

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
February 9, 2024

The County of Hawai‘i Board of Appeals met in regular session at 9:30 a.m. in the West Hawai‘i Civic Center Council Chambers, Building A, 74-5044 Ane Keohokālole Highway, Kailua-Kona, Hawai‘i 96740 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 1:30]

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/watch?v=-JY1nXvElao>

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

MEMBERS PRESENT (on Zoom): Daina “Noe” Saiki

ALSO IN ATTENDANCE: Diana Mellon-Lacey, Esq. (Deputy Corporation Counsel for the Board), April Surprenant (Staff to the Board), and Ashley DeVera (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 9:33 a.m., Chair Aguiar called for statements from the public. There was one member of the public on Zoom to provide testimony.

Claudia Rohr [SEE YOUTUBE TIMESTAMP 26:45]

Testimony closed at 9:33 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 9:32 a.m. There were no members of the public in attendance.

[SEE YOUTUBE TIMESTAMP 3:15] Chair Aguiar mentioned the matter has been continued to the April 12th, 2024, hearing.

This item concluded at 9:32 a.m.

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER TO DENY. 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: Jean Campbell (Deputy Corporation Counsel for the Planning Department).

This item was called to order at 9:33 a.m. There were no members of the public in attendance.

[SEE YOUTUBE TIMESTAMP 5:32] Chair Aguiar stated, the Board received the proposed findings of fact, conclusions of law, decision and order from the Director of the Planning Department and the purpose of this hearing was to adopt an order to deny appeal of decision by the Planning Director as decided by the Board at the December 8th, 2023, hearing. Vice Chair Henderson motioned to accept the findings of facts, conclusions of law, decision and order. Board Member Saiki requested to amend the motion, then Vice Chair Henderson withdrew his motion.

[SEE YOUTUBE TIMESTAMP 7:54] Board Member Saiki motioned to adopt the proposed order as filed by the appellee on December 21st, 2023, as amended. The motion was seconded by Vice Chair Henderson. Board Member Saiki requested to amend the findings of facts by adding, Mr. Fabri acknowledged the receipt of the violations and testified that they took no corrective actions, nor made any significant attempts to correct any of the violations provided in the notice of violation issued on January 23rd, 2023; secondly according to HRS section 205-4.5, the activities that the appellant admitted to conducting on the property are not permitted uses in an agricultural district; third, correction of the date in the decision and order which the date had a typo of January 23rd, 2003, which should reflect the NOV dated January 23rd, 2023. A brief discussion occurred. A roll-call vote was taken, and the motion passed with seven ayes (Saiki, Henderson, Lewis, Martin, McNamarra, Trefethen, Aguiar).

[SEE YOUTUBE TIMESTAMP 22:25] Chair Aguiar requested Ms. Campbell to submit the form of the order as approved by the Board.

This item concluded at 9:51 a.m.

3. CHRISTINE L. BAILEY (PL-BOA-2023-000076)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER TO DENY. Appeal of Decision by the Planning Director Dated August 22, 2023, Approval of Subdivision Variance (PL-SVAR-2023-000036)

Location: 52-4653 Akoni Pule Highway, Waimea, HI 96743

TMK: (3) 5-2-009:035

PARTIES PRESENT: Jean Campbell (Deputy Corporation Counsel for the Planning Department).

This item was called to order at 9:52 a.m. There was one member of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 25:10*] Chair Aguiar stated, the Board received the proposed findings of fact, conclusions of law, decision and order from the Director of the Planning Department and the purpose of this hearing was to adopt an order to deny appeal of decision by the Planning Director as decided by the Board at the December 8th, 2023, hearing. Board Member Lewis motioned to amend the proposed order to include some findings of facts, regarding the data that was used by the department. The motion was seconded by Board Member Trefethen. A brief discussion occurred.

[*SEE YOUTUBE TIMESTAMP 40:13*] Board Member Lewis requested to add a statement to the findings of fact in paragraph two, the Planning Director testified that he utilized this 2011 rainfall Atlas in all cases and that it was developed as a result of an agreement between the State of Hawaii Commission on Water Resource Management and the U.S. Army Corps of Engineers. Board Member Saiki requested to correct a typo in the conclusions of law, paragraph four, incompliance into two words, in compliance. A roll-call vote was taken, and the motion passed with seven ayes (Lewis, Trefethen, Henderson, Martin, McNamarra, Saiki, Aguiar).

[*SEE YOUTUBE TIMESTAMP 47:39*] Chair Aguiar requested Ms. Campbell to submit the form of the order.

This item concluded at 10:17 a.m.

MINUTES

A motion was made by Board Member Saiki to approve the hearing minutes of January 12, 2024, 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

Election of Officers for 2024.

[*SEE YOUTUBE TIMESTAMP 50:04*] Chair Aguiar requested nominations for Chair and Vice Chair. Board Member McNamarra and Vice Chair Henderson's term both expired on December 31, 2023, and they both agreed to hold over for ninety days.

Chair Aguiar opened the floor for nominations.

Board Member Saiki received two nominations for Chair (Henderson, Trefethen), but did not accept. Board Member Lewis received two nominations for Chair (Saiki, Aguiar) and Board Member Saiki received two nominations for Vice Chair (Aguiar, Henderson). Vice Chair Henderson moved to close nominations and seconded by Board Member Martin. A brief discussion occurred. Vice Chair Henderson proposed to cast a unanimous ballot for Board Member Lewis as Chair and Board Member Saiki as Vice Chair; seconded by Board Member Martin. An all-in favor vote was taken, and the motion passed unanimously.

Status of outstanding petitions – Staff

Ms. Surprenant sent an email with an update to all Board Members. There are a number of cases set for the April hearing, however there are many cases that are working to settle and some that already have settled.

ADJOURNMENT

Vice Chair Henderson motioned to adjourn the hearing. Board Member Saiki seconded the motion. An all-in-favor voice vote carried the motion unanimously. [*SEE YOUTUBE TIMESTAMP 57:47*]

The hearing was adjourned at 10:24 a.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Stacey Aguiar, Chair
Board of Appeals