

BOARD OF APPEALS  
COUNTY OF HAWAI'I

MINUTES  
MARCH 13, 2009

The County of Hawai'i Board of Appeals met in regular session at 10:02 a.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Joel Gimpel presiding.

PRESENT: Joel Gimpel  
David Drury  
Charlene Hart  
Peter Hendricks  
Karen Maedo  
Kim Tavares

Renee Schoen, Counsel to the Board  
Alice Kawaha, Staff to the Board

The Chair introduced the Board to members of the public.

PUBLIC STATEMENTS There was no one wishing to make a public statement.

BOA 08-000070 The Board took this item up at 10:03 a.m. with five people  
KOHALA PRESERVE from the public in attendance.  
CONSERVATION  
TRUST, LLC  
KAPAAUNUI, KOU,  
KAMANO, AND  
MAHUKONA,  
NORTH KOHALA

**PETITIONER: KOHALA PRESERVE CONSERVATION TRUST, LLC**

**(BOA 08-000070)** - Adoption of Findings of Fact, Conclusions of Law, and Decision and Order regarding on the Appeal of Decision by the Planning Director dated July 3, 2008, to defer action on the application for proposed subdivision and approval of preliminary plat map. The project area consists of approximately 365.5 acres and is located in the vicinity and north of Mahukona Harbor, Kapaaunui, Kou, Kamano, and Mahukona, North Kohala, Hawai'i, TMK: (3) 5-7-2:11, 5-7-3:3 and 10.

The applicant's representative, Joel Kam, and the Planning Director's representative, Amy Self, were in attendance and had no comments to offer.

The Chair stated the Board has been provided copies of the First Revised Proposed Findings of Fact, Conclusions of Law and Decision and Order.

It was moved by Mr. Hendricks and seconded by Mr. Hart that the First Revised Proposed Findings of Fact, Conclusions of Law and Decision and Order be adopted. A roll call vote was taken and motion carried with five ayes (Hendricks, Hart, Drury, Maedo and Gimpel) and one no (Tavares).

BOA 08-000071  
JAMES S. & NANCY J.  
PHILLIPS TRUST  
WAIMEA,  
SOUTH KOHALA

The Board took this item up at 10:06 a.m. with five people from the public in attendance.

**PETITIONERS: JAMES S. AND NANCY J. PHILLIPS TRUST (BOA 08-000071) -**

Adoption of Findings of Fact, Conclusions of Law, and Decision and Order regarding the Petition for Variance to Section 504(a) & (b), Section 1711 and Table No. 5-A, Part III, relating to projections (eaves) requirements of the Uniform Building Code. The subject property consists of approximately 14,500 square feet and is located at Lanikepu Place, Lalamilo House Lots, Waimea, South Kohala, Hawai'i, Tax Map Key: (3) 6-6-4:90.

Neither the petitioners nor their representative were in attendance.

Brooks Bancroft representing the Department of Public Works was in attendance. He noted the Department of Public Works did submit objections to the petitioner's proposed Findings of Fact and urged the Board to adopt the proposed revisions.

Mr. Drury said he was inclined to accept the Department of Public Works's suggested corrections as it did not make any substantive changes but rather clarified the proposed Findings of Fact, Conclusions of Law, and Decision and Order prepared by the applicant's representative.

It was moved by Mr. Drury and seconded by Ms. Maedo that the Board adopt the proposed Findings of Fact, Conclusions of Law and Decision and Order prepared by the petitioner's representative, as amended by the objections filed by the Department of Public Works, and in light of Ms. Schoen's comment to include the Board's Rule 7-8(1), (2) and (3) in Conclusion of Law No. 6. A roll call vote was taken and motion carried with six ayes (Drury, Maedo, Hart, Hendricks, Tavares, and Gimpel).

CORRESPONDENCE

The Chair stated the following 16 correspondence were received by the Board:

- Ed Boteilho dated March 4, 2009 (SEE EXHIBIT A)
- Greg Chilton of Ka La Corporation dated March 3, 2009 (SEE EXHIBIT B)
- Dwayne Cravalho and seven others of Earthworks Contracting, Inc. dated March 3, 2009 (SEE EXHIBIT C)
- Linda Elliott of Hawai'i Wildlife Center dated March 3, 2009 (SEE EXHIBIT D)
- Kirk T. Eubank of E-Scape Enterprises dated March 5, 2009 (SEE EXHIBIT E)
- Lani Eubank date stamped March 6, 2009 (SEE EXHIBIT F)
- Robert Glory, Sr. dated March 3, 2009 (SEE EXHIBIT G)
- Kim Ison-Takata dated March 3, 2009 (SEE EXHIBIT H)

Dennis S. Matsuda dated March 3, 2009 (SEE EXHIBIT I)  
Shawn L. Rocha dated March 3, 2009 (SEE EXHIBIT J)  
Patty Ann Salomon date stamped March 6, 2009 (SEE EXHIBIT K)  
John Sullivan of Timberworks, LLC dated March 6, 2009 (SEE EXHIBIT L)  
Bill Wong of ATV Outfitters Hawaii, Ltd. dated March 5, 2009 (SEE EXHIBIT M)  
Henry Ah Sam dated March 5, 2009 (SEE EXHIBIT N)  
Bob Martin dated March 4, 2009 (SEE EXHIBIT O)  
Officers & Kupunas of Malama Pono Ke Kuahiwi a Me Ke Moana date stamped  
March 6, 2009 (SEE EXHIBIT P)

BOA 09-000074  
MAIKA`I KAMAKANI  
`O KOHALA INC.,  
501(c)(3) NONPROFIT  
ORGANIZATION  
KAPAAUNUI, KOU,  
KAMANO, AND  
MAHUKONA,  
NORTH KOHALA

The Board took this item up at 10:12 a.m. with two people from the public in attendance.

**PETITIONER: MAIKA`I KAMAKANI `O KOHALA INC., 501(c)(3) Nonprofit Organization (BOA 09-000074)** - Appeal of the Planning Director's Decision of November 28, 2008, that granted Revised Tentative Subdivision Approval to subdivider Kohala Preserve Conservation Trust, LLC. The project area consists of approximately 365.5 acres and is located in the vicinity and north of Mahukona Harbor, Kapaaunui, Kou, Kamano, and Mahukona, North Kohala, Hawai`i, TMK: (3) 5-7-2:11, 5-7-3:3 and 10.

(SEE EXHIBIT Q, PAGES 1 TO 22)

MINUTES

The Board took up the following minutes at this time, 11:43 a.m.

January 16, 2009 – Ms. Kawaha reported that approval of the minutes will be placed on the April 9, 2009 agenda.

February 13, 2009 – Ms. Kawaha stated there is no minutes for this meeting as it was cancelled.

BOA 09-000074  
MAIKA`I KAMAKANI  
`O KOHALA INC.,  
501(c)(3) NONPROFIT  
ORGANIZATION  
KAPAAUNUI, KOU,  
KAMANO, AND  
MAHUKONA,  
NORTH KOHALA

The Board again took this item up at 11:45 a.m. with two people from the public in attendance.

(SEE EXHIBIT Q, PAGES 22-23)

ADMINISTRATIVE  
MATTERS

The Commission took up the following under administrative matters at this time, 11:46 a.m.:

Status of appeals filed on Board of Appeals Decisions – Corporation Counsel – The Board took up the following matters at this time:

Circuit Court Appeal on Kamakani ‘O Kohala ‘Ohana vs Hawai‘i County Board of Appeals, Daryn Arai in his official capacity as Hawai‘i County Planning Director and Kohala Preserve Conservation Trust LLC – Civil No. 09-1-038 K - Ms. Schoen reported that the above matter has been filed in Circuit Court and suggested an executive session be scheduled for the next meeting of the Board to discuss the status of the case and the positions that the parties have taken.

Supreme Court Appeal on Christopher J. Yuen, Planning Director, County of Hawaii v. Board of Appeals of the County of Hawaii, and Marlene E. Calvert – Civil No. 06-1-0184 – Ms. Schoen reported that Mr. Vitousek on behalf of Ms. Calvert has filed an answer to the appeal and the next step would be for the Planning Director to file a reply if she chooses. She clarified that the parties are still in the briefing process.

Executive Sessions –The Board agreed with Ms. Schoen’s suggestion to agendize executive sessions for pending appeals to avoid making motions to go into executive session.

ANNOUNCEMENTS

Ms. Kawaha announced the next Board meeting is scheduled for Thursday, April 9, 2009, in Hilo and reviewed the agenda items.

ADJOURNMENT

There being no further business, the Chair declared the meeting adjourned at 11:47 a.m.

Respectfully submitted,

Sharon M. Nomura, Secretary

A T T E S T:

Joel Gimpel, Chairman  
Board of Appeals