

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

MINUTES
DECEMBER 7, 2023

The Windward Planning Commission met in regular session at 9:03 a.m., in the County of Hawai'i, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i, with Chairman Dennis Lin presiding. This meeting was streamed live on YouTube.

A video recording is made part of these minutes, which can be viewed on the YouTube County of Hawai'i Planning Department channel at https://www.youtube.com/watch?v=Q3g2k1N8_VA

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

ABSENT AND EXCUSED: Chantel Perrin.

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

Nine members of the public were in the audience.

A quorum was present. Chairman Lin called the meeting to order and introduced Commissioners and staff.

APPROVAL OF MINUTES

At 9:05 a.m. the Commission took up the minutes of the October 5, 2023, Windward Planning Commission meeting. It was moved by Vice Chair Daniele and seconded by Commissioner Cross that the minutes be approved as submitted. No corrections were made. A voice vote was taken, and the motion carried with all in favor.

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

At 9:05 a.m. Chairman Lin explained the procedure and Planning Commission Rule 1-5 regarding decorum.

Chairman Lin called a recess at 9:06 a.m., to allow the Commission to review additional information provided at the start of the meeting and the meeting was called back to order at 9:21 a.m.

Testifiers were given the options of speaking at this time or later at the time the specific agenda item was called to order. There was one individual (Bryce Novak, Center Line Communications

formerly J5 Infrastructure Partners) provided testimony on Zoom regarding New Business Item No. 1 **RENEGADE TOWERS LLC (PL-USE 2023-000020)** and there were no in-person testifiers. *[SEE TESTIMONY TRANSCRIPT – EXHIBIT A]*

NEW BUSINESS

1. 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.).

The Commission took up this item at 9:25 a.m. with nine members of the public in the audience.

Following the introduction of this item, Chairman Lin stated that the Commission had received a petition for standing in a contested case hearing, and before considering the petition opened the floor to public testimony.

There were three individuals (Alan Sherman, Donna Durgin, and Cheryl Taylor) in-person and no Zoom testifiers for this agenda item. *[SEE HEARING TRANSCRIPT – EXHIBIT B]*

Action on Petition of Colleen Conifer: It was moved by Vice Chair Daniele and seconded by Commissioner Balog that the petition be denied.

At 9:56 a.m. it was moved by Vice Chair Daniele and seconded by Commissioner De Luz that the Commission go 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. There were no objections from the other Commissioners. A voice vote was taken, and the motion carried with all in favor. Chairman Lin called a recess, and the room was cleared. The Commission went into executive session at 9:58 a.m. At 10:03 a.m. it was moved by Vice Chair Daniele and seconded by Commissioner De Luz that the Commission go out of executive session. A voice vote was taken, and the motion carried all in favor.

Chairman Lin called the open hearing back to order at 10:06 a.m. once everyone returned to the meeting room. He stated the Commission went into executive session to ask for legal advice on Rule 4-6 (b) regarding the standing of a petitioner and whether or not under criteria (a) the petitioners interest is clearly distinguishable from that of the general public. Chairman Lin reminded everyone on the procedures to maintain decorum. There was discussion on the motion to deny standing and Vice Chair Daniele stated there is no clearly distinguishable interest from the petitioner to the general public. There was also discussion on the filing of the petition by Ms. Conifer as an individual. The petitioner, Ms. Colleen Conifer, stated she previously inquired with the Planning Department whether separate petitions were needed for her ‘ohana for a total of four (4) people and she was instructed just one petition was required and list all the names with one filing fee.

At 10:16 a.m. Chairman Lin called for a recess in order for the Planning Department to clarify the discrepancy in the information the petitioner received on the filing of the petition.

Upon returning from the recess at 10:26 a.m. it was moved by Vice Chair Daniele and seconded by Commissioner Cross that the Commission go 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. There were no objections from the other Commissioners. A voice vote was taken, and the motion carried all in favor. Chairman Lin called a recess, and the room was cleared. The Commission went into executive session at 10:27 a.m. At 10:39 a.m. it was moved by Commissioner Cross and seconded by Vice Chair Daniele that the Commission go out of executive session. A voice vote was taken, and the motion carried all in favor.

Chairman Lin called the open hearing back to order at 10:40 a.m. He thanked everyone present for their patience and understanding. He stated the Commission consulted with Counsel on the parameters as to what defines "distinguishable from the general public".

In light of the new information the Commission had received, Vice Chair Daniele withdrew his motion to deny standing for the petition of Colleen Conifer. It was moved by Commissioner Cross and seconded by Vice Chair Daniele that the petition for standing be granted as the residents within the vicinity of the project area are distinguishable from that of the general public. Roll call vote was taken, and the motion carried with five ayes (Cross, Daniele, Balog, De Luz, and Lin), no noes, and one absent and excused (Perrin).

Chairman Lin stated that pursuant to Planning Commission Rule 4-6, the parties are required to participate in mediation first, and that the parties would select a mediator jointly or the Commission would appoint one if the parties fail to select a mediator.

Ms. Martin representing the applicant, Renegade Towers, LLC asked the Commission how this affects the State's shot clock in regard to the County having sixty (60) days to approve, deny or approve with conditions as stated in HRS 46-89. Planner Christian Kay stated they will need to review the statute to determine how it relates to a contested case.

It was moved by Commissioner De Luz and seconded by Vice Chair Daniele that the Commission hire a hearing's officer to conduct a contested hearing on the application. For clarification Chair Lin asked Director Kern to explain how a hearing's officer is selected. Director Kern answered there is a list of service providers approved to conduct business with the County, they go through the list and select the most appropriate hearing's officer and all parties involved is part of the discussion. A roll call vote was taken, and the motion carried with five ayes (De Luz, Daniele, Balog, Cross, and Lin), no noes, and one absent and excused (Perrin).

It was moved by Vice Chair Daniele and seconded by Commissioner De Luz to continue this agenda item until the completion of mediation. A roll call vote was taken, and the motion carried with five ayes (Daniele, De Luz, Balog, Cross, and Lin), no noes, and one absent and excused (Perrin).

This hearing item ended at 10:52 a.m. *[SEE HEARING TRANSCRIPT – EXHIBIT B]*

Chairman Lin called a short recess at 10:52 a.m. and called the meeting back to order at 10:59 a.m.

2. APPLICANT: GOLD COAST SP LLC (PL-SMA-2023-000040)

Application for a Special Management Area Use Permit to allow for the development of a 2-story, 3,934 square-foot single-family residence and related improvements on 23,958 square feet of land situated on a shoreline parcel within the Special Management Area. The subject property is located at 15-1107 Ala Heiau Rd. approximately 580 feet southeast of its intersection with Maku'u Drive, Block "II" Kea'au, Puna, Hawai'i, TMK: (3) 1-5-031:062.

The Commission took up this item at 10:59 a.m. with one member of the public in the audience.

There were no in-person testifiers and one individual (Chrystal Schiszler) on Zoom testified for this agenda item.

Staff presentation by Alex Roy.

Action: It was moved by Commissioner De Luz and seconded by Vice Chair Daniele that the application for Special Management Area Use Permit No. PL-SMA-2023-000040 be approved based on the Planning Director's recommendation. A roll call vote was taken, and the motion carried with five ayes (De Luz, Daniele, Balog, Cross, and Lin), no noes, and one absent and excused (Perrin).

This hearing item ended at 11:19 a.m. *[SEE HEARING TRANSCRIPT – EXHIBIT C]*

PLANNING DIRECTOR'S REPORT

Report on Special Management Area (SMA) determinations, minor permits action issued by the Planning Director.

At 11:19 a.m. Chairman Lin introduced this item and stated the Short-Form Assessment Log and the SMA Assessment Log for October and November 2023 were circulated to the Commissioners. There were no questions about the log from Commissioners.

ELECTION OF OFFICERS

At 11:20 a.m. Chairman Lin opened the floor for nomination for chairperson for 2024. Commissioner De Luz made a motion to nominate Dennis Lin for Chair and the motion was seconded by Commissioner Daniele. There were no other nominations, and a voice vote was taken, and it was approved unanimously for Chairman Lin to continue as the chairperson. Chairman Lin accepted the position for the rest of his term as his term ends in 2024. He expressed his gratitude to the Commission for their vote of confidence.

Chairman Lin opened the floor for nomination for vice chairperson. Commissioner De Luz made a motion to nominate Commissioner Daniele for Vice-Chair and the motion was seconded

by Commissioner Cross. There were no other nominations, and a voice vote was taken, and it was approved unanimously for Vice Chair Daniele to continue as the vice chairperson.

AGENDA ITEMS FOR NEXT MEETING

At 11:22 a.m. Chairman Lin introduced this item. Planner Christian Kay stated a single agenda item is tentatively scheduled for the January meeting.

ANNOUNCEMENTS

Chairman Lin announced the Windward Planning Commission's next monthly meeting is tentatively scheduled for Thursday, January 4, 2023, at the County of Hawai'i County Council Chambers and the public may provide verbal testimony by interactive video conference via Zoom or at the physical location.

Director Kern honored and appreciated Commissioner Cross as his term will end on December 31, 2023, and stated he would be held over. He presented a certificate of appreciation signed by Mayor Mitchell Roth. Chair Lin also thanked Commissioner Cross for his service and wished everyone a very Happy Holidays and a Happy New Year.

ADJOURNMENT

There being no further business, it was moved by Commissioner Balog and seconded by Commissioner Cross that the meeting be adjourned. A voice vote was taken, and the motion carried with all in favor. Chairman Lin adjourned the meeting at 11:25 a.m.

Respectfully submitted,

Melissa Dacayanan-Salvador

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

Melissa Dacayanan-Salvador
Secretary

ATTEST:



February 02, 2024 03:02PM

Dennis Lin, Chairman
Windward Planning Commission

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

TESTIMONY TRANSCRIPT
DECEMBER 7, 2023

Public testimony regarding the application of **RENEGADE TOWERS LLC (PL-USE-2023-000020)** was heard at 9:21 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'u, 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 will move on to public testimony. So, at this time, we'll start with, I'll start with Zoom first and then we'll go to in-person. So, in-person will be right after this. Zoom testifiers, Tracie how many Zoom testifiers do you have on to testify for agenda item or for general public right now?

CAMERO: Hi, good morning, Chair. It looks like I only have a Bryce Novak and a Paul Chuba that's signed on and I don't think they are testifying if I'm not mistaken.

LIN: Okay.

CAMERO: Oh, Bryce's hand is up.

LIN: Okay, Mr. Novak?

NOVAK: Aloha, can you hear me?

LIN: Yes.

NOVAK: Aloha, my name is Bryce Novak from Centerline Communications formerly J5 Infrastructure Partners and my company has represented AT & T for all of its new site builds in Hawai'i over the last five (5) years. I'm here today to confirm AT & T's commitment to collocation on this proposed tower if its approved and also call reference to a letter of support directly from AT & T from AT & T's Hawai'i Market Director Lawrence Velasquez. Per the Planning Department's recommendation of approval I just wanted to reaffirm AT & T's coverage and capacity deficiencies in Ocean View Rancho Subdivision and —

LIN: Sorry, Mr. Novak, sorry to interrupt you but I would have to had swear you in before you provided any testimony [*indecipherable crosstalk*] —

NOVAK: Okay.

LIN: — any testimony.

NOVAK: Yes, yes. I forgot about that.

LIN: Yeah, so if you'll please raise your right hand. Do you swear or affirm to tell the truth on this matter now before the Windward Planning Commission?

NOVAK: I do.

LIN: Okay, thank you. You may continue.

NOVAK: Okay, as per the Planning, let me just start over again. Per the Planning Department's recommendation I just wanted to reaffirm AT & T's coverage and capacity deficiencies in the Ocean View Rancho Subdivision and along Hawai'i Belt Road. The existing site at Reef and Palm is overloaded with capacity requests and it has always had coverage issues reaching the Hawai'i Belt Road. The new site will provide capacity relief to the existing site and better voice coverage along Hawai'i Belt Road. The site is located near utility infrastructure and will improve additional coverage in capacity as part of the FirstNet First Responder Network. And that's all I had to add, I'm happy to answer any questions the Commission may have regarding the site for AT & T collocation.

LIN: Thank you, Mr. Novak. Commissioners any questions for this testifier? Okay, seeing none. Tracie, is there anybody else on Zoom that's testifying?

CAMERO: No, Chair. I believe Paul Chuba is an applicant. So, there's no other testifiers.

LIN: Okay, he's number 2. Okay. Thank you. Okay, we'll now move on to in-person testimony. Is there anybody who would like to testify right now before any agenda item? Okay. Seeing none. Okay.

The item ended at 9:25 a.m.

Respectfully submitted,

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

Melissa Dacayanan-Salvador, Secretary
Windward Planning Commission

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

WINDWARD PLANNING COMMISSION
COUNTY OF HAWAI‘I

HEARING TRANSCRIPT
DECEMBER 7, 2023

A regularly advertised hearing on the application of **GOLD COAST SP LLC (PL-SMA-2023-000040)** was heard at 10:59 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), Jeffrey W. Darrow (Deputy 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 one member from the public were in attendance.

APPLICANT: GOLD COAST SP LLC (PL-SMA-2023-000040)

Application for a Special Management Area Use Permit to allow for the development of a 2-story, 3,934 square-foot single-family residence and related improvements on 23,958 square feet of land situated on a shoreline parcel within the Special Management Area. The subject property is located at 15-1107 Ala Heiau Rd. approximately 580 feet southeast of its intersection with Maku‘u Drive, Block “II” Kea‘au, Puna, Hawai‘i, TMK: (3) 1-5-031:062.

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

LIN: Staff, is there any testimony for this agenda item number 2?

ANDREWS: Sorry, there’s nobody in person, —

LIN: Okay.

ANDREWS: — I don’t know about on Zoom.

LIN: Okay, is there anybody on Zoom, Tracie?

CAMERO: There’s nobody registered on Zoom right now.

LIN: Okay, thank you. At this point we will close public testimony. So, agenda item number 2 is applicant Gold Coast SP, LLC, PL-SMA-2023-000040. Application for a

Special Management Area Use Permit to allow for the development of a two (2) story, 3,934 square-foot single-family residence and related improvements on 23,958 square feet of land situated on a shoreline parcel within the Special Management Area. The subject property is located at 15-1107 Ala Heiau Road approximately 580 feet southwest of its intersection of Maku'u Drive, southeast, oh, southeast of its intersection with Maku'u Drive, Block II, Kea'au, Puna, Hawai'i, TMK: (3) 1-5-031 parcel number 62.

Deputy Director Darrow has a quick announcement.

DARROW: Thank you, Mr. Chair. Good morning members of the Windward Planning Commission. My name is Jeff Darrow, currently acting as Planning Director for this particular application. We wanted to make a statement in regards to applications in which our current Planning Director Zendo Kern is conflicted, and this was based on a ruling from the Board of Ethics, and these are applications in which our Planning Director had previously represented a particular project or applications that are submitted by Land Planning Hawai'i which was partly his previous company. In this particular application this Gold Coast was submitted by Land Planning Hawai'i. So, I will be acting as Planning Director. Moving forward there's been some conflicts when reports come out and there are references to the Deputy Planning Director's well as the Planning Director. Moving forward we are going to take out the reference to Deputy Planning Director and just continue to use it as Planning Director. I will be in those applications our current Planning Director is not involved at all. I take all decisions, I review, I make any recommendations for those particular applications. So, even in this application you'll see a few conflicts on that matter. Moving forward we just want to verify that we're going to keep it consistently with that. Hopefully, that's clear. We did consult with our Corporation Counsel as well as the Chair of Council on this and they both agree. Thank you.

LIN: Thank you, Planning Director. So, now we will move on to staff presentation. Alex, please go ahead.

ROY: Good morning, Commissioners. Today, I'm going to be talking about Special Management Area Use Permit application SMA-23-040 for the applicant Gold Coast SP, LLC. Here's a location map. As you can see it's at the makai end of Hawaiian Paradise Park on the I guess the farthest west or southern side of the shoreline in this area. So, just outside of Kea'au. The applicant is requesting approval to construct a two (2)-story 3,934 square foot single family residence. Includes five (5) bedrooms, three (3) bathrooms, a rec room, storage room, covered lanai, and a 2-car garage. The project will be setback approximately 180-feet from the shoreline. Water will be provided via an on-site private well, with wastewater being managed by a DOH or Department of Health approved individual wastewater system. So, pretty standard single-family residence develop.

Here's a view of the County zoning map. The subject parcel outlined in red. As we can see, it's at the end of Ala Heiau Road and the entire area including the park parcel to the south is zoned Agricultural-1 acre. State Land Use. The predominant State Land Use in this area is Ag but as you can see a number of parcels in this subdivision are listed as Conservation. At one time the entire coastal area was within the Conservation District but over time has been taken out via

Land Use Commission approvals and now is within the Ag. So, our subject parcel is in the Ag State Land Use Zoning District.

The LUPAG or the General Plan Map shows this entire area along the coastline as Open with the areas mauka of Ala Heiau within the Rural designation of the GP. Here's an aerial photograph from the ocean looking towards the property. I outlined in the red dash. You can see these lots are pretty well-developed. They're small, thin lots right along the shoreline. The shoreline in this area as you can see from this picture is a low bench fractured basalt rock and in this case the applicant has cited the development at the back of the property which the Planning Department is very happy with. So, here's an aerial photograph of the entire area kind of giving you an overview of the existing development, the shoreline and then down along if my cursor will work. Right along here is the entrance to the park where during my site visit, I noted a lot of the public was going down there. So, it's easily accessible and heavily used. There is another shoreline access point at the other end of Ala Heiau Road so there are numerous ways to get along the shoreline and fishing is the big predominant use in this area.

I kind of turn the plan a little bit to make it fit on the map. So, here we see a site plan, a general site plan of the proposed development. On your left-hand side of the screen is the road, on the right-hand side of the screen is the ocean. I demarcated the approximate 40-foot shoreline setback. So we see that the property and the development of the home is held back 180 feet again; the Planning Department is really happy that this applicant has choose to move as far back from the shoreline as possible. Thus mitigating any hazards related to coastal development. It also puts them out of the flood zone, the VE Flood Zone so that's good too. The individual wastewater system is allowed to be closer as long as it's within greater than 50 feet. So, in this case not an issue and then you'll see a small driveway and then the well and then we can assume of course there will be landscaping and other related improvements that are typical for single-family dwellings. But in this case, they've held way back from the certified from the shoreline and then outside of the shoreline setback area.

Here's just a profile. So, the top is the front so this is what you would see from the road and the bottom the rear elevation is what you would see from the ocean. So, pretty standard 2-story home with the open lanai and garage. The full set of plans everybody should have gotten in their application packet. Here I visited the site. Took a photograph, I crawled in a little bit it was pretty overgrown, but I was able to get in a few feet and kind of just give you an idea. I noted a couple Polynesian introduced trees, a lot of non-natives so, but nothing outstanding floral fauna surveys didn't really provide anything outstanding. This whole area been developed and was graded in the past for the development. At this point pretty standard overgrown vegetation and the trees line kind of the property lines.

Here's a view of the property entrance roughly on the left-hand side that white fence is the other property, is the property line. You can almost make out the sign, I should have gotten a picture of that but on the left-hand side would be the property entrance and this is an unpaved portion of Ala Heiau Road and then you could see a vehicle driving down towards to the public access. Which is not as pretty close, it's only a few hundred feet away. Then here's looking at the other direction towards the intersection with Maku'u and Ala Heiau. Again, the subject property is on the right. You can see pretty overgrown but there's some Polynesian introduced and a few small

native trees there in showing that site. And just for reference I wanted to add a picture of the intersection of Ala Heiau. So, our subject property would be forward in along Ala Heiau Road on the left and this is the intersection with the main Maku'u Drive. So this is the property just to kind of give you some reference.

So, at this time, the Acting Director's recommendation for PL-SMA-2023-000040 is approval with the stated conditions and I can take questions of course.

LIN: Okay, thank you Alex. Any questions from the Commissioners for staff? Okay, seeing none. We'll move on. Can I ask the applicant or their representative to please come forward. Mr. Pipan, I believe that the applicant is actually on Zoom, correct? Okay.

CHUBA: Hi, I'm Dr. Chuba and I'd like to introduce myself if you'd like.

LIN: Okay, just real quick. I have to swear you in first. So, maybe if you can get the screen off and we'll get everybody sworn in. There we go, okay. If could please raise your right hand. Do you swear or affirm to tell the truth on this matter now before the Windward Planning Commission?

PIPAN: I do.

LIN: Okay, before anybody speaks, please speak directly into to your microphones, state your name, the area that you reside in and whom you represent and if you could confirm if you've received the background and recommendation reports from the Planning Department and if you agree to these proposed conditions.

PIPAN: Aloha, I'll start off. Aloha, Chair Lin, Windward Planning Commissioners. John Pipan, Land Planning Hawai'i, here representing Dr. Paul Chuba, the applicant. He is a MD Ph. D, residing in Michigan currently. He is the Medical Director and Chief of the Radiation Oncology Department at St. John Macomb Oakland Hospital et cetera and so forth and he can explain a little bit more of his background. But he intends to retire and reside on the property full-time in just a couple more few years from now.

LIN: Can you confirm that you've received the background and recommendation reports?

PIPAN: Yes, we have received the reports. We appreciate the hard work that's gone into reviewing this project and drafting these conditions. We have no qualms; we agree with all the proposed conditions as stated.

LIN: Okay, thank you Mr. Pipan and then the applicant, you can go ahead.

CHUBA: Hi. I just like to introduce myself briefly. I want to thank the Commission for having a hearing for this for me and especially letting me attend by Zoom. As

John said I'm a doctor in Michigan, I'm a Radiation Oncologist so that being said I do radiation treatments for cancer patients. I'm 64 so I probably have a few years left to my career. I'm hoping that I could do some work, probably part-time work in Hilo or elsewhere in the Hawaiian Islands as a radiation doctor. I've applied for my Hawai'i license, and I'm excited I think it's the most beautiful property and I'll stop there. Thank you.

LIN: Okay, thank you. Questions Commissioners for either the applicant or the representative? Okay, seeing none. Is there a motion on this application?

CAMERO: Chair, I apologize.

LIN: Oh.

CAMERO: There is a last-minute testifier, Chrystal Schiszler that has just joined the Zoom.

LIN: And this is for this agenda item?

CAMERO: Yes, she had registered that it was for this agenda item. Chrystal can you please turn your screen and unmute yourself?

SCHISZLER: Um' yes, hold on a second. Thank you, guys.

LIN: Okay. Could you please raise your right hand, I would have to swear you in.

SCHISZLER: Yes.

LIN: Do you swear or affirm to tell the truth on this matter now before the Windward Planning Commission?

SCHISZLER: Yes. Yes, sir.

LIN: Okay. You have 3 minutes.

SCHISZLER: Okay, thank you so much. Yes, I just have some concerns about possible burials in that area. I was born and raised here and have had many Hawaiian friends and right nearby I don't know about the property that's currently being, what's happening right now with that property. I'm familiar with where that property is but nearby properties there are burials known to be there so, I'm just concerned about that, and I just wanted to express that to the applicant. You know, I'm sure these properties are treated just like another property. It's up to the homeowner to notify the County if burials are found but, I kind of wanted to give a heads up to him and let him know that there are sensitive cultural areas and to be especially careful. I'm sure this permit will probably be granted, and I understand that and it's fine, but I just want him to be aware of the burials in that area. Especially to be careful when developing the area, maybe to do as little of development as possible to the land itself. It's kind of a heads up and it's

up to him of course but I just wanted to let him consider that and be aware of that in that area. Thank you.

LIN: Thank you for your testimony. Oh!

PIPAN: I'm happy to assist —

LIN: Go ahead Mr. Pipan.

PIPAN: — yeah, thank you for the opportunity. The entire HPP area including this property was previously cleared when the subdivision when the infrastructure was established. We have aerial photographs in our application report showing the subject having been cleared. We have confirmation from the State Historic Preservation Division (SHPD) that no historic properties are going to be affected and we also have the Condition 12 about accidental or inadvertent discovery of previously unidentified sites. All work would stop and SHPD would be contacted for the correct process to be followed.

LIN: Thank you, Mr. Pipan. Any comment from the applicant?

CHUBA: Sure. Thank you. Um' Crystal I really appreciate your sentiment and I feel that we should be protecting that site. If we were to encounter anything like that, I would certainly take that to heart.

SCHISZLER: Thank you, sir.

LIN: Okay, thank you. Um' last call for any testimony. Okay, seeing none. Testimony is officially ended. Okay. So, now is there a motion on this application?

DE LUZ: I move that application for Special Management Area (SMA) Use Permit Docket No. PL-SMA-2023-000040 be approved based on the Planning Director's recommendation which shall be adopted.

LIN: Okay, it's been moved by Commissioner De Luz. Is there a second?

DANIELE: I will second that.

LIN: Okay, seconded by Vice Chair Daniele. Any discussion on the motion? Seeing no discussion, staff, is there a roll call vote?

ROY: Commissioner De Luz?

DE LUZ: Aye.

ROY: Commissioner Daniele?

DANIELE: Aye.

ROY: Oh, sorry, Vice Chair, I'm so sorry. Commissioner Balog?

BALOG: Aye.

ROY: Commissioner Cross?

CROSS: Aye.

ROY: That's right, that's it and then Chair Lin?

LIN: Aye.

ROY: Motion carries five to zero approved.

LIN: Okay and you'll be notified in writing of the Commission's decision.

PIPAN: Happy holidays in this season of gratitude. I just want to say I'm very grateful for the work that you Commissioners do. It often goes unnoticed, but we do notice, and we appreciate the time and care that you dedicate to this process. So, thank you.

LIN: Thank you and Dr. Chuba, we hope that you can practice here in Hawai'i because your services are very much needed. Congratulations.

CHUBA: I look forward to this very much and I want to thank the Commission, echo John's sentiments.

LIN: Thank you. Yeah, you're all good Dr. Chuba. Thank you.

CHUBA: Outstanding, take care. Mahalo.

LIN: Mahalo.

The item ended at 11:19 a.m.

Respectfully submitted,

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

Melissa Dacayanan-Salvador, Secretary
Windward Planning Commission