

BOARD OF APPEALS
COUNTY OF HAWAII

HEARING TRANSCRIPT
OCTOBER 12, 2007

A regularly advertised meeting on the petition filed by **ASSOCIATION OF APARTMENT OWNERS OF PUNAHELE PROFESSIONAL BUILDING (BOA 06-000020)** was called to order at 10:35 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

James Giroux, Counsel to the Board from Maui Corporation Counsel
Alice Kawaha, Staff to the Board

Sandra Song, representing Appellant
William Brilhante, representing the Planning Director

And approximately 20 people from the public in attendance

PETITIONER: ASSOCIATION OF APARTMENT OWNERS OF PUNAHELE PROFESSIONAL BUILDING (BOA 06-000020) - Adoption of Findings of Fact, Conclusions of Law, and Decision and Order regarding the Appeal of Decision by the Planning Director dated March 2, 2006 Notice of Violation and Order (ZCV06-030E) relating to landscaping requirements as set forth in Ordinance No. 95 33 and Final Plan Approval. The subject property consists of approximately 59,108 square feet and is located on the makai side of Komohana Street at Puuhonu Place, Punahoa, South Hilo, Hawai'i, TMK: (3) 2-3-35:42.

COOK: Okay, the second item that we have here, and I would ask the parties to come forward, is the Association of the Apartment Owners of the Punahale Professional Building, Board of Appeals 06-000020; and I would note that we have Mr. William Brilhante here from the County of Hawaii representing the Planning Director, I believe; and we have Ms. Sandy Schutte (sic). Now this is -.

BRILHANTE: Sorry to interrupt you. Before we go forward, is this the case where Corp. Counsel had a conflict so we have a Corporation Counsel from Maui on this.

COOK: Oh, that's right. And I would point out that early on in this case one of the intervenors had objected to the County of Hawaii representing, the Corporation Counsel representing the Board. So we have gone to the trouble, and no little expense to bring in from Maui a Corporation Counsel, Mr. Giroux; and we appreciate him coming back. Actually, I think he appreciates coming over here. Maui may be no kaoi but Hilo is just as good.

Okay, now we have received, as I say this is a long-standing matter. It has been going on for a long time. We've had numerous hearings, we've reached a decision. We have proposed Findings of Fact, Conclusions of Law and we have objections to those proposed Findings of Fact, Conclusions of Law. And I don't think I want further input from either the Planning Director's representative or Ms. Schutte (sic). We have all the information I think we need here, unless somebody on the Board has other feelings about this.

So I would ask, first of all, we'll start this off with a motion. I would like to have either a motion to, I think I would like a motion to approve the proposed Findings of Fact, Conclusions of Law, then we can discuss it, comment, and then have a vote. Do I have such a motion?

HENDRICKS: So move.

COOK: Okay, I have a motion to approve the proposed Findings of Fact, Conclusions of Law that were submitted by the Planning Director.

GENTRY: Second.

COOK: And I have a second to that. Now do we have some discussion? Let me just see if I can summarize as to what I understand from having read the objections. There are some objections by the Appellant on the Findings of Fact, basically citing the fact that there were originally three separate cases here. Two of those cases have been withdrawn; and we made a decision only on one of the cases, the objection being that primarily those, some of the Findings of Fact relate to the other two cases and are irrelevant and are not necessary here. And then I think another complaint that the Appellant is making is that the decision that is being sought here goes further than just approving the Planning Director's decision in this case, and actually sets out some parameters for improvements. Now do I have some comments or, from the Board concerning the proposed Findings of Fact, Conclusions of Law? Mr. Drury, is that, are you just scratching your ear or are you -?

DRURY: I was just scratching my head, there's a -.

COOK: Okay. How about from the other side here? I would just, I guess then we're ready for a motion, we have the motion, I'm sorry. I guess we're ready for the vote on approving the proposed Findings of Fact, Conclusions of Law submitted by the Planning Director's representative. Would you call the roll on this, Madam Clerk.

KAWAHA: Mr. Hendricks?

COOK: I'm sorry. Would you hold on just a minute. My legal counsel is telling me something.

(Chair had discussion with Mr. Giroux.)

COOK: Okay, I think, my legal counsel has raised a point here. And before we have the vote I'm going to go into executive session so he can speak to the Board about a legal issue. So I would ask if we could vacate the room. We'll go into a temporary recess to discuss this matter.

EXECUTIVE The Board went into executive session at 10:40 a.m. to
SESSION discuss legal issues with its counsel. The Board came out of executive session at 10:52 a.m.

COOK: The Hawaii County Planning Board of Appeals is back in session, and we're out of executive session. And rather than have a vote on that main motion, I think we may have a motion to amend. Mr. Gimpel, do you have a motion to amend?

GIMPEL: Yes. I would make a motion to amend the main motion as follows: To approve the Director's proposed Findings of Fact, Conclusions of Law, Decision and Order with the following amendments: In the third section, Decision and Order, the first paragraph delete the words "modified as provided herein," and substitute the word "affirmed;" and to delete the second paragraph of the Decision and Order in its entirety.

COOK: Do I have a second to that?

DRURY: Second.

COOK: Okay, just sort of an explanation here, we, I think the Board doesn't intend by this to restrict what the Planning Director can do. The Planning Director made an original decision and we are upholding that decision, and it's up to him then to, according to the motion if this amendment carries, then, and the full motion carries, then it will be back in the Planning Director's lap to make the decision in conformity with law. Okay, are we ready for a vote on the amendment to the motion? Okay, all those in favor say aye?

MEMBERS: Aye.

COOK: Any opposed? Okay, that unanimously carries. Now are there any other discussions on the main motion as amended? If not, I'd ask the Clerk to poll the full Board on that one.

KAWAHA: Okay. Mr. Hendricks?

HENDRICKS: Aye.

KAWAHA: Ms. Gentry?

GENTRY: Aye.

KAWAHA: Mr. Drury?

DRURY: Yes.

KAWAHA: Mr. Gimpel?

GIMPEL: Aye.

KAWAHA: Ms. Tavares?

TAVARES: Aye.

KAWAHA: And Chair Cook?

COOK: Yes.

KAWAHA: Chair, there are six ayes. Motion is carried.

COOK: Okay, I want to commend, the Intervenors are not here today but they added a lot to this case also. And I want to commend the Appellant and the Appellant's attorney particularly and for her diligence in her objections to the proposed order. We think they were well taken, at least a portion of it. So thank you very much; and we hope this is the last of this particular case. Thank you very much.

The discussion ended at 10:55 a.m.

Respectfully submitted,

Sharon M. Nomura, East Hawai'i Secretary

A T T E S T:

Noriko Sauer, West Hawai'i Secretary