

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI‘I

HEARING TRANSCRIPT
DECEMBER 7, 2023

A regularly advertised hearing on the application of **RENEGADE TOWERS LLC (PL-USE-2023-000020)** was heard at 9:25 a.m. in the County of Hawai‘i Council Chambers in Hilo, 25 Aupuni Street, Hilo, Hawai‘i with Chair Dennis Lin presiding.

COMMISSIONERS PRESENT: Dennis Lin, Lauren Balog, John C. Cross, Louis Danielle III, and Wayne De Luz.

COMMISSIONER EXCUSED: Chantel Perrin

ALSO PRESENT: Suzanna Tiapula, Esq. (Counsel for the Commission), Jean Campbell, Esq. (Counsel for the Planning Department), Zendo Kern (Planning Director), Jessica Andrews (Planner), Alex Roy (Planner), Christian Kay (Planner), Tracie-Lee Camero (Zoom Host), and Melissa Dacayanan-Salvador (Windward Planning Commission Secretary).

And nine members from the public were in attendance.

APPLICANT: RENEGADE TOWERS LLC (PL-USE-2023-000020)

Application for a Use Permit to allow the construction of an unoccupied, multi-carrier telecommunications facility to include a 150-foot-tall ‘monopole’ tower and related equipment within a 4,994-square foot portion of a larger 44,214-square foot parcel. The subject property is located at 92-8627 Paradise Circle Makai, approximately 450 feet north of its intersection with Keaka Parkway, Ocean View, Ka‘ū, Hawai‘i, TMK: (3) 9-2-101:071 (por.).

Secretary’s Note: [indecipherable] indicates that there were technical and/or internet difficulties, which made the conversation inaudible.

LIN: We’ll move on to agenda Item No. 1 then. Agenda Item No. 1, Applicant Renegade Towers, LLC application PL-USE-2023-000020. Application for a Use Permit to allow for the construction of an occupied, multi-carrier telecommunication facility to include a 150-foot-tall monopole tower and related equipment within a 4,994-square foot portion of a larger 44,214-square foot parcel. The subject property is located at 92-8627 Paradise Circle Makai, approximately 450 feet north of its intersection of Keaka Parkway, Ocean View, Ka‘ū, Hawai‘i, TMK: (3) 9-2-101 parcel number 71 a portion of.

The Commission has received a Petition for Standing in a Contested Case Hearing for this agenda item. Before we consider this petition, I’d like to open the floor to public testimony on this petition. So, let’s see [indecipherable]. Okay. So, we’ll start with testimony. Um’ the first person I have here is, actually, let me call all four (4) testifiers up so, I can swear you in first and then we will start with the first testifier. So, if Colleen Conifer, Alan Sherman, Donna Durgin, Cheryl Taylor will you please come up. *[A male and three (3) females from the audience approached the testifier table].*

Okay, if you could please raise your right. Do you swear or affirm to tell the truth on this matter now before the Windward Planning Commission?

TESTIFIERS: I do.

LIN: Okay, thank you. Um' because Colleen Conifer is the Petitioner for the Contested Case Hearing, we will do the first three (3) testifiers first and then we'll go to Colleen. Okay. So, first I have Alan Sherman. Mr. Sherman? You have 3 minutes. Thank you. Oh, yeah, if you could use the microphone, please.

SHERMAN: Will start off, the name is Alan Sherman, I live in Ocean View. I've had my property there for since 1980. I bought my property in 1980 and I'm military, ex-military U.S. Air Force and yes, I know we can't use the fact that harmful ion, non-ionized radiation is emitted from the towers from the transmission antennas. The government protects the cell phone industry if they allowed the dangers of the radiation a lot less towers would be installed. All my research which is these papers here that these studies say that the towers should be installed at least 300 feet, 300 meters from any houses and that's 984 feet from the tower to live. Anything closer than that multiplies exponentially. I would be about 70 feet from the tower, my home and I've lived there since I bought the property in 1980. So, I've lived there.

I worked for Boeing and after I retired from Boeing I came and built my house on the property and I'm about like I said. In the very back of the property I took it, long ways from the road so that I wouldn't have a lot of noise, you know. If they allow this tower to come in it would be the end of my quietness in the community. It would be a year, I don't know how long it takes to build the tower, build all the housing, all of the property everything that they use. So, this has been a quite a depressing thing for me ever since I saw the sign. Renegade Towers on there was a real small sign. It was hung up on the trees. So, I don't know how many people could see it and half the time it was already down from the wind blowing it down.

CAMERO: One minute left.

SHERMAN: Okay, so anyway this situation someday the government will allow more studies on harmful non-ionizing radiation. I hope and pray that the application is denied so I can live in peace without Godzilla in my backyard. Here's are the studies that I've read that says that the least amount of room between the tower and houses is 300 meters and a lot of studies says 400 meters. So, that's about all I have to say. Thank you.

LIN: Thank you, Mr. Sherman. Next, I have Donna Durgin. Ma'am, you can sit down if you like. Okay, you have 3 minutes. Thank you.

DURGIN: Okay. So, I did allow you to read the paperwork that I have but my big concern is we are overlapping coverage. The tower as it was promoted in the application said a 100-foot tower. It has been upgraded to a 150-foot tower as of 2021 and the old one has been removed. This is the actual picture that was for the Ka'ū Calendar, but they edited all the junk that's underneath it. But that's the trouble with these towers draw vandalism, and junk cars and everything else. I mean, we don't live in the best neighborhood, but the trouble is when you look at property

values when they come to appraise your home, they are looking at the home itself, what it cost to rebuild it and what is in the neighborhood as far as things that they cannot move which is going to be the cell phone towers. So, it will affect the property values.

The FCC it says here, it's like they're basing you cannot complain about them with health issues. But thirty (30) years ago their data was done. Not now! They've gone 2G, 3G, 4G, and now 5G. How come the data has not been upgraded? How come we're still using 1996 FCC data, you know? According to this tower on Parkway, yeah, you guys are checking out land because there is no homes in that area. There is only two (2) homes within the 500-foot that is, and I have that paperwork here. There's only 2 homes here that is affected and by the Reef tower. Two homes at the top of the 500 feet everything else is land. So, the lands, I mean if it isn't goes a little more. I mean like they say, everybody wants good coverage. My thing is here, 94% of home buyers were less interested if a cell tower is located in there.

So, 97% may want the coverage, everybody wants good cell phone coverage. But no —

CAMERO: One minute left.

DURGIN: — one wants in their backyard. Lot of problems with the application, placement of the sign, the sign was actually not, let me get here, where are we. I got some good pictures here too, but anyway. The sign was put up and it was not even actually up very long, and it was destroyed. There's fourteen (14) homes in this area that you are affecting now. Up there was 2 homes, 14 homes here. We were here, I've been here 27 years and to put a tower there is not right. The other thing is if I have only have 1 minute. The CDP has this paperwork. The stores are down here for Medium Density. This is Commercial Industrial. You can put a tower in Commercial Industrial without a permit so, why do we need a permit? Just have them put it, located there. It will cover the bottom of Ocean View and Rancho's a lot more than if we —

CAMERO: Please finish your testimony.

DURGIN: — than if we put a Use Permit in that area, so and that's what the coverage thing is on this is that they're trying to get Ranchos and the bottom of Ocean View. Well, if it was in Ranchos right here it would actually have better coverage. So, better location. Okay.

LIN: Thank you for your testimony.

DURGIN: Let me see one more thing if there's anything in here. No. You have the paperwork I submitted that will go for reading right?

LIN: Yes. Thank you.

DURGIN: Okay, thank you.

LIN: Okay, next I have Cheryl Taylor.

TAYLOR: Good morning.

LIN: You have 3 minutes.

TAYLOR: Thank you. My husband, son, and I have been new residents to Hawai'i Ocean View Estates and when we found out about this cell tower, we were not impressed in any way shape or form. This will devalue our property. It will disrupt our daily living in the fact that every cell tower emits noise, and this is right in our backyard. This backs onto the edge of our property and I guess our point is there are thousands and thousands of acres of lava rock and property in the general area where this cell tower can be built. Why is it required to be built next to existing homes and I get that it's the almighty dollar that Renegade or whoever is looking at. Well, we can snag this little piece of land, it cost us nothing, power coming off from the pump across the street, it's an easy peesy. But it's also disrupting people's lives.

I do have health concerns in regard to it. I know that the FCC is like oh, well you can't bring that up. Well, darn it, yeah! I'm bringing it up. We have a good friend, lived under a cell tower or close to one and within 2 years she developed a brain tumor and later had a stroke, and it is definitely affected her life and the life of her neighbor who passed away from a brain tumor. I guess they say it doesn't devalue your home but as the previous gal said, it does. 94% of people say that they will not buy or expect to get a reduced price on any property that is located near a cell tower, and we didn't buy this property with the hopes of losing money on it. Definitely, I mean it's ours to live on and I understand that. But we are concerned definitely for ourselves, for our livestock and finally I would just like to submit that I don't think it's right that anyone individual on a Board or whatever their position is should be able to push their agenda at the risk and the well-being of other people in their community. Thank you.

LIN: Thank you for your testimony. Next, I will call up Colleen Conifer, who is the Petitioner for a Contested Case Hearing. Okay, as I've mentioned the Commission has received a Petition for Standing in a Contested Case Hearing from Colleen Conifer. The first order of business regarding this agenda item is to determine whether to grant the petition. So, the petitioner is present. The petitioner Colleen Conifer, or their representative as well as the applicant or representative for Renegade Towers and Director Kern or representative please come forward.

KERN: I'm forward.

LIN: Okay, please raise your right hand. Oh, sorry. Oh, no need. Do we have a representative for Renegade Towers? Oh, okay. *[A female in the audience raised her hand]*. Oh okay. If you could please raise your right hand. Do you swear or affirm to tell the truth on this matter now before the Windward Planning Commission?

CONIFER: I already got sworn in, right?

LIN: Yeah. Yes, okay. Okay, please introduce yourselves.

CONIFER: Are we —

LIN: No, no, separately you can start first and then.

CONIFER: I'm Colleen Conifer and I live within approximately 500 feet of the proposed tower will be in my direct vision. Um' —

LIN: Oh, hold on Ms. Conifer. We're just doing introductions right now.

CONIFER: Oh, sorry.

LIN: Yeah.

MARTIN: Hi, I'm Danette Martin and I'm representing Renegade Towers.

LIN: Okay. Yeah, okay, and then, Director Kern. You want to do just a quick intro?

KERN: Aloha and good morning. I'm Zendo Kern, Planning Director for the Hawai'i County.

LIN: Okay. Right now Planning Commission Rule 4-6 Section (a) states that "any person seeking to intervene as a party shall file a written request on a form approved by the Planning Director and accompanied by a filing fee of \$200.00 no later than seven days, prior to the Commission's first meeting on the matter." Staff, will you confirm that this petition was properly filed, and that the copies of the petition was forwarded to the applicant in a timely manner?

KAY: So confirmed Mr. Chair.

LIN: Okay, Christian can you identify yourself, please.

KAY: Oh yes, Christian Kay, Planner for the Planning Commission Division.

LIN: Okay, and could you clarify that this was a petition by Miss Colleen Conifer?

KAY: That's correct.

LIN: As an individual?

KAY: I believe that's correct, yes.

LIN: Okay, the first order of business regarding this agenda item is to determine whether to grant the petition. Commissioners, please be reminded that our focus should be on why standing should or should not be granted, not on the merits of the application. Rule 4-6(b) states that the petitioner shall be admitted as a part if the following criteria can be met:
 No. 1 – His or her interest is clearly distinguishable from the general public; or
 No. 2 – Government agencies whose jurisdiction includes the land involved in the subject request; or
 No. 3 – That they have some property interest in the land or lawfully reside on the land; or

No. 4 – That even though they do not have an interest different from the public generally, that the proposed action will cause them actual or threatened injury in fact; or

No. 5 – Persons who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, who practice those rights which are customarily and traditionally exercised for substance, subsistent, subsistence, cultural or religious purposes.

Okay, so now Miss Conifer, could you please explain to the Commission why your standing should be granted.

CONFIER: Well, as I started to say I'm living adjacent to this proposed tower within about 500 feet. It will be clearly visible from all windows and lanai on my house that face the ocean. Which was one of the primary reasons I bought the house from a person that I know. But that's why I'm here, that's my claim for standing. It will affect the value of my house and I have safety issues that I want to discuss and also the noise that's been brought up. All of the issues that were brought up by the other testifiers are included, I believe in my petition if you've had a chance to look at that. I didn't go into technical details because I am not a technician. I am a homeowner; I am a regular person. We had less than three (3) weeks about to review all this material and I'm really, you know we know we're under the gun here because they've had over a year to work on this. We've had less than 3 weeks and we're not experts and we had to learn your system and all those things.

I also want to say that I found out that the record here at the Commission is thirty-eight (38) approved, no thirty-nine (39) sorry approved tower applications, permit applications and one (1) denied. So, I know we are up against it. You know, we hope to be number two (2), the one you denied. We feel we have a big case because there are so many alternate sites available.

LIN: So, ma'am, ma'am. Sorry, I want you to focus on why your standing should be granted for the petition on a contested case. Not on the merits of the applications provided by the applicant.

CONFIER: I thought it was my interest being that I live adjacent to the tower. Isn't that the standing?

LIN: Yeah, so. We are only focusing on that right now, is your standing.

CONFIER: Right, okay.

LIN: Yeah, we can go into the petition, the application later —

CONFIER: Fine.

LIN: — right now [*Indecipherable crosstalk*] So, our procedure is right now we're just strictly looking at whether you have standing in a contested case hearing. Okay. So, maybe if I can pass this to Deputy Corporation Counsel to explain what the process of a contested case is.

FEMALE FROM AUDIENCE SPEAKING: [Indecipherable]

LIN: No, ma'am. Yeah, sorry this is her petition.

CONIFER: We have 3 other people signed on to this.

LIN: Oh, ma'am your petition clearly states that you individually filed for a petition of a contested case —

CONIFER: And our Paradise 'Ohana. That's what they told me I could include my 'Ohana when I came to the Planning Department. So, we added their names onto the Epic System as co-signers to this. I didn't put their names on it, but they are included in the petition for standing. That would be the people you've just heard from.

LIN: Okay.

CONIFER: Al and Donna. They're in the system. Maybe somebody from the Planning Commission can confirm that because we tried to make sure we covered all our basis.

TIAPULA: Okay, at this point I've been asked to explain the process —

CONIFER: Yes.

TIAPULA: — for the petition for standing today. Right now, we are only examining whether you will be granted standing to file this petition.

CONIFER: Right.

TIAPULA: If you are granted standing there is a procedure that will take place. You will be given the opportunity to go off and experience mediation with the applicant. The Commission will look at your application as an individual. The Planning Commission rules provide that any individual who seeks to intervene has to file an application fee of \$200.00.

CONIFER: I did.

TIAPULA: One individual filed an application fee and that is the only petition being examined today. The petition from Colleen Conifer, only.

CONIFER: May I ask a question.

TIAPULA: No, sorry. I'm explaining the process. If it is granted, if the petition is granted then there's the opportunity for mediation so everything will be continued while the parties have an opportunity to go through the process of mediation and then they return to the Board, to this Commission. Where a hearing's officer either the Commission as a whole, a single Commissioner or a separate hearings officer would then hear the contested case. If the petition is denied, the

Commission may choose to move forward and evaluate the underlying application for a Use Permit. That's the process we're looking at today. For further clarification —

KERN: I could jump in real quick. So, as Corporation Counsel was saying. If standing is granted, then we'll move to mediation. The Planning Department goes through the process of working on procuring a mediator, both parties would go through that. If mediation is reached, an agreement is reached then that would come back to the Commission with some type of agreement. If no resolution is reached by the way of mediation that at that point the parties will come back to the Commission and a hearing's officer will then be found either it's Commission, the Commission, a commissioner, or we hire a hearing's officer. So I just wanted to make sure it's very clear if standing is granted then it's mediation. If mediation is reached great, if it's not then it moves to the next level of the full contested case.

CONIFER: Thank you. Would that all occur today?

KERN: All that's occurring today is whether or not there's standing. If standing is granted —

CONIFER: May I ask one other question attorney on procedure. That is if the hearing officer decides against us and in favor of Renegade. Have we at all forfeited any rights to take this matter legally. Are we forfeiting any rights to legally contest this by going through a hearing process with the hearing's officer.

TIAPULA: I am the attorney for this Commission, you will have to seek your own legal advice. I cannot advise you.

CONIFER: Well you could tell me whether it's prohibited or not.

KERN: I can give you the process.

CONIFER: Thanks.

KERN: So, at what point in time if a hearing's officer is brought in at the end of all the deliberation. A Conclusions of Law and Findings of Facts will be provided to the Commission. The Commission at that point will review the Conclusions of Law and Findings of Facts will have a public hearing, a meeting on this and then they'll decide to vote in either confirming the Conclusions of Law and Findings of Facts or not. If it does not go into to your favor, then there is an appeals process the decision can be appealed and that would be appealed at Third Circuit Court within thirty (30) days of the decision made by this body.

CONIFER: Thank you. I appreciate that —

KERN: And I am not a lawyer and I'm not giving legal advice. I'm purely saying procedurally, yes, thank you.

CONIFER: [Indecipherable] process that's exactly what I needed to know, and I've been asking that question continuously. So, thank you for finally helping me with that.

LIN: Yeah, and ma'am just to further clarify. So, if your standing is granted, the selection of a hearing's officer is there's two (2) options. One is that the Planning Commission serves as the hearing's committee, board or a separate hearing's officer will be chosen by the Planning Department to hear this case.

CONIFER: Can you like be as to what the difference would be between those 2 choices or options? In terms of effect or whatever, how it works.

KERN: Can't really speak to the effect. The difference is if the Commission feels that they have the time and the capacity to be the hearing's officer. Sometimes they do, then you make your case to them otherwise a hearing's officer is hired. It's generally an attorney and they are then the process goes on between those parties where the Commission isn't a part of that.

CONIFER: Okay.

KERN: During that process.

CONIFER: And I have an option there as to which or you do that decision. You make that decision?

KERN: The Planning Department goes through the process of procuring a hearing's officer as well as a mediator as well and actually the Planning Department also pays for the hearing's officer and mediator.

CONIFER: What was my \$200.00 fee for, I thought that —

KERN: To file your petition, to file.

CONIFER: Okay, thank you.

LIN: Okay. So, Ms. Martin, do have any objections to this petition?

MARTIN: I just wanted to say that —

LIN: Oh, you got to put your mic on, sorry. Yeah, and re-identify yourself for the record.

MARTIN: I just want to share that to give you perspective of what 500 feet is. That's one and a half football fields away and —

LIN: Sorry, —

MARTIN: — I'm just saying that when we're talking about her interest in it. She is pretty far away to be an interested party and that's really all I'm saying.

LIN: Okay. Thank you. Director Kern, you have any objections to this petition?

KERN: I have no objections to the petition. Thank you.

LIN: Okay, at this point, Commissioners, just a reminder that we are strictly discussing if the standing should be granted to Ms. Conifer. Ma'am you can sit down if you'd like to. So, Commissioners do have any questions for the petitioner, the applicant, or the Director?

DE LUZ: Chair, I just have one question.

LIN: Yeah, Commissioner De Luz.

DE LUZ: If Ms. Conifer could show us on the map. I just want to get an idea where her property is and where the cell tower will be. Is that something you might have?

CONIFER: *[Indecipherable]*

DE LUZ: Okay.

LIN: We actually have a slide. The Planning Department has provided showing the vicinity.

DE LUZ: Thank you.

KERN: Our Planner Christian will pull it up on the screen so everybody can see it.

MARTIN: There's a photo simulation that's in your packet and Miss Conifer's property is not at the corner. It's one over if that helps. That's on page 20 in your packet.

[Aerial photograph was shown on the screen by Planner Christian Kay]

KAY: So, Mr. De Luz. In red here is the petitioner's property. Outlined in blue here is the subject property where the tower is being proposed.

KERN: Christian, can you orientate mauka to makai.

KAY: I am actually not sure, Jessica which direction is mauka, which is makai?

ANDREWS: *[indecipherable]*

KAY: Makai is to the bottom.

MARTIN: Can I show you the approximate location for the tower.

LIN: Right now we're just asking questions. So, Miss Conifer is this map representative of your property and, okay.

CONIFER: Oh, it's over closer to it [*indecipherable*] the petitioner's property, yep, that is my house right there and it looks down directly onto, oh thank you. Yeah, it looks directly down through the whole development down to the highway pretty much, yeah.

LIN: Okay, thank you. Okay, Commissioners, any other questions?

DE LUZ: No further questions, thank you Chair.

LIN: Thank you. Okay, so then now that we've heard and had the opportunity to ask questions on the standing. Is there a motion to either grant or deny standing to the petitioners? Petitioner?

DANIELE: I'll submit a motion to deny standing to the petitioner.

LIN: Okay, there's a motion to deny standing by Vice Chair Daniele. Is there a second?

BALOG: Second.

LIN: There's a second by Commissioner Balog. Is there any discussion on this motion to deny standing for Miss Colleen Conifer for this contested case hearing?

[Indecipherable outburst from the audience]

LIN: Okay, I'd like to note that the role, sorry, I have to do a roll call vote. All in favor of denying standing, please say aye.

DANIELE: Aye.

BALOG: Aye.

LIN: Okay, sorry, hold on. Um' Vice Chair Daniele, as the person making the motion could you provide a reasoning for why the standing is denied.

DANIELE: Yeah, so, it seems to me that the validation of, let's say how many feet away the property is to the cell tower. It looks like it's quite a distance away, also the cell tower is going to be a betterment to the community as a whole. Okay, at this time I'll ask for legal advice from Counsel and we're to go into executive session.

LIN: I will need a motion for executive session please.

DANIELE: I'll move for a motion for executive session.

DELUZ: Second.

LIN: It's been moved Vice Chair Daniele for executive session, seconded by Commissioner De Luz. All in favor for executive session, please say aye.

COMMISSIONERS PRESENT: Aye.

LIN: Okay. Any opposed? Okay, we will now move into executive session.

At 9:56 a.m. the Commission went into executive session to consult with its attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5. At 10:06 a.m. the Commission returned from executive session.

LIN: Okay, we are now back from executive session. The Commission as a whole, oh, sorry. Let me just hold on, one second. Zoom's up, okay. The Commission went into executive session to ask for legal advice on Rule 4-6(b) which is regarding the standing of a petition and our discussion was whether or not under the criteria (a) the petitioner his or her interest is clearly distinguishable from that of the general public. Currently there is a motion on the floor for a denial of standing however, before we get into the discussion.

I do want to remind everyone. Pursuant to Rule 1-5 of the Planning Commission's Rules of Practice and Procedure. The Chairperson or Vice Chairperson, um' oh sorry, hold on. Okay. The Chairperson or Vice Chairperson may limit testimony or ask the people in attendance that anybody who is abusive, disruptive, or unduly repetitious the person testifying shall direct his remarks to the chairperson and not to any individual commission member, staff member, or person in the audience. All members of the public shall extend property courtesy and respect to one another, commission members and staff. Any person who does not abide by these rules may be ruled out of order by the chairperson, who has the authority to maintain order and decorum. I further request that the commissioners take an active role in assisting me with maintaining order. If any commissioner objects to any behavior that is undiplomatic or improper, please interrupt by stating "point of order" and your concerns will be addressed. Finally, in the event there are any behaviors displayed by applicants, members of the public, or by commissioners that are disruptive to the order of today's meeting, I will not hesitate to exercise authority as chairperson pursuant to Rule 1-5, Section J to address these behaviors and, if necessary, to remove the disruptive party from the meeting. I will provide one verbal warning, if the warning is not heeded, I will call a recess and give a second verbal warning. If there is any further disruptive, disrespectful, or discourteous behavior following the recess, the party will be removed from the meeting. It is important that we all understand that the procedures that will be put in place to maintain decorum. Thank you.

KERN: Mr. Chair, if I may.

LIN: Go ahead Director Kern.

KERN: I just want to further point out. Our commissioners up here they are volunteers from our community. They come here, they serve, they do not get paid for this. They are volunteers. They are not politicians; they are here to serve our community. It's challenging. We know there's a lot of emotions out there these days. There's a lot of stuff going on out there. So, I get that emotions can run high, but I again just want to say from my heart, please respect these commissioners. If you need to put some negative energy towards somebody you can direct that to me. But please respect our commissioners. Thank you.

LIN: Thank you, Director Kern. So, right now there is a motion on the floor to deny standing for the contested case. We are currently in discussion. So, Commissioners do we have any discussion regarding the motion to deny standing and right now we ask the Commissioner making the motion to first address your reasoning for why the petition for standing should be denied.

DANIELE: Okay, so my position is that the interest, there is no clearly distinguishable interest from the petitioner versus the general public. So, that's why I made the motion that I didn't.

LIN: Thank you, Vice Chair Daniele. Staff if I could ask that that map be brought up onto the screen again. Thank you Christian. So, here in the red we see the petitioner's property. If any other property owners around that area, are they considered general public?

DANIELE: Yeah, they would be considered general public.

LIN: So, the reasoning that I see is how does the petitioner's property there distinguish her versus any property either to the west of the blue, to the east of the blue, to the north of the blue and to the south of the blue. So, that's my thought process right now. So, why would just one property there be clearly distinguishable from the general public. The other properties are also in close proximity, but they have not identified that reasoning to us here at the Commission. *[An individual in the audience asked to speak]* You cannot, you had your chance in your public testimony portion.

DE LUZ: Chair, for clarification.

LIN: Sure.

DE LUZ: Could the petitioner speak on behalf of that question?

LIN: So, in her petition she clearly identified her filing as individually, as a single individual as the petitioner and that's why we're having her present strictly on the standing as an individual.

DE LUZ: No, I understand that.

LIN: Yeah.

DE LUZ: I just, I guess from a clarification standpoint, and I think that's clear what you're trying to say is just that it's kind of the assumption is why only one person and why not the rest. That, I'm sorry, go ahead.

LIN: Please use the mic for the record. Press the button.

CONIFER: Right, thanks. I came to the Planning Department because I was so unclear about this process last Wednesday and met with Planning Department's staff and asked that specific question. Do we all need to file separately for a petition and each of us pay a \$200 dollar fee. I should have gotten in writing because they said "no, you file as you and your 'ohana". Which is the language that I used, myself and my "ohana and the names were entered into the Eric (Epic) system when we uploaded everything. We had to say who was filing the petition, it was myself, it was Donna, and it was also Al the three of us. Oh there was also one more person, Dana who lives next door to me didn't make it here today, but her name was also added. So, there were four (4) of us supposed to be on this petition. I don't know why I'm the only one listed. Because we submitted Donna's documents with mine all as part of the same package in the standing petition that we had to upload. We had to learn the system to upload onto the Eric (Epic) system and it was for 4 people. So, it's —

LIN: Okay.

CONIFER: — not just me.

LIN: So, that sounds like a procedural issue.

CONIFER: Yeah.

LIN: That I might ask Director Kern to address right now.

KERN: Do you by chance know who you spoke to in the department?

CONIFER: Um', no. But I wished I had taken down their names, but it was a Planner. The people I spoke to at desk were very unfamiliar with the petition process, so they did bring a young woman out who was a Planner she said, and she gave me that information. Because I said I want to know specifically do we all have to file separately or can we do it together and she said, "No, you can file one petition and put all you names on it and only one fee is needed" and that's what we did. And their properties are closer than mines if that makes a difference.

DE LUZ: Yeah, Chair maybe um'

LIN: Go ahead.

DE LUZ: A suggestion might be to, my suggestion be to defer so we can maybe get the proper petition information and give the citizens a, no, the homeowners an opportunity so that it's more correct. I know it's a technicality, but we just wanted, that's why there's a lot of questions concerning that, and I think you bring up a really good point.

CONIFER: It's a complicated —

DE LUZ: You do have other people, yeah, it does look. I recommend that we get clarification before we vote on the issue, my opinion. Thank you.

LIN: Okay, maybe Director Kern you want to take a quick five (5)-minute recess? Okay. We're going to take a 5-minute recess just to clarify on what happened with your petition. Okay?

CONIFER: Uh' um'.

LIN: Thank you. We'll take a 5-minute recess till 10:20 a.m.

[Chairman Lin called a recess at 10:16 a.m.]

LIN: Can I get a motion by the Commissioners for executive session, please.

DANIELE: I move to go into executive session.

LIN: Okay, motion by Vice Chair Daniele.

CROSS: Second.

LIN: Seconded by Commissioner Cross. All in favor of entering executive session, please say aye.

COMMISSIONERS PRESENT: Aye.

LIN: Any opposed? Okay, if everybody could please clear room again. Sorry.

At 10:27 a.m. the Commission went into executive session to consult with its attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities pursuant to HRS 92-5. At 10:40 a.m. the Commission returned from executive session.

LIN: Okay, the Commission is now back from executive session, and I want to thank everybody here for your patience and your understanding. Okay, we consulted with our attorney and on the parameters of what defines distinguishable, distinguish, I can't say this word, distinguishable from the general public. With that, currently again there is a motion on the floor for denial of standing and I'll open it up to the Commissioners for any discussion or comment.

DANIELE: Okay, so.

LIN: Oh, Vice Chair Daniele.

DANIELE: Yeah, so, in light of some new information that the Planning Commission has received I am going to withdraw my motion for denial.

LIN: Okay, the motion to deny standing has been withdrawn. Is there another motion for action on the petition for standing in contested case hearing for Colleen Conifer?

CROSS: I move to grant standing.

LIN: Okay. It's been moved by Commissioner Cross. Is there a second?

DANIELE: I'll second that.

LIN: Okay, it's been seconded by Vice Chair Daniele. Any discussion? Okay, then I will ask for a, oh sorry, Commissioner Cross if you can state the basis on your motion for granting standing, please.

CROSS: That the residents within the vicinity of the project area are distinguishable from that of the general public.

LIN: Thank you. Any further discussion on that reasoning or the motion? Okay, seeing none. Roll call vote on the motion to grant standing to petitioner Colleen Conifer on this agenda item.

ANDREWS: Thank you Chair, I'll take a roll call vote. Commissioner Cross?

CROSS: Aye.

ANDREWS: Commissioner Daniele?

DANIELE: Aye.

ANDREWS: Commissioner Balog?

BALOG: Aye.

ANDREWS: Commissioner De Luz?

DE LUZ: Aye.

ANDREWS: Chair Lin?

LIN: Aye.

ANDREWS: The motion passes with 5 votes in favor.

LIN: Okay, thank you. So, Miss Conifer, your petition for standing has been granted. The next step is that we'll have to go to mediation, right? Yeah, oh, so on this one. Okay. So, the first step is to determine, wait, wait. Oh okay, okay. So both parties will have to go to mediation to see if common ground and a solution can be made. If mediation has not come out in a positive path, then, oh, here sorry, let me just read the language for you. Planning Commission Rule 4-6 requires all parties to a contested case proceeding to participate, in good faith, in mediation first, before any contested case is heard. A mediator shall be selected jointly by the parties or appointed by the Commission if the parties fail to agree. Ms. Jackson or the Planning Department will contact the parties by email within a week to select a mediator.

So, at this point Commissioners we're going to have to ask for a motion to continue this case as the standing has been granted however —

TIAPULA: Just to clarify with the Planning Department like information about the contested case. Would you like the Commission to also indicate who the hearing's officer would be, if needed, so that can be available at the next meeting.

KERN: Yeah, I think that would be a good idea.

LIN: Go ahead.

MARTIN: I don't, I was wondering how this fits in with the State's shot clock the sixty (60) days that the County has to approve/deny, approve with conditions that is HRS 46-89.

LIN: I would have to defer to either the Director or legal for that definition of the 60 days.

KAY: So, Mr. Chair. We would have to review the statute to take a look to see how this plays out. I think what the applicant is referring to is the 60 days for the, from the acceptance of an application to approval or denial of the permit and I don't know how a contested case plays in that statute. So, it would, if you'd like to take a moment we can look at or if we do that offline, I'm not sure.

LIN: Okay, yeah, I think if you can let the applicant know what that interpretation would be in regard to the 60 days and how it relates to a contested case. I think that's fair for the applicant to understand. Okay. So, *[individual in audience speaking to the Chair [indecipherable]]*. sure, yes, yes, that's perfectly fine. Okay, so, we also need to determine who will conduct the contested case hearing in the case that mediation fails. So, Commissioners we have 2 options. One is that the matter is referred to a hearing's officer separate from the Planning Commission or that the Commission conduct the hearing as a whole. Is there a motion for either one of those?

DE LUZ: Um, I make a motion Chair for option 1, the first one. That they get an independent counsel, hearing's officer.

LIN: Okay.

DE LUZ: Hearing's officer.

LIN: Okay, it's been moved by Commissioner De Luz that a hearing's officer be selected by the Planning Department to conduct the contested case hearing. Is there a second?

DANIELE: I'll second that.

LIN: It's been seconded by Vice Chair Daniele. Is there any discussion regarding this selection of a hearing's officer? Um' maybe for both parties a clarification, Director Kern you want to kind of talk through how you guys chose a hearing's officer?

KERN: We have a list of service providers that are approved to do business with the County, and we'll go through that list and then select the most appropriate hearing's officer. All parties will be involved in this discussion.

LIN: Okay, thank you. Um' any discussion, comments? If not, is there, sorry, there was a motion and a second. All in favor of the selection of a hearing's officer, oh sorry, is it a roll call?

ANDREWS: A roll call vote.

LIN: Oh, okay, okay, go ahead.

ANDREWS: For the motion to hire a hearing's officer. Commissioner De Luz?

DE LUZ: Aye.

ANDREWS: Commissioner Daniele?

DANIELE: Aye.

ANDREWS: Commissioner Balog?

BALOG: Aye.

ANDREWS: Commissioner Cross?

CROSS: Aye.

ANDREWS: And Chair Lin?

LIN: Aye.

ANDREWS: The motion passes with 5 votes.

LIN: Okay. Thank you. So, at this point in time, this agenda item will be continued until mediation happens and a result of that mediation occurs which then will be sent to the Planning Department, and then we'll be notified again. Oh, go ahead Christian.

ANDREWS: I think we may need to do a motion to continue.

LIN: Oh, okay. Sorry, procedure. Is there a motion to continue this case until mediation is completed.

DANIELE: I will make a motion to continue this case until mediation has concluded.

LIN: Is there a second?

DE LUZ: Second.

LIN: It's been moved by Vice Chair Daniele and seconded by Commissioner De Luz. All in, roll call.

ANDREWS: Okay, Commissioner Daniele?

DANIELE: Aye.

ANDREWS: Commissioner De Luz?

DE LUZ: Aye.

ANDREWS: Commissioner Balog?

BALOG: Aye.

ANDREWS: Commissioner Cross?

CROSS: Aye.

ANDREWS: And Chair Lin?

LIN: Aye. Okay, now the case will be continued. Thank you so much for your patience, everybody, I apologize.

[Individual from the audience speaking to the Commission] [indecipherable]

LIN: Okay. Um' Director Kern you want to take a stab with that?

KERN: Sure. Um' right now we believe that she would be the only one on there. We're looking at the other side of it to see if there is an opportunity to have those other ones.

Now, 'ohana is a really tricky because 'ohana generally means a family member. It doesn't, I know you might have meant something different.

CONIFER: According to the Planning Department gave me —

KERN: You are needed to turn your mic, microphone on.

CONIFER: Planning Department gave me the word 'ohana to use, so I did. I wouldn't have normally used it, but they told me you and your 'ohana can file on one petition. So, that's how I phrased it. It's signed by me, it's signed by Donna, it's signed by my neighbor Dana, well actually she didn't sign it. But her name is on it and Al's. They're all submitted. They're all in there with our names and signatures.

KERN: So, we will take a hard look at that with our legal —

CONIFER: Right.

KERN: — counsel

CONIFER: Yeah, because I'd like them to be included in the mediation, not just me. Because I'm not going to speak for everybody.

KERN: We understand that. So, like I said we'll take a hard look at it and make that determination to the best legal ability that we possibly can.

CONIFER: Thank you.

KERN: Thank you.

LIN: Okay, thank you. That concludes agenda item number 1. Thank you.

The item ended at 10:52 a.m.

Respectfully submitted,

Melissa Dacayanan-Salvador
Melissa Dacayanan-Salvador (Feb 2, 2024 12:32 HST)

Melissa Dacayanan-Salvador, Secretary
Windward Planning Commission