

*** NOT FOR PUBLICATION ***

NO. 23639

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CHRISTOPHER J. YUEN, GEORGE H. ROBERTSON, and NOELIE RODRIGUEZ,
Appellants-Appellees

vs.

BOARD OF APPEALS, COUNTY OF HAWAI'I AND PLANNING DIRECTOR,
DEPARTMENT OF PLANNING, COUNTY OF HAWAI'I, Appellees

USCOC OF HAWAII 3, INC., FIRST HAWAIIAN BANK, as Trustee
for Vern Yamanaka, Inc., profit-sharing plan, DAVID W. LARSEN,
SHIRLEY A. LARSON, MARTIN ANDERSON, Appellees-Appellants

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 99-429)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Appellees-appellants USCOC of Hawaii 3, Inc., First Hawaiian Bank, as Trustee for Vern Yamanaka, Inc., profit-sharing plan, David W. Larsen, Shirley A. Larsen, and Martin Anderson [hereinafter, collectively "US Cellular"] appeal from the May 22, 2000 judgment of the circuit court of the third circuit, the Honorable Greg K. Nakamura presiding, reversing the final decision and order of the Board of Appeals.

On appeal, US Cellular's points of error are as follows: (1) "The Circuit Court Erred in Holding that the Board of Appeals Determined 'that the Department cannot consider the preservation of natural features having community value as a factor in deciding whether to grant, deny or grant with condition plan approval;'" (2) "The Circuit Court Erred in Holding that the Board of Appeals 'concluded that the Department must not consider statements regarding natural beauty contained in the General Plan, its Support Document and the NEHCDP in deciding whether to

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grant, deny or grant with conditions plan approval;” (3) “The Circuit Court Erred in Holding that HCC § 25-2-76(7) is Sufficiently Specific to Provide Adequate Guidance to the Planning Department to Identify Natural Features of Community Value That are to Be Preserved;” (4) “The Circuit Court Erred in Holding that Consideration of the General Plan, in the Absence of any Enabling Ordinances, is not Arbitrary and Capricious when the General Plan Only Contains Broad, Hortatory Statements;” and (5) “The Circuit Court Erred in Directing the Planning Department to Rely Upon the NEHCDP, Which Was Promulgated Before the Current General Plan was Adopted and Was Based on a Prior General Plan That Has Since Been Repealed.” In addition, US Cellular, in its argument section, contends that “[t]he Federal Telecommunications Act of 1996 Precludes the Planning Department from Formulating New ‘Rules’ that May Operate to Deny Plan Approval for the Nīnole Tower After Plan Approval Has Been Requested.” Yuen argues, as a threshold matter, that this court lacks jurisdiction over this case.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that: (1) this court has jurisdiction over this case, inasmuch as the circuit court entered a final judgment and US Cellular timely appealed, see HRS § 641-1(a); (2) the circuit court’s conclusions were not erroneous, inasmuch as the Board of Appeals erred by entering conclusions of law (COL) nos. 13 and 14, see Hawai‘i County Code (HCC) §§ 25-2-75(c), 25-2-76(a)(7), 25-1-2(a), 25-2-70, and GATRI v. Blane, 88 Hawai‘i 108, 962 P.2d 367 (1998); (3) the provisions of the General Plan are sufficiently specific to be enforced, inasmuch as the General Plan’s policies regarding areas of natural beauty lists as an example Maulua Gulch; and (4) the circuit court did not direct the Department to engage in illegal rule-making, see HCC §§ 25-1-2(a), 25-2-70, and 25-2-

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76(a)(7). We further hold that US Cellular waived its point of error that the circuit court erred in directing the planning department to rely upon the NEHCDP, inasmuch as it violated Hawai'i Rules of Appellate Procedure (HRAP) Rule 28(b)(7), and waived its argument that the Federal Telecommunications Act of 1996 precludes new rules, inasmuch as it violated HRAP Rule 28(b)(4). Therefore,

IT IS HEREBY ORDERED that the judgment from which the appeal is taken is affirmed.

DATED: Honolulu, Hawai'i, July 20, 2004.

On the briefs:

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Hawaiian Bank, as Trustee for
Vern Yamanaka, Inc. profit-
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