

BOARD OF APPEALS
COUNTY OF HAWAI'I

MINUTES
APRIL 13, 2006

The County of Hawai'i Board of Appeals met in regular session at 10:00 a.m. in the County Building, Councilroom - Room 201, 25 Aupuni Street, Hilo, Hawai'i, with Chairman Valta A. Cook presiding.

PRESENT: Valta A. Cook
Anson Chong
David Drury
Diane Gentry
Joel Gimpel

ABSENT & EXCUSE: George Curtis

Patricia O'Toole, Counsel to the Board
Alice Kawaha, Staff to the Board

All those testifying were duly sworn in.

BOA 05-010

RAY M. SHIRAKAWA

WAIOHINU

KA'U

The Board took this item up at 10:10 a.m. with approximately 9 people from the public in attendance.

PETITIONER: RAY M. SHIRAKAWA (BOA 05-010) - Adoption of Findings of Fact, Conclusions of Law, and Decision and Order regarding the Appeal of Decision by the Planning Director dated June 6, 2005 (Notice of Violation and Order) relating to unpermitted use of track for motorcycle activities within the Single Family Residential (RS-15) zoned district. The subject properties consist of approximately 3.49 acres and located within Waiohinu Town Lots, Ka'u, Hawai'i, Tax Map Key: (3) 9-5-1:16 and 18.

Mr. Cook noted the Board at the last meeting directed the prevailing party to prepare the proposed Findings of Fact, Conclusions of Law and Decision and Order for the Board's consideration with a copy to the County's attorney for review and approval as to form.

The petitioner's attorney, Thomas Yeh, was in attendance, along with Christopher Yuen and his legal counsel Bobby Jean Leithead-Todd.

Ms. Leithead-Todd stated that they reviewed the order with Mr. Yeh and did sign off their consent and approval as to form and content of the submittal.

It was moved by Mr. Chong and seconded by Ms. Gentry that the Board adopt the proposed Findings of Fact, Conclusions of Law and Decision and Order. Mr. Gimpel questioned if there is any reference to the petitioner's restriction of the use of the track to his sons and to particular hours and days of the week as was promised and testified, and he noted typographical errors on page 2, paragraph 6, a misspelling his name which should be Gimpel and also an apostrophe "s" for Planning Director's. The Board took a vote just on the typographical errors to be corrected; and motion carried unanimously by all Board Members in attendance.

Mr. Gimpel said without the specific limitation of who may use the track and restriction on the hours and days can in the future have anybody use it at any time or any day during the week, the only thing a person could do is file a nuisance complaint with the police. The Chair and Mr. Drury noted that the Board did not specifically limit the use to family members or restrict the days and hours of use, but stated there was a clear understanding the Board expected it to be done. Ms. Gentry added that she recalled it was a temporary matter since the boys will be growing up and it was not something the Board wanted to nitpick on. Ms. Leithead-Todd noted they were more concerned about the legal basis for the decision and as she did not recall any motion to include these specific restrictions she did not fight the issue, noting that although it is not in the decision and order findings of fact number 21 references the fact that after the notice of violation the petitioner had voluntarily restricted the use. Mr. Yeh noted that the Board did not impose the restrictions in its decision at the last meeting and said he felt the Board could rely on the history of the petitioner being sensitive to the neighbors as it has on its own restricted the use to family members and limited the hours and days of use, noting that since the last Board meeting there has been some riding and there have been no complaints filed.

A roll call vote was taken on motion to approve the findings of fact, conclusions of law which have been submitted by the petitioner and has been as to form and content by the Planning Director through its counsel, with corrections, and motion carried with five ayes (Chong, Gentry, Drury, Gimpel and Cook).

BOA 05-000016 The Board took this item up at 10:23 a.m. with
PUU LANI RANCH CORP. approximately 7 people from the public in attendance.
PU'UANAHULU,
NORTH KONA

PETITIONER: PUU LANI RANCH CORP. (BOA 05-000016) - Continued hearing on the Appeal of Decision by the Planning Director dated October 24, 2005 relating to the refusal to sign off on any approval for any building permit for Lot 1 of File Plan 2241. The property consists of approximately 1.001 acres in the Puu Lani Ranch Subdivision, Pu'uanahulu, North Kona, Hawai'i, TMK: (3) 7-1-6:54.

(SEE EXHIBIT A)

BOA 06-000019
HOWARD & LORRAINE
STAHR, WAYNE
BROUSSARD, STEVE
OLIKER, AND JAMES
MOORE
HALEKAMAHINA,
PUNA

The Board took this item up at 11:23 a.m. with two people from the public in attendance.

PETITIONERS: HOWARD & LORRAINE STAHR, WAYNE BROUSSARD, STEVE OLIKER, AND JAMES MOORE (BOA 06-000019) - Appeal of Decision by the Planning Director dated December 6, 2005 relating to the Denial of Request for Nullification of Final Consolidation Approval No. 1116. The property consists of 49,534 square feet located in Kapoho Beach Lots Subdivision, Halekamahina, Puna, Hawai'i, TMK: (3) 1-4-11:63.

(SEE EXHIBIT B)

BOARD OF APPEALS
RULE 9
BUSINESS DEVELOPMENT
RELATED APPROVALS

The Board took this item up at 12:03 p.m. with one person from the public in attendance.

BOARD OF APPEALS INITIATED - Public hearing on proposed repeal of Part 9, relating to Business Development Related Approvals, of the County of Hawai'i Board of Appeals Rules of Practice and Procedure. The proposal is to repeal Part 9 in its entirety because Part 9 is contrary to Section 13-4(i) of the Hawai'i County Charter, and is not required or authorized by the state "automatic approval" law, Hawaii Revised Statutes Section 91-13.5.

The Chair noted the presence of the Planning Director and his attorney, Amy Self.

Mr. Yuen explained the proposal and recommended approval of the repeal of Part 9.

The Chair stated this item is scheduled for the May 12, 2006 meeting in Kona.

There was no one from the public wishing to testify on the agenda item.

MINUTES

The Board took up the following minutes at this time, 12:06 p.m.

February 10, 2006 – It was moved by Ms. Gentry and seconded by Mr. Gimpel that the minutes be approved as circulated. Motion was unanimously carried by a voice vote of all members in attendance.

March 10, 2006 - It was moved by Ms. Gentry and seconded by Mr. Gimpel that the minutes be approved as circulated. Motion was unanimously carried by a voice vote of all members in attendance.

ADMINISTRATIVE
MATTERS

The Commission took up the following under administrative Matters:

Corporation Counsel Report on status of appeals filed on decisions by Board of Appeals – Ms. O’Toole reported that Wayne Leslie and Protect Keopuka Ohana has appealed the Board’s decision regarding BOA 04-013, TMK 8-5-5:19, noting the docket number is CIVIL NO. 06-1-0027K. She stated she will be filing an answering brief shortly.

ADJOURNMENT

There being no further business, at 12:10 p.m., it was moved by Mr. Drury and seconded by Ms. Gentry that the meeting be adjourned. Motion was unanimously carried by a voice vote of all Members in attendance.

Respectfully submitted,

Sharon M. Nomura, Secretary

A T T E S T:

Valta A. Cook, Chairman
Board of Appeals