

MICHAEL J. MATSUKAWA, 1885
 75-5751 Kuakini Highway, Room 201
 Kailua-Kona, Hawaii 96740
 Telephone (808) 329-1385
 Attorney for Intervenor Jeffrey Gomes

LAND USE COMMISSION
 STATE OF HAWAII

2022 JAN 24 P 12: 29

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of	)	LUC DOCKET SP 21-413
)	
	)	INTERVENOR JEFFREY GOMES'
CONNECTIONS NEW CENTURY	)	OBJECTION TO UNTIMELY FILING
CHARTER SCHOOL AND	)	OF COUNTY OF HAWAII WIND-
COMMUNITY BASED EDUCA-	)	WARD PLANNING COMMISSION'S
TION SUPPORT SERVICES	)	COMPLETE RECORD WITH THE
	)	STATE LAND USE COMMISSION
)	
	)	AFFIDAVIT OF COUNSEL;
	)	EXHIBITS "A" AND "B"
Application for Special Permit)	
Application No. 12-000138	)	CERTIFICATE OF SERVICE
)	
	)	<u>Decision Below:</u>
TMK (3) 2-5-006-141; Kaumana,	)	Agency: Windward Planning Com-
South Hilo, Hawaii	)	mission, County of Hawaii
	)	Case No.: SPP No. 12-000138
	)	Date: November 4, 2021
)	
	)	<u>State LUC Hearing:</u>
	)	Dates: January 19-20, 2022
	)	(Zoom Hearing)
	)	Time: 9:00 a.m.

INTERVENOR JEFFREY GOMES' OBJECTION TO
UNTIMELY FILING OF COUNTY OF HAWAII'S WINDWARD
PLANNING COMMISSION'S COMPLETE RECORD
WITH THE STATE LAND USE COMMISSION

The Intervenor Jeffrey Gomes, by and through his attorney, objects to the County of Hawaii Windward Planning Commission's untimely filing of the Windward Planning Commission's "complete record" with the State Land Use Commission in this matter. The Intervenor's objection is based on Section 205-6(e), Hawaii Revised Statutes that requires the Windward Planning Commission to transmit "the complete record of the proceeding before the county planning commission" and "within sixty days after the decision is rendered." ¹ The State Land Use Commission's administrative rule HAR 15-15-95(a) similarly requires the Windward Planning Commission to forward the "complete record" within sixty days "following the planning commission's decision."

It is undisputed that:

(1) the Windward Planning Commission rendered its decision below on November 4, 2021; the Chairman John Replogle signed the decision on

¹ Unlike an agency appeal under Section 91-14, Hawaii Revised Statutes, where the time for filing an appeal begins when the appellant receives a certified copy of the agency decision, the 60-day time period for the transmission of the planning commission's "complete record" begins on the date when the decision is "rendered," i.e., signed by the chairman of the planning commission. A plain meaning of the word "render" is to make or to give a decision. Compare Section 91-14(b), HRS ("within thirty days ... after service of the certified copy of the final decision") with Section 205-6(e), HRS ("within sixty days after the decision is rendered").

that date. (See electronic copy on State LUC Website, Special Permit, Pending Dockets tab, boldfaced item *Note for ROA, Exhibit 114)

(2) the 60-day period for transmitting or forwarding the complete record ended on *January 3, 2022*;

(2) the Windward Planning Commission transmitted portions of the planning commission's record to the State Land Use Commission on *December 21, 2021*; (See Exhibit "A," Email to Mr. Orodener and others)

(3) the Windward Planning Commission later transmitted the remaining portions of the planning commission's record on *January 10, 2022*. (See Exhibit "B," Email to Mr. Orodener and others)

I. POINT OF OBJECTION

In this instance, the Windward Planning Commission rendered its decision below on *November 4, 2021*. The planning commission had sixty days thereafter to transmit or forward the "complete record" to the State Land Use Commission; the sixty-day period expired on *January 3, 2022*. As noted above, the Windward Planning Commission transmitted a partial record of its proceedings on December 21, 2022 (within the 60-day period) and the remainder of the record of its proceeding on January 10, 2022 (after the 60-day period expired).

II. EFFECT

A facial reading of the pertinent statute and administrative rule does not explain the remedy or relief that is available to the Intervenor Jeffrey Gomes who continues to investigate issues arising out of the foregoing events, such as (1) whether the foregoing events affect the State Land Use Commission's jurisdiction, (2) whether the time limit for transmitting the "complete record" is mandatory or directory, (3) whether the State Land Use Commission may extend the legislative 60-day time limit and do so after-the-fact and (4) the effect of the foregoing events on the merits of the matter at hand.

II. RELIEF SOUGHT

Upon the completion of his investigation the Intervenor intends to file a motion pursuant to the State Land Use Commission administrative rules HAR 15-15-37, *et seq.* that requests appropriate relief by a separate pleading.

Dated at Kailua-Kona, Hawaii: January 12, 2022.

JEFFREY GOMES, Intervenor

By 
Michael J. Matsukawa
His Attorney

BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

In the Matter of) **LUC DOCKET SP 21-413**
)
)
CONNECTIONS NEW CENTURY)
CHARTER SCHOOL AND)
COMMUNITY BASED EDUCA-)
TION SUPPORT SERVICES)
)
) **AFFIDAVIT OF COUNSEL;**
) **EXHIBITS "A" AND "B"**
Application for Special Permit)
Application No. 12-000138)
)
)
TMK (3) 2-5-006-141; Kaumana,)
South Hilo, Hawaii)
)
_____)

AFFIDAVIT OF COUNSEL

COUNTY OF HAWAII)
) ss.
STATE OF HAWAII)

MICHAEL J. MATSUKAWA, being first duly sworn on oath,
deposes and says that:

1. I am an attorney licensed to practice law in the State of Hawaii;
2. I represent Jeffrey Gomes who was the Intervenor in the proceedings before the Windward Planning Commission in Case No. SPP 12-

000138 and who continues to be the Intervenor in this proceeding before the State Land Use Commission, LUC Docket No. SP 21-413;

3. I have personal knowledge of the facts stated herein;


4. I received Emails from the Windward Planning Commission on December 21, 2021 (Melissa Dacayanan sender), a true copy of which is attached hereto as Exhibit "A," and on January 10, 2021 (Riley Hakoda, sender), a true copy of which is attached hereto as Exhibit "B;"

Further affiant sayeth naught.

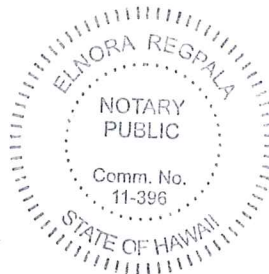


Michael J. Matsukawa, Affiant

Sworn to and subscribed before me
on January 12, 2022



Notary Public, State of Hawaii
Commission No.: 11-396
My commission expires on 12-18-2023



NOTARY CERTIFICATE (Hawaii Administrative Rules §5-11-8)

Document Description: Affidavit of Counsel

Document Date: JAN 12 2022

Number of Pages: 12

Jurisdiction in which notarial act is performed: Third Circuit of the State of Hawaii



Signature of Notary
ELNORA REGPALA

Date: JAN 12 2022

Print Name of Notary

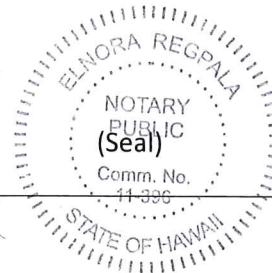


EXHIBIT "A"

LUC Docket No. SP21-413 Connections/CBESS SPP 12-138

Dacayanan, Melissa <Melissa.Dacayanan@hawaiicounty.gov>

Tue 12/21/2021 11:49 AM

To: Daniel E Orodener (daniel.e.oroedener@hawaii.gov) <daniel.e.oroedener@hawaii.gov>

Cc: Hakoda, Riley K <riley.k.hakoda@hawaii.gov>; Quinones, Natasha A <natasha.a.quinones@hawaii.gov>; Kay, Christian <Christian.Kay@hawaii.gov>; Ted H. S. Hong (ted@tedhonglaw.com) <ted@tedhonglaw.com>; Kevin M. Richardson <kevin.m.richardson@hawaii.gov>; Michael Matsukawa ESQ (kapulu@msn.com) <kapulu@msn.com>; public_works email <public_works@hawaiicounty.gov>; DWS <dwsengineeringreview@hawaiidws.org>; RPT Mapping <rptmapping@hawaiicounty.gov>; Campbell, Jean K <JeanK.Campbell@hawaiicounty.gov>; Penfield, Nicole <Nicole.Penfield@hawaiicounty.gov>; Kekai, Malia <malia.kekai@hawaiicounty.gov>; Darrow, Jeff <Jeff.Darrow@hawaiicounty.gov>; Ley, Rachelle <Rachelle.Ley@hawaiicounty.gov>

Good morning Mr. Orodener,

Thank you very much for allowing the Windward Planning Commission to provide electronic records in lieu of paper documents due to the volumes of paper regarding this Special Permit for Connections/CBESS.

As stated in our previous letter dated November 16, 2021, attached is a letter transmitting the approved Windward Planning Commission minutes and transcript for the November 4, 2021 hearing. This submittal will complete the record to the Land Use Commission in regards to the Special Permit No. SP21-413. There will be no hard copy to follow.

Should you have any questions, feel free to contact Christian Kay of the Planning Department at (808) 961-8136.

Thank you and

Melissa Dacayanan-Salvador

Windward Planning Commission

County of Hawaii, Planning Department

101 Pauahi Street, Suite 3

Hilo, Hawai'i 96720

Phone: (808) 961-8156 Fax (808) 961-8742

Email: Melissa.Dacayanan@hawaiicounty.gov



COUNTY OF HAWAII 

Electronic Processing and Information Center (EPIC)

The County of Hawaii has launched its new **Electronic Processing & Information Center (EPIC)** permit system on July 26, 2021. Only electronic applications will be accepted after that date. For more information go to <https://hawaiicountyhi-energovpub.tylerhost.net/Apps/SelfService#/home>.

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

EXHIBIT "B"

Circuit Court files for SP21-413 Connections Charter School

Hakoda, Riley K <riley.k.hakoda@hawaii.gov>

Mon 1/10/2022 5:28 PM

To: Campbell, Jean K <JeanK.Campbell@hawaiicounty.gov>; Kato, Alison S <alison.s.kato@hawaii.gov>; Funakoshi, Rodney Y <rodney.y.funakoshi@hawaii.gov>; Maki, Lorene K <lorene.k.maki@hawaii.gov>; michael matsukawa <kapulu@msn.com>; ted@tedhonglaw.com <ted@tedhonglaw.com>; Richardson, Kevin M <kevin.m.richardson@hawaii.gov>

Cc: Dacayanan, Melissa <Melissa.Dacayanan@hawaiicounty.gov>; Quinones, Natasha A <natasha.a.quinones@hawaii.gov>; Orodenker, Daniel E <daniel.e.oro denker@hawaii.gov>; Segura, Martina T <martina.t.segura@hawaii.gov>; Derrickson, Scott A <scott.a.derrickson@hawaii.gov>

 2 attachments (1 MB)

CBESS - Third Circuit Court Decisions and Order.pdf; CBESS - Third Circuit Court First Amended Final Judgment (002).pdf;

Aloha,

Attached are two files that were not included in the WPC document transfer of records for SP21-143. Due to the huge amount of records that needed to be reviewed, this oversight was only just discovered. Our apologies for the oversight, the record, as best as we can tell, is now complete as of today 1/10/2022- please update your files to reflect this records completion date . The hearing date remains on JAN 19, 2022 for this docket.

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing Objection to the attorneys who represent the parties in this proceeding as indicated by mailing the same, postage prepaid, to the addresses described and to the State Land Use Commission via its executive officer on January 12, 2022:

Kevin Richardson
Deputy Attorney General
Education Division
235 S. Beretania St., Ste. 304
Honolulu, Hawaii 96813

*Attorney for Connections
New Century Charter School*

Malia Kekai
Office of Corporation Counsel
County of Hawaii
101 Aupuni St., Ste. 325
Hilo, Hawaii 96720

*Attorney for Windward Planning
Commission, County of Hawaii*

Daniel E. Orodener
State Land Use Commission
Post Office Box 2359
Honolulu, Hawaii 96804

Ted S. Hong
Post Office Box 4217
Hilo, Hawaii 96720

*Attorney for Community Based
Education Support Services*

Jean Cambell
Office of Corporation Counsel
County of Hawaii
101 Aupuni St., Ste. 325
Hilo, Hawaii 96720

*Attorney for Department of
Planning, County of Hawaii*

Dated at Kailua-Kona, Hawaii: January 12, 2022.

A handwritten signature in black ink, appearing to read "Michael J. Matsukawa", written over a horizontal line.

MICHAEL J. MATSUKAWA
Attorney for Intervenor Jeffrey Gomes