

NO. 22984

IN THE SUPREME COURT OF THE STATE OF HAWAII

ERIC WOLF, Plaintiff-Appellant

vs.

HAWAII COUNTY COUNCIL, COUNTY OF HAWAII PLANNING DEPARTMENT,
PLANNING COMMISSION, FRED GALDONES¹, as Chair, and AINALOA
DEVELOPMENT CORP., Defendants-Appellees

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 99-6)

SUMMARY DISPOSITION ORDER

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

Defendant-appellant Eric Wolf (Wolf) appeals from the (1) September 7, 1999 decision and order, and (2) October 21, 1999 final judgment, of the circuit court of the third circuit, the Honorable Riki May Amano presiding, affirming the Hawai'i County Planning Commission's (Planning Commission) decision to amend the conditions of Ainaloa Development Corporation's (Ainaloa Development) Use Permit No. 106 (Use Permit) and Special Permit No. 827 (Special Permit) [hereinafter, collectively "the permits"] by extending the period of time within which Ainaloa Development was required to secure Final Plan Approval. On appeal, Wolf argues that the circuit court erred in ruling that "[t]he \$100 fee required by [Hawai'i County Rules of Practice and Procedure] HCRPP Rule 4-7(a) is [a] reasonable fee which accommodates administrative costs for an elective procedure,"

¹The party has been substituted pursuant to HRAP Rule 43(c) (1).

inasmuch as the filing fee amounts to an unconstitutional capitation or poll tax. In support of his contention, Wolf presents three arguments. First, Wolf maintains that, because the contested case hearing before the Planning Commission had a direct effect on his life or property, he had standing to participate as a party in the contested case proceeding. Next, Wolf argues that the \$100 filing fee constitutes an unauthorized tax, inasmuch as it could be reallocated and no controls for the possibility of potential refunds are in place, i.e., escrow accounting. Lastly, Wolf contends that, because the \$100 filing fee fails to meet the three-prong test established under State v. Medeiros, 89 Hawai'i 361, 973 P.2d 736 (1999), to determine whether a charge is a fee or a tax, it is a tax.

Upon carefully reviewing the record and the briefs submitted and having given due consideration to the issues raised and arguments advanced, we hold that: (1) Wolf had standing as an interested party, inasmuch as Wolf, a surrounding property owner, had a personal stake in the outcome of the present hearing before the Planning Commission, see Sierra Club v. Hawai'i Tourism Auth., 100 Hawai'i 242, 885 P.3d 877 (2002); Mottl v. Miyahira, 95 Hawai'i 381, 23 P.3d 716 (2001); Bush v. Watson, 81 Hawai'i 474, 918 P.2d 1130 (1996); (2) the \$100 filing fee was not an unauthorized tax, inasmuch as (a) Wolf was a beneficiary of the Planning Commission's service, (b) the \$100 filing fee was directly allocated to defray the costs incurred in conducting a contested case hearing, and (c) the \$100 filing fee was reasonably proportionate to the benefit received, see State v.

Medeiros, 89 Hawai'i at 367, 973 P.2d at 742; and (3) Wolf's failure to pay the \$100 filing fee precluded him from intervening in the present hearing. Accordingly, to the extent the circuit court ruled that the present proceeding before the Planning Commission did not have a direct effect on Wolf's life or property, the circuit court was wrong. However, in all other respects, the circuit court did not err in ruling that the \$100 filing fee required by HCRPP Rule 4-7(a) was a reasonable fee which accommodates administrative costs for intervention in a contested case hearing before the Planning Commission.

Therefore,

IT IS HEREBY ORDERED that the circuit court's decision and order, and final judgment, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, March 9, 2004.

On the briefs:

Eric Wolf, plaintiff-
appellant pro se

Frederick Giannini,
Deputy Corporation Counsel,
for defendant-appellee
County of Hawai'i