

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
August 9, 2024

The County of Hawai‘i Board of Appeals met in regular session at 9:33 a.m. in the West Hawai‘i Civic Center Council Chambers, Building A, 74-5044 Ane Keohokālōle Highway, Kailua-Kona, Hawai‘i 96740 and via the Zoom online platform. The meeting was called to order with Chair Cathy Lewis presiding. A quorum was established with five members in attendance.

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/watch?v=RvotLcoBuE0>

MEMBERS PRESENT (in person): Cathy Lewis (Chair), Rachel Able, Stacey Aguiar, and Scott Martin.

MEMBERS PRESENT (on Zoom): Lisa McNamarra.

MEMBERS EXCUSED: Daina “Noe” Saiki (Vice Chair) 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 approximately thirteen 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 9:34 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 9:36 a.m.

NEW BUSINESS

1. DANIEL B. BOLTON AND JANET T. BOLTON (PL-BOA-2023-000062)

Appeal of Decision by the Director of Public Works Dated December 20, 2022, Regarding Notice of Order (CE2021-26K) for Fines Related to Notice of Violation Dated April 26, 2022. Location: 75-476 Hualālai Road, Kailua-Kona, HI 96740
TMK: (3) 7-5-017:044

This item was called to order at 9:36 a.m. There were thirteen members of the public in attendance.

[SEE YOUTUBE TIMESTAMP 3:26] Chair Lewis mentioned this matter has been withdrawn.

2. DANIEL B. BOLTON AND JANET T. BOLTON (PL-BOA-2023-000071)

Appeal of Decision by the Director of Public Works Dated June 6, 2023, Regarding Notice of Amended Order (CE2021-26K) Relating to Notice of Violation dated December 20, 2022.

Location: 75-476 Hualālai Road, Kailua-Kona, HI 96740

TMK: (3) 7-5-017:044

This item was called to order at 9:36 a.m. There were thirteen members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 3:26*] Chair Lewis mentioned this matter has been withdrawn.

3. DANIEL B. BOLTON AND JANET T. BOLTON (PL-BOA-2024-000100)

Appeal of Decision by the Director of Public Works Dated February 9, 2024, Regarding Denial of Building Permit (PW.B2024-000239).

Location: 75-476 Hualālai Road, Kailua-Kona, HI 96740

TMK: (3) 7-5-017:044

This item was called to order at 9:36 a.m. There were thirteen members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 3:26*] Chair Lewis mentioned this matter has been withdrawn.

4. MATTHEW COUPE (PL-BOA-2024-000099)

Appeal of Decision by the Planning Director Dated January 31, 2024, Regarding Approval of Variance (PL-SVAR-2023-000041).

Location: 81-1040 Puu Lehua Drive, Kealahou, HI 96750

TMK: (3) 8-1-002:071

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

This item was called to order at 9:37 a.m. There were nine members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 5:33*] Board Member Aguiar recused herself from this matter. Quorum was confirmed with four remaining Board Members.

[*SEE YOUTUBE TIMESTAMP 6:39*] Chair Lewis requested if staff had received the notice of hearing to surrounding property owners and proof of service was filed. Staff confirmed proof of service was provided.

[*SEE YOUTUBE TIMESTAMP 10:17*] Mr. Matthew Coupe, appellant, provided his opening statement.

[*SEE YOUTUBE TIMESTAMP 14:15*] Ms. Jean Campbell, Deputy Corporation Counsel for the Planning Department, provided her opening statement.

[*SEE YOUTUBE TIMESTAMP 22:42*] Mr. Coupe testified as a witness on his behalf and discussed exhibit D regarding the flooding issue, and the appellee's exhibit B, FEMA's national flood hazard map. Ms. Campbell cross-examined, then Mr. Coupe re-directed.

[SEE YOUTUBE TIMESTAMP 49:21] Ms. Campbell called her first witness, Zendo Kern, Planning Director. Ms. Campbell questioned her witness and discussed the sign posted, which was consistent with the Code and Chapter 27 which addresses flooding. Mr. Coupe cross-examined, then Board Member Able questioned the witness.

[SEE YOUTUBE TIMESTAMP 1:04:55] Chair Lewis requested closing statements from both parties beginning with Mr. Coupe, followed by Ms. Campbell.

At 10:48 a.m. the board took a short recess, and the hearing was called back to order at 10:53 a.m.

[SEE YOUTUBE TIMESTAMP 1:20:48] Board Member Able motioned to affirm the Planning Director's decision in PL-BOA-2024-000099, dated August 8th, 2024. The decision was not clearly erroneous, and the decision was not arbitrary or capricious nor was it an abuse of discretion based on that fact, the appellant did not sufficiently prove his claim; Board Member Martin seconded. Members briefly discussed the matter. A roll-call vote was taken, and the motion passed with four ayes (Able, Martin, McNamarra, Lewis).

[SEE YOUTUBE TIMESTAMP 1:23:11] Chair Lewis requested Ms. Campbell to prepare and submit the proposed findings of fact, conclusions of law, and decision and order by September 27th and any opposition by the appellant by October 4th. The order will be heard at the October 11th hearing.

This item concluded at 10:59 a.m.

At 10:59 a.m. the board took a short recess, and the hearing was called back to order at 11:02 a.m.

5. C & J COUPE FAMILY LIMITED PARTNERSHIP (PL-BOA-2024-000108)

Petition to Intervene on PL-BOA-2024-000104 Appeal of Planning Director Declaratory Ruling Docket No. 24-0001 dated April 29, 2024, in Response to C & J Coupe Family LP Petition for Declaratory Ruling (PL-INT-2024-007028) dated February 7, 2024, and Supplement to Petition for Declaratory Ruling dated March 27, 2024, Regarding the Dedication of Mauka Haleki'i Extension, Makai Haleki'i Extension, and Connector Road to the County and a Request of Public Hearing Filed by 1250 Oceanside, LLC on May 28, 2024. Location: Kealakekua, South Kona
TMK: (3) 8-1-004:070 & 8-1-030:055

PARTIES PRESENT: Kenneth Kupchak (Representative for C & J Coupe Family Limited Partnership), Britt Bailey (Deputy Corporation Counsel for the Planning Department), Zendo Kern (Planning Director), and Derek Simon (Representative for 1250 Oceanside LLC).

This item was called to order at 11:03 a.m. There were five members of the public in attendance.

[SEE YOUTUBE TIMESTAMP 1:32:42] Mr. Kenneth Kupchak, representative for C & J Coupe Family Limited Partnership, provided his opening statement. C & J owns the property on the south side of the development, which is also referenced in the development agreement

and in the ordinance. Ms. Britt Bailey, Deputy Corporation Counsel for the Planning Department and Mr. Derek Simon, representative for 1250 Oceanside LLC, did not have any objections.

[*SEE YOUTUBE TIMESTAMP 1:34:52*] Board Member Aguiar motioned to grant the petitioners request to intervene PL-BOA-2024-000104; Board Member Able seconded. No discussion occurred. A roll-call vote was taken, and the motion passed with five ayes (Aguiar, Able, Martin, McNamarra, Lewis).

[*SEE YOUTUBE TIMESTAMP 1:36:45*] Ms. Wan mentioned PL-BOA-2024-000104 hearing is scheduled for October 11th. The Chair will submit an order to all parties.

This item concluded at 11:10 a.m.

6. C & J COUPE FAMILY LIMITED PARTNERSHIP (PL-BOA-2024-000109)

Petition to Intervene on PL-BOA-2024-000105 Appeal of Planning Director Declaratory Ruling Docket No. 24-0002 dated April 29, 2024, in Response to 1250 Oceanside LLC Petition for Declaratory Ruling (PL-INT-2024-007099) dated February 28, 2024, Regarding Planning Director Not Ruling Upon Certain Requests, and Related to the Dedication of Mauka Haleki`i Extension, Makai Haleki`i Extension, and Connector Road Filed by 1250 Oceanside, LLC on May 28, 2024.

Location: Kealakekua, South Kona

TMK: (3) 8-1-004:070 & 8-1-030:055

PARTIES PRESENT: Mark Murakami (Representative for C & J Coupe Family Limited Partnership), Britt Bailey (Deputy Corporation Counsel for the Planning Department), Zendo Kern (Planning Director), and Derek Simon (Representative for 1250 Oceanside LLC).

This item was called to order at 11:11 a.m. There were five members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 1:39:10*] Mr. Mark Murakami, representative for C & J Coupe Family Limited Partnership, provided his opening statement. Ms. Britt Bailey, Deputy Corporation Counsel for the Planning Department and Mr. Derek Simon, representative for 1250 Oceanside LLC, did not have any objections.

[*SEE YOUTUBE TIMESTAMP 1:40:11*] Board Member Aguiar motioned to grant the petitioners request to intervene PL-BOA-2024-000105; Board Member Martin seconded. No discussion occurred. A roll-call vote was taken, and the motion passed with five ayes (Aguiar, Martin, Able, McNamarra, Lewis).

[*SEE YOUTUBE TIMESTAMP 1:41:35*] Ms. Wan mentioned PL-BOA-2024-000105 hearing is scheduled for October 11th. The Chair will submit an order to all parties.

This item concluded at 11:15 a.m.

MINUTES

[*SEE YOUTUBE TIMESTAMP 1:43:33*] A motion was made by Board Member Able to approve the hearing minutes of June 14, 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 update from the last hearing. The September 13th hearing is canceled. The next hearing is scheduled for October 11, 2024, in Kona.

Status of outstanding petitions – Staff

Ms. Surprenant reported there are ten cases currently scheduled for the October agenda, however the pre-hearing conferences has not happened.

ADJOURNMENT

Board Member Aguiar motioned to adjourn the hearing. Board Member Able seconded the motion. An all-in favor voice vote carried the motion unanimously.

The hearing was adjourned at 11:19 a.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Cathy Lewis, Chair
Board of Appeals