

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
April 14, 2023

The County of Hawai‘i Board of Appeals met in regular session at 9:31 a.m in the West Hawai‘i Civic Center Council Chambers, Building A, at 74-5044 Ane Keohokālole Highway, Kailua-Kona, HI 96740 and via the Zoom online platform. The meeting was called to order with Chair Stacey Aguiar presiding. A quorum was established with four members in attendance.

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/live/ckfmvpJymNs?feature=share>

MEMBERS PRESENT: Stacey Aguiar (Chair), Richard “Ritchie” Henderson (Vice Chair), Scott Martin, and Daina “Noe” Saiki.

MEMBERS EXCUSED: Mattson Davis

ALSO IN ATTENDANCE: Sherilyn Tavares, Esq. (Deputy Corporation Counsel for the Board); April Surprenant (Staff to the board); Kim Tanaka (Board Secretary).

There were approximately 13 members of the public in attendance.

Chair Aguiar called the meeting to order and reviewed online meeting protocols and procedures. Introductions of board members in attendance were made, and Chair provided the names of members who were recused. Staff introductions were also made.

STATEMENTS FROM THE PUBLIC ON ITEMS ON THE AGENDA

At 9:34 a.m., Chair Aguiar called for statements from the public. Three members of the public provided verbal testimony: John Float, Kayla Turpin, and Geoffrey Newlon.

[SEE HEARING TRANSCRIPT – EXHIBIT A]

OLD BUSINESS

1. LAWRENCE FORD, ET AL (PL-BOA-2022-000020)

Order Granting Summary Judgement Related to Appeal of Decision by the Planning Director Dated February 15, 2022, Regarding Complaint of Operating a Short-Term Vacation Rental Without Permits in an Agricultural Project District.

Location: 81-905 Makahiki Lane, Captain Cook, HI 96704

TMK: (3) 8-1-009:044-0000

PARTIES PRESENT: Michael Matsukawa (appellant representative), Patrick Wong (landowner representative via Zoom), and Suzanna Tiapula (Deputy Corporation Counsel for the Department of Public Works via Zoom)

This item was called to order at 9:46 a.m. There were approximately 20 members of the public in attendance.

Board Member Saiki motioned to deny the Appellant's Motion for Leave to Supplement Appellants' Objections to Landowner's Proposed Order for Summary Judgment filed on February 15, 2023, which includes the filing titled *Appellants' Exhibit 3* based on the Board of Appeal's rules 1-6 and 3-20, as the board cannot reconsider its decision. The motion was seconded by Board Member Henderson. Members provided no discussion on the matter. A roll-call vote was taken, and the motion passed with four ayes (Saiki, Henderson, Martin, Aguiar), and no noes.

Board Member Martin motioned to deny the late filing by appellant, Mr. Koszarek, via email. The motion was seconded by Board Member Saiki. Members provided no discussion on the matter. A roll-call vote was taken, and the motion passed with four ayes (Martin, Saiki, Henderson, Aguiar), and no noes.

Board Member Saiki motioned to adopt the Proposed Order Granting Landowner Ryan A. Neal and Beata M. Zanone's Motion for Summary Judgment as filed by landowners on January 5, 2023. The motion was seconded by Board Member Henderson. Members provided no discussion on the matter. A roll-call vote was taken, and the motion passed with four ayes (Saiki, Henderson, Martin, Aguiar), and no noes.

This item concluded at 9:56 a.m.

[SEE HEARING TRANSCRIPT – EXHIBIT B]

2. WILLIAM ROBERT GAGE & REBECCA S. GAGE (PL-BOA-2022-000021)

Order Granting Summary Judgement Related to Deny Appeal of Decision by the Planning Director Dated February 15, 2022, Regarding Complaint of Operating a Short-Term Vacation Rental Without Permits in an Agricultural Project District.

Location: 81-905 Makahiki Lane, Captain Cook, HI 96704

TMK: (3) 8-1-009:044-0000

PARTIES PRESENT: William Gage (appellant), Patrick Wong (landowner representative via Zoom), and Suzanna Tiapula (Deputy Corporation Counsel for the Department of Public Works via Zoom)

This item was called to order at 9:57 a.m. There were approximately 20 members of the public in attendance.

Board Member Henderson moved to adopt the Proposed Order Granting Landowners Ryan A. Neal and Beata M. Zanone's Motion for Summary Judgment as filed by landowners on January 5, 2023. The motion was seconded by Board Member Martin. Members provided no discussion on the matter. A roll-call vote was taken, and the motion passed with four ayes (Henderson, Martin, Saiki, Aguiar), and no noes.

This item concluded at 10:01 a.m.

[*SEE HEARING TRANSCRIPT – EXHIBIT C*]

NEW BUSINESS

3. 88-129 KAI LLC (PL-BOA-2022-000048)

Appeal of Decision by the Director of Public Works Dated October 6, 2022, Regarding Revocation of Building Permit (BK2020-00049).

Location: 88-129 Kai Avenue, Captain Cook, HI 96704

TMK: (3) 8-8-005:101-0000

PARTIES PRESENT: Shahzaad Ausman (appellant), Christy Logan (appellant representative), and Sinclair Salas-Ferguson (Deputy Corporation Counsel for the Department of Public Works), and Steve Pause, Director of Public Works.

This item was called to order at 10:02 a.m. There were approximately 13 members of the public in attendance.

Ms. Logan, representative for appellant, provided her opening statement. [*YOUTUBE TIMESTAMP 35:53*]

Mr. Salas-Ferguson, Deputy Corporation Counsel for the Department of Public Works provided his opening statement. [*YOUTUBE TIMESTAMP 37:40*]

At 10:13 a.m., following the opening statements, Ms. Logan called her first witness, Shahzaad Ausman, landowner. Mr. Salas-Ferguson followed up with his questions for the witness. [*YOUTUBE TIMESTAMP 44:26*]

Ms. Logan's second witness was called at approximately 10:42 a.m., Mr. Douglas Petersen, who attended the hearing via Zoom. Mr. Peterson reported that he sold the property to Mr. Ausman. Ms. Logan questioned her witness and Mr. Salas-Ferguson cross-examined. [*YOUTUBE TIMESTAMP 1:13:39*]

At 10:59 a.m., Ms. Logan called upon her third witness, Mr. Walter Fullerton, a licensed architect. Ms. Logan questioned her witness and Mr. Salas-Ferguson cross-examined. [*YOUTUBE TIMESTAMP 1:30:06*]

Ms. Logan's fourth witness, Mr. Bill McCowatt was called to the stand at 11:25 a.m. Ms. Logan questioned her witness and Mr. Salas-Ferguson cross-examined. [*YOUTUBE TIMESTAMP 1:56:22*]

Chair Aguiar requested a half-hour lunch recess. Board Member Saiki motioned to take a recess. The motion was seconded by Board Member Henderson, and an all-in favor "aye" vote was taken. The Board recessed at 11:45 a.m. and reconvened at 12:21 p.m.

There were six members of the public in attendance.

Ms. Julann Sonomura, DPW Building Division Chief, was called as a witness by Ms. Logan at 12:21 p.m. Ms. Logan questioned her witness and Mr. Salas-Ferguson cross-examined. [YOUTUBE TIMESTAMP 2:53:21]

At 1:22 p.m., Ms. Logan called her next witness, Wayne Saiki. Ms. Logan questioned her witness and Mr. Salas-Ferguson cross-examined. [YOUTUBE TIMESTAMP 3:53:12]

At 1:34 p.m., Mr. Salas-Ferguson requested a short break. Chair Aguiar granted the request and the meeting resumed at 1:40 p.m.

Mr. Salas-Ferguson called his first witness, Stephen Pause, Director of the Department of Public Works, at 1:40 p.m. Mr. Salas-Ferguson questioned his witness and Ms. Logan cross-examined. [YOUTUBE TIMESTAMP 4:11:41]

Mr. Salas-Ferguson called upon his second witness, Building Deputy Chief, Kelly Wilson at 2:03 p.m. Mr. Salas-Ferguson questioned his witness and Ms. Logan cross-examined. [YOUTUBE TIMESTAMP 4:32:46]

At 2:20 p.m., Ms. Logan asked to recall Mr. Ausman to the stand. Chair Aguiar allowed an additional five minutes for questioning. [YOUTUBE TIMESTAMP 4:50:50] Mr. Wayne Saiki was called back to the stand to provide clarification of permanent electrical service.

Chair Aguiar called for closing arguments at 2:27 p.m., beginning with Ms. Logan, followed by Mr. Salas-Ferguson. [YOUTUBE TIMESTAMP 4:58:52]

Chair Aguiar read into the record public testimony dated April 10, 2023, from John Kelly. [YOUTUBE TIMESTAMP 5:05:10]

Board Member Henderson motioned to uphold the Director's decision to revoke the building permit. Board Member Martin seconded. Chair Aguiar asked for discussion on the matter. Board Member Henderson provided a brief statement. A roll call vote was taken, and the vote passed unanimously with four ayes (Henderson, Martin, Saiki, and Aguiar). [YOUTUBE TIMESTAMP 5:08:31]

Chair Aguiar asked Mr. Salas-Ferguson to prepare the Findings of Fact, Conclusions of Law, Decision and Order for all parties, within 15 days of this hearing. Parties will have 15 days to accept or submit a rebuttal from the time they receive the order from Mr. Salas-Ferguson.

This matter concluded at 2:40 p.m.

MINUTES

A motion was made by Board Member Henderson to approve the hearing minutes of January 13, 2023, as circulated. The motion was seconded by Board Member Saiki. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

ADMINISTRATIVE MATTERS

Elections of Officers of 2023

Board Member Henderson moved to open the floor for nominations. Board Member Saiki seconded the motion. A vote was taken and passed unanimously with four ayes (Henderson, Saiki, Martin, Aguiar).

Board Member Saiki nominated Stacey Aguiar for the position of Chair for the year 2023. Board Member Henderson seconded the motion. Chair Aguiar called for discussion. She accepted the nomination. A roll call vote was taken and passed unanimously with four ayes (Saiki, Henderson, Martin, Aguiar).

Chair Aguiar nominated Ritchie Henderson for Vice Chair. Board Member Martin seconded. Chair Aguiar called for discussion. Board Member Henderson accepted the nomination. A roll call vote was taken and passed unanimously with four ayes (Aguiar, Martin, Henderson, and Saiki).

Status of appeals filed on Board of Appeals decisions – Corporation Counsel

No report provided.

Status of outstanding petitions – Staff

Ms. Surprenant reported that there are no cases scheduled for May, but they may hear the findings of facts for the case heard at this hearing. June currently has two cases scheduled, but both have been in settlement discussions.

ANNOUNCEMENTS

Chair Aguiar announced that the Board of Appeals Rules and Regulations need to be reviewed for updates. She asked for a motion to get it on the May agenda. Board Member Saiki moved to add the Board of Appeals Rules of Practice and Procedure to the next agenda for review. The motion was seconded by Board Member Martin. No discussion occurred. A roll call vote was taken, which passed unanimously with four ayes (Saiki, Martin, Henderson, Aguiar).

Chair Aguiar proposed a new hearing date of June 16 due to conflicts in schedules. Board Member Saiki moved to set the June hearing date to June 16, 2023. The motion was seconded by Board Member Martin. No discussion occurred. A roll call vote was taken, which passed unanimously with four ayes (Saiki, Martin, Henderson, Aguiar).

The next meeting will be held on May 12, 2023.

ADJOURNMENT

It was moved by Mr. Henderson and seconded by Ms. Saiki to adjourn the meeting. An all-in-favor voice vote carried the motion unanimously.

The meeting adjourned at 2:48 p.m.

Respectfully Submitted,

Kim Tanaka, Board Secretary

A T T E S T :

Stacey Aguiar, Chair
Board of Appeals