

PLANNING COMMISSION  
COUNTY OF HAWAII

HEARING TRANSCRIPT  
JANUARY 16, 2004

A regularly advertised hearing on the application of **SPECTRASITE COMMUNICATIONS, INC. (SPP 03-018)** was called to order at 10:00 a.m. in the County Building, Councilroom – Room 201, 25 Aupuni Street, Hilo, Hawai`i, with Vice Chair Earl Fujikawa presiding.

PRESENT: Earl Fujikawa  
Bill Graham  
Jeffrey McCall  
Aurelio C. Mina, Jr.  
Francis Smith  
Hannah Springer  
Bill Thibadeau

ABSENT AND EXCUSED: Fred Galdones  
Florence Kubota

Patricia O'Toole, Esq., Deputy Corporation Counsel  
Christopher J. Yuen, Planning Director  
Norman Hayashi, Planning Program Manager  
Phyllis Fujimoto, Staff Planner  
Jeff Darrow, Staff Planner

And approximately 12 people from the public in attendance.

**APPLICANT: SPECTRASITE COMMUNICATIONS, INC. (SPP 03-018)**

Application for a Special Permit to allow the retention of an existing 200-foot telecommunications tower and antennae, communication equipment building, four satellite dishes, generator and fuel tanks, chain link security fence, driveway access, and related improvements on a 11,413 square foot area situated within the State Land Use Agricultural District. The property is located approximately 2.5 miles north of Highway 11 (Volcano Highway), and at the corner of the Kulani Road – South Road intersection, O'laa Reservation Lots, Keaau, Puna, Hawaii, TMK: 1-7-17: portion of 153.

FUJIKAWA: Will the Hawaii County Planning Commission meeting please come to order again. It's 10:00 a.m. right now, and we are going to be hearing the applicant on Item No. 4, Spectrasite Communications, Inc. (SPP 03-018). The application is for a Special Permit to allow the retention of an existing 200-foot telecommunications tower and antennae, communication equipment building, four satellite dishes, generator and fuel tanks, chain link security fence, driveway access, and related improvements. Staff?

DARROW: Thank you, Mr. Chairman. Good morning, Members of the Planning Commission. If I can direct your attention to the location map, this application is in the area of Mt. View in the Puna district. This line along the bottom part of the map is Mamalahoa

Highway, or also referred to as Volcano Highway, running in a southwest direction up to Volcano, northeasterly direction down to Hilo. If you were traveling along Mamalahoa Highway in a southwesterly direction towards Volcano, you would come to approximately the 13-, 14-mile marker, and turn right or mauka on North Kulani Road, you would travel approximately 2.5 miles north, and you would come to where this application is located. This is on the corner of North Kulani Road and South Road where this is identified with this red dot.

The applicant in this case is Spectrasite Communications, Inc. They're requesting a special permit for the retention of a 200-foot communication tower and antennae, along with a communications equipment building, four satellite dishes, and related improvements. If I can direct your attention to the site map. This is a map of the actual parcel that this project site is located on. The parcel itself is approximately 29 acres in size. The project site is approximately 11,413 square feet. On the project site, you have a dirt driveway access coming off of South Road; and on the site you have the four satellite dishes. You have the existing communication equipment building, and the existing 200-foot guyed communication tower and antennae. On the tower itself you have several antennae that are located there for co-locatable wireless service providers.

Spectrasite is not a wireless service provider itself but it is in the business of buying towers for co-location. They own four and operate four towers in the County of Hawaii. One is located in Keaau, Waikoloa, Capt. Cook, and this tower here is located in Mt. View.

The Planning Department has received the petition for standing in a contested case from Mr. Ronald Wong and Dr. Bernard Fong. Are there any questions?

FUJIKAWA: Any questions, Commissioners, to the staff? Commissioner Springer, go ahead.

SPRINGER: Thank you. Could you point out the location of the Fong and Wong applicants, please.

DARROW: Yes, Commissioner Springer. This area here, as you, if you were traveling north on North Kulani Road, if you were to take a, the actual parcel that the petitioners is located is the parcel located directly south of the project site, just cross South Road. It's a larger parcel and it's identified as Parcel 17 on the same plat map. It would be approximately in this area, directly across the street.

SPRINGER: Thank you.

FUJIKAWA: Any other questions, Commissioners? Go ahead, Commissioner Graham.

GRAHAM: Jeff, I was just wondering about the timing. It seems when we read our Background Report some time like 1999 or 1998 it was ruled that permits are needed; and now it's January 2004. So I was wondering if there were any particular events that brought about this hearing, and this application, and all.

DARROW: The Planning Department had sent out communications to the different telecommunication companies letting them know that they are going to have to come in for special permits if the tower sites are located in the State Land Use Agricultural District. I do not recall if there was actually, you know, a time frame placed on those or a possibility of receiving a notice of violation if it wasn't submitted within a certain time. But over that period of time, we've been consistently receiving special permits. This is, that's something I need to follow up on, if there actually has been a time frame placed on this; and if there has, maybe what we can do is follow up on the companies that have not come in up to this time.

FUJIKAWA: Thank you. Any other questions, Commissioners? If not, will the applicant or the applicant's representative please step forward, and any one of you in the audience who will be giving testimony on this. Have you already signed in?

PUBLIC: Yes.

FUJIKAWA: Okay. Could you raise your right hand. Okay. Do you swear to tell the truth on this matter now before the Hawaii Planning Commission?

FOX: I do.

FUJIKAWA: Would you like to state your name and address, please.

FOX: My name is William Keoni Fox. My address is 2333 Kapiolani Boulevard, Apartment 2410, Honolulu, 96826.

FUJIKAWA: Have you received the Planning Department's Background Report?

FOX: Yes, sir.

FUJIKAWA: Thank you. You may proceed.

FOX: This communication tower is owned by Spectrasite Communications. I'm a consultant for Spectrasite. The tower was built in 1994, I believe; and it was built originally for a company that was providing satellites, tv and radio services to the Hilo and Puna areas. And since that time the tower was purchased by Spectrasite. I believe there were a number of towers purchased nationally. And Spectrasite did follow up with the County to make sure the tower was in compliance. There was, again, the ruling in 1999 that said towers that were in a State Agriculture, Land Use Agriculture zone did need special permits; and Spectrasite is hoping to get all of their towers in compliance. So that is why we're coming today before the Planning Commission.

FUJIKAWA: Are there any questions from the Commissioners to the applicant's representative? If none, staff, you have any other questions.

DARROW: No, Mr. Chairman.

FUJIKAWA: Okay. You may step back. Now, Commissioners, this particular hearing, applicant, there is a contested hearing application on it. Would the person who filed in for the contested hearing please step forward. No one is here.

YUEN: Do you know if they were given notice of this specific meeting?

DARROW: The second notice that was sent out by the applicant does reflect that the petitioners were notified.

YUEN: And the names again, just so we can announce it if they're here, if they can come forward.

DARROW: Sure. Mr. Ronald Wong and Dr. Bernard Fong.

FUJIKAWA: They're not present.

YUEN: Yeah. It's not essential that they be present for the Commission to take up their request and to take a vote on it. So the Commission can make its decision based on what they've submitted in writing. We should also ask the applicant if they have any testimony or comments they want to make on the petition before the Commission takes action.

FUJIKAWA: The applicant's representative, could you step forward again. Have you see the application on the contested hearing?

FOX: Yes, I have.

FUJIKAWA: Do you have any questions on it -?

FOX: No, none at all.

FUJIKAWA: Or comments?

FOX: I did speak with the two petitioners for the contested case. Actually before we even filed an application, we sent out notices to landowners in the area to find out if they were going to have any concerns. So I was hoping to address that before we even submitted the application. And I sent a letter to, you know, everybody that was within the 500 feet around the property, and I didn't receive any replies. After submitting our application I was notified about the contested case; and I did contact both petitioners to find out what their concerns were. They mentioned a number of different things. Apparently, I believe their property is raw land. It's not developed and they reside on Oahu. So I was, of course, I was very curious as to why they were filing the petition. I spoke with them as early as last week and they were still set on going through with the petition for the contested case. So I, too, am surprised that they're not here today.

FUJIKAWA: Commissioners, do you have any questions with the applicant's representative or the Director? Commissioner Graham?

GRAHAM: Could you give us a little insight into what their concerns were for wanting a contested case as they conveyed them to you?

FOX: Apparently they've owned this property for a number of years. It has been in their family for a number of years. And living on Oahu they were not even aware that there was a communication tower that was built on the adjoining property even though it was built approximately ten years ago. And when they found that out, they were concerned about effects on their property value should they ever sell their property.

FUJIKAWA: Are there any other questions, Commissioners?

SPRINGER: Mr. Chair?

FUJIKAWA: Go ahead, Commissioner Springer.

SPRINGER: Just a comment. I see by their submittal that they've communicated their desire for standing as long ago as November. So they've had ample time to be in discussions.

FUJIKAWA: Okay. What is your, any other questions, any comments? Director? No, none?

YUEN: No, just that they are not required to be here and the Commission can make its decision based on their written application.

FUJIKAWA: Commissioners, what are your decisions? Do we have a motion to grant standing or -?

SPRINGER: Mr. Chair, it would seem as though clearly they're co-owners of adjacent property, but I don't have much information aside from that to evaluate their request. If I can hear other Commissioners' feelings, given these circumstances -.

FUJIKAWA: Other Commissioners? Commissioner McCall.

MCCALL: Yeah. We certainly have granted standing to people with, with less potential than this. I would have like to see them here. I certainly don't want to see these proceedings drawn out any longer than they have to, but it seems to me we don't have a whole lot of choice. We need to grant them standing; and, I mean, we can hope that maybe they can come to agreement and withdraw. But I don't see a whole lot of other options. I feel we need to just, you know -.

FUJIKAWA: Any other comments or questions from the Commissioners? So you feel that -?

MCCALL: Yeah, I'd be willing to make a motion to grant standing to Ronald Wong and Bernard Fong in this matter, if there's no other comments.

FUJIKAWA: Okay. Do I hear a motion?

SPRINGER: Mr. Chair, before we move, could we sketch out if we do move to grant the petition for standing what comes next. It is determining whether the Commissioners as a whole is going to hear it or whether it's going to be outsourced; and then setting up a calendar for the hearing?

FUJIKAWA: It's a discussion between the Commissioners and the staff. Director, can you answer that.

YUEN: Yeah, that's exactly right.

FUJIKAWA: Go ahead.

MCCALL: Well, I guess, I will move that we grant standing to Mr. Ronald H. Fong and Dr. Bernard Fong in this matter.

FUJIKAWA: Okay, do I hear a second.

GRAHAM: I'll second.

FUJIKAWA: It has been moved by Commissioner McCall and seconded by Commissioner Graham that the standing be approved. Any questions? Go ahead, Commissioner Graham.

GRAHAM: I'd like a little advice from the Corporation Counsel, please. I had to run up and get a copy of a letter from Norman because somehow I couldn't find it in what I brought. But I don't see any explanation in the letter for how they are aggrieved or how they're damaged or anything, other than the commentary we got verbally here today. So I was just wondering if that is a requirement of a petition for a contested case that you explain how you can be detrimentally affected by the application.

FUJIKAWA: Any other questions, Commissioners? Corp. -.

O'TOOLE: No.

FUJIKAWA: Counsel, you have any -?

O'TOOLE: Yeah, no. I mean there's, the alternative is here in the form, that they're claiming that their interest is distinguishable from that of the general public because they own the adjacent property; and I think that is commonly claimed. And then if they said no to that first question, then they would have had to explain how they were injured.

GRAHAM: Yeah, my understanding is that that is necessary, that should be distinguishable from the general public.

O'TOOLE: Yeah.

GRAHAM: But is that sufficient, or are there other requirements for a contested case in the Hawaii Administrative Rules, or something -?

O'TOOLE: Yes.

GRAHAM: Beyond just being distinguishable from the public?

O'TOOLE: Yes.

GRAHAM: Yes, there are other requirements?

O'TOOLE: No, no. I mean that is sufficient.

GRAHAM: That is sufficient?

O'TOOLE: Yeah.

GRAHAM: All right, thank you.

FUJIKAWA: Are there any other questions to the Corp. Counsel, Commissioners? If not, staff, go ahead and, roll call.

DARROW: Thank you, Mr. Chairman. Commissioner McCall?

MCALL: Aye.

DARROW: Commissioner Graham?

GRAHAM: Aye.

DARROW: Commissioner Mina?

MINA: Aye.

DARROW: Commissioner Smith?

SMITH: No.

DARROW: Commissioner Springer?

SPRINGER: Yes.

DARROW: Commissioner Thibadeau?

THIBADEAU: Aye.

DARROW: Mr. Chairman?

FUJIKAWA: Aye.

DARROW: Sorry, I need to clarify. Commissioner Mina, aye or no?

MINA: Aye.

DARROW: Aye. The motion passes six to one.

FUJIKAWA: Okay, next on the agenda -.

SPRINGER: Mr. Chair?

FUJIKAWA: Go ahead.

SPRINGER: Do we need to determine who the hearings officer will be?

FUJIKAWA: Yeah, before we go to the next agenda. Thank you for reminding me. Planning Director, can you assist us on this, who's the hearings officer.

YUEN: We should have the Commission take a vote as to whether they would like the Planning Department to secure a hearing officer to handle the contested case hearing, or whether the Planning Commission would like to do that as a body, or, finally, whether any Planning Commissioners want to volunteer to be hearing officers.

FUJIKAWA: Any of you Planning Commissioners? Commissioner McCall, you have any -?

MCCALL: Yeah, if this is going to go to contested case, I would ask that our Director hire a hearings officer. I was wondering if there's a way to stall the procedure and allow the parties to get together and see if they can come to any accommodation before we hire a hearings officer? Is that a possibility?

YUEN: Yes, we can do that; and we can also have the hearings officer, the clock not start on their bill if it does look like progress is being made.

MCCALL: Okay.

FUJIKAWA: Yeah, and so in other words -. Any other questions of the Commissioners? Commissioner Springer.

SPRINGER: My standard question about availability of funds for outsource?

YUEN: We do have funds in the budget to do that.

FUJIKAWA: In the meantime, question of the applicant's representative, do you think that there's a possible chance that you people could work it out?

FOX: Like I said before, I spoke with them twice on the phone and I could not persuade them to withdraw, but I'd be willing to make another attempt. And, especially, in light of them not showing up today, perhaps they are willing to withdraw.

FUJIKAWA: Okay, fine. Thank you. Okay, staff, roll call.

DARROW: And this is a motion to continue?

MCCALL: Do we make a motion or do we just direct the -?

YUEN: You make a motion.

MCCALL: We make, okay, so I guess -.

FUJIKAWA: Oh, we made a motion -.

MCCALL: Okay.

FUJIKAWA: I'm sorry, we just wanted the Director to give us a guideline on the hearing officer.

YUEN: Oh, you need a motion. You need a motion to direct me to procure a hearing officer.

FUJIKAWA: Okay, so do we have a motion, Commissioners?

MCCALL: So moved if that's -. I move that we ask our Director to hire a hearings officer for this matter.

FUJIKAWA: Do I hear a second?

SPRINGER: Second.

FUJIKAWA: It has been moved by Commissioner McCall, seconded by Commissioner Springer, that we have the Director hire the hearings officer on this particular case. Go ahead, staff.

DARROW: Thank you, Mr. Chairman. Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Springer:  
SPRINGER: Yes.  
DARROW: Commissioner Graham?  
GRAHAM: Aye.  
DARROW: Commissioner Mina?  
MINA: Aye.  
DARROW: Commissioner Smith?  
SMITH: Aye.  
DARROW: Commissioner Thibadeau?  
THIBADEAU: Aye.  
DARROW: And Mr. Chairman?  
FUJIKAWA: Ayes.  
DARROW: The motion passes.  
FUJIKAWA: Okay. So the Planning Director will locate a hearing officer. And you keep in touch, the applicant's representative keep in touch with the Planning Department.  
FOX: Yes.  
FUJIKAWA: Thank you.  
FOX: Thank you.

The discussion ended at 10:24 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary