

BOARD OF APPEALS
COUNTY OF HAWAI‘I

MINUTES
August 8, 2025

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=L7X-AWIMH6A>

MEMBERS PRESENT IN PERSON: Cathy Lewis (Chair), Rachel Able (Vice Chair), John Kimura, and Scott Martin.

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

[SEE YOUTUBE TIMESTAMP 2:47]

Testimony closed at 9:35 a.m.

NEW BUSINESS

1. ERIN GALLOGLY (PL-BOA-2024-000110)

Appeal of Decision by the Planning Director Dated July 2, 2024, Regarding Closure Letter for Notice of Violation and Order (PL-PCV-2024-00676) Relating to Unpermitted Events/Weddings.

Location: 75-5785 Pikake Place, Kailua-Kona, HI 96740

TMK: (3) 7-5-011:014

PARTIES PRESENT: Erin Gallogly (Appellant), Jason Eisert (Landowner), Patrick Wong (Representative for Landowner), Jeffrey Darrow (Planning Director), and Jean Campbell (Deputy Corporation Counsel for the Planning Department).

This item was called to order at 9:36 a.m. There were four members of the public in attendance, and no public testimony was provided.

[*SEE YOUTUBE TIMESTAMP 4:54*] Ms. Sylvia Wan, Deputy Corporation Counsel for the Board, disclosed that Mr. Jason Eisert, the landowner, currently serves on another board that she represents. Ms. Wan noted that the two boards had no connection to each other and that there were no matters that would create a conflict or overlap. At this time, Ms. Wan stated that she did not believe her dual representation posed any conflict of interest or bias with respect to her role in advising the Board of Appeals on its legal responsibilities and duties.

[*SEE YOUTUBE TIMESTAMP 5:44*] Chair Lewis asked Ms. Bethany Morrison, staff to the Board, whether the appellant had provided notice of the hearing to the surrounding property owners pursuant to Rule 8-11(d). Ms. Morrison confirmed that the appellant had filed the notice with the Board on July 11th, 2025.

[*SEE YOUTUBE TIMESTAMP 6:03*] Chair Lewis noted that, following the issuance of the prehearing order in which she had granted the appellant's request to withdraw one of the issues in the petition, the Board would consider only the facts related to the alleged unpermitted event that had occurred on April 19th, 2024.

[*SEE YOUTUBE TIMESTAMP 8:01*] Ms. Erin Gallogly, appellant, provided her opening statement. She stated that she found the Director's decision to be clearly erroneous, as it was based on unreliable and insubstantial evidence provided by the landowner. Ms. Gallogly requested that the decision be overturned and that a new closure letter be issued, stating that unpermitted commercial activity did occur on April 19th, 2024. She further noted that the evidence submitted by the four complainants had been categorized as allegations.

[*SEE YOUTUBE TIMESTAMP 13:39*] Ms. Jean Campbell, Deputy Corporation Counsel for the Planning Department, provided her opening statement. She stated that when the government accused someone of wrongdoing, they first had to prove that the alleged action had occurred. She explained that it was the Director's duty to determine whether there was sufficiently reliable, probative, and substantial evidence to support the findings.

Ms. Campbell argued that the allegations made by neighbors—such as the presence of many cars at the property, the attire of some attendees, and the noise from the gathering—were not sufficient to establish that the event had been commercial in nature. She further noted that noise was not regulated by the County but fell under the jurisdiction of the State Department of Health. Ms. Campbell requested that the Board find that the closure letter had not violated the law, was not clearly erroneous, and was not arbitrary or capricious, characterized by an abuse

of discretion, or a clearly unwarranted exercise of discretion. She concluded by requesting that the Director's closure letter be upheld.

[*SEE YOUTUBE TIMESTAMP 16:55*] Mr. Patrick Wong, representative for the landowner, provided his opening statement. He requested that the Board affirm the Director's decision, stating that there was no violation of the code and no commercial activity had occurred on the property. He stated that the evidence showed a wedding had taken place at the Outrigger, which had been paid for by the tenants who occupied the Kona Kai property.

[*SEE YOUTUBE TIMESTAMP 19:53*] Ms. Gallogly called her first witness, Mr. Eisert. She handed Mr. Eisert Exhibit J, Page 4 and asked if it was a representation of the Airbnb link for the property. Mr. Eisert responded that he believed it was. Ms. Gallogly then inquired what an "in-home service" referred to. Mr. Eisert explained that he provided guests with a list of recommendations for excursions, private chefs, and cleaning services upon request. He clarified that guests would hire private chefs independently.

Ms. Gallogly asked if Mr. Eisert offered rental car services. He stated that the Kona Kai property did not offer rental cars on-site but that he operated a separate company which provided rental cars and included a link to that company on the booking site. Referring to Exhibit J, Page 25, Ms. Gallogly asked whether there were two restaurants on-site. Mr. Eisert responded that there were not. When asked whether the amenities listed were offered on the property, Mr. Eisert explained that the Booking.com website had created its own listing and that he did not have control over its content.

[*SEE YOUTUBE TIMESTAMP 33:02*] Ms. Gallogly asked how many guests could stay at the Kona Kai property. Mr. Eisert responded that it could vary, for example, one family and four unrelated people, or five unrelated persons. He stated that the house was advertised as having five bedrooms. Ms. Gallogly then handed Mr. Eisert Exhibit A, which showed a group text message regarding the sound from the Kona Kai property. Mr. Eisert stated that he had gone to Ms. Gallogly's property, entered the carport area, and heard light music.

[*SEE YOUTUBE TIMESTAMP 42:22*] Ms. Gallogly asked who had hired an emcee. Mr. Eisert responded that he did not hire the emcee. Ms. Gallogly then asked if Mr. Eisert had provided contact information to the guest. Mr. Eisert responded that he had never referred an emcee or DJ to any of his guests.

Ms. Gallogly asked if Mr. Eisert had ever provided speakers or karaoke machines, and Mr. Eisert responded no. She then handed Mr. Eisert the landowner's Exhibit D, Page 49, parties and group events were strictly prohibited. Ms. Gallogly asked if the guests were having an on-site party or group event that night. Mr. Eisert responded, "I don't believe so."

Ms. Gallogly inquired about the subpoena for unedited 24-hour footage from the 19th and 20th. Mr. Eisert responded that his records could not go back that far, explaining that the system only retained footage for six months before erasing.

[SEE YOUTUBE TIMESTAMP 48:59] Index Page 30, Landowner Exhibit E: Letter from Landowner. Ms. Gallogly read the second paragraph of the letter, in which the landowner stated that she knew she could not have a wedding or event on the property. Ms. Gallogly then asked Mr. Eisert if he had provided any services to guests other than the building in which they slept. Mr. Eisert responded that he provided many services to guests, including quick responses and a clean home. Ms. Gallogly further asked whether Mr. Eisert had provided any in-home services beyond the contact information for the private chef. Mr. Eisert replied that he had already answered that question.

[SEE YOUTUBE TIMESTAMP 56:15] Ms. Campbell did not have any questions for Mr. Eisert. Mr. Wong submitted the noise report and read it into the record. According to the noise log for April 19th, 2024, at 3:00 p.m. to April 20th, 2024, at 3:00 p.m., no sustained noise was detected.

[SEE YOUTUBE TIMESTAMP 57:09] Ms. Gallogly called her next witness, Cynthia Milani. She asked Ms. Milani how long she had lived next to Mr. Eisert. Ms. Milani responded that she had lived there for five years. She stated that she had guests at her house that day and that they were unable to hear each other due to the amplified noise. She referred to Exhibit A, Page 2, which included a 20-second video.

[SEE YOUTUBE TIMESTAMP 1:01:33] Ms. Campbell cross-examined Ms. Milani. She asked what factors, as an observer of a gathering at a home, differentiate a loud, noisy party from actual commercial activity. Ms. Milani responded that the difference was the noise. Mr. Wong did not have any questions for Ms. Milani.

[SEE YOUTUBE TIMESTAMP 1:05:41] Ms. Gallogly discussed Exhibit G, which was a video showing a twenty-five-minute period during which twelve vehicles passed by. She stated that the video was recorded from the house camera. Ms. Gallogly stated that she had no further witnesses.

[SEE YOUTUBE TIMESTAMP 1:11:22] Ms. Campbell called her first witness Mr. Jeffrey Darrow, Planning Director.

At 10:46 a.m. the board took a recess, and the hearing was called back to order at 10:52 a.m.

[SEE YOUTUBE TIMESTAMP 1:19:38] Ms. Campbell asked Mr. Darrow, when the Planning Department is trying to determine whether an event that took place in a home is commercial in nature, what kind of evidence is generally considered to distinguish a commercial event from a private party. Mr. Darrow responded that for a commercial event, the department looks for evidence such as advertising, the exchange of money for ticket purchases, or requests for donations.

Ms. Campbell then asked what evidence was available in this particular case. Mr. Darrow responded that the complainant submitted evidence, which was evaluated, and that additional information was provided by the landowner that assisted in making a determination.

Ms. Campbell asked what types of allegations were included in the complaint that helped suggest the event might have been commercial in nature. Mr. Darrow responded that the complaint referenced a loud party, excessive noise, significant traffic, and guests wearing a particular type of attire.

Ms. Campbell asked, based on Planning Department procedures, whether a notice of violation (NOV) would have been issued based on the evidence in this case. Mr. Darrow responded that at the time the NOV was issued, individuals were not given the opportunity to provide information beforehand. He explained that the current procedure is to issue a courtesy letter informing the recipient that a complaint has been received and requesting a response within a certain time period. After receiving a response, the department assesses whether there is sufficient information to issue a NOV.

Ms. Campbell then asked whether the Planning Department would issue a NOV or a courtesy letter based on this case. Mr. Darrow responded that the department would issue a courtesy letter requesting information and possibly conduct a site inspection. He stated that in this case, it would likely have resulted in the same conclusion.

Ms. Campbell noted that Mr. Eisert had established personal rules for the use of his property, including prohibiting parties and gatherings, and asked whether such personal rules would turn any party at the property into a planning violation. Mr. Darrow responded no. Finally, Ms. Campbell asked whether the County regulates noise. Mr. Darrow responded that it does not; noise is regulated by the Department of Health.

[*SEE YOUTUBE TIMESTAMP 1:26:23*] Ms. Gallogly cross examined Mr. Darrow. She asked whether the information provided on Mr. Eisert's website had been received by the Planning Department. Mr. Darrow responded that he had everything that was part of the official record.

Ms. Gallogly then referred to Index Exhibit E, Page 31, which included a letter from the bride; Index Page 32, which contained the bride's transaction; and Index Page 30, which was Mr. Eisert's affidavit. She asked whether those were the only pieces of evidence submitted. Mr. Darrow again stated that he had everything included in the record.

Ms. Gallogly asked whether those items were what the Director based his decision on. Mr. Darrow responded that there was not sufficient evidence submitted to prove that a commercial event had taken place.

[*SEE YOUTUBE TIMESTAMP 1:30:32*] Ms. Gallogly referred to the Director's legal memorandum dated August 1st, Page 4, which stated that details of monetary transactions, compensation, or other supporting documentation may be relevant. She asked whether the complainants were believed to have that information. The Director responded that he did not believe they did. Ms. Gallogly then asked if it was within the Director's discretion to request that information from the landowner. The Director responded that they typically did not ask the landowner to provide proof that they committed the violation. He explained that the

department's role was to review the complaint, determine whether a violation had occurred, and ultimately work toward resolving the issue.

Ms. Gallogly asked whether emcee noise, party noise, amplified noise, quick traffic, and the statements from the four complainants could be considered indicators of possible commercial activity, such as serving as a venue for a party. Mr. Darrow responded that the information had been received as a complaint, the department had investigated, and the department had not been able to establish that a commercial event had taken place.

[*SEE YOUTUBE TIMESTAMP 1:42:26*] Mr. Wong cross examined Mr. Darrow. Mr. Wong asked Mr. Darrow whether, after hearing the testimony, reviewing the evidence, and considering the record on appeal, he stood by his decision that no commercial activity had occurred on April 19th, 2024, and whether he was asking the Board to affirm that decision. Mr. Darrow responded that he did. Mr. Wong stated that he had no witnesses.

[*SEE YOUTUBE TIMESTAMP 1:44:09*] Ms. Gallogly provided a brief closing statement, followed by Ms. Campbell, and then by Mr. Wong.

[*SEE YOUTUBE TIMESTAMP 1:59:01*] Vice Chair Able motioned to affirm the Planning Director's decision. Board Member Kimura seconded the motion. A brief discussion followed. Vice Chair Able stated that her motion was based on the determination that, on the date in question, April 19th, there was not substantial evidence to prove that commercial activity had occurred. Chair Lewis agreed, noting that there had been no showing of any exchange of compensation in return for attendance, and no actual proof had been presented. Board Member Martin commented that the commercial activity appeared to have occurred at the hotel, where there was a transaction receipt and payment for the event, whereas the noise complaint at the property appeared to stem from a private party. Board Member Kimura agreed that no commercial activity had taken place, based on the testimony presented by the witnesses. A roll-call vote was taken, and the motion passed with four ayes (Able, Kimura, Martin, Lewis).

[*SEE YOUTUBE TIMESTAMP 2:02:09*] Chair Lewis requested Ms. Campbell to prepare the proposed findings of fact, conclusions of law, decision and order, and to distribute it to all parties by August 22nd. Any opposition by the appellant or landowner would be submitted by August 29th. The proposed order would then be heard at the October hearing.

This item concluded at 11:37 a.m.

2. LARRY RUTKOWSKI (PL-BOA-2025-000122)

DEFECTIVE PETITION

Appeal of Decision by the Planning Director, Date Unknown, Regarding Commercial Activity.

Location: 524 Kalanikoa Street, Hilo, HI 96720

TMK: (3) 2-2-035:032

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

This item was called to order at 11:37 a.m. There were no members of the public in attendance, and no public testimony was provided.

[*SEE YOUTUBE TIMESTAMP 2:07:08*] Chair Lewis asked the Board if they had reviewed the petition, and all Board Members affirmed that they had. Board Member Martin motioned that the Board find the petition does not comply with the Board Rules and that the petition be dismissed; Vice Chair Able seconded. No discussion occurred. Ms. Morrison asked Board Member Martin to clarify his motion. Board Member Martin restated that his motion was to dismiss the petition, finding it defective. A roll-call vote was taken, and the motion passed with four ayes (Martin, Able, Kimura, Lewis).

[*SEE YOUTUBE TIMESTAMP 2:09:38*] Ms. Wan clarified that, since it was the Board's motion, she would draft the proposed order on behalf of the Board, and it would be placed on the next hearing agenda.

This item concluded at 11:43 a.m.

MINUTES

[*SEE YOUTUBE TIMESTAMP 2:10:02*] Chair Lewis asked if the Board reviewed the July 11th, 2025, minutes and all Board Members affirmed. A motion was made by Vice Chair Able to approve the July 11th, 2025, minutes as circulated. The motion was seconded by Board Member Martin. No discussion occurred. An all-in favor voice vote carried the motion unanimously.

ADMINISTRATIVE MATTERS

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

[*SEE YOUTUBE TIMESTAMP 2:10:56*] Ms. Wan reported that there had been no changes since the last hearing. She noted that the 88-129 Kai LLC case had received the final judgment from the court, and the Board's decision had been reversed, and the matter is now concluded.

Status of outstanding petitions – Staff

[*SEE YOUTUBE TIMESTAMP 2:11:45*] No staff updates were provided.

ADJOURNMENT

The hearing was adjourned at 11:45 a.m.

Respectfully Submitted,

Ashley DeVera, Board Secretary

A T T E S T :

Cathy Lewis, Chair
Board of Appeals