

BOARD OF APPEALS  
COUNTY OF HAWAI'I

MINUTES  
MAY 9, 2008

The County of Hawai'i Board of Appeals met in regular session at 10:00 a.m. in the West Hawai'i Mayor's Office, Conference Room, 75-5706 Kuakini Highway, Suite 103, Kailua-Kona, Hawai'i, with Chairman Joel Gimpel presiding.

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

ABSENT & EXCUSED: Kelly Ann Soo

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

The Chair introduced the Board to Members from the public.

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

The Board at this time decided by consensus to take up the matter of GIG Development LLC (BOA 08-000052) at the end of the agenda since the appellant was not present.

BOA 08-000056 The Board took this item up at 10:04 a.m. with seven people from  
SURETY KOHALA the public in attendance.  
CORPORATION  
KAPA`AU ROAD,  
NORTH KOHALA

**PETITIONER: SURETY KOHALA CORPORATION (BOA 08-000056)** - Appeal of Decision by the Planning Director dated January 14, 2008, relating to the determination of pre-existing lots. The property consists of approximately 378.77 acres and is located to the south of Kapa`au Village and at the end of Kapa`au Road, North Kohala, Hawai'i, TMK: (3) 5-4-3:2.

Planning Director and his attorney, Amy Self, were in attendance. Ms. Self requested continuance based on the fact that the Planning Department needs more time to do some additional research on the subject road, and that the parties are trying to settle the matter.

The Chair granted the request, and affirmed the matter be continued to the July 11<sup>th</sup> meeting in Kona.

BOA 08-000059  
KALI KO CHUN AND  
RICHARD NELSON, III  
KEALAKEHE,  
NORTH KONA

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

**PETITIONERS: KALI KO CHUN AND RICHARD NELSON III (BOA 08-000059) -** Appeal of Decision by the Planning Director dated February 4, 2008, relating to the rezoning of Department of Hawaiian Home Lands (DHHL) subject property pursuant to a Memorandum of Agreement (MOA) with DHHL without the approval of the County Council. The subject property consists of approximately 200 acres and is located on the makai side of Queen Ka`ahumanu Highway, mauka of Honokohau Boat Harbor and adjacent to the Kealakehe Wastewater Treatment Plant site, Kealakehe, North Kona, Hawai`i, TMK: (3) 7-4-8:72.

(SEE EXHIBIT A)

BOA 08-000052  
GIG DEVELOPMENT  
LLC/JIM GOMEZ,  
STEVE AND JOANNE  
HUDDLESTON  
KAWELA,  
KAU

The Board took this item up at 10:49 a.m. with no one from the public in attendance.

**PETITIONERS: GIG DEVELOPMENT LLC/JIM GOMEZ, STEVE AND JOANNE HUDDLESTON (BOA 08-000052) -** Appeal of Decision by the Planning Director dated December 24, 2007, denial of the variance request (VAR 07-066) relating to minimum water supply requirements of Chapter 23, Subdivision Code. The subject property consists of approximately 42.633 acres and is located on the north side of Kamaoa Road, approximately 2,000 feet west of Discovery Harbour Subdivision, Kawela, Ka`u, Hawai`i, TMK: (3) 9-4-4:11.

Planning Director and his attorney, Amy Self, were in attendance. The appellant was not present.

It was moved by Mr. Drury and seconded by Ms. Tavares that the hearing be continued. Mr. Drury inquired whether there have been any discussions between the appellant and the Department; Director Yuen mentioned that the Department received a letter from the appellant's attorney, Francis Jung, around April 28<sup>th</sup>, requesting reconsideration of the decision and citing additional rainfall information, and that he faxed a response letter on May 8<sup>th</sup>, denying the request and recommending that they continue with the appeal process. In response to Ms. Tavares' question, the Chair mentioned and Ms. Schoen confirmed that the appellant will be precluded from re-filing their appeal, if the Board dismisses the appeal based on their default. Mr. Hendricks observed that the material indicates a couple of discrepancies in filing and performance in the process by the appellant. In response to the Chair's inquiry, Ms. Kawaha confirmed that the appellant was notified of this meeting by a letter dated April 10, 2008. Ms. Maedo expressed her opinion that if this matter is as important to the appellant as the petition

indicates, they should have notified the Board of the reason for their nonappearance, and that they should be found in default. A roll call vote was taken and motion did not carry with six noes (Drury, Tavares, Hart, Hendricks, Maedo and Gimpel) and one absent and excused (Soo).

It was then moved by Ms. Maedo and seconded by Ms. Tavares that the appeal be dismissed for failure to appear. A roll call vote was taken and motion carried with six ayes (Maedo, Tavares, Drury, Hart, Hendricks and Gimpel) and one absent and excused (Soo).

MINUTES The Board took up the following minutes at this time, 10:57 a.m.

April 11, 2008 – It was moved by Ms. Tavares and seconded by Mr. Hendricks that the minutes be approved with a typographical correction. Motion was unanimously carried by a voice vote of all Members in attendance.

ADMINISTRATIVE MATTERS The Board at this time, 11:05 a.m. took up the following under Administrative Matters:

Status of appeals filed on Board of Appeals decisions - Corporation Counsel – Ms. Schoen reported that there has been a decision by the Third Circuit Court on the appeal filed by the Director of the decision by the Board relating to the water variance case of Edmund Jin and Eva Y. Lu (BOA 07-000043), and that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order will be distributed to the Board prior to the next meeting. She added that the Court has reversed the Board’s decision essentially on the ground that the Board impermissibly shifted the burden of proof to the Director.

Other Board matters – Based on the Sunshine Law training she had recently attended, Ms. Tavares noted that it seems necessary for the Board’s agenda to routinely include executive session as an agenda item. The Chair mentioned that he has brought up the matter to Ms. Schoen, and she will consult with Corporation Counsel, Lincoln Ashida. Ms. Schoen added that if the Board is aware in advance of an issue that requires executive session, the agenda should include the information.

ANNOUNCEMENTS There was no announcement.

ADJOURNMENT There being no further business the Chair declared the meeting adjourned at 11:08 a.m.

Respectfully submitted,

Noriko Sauer, West Hawai‘i Secretary

A T T E S T:

Joel Gimpel, Chairman  
Board of Appeals