

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
October 13, 2023

The County of Hawai‘i Board of Appeals met in regular session at 9:32 a.m. in the West Hawai‘i Civic Center County Council Chambers, Building A, 74-5044 Ane Keohokalole Highway, Kailua-Kona, Hawai‘i 96740, and via the Zoom online platform. The meeting was called to order with Vice Chair Richard Henderson presiding. A quorum was established with five members in attendance.

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/watch?v=8WWRcR9ASgk>

MEMBERS PRESENT (in person): Cathy Lewis, Scott Martin, and Lisa McNamarra.

MEMBERS PRESENT (via Zoom): Richard “Ritchie” Henderson (Vice Chair) and Scott Trefethen.

MEMBERS EXCUSED: Stacey Aguiar (Chair) and Daina “Noe” Saiki.

ALSO IN ATTENDANCE: Sherilyn Tavares, Esq. (Deputy Corporation Counsel for the Board); April Surprenant (Staff to the Board); Ashley DeVera (Staff to the Board); Janice Hata (Staff to the Board).

There were no members of the public in attendance.

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

STATEMENTS FROM THE PUBLIC ON ITEMS ON THE AGENDA

At 9:34 a.m., Vice Chair Henderson called for statements from the public. There were no members of the public in attendance to provide testimony.

OLD BUSINESS

1. BOA-21-000299 – COMPREHENSIVE REVIEW OF BOA RULES OF PRACTICE AND PROCEDURES AND PROPOSED AMENDMENTS

The Board of Appeals passed a motion to initiate rule amendment proceedings at its hearing on July 9, 2021, in accordance with Hawai‘i County Board of Appeals Rules of Practice and Procedure, Rule 5 Rulemaking Procedures. The proposed amendments include a comprehensive review and update to provide more consistency and adherence to related statutes and codes. Further in accordance with Hawai‘i Revised Statutes 92-2.5, the Board created a Permitted Interaction Group at its May 12, 2023, hearing to review the rules and make recommendations to the Board. The Permitted Interaction Group provided a summary

report of its findings at the September 14, 2023, hearing. The Board will review and deliberate the draft rule amendments for (possible) adoption.

This item was called to order at 9:36 a.m. There were no members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 11:42*] Vice Chair Henderson requested a motion to have an open discussion on the permitted interaction group report. Ms. Lewis motioned, and Mr. Trefethen seconded. An all-in-favor voice vote carried the motion unanimously.

[*SEE YOUTUBE TIMESTAMP 13:09*] Ms. Tavares recommended discussion section by section. Part 1 General Rules, Ms. Lewis mentioned (e) Executive Meetings language to be consistent throughout the rules, no other comments were mentioned.

[*SEE YOUTUBE TIMESTAMP 22:47*] Moved onto Part 2 Proceedings Before the Board General Requirements, Ms. Lewis requested “themselves” to be consistent throughout the rules.

[*SEE YOUTUBE TIMESTAMP 24:47*] Moved onto Part 3 Contested Case Procedure, Ms. McNamarra mentioned section 3-2 Notice of Hearing regarding the publication in the newspapers. Mr. Martin is concerned about internet access for some communities. All board members agreed and accepted the removal of the newspaper publication. Ms. McNamarra questioned section 3-16 Presentation of Evidence, if one hour is ample for presentations. Vice Chair Henderson clarified the Chair would be able to grant additional time. In section 3-14 Briefs, Ms. Lewis mentioned the rules should clarify twenty pages, double spaced, and twelve-point font.

[*SEE YOUTUBE TIMESTAMP 41:36*] Moved onto Part 4 Posting Hearing Procedure for Hearings Conducted by Hearing Officer. Ms. Lewis discussed hearing officer selection and appointment. Ms. Surprenant mentioned procurement through professional services to seek a qualified individual.

[*SEE YOUTUBE TIMESTAMP 45:02*] Moved onto Part 5 Rulemaking Procedures. Ms. McNamarra mentioned concerns with section 5-2, issue with notice of public hearing in the newspapers.

[*SEE YOUTUBE TIMESTAMP 50:33*] Moved onto Part 6 Declaratory Rulings. Mr. Martin questioned board action from sixty (60) to one hundred twenty (120) days. Vice Chair Henderson clarified to be consistent with other petition submissions and to allow additional time for scheduling the hearings.

[*SEE YOUTUBE TIMESTAMP 52:19*] Moved onto Part 7 Variances. Ms. McNamarra was concerned with the notice to surrounding property owners for agricultural use lands that five hundred (500) feet is not adequate for larger parcels and should include notification to the homeowner’s association and increase it to one thousand (1,000) feet. Ms. Tavares mentioned the rationale for the notice is in the Hawaii County Code 25-2-4. Ms. Tavares will research the notification to surrounding property owners and the twenty (20) days prior to the hearing date and will draft a memo to the board with her findings prior to finalizing the rules. Ms. Lewis mentioned section 7-11, the effective date should be defined earlier in the rules.

[*SEE YOUTUBE TIMESTAMP 1:12:02*] Moved onto Part 8 Appeals. Ms. McNamarra recommended notice to surrounding property owners, prior to the hearing date, should be thirty (30) days instead of twenty (20) days. Vice Chair Henderson clarified that Ms. Tavares will provide that in her research.

This item concluded at 10:43 a.m.

[*SEE YOUTUBE TIMESTAMP 1:18:00*] Vice Chair Henderson re-opened statements from the public. One member of the public provided verbal testimony: Claudia Rohr. At 10:49 a.m., Vice Chair Henderson closed public testimony.

[*SEE YOUTUBE TIMESTAMP 1:24:13*] Ms. Tavares mentioned since the permitted interaction group presented the updated rules to the board and had an open discussion, the staff will prepare a final draft of all the recommendations and comments in Ramseyer's format. It will be distributed to all board members and posted online prior to our next scheduled hearing for final approval and discussion. Ms. Tavares's research will be included and there will be another opportunity for public testimony.

ADJOURNMENT

Vice Chair Henderson requested a motion to conclude the hearing. It was moved by Mr. Martin and seconded by Ms. McNamarra to adjourn the meeting. An all-in-favor voice vote carried the motion unanimously. [*SEE YOUTUBE TIMESTAMP 1:26:05*]

The meeting was adjourned at 10:51 a.m.

Respectfully Submitted,

Ashley DeVera, Staff to the Board

A T T E S T :

Stacey Aguiar, Chair
Board of Appeals