

BOARD OF APPEALS  
COUNTY OF HAWAII

HEARING TRANSCRIPT  
OCTOBER 12, 2007

A regularly advertised meeting regarding the appeal of **REX A. RAMSEY (BOA 07-000044)** was called to order at 11:00 a.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Valta A. Cook presiding.

PRESENT: Valta A. Cook                      ABSENT & EXCUSED: Kelly Ann Soo  
David Drury  
Peter Hendricks  
Joel Gimpel  
Diane Gentry  
Kim Tavares

Brooks Bancroft, Counsel to the Board  
Alice Kawaha, Staff to the Board

Steven Lim representing appellant  
Rex A. Ramsey, appellant  
William Brilhante representing the Planning Director

And approximately 21 people from the public in attendance

**PETITIONER: REX A. RAMSEY (BOA 07-000044)** - Appeal of Decision by the Planning Director dated March 8, 2007, Denied Variance Application (VAR07-004) from minimum yards requirements of Chapter 25, Zoning Code. The property consists of approximately 8,662 square feet and is located on the north side of Welea Street, Hawaiian Beaches Subdivision, Puna, Hawai'i, TMK: (3) 1-5-87:12.

COOK:                      First of all, I want to find out from the Board, has everyone received the motion to reconsider and have they had the opportunity to read it? Looks like everyone has -.

GIMPEL:                      Yeah.

COOK:                      Okay. All right.

DRURY:                      No, I haven't seen the motion to reconsider. You've got another copy floating around?

COOK: You have not read it yet, okay. Well, let me, first of all, say to Mr. Lim this is the first time, I believe, certainly since I've been on the Board that we've had a motion to reconsider. And I want to let Mr. Ramsey know that we did have a full hearing on this; and I believe that some of the comments he has made today were testified to before the Board. The Board had a full hearing on this matter. Now, there is no particular, as you've indicated in your motion, Mr. Lim, there is no particular rule that allows a motion to reconsider. But you've been very inventive in arguing the Robert's Rules of Order and citing us to that.

I think before we go further there's a couple of issues here. No. 1, whether even if we're going to look at this it's timely, and then secondly whether or not the Board does have the authority to hear this. So I think we are going to, again, to go into executive session and discuss this matter with our legal counsel before we move further with this. So I think the people in the audience need exercise anyway, so we're going to ask you to leave for a few minutes while we, and the parties also, while we discuss this.

EXECUTIVE The Board went into executive session at 11:02 a.m. to  
SESSION discuss legal concerns with its counsel. The Board came  
out of executive session at 10:52 a.m.

COOK: Okay, the Hawaii County Planning Board of Appeals is back in session, regular session. Because we got this so late, I think I have a motion from -.

GENTRY: I would move to continue the hearing, or continue this case.

COOK: Do I have a second?

GIMPEL: Second.

COOK: All in favor of continuing the hearing to the next Hilo session which would be, I assume that motion is the next Hilo session in December.

GENTRY: To the next Hilo session, unless the party doesn't mind hearing it in Kona, cause -.

BANCROFT: No, he can't do it.

GENTRY: Oh, they can't, okay.

COOK: Can't because of the -.

LIM: We'd consent to a Kona hearing to speed things along.

GIMPEL: I believe our Kona hearing has already been published -.

GENTRY: Oh, that's right. I'm sorry.

GIMPEL: The agenda is set.

GENTRY: It's already published.

COOK: Yeah, we already had the public notice so we can't do that. Okay, so we've got a motion and a second to continue this matter until the Kona -.

KAWAHA: No, Hilo.

COOK: Meeting in December.

GENTRY: Hilo meeting in December.

TAVARES: Hilo.

COOK: Hilo meeting in December.

LIM: Do you know the date of that hearing?

KAWAHA: December 14<sup>th</sup>.

COOK: Okay, all in favor?

MEMBERS: Aye.

COOK: Any oppose? Okay, unanimously carries. Now we have a reason for doing this, couple of reasons. Number one is because we just got this couple of days ago; Number two it's a very unusual motion, but we always want to do, you know, give a full hearing to anything that comes before the Board; and third, we have had some explanation by our legal counsel who wants to give the parties an explanation for their use before the next hearing. Okay?

BANCROFT: Thank you, Mr. Chair. I think in reviewing the Board's rules in this instance, there are a couple of rules that seem to apply. First of all, there's Board of Appeals Rule 3-20 which is entitled Reconsideration of Decision and Order. It basically says that the Board won't reconsider its action in any contested case hearing after the effective date of the Board's decision. Now reading it in conjunction with the Board's Rule 1-6 which is entitled the Effective Date of Decisions and Orders, that rule basically states that unless otherwise indicated in the written order, the effective date of a decision by the Board shall be the date of the oral decision by the Board. So those two rules have to be read in conjunction with each other. I think as it stands now, the effective date of the Board's decision is the oral decision, unless something else changes and the Board decides to place a new effective date in the written decision and order. So as it stands now, that's the issues.

COOK: Okay, so we'll take the matter of the proposed Findings of Fact, Conclusions of Law and this motion at the next hearing; and we will decide whether we're going to hear the motion or not, or take whatever other action is deemed

appropriate by the Board. Okay, and we apologize for not being able to make a final determination today; but under the circumstances the Board didn't feel that we could do that. So I think I can speak for the Board in saying that we almost definitely are going to make a decision at the next hearing in Hilo. Thank you very much.

The discussion ended at 11:21 a.m.

Respectfully submitted,

Sharon M. Nomura, East Hawai'i Secretary

A T T E S T:

Noriko Sauer, West Hawai'i Secretary