

PLANNING COMMISSION  
COUNTY OF HAWAI`I

HEARING TRANSCRIPT  
OCTOBER 22, 2004

A regularly advertised hearing on the application of **SPECTRASITE COMMUNICATIONS, INC. (SPP 03-018)** was called to order at 9:02 a.m. in the County Building, Councilroom-Room 201, 25 Aupuni Street, Hilo, Hawai`i, with Chairman Fred Galdones presiding.

PRESENT: Fred Galdones  
C. Kimo Alameda  
Earl Fujikawa  
William Graham  
Jeffrey McCall  
René Siracusa  
Hannah Springer  
Francis Smith

ABSENT & EXCUSED: Bill Thibadeau

Ivan Torigoe, Deputy Corporation Counsel  
Christopher J. Yuen, Planning Director  
Norman Hayashi, Planning Program Manager  
Phyllis Fujimoto, Staff Planner  
Jeff Darrow, Staff Planner

And approximately 8 people from the public in attendance

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

Contested case hearing on the application of Spectrasite Communications, Inc. for a Special Permit to allow the retention of an existing 200-foot telecommunications tower and antenna, communication equipment building, four satellite dishes, generator and fuel tanks, and related improvements. The property is located approximately 2.5 miles north of Highway 11, at the corner of Kulani Road and South Road, Olaa Reservation Lots, Keaau, Puna, Hawai`i, TMK: 1-7-17:portion of 153.

GALDONES: Commissioners, we will proceed with Agenda Item No. 2. The Applicant is Spectrasite Communications, Inc. (SPP 03-018). This is a contested case hearing on the application of Spectrasite Communications, Inc. for a Special Permit to allow the retention of an existing 200-foot telecommunications tower and antenna, communication equipment building, four satellite dishes, generator and fuel tanks, and related improvements. Jeff?

DARROW: Thank you, Mr. Chairman. If I may direct your attention to the location map. This is a contested case hearing on the application submitted by Spectrasite Communications, Inc. to allow a Special Permit for the retention of an existing 200-foot telecommunications tower and related improvements. The area that we're looking at for this application is in the Puna District. This line running in a north-south direction is North Kulani

Road. It intersects here with South Road that's running in an east-west direction. The red dot identifies the location of this application.

The Intervenors in this case are identified as Ronald Wong and Dr. Bernard Fong. Unfortunately, they're not able to be with us. They had submitted a letter and stated due to medical reasons they could not appear for this hearing. Their property is identified here in this triangle-shaped lot just below the area of the application.

If I can direct your attention to the site plan that was submitted by the Applicant, this is on an 11,413-square foot area of an approximate 26-acre parcel. As you come from North Kulani Road, you would take a right on to South Road, and just a brief way down the road you have a little area that's set aside that has all the improvements for the telecommunication tower. There's an access-way that comes off the South Road. There's a fenced area, there's an existing communications building. These red circles identify four satellite dishes, and then we have the existing 200-foot guyed telecommunication tower.

Again, this is a contested case hearing. Are there any questions?

GALDONES: Jeff, you had mentioned that the Intervenors are not present this morning. Did they notify you that they will not appear at all, or are they asking for a continuance?

DARROW: They just had notified us that they would not be present for the hearing. They did not ask for a continuance.

GALDONES: Okay. Thank you. Commissioners, are there any questions of Jeff? Commissioner Graham?

GRAHAM: Jeff, since the Intervenors are not here, could you give us a little recap of your understanding of what you know about what their primary concerns are so that we can be aware of them as we conduct this?

DARROW: There was a, the Intervenors had submitted two letters which should be in your packet; and, basically, they say that they were never notified when the tower was previously built. And the reason for that was that prior to 1999 telecommunication towers were considered permitted uses within the State Land Use Agricultural District. More recently, Judge Nakayama had reversed that decision and had said that telecommunication towers do require a Special Permit within the State Land Use Agricultural District. As a result of that ruling, all the unpermitted towers that we have around the island or towers that were never, that never did receive the Special Permit, have been coming in and submitting for a Special Permit to allow the retention of their telecommunication tower.

In the process, they were notified of this application and they have concerns that, No. 1, had they been notified before, they could have come forward and it's, you know, said their concerns, that they had concerns regarding the emission of, I guess, a type of radiation that's listed.

SIRACUSA: Electro-magnetic -.

DARROW: Yeah. And, then, as well as the fact that they're trying to sell their property at this time and that they feel that that might be a, it might deter somebody from wanting to purchase their property because of the tower being right next to their property.

GALDONES: Commissioner Siracusa?

SIRACUSA: Thank you. I noticed in the file that we got that a letter had been written by, I can't remember if it was the Department or Spectrasite to a Mr. Richard Wong at the same address as the Intervenors. And I'm wondering if he was the previous owner and that's why these Intervenors never received anything, because they weren't owners at the time back then, or if it was just the failure of communication within that hui? And, if so, how would that affect -? Mr. Torigoe, maybe you can tell us how would that affect the question of proper notification.

TORIGOE: Let's find out what the facts are with respect to the notice.

DARROW: It might be, that might be a question that we can defer to the Applicant's representative. It's my understanding that, previously, they may have held a meeting, but I'm not sure about that, what happened in 1994, when the tower was originally built. But, again, by law, they weren't required to give notification at that time because it was considered a permitted use.

At this time, I'm not sure if it's just an error as far as name, Richard or Ronald. Maybe at that point we can ask the Applicant's representative -.

SIRACUSA: Thank you. I have one other question. And that is that at the last time we looked at this, I was concerned about the strobe and, one, had noticed that the Observatory had not been asked, had not been written a letter asking how they felt about a strobe, if it would affect their ability to do their work up on top of the mountain. And I noticed that since then, with all the extra paperwork that's come in, there was still no copy of a letter requesting a statement, pro or con, from the Observatory. So I'm wondering about that.

DARROW: We had, based on your suggestion at the, after the last meeting, we had sent a request for comments to the Mauna Kea Observatory Support Services asking them to respond by, I believe, it was October 15<sup>th</sup>; and we did not receive a response. So, at this point, we haven't received anything.

SIRACUSA: Thank you.

GALDONES: Jeff, the impact of the electro-magnetic field, is that something that the Commissioners need to be concerned of and it's part of the decision-making?

DARROW: It's, I'm not really familiar with the effects of the radiation on people. But, apparently, there has been studies on it done; and they say that it's no, that's it's not a hazard, that the levels are very low, and it's not considered a hazard. But, again, maybe the Applicant's representative, as well as the Director, can further speak about that matter.

GALDONES: Okay, thank you. Any further questions from the Commissioners of Mr. Darrow? If not, is the Applicant or his representative present here today?

FOX: Yes.

GALDONES: Could you please raise your right hand? Do you swear or affirm to tell the truth on this matter now before the Hawai'i County Planning Commission?

FOX: I do.

GALDONES: But will she be testifying?

ANDREWS: Oh, I'm Ms. Andrews, I'm the attorney for the Applicant, Spectrasite Communications; and Keoni Fox will be the only one testifying.

GALDONES: Okay. Then, Mr. Fox, could you please state your name and your residence address?

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

GALDONES: Mr. Fox, have you received a copy of the Background Report and the Recommendations?

FOX: Yes, sir.

GALDONES: Do you wish to comment on that?

FOX: No.

GALDONES: Okay. Commissioners, are there any questions of Mr. Fox?

SIRACUSA: Yes.

GALDONES: Commissioner Siracusa.

SIRACUSA: I have heard that there is going to be some, within the next couple of years, some new technological improvements coming down the pike, such as fiber optic things, and which will obviate the need for towers. Could you fill us in on any of this? And what I'm wondering is, basically, if it looks like this new technology is going to come through and be viable, you know, within a five-year frame then I would not be interested in extending this permit for more than five years. So I'm wondering about that, will we be stuck with the tower, you know, that we won't be needing, or how soon can we expect not to need such a tower?

GALDONES: Mr. Fox, would you, do you wish to comment on that question?

FOX: Yeah, I guess that's a two-part question. I'm not aware of that technology you're referring to. I do understand that a lot of new companies are using fiber optics to provide quicker telecommunication service and broad band services as well; but there's always going to be areas and communities in different locations that aren't going to be able to get hard-line

infrastructure. Fiber optic still requires a hard-line coming into a house, or building, or whatnot. So that's where wireless technology comes in. Wireless technology is used all over the world now. Some countries in Central America never had telephones at all, never had telephone infrastructure, they went directly to wireless; and that's a lot of, a lot of those countries do get cell phone coverage and other services they would not have had otherwise.

As far as the tower is concerned, Spectrasite does have a lease with the landowner. It's a 25-year lease and their lease does include a provision that the tower and all the structures will be removed if the lease is terminated by Spectrasite.

GALDONES: Commissioners, further questions of -?

FUJIKAWA: I have a question with -.

GALDONES: Commissioner Fujikawa?

FUJIKAWA: Question with the staff. Norman, in the past, on a Special Permit like this, did we put it in the condition that they are to remove the tower when the time ends?

HAYASHI: I believe in some applications that I've seen that, you know, previous to us working on the Commission, there are, there's a condition that says that once they abandon the tower, the use of the tower, then it would have to be dismantled. I don't know if we had -. Oh, okay, Item No. 4, Condition No. 4 of this particular permit does state that within 120 days they would have to dismantle or remove the tower.

FUJIKAWA: That's the complete system, right?

HAYASHI: Yeah.

FUJIKAWA: Thank you.

GALDONES: Seeing no further question, representing, we have representatives of the department. I'd like to swear you folks in. Could you please raise your right hand? Do you swear or affirm to tell the truth on this matter now before the Hawai'i County Planning Commission?

TESTIFIERS: Yes.

GALDONES: Could you please state your name and your residence address?

LEITHEAD-TODD: Bobby Leithead-Todd, Deputy Corporation Counsel, 118 Lukia.

YUEN: Chris Yuen, Planning Director, Post Office Box 5, Ninole is the home address; and I'm trying to remember my office address, oh, 101 Pauahi Street, Suite 3.

GALDONES: Thank you. Having a senior moment there, Mr. Yuen. Ms. Leithead, being this is a contested case hearing, do you wish to present the Department's position?

LEITHEAD-TODD: We've already submitted the Planning Department's Recommendation as well as its Background Report; and I think they speak for themselves. The Planning Department is recommending approval. And if there are further questions, we have Planning Director Yuen here to answer them.

GALDONES: Commissioners, any questions of Ms. Leithead? Commissioner Springer?

SPRINGER: Mr. Yuen, with regard to the Intervenors' concerns about emissions, are those covered under the Telecommunications Act of 1996?

YUEN: That's right. The Federal Government passed the Telecommunications Act of 1996; and what it did was it prohibited local land use bodies, like our Planning Commission, from considering health effects as long as the facility met the requirements of the FCC on emissions. So we cannot put further conditions on a permit, requiring shielding of microwaves, for example, or prohibit a permit based on the Commission coming to a conclusion that these towers are harmful to health, as long as the facility meets the FCC guidelines for the emission of these microwaves. So that takes it off the table, it takes health effects off the table; and I believe that this, there is documentation in the file that this does meet the FCC requirements.

SPRINGER: Thank you.

GALDONES: Any further questions from the Commissioners?

ANDREWS: Chairman Galdones, do I have to be sworn in just to introduce exhibits?

GALDONES: Procedurally, why don't we just do it in case there's any questions?

ANDREWS: Okay.

GALDONES: Do you swear or affirm to tell the truth on this matter now before the Hawai'i County Planning Commission?

ANDREWS: Yes.

GALDONES: Please state your name and residence address.

ANDREWS: My name is Lisa Andrews and I'm the attorney for Spectrasite. You want my residence address?

GALDONES: Okay.

ANDREWS: Oh. Lisa Andrews, attorney for Spectrasite. My residence address is 2115 Rocky Hill Place, Honolulu, Hawai'i. My business address, I'm like Mr. Yuen, I think it's 737 Bishop Street, Suite 2400; but being as I'm under oath, I'd like a little leeway with that.

All I want to do is make sure that my exhibits are all in the record. I have Exhibits A-1 through A-6. And I think most of them are in the Planning Commission, Planning Director's record, except I had specifically added documents that weren't submitted before, which was the lease agreement and the estoppel certificate, basically, the underlying document showing that, Spectrasite's use of the property. And I just want to make sure that it gets into the record.

GALDONES: Yes, Ms. Andrews, we have received Exhibits A-1 to A-6, and along with the lease agreement -.

ANDREWS: Thank you.

GALDONES: Thank you. Any questions of Ms. Andrews? Otherwise, Ms. Leithead, do you have any objections to entering Exhibits A-1 to A-6, along with the lease agreement into the record?

LEITHEAD-TODD: No objections.

GALDONES: Mr. Darrow, are there any problems with their entering that into the record?

DARROW: No problems.

GALDONES: Okay. So there being no objections by parties involved, then the Chair will enter, formally enter these exhibits and the lease agreement into the record.

Ms. Leithead, does the County have any exhibits to introduce?

LEITHEAD-TODD: Just what we've already submitted, which is our Background Report and our Recommendation. And, at this time, if the Commission would allow us we'd like to officially submit those as Exhibits 1 and 2 on behalf of the Department.

GALDONES: Okay. Ms. Leithead has introduced Exhibits 1 and 2 into the record. Mr. Fox, are there any objections into entering that into the records?

ANDREWS: No, no objections.

FOX: No objections.

GALDONES: No objections. Mr. Darrow?

DARROW: No objections.

GALDONES: Commissioners, any questions on those exhibits? Seeing none, then let the record show those exhibits, Exhibit 1 and Exhibit 2, entered by the County has been entered, formally entered into the records. Mr. Torigoe?

TORIGOE: Thank you, Mr. Chairman. I just want to clarify on, this was filed as a formal contested case. Obviously, the parties can stipulate to whatever procedure they want

that's consistent with the Statute. So, at this point, we entered the exhibits -. I guess I just wanted to ask if there's any other formal offering of evidence or testimony that any of the parties want to put on at this point, or shall we just proceed on the exhibits and any questioning by the Commissioners?

ANDREWS: Spectrasite has nothing further to add, unless any of the Commissioners have any further questions.

LEITHEAD-TODD: Similarly, the County has nothing further to add, and that we are here if there are any questions from the Commissioners.

TORIGOE: Okay. So if that's the extent of the evidence that's going to be presented formally then, Mr. Chairman, I think the Commissioners can ask whatever questions they want, and then you can close the contested case hearing and go into decision-making.

GALDONES: Okay. Mr. Yuen, then, I would allow for public testimony, I mean, Mr. Torigoe?

TORIGOE: Yes.

GALDONES: Okay, Commissioners, are there any questions on the documents that have been presented for us to consider? Seeing no questions, is there any one here from the public to testify on this subject matter now before the Hawai'i County Planning Commission? Seeing none, Commissioners, motion in order to close this public hearing on the application by Spectrasite Communications.

FUJIKAWA: Make a motion, you want a motion to close the public hearing?

TORIGOE: That's close the contested case hearing, yeah.

GALDONES: Stand corrected, close the contested case hearing. That would be the motion.

FUJIKAWA: So move.

SPRINGER: Second.

GALDONES: It has been moved by Commissioner Fujikawa and seconded by Commissioner Springer that this contested case hearing be closed. Any further discussion? All those in favor say aye?

COMMISSIONERS: Aye.

GALDONES: Oppose? Motion is carried. Commissioners, Spectrasite Communications, Inc.'s application, the Department recommends approval by the Planning Commission. Motion in order. Commissioner Graham?

GRAHAM: Prior to making a motion, could I just make a commentary for the Commissioners' consideration, or shall I wait for a motion for that?

GALDONES: Why don't we do the motion then we'll open it for discussion?

GRAHAM: Fine.

GALDONES: Commissioner Fujikawa?

FUJIKAWA: So I make a motion to approve the application on this contested case, SPP 03-018.

SMITH: Second.

GALDONES: It has been moved by Commissioner Fujikawa and seconded by Commissioner Smith, Spectrasite Communications, Inc. (SPP 03-018), the request to allow the retention of an existing 200-foot telecommunications tower and antenna, communications equipment building, four satellite dishes, generator and fuel tanks, chained link security fence, driveway access and related improvements on a 11,413 square foot area be approved by the Planning Commission, along with the Background Report, Finding of Facts and the Recommendations. Further discussions, Commissioners? Commissioner Graham?

GRAHAM: I just wanted to bring it to the open and try to cut to the chase. It seems like when we look at the Special Permit requirements, that the one that affects the Intervenor's concerns in this case is one whereby when we grant a Special Permit. And I quote from the Recommendation, "The desired use shall not adversely affect the surrounding properties." And the Intervenor folks are surrounding property owners and they are saying, you know, it hinders their ability to sell the property, presumably, largely for visual reasons. So it seems like it's up to us to decide if that is a substantial enough adverse effect that the request should not be approved.

My particular feeling is that because it's in an agricultural district, you wouldn't have quite the same expectations that you might have if it was being built right next to a residential district. And, also, that maybe the ability to find a more suitable location with less impact is also whether it even exists, but also it is constrained by the fact that tower is already in place. So I just want to be sure to acknowledge that it does feel like the adverse effect on surrounding properties is the key issue; and my judgment is that the adverse effect is not unreasonable nor meets the bar that would be such as to deny the application. But I'm certainly willing to hear from others. Thank you.

GALDONES: Thank you, Commissioner Graham. Commissioner Siracusa?

SIRACUSA: Just to play Devil's Advocate for a minute, on the other hand there are a lot of areas in, on the Big Island and in Puna specifically where people do not have access to communication. They cannot even, where I live, for example, we can't even call 911 'cause we're in a hollow. And, so, there's a, although I basically am against telecommunication towers as being really ugly and obtrusive, I do realize that there's a public safety issue; and I think that would probably override the concerns of the neighboring property owners.

GALDONES: Thank you, Commissioner Siracusa. Seeing there are no discussions, Mr. Darrow?

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

FUJIKAWA: Aye.

DARROW: Commissioner Smith?

SMITH: Aye.

DARROW: Commissioner Alameda?

ALAMEDA: Aye.

DARROW: Commissioner Graham?

GRAHAM: Aye.

DARROW: Commissioner McCall?

MCCALL: Aye.

DARROW: Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: Commissioner Springer?

SPRINGER: Yes.

DARROW: And Mr. Chairman?

GALDONES: Aye.

DARROW: The motion passes.

GALDONES: Thank you, Mr. Darrow. Ms. Andrews, as you have witnessed, the Commissioners have approved your application. But this being a contested case hearing, would you be able to put together the proposed Findings of Facts, Conclusions of Law and the Recommendations for us?

ANDREWS: Yes, Chairman Galdones. I will prepare that.

GALDONES: I'd appreciate it.

ANDREWS: And then, do I forward it to you, Mr. Torigoe or -?

TORIGOE: Yeah, that's, just to staff.

ANDREWS: Just the staff. Okay, thank you. Yes, your honor, I mean, yes, we'll prepare it. What kind of deadline would you like for that?

GALDONES: It was yesterday. No, I'm just kidding. What would be a reasonable timeline for you, Ms. Andrews?

ANDREWS: Within two weeks. Is that too long?

GALDONES: Norman, is two weeks sufficient?

HAYASHI: That's sufficient.

GALDONES: It's acceptable.

ANDREWS: Thank you.

GALDONES: Thank you very much.

ANDREWS: Thank you all. Oh, I'm sorry.

SPRINGER: You're welcome. But, Mr. Chair, what is the timeframe for any appeal of this decision from the Intervenors? Do they not have standing to appeal this?

TORIGOE: Yeah, they would have standing. It would be 30 days after they get their written decision.

SPRINGER: Thirty days. Thank you.

FOX: Thank you.

ANDREWS: Thank you very much.

TORIGOE: Actually, Mr. Chairman, let me just clarify that last statement, because I think standing would be an open issue, since they did not come to participate in the hearing.

SPRINGER: I'm sorry. Because they did not participate?

TORIGOE: There would be an issue as to whether they would really have standing to prosecute an appeal.

SPRINGER: Thank you.

The discussion ended at 9:32 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary