

KAUAI PLANNING COMMISSION
REGULAR MEETING

Tuesday, September 10, 2019

9:00 a.m. or Soon Thereafter
Lihu'e Civic Center, Moikeha Building
Meeting Room 2A-2B
4444 Rice Street, Lihue, Kauai, Hawai'i

RECEIVED

AGENDA

'19 SEP -4 P 3:28

- A. CALL TO ORDER
- B. ROLL CALL
- C. APPROVAL OF AGENDA
- D. MINUTES of the meeting(s) of the Planning Commission

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

- 1. Meeting of July 23, 2019

E. RECEIPT OF ITEMS FOR THE RECORD

- F. HEARINGS AND PUBLIC COMMENT (Noticed hearings will not commence until 9:00 a.m. or soon thereafter.) Individuals may orally testify on items on this agenda during the Public Comment Period. Please call the Planning Department prior to the meeting or notify Commission Staff at the meeting site. Testimony shall also be accepted when the agenda item is taken up by the Commission. However if an individual has already testified during this period, additional testimony at the agenda item testimony may be allowed at the discretion of the Chair. Testifiers shall limit their testimony to three (3) minutes, but may be extended longer at the discretion of the Chair. Written testimony is also accepted. An original and twelve (12) copies of written testimony can be hand delivered to the Planning Department or submitted to Commission Staff at the meeting site.

1. Continued Agency Hearing

2. New Agency Hearing

3. Continued Public Hearing

- a. Zoning Amendment ZA-2020-1 to amend Zoning Conditions in Ordinance No. PM-2004-370, relating to zoning designation at Kukuiula, Kauai, further identified as Tax Map Keys 2-6-003: Por. 001, 004, 021, 023, Por. 031, and Por. 032; 2-6-004: 017, 038, and 045; 2-6-011: 013 through 016; 2-6-015: 001 and 006, and affecting a total land area of 1,002 acres = *County of Kauai*. [Continued 8/13/19.]

- 1. Letter (9/3/19) from County of Kauai withdrawing Zoning Amendment.

4. New Public Hearing

5. All remaining public testimony pursuant to HRS 92 (Sunshine Law)

G. CONSENT CALENDAR

1. Status Reports

- a. Annual Status Report 2019 for Special Management Area Use Permit SMA(U)-2005-08, Project Development Use P.D. U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30, Tax Map Keys: (4) 3-5-001:027 (Por.), 168, 169, 71 (Por.), 175, and 176 = *Kauai Lagoons LLC & MORI Golf (Kauai) LLC*.

1. Director's Report pertaining to this matter.

2. Director's Report for Project Scheduled for Agency Hearing on Tuesday, September 24, 2019. NONE

H. EXECUTIVE SESSION

1. Pursuant to Hawaii Revised Statutes Section 92-5(a) (2 and 4) for Evaluation of Planning Director for first 6 months of FY 2019. This session pertains to the evaluation of the Planning Director's work performance where consideration of matters affecting privacy will be involved. Further, to consult with legal counsel regarding powers, duties, privileges and/or liabilities of the Planning Commission as it relates to the evaluation of the Planning Director.

I. GENERAL BUSINESS MATTERS

1. *HBR Enterprises LP's* Petition for a Declaratory Order Regarding Noncompliance and, in the Alternative, Petition to Revoke and/or Modify Variance Application Permit V-72-11, (7/26/19) by Calvert G. Chipchase, Esq., and Nicholas M. McClean, Esq. of Cades Schutte LLP, Attorneys for Petitioner HBR Enterprises LP.
 - a. Planning Director's Report pertaining to this matter.
 - b. Association of Apartment Owners of Hanalei Bay Resort's Memorandum in Opposition to HBR Enterprises LP's Petition for a Declaratory Order Regarding Noncompliance and, in the Alternative, Petition to Revoke and/or Modify Variance Application Permit V-72-11 (9/3/19) from Ian J. Jung, William C. Byrns, A. Bernard Bays, Michael C. Carroll, and Sharon Paris, Attorneys for Respondent, Hanalei Bay Resort.
2. Notice of Appeal and Demand for Contested Case Hearing from Denial of Nonconforming Use Certificate Renewal Application at: 4922 Weke Road, Hanalei, Hawaii 96714 (Certificate #1032) for *Christopher James* from Gregory Kugle, Esq., and Joanna C. Zeigler, Esq., to Clerk of the Planning Commission, Mr. Kaaina S. Hull (8/19/19) [Contested Case No. CC-2019-17].
 - a. Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Denial of a 2019 renewal packet by *Christopher James* for TVRNCU #1032 due to a failure to timely renew in 2018, Tax Map Key (4) 55001014, Hanalei, Kauai, received August 19, 2019 via email, for referral to Board and Commissions as Contested Case File No. CC-2019-17.

I. GENERAL BUSINESS MATTERS (Cont'd)

3. Petition to Appeal the Action of the Director of Planning of the County of Kauai re Denial of 2019 Renewal Application Packet for Non-Conforming Use Certificate TVNCU #5023 (Hale Haloko Kai), 5111 Hoona Road, Koloa, Kauai, Tax Map Key 4-2-6-006-004-0000 = **Rosa Giem** (Petition Undated, Received 8/21/19) [Contested Case No. CC-2019-18].
 - a. Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Denial of a 2019 renewal packet by **Rosa Giem** for TVRNCU #5023 due to a failure to timely renew in 2019, Tax Map Key (4) 26006004, Koloa, Kauai, received on August 21, 2019, for referral to Board and Commissions as Contested Case File No. CC-2019-18.
4. Appeal of the Director's Decision to Revoke Non-Conforming Use Permit #TVNC1050, The Poipu Hideaway, 2397A Kipuka Street, Poipu, Kauai, Tax Map Key 2-8-023:044 Unit A, **Santo Giorgio** (Received 8/26/19) [Contested Case No. CC-2019-19].
 - a. Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Denial of a 2019 renewal packet by **Santo Giorgio** for TVRNCU #1050 due to a failure to timely renew in 2019, Tax Map Key (4) 28023044A, Poipu, Kauai, received on August 26, 2019, via email, for referral to Board and Commissions as Contested Case File No. CC-2019-19.

J. COMMUNICATION (For Action)

K. COMMITTEE REPORTS

1. **Subdivision** Subdivision Action matters listed in the Subdivision Committee Agenda (attached).

L. UNFINISHED BUSINESS (For Action)

1. In the Matter of Petition to Appeal Decision of the Planning Director Relating to the Denial of Non-Conforming Use Certificate Packet Submitted on 8/13/18, as Required by Kauai County Code Sec. 8-17.10(h)(1) for TVNC#5081, Anini Beach Hale, LLC, located at 4371 Anini Beach Road, Kilauea, Kauai, Hawaii, 96754, and Further identified by Kauai TMK No. (4) 5-3-007:006, and containing 32,813 s.f. = **Anini Beach Hale LLC**. [Deferred 8/13/19].
 - a. Hearing Officer's Report and Recommendation of Contested Case dated July 29, 2019. [Deferred 8/13/19.]
 - b. Planning Department's Written Brief Limited to the Issues of Whether the Petitioner was a "Quasi-Governmental Agency," and if so, Whether that Status Meant that the Emergency Proclamation Applied to Petitioner; Exhibits A-B; Certificate of Service (8/30/19) from Matthew M. Bracken, County Attorney and Mary Ann Sasaki, Deputy County Attorney for Respondent Planning Department of the County of Kauai.
 - c. Supplemental Briefing to the Planning Commission, Certificate of Service (8/30/19) from David G. Brittin and Michelle J. Chapman of Case Lombardi & Pettit, Attorneys for Petitioner Anini Beach Hale LLC.

M. NEW BUSINESS

1. **For Action – See Agenda F for Project Descriptions**

N. ANNOUNCEMENTS

1. Topics for Future Meetings
2. The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Hawaii 96766 on **Tuesday, September 24, 2019.**

O. ADJOURNMENT

EXECUTIVE SESSION: The Commission may go into an executive session on an agenda item for one of the permitted purposes listed in Section 92-5(a) Hawaii Revised Statutes (“H.R.S.”), without noticing the executive session on the agenda where the executive session was not anticipated in advance. HRS Section 92-7(a). The executive session may only be held, however, upon an affirmative vote of two-thirds of the members present, which must also be the majority of the members to which the board is entitled. HRS Section 92-4. The reason for holding the executive session shall be publicly announced.

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ASEGRETI@KAUALGOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

KAUA'I PLANNING COMMISSION
SUBDIVISION COMMITTEE MEETING
Lihu'e Civic Center, Mo'ikeha Building
Meeting Room 2A-2B
4444 Rice Street, Lihu'e, Hawai'i 96766

Tuesday, September 10, 2019, 8:30 A.M.

AGENDA

- A. CALL TO ORDER**
- B. ROLL CALL**
- C. APPROVAL OF AGENDA**
- D. MINUTES of the meeting(s) of the Subdivision Committee**
- E. RECEIPT OF ITEMS FOR THE RECORD (None)**
- F. HEARINGS AND PUBLIC COMMENT**

Individuals may orally testify on items on this agenda during the Public Comment Period. Please call the Planning Department prior to the meeting or notify Commission Staff at the meeting site. In addition, testimony may be accepted when the agenda item is taken up by the Commission at the discretion of the Chair. Testifiers shall limit their testimony to three (3) minutes, but may be extended longer at the discretion of the Chair. Written testimony is also accepted. An original and twelve (12) copies of written testimony can be hand delivered to the Planning Department or submitted to Commission Staff at the meeting site.

- G. GENERAL BUSINESS MATTERS (None)**
- H. UNFINISHED BUSINESS (For Action)**

- 1. Request for a Modification of Condition
 - a. Subdivision Application No. S-76-60
(**Antone M. Souza**)
Proposed 7-lot Subdivision
TMK: (4) 2-5-03:044
Lawai, Kaua'i
 - 1. Subdivision Report pertaining to this matter.

I. NEW BUSINESS (For Action)

1. Tentative Subdivision Map Approval

- a. Subdivision Application No. S-2019-18
(SALVATORE F. & JO_ANN DILEONARDO TRUST)
Proposed 2-lot Boundary Adjustment
TMK: (4) 4-9-013: 013 & 014
Moloa'a, Kaua'i

1) Subdivision Report pertaining to this matter.

- b. Subdivision Application No. S-2019-19
(KUKUI'ULA DEVELOPMENT COMPANY, LLC)
Proposed 8-lot Subdivision
TMK: (4) 2-6-022:019 & 021
Koloa, Kaua'i

1) Subdivision Report pertaining to this matter.

J. ADJOURNMENT

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Pursuant to Section 8-27.8 (6) of the Kaua'i County Code (1987), as amended, the following shoreline setback determinations by the Director are disclosed for purposes of public notification.

September 10, 2019

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Reasons
SSD-2020-5	Bob Kutkowski/Princeville Development	5-3-006:025	Anini	New Carport, Storage and Equipment Building
SSD-2020-6	Walter & Ann Louie	4-5-013:020	Kapaa	New Rock Wall
SSD-2020-7	Steven Rodger	5-8-012:010	Wainiha	Roof Repair and Extension