



TED H.S. HONG
ATTORNEY AT LAW, L.L.C.

EMPLOYMENT,
WORKPLACE LAW & LITIGATION

January 18, 2022

Hon. Jonathan Likeke Scheuer
Chairperson
Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

RE: Agenda Item
SP21-413, CONNECTIONS NEW CENTURY PUBLIC
CHARTER SCHOOL/Community Based Education
Support Services (CBESS) (SPP 12-000138) (Hawaii)

Hearing: January 19-20, 2022: 9:00 a.m.

Dear Chairperson Scheuer and Commissioners:

My name is Ted H. S. Hong and I am the legal representative for Applicant CBESS. Please accept this written statement on behalf of CBESS.

I. INTRODUCTION

The “overarching purpose” of Chapter 205, Hawaii Revised Statutes (hereinafter referred to as “HRS”) is to “foster intelligent, effective, and orderly land allocation and development.” *Kaua'i Springs, Inc. v. Planning Comm'n of Cnty. of Kaua'i*, 130 Hawai'i 407, 426, 312 P.3d 283, 302 (Ct. App. 2013) *cert. granted sub nom. Kaua'i Springs, Inc. v. Planning Comm'n of Cnty. of Kaua'i*, No. SCWC 29440, 2013 WL 4779589 (Haw. Sept. 4, 2013) and *aff'd*, 133 Hawai'i 141, 324 P.3d 951 (2014).

II. RELEVANT BACKGROUND

CBESS is the non-profit, governance Board for Connections, a public charter school that currently operates its elementary, middle and high school on Kamehameha Avenue in downtown Hilo.

In March 2008, the State of Hawaii Department of Land and Natural Resources, Board of Land and Natural Resources issued its Approval in Principal of Direct Lease to Connections for school purposes at the Property.

Beginning on April 16, 2009, CBESS held a total of six (6) meetings in the neighboring community, invited the community to attend, listened to



their concerns about the proposed project and modified it based on neighbors' concerns: (1) April 16, 2009; (2) June 3, 2011; (3) September 2, 2011; (4) April 27, 2012; (5) April 28, 2012, CBESS administrators, faculty and students walked door to door in the neighboring community to notify and discuss with residents any concerns about the proposed development; and again on (6) December 17, 2012.

A Draft Environmental Assessment (EA) addressing the campus Master Plan was prepared, distributed for agency and public comment in August 2009 and a finding of "No Significant Impact" was made by the State of Hawaii. Several comments were received on the Draft EA regarding potential impacts to Kaumana Cave, a segment of which underlies portions of the upper part of the property. After further research and review, CBESS reconfigured the campus plan to avoid school construction in the upper part of the subject property.

On January 13, 2011, the State Department of Land and Natural Resources Board of Land and Natural Resources issued a Direct Lease to Connections for school purposes.

On July 25, 2012, a Special Permit application was prepared and submitted to the County of Hawaii Planning Department and on July 31, 2012 the County of Hawaii Planning Department acknowledged receipt of the Special Permit Application designating it as SPP No. 12-000138.

On or about October 11, 2012, the school was the victim of a "hate crime" by anti-project suspects and vandalized. Stickers were plastered around the school and school bus with the words "No Connections in Kaumana."

On October 12, 2012, County of Hawaii Planning Department notified CBESS that its permit application, SPP No. 12-000138, was scheduled for public hearing. The notice included instructions what information was to be included to notify any interested parties of their right to submit a written request for a contested case hearing.

On October 19, 2012, CBESS provided timely notice to property owners within 500-feet of the Property of SPP No. 12-000138 that included information regarding the public hearing date and instructions for interested parties to submit a written request for a contested case hearing.

On November 9, 2012, at the first public hearing on SPP No. 12-000138, after hearing presentations by CBESS and CBESS' experts and testimony from surrounding property owners, the WPC voted to defer SPP No. 12-



000138 to allow CBESS an opportunity to submit: (1) water calculations to address water usage concerns and (2) meet with an adjacent property owner to explore an alternative access to the property.

On November 13, 2012, the County of Hawaii Planning Department provided timely notice to property owners within 500-feet of the Property of the second public hearing for SPP No. 12-000138 on December 6, 2012.

On December 6, 2012, at the second further hearing for SPP No. 12-000138, the Windward Planning Commission voted to defer SPP No. 12-000138.

On December 28, 2012, CBESS provided timely notice to property owners within 500-feet of the Property of a third public hearing for SPP No. 12-000138 on January 10, 2013.

On January 10, 2013, at the third further public hearing for SPP No. 12-000138, the WPC moved to deny SPP No. 12-000138 and allow for the preparation of Findings of Fact, Conclusions of Law and Decision and Order.

On or about January 24, 2013, the WPC formally notified CBESS that it had denied CBESS' application for a special permit and would draft its Findings of Fact and Conclusions of Law.

On February 15, 2013, the County of Hawaii, Planning Department provided timely notice to property owners within 500-feet of the Property of a fourth public hearing for SPP No. 12-000138 for March 7, 2013 with instructions for parties wishing to intervene in a contested case to complete the "Petition for Standing in a Contested Case Hearing" form by February 28, 2013.

On March 7, 2013, the WPC received a Petition for Standing in Contested Case Hearing from Intervenor, Jeffrey Gomes (hereinafter referred to as "Gomes"). Mr. Gomes was granted standing at the WPC's March 7, 2013 meeting. The WPC also voted to retain a hearings officer to conduct a Contested Case hearing.

On July 12, 2013, the WPC notified all parties that the Hon. Sandra Pechter Song (ret.), was retained to serve as hearings officer for the contested case hearing in SPP No. 12-000138.



The Contested Case hearing was held on October 21, 2013; October 22, 2013; November 12, 2013; January 8, 2014, and January 22, 2014. On January 22, 2014, the Hearings Officer closed the contested case hearing.

On April 7, 2014, the Hearings Officer submitted her Report to the parties and WPC.

On or about April 21, 2014, CBESS and Connections submitted their Joint Exceptions to Hearings Officers [sic] Report Finding of Fact, Conclusions of Law and Recommendation Dated April 7, 2014. The County Planning Director also submitted his Exceptions to Hearing Officer's Report Dated April 7, 2014.

On May 1, 2014, at the fifth public hearing, the WPC voted to uphold the Hearings Officer's report and recommendation and denied SPP No. 12-000138.

On May 12, 2014, the WPC distributed its Findings of Fact and Conclusions of Law to the parties.

On or about June 9, 2014, CBESS filed its Notice of Appeal to the Third Circuit Court, State of Hawaii.

The Third Circuit Court issued its 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, filed on July 14, 2015.

III. LEGAL BACKGROUND

CBESS filed its Notice of Appeal on November 16, 2016 in CAAP-16-0000813.

On January 31, 2020, the Intermediate Court of Appeals vacated the Windward Planning Commission's decision and remanded the proceedings back to the Windward Planning Commission. *Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n*, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136 (Ct. App. 2020), the Intermediate Court of Appeals concluded:

For the foregoing reasons, the Circuit Court's July 14, 2015 Order Affirming and January 13, 2017 Final Judgment and the Planning Commission's May 12, 2014



Decision and Order are vacated, and this case is remanded to the Planning Commission for further proceedings consistent with this Memorandum Opinion. (Emphasis added)

Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *19 (Ct. App. 2020).

The Intermediate Court of Appeals also held:

There is nothing in the record to suggest that Connections would not or could not be held to its commitments. FOFs 21, 48, and 50 are clearly erroneous and not supported by the evidence. FOF 49 is not clearly erroneous, as there was no definitive evidence in the record that Connections would be able to develop potable water sources. However, the Planning Commission may reconsider any weight it assigned to this finding in light of the Planning Director's testimony regarding the burden placed on applicants for special permits at this stage and Connection's agreement to limit the number of persons on the campus to the amount of water it can obtain. **COL 51 is also vacated in light of the above.** (Footnote omitted) (Emphases added)

Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *12 (Ct. App. 2020).

The Intermediate Court of Appeal further held:

We conclude that **it would be an absurd result to read the "unsuited for agricultural use" consideration so strictly and narrowly, particularly under circumstances such as those presented here, to deny a special permit due to an applicant's attempt to incorporate an agricultural component into its proposed use.** See, e.g., *Morgan v. Planning Dep't, Cty. of Kaua'i*, 104 Hawai'i 173, 181, 86 P.3d 982, 990 (2004) (planning commission is required to give effect to the policies and objectives of land use statutes and not to interpret them in a manner that would lead to an absurd result).



Accordingly, in view of the reliable, probative, and substantial evidence on the whole record, and in light of the aforementioned considerations, **we conclude that FOF 55 must be vacated in order for the Planning Commission to assess the evidence in this light.** (Emphases added)

Connections New Century Pub. Charter Sch. v. Windward Planning Comm'n, 146 Hawai'i 155, 156, 456 P.3d 1002, 1003, 2020 WL 508136, at *14–15 (Ct. App. 2020).

On July 10, 2021, one of the School's employees was assaulted and beaten by thugs who apparently were at the School's property by invitation of one of the vocal opponents of the project. The assault and beating were in plain sight of this resident and from what I understand, another vocal opponent of my client's proposal. **They did nothing to stop the beating. They did nothing to report the beating.** The resident later mocked the employee by coming up to him after the incident and said something to the effect that, he hoped "no one" was hurt. He obviously saw that my client's employee was the only person being beaten, but went out of his way to mock him.

In the wake of the remand by the Intermediate Court, the Windward Planning Commission and the clear and unambiguous language in the opinion, it took another four (4) more months to approve the Special Use Permit, in hearings held on August 5, 2021, October 7, 2021 and November 4, 2021.

IV. LAND USE COMMISSION

After nearly fourteen (14) years of pursuing this Project, it is finally before the Land Use Commission for approval of the Special Permit. At the time this project was started, the Department of Land and Natural Resources suggested that CBESS pursue a Special Permit instead of District Boundary Amendment.

In accordance with the commitment made to the County of Hawaii, Windward Planning Commission and community, CBESS is currently updating the Traffic Report and Water Calculations. Since the original Traffic Report was made, the County and State of Hawaii, have opened the Puainako Extension which has significantly reduced daily traffic on Kaumana Drive. Additionally, the water calculations, concerning the need for the School to use County supplied water, when completely built out, is being recalculated to show that the School, through updated technology



and water conservation practices, will actually use less water than allocated by the County of Hawaii.

Finally, many of the most vocal opponents of this project, have consistently engaged in gross misrepresentations (aka “lies,” *see, Boyd v. Hawaii State Ethics Commission*, 138 Hawai’i 218, 378 P.3d 934 (2016), state ethics convictions against an employee of Connections, were overturned), criminal property damage to school property (school defaced, fencing torn down, equipment vandalized, locks to gates repeatedly glued shut, neighborhood trash dumped onto the property) and lately assault. The opponents live in one of Hilo’s most exclusive, wealthiest neighborhoods. They oppose any development in the area. They have made derogatory comments about the ancestry of the student body (Caucasian and part-Hawaiian) and their socioeconomic status.

Their current opposition, has taken an insidiously softer tone, as “Good idea, wrong location.” They are organized and politically connected. Their voices have been disproportionately catered to, pandered to and influenced decision makers. They have left no stone unturned in their scorched Earth campaign against the School, its employees and students. It is only through our persistence and refusal to be intimidated into silence that we are here today, before the Land Use Commission. If we, as adults, don’t set the example for the School’s students, of being committed to do the right thing and follow the law, no matter how long it takes, then none of us deserve to be involved in educating and developing the minds and spirit of children.

V. CONCLUSION

The question for the Land Use Commission is, which side will it take in this land use matter? CBESS and the School have shown time and again that when examining the objective factors in Chapter 205, HRS, they meet and exceed all the “intelligent, effective, and orderly land allocation and development.” *Kaua’i Springs, Inc. v. Planning Comm’n of Cnty. of Kaua’i*, 130 Hawai’i 407, 426, 312 P.3d 283, 302 (Ct. App. 2013) *cert. granted sub nom. Kaua’i Springs, Inc. v. Planning Comm’n of Cnty. of Kaua’i*, No. SCWC 29440, 2013 WL 4779589 (Haw. Sept. 4, 2013) and *aff’d*, 133 Hawai’i 141, 324 P.3d 951 (2014). CBESS and the School have shown time and again that they are willing to meet with and work with the Community, at every turn.

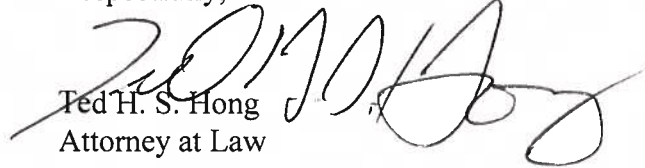
The School, as currently planned, will be located in the furthest point away from the neighborhood. Students and employees will meet at the



downtown campus and be bussed to the school, in the morning and afternoon, to minimize traffic at the street leading into the neighborhood. The upper part of the parcel, will be used as a living, conservation, classroom. No construction will occur on that part of the property, out of concerns for the underground lava tubes, native flora, fauna and community. The School will emphasize native forestry conservation, “new” agriculture because of the rocky, poor soil, and resource management (water conservation practices). This is a School for the future of our Island home.

CBESS, the School, and I hope, the Land Use Commission sees the same need and future. CBESS respectfully asks the Land Use Commission to approve Agenda Item SP21-413, and hold us to our commitment to the State, the County, the Community, and most importantly, to the students.

Respectfully,


Ted H. S. Hong
Attorney at Law

cc: Client