

COUNCIL MEETING

APRIL 22, 2020

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Arryl Kaneshiro at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, April 22, 2020 at 8:31 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock
Honorable Felicia Cowden
Honorable Luke A. Evslin (*via remote technology*)
Honorable Ross Kagawa (*present at 8:33 a.m.*)
Honorable KipuKai Kualii
Honorable Arryl Kaneshiro

Excused: Honorable Arthur Brun*

Council Chair Kaneshiro: Please note that we will run today's meetings pursuant to the Governor's Supplementary Emergency Proclamation dated March 16, 2020.

APPROVAL OF AGENDA.

Council Chair Kaneshiro: The first item is the approval of the agenda.

Councilmember Kualii moved for approval of the agenda, as circulated, seconded by Councilmember Chock.

(No written testimony was received regarding this agenda item.)

Council Chair Kaneshiro: Any discussion on the agenda from the members?

The motion for approval of the agenda, as circulated, was then put, and carried by a vote of 5:0:2* (*Councilmember Brun and Councilmember Kagawa were excused*).

Council Chair Kaneshiro: The motion is carried. Next item please.

MINUTES of the following meetings of the Council:

February 19, 2020 Council Meeting
March 11, 2020 Council Meeting
March 25, 2020 Council Meeting
March 25, 2020 Public Hearing re: Bill No. 2755 and Bill No. 2775
April 8, 2020 Council Meeting
April 8, 2020 Public Hearing re: Bill No. 2777 and Bill No. 2778

Councilmember Kualii moved to approve the Minutes as circulated, seconded by Councilmember Chock.

(No written testimony was received regarding this agenda item.)

Council Chair Kaneshiro: Any discussion on the minutes?

The motion to approve the Minutes, as circulated, was then put, and carried by a vote of 5:0:2* *(Councilmember Brun and Councilmember Kagawa were excused)*.

Council Chair Kaneshiro: Motion is carried. Next item.

INTERVIEW:

PUBLIC ACCESS, OPEN SPACE, NATURAL RESOURCES
PRESERVATION FUND COMMISSION:

- Jonathan Thomas Lucas – Term ending 12/31/2022

Council Chair Kaneshiro: Good morning Jonathan. If you want to provide us with an introduction or a little information about yourself. Then I will open it up to questions from the members.

JONATHAN LUCAS: Okay. This is all kind of new to me. I am learning new things here. I am a licensed architect. I have been on the island for almost forty (40) years. I have a Master's Degree in Architecture. I have been working for the University of Hawai'i at the Community College for the past ten (10) years. I have been teaching blueprinting and AutoCAD drafting at the college and at the high schools with the construction academy program. I am basically involved in all four (4) public institutions.

(Councilmember Kagawa was noted as present.)

Mr. Lucas: I work part-time for Palms Hawai'i Architecture. Once upon a time, I used to work with Ron Agor for several years. I am a Kōloa resident and have been for quite a while. I have a fourteen (14)-month-old son. I am learning a lot from him. I am pretty active here in Kōloa. I try to keep aware of things going on. I am involved with the Kōloa Community Association. That is about it. I am a regular guy that likes to surf as much as possible very early in the mornings before work.

(Councilmember Kagawa was noted as not present.)

Council Chair Kaneshiro: Any questions from the members?
Councilmember Cowden.

Councilmember Cowden: Thank you so much being willing to do this. I appreciate the work that I am familiar with you doing. Have you followed the encroachment of beach access and mountain access in different portions of the island? In the northeast area, it is profound and it is growing along the west or south portions of the island. What are your thoughts about that?

(Councilmember Kagawa was noted as present.)

Mr. Lucas: I am most familiar these days with the South Shore region beaches. I am quite familiar with the North Shore. Up until recently about two (2) years ago, I was very familiar with the west side. I used to spend a lot of time out there. Any time you are dealing with land access, whether it is regarding a public right-of-way or perceived public right-of-way, or something that has been used over time and is just known to be the access...that is what I know about that.

Councilmember Cowden: Do you have an opinion on it? Do you have an opinion towards the importance of keeping beach and mountain accesses open?

Mr. Lucas: Definitely. Yes. You have to keep the accesses open to those special places. The other side of it, you have to give landowners their rights and do not put them in harm's way by the encouragement of lawsuits and damages and things like that. Overall, I think the important factors is giving the public access to beaches, trails, and resources.

Council Chair Kaneshiro: Any other questions from the members?
Councilmember Evslin.

Councilmember Evslin: I do not have a question. I just want to thank you. I nominated you. You came well-recommended from other members of the community for your work over the years. I appreciate you being willing to serve. I think your background makes you highly qualified for the job. I know you will do a good job.

Mr. Lucas: Thank you.

Council Chair Kaneshiro: Thank you for your time this morning. We will be voting on this at our next Council Meeting. Thank you Jonathan.

Mr. Lucas: Thank you. Please be safe. Aloha.

Councilmember Cowden: Aloha.

Council Chair Kaneshiro: Next item are the items on the Consent Calendar.

CONSENT CALENDAR:

C 2020-110 Communication (04/07/2020) from the Director of Finance, transmitting for Council information, the Period 7 Financial Reports – Statement of Revenues, Statement of Expenditures and Encumbrances, Revenue Report, and Detailed Budget Report as of January 31, 2020, pursuant to Section 21 of Ordinance No. B-2019-856, relating to the Operating Budget of the County of Kaua'i for Fiscal Year 2019-2020.

C 2020-111 Communication (04/02/2020) from Todd Karl Jenson, Deputy County Attorney, transmitting for Council information, the Quarterly Report on Settled Claims filed against the County of Kaua'i from January 1, 2020 through March 31, 2020.

Councilmember Kualii moved to receive C 2020-110 and C 2020-111 for the record, seconded by Councilmember Chock.

Council Chair Kaneshiro: Any discussion from the members?

(No written testimony was received regarding these agenda items.)

The motion to receive C 2020-110 and C 2020-111 for the record was then put, and carried by a vote of 6:0:1*.

Council Chair Kaneshiro: The motion is carried. Next item please.

LEGAL DOCUMENT:

C 2020-112 Communication (04/03/2020) from the Housing Director, recommending Council approval of a Ground Lease with Pua Loke Housing Partners LP, a Hawai'i Limited Partnership, for the Pua Loke Affordable Housing Development project, Tax Map Key (TMK) No. (4) 3-8-005-028 & 029, Lihu'e, Kaua'i, Hawai'i.

- Ground Lease

Councilmember Kualii moved to approve C 2020-112, seconded by Councilmember Cowden.

Council Chair Kaneshiro: Any discussion from the members on this item?

(No written testimony was received regarding this agenda item.)

The motion to approve C 2020-112 was then put, and carried by a vote of 6:0:1*.

Council Chair Kaneshiro: The motion is carried. Next item.

COMMITTEE REPORT

A report (No. CR-PL 2020-03) submitted by the Planning Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2755 – A BILL FOR AN ORDINANCE AMENDING SECTION 8-4.3(a), KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO DEVELOPMENT STANDARDS FOR RESIDENTIAL STRUCTURES NOT INVOLVING THE SUBDIVISION OF LAND (*Kauai County Council, Applicant*) (ZA-2020-5),”

Councilmember Chock moved for approval of the report, seconded by Councilmember Kualii.

Council Chair Kaneshiro: Any discussion from the members on this item?

Councilmember Cowden: I raised my hand.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: It is going to come up later, correct?

Council Chair Kaneshiro: This is the Committee Report.

Councilmember Cowden: Okay.

(No written testimony was received regarding this agenda item.)

The motion for approval of the report was then put, and carried by a vote of 6:0:1*.

Council Chair Kaneshiro: Motion is carried. Next item.

BILL FOR SECOND READING:

Bill No. 2755 – A BILL FOR AN ORDINANCE AMENDING SECTION 8-4.3(a), KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO DEVELOPMENT STANDARDS FOR RESIDENTIAL STRUCTURES NOT INVOLVING THE SUBDIVISION OF LAND (*Kaua'i County Council, Applicant*) (ZA-2020-5): Councilmember Kualii moved to approve Bill No. 2755 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Chock.

Council Chair Kaneshiro: Do we have questions for the Administration on this item? We have Ka'āina available.

There being no objections the rules were suspended.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Ka'āina, can you explain this one more time?

KA'ĀINA S. HULL, Planning Director: Just to confirm, this is Bill No. 2755?

Council Chair Kaneshiro: Correct.

Mr. Hull: This Bill came from the Council and the Planning Department and Planning Commission reviewed it. Ultimately, it is for multi-family construction to occur on lots that are ten thousand (10,000) square feet...

Council Chair Kaneshiro: You may have to speak a little slower or sit a little further...

Councilmember Cowden: Maybe sit back a little.

Council Chair Kaneshiro: You are breaking up a little.

Mr. Hull: Is this better?

Councilmember Cowden: Yes.

Council Chair Kaneshiro: Yes. Maybe sit a little farther back.

Councilmember Cowden: Or maybe Councilmember Evslin can do it.

Mr. Hull: Is this better?

Council Chair Kaneshiro: You can try.

Mr. Hull: The Bill is essentially to allow for multi-family construction on lots that are ten thousand (10,000) square feet or smaller. It does not increase density whatsoever. It does not make more units capable of being constructed on these lots. All it says is that if you have a lot of ten thousand (10,000) square feet or smaller in the Residential Zoning District, you can take advantage of shared-wall construction. You do not have to have separate single-family dwelling units. You can actually attach them like a multi-family dwelling. That is really all it does. It allows for multi-family construction or shared-wall construction which is a lot more cost-friendly. It can reduce construction costs. It allows for shared-wall construction to happen on all lots of record from the Residential Zoning District, regardless of size. To be honest, there was not much discussion at the Planning Commission or even at the Planning Department concerning this Bill because we really viewed it as a cleanup bill. Whenever you address things like the Zoning Code or any codes that are particularly complicated or complex, it is like a Rubik's Cube. When you move one side, you have to adjust the other. Back in the 1980s when the Additional Dwelling Unit (ADU) law was passed, ADUs can take advantage of multi-family construction no matter what. Back in the 2016 time period, Council Chair Kaneshiro introduced a bill to allow for multi-family construction to occur in the Residential Zoning District. Again, that was to allow for shared-cost construction to happen. There was one caveat that I think Councilmember Evslin caught, where there was still that ten thousand (10,000) square foot threshold that needs to be still met. There was not much discussion because it was really a cleanup measure.

Council Chair Kaneshiro: He said a cleanup bill.

Councilmember Cowden: A cleanup bill. Okay. My other question is for Councilmember Evslin. It can wait. Councilmember Evslin, do you want to speak to some of the concerns of people resisting this?

Councilmember Evslin: Sure. We received some testimony recently. I can go through them and state some of the concerns that I know of. Two (2) of the letters referenced that possibly one of the Councilmembers might personally benefit from this. I do not know if they were referring to me. I want to be clear that I do not. I have a seven thousand five hundred (7,500) square foot lot with R-6 density. Contrary to that since I am R-6 and have relatively low-density, I have the rights to an ADU. I can already do a multi-family home with that ADU as Ka'aina was just referring to. I do not know personally anyone that will benefit from this. I am pretty sure none of you will personally benefit from this. That was one concern. The second concern was that maybe we were rushing this through...

Council Chair Kaneshiro: I think you have to sit back a little more.

Councilmember Evslin: Sorry. Can you hear me okay?

Councilmember Cowden: Now it is better.

Councilmember Evslin: The other concern was that this was rushed through and that we were rushing it through with the Sunshine Law being waived and not taking public testimony on it. This came up for first reading last June. This came up again for first reading again in February after it went through the public process at the Planning Commission. We entertained this again at the Committee level. We had three (3) opportunities already to discuss this and two (2) times were before the Sunshine Law was lifted. We had very little testimony in total. I think in total we have received four (4) pieces of testimony. One of the other concerns was that we need to address infrastructure before making any changes. I want to be clear as Ka'aina has said, if you have the rights to an ADU and this has no impact on you, you can already build a multi-family home out there. This only really applies to properties, and Ka'aina can correct me if I am wrong, that are zoned R-10 and above that would involve two (2) or more homes. This is narrowly applied to or within our town cores. It would have the density for R-10 and above. Our town cores are the places with the existing infrastructure. Another concern was that this Bill increases density. Obviously that is not the case. This Bill makes no change to density. The last thing I wanted to address was Councilmember Cowden's concern. At the last meeting you mentioned the idea that this will exacerbate some of the issues out there where people can overhear their neighbors and there is fighting going on. You said in this time of stress this might make it harder for people to get along. Am I representing that view correctly?

Councilmember Cowden: I was just making a general statement about...as we are increasing density I am seeing that happen. Yes, I was making a general statement that we have a lot of neighborhood contention that is really surfacing right now. I am not opposed to the Bill. One of my main reasons for not being opposed to this Bill is because we do not have enough housing. And it is already happening. When we have heavy penalties that can sit on people who are out of compliance, this allows people to come in to compliance. This is a natural tendency. Especially when people age and the children have grown and moved away, if they are in a four-bedroom house by themselves, this is a way that it can be a part of the solution. I am not opposed to it. I was just bringing up the points that we have more cars and more people. It was that family of six (6) that conceivably still live in that house that has that density. I was asking and I wanted to honor that there are people who have a strong opinion on this. I think largely it is because it is so subtle that it is hard to understand what this is asking for.

Councilmember Evslin: I can address your concerns briefly. I have a small lot, seven thousand (7,000) square feet. I am not impacted by this because I am R-6 and I can already do an ADU. Given that I have a small lot, I have three (3) neighbors that all live within thirty (30) feet of me. I sometimes can hear the music

playing in their house. I can hear them arguing. Sometimes if they are arguing loud enough it sounds like they are in my house. If I am trying to get work done or putting my kids down to sleep, it can drive me crazy. But I have a house. I can live on Kaua'i and I can raise my family on the island where I was born. That is more than most in my generation can say. My hope with this policy and so many others that we have been working on is to enable my generation, my friends, our friends, and their friends' friends, and their children and their children's children, or anyone that is from Kaua'i to continue to live on Kaua'i. We have this incredibly dire housing crisis and I do not think we have the crisis of "sometimes hearing your neighbors playing music or arguing." If the sacrifice that I have to make to own a house here is to sometimes be able to hear my neighbors, then count me in. I can own a house. I just want to lastly clarify and bring this all together...this does not force anyone to build a rental unit on their lot. It does not change the density of anyone's property. It does not impact that many properties because every property less than R-10 can already build multi-family homes. We are looking at a very targeted discrepancy within our Comprehensive Zoning Ordinance (CZO) and all we are trying to do is rectify that. We are trying to give people with an R-10 and above, that have a small lot, the option to build a multi-family home as their density calls for, if they choose to do it. That is all we are doing here.

Councilmember Cowden: Okay, thank you.

Council Chair Kaneshiro: Any other questions from the members? If not, Ka'āina, did you have anything else you wanted to say?

Mr. Hull: I would just echo some of what Councilmember Evslyn said. That was an analysis done at a high level. To clarify, because every lot that is under ten thousand (10,000) square feet or smaller in the R-8, R-6, R-4, R-2, and R-1 districts only qualifies for one (1) dwelling unit, then this free-up that is being proposed only applies to R-10 and R-20 lots. Arguably and conceivably, R-10 and R-20 lots were meant to have multi-family dwelling units. I will leave it at that.

Council Chair Kaneshiro: Councilmember Cowden.

Councilmember Cowden: Just for people who might not understand. R-20 means twenty (20) units per acre and it is residential. R-2 means two (2) units per acre and it is residential.

Council Chair Kaneshiro: Any further questions?

There being no objections, the meeting was called back to order and proceeded as follows:

Council Chair Kaneshiro: Any final comments from the members? No?

Councilmember Chock: It is good.

The following written testimony was Received for the Record:

1. Drent, Les, dated April 8, 2020
2. Mohamed, Ana, dated April 21, 2020
3. Erum, Tai on behalf of Les Drent, dated April 22, 2020
4. Sykos, Lonnie, dated April 22, 2020

Council Chair Kaneshiro: Roll call vote.

The motion to approve Bill No. 2755 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR APPROVAL:	Chock, Cowden, Evslin, Kagawa, Kuali'i, Kaneshiro	TOTAL – 6,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun	TOTAL – 1*,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes.

Council Chair Kaneshiro: Next item.

EXECUTIVE SESSION:

ES-1025 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing, discussion, and consultation regarding the Quarterly Report on Pending and Denied Claims. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Chock moved to convene into Executive Session for ES-1025, seconded by Councilmember Kuali'i.

(No written testimony was received regarding this agenda item.)

The motion to convene into Executive Session for ES-1025 was then put, and carried the following vote:

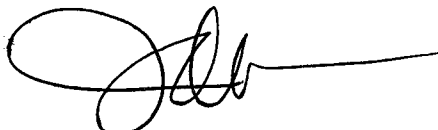
FOR EXECUTIVE SESSION:	Chock, Cowden, Evslin, Kagawa, Kuali'i, Kaneshiro	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Brun	TOTAL – 1*,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Kaneshiro: We are actually going to take the Executive Session later in the day. We have public hearings and Committee Meetings. Let us go to the public hearings.

ADJOURNMENT.

There being no further business, the Council Meeting adjourned at 8:53 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jade K. Fountain-Tanigawa', with a long horizontal line extending to the right.

JADE K. FOUNTAIN-TANIGAWA
County Clerk

:SS

*Beginning with the March 11, 2020 Council Meeting and until further notice, Councilmember Arthur Brun will not be present due to U.S. v. Arthur Brun et al., Cr. No. 20-00024-DKW (United States District Court), and therefore will be noted as excused (i.e., not present).