

WINDWARD PLANNING COMMISSION  
COUNTY OF HAWAII

HEARING TRANSCRIPT  
MARCH 5, 2026

A regularly advertised hearing on the request of **BRANDY CAMACHO, PETITION FOR DECLARATORY RULING REGARDING USE PERMIT NO. 15-000056** was heard at 10:34 a.m. in the County of Hawai'i Council Chambers in Hilo, 25 Aupuni Street, Hilo, Hawai'i with Chairperson Louis Daniele III presiding.

COMMISSIONERS PRESENT: Louis Daniele III (Chairperson), Lauren Balog, Thomas E. Fratinardo, JoNelle Fukushima, and Chantel Perrin (Vice Chair).

COMMISSIONERS ABSENT AND EXCUSED: Kanoë Wilson.

ALSO PRESENT: William Jarrett, Esq. (Counsel to the Commission), Jeffrey Darrow (Planning Director), Jean Campbell, Esq. (Counsel to the Planning Department), and Planning Department staff.

And approximately nine members of the public were in the audience.

**PETITIONER: BRANDY CAMACHO**  
**PETITION FOR DECLARATORY RULING REGARDING**  
**USE PERMIT NO. 15-000056**

Request for a Declaratory Ruling on the applicability and legal effect Condition No. 3 (access easement) of Use Permit No. 15-000056, which allowed the construction of a new telecommunication facility, including a 150-foot tall steel monopole and related facilities within a 1,600 square-foot portion of a 2-acre parcel situated in the County's Agricultural-1 acre (A-1a) zoning district. The project site is located between 31<sup>st</sup> Avenue and 32<sup>nd</sup> Avenue, about 2,160 feet southeast of the Paradise Drive intersection, Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i, TMKs: 1-5-017:084 and 1-5-017:118.

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

The following is when the agenda item was called at the Windward Planning Commission hearing on March 5, 2026 [SEE YOUTUBE TIMESTAMP 01:34:23]

YouTube: <https://youtube.com/live/JUvT2RCojqY>

DANIELE: We are going to move on to agenda Item No. 2. Item No. 2, Petitioner Brandy Cama, Cam a cho, sorry. Brandy Camacho, Petition for Declaratory Ruling regarding Use Permit No. 15-000056. Request for a Declaratory Ruling on the applicability and the legal effect Condition No. 3 (Access Easement) of Use Permit No. 15-000056, which allowed the construction of a new telecommunications facility, including

a 150-foot-tall steel monopole and related facilities within a 1,600 square foot portion of a two-acre parcel situated in the County's Agricultural-one acre (A-1a) zoning district. The project site is located between 31st Avenue and 32nd Avenue, about 2,160 feet southeast of the Paradise Drive intersection, Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i, TMK 1 -, TMK's, excuse me, 1-017:084 and 1-5-017:118.

Um, okay, before we have any staff presentation, we have a matter we have to do first, which is accepting or denying the Petition for Declaratory Ruling, before we can go any further. So, I would need a motion of either acceptance or a denial. Yeah, we are going to have Corporate Counsel William Jarrett explain this part of the procedures. Thank you.

JARRETT: Thank you, Chairperson Daniele. I'm William Jarrett. I'm the Corporation Counsel assigned to the Planning Commission. As the Planning Commission's attorney, I don't have any ability to advocate to any of the parties, any of the applicants, petitioners, or I am not representing anybody who provides public testimony. I represent the commission and my role as an attorney for the commission is to protect the integrity of the process. I'm normally not speaking from the dais like this, this is very unusual, but I think in this particular instance it might assist the commissioners and the people seated here to explain what the procedural process is with regards to the Petition for Declaratory Ruling. If you look at the rules of the Planning Commission, Rule 3-1, Subsection A, it specifically states that a petition for declaratory ruling is within the discretion of the Planning Commission. Which means that the Planning Commission may or may not hear a petition for declaratory ruling and that is a preliminary issue that must be resolved by the Planning Commission before the Planning Department and the petitioner can come and state their case. And that discretionary power on the part of the Planning Commission is also repeated in Subsection C of 3-1. So, as a preliminary matter, the Planning Commission must decide whether to accept or deny the petition for declaratory ruling and as such, that will be a preliminary matter that must be decided before any presentation can be made. So, with that having been said. Chairman Daniele, you can continue. Thank you

DANIELE: Thank you. Okay, so on the floor is acceptance or denying petition for declaratory ruling before we can move any further.

PERRIN: I move that the petition for declaratory ruling regarding Use Permit No. 15-000056 at 15-1839 32nd Avenue be accepted for review and that a declaratory ruling be issued after presentation by the petitioner, the planning department, and public testimony.

FUKUSHIMA: Second.

DANIELE: Okay, it was moved by Vice Chair Perrin, and it was seconded by Commissioner Fukushima. Okay. We need roll call from staff, please.

KAY: Yes, thank you, Mr. Chair. On the motion to accept Vice Chair Perrin?

PERRIN: Aye.

KAY: Commissioner Fukushima?

FUKUSHIMA: Aye.

KAY: Commissioner Balog?

BALOG: Aye.

KAY: Commissioner Fratinardo?

FRATINARDO: Aye.

KAY: And Chair Daniele?

DANIELE: Aye.

KAY: Thank you, Mr. Chair. Motion carries with five aye votes.

DANIELE: Okay, so the petition has been accepted and again before we move on there is another preliminary matter that we have to take care of.

JARRETT: You want me to explain?

DANIELE: Yeah. Um, at this point, we are going to have Deputy Counsel William Jarrett explain this part of the procedure as well. Thank you.

JARRETT: Thank you, Chairperson Daniele. So once again William Jarrett Corporation Counsel for, assigned to the Planning Commission. Another procedural note here, a Petition for Standing in a Contested Case Hearing has been filed by Horizon and that is another preliminary matter that must be addressed by the commission before that we move on to the presentation by the petitioner. Thank you.

DANIELE: Thank you.

FRATINARDO: I'd like to make a motion that on Condition Number 3 was complied with. No, no, I'm sorry. *[indecipherable crosstalk]* Yes. Oh, I'm sorry.

DANIELE: I don't think we need that at this moment in time. Okay, so what is on the floor at the moment in time is the petition for a contested case. Petition for standing, that is what's on the floor at the moment in time in this contested case.

PERRIN: Okay, I'd like to call for motion.

DANIELE: Okay.

PERRIN: I move that petition for standing case standing in a contested case hearing filed by Horizon Tower Limited Partnership III, by Horizon Tower III, LLC be deferred until after disposition of the underlying Petition for Declaratory Ruling.

DANIELE: Do I have a second?

FRATINARDO: I second.

DANIELE: Okay, the motion was moved by Vice Chair Perrin and seconded by Commissioner Fratinardo. Staff, can we have roll call, please?

KAY: Yes, thank you, Mr. Chair. On the motion to defer, Vice Chair Perrin?

PERRIN: Aye.

KAY: Commissioner Fratinardo?

FRATINARDO: Aye.

KAY: Commissioner Balog?

BALOG: Aye.

KAY: Commissioner Fukushima?

FUKUSHIMA: Aye.

KAY: And Chair Daniele?

DANIELE: Aye.

KAY: Thank you, Mr. Chair. Motion carries with five aye votes, one excused.

DANIELE: Okay, with that behind us, staff, can we please have a presentation please?

KAY: Thank you, Mr. Chair. There will be no formal PowerPoint presentation from the staff. We wanted to pull together the documentation that was provided to you in the background report and have provided you with subsequent

testimony that was gathered after the background report was given. So that will stand as our presentation.

DANIELE: Okay, that was received into the record and reviewed. Thank you.

KAY: Thank you.

DANIELE: Will the petitioner and or the representatives please come forward. Good morning, please raise your right hand. Do you swear or affirm to tell the truth on this matter now before the Windward Planning Commission?

CAMACHO: I do.

DANIELE: Thank you. Please speak directly and clearly into your microphone. State your name, the town you reside in, and whom you represent.

CAMACHO: Good morning, my name is Brandy Camacho. I reside in Hawaiian Paradise Park within Kea'au. I represent myself, pro se.

DANIELE: Thank you. Have you received the background report from the Planning Department?

CAMACHO: Yes, I have.

DANIELE: Is there anything that you would like to add? Is there anything you would like to tell the Commission about your petition?

CAMACHO: I would. I would like to take a few minutes. May I proceed? Yep, okay, perfect. Aloha Commissioners. I recognize that the legal complexities have been discussed. I also recognize the complexities overall of this situation. I just want to directly say thank you to everybody participating in here today and the public as well. But for the public record and for my household safety. The facts remain binary. The record is certified. The county has already admitted in writing that the Planning Director provided zero authorizations to proceed after the breach was discovered in December. The logic gate for Use Permit 15-000056 required an easement prior to building. That condition was failed for 251 days under the law of condition precedents. The permit is void ab initio. Bill 24 is the standard.

The Commission officially repealed the Use permit process for towers to comply with the 60-days mandate in HRS §46-89. You cannot legally grant a contested case process that no longer exists for this use. Regarding no vested rights and bad faith. Expenditures made after notice of breach are not vested rights, they are at risk gambles. I respectfully ask the Commission to rule on the facts today; declare the permit void and enforce the 600-foot safety setback our County has officially adopted. That's my statement. I provided testimony already.

DANIELE: Okay, thank you. Commissioners, we have questions for the staff and or the applicant. Yes, Commissioner Fukushima.

FUKUSHIMA: Ms. Camacho, at the time you purchased, or when did you purchase this parcel?

CAMACHO: When did I purchase?

FUKUSHIMA: My apologies, when was this parcel, when did you personally purchase this property?

CAMACHO: Is that relevant to this?

FUKUSHIMA: I'm trying to establish something in my mind as I'm thinking about it. Yeah.

CAMACHO: Yes. Because there's secondary conditions to this, there's the other things that —

FUKUSHIMA: Right.

CAMACHO: — might be an issue and timing could be one of them. That's certainly not the reason for this today.

FUKUSHIMA: I am just clearly asking.

CAMACHO: Yeah. I am. I'm just trying, I'm just relating and understanding the question. I have no problem sharing.

FUKUSHIMA: Yeah.

CAMACHO: I purchased a home in 2021.

FUKUSHIMA: Okay, thank you.

CAMACHO: Yes.

FRATINARDO: And you go by Ms. or Mrs.? Okay, first name.

CAMACHO: Yeah, Brandy, first name is Brandy. Call me Brandy.

FRATINARDO: Have you consulted with all of the neighbors in that area around the proposed building site of this tower?

CAMACHO: So, I have talked to my neighbors. I just want to share that I'm the adjoining property directly at the site. This became a necessity for me due to health of my family and myself. Once when I started investigating it, I understood the distance the tower was being installed and that created a safety risk for me and my family because that means that in the event of a catastrophe that tower can land over 50 feet into my home. My children's bedroom window, that's my kitchen, that's my living room and this is the drive and determination that has me doing this. This is not something I enjoy to do, I'm doing this out of necessity, so I'm just sharing with you. As the facts were derived, I made sure to communicate with everybody to respect everybody in the public including our administrative folks like yourself today. I made sure in real time to document and share as I gathered facts and so I just did the best I can. And I did talk to my neighbors and there's some confusion about that. My neighbors thought that this was an abandoned project. My neighbors thought that this project never was allowed to proceed forward. But that's a secondary issue. That's not even what I'm here for today but I did ask my neighbors and they are aware.

FUKUSHIMA: I have a question. Hi.

CAMACHO: Yeah.

FUKUSHIMA: Fukushima. So, at the time you purchased your property, were you aware that there was possibility that this could be built?

CAMACHO: So, I was aware of a Special Use process and that I'm in a zone of a special use process. The defining factors of that special process were not disclosed to me. The tower placement, the tower, the details of the tower, how it might affect me, none of that was disclosed. And when I would look into things, nothing would go, it seemed as an abandoned project and plus as Bill 24 came into effect, I felt like that certified the problem. I'm like, okay, cool, we're safe. But it wasn't until in real time, as I communicated with all the authorities, I discovered information. So, everything that I've communicated with are all new findings on my end and I did everything again to make sure that there was not a delay in communicating those.

FUKUSHIMA: So, you're not per se against the tower as much as you are as the placement of the tower?

CAMACHO: Right now, that's secondary. That's secondary, right now we have a Condition 3 precedent, a binary matter of fact, right? And that literally aids in the process of the timeline of is this thing even legal in the first place. Secondary, there's other concerns like if proceeds to continue, what are those concerns? Of course, there's many other concerns. But those are irrelevant. I just haven't focused on those because they didn't seem like that's the matter of the discussion today, but certainly I have many other concerns about this tower.

FUKUSHIMA: Thank you.

CAMACHO: Yeah.

PERRIN: Upon purchasing the land was your house currently, was it already built or did you build it there on that property?

CAMACHO: When I purchased my home in 2021, it was built and I moved into it immediately.

PERRIN: Did you —

CAMACHO: It was finalized and a certificate of residence.

PERRIN: So being that you purchased in 21, there is a timeline that dates back to 2015, and you were still not aware that that special use permit was gonna be for that type of usage on this vacant property next door to where you had purchased a home.

CAMACHO: Next door is not a vacant property. It's a church that has a school and —

PERRIN: Where is this property in reference to yours?

CAMACHO: Right next to me, right next.

PERRIN: Next door.

CAMACHO: The tower right now as I learned recently in December is 30 feet from my property line approximately 80 to 100 feet from my children's bedroom window. I have a special injury concern in regards to the risk of this tower and my home that got disclosed to me and in December when I reported it. So, I am a technologist, and I believe in technology. No, I'm not opposed to technology, cell phone towers, but I certainly respect public safety. I definitely respect my household, my family, my children, my loved ones, anybody who's visiting my property. I care about their health and safety as well.

And so, we have a couple things here. On one side, I am hearing hey, were you acknowledge, can you acknowledge that you are informed about the details of this tower and snow? I didn't have those details. I clearly did not have those because if I knew I would have very well would have changed my purchasing decision on my property, right? So, all these things that have become clear to me in regards to my complaints happened at the time that I got data to be made aware of them.

When we say there's a special use permit, somebody's gonna take this ag land and turn it commercial, I'm not opposed. I'm a pro-business person. I've owned many businesses. My first business I was only 16 years old. I continued doing business all the way until I started working in Silicon Valley. I have heritage here in the islands. When I started making meaningful wage I kept on being called to this island and I visited every island. I



started researching my family heritage. This is why I'm here in this area now because my heritage derived from the islands. It just naturally called me.

I am not opposed to technology and I'm just making sure that's clear now, but we have a public safety risk here. That made me aware of it. That made me alert. The process that made me start scrutinizing and understanding is this thing even legal in first place. That's why here today we are talking about the Condition 3, and I had a hard time getting anybody to answer the question on the legalities of this, so much so that this process was even shared. I didn't understand it. This process exists, but I certainly communicated in wanting to have this process that has been documented all the way until we went to Third Circuit Court. And in Third Circuit Court, Judge Kubota simply dismissed my case without prejudice because of administrative reason. We needed the Commission. That's the day I was aware that, oh shoot, we really have to go to this new process that I didn't know, and I had to learn the process and that's when I filed. I immediately filed it within one business day I filed that.

FUKUSHIMA: I have another question for you. So, I read everything. I've read everything that you've supplied and on your second page of the most recent document, it says, I respectfully request the Commission and then declare the Use Permit void, deny Horizon's petition for standing and issue an immediate stay. Do you yourself understand what this Commission can and cannot do today? What we're, what were, what this uh matter how it's to proceed. Do you understand the rules and what the Commission has the power to do and not to do?

CAMACHO: I've been told the Commission have the power to issue these permits and the Commission has the power and when I've looked up regulations and I do my best, my diligence by doing research, I understand that you have authority to make these decisions today.

FUKUSHIMA: So, we definitely do. The issue before us has to do with a matter of compliance in this stage. I want to be able to let you know so that you understand what we are, you know, um' here for, we don't waste anybody's time. Obviously, you've taken a lot of time and energy into writing everything and I feel your passion. I don't blame you, I'm a mother myself, but I'd wanted to know what your understanding was of this administrative procedure.

CAMACHO: I think throughout this whole process it's been quite emotional for me. It certainly has taken it away from family time, my household has been under duress, and I did everything I can with my filings, my communications to remove those motions and stick to binary matters of facts and that is there to respect the Commission. Honestly, we're here today. I'm just focusing on binary matter of facts, and a conditional precedent is something that is, again, a binary matter of fact. It's a Boolean. It's either pass or fail, yes or no. I'm not asking the Commission anything extraordinary. So.

FUKUSHIMA: Thank you.

CAMACHO: Yeah, you're welcome.

DANIELE: Any other questions? Okay, seeing no more questions. So, Ms. Camacho, you will have an opportunity to respond again after public testimony. Thank you.

CAMACHO: Thank you very much.

DANIELE: Okay. Do we have any staff, do we have any individuals to provide in person testimony?

KAY: Yes, Mr. Chair, we have two public testifiers, Eric Robinson and Patrick Wong.

DANIELE: Thank you. Okay, I am going to change the time limit from three minutes to five minutes for this next part. Thank you.

ROBINSON: Thank you, Chair.

KAY: Can I, can I swear you in please? Okay, thank you. Do you swear or affirm to tell the truth at this time in front of the Windward Planning Commission?

ROBINSON: I do.

KAY: Okay, thank you. Please state your name, the town you reside in and you may begin.

ROBINSON: Good morning, Chair Daniele, Vice Chair Perrin, members of, excuse me, additional commissioners. My name is Eric Robinson. I'm an attorney. I reside on Oahu and Kailua. I represent Horizon Tower Limited Partnership III, by Horizon Tower III, LLC. That's a bit of a mouthful, so I'm just going to call them Horizon if that's okay with the Commission. We submitted a written testimony as well as some exhibits in that and the Petition for Contested Case Standing. I won't reread that, but I do want to highlight a few key points from our testimony. And the first is that if the posture and the procedure seems odd here, it's because it is. We're trying to fit into a declaratory ruling process, something that's not meant to fit there. Yes, my apologies. We're trying to fit something in here that doesn't belong here. A Petition for Declaratory Ruling under Rule 3.1 is not meant to void or revoke permits. That's what we're seeking here. It's not meant to issue injunctions of building permits. What it's there to do is to determine what rules mean, what orders mean, what statutes and ordinances mean.

Under Planning Commission Rule 7-11, that outlines the process for revoking a use permit and that authority is vested in the Planning Director, whether it's the Planning Director, that's initiating it and asking the Commission to handle it or an applicant or a permit holder asking the Director to do so. In either event, that discretion and power resides with the

Planning Director, not with private parties. With respect to issuing an immediate stay of the building permit. That building permit is issued by the Department of Public Works and issuing a stay is an effect in joining or issuing an injunction which is an extraordinary relief. and it's not something that the Commission has granted the authority to do under the Hawai'i County Charter. If that's something that would like to be brought up with the Director of the Department of Public Works or if there are issues with the Planning Director's decisions, both of those have separate processes to address that. Whether that's through the Board of Appeals or through the court system.

With that, I think the Commission has a sufficient basis to deny the petition. But if the Commission is inclined to address the merits of the petition, I'd offer that Condition No.3 of the Use Permit was satisfied. When we're looking at the record and the transcript from when Condition No. 3 was added, what we have is a concern over making sure that access to the site is guaranteed if ownership of one of the two parcels is split. What we have and what was submitted and recorded is a Memorandum of License. It's called a license and not an easement and that is the only thing that differs. What the license agreement does provide and ensure is access throughout the life of the cell phone tower and that provided as an exhibit. The full license agreement, not just the memorandum that clearly shows that Condition No. 3 was satisfied several years in advance of the building permit being issued by the Department of Public Works. Whether or not Bill 24, which is codified as Ordinance 25-55, came into effect, is relevant here. Under Hawai'i Law, specifically HRS §1-3, laws do not have retrospective application unless they clearly show that intent or language. There's no such language in Ordinance 25-55, so it acts prospectively and does not impact rights that are vested under permits that have already been issued.

So, for these reasons, Horizon respectfully requests that the Commission deny the petition on procedural grounds. However, if the Commission is inclined to reach the merits, rise in further requests that the Commission find that Condition N. 3 was satisfied by the license agreement. Thank you, and I'm happy to take any questions the Commission may have.

DANIELE: Commissioners, do we have any questions? Seeing none, seeing none, thank you —

ROBINSON: Thank you.

DANIELE: — for your testimony. Could we have the next testifier, please?

KAY: May I swear you in? Thank you. Do you swear or affirm to tell the truth on this matter in front of the Windward Planning Commission today?

WONG: I do.

KAY: Okay, please state your name, the town you reside in, and now you may continue. I'll let you know when there's 30 seconds left.

WONG: Thank you. My name is Patrick Wong. I'm an attorney at Carlsmith Ball. Interesting that you want to know my residence. I live in Nāpō'opo'o. I drove over this morning. We do have an office here in Hilo. We do have an office in Hilo. I'm here to provide testimony which we've already submitted by the way in writing. We represent Cellco Partnership doing business as Verizon, the original applicant on the Use Permit. I appreciate the Planning Commission's decision to give Ms. Camacho opportunity to speak, opportunity to be heard, and to present her case. I was there when she presented before Judge Kubota, and our arguments basically were that she should exhaust her administrative remedies. That's why she's here. So, thank you for giving her that opportunity.

I want to follow up on testimony that you just heard by the other Counsel and focus really, really focus your efforts on the substantive issue. The license, the land license was in place from 2018. The Use Permit was applied for in 2015. The land license gives access to and from that area to install the tower. Legally that access still remains regardless of whether there's an easement or not. That license effectuates the same thing the easement does. So, is there compliance or not? You look back and you heard testimony about when Condition 3 was placed, it was purely to effectuate access in the event the parcels are sold. Now we have belt and suspenders here, we have the license in place, and we now have the easement in place. Both of them cover the work that's to be done in this area.

I want to clarify some of the information that you may or may not heard. Your testimony about the distance that the tower is to be located from Ms. Camacho's residence. You know, we did take a look at structures on her parcel. There are a few that are within 10 feet or 30 feet of her boundary line, but I couldn't find any permits for those things. Certainly, those are not residential units. Her house, by our measurement, and I didn't have the chance to present to you the actual maps that show the distance from the point of the tower to the edge of her house and it's greater than 100 feet. That's what I have.

I'll offer that Ms. Camacho may have real concerns about their issues involved. Good questions for her earlier. When did she purchase? What was she told? What was given at the time of purchase? She shared that she had some information, but not all. If you look at the documents, her TMK and the previous owner did receive notice of the application. They had opportunity to speak. The issues that you hear are raising well after the fact were raised before and were dealt with before. Despite that, the permit was still issued and it's the Use Permit that we're talking about. She's asking you to take one step from the Use Permit and transcend down to the building permit and deny the building permit. Can't do that. Can't do that. So, thank you for listening to her concerns. She does have valid concerns but whether or not she has proper legal concerns and a proper legal basis it's really what you need to think about.

So procedurally, you heard testimony earlier that procedurally perhaps it shouldn't be before this body. But if you just look at the substance and with the core of what she's asking, she claims Condition 3 as a condition precedent failed.

KAY: Thirty seconds remaining.

WONG: We're telling you that Condition 3 was satisfied with the land license, still is and since then, the easement was filed and recorded. So, belt and suspenders, both of them cover the same activity. It's nothing further that you really need to think about. I appreciate the opportunity. Thank you. Have a good day.

DANIELE: Thank you. Commissioners, do we have any questions? I have one question.

WONG: Sure.

DANIELE: Nationwide, how many cell towers fall in a year or has fallen like fell like in the last 10 years? Let's say.

WONG: I'm sorry, I'm not the expert to answer that question and I think that if we're given opportunity, if you want us to present that type of information, I can have our client or even Horizon address that issue. I personally currently have no information to be able to share that with you. If you want to get into the details about the type of tower that's there, I think that it's better directed towards Horizon's Counsel.

DANIELE: Okay, thank you.

WONG: Thank you.

DANIELE: Commissioners, do we have any other questions? Is there any more public testimony?

KAY: Not in person, Mr. Chair.

DANIELE: Uh, do we have anyone on Zoom to testify?

ZOOM HOST: Uh, no Chair. There was no one on Zoom.

DANIELE: Okay. So, the applicant has an opportunity to respond. So, if the applicant can come forward and address any concerns raised by the testifiers. Yes, thank you.

CAMACHO: Thank you so much. May I go ahead and continue?

DANIELE: Yes, you may.

CAMACHO: Okay. I understand the opposing party's concerns. They're great for a legal permit. That's sound, what they have said, as if I was going against legal a permit and wanting to avoid a legal permit would be correct. But that's not the case. Condition 3 is a binary pass or fail to even issue a permit in the own condition. It had to be done prior to any issuance of a building permit prior, and it says "shall". It's interesting that I heard about the 2020 testimonies. In the testimonies, the applicant even acknowledged the difference between a license and an easement. Questions were even placed on the reasons why. Why do we need an easement? An easement for the life of the facility in the event that it would be sold and that was a question that was directly asked that's on the testimony. Which is exactly why it's required.

The applicant clearly showed skills on the appeals process, something I'm just learning throughout my experience thus far. For Condition 2, they need to extend the time period. So, they followed the process, they amended the Use permit to allow the extensive time. But they never once addressed Condition 3. So, they had every opportunity to address Condition 3 if it was gonna be such a challenge to secure an easement while just like Condition 2, they could go ahead and ask for an amendment, but they did not. Furthermore, after the fact, once when the County was made aware of non-compliance, the applicant even communicated with Director Jeff Darrow, and asked if I'm okay, if I am okay to proceed forward. Apparently, because I asked for the file, request for these communications, the certification I got was that there was no provided response from Director Jeff Darrow to the applicant. But what's interesting is that in that message, what stood out to me was not only asking, but it's clearly the applicant even put a definition that there's a vast difference between a license and an easement.

From a legal standpoint, it's completely true. A license can be terminated, it can be revoked, it can time limited, while an easement is not. It runs for the land, which is specifically why that use verbiage was used on Condition 3. And so, I even find it more interesting that the timing things, like timing matters in different steps when we're talking about painting a picture. And the interesting thing is, Bill 24 weeks after this permit became adopted countywide, purely for safety of public safety to have these setbacks in place, to prevent issues from occurring that is hazardous to safety of the general public. Just weeks after that permit and to me, I don't have the facts so it's just my opinion. It's just assumptions I make. So, I don't want to point out, I'm just sharing my thought process here kind of loud. Is that —

PERRIN: Can I ask a question. Sorry, I don't mean to be rude, but you're kind of touching on the topic and I kind of wanted to stay on point on something you mentioned. Do you mind if I ask you a question?

CAMACHO: You sure can.

PERRIN: Sorry. You mentioned the license. Have you had a chance to read the license?

CAMACHO: I reviewed the license. Yeah.

PERRIN: You have. So, the problem with the license is the, is your concern with it because it says license and not easement? If it had said easement, would that answer your questions.

CAMACHO: A license and an easement are two different things from a legal standpoint.

PERRIN: Okay, so, but have you read the license?

CAMACHO: I reviewed the license. *[Indecipherable crosstalk]*. I cannot recite the license right now.

PERRIN: — have you read. I said reviewing and reading are two different things. Have you read the license?

CAMACHO: I've read the license.

PERRIN: Do you, okay. Can I do that? So, I have the license here and I want to read this part.

CAMACHO: Sure.

PERRIN: Because you mentioned about how it should run with the land and it doesn't do that with the license. But this is what it says, should the licensor at any time during the term decide to sell or transfer all or any part of the property to a purchaser other than the licensee or to grant to a third party by easement or other legal instrument an instrument oh I'm sorry an interest in and to the portion of the property occupied by the licensee.

CAMACHO: Again, a license can be revoked at any time. An easement runs with the land. That is a legal process. It's Easement 101. It's Real Estate 101. It's something I learned because I —

*[Indecipherable crosstalk]*

PERRIN: But it clearly states right there that it's transferable.

CAMACHO: License can be transferable, but they also can be terminated. That's why an easement is so important. It has to run with land because it is hard set with the property, its boundaries, *[Indecipherable crosstalk]*

PERRIN: — that's a third party by easement or legal instrument. It says it right there.

CAMACHO: The applicant secured an easement January 30th after the fact.  
*[Indecipherable crosstalk]*

PERRIN: — starting from 2015.

CAMACHO: Understood.

PERRIN: Prior to you purchasing the land. The prior owners were notified. You were notified.

CAMACHO: But we're here today on Condition 3, specifically.

*[Indecipherable crosstalk]*

PERRIN: — hence why the property was sold.

CAMACHO: We're here today —

*[Indecipherable crosstalk]*

PERRIN: — because they knew of that upcoming they did not want to sit with that.

CAMACHO: Condition three specifically says, this is a binary condition, it's a yes or no, pass or fail, because it specifically says "easement". The license is not an easement, that's just a matter of fact, this is a binary. I understand the emotions that you're putting there, but all they have to do is just take that license like they already showcased with their January 30<sup>th</sup> filing for the easement that's in place now.

PERRIN: But it's inclusive in that license, and if you read the license, it clearly states it there.

CAMACHO: It could state a million things; it's still not an easement.  
*[Indecipherable crosstalk]* An easement gets recorded, it is not an easement.

PERRIN: Is this recorded? This should be recorded with the land. I wanted to know if you read it in full. I read a portion where it clearly states easement and that is transferable to a third party what may be and the fact that it was in motion starting in 2015. You should have been made aware by your realtor in 2021 when you decided to purchase this land or even ask why, why are you selling this? Relocation is one thing that is another thing. I think, I think honestly that should have been your personal research to make sure nothing that was going to stand in the way of you and your family living should have been done.



CAMACHO: Are you saying that that license satisfied the public safety concern that I have in regard to the tower collapsing into my property?

PERRIN: It's stated right there in the license.

FUKUSHIMA: May I?

*[Indecipherable crosstalk]*

CAMACHO: You're going off guards here.

PERRIN: And it's open for public.

CAMACHO: You're going off guard here. We are talking about secondary information. I'm here on Condition 3, which is a Boolean matter of fact. It was condition that was required before an issuance of any permit period! That is hard lines.

FUKUSHIMA: My understanding, my humble understanding is that this license although it's not a physical easement has all of the elements of an easement in its design and in its and the physical easement is the accessible portion. Where a vehicle can get to and from to fix or whatever, but the license itself serves can itself serve as an easement.

CAMACHO: It is not an easement, it's a license.

FUKUSHIMA: No, it is it is matter of law.

CAMACHO: Yeah.

FUKUSHIMA: And so, I, I read everything it really sent me down another space and thinking about it the way you are because I understand. I understand what you, the way you're viewing it, a physical easement versus a lease, but the lease in itself in its elements in its use and under the law, it can be an easement.

CAMACHO: A license is not an easement.

FUKUSHIMA: Access is different. Access is I can get in my truck, I can drive on the road, I can you know granting access. This license does both, I believe it has all the elements of an easement.

CAMACHO: I want to remind that license can be revoked. This is Real Estate Law 101. It is a license is a license. It doesn't make it an easement. An easement is an easement. They're two separate things. Now, while one can have verbiage and make you feel comfortable that it's the same thing, it is not. A license is just that. It can be revoked. It does not run with the land. The verbiage can be canceled, changed or modified. Where an easement is not.—

*[Indecipherable crosstalk]*

FUKUSHIMA: — This lease seems to run with the land.

CAMACHO: No.

FUKUSHIMA: — this lease is running with the land. That's where my point, because I feel like I'm —

CAMACHO: — you record it

FUKUSHIMA: — yes. I feel that I'm doing my best to look at it from all angles and it appears in its language and on its face that it runs with the land, no different than a concrete easement that you're speaking of.

DANIELE: Okay, I'm going to, right here, I would like to have the Director Jeff Darrow, come up and he would like speak to this matter. Okay. Can you please come up.

FRATINARDO: Hi Mr. Darrow. I guess there's a belief, by, sorry.

DARROW: Um' can I introduce myself real quick, sorry about that.

FRATINARDO: I apologize.

DARROW: Good morning, Chair Daniele, Vice Chair Perrin, members of the Windward Planning Commission. Jeff Darrow with the Planning Department. Sorry Commissioner.

FRATINARDO: Can you walk us through the steps and procedure for a revocation of a use permit of a user and a building permit?

DARROW: Sure. If I could, if I could kind of go back a little and give some historical information here. Before approximately 2010 in the State Land Use Agricultural District, which Hawaiian Paradise Park is located, it required a Special Permit to do uses that weren't approved in the State Land Use Agricultural District. So, including telecommunication towers. What happened was state law changed and they allowed telecommunication towers as permitted in the State Land Use Agricultural District. So, the County scrambled and we changed our code because we still wanted a public hearing process for these towers. So, we ended up creating a Use permit in the County Agricultural District for telecommunications towers. Thus, this permit you'll see is not a Special Permit. It is a Use permit. It's Use Permit No.15-000056, which was originally approved in 2015 for 150-foot telecommunication tower on that one property that the church is located on.

Through the process, notification was done surrounding property owners within 500 feet, first and second notification, there was signposting, plenty of opportunity for people to be a part of the public hearing process, including the potential to submit a contested case petition. That did not happen. But it went through hearing, the Planning Commission approved the permit with conditions. In 2020, the applicant came back to the Planning Commission did the same process of notifying surrounding property owners, posting the sign, giving the opportunity for a contested case, did not happen again. People did show up and oppose the tower. The request was to add the rear property as access. That's all that second request was and to ask for more time because the five years had gotten used up in the beginning and they did not use their administrative time that was allowed under Condition 15. So, in 2020, they started the clock again. At the hearing, if you look at Exhibit 7 on Page 19, there was a statement made by Danette Martin who's with us today that said, and I just want to confirm that we already do have a recorded license for this access for that property. So, if it is ever sold, the easement would go with the property. It wouldn't just end. So that is in the record.

The actual permit that we're looking at has a condition, Condition 3, that required the applicant to execute and record an easement over Parcel 84 to provide access to the telecommunication site on Parcel 118 only for the duration of the life of the telecommunication facility. Not for the life of the land or forever. It was only for a period of time. If that telecommunications tower was only there for a period of time, that access easement or use of that would no longer be needed. Okay. The reason why we're here today is because a request was made to the Planning Director to make a determination whether or not this condition was met or not met by the term license versus easement. I felt it was not in my purview to make that call because the condition was made by the Planning Commission. But as we reviewed this, we've heard testimony, we've read the license, we've read not only that, but as a result of this the applicant went out and secured an easement and so that is your Exhibit number 29 and that is in the record.

Now someone may say, but they didn't get it before the building permit. They still have five, they have up to 20, 30 to comply. They could, I mean, if it's just semantic, we could have them withdraw the permit. We've already got the easement, and they resubmit and that the condition is complied with. So again, I think we've kind of know where we're at with this. They, the intention of the condition even though the words and get into semantics was to provide access through the rear property to the site versus on the main site.

FRATINARDO: And can you expand on the difference between the use permit and the building permit, please?

DARROW: Sure, the use permit is the permit that is granted typically in this case it was granted through the Planning Commission to allow a use that was not permitted in a zoning district to be permitted with conditions and that was granted by the Planning Commission. In the permit it required the applicant to get a building permit to build the tower. That goes through Public Works. They cannot get that permit until they get what's

called Plan Approval, that's your Condition 2. So, they submitted the plan approval in 2021 and then they were able to submit for the building permit. The building permit is not under our jurisdiction as far as the Planning Department, the Planning Commission. It is under the jurisdiction of the Department of Public Works.

FRATINARDO: Thank you.

DARROW: I think that's all I have. If you have any questions, I'll try and answer them.

DANIELE: Commissioners, do we have any more questions? Okay seeing none, thank you very much.

DARROW: Thank you.

DANIELE: You can come back up and respond.

CAMACHO: I appreciate it. Condition 3 says easement, period. It says easement, it doesn't say only for the life of facility, it says specifically for the life of facility. An easement must be recorded. Easement must be recorded. A license recorded doesn't make it an easement. Now, I understand that we have rights and we want to go into other great gray areas, everything, so far, everybody's really good at the gray areas but I'm pointing to a binary matter of fact. Again, that came out of necessity, which I disclosed in real time as information was derived to me. I shared it with everybody in the administrative process throughout the life of this event. And again, I'm a business person. I come from a history of business. I value creating business. I value the commerce, but I value public safety, my safety, my family's safety and so this is not something where I just want to go and just present or have you guys meet without it being viable. And this is viable because of the legality of Condition 3 being a precondition to any permit being approved.

DANIELE: Okay, thank you very much. I think we've heard—

CAMACHO: Okay.

DANIELE: — from both sides. Okay, so thank you much for your testimony. Thank you.

CAMACHO: I appreciate it.

DANIELE: Okay, as a preliminary matter, the Commission must address the petition for standing filed by Horizon Tower Limited Partnership III. Since the petition is dependent on whether the commission will accept or deny the underlying petition for declaratory ruling, deferring a decision on the petition would be appropriate. At this point in time, I'll ask for a motion. Does the petitioner want to continue?

ROBINSON: Good morning, Chair, Vice Chair, members of the Commission. With respect to the Petition for Standing in a Contested Case Hearing, Horizon is amenable to either deferring or depending on the outcome of the Petition for Declaratory Ruling withdrawing its petition.

FRATINARDO: Can you repeat that again?

ROBINSON: Yes. So, depending on how the Commission rules today, Horizon is amenable to waiting for the Petition for Contested Case standing to be determined until after the Petition for Declaratory Ruling has been ruled on.

FRATINARDO: Thank you.

DANIELE: Okay, so we're going to continue the deferment.

ROBINSON: Thank you, Chair.

DANIELE: Yes, you're welcome. Okay, at this moment in time, we're going to enter into executive session. Um, could I have a motion?

FRATINARDO: I move for an executive session.

DANIELE: Can I have a second?

PERRIN: I'll second.

FRATINARDO: I apologize. This is for our executive session. I move that the Commission enter into executive session to consult with its attorney, Mr. Jarrett, regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities pursuant to Hawai'i Revised Statute §92-5.

PERRIN: I'll second.

DANIELE: Okay, I have the motion moved by Commissioner Fratinardo and seconded by Vice Chair Perrin. Thank you.

KAY: Shall I do a roll call vote, Mr. Chair?

DANIELE: Yeah, roll call vote.

KAY: On the motion to enter executive session, Commissioner Fratinardo?

FRATINARDO: Sorry.

KAY: On the motion to enter executive session. I'm asking for a vote. Do you want to vote to enter executive session?

FRATINARDO: Yay.

KAY: Commissioner Perrin, Vice Chair Perrin?

PERRIN: Yay.

KAY: Commissioner Balog?

BALOG: Aye.

KAY: Commissioner Fukushima?

FUKUSHIMA: Aye.

KAY: And Chair Daniele?

DANIELE: Aye.

KAY: Thank you, Mr. Chair. Motion carries with five aye votes and one excused.

***The Commission entered into executive session.***

DANIELE: Okay, we are back from executive session. It was a session to consult with our attorney regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities pursuant to Hawai'i Revised Statute §92-5. Okay, so on the table at the moment is do we have a motion on issuing a declaratory ruling?

PERRIN: I move that the Commission issue a Declaratory Ruling on the Petition for Declaratory Ruling (Rule 3-1) regarding Use Permit No. 15-000056 as follows: that the Applicant in Use Permit No. 15-000056 complied with Condition No. 3 of the Planning Commission's January 21, 2020 by order, having filed and obtaining a license satisfying the requirements of the Planning Commission, and the petitioner's request to void Use Permit and stay construction is outside the scope of Declaratory Ruling.

DANIELE: Do I have a second?

FRATINARDO: Second.

DANIELE: Okay, the motion was moved by Vice Chair Perrin and seconded by Commissioner Fratinardo. Any discussion? Do we have anything else to say? Okay, seeing none, staff, could you have, take roll call please?

KAY: Yes, on the motion for declaratory ruling, Vice Chair Perrin?

PERRIN: Aye.

KAY: Commissioner Fratinardo?

FRATINARDO: Aye.

KAY: Commissioner Balog?

BALOG: Aye.

KAY: Commissioner Fukushima?

FUKUSHIMA: Aye.

KAY: And Chair Daniele?

DANIELE: Aye.

KAY: Thank you, Mr. Chair. Motion carries with five aye votes, one excused.

DANIELE: Great, thank you. You will be notified by mail and writing for the Commissioner's ruling. Thank you. At this point in time, we are going to break lunch, no, oh, sorry. Sorry, can I have the petitioner up please?

KAY: For contested case.

DANIELE: Yeah. Okay, so.

ROBINSON: Thank you Chair. Eric Robinson, on behalf of Horizon, thank you for taking this before recess. Petitioner respectfully withdraws its Petition for Standing in a Contested Case Hearing.

DANIELE: Okay. Okay, we accept. Thank you very much.

ROBINSON: Thank you.

The item ended at 11:53 a.m.

Respectfully submitted,

*Melissa Dacayanan-Salvador*  
Melissa Dacayanan-Salvador (Apr 3, 2026 09:12:20 HST)

Melissa Dacayanan-Salvador, Secretary  
Windward Planning Commission