

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
October 11, 2024

The County of Hawai‘i Board of Appeals met in regular session at 9:31 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 seven members in attendance.

The full YouTube video of this hearing can be found here:
<https://www.youtube.com/watch?v=ihTR95thScE>

MEMBERS PRESENT (in person): Cathy Lewis (Chair), Daina “Noe” Saiki (Vice Chair), 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 approximately seventeen 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 9:39 a.m., Chair Lewis called for statements from the public. There were two members of the public in attendance to provide testimony.

Jim Medeiros [*SEE YOUTUBE TIMESTAMP 8:31*]

Walter Kelly [*SEE YOUTUBE TIMESTAMP 13:06*]

Testimony closed at 9:44 a.m.

OLD BUSINESS

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

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

This item was called to order at 9:33 a.m. There were eighteen members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 1:58*] Board Member Aguiar recused herself from this matter. Quorum was confirmed with six remaining Board Members.

[*SEE YOUTUBE TIMESTAMP 2:19*] Board Member Martin motioned to accept the findings of fact, conclusions of law, and decision and order; Board Member Trefethen 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, “Based on the above, the Planning Director’s decision to grant the variance did not violate the law, was not clearly erroneous, was not an abuse of discretion, and was not arbitrary or capricious.” Board Member Martin moved to adopt the amendment; Vice Chair Saiki seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 5:20*] An all-in favor vote was taken on the motion as amended, and the motion passed unanimously. The findings of fact, conclusions of law, and decision and order were approved by the Board with the additional paragraph number (5) under conclusions of law.

This item concluded at 9:37 a.m.

NEW BUSINESS

2. DANIEL B. AND JANET T. BOLTON (PL-BOA-2022-000024)

Appeal of Decision by the Planning Director Dated April 19, 2022, Regarding Notice of Violation and Order (PL-PCV-2022-00182) Relating to Processing of Aggregate Material on Agricultural Land and Operation of a Contractor’s Yard.

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

TMK: (3) 7-5-017:031 & 044

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

[*SEE YOUTUBE TIMESTAMP 6:05*] Chair Lewis mentioned this matter has been continued to the December 13th hearing in Kona.

3. DANIEL B. AND JANET T. BOLTON (PL-BOA-2022-000026)

Appeal of Decision by the Director of Public Works Dated June 3, 2022, Regarding the Revocation of Grading Permit No. PW.ENG2021-00094 (extension of Permit No. 092524).

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

TMK: (3) 7-5-017:031 & 044

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

[SEE YOUTUBE TIMESTAMP 6:18] Chair Lewis mentioned this matter has been continued to the December 13th hearing in Kona.

4. DANIEL B. AND JANET T. BOLTON (PL-BOA-2023-000063)

Appeal of Decision by the Director of Public Works Dated December 20, 2022, Regarding Notice of Order (CE2021-74K) for Fines Related to Notice of Violation Dated June 1, 2022.
Location: 75-456 Hualālai Road, Kailua-Kona, HI 96740
TMK: (3) 7-5-017:031

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

[SEE YOUTUBE TIMESTAMP 6:27] Chair Lewis mentioned this matter has been continued to the December 13th hearing in Kona.

5. I'O PROCESSING COMPANY INC. DBA I'O PROCESSING COMPANY (PL-BOA-2023-000065)

Appeal of Decision by the Director of Public Works Dated January 13, 2023, Regarding Denial of Declarations of Compliance for Agricultural Buildings.
Location: 73-4103 Hawai'i Belt Road, Kailua-Kona, HI 96740
TMK: (3) 7-3-002:015

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

[SEE YOUTUBE TIMESTAMP 6:39] Chair Lewis mentioned this matter has been continued to the November 15th hearing in Hilo.

6. 1250 OCEANSIDE, LLC (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.
Location: Kealahue, South Kona
TMK: (3) 8-1-004:070 & 8-1-030:055

7. 1250 OCEANSIDE, LLC (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.
Location: Kealahue, South Kona
TMK: (3) 8-1-004:070 & 8-1-030:055

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

WITNESSES: Michael Vitousek and Zendo Kern.

This item was called to order at 9:38 a.m. There were eighteen members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 16:37*] The appellant, 1250 Oceanside, LLC, filed a stipulation regarding consolidated hearing procedures. Board Member Able motioned to accept the stipulation; Board Member Trefethen seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 21:56*] Mr. Derek Simon, representative for 1250 Oceanside, LLC, provided his opening statement with a PowerPoint presentation.

[*SEE YOUTUBE TIMESTAMP 32:45*] Mr. Mark Murakami, representative for C & J Coupe Family Limited Partnership, provided his opening statement.

[*SEE YOUTUBE TIMESTAMP 36:52*] Ms. Britt Bailey, Deputy Corporation Counsel for the Planning Department, provided her opening statement.

[*SEE YOUTUBE TIMESTAMP 39:06*] Mr. Ian Wesley-Smith, representative for 1250 Oceanside, LLC, called his first witness, Mr. Michael Vitousek. Mr. Vitousek discussed the bypass road presented in Exhibit twenty (20) and the connector road in Exhibit nineteen (19) from case number PL-BOA-2024-000104.

[*SEE YOUTUBE TIMESTAMP 1:06:59*] Mr. Murakami cross-examined Mr. Vitousek and questioned him about the road dedication and the shoreline public access plan, then Ms. Bailey had a few follow-up questions. Mr. Wesley-Smith re-directed, then Ms. Bailey followed.

[*SEE YOUTUBE TIMESTAMP 1:24:08*] Mr. Simon called his second witness, Zendo Kern, Planning Director.

At 10:55 a.m. the board took a short recess, and the hearing was called back to order at 11:01 a.m.

[*SEE YOUTUBE TIMESTAMP 1:30:55*] Mr. Simon questioned Director Kern regarding the declaratory order presented in Exhibit one (1) in both cases, PL-BOA-2024-000104 and PL-BOA-2024-000105.

[*SEE YOUTUBE TIMESTAMP 2:10:47*] Mr. Murakami cross-examined Director Kern regarding the declaratory ruling process, followed by Ms. Bailey, who posed additional questions. Mr. Simon then redirected the discussion.

[SEE YOUTUBE TIMESTAMP 2:17:20] Chair Lewis requested closing statements from all parties beginning with Mr. Simon, followed by Mr. Murakami, then Ms. Bailey.

At 11:56 a.m. the board took a short recess, and the hearing was called back to order at 12:09 p.m.

[SEE YOUTUBE TIMESTAMP 2:38:31] Board Member Aguiar requested for an extended recess to have a discussion with their attorney.

At 12:10 p.m. the board took a recess, and the hearing was called back to order at 12:38 p.m.

[SEE YOUTUBE TIMESTAMP 3:08:09] Vice Chair Saiki motioned for case PL-BOA-2024-000104 to affirm the Planning Director's decision, it was not clearly erroneous, was not arbitrary or capricious, nor an abuse of his discretion; Board Member Trefethen seconded. Members briefly discussed the matter. A roll-call vote was taken, and the motion passed with seven ayes (Saiki, Trefethen, Able, Aguiar, Martin, McNamarra, Lewis).

[SEE YOUTUBE TIMESTAMP 3:11:30] Vice Chair Saiki motioned for case PL-BOA-2024-000105 to affirm the Planning Director's decision in docket number 24-0001, in that the decision was not clearly erroneous, was not arbitrary or capricious, nor an abuse of the Planning Director's discretion; Board Member McNamarra seconded. Members briefly discussed the matter. A roll-call vote was taken, and the motion passed with seven ayes (Saiki, McNamarra, Able, Aguiar, Martin, Trefethen, Lewis).

[SEE YOUTUBE TIMESTAMP 3:14:02] Ms. Sylvia Wan, Deputy Corporation Counsel for the Board, requested that the appellee prepare the order and file it with the Board no later than November 13th and the appellant and intervenor can file any objections no later than November 29th. The order will be agendized for the December 13th hearing in Kona.

This item concluded at 12:47 p.m.

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[SEE YOUTUBE TIMESTAMP 3:16:26] A motion was made by Board Member Martin to approve the hearing minutes of August 9, 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.

ADMINISTRATIVE MATTERS

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

Ms. Wan reported on the Board of Appeals decisions regarding a Kona filing 3CCV-22-0000049, which is set for a bench trial hearing in May 2025. A recent decision, 3CCV-23-000100 involving Ms. Rohr, was affirmed by the Circuit Court on September 12, 2024. Staff will reach out to Ms. Rohr and all parties to schedule a new hearing date. The Rosehill case, which has been affirmed by the Supreme Court regarding the Land Use Commission decision, consists of seventeen plus

one separate case. Staff will reach out to all parties to schedule a new hearing date. Further details on BOA-21-000296 AOPOOKOVP, will be provided at the next hearing.

Status of outstanding petitions – Staff

Ms. Surprenant reported that two cases are currently scheduled for the November agenda, PL-BOA-2022-000052 Big Island Retreat and PL-BOA-2023-000065 I'O Processing Company. However, their pre-hearing conferences have not yet occurred. Additionally, some cases were moved to December, resulting in a total of seven cases now on the agenda.

ADJOURNMENT

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

The hearing was adjourned at 12:52 p.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Cathy Lewis, Chair
Board of Appeals