



DARROW: Thank you, Mr. Chairman. As mentioned, we had received the letter from the Petitioners in the contested case informing us that they will not be able to make the hearing. As discussed earlier on the previous application, this would be a good opportunity to be able to minimize costs and be able to have the Commission hear this particular contested case hearing and be able to take care of the issues in-house.

GALDONES: Commissioners, what you will be acting upon today is the request that we hear this, put this on the agenda at the next Hilo meeting and the Planning Commission become the hearing officer for this because there's not going to be a hearing officer. So that's the action that you will be acting upon. Commissioner McCall?

MCCALL: Just to be clear, the contested case hearing still needs to proceed, 'cause they have not withdrawn their contested case. They're just saying that they're not going to participate in it. Is that correct?

GALDONES: That is correct.

MCCALL: Okay. Thank you.

GALDONES: Further discussion? Commissioner Siracusa?

SIRACUSA: Well, I'm trying to understand how it can go on if they're not participating. Because a contested case involves some give-and-take, you know, cross-examination of witnesses, isn't that correct?

GALDONES: Mr. Yuen.

SIRACUSA: Then it's only one-sided and it's not a contested case.

YUEN: Well, we tend to use the word, the term "contested case" only when there's an Intervenor; but, actually, to be technical about it, all of these permit applications are contested cases. It's just that without an Intervenor, we do it informally; and the only parties are the, the County is actually a party, the Planning Director is a party, and the Applicant then is a party. And so the County, the Applicant has witnesses, the County has witnesses and exhibits, people from the public can come up and testify. The County, the Commissioners and the Applicant can cross-examine. The Applicant, for example, has a right to question our staff or myself about things that we may say. So that's cross-examination. And then when you come out with your decision, if it's adverse to the Applicant, the Applicant actually has the right to appeal that to court because this is a contested case. If it wasn't, they wouldn't have a right to appeal. And if the Department was opposed to the permit and the Commission granted it, then the Department would have the right to appeal to court.

So, in this case, you have a party that has requested intervention; and, so, normally, then we go into this more formal mode. We could actually, and we've talked about this, have the contested case hearing, formal contested case hearing, right there at the same day and

say, you know, put on your witnesses and let's go do it. But, normally, we've been either postponing that for a later time for the hearing or sending it off to a hearings officer.

Now, if what happens, returning to this particular application, if what happens is we schedule it for the Commission to hear it and the Intervenor does not show up, then it'll be two-sided in the sense that you'll have the Applicant and you'll have the Department, the same as what happened a few minutes ago. There won't be a report, the Department will have a recommendation and the Commission can just take a vote on it.

GALDONES: Commissioner Springer?

SPRINGER: In the previous action and this action before us now, even though they're not present at the meeting or the hearing, do the Intervenors still have the right to appeal by which virtue of having filed for its, that status?

YUEN: I believe they do. But they would have a tough time because they would have to show the court that what they, that they presented some objection here that was not dealt with by the Commission. So if they went to court and they said, "Gee, there's going to be toxic fumes coming out of this glass-blowing operation and the Commission didn't look at it, the court is not going to look at their evidence that they have, that they didn't come in here, for example. So I believe they still, once they file for the contested case, they file something in opposition, they've been granted standing, they can appeal an adverse judgment. But they're, and they're not going to get immediately thrown out of court but they will have a really tough time on their appeal.

SPRINGER: Thank you.

GALDONES: Further questions? Commissioner McCall?

MCCALL: Just a further clarification I get, like when Tom Yeh was the hearings officer on the previous application, I mean, he made a point of even though the Intervenors were not there, he made a point of looking at their information, bringing up the questions that they had questioned. I mean, we can, and as Commissioners, we can and should do that as we would with anybody else. Someone coming in to testify, we can bring in their comments and trying, you know, elucidate the responses and stuff, so -.

GALDONES: Yes. Hearing no further comments, is the Applicant or the representative present here today? No? Is there anyone from the public, Sharon, signed up to testify on this matter?

NOMURA: No one.

GALDONES: Did someone want to testify that did not sign up? Hearing none, Commissioners, you have heard the motion that is before us, the request by the Planning Director. Do I -. I will entertain a motion at this time. Commissioner Springer?

SPRINGER: Mr. Chair, I move that the Hawaii County Planning Commission accept the Planning Director's request that the Planning Commission conduct a contested case hearing on this Spectrasite Communications, Inc. application (SPP 03-018) and that the Planning Department staff schedule it for an upcoming meeting in Hilo.

GALDONES: Is there a second?

MCCALL: Second.

GALDONES: It has been moved by Commissioner Springer and seconded by Commissioner McCall that Applicant Spectrasite Communications, Inc. (SPP 03-018) have the Planning Commission conduct the contested case hearing. Commissioner Siracusa?

SIRACUSA: Yes, some clarification. We're not referring till today, though?

GALDONES: Not today.

SIRACUSA: Okay. Can we, in the meantime, ask some questions to clarify, you know, to have the staff look into so that they will have a report ready addressing those questions when the hearing comes up?

GALDONES: Question is in order.

SIRACUSA: Okay, 'cause I have a couple of questions about that.

GALDONES: You may proceed.

SIRACUSA: Thank you. One is, it says here that there's going to be a strobe on top of the tower. And I noticed in the letters that were sent out to the various agencies that the observatories on Mauna Kea were not asked to respond if that would detract from their observations, or whatever, in any way. And, so, I think that really should be, I think, would be appropriate to do that.

And then, also, there was nothing in here about how many years is the lease that the Changs have given Spectrasite and how long are we seeking to retain this application? Is there a timeline on this?

GALDONES: Jeff, you have noted those questions, huh?

DARROW: Yes.

GALDONES: Okay. They would be included. Any further discussions? Hearing none, Jeff, on the motion?

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

SPRINGER: Yes.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Graham?

GRAHAM: Aye.

DARROW: Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: And Mr. Chairman?

GALDONES: Aye.

DARROW: The motion passes.

GALDONES: Thank you. Commissioner Springer?

SPRINGER: Will we deal with scheduling now or look forward to seeing it on the agenda when they're mailed out?

GALDONES: Jeff, are we prepared to put that on the next Hilo agenda?

DARROW: Yes, it'll be on the next Hilo agenda. Thank you.

The discussion ended at 10:26 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary