

KAILUA NEIGHBORHOOD BOARD NO. 31

WILLIAM M. HICKS, CHAIRMAN • 923 AKUMU STREET • KAILUA, HAWAII, 96734-4004
PHONE (808) 230-2293 • E-MAIL billhicksknb@gmail.com

July 21, 2022

Suzanne D. Case, Chairperson
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813-3047
blnr.testimony@hawaii.gov

Subject: Contested Case Hearing OA 22-75 for the Verizon Wireless Lanikai Telecom Project (July 22 Item K1)

Aloha Ms. Case,

On January 10, 2022 the Kailua Neighborhood Board (KNB) submitted testimony (enclosure (1)) on the subject application for consideration at the Board of Land and Natural Resources (BLNR) public meeting on January 14, 2022 (agenda item K3).

It should be noted that Verizon was scheduled to make a presentation to the KNB at the March 4, 2021 regular meeting, but on the day of the meeting Verizon's Permitting Consultant, Mr. Grant Nakaya, withdrew the presentation citing a need to "reassess" due to feedback received on the project. Verizon subsequently never attempted any contact with the KNB. The mature nature of Verizon's application therefore came as a surprise to the KNB when a Lanikai resident, Mr. Whiting, made us aware on November 4, 2021.

Minutes of the BLNR January 14th meeting note that it was not possible to delay a decision on this CDUA beyond the January 14th meeting because it would be approved by default due to the number of days since the application was submitted.

Today I am very disappointed to learn that, contrary to the discussion at the January 14th meeting, the CDUA was actually automatically deemed approved on January 12, 2022, two days before the January 14th meeting, so the entire decision process on January 14th was moot and the Kailua Neighborhood Board input was irrelevant.

I am further disappointed to learn that the residents' January 24 and January 25, 2022 requests for a contested case hearing have also been disapproved and that they were not notified of this until July 19th, a mere three days before the upcoming BLNR July 22, 2022 meeting (agenda item K1).

The net result is an automatic approval of this CDUA occurred without a scheduled presentation to the KNB, without the benefit of considering testimony of concerned residents, and without a process to contest the result.

This is not the public transparency that our system is supposed to provide.

Mahalo.

Sincerely,

William M. Hicks
Chairman, Kailua Neighborhood Board

Enclosure (1) Kailua Neighborhood Board Opposition to Proposed Conservation District Use Application (CDUA) OA-3879 for Verizon Wireless Lanikai Telecom Project of January 10, 2022

Copy:

Ms. Rachel E Beasley

Office of Conservation and Coastal Lands

Department of Land and Natural Resources

rachel.e.beasley@hawaii.gov

Senator Chris Lee senlee@capitol.hawaii.gov

Representative Lisa Marten repmarten@capitol.hawaii.gov



KAILUA NEIGHBORHOOD BOARD NO. 31

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PHONE (808) 230-2293 • E-MAIL billhicksknb@gmail.com

January 10, 2022

Suzanne D. Case, Chairperson
Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Subject: Kailua Neighborhood Board Opposition to Proposed Conservation District Use Application (CDUA) OA-3879 for Verizon Wireless Lanikai Telecom Project

Aloha Ms. Case,

The Kailua Neighborhood Board (KNB) received a presentation on the proposed Verizon Wireless Lanikai Telecom Project at its regular meeting on November 4, 2021 from Lanikai resident Mr. Scott Whiting.

It should be noted that Verizon was scheduled to make a presentation to the KNB at the March 4, 2021 regular meeting, but on the day of the meeting Verizon's Permitting Consultant, Mr. Grant Nakaya, withdrew the presentation citing a need to "reassess" due to feedback received on the project. Verizon subsequently never attempted any contact with the KNB. The mature nature of Verizon's application therefore came as a surprise to the KNB when Mr. Whiting made us aware on November 4, 2021.

Mr. Whiting provided history on the construction of cell towers in Lanikai, including the original AT&T antenna in 1999. Because the site is located on preservation land Zone P1 above Lanikai, extra care must be taken to enhance, protect, conserve, and manage this precious resource held in public trust. It is therefore disturbing that there has not been any formal Verizon presentation to the KNB to solicit community input regarding the installation of this tower. Mr. Whiting provided pictures of the visual impacts the current tower and contrasted it with the visual impact of this proposed tower. We are skeptical of the need for an additional tower, as the surrounding area infrastructure already provides four bars of service for Verizon customers.

The large size of the proposed project enclosure on the Lanikai hillside will have a major visual impact which was not known until Mr. Whiting's presentation. Residents' and visitors' enjoyment of Lanikai's beautiful environment will be impacted. The faux rock enclosures will have a high profile, will not blend with the natural surroundings, and will be visible from most of Lanikai.

The Final Environmental Assessment (paragraph 3.4.1) states it is "unlikely they (endangered shearwaters) would use the habitat", however, for decades residents report regular shearwater activity on the hillside. We understand no formal study of bird habitats on Ka'iwa Ridge exists, so we are concerned that possible environmental impacts may not have been properly assessed. This may require a more rigorous major SMA permit.

Nearby residents also expressed concern about potential negative impact on property values in the vicinity of this large tower due to its visual impact.

The KNB unanimously (with one abstention) approved a **Resolution to oppose the cell towers on Ka'iwa Ridge in Lanikai, conservation designated and preservation zoned land, and request that a major SMA be required before any approval and/or construction.**

Mahalo for your consideration!

Sincerely,

William M. Hicks

William M. Hicks
Chairman, Kailua Neighborhood Board

Copy: Ms. Rachel E Beasley
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
rachel.e.beasley@hawaii.gov

July 20, 2022

Dear Chairperson and Members of the Board of Land and Natural Resources:

We are writing this letter to you, pursuant to our receipt on 7/18/22 of BLNR's attempted Denial of Contested Case Petition by George Nardin, Amir Ginsberg, Ana Moreno, Daniel Rubenstein, Scott Whitting and Christina Townson, whereby we are formally challenging your attempt to Deny our Contested Case Petition.

We are primarily basing our position on the fact that BLNR failed to comply with the requirement for a scheduled public hearing where testimony was to be submitted for review and consideration **BEFORE** a decision by the OCCL and the BLNR Board to Approve or Deny the Permit Application was to be made.

The following is an excerpt from Page 7 of the Staff Report for Verizon Lanikai Telecom CCOA 22-75:

"As Verizon Wireless' permit application under CDUA OA-3879 was accepted for processing and review by the OCCL on August 19, 2021; the 145-day review timeframe ended on January 11, 2022. Therefore, the permit was deemed approved on January 12, 2022, prior to the Board hearing and decision of permit approval by the Board on January 14, 2022. If the permit was already approved, the Board did not have jurisdiction to consider a request for a contested case hearing on January 14, 2022.

CONCLUSION

That the Board of Land and Natural Resources deny the requests for a contested case hearing regarding CDUP OA-3879 for a new telecommunication facility as the permit was deemed approved by the State on January 12, 2022, pursuant to HRS § 27-45(b). Under HRS § 27-45(c) the permit shall be issued with the language, "This is broadband-related permit issued pursuant to section 27-45, Hawaii Revised Statutes."

We find it rather rich that the stated reason for the denial is based on the fact that the hearing on January 14th, 2022, which BLNR scheduled, was after the 145-day period elapsed on January 12th, 2022 and so as a result, the public testimony was deemed irrelevant and inadmissible.

Why was the hearing scheduled after the 145-day period had elapsed? Whether it was intentional, pure negligence or for any other reason, the fact that the testimony we and others submitted occurred after the 145-day period elapsed is simply not sufficient reason to deny members of the community our public right to challenge the permit application. We were told by public officials, in advance of that hearing, to come prepared in order to make our case so that the BLNR could consider it in their decision process, and so we did just that.

Several members of the public offered very substantive reasons and examples in writing before the hearing for why BLNR should deny Verizon's application. The fact that the Verizon's rationale for their permit and several of the specifics about their proposed location and tower installation was justified based on a previous AT&T cell tower permitting process and installation, which was itself in clear violation of their permit application, is just one example. The fact that there was an inadequate and apparently incomplete proper review and accounting for all of the incurred and anticipated costs for the

proposed Verizon cell tower, which if it were done properly would have clearly shown that it exceeded the limits under which the permit was submitted, is a second example, and there were more.

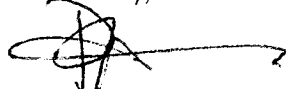
When we initially read the Staff Report, which omitted and/or downplayed many of our positions and offering of facts, as well as the biasing to Verizon's arguments as well, we were justifiably unhappy and expressed it during the hearing. When the Board recessed during the January 14th hearing to confer with their attorneys and then came back and essentially said that after "careful consideration" they were voting with Verizon to approve the permit as submitted, we were left wondering if it was a subtle form of gaslighting that we were experiencing or perhaps they were in some way fearful of possible legal action from Verizon if they did not approve the permit as submitted.

We did not believe then, nor do we believe now, that this process has been managed fairly nor properly. This includes our only finding out about the Verizon Application many months after it was submitted and only through the good fortune of one of our neighbors coming to learn about it, and then sharing it informally within the neighborhood. We had an extremely short amount of time to assemble and make our case during the holiday season, and even with just a few weeks to prepare, more than 500 people signed a petition requesting that the permit be denied and both the Lanikai Association and the Kailua Community Board both submitted formal letters in opposition to the Verizon permit application.

To add insult to injury, we received notice of BLNR's letter and 90-page report describing the denial of our challenge to the permit, as well as the upcoming hearing this Friday with only three days' notice for which to respond - this is also simply not acceptable.

Given how mismanaged this process was from the beginning, including the violation of our rights to submit testimony at a hearing within the 145-day period, we are not willing to simply stand down and nor stand by so that Verizon can have their way – Verizon's permit application as submitted should be denied.

Sincerely,



Daniel A. Rubenstein



Ana Moreno

1142 KooHoo Place
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July 20, 2022

VIA EMAIL TO BLNR.TESTIMONY@HAWII.GOV

Suzanne D. Case
Chairperson, Board of Land and Natural Resources
Members of the Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 130
Honolulu, Hawai'i 96813

Re: July 22, 2022 Board of Land and Natural Resources Meeting
Testimony in support of Staff Recommendation on Agenda Item K-1
Denial of Individual Petitions for Contested Case Hearing filed on January 24
and 25, 2022 by George Nardin, Amir Ginsberg, Ana Moreno, Daniel
Rubenstein, Scott Whiting, and Christina Townson regarding their requests for a
Contested Case Hearing OA 22-75 for the Verizon Wireless Lanikai Telecom
Project, Tax Map Key Nos. (1) 4-3-005:068 and 70

Dear Chairperson Case and Members of the Board of Land and Natural Resources:

Carlsmith Ball LLP represents Cellco Partnership dba Verizon Wireless ("**Verizon**") with respect to the above-referenced requests for contested case hearings. On January 14, 2022, the Board of Land and Natural Resources ("**Board**") voted to approve Conservation District Use Permit ("**CDUP**") OA-3879 authorizing Verizon to install a new stealth telecommunications facility at 1160 Koohoo Place, Por. Lanikai Beach Tract, Kailua, Ko'olaupoko, O'ahu, TMK Nos: (1) 4-3-005:068 and 070 (the "**Project**"). Following the Board's approval of the CDUP, several oral requests were made for a contested case hearing. Thereafter six (6) individuals filed written Petitions for a Contested Case Hearing (collectively the "**Petitions**"). The six petitioners are referred to herein collectively as the "**Petitioners**".

Verizon is in support of the Staff Recommendation to deny the Petitions. As detailed by the Staff Recommendation, the processing time for a broadband telecommunications facility was 145 days pursuant to State law and thus the CDUP was deemed approved prior to the January 14, 2022 Board meeting on this matter.

Additionally, under Federal law, a State governmental entity must definitively act on a telecommunications permit within a reasonable time, which is presumptively 150 days, and thus under Federal law, the requests for a contested case should be denied as a contested case hearing would take decision making on Verizon's Conservation District Use Application OA-3879 ("CDUA") well beyond the reasonable time limits established by Federal law.

I. FACTS

Verizon's CDUA was filed with the Department of Land and Natural Resources ("DLNR"), Office of Conservation and Coastal Lands ("OCCL") on June 29, 2021 and deemed accepted by the Board for processing on **August 19, 2021**.

The Project would enhance wireless communication and data service in the Lanikai area¹ and is considered a broadband-related permit.

At its regular meeting on January 14, 2022, the Board considered and voted to approve the CDUA. At the public meeting, several members of the public made oral requests² for a contested case hearing. George Nardine followed up with a written request for a contested case hearing which was received by the Board on January 24, 2022. The remainder of the Petitioners' requests were received by the Board on January 25, 2022.

II. LEGAL ARGUMENT

A. THE CDUA WAS DEEMED APPROVED PRIOR TO THE JANUARY 14, 2022 MEETING DATE

1. State Law Requires Broadband Related Permits in the Conservation District Be Approved, Approved with Modification, or Disapproved within 145 days or the Permit is Deemed Approved

HRS § 27-45(b) provides:

The State shall approve, approve with modification, or disapprove use applications for broadband facilities within the conservation district within one hundred forty-five days of submission of a complete application and full payment of any applicable fee. If, on the one hundred forty-sixth day, an application is not approved, approved with modification, or disapproved by the State, the application shall be deemed approved by the State.

¹ See CDUA, page 7.

² The recording of the January 14, 2022 Board meeting is clear that George Nardin, Amir Ginsberg, Ana E. Moreno, Daniel Rubenstein and Christina Townson made oral requests for a contested case hearing and subsequently filed written noticed for a contested case hearing. Scott Whiting also made a written request for a contested case hearing, but it is unclear if he also made an oral request at the January 14, 2022 Board meeting.

“Broadband-related permits” means all state permits required to commence actions with respect to the installation, improvement, construction, or development of infrastructure relating to broadband service or broadband technology, including the interconnection of telecommunications cable, cable installation, tower construction, placement of broadband equipment in the road rights-of way,” See HRS § 27-45(i).

“Broadband” is the transmission of wide bandwidth data over a high speed internet connection.³ Wireless broadband (“**Wi-Fi**”) is a connection to the internet using radio signals instead of cables and is what the Project is intended to encompass.

As noted above, the CDUA was accepted for processing on August 19, 2021. 145 days from that date is January 11, 2022. Thus, based on the above statute, the CDUA was deemed approved by the Board on **January 12, 2022**.⁴

Because the CDUA was deemed approved on January 12, 2022, the Board no longer has jurisdiction to order a contested case hearing, and the Petitions should be denied as moot.

2. Federal Law Requires a Telecommunications Permit to be Acted Upon within 150 days

Congress enacted the Telecommunications Act of 1996, 47 U.S.C. §151 et seq. (“TCA”) to promote competition between service providers that would inspire the creation of higher quality telecommunications services and to encourage the rapid deployment of new telecommunications technologies. See *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005).

The TCA generally “preserves traditional authority of state and local governments to regulate the location, construction, and modifications” of wireless communications facilities such as cell phone towers. *T-Mobile South, LLC v. City of Roswell, Ga.*, 135 S.Ct. 808, 814 (2015) (internal quotations omitted). On the other side, the TCA imposes specific substantive and procedural limitations on that authority by reducing the impediments that local governments can impose to defeat or delay the installation of wireless communications facilities and by protecting against “irrational or substanceless decisions by local authorities.” Sw. *Bell Mobile Sys., Inc. v. Todd*, 244 F.3d 51, 57 (1st Cir. 2001); *T-Mobile Cent. LLC v. Unified Gov't of Wyandotte Cnty., Kansas City, Kan.*, 546 F.3d 1299, 1306 (10th Cir. 2008).

³ The term “broadband infrastructure” is defined by federal law as meaning any buried, underground, or aerial facility and any wireless or wireline connection that enables users to send and receive voice, video, data, graphics, or any combination thereof. See 47 U.S.C. § 1504(a)(2).

⁴Prior to the time the CDUA was submitted on June 29, 2021, Verizon’s consultant requested a determination as to whether the required CDUP was a Board Permit or a Departmental Permit which would have determined the applicable fee, but OCCL had not made that determination. The application fee was submitted on or about September 8, 2021, subsequent to the OCCL and Board accepting the CDUA for processing on August 19, 2021. The 146th day from September 8, 2021 was February 1, 2022.

The TCA thus requires a State to act on any requests for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request. 47 U.S.C. § 332(c)(7)(B)(ii) (emphasis added).

The Federal Communications Commission (“FCC”) issued a Declaratory Ruling concluding that the phrase “reasonable period of time” is presumptively (but rebuttably) 90 days to process an application to place a new antenna on an existing tower and 150 days to process all other applications. See Petition for Declaratory Ruling, 24 FCC Rcd. 13,994 (2009) (“**2009 Order**”); see also *City of Arlington v. FCC*, 668 F.3d 229, 235-36 (5th Cir. 2012), *aff’d*, 569 U.S. 290 (2013). This is commonly referred to as the “shot clock” rule.

150 days from August 19, 2021,⁵ the date the application was accepted for processing, was **January 16, 2022**, two days after the date of the Board meeting on the CDUA. Thus, allowing a contested case hearing after January 16, 2022 would be a presumptively unreasonable time to process the CDUA.

Federal law is clear that the time limitations established by the 2009 Order would include the time required to resolve any contested case hearing. See *New Cingular Wireless PCS, LLC v. Town of Stoddard*, N.H. 853 F.Supp.2d 198 (2012) (providing that the Shot Clock Ruling contemplates not just that a local government will take some action on an application within the deadline, but will resolve the application before the deadline and thus included the time for a rehearing.)

Any contested case proceeding would thus take the CDUA final approval well past the shot clock deadline. Should the Board grant the Petitioners’ request for a contested case, Verizon would then consider a request for a declaratory ruling in Federal District Court challenging the Board’s presumptive unreasonable delay.⁶

B. STATE CONSERVATION DISTRICT RULES ALSO SUPPORT DENIAL OF THE PETITIONERS’ REQUESTS FOR A CONTESTED CASE

Also note that under the Conservation District Rules, HAR § 13-5-31(c) and (d) “if within 180 days, or a time period as provided by law, after the acceptance of department’s acceptance of a completed application, and the board fails to render a decision thereon, the landowner may automatically put the land to the use or uses requested in the application, subject

⁵ It should be noted that if OCCL deemed the CDUA incomplete for any reason, in order to toll the shot clock, it must notify an applicant within 30 days of the receipt of the application that it was incomplete and what additional information should be submitted. See 2009 Order and *City of Arlington v. FCC*, 668 F.3d at 257 - 258 (In the 2009 Order, the FCC allowed for a tolling of the 150-day time frame in cases of incompleteness, but also imposed a separate time frame for state and local governments to notify applicants of incompleteness in order to prevent them from manipulating the process). At no time did OCCL notify Verizon that there were any deficiencies in the CDUA.

⁶ Per 47 U.S.C. § 332 (7)(B)(v), Verizon would have 30 days to commence the action in any court of competent jurisdiction.

however, to the condition contained in section 13-5-42 [standard conditions]”(emphasis added). Therefore, the statutory time period under HRS § 27-45(b) for the BLNR to make a decision on the CDUA applies.

C. THE PETITIONERS' FEAR OF RF EMISSIONS IS NOT GROUNDS FOR DENIAL OF A PERMIT

Additionally, it should also be noted that under 47 U.S.C. § 332(c)(7)(B)(iv), concerns regarding the environmental or health effects of radio frequency emissions cannot be the basis for the denial of a telecommunications use permit. All of the Petitioners referenced the fear of “rf radiation”, and “health concerns” of living within close range of a cell tower. As these fears cannot be the basis of a denial of a permit, as a matter of law the Petitioners' requests for a contested case should be denied. Furthermore, PDF page 3 of the Staff Submittal recommending approval of the CDUP acknowledged that the Project will operate under the FCC limits for the Project and the cumulative emissions limits for all carriers, in compliance with FCC guidelines.

D. THE DENIAL OF THE PERMIT WOULD DISCRIMINATE AGAINST VERIZON

In addition, under 47 U.S.C. § 332(c)(7)(B)(i), the Board is prohibited from regulating the placement, construction, or modification or personal wireless service facilities that prohibit or has the effect of prohibiting the provision of personal wireless services and shall not unreasonably discriminate among providers of functionally equivalent services.

As noted in the CDUA and at the Board's January 14, 2022 meeting, AT&T and Sprint already have facilities adjacent to the Project site. To deny Verizon a similar permit would be to discriminate against a provider of functionally equivalent services.

E. THE PETITIONS DO NOT COMPLY WITH THE BOARD'S RULES FOR REQUESTING A CONTESTED CASE HEARING

Under HAR § 13-1-29(b), a petition for a contested case *must* include the following:

- 1) The nature and extent of the requestor's interest that may be affected by board action on the subject matter that entitles the requestor to participate in a contested case;
- 2) The disagreement, if any, the requestor has with an application before the board;
- 3) The relief requestor seeks or to which the requestor deems itself entitled;
- 4) How the requestor's participation would serve the public interest; and
- 5) Any other information that may assist the board in determining whether the requestor meets the criteria to be a party pursuant to section 13-1-31.

None of the Petitions address or sufficiently detail items 3 and 4 above. Each of the Petitions requests that the CDUP be denied or modified, however, none of the Petitions identify what modification is requested. Furthermore, none of the Petitions detail how the Petitioners' participation in a contested case would serve the public interest.

Furthermore, each of the Petitions filed repeat nearly verbatim of the other Petitions, indicating that Petitioners stated interests in a contested case hearing are not clearly distinguishable from that of the general public.

Additionally, Petitioners have not sufficiently detailed their interests to be entitled to a contested case. Petitioners primary concerns are (1) alleged RF emissions from the Project; and (2) visual impacts. As discussed in Part C above, Petitioners' claims regarding RF emissions are without merit.

With respect to Petitioners' visual impacts claims, the CDUA and Staff Submittal recognize that visual impacts will be mitigated using an enclosure that is intended to camouflage the antennae structure to match the natural features of the surrounding area and existing antennae structures in the vicinity.

Furthermore, the Hawai'i Supreme Court has determined that aesthetic interests do not constitute a constitutionally protected "property interest" in Hawai'i. *Sandy Beach*, 70 Haw. at 377, 773 P.2d at 261 ("While we have recognized the importance of aesthetic and environmental interests in determining an individual's standing to contest the issue, we have not found that such interests rise to the level of 'property' within the meaning of the due process clause[.]") (internal citation omitted); *see also Protect and Preserve Kahoma Ahupua'a Ass'n v. Maui Planning Comm'n*, 149 Hawai'i 304, 312, 489 P.3d 408, 416 (2021) (quoting *Sandy Beach*). Because "aesthetic interests" do not constitute a constitutionally protected property interest, due process does not mandate a contested case hearing in this case.

III. CONCLUSION

For the foregoing reasons, the Petitioners are not entitled to a contested case hearing and the Petitions should be denied. Not only was the CDUA deemed approved prior to Board's January 14, 2022 meeting pursuant to State law, but under all the State of Federal rules governing the processing of this CDUA, the Board could not timely hold a contested case hearing on this matter.

Based on the foregoing, Verizon respectfully supports Staff's recommendation that the Petitioners' requests for a contested case hearing be denied.

Chairperson Suzanne D. Case and Members of the Board of Land and Natural Resources

July 20, 2022

Page 7

Sincerely,

A handwritten signature in black ink, appearing to read "Onaona P. Thoene". The signature is fluid and cursive, with a large, stylized initial "O" and a long, sweeping horizontal stroke at the end.

Katherine A. Garson

Onaona P. Thoene

cc: client

4895-0171-7290.3

BLNR has failed our community.

- Verizon cell tower application CDUA OA-3879 proposed to build a cell tower in Lanikai conservation land / OCCL area. Proposed site is very close to many homes and cell tower would be visible from most of the community including the beach and pillbox trail.
- BLNR failed to make a decision within the required 145 days and Verizon's application was automatically approved on January 12, 2022. Revised Statute 27-45 requires all cell tower applications to be processed with 145 days of application receipt. If no decision is made within the 145 days the application will be automatically approved.
- Results:
 - BLNR's negligence denied hundreds of people their legal right to give testimony and have a chance of making a difference at a viable hearing because BLNR scheduled the hearing on January 14th, 2022 two days after the Verizon application was automatically approved. This made BLNR's hearing irrelevant.
 - In addition, BLNR is now denying five residents their legal right to contest the January 14th, 2022 hearing because you cannot contest a hearing if it was not a legitimate hearing.
 - BLNR's actions got the Verizon application approved and systematically bypassed all of our residents legal rights to give testimony and have a chance to make a difference.
 - BLNR is unable to make unbiased decisions in this case due to its actions. If BLNR tries to reverse Verizon's approval, Verizon will most likely file a lawsuit.
 - BLNR's negligent actions cannot be easily reversed.
 - Our system is broken. Our laws regarding cell tower applications is heavily weighted towards the telecommunications companies and susceptible to being influenced by these large corporations. Laws needs to be revised with more oversight and community input. All applications should require city council approval.

Upon receipt of the Verizon cell tower application, BLNR was required by law to make a decision within 145 days. BLNR held a hearing on January 14, 2022, 148th day from application receipt, making their hearing and all testimony irrelevant. Verizon's application was automatically approved on the 146th day, January 12th 2022. Numerous residents gave testimony against the Verizon cell tower slated to be built in the middle of Lanikai conservation land. The Kailua Board and Lanikai Association also testified against. A petition with over 500 residents against was also presented to BLNR.

None of this mattered because the hearing was made irrelevant due to BLNR's negligence. The Verizon application had already been approved on January 12th, 2022. Five residents contested this January 14th hearing and now DLNR is trying to deny their case because they will get sued by Verizon if they try to reverse the automatic approval decision.

We are formally challenging DLNR's attempt to deny our contested case petition. We are primarily basing our position on the fact BLNR failed to have the hearing for CDUA OA-3879 within the 145 day requirement. BLNR's scheduling error has denied hundreds of people the legal right to provide testimony at a viable hearing on January 14th, 2022. BLNR's action has also denied five residents the legal right to a contested case hearing. The discussion DLNR provided in their staff report trying to diminish our claims after they rendered the hearing irrelevant is ridiculous. The issue here is that BLNR's actions have denied hundreds of people our rights and they seem to be trying to cover that up.

The following is an excerpt from Page 7 of BLNR's Staff Report for Verizon Lanikai Telecom CCOA 22-75: dated 7/22/2022

“As Verizon Wireless’ permit application under CDUA OA-3879 was accepted for processing and review by the OCCL on August 19, 2021; the 145-day review timeframe ended on January 11, 2022. Therefore, the permit was deemed approved on January 12, 2022, prior to the Board hearing and decision of permit approval by the Board on January 14, 2022. If the permit was already approved, the Board did not have jurisdiction to consider a request for a contested case hearing on January 14, 2022.

CONCLUSION

That the Board of Land and Natural Resources deny the requests for a contested case hearing regarding CDUP OA-3879 for a new telecommunication facility as the permit was deemed approved by the State on January 12, 2022, pursuant to HRS § 27-45(b). Under HRS § 27-45(c) the permit shall be issued with the language, “This is broadband-related permit issued pursuant to section 27-45, Hawaii Revised Statutes.”

In the quote above BLNR admits they had to deny our contested case hearing due to BLNR not scheduling the January 14th hearing within the required 145 days. Why was the hearing scheduled after the 145-day period? Racheal Beasley from OCCL / BLNR had discussed this 145 day requirement with us multiple times in the months prior to the January 14th hearing so they were well aware of this requirement. Whether it was intentional or pure negligence, the end result is that BLNR's actions rendered all our efforts and their January 14, 2022 hearing meaningless. Everyone that provided testimony at the January 14th hearing was denied their chance to make a difference because this hearing was made irrelevant due to BLNR's actions.

This is a problematic situation for BLNR to recover from. BLNR will be biased and need to say that the contested petitions did not meet the requirements. This way BLNR could claim the end result of their 145 day screw up would have been the same either way. I can't see how we can get an impartial hearing from BLNR.

We received notification from BLNR about a hearing to discuss this situation on July 19th, 2022 only three days prior to the hearing on July 22nd, 2022. They included a letter and a 90 page document in the email for our review. This is unacceptable. BLNR has known about this situation since January 2022 and notifies us of the situation three days before the hearing. They have been working on this for six months and hoping we won't have enough time to get our attorneys involved. We spent hundreds of hours preparing for the January 14th hearing, three days is not enough time.

We don't feel DLNR is capable of providing an unbiased consideration of our testimony and petitions in this case. If DLNR decided in our favor they will have to admit their actions caused damage and will probably be sued by Verizon. This will be difficult for DLNR to find a solution for this damage.

Our system is broken. Our laws regarding cell tower applications is heavily weighted towards the telecommunications companies and susceptible to being influenced by these large corporations. Laws needs to be revised with more oversight and community input. All applications should require city council approval.