

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

KAI ALA PARTNERS LLC,

Applicant/Appellant,

vs.

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

Appellee.

**DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT DIRECTOR'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF
LAW, DECISION AND ORDER**

HEARINGS:

Date: January 7, 2022 and April 27, 2022

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT DIRECTOR'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER**

On October 19, 2021, Kai Ala Partners LLC (“Appellant”) filed an appeal under Part 7 of the Hawai‘i County Environmental Management Commission’s (“Commission”) Rules of Practice and Procedure. Appellant appealed the June 10, 2021 decision (“Director’s Decision”) of the County of Hawai‘i Department Environmental Management Director (“Director”) to impose a monthly sewer maintenance fee for an unoccupied unit located on Appellant’s property located at 75-5944 Ali‘i Drive, Kailua-Kona, Hawai‘i 96740, Tax Map Key (3) 7-5-019:018 (the “Subject Property”). On January 7, 2022 and April 27, 2022, the Commission held evidentiary hearings on the appeal. On April 27, 2022, after consideration of the entire record on this matter, the Commission reversed the Director’s Decision holding that Appellant’s detached unit did not meet the definition of an unoccupied unit because Appellant’s detached unit did not receive a water bill.

FINDINGS OF FACT

1. On May 6, 1998, the County of Hawai'i Department of Public Works ("DPW") completed the Sewer Account Update and determined that the Subject Property should be billed for two (2) units.
2. The Subject Property has two residential structures. A single-family dwelling and a detached unit. The detached unit has the following plumbing fixtures installed: a toilet, sink, shower, and a washing machine.
3. On May 7, 1998, DPW confirmed that the Subject Property was connected to the County's sewer system.
4. Therefore, the Appellant's detached unit has accessibility to the County's sewer system.
5. On May 10, 2002, the Department of Environmental Management ("DEM") officially took over management of the Wastewater Division from DPW.
6. On June 2, 2021, Appellant sent DEM Wastewater Division's Chief Dora Beck a letter explaining that the Subject Property had been incorrectly charged for two (2) units since 1998 and requested a refund of the over charged amount and demanded that the Subject Property be charged for only one (1) unit going forward.
7. On June 10, 2021, Director Mansour sent Appellant a letter explaining that Appellant's detached unit met the definition of an unoccupied unit under HCC Section 21-2 and based on that billing Appellant for two units was both fair and appropriate.
8. On October 12, 2021, Appellant filed an appeal with the Commission requesting his bill be changed to a single user fee and that Appellant be refunded \$7,800.00. However, this appeal was not filed contemporaneously with the required filing fee attached.

9. On October 14, 2021, Appellant's Appeal was returned to Appellant due to defective filing (his failure to include the required filing fee).
10. On October 19, 2021, Appellant re-filed the present appeal with the Commission with the appropriate filing fee.
11. On January 7, 2022, the Commission held an evidentiary hearing but did not have enough votes to carry a motion, and the hearing was continued.
12. Appellant's bi-monthly water bill, which is issued by the Department of Water Supply, lists the service address as 75-5946 Ali'i drive, Kailua-Kona, Hawai'i 96740, which is the lot adjacent to the Subject Property and owned by Appellants.
13. On January 7, 2022, Appellant testified that the water bill's service addresses' property located at 75-5946 Ali'i drive, Kailua-Kona, Hawai'i 96740, which is the adjacent lot, does not have any structures located on it. Appellant further testified that the water "meter is in front of the residential TMK address, and that's the property that has water on it."
14. On January 7, 2022, Appellant testified that the Subject Property is the only property of the two adjacent lots owned by Appellants, that receives water from the Department of Water Supply. However, the bill for the Subject Property's water usage is sent next door to the empty adjacent lot/property.
15. On April 27, 2022, the Commission voted to reverse the Director's Decision on the grounds that the Director's Decision was in violation of the Hawai'i County Code and clearly erroneous because Appellant's Property at 75-5944 Ali'i Drive, Kailua-Kona, 96740, does not receive a water bill and thus does not meet the definition of an unoccupied unit.

CONCLUSIONS OF LAW

1. HCC § 21-2 defines an “unoccupied unit” as “a unit that is not occupied but has accessibility to a sewer, plumbing fixtures located on it, and currently receives a water bill.”
2. In relevant part, HCC § 21-31 states that “[u]noccupied units will be assessed a monthly maintenance fee equal to the current monthly sewer user fee.”
3. Under Environmental Management Commission’s Rules of Practice and Procedure, Rule 7-4(4)(a) and (b), the Commission has the authority to reverse Appellee’s decision if it “violates the law” or is “clearly erroneous[.]”
4. The Commission finds that Appellee’s decision violated HCC § 21-31 and was clearly erroneous because the structure on Appellant’s property was not currently receiving a water bill, as required by HCC §§ 21-31 and 21-2.

DECISION AND ORDER

Based on the foregoing and under the authority of Commission Rule 7-12, the Director’s June 10, 2021 decision to bill Appellant a “monthly maintenance fee equal to the current monthly sewer user fee” for the detached unit on Appellant’s property located at 75-5944 Ali‘i Drive, Kailua-Kona, 96740 was is **REVERSED**.

Dated: Hilo, Hawai‘i, _____.

GEORJEAN ADAMS, Chairperson,
Environmental Management Commission,
County of Hawai‘i, State of Hawai‘i