

SUPREME COURT OF HAWAI‘I

Department of Environmental Services, City and County of Honolulu
v. Land Use Commission, State of Hawai‘i, 127 Haw. 5

275 P.3d 809 (2012) · No. SCAP-10-0000157 · Decided May 4, 2012

SUMMARY

The Supreme Court of Hawai‘i reviewed the Land Use Commission’s approval of a special use permit to expand the Waimanalo Gulch Sanitary Landfill. The court held that Condition 14, which prohibited the landfill from accepting municipal solid waste after July 31, 2012, was not supported by substantial evidence in the record. Because the condition appeared material to the approval, the court vacated the circuit court’s judgment and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Duffy, J.; Recktenwald, C.J.; Nakayama, J.; Acoba, J.; McKenna, J.
JURISDICTION	Hawaii
DECIDED	May 4, 2012
DOCKET	SCAP-10-0000157
DISPOSITION	vacated
PROCEDURAL POSTURE	The Department of Environmental Services appealed the circuit court's judgment affirming the Land Use Commission's approval, with modifications, of a special use permit to expand the Waimanalo Gulch Sanitary Landfill. The Hawai‘i Supreme Court accepted the appeal by mandatory transfer.
STANDARD OF REVIEW	On secondary appeal, the Supreme Court determines whether the circuit court was right or wrong while applying the standards governing review of the agency decision under HRS § 91-14(g). An agency restriction must be supported by substantial evidence in the record as a whole.
PRECEDENTIAL VALUE	Published, precedential Hawai‘i Supreme Court opinion
PARTIES	Department of Environmental Services, City and County of Honolulu v. Land Use Commission, State of Hawai‘i, Colleen Hanabusa, Maile Shimabukuro, Ko Olina Community Association

TOPICS

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QUESTIONS PRESENTED

1. Whether the Land Use Commission had statutory authority to impose restrictive conditions on its approval of a special use permit.
2. Whether Condition 14, limiting municipal solid waste disposal at the landfill after July 31, 2012, was supported by substantial evidence in the record.
3. Whether the LUC's approval of the special use permit could stand after Condition 14 was determined to be unsupported by substantial evidence.

HOLDINGS

1. HRS § 205-6(d) authorizes the Land Use Commission to impose additional restrictions that may be necessary or appropriate when approving a special use permit.
2. Condition 14 was inconsistent with the evidence in the record and was not supported by substantial evidence.
3. Because Condition 14 appeared to be material to the LUC's approval, the approval of SUP-2 could not stand after Condition 14 was invalidated; remand to the LUC for further proceedings was required.

KEY QUOTATIONS

“While the LUC is authorized to impose restrictive conditions in its approval of SUPs, its decision to impose such a restriction must be supported by substantial evidence in the record.” (816-817)

“LUC Condition 14 is not supported by substantial evidence in the record, including the Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order, which were adopted by the LUC in its Order Adopting the City and County of Honolulu Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order With Modifications filed October 22, 2009.” (821)

“Having held that Condition 14 cannot stand because it is inconsistent with the evidence shown in the record and not supported by substantial evidence, the LUC's approval of SUP-2 also cannot stand because Condition 14 was a material condition to the LUC's approval.” (822)

“Pursuant to HRS section 91-14(g)(5) (1993), we vacate the circuit court's judgment affirming the LUC's approval of SUP-2, and remand this matter to the circuit court with instructions that the circuit court remand this matter to the LUC for further proceedings consistent with this opinion.” (823)

FACTUAL BACKGROUND

The Waimanalo Gulch Sanitary Landfill was the only permitted public municipal solid waste facility on O‘ahu and the only permitted repository for ash and residue from the City's H-POWER waste-to-energy facility. The City sought to expand the landfill because existing capacity was limited and continued landfill availability was necessary for integrated solid-waste management, including disposal of material that could not be recycled, reused, burned, or shipped. The Planning Commission found that identifying and developing another landfill would take more than seven years and approved the permit until Department of Health-approved capacity was reached. The LUC nevertheless added Condition 14, which barred municipal solid waste after July 31, 2012.

PROCEDURAL HISTORY

The City applied for SUP-2 to expand the landfill. The City and County Planning Commission recommended approval, allowing use until Department of Health-approved capacity was reached. The Land Use Commission adopted the Planning Commission's findings and decision but added Condition 14, limiting municipal solid waste acceptance to July 31, 2012. The circuit court affirmed the condition, and the Supreme Court vacated that judgment and remanded for further proceedings before the LUC.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the circuit court's judgment affirming the LUC's approval of SUP-2 and remand to the circuit court with instructions to remand the matter to the LUC for further proceedings consistent with the opinion. The LUC may conduct further hearings as it deems appropriate and should consider relevant new testimony developed before the Planning Commission.

CASES CITED

- Save Diamond Head Waters LLC v. Hans Hedemann Surf, Inc., 121 Hawai‘i 16, 24, 211 P.3d 74, 82 (2009)
- In re Water Use Permit Applications, 94 Hawai‘i 97, 119, 9 P.3d 409, 431 (2000)
- State v. Kahawai, 103 Hawai‘i 462, 465, 83 P.3d 725, 728 (2004)
- State ex rel. City of Niles v. Bernard, 53 Ohio St. 2d 31, 372 N.E.2d 339, 341 (1978)
- Kinkaid v. Board of Review of City & County of Honolulu, 106 Hawai‘i 318, 325, 104 P.3d 905, 912 (2004)
- Doe Parents No. 1 v. State Department of Education, 100 Hawai‘i 34, 59-60, 58 P.3d 545, 570-71 (2002)
- Bustamante v. Massanari, 262 F.3d 949, 951-56 (9th Cir. 2001)
- Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001)
- Sousa v. Callahan, 143 F.3d 1240, 1242-45 (9th Cir. 1998)
- Lanai Co., Inc. v. Land Use Commission, 105 Hawai‘i 296, 314-16, 97 P.3d 372, 390-92 (2004)
- United Jewish Center v. Town of Brookfield, 78 Conn. App. 49, 827 A.2d 11, 13-20 (2003)
- Florida Power & Light Co. v. Lorion, 470 U.S. 729, 744, 105 S. Ct. 1598, 84 L. Ed. 2d 643 (1985)
- Liberty v. Police & Firemen's Retirement Board, 410 A.2d 191, 192-94 (D.C. 1979)
- In re Doe, 96 Hawai‘i 255, 259, 30 P.3d 269, 273 (App. 2001)

