

BOARD OF APPEALS
COUNTY OF HAWAI'I

MINUTES
November 17, 2023

The County of Hawai'i Board of Appeals met in regular session at 9:35 a.m. in the Hawai'i County Council Chambers, 25 Aupuni 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 seven members in attendance. [*SEE YOUTUBE TIMESTAMP 4:18*]

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/watch?v=c2I93SC9pdY>

MEMBERS PRESENT (in person): Stacey Aguiar (Chair), Richard "Ritchie" Henderson (Vice Chair), Cathy Lewis, Scott Martin, Lisa McNamarra, Scott Trefethen, 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).

There were approximately ten 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 9:37 a.m., Chair Aguiar called for statements from the public. There were seven members of the public in attendance to provide testimony:

Ryan Nichols [*SEE YOUTUBE TIMESTAMP 7:24*]

Robert Silber [*SEE YOUTUBE TIMESTAMP 10:00*]

Carrie Fischer [*SEE YOUTUBE TIMESTAMP 14:53*]

Kaliko Kanaile [*SEE YOUTUBE TIMESTAMP 18:15*]

Tomas Mendola [*SEE YOUTUBE TIMESTAMP 21:23*]

Stephen Hill [*SEE YOUTUBE TIMESTAMP 22:58*]

Juan Pablo Mendoza [*SEE YOUTUBE TIMESTAMP 1:01:58*]

Testimony closed at 9:58 a.m.

NEW BUSINESS

1. ROBERT SILBER (BOA-20-000241)

Appeal of Planning Director's Notice of Violation and Order (ZCV-2017-007E) Dated December 5, 2019

Location: 13-2060 Lolua Place, Pāhoa, HI 96778

TMK: (3) 1-3-002:140

PARTIES PRESENT: Robert Silber (appellant), Jean Campbell (Deputy Corporation Counsel for the Planning Department), and Jeffrey Darrow (Deputy Planning Director).

This item was called to order at 9:59 a.m. There were approximately ten members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 30:15*] Chair Aguiar questioned Mr. Silber regarding the surrounding property owner notification. Mr. Silber mentioned his legal team and consultants did not provide the notice.

[*SEE YOUTUBE TIMESTAMP 35:39*] Ms. Campbell provided to the appellant and the board a motion to dismiss for lack of prosecution. Mr. Silber responded that he retained counsel and consultants, responded to the notice of violation, and then lost counsel. Chair Aguiar stated that Mr. Silber had three months to find new representation prior to the pre-hearing in October.

[*SEE YOUTUBE TIMESTAMP 50:03*] Vice Chair Henderson motioned to adopt the appellee's motion to dismiss for the lack of prosecution. Board Member Saiki seconded the motion. A roll call vote was taken, and the motion passed with seven aye votes (Henderson, Saiki, Lewis, Martin, McNamarra, Trefethen, Aguiar).

[*SEE YOUTUBE TIMESTAMP 51:57*] Chair Aguiar requested Ms. Campbell to submit the order granting the motion.

This item concluded at 10:25 a.m.

2. ELLIOT FABRI (PL-BOA-2023-000066)

Appeal of Decision by the Planning Director Dated January 23, 2023, Regarding Notice of Violation and Order (PL-PCV-2022-00235) Relating to Unpermitted Events, Retreat Center/Activity, Church Practice and Renting Cabins

Location: Noni Farms Road, Puna, HI

TMK: (3) 1-4-020:007

PARTIES PRESENT: Elliot Fabri (appellant), Jean Campbell (Deputy Corporation Counsel for the Planning Department), and Zendo Kern (Planning Director).

This item was called to order at 10:37 a.m. There were approximately ten members of the public in attendance.

[SEE YOUTUBE TIMESTAMP 1:07:13] Chair Aguiar questioned Mr. Fabri regarding the surrounding property owner notification. Mr. Fabri did not have legal representation and did not provide the notice.

[SEE YOUTUBE TIMESTAMP 1:11:47] Ms. Campbell provided to the appellant and the board a motion to dismiss for lack of prosecution and requested an immediate dismissal or continuance of this hearing to the next hearing date and the original scheduling hearing remain in place.

At 10:50 a.m. the board took a short recess, and the meeting was called back to order at 10:55 a.m.

[SEE YOUTUBE TIMESTAMP 1:23:58] Mr. Fabri requested a continuance of the hearing to send out the proper notification to surrounding property owners and objected to the department's request to not allow time extension to submit additional evidence.

[SEE YOUTUBE TIMESTAMP 1:29:07] Vice Chair Henderson motioned to accept the appellee's motion to dismiss for lack of prosecution and amended the motion to prepare for the hearing on December 8, 2023, and if the appellant does not prepare for the hearing, then the order will be effective to be dismissed. Board Member Trefethen seconded the motion. Chair Aguiar clarified the motion to reschedule the hearing to December 8, 2023, no other filing of documents, and the notice to surrounding property owners would need to be completed by tomorrow. A roll call vote was taken, and the motion passed with seven aye votes (Henderson, Trefethen, Lewis, Martin, McNamarra, Saiki, Aguiar).

[SEE YOUTUBE TIMESTAMP 1:37:50] Chair Aguiar requested Ms. Campbell to prepare the order granting the motion.

This item concluded at 11:09 a.m.

MINUTES

A motion was made by Vice Chair Henderson to approve the hearing minutes of May 12, 2023, as circulated. The motion was seconded by Board Member Martin. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

A motion was made by Board Member Saiki to approve the rulemaking hearing minutes of September 14, 2023, and October 13, 2023, as circulated. The motion was seconded by Vice Chair Henderson. No discussion occurred. 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

Ms. Tavares reported one appeal for Douglas Dierenfield has been remanded back to the Board for a full contested case hearing on January 12, 2024. Judge Kim remanded the case due to prematurely appealing to the Circuit Court. The pre-hearing conference is scheduled for December.

Status of outstanding petitions – Staff

Ms. Surprenant reported in December the rule amendments are the on agenda under old business and the Ramseyer version was posted for the public to view. There are two cases for December 8, 2023, Christine Bailey and Elliot Fabri.

ADJOURNMENT

Board Member Lewis motioned to adjourn the hearing. Vice Chair Henderson seconded the motion. An all-in-favor voice vote carried the motion unanimously. [*SEE YOUTUBE TIMESTAMP 1:44:58*]

The hearing was adjourned at 11:18 a.m.

Respectfully Submitted,

Ashley DeVera, Staff to the Board

A T T E S T :

Stacey Aguiar, Chair
Board of Appeals