

ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF HAWAII

SPECIAL MEETING MINUTES

Wednesday, December 29, 2021

9:09 a.m. to 9:21 a.m.

Aging and Disability Resource Center, Hilo, and Zoom

Commissioners present:

Georjean Adams, Chair

Rick Gaffney, Vice Chair

Dee Fulton

Lee McIntosh

Jon Olson (Audio only)

Elyse Robinson

Others present:

Richard Henderson (Henderson I), Kai Ala Partners/Appellant

Ritchie Henderson (Henderson II), Kai Ala Partners/Appellant

Ramzi Mansour, Director/Appellee

Keyra Wong, Deputy Corporation Counsel for the Commission

Peter Sur, Secretary for the Commission

Dean Au

Nathaniel Kinney

Nancy Cook Lauer

1. CALL TO ORDER

ADAMS: I will call the meeting to order. The time is now 9:09. My name is Georjean Adams. I'm the chair of the Environmental Management Commission, and we are having a Special Meeting in the Office of Aging at 1055 Kino'ole Street in Hilo, as well as online on Zoom and by phone, and major apologies for any technical difficulties people still are having. The purpose of this meeting is to deal with the new business of a contested case hearing. And I'll talk about that a little bit later. But first, I want to introduce the members of the EMC again. I'm Georjean Adams, the Chair. I represent District 9 and going across at least my grid on Zoom. We have Elyse Robinson, who is representing District 2. Rick Gaffney is District 8. Dee Fulton is District 7. Lee McIntosh is District 6, and on the phone is John Olson for District 4, and helping us out to make sure that we do this right is Keyra Wong, our Deputy Corporation Counsel back up in the top row for the Environmental Management Commission. And I see there are several members

of the public as well as Director Mansour and the Appellants in this contested hearing case. First, a reminder everybody except Keyra, turn off your phones so that we don't hear extraneous noises.

2. PUBLIC STATEMENTS ON ITEMS ON THE AGENDA

ADAMS: First item would be to take public testimony on the item on the agenda, which is a contested case hearing. Is there anyone on the call that wishes to give public testimony?

SUR: No testifiers in Hilo.

ADAMS: We are live with an empty room in Hilo except for Peter Sur, who is Secretary to the Environmental Management Commission. So he's the voice in the spooky empty room. So we will close public testimony since they don't have anyone raising their hand. And if somebody comes in at 9:30, I guess we'll deal with that.

3. NEW BUSINESS

Kai Ala Partners LLC appeal of the Director's decision to bill two wastewater accounts for TMK (3) 7-5-019:018 and (3) 7-5-:019:026.

ADAMS: So under new business, this is a contested case hearing. We have Kai Ala Partners LLC appealing the DEM Director's decision to bill two wastewater accounts for TMK (3)7-5-019:018 and (3) 7-5-019:026. This contested case hearing is being held in accordance with Chapter 91 of the Hawai'i Revised Statutes and Parts 3 and 7 of the Environmental Management Commission Rules of Practice and Procedure.

The issues involved in this case will be Kai Ala Partners LLC's appeal of the Department of Environmental Management Director's decision to bill two wastewater accounts for those TMK numbers that I just read off. This hearing was set pursuant to Kai Ala Partners' appeal dated October 12, 2021. The EMC is in receipt of a motion to continue the hearing dated December 27, 2021, and the Appellant's response to Appellee's motion to continue hearing date of December 28, 2021. The Appellant Kai Ala Partners has agreed to the continuance of the hearing and I have issued an order yesterday continuing the hearing.

There are three matters that I'd like to address in continuing the hearing.

First, I need to make the announcement on the record that this special meeting is being continued to Friday, January 7, 2022 – it's the first time I've said that year, 2022 – January 7 at 9:00 a.m. via web conferencing and in person located at Hawai'i County Office of Aging, Aging and Disability Resource Center, 1055 Kino'ole Street Hilo¹, and also via Zoom. And if you want

¹ Pursuant to the Governor's Emergency Proclamation Related to Sunshine Law In-Person Meetings dated December 29, 2021, the requirement to have at least one in-person meeting location has been suspended

me to, I can read off that address, but we will be posting the locations and the ID numbers and meeting numbers on the County site for both DEM and the Environmental Management Commission, and hopefully we'll get the newspapers to put the right time in.

Second, it has come to my attention that the Commissioner Olson, we finally got on the line so that's good, would like to recuse himself from participating in the contested case hearing proceedings due to a conflict of interest. Mr. Olson, would you like to give a brief statement about your recusal.

OLSON: Sure. Well, going back to the early days of the Environmental Management Commission, I do not recall whether I was actually on the Commission at the time or whether I was simply tagging along, but I did view the property that you are discussing and the infrastructure that we're talking about. And that was quite some time ago, and I remember having a discussion with the people involved at the time, probably from my perspective, my memory of that is to say the least, clouded. Shortly after that meeting, I ended up in the hospital for a very extended stay. Basically, I died. So my memory is not clear on a lot of things that happened leading up to that event, and I just think it's in the best interest of everyone that I stay out of this. Thank you.

ADAMS: We thank you very much, John, for your raising the issue of possible conflict of interest and appreciate the contributions you make to this committee. We do treat Jon as our historian on all things EMC and continue to appreciate his participation, but he is recused from participating in the contested case hearing proceedings.

Third item is that EMC Rule 7-9(d) requires the Appellant to give notice of the contested case hearing to surrounding property owners within 300 feet of the affected property. Appellant has satisfied the requirement for today's hearing. Since we are continuing the hearing, Appellant would need to provide notice again, however, due to the short turnaround time that we're dealing with, thank you COVID for messing things up once again, and recognizing the costs associated with the Appellant having to reissue notice, I think it's a good cause for the Commission to waive the EMC Rule 7-9(d). The waiver of this rule can be done by EMC under Rule 2-1, Waiver or Suspension of Rules, which reads that for good cause shown, the Commission may by majority vote, waive or suspend any rule or rules of practice and procedure, provided that rules relating to jurisdictional matters shall not be waived or suspended by the Commission.

Having said that, can I have a motion to waive Rule 7-9(d) so that Kai Ala Partners do not have to re-notice their neighbors?

through February 28, 2022. No in-person meeting location will be provided during this time period, unless the suspension is earlier terminated or superseded by a separate proclamation.

Motion and second: Vice Chair Gaffney made a motion, to which Commissioner Robinson seconded, to waive EMC Rule No. 7-9(d) relating to Appellant's requirement to provide notice to owners of neighboring parcels for the continuance of the special meeting.

Discussion:

ADAMS: We are going to hang on until 9:30, just in case one of those neighbors decided to join us late. But I think that there are votes. So we think because they received notice that said 9:00, we saw the notice that was sent to the neighbors. We're probably okay to go ahead with this motion. Any other discussion?

McINTOSH: I was going to say something real quick. This is Commissioner McIntosh, he (the Appellant) already sent an initial notice to them, so they know something is going on. So if they're interested, they can find out more on their own. It's not like it's just a surprise out of the blue, they don't know about it. They've been notified. So I think they've met their obligation.

ADAMS: Okay. Any other comments? We ready for a vote. I'll call roll.

Vote: The motion was carried. Ayes 5 (Adams, Gaffney, Fulton, McIntosh, Robinson); Excused 1 (Olson); Absent 3 (Burns, Cardwell, Hoopii).

ADAMS: It is unanimous that Kai Ala Partners LLC does not have to re-notify their neighbors about the continuance date. So I will issue an order and send it out to the parties. Keyra will sign on my behalf that this rule is waived. Finally, I want to announce that – Keyra, tell us how we do this. We're going to continue until 9:30, just in case somebody joins late. So do I wait to recess it or –

WONG: No. You can go ahead and recess it now until January 7, 2022. And then I'll just hang around until 9:35, around there. And if we have any latecomers, I'll let them know.

ADAMS: Okay. So I hereby announce that the meeting is in recess until January 7, 2022, at 9:00 a.m. Thank you and Happy New Year.

Meeting recessed at 9:21 a.m. on December 29, 2021