

LEEWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

MINUTES
JULY 18, 2024

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Timestamps are provided for reference in accordance with the provisions of Chapter 92, Hawai'i Revised Statutes. In the event the video recording becomes unavailable at the abovementioned URL address, the public can contact the Planning Department for assistance.

The Leeward Planning Commission met in regular session on Thursday, July 18 2024, at 9:32 a.m. in the West Hawai'i Civic Center, Council Chambers, Building A, 74-5044 Ane Keohokālole Highway, Kailua-Kona, Hawai'i, with Chairperson Barbara DeFranco presiding. This meeting was streamed live on YouTube.

COMMISSIONERS PRESENT: Mahina Paishon Duarte (Vice Chair, from 9:30 a.m. to 12:10 p.m.), Dean Au, Donna "Kinuko" Noborikawa, Armando Rodriguez, and Barbara DeFranco (Chairperson).

COMMISSIONERS ABSENT: Clement "CJ" Kanuha, Michael Dela Cruz and Mahina Paishon Duarte after 12:10 p.m.

ALSO PRESENT: Suzanna Tiapula, Esq. (Deputy Corp Counsel to the Commission arrived at 10:28 a.m.), Jean Campbell, Esq. (Deputy Corp Counsel to the Planning Department), and Zendo Kern (Planning Director via Zoom) and Planning Department staff.

Approximately thirteen public members were in the audience.

A quorum was present. Chairperson DeFranco called the meeting to order and introduced the Commissioners. *[SEE YOUTUBE TIMESTAMP 02:48]* Staff introductions were made.

Chair DeFranco asked each Commissioner to confirm they had the opportunity to review all materials, including written public testimony, related to the applications being reviewed today. Commissioners confirmed that they had reviewed the application materials. *[SEE YOUTUBE TIMESTAMP 03:06]*

APPROVAL OF MINUTES

At 9:35 a.m. the Commission took up the minutes of the June 20, 2024, Leeward Planning Commission meeting. No corrections were offered. Commissioner Paishon-Duarte moved, and Commissioner Noborikawa seconded that the minutes be approved as submitted. No voice vote was taken. *[SEE YOUTUBE TIMESTAMP 05:07]*

STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

At 9:37 a.m. the Commission took up this item with approximately thirteen public members in the audience in the Council Chambers. Chairperson DeFranco stated she will be limiting testimony to 3 minutes per testifier for each agenda item. Chairperson DeFranco explained the procedure for testifying and Planning Commission Rule 1-5 regarding decorum. [SEE YOUTUBE TIMESTAMP 05:37]

Testimonies were given at the beginning of the hearing on agenda items #3 and #4.

Two individuals provided testimony on Zoom at 9:38 a.m.:

- 1) E. Kalani Flores on Items #3 & #4 [SEE YOUTUBE TIMESTAMP 08:35]
- 2) Pua Case on Items #3 & #4 (*technical difficulties, didn't speak*) [SEE YOUTUBE TIMESTAMP 15:08]

Two individuals provided testimony in-person at 9:47 a.m.:

- 1) Michael Matsukawa on Items #3 & #4 [SEE YOUTUBE TIMESTAMP 18:02]
- 2) John Kawano on Items #3 & #4 [SEE YOUTUBE TIMESTAMP 21:03]
- 3) Ceci Davenport on Items #3 & #4 [SEE YOUTUBE TIMESTAMP 28:38]
- 4) LaDonna Shively on Items #3 & #4 [SEE YOUTUBE TIMESTAMP 35:25]

One individual provided testimony on Zoom at 10:06 a.m. (previously had technical difficulties):

- 1) Pua Case on Items #3 & #4 [SEE YOUTUBE TIMESTAMP 36:50]

There being no further public testimony, this agenda item ended at 10:12 a.m.

UNFINISHED BUSINESS

1. APPLICANT: MARGARET ILIEV (PL-SPP-2023-000051)

Application for a Special Permit to establish a one (1)-bedroom bed and breakfast establishment within an existing dwelling on a 26,761-square foot parcel of land in the State Land Use Rural District. The subject property is located at 78-6935 Māmalahoa Hwy, approximately 580 feet south of its intersection with Kalelei Street, Keauhou 2nd (Mauka), North Kona, Hawai'i, TMK: (3) 7-8-004:041.

This hearing item began at 10:13 a.m. there were eleven members of the public in the audience. [SEE YOUTUBE TIMESTAMP 43:34]

Staff presentation by Maija Jackson. [SEE YOUTUBE TIMESTAMP 44:32]

Chair DeFranco opened the floor to allow the Commission to ask questions of the Applicant and Planning Department Staff. [SEE YOUTUBE TIMESTAMP 49:03]

Applicant Margaret Iliev thanked the commissioners and noted agreement with the recommendations by the Planning Department. [SEE YOUTUBE TIMESTAMP 50:11]

Commissioner Noborikawa asked about the retaining wall, and the applicant explained its location, which is far from the B&B. Ms. Jackson showed a visual to help clarify. Commissioner Au asked who filed the complaint, and the applicant said she didn't know and found out only when she submitted her application. Ms. Jackson didn't have the information, but it could be obtained from the Department of Public Works. *[SEE YOUTUBE TIMESTAMP 50:52]*

There were no in-person or zoom testifiers for this agenda item. *[SEE YOUTUBE TIMESTAMP 53:53]*

Action: Commissioner Au moved that the application for special permit PL-SPP-2024-000051 be approved based on the Planning Director's recommendation which shall be adopted. Commissioner Paishon-Duarte seconded. In discussion, there were concerns about the complaint mentioned. Commissioner Noborikawa wanted to add a condition to the application related to the complaint. Ms. Jackson said they didn't add it because the applicant must follow building codes anyway and the violation is being investigated. Commissioner Noborikawa asked about the County's liability, and Ms. Jackson referred that to Corporation Counsel. Deputy Corporation Counsel Jean Campbell, representing the Planning Department (Deputy Corporation Counsel Suzanna Tiapula not present yet), indicated that the County would not be liable. *[SEE YOUTUBE TIMESTAMP 53:48]* A roll call vote was taken, and the motion carried with five ayes (Au, Paishon-Duarte, Noborikawa, Rodriguez, and DeFranco), no nays, and two Commissioners absent (Dela Cruz and Kanuha). *[SEE YOUTUBE TIMESTAMP 57:54]*

This hearing item ended at 10:28 a.m.

RECESS from 10:28 a.m. to 10:36 a.m. *[SEE YOUTUBE TIMESTAMP 58:28]*

At 10:28 a.m. Deputy Corporation Counsel Suzanna Tiapula arrived for the meeting.

2. INITIATOR: COUNTY COUNCIL (PL-CCI-2024-000007)

Bill 134, Draft 2, an ordinance amending Chapter 25 (Zoning), Article 2, Section 25-2-42, of the Hawai'i County Code 1983 (2016 Edition, as amended), relating to amendments initiated by property owners and other persons. Establishes the requirement for the Planning Director to prepare a report identifying all buildings, excluding existing buildings, that are legally permitted to be constructed on surrounding properties within a one-quarter mile radius of a subject property that is seeking a change of zoning district.

The Commission took up this item at 10:36 a.m. with ten public members in the audience. *[SEE YOUTUBE TIMESTAMP 1:07:35]*

No staff presentation. At the last meeting, the Planning Commission voted to defer this application. Chair DeFranco asked the councilmembers for an update on Bill 134. *[SEE YOUTUBE TIMESTAMP 1:07:55]*

Councilmembers Holeka Inaba and Cindy Evans gave an update on Bill 134. *[SEE YOUTUBE TIMESTAMP 1:08:36]* Comments were made by Planning Director Kern. *[SEE YOUTUBE TIMESTAMP 1:13:00]*

Chair DeFranco opened the floor to allow the Commission to ask questions of the Applicant and Planning Department Staff. *[SEE YOUTUBE TIMESTAMP 1:17:20]*

One individual provided testimony in-person at 11:03 a.m.:

- 1) Nancy Car Smith on Item #2 *[SEE YOUTUBE TIMESTAMP 1:33:20]*

There were no zoom testifiers for this agenda item. *[SEE YOUTUBE TIMESTAMP 1:35:13]*

Action: Commissioner Au moved that a favorable recommendation be forwarded to the County Council on Bill No. 134, Docket No. PL-CCI-2024-000007. Seconded by Commissioner Rodriguez. *[SEE YOUTUBE TIMESTAMP 1:35:40]* Chair DeFranco asked Commissioner Au if he wanted to amend his motion to include a condition, but Commissioner Au chose to keep his motion unchanged. *[SEE YOUTUBE TIMESTAMP 1:36:20]* A roll call vote was taken, and the motion did not carry with three ayes (Au, Paishon-Duarte, and Rodriguez), two nays (Noborikawa, and DeFranco), and two Commissioners absent (Dela Cruz and Kanuha). *[SEE YOUTUBE TIMESTAMP 1:50:01]*

Action: Commissioner Paishon-Duarte moved that a favorable recommendation be forwarded to the County Council on Bill No. 134, Docket No. PL-CCI-2024-000007 with an amendment to replace recommendation #4 that the Planning Director shall prepare a report identifying properties with a boundary of up to a thousand square feet of the subject property that have undergone a change of Zone, any ordinances relevant to the change of Zone and the status of those change of Zone ordinances to include expiration dates. *[SEE YOUTUBE TIMESTAMP 1:51:24]*

Action: Commissioner Paishon-Duarte then moved to amend her initial motion. Commissioner Paishon-Duarte moved that a favorable recommendation be forwarded to the County Council on Bill No. 134, Docket No. PL-CCI-2024-000007 with recommendation #4 to strike the one quarter mile and replace with “to stay consistent with the public notification requirements”. Seconded by Commissioner Noborikawa. *[SEE YOUTUBE TIMESTAMP 1:52:52]* A roll call vote was taken, and the motion carried with five ayes (Paishon-Duarte, Noborikawa, Au, Rodriguez, and DeFranco), no nays, and two Commissioners absent (Dela Cruz and Kanuha). *[SEE YOUTUBE TIMESTAMP 1:54:13]*

This hearing item ended at 11:24 a.m.

3. APPLICANT: KAUPULEHU LAND LLC (PL-SLU-2022-000008)

Application for a State Land Use Boundary Amendment from Agricultural to Rural for 2.653 acres of land. The subject property is located at 64-983 Māmalahoa Highway, approximately one mile east of its intersection with Kawaihae Road, Pu‘ukapu Homesteads, South Kohala, Hawai‘i, TMK: (3) 6-4-024:027.

4. APPLICANT: KAUPULEHU LAND LLC (PL-REZ-2022-000039)

Application for a Change of Zone from an Agricultural-5 acre (A-5a) zoning district to a Neighborhood Commercial-10,000 square feet (CN-10) zoning district for 2.325 acres of land and from an Agricultural-5 acre (A-5a) zoning district to a Residential Agricultural-0.5 acre (RA-0.5a) zoning district for 3.024 acres of land. The subject

property is located at 64-983 Māmalahoa Highway, approximately one mile east of its intersection with Kawaihae Road, Pu‘ukapu Homesteads, South Kohala, Hawai‘i, TMK: (3) 6-4-024:027.

The Commission took up both agenda items at 11:25 a.m. but indicated each would be associated with separate actions. There were eight members of the public in the audience. *[SEE YOUTUBE TIMESTAMP 1:55:44]*

Two individuals provided testimony in-person at 11:29 a.m.:

- 1) Roger Harris on Items #3 & #4 *[SEE YOUTUBE TIMESTAMP 2:00:33]*
- 2) Nancy Car Smith on Items #3 & #4 *[SEE YOUTUBE TIMESTAMP 2:01:43]*

One individual provided testimony on Zoom at 11:37 a.m.:

- 1) Mark DeReus on Items #3 & #4 *[SEE YOUTUBE TIMESTAMP 2:08:17]*

Applicant Representative Katherine Garson gave a presentation. *[SEE YOUTUBE TIMESTAMP 2:11:36]* Applicants John and Joni Metzler made statements which were a part of the presentation. *[SEE YOUTUBE TIMESTAMP 2:11:36]*

Chair DeFranco opened the floor to allow the Commission to ask questions of the Applicant and Planning Department Staff. *[SEE YOUTUBE TIMESTAMP 2:34:20]*

At 12:10 p.m. Commissioner Paishon-Duarte left the meeting. *[SEE YOUTUBE TIMESTAMP 2:40:49]*

Public Testimony closed for this agenda item. *[SEE YOUTUBE TIMESTAMP 2:43:30]*

Action on PL-SLU-2022-000008: Commissioner Au moved that a favorable recommendation be forwarded to the County Council and the application for a State Land Use Boundary Amendment Docket No. PL-SLU-2022-000008 based on the Planning Director’s recommendation which shall be adopted. Commissioner Noborikawa seconded. *[SEE YOUTUBE TIMESTAMP 2:43:38]* Chair DeFranco opened the floor to discussion. *[SEE YOUTUBE TIMESTAMP 2:44:05]* Commissioner Au believes that this project is appropriate for the designation and for the area. The applicant is consistent with the General Plan and the South Kohala CDP. Commissioner Au believes that it’s an appropriate project but that the community does not want it. There have been a lot of letters that were submitted, granted a lot them are form letters in opposition but nonetheless, it is the community that does not want it. His reason for the motion is that it’s consistent with the General Plan and the CDP. He hopes that the landowner and the applicant continue the conversation with the community because the community does not want it. *[SEE YOUTUBE TIMESTAMP 2:44:09]* Commissioner Noborikawa commented that she agrees that it is consistent. She stated that the back half of the property would be acting as an appropriate buffer between that higher density and the agricultural areas that are behind it. *[SEE YOUTUBE TIMESTAMP 2:45:29]*

Commissioner Au motioned to recess for lunch break. Seconded by Noborikawa. A voice vote was taken, and the motion carried unanimously. *[SEE YOUTUBE TIMESTAMP 3:01:12]*

Lunch Break from 12:31 p.m. to 1:06 p.m.

At 1:06 p.m. (Chair DeFranco said 1:08 p.m.) Chair DeFranco reconvened the meeting, with approximately three public members in audience.

Continued Action on PL-SLU-2022-000008: Current motion on the floor with discussion is that Commissioner Au moved that a favorable recommendation be forwarded to the County Council on the application for a State Land Use Boundary Amendment Docket No. PL-SLU-2022-000008 based on the Planning Director's recommendation which shall be adopted. Commissioner Noborikawa seconded. *[SEE YOUTUBE TIMESTAMP 3:36:26]* Commissioner Rodriguez clarified that they were discussing item #3 and not item #4. *[SEE YOUTUBE TIMESTAMP 3:37:08]* A roll call vote was taken, and the motion carried with four ayes (Au, Noborikawa, Rodriguez, and DeFranco), no nays, and three Commissioners absent (Dela Cruz, Kanuha, and Paishon-Duarte). *[SEE YOUTUBE TIMESTAMP 3:37:33]*

Action on PL-REZ-2022-000039: Commissioner Au moved to rescind the motion for a negative recommendation for PL-REZ-2022-000039 that was made at the prior Leeward Planning Commission. Commissioner Noborikawa seconded. *[SEE YOUTUBE TIMESTAMP 3:41:40]* Chair DeFranco opened the floor to discussion. *[SEE YOUTUBE TIMESTAMP 3:42:10]* A roll call vote was taken, and the motion failed with three ayes (Au, Noborikawa, and DeFranco), one nay (Rodriguez), and three Commissioners absent (Dela Cruz, Kanuha, and Paishon-Duarte). *[SEE YOUTUBE TIMESTAMP 3:45:59]*

These hearing items ended at 1:11 p.m.

NEW BUSINESS

5. **INITIATOR: PLANNING DIRECTOR (EDWARD & RHONDALL RAPOZA - FORMERLY HU-KO-PA, LLC) (PL-PDI-2024-000006/AMEND REZ 2009-000096)**
The Planning Director has initiated the repeal of Change of Zone Ordinance No. 10-2 and amendment to Section 25-8-3 (North Kona Zone Map), Chapter 25, Article 8, of the Hawai'i County Code 1983 (2016 Edition, as amended), by reverting the current zoning of the subject property from Single-Family Residential-10,000 square feet (RS-10) to its original Agricultural-5 acre (A-5a) zoning district for approximately 14.437 acres of land. The subject parcel is located on the south side of Hualālai Road, approximately 0.6 miles east of its intersection with Queen Ka'ahumanu Highway, Kahului 2nd, North Kona, Hawai'i, TMK: (3) 7-5-017:042.
6. **INITIATOR: PLANNING DIRECTOR (EDWARD & RHONDALL RAPOZA - FORMERLY HU-KO-PA, LLC) (PL-PDI-2024-000007/AMEND SLU 2009-000022)**
The Planning Director has initiated the repeal of State Land Use District Boundary Ordinance No. 10-1 and the State Land Use District Boundary Map, by reverting the State Land Use Boundary District from Urban to its original designation of Agricultural, for approximately 14.437 acres of land. The subject parcel is located on the south side of

Hualālai Road, approximately 0.6 miles east of its intersection with Queen Ka‘ahumanu Highway, Kahului 2nd, North Kona, Hawai‘i, TMK: (3) 7-5-017:042.

At 1:16 p.m. Chair DeFranco stated that items #5 & #6 were deferred to the next meeting. *[SEE YOUTUBE TIMESTAMP 3:46:56]*

There were no in-person or zoom testifiers for this agenda item. Public testimony is closed for these agenda items. *[SEE YOUTUBE TIMESTAMP 3:47:41]*

7. PLANNING COMMISSION TRAINING

Training for the Leeward Planning Commission’s members by Commission’s Attorney regarding the Commission’s powers, duties, privileges, immunities, and liabilities as it relates to Sunshine Law (Chapter 92, Hawai‘i Revised Statutes), Robert’s Rules of Order, and Planning Commission Rules of Practice and Procedure. This training is expected to occur in executive session in accordance with Chapter 92-5(a)(4), Hawai‘i Revised Statutes, as amended, and is being delivered in response to requests for legal guidance from Commissioners.

The Commission took up this item at 1:17 p.m. with zero public members in the audience. *[SEE YOUTUBE TIMESTAMP 3:48:00]*

Action: Commissioner Au moved that the Planning Commission Training be deferred to the next meeting due to the absence of half the Commission. Commissioner Noborikawa seconded. No discussion. *[SEE YOUTUBE TIMESTAMP 3:48:28]* A voice vote was taken, and the motion carried unanimously. *[SEE YOUTUBE TIMESTAMP 3:48:41]*

This hearing item ended at 1:18 p.m.

PLANNING DIRECTOR’S REPORT

Report on Special Management Area (SMA) determinations and minor permits issued by the Planning Director for June 2024. No questions or comments. *[SEE YOUTUBE TIMESTAMP 3:48:56]*

AGENDA ITEMS FOR NEXT MEETING

The Commissioners had no input regarding agenda items for the next Commission meeting. *[SEE YOUTUBE TIMESTAMP 3:49:26]*

ANNOUNCEMENTS

The Leeward Planning Commission’s next regular meeting is scheduled for Thursday, August 15, 2024, at the County Council Chambers in Kona and the public can also testify via Zoom. The date and venue of the meeting are subject to change. *[SEE YOUTUBE TIMESTAMP 3:49:37]*

Ms. Jackson made an announcement that there will be eight items tentatively scheduled on the next agenda, including the Planning Commission Training provided by Deputy Corporation Counsel Suzanna Tiapula. For the September meeting, we will be coordinating an approximately two-hour training session with the State Coastal Zone Management office on Coastal Zone Management and Special Management Area issues. *[SEE YOUTUBE TIMESTAMP 3:49:59]*

ADJOURNMENT

There being no further business, it was moved by Commissioner Au and seconded by Commissioner Noborikawa that the meeting be adjourned. A voice vote was taken, and the motion was carried with all in favor. *[SEE YOUTUBE TIMESTAMP 3:50:39]*

Chairperson DeFranco adjourned the meeting at 1:20 p.m.

Respectfully submitted,

Kelsie Chang
Kelsie Chang (Aug 28, 2024 12:27 HST)

Kelsie Chang
Secretary

ATTEST:

Barbara DeFranco
Barbara DeFranco (Aug 28, 2024 12:35 HST)

Barbara DeFranco, Chairperson
Leeward Planning Commission