

Kai Ala Partners LLC

Written Testimony before the Environmental Management Commission

December 29, 2021

Chair Adams and Members of the Commission,

We are here today to ask for your favorable consideration of Kai Ala Partners, LLC appeal from the decision in Director Ramzi I. Mansour's letter dated June 10, 2021, denying our request that the billing for the property at 75-5944 Alii Drive, Kailua-Kona, HI, be changed from two service charges for sewer service to a single sewer service charge and that the amounts illegally over charged by the Sewers Division since July of 1998 be refunded.

Director Mansour and the Division have treated a storage room and utility room and bath as a "Unoccupied Unit" as defined under Chapter 21, Article 1, Section 21-2. The section with the definitions does not grant the Director the authority to charge a sewer fee for a residential dwelling, as that power is only found in Chapter 21, Article 4, Section 21-31 which states:

Section 21-31. Sewer user charges for residential customers.

Sewer user charges for residential customers shall be assessed to all lots accessible to a public sewer or public gang cesspools whether connected or not. User charges for sewer service to residential customers, which include service for single family dwellings, duplexes, housing projects, condominiums, townhouses, apartments, and dormitories shall be according to the schedule shown under 21-36.1. Unoccupied units will be assessed a monthly fee equal to the current monthly service fee.

No where in Section 21-31 is there mention of a storage room, laundry room or bathroom and therefore Director Mansour has no legal authority to charge Kai Ala Partners LLC a sewer fee for this structure. Furthermore, this building is an annex to the main residence and is connected to that building by electric lines and the hot water system. **Black's Legal Dictionary defines a dwelling-house in 2. Real Estate. The house and all buildings attached to or connected with the house.** Clearly, the property at 75-5944 Alii Drive consists of a main residential building and an outbuilding that originally housed the freshwater catchment tank (later converted to a storage room), laundry facility and bathroom and should be considered as one dwelling in accordance with Black's Legal definition of a dwelling.

Finally, on June 25, 1992, the Hawaii County Council passed Ordinance No. 92-77, Bill No. 595, the purpose of which was to revise the sewer billing system to comply with the 1972 Federal Water Pollution Control Act (PL92-500) and to receive construction grants through the Environmental Protection Agency. The Federal Regulations required that the system must collect sufficient revenues to insure that the Federally funded treatment works are properly maintained and operated **and that all users of the system shall pay their proportionate share based on the users' proportionate wastewater loading.** The double charging of Kai Ala Partners LLC by the Sewer Division is in violation of the Federal Regulations as a double charge to a single-family dwelling is certainly not proportionate to their proportionate wastewater loading.

Thank you for your favorable consideration of our petition requests.

Richard Henderson

Richard Henderson II

Managing Members

Kai Ala Partners, LLC