

BOARD OF APPEALS
COUNTY OF HAWAI'I

MINUTES
May 9, 2025

The County of Hawai'i Board of Appeals met in regular session at 9:33 a.m. in the Hawai'i County Council Chambers at 25 Aupuni Street, Hilo, Hawai'i 96720 and via the Zoom online platform. The meeting was called to order with Chair Pro Tem 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=kLscLNyxG1E>

MEMBERS PRESENT IN PERSON: Cathy Lewis (Chair Pro Tem), Rachel Able, Scott Martin, 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.

Chair Pro Tem Lewis reviewed online meeting protocols and procedures.

STATEMENTS FROM THE PUBLIC ON ITEMS ON THE AGENDA

At 9:35 a.m., Chair Pro Tem Lewis called for statements from the public. There were no members of the public in attendance to provide testimony.

[SEE YOUTUBE TIMESTAMP 6:06]

Testimony closed at 9:35 a.m.

OLD BUSINESS

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER TO DENY 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: 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 7:05*] Chair Pro Tem Lewis asked if the Board received the proposed findings of facts, conclusions of law, decision and order that was prepared by Ms. Jean Campbell, Deputy Corporation Counsel for the Planning Department; all Board Members affirmed.

[*SEE YOUTUBE TIMESTAMP 7:27*] Board Member Able motioned for the written approval; Board Member Martin seconded. Ms. Sylvia Wan, Deputy Corporation Counsel for the Board clarified and suggested that the introductory paragraph be exchanged for the following sentence, “On May 9th, 2025, the County of Hawai‘i Board of Appeals adopted the following findings of fact, conclusions of law, decision and order.”

[*SEE YOUTUBE TIMESTAMP 9:10*] Board Member Able amended the motion for the written approval to have the replacement and the introduction; Board Member Martin seconded. No discussion occurred on the motion to amend. An all-in favor voice vote carried the motion to amend unanimously. No further discussion occurred on the amendment. An all-in favor voice vote carried the amended motion unanimously.

This item concluded at 9:40 a.m.

2. JENNIFER GREGGOR (BOA-19-000228)

PLANNING DIRECTOR MOTION TO DISMISS

Appeal of Decision by Planning Director Dated October 28, 2019, Regarding Denial Issued for Short-Term Vacation Rental Registration (STVR-19-362921) and Nonconforming Use Certificate (NUC-19-1136).

Location: 59-393 Iliahi Place, Kamuela, HI 96743

TMK: (3) 5-9-008:033

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

This item was called to order at 9:40 a.m. There were no members of the public in attendance and no public testimony was provided.

[*SEE YOUTUBE TIMESTAMP 11:04*] Chair Pro Tem Lewis asked if the Board reviewed the Planning Director’s motion to dismiss and all Board Members affirmed. Chair Pro Tem Lewis noted there was no submission in opposition to the motion or any appearance by the appellant.

[*SEE YOUTUBE TIMESTAMP 11:56*] Ms. Campbell provided a brief statement.

[*SEE YOUTUBE TIMESTAMP 13:33*] Board Member Able motioned to dismiss case BOA-19-000228; Board Member McNamarra seconded. No discussion occurred. Ms. Wan noted

that the Board staff attempted to contact the appellant with the contact information provided, attempted to identify any alternative or new addresses, but were unsuccessful. The Board mailed a certified letter on April 3rd, 2025, to inform the appellant of the hearing and the letter was returned to the Board on May 3rd marked returned to sender, unclaimed, unable to forward. A roll-call vote was taken and the motion passed with four ayes (Able, McNamarra, Martin, Lewis).

[*SEE YOUTUBE TIMESTAMP 15:18*] Chair Pro Tem Lewis requested Ms. Campbell to prepare the order.

This item concluded at 9:45 a.m.

NEW BUSINESS

3. BEVERLY L. FULLER (PL-BOA-2024-000115)

Appeal of Decision by the Planning Director Dated November 13, 2024, Regarding Approval of Special Management Area Assessment Application (PL-SAA-2024-000249) to Construct a Single-Family Dwelling and Related Improvements.

Location: 28 Machida Lane, Hilo, HI 96720

TMK: (3) 2-1-014:046

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

This item was called to order at 9:45 a.m. There were no members of the public in attendance and no public testimony was provided.

[*SEE YOUTUBE TIMESTAMP 17:33*] Chair Pro Tem Lewis asked if the appellant provided the notices to the surrounding property owners. Ms. Bethany Morrison, Staff to the Board, confirmed that the notices were provided on April 22nd, 2025.

[*SEE YOUTUBE TIMESTAMP 18:32*] Chair Pro Tem Lewis requested opening statements from both parties starting with the appellant. Ms. Beverly Fuller, appellant, requested Emeline Renz to read her opening statement.

[*SEE YOUTUBE TIMESTAMP 22:49*] Ms. Campbell provided her opening statement.

[*SEE YOUTUBE TIMESTAMP 27:03*] Ms. Fuller's first witness was Denise Colgrove but was unable to attend and requested Ms. Renz to read her testimony.

[*SEE YOUTUBE TIMESTAMP 31:15*] Ms. Fuller called her second witness, David Owens to provide his testimony. No cross-examination occurred and no Board Members had questions for Mr. Owens.

[SEE YOUTUBE TIMESTAMP 35:01] Ms. Campbell questioned Ms. Fuller regarding what she expected the outcome of the appeal to be. Ms. Fuller responded that she was hoping the landowner would agree to use Laehala Street to access the property in order to avoid congestion on Machida Lane and prevent further damage to the road.

[SEE YOUTUBE TIMESTAMP 36:00] Ms. Campbell called her first witness, Mr. Jeffrey Darrow, Planning Director. Ms. Campbell requested Mr. Darrow to briefly describe the difference between the Shoreline Management Area (SMA) assessment process and a use permit, as well as the types of projects that would have triggered each. Mr. Darrow responded when an application was received, staff would determine whether or not it qualified for one of the exemptions under state law. If it did not, staff would then consider the monetary value of the project. If the project value was under five hundred thousand dollars, it would qualify for a SMA minor permit; if it was higher, the project would require a SMA major permit and would go before the Planning Commission for approval.

Ms. Campbell requested clarification and confirmation that this property, together with its two adjacent lots, had been submitted for a use permit application last year. Mr. Darrow responded that the application was submitted as an assessment, and when staff reviewed it, they determined that this particular exemption, identified in state law and within the Planning Commission Rules, applied to the construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet in floor area, is not on a shoreline parcel, and is not part of a larger development. Since the application included three dwellings on three different parcels, it was considered part of a larger development. Therefore, staff did not exempt it and requested that the applicant submit a SMA major permit.

[SEE YOUTUBE TIMESTAMP 40:20] Ms. Campbell asked if, given that the Windward Planning Commission had denied the use permit submitted to them last year at their September meeting, the applicant would be able to submit a new use permit for a substantially similar project on any of the three properties. Mr. Darrow responded that, based on the Planning Commission Rules, the applicant would have to wait a period of two years before resubmitting a similar project as a SMA use permit.

Ms. Campbell asked what factors were considered in the review of the assessment application that was received, which is the subject of this appeal. Mr. Darrow responded that the main factor they considered was whether the request qualified for a SMA exemption, a minor permit, or a major permit. In this case, it qualified for one of the exemptions. Ms. Campbell asked if the exemption determination letter made it clear to the landowners that if they came in with any additional phases, substantial changes, or anything larger, would those be determined exempt. Mr. Darrow responded that the SMA exemption letter stated that if the project changed, increased, or expanded, they would need to submit another SMA assessment application.

Ms. Campbell asked if the assessment application that was received, following the denial, has been processed consistently with the way the Department processes SMA assessment

applications for single-family homes island wide. Mr. Darrow confirmed that it had.

[*SEE YOUTUBE TIMESTAMP 44:38*] Ms. Campbell inquired about the environmental concerns raised regarding the treatment of wastewater in the application, asking how wastewater was addressed for this project. Mr. Darrow responded that when the SMA major permit was submitted, the Department sent the application to numerous agencies and requested their comments. The Department received those comments and incorporated them as part of the permit conditions. In this case, the exemption was not sent out for agency comments granted by state law. When they submit their building permit, they would then go through the agency for wastewater review.

Ms. Campbell asked if the State Department of Health regulated how wastewater was treated at an individual property like this. Mr. Darrow confirmed but mentioned that if they were able to connect to the county sewer, it would go through the Department of Environmental Management.

[*SEE YOUTUBE TIMESTAMP 48:12*] Ms. Campbell requested information about how access concerns on Machida Lane were addressed in the SMA process to accommodate additional traffic. Mr. Darrow responded that in a SMA assessment or a SMA major review, access was not a trigger unless it had a significant environmental or ecological impact and would be included in the SMA major background report. For an application, there would typically be a comment letter from the Department of Public Works or the State Department of Transportation requesting certain roadway improvements.

Ms. Campbell asked whether, given the proximity of Onekahakaha Beach Park, was there any anticipation that the construction of the home would affect public access to the beach. Mr. Darrow responded that public access is always a consideration, but in this case, it was not a factor.

[*SEE YOUTUBE TIMESTAMP 51:59*] Ms. Fuller cross-examined Mr. Darrow. Ms. Fuller asked how road improvements to Machida Lane could be addressed, given the narrow width. Mr. Darrow responded that, under the SMA exemption, the Department did not have the authority to impose conditions related to road improvements. Such improvements could be considered under a SMA permit, however, there were certain limitations on when those conditions could apply.

Ms. Fuller then asked whether wastewater and access concerns were considered as part of the major development. Ms. Campbell objected, stating that the question was outside the scope of the current petition since it pertained to the SMA major application. Chair Lewis allowed the questioning to continue. Mr. Darrow responded that, in the SMA major permit that was previously denied by the Planning Commission, the Department was limited in the conditions it could impose, and those concerns were among the reasons for the denial.

[SEE YOUTUBE TIMESTAMP 57:23] Ms. Fuller asked if the proposed home was actually a single-family dwelling. Mr. Darrow responded that the request submitted to the Planning Department was a four-bedroom, four-bathroom single-family dwelling. There was no request for a duplex, multi-family dwelling, or hotel. Ms. Fuller asked if the Department considered the layout of the house; Mr. Darrow confirmed that they did. Ms. Fuller then asked if it made sense for a water heater and washing machine to be located in the living room. Mr. Darrow responded that, according to the zoning code and the definition of a single-family dwelling, the proposal met definition.

[SEE YOUTUBE TIMESTAMP 1:01:44] Board Member Martin asked Mr. Darrow if the applicant returned for the second and third dwellings, would it be processed as an assessment or a SMA major permit. Mr. Darrow responded, as stated in the approval letter, if the same landowner submitted a similar request, it would trigger a SMA major permit because it would be considered part of a larger development.

[SEE YOUTUBE TIMESTAMP 1:06:12] Chair Pro Tem Lewis asked if the intent of the project was considered during the SMA assessment review. Mr. Darrow confirmed that it was. He stated that, according to state law, the size of the dwelling could be up to seven thousand five hundred square feet, and this particular dwelling would be four thousand square feet.

Chair Pro Tem Lewis asked who the neighbors should contact if the landowner did not comply. Mr. Darrow responded that they should fill out the Planning Department complaint form. Once received, the inspectors would send a courtesy letter to the landowner informing them of the complaint and advising them to contact the Planning Department. A site visit would then be conducted, and based on the findings, if the complaint was valid, the inspectors would issue a notice of violation with associated fines and proposed corrective actions.

[SEE YOUTUBE TIMESTAMP 1:13:49] Board Member Martin asked if all three parcels were subject to short-term vacation rentals. Mr. Darrow responded that the parcels are located within a resort zone and that short-term vacation rentals are a permitted use. He added that the landowners would need to register with the Planning Department. Board Member Martin then inquired about parking requirements. Mr. Darrow responded that if the property was used as a single-family dwelling, two parking spaces were required. If used as a short-term vacation rental, additional parking would be required, and those spaces would need to be identified at the time of registration.

[SEE YOUTUBE TIMESTAMP 1:18:44] Board Member McNamarra asked if any of the parcels were located along the shoreline. Mr. Darrow responded that they were not, and that Onekahakaha Beach Park fronted the parcels.

At 10:51 a.m. the board took a recess, and the hearing was called back to order at 11:02 a.m.

[SEE YOUTUBE TIMESTAMP 1:33:34] Chair Pro Tem Lewis requested closing statements from both parties beginning with Ms. Fuller, followed by Ms. Campbell.

[SEE YOUTUBE TIMESTAMP 1:37:06] Board Member Able motioned to affirm the Planning Department's decision in PL-SAA-2024-000249, dated November 13th, 2024. She found the decision was not clearly erroneous, arbitrary, or capricious, nor was it an abuse of discretion. She stated that the Planning Department followed the law and undergoing SMA assessment when they found the project to be within the scope of what defines as a single-family dwelling. Therefore, it was exempt based on the criteria area that was less than seven thousand five hundred square feet and the other requirements that the county based their decision on. Board Member McNamarra seconded. A brief discussion occurred. A roll-call vote was taken, and the motion passed with four ayes (Able, McNamarra, Martin, Lewis).

[SEE YOUTUBE TIMESTAMP 1:41:47] Ms. Wan asked Ms. Campbell to prepare the form of the order due to May 23rd, 2025, and the appellant submit any objections by May 30th, 2025.

This item concluded at 11:11 a.m.

MINUTES

[SEE YOUTUBE TIMESTAMP 1:42:25] There were no members of the public in attendance and no public testimony was provided. Chair Pro Tem Lewis asked if all Board Members reviewed the December 13th, 2024, hearing transcript and all Board Members affirmed. A motion was made by Board Member McNamarra to approve the hearing transcript of December 13th, 2024, as circulated. The motion was seconded by Board Member Martin. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[SEE YOUTUBE TIMESTAMP 1:44:10] There were no members of the public in attendance and no public testimony was provided. Chair Pro Tem Lewis asked if all Board Members reviewed the January 10th, 2025, hearing transcript and all Board Members affirmed. A motion was made by Board Member Able to approve the hearing transcript of January 10th, 2025, as circulated. The motion was seconded by Board Member McNamarra. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[SEE YOUTUBE TIMESTAMP 1:45:00] There were no members of the public in attendance and no public testimony was provided. Chair Pro Tem Lewis asked if all Board Members reviewed the February 14th, 2025, hearing transcript and minutes; all Board Members affirmed. A motion was made by Board Member McNamarra to approve the hearing transcript and minutes of February 14th, 2025, as circulated. The motion was seconded by Board Member Able. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

ADMINISTRATIVE MATTERS

Election of Chair and Vice Chair for 2025.

[*SEE YOUTUBE TIMESTAMP 1:45:55*] There were no members of the public in attendance and no public testimony was provided. Chair Pro Tem Lewis requested nominations for Chair and Vice Chair. Board Member Lewis received two nominations for Chair (Martin, McNamarra) and accepted. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

[*SEE YOUTUBE TIMESTAMP 1:47:59*] Chair Pro Tem Lewis requested nominations for Vice Chair. Board Member Able received two nominations for Vice Chair (Able, Lewis) and accepted. No discussion occurred. An all-in favor vote was taken, and the motion passed unanimously.

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

[*SEE YOUTUBE TIMESTAMP 1:52:41*] Ms. Wan reported the remaining cases related to Rosehill, regarding the Supreme Court decision was withdrawn under case number BOA-19-000211, consolidated under Doyle Land Partnership with a total of sixteen cases.

Status of outstanding petitions – Staff

[*SEE YOUTUBE TIMESTAMP 1:53:31*] Ms. Morrison reported no update.

ADJOURNMENT

An all-in favor voice vote adjourned the hearing at 11:23 a.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Cathy Lewis, Chair Pro Tem
Board of Appeals