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HENRIETTA CHONG, CLERK
THIRD CIRCUIT COURT
STATE OF HAWAII

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WINDWARD PLANNING COMMISSION,
COUNTY OF HAWAI'I

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAI'I

COMMUNITY BASED EDUCATION
SUPPORT SERVICES; CONNECTIONS
NEW CENTURY PUBLIC CHARTER
SCHOOL,

Applicants-Appellants,

vs.

WINDWARD PLANNING COMMISSION,
COUNTY OF HAWAI'I,

Appellee,

and

JEFFREY GOMES, Intervenor,

Intervenor-Appellee.

Civil No. 14-1-0223
(Agency Appeal)

**DECISION AND ORDER
AFFIRMING WINDWARD PLANNING
COMMISSION, COUNTY
OF HAWAI'I'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION AND ORDER DENYING
SPECIAL PERMIT APPLICATION NO.
SPP 12-138**

Hearing:

Date: May 29, 2015

Time: 9:00 a.m.

Judge: The Honorable Melvin H. Fujino

I hereby certify that this is a full, true and correct
copy of the original on file in this office.

Clerk, Third Circuit Court, State of Hawaii

EXHIBIT A

DECISION AND ORDER
AFFIRMING WINDWARD PLANNING COMMISSION, COUNTY
OF HAWAII'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
AND ORDER DENYING SPECIAL PERMIT APPLICATION NO. SPP 12-138

Applicants-Appellants Community Based Education Support Services (“CBESS”) and Connections New Century Public Charter School (“Connections”) (collectively, “Appellants”) appeal from the Windward Planning Commission, County of Hawai‘i’s (“Commission”) decision denying Appellant’s Special Permit Application No. SPP 12-138 entered May 1, 2014 (“Decision”) and Findings of Fact, Conclusions of Law and Decision and Order entered May 19, 2014 (“D&O”), came on for oral argument on May 29, 2015 at 9:00 a.m. before the Honorable Melvin H. Fujino. Ted H.S. Hong, Esq., appeared on behalf of CBESS, Carter K. Siu, Esq., appeared on behalf of Connections, Danny B. Patel, Esq., appeared on behalf of Commission, and Michael J. Matsukawa, Esq., appeared on behalf of the Intervenor-Appellee, Jeffrey Gomes (“Gomes”). The Court, having reviewed the briefs and appendices submitted by the parties, the record on appeal, and having considered the arguments of the parties’ counsel, enters the following Decision and Order:

DECISION

1. The Court finds the Applicants were allowed five public hearings and five days of contested case proceedings, within which to meet their burden to establish the Application met the criteria required for a Special Permit. The Commission denied the Application.

2. The Court’s review of the Commission’s Decision and D&O is qualified by the principle that an agency’s decision carries a presumption of validity and appellants have the heavy burden of making a convincing showing that the decision is invalid because it is unjust and unreasonable in its consequences.

3. In reviewing an agency appeal, the Court applies the standards set forth in Hawai'i Revised Statutes ("HRS") § 91-14(g).

4. Conclusions of law are reviewable under HRS § 91-14(g), subsections (1), (2), and (4). The Commission's Decision and D&O do not violate relevant constitutional or statutory provisions, are not in excess of statutory authority or jurisdiction, and are not affected by other error of law.

5. Findings of fact are reviewable under HRS § 91-14(g), subsection (5). In view of the reliable, probative, and substantial evidence on the whole of the record, the Commission's Decision and D&O are not clearly erroneous.

6. Mixed questions of law and fact are reviewable under HRS § 91-14(g), subsection (6). The Commission's Decision and D&O are not arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

7. The County Charter, County of Hawai'i, explicitly authorizes the Commission to consider the County of Hawai'i General Plan when determining special permit applications.

ORDER

Pursuant to the above Decision, it is hereby ORDERED, ADJUDGED, and DECREED:

1. The Commission's Decision and D&O are **AFFIRMED** and the appeals taken by CBESS and Connections are dismissed;

2. CBESS' request for attorney's fees and costs are **DENIED**;

3. CBESS' request that the Court admonish and recommend the County to remove the Commissioners who voted against the Appellant's application as unfit to serve on public commissions and boards because they violated their legal duty is **DENIED**; and

4. FINAL JUDGMENT shall be entered in favor of the Appellee Commission and Intervenor-Appellee Gomes, and against Applicants-Appellants CBESS and Connections, on all claims in this action.

DATED: Kealahou, Hawai'i, JUL - 8 2015.

Melvin H. Fujino (Seal)

JUDGE OF THE ABOVE-ENTITLED COURT

~~APPROVED AS TO FORM:~~

~~_____
TED H.S.HONG, ESQ.~~

~~Attorney for Applicant-Appellant~~

~~COMMUNITY BASED EDUCATION SUPPORT SERVICES~~

CARTER K. SIU, ESQ.

Attorney for Applicant-Appellant

CONNECTIONS NEW CENTURY PUBLIC CHARTER SCHOOL

Community Based Education Support Services, et al. v. Windward Planning Commission, County of Hawaii, et al., Civ. No. 14-1-0223 (Agency Appeal); DECISION AND ORDER AFFIRMING WINDWARD PLANNING COMMISSION, COUNTY OF HAWAI'I'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER DENYING SPECIAL PERMIT APPLICATION NO. SPP 12-138



MICHAEL J. MATSUKAWA, ESQ.
Attorney for Intervenor-Appellee
JEFFREY GOMES

Community Based Education Support Services, et al. v. Windward Planning Commission, County of Hawaii, et al., Civ. No. 14-1-0223 (Agency Appeal); DECISION AND ORDER AFFIRMING WINDWARD PLANNING COMMISSION, COUNTY OF HAWAII'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER DENYING SPECIAL PERMIT APPLICATION NO. SPP 12-138

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