

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
December 13, 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 four members in attendance.

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

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).

There were approximately sixteen 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 9:37 a.m., Chair Lewis called for statements from the public. There was one member of the public in attendance to provide testimony.

David Fischer [*SEE YOUTUBE TIMESTAMP 10:20*]

Testimony closed at 9:42 a.m.

At 11:32 a.m., Chair Lewis allowed two members of the public to provide testimony.

Jane DeMello [*SEE YOUTUBE TIMESTAMP 2:06:01*]

Shane DeMello [*SEE YOUTUBE TIMESTAMP 2:08:47*]

OLD BUSINESS

1. 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: Kealakekua, 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).

This item was called to order at 9:43 a.m. There were approximately sixteen members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 17:52*] Chair Lewis motioned to approve the proposed findings of fact, conclusions of law, and decision and order; Board Member Martin seconded. No discussion occurred.

[*SEE YOUTUBE TIMESTAMP 21:47*] Chair Lewis motioned to amend in the findings of fact under item number nine (9) which states, “On October 11th, 2024, the Board heard oral arguments presentation of evidence” to include the following language, comma including exhibits comma; Board Member McNamarra seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 24:46*] Chair Lewis motioned to amend the findings of fact to add number ten (10) the proposed language, “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”; Board Member Martin seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 27:00*] Chair Lewis motioned to amend the conclusions of law to add a new number five (5) which would state, “The Director acted within his jurisdiction, when the Director addressed the posed questions in his order”; Board Member Martin seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 30:00*] Chair Lewis motioned to amend the conclusions of law to add a new number six (6) which would state, “The order correctly identified issues outside

of the Director's jurisdiction and discretion"; Board Member McNamarra seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 31:25*] Chair Lewis motioned to amend the conclusions of law to add a new number seven (7) which would state, "The order sufficiently addressed the questions raised by the appellant, even though the order did not reflect the specifics desired by the appellant"; Board Member Martin seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 32:33*] Chair Lewis motioned to amend the conclusions of law to add a new number eight (8) which would state, "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"; Vice Chair Saiki seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously. Ms. Wan mentioned for clarity, the original number five (5) would become number nine (9).

[*SEE YOUTUBE TIMESTAMP 34:00*] Chair Lewis motioned to amend the decision and order in the very last paragraph of the document, to cross out denied and replace with affirmed. It would then state, "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", then the last sentence remains unchanged; Board Member McNamarra seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 36:32*] Chair Lewis motioned to amend the conclusions of law, the old number five (5), which is now number nine (9) to change the word ruled to concluded; and to change the word denied to affirmed. It would then state, "Having considered the testimony and evidence provided, the Board unanimously concluded 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. Therefore, the Board affirmed Zendo Kern", then the rest remains unchanged; Board Member McNamarra seconded. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 39:43*] Chair Lewis motioned to approve the proposed findings of fact, conclusions of law, as amended by the subsequent amended motions. No discussion occurred. A roll-call vote was taken, and the motion passed with four ayes (Martin, Saiki, McNamarra, Lewis).

This item concluded at 10:09 a.m.

2. 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: Kealahakua, 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).

This item was called to order at 10:10 a.m. There were approximately sixteen members of the public in attendance.

[SEE YOUTUBE TIMESTAMP 41:22] Ms. Wan confirmed with all parties that the findings of facts, conclusions of law, decision and order are identical outside of the changes relative to the respective declaratory orders. Chair Lewis motioned 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; Board Member McNamarra seconded. A roll-call vote was taken, and the motion passed with four ayes (McNamarra, Saiki, Martin, Lewis).

[SEE YOUTUBE TIMESTAMP 44:56] Ms. Wan stated that staff will make the amendments as approved by the Board and will submit it to Chair for signature.

This item concluded at 10:13 a.m.

NEW BUSINESS

**3. 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 10:14 a.m. There were sixteen members of the public in attendance.

[SEE YOUTUBE TIMESTAMP 45:45] Chair Lewis mentioned this matter has been continued to the February 14th hearing in Kona at the request of the parties.

5. BEVERLY MARAGOS (PL-BOA-2024-000112)

DIRECTOR OF PUBLIC WORKS MOTION TO DISMISS

Appeal of Decision by the Director of Public Works Dated June 20, 2024, Regarding Issuance of Permit No. 25910 to Work Within the County Right-of-Way.

Location: Kealahakua, South Kona

TMK: (3) 8-3-015:113

[SEE YOUTUBE TIMESTAMP 46:01] Chair Lewis took item five (5) out of order.

PARTIES PRESENT: Randall Yamabe (appellant's representative) and Sinclair Salas-Ferguson (Deputy Corporation Counsel for the Department of Public Works).

This item was called to order at 10:14 a.m. There were fifteen members of the public in attendance.

[SEE YOUTUBE TIMESTAMP 48:06] Chair Lewis gave each party five (5) minutes to argue the motion to dismiss, beginning with Mr. Salas-Ferguson. He explained that the landowner approached the Department of Public Works (DPW) with the intention of dedicating the street to the County. To meet the County's dedicable standards, the landowner obtained a permit. After DPW inspections, the matter is then presented to the Hawai'i County Council for approval. Mr. Salas-Ferguson mentioned that the appellant filed the appeal one hundred and thirty-one (131) days later, and DPW is requesting the appeal to be dismissed due to untimely filing.

[SEE YOUTUBE TIMESTAMP 52:25] Mr. Yamabe mentioned that DPW filed the motion to dismiss on November 14, 2024, which was past the deadline and should be disqualified. The appellant filed a request to access a government record, and the permit was received by the appellant on October 22, 2024. The appellant then filed an appeal on October 29, 2024.

[SEE YOUTUBE TIMESTAMP 58:50] Chair Lewis gave Mr. Salas-Ferguson time for rebuttal. The Board Members did not have any questions for both parties.

[SEE YOUTUBE TIMESTAMP 1:01:32] Vice Chair Saiki motioned to grant the Department's motion to dismiss; Board Member Martin seconded. Members briefly discussed the matter. A roll-call vote was taken, and the motion passed with four ayes (Saiki, Martin, McNamarra, Lewis).

[SEE YOUTUBE TIMESTAMP 1:06:55] Chair Lewis asked Mr. Salas-Ferguson to prepare the order and file it with the Board by December 27th, 2024, and the appellant can file any objections by January 3rd, 2025.

This item concluded at 10:35 a.m.

At 10:37 a.m. the board took a short recess, and the hearing was called back to order at 10:47 a.m.

4. JOAQUIN BELISARIO (PL-BOA-2024-000101)

Appeal of Decision by the Director of Public Works Dated February 20, 2024, Regarding Finding of No Violation (DPW24-009).

Location: 76-785 Hualalai Road, Kailua-Kona, HI 96740

TMK: (3) 7-6-009:045

[*SEE YOUTUBE TIMESTAMP 1:18:55*] Chair Lewis took item four (4) after item five (5).

PARTIES PRESENT: Joaquin Belisario (appellant), Sierra Hagg (standby counsel for appellant), Patrick Wong (landowner's representative), and Sinclair Salas-Ferguson (Deputy Corporation Counsel for the Department of Public Works).

This item was called to order at 10:52 a.m. There were eight members of the public in attendance.

[*SEE YOUTUBE TIMESTAMP 1:23:42*] Mr. Salas-Ferguson made an oral motion to dismiss under Board Rule 3-12 and based on two legal principles. The first was res judicata and noted that Mr. Belisario had filed three separate complaints, with the first two being investigated and closed. For the third complaint, Mr. Belisario received a written notice with a finding of no violation and did not submit his appeal until thirty-seven (37) days later. The second basis for the motion was that the appeal was not timely filed, and it was requested that the matter be dismissed for lack of jurisdiction. Mr. Wong joined the motion.

[*SEE YOUTUBE TIMESTAMP 1:25:48*] Mr. Belisario addressed the date of the official documentation, and the numerous complaints filed. Mr. Salas-Ferguson responded. Chair Lewis inquired about the difference between the last two complaints filed, and Mr. Wong replied.

[*SEE YOUTUBE TIMESTAMP 1:34:38*] Chair Lewis allowed Mr. Belisario a few minutes for rebuttal, then Mr. Salas-Ferguson responded.

[*SEE YOUTUBE TIMESTAMP 1:45:28*] Board Member Martin motioned to grant the Department's motion to dismiss due to the untimely filing; Board Member McNamarra seconded. Members briefly discussed the matter.

[*SEE YOUTUBE TIMESTAMP 1:52:17*] Board Member Martin motioned to amend his original motion to include grounds for dismissal as mentioned by Chair Lewis; Vice Chair Saiki seconded. No discussion occurred. An all-in-favor voice vote carried the motion unanimously, and the motion to amend was adopted.

[SEE YOUTUBE TIMESTAMP 1:53:04] No discussion on the main motion as amended occurred. A roll-call vote was taken, and the motion passed with four ayes (Martin, McNamarra, Saiki, Lewis).

[SEE YOUTUBE TIMESTAMP 1:54:54] Chair Lewis asked Mr. Salas-Ferguson to prepare the order and file it with the Board by December 27th, 2024, and the appellant can file any objections by January 3rd, 2025.

This item concluded at 11:24 a.m.

MINUTES

[SEE YOUTUBE TIMESTAMP 1:56:12] A motion was made by Board Member Martin to approve the hearing minutes of October 11th, 2024, as circulated. The motion was seconded by Board Member McNamarra. A brief discussion occurred. Chair Lewis mentioned a typo on page two (2) where it states was not clearly erroneous, was not an abusive discretion, to be replaced by abuse of discretion. Board Member Martin motioned to make the change as noted by the Chair; Board Member McNamarra seconded. An all-in favor vote was taken, and the motion passed unanimously. The motion to amend was adopted. The motion on the floor to adopt the minutes as amended was seconded by Board Member McNamarra. 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

[SEE YOUTUBE TIMESTAMP 1:58:58] Ms. Wan reported on the Board of Appeals decisions, there were three notable decisions that reached their final judgment. The first one was Lawrence Ford, John Koontz, Peter Hazard Trust, Don Davis, John Legerfo, Phillip Koszarek, William Gage, and Rebecca Gage in matter 3CCV-23-0000200. The final judgment was entered on December 2nd, 2024, which reversed the Board of Appeals decision allowing a short-term vacation rental (STVR) on agricultural property. The reason for that judgment is the Supreme Court case, Linda Rosehill and other parties versus the State of Hawai'i Land Use Commission (LUC) and the County of Hawai'i filed on September 24th, 2024, found that STVR's are not allowed on agricultural land.

The Ford case (PL-BOA-2022-00020) and Gage case (PL-BOA-2022-000021) will return on the agenda. The Rosehill consolidated cases, which includes sixteen (16) cases also will return on the agenda. The last matter was Claudia Rohr versus the Board of Appeals and Planning Department in 3CCV-23-0000100, the Judge had entered a findings of fact, conclusions of law, decision and order affirming the Board's decision. The final judgment was entered on November 15th, 2024. Ms. Rohr has a different case pending before the Board that stayed pending the outcome of this particular case, however it may return to the Board's agenda.

Status of outstanding petitions – Staff

Ms. Surprenant reported no updates.

ADJOURNMENT

The hearing was adjourned at 11:41 a.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Cathy Lewis, Chair
Board of Appeals