

BOARD OF APPEALS
COUNTY OF HAWAI‘I

TRANSCRIPT
December 13, 2024

The County of Hawai‘i Board of Appeals took up the petition for **JOAQUIN BELISARIO (PL-BOA-2024-000101)** at 10:52 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).

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

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).

[There were approximately eight members of the public in attendance.]

LEWIS: All right, we’ll call the meeting back to order and take up the matter of the petition of Joaquin Belisario, let me find my numbers so I state it correctly, PL-BOA-2024-000101. This is an—wait a minute—thank you, I’ve lost my—this is appeal of the decision by the Director of Public Works dated February 20th, 2024, regarding a finding of no violation, which is DPW 24-009. I—there are no public testifiers that have appeared, correct? Nobody here to testify as a member of the public simply? Okay. Then if you would introduce yourselves parties, state your name for the record and appearances. We’ll start with the appellant.

WAN: Mr. Belisario, can you please turn on your mic and speak into that.

BELISARIO: Joaquin Belisario.

WAN: And my understanding is you have standby counsel. Is that correct?

BELISARIO: Yes.

WAN: Can you please introduce your standby counsel.

BELISARIO: Standby counsel, Sierra Hagg, by Zoom.

WAN: Okay and her presence is you're still pro se, she's just here to assist you.

BELISARIO: She's representing me under limited counsel—as limited counsel, but I am pro se.

WAN: Okay, so I understand Ms. Hagg is on Zoom, can you please describe for the Board the limitation of your representation.

BELISARIO: I'm sorry.

WAN: I'm addressing Ms. Hagg.

BELISARIO: Oh.

HAGG: Yes, I'm just assisting Mr. Belisario today. He'll be speaking, but I'm here to listen and confer with him as necessary, so if we can have leave of the court to communicate via text so that he can ask me questions as he needs.

LEWIS: Yes, you could do that. Okay, Mr. Belisario when you speak, you will have to keep that mic kind of close to your mouth. I know it's a little bit of a pain, but otherwise it doesn't really work very well and most—okay—sorry, okay yes the landowner please introduce yourself.

WONG: Chair Lewis and Board, my name is Patrick Wong. I'm an attorney and I represent Jeffrey Duggan, a property owner in the subdivision. Also present in the chambers is Patrick McDonald, another property owner in the sub—another property owner in the subdivision. Patrick McDonald is in the audience back there.

LEWIS: He's also a landowner?

WONG: He's also a landowner in—

LEWIS: The landowner?

WONG: —in the same subdivision involving the same dispute.

LEWIS: But he's not the landowner of the subject property. Correct or not?

WONG: Well, the target of the action is Mr. Duggan, who is also here. Jeffrey Duggan.

LEWIS: Right, okay.

SALAS-FERGUSON: Good—good morning again Chair, fellow Board Members. Deputy Corporation Counsel, Sinclair Salas-Ferguson for the County of—for the Department of Public Works, County of Hawai‘i. I didn’t catch, the rules require that one person for each party have the authority to do objections. Was—was that asked? Is it going to be Mr. Belisario or Ms. Hagg?

LEWIS: Mr. Belisario, will you be making objections to evidence or testimony? Do you know how to do that?

BELISARIO: Yes, possibly.

LEWIS: Okay, when you make an objection, and this goes for both parties, when we make an objection, the witness should not answer until we rule on the objection.

BELISARIO: Just for clarity, on my sake—I believe Mr. Sinclair—I believe Mr. Sinclair indicated that only one person will be objecting. My attorney wouldn’t be able to object?

LEWIS: Correct, you will be making the objections. You’re pro se, you’re doing the presentation.

BELISARIO: Okay.

LEWIS: Yep.

SALAS-FERGUSON: Chair, one more thing. Under Rule 3-12, I’d like to make a motion to dismiss, an oral motion to dismiss before we proceed.

LEWIS: Okay, so you’re doing that right now?

SALAS-FERGUSON: Can I?

LEWIS: Okay. All right.

SALAS-FERGUSON: So, I’d like to make a motion to dismiss, and this is based on two legal principles. The first legal principle—okay, before I get there. This motion is made under Rule 3-12, which states that a motion can be made before, during, or after a hearing. So, the first principle I’d like—legal principle is the principle of res judicata. So, in this matter, Mr. Belisario has filed three separate complaints and that’s in the record on appeal. So, he—against the same roadway, so he filed a complaint, it was investigated and closed, and he didn’t do an appeal, so it was closed.

He filed another complaint against the project, complaint number two, it was investigated, it was closed. He filed a third complaint, it was investigated and closed. And on that third complaint, he was provided notice on February 5th in writing that complaint number three was closed with the finding of no violation.

He didn’t submit this appeal until thirty-seven days later. So, on two separate grounds res judicata being that the matters already been decided, one, two, and three times, and also on the separate

grounds that this current appeal was not timely filed. It wasn't filed within the thirty-day deadline and on that basis, on both of those bases, I'd ask that this matter be dismissed for lack of jurisdiction.

LEWIS: Okay. I'm going to ask Mr. Wong his position on that—

WONG: We will—

LEWIS: motion.

WONG: join. We will join in that motion.

LEWIS: Okay.

BELISARIO: I believe I responded to that during an email showing the official letter dated February 20th, which is also recognized on the Board of Appeal's acknowledgement letter to me that the document actually received was dated, closure of 009, was dated February 20th. I have email exhibits that show it being delivered to me on February 23rd and to that end. That's the official documentation that recognizes the—recognizes officially the closure of DPW 009.

As to Mr. Sinclair's issue on res judicata. Res judicata, the complaint 408 mirrored, was closed. There was no appeal filed, but there was communication with the County's engineering department for a meeting discussing the closure of that DPW 408. At that meeting, I was advised that DPW 408 would remain closed and—I was instructed to submit a new complaint, which basically mirrored the first complaint, but in much more detail. Along with significant amount of video tapes—video tapes, exhibits, a very—I mean you—I think you've seen what I've submitted there.

So, as far as res judicata goes, the new complaint 009 actually contains more detailed violations of the code or deviations from the code and moves it into a different level of complaint. And again, the—this was at the instruction of a meeting that was held between Dion Gonzalez, Mr. Joon So, and Mr. Stafford Akoni. So, I would object to this to show because the res judicata issue is not applicable because the new complaint is not only requested but contains newer information that is not resolved in 408. And by the date on the letter itself indicates February 20th and the email reflects receiving of that February 23rd, well inside the thirty-day window.

LEWIS: Okay, reply please.

SALAS-FERGUSON: Thank you Chair. So, he just admitted that complaint number three. So, let me take it a step back. So, complaint number two was filed in—on May 9th, 2023, and he received notice that that complaint was closed in a letter dated October 12th, 2023. So, that was quite some time ago, over a year ago. So, he would have thirty-days, even assuming that wasn't that an appeal for that letter wasn't precluded by res judicata, he would had thirty-days from then, which would have been November 2023.

What he just stated was that his January 4th, 2024, complaint in his own words mirrored complaint number two, it just provided a little bit more detail. So, the Department's position is when they get

a complaint they go and they investigate it for violations. They'll—you know if they—if somebody complains about—let's just for an example, grading beyond the setback and they go there and they see another violation, they don't ignore the other violation, they review the project for any and all violations. And if there are violation, they'll issue a notice of violation.

So, in this case I think it's pretty clear that he's had three bites at the same apple and each time the finding has come back the same thing, there's no violation. The landowner is complying with the notice of violation. The landowner got a permit, the license to the engineer, submitted the grading plan and which I know it wasn't required in this case because a licensed engineer is only required when there's a certain level of grading. I think it's a certain level which wasn't met in this case, so it wasn't required.

So, on those grounds res judicata and then he had—there's an email sent to him February 5th and it's clearly stating for the third time that there's no violation on this project. It's closed and so he had thirty days from that time, and he just didn't meet it. So, on both of those grounds we'd ask that this matter be dismissed. Thank you.

LEWIS: What is the difference—can somebody tell me the difference between the complaint that we have before us now and the one just prior to it. Whoever can answer that.

WONG: Chair—

LEWIS: Mr. Wong.

WONG: I believe it's identical. If you take a look at both complaints. They site his contentions that our client built a private driveway without the proper permits. This issue has been arbitrated twice and if you look at our exhibits, what you have here today is a—what I characterize as an attempt to forum shop and to find a different result. He failed to appeal—appeal the arbitration awards that are attached as exhibits to—

LEWIS: A little louder.

WONG: He failed to appeal the arbitration awards, didn't like it. He stuck with it and he's here with you trying to relitigate those issues. If you look at all his exhibits, they all stem from the arbitrations that we've had. Both—we prevailed them both, their subsequent restraining orders my client filed, we prevailed on that. That's an exhibit. Mr. Belisario referenced the—his restraining order declarations and he filed complaints with the Office of Disciplinary Counsel against my client and myself as a last-ditch effort to lash out.

This is a last proceeding that he's taken everything that was previously arbitrated and ruled against him and he's bringing it to you to find relief, even though untimely. So, my recommendation would be to listen to Mr. Salas-Ferguson, grant the motion or we can move forward and have the hearing and all you're going to hear is references to an arbitration award that was never appealed that has been reduced to judgment.

He's gone through multiple sets of attorneys and we're talking about the same driveway. He has recourse within his CC&R's to do something about it. He could've appealed the arbitration awards, but he chose not to. And so, we're another forum, same fact pattern, same road, and it really is my client's, the McDonald's and the Duggan's, that removed an easement that ran through his parcel. Created their private driveway on their flag lot, so as not to have to deal with Mr. Belisario any further. They spent over a hundred thousand dollars—

LEWIS: That's—that's not relevant right now.

WONG: So, I'm just telling you.

LEWIS: Okay. I understand. Mr. Belisario, the reason I didn't rule on your objection is it's—it's argument, so we don't object to argument. You have a couple minutes—

BELISARIO: I do, just in rebuttal. Just to—I've brought this before—this body before in emails, but again the veracity of the—the veracity of the arbitration award and the TRO are in question and that's for another matter. Personally, I accepted the driveway as to be as awarded. The—why we are here today is because of you guys spoke about how important the codes are. I've been—I've been here in this town for forty-four years, for over four decades adhering to those codes, representing clients, using those codes and all their formations and modifications and generations over four decades. I've represented clients—

LEWIS: That's not relevant to this argument.

BELISARIO: As far as the—as far as the—as far as the arbitration award the—we're here today because of the not re-litigating the arbitration. We're looking at how the driveway was built and the circumstances surrounding the building and permitting of the driveway and the inspection of the driveway as dictated by the code and I prepared fully to go to trial for lack of a better term and make my arguments clear.

Again, the DPW 408 and DPW 409—009 I'm sorry. Right—they—I did say they did mirror each other so they—they kind of actually do, but there's a lot more detail in there because the—I was made to feel at that meeting that there was not enough detail in 408 to justify any finding of violations and it was because of that comment that I requested that meeting because there were obvious—

LEWIS: Okay, I'm going to stop you now on this argument because we've heard this now. If you have a new argument—

BELISARIO: That's just the argument. We're here—we're here not—we're here to just—just to figure out and—and determine whether or not the Hawai'i County Codes were followed to the letter and if—if there was improper or improper deviation from those codes that favored the landowner.

LEWIS: Okay.

SALAS-FERGUSON: Chair, can I just address your original question? Well, just very briefly.

LEWIS: Very briefly.

SALAS-FERGUSON: So, the complaints are all the same right. He's saying that there's a grading violation under Chapter 10 and the—it it's been remedied and the road received final inspection on May 24th, 2023, so a long time ago. So, to summarize the County's position, was ask that this be dismissed for not being [*indecipherable*] filed in a timely manner in violation of the Board of Appeal's Rules and on the additional grounds that this matter has already been examined previously in res judicata would prohibit a reexamination of the same matter. Thank you.

LEWIS: All right, thank you.

WAN: Chair, would it—would it help the Board if I direct them to where the two complaints that the parties are—are talking about are is located within the record on appeal.

LEWIS: Would—

WAN: Would that assist that Board?

SALAS-FERGUSON: And there's actually three complaints that he filed.

LEWIS: Right.

WAN: Okay, so—

SALAS-FERGUSON: That's, yeah. They're all alleging violations in Chapter 10—

LEWIS: This one and the one right before is probably—

WAN: My understanding is that the majority of the arguments being made by the parties today is regarding Mr. Belisario's complaint that was made on May 9th, 2023, and January 4th, 2024, is that correct?

SALAS-FERGUSON: And also, the complaint filed on December 9th, 2021.

WAN: Yes.

SALAS-FERGUSON: Three complaints, yeah.

WAN: Yes, but I understand the majority of your arguments. That's the first complaint and you're saying res judicata because of complaint two and three, is that correct?

SALAS-FERGUSON: Correct.

WAN: Okay, would—would it help the Board to tell you where that is on the record?

LEWIS: I would hear from the Board Members whether that they want—would like that.

MARTIN: Yes.

WAN: Okay, so on the record on appeal that was filed by the Department for this case, document number five is Mr. Belisario's complaint that was dated May 9th, 2023, and document number seven is Mr. Belisario's complaint dated January 4th, 2024. I do have printed copies here at my desk if you want to view it in person.

SALAS-FERGUSON: And for the Board's edification document six is the finding of no violation for document number five—

WAN: So that's the no v—

SALAS-FERGUSON: And document eight is the finding of no violation for document number seven and they're both saying the same thing, it's been investigated, there's no violation.

BELISARIO: I'm—I'm sorry [*indecipherable*]. What are we referring to the records on appeal presented by Council, County Council? What are—

WAN: Presented by the Department. I don't have page numbers. I'm sorry because each—each document has its own page number.

BELISARIO: But are we looking at the submittal for—from the County on records of appeal.

WAN: That is correct.

BELISARIO: Thank you. So—

SALAS-FERGUSON: So, the record on appeal document numbers five and six. Five is the complaint. Six is the department's response that there's no violation. Documents seven and eight. Document seven is Belisario's third complaint. Document eight is the Department's communication that again there's no violation.

BELISARIO: I'm—I'm sorry counsel. We're looking at page number—document page—document one, page five?

SALAS-FERGUSON: Sorry, Mr. Belisario. It's documents five, six, seven, and eight.

BELISARIO: Document five.

SALAS-FERGUSON: And Chair, can I just add one last comment to the County's motion. Res judicata is a principle that you know, it—it means it basically prohibits something from being relitigated. So, it—it's really apt to this situation where somebody can keep filing—even if today, say for example, if you if the Board did grant this motion to dismiss for not being timely filed, Mr.

Belisario could go today down to DPW and say I'm—there's a grading violation, investigate it, no finding of violation, and then he could appeal that again. If we didn't have that principle, res judicata, that's what that prevents is somebody filing, filing, filing the same allegations and then having to relitigate it over and over. So, I just wanted to clarify that point about res judicata.

BELISARIO: May I?

LEWIS: At this point, I'm allowing the Board to take a look at the—at these exhibits again and— and then we could be ready then for a motion and we can certainly have a discussion.

BELISARIO: May I just add one thing? May I?

LEWIS: Well—

BELISARIO: It'll be very short.

LEWIS: All right.

BELISARIO: DPW 408 and DPW 009, if you look at their—if you look at the—the text in the description of the complaint, it's clear to see that—

LEWIS: That's what we've been doing, Mr. Belisario, we've been doing that.

BELISARIO: I just want to make that point.

LEWIS: Yeah, no you've made it, and we do understand it. So—do the Board Members need recess or—are you ready for a motion and then discussion? Okay.

WAN: All right, it appears that at least one member is ready.

LEWIS: Okay. You can make your motion one way or another. It doesn't matter. We'll have a discussion and a vote. Wait—the motion being whether you know to grant or deny the Department's motion to dismiss based on one or both concepts.

MARTIN: I'd like to make a motion to grant the Department's motion to deny.

LEWIS: To dismiss?

MARTIN: Excuse me, to dismiss. I don't—based on the fact that the filings were too late and passed the time—the deadline.

MCNAMARRA: I'll second it.

LEWIS: Okay, we have a motion and discussion to grant the motion based on timeliness of the filing, discussion on that? Does anybody have any questions of anybody regarding this? I can't tell if she's [*indecipherable*]*—*Noe would you—do you have a question or—no.

SAIKI: I have a question for Mr. Belisario. Mr. Belisario, hello I'm Noe Saiki, Vice Chair for the Board. I was wondering after you did the arbitration, why did you not appeal it? I mean you seem to have still something that you wanted to address which led to the—the third complaint and I'm just wondering what was your thinking.

BELISARIO: Yes, my—my thinking has always been from—this has been a thirteen-year ordeal with my neighbors and it culminated into the last past three and a half years with the landowner taking over as a—as an attorney our—our legal matters. For in—in my case whether I was represented correctly or whether the—the conduct of everyone the attorney's involved. They are before the Office of Disciplinary Counsel, which found—which found grounds to initiate investigations, which are still ongoing and—so—

LEWIS: Yeah, I'm going to stop you, Mr. Belisario. You're not addressing the question that you've been asked.

BELISARIO: Yeah, so I am—I am getting there. The—as far as the arbitration award to build a driveway, I was you know, I was fine with that, you know what I mean. You know, you—you depend upon oversight committees and the judiciary to honor and to be correct in their judgment. It's not always perfect, but that's all we have. I fully accepted the arbitration award, as much as it disappointed me, and I did not at any point challenge that and I did not appeal it as counsel has noted.

But, as a forty-four-year draftsman and planning consultant, I personally know what the codes are and how this thing should be built. I've done hundreds of these over the years and construction started and one day Mr. So showed up and asked me—

LEWIS: Okay, I'm going to stop you because you—you're not addressing her question which is why you did not—why did you not—

SAIKI: I get the gist of what you're saying, Mr. Belisario. Thank you.

BELISARIO: I accepted the arbitration. It was not until the complaint was—an anonymous complaint was filed, and I was identified as the complainant, when I was not, that triggered these complaints.

SAIKI: Okay, thank you.

LEWIS: Thank you, thank you.

WAN: So, I'm just going to remind the Board at this point there is a motion on the floor, so it is otherwise inappropriate to be asking questions of the parties because right now that portion of this hearing regarding the motion is closed and it is just open for discussion between the members based on the motion that's on the floor, which is to—to affirm or rather grant the motion to dismiss based on timeliness.

LEWIS: Any further discussion? I would like to—so amend the motion. Propose an amendment?

WAN: You can suggest that the mover make an amendment because ultimately the amendments got to come from the mover.

LEWIS: Okay. I—I would—I would suggest that we amend this motion to also grant the motion to dismiss on the grounds, maybe not so much *res judicata*, which I'm not thoroughly convinced applies at this level, however, issue preclusion whatever you want to call it, relitigating an issue that has been already decided. Obviously can't continue to happen or people would be filing and re-filing with a few additional little facts whereas the issue is the same. The issue here, I think we can—we can all recognize what the issue is, has been, on all these complaints and the Department has—has looked at it, has made its findings, and—so whether we call it *res judicata*, issue preclusion, I would like to also add that as a grounds for dismissal.

MARTIN: I'd like to make a motion that we adopt the changes as recommended by the Chair.

LEWIS: Okay.

SAIKI: I second.

LEWIS: Okay, in—

WAN: I think—I think Noe.

LEWIS: We need a discussion on the new motion.

WAN: So, this is a motion to amend, so now it—it's been moved and seconded, so it's open for discussion for this amendment.

LEWIS: Whether to include that additional grounds. Okay, hearing no discussion. We'll take a vote, all in favor? This point—

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

LEWIS: All opposed? Hearing none. Then we now will vote on the—on the motion itself, correct?

WAN: So—

LEWIS: Whether to grant or deny.

WAN: So, hearing none, the motion to amend is adopted. The main motion has thus been amended, that is now open for discussion for the Board.

LEWIS: So, yes whether to grant or deny this motion now is open for discussion. And hearing none. Then we'll take the roll call vote on the motion.

SURPRENANT: Okay, very good.

BELISARIO: Excuse me. I need to—I have been advised by my attorney to make one comment and I'd like to make that comment before the vote.

LEWIS: How long do you plan on—

BELISARIO: It's very short.

LEWIS: Okay.

BELISARIO: Two seconds maybe. My attorney's informing me that this—that res judicata applies to new action and that res judicata—this is not barred by res judicata because this is an appeal of a decision. The res judicata does not apply.

LEWIS: All right, thank you. Okay, we're ready for the roll call vote.

SURPRENANT: Okay, Member Martin.

MARTIN: Yes.

SURPRENANT: Member McNamarra.

MCNAMARRA: Yes.

SURPRENANT: Member Saiki.

SAIKI: Yes.

SURPRENANT: And Chair Lewis.

LEWIS: Yes.

SURPRENANT: You have four ayes, the motion passes.

LEWIS: Okay, that concludes this matter and—

SURPRENANT: The order.

WAN: So, you're going to need a form of the order.

LEWIS: Right, so Mr. Salas-Ferguson if you will prepare an order for our consideration that will be available or that will be due on January—hang on I got to get those dates for you and for Mr. Belisario especially. Thank you so much. So, that would be due in fourteen days, which is December 27th, 2024, and then Mr. Belisario, you may provide in writing any objections to the form of the order that is prepared within seven days thereafter, which would be January 3rd, 2025.

Thank you. All right, that matter is concluded then. I thank everybody for their time and their input and consideration here today.

[This matter concluded at 11:24 a.m.]

Respectfully submitted,

Ashley DeVera, Board Secretary