

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
February 14, 2025

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 Deputy Corporation Counsel, Sylvia Wan, Esq. 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=F5ULvkPE0o0&t=2140s>

MEMBERS PRESENT IN PERSON: Rachel Able, Stacey Aguiar, and Scott Martin.

MEMBERS PRESENT ON ZOOM: Cathy Lewis and Lisa McNamarra.

ALSO IN ATTENDANCE: Sylvia Wan, Esq. (Deputy Corporation Counsel for the Board), Bethany Morrison (Staff to the Board), and Ashley DeVera (Board Secretary).

There were no members of the public in attendance.

Introductions of board members and staff were made.

[*SEE YOUTUBE TIMESTAMP 2:08*] Ms. Wan requested nominations for the election of a Chair pro-tem. Since the resignation of the previous Chair at the last hearing, the Board of Appeals currently has no officers. Board Member Aguiar received two nominations for Chair pro-tem for this hearing (Aguiar, Able) and accepted. No discussion occurred, and a roll-call vote was taken. Board Member Aguiar received five aye votes (Aguiar, Able, Lewis, Martin, McNamarra).

Chair Aguiar reviewed online meeting protocols and procedures.

STATEMENTS FROM THE PUBLIC ON ITEMS ON THE AGENDA

At 9:34 a.m., Chair Aguiar called for statements from the public. There were no members of the public in attendance to provide testimony.

[*SEE YOUTUBE TIMESTAMP 4:15*]

Testimony closed at 9:34 a.m.

OLD BUSINESS

1. DAVID HEFER (BOA 19-000206-C)

Appeal of Planning Director Decision Denying Application for Short-Term Vacation Rental Registration Dated August 27, 2019.

Location: 82-953 Coffee Drive, Captain Cook, HI 96704

TMK: (3) 8-2-009:073

PARTIES PRESENT: David Hefer (appellant), Jean Campbell (Deputy Corporation Counsel for the Planning Department), and Jeffrey Darrow (Planning Director).

This item was called to order at 9:35 a.m. There were no members of the public in attendance and no public testimony was provided.

[*SEE YOUTUBE TIMESTAMP 6:11*] Chair Aguiar requested if staff had received the notice of hearing to surrounding property owners and proof of service was filed. Staff confirmed the proof of service was provided on January 24th, 2025.

[*SEE YOUTUBE TIMESTAMP 7:33*] Dr. David Hefer, appellant, provided his opening statement.

[*SEE YOUTUBE TIMESTAMP 9:13*] Ms. Jean Campbell, Deputy Corporation Counsel for the Planning Department, provided her opening statement.

[*SEE YOUTUBE TIMESTAMP 16:19*] Dr. Hefer did not have any witnesses or any statements.

[*SEE YOUTUBE TIMESTAMP 16:42*] Ms. Campbell called her first witness, Jeffrey Darrow, Planning Director. Ms. Campbell requested Mr. Darrow to provide his planning background and the County's process for regulating vacation rentals. Bill 108 was created to regulate non-hosted vacation rentals. Ms. Campbell requested to define a building site. Mr. Darrow responded that a building site is defined in our zoning code, and it means "a parcel of land which is occupied or is to be occupied by a principal use and accessory uses or a building or group of buildings, and includes a lot and a plot."

Ms. Campbell questioned why the County did not include short-term vacation rental (STVR), non-conforming use certificates (NUC) that would be issued on lots formed after June 4th, 1976. Mr. Darrow responded that we have a state land use law and a county land use law. The state land use law stated that an allowable use on state land use agricultural districts were farm dwellings. On lots existing prior to June 4th, 1976, the dwellings were considered single-family dwellings.

Ms. Campbell requested information on the rezoning and subdivision processes. Mr. Darrow responded that rezoning is done to create a higher density, and the subdivision process is to create smaller lots. Ms. Campbell questioned whether there were individual lots within the

community that changed later, and Mr. Darrow responded that when a subdivision is created, and then revisions are made to that subdivision, it changes the creation date of the new lots. In this case, the property was originally agricultural five acres and the applicant rezoned the property to agricultural one acre and agricultural three acres. The applicant then subdivided a portion of the property, increment one, but did not create the original lot eleven. At a later date, the applicant subdivided the remainder of the property.

Ms. Campbell asked what the formation date for Dr. Hefer's lot eleven and Mr. Darrow responded in April 1979. The county did not issue any NUC's for any lot within the state land use agricultural district, where the lot was formed after June 4, 1976. An STVR NUC application was received from Dr. Hefer but was denied due to the date of lot creation. The property was situated in the county's agricultural district and state land use agricultural district, which was considered a farm dwelling.

[SEE YOUTUBE TIMESTAMP 35:19] Dr. Hefer cross-examined Mr. Darrow. The Board Members did not have any questions for the witness.

[SEE YOUTUBE TIMESTAMP 36:29] Ms. Campbell called her second witness, Dr. Hefer. Ms. Campbell asked if Dr. Hefer lived on the property and if it was ever used as a rental. Dr. Hefer responded that they did live on the property, and it was rented for both fewer than thirty days and longer than thirty days. No one lived on the property while it was rented for periods shorter than thirty days. Mr. Hefer made a brief statement, and the Board Members did not have any questions. Ms. Campbell did not have any further witnesses.

[SEE YOUTUBE TIMESTAMP 38:53] Dr. Hefer did not have any closing statements or arguments. Ms. Campbell provided a brief closing statement.

At 10:11 a.m. the board took a short recess, and the hearing was called back to order at 10:26 a.m.

[SEE YOUTUBE TIMESTAMP 56:24] Board Member Able motioned to affirm the Planning Director's decision because it was not clearly erroneous and that decision was not arbitrary or capricious, nor was it an abuse of discretion. This was based on the fact that the appellant did not sufficiently prove his claim that the Director's action, where state and county law in his decision, specifically that he based his decision on that his lot was created after 1976. Ms. Wan clarified that the motion claimed that the appellant did not sufficiently prove his claim because the Director's actions were not against law in that the Director specifically followed state and county law. Board Member Lewis seconded the motion.

[SEE YOUTUBE TIMESTAMP 1:00:22] Chair Aguiar opened the floor for discussion. Board Member Able said that the law was set in place in 1976, and Dr. Hefer's property was created in 1979. Board Member Lewis mentioned that Dr. Hefer's case falls under the Rosehill case from the rulings of the Hawai'i Supreme Court. A roll-call vote was taken, and the motion passed with five ayes (Able, Lewis, Aguiar, Martin, McNamarra).

[*SEE YOUTUBE TIMESTAMP 1:02:25*] Chair Aguiar requested Ms. Campbell to prepare and submit the proposed findings of fact, conclusions of law, and decision and order to all parties by March 14th and any opposition by the appellant by March 28th.

This item concluded at 10:33 a.m.

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

ORDER TO DISMISS

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

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

This item was called to order at 10:33 a.m. There were no members of the public in attendance and no public testimony was provided.

[*SEE YOUTUBE TIMESTAMP 1:05:09*] Chair Aguiar asked if all the Board Members reviewed the proposed order to dismiss submitted by the Department of Public Works, along with the appellant's objections and comments. All Board Members affirmed that they reviewed all documents submitted. Board Member Lewis motioned to approve the form of the order with an amendment, to change the person's name to sign as Chair; Board Member McNamarra seconded.

[*SEE YOUTUBE TIMESTAMP 1:06:42*] Chair Aguiar recommended to correct the order to change intervenors to state, "landowners". Board Member Lewis motioned to adopt the amendment as stated by Chair Aguiar; Board Member Martin seconded. No discussion occurred on the motion to amend. A roll-call vote was taken, and the motion passed with five ayes (Lewis, McNamarra, Martin, Able, Aguiar).

[*SEE YOUTUBE TIMESTAMP 1:10:22*] Ms. Wan clarified the motion by Board Member Lewis which stated, the Board approves the proposed findings of fact, conclusions of law, and decision and order granting Public Works motion to dismiss with the following amendments. First amendment, that the Chair at the signatory line to be adjusted and reflect the appropriate Chair, which would be the Chair pro-tem. Second, would be the removal of the word intervenors and insert the word "landowners" instead. No discussion occurred on the motion as amended. A roll-call vote was taken, and the motion passed with five ayes (Lewis, McNamarra, Able, Aguiar, Martin).

[SEE YOUTUBE TIMESTAMP 1:12:24] Chair Aguiar requested Ms. Wan to prepare the final form of the order and submit it to all parties.

This item concluded at 10:42 a.m.

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

ORDER 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

PARTIES PRESENT: Sinclair Salas-Ferguson (Deputy Corporation Counsel for the Department of Public Works).

This item was called to order at 10:43 a.m. There were no members of the public in attendance and no public testimony was provided.

[SEE YOUTUBE TIMESTAMP 1:13:59] Chair Aguiar asked if all the Board Members reviewed the proposed order to dismiss submitted by the Department of Public Works. All Board Members affirmed that they reviewed all documents submitted. Board Member Lewis motioned to adopt the order with an amendment, to reflect the proper Chair on the signature line; Board Member Able seconded. No discussion occurred. A roll-call vote was taken, and the motion passed with five ayes (Lewis, Able, Martin, McNamarra, Aguiar).

[SEE YOUTUBE TIMESTAMP 1:16:00] Chair Aguiar requested Ms. Wan to prepare the final form of the order and submit it to all parties.

This item concluded at 10:47 a.m.

4. ANDREW TEPPER (PL-BOA-2024-000113)

PROPOSED ORDER REJECTING DEFECTIVE PETITION

Appeal of Decision by the Planning Director Dated June 25, 2024, Regarding Notice of Violation and Order (PL-PCV-2023-00567) Relating to Unpermitted Event (Falls of Fire) and Overnight Accommodations.

Location: 27-476 Indian Tree Road, Papaikou, HI 96781

TMK: (3) 2-7-007:001

This item was called to order at 10:47 a.m. There were no members of the public in attendance, no public testimony was provided, and no parties were present.

[SEE YOUTUBE TIMESTAMP 1:17:39] Chair Aguiar asked if all the Board Members reviewed the proposed order submitted by Counsel. All Board Members affirmed that they reviewed all documents. Board Member Lewis motioned to adopt the proposed order; Board

Member Able seconded. No discussion occurred. A roll-call vote was taken, and the motion passed with five ayes (Lewis, Able, Martin, McNamarra, Aguiar).

This item concluded at 10:49 a.m.

MINUTES

[*SEE YOUTUBE TIMESTAMP 1:19:10*] There were no members of the public in attendance and no public testimony was provided. Chair Aguiar asked if all Board Members reviewed the minutes, and all Board Members affirmed. A motion was made by Board Member Martin to approve the hearing minutes of January 10, 2025, as circulated. The motion was seconded by Board Member McNamarra. No discussion occurred. A roll-call vote was taken, and the motion passed with five ayes (Martin, McNamarra, Lewis, Able, Aguiar).

ADMINISTRATIVE MATTERS

Election of Vice Chair for 2025.

[*SEE YOUTUBE TIMESTAMP 1:21:04*] Ms. Wan stated that since the submission of the agenda item, the Board's Chair resigned. Ms. Wan requested if the Board was willing to entertain both the election of Chair and Vice Chair, the Board would need to move to amend the agenda to reflect the change and it would take a two-third vote of those present. Board Member McNamarra motioned to amend the agenda for the election of both the Chair and Vice Chair for 2025; Board Member Martin seconded. No discussion occurred. A roll-call vote was taken, and the motion passed with five ayes (McNamarra, Martin, Lewis, Able, Aguiar).

[*SEE YOUTUBE TIMESTAMP 1:22:48*] Chair Aguiar requested nominations for Chair and Vice Chair. Board Member Lewis received one nomination for Chair (Aguiar) and declined. Board Member Martin received one nomination for Chair (Lewis) and declined. Ms. Wan noted all Board Members declined the position of Chair and recommended a Chair pro-tem so the Board could hold pre-hearing conferences, grant non-substantial motions relating to evidence, and subpoenas.

[*SEE YOUTUBE TIMESTAMP 1:26:07*] Ms. Wan requested a Chair pro-tem until the end of March and noted that the April hearing was canceled due to Council Chambers being unavailable and both Directors would not be present. The next hearings are scheduled for March and May, both in Hilo. Chair Aguiar noted that her holdover term ends in March. Chair Aguiar recommended nominating a Chair pro-tem or a Vice Chair that could be Acting Chair.

[*SEE YOUTUBE TIMESTAMP 1:28:01*] Staff have been working on nominations to fill the vacant positions. Chair Aguiar received two nominations for Acting Chair pro-tem in March (Aguiar, Able) and accepted. No discussion occurred. A roll-call vote was taken, and the motion passed with five ayes (Aguiar, Able, Lewis, Martin, McNamarra).

[*SEE YOUTUBE TIMESTAMP 1:31:17*] Board Member Lewis received two nominations for Chair pro-tem in April and May (Lewis, Aguiar) and accepted. A brief discussion occurred. A roll-call vote was taken, and the motion passed with five ayes (Lewis, Able, Martin, McNamarra, Aguiar).

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

[*SEE YOUTUBE TIMESTAMP 1:33:50*] Ms. Wan reported no update.

Status of outstanding petitions – Staff

[*SEE YOUTUBE TIMESTAMP 1:34:07*] Ms. Morrison reported no update.

ADJOURNMENT

Board Member McNamarra 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 11:05 a.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Cathy Lewis, Chair
Board of Appeals