

BOARD OF APPEALS  
COUNTY OF HAWAI'I

MINUTES  
MAY 12, 2006

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

PRESENT: Valta A. Cook  
Diane Gentry  
Joel Gimpel  
David A. Drury  
George D. Curtis

ABSENT/EXCUSED: Anson Chong

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

The Chair welcomed the public and invited any public testimony to be heard at this time.

Dr. Peter Locatelli addressed the Board members about petitioner Peter Dungate, BOA 05-008. He stated that he is an adjacent property owner located to the south of the Dungate property. He said he doesn't have a problem with the subdivision but he's concerned about the boundaries. Dr. Locatelli said that the survey submitted by Mr. Dungate is significantly different from the survey that his surveyor had done. Mr. Dungate's current surveyor, which is Wes Thomas Associates will be redoing the boundaries of the subdivision as confirmed in a letter to Dr. Locatelli's attorney Michael Matsukawa. Dr. Locatelli stated for the record that should the subdivision be approved with the current boundaries that there will be a major confrontation between himself and Mr. Dungate. He explained that the current boundaries shows Mr. Dungate's property impinging on his property and as drawn includes ocean frontage that belongs to the State of Hawaii as confirmed during a conversation between his surveyor and the State Survey office at DAGS. Dr. Locatelli said that the properties were altered by the lava flow of 1950 and the original survey did not take that into account.

Chairman Cook told Dr. Locatelli that Mr. Dungate is withdrawing his appeal and has gone back to the Planning Department to work out the water variance issue but that the subdivision process will go forward and that's where Dr. Locatelli and his attorney should get involved.

Iwalani Arakaki was also present to address the Board about petitioner Peter Dungate. The Chair reiterated that Mr. Dungate has withdrawn his appeal to the Board and has gone back to the Planning Department to work out the water variance issues. He told Ms. Arakaki that the subdivision issues should be brought up to the Planning Department.

There was no further public testimony.

BOA 05-000014                      The Board took this item up at 10:13 a.m. with approximately  
MARLENE E. CALVERT            10 people from the public in attendance.  
KAHUKU COUNTRY  
ESTATES,  
KAHUKU,  
KA‘U

**PETITIONER: MARLENE E. CALVERT (BOA 05-000014)** - Adoption of Findings of Fact, Conclusions of Law, and Decision and Order regarding the Appeal of Decision by the Planning Director dated September 29, 2005 relating to the Denial of Variance Application WH(VAR 05-056) relating to water supply requirements of Chapter 23, Subdivision Code, for proposed 7-lot subdivision on each parcel. The subject properties consist of approximately 42.6 acres and located at Kahuku Country Estates, Kahuku, Ka‘u, Hawaii, Tax Map Key: (3) 9-2-150:13 and 18.

Chairman Cook stated that at the close of the last hearing he asked the Appellant to draft proposed Findings of Fact, Conclusions of Law which were received by the Board and a copy was sent to the Planning Director’s attorney.

Deputy Corporation Counsel Amy Self, representing the Planning Department said that the County had no comments or objections to the proposed Findings of Fact, Conclusions of Law.

Jocelyn Garavoy representing Marlene Calvert asked that the Board adopt the proposed Findings of Fact, Conclusions of Law since the County had no objections.

A motion was made by Mr. Curtis to adopt the proposed Findings of Fact, Conclusions of Law and Decision and Order on application 05-056. Ms. Gentry seconded the motion. There was no discussion by the Board. The motion unanimously passed with a roll call vote of all Board members in attendance.

This discussion ended at 10:15 a.m.

BOA 05-008                              The Board took this item up at 10:15 a.m. with approximately  
PETER DUNGATE                      5 people from the public in attendance.  
KONA PARADISE  
SUBDIVISION,  
PAHOEHOE 1<sup>ST</sup>,  
SOUTH KONA

**PETITIONER: PETER DUNGATE (BOA 05-008)** - Continued hearing on the Appeal of Decision by the Planning Director dated June 1, 2005 relating to the Denial of Variance Application (VAR 04-092) from minimum water system requirements of Chapter 23, Subdivision Code for a proposed 8-lot subdivision. The property consists of approximately 94.113 acres located on the makai side of Mamalahoa Highway and approximately 0.8 mile

north of Kaohe Road, the access entrance to Kona Paradise Subdivision, Pahoehoe 1st, South Kona, Hawai'i, TMK: (3) 8-7-7:8.

The Chair stated that the Board received a letter dated May 8, 2006 formally withdrawing the Appeal.

Jocelyn Garavoy was present on behalf of Peter Dungate.

Deputy Corporation Counsel Amy Self representing the Planning Department confirmed that the appeal is being withdrawn and worked out with the Planning Director.

This discussion ended at 10:17 a.m.

BOA 05-000016                      The Board took this item up at 10:17 a.m. with approximately  
PUU LANI RANCH CORP. 5 people from the public in attendance.

PUU LANI RANCH  
SUBDIVISION  
PU'UANA HULU,  
NORTH KONA

**PETITIONER: PUU LANI RANCH CORP. (BOA 05-000016)** - Adoption of the Order dismissing 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.

There was no one present to represent Puu Lani Ranch Corporation. Amy Self, Deputy Corporation Counsel was present to represent the Planning Director Chris Yuen.

Chairman Cook stated that the members of the Board received the proposal for dismissing the Appeal of Decision by the Planning Director. Ms. Self did not have any objections to the form of the order as it was presented.

Mr. Gimpel made a motion to accept the Order dismissing the Appeal of Decision by the Planning Director on Puu Lani Ranch Corporation 05-000016. Ms. Gentry seconded the motion. The motion unanimously passed with a roll call vote of all Board members in attendance.

This discussion ended at 10:19 a.m.

BOARD OF APPEALS                      The Board took this item up at 10:19 a.m. with approximately  
INITIATE 5 people from the public in attendance.

**BOARD OF APPEALS INITIATE** - Continued public hearing on the 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 called a public hearing on this matter.

Deputy Corporation Counsel Amy Self representing the Planning Director stated that she could answer any questions that the Board may have regarding this initiative.

There was no one from the public to testify on this subject.

Deputy Corporation Counsel Pat O'Toole informed the Board that they could either adopt the rule or deny the rule at the Public Hearing or at the Board's meeting. She said that there were 2 public hearings.

Mr. Drury made a motion to approve the proposed amendments to the Board of Appeals Rule Part 9 relating to business developments related approvals. Mr. Curtis seconded the motion. There was no discussion on this matter. The motion unanimously passed with a roll call vote of all Board members in attendance.

The Chair announced that the public hearing is officially ended.  
This discussion ended at 10:22 a.m.

BOA 05-009  
DENNIS R. AND  
CHRISTY M. NEEDHAM  
QUEEN LILIUOKALANI  
VILLAGE,  
NORTH KONA

The Board took this item up at 10:22 a.m. with approximately 5 people from the public in attendance.

**PETITIONERS: DENNIS R. AND CHRISTY M. NEEDHAM (BOA 05-009)** - Appeal of Decision by the Director of Public Works dated May 31, 2005 relating to access to County Street over improper and unpermitted gravel approach. Also under consideration is a petition to intervene filed by Queen Lili'uokalani Village Community Association Board. The subject properties are located at Puuoloka'a Place in Queen Liliuokalani Village, North Kona, Hawai'i, TMK: (3) 7-4-13:77, 78 and 80.

(SEE EXHIBIT A)

MINUTES

The Board took this item up at 11:13 a.m. with approximately 2 people from the public in attendance.

April 13, 2006

It was moved by Mr. Drury and seconded by Mr. Gimpel that the minutes be approved as circulated. The motion unanimously passed by voice vote of all members present.

ADMINISTRATIVE  
MATTERS

The Board took up the following under Administrative Matters at 11:14 a.m. with 2 people from the public in attendance.

Deputy Corporation Counsel Patricia O'Toole stated that there is one appeal that she reported on. The Record on Appeal has been filed on that but it has not been scheduled for briefing or hearing yet.

ANNOUNCEMENTS

The Board took up this matter at 11:14 a.m. with 2 people from the public in attendance.

There were no announcements.

ADJOURNMENT

There being no further business at 11:14 it was moved by Mr. Gimpel and seconded by Ms. Gentry that the meeting be adjourned. The motion was unanimously carried by a voice vote of all Members in attendance.

Respectfully submitted,

Lynette H. Marushige, West Hawai'i Secretary

ATTEST:

Valta A. Cook, Chairman  
Board of Appeals