

Meeting of the Planning Commission
Transcripts
July 31, 2009

The Planning Commission held a meeting on Friday, July 31, 2009, at 3:05 p.m. at the City Council Committee Meeting Room, Second Floor, 530 South King Street, Honolulu, Hawaii. Chair Karin Holma presided.

PRESENT: Karin Holma, Chair
Rodney Kim, Vice Chair (by telephone conference call)
Beadie K. Dawson
Harold J. Dias, Jr.
Vicki Gaynor
Andrew M. Jamila, Jr.
Kerry Komatsubara
James Pacopac

ORIGINAL

RECUSED: John S. Kaopua III

COMMISSION STAFF: Patty Kalapa, Secretary-Reporter

CORPORATION COUNSEL: Winston Wong

CONTESTED CASE HEARING

EWA—STATE SPECIAL USE PERMIT APPLICATION—2008/SUP-2(RY)
AND WITHDRAWAL OF STATE SPECIAL USE PERMIT NO. 86/SUP-5(RY)
WAIMANALO GULCH SANITARY LANDFILL

2009 07 31 P 1:55
STATE USE COMMISSION
STATE OF HAWAII

HOLMA: I'd like to call the meeting to order. We have State Special Use Permit Application 2008/SUP-2 and withdrawal of the State Special Use Permit number 86/SUP-5, Waimanalo Gulch Sanitary Landfill. First, I want to confirm for the record that the evidentiary portion of the contested case was closed on July 8, 2009. We are here for decision making today. I want to thank all of the commissioners for all of their hard work and attending. We thank the parties for their submittals which we've all read.

What we have passed out at this point is a draft Findings of Fact or a discussion draft Findings of Fact, Conclusions of Law and Decision and Order. We are currently waiting for Commissioner Kim who is on the mainland. It's being faxed to him at this point. We're waiting for him to receive that. I ask the Commissioners to take a look at this draft.

HOLMA: It got there. We should wait ten more minutes, five more minutes? He hung up on me. He was going to pick it up. Hi Rodney, can you hear us?

KIM: Hello.

GAYNOR: Rodney.

KIM: I'm here.

GAYNOR: Can you hear us?

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think it's been extended three or four times. In my opinion, simply putting on a new closure date to this new SUP will not lead to the closure of the Waimanalo Gulch Sanitary Landfill. I believe that the focus should not be on picking a date. The focus should be on how do we get the City to select a new site because you're not going to close this landfill until you find another site. I don't think it's in the interest of our community not to have a landfill. That is the problem. I don't know if there is going to be a totally workable solution, but how do you get the City to select a new site? That's the...before they used to say \$64,000 and I guess that's not worth much now, but that's the big question here.

I went through the rules of our Commission and our responsibilities. First of all, I think it's very clear that it's not our Commission's responsibility to select a new site for the landfill. Really what we're doing in this process is merely to, in essence, do a land use process evaluation of a permit. Now, surely we can through the granting or denial of a permit add conditions so on and so forth, but we do not have the power to, for example, impose a fine or levy sanctions if the conditions are not met. The only power we really have is the power to revoke under our rules. But then we come back to the same question. If our only power is to revoke, how meaningful is it when everyone knows that we still need this landfill because, you know, we're not going to throw the baby out with the bath water. That's the biggest problem.

What I've tried to do in drafting this proposal is to try to change the focus, so rather than picking a date certain like it was done before, you know, you can pick a date fifteen years out and in the fourteenth year people start reporting and focusing upon whether you're going to close this landfill. If you don't have a new landfill site ready, then you just extend it another five years. That's what happened in the past.

So what this proposal does is, it says look, you can keep it open until your full, until you've reached the capacity, but you have an obligation starting from next year to start looking for a new site. Now whether you take it seriously or not, that's up to you because we have the power to call you in, and you have the obligation now to report every year on what you're doing to find a new landfill site whether it be a replacement site or supplemental site or both. We have the right to hold a hearing at any time we feel that you are not...the applicant is not in good faith moving forward with reasonable diligence to find a new site.

This, in essence, is our attempt to keep the applicant true to its representation in the hearing that it will begin in 2010 its effort to identify and develop a supplemental landfill site on Oahu. The problem still remains how to enforce this condition, how to enforce this promise. This is my good faith effort as to how to answer the question. I don't know if there's ever going to be a simple answer, but I think going down the old path of just putting a date in there has not worked. We put it down three or four times before and every time we came to that date, it was extended further and further. I can understand why people feel that they have been deceived because this keeps on being extended. I personally don't want to go down that road. I'd rather not say it's a certain date only to know that when we reach that date we're going to extend it further until we find the new site. I'd rather focus on an effort to find a new site and have the applicant come in every year and explain to us where you are in your effort to find a new site. That's what this proposal does.

DAWSON: I want to thank Kerry for the work that he has put into this proposal on his own without any encouragement from anywhere else. This is a difficult decision and I'm very, very grateful to you. I think that what you have proposed could be a great solution, the beginning of a solution, but I think that there are some refinements that need to be put in there. First of all...and this is addressed to our Commission. We have

repeatedly, as you have said, set dates only to have those dates not complied with, set conditions, only to have those conditions asked to be released again and again and again – five years, two years, another five years. This could go on indefinitely. In that sense, simply putting date there just is an invitation for more of this procrastination.

Having said that, I don't believe that asking the City Council to cooperate on this is sufficient. They've been asked to cooperate before. I don't know what the problem is on the City Council, but they cannot get their act together. And they haven't been able to move the decisions and the orders forward that have been put forward by this Commission before. In effect, what they have done is that they've made a mockery of this Commission. We make a decision, somebody from the Council overrules it or there's an effort on the part of someone to extend once again. The only way I can put it is that it has neutered whatever analysis, power, whatever progress this Commission might make. And that, I think, is what we're looking for here. How do we be a more meaningful Commission? How do we make that more meaningful? One way is not to put the dates in there. But when you simply say that the applicant shall begin to identify, that could take fifteen years; that could take another twenty years. While we don't put a date in there, we say we begin to identify and then we will have annual reports, we can call for more hearings, we can perhaps take action on that.

What we have to ask ourselves as Commissioners, do we have the fortitude to make a decision at that point? If they're not making good faith efforts or if they haven't made good faith efforts in the past, do we have the fortitude to say, "We're going to revoke you? If we revoke you, there's going to be no landfill." And we're back to our original problem that we had as a Commission that we couldn't make that decision. We couldn't put the City in the position of saying, "You're not going to have a landfill." I'm not sure that that provides us with an answer either.

I think that one of the things that we must consider and accept or reject...how do we put a fire under DPP, the Planning Department, as well as the Council, as well as the Mayor? How do we put a fire under those guys to make them act? Clearly, even if we were to allow an extension of all of this, that landfill is not going to last forever and Hawaii is not going to simply stop producing opala. We're going to be producing opala for the next...for hundreds of years. So we can't have a situation where we just say, "We'll give you more time and more time." It's going to run out.

All of the experts have told us differing opinions. Some say there is two years capacity left. Towill says twenty years capacity. We, as Commissioners, are not experts but we are stuck with what we hear from the experts. And we're hearing different answers, so maybe we have to come up with our own answer. What we might have to consider is to simply deny this applicant. If were to get really tough on this and say, "Okay, we're going to deny it." Maybe, you know, put a denial date in there if you will and there will be absolutely no extensions after that. I'm not sure how we can work that. We'd have to probably talk that out. But if we were to deny this applicant right now, I think the Department of Planning, the Mayor and the Council would get their act together fast. They couldn't leave...politically; they couldn't leave Honolulu, the island, in a state of garbage, accumulated garbage. It's happened in New York; it's happened elsewhere all over the place when they've had problems like this. We can't do that; it's unsanitary, unsightly. It would destroy our tourism market even more than it's being destroyed right now.

It may be that we...we've got to find a way to put some fire under those guys to make them act. I like some of this that we're hearing, Kerry. We're saying, "Okay. You guys have to look for some answers here." But since we're not putting a date on it, they can stretch that on until the current Mayor goes out of office, until the current Council goes out of office, and they leave somebody else in our town to deal with the problem.

And we, as Commissioners, are going to be part of the problem because we haven't forced their hand. We haven't forced them to make a decision. This is what we're faced with right now. Really the decision is tough on us right now. How do we do that? I'd like to hear from some other people before I have anything further to say.

JAMILA: That was good, Beadie. Kerry, that's an excellent draft form you put in. I just have a couple of things, a couple of bullets that stuck out in my head when you were saying about the amendments. First of all, the power to revoke like how you stated, you know...We as the Commission, we have the power to revoke. Part of it, you know, when you said that...December 2010 is going to come around real fast. I mean November. That's only about, I'd say, a year and a half away.

Looking at the past, you know, as far as moving forward, it took five years just for them to come up with another SUP. Having a little bit more bite or adding a little bit more bite that if there is no work done forwarding as far as on the reports to us that they did cite or have another site in mind, you know. Like Beadie said, having a little bit bite of revoking the SUP, you know, "We're going to revoke your SUP. Now we really need to put things forward." But on that same site as far as the site selection, remember when they had that Blue Ribbon Panel? Okay. My question is would they refer back to the essence of the information that was gained by the Blue Ribbon Panel to make a selection? My question is would that be valid as far as Kerry staying with this draft form of having reports to base their findings of where they have alternate sites?

I don't want to go out on one limb here. Because if one community seems to have the landfills in their area, I don't see anything from preventing...I don't see anything in the report preventing them from saying, "Let's use a different part of this community to have a landfill or an alternate landfill." You know what I'm saying? I read it and I'm afraid that their selection may be another part of that community down the road into the community without me saying any variables on the locations. I'm afraid for them that we're putting the gun to their head now. "You need to act and get a site selection going." Would they be picking something else more into that community? I didn't see anything preventing or any stoppage on that, Kerry, is what I'm saying. I kind of feel their pain. I kind of feel the pain of that community having enough dumped on them, and that's why I'm bringing this up for discussion. Thank you.

KOMATSUBARA: I made 15 drafts of this thing. And every time I came up with a new draft, it was because of a different idea, different problems, and different concerns. And the first question I ran into was what powers do we have? The first draft I put together mandated the Council to take action, and I took that out because in my opinion clearly we don't have the power to tell the Council what to do. I don't want to jeopardize the whole document. But I wish Councilman Apo was here.

UNKNOWN: He's here.

KOMATSUBARA: Oh, he is? Oh, there he is. I wanted to thank you because I re-read your testimony and actually I was very happy. On page 267, line 22, you stated, "The answer is Commissions, Boards and Commissions like yourself and the State Land Use Commission need to be part of putting the clamp down a bit on City government and it's myself included. It's forcing the Council to participate in that whether it's actually funding the money or making the policy decisions via resolution that we need to do." I want to thank you for that statement and that recognition. The problem is that I don't think this Commission has the power to tell the Council what to do. We can only encourage them to work cooperatively. That's why it's drafted in that form.

HOLMA: What's your definition of the leeward coast?

JAMILA: Well, the leeward coast would be Nanakuli, Waianae, Makaha, you know, that area. It's only because after the amounts of testifying I heard from people coming up about dumping on their neighborhood. That's why I was just thinking of not as an amendment, but as one of the conditions maybe they could look outwardly before looking inwardly down there, you know what I mean. If that was a possibility we could include as a condition. Because they've got to make a yearly report to us and see how they could go around the island making the report first as other possible site selections rather than just going a couple miles down inwards and then a couple miles down inwards. I felt the pain of the people that were testifying that's why, and I just wanted to clarify that.

HOLMA: Commissioners, I'm very sorry. I have a personal thing. Can I take a five minute break? I apologize. And just to caution you, we're not going into Executive Session. Please don't talk amongst yourselves about this, but for five minutes...Again, my apologies.

RECESSED AT 3:55 P.M.
RECONVENED AT 4:00 P.M.

HOLMA: Rodney, go ahead.

KIM: Thank you. First of all, I would like to thank Kerry for putting together this draft. Apparently, he's done a lot of work. I totally agree with all of the issues you guys are discussing, and that's between Beadie and Kerry. The question that's bothering me as well is what authority does this Commission have? It's very frustrating that while we have the certain responsibility, we don't have a whole lot of authority to enforce what should be enforced.

I like Kerry's idea of granting the SUP and the reporting...it's like a condition subsequent. I don't know how much more we can do except at the very end, as Kerry said, is to issue an order to show cause at some point in time that says to the City Administration and the Council, "You have not done enough." And then we're going to revoke the SUP.

Clearly, I agree we need a landfill. It's going to be necessary, but what is frustrating is that from what I've seen from all the testimony in not only these past hearings but in previous hearings is that between the Administration and the City Council, there's never been a comprehensive push or program on how do we take care of our solid waste with certain goals in mind that this is what we need to do, this is what we need to accomplish.

To conclude, I'm in favor of the draft proposed by Kerry. It is not clearly all that we want, but probably the best we can do under the powers and the authority given to us under our rules. Thank you very much.

DAWSON: One of the factors that we have...this is everybody here that I'm talking to. One of the factors that we have not considered in asking for alternate sites, looking for a new site or several sites, what we haven't taken into consideration is the fact that we are a small island community which is definitely growing and is going to continue to grow. We're not going to stop...our population is not going to suddenly go static and stay still. We are going to continue to grow. In whatever solution we come up

with, we're not taking into account we will have more and more and more opala that we've got to figure out what to do with.

The fact that we are an island speaks to something which we haven't said very definitively here and that is that we are going to have to ship some of our waste out away from the island. I don't know where. That's not our job. But it certainly is done in other communities that are not islands. We have had tremendous testimony indicating that there are cities all over the world much less in our own nation that have...that simply truck, train or ship their garbage away. And so I think that maybe we're going to have to emphasize that as a condition that in addition to looking for new sites...and I must say I'm very impressed with the condition that says if we do have new sites, let's get away from the leeward coast; we've burdened them long enough. But perhaps something where we can look at shipping as a...we can't mandate it because we don't have that kind of authority.

But Kerry, what we do have is we have the authority to deny this application. Whether we deny this application immediately or within six months or within a year...or put some time on it, I don't know. But with that, we do have authority to do. We are not without power. We can't say, "There's nothing else we can do but to simply accept it." That's giving up; that's really giving up by saying we don't have any power. We do have power. But the most important thing I would like to have us consider and maybe tweak what we are doing right now is to put conditions on what we are saying. Maybe we don't want to put dates on because dates just get bounced all over the place. A new application, a new petition, they get bounced all over the place.

I like the idea of having annual reports where they have to come in and give us concrete evidence on what they're doing. That could be one of the conditions. And we could have a condition that says that if we are going to have other...we are going to have other sites, site or sites, they will have to be away from the leeward coast. And I think that's a fair condition. I totally agree with that.

I would like to maybe ask the Commission if we couldn't use this as a starter, but put some conditions in there that will give it the kind of meaningful teeth that we can do. The alternative to that is denying it because that will get the attention, that will get action. Politically, nobody can let that happen if we were to deny this. The Mayor won't; the Council won't. There will be lawsuits all over the place. That's definitely an option that we have to look at.

HOLMA: How about this? If we approve this today and then over the course of the next few months you come up with some additional conditions and proposals that you're suggesting...I understand your...

JAMILA: Chair, in other words you're asking not to put any conditions on this draft as it is and when we get...

HOLMA: As Kerry said, I think he spent a fair amount of time, and it takes a lot of time and analysis and investigation to think what could be better conditions, how can we get people to do what we want them to do which is the number one question. Well, then over the next few months, let's think of some new conditions. Harold.

DIAS: Madam Chair, I just wanted to commend Kerry for the great work that he did. I do agree totally with him. The Commission itself has limited power, but I think what Kerry did was essentially the one power that we do have which is to revoke. I believe he already answered the question of adding conditions in his number eight saying that, "The Commission may at any time impose additional conditions when it

becomes apparent that a modification is necessary and appropriate." I think it already gives us that authority in there. For myself, I'd like to see us just adopt as proposed, and I think it again accentuates our authority to hold some feet to the fire as well as put additional conditions as we see necessary if we see a certain timetables and commitment is not being met.

DAWSON: I think that's a good point.

HOLMA: How do you like that Beadie?

DAWSON: Well, we don't have to adopt a condition that we already have the authority to do.

HOLMA: But it makes it stronger.

DAWSON: It makes it stronger. I think that it will be stronger if we have some minimal conditions. If we want to adopt this, if we have minimal conditions with this and then within the next few months, we try and expand that and look for ways where we can really put some teeth into it. But I would not want to do that without having some minimal conditions on it. I certainly think that the leeward coast one is a very valid one. I think the whole island would agree with that except people...nobody wants this in their back yard. We know that.

I would like to have more emphasis on shipping. That's something that we can't ignore. We can't keep on keeping all this stuff here and burying it. We don't have enough places to bury it. We're an island, a small island. I would go for some kind of condition or conditions, and we approve this. Kerry, what's your thought on that?

KOMATSUBARA: Again, I have some concerns as to whether we have the power to select or to limit alternative sites to be considered. I do want to point out that this matter does continue to the Land Use Commission forty-five days afterwards. I think people are free to go there and put in your two cents and...

DAWSON: A recommendation, perhaps not a condition for eliminating the leeward coast, but a recommendation. And the Land Use Commission has shown that they are amenable or they will at least consider what our recommendations are, so if not a condition, then a recommendation to go along with the approval...maybe a recommendation and a condition.

KOMATSUBARA: Again, my position is I am reluctant to limit where this new site will be. I think my feeling is you're giving ENV the responsibility to find a new site; they've heard the criticism. Maybe it is right that the next landfill should not go to the Waianae Coast, but I don't want to be one to tell them this because very honestly, I don't know. I haven't read everything in the Blue Ribbon Committee Report. I don't want to presuppose what their judgment is going to be. They may end up at that point anyway, but to say that this document...and at the same time my statement is we don't have the power to do that, that's why I would not want to put it in here right now. That's a decision for ENV and whoever the Blue Ribbon Committee is in the future to make that determination.

HOLMA: What I'm hearing them suggest, though, and Harold particularly, was it wouldn't go into this. We would approve this and as the months go by, we can discuss those types of issues.

DIAS: Madam Chair, one of the concerns I heard...and I'm certainly the rookie here, but one of the concerns we heard throughout both hearing the testimony from various individuals as well as Commissioners themselves, is we felt that we were being put in a box and pressured, time tables and pressures put on us to make decisions now. It's got to happen by this date. I think any condition that we put on now would be a mistake without a full and fair discussion as a body hearing all our options and such. And I'm not against putting additional conditions; I'm just against doing it at this time. I think the draft by Kerry allows us to put conditions when we feel it's necessary and after we have full and fair discussion and hear everything that we possibly could so we can make wise decisions.

JAMILA: I'd like to echo that also. After reviewing item eight on page 26 of what Harold had just brought up, you know, Kerry, it does leave us with imposing additional conditions at a later date and that would be acceptable to me, Kerry. Then that way, you can leave this draft as the form that you've put it in if that's alright, Chair. I think that item eight, it does speak buckets for what we want to do and add on later on.

KOMATSUBARA: I agree.

HOLMA: Vicki, did you have anything?

GAYNOR: I think that we've listened to an awful lot of testimony, and I think one of the things I'm disillusioned about is that it doesn't seem like conditions mean anything because in the previous SUP, there was a condition that said Waimanalo would be closed and yet when it came time to consider a new landfill site, the City did not step up and say Waimanalo could not be selected because there was an SUP in place with a permit that said Waimanalo would be closed. I'm rather discouraged about how any conditions we put in can be meaningful.

I don't see these conditions as promises, and I don't think they are something that can be changed when a new administration comes in or when a new City Council is seated. I think it is a condition of a permit, and I think what we're going to do here by canceling the old permit is pretty much get in bed with all of the people that broke their promises all along. Frankly, the community was misled, very clearly misled, in public hearings where the voice of the applicant said, "This landfill will close." And yet nothing was ever done about that. Quite honestly, I could easily vote for closing the landfill as scheduled. I just think that it's bad government to allow the condition of a permit to be blown off like that so easily when it's these people that put elected officials into the offices.

I think we need a landfill; there's no doubt about that. The City has not done its job, so we have, unfortunately, to make a decision one way or the other. I love condition number one, Kerry, because I think that everybody on the island of Oahu needs to be reminded every year that we need a landfill and it might be in your back yard. And if we don't have it, it could be very, very expensive to the taxpayers. Everyone needs to understand that. And if we have to have these hearings every year to get that understanding out...I love that condition; I think it's a great condition. I'm concerned that the City Council feels that recycling should be eliminated in an effort to the cut the budget. I think that's really short sighted. I think that Kerry's done an excellent job trying

to pull something together that in reality can work. I guess the only thing I'm uncomfortable with is I would like to see a closure date.

I am not opposed to ash going into the Waimanalo Landfill until there's no room for it any more since H-Power is the source of that ash. It's being expanded, and it's right there at Waimanalo. I don't think that the taxpayers should pay to haul that stuff half way around the island somewhere. I have a problem with solid waste continuing to go there, and I think we've had some pretty steady leadership in the Waste Management Division of ENV for many, many years. Here we are twenty years later with no place to put this landfill. I'm not too trusting of their ability without some sort of deadline to take anything seriously. I love every single one of these conditions, and I think even with a deadline...and I'm willing to be reasonable about that. We heard as short as seven years to identify a new site, as long as ten years. But I'm not comfortable with giving the City the leeway to perform with reasonable diligence because I don't think they're capable.

DAWSON: I think you're right.

HOLMA: I think that's sort of the beauty of this proposed Findings of Fact, Conclusions of Law. It puts the burden on us. We've learned that they can't do it, so it's our power to revoke it if you're not satisfied with their commitment and their participation in the conditions. We put on the burden, the responsibility; however you want to term it. We put it back on ourselves, and we can exercise that power if we choose to do that. But putting...I understand totally what you're saying.

GAYNOR: Unless they continue to come to us every year without making the effort and we find ourselves in the same position or whoever is sitting here in five years where we have to have a landfill, there isn't an alternative. I feel very strongly about the condition in the previous condition. I felt strongly about how the community was misled, and I don't have a lot of confidence that ENV can get the job done and that they're getting the political leadership and willpower especially if we lead everyone to believe that this landfill could go on indefinitely. I like every single condition in here. The only thing I would like to see is a deadline. This landfill will close, and then let them come and report every year. Let them show the effort and that there's a political will to do what they promised to do in 1984 and then again in 2003.

DAWSON: We could talk about this item for item, but I'd like to propose an amendment.

HOLMA: Well, you can't do that right now.

DAWSON: I can't?

HOLMA: No.

DAWSON: We have to vote it up or down?

HOLMA: Yes. We have the motion.

DAWSON: Because I think Vicki has given perhaps a good out for us.

HOLMA: I'm going to call for a vote on the motion. Before I do, I want confirmation from each of the Commissioners who are voting on this motion that you...and it's particularly for those Commissioners who were not there a couple of the days of the hearings...that you, in fact, read the transcripts of those people and reviewed those exhibits. Is there anyone who did not do that? Rodney, you were there for every day of the hearing. Is that right?

KIM: Yes.

DAWSON: Quick question. If we want a new motion with whatever dates the conditions are on it, we need to vote on this one first up or down?

HOLMA: Correct.

DAWSON: Okay. Call the question.

HOLMA: There is the pending motion to approve the Special Use Permit based on the Findings of Fact, Conclusions of Law as stated in this. All in favor of that say aye.

AYES: HOLMA, DIAS, KIM, JAMILA, KOMATSUBARA, PACOPAC
NOES: DAWSON, GAYNOR
RECUSED: KAOPUA

HOLMA: So that's Rodney, Kerry, Karin, you and Harold and Andy. The motion carries, one, two, three, four, five, six to two. That is it on that application. Now I need...part of the application was to withdraw the Special Use Permit from 1986. Could I please have a motion to approve the withdrawal of that Special Use Permit?

DIAS: So moved.

KOMATSUBARA: Second.

HOLMA: All in favor of that say aye.

AYES: HOLMA, DIAS, KIM, JAMILA, KOMATSUBARA, PACOPAC
NOES: DAWSON, GAYNOR
RECUSED: KAOPUA

HOLMA: Six to two as well. Did you get that Patty? Okay. We're going to adjourn the meeting and then those Commissioners who voted in favor of the first motion, we will sign that draft and the second one.

DAWSON: What's that again? What are we going to do?

GAYNOR: Sign the Decision and Order.

HOLMA: Okay. Adjourned.