mayor

DAVID C. GOODE  
Director

ROWENA M. DAGDAG-ANDAYA  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PUBLIC WORKS  
**DEVELOPMENT SERVICES ADMINISTRATION**  
250 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

GLEN A. UENO, P.E., P.L.S.  
Development Services Administration

CARY YAMASHITA, P.E.  
Engineering Division

BRIAN HASHIRO, P.E.  
Highways Division

May 13, 2015

Ono Gelato  
c/o Mr. Wilford Kirton  
115 Hana Highway, Unit D  
Paia, Hawaii 96779

SUBJECT: **NOTICE OF VIOLATION #V2011/0068**  
REQUEST FOR SERVICE # 07-0002883  
FOR OCCUPYING AND DOING BUSINESS WITHOUT A CERTIFICATE  
OF OCCUPANCY  
AT 115 D HANA HIGHWAY, PAIA, MAUI, HAWAII  
TMK (2) 2-6-004:016

Dear Mr. Kirton:

Please be advised that Notice of Violation (NOV) #V2011/0068, was issued on July 8, 2011, for occupying and doing business without a Certificate of Occupancy.

Our records also indicate that the \$500 initial fine must be paid and cannot be administratively waived.

**Your daily fines have accrued to \$1,291,000 since August 9, 2011, and will continue to accrue until you obtain a Certificate of Occupancy or the business operation has ceased. The County of Maui may reduce the amount of daily fines that have accrued, with a settlement amount to be finalized on the day the Certificate of Occupancy is issued or the business operation has ceased.**

To date, no Certificate of Occupancy has been issued, although **Certificate of Occupancy application #COT2011/0216 has been applied for**, nor have we received confirmation that the business operation has ceased.

Please be aware that you have until **June 5, 2015**, to obtain a Certificate of Occupancy or business operation has ceased. **Failure to do so may result in your case being forwarded to the Department of Corporation Counsel for legal action.**

Sincerely,

  
Ernie Takitani  
Supervising Building Inspector



EYT:bjc

S:\DS\Bldg\TMK\26004016\07-0002883\OnoGelato-NorthShoreMauiLLC\_V2011-0068\_CourtesyLtr-PropStmntOffer\_May13-2015.wpd

I assume the \$500 administrative fine must be paid. Unless you tell us otherwise, I will ask Bill to prepare the payment.

Thank you very much Dave and Michele for your time and assistance in this process.

Dean K. Frampton  
Frampton & Ward, LLC  
2035 Main Street, Suite 1  
Wailuku HI 96793  
808.249.2224 o  
808.357.6240 c  
808.249.2333 f  
[dean@fwmaui.com](mailto:dean@fwmaui.com)

**From:** David Goode [<mailto:David.Goode@co.maui.hi.us>]  
**Sent:** Thursday, February 25, 2016 8:53 AM  
**To:** Michele McLean; Dean Frampton  
**Subject:** Fwd: Re: CO fines

Such a deal! DG

>>> Anthony Fukuoka 2/25/2016 8:47 AM >>>

Hi Dave,

The violations go away if the space is vacated. I'll check the violation to see who was addressed (owner or applicant) and get back to you. Thanks, Anthony

>>> Renee Segundo 2/25/2016 8:33 AM >>>

Hi Dave,

I have copied Anthony on the email to reply.

Renee

>>> David Goode 2/24/2016 4:54 PM >>>

Glen, Renee, had a discussion about a business that will be vacating a space that they



**From:** "Wayne Kitamura" <Wayne.Kitamura@co.maui.hi.us>  
**Date:** April 16, 2019 at 2:44:34 PM HST  
**To:** <mrkhm@aol.com>  
**Cc:** "Matthew Driggers" <Matthew.Driggers@co.maui.hi.us>  
**Subject:** Re: Fines

10-0003813  
343 Hana Highway  
TMK (2) 2-6-008:001  
B 2019 0363  
V 2011 0082



Rick,

ps://mail.google.com/mail/u/0?ik=b84a03edb1&view=pt&search=all&permthid=thread-f%3A1651855147460324068%7Cmsg-f%3A1651855147460... 1/2

/2/2019

Revere and Associates Mail - Fwd: Fines - Rick Markham Personal Shed Case - Trial Exhibits

As per our conversation, please schedule inspections for B 2019 0363.

The daily fines will be calculated to April 2, 2019.

The initial fine of \$500.00 must be paid & cannot be reduced.

The daily fines can be reduced, please submit a letter requesting a reduction of the daily fines.

The case can be closed when B 2019 0363 is Done (Final Inspection Passed) and the fines for the Notice of Violation V 2011 0277 have been paid.

Wayne Kitamura  
Building Inspections Supervisor  
(808) 270-7393  
(808) 264-1140

>>> Rick Markham <mrkhm@aol.com> 4/16/2019 2:22 PM >>>  
Aloha Wayne -

I have your email!! Just wanted to say thanks again for your assistance into compliance.

For clarity from here,

- 1) call for all inspections for sign off.
- 2) send a letter to requests fines be removed to you?
- 3) \$500 initial fine will stay in place and then you said roughly a \$3000 fine?

At that point, I should be complete? Who approves fine dismissal and how long does this process take? How do they determine again? Scale?

Appreciate your time and thanks again for all of your help!

Aloha,  
Rick Markham

Sent from my iPhone



# NOTICES WERE NOT MAILED TO MY PAIA ADDRESS

ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



## COUNTY OF MAUI DEPARTMENT OF PLANNING

September 14, 2011

Rick Markham  
P.O. Box 827  
Haiku, Hawaii 96779

Dear Mr. Markham:

**SUBJECT: REQUEST FOR ADDITIONAL DOCUMENTS.**

**Tax Map Key:** (2) 2-6-008:001-0000  
**Project Name:** Cottage (Accessory Dwelling)  
**Project Description:** After-The-Fact (ATF) Accessory Dwelling at  
343 Hana Highway, Paia, Maui, Hawaii  
(SMX 2011/0277 & BT 2011/0803).

We are in receipt of your Special Management Area (SMA) permit application dated June 22, 2011. Please provide us with the following additional After-The-Fact (ATF) filing fee so that we may continue processing the subject application.

The ATF fee is calculated as \$1,000.00 minus the \$110.00 filing fee already paid.

ATF	\$ 1000.00
Fee already paid	<u>\$ 110.00</u>
<b>Total Due</b>	<b>\$ 890.00</b>

*Please pay in cash or check, made payable to: County of Maui, Director of Finance.*

Please remit the above requested fee and with the enclosed Reply Sheet referring to your permit application number. Should you have any questions, you may contact Russell (Russ) T. Higa, Land Use & Building Plans Technician, at (808) 270-6279 or email [russ.higa@co.maui.hi.us](mailto:russ.higa@co.maui.hi.us).

Sincerely,

  
AARON SHINMOTO  
Planning Program Administrator

### Enclosure

xc: Russell (Russ) Higa; Land Use and Building Plans Technician (via email)  
Michael Flemister; Maui Design Services, [mauidesign@earthlink.net](mailto:mauidesign@earthlink.net) (via email)  
SMX 2011/0277 (KIVA related documents)  
BT 2011/0803 (KIVA related documents)  
11/General File

AHS:RTH:ckk  
K:\WP\_DOCS\PLANNING\smx\2011\0277\_RickMarkham\ReqATFfee.wpd

ALAN M. ARAKAWA  
Mayor  
WILLIAM R. SPENCE  
Director  
MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

June 28, 2012

Michael Flemister  
P.O. Box 827  
Haiku, Hawaii 96708

Dear Mr. Flemister:

**SUBJECT: BUILDING PERMIT APPLICATION NO. BT 2011/0803 FOR  
AN AFTER-THE-FACT (ATF) ACCESSORY DWELLING FOR  
RICK MARKHAM AT 343 HANA HIGHWAY, PAIA, MAUI,  
HAWAII; TMK: (2) 2-6-008:001-0000 (SMX2011/0277)**

Due to the inactivity and lack of response to our previous correspondence dated February 9, 2012, we will be forwarding your file to our Corporation Counsel's office for legal action.

If you have any questions regarding this letter, please contact Jay Arakawa, Zoning Inspector, by email at [Jay.Arakawa@co.maui.hi.us](mailto:Jay.Arakawa@co.maui.hi.us) or at 270-7484.

Sincerely, .

A handwritten signature in black ink, appearing to read "Michele McLean".

MICHELE CHOUTEAU McLEAN  
Deputy Planning Director

Enclosure

xc: Jay Arakawa, Supervising Zoning Inspector (via email)  
Corporation Counsel  
Development Services Administration  
BT 2011/0803 (KIVA Related Documents)  
SMX 2011/0277 (KIVA Related Documents)  
12/General File

MCM:AHS:RTH;ckk

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## SETTLEMENT OFFERS

DATE	Defendant's Offers on Shed Case Civil17-1- 0393(2)	Plaintiff's Offers On Shed Case Civil17-1-0393(2)
4/1/19	\$3,100 per Wayne Kitamura	Not approved by Corp. Counsel
4/30/19	\$11,000	rejected by Corp. Counsel
5/1/19	\$50,000	rejected by Corp. Counsel
5/3/19		\$75,000 (accepted by Corp. Counsel on 5/12/19 but rejected by the County Council)
7/5/19		\$350,000 suggested by the County Council but the Corp. Counsel suggested that he will follow up with a global offer on both cases

Multiple global offers were proposed thereafter  
but were rejected by Corp. Counsel