

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
FEBRUARY 12, 2009**

APPROVED

Maui County Board of Variances and Appeals
Meeting Date: FEBRUARY 26, 2009

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Randall Endo at approximately 1:36 p.m., Thursday, February 12, 2009, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

A quorum of the Board was present. (See Record of Attendance.)

B. VARIANCES

1. **ELLIOT & BARBARA LUKE requesting a variance from Maui County Code, §16.04B.140, Subsection 903.4.2 (as amended) to delete the requirement to provide fire protection with a fire flow of 500 gallons per minute for a two-hour duration for the Luke Family Subdivision located on 233 Anuheha Place, Kula, Maui, Hawaii (BVAV 20080006) (Deferred from the December 11, 2008, meeting.)**
 - a. **Department of Fire and Public Safety's Witness List and Exhibit List**
 - b. **Elliot & Barbara Luke's Information Submission Dated February 2, 2009**

Mr. Francis Cerizo read the agenda item into the record.

Chairman Randall Endo: Is there anyone here from the general public who wants to testify on this matter? Okay, seeing none. If there was, we would've asked them to testify under oath anyway. So we'll now proceed as a contested case matter. We would like to allow the appellants first to make an opening statement to— I take that back. Before we begin, if the parties are okay, is there any objection to admitting all of the proposed exhibits from both sides?

Ms. Barbara Luke: No.

Mr. Richard Rost: No.

Chairman Endo: No? Okay. In that case, we will deem all of the Exhibits A through F submitted by Mr. and Mrs. Luke into evidence, as well as Exhibits A and B from the Fire Department. In addition, of course, everything that's already been put on file is also part of the record for the contested case. So your map, all the application documents, and anything else that was submitted to the Department is part of the record, the video. Everything we're considering and looking at is part of the record for this contested case. So at this time, we'd like to allow the appellants to make an opening statement followed by an opening statement from the Fire Department, and then we'll let the appellants go with their first witness. So—

Ms. Luke: I don't know if this is considered an opening statement, but it's just kind of an overview. Good afternoon, Chairman Endo and Members of the Board. My name is Barbara Luke. And to support our application, I would like to outline a few important factors.

In early 2006 before going ahead with the subdivision application, I checked with various people

in the County to see what the various requirements were. In reference to the fire flow requirement, I was told 250 gpm and a 30,000-gallon tank which with our signature could be waived so the County would not be held liable in case of fire. When we received the preliminary approval in November 2007, I was shocked to see the increase to 500 gpm and the 60,000-gallon tank. I immediately tried calling the Fire Prevention Bureau. In early 2008, we met with Paul Haake who said he couldn't waive the requirement but to check with the County as we could possibly apply for a variance. After many phone calls and letters, along with some confusion, we are here in front of you today. I just want to say that no lot will be sold. Properties in Maui County are not affordable, so we felt pressed to subdivide. We are doing three lots because we have three children. Although Lt. Paul Haake stated with subdivision approval we could build six homes on the property, we have no intentions of doing this. No further structures will be built in the immediate future.

Goats will continue to be pastured on the land. California uses the same breed of goats for prevention of wildfires. (See three different articles with the yellow D tab.) CNN did a report on this on December 17th 2008. If the grass becomes overgrown, we mow it back to approximately 100 feet from our boundary.

Our neighborhood is unique in that physically, we are surrounded on three sides by developments that apparently have the proper fire flow: Kamehameha Schools, Kulamalu Commercial Development, and Kula 200. We are working on a solution to our situation with the Water Department. The Upcountry Community Plan clearly states the support of agricultural family subdivisions and developing water systems to further that endeavor. (See page 16 with the pink E tab.) At the Water Resources Committee meeting on January 7th 2008, the Water Director, Jeff Eng, addresses fire flow and the deficiencies that exist in Maui County. He states the property owner may have to pay for some of the improvements. (See orange tab F.)

As property owners, we feel we are responsible in preventing a fire. We value the men of our Fire Department, and would not endanger their lives or equipment. We are on the verge of getting water and feel this requirement would be an inefficient use of land and funds when everyone is hurting from a financial standpoint. I would ask that you please consider waiving the requirement. Thank you.

Chairman Endo: Okay.

Mr. Richard Rost: Good afternoon. Deputy Corporation Counsel, Richard B. Rost, for the Fire Department. The requirement that the Lukes do not want to comply with requires a flow of 500 gallons per minute for two hours. The 500 gallons per minute is the lowest gallons per minute requirement of any zone. Rural residential, they're all higher. And there's really no reason the Lukes are unable to comply with the standard. They simply don't want to pay for it, which is understandable, but considering this is a public safety issue, it's not a valid justification. If there's not adequate fire – water for fire protection, the Fire Department's personnel are at risk, the Fire Department's equipment is at risk, and public citizens and private property are at risk. So on that basis, the Fire Department would ask that this application be denied. Thank you.

Chairman Endo: All right. Thank you. Okay. The appellants can call their first witness. I think since nobody's going to ask you questions, yeah, why don't you go up there? So I guess I'm going to swear you in. Raise your right hand. Do you swear or affirm that the testimony you're about to

give is the whole truth?

Mr. Elliot Luke: Yes.

Chairman Endo: Okay. Thanks. Just so you know, we are empowered as a Board to give oaths. And therefore, your testimony, if untruthful, could subject you to criminal liability. Okay? Please state your name and address to begin.

Mr. Luke: My name is Elliot Luke. My address is 111 Aulii Drive, Pukalani, Hawaii, 96768. Good afternoon, Chairman Endo, Vice-Chairman Shibuya, and Members of the Board. My name is Elliot Luke, one of the property owners of 233 Anuhea Place. Anuhea Place is a private road.

Chairman Endo: Excuse me. Could you put the mic. a little closer?

Mr. Luke: Oh, I'm sorry. Shall I repeat?

Chairman Endo: No, that's fine.

Mr. Luke: We are requesting a variance to Maui County Code §16.04B.140 relative to agriculturally-zoned lots. What are we hoping to do? Basically, we are trying to gift agricultural lots to each of our three children. It is our legacy to our children. Our oldest son Eric, 35, with a family of five is building a home on the property. He has a 30,000-gallon water collection and storage tank. He was required by the Fire Department to have a 25,000-gallon tank for home use and for fire protection. After talking it over with myself and others, he increased their minimum requirements by 5,000 gallons. He was also required to install an approved fire sprinkler system, which he has done. If you'll look at Exhibits A and B, Exhibit A is from the National Fire Protection Association. It talks about, and let me quote, "Because fire sprinkler systems react so quickly, they can dramatically reduce the heat, flame, and smoke produced in a fire." If you look down the facts and figures on the lower lefthand side, when sprinklers are present, the chances of dying in a fire are reduced by one-half to three-quarters. And the average property loss per fire is cut by one-half to two-thirds compared to fires where sprinklers are not present. Sprinklers typically, reduce the chances of dying in a home fire by one-half to two-thirds in any kind of property where they are used. Together with smoke alarms, sprinklers cut the risk of dying in a home fire 82% relative to having neither.

On page 2, it talks about how they work. And if you look at the bottom part of that page, the third paragraph on the bottom, sprinklers are so effective because they react so quickly. They reduce the risk of death or injury from a fire because they dramatically reduce the heat, flames, and smoke produced allowing people time to evacuate the home. Home fire sprinklers release approximately ten to 25 gallons of water per minute. You know, a home without sprinklers, a fire is likely to grow to dangerous levels by the time the Fire Department is able to arrive. In preparing for all of this, I've done a lot of research on sprinkler systems, and certainly agree with the Fire Department that it be a requirement especially for homes that do not have County water and fire protection through County water system. But I just wanted to point out that in terms of the home that's there, the home that my son has, our grandchildren live in, they do have the required sprinkler system.

He also had in his home a hundred percent spray foam insulated. And it was required by the

County just to have the roof insulated. But he did the whole home again, for environmental reasons and also for fire protection. We did research and understood that by having spray foam throughout the entire home that it will not ignite as quickly should there be a fire. His home also has a metal roof. This metal roof is there for water catchment and fire protection. And by the way, since he put up that tank, which has been about a little over a month and a half with the rains that we've had Upcountry, and the roofing system, and the water catchment system that he has, that 30,000-gallon tank is full even though he's been using water from the tank. Maybe we have a very different year from most.

Attachment B also talks about sprinkler systems and it talks about on the second page, fast response. And again, not having County water and the Fire Department being a little ways from where we're at, I think response time is important.

Our second son, Brandon, who is 33 years old has been living on Oahu for over 15 years, and does not plan to move back to Maui or build. He's not married and has no children. Our youngest daughter, Cherise, she's 30 years old, is living in Houston, Texas. She has been primarily on the Mainland since graduation from high school. She does not plan on building. And at this time, she does not plan on relocating. Both individuals certainly would not want to build without water. They're not country kind of people.

We are not developers. We are not subdividing for sale, rent, or profit. I know that the code, the County Code, is there, and it doesn't really differentiate a developer between someone else that's trying to subdivide for other reasons. All that we do with this property is pure expense to myself and my family. When you're the County and you're able to get money from the taxpayers, it's very different than having to take it out of your own pocket. I'm not saying that what they do is wrong, but what I am saying is that in certain cases, you should have a better understanding of the situation and make a decision based upon the circumstances.

All that we do with this property is pure expense to myself and my family. I now know why many local families sell their land instead of giving it to children. If you give it to them without it being subdivided, you can also be creating huge family problems. We are trying to subdivide and define boundaries for financing, valuation, taxes, and insurance. Eric, my son, has built this home with my money—money that he borrowed from me from my retirement funds. He's applying for a home mortgage so he can repay me.

We do not plan on building another human structure on this property. We farm goats and have built small structures for them.

A review of the staff analysis and Points 1 through 4 really come down to safety. You heard the opening remarks by County Counsel. It really comes down to safety, safety of people and structures. What we are doing on our property pose no fire hazard. And in fact, through the grazing of goats, it reduces the fuel for fires. And that's a fact that's very, very well known. And you can look at Exhibit C, which is from the— Los Angeles, they've had a lot of fires. This is from P. Michael Freeland, Fire Chief, Forester, and Fire Warden, July 17, 2007. The second paragraph, "The most thing that you can do to help your local firefighters to protect your home is to properly clear brush located around the perimeter of your home." Around the perimeter of Eric's home, there is no brush. We have cleared at least a hundred feet around the home. And the rest is left for the goats

to graze on.

We have owned this property for about 20 years and have used it for grazing of goats, horses, and cattle. Goats actually are the best animals to graze because they eat almost anything. And I don't mean to be funny with that remark but they eat Christmas Berry trees, Silver Oak, which a lot of people believe to be poisonous. They eat hale koa. And the last thing they want to eat is grass. But they eat the grass, the shrubs. So in terms of fire prevention, it is a definite plus when you have animals especially, a goat or herds of goats that can keep the fuel for fires down.

You know, we don't live out in Kahikinui. I know that there's homes up at Kahikinui that are built without any kind of fire protection, but that's maybe the wild part of Maui. We live right in the heart of Pukalani. We're surrounded by a couple high schools and a shopping center. We have now communicated, spoken with, on countless occasions with three different Water Directors trying to get water to this subdivision. There was a waterline put in. They're standpipes. In fact, when a representative from the Fire Department first went out there, he thought it was okay until he found out that the standpipes were empty.

We are not going to build another dwelling. It would stand accountable through the building process, the building permitting process. We hope to have water issues resolved in the near future. But even with that, it would not change our purpose or character of the land. The rules and regulations are designed for the good of all, but our situation is unique and with an exceptional set of circumstances.

The County has a code for when you want to build a home where there is no County water provided to that home or to that subdivision. And you can get a building permit and build a home providing you put in your own water storage system, sprinkler system, and such. And I know that that's not an issue here. The issue here is subdividing the land. The issue here is that if we subdivide, we would have the opportunity to put more homes on the property. We will be willing to sign documents to state that that – or whatever, to hold us back from doing that sort of thing 'cause we're not gonna be doing it. To spend \$60,000 to \$100,000-plus to put up a tank that's just gonna sit there – You know, if we build another house, we'd be more than willing to put up another 30,000-gallon tank if we don't have County water by then. Put up another sprinkler system. In fact, knowing what I know now about sprinkler systems, we're gonna do that whether we have County water or not. It's just so much more efficient. But to have a tank sitting there, I mean, I don't know, maybe the Fire Department has an inspection system where – go by on a monthly basis, or annual basis, or every five years to inspect the tanks to make sure that they're full, they have water, and that the water is flowing through the lines at 500 gallons per minute. I don't know that they do. I guess that could be a question that we may want to ask them. But I would venture to say that there's a lot of systems that do not have and cannot produce 500 gallons per minute in existing subdivisions Upcountry.

Again, you know, in these times when it's economically and financially we're in a crisis, not here – only here in Maui, but basically the world, it's ridiculous to throw \$100,000 or to put a hundred – to just not – to have it wasted. And I just don't understand. I know that the rule is a rule, and that we need to abide by all the rules, but I can't understand why we need to put a tank there hopefully, to do nothing. Thank you very much.

Chairman Endo: Okay, before we begin cross examination, I think what I'd like to do, maybe the Planning Department can chime in is to actually restate some of the basic issues just so it's clear for the Board Members. And so I'm going to state generally what I think it is, but please correct me, Francis, or somebody else can jump in too. So basically, you get the 60,000-gallon tank that you gotta do for a subdivision. Right?

Mr. Luke: Well, basically what it is, is 500 gallons per minute for two hours.

Chairman Endo: Right, 500 gallons for two hours. So that's the requirement for a subdivision. Separate from that, you would have building permit requirements which are unique when you don't have water supply.

Mr. Luke: Correct.

Chairman Endo: So you pulled the building permit already or your son did. And so he's done sprinklers, and he's done a 30,000-gallon tank.

Mr. Luke: Correct.

Chairman Endo: Just for the building permit.

Mr. Luke: Correct.

Chairman Endo: So now you're saying that you want a variance to just do what's required for the building permit but not for the subdivision.

Mr. Luke: Correct.

Chairman Endo: And that you're willing to defer – you're willing to build up to subdivision standards in the future if you do a third or fourth or fifth house on the other lots that are going to be vacant for a foreseeable future, or something like that, but we'll leave that. You don't have to say exactly. And you're also saying that you've got extra fire protection because you keep the ground pretty barren and things like that. Is that a basic summary of what you're saying?

Mr. Luke: Well, not barren, but yeah, we do–

Chairman Endo: I mean, not as much fuel on the ground.

Mr. Luke: We do control the fuel all around us, yes.

Chairman Endo: Okay. I just want to clarify that. So now we can have cross examination. Oh, yeah, no, actually, why don't you go down there, Mr. Luke, and have–?

Mr. Rost: Mr. Luke, is your lot similar in size to the lot surrounding it?

Mr. Luke: There are– Yes.

Mr. Rost: And how many lots are adjacent to your property?

Mr. Luke: If you count the roadway as a lot, the road going down which is a private roadway—three. And I believe on the backside of us belongs to either Maui Land and Pine or the State of Hawaii is a gulch.

Mr. Rost: Now, several of those lots don't have any structures right now, is that right?

Mr. Luke: That's correct.

Mr. Rost: And you were just testifying about how you plan to have – or you do have goats on your property, is that right?

Mr. Luke: Correct.

Mr. Rost: Now, if you were to ever sell your property, you have no way of knowing whether the new owner would have goats, is that right?

Mr. Luke: We're not gonna sell.

Mr. Rost: So what you're saying is, at no point will you ever sell this property?

Mr. Luke: That's correct.

Mr. Rost: Now the reason you don't want to build the water storage is cost, is that correct?

Mr. Luke: Not only cost. It's just a waste of money.

Mr. Rost: Is there any physical obstruction on the property that would prevent the construction of the tank?

Mr. Luke: I don't know. I would have to hire an engineer to see where such a tank could be located.

Mr. Rost: You were talking about fire sprinklers during your testimony. Isn't it true that fire sprinklers are only helpful when the house itself is on fire as opposed to properties surrounding the house?

Mr. Luke: That's correct.

Mr. Rose: Thank you, Mr. Luke. I don't have any more questions.

Chairman Endo: Okay, at this time, we'll allow the Board to ask questions of the witness. So anyone? Oh, yeah, you can go back up to the – so we can see you better. Does anyone have a question? Member Ajmani?

Mr. Harjinder Ajmani: Yes, Mr. Luke, you were saying that one of the reasons you want to not spend the money is under these economic times is it will be a tremendous hardship, and the money is hard to come by, and those kinds of issues. And I was wondering if those same issues may compel you

to sell your lot and what would you do about it?

Mr. Luke: If we're able to get a subdivision approval, our names, my wife and I, would be taken off the property. The property will have three owners: each of the children. We are putting together a legal document that would state that the properties to be placed into, I don't know, maybe a land trust or something like that where they are not able to sell the property. We, my wife and I, saved up enough money to buy the property. When we bought it 20-some years ago, the rules that are in place now were not in place then. In giving it to the children, it was one condition placed upon them, and that condition was that they were never to sell that property otherwise, we were not gonna give it to them. So no, to answer your question, no.

Mr. Ajmani: So now your son Eric is building his house on the property.

Mr. Luke: That's correct.

Mr. Ajmani: So that really will be current use of that place for some years.

Mr. Luke: Sorry?

Mr. Ajmani: That will be the use of your property for the immediate future.

Mr. Luke: As far as I can see, we are working with the current Water Director. We are trying to get the entire subdivision up to Maui County standards. Things may change if and when that happens. But in the foreseeable future, Eric is the only one that wants to live there.

Mr. Ajmani: Will be living there. Okay. So in other words, if this subdivision application is denied, it does not prevent the actual use of the property the way you're envisioning it at this point?

Mr. Luke: No, it would not prevent the use of the property. It would just make it very difficult for— You know when everything is under — encumbered by one, and the other kids can be liable for things should something happen, it makes it difficult for taxes. It makes it difficult for making loans and such. It's not a clean way of doing things.

Mr. Ajmani: Okay. I don't have any more questions at this point.

Mr. James Shefte: I have one question. I'm a little bit confused. The Fire Department is asking you to put in a 60,000-gallon tank after which then you could subdivide the property. Is that correct?

Mrs. Luke: There were 23 conditions for approval of the subdivision, and we pretty much have fulfilled all of them. This is the one that's holding it up.

Mr. Shefte: Well, my confusion is if the property is subdivided, then this 60,000 gallons, is that supposed to satisfy the needs of the three subdivided lots? If so, where would it be put?

Mr. Luke: To my knowledge, it doesn't satisfy the needs for any of the—

Mr. Shefte: I'm asking you just about the fire needs, not everyday needs. I'm just talking about for

the Fire Department. So that this particular – then this tank would be there. If there was a fire, on any one of these lots, it would be used for that? You wouldn't be required to have another tank because it's a separate lot? You know what I'm saying? Because once you have the lots, it's subdivided, then that's an entity unto itself. And is there a requirement then that there be separate water for those for fire purposes, or is this just going to be like a community tank that's going to feed all of them?

Mr. Luke: You bring up an issue I haven't really considered. And from a legal standpoint, I don't know the answer to that, but I thank you for that question.

Chairman Endo: I have a couple of questions. Just to clarify the basic circumstances, so you said that you instructed recently a new 30,000-gallon tank for your son's home.

Mr. Luke: That's correct.

Chairman Endo: So prior to that, do you have another tank for your home?

Mr. Luke: No, I do not live on that property.

Chairman Endo: Oh, you don't live on that property?

Mr. Luke: No.

Chairman Endo: Oh. So how many structures are there on that property, then?

Mr. Luke: One, one human structure, and a couple of little goat sheds.

Chairman Endo: Oh, okay. I was confused. I thought you lived there, and then your son was building another house.

Mr. Luke: No, this is eight acres that I'm trying – and part of it is a gulch that we're trying to split into three parcels for each of the children.

Chairman Endo: So you don't want to live close to your kids? I'm just joking around. Okay. So that was my basic question: what the situation was. My other question, real quickly, maybe for Planning to jump in would – anybody talk to you about possibly doing – utilizing the family subdivision provisions where you can defer certain subdivision improvements?

Mr. Luke: We asked about it and it didn't–

Chairman Endo: They said it didn't apply? Because I'm not positive. Maybe it doesn't apply to fire standards.

Mr. Francis Cerizo: That provision is under Title 18. It's not a – we don't have family subdivision, but under the – in our County Code, but as far as Title 18, they have provisions for family subdivisions.

Chairman Endo: So they can defer certain things, right?

Mr. Cerizo: Yeah, they can – as far as I know it's for the transfer of title. And you can't build on it, but I'm not sure if this would apply because–

Chairman Endo: Because he's building on one of them.

Mr. Cerizo: Yeah.

Chairman Endo: Okay. Never mind. Any other questions? Warren?

Mr. Warren Shibuya: I just have one maybe right now. It's primarily with the Fire Department. The delivery of the water from the tank to the fire area, how is that done?

Mr. Luke: To the standpipe, you mean, to where they would be able to hook up to the–?

Mr. Shibuya: Yes.

Mr. Luke: You would have to – well, depending upon – you would have to get an engineer. They would have to tell you where they think the best place to put the tank. You would then have to grade that area and clear that site. And you would have to build the tank. Then you would have to put an underground piping with a pump.

Chairman Endo: Warren, that question might be better be asked of the Fire Department. That was part of his testimony . . . (inaudible) . . .

Mr. Shibuya: That's correct. So I'll stay with his question, I guess. All I know is that I applaud what your intentions are. And I'm just supportive of what you're doing. That's all I have.

Chairman Endo: Okay. At this point– Oh, sorry.

Mr. William Kamai: Yeah, Mr. Luke, regarding that dry standpipe, and hiring one engineer to space it out, isn't your property – there's existing dry standpipes now?

Mr. Luke: Sir, that's a whole other matter. It's a subdivision that has been approved that a waterline was put in and standpipes are there, but the water that was – we never got water. The subdivision never got water. And it goes back to the '60s.

Mr. Kamai: But those standpipes are engineered to be in certain areas?

Mr. Luke: Yes, they were put in based on the requirements at the time. You know, whatever distance apart they were needed to be, they were put in by the subdivision developer.

Mr. Kamai: So are they usable?

Mr. Luke: My opinion is that they're not usable, but I don't know that. I'm not a– The pipes are – I don't believe the pipes have ever had water in them. And I'm not sure what material the pipes are

made out of. I'm talking about the waterline. And in order— And I think those standpipes wouldn't fulfill the requirements that the Fire Department has now. I think those standpipes will produce less than 250 – I mean 500 gallons per minute.

Mr. Kamai: Okay, that's it.

Chairman Endo: Okay. At this time, we would allow— Let's see. So everybody's cross-examined you. So technically, you could ask – you could provide rebuttal statements. So is there any additional you want to say based on the questioning that's been asked of you?

Mr. Luke: No.

Chairman Endo: No? Okay. So in that case, you can call your next witness, if you have one.

Mr. Luke: I don't have one.

Chairman Endo: You don't have one. You know what we should do, though. We should have Mrs. Luke be sworn in just for the stuff that she said at the opening statement 'cause it was more of a factual nature. So if you don't mind, I'll swear you in that everything you said earlier was, you know, the truth, if that makes sense.

Ms. Luke: Sure, that makes sense.

Chairman Endo: Okay. So, please raise your hand. Do you swear or affirm that the testimony or statements that you've previously given in your opening statement are the truth, the whole truth, and nothing but the truth?

Ms. Luke: Yes, they are.

Chairman Endo: Okay. Thank you. So at this point, then— Oh, actually, we should allow the other party to ask questions of your opening statement perhaps because it's more of a factual testimony nature, if you have any questions.

Mr. Rost: No questions.

Chairman Endo: No questions. Does anybody on the Board have any questions of Mrs. Luke? No? Okay. That's fine, then. So your folks' case is done then basically, in terms of presenting your evidence? Okay. So at this time, we'll allow the County to put on their case.

Mr. Rost: Thank you. The County will call Paul Haake.

Chairman Endo: Do you swear or affirm the testimony you're about to give is the whole truth?

Mr. Paul Haake: I do.

Chairman Endo: Okay. Please be seated. And you heard my caution earlier about being under oath and what it means and all that?

Mr. Haake: I did.

Chairman Endo: Okay.

Mr. Rost: Could you state your name?

Mr. Haake: Paul Haake.

Mr. Rost: And who are you employed by?

Mr. Haake: Maui County Department of Fire and Public Safety. And I work in the Fire Prevention Bureau.

Mr. Rost: How long have you been with the Department of Fire and Public Safety?

Mr. Haake: I have been with the department for 18 years and six years in the Prevention Bureau.

Mr. Rost: Could you briefly explain what your duties are in the Fire Prevention Bureau as it relates to the matter that we're here for today?

Mr. Haake: As it relates to the matter today, I do plans review for applications for subdivisions and residential building permits.

Mr. Rost: So are you familiar with the property owned by the Lukes that's the subject of this proceeding?

Mr. Haake: I am. I've been up to the site several times.

Mr. Rost: What are the requirements of the Fire Code that this property has to comply with in terms of available water?

Mr. Haake: Mr. and Mrs. Luke is applying for a subdivision. And under the requirements of the Fire Code, they need to provide water for fire protection and Fire Department access. And the – with that said, the requirements for water are based on land use. And in the Lukes' case, they're doing ag subdivision. If they were doing a residential subdivision, or a commercial subdivision, or heavy industrial subdivision, they'd be required to put more water in for fire protection. The minimum requirement for their subdivision is 500 gpm for two hours. And the max on a – say a heavy industrial subdivision would be 2,500 gpm.

Mr. Rost: So agricultural is the lowest gpm of any zone, is that right?

Mr. Haake: Yes, it is. In fact, when we adopted the Fire Code in July of 2006, we had to come up with something practical for people doing ag subdivisions. And – see the minimum requirement for a home is a thousand gpm. So we – And you get that from – You do 500 gpm to protect the structure, and 500 gpm to protect surrounding structures. In the ag subdivision, because of the lot size, there's more space between the homes. So we thought, okay, let's do – let's make it 500 gpm so that – and the reasoning behind that is because of lot size, we may only need to use the

water to fight the structure fire or to protect the structure from say, a brush fire because of ag lot. So we had to use some reasoning behind coming up with the 500 gpm. So we did make some allowances there when the code was put in place.

Mr. Rost: So about how many gallons per minute would a single fire hose use?

Mr. Haake: Depending upon the size of hose used to fight the fire, you would get anywhere from a hundred to 250 gpm. So, you know, if you use 500 gpm to fight the fire, you could say – have up to maybe three hose sections to fight the fire.

Mr. Rost: Could you explain why not having sufficient water available to fight a fire could be dangerous?

Mr. Haake: For emergencies, the people are gonna expect the Fire Department to respond. They need help and we are gonna respond. During emergencies, time is valuable. And because – and during fires, we need water. So if there's no water. We'd have to use more resources, pull trucks other – out of different districts, tankers, set up water relay, and that's, you know, finding a source some place, pumping it to another truck, pumping it to another truck, pumping it to another truck to get the water where we want it. So it would be dangerous because we'd lose valuable time. We'd use up other resources from other districts setting them up. That's it right there. Just we'd lose time and resources.

Mr. Rost: Okay, so specific to this matter, if this variance was granted and there's a subdivision on the Lukes' property, and there's a fire, and there's not 500 gallons per minute, you'd have – would you have to do what you just talked about? Setting up the relays, bringing in additional crews?

Mr. Haake: Yeah, what I describe would be what the procedures we'd have to use to fight a fire in that particular subdivision.

Mr. Rost: Now, having been to the property yourself, are you aware of any features of the property that would make it impossible to put in a tank sufficient for 500 gallons a minute for two hours? Anything physical about the property?

Mr. Haake: No. No, I don't, but again, like Mr. Luke said, it would take an engineer to design that stuff and I'm not an engineer.

Mr. Rost: Now, there are currently a number of other unsubdivided lots in that area, is that right, adjacent to the Lukes' property?

Mr. Haake: Yes, I think – I'm not sure, but Anuheia Place is served by – I think Mr. Luke said three parcels, but I think he didn't understand the question, but I think Anuheia serves more than three parcels, maybe ten? Fifteen, 15 similar parcels on – off Anuheia Place.

Mr. Rost: Now, if those other lots were subdivided and additional buildings were constructed on them, would that impact the fire risk in the area?

Mr. Haake: Definitely, because, you know, the more lots you have, you have the potential for more

structures to be built. Definitely, it would impact.

Mr. Rost: If I understand you, more structures results in a higher risk of fire, is that correct?

Mr. Haake: Yes, you're correct.

Mr. Rost: Now, Mr. Luke was testifying about fire sprinklers. Would fire sprinklers provide adequate fire protection in this case?

Mr. Haake: From the Fire Department's standpoint, we love fire sprinklers. So we love the fact that he's putting fire sprinklers in his home. However, the issue here is the subdivision process. And in the subdivision process, we require water to protect structures also, not only fight a fire in the structure, but to protect surrounding structures. So we love fire sprinklers, but it doesn't apply in this case.

Mr. Rost: So in your opinion, if a property has inadequate water for fire protection, does that pose a risk to the adjoining properties?

Mr. Haake: Yes, because there's – again, in emergencies, time is valuable, and we'd have to set up other ways to get water there, so definitely.

Mr. Rost: Thank you, Paul. I don't have any further questions.

Chairman Endo: Okay, at this point, we will allow the appellants to ask questions, and then the Board.

Mr. Luke: Hi, Paul.

Mr. Haake: Hi.

Mr. Luke: You stated that the question was asked inadequate water for – would be a risk for adjoining properties. If there was no change in that area, if nobody else did any other building, and the place continued to stay as it is, would you consider that subdivision to be more at risk? I mean, there's no County water, right? So if there was no change, wouldn't the risk as it is right now still continued to be the same?

Mr. Haake: Are you talking about just your parcel?

Mr. Luke: No, I'm talking about the whole subdivision, if nothing else was built, if it stood just the way it is.

Chairman Endo: Let me just interject just to make it clear. The question isn't super clear so I'm gonna try and restate it.

Mr. Luke: Okay.

Chairman Endo: You're saying if we grant the variance, and he builds only a 30,000-gallon tank

required for building permit for one structure and nobody else in the Anuhea Subdivision builds any more new houses, would there be any increased danger to neighbors? Is that basically your question?

Mr. Luke: Correct.

Mr. Haake: I guess I would have to say yes, but if you – there's no way you can guarantee that. And, you know, if he's allowed to subdivide without meeting the requirements, what's to stop the other people from subdividing? And I think that's the issue here is that there's requirements for the subdivision, and everybody has to meet them. And if one is allowed not to meet the requirements, then what's to stop everybody else? And that's where the potential danger is.

Mr. Luke: You talked about an emergency situation. The two issues are that you would lose valuable time and resources. If you look at some of the adjoining properties, the Kamehameha Schools, Kula 200 across the street mauka of the highway, or if you look at Dowling's planned development with the housing that he has, they all have met the minimum requirements for the type of structures that they have concerning fire flow?

Mr. Haake: I would have to say yes although I don't think I was involved with all those different processes.

Mr. Luke: One last question: do you happen to know if surrounding area, Kula 200, for instance, older subdivision, do they meet the minimum fire flow as it is required right now?

Mr. Haake: I don't know if they meet the minimum requirements now. And I wasn't involved with that process, but I would hope that whoever was in charge would make sure that they met the requirements at the time.

Mr. Luke: Thank you.

Mrs. Luke: (Inaudible)

Chairman Endo: Sure.

Mrs. Luke: Hi, Paul. Are you aware that there are 13 homes in this Anuhea Place neighborhood all using County water with the exception of our son's who is on a catchment system?

Mr. Haake: I know that – I didn't know that there were 13 homes, but I knew that there were other homes.

Mrs. Luke: Okay.

Chairman Endo: Okay, at this point, we will take questions from the Board to the Fire Department. Hari?

Mr. Ajmani: I have two questions, Mr. Haake. I just want to understand how the 60,000-gallon tank will work for the whole subdivision. Will they put the tank somewhere on the street or on the side

of the street that all the lots can be served from it? Or how does it work? Maybe you can explain it to me.

Mr. Haake: The system that we're talking about would only serve Mr. Luke's parcel. And you know, I wish I could go up there and convince everybody up there that you know what? You guys don't have fire protection. Why don't you guys all work together and get something set up on that whole Anuhea Street? But because there's no water, Mr. Luke has to meet that requirement. So I think, you know, I'm not an engineer, but I've seen plans for it. So I would think that he would just design the system to serve his property so he'd have a tank on his property, and he'd have – the requirements are 500 gallons per minute with fire hydrant spacing at a maximum of 500 feet apart. So depending on what road he uses to serve his parcels, he would have the tank, and he would have piping along that road. And if the road was 200 feet long, then he would have maybe two standpipes, two hydrants. And the requirements also say you have to flow 500 gpm for two hours. So you'd have to have some type of pump so that when we just opened up the connection, the water would come up flowing 500 gpm.

Mr. Ajmani: So it means that it's not just the tank but you have to have a whole system of pumping water into the standpipes and the pipe.

Mr. Haake: Yes.

Mr. Ajmani: I see. Okay, and the second question is that do you know if any other subdivision like this that has been approved without the fire requirement?

Mr. Haake: No.

Mr. Ajmani: Okay. Thank you.

Mr. Shibuya: Mr. Haake, I just have a question in terms of the size of the hose pipe that – I mean, the fire hose that you're mentioning that takes about a hundred to 200 gallons per minute. What size hose is that and what psi are you talking about, approximately?

Mr. Haake: The hose we use to fight fires would be from an inch and three quarters to two and a half inch. And then the psi we're looking at is under – it has to be under 120 psi otherwise you wouldn't be able to hold the hose. It would fly you around the place.

Mr. Shibuya: I understand. At least two guys, right?

Mr. Haake: Right.

Mr. Shibuya: You generally don't use 120 psi. You probably use around 80 or 90 psi.

Mr. Haake: On the larger size hose, yeah. Maybe on the two and a half, but you could hold an inch and three-quarter with say, maybe 120 is a little too much, but maybe 115.

Mr. Shibuya: Okay. Thank you. In terms of the size of the standpipes currently existing in Kula 200, Kula 200 is zoned I believe as ag, gentlemen's estate, which at least is about two to two and a half

acres a piece. And the standpipes there is what size would you say?

Mr. Haake: If they're standpipes, then that would have to be the two and a half-inch connections. So – sorry. So that would be just that pipe connection with the two and a half inch valve on it.

Mr. Shibuya: Right. And that's what I see up in Kula 200. And those lots there, ag lots, have a large home. And they're also entitled to have a farm dwelling as well as equipment shed. Is that not true?

Mr. Haake: That is true.

Mr. Shibuya: And yet in this particular case, we are talking only one dwelling structure with a sprinkler.

Mr. Haake: Right.

Mr. Shibuya: Okay.

Mr. Haake: I think where – I kinda see where you're going. The – and the 500 gpm was adopted in 2006, July 2006. I don't know if you remember but Mrs. Luke said that she talked about it, and then there was a 250-gpm requirement. And then when she did apply, there was a 500-gpm requirement. I'm thinking that she asked prior to the adoption of the July 2006, and so that's why she had the 500. But in July of 2006, we upped the requirements on ag just for that reason that people were using these lots and building huge homes.

Mr. Shibuya: Understand.

Mr. Haake: And so we needed to – for safety, we needed to require more water.

Mr. Shibuya: And I agree. And I agree with that upping of the requirements, too. I'm not arguing that.

Mr. Haake: Okay.

Mr. Shibuya: The other aspect that I'm looking at is access of the fire equipment. The fire equipment that you would be responding to normally in this area would be a pumper normally, would it not?

Mr. Haake: Yes.

Mr. Shibuya: And the pumper, because you knew that this area does not have adequate water, that pumper carries how many gallons of water, roughly?

Mr. Haake: I think the largest one has 750 gallons.

Mr. Shibuya: Okay. And then the other fire station, because there's two fire stations somewhat close by, there's Makawao, I believe, and there's the Kula one—what are the sizes of their pumpers?

Mr. Haake: I would have to guess at least 750.

Mr. Shibuya: 750 each?

Mr. Haake: Yes.

Mr. Shibuya: So you'd have two pumpers, possibly?

Mr. Haake: Yes.

Mr. Shibuya: And then you'd have tankers available?

Mr. Haake: Yes, sir.

Mr. Shibuya: Okay. What's the capacity for those tankers located at those stations?

Mr. Haake: No tankers at those stations. Kahului would be the closest.

Mr. Shibuya: And that you're using R-1 water? Or are you using tap water?

Mr. Haake: I think it's the potable water we're using. So they fill up at the hydrants. So it would be the tap water.

Mr. Shibuya: Okay. Thank you.

Chairman Endo: Mr. Haake, is it correct that there is a potable County waterline going down Anuhea? Because I heard the testimony earlier that other homes in the 15-lot subdivision have water service from the County, is that correct?

Mr. Haake: I am not sure of that. I know that there's a standpipe system that's set up along Anuhea Road, but that there's no water in there. As far as where everybody is getting their domestic water, I'm not sure.

Chairman Endo: Okay. Well, later on, I'll try and ask somebody else because it seems odd if there is a County waterline why it doesn't serve the— You don't know? Okay. Oh, one other quick question: understanding your concern about proliferation of, you know, a whole lot of homes in this area, if everybody did the similar thing as this lot, the fact that they're offering to provide a condition, or at least I think they're offering to provide a condition to the variance where they're not going to build any more structures, and if they do, then they'll comply with the full subdivision requirements at that time, so it's sort of like just deferring it, delaying it until that time, would that give you at least some consolation that at least you're gonna get it eventually? You'll get your full 500 gpm for two hours later on at least? Or do you have a strong objection to that kind of a compromise?

Mr. Haake: I don't think I'm in the position to make those kind of deals. I just enforce the rules. So the rules is do this. If you just ask me as a person out on the street, yeah, I feel for the Lukes, but in my capacity, I just enforce the rules.

Chairman Endo: Okay.

Mr. Haake: And then I did hear you mention the family subdivision. And I don't know if the Lukes asked me, but I might not have been the correct person to ask, but maybe they should've gone to Subdivisions and see if they really did qualify for that. And the family subdivision allows them to defer the requirements.

Chairman Endo: Yeah, I believe if it's just a transfer to your children, you just wanna cut up your property, transfer it, don't build anything right now, then you don't have to put in your subdivision requirements. So this would be kind of a hybrid. You're saying, well, we're going to build only one lot, but not the other two. So it might have been a little tricky, but we can ask about that later. I mean, it doesn't affect this particular case except on a side note kind of thing.

Mr. Haake: Right, if they were allowed to go that process, then you know what? I could continue doing my job, you know, consistently and fair.

Mr. James Giroux: (Inaudible)

Chairman Endo: Sure, go ahead.

Mr. Giroux: Paul, can I just rephrase Randy's question maybe just so it fits the legal context of the variance, if you can answer this? If there's a deed restriction on the property that this allows any further building of dwelling, would that increase or decrease the detriment to the public health, safety or welfare to that area?

Mr. Haake: I would say it doesn't increase it. But what you – I think what we're trying to do is, you know, not allow other subdivisions to go forward without following the requirements.

Mr. Giroux: Okay. And just as followup that in the variance process that if somebody were to try to do this, to do it and not – and put a deed restriction on their property would mean that they would absolutely not be able to build a home on it. Just to clarify what a deed restriction is, is that they would not be able to build a dwelling. So it would basically be left as pasture land.

Mr. Haake: You're telling me?

Mr. Giroux: Just to clarify what a deed restriction is.

Mr. Haake: You're telling me that?

Mr. Giroux: Yeah.

Mr. Haake: Okay.

Mr. Giroux: I thought maybe you were asking me if that's—

Chairman Endo: Okay, at this point, I want to allow Scott English to make a remark if there's no objections. I think he wanted to help talk about some of the questions we had recently, right?

Mr. Scott English: Yes. Good afternoon. My name is Scott English. I work in the Fire Prevention Office along with Paul Haake.

Chairman Endo: Scott, I'll swear you in, then. Do you solemnly swear or affirm that the testimony you're about to give is the truth?

Mr. English: I do.

Chairman Endo: Okay. Go ahead.

Mr. English: Okay. I would say half an hour ago when you were in the discussion, I went over to DSA and pulled out the family subdivision requirements from DSA. And the Lukes do qualify to do a family subdivision and defer the infrastructure until they decide to build. So if they do the family subdivision process, it would leave us out of the picture, the fire protection, until they come up with a building permit to improve the new lots.

Chairman Endo: But they're building on one of the lots already, though, right?

Mr. English: You can have an existing home on the lots and subdivide. They may have to talk with the DSA to get that home completed, inspected and completed, and then do the subdivision, family subdivision, after that.

Chairman Endo: Oh, you could've avoided this whole thing, then. Okay.

Mrs. Luke: Just in addition to what Scott has said, you know, because that was something that I brought up when I spoke with Paul because I kept saying "family subdivision," and he said, "I think you're a little confused because family subdivision is just a name given to property you want to pass on to your children, and once a home is on it, you can't do it." And I checked with the County. And they said say if there was no home on it and here – I mean, here we are. We've got all our conditions met. So if we had to go and do the family subdivision, everything we did would be lost and we'd have to go back to square one again for a family subdivision. But the person I spoke to in the office told me that because there was a home, a building permit, and a home going up on the property that we couldn't do a family subdivision that you just spoke of. So I don't know. Now I'm confused again.

Mr. Haake: That may have been me. And because you already had the structure, the requirements for the improvements come in when you pull the first permit. So I might've been confused with that. I should've directed her to Subdivisions.

Chairman Endo: Okay. I was just reading the ordinance while you were talking. But, Hari, you had a question?

Mr. Ajmani: Yes, I am a little confused about this building permit for the house. When the application was filed for the building permit, was the subdivision permit filed at the same time, or was the building permit taken before the subdivision permit?

Ms. Luke: The building permit was before.

Mr. Ajmani: Okay. So you took the building permit as a one lot and there was no special requirement?

Ms. Luke: No.

Mr. Ajmani: Okay. So you can build the house without having to deal with anything here?

Ms. Luke: Right.

Mr. Ajmani: Okay. Thank you.

Chairman Endo: So there's no further cross examination of Mr. Haake or--? No?

Mr. Rost: I don't have anything.

Chairman Endo: Okay. Did you? Okay, go ahead then. Oh, wait. You testified, crossed examined. Technically, you don't have the right to cross examine again, but is it something really burning? If it's a statement you wanna make, we'll let you – if you want to counter something, you can take the stand and say something counter later on unless the other side wants to waive– They don't care?

Mr. Rost: (Inaudible)

Chairman Endo: Okay. Let's call your next witness then.

Mr. Rost: I have no further witnesses.

Chairman Endo: Oh, okay.

Mr. Haake: Thank you, Board.

Chairman Endo: Yeah, thank you. At this time, let's take a five-minute break, five-minute recess, and return. And then we'll allow the parties to make final arguments. So both sides will have – you can make a short speech, five minutes or so. Okay. So recess.

(A recess was taken at 2:55 p.m. and the meeting reconvened at 3:00 p.m.)

Chairman Endo: Okay, we will now come back to order. Our recessed meeting will be back in session. At this point, I will like to ask the parties to make brief closing remarks. And then I believe we will go into deliberation, and hopefully, make a decision today. So at this point, we will allow the appellant to go first. Okay, yeah, we will allow let the appellant make some closing remarks. Then we'll let the County make some remarks. Then we'll let the appellant make some additional final closing remarks, if they want to.

Mr. Luke: This subdivision, Aapueo, actually has been a nightmare. For 20-some years I haven't had to deal with it working on Oahu. And I should've dealt with it, 'cause the rules and regulations at that time were very different. It's a subdivision for a lot of reasons never should've been a subdivision. Waterlines were put in. Standpipes were put in. Never got water. And all the owners

of this particular subdivision who have – some have waited. In fact, we just met with the Deputy Director of the Water Department the day before yesterday. And this other party has been waiting for 35 years to get water to this particular subdivision. And it's not the Fire Department's fault. It's really things that happened in the '60s that should've never happened. Part of that has to do with the County.

The rules and regulations that we currently have now at hand are designed again for the good of all. Our situation is very unique. And we wouldn't want for the sake of money to put our children and grandchildren in harm's way. It's not a point of, hey, you guys can afford it, so put it on there. I mean, as far as the County is concerned, they got the code to follow, and if one party is permitted, then they feel everyone's gonna start lining up at the door and wanting to come in. But everyone doesn't have the same set of circumstances, and I'm really thankful that they have Boards like yourself that can listen to unique situations. And based upon what you hear and make a decision whether a variance is warranted.

Again, we are more than willing to place conditions. And we are working really hard to bring this subdivision up to County standards. We're working really hard with the Water Department to see what we can do to bring water to this particular subdivision. Certain members of this subdivision has spent over – upwards over a million dollars to drill their own well – private water system. And I mean, again, this is not in the boonies. You know, this is right – the town is coming to us, I guess. It's right in town, right Upcountry. A variance by your Board would not negatively affect any of the surrounding properties. I don't think we had any property owners that may have written in or said something—hey, don't give these guys a variance because, you know, it's gonna hurt our situation. It's gonna be harmful to us.

We wouldn't want to do something that would pose a fire hazard again to the Fire Department. I mean, the person that I buy my goats from is a very good friend of mine was an officer of the Fire Department. When my oldest son got lost many years ago, it was the Fire Department that came out 'cause I worked with a lot of the guys. They came out with their helicopter and eight hours later, found him in the brush about two miles away. I really have a lot of respect and aloha for them, and I know that they're just doing their job.

We're asking for a variance to give us more time so that we are able to work out the situation with the Water Department, and hopefully bring this thing to a head in terms of water to this particular subdivision which would include fire flow. A variance will not change the property from how it is currently. We're not gonna make any changes. It is currently being said by many that we are in the worse economic financial crisis since the Great Depression. I think it's important for all of us to utilize our resources which includes water—wisely. Please consider our unique situation and our circumstances and offer a solution to our request. Thank you very much.

Chairman Endo: Thank you. Mr. Rost?

Mr. Rost: Thank you. I just heard Mr. Luke say how their property is not in the boonies and he's right, and that's part of the problem. The school's nearby. There are a number of other structures nearby. And we have to consider the safety. It has to be the number one priority here. Now, not only are the school and many other structures nearby, but as Mr. Luke says, his own grandchildren live on this property. And he, of course, wouldn't want to do anything that would endanger them.

The problem is that people never really expect the worst things gonna happen. You don't think that there's gonna be a big fire until it actually happens so it's easy to say we're not gonna do anything that's gonna endanger anyone without knowing that you are in fact doing that. I mean, we've all seen the story in the news recently about the brush fires down in Australia where over a hundred people died. And the problem here is that, you know, the situation is not gonna be encased in amber. Things are gonna continue to change. Developments are gonna continue. And the Lukes can say they're not gonna build anything but that's not gonna affect the surrounding area. And 500 gallons per minute is a low standard. It's the lowest standard allowed by the code. So it's not something that's not going to be overly burdensome upon the Lukes.

The other thing is the Lukes have said that the two children that don't live on the property now aren't planning to come back at any point in the foreseeable future, so there's no really no immediate need for their subdivision. There's been references to the Family Subdivision. Perhaps they could apply for that in the future, but at this point, I think the safety concern as we've heard from Mr. Haake, time is of the essence in a situation like this. And allowing the variance could well be a safety risk. So on that basis, the County would ask that the application be denied. Thank you.

Chairman Endo: Thank you. Okay. So we should begin deliberations now. I'd like to just state before we begin deliberating that I thought it was a very well presented case from both sides. I thought that it's an important issue with some emotion involved with it, but a lot of things going on. And both sides carried themselves with great decorum and consideration for the other sides. And it was well done, and in the spirit of aloha, and I really appreciate that. So that's just an aside. So for the matter at hand, does anybody want to start off with a motion or a question? Hari?

Mr. Ajmani: Yes, I think as sympathetic as I'm for Mr. and Mrs. Luke's dilemma here, I think that the subdivision rules are very clear. And as Mr. Haake said that they have not allowed these kinds of subdivision without the fire requirement before, and they – to circumventing the issue of Mr. Luke suggesting that they can put some legal deed restrictions and some further limit on future construction in my opinion those things are not easily enforceable. And even if they are enforceable, it's a tremendous cost to the County to defend it, and so on. So I want to make a motion that we should deny the variance.

Chairman Endo: Is there a second?

Mr. Shefte: I'll second that.

Chairman Endo: Okay, it's been moved and seconded to deny the variance request. Discussion? Jim?

Mr. Shefte: The reason I'm willing to second it is I also feel for the dilemma of the Lukes in the maze of confusion that sometimes exist when you go through the County to try and decide which is the best avenue to take to meet your needs. But I don't think we should be second guessing the Fire Department, and you know, the rules and regs that they've established. They've been established based on a lot of history. And they know what the needs are. And therefore, I cannot see how we can, you know, give them a variance when they are recommending that it be denied.

Chairman Endo: Hari?

Mr. Ajmani: Yeah, I think in light of the fact that they really want to build one structure at this point, and they already have a permit to build it, so the usage of what they are contemplating is not going to be jeopardized by this denial of the variance. The only thing is they cannot draw the three lines on the lot, the property, where they can show where the property will be divided. And the fact that all what they're trying to do can be done by the Family Subdivision ruling. So I think I don't see a real urgency to approve this variance at this point until those other avenues have been checked by them.

Chairman Endo: Warren?

Mr. Shibuya: I find that my colleagues are supporting the County's ordinances and codes, and I applaud them. There is also another ordinance in 18.20.260, and it's on Paragraph 8.20.280, Family Subdivisions. And this allows for the construction of a dwelling, and the maintenance of that dwelling on that one property. And then later on because they're blood-related, they can subdivide afterward. And I see this as an alternative to achieving the needs of this particular Luke Family. So for this reason, I feel that we can, this Board can, allow for this provision to be enacted. And so therefore, I will probably, I will definitely, be voting against this motion. Thank you.

Chairman Endo: Just for clarification, so you're saying that you want to allow them a variance that will be effectively the same thing as a Family Subdivision?

Mr. Shibuya: That is correct.

Chairman Endo: Okay. Just to clarify, so you're saying that you would support a variance with a condition that they can't build any further without doing all the deferred improvements for fire flow?

Mr. Shibuya: That's correct.

Chairman Endo: Okay. Bill?

Mr. Kamai: Yeah, I would support Mr. Shibuya's point of view.

Chairman Endo: Okay. Looks like we're gonna have a hung jury.

Mr. Ajmani: I think – I thought we are supposed to rule on the current variance that we are reviewing. We cannot convert this subdivision application to a family subdivision application in our–

Chairman Endo: Oh, yeah, no, definitely, we can't. But we can grant variances with conditions that would have effectively almost the same thing, but it's not a Family Subdivision. It's a variance with a condition that makes it almost the same thing.

Mr. Ajmani: Yeah, but I don't know what are the legal implications of doing that. This will be recorded as a regular subdivision on the County records.

Chairman Endo: Correct, if we granted the variance.

Mr. Ajmani: If we grant the variance. So I'm not sure that that's truly a Family Subdivision even

though we are intending it to be.

Chairman Endo: Okay. Is there any further discussion? Okay, all those— Seeing none. All those in favor of the motion to deny the variance, please say aye. All those opposed, please say no.

It was moved by Mr. Ajmani, seconded by Mr. Shefte, then

VOTED: To Deny the Variance Request.

(Assenting: H. Ajmani, J. Shefte.)

(Dissenting: W. Shibuya, W. Kamai.)

(Excused: S. Castro, R. Ball Phillips, K. Tanaka, S. Duvauchelle)

Chairman Endo: **Okay, the motion fails.** The Chair would recommend that we defer the matter to the next meeting where we can do a couple of things. One, we'll have more Members so we can – more possibility of having a majority vote. And second of all, we could take some time to perhaps check on the feasibility of – you know, if it's easy to convert, if all they've got to do is sign a few more requirements, agreements, with the County, the Family Subdivision agreements basically, deferring improvements, etc., and if they can convert their existing subdivision very easily and quickly, then maybe they'll just withdraw their application. So maybe we could ask them to go check on that from now until the next meeting. That might have some impact. Francis?

Mr. Cerizo: I just checked with Public Works, and Lesli who handles the subdivision is available right now if you folks have any questions on that process. We can have her answer any questions. She's right across the hallway.

Chairman Endo: Yeah, I think that would be a great idea. Is there any objections from the Board?

(No objections were stated from the Board.)

Mr. Ajmani: I think if there's a simple way to just change this application to a Family Subdivision application that will be the best.

Chairman Endo: Okay. Lesli, thanks for joining us. Really appreciate it. Do you know the background of this matter?

Ms. Lesli Otani: I'm thinking they're here for a variance or an appeal, but other than that, I don't know.

Chairman Endo: I'll just give you a quick background, then, and then everybody's gonna barrage you with questions.

Ms. Otani: Okay.

Chairman Endo: Okay. So the Lukes had a vacant parcel Upcountry and they wanted to divide it into three lots to deed to their children. They've already – previous to applying for a regular three-lot subdivision, they have pulled a building permit, and have constructed – or their son has constructed

a house on one of the three lots. So at this point, they are seeking a variance from the Fire Department's fire flow requirements of 500 gallons per minute for two hours. And in place, they want to just do the – I guess it's 500 gallons for one hour, yeah? It's the building permit with the sprinkler. Anyway, the lower requirements that were required just for one building permit as opposed to the subdivision requirements for fire flow. But in addition, they were agreeable to not doing any further buildings on any of the other two lots. But if they did do it in the future, then they would upgrade the fire flow such that there would be – they would meet all of the subdivision fire flow requirements. So while we were deliberating and hearing the appeal and everything, it came up to us that it sounds very similar to doing a Family Subdivision where you would have one house originally, and then you want to cut up into three, and deed them all to family members. And you want to defer certain subdivision improvements. So I think the first question that the Board had was, does that sound feasible, and would they have to start all over, or could they convert their existing subdivision request into a Family Subdivision request?

Ms. Otani: If they chose to do a Family Subdivision, they would submit to us an amended application for preliminary approval. So it would go back to the 45-day review, and we would process with a new – with the same file number, but it would be a new preliminary approval. So any grandfathering they have, such as the three lots or less approvals would be lost. It would be void. So they would come under the new code, whatever it is at the time of the approval. And in order to submit for the Family Subdivision, it has to meet our code requirement, which means that land has to be divided amongst children from parents or grandparents. So if Mr. and Mrs. Luke own the property now, then – and they're giving it to their two, or three, or however many children they have, we would need to see the birth or adoption certificates for all their children, and we would have to know which lots is proposed for which child. If everything in their application is acceptable, we process it. At the preliminary approval stage, we state that they have to provide us the family deferral agreements to defer the Public Works roadway requirements, and also we need the deeds. So the conveyance to the children will be immediate upon final approval. We would execute the deeds once final is granted.

Chairman Endo: Questions, Hari?

Mr. Ajmani: So that means that the Fire Department requirement will be deferred until they build the houses on the other lots?

Ms. Otani: Well, this may be something for our attorney, but typically my understanding is that the deferral is for things within Public Works' jurisdiction of Title 18. I'm not sure if there's a separate deferral with the Fire Department or not, but again, that may be a question for our attorney.

Mr. Ajmani: I think this is a Chapter 18 requirement that they are seeking a variance from. So I guess this will be deferred then. Is that right, Jim?

Mr. Giroux: No, I believe it's a Chapter 16 requirement that they're asking a waiver from.

Mr. Ajmani: Oh, yeah, it's Chapter 16. So how does that get affected?

Mr. Giroux: I don't know. If it's not addressed in the code, I don't know how we could address it. I believe that's the reason they're in this situation is because in the County with the rules

overlapping agency after agency, there really isn't any way that the Fire Department or the Subdivision Department can give us a clear answer until they're in the situation like this.

Chairman Endo: Well, let me just ask a question: the Fire Department's comment letter, Lesli, would become one of the subdivision requirements, correct?

Ms. Otani: Well, we forward whatever the requirements are for all the agencies whether we have jurisdiction over it or not. So State DOT or what have you, we forward it.

Chairman Endo: Because it says under the code that they can defer subdivision requirements. So it's kind of generic, but I would think that that includes the Fire Department's requirements that have been adopted or incorporated in your requirements, conditions.

Ms. Otani: Well, I'm clear that they could defer the Public Works' roadway requirements and also DWS requirements as stated in the code, if it's applicable, and if Water Department agrees, but again, I can't speak on behalf of the Fire Department. And I can't say whether or not the code will extrapolate to their situation. Similar to wastewater now, wastewater is no longer a part of Public Works. I'm not sure if that exemption would apply to them.

Chairman Endo: At this point, I'm going to allow Hari to ask a question, then I'm going to allow the parties to ask Lesli a question.

Mr. Ajmani: Since we have the Fire Department here, and maybe Mr. Haake can shed some light on this that – did they have to enforce this requirement on the Family Subdivisions in the past?

Mr. Haake: Yeah, on the past applications for Family Subdivisions, the fire protection requirements was deferred until the Public Works requirements kick in.

Mr. Ajmani: I see. Okay.

Chairman Endo: Go ahead, Mrs. Luke.

Mrs. Luke: Yeah, Lesli, I just wanted to ask you because I spoke to the County before we even went into this. Actually, it was when we had gotten the preliminary approval, and I was trying to get in touch with Paul Haake regarding the fire flow requirement because there's no water to this neighborhood even though it's right next to Kulamalu. And Paul said, well, you know, if it came by my desk, you're not a Family Subdivision. You're a subdivision asking for approval. And so then I called the County. And they said once a home is on it, it's not a Family Subdivision. And you know, I'm thinking, but it's for our kids. It's a family. But she said, no, it's not a Family Subdivision because you've put a home on it. We didn't put a home on it. Our son was just, you know, building a home. And so she said if we tried to do a subdivision at that point, we would have to go back to square one. And anything we had done– Like at this point now, we had 23 conditions. We've met all except this fire flow and we have to pay the back taxes on it. So we've expended considerable money to take in the electrical – you know, to do several things, but does that all get thrown out then if we revert back to a Family Subdivision and then – or do we get tax map keys for each one and that's it?

Ms. Otani: If you do the – if you come in for the Family Subdivision, it would be as an amended preliminary approval. So you would keep the same subdivision number, but we would send it out for 45 days, and you would get a new list of conditions. And there would be additional requirements in some cases and maybe less in others. So for Public Works, we would have less roadway requirements because you would be deferring them until the later date which is until such time that a building permit is applied for. Okay, so you would be starting over. And we would give you the letters. Now, if you wanna go to, you know, Real Property, or Maui Electric, or whomever and explain to them that this is an old subdivision that you're doing it under the Family now, that's up to you, but we would send out a new letter.

And regarding the – your statement about when you called and – or when you went to Fire that it wasn't a Family Subdivision, just because you're subdividing with the intent to give to your children, that alone for our code doesn't make it a Family Subdivision. There's a special process that is the Family Subdivision where we ask for the proof of birth or proof of adoption and there's certain requirements. And then we send it to the agencies, we'll state "Family Subdivision" on it so that they know it's a Family Subdivision or we have other processes. So just the intent for the kids won't make it a Family Subdivision. It's a special processing.

Ms. Luke: So from your point of view, we've already satisfied 21 of the conditions which took considerable time. We would have to repeat those as some of the laws may have changed or maybe we won't even be able to meet some of the conditions because laws have changed.

Ms. Otani: Well, you would be starting over. It would be new conditions. And some things like for Public Works, the three lots or less deferral that you qualified for when you had your preliminary deferral, since that time, the County Council had changed that code section, and you would no longer have that deferral. So with the Family Subdivision, you come in. If you receive final subdivision approval, you get that map, and it's stamped in. It's Family Subdivision approval, and the land is divided amongst your children. Later when you wanna get a building permit or water meter, if applicable, you come in. You have to do all the improvements. You do the improvements that are in place at that time. So, you know, if you came in today, it would be that you have to improve your half of the road and whatever other requirements there are. So any grandfathering you have is lost and then you come under the new one. And that's the decision that you would have to make whether you want to do that or not.

Ms. Luke: Okay. Thanks.

Ms. Otani: You're welcome.

Chairman Endo: Just to clarify, the Lukes, you folks didn't do a three-lot or less deferral agreement, though, did you?

Ms. Luke: (Inaudible)

Ms. Otani: Yes.

Chairman Endo: They did?

Ms. Luke: (Inaudible)

Chairman Endo: But wouldn't that defer the fire flow subdivision requirements, too?

Ms. Otani: The three lots or less is deferring the Public Works' improvements along the adjoining half of the road.

Chairman Endo: Oh, okay. All right. Any further--? Oh, Hari?

Mr. Ajmani: I think the Lukes are only going to subdivide into three lots. They have no intention of dividing any more than that anyway. So I don't know whether that benefit that you have today is really gonna hamper you with your other application. Am I correct, Lesli?

Ms. Otani: Well, the three lots or less deferral was for this application to divide into three, but the Council I think it was either late 2007 or early 2008 revised that code – ordinance. So now people don't have that option any more. So if they come under the current code or whether you came in today or anyone else, you would have to comply with the current code which does not allow deferral under that agreement. So anybody who had a preliminary subdivision approval when the code was adopted was grandfathered in. But if they start over, then they lose that grandfathering because they have a new preliminary approval.

Mr. Ajmani: I see, but so what exactly was deferred on this subdivision application?

Ms. Otani: The adjacent roadway improvements required by Public Works.

Mr. Ajmani: Oh, I see.

Chairman Endo: I guess the question is if they were – they would lose that exemption, that deferral, but then they would potentially regain it back with the Family Subdivision deferrals?

Ms. Otani: Well, the – so the three lots or less is a deferral whereby they're deferring improvements until such time that the road is improved and the County can request the pro rata share of the road improvements. With the Family Subdivision deferral, you're not exempted from everything. You're just postponing it until such that you apply for a building permit or a water meter, if applicable. So in that case, they would get final, but later on, before they could develop the property further, they would have to do any improvements required for the roadways and such.

Chairman Endo: Okay, so the triggers would be different for later on as to when they have to-- Yeah. Okay.

Mr. Luke: The roadway deferral that you're talking about, is that the roadway for our subdivision or the private roadway down-- I mean, Anuheia is a private road. What are you talking about?

Ms. Otani: For the private roadway fronting the property.

Chairman Endo: Okay. Further questions?

Mr. Ajmani: I think – if my memory serves me right, there was a similar kind of case where they had to increase the width of the roadway to meet the subdivision conditions. So this road seems to be – according to the drawing, shows a 40-foot wide road. So will this have to be increased in width if they go back for some more construction?

Ms. Otani: I think in this case, the 40-foot width meets the ag standards. So they may not have to give up a road-widening lot because 40 feet is adequate for ag purposes. And the improvements would take place in the existing right-of-way.

Mr. Ajmani: Oh, I see. Okay.

Ms. Luke: Can I make one other–? The roadway lot is actually owned by one of the original developers, Arlene Ellis, and one of the property owners in the neighborhood, the church, Hale O Ke Ula, that's at the bottom of the road. So I don't know how that would affect this particular thing, but I will say I'm getting very confused.

Ms. Otani: Well, the way our code requirements are, unless the road is owned by the State DOT, the requirements are the same for everyone whether it's private, or government, or County.

Ms. Luke: Well, I'm just getting confused about the process. I was confused to begin with. We are not developers. We've never subdivided. So this whole process has been an education, but I'm now getting more confused.

Chairman Endo: Basically, you would have to improve at some point that private road to whatever standards the County wanted, but that improvement could be deferred and presently is deferred by the three-lot or less agreement.

Ms. Luke: (Inaudible)

Chairman Endo: And there might be other stuff, too, yeah. Okay. So does anybody want to move to defer? Anybody said they'd their change their mind or position?

Mr. Shibuya: I move that we defer this case to the next meeting. It's a delay, I guess. What is it—a recess on this material? It's not–? James, what's the legal term on this if I want to delay it?

Mr. Giroux: Just defer.

Mr. Shibuya: It's not a running clock or 60 days?

Mr. Giroux: No, because we are in a contested case situation that it doesn't follow under those timeframes.

Mr. Shibuya: Okay, so I'd like to defer it to the next available meeting date of the BVA and I don't know when the next meeting date would be. Would it be appropriate to select a date that's most convenient for the Lukes because they need to check whether they would be agreeable to a Family Subdivision-type provisions versus the current deferred subdivision requirements? They need to choose too.

Chairman Endo: Francis, do you have any suggestions to start with?

Mr. Cerizo: Well, I would suggest that the Lukes talk to Public Works to get a clear understanding on what the Family Subdivision entails, and then they can decide if they want to follow through with that.

Chairman Endo: Okay, but should we just pick a date?

Mr. Cerizo: Yeah, the date that's gonna be open is March 12th.

Chairman Endo: Okay, is March 12th okay with both parties?

Mr. Rost: I don't have my calendar in front of me, but I think so.

Chairman Endo: Okay. Mr. and Mrs. Luke?

Mr. Luke: I think it is okay.

Chairman Endo: Okay. If it's really, really inconvenient, if you have a serious conflict, then you can make a request to have it changed. Okay, so that'll be part of your motion, then?

Mr. Shibuya: That is part of the motion, yeah. The motion is to defer this case until March 12th. And if there is any rescheduling, it is required by either the plaintiff, or appellant, or counsel, please inform staff.

Mr. Shefte: I'll second that.

Chairman Endo: Okay. It's been moved and seconded to postpone the matter to March 2nd as stated.

Mr. Shibuya: 12th.

Chairman Endo: Sorry, March 12th. Sorry. Any discussion? Hari?

Mr. Ajmani: I would just like to make it – clarify to Mr. and Mrs. Luke is that I think by filing the application – this application before the code change, you have some special grandfathered rights that you would lose in the refiling the application, but I think that can – you should be able to readily check those and see which one benefits you the most. And if you can do that before the next meeting, then the next meeting can be very brief, I hope.

Chairman Endo: Okay. Any further discussion? Hearing none, all those in favor of the motion to defer, please say aye. Opposed, please say no. Okay, the Chair votes yes. So it's five - zero.

It was moved by Mr. Ajmani, seconded by Mr. Shefte, then

VOTED: To Defer this Matter to March 12, 2009.

(Assenting: H. Ajmani, J. Shefte, W. Shibuya, W. Kamai, R. Endo.)
(Excused: S. Castro, R. Ball Phillips, K. Tanaka, S. Duvauchelle)

Chairman Endo: **The matter is deferred until March 12.** Thank you, everyone.

Mr. Luke: Do you want a full presentation again or--?

Chairman Endo: No, we're just going to continue what we're doing although we might ask for summaries. Just summarize your position for Members who missed today's meeting. Okay. Thanks, Lesli.

C. APPROVAL OF THE JANUARY 29, 2009, MEETING MINUTES

Chairman Endo: Is there a motion to approve the January 29, 2009 minutes?

It was moved by Mr. Shefte, seconded by Mr. Ajmani, then

VOTED: To Approve the January 29, 2009 Meeting Minutes as Presented.

(Assenting: J. Shefte, H. Ajmani, W. Shibuya, W. Kamai, R. Endo.)
(Excused: S. Castro, R. Ball Phillips, K. Tanaka, S. Duvauchelle)

Chairman Endo: **The minutes of the January 29, 2009 are approved.**

D. DIRECTOR'S REPORT

- 1. Status Update on BVA's Contested Cases**
- 2. Mileage Reimbursement**

Chairman Endo: Can we skip the Director's Report for today?

Mr. Cerizo: Sure.

Chairman Endo: Not too much going on. Okay.

E. NEXT MEETING DATE: February 26, 2009

Chairman Endo: The next meeting date is the regular meeting date--February 26, 2009. Thank you, Members. This meeting is adjourned.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:45 p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Members Present:

Randall Endo, Chairman
Warren Shibuya, Vice-Chairman
Harjinder Ajmani
William Kamai
James Shefte

Members Excused:

Sandra Duvauchelle
Stephen Castro, Sr.
Rachel Ball Phillips
Kevin Tanaka

Others:

Francis Cerizo, Staff Planner, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Office of Corporation Counsel
Lesli Otani, Development Services Administration, Department of Public Works