

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
May 12, 2023

The County of Hawai‘i Board of Appeals met in regular session at 9:32 a.m in the County of Hawai‘i Planning Department Conference Room, 101 Pauahi Street, Hilo, Hawai‘i 96720, 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/XX7ser-nZO?feature=share>

MEMBERS PRESENT (in person): Stacey Aguiar (Chair) and Scott Martin.

MEMBERS PRESENT (via Zoom): Richard “Ritchie” Henderson (Vice Chair) and Daina “Noe” Saiki.

MEMBERS EXCUSED: None.

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

There were no members of the public in attendance.

Chair Aguiar reviewed online meeting protocols and procedures. Introductions of board members and staff were made.

STATEMENTS FROM THE PUBLIC ON ITEMS ON THE AGENDA

At 9:35 a.m., Chair Aguiar called for statements from the public. There were no members of the public in attendance to provide testimony.

OLD BUSINESS

1. 88-129 KAI LLC (PL-BOA-2022-000048)

Findings of Fact, Conclusions of Law, Decision and Order to Deny 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) via Zoom audio, Christy Logan (appellant representative), and Sinclair Salas-Ferguson (Deputy Corporation Counsel for the appellee, Department of Public Works).

This item was called to order at 9:35 a.m. There were no members of the public in attendance.

The Board received two documents from the parties: Findings of Fact, Conclusions of Law, and Decision and Orders from the Director of Public Works; and Concurring Findings of Fact, Conclusions of Law, and Decision and Order from the appellant.

Chair Aguiar reminded members that the Board may not reconsider its actions in any contested case hearing after the effective date of the Board's decision.

Chair Aguiar allowed both parties a moment to provide comments on the proposed documents. [SEE YOUTUBE TIMESTAMP 7:31]

A motion was made by Board Member Martin to adopt the appellee's findings of facts with their amendments for clarification. Board Member Saiki seconded. [SEE YOUTUBE TIMESTAMP 17:16]

Pursuant to HRS §92-5(a)(4) Board Member Henderson motioned for executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. The motion was seconded by Board Member Saiki and passed unanimously with an aye voice vote.

The Board entered into executive session at 9:51 a.m. and returned to full session at 10:10 a.m.

Chair Aguiar reminded participants that there is a motion on the table to adopt the Department's Findings of Fact, Conclusions of Law, Decision and Order. Board Member Martin moved to withdraw his previous motion. Board Member Saiki seconded. A roll call vote was taken and passed unanimously (Martin, Saiki, Henderson, Aguiar). [SEE YOUTUBE TIMESTAMP 39:27]

Board Member Henderson motioned to adopt the following hybrid Findings of Fact, Conclusions of Law, Decision and Order. [SEE YOUTUBE TIMESTAMP 40:33]

From the Director's proposed document, Findings of Fact:

1, 2, 3, and 4.

6. With an amendment to delete the period and add a comma and the words "as to the 1987 permit" after "DPW."

7. Amended to read, "On January 8, 2020, the new owner of the Property, Douglas Peterson, was issued a building permit to alter an add to the Structure, identified as building permit BK2020-00049 ("2020 Permit").

8. Amended to read, "The building permit application for the 2020 Permit did not indicate that the 1987 Permit was expired, had received any inspections, or that it received final approval."

9 and 10. Amend to add, with the 2020 permit from Mr. Peterson, at the end of the sentence.

11. Amended to add stating that, Permit number BK2020-00049 for the alterations was issued in error since the reference Permit number 872263 was not granted a permit extension by the June 1, 2022, deadline, at the end of the sentence.

12 and 13.

14. Striking everything after the word “issued.”

From the appellant’s proposed document, Findings of Fact:

21.

From the Appellant's Conclusions of Law:

1, 2, 3, 4, 5, and 6. Amended to read DPW has the authority to revoke or suspend any permit when issued in error on the basis of incorrect information supplied or in violation of the construction code, any permit or variance issued pursuant to the construction code, or other applicable law. HCC §5-5-1(d)(2).

7, 9, and 10.

From the Director’s Conclusions of Law:

7.

Mr. Henderson also added the following to the Findings of Fact:

1. The line on the 1987 permit for Plumbing Contractor states “Later.”
2. The line on the 1987 permit for Electrical Contractor states “No Electricity.”
3. Mr. Peterson testified that that he knew that the 1987 Permit was never finalized and remains incomplete.
4. Mr. Peterson testified that he never discussed the 1987 Permit with the appellant.
5. At no time did any of the property’s owners apply to extend the deadline of the 1987 Permit.

The motion was seconded by Board Member Saiki. Chair Aguiar called for discussion. Hearing none, she called for a roll-call vote. The motion passed unanimously (Henderson, Saiki, Martin, Aguiar). [*SEE YOUTUBE TIMESTAMP 44:38*]

Chair Aguiar asked the Board’s attorney to draw up the modified Findings of Fact, Conclusions of Law, Decision and Order for issuance to both parties.

This matter concluded at 10:17 a.m.

2. BOARD OF APPEALS RULE AMENDMENT (BOA-21-000299)

Discussion about potential rule amendments in accordance with Rule 5 of the Board of Appeals' Rules of Practice and Procedure and Hawaii Revised Statutes Chapter 91. The Board may consider and/or vote on creating a related permitted interaction group.

This item was called to order at 10:18 a.m. There were no members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 46:32*]

Chair Aguiar announced that HRS §92-2.5 permits the board to create a Permitted Interaction Group. The process to update the rules began in 2021, but it was not finalized. She opened the floor for thoughts or suggestions from board members.

To work on the amendments without time constraints and the ability to perform due diligence, a committee can be formed, and work can be done outside of a formal hearing. Findings and recommendations will be presented to the full board for discussion.

Board Member Henderson motioned to consider a Permitted Interaction Group of two or more members, but less than quorum to review the rules and policies of the Board of Appeals. Board Member Saiki seconded the motion. Board Member Saiki volunteered to participate in the subcommittee, as did Chair Aguiar. *[SEE YOUTUBE TIMESTAMP 49:56]* A roll-call vote was taken, and the motion passed unanimously (Henderson, Saiki, Martin, Aguiar).

After a brief discussion confirming the allowed number of participants in the subcommittee, Board Member Henderson volunteered to participate in the Permitted Interaction Group. *[SEE YOUTUBE TIMESTAMP 51:38]*

The expectation of the subcommittee is to review and recommend an amended document for presentation to the full board for discussion in a regular, open-session meeting. Board Member Henderson motioned that the purpose of the Permitted Interaction Group is to review and propose updates to the current rules, which will be shared as a recommendation for rule change to the Board. The motion was seconded by Board Member Martin. No discussion by board members offered. A roll-call vote was taken and passed unanimously (Henderson, Martin, Saiki, Aguiar). *[SEE YOUTUBE TIMESTAMP 54:24]*

This matter concluded at 10:29 a.m.

MINUTES

A motion was made by Board Member Henderson to approve the hearing minutes of April 14, 2023, as circulated. The motion was seconded by Board Member Saiki. No discussion offered by board members. An all-in favor vote was taken, and the motion passed unanimously.

ADMINISTRATIVE MATTERS

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 June. There are five currently scheduled for July.

ANNOUNCEMENTS

Ms. Tavares announced that there are three nominations moving forward and potentially all board vacancies will be filled in July.

The next meeting will be held on July 14, 2023.

ADJOURNMENT

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

The meeting adjourned at 10:32 p.m.

Respectfully Submitted,

Kim Tanaka, Board Secretary

A T T E S T :

Stacey Aguiar, Chair
Board of Appeals