

BOARD OF APPEALS
COUNTY OF HAWAII

DRAFT MINUTES
June 12, 2026

The County of Hawai'i Board of Appeals met in regular session at 9:30 a.m. in the West Hawai'i Civic Center Council Chambers, 74-5044 Ane Keohokālole Hwy, Building A, 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=JkkiL-ZjoJU&t=4s>

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

MEMBERS PRESENT ON ZOOM: Maci Wilson

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

There were six 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 public testifiers.

[SEE YOUTUBE TIMESTAMP - 6:59]

Testimony closed at 9:35 a.m.

OLD BUSINESS

1. 1250 OCEANSIDE, LLC (PL-BOA-2024-000104)

PROPOSED AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER Pursuant to Judgment on Appeal in 3CCV-25-0000025 Regarding an 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: Kealahakua, South Kona

TMK: (3) 8-1-004:070 & 8-1-030:055

PARTIES PRESENT: Derek Simon (Representative), Kenneth Kupchak (Representative), Charles Coupe (Intervenor), Joan Coupe (Intervenor), Matthew Coupe (Intervenor)

This item was called to order at 9:42 a.m. There were two members of the public and no public testimony was provided.

[SEE YOUTUBE TIMESTAMP - 10:44] Chair Lewis asked for a motion to approve the proposed amended Findings of Fact, Conclusions of Law, Decision, and Order, as presented or with any amendments the Commission deemed appropriate, in order to begin discussion.

[SEE YOUTUBE TIMESTAMP - 11:06] Commissioner Scott Martin moved to approve the proposed amended Findings of Fact, Conclusions of Law, Decision and Order, as presented in the proposed amended document. Commissioner John Kimura seconded the motion.

[SEE YOUTUBE TIMESTAMP - 11:53] Deputy Corporation Counsel Sylvia Wan noted that she had provided the Board with a redlined version of the proposed amended Findings of Fact, Conclusions of Law, Decision and Order reflecting comments and suggestions received from the parties. She clarified that the pending motion was to approve the original proposed amended document presented to the Board and did not include the suggested redline edits. Ms. Wan stated that it was within the Board's discretion whether to adopt those edits and wanted to ensure the Board was aware of the distinction.

[SEE YOUTUBE TIMESTAMP – 12:31] Chair Lewis asked Commissioner Martin whether he wished to amend his motion in light of Ms. Wan's clarification, specifically asking whether his motion should include the suggested redline edits.

[SEE YOUTUBE TIMESTAMP – 12:41] Commissioner Martin clarified his motion to adopt the redlined version of the proposed amended Findings of Fact, Conclusions of Law, Decision and Order. Commissioner Kimura seconded the motion.

[SEE YOUTUBE TIMESTAMP – 13:07] Chair Lewis identified several typographical corrections to the proposed amended Findings of Fact, Conclusions of Law, Decision and Order. The corrections included inserting the word "and" in the last paragraph on page two preceding the Findings of Fact section, on page four, changing "can be issued" to "may be issued," top of page six, correcting "provides" to "provide," and on page eight, removing a duplicate reference to "in issuing his

order." She requested that these non-substantive edits be incorporated into the pending motion if the Commissioners agreed.

[SEE YOUTUBE TIMESTAMP – 16:10] Commissioner Martin amended his motion to incorporate the typographical corrections identified by Chair Lewis into the proposed amended Findings of Fact, Conclusions of Law, Decision and Order. The motion to amend was seconded by Commissioner Kimura.

[SEE YOUTUBE TIMESTAMP – 16:39] Ms. Wan explained that the Board would now discuss the proposed amendments in their entirety. To facilitate the discussion, she advised that she had prepared an additional handwritten redline reflecting the typographical edits identified by Chair Lewis and offered to provide it for the Board's review. There was no further discussion on this agenda item.

[SEE YOUTUBE TIMESTAMP – 17:29] A roll-call vote was taken to amend the motion to accept the changes from Chair Lewis and the motion passed unanimously with five ayes (Martin, Kimura, Able, Wilson, Lewis). There was no further discussion.

[SEE YOUTUBE TIMESTAMP – 18:14] A roll call vote was taken on the motion to approve the redlined proposed amended Findings of Fact, Conclusions of Law, Decision and Order, as amended to include the accepted typographical corrections. The motion passed unanimously with five ayes (Martin, Kimura, Able, Wilson, Lewis).

This item concluded at 9:51 a.m.

2. 1250 OCEANSIDE, LLC (PL-BOA-2024-000105)

PROPOSED AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER Pursuant to Judgment on Appeal in 3CCV-25-0000028 Regarding an 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: Kealahkekua, South Kona
TMK: (3) 8-1-004:070 & 8-1-030:055

PARTIES PRESENT: Derek Simon (representative), Kenneth Kupchak (representative), Charles Coupe (Intervenor), Joan Coupe (Intervenor), Matthew Coupe (Intervenor)

This item was called to order at 9:51 a.m. Two members of the public were present in person. No public testimony was provided.

[SEE YOUTUBE TIMESTAMP 20:45] Chair Lewis reminded the Board that the matter before them was the adoption of the amended Findings of Fact, Conclusions of Law, Decision and Order. She asked whether all Board members had reviewed the submitted materials prior to the meeting.

[SEE YOUTUBE TIMESTAMP 21:12] Chair Lewis acknowledged Mr. Kenneth Kupchak who noted for the record that his clients Charles, Joan and Matthew Coupe of C & J Coupe Family LP were present in the meeting room.

[SEE YOUTUBE TIMESTAMP 21:53] Chair Lewis invited a motion to begin consideration of the amended Findings of Fact, Conclusions of Law, Decision and Order. She noted that the motion should clearly specify whether it was to adopt the document as originally presented or with the red-lined amendments.

[SEE YOUTUBE TIMESTAMP 22:34] Commissioner Martin moved to approve the amended Findings of Fact, Conclusions of Law, Decision and Order with the redlined amendments. Commissioner Kimura seconded the motion. Chair Lewis then opened the floor for discussion.

[SEE YOUTUBE TIMESTAMP – 23:09] Chair Lewis noted that there was no discussion on the motion. She then identified a typographical correction to the proposed amended Findings of Fact, Conclusions of Law, Decision and Order, stating that the word "petitions" in the last line of new paragraph 13 on page five should be changed to the singular "petition."

[SEE YOUTUBE TIMESTAMP – 24:15] Commissioner Martin moved to accept the recommended changes to the redlined version of the proposed Findings of Fact, Conclusions of Law, Decision and Order, incorporating the additional typographical correction identified by Chair Lewis. Commissioner Kimura seconded the motion. Chair Lewis then opened the floor for discussion.

[SEE YOUTUBE TIMESTAMP – 24:37] Chair Lewis called for a vote on the motion to incorporate the typographical corrections into the redlined version of the proposed Findings of Fact, Conclusions of Law, Decision and Order. The motion was approved unanimously by voice vote. Chair Lewis asked if there was any further discussion. Hearing none, a roll call vote was taken on the motion to adopt the Findings of Fact, Conclusions of Law, Decision and Order with the redlined amendments and the additional typographical corrections identified by Chair Lewis. The motion passed unanimously with five ayes (Martin, Kimura, Able, Wilson, Lewis).

[SEE YOUTUBE TIMESTAMP – 26:06] Ms. Wan noted for the record that the Board had adopted the form of the Findings of Fact, Conclusions of Law, Decision and Order. She stated that staff would incorporate the approved corrections and that the order would become effective upon the Chair's signature. She further advised that

the parties would receive electronic copies of the signed order and that it would be uploaded into EPIC.

This item concluded at 9:58 a.m.

NEW BUSINESS

1. MARK KELLBERG (PL-BOA-2025-000124)

Appeal of Planning Director Denial of Petition for Declaratory Ruling Docket No. 25-0001 Dated July 18, 2025, in Response to Mark Kellberg's Petition for Declaratory Ruling (PL-INT-2025-010598) dated May 23, 2025, Regarding the Applicability of Various Sections of the Hawai'i County Subdivision and Zoning Codes (HCC, Chapter 23 and 25) to a Subdivision Approved in 2005 (SUB-05-000064).

Location: 32-977 Old Māmalahoa Highway, Nīnole, HI 96773

TMK: (3) 3-2-002:034

PARTIES PRESENT: Clint Hamada (Representative for appellant) Kenneth Kupchak (Representative for appellant), Jean Campbell Esq. (Deputy Corporation Counsel for the Planning Department), Michelle Ahn (Deputy Director for the Planning Department)

This item was called to order at 9:58 a.m. There was one member of the public and no public testimony was provided.

[SEE YOUTUBE TIMESTAMP 29:37] Chair Lewis inquired whether the appellant had provided notice of the hearing to surrounding property owners in accordance with Rule 8-11 (d) and submitted proof of service. Ms. Morrison confirmed that the proof of service had been filed on April 22, 2026.

[SEE YOUTUBE TIMESTAMP 29:54] Chair Lewis opened the hearing and advised the parties that the Board had reviewed the record and submitted briefs. She requested that the parties avoid repeating information already contained in the record and noted that testimony or evidence deemed irrelevant could be interrupted to keep the proceedings focused. She further stated that the sole legal issue before the Board was whether the Planning Director's decision should be affirmed or reversed and then commenced the hearing.

[SEE YOUTUBE TIMESTAMP 30:34] Chair Lewis invited the parties to present their opening statements, requesting that each be limited to 10 minutes. She advised that Ms. Wan would provide a two-minute time warning and called upon the appellant to proceed first.

[SEE YOUTUBE TIMESTAMP 30:52] Mr. Hamada, on behalf of the appellant, stated that the appeal sought guidance from the Planning Department on the future application of the zoning code to a subdivision he described as having been

mistakenly approved approximately 20 years earlier. He emphasized that the appellant was not seeking to invalidate the subdivision approval, but rather a declaratory ruling clarifying how the zoning code should apply to the subdivided lots. He argued that the Planning Director's denial was erroneous because the lot owners had since been joined as parties and because the petition raised a new, forward-looking legal issue and is not trying to overturn the subdivision approval. He requested that the Board remand the matter to the Planning Director for a declaratory ruling.

[SEE YOUTUBE TIMESTAMP – 36:54] Ms. Campbell, on behalf of the Planning Department, introduced herself and Deputy Director Michelle Ahn. She argued that the sole issue before the Board was whether the Planning Director properly denied the appellant's petition for a declaratory order under Planning Department Rule 3-1. She maintained that the Director timely denied the petition, provided three valid reasons for the denial, and did not act illegally, arbitrarily, capriciously, or abuse his discretion. She further asserted that the appeal did not present a new legal issue distinct from the 2005 subdivision approval and requested that the Board affirm the Director's decision.

[SEE YOUTUBE TIMESTAMP – 40:36] Mr. Hamada presented a brief rebuttal, arguing that the Planning Director's reasons for denying the petition were no longer applicable because the affected lot owners had since been joined as parties. He reiterated that the petition did not seek to invalidate the 2005 subdivision approval but rather requested a forward-looking declaratory ruling on the application of the zoning code to the subdivided lots.

[SEE YOUTUBE TIMESTAMP – 42:57] Chair Lewis asked whether either party intended to present any witnesses other than the one already identified.

[SEE YOUTUBE TIMESTAMP – 43:08] Ms. Wan asked whether the appellant intended to present any evidence beyond the documentation already submitted into the record. Mr. Hamada responded that the appellant did not.

[SEE YOUTUBE TIMESTAMP – 43:30] Ms. Campbell provided an offer of proof, stating that Ms. Ahn, appearing on behalf of the Planning Director due to his scheduling conflict, would testify regarding the Planning Department's process for complying with declaratory ruling petitions, the Department's actions in this matter, and the procedures used to review and approve subdivisions.

[SEE YOUTUBE TIMESTAMP – 43:56] Chair Lewis questioned the relevance of the proposed testimony, noting that the Board was not relitigating the subdivision approval. Ms. Campbell responded that the testimony would clarify the distinction between the County's subdivision processes and was relevant to the Department's position that the petition effectively challenged the prior subdivision approval. She added that the Planning Department would defer to the Board if it deemed the testimony unnecessary.

[SEE YOUTUBE TIMESTAMP – 44:52] Ms. Wan suggested that, considering the parties' arguments, the Board open the floor for questions from Board members directed to the parties and, if necessary, to the Planning Department's proposed witness. Chair Lewis noted that the Deputy Director could be sworn in if Board members anticipated having questions for her and asked whether any Board members wished to question the Deputy Director.

[SEE YOUTUBE TIMESTAMP – 45:22] Chair Lewis stated that she did not intend to preclude testimony if it became necessary but first wished to question counsel for the appellant. She asked counsel to identify a specific concern involving the seven subdivided lots that prompted the appellant to seek a declaratory ruling from the Planning Director and to explain what specific issue the appellant had requested the Director to address.

[SEE YOUTUBE TIMESTAMP – 45:35] In response to Chair Lewis's questions, Mr. Hamada stated that there was an application for a building permit that has since been granted for one of the subdivided lots after the declaratory ruling petition was filed and therefore was not referenced in the original petition. Chair Lewis further asked if the petition for declaratory ruling refers to that building permit? Mr. Hamada responded that it did not as the building permit was issued on May 24, 2025, and they were unaware of it at the time of the petition. He also confirmed that the surrounding property owners were not joined in the original petition but were added as parties during the Board's prehearing proceedings.

[SEE YOUTUBE TIMESTAMP – 46:43] Ms. Wan clarified that the building permits are issued by the Department of Public Works and asked Mr. Hamada to confirm. Mr. Hamada confirmed. Ms. Wan continued to clarify that there would be an opportunity to appeal that decision by that department and Mr. Hamada also confirmed that.

[SEE YOUTUBE TIMESTAMP – 47:37] Ms. Wan clarified that, under the Board of Appeals' rules, the affected department and any landowner whose property is affected automatically become parties to an appeal before the Board. She advised the Board not to conflate the Board's procedural rules with the Planning Department's rules governing declaratory orders.

[SEE YOUTUBE TIMESTAMP – 48:40] Chair Lewis asked whether the appellant's petition sought guidance on a specific issue. Mr. Hamada responded that the petition requested clarification on how the zoning code applied to the subdivided lots. He further stated that the appellant did not challenge the Planning Director's compliance with procedural requirements, but rather the substance and rationale of the denial. Ms. Campbell maintained that the petition effectively challenged the prior subdivision's approval rather than presenting a new legal issue and indicated that, if the Board understood the Department's position, the Planning Department would not call its witness. She also noted that the original petition raised concerns regarding

residential uses, barking dogs, and roosters, which she stated were permitted uses in the Agricultural District.

[SEE YOUTUBE TIMESTAMP – 51:18] Ms. Wan observed that no additional questions had been raised by the Board members. She reminded the Board that, because the issues presented were largely legal in nature, the Board could enter executive session to seek legal advice regarding its roles, responsibilities, or other legal matters. She also advised that the Board could take a brief recess if members wished additional time to consider the matter before proceeding, leaving the decision to the Board.

[SEE YOUTUBE TIMESTAMP – 52:27] Chair Lewis called a 10-minute recess to allow the Board additional time to consider the matter. She also advised the parties that they could use the recess to confer with their clients if they wished.

[SEE YOUTUBE TIMESTAMP – 53:42] Chair Lewis reconvened the meeting following the recess and advised that several Board members wished to enter executive session. Commissioner Kimura moved to enter executive session, the motion was seconded by Commissioner Martin, and the Board approved the motion by voice vote.

[SEE YOUTUBE TIMESTAMP – 54:10] Ms. Wan confirmed for the record that the purpose of the executive session was to consult with the Board's attorneys regarding questions relating to the Board's powers, duties, privileges, immunities, and liabilities. Commissioner Kimura confirmed that this was the purpose of his motion.

[SEE YOUTUBE TIMESTAMP – 54:37] Chair Lewis called for discussion on the motion to enter executive session. Hearing none, she called for a voice vote, and the motion passed unanimously. Ms. Wan directed all individuals other than Board members and authorized staff to leave the room while Board staff prepared the meeting for executive session.

[SEE YOUTUBE TIMESTAMP – 56:10] Following executive session, Chair Lewis reconvened the meeting in open session. Ms. Wan stated for the record that the Board had met in executive session to consult with legal counsel regarding the Board's duties, responsibilities, powers, and decision-making authority in contested case hearings.

[SEE YOUTUBE TIMESTAMP – 56:17] Chair Lewis indicated that the Board was prepared to close the evidentiary portion of the hearing and proceed to deliberations. After consulting with Ms. Wan, she offered the parties an opportunity to present brief closing arguments to emphasize their principal points before deliberations began.

[SEE YOUTUBE TIMESTAMP – 57:53] Mr. Hamada, in closing, reiterated that the appellant viewed the matter as presenting a novel issue and emphasized that the

appellant was seeking guidance from the Planning Department through the declaratory ruling process rather than challenging the prior subdivision approval.

[SEE YOUTUBE TIMESTAMP – 58:14] Ms. Campbell, in closing, argued that the appellant's purportedly novel issue concerned the substance of the 2005 subdivision approval, for which the appeal period had long since expired. She maintained that the Planning Director fully complied with Planning Department Rule 3-1 in denying the petition and requested that the Board affirm the Director's decision.

[SEE YOUTUBE TIMESTAMP – 58:42] Chair Lewis closed the testimony and arguments and opened the Board's deliberations. She then requested a motion regarding the appeal, including whether to affirm, reverse, or remand the Planning Director's decision.

[SEE YOUTUBE TIMESTAMP – 59:11] Commissioner Martin moved to affirm the Planning Director's denial of the petition for a declaratory ruling in Case No. PL-BOA-2025-000124. Vice Chair Able seconded the motion.

During deliberations, Board members concluded that the Planning Director had complied with Planning Department Rule 3-1 by timely issuing the denial and providing valid reasons for the decision. Chair Lewis stated that the failure to join the affected property owners at the time the petition was filed was dispositive and that the petition did not present a sufficiently specific or ripe issue for a declaratory ruling. Commissioner Wilson agreed that the Director did provide valid reasoning and had complied with Rule 3-1, while Commissioner Kimura indicated he was leaning toward affirming the decision. Hearing no further discussion, the Board proceeded to vote.

[SEE YOUTUBE TIMESTAMP – 1:05:06] Chair Lewis called for a roll call vote on the motion to affirm the Planning Director's July 18, 2025, denial of the petition for a declaratory ruling. The motion passed unanimously with five ayes (Martin, Able, Kimura, Wilson, Lewis).

[SEE YOUTUBE TIMESTAMP – 1:05:59] Ms. Wan noted for the record that the Board had affirmed the Planning Director's decision. She advised that, as the prevailing party, the Planning Department was directed to prepare and submit proposed Findings of Fact, Conclusions of Law, Decision and Order by July 2, 2026. She further stated that the appellant could file objections to the proposed order by July 17, 2026, after which the Board would hold a separate hearing to consider, amend if necessary, and adopt the proposed order. She clarified that while the Board could amend the form of the order, it could not change its decision.

MINUTES

[SEE YOUTUBE TIMESTAMP 1:07:27] Chair Lewis announced that consideration of May 15, 2026, Board of Appeals hearing minutes would be continued to the next

Board meeting, as Board staff required additional time to complete the draft meeting minutes.

ADMINISTRATIVE MATTERS

[SEE YOUTUBE TIMESTAMP 1:08:03] Ms. Wan reported that there had been no significant updates regarding pending appeals of Board decisions since the previous meeting. She provided a preview of upcoming cases, noting that several matters were scheduled for July, including one that was likely to be continued due to settlement discussions and another that was expected to proceed as scheduled. She also advised that two additional cases were scheduled for August. Ms. Wan noted that all scheduled matters remained subject to continuance at the Chair's discretion or upon request of the parties and concluded her status report.

STAFF UPDATES

[SEE YOUTUBE TIMESTAMP 1:10:24] Ms. Morrison announced that Anna Liu was expected to join the Board as a new member, subject to confirmation by the County Council. She noted that Ms. Liu had previously served on the Banyan Drive Redevelopment Agency and that staff would schedule her onboarding and training following her confirmation. Ms. Wan added that Ms. Liu's appointment remained contingent upon Council confirmation at its upcoming meeting.

ADJOURNMENT

The hearing was adjourned at 11:01 a.m.

Respectfully Submitted,

Shantel Miller, Board Secretary