

BEFORE THE ENVIRONMENTAL MANAGEMENT COMMISSION  
COUNTY OF HAWAI'I  
STATE OF HAWAI'I

KAI ALA PARTNERS LLC,

Appellant.

vs.

RAMZI I. MANSOUR, DIRECTOR,  
DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT, COUNTY OF HAWAI'I

Appellee

---

|  
| CONTESTED CASE HEARING:  
| Date: 4/27/2022  
| Time: 10:15 am  
|  
| FINDINGS OF FACT, CONCLUSIONS  
| OF LAW AND ORDER  
|  
| CERIFICATE OF SERVICE  
|  
|

**APPELLANTS' PROPOSED FINDING OF FACTS,  
CONCLUSION OF LAW AND ORDER**

**I. INTRODUCTION**

Appellant, Kai Ala Partners LLC appealed the Director's decision to uphold the 1998 Department of Public Works ("DPW") determination that the property located

at 75-5944 Ali'i Drive, Kailua-Kona, Hawaii 96740, Tax Map Key (3) 5-09:018 ("Property"), should be billed as two (2) units. The facts show that the Director's action was in violation of the Hawaii County Code and clearly erroneous.

## **II. FINDING OF FACTS**

1. On May 6, 1998, the County of Hawaii DPW completed the Sewer Account Update determining that the Property should be connected to the County sewer and billed for two units.
2. On May 7, 1998, DPW confirmed that the Property was connected to sewer.
3. On July 31, 1998, Appellant paid their first DPW Wastewater Division bill for \$100.00. This bill showed

only the amount of \$100.00, nowhere on the bill did it reflect that the assessment was for two sewer fees.

4. From July 31, 1998, to present, Appellant wrote a check every other month for twenty-three (23) years to pay the Wastewater Bills, a total of 14 checks that totaled \$16,304.00, which resulted in an over payment of \$8,152.
5. On April 15, 2021, Appellant received a “Notice of Wastewater Service New Rate, which was included with Appellant’s April 5, 2021, bill. The Notice indicated that the new rate would be \$44.00 per unit effective April 1, 2021.
6. The bill showed a bi-monthly charge of \$160.00 and a new monthly rate for a single-family residence of \$44.00 (\$88 bimonthly for one unit), the resulting

bi-monthly charge for two units was \$176.00. This when Appellant first became aware of the error in the County Wastewater Division's billing two sewer fees for the Property.

7. On June 2, 2021, Appellant sent DEM Wastewater Division's Chief Dora Beck a letter explaining that the Property had been incorrectly charged for two (2) units since 1998 and requested a refund of the over charged amount and asked that the Property be charged for only one (1) unit going forward.
8. On June 10, 2021, Director Mansour sent Appellant a letter explaining that the "Accessory Building" met the definition of an "Unoccupied unit" under HCC Section 21-2 and based on that fact, billing

Appellant for two units was both fair and appropriate. Director Mansour informed Appellant that should Kai Ala Partners want to avoid being charged for two (2) units it would need to remove the plumbing fixtures in the Accessory Building, which included the washing machine, wash tub, hot water heater, toilet, basin, and shower which are currently connected to the County's sewer line. Director Mansour's letter was addressed to the street address of the Property not the billing address and as a result the Director's letter was returned and did not reach the Appellant until August 2021.

9. On August 23, 2021, Appellant sent another letter to Director Mansour where it was pointed out that among other things, the Accessory Building did

not receive a water bill and that under the definition of an “unoccupied unit” the lack of a water bill means that Section 21-2 could not be used to charge a sewer fee.

10. During the cross examination of Director Mansour, he was asked if he had seen a water bill for the property at 75-5944 Alii Drive, Kailua-Kona, HI., and he replied that “where there is water, there is a bill”. He was then shown that there was no water bill for the property at 75-5944 Alii Drive (Exhibit 18).

### **III. CONCLUSIONS OF LAW**

Section 21-2 of the Hawaii County Code states under the definition:

**“Unoccupied unit” means a unit that is not occupied but has accessibility to a sewer, plumbing fixtures located on it, and currently receives a water bill.**

The unoccupied unit that was charged a sewer fee from 1998 to the present has never received a water bill. Therefore, the Director’s charging a sewer fee for this unit was in violation of the Code and was clearly erroneous.

Following the hearing and after full consideration of the evidence, and the review of briefs submitted by the parties, the Environmental Management Commission makes the following decision and order.

#### **IV. ORDER**

At the Environmental Management Commission meeting on April 27, 2022, Commissioner Robinson made a motion to which Commissioner Gaffney seconded, “to reverse the director’s decision that the structure at issue in this appeal is an unoccupied unit, on the grounds that the decision was rendered in violation of the code and clearly erroneous”. After a lengthy discussion the commissioners voted four (4) in favor of the motion and two (2) opposed. The motion carried.

**WHEREFORE**, it is this \_\_\_\_\_ day of May 2022

**ORDERED**, that this commission’s findings of fact and conclusions of law made at the conclusion of the hearing on April 27, 2022, are hereby incorporated by reference; and it is

**FURTHER ORDERED**, the Wastewater Division is directed to change the double Sewer Service fee to one (1) service effective immediately; and the billing for the sewer service at 75-5944 Alii Drive, Kailua-Kona, Hawaii shall be one unit.

---

COMMISSIONER GEORGJEAN ADAMS (CHAIR)

Copies to: APPELANT, APPELLEE