

PLANNING COMMISSION
COUNTY OF HAWAII

HEARING TRANSCRIPT
FEBRUARY 19, 2009

A regularly advertised hearing on the application of **CROWN CASTLE INTERNATIONAL (SPP 1191)** was called to order at 12:01 p.m. in the Waikoloa Beach Marriott Hotel, Alii III Room, 69-275 Waikoloa Drive, Waikoloa, Hawaii, with Chairman Rodney Watanabe presiding.

PRESENT: Rodney Watanabe
C. Kimo Alameda
Lani Bowman
Takashi Domingo
Frederic Housel
Andrew Iwashita
Shelly Ogata
Rell Woodward

Gerald Takase, Deputy Corporation Counsel
BJ Leithead-Todd, Acting Deputy Planning Director
Norman Hayashi, Planning Program Manager
Jeff Darrow, Staff Planner
Maija Cottle, Staff Planner

And two people from the public in attendance

APPLICANT: CROWN CASTLE INTERNATIONAL (SPP 1191)

Decision and Action on Special Permit No. 1191 to allow the replacement of an existing 80-foot monopole with a 120-foot steel monopole. The request would also require the amendment of Condition 5 (height of tower). The property is located along the north side (makai) of Kynnersley Road, approximately 1.3 miles south of its intersection with Akoni Pule Highway (Highway 270), Honomakau, North Kohala, Hawaii, TMK: 5-4-2: por 2.

WATANABE: Agenda Item No. 4 is unfinished business, Crown Castle International. It's Special Permit 1191 for replacement of an existing cell tower. But for the record I'd like to make it clear that the date of this meeting was changed from the 20th to the 19th. As you'll recall, all of us, well, most of us were here at that meeting, and we wound up with a four-four (sic) stalemate. And I will not be able to be here; I'm flying out on the 20th. And that's why the date was changed to the 19th; that's the only reason that it was changed. And obviously, you know, it was going to be difficult for us to get five votes, which are required to have any decision made, and that was the sole purpose of that. With that, let me turn this over -. Oh, let me clarify one more thing before we move forward. At the end of the previous meeting we closed the contested case hearing. And at this meeting the intervenor is not present for, I believe it was communication purposes, it just happens he's not here. And you know, personally, I have no intention of reopening the contested case hearing. So with that, I'll turn it over to Mr. Hayashi.

HAYASHI: Thank you, Mr. Chair. This particular application was heard as a contested case hearing on January 22nd. The contested case hearing was closed, and at that meeting a motion was made to deny the application. That motion did not pass; the vote was actually three to four, with Commissioner Alameda not being present at that meeting. We now have all eight Commissioners here today. The transcript and whatever information on the application was forwarded to the Commissioners as well as Commissioner Alameda for his review. So first, at this time we'd like to ask whether Mr. Alameda has read the record and whether he is ready to proceed with the voting.

ALAMEDA: Yes, I have, and I'm ready to proceed with the voting.

HAYASHI: Thank you. With that, just going back to the meeting of January 22nd, at that meeting after the vote was taken, and since there are no motion to carry one way or the other, the Chair declared that the meeting be continued to the February 20th meeting; at that time it was scheduled for February 20th. The next day it was discovered that the Chair would not be at the meeting, so we rescheduled the meeting to February 19th, which is today. We did send a notice to the applicant as well as to the intervenor, Mr. McCullough, dated January 23rd, the day after the Planning Commission meeting. The letter was sent to both the applicant and the intervenor on January 26th by certified mail. And that letter indicated, and we highlighted the date in bold to be Thursday, February 19, 2009. Yesterday, we received a call -. Since we hadn't heard from Mr. McCullough, the staff called Mr. McCullough to inquire as to whether he received the notice. He indicated that he did not pick up the certified mail that was waiting for him at the Post Office, and the reason he gave was that the line was too long for him to pick up the certified mail. And again, I'd like to emphasize that the letter was sent out certified on January 26th. This morning he also called the staff back in Hilo, and indicated that he will not be in attendance at today's meeting, and he also indicated that a couple members of the public will be attending the meeting tomorrow at 10:30. So that's the story that we received back to the staff back in Hilo. With that, we'll leave it up to the Commission as to what you want to decide to do – proceed with the voting or whatever you need to do.

WATANABE: Okay, thank you. Yes, Mr. Woodward.

WOODWARD: Well, I'll just make a comment first, and then I'm ready to make a motion. Mr. McCullough bought the property with the existing cell tower in place, and now he's raising concerns about cell towers; well, when he bought the property, it was already there. And he has made numerous remarks that he hasn't been adequately notified; well, obviously he has been adequately notified. And the advantage of changing this from an 80-foot tower, wooden monopole with steel guy wires going all over the place, to a 120-foot steel monopole with no guy wires, the whole question of visual impact, I think, is moot; having all these guy wires going all over the place is a lot more distracting than having another 40 feet on top with no guy wires. So I would move that in regard to -.

WATANABE: Mr. Woodward -.

WOODWARD: Do we have more comments?

WATANABE: No, no, no.

IWASHITA: I do.

WATANABE: Yeah, wait, before we even begin deliberation, let me interrupt for a minute. We do have two people from the public who signed up to testify, just to provide public testimony, not, like I indicated earlier, we have no intention of reopening the hearing, yeah? So I think – they’ve been waiting patiently – maybe we should show them the respect and allow them to provide their testimony, and then we can proceed, if you don’t mind. I apologize. So if there are no objections to that, let me call up these two individuals, Eric Schatz and Danette Mettler. Thank you -.

HAYASHI: Mr. Chair?

WATANABE: Yes.

HAYASHI: While they are coming up, I just wanted to also include that, which I failed to do so, the public hearing notice was published in both West Hawaii Today and Hawaii Tribune Herald on January 31, 2009.

WATANABE: Okay, thank you. That would be for this meeting date, right?

HAYASHI: That is correct.

WATANABE: Okay, thank you very much. Okay. May I swear the both of you in? Do you swear or affirm to tell the truth now before the Planning Commission?

SCHATZ: I do.

METTLER: I do.

WATANABE: Okay. Yeah, and then who wants to begin? Okay, Danette, would you state your name and address for the record? And then you may begin your testimony. It’s a little past lunch, so I would appreciate it if you limit your testimony to three minutes.

METTLER: That’s fine.

WATANABE: Okay? Thank you.

METTLER: My name is Danette Mettler, and I reside at 76-6357 Kololia Street in Kailua-Kona.

WATANABE: Thank you. And you may begin.

METTLER: I’m here representing Verizon Wireless today. I just wanted to talk about some of the problems that we in this industry experience. We’ve been told by the policies of the County of Hawaii, and we’ve been told that we are to not have proliferation of towers. And so we plan for co-location when we go in for any of the towers. And although this is not a Verizon

Wireless tower, it's the same for our entire industry. And then, so we try to plan for the height in order to do that. And I see sometimes that the Commission may be resistant to approve tall towers, but the whole point is to limit the amount of towers that we have around our island. And if this application does not get approved, we will probably have to have another cell tower somewhere else in, you know, to cover the area that this tower could cover. And I just wanted to make that clear; I'm sure you knew that already, but I wanted to reiterate. Also how important it is that we have cell phone communication for public safety and also to provide voice and data services, too; it's so important to our economy. And that's all I have to say. Thanks.

WATANABE: Thank you. Fellow Commissioners, do we have any questions of Ms. Mettler? Seeing none, then, Eric, name and address, please.

SCHATZ: Good afternoon. Eric Schatz, representing Coral Wireless dba Mobi PCS. Address is 1200 Bishop, excuse me, 733 Bishop Street, Suite 1200, Honolulu. I'm here representing Mobi PCS in support of this application to replace the 80-foot wooden monopole, guyed pole, with a 120-foot steel pole. Mobi PCS began providing service on the Big Island just over a year ago. We do not currently provide service to this particular area, and we would like to do so. Without the increase in height and the additional structural support a steel pole will offer, we are going to be forced to build another pole somewhere else in order to provide this coverage. We greatly prefer to locate on an existing structure or an improved structure, if we could, rather than building one of our own. And that's all my testimony. Thank you.

WATANABE: Thank you. Fellow Commissioners, any questions?

DOMINGO: Mr. Chairman?

WATANABE: Yes.

DOMINGO: It's obvious then that both of you, the companies that you represent will be co-locating on this pole, if it's granted the necessary height.

SCHATZ: Verizon Wireless is currently on the pole, and would like the increased height to add services, I believe; I don't want to speak for Verizon. Mobi PCS is not on the pole, but would like to locate there.

DOMINGO: Okay.

WATANABE: Any further questions? Okay. Thank you for your testimony. You both may be seated. I believe I left off with you, Mr. Woodward.

WOODWARD: Yeah, I would like to move in the matter of Special Permit No. 1191, that we approve the amendment to allow the replacement of the existing 80-foot monopole with a 120-foot steel monopole. And I believe there were some additions, when we last met, to some of the conditions; that essentially this 120-foot steel monopole will not have any guy wires, and so Condition No. 6 can be deleted.

IWASHITA: Mr. Chair, point of procedure.

WATANABE: Yes.

IWASHITA: Thank you, Mr. Chair. I just want to clarify my understanding on the service of notice issue in this contested case. Was the notice of this meeting send by regular mail also?

HAYASHI: No, just by certified mail.

IWASHITA: Okay. Mr. Chair, I guess my understanding of the rule, Rule 4, the applicable subsection, is that it requires service by mail, or allow service by mail and doesn't specify service by certified mail. So I'm just a little concerned, because it's a contested case, and I really don't want this tied up, whatever the decision is, have this tied up in any kind of, I guess if there is approval, post-approval litigation or, probably. Then I'm just concerned about the status of service and compliance with the rule. And that would be my concern, if we're proceeding at this time. And I'm thinking, I guess my suggestion is that, to be very conservative about making sure this is handled properly, that we postpone hearing this matter until the next meeting, and have service by mail, just regular US Postal Service mail, done in compliance with the specific words of the rule.

WATANABE: My personal interpretation would be that certified mail is a US mail, or a portion of the US mail, but I defer to someone who also wears a tie in the room. So, Mr. Takase?

TAKASE: Thank you, Mr. Chairman. Mr. Iwashita is correct as to your Rules; however, you are also governed by Chapter 91, HRS, which is Administrative Procedure's act, and in there Section 91-9.5 states, "Unless otherwise provided by law, all parties shall be given written notice of hearing by registered or certified mail with return receipt requested at least fifteen days before the hearing," and goes on to further say, "Unless otherwise provided by law, if service by registered or certified mail is not made because of the refusal to accept service or the board or its agents have been unable to ascertain the address of the party after reasonable and diligent inquiry, the notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation." In this case, I think, you know, your Rules are silent as to whether it has to be certified or not, but I think that, I don't see certified mail as being a lesser than regular mail; so I think you've met the requirements both of the Statute and of your Rules by the certified mail. And you know, I think the testimony provided by the staff today is that it was mailed timely, that it was just a failure of the intervenor to go and get the mail; he was told that the mail was there. And reading your minutes, you know, this is not the first time it's happened. So I don't think that they can avoid, or prolong the hearing by refusing to accept that. I think the Rules and the Statute give you the actual word for word.

WATANABE: Thank you.

WOODWARD: Mr. Chairman?

WATANABE: Yes.

WOODWARD: I'd just like to say welcome aboard, and we finally got a legal opinion out of you.

IWASHITA: Took a lawyer to do that, right? Mr. Chair, just a follow-up and I guess devil's advocate, the Statute, you know, Chapter 91 does provide for the certified mail and so forth, and obviously the record supports service under the Statute. I guess my concern is that the rule is broader than the Statute, which, to be devil's advocate again, would confer additional rights upon the intervenor in terms of regular mail and not just using certified mail. And so because the rule is there and I really don't want to create any kind of situation where any kind of argument can be made about notice, my preference is to defer and re-notice this matter both by regular mail and the certified mail.

WATANABE: Okay, thank you. You've voiced your opinion. And we were, let's get back to the motion that Mr. Woodward was making. Mr. Woodward, according to my notes, we have a couple of clarifications in this. You were correct; No. 6 was eliminated because no guy wires are planned for the proposed structure. And I believe the representative also clarified that the actual height of the steel monopole was 120 feet, but the appurtenances would extend beyond the 120 feet to an additional four feet, and I believe we made those revisions to Condition 5.

IWASHITA: Mr. Chair?

WOODWARD: Absolutely correct.

IWASHITA: Mr. Chair, point of procedure again, sorry. I move that this matter be deferred to the next Kona meeting based on the concerns I expressed earlier.

WATANABE: Okay. Do we have a second?

WOODWARD: We already have this motion on the floor. So is there a second to my motion?

IWASHITA: No, we don't. No, it's a privileged motion, Your Honor, I mean – Your Honor – Mr. Chair. Well, he is honorable. It's a privileged motion. I just needed to make a proper entry.

WATANABE: Do we have a second? It doesn't seem like we have a second, so the privileged motion dies. Okay, back to your motion, Mr. Woodward. You were indicating you were in agreement. To your recollection, were there any other revisions?

WOODWARD: No, those were the -. I failed to mention that part about appurtenances.

WATANABE: Okay, thank you.

WOODWARD: But I love appurtenances, so you know, four feet above, yeah, that's great.

WATANABE: Okay. So we have a motion that the amendment to Special Permit No. 1191 be approved. Do I have a second on that?

HOUSEL: I'll second that.

WATANABE: Thank you, Mr. Housel. Okay. Do we have any discussion? Ms. Bowman.

BOWMAN: For the record, at the last meeting, you know, we heard the testimony, and I again stated it wasn't necessarily that the testimony from the landowners that was my concern, it was that the maintenance of the pole; there was problems with trees. And I had specifically asked if the applicant had even, you know, considered or looked at any other locations that would be viable and perhaps in a long run better than the surrounding trees. I don't know it's appropriate to ask if that has been done, because that was just my main concern is that the long-term maintenance of this pole. I definitely agree that a monopole without -.

WATANABE: Guy wires.

BOWMAN: Guy lines – thank you – is a lot less -.

WATANABE: Visual impact?

BOWMAN: Thank you – visually.

WATANABE: Okay. Then, again, I typically do not wear a tie, but I believe that once we start opening that door, we are then reopening the contested case hearing, and that will be extremely difficult since the intervenor is not here. So you know, I would defer again to counsel to see if he is in agreement with that.

TAKASE: Yes, your interpretation would be correct. To open the hearing again, you would have to have all the parties present.

BOWMAN: Okay, thank you.

WATANABE: Any further discussion? Mr. Domingo.

DOMINGO: Thank you, Mr. Chairman. This Commission, the members of this Commission are all aware how I stand on cellular towers. And of course it's dependent on certain issues. But the record shows that I have in the past voted for other towers in different, other locations. With this particular application, you know, and as I look at it today, everything has been equal and we're dealing with a level playing, and I would certainly, you know, express my concerns of opposition as I have done in the past. But now I found that because of recent developments, you know, with regards to those who were contesting this issue, have shown but little concern as to what, in my opinion, as to what was taking place. We've given them the benefit of the doubt when they came before the Commission in the very beginning when they stated that, you know, they had not had proper notification or ample time to be noticed about this meeting. And I think we made provisions that that concern would be taken care of. And now we

find similar instances where they haven't picked up the mail even though it was sent on January 26th, immediately a few days after our last meeting. And the issue and the question of whether or not they picked it up, and the reason for them not picking it up is so shallow, you know, saying that the line was so long, therefore I had not taken a time to wait in line and pick up my mail. Now, if I was them and if I was aware that there was a meeting, that meeting, the situation to which they were totally against and were strongly adamant against it, knowing that a notice would be sent to me, I would wait there even if I was the last person, and pick up the mail, and find out for myself where and when the meeting would be. Now, they haven't done that. And our notices were sent through the news media paper, noticing the public with regards to this meeting being held today. And to double that, to make it even worse, other than the intervenor, other people, the surrounding neighbors were aware of this meeting, they were aware of this meeting taking place, but they expressed and amplified their desire that they would be at the 20th meeting to attend the Planning Commission meeting. You know, I hate to be -.

WATANABE: Patience wearing thin?

DOMINGO: Yeah, and you know the jargon "I hate to be jerked around," and that's how I feel, so -. You know, I gave them the benefit of the doubt, I've been as polite as I can and responsive to their concerns, but this is what I'm receiving, this Commission is receiving. So I say, okay, pau, that's it already. And if they were really concerned, they would be here today, because they know that we are having this meeting today; but they are not here. So the question is, why?

WATANABE: Thank you. Any further discussion? Seeing none, Mr. Hayashi?

IWASHITA: Mr. Chair? Sorry.

WATANABE: Yes.

IWASHITA: Thank you, Mr. Chair. I appreciate Commissioner Domingo's concerns that he expressed, and I share them. It's just, I don't know, it must be because what I do for a living, I'm really concerned about proceeding today. And so I'm not able, you know, I voted on the merits against this application; my feelings on that really haven't changed on the record. But I am concerned, and I appreciate that no other Commissioners shares my concern this way. But it is to me a matter that - it may very well come to nothing - but as a matter of procedural principle, I think that we should -. We have rules for a reason, they are the rules, and the rules should be followed; the Statute was followed, the rule wasn't followed. And it, I think it behooves us to follow the rule. Thank you.

WATANABE: Okay. Well, in an abundance of caution your concerns would be noted in the minutes. Mr. Hayashi?

HAYASHI: Thank you, Mr. Chair. The motion is to approve the proposed amendment, also to delete Condition 6 relating to the guy wires, and also to amend Condition 5 which would allow the four additional feet for the appurtenances.

WATANABE: That's correct.

HAYASHI: And also to re-number all other Conditions following Condition No. 5.
Commissioner Woodward?

WOODWARD: Aye.

HAYASHI: Commissioner Housel?

HOUSEL: Aye.

HAYASHI: Commissioner Alameda?

ALAMEDA: Aye.

HAYASHI: Commissioner Bowman?

BOWMAN: Aye.

HAYASHI: Commissioner Domingo?

DOMINGO: Aye.

HAYASHI: Commissioner Ogata?

OGATA: Aye.

HAYASHI: Commissioner Iwashita?

IWASHITA: No.

HAYASHI: And Chair Watanabe?

WATANABE: Aye.

HAYASHI: Mr. Chair, motion carries, seven to one.

WATANABE: Thank you very much. Thank you. So you'll be notified in writing.

The discussion ended at 12:29 p.m.

Respectfully submitted,

Noriko Sauer, West Hawaii Secretary