

TED H. S. HONG 3569
Attorney at Law
P. O. Box 4217
Hilo, HI 96720
Telephone No. 808.933.1919
Facsimile No. 808.935.8281
ted@tedhonglaw.com

Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES

BEFORE THE COUNTY OF HAWAII

WINDWARD PLANNING COMMISSION

In the Matter of	)	SPP No. 12-000138
)	
CONNECTIONS NEW CENTURY	)	APPLICANT COMMUNITY BASED
PUBLIC CHARTER SCHOOL and	)	SUPPORT SERVICES' MEMORANDUM
COMMUNITY BASED EDUCATION	)	IN OPPOSITION TO INTERVENOR
SUPPORT SERVICES,	)	JEFFREY GOMES' EXCEPTIONS TO
	)	COUNTY OF HAWAII WINDWARD
Application for Special Permit Application	)	PLANNING COMMISSION'S PROPOSED
No. 12-000138,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW, DECISION AND ORDER ON
TMK: (3) 2-5-006-141; Kaumana, South	)	REMAND, DATED NOVEMBER 1, 2021;
Hilo, Hawaii.	)	CERTIFICATE OF SERVICE
)	
	)	<u>HEARING:</u>
	)	DATE: November 4, 2021
	)	TIME: 9:00 a.m.
)	

APPLICANT COMMUNITY BASED SUPPORT SERVICES' MEMORANDUM IN
OPPOSITION TO INTERVENOR JEFFREY GOMES' EXCEPTIONS TO
COUNTY OF HAWAII WINDWARD PLANNING COMMISSION'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION and ORDER
DATED NOVEMBER 1, 2021

Comes Now, Applicant, COMMUNITY BASED EDUCATION SUPPORT SERVICES,
(hereinafter referred to as "CBESS"), by and through its undersigned counsel and hereby
submits its Memorandum in Opposition to Intervenor Jeffrey Gomes' Exceptions to County of

Hawaii Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021, as follows:

A. OBJECTION

Intervenor Jeffrey Gomes’ Exceptions to County of Hawaii Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021, were only served on counsel for Applicant CBESS on November 2, 2021. Counsel for Intervenor continues to play games by having emailed the document to the Windward Planning Commission but only mailed his motion and memorandum on November 1, 2021 and did not have the professional courtesy to email the document to Applicant CBESS’ counsel.

Intervenor Jeffrey Gomes and his counsel’s actions violate Applicant CBESS’ right to due process. Applicant CBESS does not have time to process, analyze and submit an opposition memorandum to challenge and disprove the flawed analysis and argument proffered by Intervenor Gomes and his counsel. Applicant CBESS is deprived of adequate “notice and opportunity to be heard at a meaningful time and in a meaningful manner[.]” on the issues raised by Intervenor Gomes and his counsel. *Mauna Kea Anaina Hou v. Bd. of Land and Natural Res.*, 136 Hawai‘i 376, 389, 363 P.3d 224, 237 (2015). Taking any official action based on the intentionally, late submission, would violate Applicant CBESS’ right to due process.

B. RECONSIDERATION NOT “EXCEPTIONS.”

Intervenor Jeffrey Gomes’ Exceptions to County of Hawaii Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021, are not exceptions but another attempt to argue the scope of the rehearing on

remand and the merits of the Special Permit. The Commission previously allowed all parties to submit briefs and argue their positions on the scope of the Intermediate Court of Appeals remand in this case. The Commission held a public meeting on it on August 5, 2021, during which it took testimony from the public and argument from the parties in this matter. The Commission then took action and set the hearing on the Special Permit for October 17, 2021. Even a cursory review of Intervenor Gomes' and Mr. Matsukawa's "exceptions" clearly demonstrates that their submission reargues, rehashes and repeats their prior argument and positions.

Intervenor Gomes and Mr. Matsukawa fraudulently label their extensive filing as "Exceptions" because under the County of Hawaii, Planning Commission Rules of Practice and Procedure (amended 8-9-2021), they are prohibited from filing a motion for reconsideration. Rule 4-31, of the County of Hawaii, Planning Commission Rules of Practice and Procedure (amended 8-9-2021) clearly states:

4-31 Reconsideration of Decision and Order.

The Commission **shall not reconsider its action in any contested case hearing after the effective date of its decision.** (Emphasis added)

Intervenor Gomes and Mr. Matsukawa are deliberately and intentionally trying to circumvent the Commission's rules of procedure by disguising their argument to have the Commission impermissibly reconsider its decision from the October 7, 2021 hearing. Mr. Matsukawa, as former Corporation Counsel for the County of Hawaii should know better. He also has a professional obligation to follow the rules of procedure for all commissions, boards and administrative agencies. Rules 3.3(a)(1) and 3.9, Hawaii Rules of Professional Conduct, a lawyer shall not make a false statement of law to the Commission. In this case, the false

statement is stating that their submission is an “exception” when in reality, it is a motion for reconsideration of the Commission’s decisions on the scope of the remanded hearing made on August 5, 2021 and then on the merits of the Special Permit hearing on October 7, 2021. Their motion is emblematic of their lack of credibility in this case. They think it’s entertaining to watch the Commission thrash about after raising these improper arguments. If the Commission’s rules are to be applied equally to all parties, the Commission should not reward them for their underhanded tactics.

C. STANDARD FOR RECONSIDERATION.

Generally, the standard to consider a Motion for Reconsideration includes:

[T]he purpose of a motion for reconsideration is to allow the parties to **present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion.** Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding. (Citations omitted)

Tagupa v. Tagupa, 108 Haw. 459, 465, 121 P.3d 924, 930 (Ct. App. 2005).

The “exceptions” submitted by Intervenor Gomes and Mr. Matsukawa are clearly argument about the scope of the Remand proceeding, that **could have been presented** at the August 5, 2021, by written submission before the hearing or at the hearing through argument. Mr. Matsukawa attached two excerpts of briefs that were submitted to the Intermediate Court of Appeals in the underlying appeal. He then goes on to list what he believes should have been narrowed in terms of the scope of the remanded hearing which was argued and decided on August 5, 2021. Intervenor Gomes and Mr. Matsukawa reargues the merits of the Commission’s hearing and decision at its October 7, 2021 hearing, which granted the Special Permit Application. They are simply relitigating the same matters and raising arguments that they could

and should have made during the October 7, 2021 hearing.

D. CONCLUSION.

Applicant CBESS, has at all times, followed the rules and been mindful of the Commission’s role and rules of procedure. Applicant CBESS has been respectful of the process, despite the criminal property damage to its facilities and equipment, trespasses and more recently a physical assault of an employee by surrounding property owners. Intervenor Gomes and Mr. Matsukawa mock the process by asking the Commission to reconsider the scope of the remanded hearing which was decided upon on August 5, 2021. Intervenor Gomes and Mr. Matsukawa show their contempt for the process, the facts, the evidence and truth by filing this frivolous motion for reconsideration as “exceptions.” This is not a game of “Chutes and Ladders.”

Unlike a Court’s rules and procedures, the Commission’s rules and procedures do not allow the Applicant to ask the Commission for an award of attorney’s fees and costs against Intervenor Gomes and Mr. Matsukawa for their frivolous filing.

Accordingly, Applicant CBESS respectfully requests the Commission, reject Intervenor Gomes and Mr. Matsukawa’s Exceptions to County of Hawaii Windward Planning Commission’s Proposed Findings of Fact, Conclusions of Law, Decision and Order Dated November 1, 2021.

DATED: Hilo, Hawaii, November 3, 2021.



TED H. S. HONG
Attorney at Law
Attorney for Applicant
COMMUNITY BASED EDUCATION
SUPPORT SERVICES

Angelic Malia Hall, Esq.
Deputy Corporation Counsel
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720

AngelicMalia.Hall@hawaiicounty.gov

Attorney for County of Hawai 'I, Windward Planning Commission

Michael J. Matsukawa, Esq.
Territorial Centre, Suite 201
75-5751 Kuakini Highway
Kailua-Kona, Hawaii 96740

Attorney for Intervenor
Jeffrey K. Gomes

Mr. Jeff Darrow
Deputy Planning Director
County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

The Hon. Elizabeth Strance
Corporation Counsel
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Attorney for Planning Director

DATED: Hilo, Hawaii, November 3, 2021



TED H. S. HONG
Attorney at Law

Attorney for Applicant
COMMUNITY BASED
EDUCATION SUPPORT SERVICES