

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
June 14, 2024

The County of Hawai‘i Board of Appeals met in regular session at 9:30 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 Cathy Lewis presiding. A quorum was established with seven members in attendance.

The full YouTube video of this hearing can be found here:
https://www.youtube.com/watch?v=jX2L2y_bTy4

MEMBERS PRESENT (in person): Cathy Lewis (Chair) and Daina “Noe” Saiki (Vice Chair)

MEMBERS PRESENT (on Zoom): Rachel Able, Stacey Aguiar, Scott Martin, Lisa McNamarra, and Scott Trefethen.

ALSO IN ATTENDANCE: Sylvia Wan, 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 Lewis reviewed online meeting protocols and procedures. Introductions of board members and staff were made.

STATEMENTS FROM THE PUBLIC ON ITEMS ON THE AGENDA

At 9:32 a.m., Chair Lewis called for statements from the public. There were no members of the public in attendance to provide testimony.

Testimony closed at 9:32 a.m.

OLD BUSINESS

1. BRIAN O’REILLY (PL-BOA-2023-000089)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER TO DENY Appeal of Decision by the Director of Public Works Dated September 22, 2023, Regarding Penalty Fee for Work Started Without Permit (PW.B2023-001531).

Location: 19-4002 Kalani Honua Loop, Volcano, HI 96785

TMK: (3) 1-9-009:092

PARTIES PRESENT: Brian O’Reilly (appellant via Zoom).

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

[*SEE YOUTUBE TIMESTAMP 4:45*] Board Member Aguiar motioned to adopt the Department’s finding of fact, conclusion of law, decision and order with amendments; Vice Chair Saiki seconded. Members briefly discussed the matter. Chair Lewis recommended to add a new paragraph below number four (4) to the conclusions of law that states, “Section

5-7-3(d) does not distinguish between work begun without a permit by a prior owner and work begun without a permit by the owner applying for an as-built permit.”

[*SEE YOUTUBE TIMESTAMP 13:17*] Board Member Aguiar recommended two additions into the findings of fact. The first is by adding a new paragraph below number two (2) that states, “the appellant’s architect’s as-built letter dated April 24, 2023, submitted with the permit application certified the as-built work was performed under their supervision and the construction was under their observation.” Secondly, adding a new paragraph below number five (5) that states, “during the testimony received on April 12, 2024, by appellee, DPW Director Steve Pause, stated the description of the \$1,000 line-item fee on the permit invoice number 00031262 categorizing it as a penalty fee was a misnomer and that the intent of that fee was for services to be rendered under County Code Section 5-7-3(d).”

[*SEE YOUTUBE TIMESTAMP 18:10*] Board Member Aguiar motioned to amend the Department’s conclusions of law, as suggested by the Chair, to insert a new paragraph after number four (4) that states, “Section 5-7-3(d) does not distinguish between work begun without a permit by a prior owner and work begun without a permit by the owner applying for an as-built permit;” Vice Chair Saiki seconded. Board Members briefly discussed the matter. A roll-call vote was taken, and the motion passed with seven ayes (Able, Martin, McNamarra, Trefethen, Aguiar, Saiki, Lewis).

[*SEE YOUTUBE TIMESTAMP 22:54*] Board Member Aguiar motioned to amend the Department’s findings of fact to insert a new paragraph after number two (2) that states, “the appellant’s architect’s as-built letter dated April 24, 2023, submitted with the permit application certified the as-built work was performed under their supervision and the construction was under their observation;” Board Member Trefethen seconded. No discussion occurred. A roll-call vote was taken, and the motion passed with seven ayes (Aguiar, Trefethen, Saiki, Able, Martin, McNamarra, Lewis).

[*SEE YOUTUBE TIMESTAMP 25:08*] Board Member Aguiar motioned to amend the Department’s findings of fact to insert a new paragraph after number five (5) that states, “during the testimony received on April 12, 2024, by appellee, DPW Director Steve Pause, stated the description of the \$1,000 line-item fee on the permit invoice number 00031262 categorizing it as a penalty fee was a misnomer and that the intent of that fee was for services to be rendered under County Code Section 5-7-3(d);” Board Member Trefethen seconded. No discussion occurred. A roll-call vote was taken, and the motion passed with seven ayes (Aguiar, Trefethen, Saiki, Able, Martin, McNamarra, Lewis).

[*SEE YOUTUBE TIMESTAMP 27:14*] Chair Lewis opened the floor for discussion on the amended motion, no discussion occurred. A roll-call vote was taken to adopt the amended motion and the motion passed with seven ayes (Aguiar, Saiki, Able, Martin, McNamarra, Trefethen, Lewis).

This item concluded at 9:59 a.m.

MINUTES

[*SEE YOUTUBE TIMESTAMP 29:38*] A motion was made by Board Member Trefethen to approve the hearing minutes of April 12, 2024, 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.

[*SEE YOUTUBE TIMESTAMP 30:48*] A motion was made by Board Member Martin to approve the hearing minutes of May 10, 2024, as circulated. The motion was seconded by Board Member Trefethen. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 31:37*] A motion was made by Board Member McNamarra to approve the general and executive session hearing minutes of April 26, 2024, as circulated. The motion was seconded by Board Member Able. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 32:35*] A motion was made by Board Member Trefethen to approve the hearing transcript of January 12, 2024, 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.

ADMINISTRATIVE MATTERS

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

Ms. Wan reported no Board of Appeals cases for July and the next hearing will be held in August in Kona.

Status of outstanding petitions – Staff

No report provided.

ADJOURNMENT

Vice Chair Saiki motioned to adjourn the hearing. Board Member Trefethen seconded the motion. An all-in favor voice vote carried the motion unanimously.
The hearing was adjourned at 10:06 a.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Cathy Lewis, Chair
Board of Appeals

BOARD OF APPEALS
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