

HEMPEY & MEYERS LLP
Daniel G. Hempey #7535
3175 Elua Street, Suite C
Lihue, HI 96766
Telephone: (808) 632-2444
Facsimile: (808) 632-2332

5TH CIRCUIT COURT
STATE OF HAWAII
FILED

2012 MAR 16 PM 3: 15

DANETTE FUJII
CLERK

Attorneys for DEFENDANT

IN THE CIRCUIT COURT OF THE STATE OF HAWAII

FIFTH JUDICIAL CIRCUIT

STATE OF HAWAII	)	CR. NO. <u>12-1-0131</u>
)	
v.	)	MOTION TO DISMISS BASED UPON
	)	UNCONSTITUTIONALLY VAGUE
TIMOTHY BYNUM,	)	AND OVERBROAD LAW;
	)	MEMORANDUM IN SUPPORT OF
	)	MOTION; DECLARATION OF
Defendant.	)	COUNSEL; AFFIDAVIT OF TIMOTHY
	)	BYNUM; EXHIBITS "A" - "T"; NOTICE
	)	OF HEARING; CERTIFICATE OF
	)	SERVICE
)	
	)	Hearing Date: March 27, 2012
	)	Hearing Time: 9:00 a.m.
	)	Judge: Hon. Kathleen N.A. Watanabe
)	
	)	Trial Date: April 23, 2012
)	


MOTION TO DISMISS BASED UPON
UNCONSTITUTIONALLY VAGUE AND OVERBROAD LAW

Comes now Defendant, TIMOTHY BYNUM, by and through counsel, and hereby moves this Court for an Order dismissing the charges against him in the above-entitled action.

This Motion is made pursuant to Rule 12 of the Hawai'i Rules of Penal Procedure, the due process clauses of the federal and state Constitutions, the Memorandum in Support,

Declaration of Counsel, Affidavit of Timothy Bynum, and the Exhibits attached hereto, and such further evidence that may be presented during hearing of said Motion.

DATED: Lihue, Hawaii, March 16, 2012.



DANIEL HEMPEY
Attorney for Defendant

IN THE CIRCUIT COURT OF THE STATE OF HAWAII

FIFTH JUDICIAL CIRCUIT

STATE OF HAWAII)
) CR. NO. 12-1-0131
)
v.)
) MEMORANDUM IN SUPPORT OF
) MOTION
TIMOTHY BYNUM,)
)
Defendant.)
)
)
)
)
)
)
)
)
)

MEMORANDUM IN SUPPORT OF MOTION

FACTUAL SUMMARY

Defendant TIMOTHY BYNUM is charged, by way of Complaint filed herein November 9, 2011, with two counts of “AGRICULTURAL DISTRICTS GENERAL PERMITTED USES AND STRUCTURES (8-7.2)” (Counts 1 and 3), and two counts of “ZONING PERMITS WHEN REQUIRED” (8-19.1) (Counts 2 and 4).

The criminal Complaint arises out of events related to a complaint made to the Planning Department by an un-named person on or about March 26, 2010. The basis for the complaint is noted as, "illegal dwelling/multi-family." See Exhibit "A" (Planning Department Complaint/Inspection Request Form Log # 2010-083, dated 3/26/10 / 4/14/10). In "Complainer/Requester" section, the form notes that the complainer wants to remain anonymous.

Ibid.

On or about April 7, 2010, before the Planning Department had instigated any investigation of the anonymous complaint, the Prosecuting Attorney emailed then-Director Ian Costa of the Planning Department, stating:

Aloha Ian,
We received information to corroborate an anonymous complaint dated March 26, 2010 that was sent to the Planning Department and our office, that Councilmember Tim Bynum was renting out his house, or a portion thereof. Can you let me know if renting out a portion of his residence is illegal given his land status, and what ordinance/statute would he be violating by doing so? Please advise.
Much Mahalo,
Shay

See Exhibit "B" (Email exchange between Shaylene Carvalho and Ian Costa, cc'ing Sheilah Miyake, dated 4/7/10 and 4/8/11) (emphasis added).

In response to Defendant's First Written Request for Discovery, the Prosecutor provided approximately 120 pages of documents, none of which contained the alleged "information to corroborate" the March 26 "anonymous" complaint.

Mr. Costa responded to Ms. Iseri-Carvalho's email, stating in relevant part:

The CZO really doesn't prohibit renting portions of structures. Even the issue of "lock-outs" is not addressed. The CZO does not dictate where locks are permitted and not permitted (thank goodness!). The issue would be whether the area, in question creates a "multi-family" dwelling. What was permitted is a "single-family" dwelling based on "one kitchen". If a second kitchen (area used for the preparation of food) is present, then a violation would exist for an illegal "multi-family" dwelling unit.

I understand Sheila has been assisting and monitoringlet me know if we can be of further assistance.

Ibid.

On or about April 14, 2010, Inspector Patrick Henriques went to Mr. Bynum's house, looked in the windows, and saw a refrigerator and a rice cooker on a countertop. See Affidavit of Timothy Bynum; Exhibit "C" (Field Investigative Report dated 4/14/2010).

On or about April 15, 2010, Sheilah Miyake from the Planning Department sent Peter Nakamura, then the Clerk for the County Council, an email with the subject line that read “4 your eyes only” and had as an attachment a document entitled “4-4-011-036 0001 bynum.doc (44 KB)”. See Exhibit “D” (email from Sheilah Miyake to Peter Nakamura dated 4/15/10). Upon information and belief, this document was the Zoning Compliance Notification (“ZCN”) dated April 15, 2010. The ZCN is attached as Exhibit “E”. This email was sent to the County Clerk before even Mr. Bynum had notice of the ZCN or would have had a chance to receive the ZCN by mail.

On or about November 10, 2010, then Planning Director Ian Costa sent Mr. Bynum a letter stating, “This notice shall supersede our letter dated April 15, 2010,” and that “we believe the following violations of Chapter 8, Kauai County Code may exist.” See Exhibit “F” (Letter from Ian Costa to Mr. Bynum dated November 10, 2010).

Mr. Bynum repeatedly told Mr. Henriques, his superiors and the County Attorney that if the County sent Mr. Bynum a letter stating that a complaint was received and asking to do an inspection to determine if a violation had occurred, he would be happy to arrange an inspection right away. Affidavit of Timothy Bynum.

In response to Mr. Henriques’ representations, Mr. Bynum contacted the Planning Department and arranged for an inspection of his home, which occurred on April 13, 2011.

Inspection notes by Mr. Henriques from the April 13, 2011 inspection state “the placement of the door and it’s [sic] area it was placed, creates a seperate [sic] unit within the SFR.” See Exhibit “G” (Field Investigative Report dated 4/13/2011).

This is contradictory to the interpretation of former Planning Director Ian Costa’s assessment that

The CZO really doesn't prohibit renting portions of structures. Even the issue of "lock-outs" is not addressed. The CZO does not dictate where locks are permitted and not permitted (thank goodness!). See Exhibit "B" (Email exchange between Shaylene Carvalho and Ian Costa, cc'ing Sheilah Miyake, dated 4/7/10 and 4/8/11) (emphasis added)

In 2005, Mr. Bynum and his family decided build an addition onto his home to accommodate the four (4) generations of family members living there at the time. Affidavit of Timothy Bynum. The drawings for the addition went through informal and formal review by the Planning Department. Mr. Bynum was told that the addition as designed was legal as long as no stove was installed. Id. The plans were approved after being circulated to and approved by various departments including the Planning Department, and a building permit was issued.

The County sent inspectors during construction, including a final inspection after which the Bynums were issued a certificate of occupancy. Id.

The addition to Mr. Bynum's property is exactly as it was when "final inspection" occurred; nothing structural has been added or deleted. Id. No installed cooking facilities or fixtures have ever existed in the addition. Id.

Mr. Bynum's home has one kitchen and one laundry room. Id.

Mr. Bynum is being criminally prosecuted for using his own home that remains in the same state that was approved and inspected by the County.

Despite having already received approval in 2005 and passing final inspection, Mr. Bynum sought to get further clarity and to again ensure his compliance after he received the ZCNs. On or about July 15, 2011, Mr. Bynum met with Planning Department staff who reviewed the "as-built" architectural plans of his home, and approved them. See Exhibit "H" (Plans stamped Approved by the Planning Department dated 7/15/11).

On or about January 9, 2012, Mr. Bynum received written confirmation from the planning department that “the Class I approval of your as-built plans was sufficient to rectify the previous violation notice on the property. At this time, there are no zoning encumbrances on the above referenced property.” See Exhibit “I” (email from Michael Dahilig to Tim Bynum dated 1/9/12).

On December 23, 2011, Mr. Bynum filed a Motion for Bill of Particulars in the District Court arguing that the Complaint lacked sufficiency as it fails to particularize the acts charged against Mr. Bynum. In particular, the defense argued

In this case, the Complaint does not provide Mr. Bynum with substantial details for him to understand “exactly what he has to meet.” Indeed, for Counts 1 and 3, the Complaint does not identify on what basis the State is alleging that Mr. Bynum’s home was a Multiple Family Dwelling. Similarly, for Count 2, the Complaint does not give Mr. Bynum any information regarding on what basis the State is alleging his Family Room had been converted into a Dwelling Unit. Finally, for Count 4, the Complaint fails to identify which regulations require a permit to install a door or a sink. Each of these charges merely tracks the County Codes cited, but fails to allege with the requisite particularity the specific offense that has violated the Code.

See Motion for Bill of Particulars, p. 5.

The Motion was granted on January 4, 2012 after a hearing. At the hearing, the Prosecution stated on the record that all definitions being relied on for the Complaint are those contained in Section 8-1.5 of the Kauai County Code, including the definition of “kitchen.”

Section 8-1.5 of the Kauai County Code defines Multiple Family Dwelling as

a building or portion thereof consisting of two (2) or more dwelling units and designed for occupancy by two (2) or more families living independently of each other, where any one (1) of the constructed units is structurally dependent on any other unit.

Furthermore, Section 8-1.5 of the Kauai County Code provides

“‘Dwelling Unit’ means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities, within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.”

Any building or portion thereof that contains more than one (1) kitchen shall constitute as many dwelling units as there are kitchens.” (emphasis added).

Section 8-1.5 of the Kauai County Code defines a kitchen as “any room used or intended or designed to be used for cooking and preparing food.”

It appears, given the representations made during the hearing on the Bill of Particulars, that each and every charge against the Defendant turns on whether or not he is found, beyond a reasonable doubt, to have had a separate, second kitchen in his family home at the time of the alleged offenses.

ARGUMENT

The charges against Defendant should be dismissed because the relevant Kauai County Code: (1) is unconstitutionally vague, failing to give citizens proper notice (of what is a kitchen - and therefore a second residence), and allowing for arbitrary and discriminatory enforcement; and (2) is overbroad, prohibiting constitutionally protected conduct or rights.

I. Any Charges Criminalizing Zoning Violations Based on Definition of “Kitchen” in Section 8-1.5 of the Kauai County Code are Void Because The Statutory Language is Unconstitutionally Vague, Failing to Give Citizens Proper Notice, and Allowing For Arbitrary and Discriminatory Enforcement.

For all four Counts in the Complaint, the crux of the State’s case will require proof that Mr. Bynum’s residence contained more than one kitchen, because under the Kaua’i County Code, a Multiple Family Dwelling Unit requires multiple “kitchens.”

At the January 4, 2012 hearing on the Motion for a Bill of Particulars, the Prosecution stated on the record that all definitions being relied on for the Complaint are those contained in Section 8-1.5 of the Kauai County Code, including the definition of “kitchen.” Moreover, 8-1.5 of the Kauai County Code provides that installed equipment is necessary for the creation of a “kitchen”.

Yet section 8-1.5 of the Kauai County Code defines a kitchen as “any room used or intended or designed to be used for cooking and preparing food.”

“A statute is void for vagueness if it fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes, or if it invites arbitrary and discriminatory enforcement.” Schwartzmiller v. Gardner, 752 F.2d 1341, 1345 (9th Cir. 1984) (internal citations omitted).

A law is void for vagueness if persons “of common intelligence must necessarily guess at its meaning and differ as to its application.” Smith v. Goguen, 415 U.S. 566, 572 n.8 (1974) quoting Connally v. General Constr. Co., 269 U.S. 385, 391 (1926). Vague laws violate due process because individuals do not receive fair notice of the conduct proscribed by a statute, Papachristou v. Jacksonville, 405 U.S. 156, 162 (1972), and because vague laws that do not limit the exercise of discretion by officials engender the possibility of arbitrary and discriminatory enforcement, Grayned v. Rockford, 408 U.S. 104, 108-109 & n.4 (1972).

The void-for-vagueness doctrine is rooted in the basic guarantees of due process. Grayned, 408 U.S. at 108, 92 S.Ct. 2294. The doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.... Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement, [the

Supreme Court has] recognized ... that the more important aspect of vagueness doctrine is not actual notice, but the other principal element of the doctrine – the requirement that a legislature establish minimal guidelines to govern law enforcement. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982). See Kolender v. Lawson, 461 U.S. 352, 357-58, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983).

In Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982), the United States Supreme Court articulated the concerns underlying the void for vagueness doctrine:

The void-for-vagueness doctrine is premised on the notion that

[v]ague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498-499 (1982), quoting Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972).

The vagueness doctrine applies to zoning regulations as well as criminal prohibitions.

“[W]hen a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest.” Schad v. Borough of Mount Ephraim, 452 U.S. 61, 68 (1981). (emphasis added). Here, the County definition of kitchen in the Kauai County Code is certainly not “narrowly drawn”. For that reason alone, this prosecution must be dismissed.

In conjunction with County Code Section 8-44.1¹, which criminalizes any violation of Chapter 8, the Kauai zoning laws clearly “infringes upon a protected liberty”, see Schad, 452 U.S. at 68. The right to live in and enjoy one’s private home is certainly such a protected liberty.

Under the relevant standards cited above, the definition of “kitchen” in Section 8-1.5 of the Kauai County Code is unconstitutionally vague because it both (1) “fails to give adequate notice to people of ordinary intelligence concerning the conduct it proscribes”; and (2) “it invites arbitrary and discriminatory enforcement.” Schwartzmiller, *supra* 752 F.2d at 1345.

Section 8-1.5 defines a kitchen as “any room used or intended or designed to be used for cooking and preparing food.”

As to the “notice” test, the term “preparing” food is unconstitutionally vague. Does this include boiling water? Spreading peanut butter on bread? Microwaving pre-prepared food? Reheating food that has already been prepared and “Cooked” at a restaurant? Pouring rice from a bag and covering it in water? At what point can we say that food was fully “prepared” outside of the subject room - such that it can be lawfully “cooked” inside of the subject room?

Furthermore, does this definition mean that a citizen is violating the Zoning Ordinance because he or she created a second “kitchen” at Thanksgiving dinner by “using” a room off of the kitchen area to heat up dishes or keep food heated for the holiday meal? Or put a microwave in an elderly parent’s bedroom, so that they can heat up soup or add hot water to tea or noodles without walking far? Or because children used a microwave in the living room to make popcorn for movie night? Or grilled out on the enclosed lanai or in the carport? Defendant asserts that an average citizen could not know which of the above examples are legal or illegal - given the vagaries in the county definition of kitchen. Moreover, it appears that neither the planning

¹ Section 8-44.1 reads “Any person convicted of causing or permitting the violation of any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00)”.

² A law may be challenged for vagueness either facially or as-applied. See U.S. v. Doremus, 888 F.2d 630, 634 (9th

department nor the prosecuting attorney are guided by any sort of administrative regulations or other documents (that are available to the public) for guidance as to what it means to “prepare” food.

And as for the second prong of the vagueness test, the facts of this case exemplify how the statute “invites arbitrary and discriminatory enforcement”: during both the informal and formal review by the Planning Department of his plans for the addition, Mr. Bynum was told that the addition as designed was “legal” as long as no stove was installed. See Exhibit “B” (Affidavit of Timothy Bynum). This advice is consistent with Section 8-1.5 of the Kauai County Code which defines a “‘Dwelling Unit’ as being designed or intended for occupancy ... and providing complete living facilities, within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.” This begs the question in this case, “Is plugging a small portable rice cooker into a wall plug equivalent to “installing” kitchen equipment. Again, an ordinary citizen would not consider such an act to be illegal.

However, contrary to the advice that Planning previously gave to Mr. Bynum, a county official within the same department (Mr. Henriques) later interpreted that Mr. Bynum was in violation of the zoning code despite there being no stove or other installed cooking facilities. Id. The addition to Mr. Bynum’s property is exactly as it was when “final inspection” occurred and the County granted final permits; nothing structural has been added or deleted. Id. No installed cooking facilities or fixtures have ever existed in the addition. Id.

When, as here, two officials within the same department interpret a statute in contradictory ways, it leads to some citizens being prosecuted for creating an unauthorized “kitchen” only when they have gone to the extent of installing a stove -- and others for having a

rice cooker on the counter. This surely falls within the U.S. Supreme Court's concerns that "[v]ague laws offend several important values."²

First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

Flipside, supra, 455 U.S. at 498-499, quoting Grayned, 408 U.S. at 108.

Because of these fatal flaws in the Kauai Zoning Code, the charges against Mr. Bynum should be dismissed.

II. Any Charges Criminalizing Zoning Violations Based on Definition of "Kitchen" in Section 8-1.5 of the Kauai County Code are Void Because The Statutory Language is Unconstitutionally Overbroad, Prohibiting Constitutionally Protected Conduct.

Kauai's Zoning Code also violates the doctrine of overbreadth, laid out in Schwartzmiller v. Gardner, 752 F.2d 1341, 1346 (9th Cir. 1984):

Related to, but distinct from, the vagueness doctrine is the doctrine of overbreadth. See Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855, 1859 n. 8[,] (1983) (Kolender); Zwickler v. Koota, 389 U.S. 241, 249-50[,] (1967); G. Gunther, *Constitutional Law* 1188 n. 9 (10th ed. 1980). A law is overbroad if it prohibits not only acts the legislature may forbid, but also constitutionally protected conduct.

Here, the definition of kitchen under Section 8-1.5 of the Kauai County Code is unconstitutionally overbroad and unworkable. Section 8-1.5 defines a kitchen as "any room used

² A law may be challenged for vagueness either facially or as-applied. See U.S. v. Doremus, 888 F.2d 630, 634 (9th Cir. 1989) quoting Schwartzmiller v. Gardner, 752 F.2d 1341, 1346 (9th Cir.1984). Here, the defense asserts that the definition of kitchen in Section 8-1.5 is unconstitutional both on its face and as-applied.

or intended or designed to be used for cooking and preparing food.” (emphasis added). Upon information and belief, the County has interpreted this statute -- and informed the citizenry accordingly -- to mean, in practice, a room with an installed cooking fixture (i.e., a stove). In fact, this is exactly how the County advised Mr. Bynum. Affidavit of Timothy Bynum.

However, a plain reading of the statute would lead to criminalizing conduct that the County did not intend to criminalize as demonstrated above.

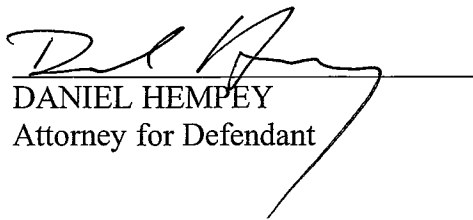
Defendant intends to call witnesses to testify at the hearing to illustrate the vagueness and overbreadth, and the lack of guidelines for consistent enforcement - related to the County’s current definitions of “multiple family dwelling”, “kitchen”, “preparation of food”, and “installed appliances”.

When the facts of this prosecution are applied to the U.S. Supreme Court’s mandate that “[W]hen a zoning law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest”, due process requires that this prosecution must be stopped.

CONCLUSION

For all the reasons stated above, the ordinances under which Mr. Bynum is being prosecuted are unconstitutionally vague and overbroad, and the charges against him should be dismissed.

DATED: Lihue, Hawaii, March 16, 2012.


DANIEL HEMPEY
Attorney for Defendant

IN THE CIRCUIT COURT OF THE STATE OF HAWAII
FIFTH JUDICIAL CIRCUIT

STATE OF HAWAII	)	CR. NO. <u>12-1-0131</u>
)	
v.	)	DECLARATION OF COUNSEL
)	
TIMOTHY BYNUM,)	
)	
)	
Defendant.)	
)	
)	
)	
)	
)	
)	

DECLARATION OF COUNSEL

I, declarant DANIEL G. HEMPEY, counsel for TIMOTHY BYNUM, hereby
declare:

1. I am a citizen of the United States. I represent the defendant in the above-captioned case.
2. This motion is not brought for the purpose of delay of any other improper purpose.
3. Exhibit "A" attached hereto is a true and correct copy of the Planning Department Complaint/Inspection Request Form Log # 2010-083, dated 3/26/10 / 4/14/10 and provided to me in discovery.
4. Exhibit "B" attached hereto is a true and correct copy of the Email exchange between Shaylene Carvalho and Ian Costa, cc'ing Sheilah Miyake, dated 4/7/10 and

4/8/10 and provided to me in response to a Subpoena Duces Tecum issued to the Director of the Planning Department/County I.T. Director.

5. Exhibit "C" attached hereto is a true and correct copy of the Field Investigative Report dated 4/14/2010 provided to me in discovery.

6. Exhibit "D" attached hereto is a true and correct copy of the email from Sheilah Miyake to Peter Nakamura dated 4/15/10 provided to me in response to a Subpoena Duces Tecum issued to Brandon Raines, IT Department.

7. Exhibit "E" attached hereto is a true and correct copy of the Zoning Compliance Notification dated April 15, 2010, from Mr. Henriques to Mr. Bynum.

8. Exhibit "F" attached hereto is a true and correct copy of the Letter from Ian Costa to Mr. Bynum dated November 10, 2010.


9. Exhibit "G" attached hereto is a true and correct copy of Field Investigative Report dated 4/13/2011 provided to me in discovery.

10. Exhibit "H" attached hereto is a true and correct copy of Plans stamped Approved by the Planning Department dated 7/15/11 (shrunk to fit one page) provided to me in discovery.

11. Exhibit "I" attached hereto is a true and correct copy email from Michael Dahilig to Tim Bynum dated 1/9/12 provided to me by the Defendant.

FURTHER DECLARANT SAYETH NAUGHT.

DATED: Lihue, Kauai, Hawaii, March 16, 2012.


DANIEL HEMPEY
Attorney for Defendant

IN THE CIRCUIT COURT OF THE STATE OF HAWAI'I

FIFTH JUDICIAL CIRCUIT

STATE OF HAWAII,	)	CR. NO. 12-1-0131
)	
v.	)	AFFIDAVIT OF TIMOTHY BYNUM
)	
)	
TIMOTHY BYNUM,)	
)	
Defendant.)	
)	
)	
)	

AFFIDAVIT OF TIMOTHY BYNUM

STATE OF HAWAI'I)
	) SS.
COUNTY OF KAUAI)

TIMOTHY BYNUM, being first duly sworn on oath, declares:

1. In 2005, at times there were 4 generations of my family living in my home (my father, myself and my wife, my son, my daughter, our grandson and his mother). We decided to do an addition to our home. We wanted to create a living space that was integrated. We designed two bedrooms, a bathroom and family room. The addition also included a ramp because my elderly father was increasingly having difficulty negotiating the steps to the front door much less the stairs to the second story where the existing bedrooms were located.
2. When the drawings were done I took them to the County Planning department and the Building division for informal review. I was told everything was fine as long as no stove was installed.
3. Subsequently we submitted the plans to the County for formal review and approval. The plans were approved after being circulated to and approved by various departments including the Planning department.

4. We hired a contractor and built according to the plans. The County sent inspectors during construction including a final inspection after which we were issued a certificate of occupancy.
5. The addition remains as it was when "final inspection" occurred; nothing has been added or deleted. I have since been informed that one of the reasons I was charged was due to an internal door within my house that had a lock on the door. This is the same door lock that was installed by the contractor who did the remodel. No installed cooking facilities have ever existed in the addition.
6. Our home has one kitchen and one laundry room.
7. On May 12, 2010 while in a Council meeting staff informed me that there was someone "from the County" who wanted to speak to me. I left the meeting and a gentleman who said he was Patrick from Planning handed me a certified letter. The letter is attached to the Motion to Suppress as Exhibit "G".
8. The letter was three pages and said that Planning had inspected my home and alleged zoning violations including creating an illegal multi family unit.
9. I was surprised and told Patrick "We never put a stove in there." Patrick responded that he went to my house, looked in the windows, and saw a rice cooker on the counter. I am informed and believe that this took place on April 14, 2010.
10. One of my duties as a council member is to approve requests for a "right of entry" when any County entity want permission to enter private property. Yet in this instance I am informed that County "inspectors" have looked into the windows of my family home without any permission or even an attempt of notice.
11. Prior to the April 14, 2010 trespass "inspections" of my house, I was not contacted by anyone from the Planning Department to give me notice of an inspection or request permission to enter on to my property.
12. In order to access any window that could see into the family room a person would have to enter a gate into a fenced back yard, go up a ramp past bedroom windows to the back of the house, and across a lanai. When I shared this with my wife she was quite upset stating "what if I would have been home alone when this voyeur was peeping in our windows?" My whole family felt quite violated by this intrusion, particularly my wife and teenage daughter.
13. I later learned that this "inspection" occurred on April 14, 2010, a Wednesday, when one working for the County could know I would not be at home because I was in a Council meeting.

14. In subsequent conversations with Patrick he asked for an internal inspection stating, "Just hide the rice cooker while were there and we can clear this thing up." I told him that that was not acceptable for several reasons including that I did not believe a violation ever existed and what he was asking was to go on record that I had violated the law and needed to "correct" something.
15. At some time prior to October 15, 2010 I had a conversation with County managing Director, Gary Heu. Among other things, we discussed my situation regarding alleged zoning violations. I had previously shown him a letter that I received from Patrick Henriques at the Planning Department, accusing me of the alleged zoning violation. In this meeting Mr. Heu said, "You know where this came from don't you. Its Shaylene". He went on to say, "There was some kind of a domestic at your home, yeah?. There was a police report. A window got broken. Well that's where she got it."
16. In a subsequent meeting with Ian Costa on October 15, 2010 I told Mr. Costa that I had heard that the "Wants to remain anonymous" complainant may have been Prosecuting Attorney, Shaylene Iseri-Carvalho. Director Costa laughed out loud and as said, among other things, "Yes we can't believe it. I've never seen anything like it." He stated that a complaint from the prosecutor had never happened before.
17. Additionally at the October 15, 2010 meeting, Mr. Costa also notified me that in his interpretation of the CZO, a refrigerator, a sink, a door etc. did not constitute a "kitchen" because to be a "kitchen" the room needed to be used for cooking and that evidence of cooking would require *installed* cooking facilities or fixtures.
18. On approximately, November 5, 2010, I read a local internet blog, which discussed the alleged zoning violations. The blogger had apparently suggested that the prosecuting attorney had been involved in investigating me. The blog allows for people to post comments, and one comment was posted, purporting to be from the prosecuting attorney. It read "Mr. Parx, Your statements are completely erroneous. I was never involved in the investigation of Tim Bynum's violations. The entire investigation was conducted by the Planning Department."
19. On January 19, 2012, the prosecuting attorney sent an email to councilman Jay Furfaro, asking that I be recused from taking part in the oversight of the Office of the Prosecuting Attorney. In that email, the Prosecuting Attorney again disclaimed any involvement in the "investigation" of my alleged zoning violations. She wrote, among other things, "Bynum's paranoid belief that the actions taken by our office were calculated personal attacks against him is without any merit and is completely baseless. ...The case initiated against Councilmember Bynum was investigated by the Planning Department and referred to our office for criminal prosecution."
20. However, my attorney has obtained what appears to be an email exchange dated April 7, 2010, between former Planning Director Costa and the prosecuting attorney, in which it

appears that the prosecutor was involved in the investigation since its inception. The email exchange reads: "Aloha Ian, We received information to corroborate an anonymous complaint dated March 26, 2010 that was sent to the Planning Department and our office, that Councilmember Tim Bynum was renting out his house, or a portion thereof. Can you let me know if renting out a portion of his residence is illegal given his land status, and what ordinance/statute would he be violating by doing so? Please advise."

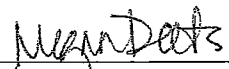
21. Director Costa, replied: "The CZO really doesn't prohibit renting portions of structures. Even the issue of "lock-outs" is not addressed. The CZO does not dictate where locks are permitted and not permitted (thank goodness!). The issue would be whether the area, in question creates a "multi-family" dwelling. What was permitted is a "single-family" dwelling based on "one kitchen". If a second kitchen (area used for the preparation of food) is present, then a violation would exist for an illegal "multi-family" dwelling unit..."
22. To this date, I have still not been informed of what alleged information to "corroborate" the "anonymous" complaint the prosecuting attorney was referring to in her email to Director Costa. I have not been provided with the source of the this alleged corroboration. I have not been told what the alleged corroboration was. And I am unaware of any witness to the alleged corroboration, other than the prosecuting attorney herself - as evidence by her email to Director Costa.
23. After I learned, fairly recently, that a planning inspector had entered my property without permission and peered into my windows, after the planning department had received the email from the prosecuting attorney stating that she had "corroboration" of the allegedly anonymous complaint - it appeared to me that individuals may have trespassed onto my property on two separate occasions - the first which was the "corroboration" that the prosecutor allegedly found, and the second was the peering into my windows without warrant or permission by a planning inspector. I am unaware of whether or to what extent the prosecuting attorney may have been involved in instigating either trespass onto my property. However, I have filed a police report asking that any unlawful trespass be prosecuted.
24. It appears from the "wants to remain anonymous" complaint form, that the Planning Department/Prosecutor commenced their "investigation" into my property on (or prior to) April 7, 2010 - the same day that the prosecutor sent the above email to the Planning Director. On this date, the investigation of my property was assigned by Sheila Miyake to Patrick Henriques - who was apparently peering onto the windows of our private family home just a week later. Thus it appears that the the Prosecuting Attorney actively investigated me, prior to the matter even being assigned to an investigator at the Planning Department.

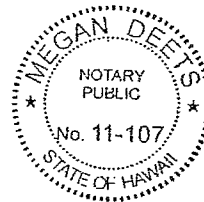
25. Upon information and belief, there are no guidelines in the County's Comprehensive Zoning Ordinance, nor in any administrative regulations, that would identify any room in which a refrigerator and a portable rice-cooker are plugged in as being a "kitchen" within the meaning of the CZO. Similarly, as former Director Costa opined in this email, there are no regulations or laws that prevent the installation of a locking door within a private home.
26. Exhibit "J" to the Motion to Suppress is a copy of an as built floor plan for my home that has been approved by the building/planning department.
27. Exhibit "J" to the Motion to Suppress is a true and correct copy of the email received by me from Michael Dahilig dated January 19, 2012.

Further Affiant sayeth naught.

3/13/12 
TIMOTHY BYNUM

Subscribed and sworn before me
this 13th day of March, 2012.


Notary Public, State of Hawai'i
Print Name: Megan Deets
My commission expires: 4/10/2015



() COMPLAINT		() INSPECTION REQUEST	
DATE: 3.26.10	TIME:	RECVD BY:	TYPE
TMK: 4.4.011:036 0001	LAND AREA: 3.21 ac	LAND USE:	
DIST: Kawaihau	LOC: Wailua Homeokale		
ZONING: Ag	OWNER: Timothy Bynum		
SLUC-DIST:	LESSEE:		
LOG # 2010-083	SITE ADDR: 5935 Kolo'lia Place		
COMPLAINER/REQUESTOR		COMPLAINEE/OWNER:	
* wants to remain anon!		NAME: Timothy Bynum CPR!	
		ADDR: 5935 Kolo'lia Place	
		Kapaa, 96746	
		PHONE:	
NATURE OF COMPLAINT/REQUEST:			
illegal dwelling / multi-family			
(lot 9. Sleeping giant acres)			
INSPECTOR: P.H.	DATE ASSGN: 4.7.10	ASSGND BY: [Signature]	

FIELD INVESTIGATIVE REPORT

INITIATED BY:		DRIVE BY	
CITIZEN COMPLAINT		UNRELATED INSP.	
ROUTINE ENFORCEMENT		REFERRAL FR. OTHER DEPT.	
DATE: 4/14/2010	ARRIVE: 10:25 am DEPART: 10:35 am	CONTACT:	
DESCRIPTION OF INVESTIGATION: observed an full size ice box, and a rice cooker on the counter top.			

EXHIBIT

A

Sheilah Miyake

From: Ian Costa
Sent: Thursday, April 08, 2010 10:21 AM
To: Shaylene Carvalho
Cc: Sheilah Miyake
Subject: RE: COMPLAINT RECEIVED 3/26/10 RE: TIM BYNUM

Sorry for delay Shaylene!.....

The CZO really doesn't prohibit renting portions of structures. Even the issue of "lock-outs" is not addressed. The CZO does not dictate where locks are permitted and not permitted (thank goodness!). The issue would be whether the area in question creates a "multi-family" dwelling. What was permitted is a "single-family" dwelling based on "one kitchen". If a second kitchen (area used for the preparation of food) is present, then a violation would exist for an illegal "multi-family" dwelling unit.

I understand Sheilah has been assisting and monitoring.....let me know if we can be of further assistance.

-----Original Message-----

From: Shaylene Carvalho
Sent: Wednesday, April 07, 2010 7:54 PM
To: Ian Costa
Subject: COMPLAINT RECEIVED 3/26/10 RE: TIM BYNUM

Aloha Ian,

We received information to corroborate an anonymous complaint dated March 26, 2010 that was sent to the Planning Department and our office, that Councilmember Tim Bynum was renting out his house, or a portion thereof. Can you let me know if renting out a portion of his residence is illegal given his land status, and what ordinance/statute would he be violating by doing so? Please advise.

Much Mahalo,
 Shay

EXHIBIT

B

4/8/2010

000000

() COMPLAINT		() INSPECTION REQUEST	
DATE: 3.26.10	TIME:	RECVD BY:	TYPE
TMK: 4.4.011:036 0001	LAND AREA: 3.21 ac	LAND USE:	
DIST: Kawaihau	LOC: Wailua Homeokas		
ZONING: Ag	OWNER: Timothy Bynum		
SLUC DIST:	LESSEE:		
LOG # 2010-083	SITE ADDR: 5935 Kolo'lia Place		
COMPLAINER/REQUESTOR		COMPLAINEE/OWNER:	
* wants to remain anon!		NAME: Timothy Bynum CPR	
		ADDR: 5935 Kolo'lia Place	
		Kapaa, 96746	
		PHONE:	
NATURE OF COMPLAINT/REQUEST:			
illegal dwelling / multi-family			
(lot 9. sleeping giant acres)			
INSPECTOR: P.H.	DATE ASSGN: 4.7.10	ASSGND BY: [Signature]	

FIELD INVESTIGATIVE REPORT

INITIATED BY:		DRIVE BY	
CITIZEN COMPLAINT		UNRELATED INSP.	
ROUTINE ENFORCEMENT		REFERRAL FR. OTHER DEPT.	
DATE:	ARRIVE: 10:25 am	CONTACT:	
4/14/2010	DEPART: 10:35 am		
DESCRIPTION OF INVESTIGATION: observed an full size ice box, and a rice cooker on the counter top.			

EXHIBIT

C

4 your eyes only

Page 1 of 1

4 your eyes only

Sheilah Miyake

Sent: Thursday, April 15, 2010 12:05 PM

To: Peter Nakamura

Attachments: 4-4-011-036 0001 bynum.doc (44 KB)

EXHIBIT

D

BERNARD P. CARVALHO, JR.
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUAI
PLANNING DEPARTMENT**

4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326

TEL (808) 241-4050 FAX (808) 241-6699

ZONING COMPLIANCE NOTICE

CERTIFIED MAIL

April 15, 2010

LOT 9 SLEEPING GIANT ACRES

Timothy Bynum Unit 1

Virginia Bynum

5935 Kolo'lia Place

Kapaa, Kauai Hawaii 96746

Peter Welch Unit 2

5923 C Kolo'lia Place

Kapaa, Kauai Hawaii 96746

Maria Fabro Unit 3

Priscilla Fabro

Post Office Box 2182

Lihue, Kauai Hawaii 96766

**SUBJECT: Change in USE (Single Family Residence) into a Multi-Family Residence &
Illegal Conversion of the Family Room into a Dwelling Unit on CPR Unit 1:
TMK: (4) 4-4-011: 036 0001 5935 Kolo'lia Place
Wailua Homesteads, Kauai, Hawaii**

The Planning Department conducted a site inspection on the subject property on April 14, 2010 and found the following violations of the zoning code :

AN EQUAL OPPORTUNITY EMPLOYER

EXHIBIT

E

Timothy Bynum Unit 1
Zoning Compliance Notice
TMK: (4) 4-4-011: 036 0001
April 15, 2010
Page two

- a. **Article 19. Zoning Permits Sec. 8-19.1 When Required.** No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required zoning permit. (Ord. No. 164, August 17, 1972; Sec. 8-18.1, R.C.O. 1976).
Conversion of the Single Family Dwelling into a Multi Family Dwelling without proper permits constitutes a violation.
Conversion of the Family Room into a Dwelling Unit without proper permits constitutes a violation.
- b. **Violation of the USE AGREEMENT executed between the owner (Unit 1) and the County of Kauai.**

Pursuant to Chapter 8, Kauai County Code, you are directed to comply with the following requirements immediately:

- a. **Cease and desist use of above noted conversions as a dwelling unit and remove all illegal gas and/or electric service supplies along with cooking facilities.**
- b. **Submit plans and applications along with filing fees for review by the Department for all illegal construction, additions and alterations. Such construction, additions and alterations without proper approval shall be demolished and removed.**

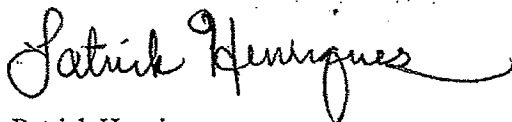
Please be advised that the State Department of Health have specific wastewater management requirements that will have to be addressed with regard to the kitchen that exists within the illegal Dwelling Unit.

EXHIBIT

E

Timothy Bynum Unit 1
Zoning Compliance Notice
TMK: (4) 4-4-011: 036 0001
April 15, 2010
Page three

Failure to contact the Planning Department within 15 calendar days upon receipt of this letter to provide a written acceptable plan for compliance provides us with no other alternative but to refer this matter to the Prosecutor's Office. Please call me at 241-6677.



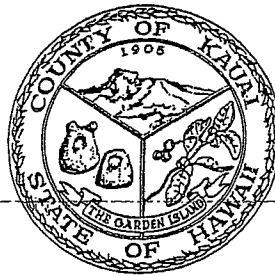
Patrick Henriques
Planning Inspector

cc: County Attorney
Prosecuting Attorney
Department of Health, State of Hawaii
Department of Public Works, Building Division

EXHIBIT

E

Patrick -
pls sign
1/4 give to
SI to mail
ASAP



IAN K. COSTA
DIRECTOR OF PLANNING

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUA'I, HAWAII 96766-1326

TELEPHONE: (808) 241-4050 FAX: (808) 241-6699

ZONING COMPLIANCE NOTICE

CERTIFIED MAIL

November 10, 2010

LOT 9 SLEEPING GIANT ACRES

Timothy Bynum Unit 1
Virginia Bynum
5935 Kolo'lia Place
Kapaa, Kauai Hawaii 96746

Peter Welch Unit 2
5923 C Kolo'lia Place
Kapaa, Kauai Hawaii 96746

Maria Fabro Unit 3
Priscilla Fabro
Post Office Box 2182
Lihue, Kauai Hawaii 96766

SUBJECT: Illegal Change in USE (Single Family Residence) into a Multi-Family Residence & Conversion of the Family Room into a Dwelling Unit
5935 Kolo'lia Place
Wailua Homesteads, Kauai, Hawaii
TMK: (4) 4-4-011: 036 Unit 1

This notice shall supersede our letter dated April 15, 2010. Based on a received complaint, research of our records, and a site inspection on the subject property on April 14, 2010, we believe the following violations of Chapter 8, Kauai County Code may exist as follows:

- a. **Article 19. Zoning Permits Sec. 8-19.1 When Required.** No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required zoning permit (Ord. No. 164, August 17, 1972; Sec. 8-18.1, R.C.O. 1976)

EXHIBIT

000047 F

Zoning Compliance Notice

April 15, 2010

Page 2

- Conversion of the Single Family Dwelling into a Multi Family Dwelling without proper permits.
- Conversion of the Family Room into a Dwelling Unit without permits.
- Violation of the USE AGREEMENT executed between the owner (Unit 1) and the County of Kauai to require a Single-Family Residence use only, and provide inspection authorization.

Please be additionally advised that the State Department of Health may also have specific wastewater requirements for the installation of an additional kitchen within an existing Single-Family Dwelling Unit.

We hereby request that you contact the Planning Department to arrange an inspection of the subject property and dwelling unit, and allow our assistance in resolution of this matter, and assure compliance to Chapter 8, Kauai County Code.

Your immediate assistance and cooperation is appreciated. Failure to contact the Planning Department within 1 calendar days upon receipt of this letter to facilitate compliance may be cause to refer this matter to the Prosecutor's Office. Please call me at 241-6677.



Patrick Henriques
Planning Inspector

cc: Office of the County Attorney
Office of the Prosecuting Attorney
Department of Health, State of Hawaii
Department of Public Works, Building Division

EXHIBIT

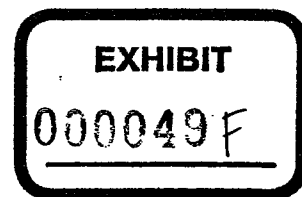
000048F

Patrick Henriques

From: Ian Costa
Sent: Wednesday, November 10, 2010 7:56 PM
To: Patrick Henriques
Cc: Imai Aiu; Sheilah Miyake; Alfred Castillo Jr.
Subject: Bynum Zoning Compliance Notice
Attachments: image001.gif; 4-4-011-036 0001 bynum.doc

Howzit Patrick.....

Attached is the file for my the subject ZCN. Please sign the printed original I have left on your desk and give to SJ to mail immediately.....Mahalo!



DATE: 3.26.10	TIME:	RECVD BY:	TYPE
TMK: 4.4.011:036 0001	LAND AREA: 3.2 ac	LAND USE:	
DIST: Kawaihau	LOC: Wailua Tones/Kas		
ZONING: Ag	OWNER: Timothy Bynum		
SLUC DIST:	LESSEE:		
LOG # 2010-083	SITE ADDR: 5935 Kolo'ia Place		
COMPLAINER/REQUESTOR		COMPLAINEE/OWNER:	
* wants to remain anon!		NAME: Timothy Bynum Cpr	
		ADDR: 5935 Kolo'ia Place	
		Kapaa, 96746	
		PHONE:	
NATURE OF COMPLAINT/REQUEST:			
illegal dwelling / multi-family			
(lot 9. Sleeping giant acres)			
INSPECTOR: P.H.	DATE ASSGN: 4.7.10	ASSGND BY: [Signature]	

FIELD INVESTIGATIVE REPORT

INITIATED BY:		DRIVE BY	
CITIZEN COMPLAINT		UNRELATED INSP.	
ROUTINE ENFORCEMENT		REFERRAL FR. OTHER DEPT.	
DATE:	ARRIVE: 8:00 am	CONTACT:	
4/13/2011	DEPART: 8:09 am	Tim Bynum	
DESCRIPTION OF INVESTIGATION: Upon entry into Bynum's residence, I observed a unpermitted addition of a door and the alteration to the sink by placing a larger sink in it's place.			
With the placement of the door and it's ones it was placed, creates a separate unit within the SFR.			

EXHIBIT

G

VIOLATION TYPE			
NONE OBSERVED		SETBACK VIO.	
USE VIOLATION		ILLEGAL UNIT	
ILEGAL BLDG. STR.		LOT COVERAGE	✓
			JUNK YARD
			POULTRY
			OTHER

COMMENTS & ANALYSIS: Addition of door creates a separate unit within the SFR.

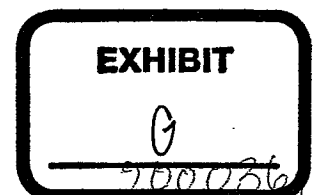
Alteration to the sink, installing a larger sink with out proper permits.

Photos taken: (yes) / no	STORAGE LOCATION: Case File
VIOLATION CODE SECTION:	Article 19 Zoning Permits

DATE:	DESCRIPTION OF FOLLOW-UP

ENFORCEMENT OFFICER: *John H. Hennessey*

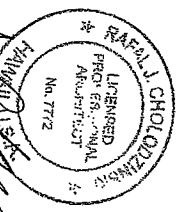
DATE SUBMITTED: 4/13/2011



LEGEND

- WINDOWS:**
- AWN = AWNING
 - CASE = CASEMENT
 - DI = DOUBLE HUNG
 - FIX = FIXED
 - GB = GLASS BLOCK
 - GDN = GARDEN
 - JAL = JALOUSIE
 - JFJ = JAL/FIX/JAL
 - LVR = LOUVERED
 - SLDR = SLIDER
 - SCN = SCREEN

- DOORS:**
- BEL = BEL-AIR
 - BFD = BI-FOLD
 - BYP = BYPASS
 - FD = FRENCH DOOR
 - GLD = GLASS
 - HCD = HOLLOW CORE
 - LVD = LOUVERED
 - PD = POCKET
 - SCD = SOLID CORE
 - SCRN = SCREEN
 - SCSC = SOLID CORE SELF CLOSING
 - SFD = SINGLE FOLD
 - SGD = SLIDING GLASS
 - SHWR = SHOWER DOOR
- * WINDOWS WITHIN 24" OF A DOOR SHALL BE GLAZED W/ TEMPERED GLASS

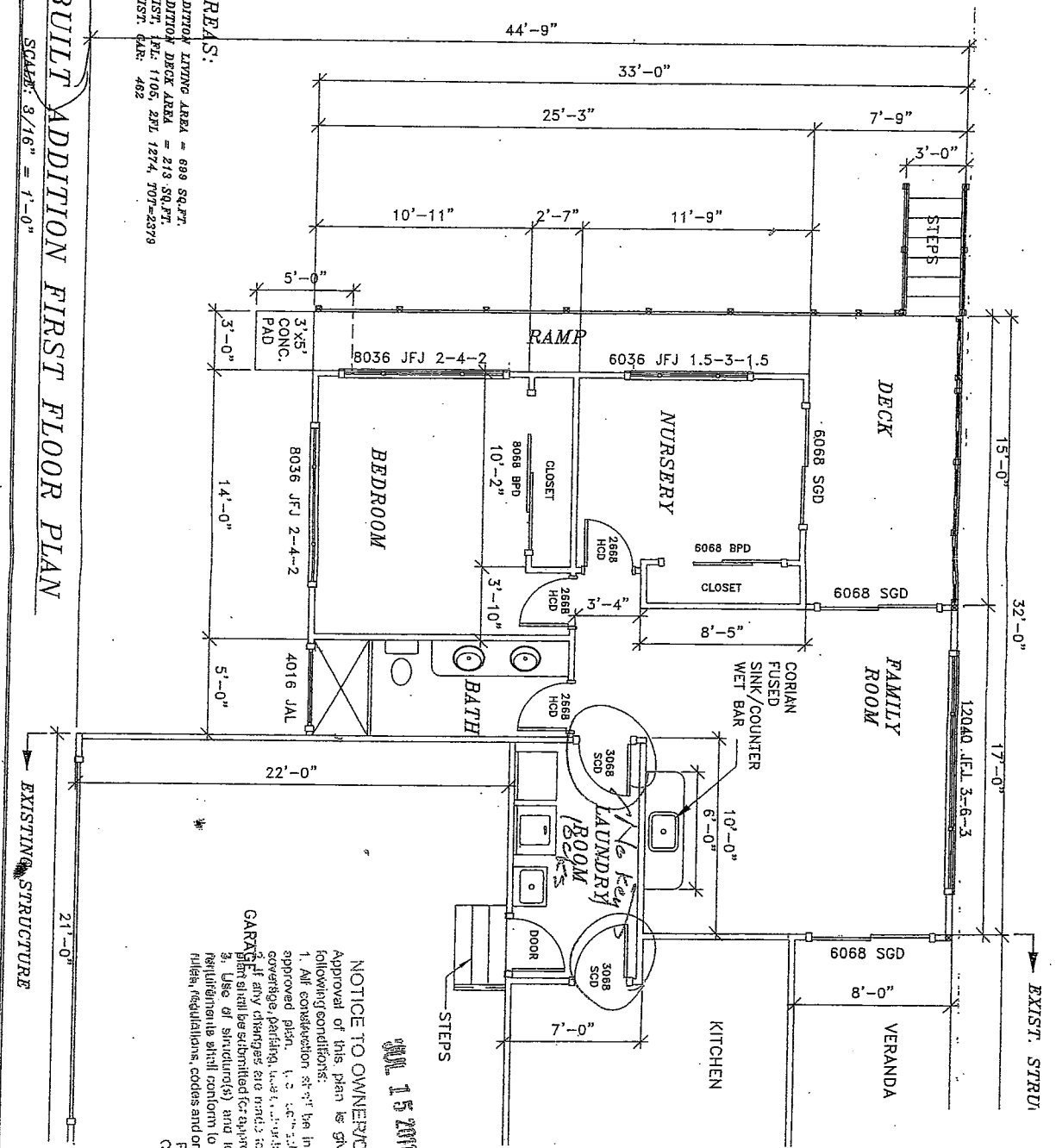


AREAS:

ADDITION LIVING AREA = 699 SQ.FT.
 ADDITION DECK AREA = 213 SQ.FT.
 EXIST. 1FL. 1105, 2FL 1274, TOT-2379
 EXIST. GAR. 462

AS BUILT ADDITION FIRST FLOOR PLAN

SCALE: 3/16" = 1'-0"



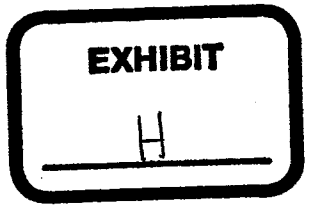
NOTICE TO OWNER/CONTRACTOR

Approval of this plan is given subject to the following conditions:

- All construction shall be in accordance to this approved plan, i.e. lot, height, size, lot coverage, parking, etc., etc.
- If any changes are made to this plan, a revised plan shall be submitted for approval.
- Use of structural and all minimum requirements shall conform to all State and County rules, regulations, codes and ordinances.

Planning Department
 County of Kauai

JUL 15 2001



0000001

DRAWING NUMBER HNTS08 AS B		CHECKED: DATE:		DRAWN: MS DATE: 8/29/11 SCALE: 3/16" = 1'-0" SHEET: 1 OF 1 REVISION:	
DRAWN EXCLUSIVELY FOR: MR. MRS. BYNUM LOT DESCRIPTION: 5935 KOLOLUA PLACE, KAPAA, HI TMK #: (4) 4-4-11-36-1					
HIGH TECH DRAFTING AND DESIGN 4-1383 KUHIO HWY., KAPAA, HI. 96746 PHONE # (808) 821-2468 FAX # (808) 821-0482					

----- Forwarded message -----

From: **Michael Dahilig** <mdahilig@kauai.gov>

Date: Mon, Jan 9, 2012 at 4:40 PM

Subject: Confirmation of encumbrances at 5935 Kololia Place, Kapaa

To: "Tim Bynum (External)" <bynum.tim@gmail.com>

Aloha Tim,

Just to confirm, the Class I approval of your as-built plans was sufficient to rectify the previous violation notice on the property. At this time, there are no zoning encumbrances on the above referenced property.

If you have any questions, please do not hesitate to contact me.

Mike Dahilig
Director of Planning
County of Kaua'i
4444 Rice Street, Suite A473
Lihue, Hawaii 96766
(808)-241-4050 <tel:%28808%29-241-4050>

EXHIBIT

I

IN THE CIRCUIT COURT OF THE STATE OF HAWAII

FIFTH JUDICIAL CIRCUIT


STATE OF HAWAII	)	CR. NO. <u>12-1-0131</u>
)	
v.	)	NOTICE OF HEARING
)	
TIMOTHY BYNUM,)	
)	
)	
Defendant.)	
)	
)	
)	
)	
)	
)	
)	
)	

NOTICE OF HEARING

TO THE OFFICE OF THE PROSECUTING ATTORNEY:

PLEASE TAKE NOTICE that on March 27, 2012 at 9:00 a.m. before the Honorable Judge Presiding, the Defendant will move for an Order dismissing the charges against him, for the reasons set forth herein.

DATED: Lihue, Hawaii, March 16, 2012.



DANIEL HEMPEY
Attorney for Defendant

IN THE CIRCUIT COURT OF THE STATE OF HAWAII

FIFTH JUDICIAL CIRCUIT

STATE OF HAWAII	)	CR. NO. <u>12-1-0131</u>
)	
v.	)	CERTIFICATE OF SERVICE
)	
TIMOTHY BYNUM,)	
)	
)	
Defendant.)	
)	
)	
)	
)	
)	
)	

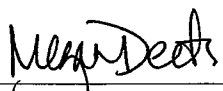
CERTIFICATE OF SERVICE

I the undersigned hereby swear and affirm that I caused a copy of the foregoing motion to be delivered to the following via his Court Jacket at the Lihue Courthouse:

JAKE DELAPLANE, ESQ.
Office of the Prosecuting Attorney
3990 Ka'ana Street, Suite 210
Lihue, Hawaii 96766

Deputy Prosecuting Attorney

DATED: Lihue, Kauai, Hawaii, March 16, 2012.



MEGAN DEETS
Legal Assistant