

BOARD OF APPEALS
COUNTY OF HAWAI‘I

TRANSCRIPT
December 13, 2024

The County of Hawai‘i Board of Appeals took up the petition for **1250 OCEANSIDE, LLC (PL-BOA-2024-000104 & PL-BOA-2024-000105)** at 9:43 a.m. This was a hybrid meeting held in person at 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 Cathy Lewis presiding.

MEMBERS PRESENT IN PERSON: Cathy Lewis (Chair), Scott Martin, and Lisa McNamarra.

MEMBERS PRESENT ON ZOOM: Daina “Noe” Saiki (Vice Chair).

MEMBERS EXCUSED: Rachel Able, Stacey Aguiar, 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).

1250 OCEANSIDE, LLC (PL-BOA-2024-000104)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER TO DENY 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

1250 OCEANSIDE, LLC (PL-BOA-2024-000105)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER TO DENY 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, Patrick Wong (Representative for 1250 Oceanside, LLC); Kenneth Kupchak, Mark Murakami, Toren Yamamoto (Representative for C & J Coupe Family Limited Partnership); and Jean Campbell (Deputy Corporation Counsel for the Planning Department).

There were approximately sixteen members of the public in attendance.

LEWIS: Okay, very good. So, we are to consider the adoption of the—as I mentioned proposed findings of fact, conclusions of law, decision and order. And to the—Board Members, has everyone had a chance to read the proposed findings? Okay. Is that a yes from Scott.

ALL BOARD MEMBERS: [*all acknowledged*].

LEWIS: All right very good. All right and the order submitted by the department, everybody had a chance to review that?

ALL BOARD MEMBERS: [*all acknowledged*].

LEWIS: All right, so I would—and has everybody familiarized themselves with the objections filed?

ALL BOARD MEMBERS: [*all acknowledged*].

LEWIS: Okay, all right. Now I would entertain a motion for—regarding the proposed findings of fact. Will anybody make a motion? I don't like to have to make the motions. Okay, I'm going to make a motion, that we approve the proposed findings of fact, conclusions of law, and decision and order. Well, I thought perhaps we would get my order—or my motion underway and then have a discussion.

WAN: Deputy Corporation Counsel, Sylvia Wan. So, you can do a motion to approve. If you are going to consider amendments to the form of the order that's been presented, just know that you're going to have to have subsequent motions to amend.

LEWIS: Right.

WAN: Your original motion.

LEWIS: So, it would be simpler since nobody else is speaking, that I should just go ahead and do it with amendments or is somebody going to be speaking on any amendments within here.

WAN: I think that's up to you. If you already have in mind particular amendments, you can start or—I'm just giving you options here.

LEWIS: Yeah, all right. All right, I'm going to—

WAN: If you—

LEWIS: Since nobody seconded my motion, I'll start over, I guess.

WAN: So—

LEWIS: Robert's Rules—

WAN: Do you have an idea of about how many amendments you do want to propose, because if there's more than one, then maybe you should do it singularly. Approve and then amend, and then amend, and then amend.

LEWIS: I wish I wasn't the one that had to do this, but—all right. Well hang on a minute, let me find the amendments that I would like to see—all right.

WAN: Okay, Chair, just based off of how this is going at the present time, why don't you start with the simple motion, which is to approve the proposed findings of fact, conclusion of law. Get a second, you'll open it for discussion.

LEWIS: Okay.

WAN: Based on discussion, then you could decide to amend it.

LEWIS: Okay.

WAN: As we go along. That's probably the easiest way to go forward.

LEWIS: All right. Mostly it was taking a minute because I wasn't ready to be the one to do—

MARTIN: I'll second your original motion.

LEWIS: Okay, thank you. Any discussion? All right, I'm going to find that there are some gaps in this. Not necessarily in terms of the conclusion, but just to get to the conclusion. So, on item number nine in the proposed findings. Hang on a minute. Hang on just a minute. I'm not find—hang on a minute. I'm sorry, I do apologize.

So, the findings of fact. Yeah, okay. So, number on number nine, which states on October 11th, 2024, the Board heard oral arguments presentation of evidence. I would propose including the following language. Comma including exhibits comma. It's implied, but I think it's good to state it and note for the record that we have exhibits.

And I'll go ahead and add the next one and then maybe we can vote on that. On two of them because that one's fairly in objection of—unobjectionable I would think. All right, so I would like to insert a finding of fact to—this finding, I feel reflects the Board's discussion and reasoning and—hang on a minute.

All right, here's the language it would be. The very first finding of fact then, so actually I'm going backwards again here in terms of the number. All right, so Jean Campbell although present at the hearing—no, no, no, no, that's not it. I'm sorry.

WAN: Chair, do you want to just have the members—are you proposing an amendment to paragraph nine of findings of fact, just to include exhibits. Would you like the members to at least vote on that first, so you have a moment to collect yourself for your next point?

LEWIS: Okay, all right. So, with just that one?

WAN: There would need to be a second to that amendment.

MCNAMARRA: I'll second that.

LEWIS: Okay, thank you. All in favor.

WAN: Well, I guess there would need to be a discussion. Is there any discussion on that matter?

LEWIS: I'm sorry. Discussion? All right. All in favor. Anyone opposed?

ALL BOARD MEMBERS: [*all voted in favor*].

LEWIS: Okay, that carries.

WAN: So, I'm just going to note that Noe, Lisa, and Scott all voted in the affirmative, although the mics didn't all catch it.

LEWIS: Okay, I'll make a motion to amend the—excuse me—the findings of fact to add number ten. And the proposed language is as follows, the Board found that the order addressed the questions raised by the appellant in its appeal, even if the Director did not provide the level of clarity or specifics desired by the appellant. So, I would entertain a second to that.

MARTIN: Second.

LEWIS: All right, all—discussion. Any discussion? Okay, then we'll vote on that. All in favor to that. Noe—

WAN: Are there any nays?

LEWIS: Any nays? Thank you.

ALL BOARD MEMBERS: [*all voted in favor*].

WAN: Hearing and seeing none, that motion passes.

LEWIS: That motion passes.

WAN: So, the motion has been amended now twice?

LEWIS: Right. I have too many things here. Here is it. Okay, this is five of them or four.

WAN: So, Chair, let's take them each in each in turn if you have five different items.

LEWIS: It's easier, yeah. Okay, now I'll make a motion to amend the findings of fact to and conclusions of law—I'm calling—just for shorthand, I'm calling this document findings of fact, but I want to amend the conclusions of law, and we'll start with one of them. Okay, the first would be number two—I'm look—hang on a minute.

All right, the first one will—I'll do them one at a time just for clarity. So, the first one will be number—would be numbered five. It would be a different number five, and it would state the following, the Director acted within his jurisdiction, when the Director addressed the posed questions in his order. That is the first proposal.

WAN: So, just for clarity sake Chair, what you're proposing is that under the conclusions of law section, to appear after paragraph four, which would be a new paragraph five. Would be the language you stated, the Director acted within his jurisdiction when the Director addressed the posed questions in the order, is that correct?

LEWIS: Correct.

WAN: Okay. So, that's a motion to amend.

LEWIS: It is a motion to amend.

SAIKI: I second the motion.

MARTIN: Second.

LEWIS: Okay—I'll—

WAN: I'm not sure who was first, but I heard Scott first, so I'm going to have Scott as the second.

LEWIS: Everybody wants to second, but that's—all right any discussion on that? All right, we'll take a vote. All in favor say aye.

WAN: Can the members do that one more time with your mics on?

LEWIS: All in favor, please say aye. All opposed?

ALL BOARD MEMBERS: [*all voted in favor*].

LEWIS: Okay, that passes. All right, my second amendment, proposed amendment is going to follow next. So, this will be a new six, a new paragraph six. And it will state, the order correctly identified issues outside of the Director's jurisdiction and discretion. Everybody—

SURPRENANT: Point of clarification, Chair. A new six, so you have a new five, which means the existing five, will be six.

LEWIS: Just bump them down.

SURPRENANT: This is a new six, under the new five.

WAN: No.

LEWIS: Correct, she's right.

SURPRENANT: And therefore, the existing five will become seven.

LEWIS: Right, that's what—so it just bumps every—bumps the last one down.

SURPRENANT: Okay, I just want to be clear, so we know. Thank you.

LEWIS: Absolutely. Yeah, all right now—so right, I need a second.

MCNAMARRA: I'll second it.

LEWIS: Thank you. Discussion please, any discussion? All right then, all in favor please indicate with aye. Any opposed?

ALL BOARD MEMBERS: [*all voted in favor*].

LEWIS: Okay, so hearing none, that motion passes, that amendment. Okay I've got two more, so then the next one will be a new paragraph seven. I move to amend the order to add the new—a new paragraph seven under the conclusions of law. This would be, the order sufficiently addressed the questions raised by the appellant, even though the order did not reflect the specifics desired by the appellant. And—that's it. Would you like me to repeat that?

MARTIN: Yes.

LEWIS: The order sufficiently addressed the questions raised by the appellant, even though the order did not reflect the specifics desired by the appellant.

MARTIN: Second.

LEWIS: Okay, we got a second. Any discussion? All right, all in favor of this say aye. All opposed—I'm sorry, all opposed?

ALL BOARD MEMBERS: [*all voted in favor*].

LEWIS: Hearing none, that amendment passes that motion for an amendment passes. And I have one more proposed amendment and that's going to be a new number eight. In the conclusions of law, and it would state, appellant's argued a lack of clarity and/or specifics in the Director's responses, but that did not meet the burden required for modifying or remanding the Planning Director's decision.

I'm going to repeat that since that's a little dense there. All right, appellant's argued lack of clarity and/or specifics in the Director's responses, but that did not meet the burden required for modifying or remanding the Planning Director's decision.

SAIKI: I second that amendment.

LEWIS: Okay, any discussion? All right, all in favor, please say aye. Any opposed?

ALL BOARD MEMBERS: [*all voted in favor*].

LEWIS: All right, that hearing none that motion and amendment passes. And April, just for clarity then that leaves that one last original. All right.

WAN: So, for clarity the original paragraph five as proposed, would become paragraph nine under conclusions of law.

LEWIS: And I have one final sort of rewording I'd like to propose. In the decision and order itself, which is the—and actually the very last paragraph of this document. Do you all want to take—turn to that. Where it says appellant's appeal of, I'd like to cross out that language and begin with the Planning Director's and then continue all the way as written, until it says is denied and cross out denied and say affirmed.

So now it's going to read, if the motion passes, it will read the Planning Director's April 29th, 2024, Zendo Kern, Planning Director, County of Hawai'i's declaratory order in the matter of C & J Coupe Family Limited Partnership, petitioner docket number 24-0001 is affirmed. And then the last sentence remains unchanged. Basically, oh go ahead.

MCNAMARRA: I'll second that.

LEWIS: Thank you, any discussion? We're just basically turning a negative into a positive kind of—

WAN: And just for record of clarity sake, that is the last paragraph on the decision and order, first sentence is being amended in that fashion.

LEWIS: Correct. Correct. Okay, any other discussion? All right then I'll take a vote, any—all—

WAN: I'm sorry, did we have a second, oh Lisa seconded. Okay, sorry.

LEWIS: All right, so all in favor please say aye. Any opposed?

ALL BOARD MEMBERS: [*all voted in favor*].

LEWIS: All right, so hearing no opposition, that amendment, that final amendment passes. Yeah, I guess so. All right, I missed one that where it's basically again a rewording to make it more of an active versus passive language. So, this is now going to be—that so, I'm going to move that the conclusions of law be amended, the old number five, which is now number nine. Okay, hang on a minute.

Okay, all right so I'm going to—if you can follow along Board Members, follow along, and I will indicate where the changes will be. Having considered the testimony and evidence provided, the Board unanimously concluded rather than ruled, so that's the first change, that in issuing his order, the Planning Director Zendo Kern did not clearly err, was not arbitrary or capricious, nor did he abuse his discretion, that's unchanged. Therefore, the Board affirmed Zendo Kern and the rest is unchanged. So, we're crossing out denied appellant's appeal of and turning it into the active voice of. Therefore, the Board affirmed Zendo Kern and the rest remains unchanged. That's it from me.

MCNAMARRA: I'll second that.

LEWIS: Okay, any discussion? All right, all in favor of this amendment, please say aye. Any opposed? Thank you, Noe. Any opposed?

ALL BOARD MEMBERS: [*all voted in favor*].

LEWIS: All right, hearing no opposition, then that final amendment passes.

WAN: Okay, so if the Chair is done suggesting amendments, then what is left on the floor is the original motion to approve the proposing findings of facts, conclusions of law as amended, so that would be on the floor for discussion presently.

LEWIS: It's been seconded.

WAN: You've already been seconded.

LEWIS: So, the discussion now is to really the merits of whether we're going to adopt the—this findings of fact and order in it's entirety as amended. Any discussion on that? Okay.

WAN: So, Chair, can you just call the question just so that everybody's clear.

LEWIS: Okay, how do I call the question?

WAN: So, it would be restating the motion. So, your motion is to—I guess, I'll just call the question for you then. The Chair's motion is to approve the proposed findings of fact, conclusions of law, as amended by the subsequent amended—amendment motions rather than having to state it all into the record once more since the Board has voted on each and every single one of the amendments. So, that's the call of the question and since this is approving the final form of the order, I would ask if you're going to ask for the vote that it be roll call.

LEWIS: Okay, so is there any discussion? All right, so we'll have a roll call vote and please state your vote when your name is called.

MARTIN: Aye.

SAIKI: Yes.

MCNAMARRA: Aye.

LEWIS: Aye.

SURPRENANT: You have four ayes, motion passes.

LEWIS: All right, thank you for bearing with me, that was a little bit painful. All right, so back to this. Now we are going to do it all over again for the second Oceanside case. Now, the conclusions of law—the findings of fact, conclusions of law, decision and order are virtually identical. Is there any way we can somehow shorthand this process a little? Where we adopt in mass all the same amendments.

WAN: Ms. Campbell, I understand that you were the drafter of the original proposed findings of fact, conclusions of law. Can you attest that they are identical outside of the changes relative to the respective declaratory orders.

CAMPBELL: To my recollection, that's correct.

LEWIS: Obviously case numbers and things are different.

WAN: And would 1250 assent to that? 1250 Oceanside.

SIMON: Yeah, hi Ms. Wan, Derek Simon on behalf of 1250. I don't think there's a problem with that, although I think the numbering is off as far as referencing. I can double check here, but I think there's maybe one more or two more factual findings in the proposed order. I could be wrong on that.

WAN: Chair, do you want to [*indecipherable*] place just so we can pull up those orders.

LEWIS: Okay, well let him finish, maybe he can—

SIMON: Yeah, actually maybe I misspoke there, I apologize. The numbering is the same, I apologize.

WAN: So, it appears that the parties are both affirming that the second order for case number PL-BOA-2024-000105 is the same. So, if you want to adopt the same changes as in the findings of fact, conclusions of law, adopted by the Board for case number PL-BOA-2024-000104, you can do that type of motion.

LEWIS: Okay, does anybody else—

WAN: Oh, did the in—I'm sorry. Before I, before we go forth, does the intervenor have any objections to proceeding this matter? Do you have any objections? Do you agree that the order is the same?

MURAKAMI: We have no objection to your proceeding that way. Thank you.

WAN: Thank you.

LEWIS: Okay. All right then, I will make a motion to adopt the proposed findings of fact, conclusions of law, decision and order with the amendments that we just passed for the related case, without restating them. That is my motion.

MCNAMARRA: I'll second that.

LEWIS: Any discussion? Okay, we'll do a roll call order or hearing no opp—hearing no discussion, let's have a vote on that and we'll do the roll call order again just to be clear.

SURPRENANT: Thank you, Chair.

MCNAMARRA: Aye.

SAIKI: Aye.

MARTIN: Yes.

LEWIS: Aye.

SURPRENANT: You have four ayes, motion passes.

LEWIS: Thank you. Thank you very much. Is there any clerical kind of thing that I need to tell them about?

WAN: Staff will follow up to make those changes as approved by the Board and we'll submit them to the Chair for signature, once those changes have been added to the—to the new form of the order. Thank you.

[This matter concluded at 10:13 a.m.]

Respectfully submitted,

Ashley DeVera, Board Secretary