

HB1431

Testimony in Support

Good morning....Chair Oshiro, Vice Chair Rep Lee, and members of the Finance Committee. I would like to submit testimony in support of **HB1431**.

I am a resident of an area which has Protective Provisions which state the developers' vision for the neighborhood. Their vision included greater frontage setbacks, wider streets with front lawns, and restrictions on the land's use such as limiting each parcel to only one single family dwelling and prohibiting rooming or boarding houses and any business whatsoever. These limitations, restrictions, covenants and conditions were thoughtfully constructed with the purpose of preserving and maintaining the attractiveness, values, and character of the residential neighborhood being planned. The Declaration of Protective Provisions were recorded with the Bureau of Conveyances as attachments to each deed, run with the residential lots, and transfer to new owners and successors.

About 30 years later, residents who believed in the value of the Protective Provisions gathered together and formed the Kahala Community Association whose mission is to monitor and, when necessary, enforce these covenants. I am currently one of the volunteers for our Association. I am here to speak in support of HR1431 because I would like to have the City of Honolulu be more supportive and in synch with not only our neighborhood's covenants but all the many other areas who also have their own protective provisions.

The Honolulu Land Use Ordinance (LUO) provisions, also referred to as zoning ordinances, govern and regulate the usage of land on Oahu. These regulations are the minimum standards under which the City's various agencies operate. All development projects must submit exhaustive land use and infrastructure plans to the City for approval. Increasingly and island-wide, neighborhoods exceed the LUO standards through development of their own more stringent private covenants. The City approves these development projects with the knowledge the stricter covenants supersede the minimums followed by the LUO.

This is where bill HR1431 comes in to play. Despite the awareness that many of Oahu's neighborhoods have covenants that are stricter than the City's, agencies such as the Department of Planning and Permitting issue permits which undermine the local community's rules by following the minimums. This creates contradictions about the rules, causes conflicts between owners and their associations and

between neighbors. Bill HR1431 addresses the contradiction and supports communities and their associations whose plans, including covenants, were submitted to and approved by the City.

HR1431 empowers and authorizes the City and County of Honolulu to abide by local restrictions where more stringent covenants exist. Passing this bill, together with the City's computerized system already in place, will support the Dept of Planning and Permitting to require an association's approval stamp or approval letter BEFORE approving permits. The information required is already in the City's system and it should be capable of flagging whole developments or individual Tax Map Keys (TMKs) which are known to have recorded covenants. This change will put the City and its neighborhoods on the same page and, after having approved the development plans, enables the City to support neighborhoods which are monitoring and enforcing their own rules in the effort to preserve their protective provisions.

Thank you for your consideration. I strongly urge members of the Committee to pass this measure.

Mahalo,

Nina Reppun Carney, President
Kahala Community Association

Mrs. Larry Doheny
Royal Place
Honolulu, Hawaii 96816

February 7, 2011

House Water, Land, Ocean Resources Committee
Room: State Capitol, 325: 9:00AM Hearing

Dear Chair Rep. Chang, Vice-Chair Rep. Har and Members:

Testimony in favor of HB 1431, Relating to Covenants

My name is Josh Doheny and I write to you in favor of HB 1431. The purpose of this bill is to allow counties to enact ordinances or adopt rules to enforce existing covenants on properties such as setbacks, building height, proper maintenance, etc.

Our neighborhood has been inundated in recent years with neglected properties. It has resulted in hazardous conditions along pedestrian right of ways, empty homes being used for possible illegal activities and an increase in unwanted bugs, mice and rats. This bill will allow the counties to police covenants on properties to ensure that they are properly maintained and used. Improperly maintained and used properties can cause hazardous conditions and loss of property value, particularly when neighbors try to sell properties.

Some neighborhoods in the state have already suffered loss of property values and hazardous conditions. Hazardous conditions include improperly maintained pools, and vermin such as rats and roaches running through them. Neighbors have complained, held meetings, met with property owners and have not had good results. This bill will give counties some teeth to police conditions that have the potential to ruin neighborhoods. Hazardous conditions and loss of property value run counter to the safety and economic health of the state. I therefore urge you to vote in favor of HB 1431.

Lucinda and John Pyles
Honolulu, HI 96816
732-6262

RE: Testimony in support of HB1431 Relating to Covenants

My husband and I have resided in Kahala for forty years. We have both served on the Waiialae-Kahala Neighborhood Board and been active members of the Kahala Community Association. We, and many others within our neighborhood and beyond, have been appalled for several years by the blighted properties and public nuisance that characterizes nearly two-dozen properties, all within a one-mile strip, on Kahala Avenue.

The property owner's MO (mode of operation) is familiar to all by now and has been repeated over and over. Upon closing escrow all upkeep and maintenance ceases. Severe overgrowth takes over with weeds growing head high; palm fronds and tree branches litter the grounds. Trimmings are left where they fall, rubbish piles up and structures deteriorate into disrepair. Most existing walls have been partially toppled and frequently the rubble shoved into swimming pools along with tree trunks and other plant rubbish. Where walls have been partially torn down, jagged concrete, rock and rebar have been left exposed. Nearly all the swimming pools and water features were initially left with slimy green stagnant water or had a thin layer of topsoil dumped on top of plant rubbish and rubble. The mounds of rubbish are breeding grounds for rodents and fire hazards. All but 3 or 4 of the 24 properties are unoccupied. Neighbors have reported seeing vagrants entering properties. Demolitions have taken place without permits.

As of October 2009 the Code Enforcement branch of the City and County, Department of Planning and Permitting reported most of these Kahala Avenue properties had been sited for code violations with the count at 53 NOV's (Notice of Violation) and 28 NOO's (Notice of Order). An NOO is issued when it is a repeated violation for the same offense on the same property.

This property owner has shown blatant disregard for the neighbors, the community and the law. When neighboring property owners began to complain about the neglect of these properties as early as 2005, the property owner stated in a press interview that, if the people of Kahala did not like it, they could move!

HB-1431 proposes to amend Section 46-17 of the Hawaii Revised Statutes, that relates to the "Regulation of certain public nuisances". The amendment would allow (but not require) the county to adopt rules and ordinances that could utilize restrictive covenants in property deeds that run with the land in order to have a stronger, more effective mechanism, in extreme cases such as this, in order to preserve residents rights to quiet enjoyment, preservation of property values, public safety and the quality and character of a neighborhood as a desirable place to live.

All Kahala properties have covenants that address repair, maintenance and landscaping. These covenants were carried over from the Bishop Estates leases into the property deeds at the fee conversion in the mid 1980's. The covenants state, "All buildings and improvements now or hereafter built on the residential lots shall at all times be well and substantially repaired and maintained," and that with respect to landscaping "All residential lots, together with all adjacent land between any street boundary of such lots and the established curb, shall at all times be landscaped and kept in a neat and attractive condition and all trees, shrubs, and grass thereon shall be kept in good and neat condition."

To date, after more than half a decade, the fruitless expenditure of too much time, effort and taxpayer dollars (code violations) has left residents frustrated and angry. We MUST find a way to effectively correct and deter such a horrific public nuisance caused by these horribly blighted properties. We cannot be impotent in the face of such an affront to our neighborhoods and its responsible, hard working citizens. There come times when the need calls for measures and mechanisms that meet challenges that are beyond what is generally considered within a normal range, whether it be in health care, education, clothing, security, environmental protection, etc. When this occurs our government agencies need the added capability to tap legal resources such as deed covenants in order to meet the challenge effectively.

Thank you for your consideration.

Yours truly,

Lucinda and John Pyles

Cc Rep. Barbara Marumoto,
Rep. Mark Hashem,
Councilmember Stanley Chang,
Senator Sam Slom

Enclosures:
October 2009 C&C Code Enforcement Violations List,
Property List,
Pictures.

Property list in support of HB1431, submitted by Lucinda Pyles

VIOLATIONS AS OF OCT 2008

(yellow) per City's DPP website

NOV = Notice Of Violation

NOO = Notice of Order

St #	Street	TMK	Name	
4332	Kahala Ave.	35 013 011	G. Kawamoto	2009/NOV-01-050
4337	Kahala Ave.	35 002 039	G. Kawamoto	No Violation / Occupied Property
4398	Kahala Ave.	35 013 001	G. Kawamoto	No Violation / Occupied Property
4432	Kahala Ave.	35 003 019	G. Kawamoto	2009/NOV-01-050
4439	Kahala Ave.	35 003 007	G. Kawamoto	2009/NOV-01-053
4465	Kahala Ave.	35 003 003	G. Kawamoto	2009/NOO-007
4469	Kahala Ave.	35 003 002	G. Kawamoto	2009/NOO-314
4578	Kahala Ave.	35 004 013	G. Kawamoto	No Violation / Occupied Property
4581	Kahala Ave.	35 004 001	G. Kawamoto	2008/NOV-09-102&106
4607	Kahala Ave.	35 005 016	G. Kawamoto	2009/NOV-01-055
4631				2009/NOV-01-057
33	Kahala Ave.	35 005 013	G. Kawamoto	2008/NOV-09-100 (Shoreline)
4633	Kahala Ave.	35 005 022	G. Kawamoto	No Violation
4635	Kahala Ave.	35 005 011	G. Kawamoto	2009/NOV-01-054
4744	Kahala Ave.	35 007 010	G. Kawamoto	2009/NOV-01-017
4758	Kahala Ave.	35 007 009	G. Kawamoto	2009/NOV-01-019
4766	Kahala Ave.	35 005 016	G. Kawamoto	2009/NOV-01-059
4767	Kahala Ave.	35 006 009	G. Kawamoto	2009/NOV-01-063
4802	Kahala Ave.	35 007 007	G. Kawamoto	Water Feature less than 18 inches
4823	Kahala Ave.	35 059 008	G. Kawamoto	Second Tier Vacant Lot
4834	Kahala Ave.	35 007 003	G. Kawamoto	No Violation
4837	Kahala Ave.	35 059 006	G. Kawamoto	2009/NOV-01-058
4845	Kahala Ave.	35 059 028	G. Kawamoto	2009/NOV-01-060
4851	Kahala Ave.	34 059 026	G. Kawamoto	2009/NOV-01-061

Code Enforcement Summary
Gensiro Kawamoto Properties in Kahala
(As of October 8, 2009)

File Number	Date Issued	Tax Map Key	Address	Violation Description	Comments
2008/NOV-07-147	July 18, 2008	3-5-002: 039	4337 Kahala Avenue	Plants placed in the unimproved sidewalk area	Corrected and closed
2008/NOV-09-215	September 24, 2008	3-5-003: 002	4469 Kahala Avenue	Property littered with leaves and branch cuttings.	Notice of Order 2008/NOO-314 issued (Fines: \$50/\$50)
2008/NOV-11-066	November 14, 2008	3-5-003: 003	4465 Kahala Avenue	Vacant lot littered and overgrown with weeds	Notice of Order 2009/NOO-007 issued (Fines: \$50/\$50)
2007/NOV-01-164	February 7, 2007	3-5-003: 003	4465 Kahala Avenue	Grubbing without a permit	Notice of Order 2007/NOO-205 issued Corrected, fines paid and closed
2009/NOV-01-053	January 9, 2009	3-5-003: 007	4439 Kahala Avenue	Litter and overgrowth	Notice of Order 2009/NOO-064 issued Corrected; fines, \$3,500 outstanding
2009/NOV-01-050	January 9, 2009	3-5-003: 019	4432 Kahala Avenue	Litter and overgrowth	Notice of Order 2009/NOO-066 issued Corrected; fines, \$1,350 outstanding
2008/NOV-01-	January 16, 2008	3-5-003: 019	4432 Kahala Avenue	Property overgrown with	Corrected and closed

092				weeds and littered with debris	
2009/NOV-01-055	January 9, 2009	3-5-004: 001	4581 Kahala Avenue	Litter and overgrowth	Notice of Order 2009/NOO-067 issued (Fines: \$50/\$50)
2008/NOV-09-106	September 11, 2008	3-5-004: 001	4581 Kahala Avenue	Collapsed metal fences overhang into the Shoreline Setback area without a variance	Notice of Order 2008/NOO-317 issued (Fine: \$500/\$50)
2008/NOV-01-007	January 3, 2008	3-5-004: 001	4585 Kahala Avenue	Pool does not have the required enclosure and latching gate	Notice of Order 2008/NOO-001 Corrected and closed
2007/NOV-10-214	October 29, 2007	3-5-004: 001	4585 Kahala Avenue	Swimming pool filled with litter and miscellaneous items	Corrected and closed
2009/NOV-01-054	January 9, 2009	3-5-005: 011	4635 Kahala Avenue	Litter and overgrowth	Notice of Order 2009/NOO-052 issued (Fines: \$50/\$50)
2007/NOV-02-167	February 28, 2007	3-5-005: 011	4635 Kahala Avenue	Sections of pool enclosure are missing.	Corrected and closed
2008/NOV-09-100	September 11, 2008	3-5-005: 013	4631 Kahala Avenue	Layers of concrete bricks stockpiled within the Shoreline Setback area without a variance	Notice of Order: 2008/NOO-316 issued Corrected; fine \$5,100 outstanding
2005/NOV-08-184	August 18, 2005	3-5-005: 013	4631 Kahala Avenue	Seawall construction w/o a variance	Corrected and Closed
2009/NOV-05-014	May 4, 2009	3-5-005: 016	4607 Kahala Avenue	Concrete terrace and stairway collapsed in shoreline area	Notice of Order 2009/NOO-155 issued (Fines: \$1,000/\$50)

2009/NOV-01-057	January 9, 2009	3-5-005: 016	4607 Kahala Avenue	Litter and overgrowth	Notice of Order 2009/NOO-068 issued (Fines: \$50/\$50)
2008/NOV-11-049	November 12, 2008	3-5-005: 016	4607 Kahala Avenue	Broken sprinkler system; fence concrete footing exposed	Notice of Order 2009/NOO-051 issued Corrected; fines \$1,500 outstanding
2008/NOV-01-094	January 16, 2008	3-5-005: 016	4607 Kahala Avenue	Property overgrown with weeds and littered with debris	Corrected and closed
2007/NOV-11-220	November 30, 2007	3-5-005: 016	4607 Kahala Avenue	Cylindrical footings deposited and exposed in the Shoreline setback area without a variance	Corrected and closed
2007/NOV-08-092	August 14, 2007	3-5-005: 016	4607 Kahala Avenue	Property littered with tree cuttings, branches etc.	Corrected and closed
2006/NOV-09-019	February 6, 2007	3-5-005: 016	4607 Kahala Avenue	White vinyl fence constructed in the Shoreline Setback area without a variance	Notice of Order 2006/NOO-460 Corrected and closed
2009/NOV-01-063	January 9, 2009	3-5-006: 009	4767/D Kahala Ave	Litter and overgrowth	Notice of Order 2009/NOO-053 issued Corrected; fines \$2,250 outstanding
2009/NOV-01-019	January 6, 2009	3-5-007: 009	4758 Kahala Avenue	Property overgrown with weeds	Notice of Order 2009/NOO-070 Corrected; fines \$50 outstanding
2006/NOV-02-014	February 1, 2006	3-5-007: 009	4758 Kahala Avenue	Property overgrown with weeds	Corrected and closed
2005/NOV-10-043	October 11, 2005	3-5-007: 009	4758 Kahala Avenue	A five foot high chain link fence erected at the front of	Corrected and closed

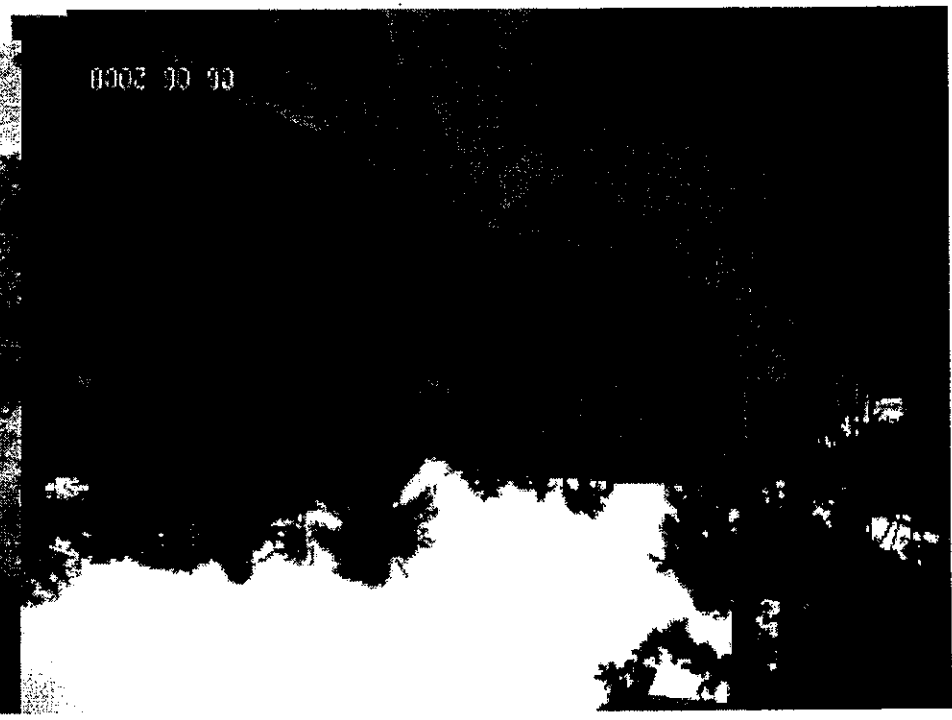
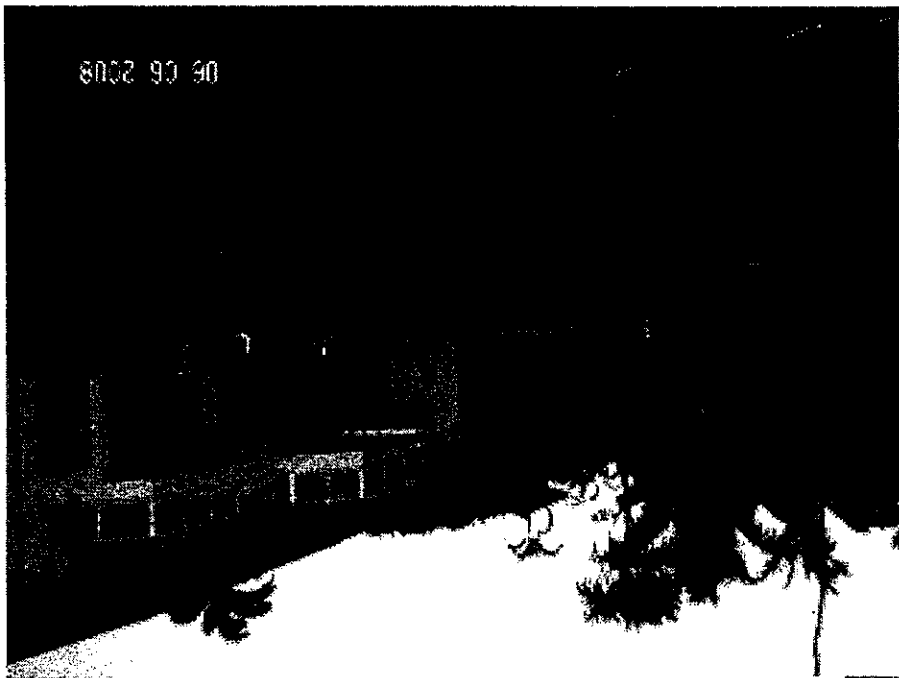
				the property without a permit	
2005/NOV-08-164	August 22, 2005	3-5-007: 009	4758 Kahala Avenue	Property overgrown with weeds	Corrected and closed
2005/NOV-08-163	August 22, 2005	3-5-007: 009	4758 Kahala Avenue	Sidewalk area is overgrown with grass and weeds	Corrected and closed
2005/NOV-06-035	June 3, 2005	3-5-007: 009	4758 Kahala Avenue	Rocks, plants, bricks and mounds of dirt in the sidewalk area	Corrected and closed
2005/NOV-05-208	May 24, 2005	3-5-007: 009	4758 Kahala Avenue	Swimming pool does not have the required enclosure	Notice of Order 2005/NOO-116 Corrected, fines paid and closed
2009/NOV-01-017	January 6, 2009	3-5-007: 010	4744 Kahala Avenue	Property overgrown with weeds	Notice of Order 2009/NOO-069 issued Corrected; fines \$50 outstanding
2007/NOV-02-044	February 15, 2007	3-5-007: 010	4744 Kahala Avenue	Swimming pool without the required enclosure	Notice of Order 2007/NOO-055 issued Corrected, fines paid and closed
2005/NOV-08-162	August 22, 2005	3-5-007: 010	4744 Kahala Avenue	Property overgrown with grass and weeds	Corrected and closed
2005/NOV-08-033	June 3, 2005	3-5-007: 010	4744 Kahala Avenue	Rocks, plants, bricks and mounds of dirt placed in the sidewalk area.	Corrected and closed
2005/NOV-05-207	May 24, 2005	3-5-007: 010	4744 Kahala Avenue	Swimming pool does not have the required enclosures	Notice of Order 2005/NOO-115 Corrected and closed
2009/NOV-01-059	January 9, 2009	3-5-007: 049	4766 Kahala Avenue	Property littered	Notice of Order 2009/NOO-055 issued Corrected; fines \$750

					outstanding
2008/NOV-11-129	November 24, 2008	3-5-013: 011	4332 Kahala Avenue	Property littered	Notice of Order 2009/NOO-006 issued Corrected; fines \$3,300 outstanding
2006/NOV-04-013	April 5, 2006	3-5-013: 011	4332 Kahala Avenue	Branches from palms and trees encroaching into the sidewalk area	Corrected and closed
2006/NOV-04-014	April 5, 2006	3-5-013: 011	4332 Kahala Avenue	Sidewalk area uplifted by roots from private tree	Corrected and closed
2005/NOV-09-107	September 14, 2005	3-5-013: 011	4332 Kahala Avenue	Branches overhang the sidewalk and litter on the sidewalk	Corrected and closed
2008/NOV-01-157	January 25, 2008	3-5-013: 017	4286 Kahala Avenue	Property is overgrown with weeds	Corrected and closed
2008/NOV-08-012	August 4, 2008	3-5-058: 003	1103 Kaimoku Place	Vacant lot overgrown with weeds, grass, shrubbery and littered with dried leaves and branches	Notice of Order 2008/NOO-277 issued Corrected; fines \$5,950 outstanding
2008/NOV-08-013	August 4, 2008	3-5-058: 003	1103 Kaimoku Place	Sidewalk is overgrown with weeds. Branches from private plants are encroaching into the sidewalk area	Work Order referral Corrected and closed
2006/NOV-12-058	December 7, 2006	3-5-058: 003	1103 Kaimoku Place	Vacant lot overgrowth	Corrected and closed
2005/NOV-09-237	September 27, 2005	3-5-058: 003	1103 Kaimoku Place	No fence enclosure for swimming pool	Notice of Order 2005/NOO-244 issued Corrected and closed
2005/NOV-09-238	September 27, 2005	3-5-058: 003	1103 Kaimoku Place	Alterations w/o a Building Permit	Corrected and closed

2009/NOV-09-269	September 30, 2009	3-5-059: 006	4837 Kahala Avenue	Pool enclosure required	Notice of Order 2009/NOO-265 in draft
2009/NOV-01-058	January 9, 2009	3-5-059: 006	4837 Kahala Avenue	Property overgrown with weeds	Notice of Order 2009/NOO-062 issued Corrected; fines \$1,400 outstanding
2008/NOV-02-194	March 31, 2008	3-5-059: 006	4837 Kahala Avenue	Grading (approximately 606 cubic yards) without a grading permit	Corrected and closed
2005/NOV-08-281	September 13, 2005	3-5-059: 006	4837 Kainapau Place	Metal fence constructed within the Shoreline Setback area without a Minor Shoreline Structure permit	Corrected and closed
2007/NOV-10-135	October 18, 2007	3-5-059: 008	4439 Kahala Avenue	Property littered with plants and tree cuttings and other miscellaneous items	Corrected and closed
2009/NOV-01-060	January 9, 2009	3-5-059: 025	4845 Kahala Avenue	Property overgrown with weeds	Notice of Order 2009/NOO-063 Corrected; fines \$1,400 outstanding
2009/NOV-01-061	January 9, 2009	3-5-059: 026	4851 Kahala Avenue	Property overgrown with weeds	Notice of Order 2009/NOO-065 issued Corrected; fines \$1,400 outstanding

Summary of Enforcement Actions

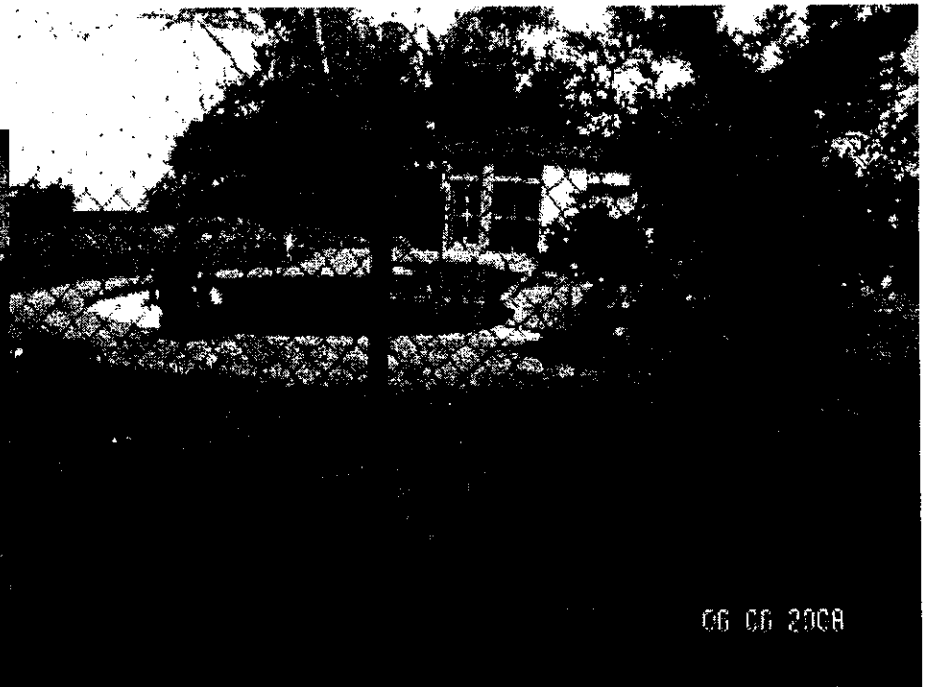
NOVs Issued	NOVs corrected	NOOs issued	NOOs corrected/NOO fines paid and file closed
53	44	28	20/7

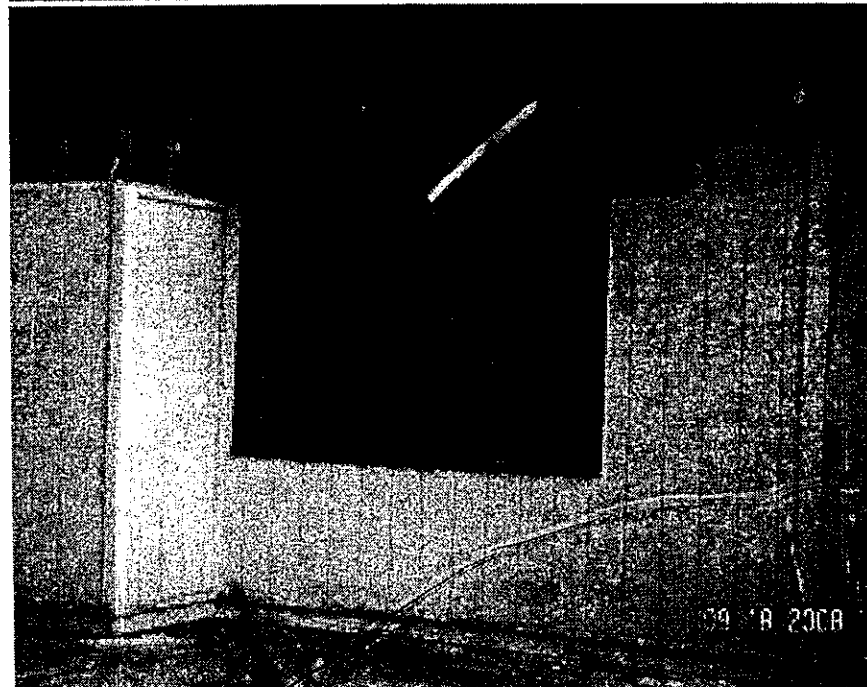
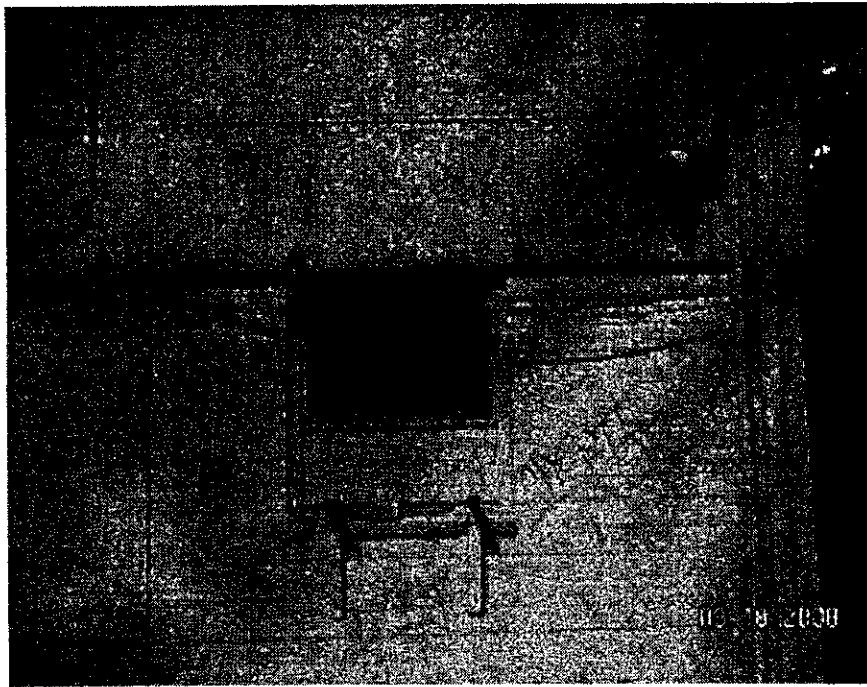




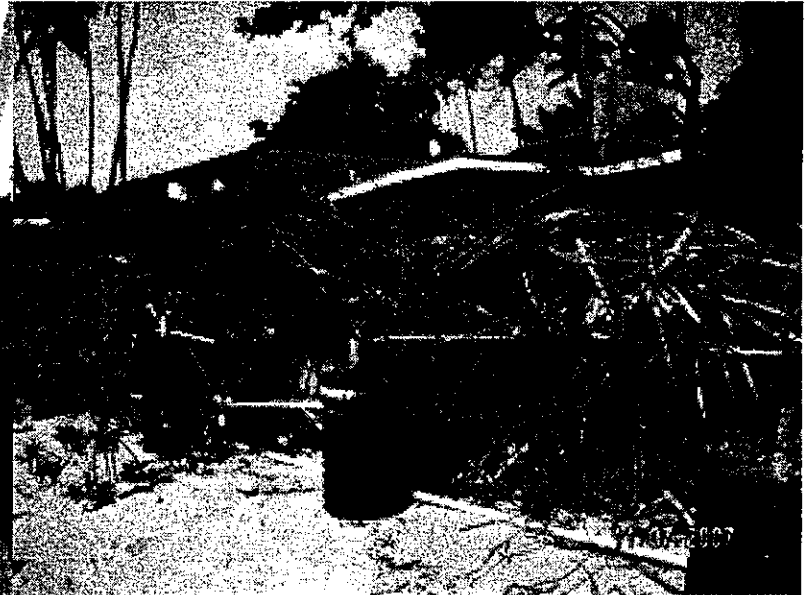
**4585 Kahala Ave at
Hunakai beach
access.**

**Pool citations
issued.**





**4607 Kahala Ave. at Hunakai beach access.
Broken windows, rubbish, disrepair, graffiti
on walls.**



4607 Kahala Ave at Hunakai access



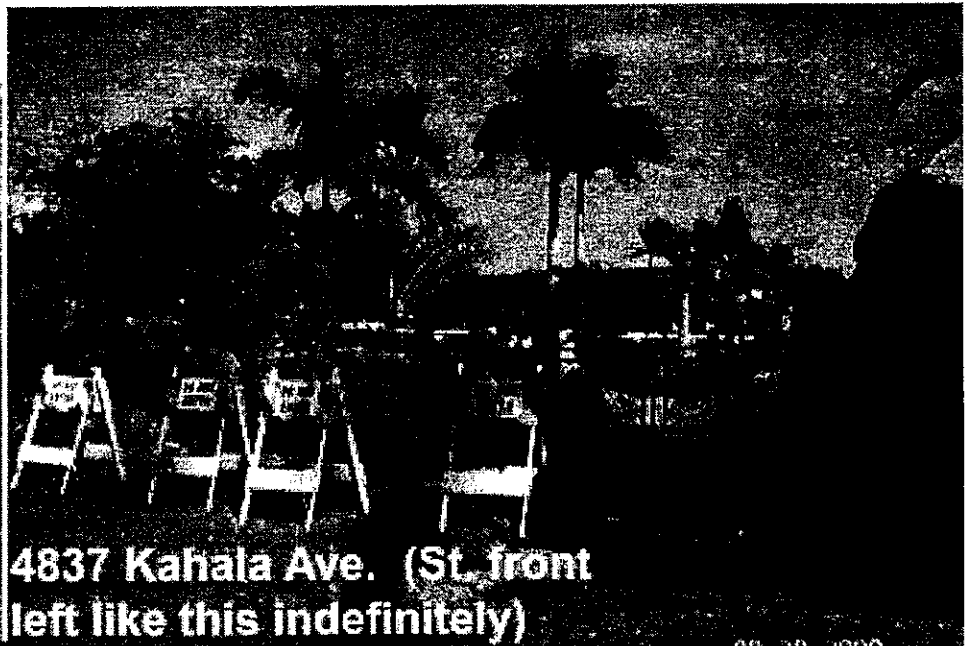


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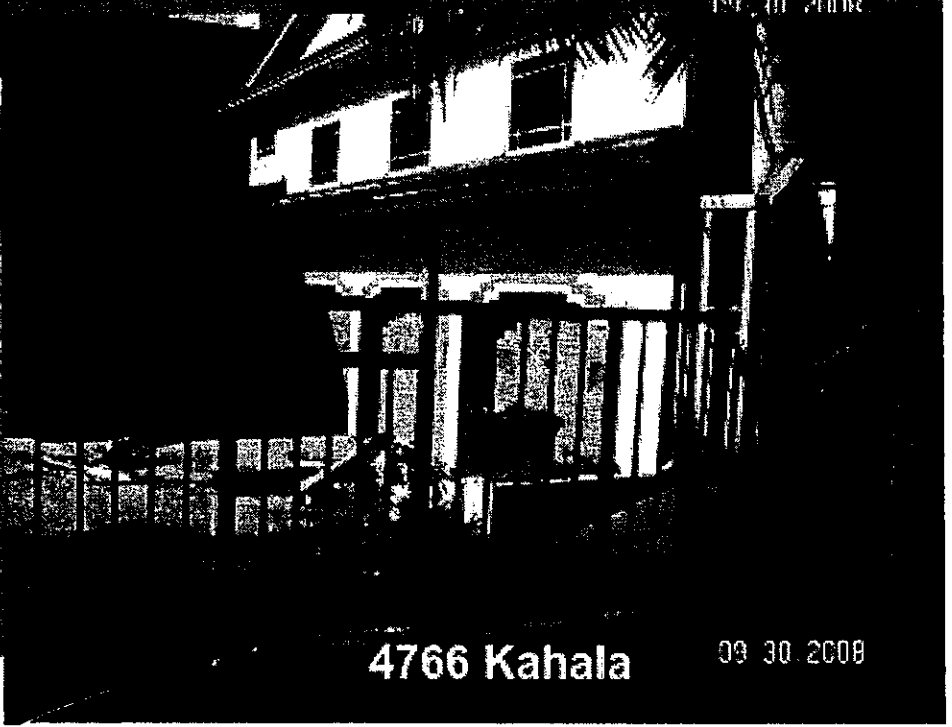
05 18 2008

Logs a drift up and down beach.



4837 Kahala Ave. (St. front left like this indefinitely)

09 10 2008



4766 Kahala

09 30 2008



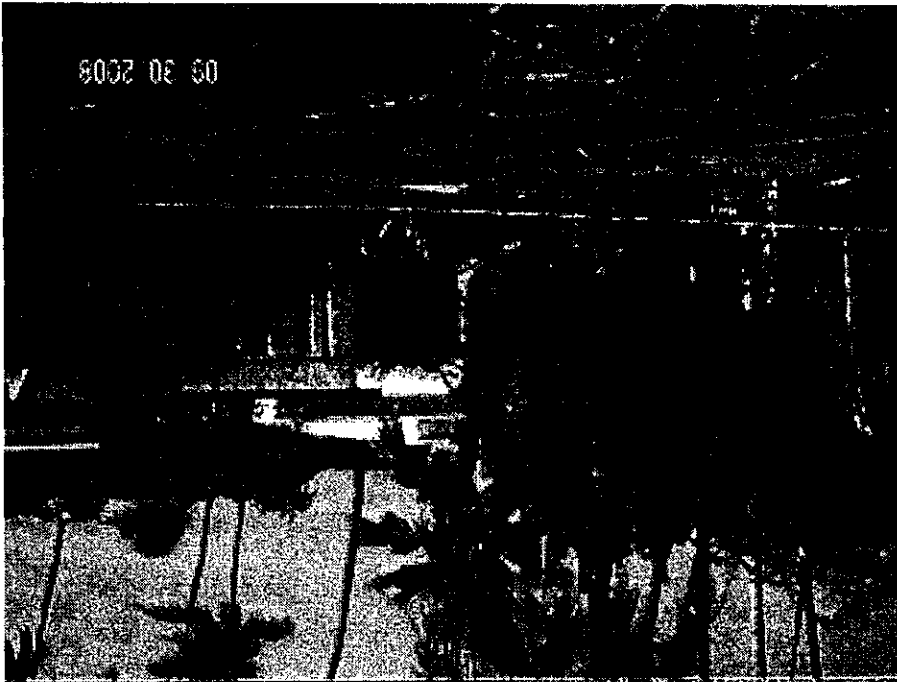
4744 Kahala Ave, rubbish left more than a month



4758 Kahala Ave, Weeds head height.



4



09 30 2008



09 30 2008

4439 Kahala piles of
rubbish left indefinitely



09 30 2008



09 30 2008

4432 Kahala (pool
filled with weeds)

4332
Kahala
at
August

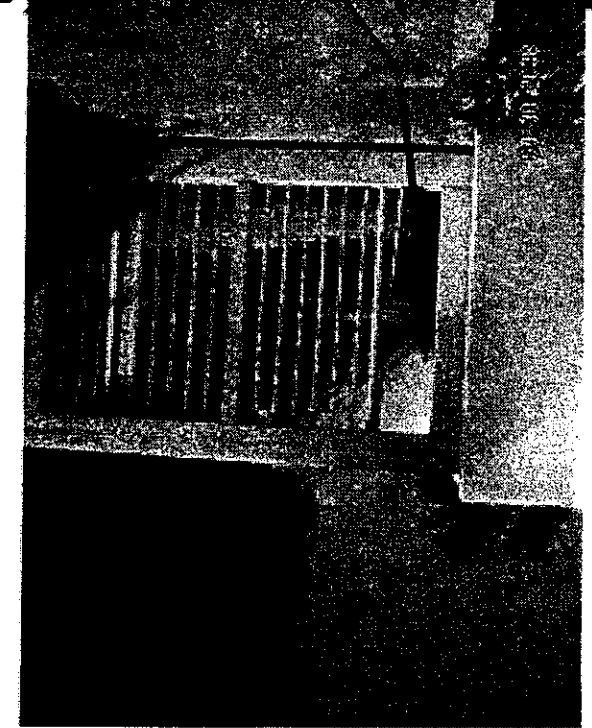
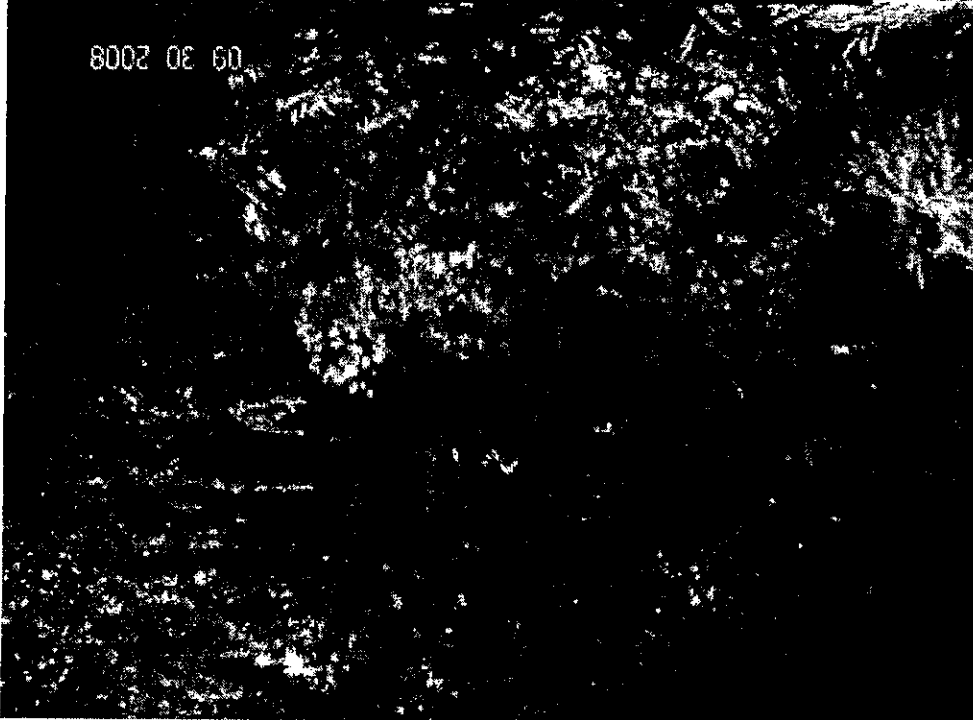
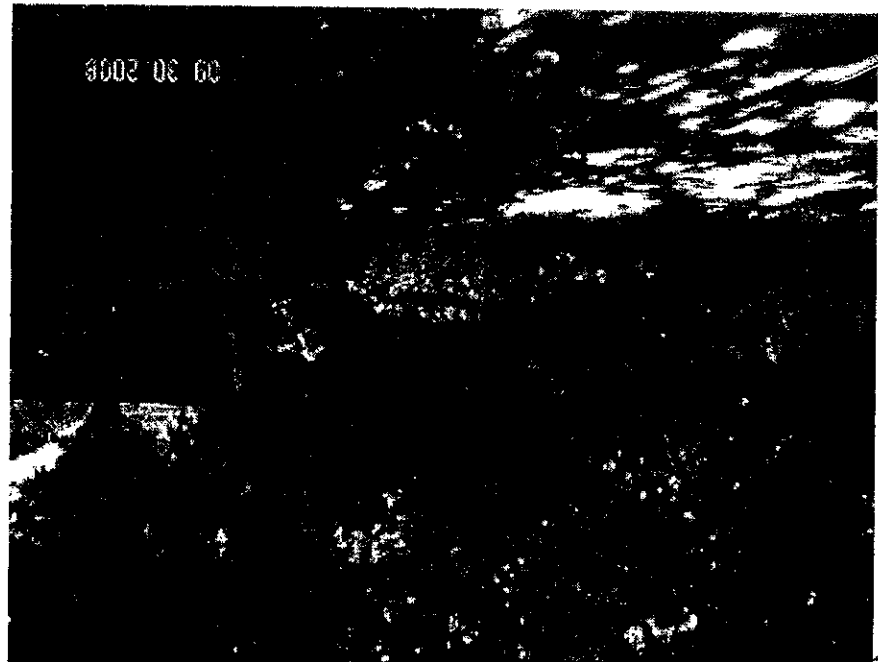
4439 Kahala
Rubbish left
more
months

09 31 2008

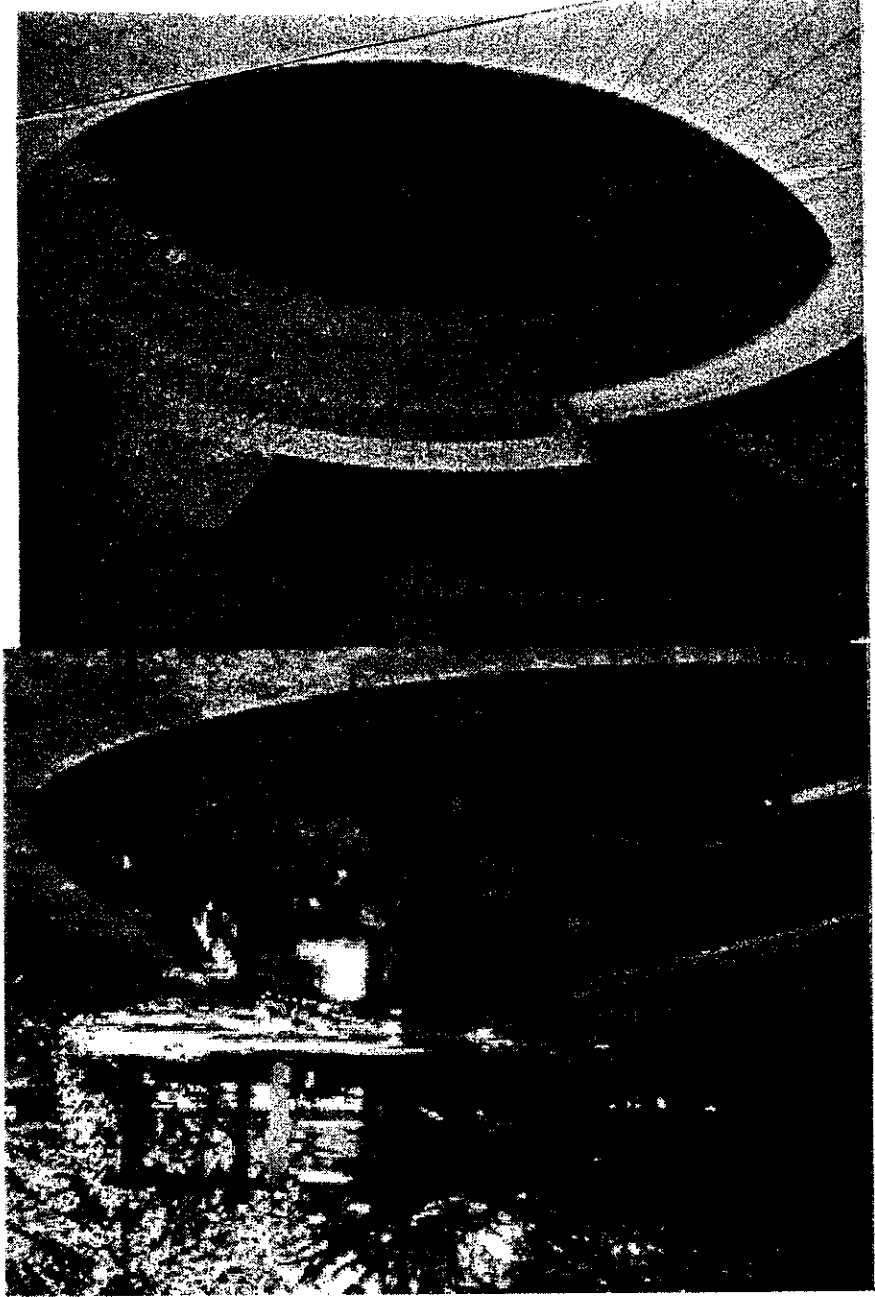
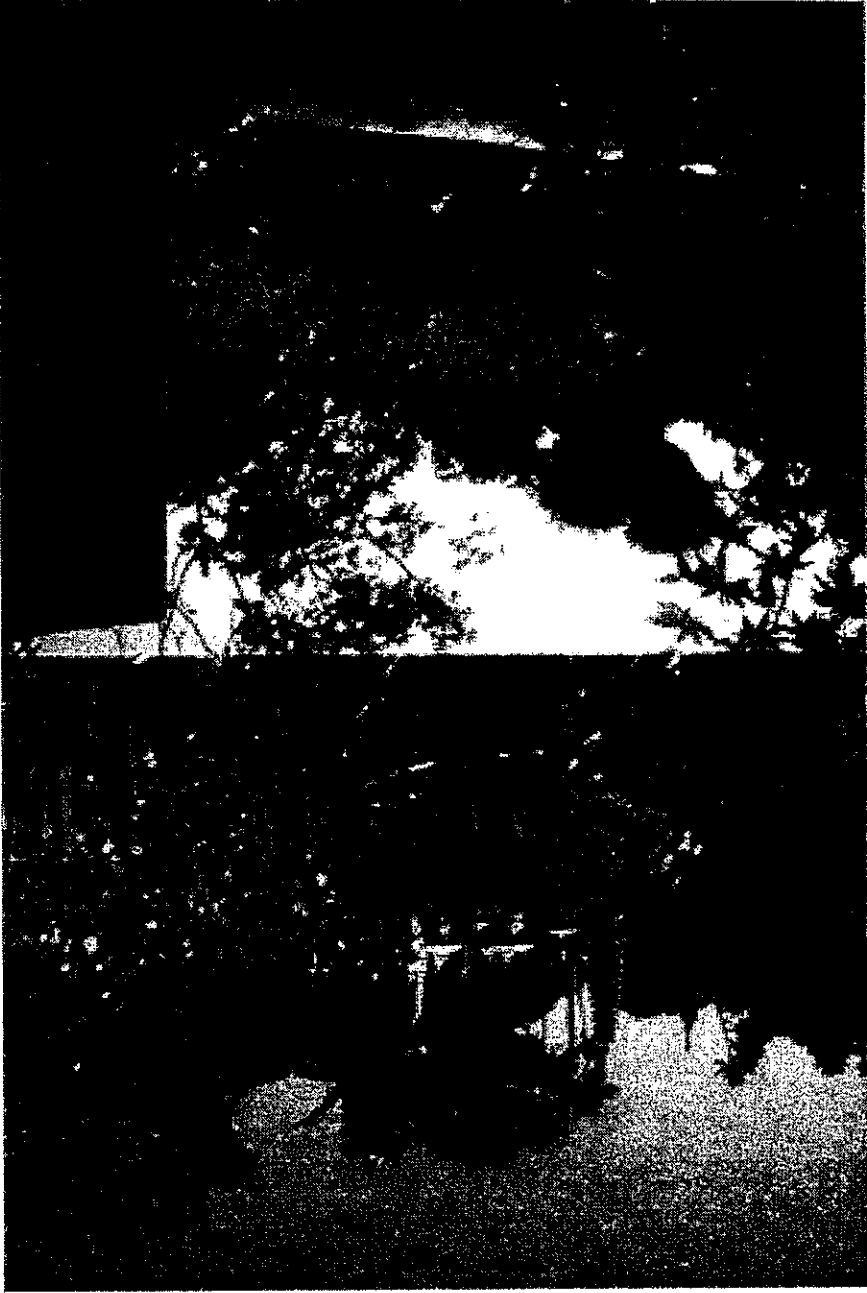
09 20 2008

09 30 2008

6



2



12/10/2009, Clockwise: 4767, 4837, 4744-4758, 4806 Kahala Ave.

Testimony on House Bill No. 1431 Relating To Covenants.

Good afternoon, Chairman Oshiro, Vice Chair Lee and members of the Finance Committee (FIN). My name is John Ishikawa and I thank you for the opportunity to testify in support of HB1431.

I have been a homeowner for more than 25 years in a Kahala subdivision governed by a Declaration of Protective Provisions (DPP), or what is more commonly referred to as a private covenant set forth in our land deeds.

For most of those 25 years, I have served on the Board of the Kahala Community Association (KCA) and have been actively involved in enforcing and monitoring the area's private covenants; specifically:

- Front yard setback restrictions and,**
- Use restrictions, including the restriction of one single family dwelling per property, the prohibition of tenements, boarding houses and the conduct of business.**

Each year the KCA reviews an average of 50 construction projects, both new construction and renovations for compliance with the covenant restrictions, especially the setback restriction. Some violations are resolved through discussions with the homeowner and/or architect. In some instances, the violation is unintentional and simply a result of not being aware of the covenant restrictions. However, more often, the violations are a direct result of the disparity between the less restrictive 10-foot setback provided for in the City's building code and the more restrictive 25-foot setback prescribed by our covenant.

Disputes arise when a homeowner takes out a building permit, receives City approval according to plans submitted and feels entitled to build according to those plans even though he is in violation of our covenant. This occurs even though the City may advise the homeowner to check his deed for provisions that are more restrictive than the City's building code.

Setback disputes between homeowners and the KCA are numerous. Over the years several were referred to legal counsel; three in which I served as principle plaintiff resulted in lawsuits. The first was settled prior to the scheduled court appearance with the defendant ordered to move the violating structure and pay attorney fees, the second went through full court adjudication in the defendant's favor, and the third, as we speak, is awaiting the court's decision on a Motion for Summary Judgment to cause a structure to be removed.

Resolution of disputes, even those amicably resolved without legal action, is time consuming for homeowners, their architect, consultants and members of the KCA's volunteer Board of Directors. Lawsuits, their cost and the emotional strain imposed on all parties, can and should be avoided.

I hope that HB 1431 will enable county agencies like the City's Building and Permitting Department (DPP) to eliminate the existing disparity between City and private covenant restrictions.

The DPP should, as a condition for approval of a building permit, require that homeowners review their property deeds and attest to the fact that project plans are in compliance with covenant restrictions. This would be similar to the affidavit that the City currently requires builders of "accessory structures" to certify that the new structure will not be used as a rental unit. This precedent enables both the City and private covenant organizations, like the KCA, to uniformly enforce the single-family residential use restriction.

HB 1431 will remove the disparities and confusion between the use and setback restrictions of the City building code and private covenants and I urge the Committee to consider the merits of this bill.

Thank You.