

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
January 12, 2024

The County of Hawai‘i Board of Appeals met in regular session at 9:31 a.m. in the Hawai‘i County Council Chambers at 25 Aupuni Street, Hilo, HI 96720 and via the Zoom online platform. The meeting was called to order with Chair Stacey Aguiar presiding. A quorum was established with six members in attendance. [*SEE YOUTUBE TIMESTAMP 0:49*]

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/watch?v=H26r8TwTYd8>

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

MEMBER EXCUSED: Cathy Lewis

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

There were approximately twelve 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 9:33 a.m., Chair Aguiar called for statements from the public. There were seven members of the public in attendance to provide testimony:

[*SEE HEARING TRANSCRIPT – EXHIBIT A*]

Mary True [*SEE YOUTUBE TIMESTAMP 3:37*]

Greg Edwards [*SEE YOUTUBE TIMESTAMP 7:13*]

Jaerick Medeiros-Garcia [*SEE YOUTUBE TIMESTAMP 9:12*]

Debbie Nakasato [*SEE YOUTUBE TIMESTAMP 12:45*]

Charles Cravalho [*SEE YOUTUBE TIMESTAMP 14:04*]

Jeremy Santos [*SEE YOUTUBE TIMESTAMP 15:30*]

Kanaka [*SEE YOUTUBE TIMESTAMP 18:20*]

Testimony closed at 9:50 a.m.

OLD BUSINESS

1. DOUGLAS DIERENFIELD (BOA-21-000303)

Appeal of Decision by the Director of Public Works Dated June 8, 2021, Regarding Revocation of Building Permit (BK2020-00957)

Location: 75-116 Kaiolu Drive, Kailua Kona, HI 96740

TMK: (3) 7-5-020:017

This item was called to order at 9:51 a.m. There were approximately twelve members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 19:25*] Chair Aguiar mentioned that at the request of both parties, the matter has been continued to the February 9th, 2024, hearing.

This item concluded at 9:51 a.m.

NEW BUSINESS

2. CLAUDIA ROHR (PL-BOA-2023-000075)

Appeal of Decision by the Planning Department Dated August 14, 2023, issuance of Special Management Area (SMA) Use Permit Assessment Application (SAA-19-001724), Special Management Area, Minor Use Permit (PL-SMM-2022-000016), and Notice of Violation and Order (ZCV-2018-091E)

Location: Pepeekeo Point Subdivision, South Hilo, HI

TMK: (3) 2-8-008:100

PARTIES PRESENT: Claudia Rohr (appellant) and Jean Campbell (Deputy Corporation Counsel for the Planning Department).

This item was called to order at 9:51 a.m. There were approximately twelve members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 21:00*] Chair Aguiar mentioned the contested case hearing portion has been continued on the request of the appellant to March 8th, 2024. Two items needed to be addressed prior to the contested case hearing, Declaration of Claudia Rohr in Lieu of Affidavit for Recusal and Motion to Dismiss filed by appellee Zendo Kern, Planning Director, County of Hawaii Memorandum in Support of Motion Letter to Hank Correa Jr. The proceedings for item number one were handed over to Vice Chair Henderson.

[*SEE YOUTUBE TIMESTAMP 22:36*] Vice Chair Henderson mentioned the Board received the following documents, October 18, 2023, request for recusal of Chair Aguiar and Corp Counsel Tavares; January 8th, 2024, declaration of C. Rohr for recusal; January 11th, 2024, Re:

BOARD OF APPEALS
Minutes of January 12, 2024

Rohr declaration. The request for the removal of Corporation Counsel S. Tavares was previously denied and is not within the jurisdiction of the Board. Chair Aguiar elected not to recuse herself. Pursuant to Rule 2-3, the remaining Board Members shall decide by a majority whether the member should be disqualified from the proceedings. Vice Chair Henderson requested a motion.

[*SEE YOUTUBE TIMESTAMP 24:00*] Board Member Saiki motioned that Chair Aguiar remain in her position as Chair, and she should not be disqualified from this case as requested by the appellant on October 18, 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 five ayes (Saiki, Martin, McNamarra, Trefethen, Henderson).

[*SEE YOUTUBE TIMESTAMP 25:20*] Vice Chair Henderson recalled Chair Aguiar to take over the proceedings. Chair Aguiar requested to address the second matter appellee Zendo Kern, Planning Director, County of Hawaii's Motion to Dismiss, Memorandum in Support of Motion and letter to Henry Correa Jr.

At 10:00 a.m. the Board took a short recess, and the hearing was called back to order at 10:07 a.m.

[*SEE YOUTUBE TIMESTAMP 39:01*] Chair Aguiar requested each party to present a three-minute brief. Both parties presented and Chair Aguiar opened the floor for questions, then requested a motion.

[*SEE YOUTUBE TIMESTAMP 56:50*] Board Member Martin motioned to grant the appellee's motion to dismiss because the SMA permit is no longer required and therefore the appeal is a moot. The motion was seconded by Board Member McNamarra. Chair Aguiar asked for discussion and Chair Aguiar, Board Member Saiki, and Board Member Trefethen provided a brief statement. A roll call vote was taken, and the vote passed unanimously with six ayes (Martin, McNamarra, Henderson, Trefethen, Saiki, Aguiar).

[*SEE YOUTUBE TIMESTAMP 1:02:12*] Chair Aguiar requested Ms. Campbell to submit the order granting the motion to dismiss and distribute.

This item concluded at 10:33 a.m.

[*SEE HEARING TRANSCRIPT – EXHIBIT B*]

MINUTES

A motion was made by Vice Chair Henderson to approve the hearing minutes of December 8, 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

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

Ms. Tavares reported no updates for pending Board of Appeals cases.

Status of outstanding petitions – Staff

Ms. Surprenant reported three petitions for the February 9th hearing, two are Findings of Facts for PL-BOA-2023-000066 Kumukahi and PL-BOA-2023-000076 Bailey and petition BOA-21-000303 Dierenfield.

ANNOUNCEMENTS

Board Member Saiki requested board training on how to run a hearing.

ADJOURNMENT

Board Member Saiki motioned to adjourn the hearing. Board Member Trefethen seconded the motion. An all-in-favor voice vote carried the motion unanimously. [*SEE YOUTUBE TIMESTAMP 1:05:34*]

The hearing was adjourned at 10:37 a.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Stacey Aguiar, Chair
Board of Appeals