

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
APRIL 8, 2010**

**(Approved: 4/22/2010)**

**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, 1:38 p.m., Thursday, April 8, 2010, 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.)

Chairman Randall Endo: This meeting of the Board of Variances and Appeals will now come to order. Let the record reflect that it's 1:38 p.m. on April 8, 2010, and that there is a quorum present of eight Members.

**B. WELCOME NEW MEMBERS: BART SANTIAGO, JR., AND RICK TANNER**

Chairman Endo: At this time we'd like to first of all welcome our new Members: Bart Santiago, Jr., and Rick Tanner. Welcome to the Board of Variances and Appeals.

**C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR THE 2010-2011 YEAR**

Chairman Endo: Our first order of business after that is the election of our Chair and Co-Chair. So what I would like to do is call for nominations. They do not need a second. You can just nominate somebody, and we'll make a list of all the nominees, and then we'll vote on them one at a time. So usually if you want somebody, and he's not coming up second or third in the vote, then don't vote for the first guy, 'cause he might . . . (inaudible) . . . Okay.

Mr. William Kamai: Mr. Chair, I'd like to nominate yourself as Chairperson and Mr. Tanaka as Vice-Chairperson.

Chairman Endo: Okay. Any other nominations? Feel free to nominate other people. I've been Chair for three years now. I don't have to be Chair anymore. No? You sure? Okay, we'll vote on – well, if there's no more nominations, then we'll just vote on the same time, I guess, then. Is there a motion? How do I do it? Okay, so all those in favor of myself and Kevin as Chair and Co-Chair? Discussion? Hearing none, all those in favor, say aye. Opposed, please say no.

The vote was unanimously taken as follows:

**To Elect Randall Endo to the Office of Chairperson and Kevin Tanaka to the  
Office of Vice-Chairperson.**

Chairman Endo: Okay. Alright. Congratulations, Kevin. So you're Chair, right? You're Chair and I'm Co-Chair.

Mr. Tanaka: Oh, no.

Chairman Endo: Isn't that what he said? Okay. Alright. Okay. At this point, this whole meeting is an orientation, especially for the new Members. It's very educational. And to start it all off, we'd like to ask our Planning Director to say a few words—Mr. Jeff Hunt.

#### **D. ORIENTATION**

Mr. Jeffrey Hunt: Thank you, Mr. Chairman. We'd like to welcome the new Members to the Board, but also, I want to extend my thanks to everyone on the Board for your efforts and your contribution. And your contribution really is pretty wide. You really help the Planners out. You help out the Planning Commission and Council. It's not unusual to hear them say, "Well, was there a variance granted?" or "What was the disposition of that variance?" but especially, the citizens and the community. So we don't take your role lightly.

You won't see me attending many meetings. You won't have to put up with me very much, but don't take that as I'm not interested or involved. I work with Aaron, and Francis, and the Planners, Trish, in reviewing reports and discussing issues. So we do respect the role of the Board and do take it very seriously.

I've got about 20-plus years in community planning as a professional. And for my experience, the best relationship between a Board and staff is one of mutual respect on what you both bring to the situation or the issue at hand. And so that's – our intent is to continue with that. From my understanding, we've got a good working relationship and we hope to continue that with the Board.

I see your role as having two major roles. The first is you're kind of a safety valve. Variances are provided in our codes because zoning is done in a broad brush manner. And it can't really conceive of every unique or unusual circumstance that life throws at us. So the Zoning Board in that regard is intended to make allowances for these situations. They should be unique situations and not too many of them.

There's also a legal issue that you should – we need take to account for what's called a takings. And we can regulate property, but if we regulate it too much, then the Fifth and the Fourteenth Amendment to our Constitution says that we cannot take the property without compensation. So we have to allow some reasonable economic use of property. And that's another kind of a safety valve that this Board can play.

The other issue that you guys deal with a lot is appeals. And in that regard, you're more of a check on the administration of the law. It's not always the Planning Department. There's other Departments that you'll work with, but in that case, you're looking at it more did they – did the Administrator make an error? Was the decision arbitrary? Was there actually an abuse of discretion? And in any case whether you're doing a variance or an appeal, I would remind you that you should rely on your rules and your codes. And you do have rules stipulating this is what your appeal process is based on, your variance is based on. And look at the big picture. Keep the big picture in mind. When you're looking at a variance, why should you be granting an exception to a law that everyone else is required to comply with except for this person? You need to ask yourself that question. Same with the appeal—was there actually an abuse? Was there an error? Or did someone just not like the decision? Did someone just not like that law? And there are alternatives to both of those. If – rather than granting variance after variance after variance, or rather than

granting appeals and appeals, we can change the law. And that's really the better approach. And we have that ability. And we would suggest that perhaps that's a better approach if you start getting into too many appeals or variances concerning the same situation. But again, we'll trust your judgement on that. That's why you're here to make those decisions. We're here to help you make those decisions. And again, we look forward to working with you in managing the growth in our community. And again, I want to thank everyone for you volunteering for your time. And unless there's any questions of me, I'll turn it over to the next person.

Chairman Endo: Any questions for Director Hunt?

Mr. Kamai: We want to thank you for keeping the staff intact, because you're right—they're a very good staff.

Mr. Hunt: Thank you. I think we do have a good staff.

Chairman Endo: Thank you. So now we'll proceed with the sexual harassment policy.

#### **1. County of Maui Sexual Harassment Policy**

Mr. Allan DeLima: Good afternoon. My name's Allan DeLima. I'm the Administrative Officer for the Planning Department. And this afternoon, I'll give you a brief overview of the County's sexual harassment policy. We'll only be touching on the highlights of this. And my Portuguese nature comes to the forefront through these, and I speak very quickly. So please don't blink or you'll miss the entire presentation, okay?

Okay now, you should all have a copy of the County sexual harassment policy in either your orientation packet or in your binders. The definition of sexual harassment: sexual harassment means unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct, or visual display of a sexual nature directed by an officer or employee to another officer, employee, or a private individual. All personnel must refrain from the following conduct: making unwelcome sexual advances or request for sexual favors, making remarks of a sexual nature, using gender-based or sexually abusive language and sexual innuendos, visually displaying materials of a sexual nature, physical contact of a sexual nature, and then the typical legal catchall phrase—any other similar actions.

Now, the County of Maui has a zero tolerance policy against sexual harassment and will not condone or tolerate sexual harassment in the workplace. This policy is applicable to Board and Commission Members, as well as to County officers and employees.

The process for filing a complaint: an individual who feels subject to sexual harassment should immediately make a complaint to his or her supervisor. Now, for Board and Commission Members: Board or Commission Members who feel subjected to sexual harassment should make a complaint to his or her Chairperson. If the Chairperson is the alleged offender, the report should be made to the County's Equal Employment Opportunity Officer—the EEO. And the County's EEO Officer is the Director of Personnel Services, but this isn't your only option. You may also file the complaint with the Planning Director, with the Planning Deputy Director, the Board or the Commission's Chairperson, if that isn't the alleged officer, the Director of Personnel Services who is the County's

EEO Officer again, the Hawaii Civil Rights Commission, and the Federal Equal Employment Opportunity Commission. We do ask that you give us the courtesy of trying to take care of this matter internally before you would take it to an outside source. It's just basically a good housekeeping measure for the County. Now, the complaint may be informal, which would be a verbal or written, an unsigned allegation; or it can be a formal complaint, which is written and signed.

The investigation process: investigation will be conducted in an unbiased, fair, and discrete manner. There will be all of the appropriate safeguards to maintain confidentiality and protection from embarrassment that the law allows. An individual who is found after investigation to be an offender shall receive the appropriate warning or discipline. Any disciplinary action prior to implementation will be reviewed by the Director of Personnel Services and approved by the County's EEO Officer. There shall be no retaliation or discrimination against the individual who has made the complaint, conducted the investigation, or acted as a witness. Retaliatory conduct is illegal and constitutes a separate violation.

Well, I promised you brevity and hopefully, I delivered on it. And if you have any questions, I'd be happy to address them. If not, thank you for your kind attention.

Chairman Endo: Thank you.

- 2. Area Variances**
- 3. Use Variances**

Ms. Trisha Kapua`ala: Okay, today we're going to be going over area variances, use variances, Title 12 of Maui County Code, which is Streets, Sidewalks, and Public Places; Title 16, Buildings and Construction; Title 18, Subdivisions; Title 19, Zoning; and appeals.

Now, use variances versus area variances: use variances are based on unnecessary hardship where area variances are based on practical difficulty. Use variances are generally subject to a higher level of scrutiny whereas area variances are generally considered to be a less serious deviation from the zoning requirements.

Now, there's five criteria to consider for area variances, which balances the need, the harm, and the alternative solutions. And this is based on a Department of Corporation Counsel policy – I'm sorry, memo, from 1997. So the five criteria: how substantial is the variance in relation to the requirements? Two, if the variance is allowed, the effect of the increased population density thus produced on available government facilities. Three, whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created. Four, whether the difficulty can be obviated by some method feasible for the applicant to pursue other than a variance. And five, whether in view of the manner in which the difficulty arose and consideration of all the above, the interest of justice will be served by allowing the variance.

Now, in general, the scrutiny is less strict for area variances than use variances. And the greater the deviation from what is allowed, the more scrutiny should be given. And finally, these considerations do not substitute the criteria for variances as mandated by County Code and your BVA rules. They are simply additional guidance. So again, this is Corporation Counsel's memo

of trying to provide you with additional considerations when considering the criteria to qualify for a variance.

Okay, let's just go to use variances. Again, a Department of Corporation Counsel memo which outlines variances from the Interim Zoning provision. However, the Planning Department applies for – to all zoning districts from all districts so – the Interim and the Comprehensive Zoning Ordinances.

Now, use variances: the Board should determine whether a denial of the variance would result in unnecessary hardship to the property owner. Unnecessary hardship is a higher standard than that of practical difficulty. That's what we just went over. There's three elements to unnecessary hardship. One, the land cannot yield a reasonable return if used only for the purposes allowed in that zone. The plight of the owner is due to unique circumstances and not to general conditions of the neighborhood, which may reflect unreasonableness of the code itself. And the use to be authorized will not alter the essential character of the locality.

So I'm going to go over three key points: reasonable return, unique circumstances, and essential character. So reasonable return: look at the permitted uses as determined by the Zoning Ordinance. This criteria is met if none of the uses would allow a landowner reasonable return. Now, reasonable return does not mean maximum return. The Zoning Ordinance prevents reasonable use of the land. The use variance is thus used to prevent what would amount to confiscation of property or what Mr. Hunt talked about—regulatory taking due to the application of Zoning Ordinances.

So it's the applicant's or landowner's burden to show you that they cannot produce reasonable return, reasonable use of the land. And according to Corp. Counsel, these are the five types of evidence to be considered: the initial purchase price of the property, the market value of the property, the expenses for maintenance of the property, the amount of mortgage on the property, and the annual income. Failure to sell the property for a permitted use after vigorous efforts to sell is also evidence that the land cannot produce reasonable return. So that's for use variances.

The second term I'm going to go over—unique circumstances. Focus must be on the features of the property rather than circumstances of the owner. And actually in general, this is a good rule to follow as variances run with the land. So personal situations of a present landowner should not be a consideration for variances. The idea is that when – owners come and go, but the land will still remain. So if you base a variance on the fact that – you know, personal situations, personal circumstances of a family or individual, then when they sell that property, that variance should no longer apply. That's why variances should run with the land. Finally, the use to be authorized will not alter the essential character of the locality. It's important to prevent a use variance, which results in intrusive, incompatible uses, considers the applicant's interest, but also protects the interest of the neighboring community.

- 4. **Title 12, Streets, Sidewalks, and Public Places, Maui County Code (MCC)**
- 5. **Title 16, Buildings and Construction, MCC**
- 6. **Title 18, Subdivisions, MCC**
- 7. **Title 19, Zoning, MCC**

Ms. Kapua`ala: Okay, back to County Code: Titles 12, 16, 18, and 19, which is the code sections or the titles that you have jurisdiction over according to the County Charter.

So first of all, Title 12, which is Streets, Driveways, Public Places, which is administered by the Department of Public Works. This is the entire Title 12. Each of these chapters, you have jurisdiction over: cleaning and maintenance of sidewalks, streets, highways, driveways, drainageways, utility poles, street lighting, hedges, landscape. You hardly see any of these. I haven't seen any of these.

Here are the criteria. There's four criteria that applicants must meet, all four, to qualify for a variance. You may grant a variance if you find that the exception or variance desired arises from peculiar physical conditions not ordinarily found in most districts, or because of the peculiarity of a business. The exception of variance desired is not against the interest, safety, convenience, and general welfare of the public. The granting of the permit for the exception for a variance will not adversely affect the rights of adjacent property owners or tenants. And the strict application of terms of this chapter will work unnecessary hardship and practical difficulty on the owner or tenant.

How you guys doing? Any questions so far? Great.

Title 16, another Public Works Title. This is the Building and Construction Code, which many of you may be familiar with: Fire Code, Housing Code. Commercial Signs, Non-Commercial Signs. Here are the criteria for a Title 16 variance. That the strict application, operation, or enforcement of the code provisions appealed from will result in practical difficulty or unnecessary hardship to the applicant. That the granting of the variance shall not be detrimental to the public health, safety or welfare. That the granting of the variance will not be injurious to the adjoining lots and buildings thereon. And that the granting of a variance would not be contrary to the purposes of this code and public interest.

Title 18, which is Subdivisions, you see this a lot. These are all of the chapters within Title 18. Here we go, the criteria for granting a variance for a subdivision. That there are special geographical or physical circumstances or conditions affecting the property that are not common to all property in the area. That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner, and extraordinary hardship will result in a strict compliance with the provisions of this title because of the special geographical or physical circumstances or conditions affecting the property. That the special geographical or physical circumstances or conditions affecting the property are not the result of previous actions pertaining to the subdivision. And finally, that the granting of the variance shall not be detrimental to the public health, safety, or welfare, or injurious to other property in the vicinity of said property. And this is whether the property is zoned interim or not. You cannot grant a variance if the property is zoned interim. You cannot have a subdivision if the property is zoned interim. So that request would have to be that they meet this final criteria.

Mr. Francis Cerizo: Trisha, maybe you can explain to the new Members what special geographical or physical circumstances are.

Ms. Kapua`ala: Sure. Mr. Hunt briefly touched on it. A special geographical or unique circumstance that's geographical is land-based. It could be something like a gulch on a property.

It could be something where the property is substandard. It's small. And therefore unless I get a variance from the setback requirement, I can only build a small house and that kind of thing. Those are special unique circumstances that you have to find that exist on the property and is not prevalent within the surrounding neighborhood. If you can find that, then a variance may be appropriate. Mr. Hunt said that how – what about me is so special that everyone else in my subdivision, in my neighborhood, has to comply to the code whereas I should be able to receive a variance? And variances are supposed to be case-by-case. You're not supposed to consider other variances when you grant one. However, it does set a precedent. You have to keep that in mind that when you grant variances, it sets a precedent. So if there's one variance that you grant for a certain situation, you have to keep in mind that others in that neighborhood might have that same situation, and they might be coming to you as well should you grant a variance or deny one. Sir, is that okay?

This title right here, Title 19, the Comprehensive Zoning Ordinance, this is what the Planning Department has jurisdiction over. It's very comprehensive. It's by far the largest title within the County Code because it has a chapter for every zoning ordinance, every zoning district that exists in Maui County.

So the Board shall comply with the General Plan and community plan provisions of the County in Title 19 variances. We also have jurisdiction over the administration and enforcement of the General Plan, the community plans. So as part of your job in considering Title 19 variances, you must consider what the community plan intends. The Board shall not grant an application for a variance which requests a use which does not conform to the applicable community plan designation for the property.

Now, Article 1, which is the interim zoning provision, any action of the Board whether granting or denying the relief applied for shall be referred to the Council for its approval. So that means that the Board reviews first. Your decision becomes a recommendation for Council action. The Board recently – well, within the past – three years ago – was it two or three years ago? Granted a use variance within the interim district. So what happened after you granted that, it went to Council as a recommendation for approval, and Council eventually approved that. So the Council may override any action of the Board, and either grant or deny relief as the case may be by an affirmative vote of at least five of its Members.

Two conditions must exist to justify the granting of a variance in the interim district: strict enforcement of any provisions of this article would involve practical difficulty or unnecessary hardship. You hear that language a lot here. Desirable relief may be granted without being detriment to the public interest, convenience, and welfare.

Mr. Cerizo: Trisha, I just want to add to – just for the new Members again, the interim zoning, if you go through your Zoning Code, Title 19, it's broken up into the three different provisions, and the first one is the interim zoning provision. The interim zoning was the first zoning that was actually initiated in 1958. The whole island and Molokai, Lanai, were all designated interim with the intent that it would eventually become zoned, but we still have areas that's in interim. And that's just some background. And the difference between interim and the comprehensive is that when you have an area variance, like Trisha said, or a use variance, it has to go through the County Council.

Ms. Kapua`ala: Thank you, sir. The interim is very strict in its uses. And the intent is that any time you want to do anything in the interim district, you either comply, or if you cannot, you seek Council. Council wants to be able to see everything that happens in the interim district.

So in the comprehensive zoning ordinances, these are the three criteria. I'm sorry. Let me back up. In Title 19, it specifically says that due to the particular physical surrounding, shape, or topographical condition of the subject property, compliance to the provisions of this chapter would result in hardship to the owner which is not a mere inconvenience or economic hardship on the applicant. So keep in mind a variance cannot be granted because it's too expensive to move my house, or it's inconvenient because I have this situation.

So the three criteria: one, that there's an exceptional, unique, or unusual physical geographical condition existing on the subject property, which is not prevalent in the surrounding area; and the use sought to be authorized by the variance will not alter the character of the neighborhood. Two, that the strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property. And three, that the conditions creating the hardship were not a result of previous actions by the applicant. You'll see a lot of Title 19 variances. And because we staff you and we write the report, we, by far, write the most extensive analyses when it comes to Title 19 variances.

First of all, the applicant must identify the exceptional, unique or unusual physical or geographical condition on the property which we talked about earlier. Now, once they identify that unique situation, does that strict compliance with the code prevent reasonable use of the property because of this situation. And then three, that the conditions which is again, that unique situation, does this unique situation create a hardship which I identified here? Does it create a hardship that was not my fault? That's basically what it comes down to.

So finally, we are going to go over very quickly appeals. James is going to take over from here, and he can expound upon your adjudicatory functions as appeals. For appeals the authority comes from Maui County, the Maui County Charter where the Board can hear and determine appeals alleging error from any person aggrieved by a decision or order of any Department charged with enforcement of zoning, subdivision, and building ordinances. That the subject decision and order was based on an erroneous finding of fact— I'm sorry, these are the standards for an appeal. The applicant or appellant only need to meet one of these three standards: that the decision and order was based on an erroneous finding of fact, material fact, or erroneously applied to the law. Two, that the subject decision or order was arbitrary or capricious in its application. And three, that the decision or order was a manifest abuse of discretion. So again, you only have to find one of these three to be true to grant an appeal. The applicant or appellant has the burden, and they only have to prove one of these three for an appeal to be granted.

Here are the time periods specified by law. For subdivisions, an applicant has 15 days from the date of a decision to appeal. And for every other title within County Code, 30 days, 30 days to appeal.

The Board shall conduct a contested case pursuant to Subchapters 3, 4, 5, and 10 of the Rules of Practice and Procedure of the Board of Variances and Appeals or the BVA Rules. The Board may act as the hearing officer or appoint a hearing officer to conduct the contested case. The BVA



Rules provide the framework for appeal procedures. This is from your rules. These are all actions, requirements, deadlines, documents that you see, pleadings, notice of hearings, transcripts, testimony, cross examination, the rules for that, subpoenas, taking oaths which you might be familiar with, substitution of parties, motions, discovery, settlements, transcripts, briefs. And you'll see these documents upon the close of the final hearing: recommendation of the hearing officer, exceptions to the hearing officer's report, support memos to the hearing officer's report, a decision and order which is the final document issued by the Board whether approved or denied. So again, the Board may act as the hearing officer, or conduct the contested case itself.

And Subchapter 10 of the BVA Rules govern appeals of notices of violations. Now, this is when someone is in violation and receives a notice of violations, which comes attached with it fines and some type of order saying that you must pay a fine and you must do this. You must correct the violation. Now, someone can appeal that and it comes to you. Whenever it's an appeal of a notice of violation, the Board must conduct the contested case itself. And this is to truncate the contested case process. All that you saw in the previous slide pretty much doesn't exist in appeals of notices of violations. Discovery is not allowed. So this is to expedite the process and provide swift justice.

So the Board grants or denies appeals. The aggrieved party may appeal to Second Circuit Court. The Second Circuit Court may affirm, remand, or reverse the decision of the Board. And the aggrieved party from that decision may appeal to the Hawaii State Supreme Court. That's about it. Any questions? Thank you very much. Mr. Giroux?

8. **Ethics**
9. **Sunshine Law**
11. **Discussion of Boards and Commissions Booklet distributed by the Department of the Corporation Counsel**
12. **Maui County Charter**
13. **Chapter 91, Administrative Procedure, Hawaii Revised Statutes (HRS)**
14. **Chapter 92, Public Agency Meetings and Records, HRS**

Mr. James Giroux: Hello. I'm going to try to make this as exciting as I can. I'm James Giroux. I'm the Corporation Counsel assigned to the Board of Variances. I've been advising this Board for about four years now. And I'm going to touch on three subjects: the Open Meeting, the Sunshine Law; the Ethics' portion; and also, I'm going to go over some contested case Chapter 91 issues with you. So I have two handouts. If you look at your handouts, I have the New Board and Commission Member Orientation Handout, and the Open Meetings Official Office of Information Practices State of Hawaii Handout. So you can, in the future, when you need to get to bed, these are good reading. These will take you right there. I've been doing it for four years, so I've had lots of good sleep. The other things that I'm going to be referencing is the Charter of Maui, and that's for the Ethics' portion. So if there's anything— Just to let you know that you have all this information. And today, I'm just going to try to highlight some of that just to give you kind of – when things come up during the meetings that you can grasp what we're talking about, and participate, and actually add to the debate.

So the first one I'm going to touch on is our open meetings, the Sunshine Law, and that comes from Hawaii Revised Statutes, Chapter 92. What is the Sunshine Law? The Sunshine Law is Hawaii's open meeting law. It governs the manner in which all State and County boards must conduct their

business. This is a County Board so we have to follow the Sunshine Law.

What is the general policy and intent of the Sunshine Law? This is very important because a lot of the text sometimes isn't very helpful. So it's good to know what the intent and the purpose of the Sunshine Law is. It's to open up governmental process to public scrutiny, to conduct business as openly as possible. The Sunshine Law is to be liberally construed in favor of open meetings. The exceptions to the Sunshine Law are to be strictly construed against closed meetings. And absent a specific statutory exception, board business cannot be discussed in secret. So if there's debates that come up about the Sunshine Law, it's very important – as lawyers, we always go back to this. If there's an argument, we need to go back to what's the purpose and intent, and what does the law say we need to do—interpret it liberally or strictly.

Open meetings, what's required in an open meeting? Well, every meeting of the Board is open to the meeting and all persons are permitted to attend. All interested persons shall have an opportunity to submit data, views, or arguments in writing on any agenda item. All interested persons shall have the opportunity to present oral testimony on any agenda item. The Board may make reasonable time limit of oral testimony. And this Board has a tradition of limiting testimony to about three minutes. And that's what most of the boards in the County do.

Another mandatory part of the law is notice. Notice is written public notice. It has to be posted at least six calendar days before the meeting. The notice has to list all the items to be considered at the meeting. And it also has to have the date, time, and place of the meeting. This would be your agenda. Your agenda would be placed in the first floor of the County building and at the Clerk's Office. No additions, once the agenda is filed with the Clerk, can be made unless two-thirds' vote of all Members to which the Board is entitled. So you're entitled to nine Members. And if you want to change something, you have to – if you want to actually add something to your agenda, you have to take a vote, and you have to have a two-thirds majority vote to get that item changed. However, even if that happened, the next sentence, "No item shall be added if it is of reasonably major importance and action thereon will affect a significant number of persons." So that comes up for debate sometimes. If you want to add something, okay, first, you gotta get the vote. Now, once you get the vote, then you gotta discuss. Is this gonna affect a lot of people? Or is this just about whether we're going to order lunch from ABC Corporation or lunch from DFG Corporation? We can talk about that. We can do that, but you can't put something that's going to affect a significant amount of people that's of importance on the agenda without it being published first.

Another mandatory part of the law is your minutes. At a minimum, you have to have your date, time, and place of the meeting in your minutes; the Members of the Board recorded as present or absent; substance of all matters proposed, discussed, or decided, and record of any votes taken; any other information requested to be noted by the Members. And this record has to be available within 30 days of the meeting. You don't have to worry too much about that because we have verbatim minutes. So everything that happens in this meeting is recorded, and hopefully brought back to you within 30 days, and put out for the public. The public does have a right to access those minutes even if you haven't approved them within 30 days.

What is a meeting? A meeting as defined by HRS 92 means the convening of a board for which a quorum is required in order to make a decision, or to deliberate towards a decision upon a matter over which the Board has supervision. An easier way to remember this is there's a – what's

allowable and what's not allowable. More than two Members of the Board cannot gather to discuss Board business. If you have three Members, and in you're in a same room, and you're talking about something that's going to come up on your agenda, you're violating the Sunshine Law. But this law does not prohibit three Members of this Board from being in the same room. You can be in the same room. You cannot discuss Board business. Okay? And then there's exceptions to this rule and we'll go over that later.

Very important—what is Board business? You got three people in a room. You can't discuss Board business. What is it? Matters over which the Board has supervision, control, jurisdiction, or advisory power, and that are before or reasonably expected to come before the Board. I really wanna emphasize this "reasonably expected." This issue came up with a lot of boards that I've advised in the past where you're in Maui County. Everything you talk about somebody could say, hey, – you know, but it's gotta be reasonable that it's going to be before you. You've either had notice that the agenda came out. It's on your agenda. You better believe that's Board business. Somebody's told you, hey, I applied for a variance. Okay, that's reasonably going to be before you within the next six months to a year. Those are the types of things. But when people wanna talk about traffic in Lahaina, that's no problem. You wanna talk about the telescope on Haleakala, that's no problem. But think about it, because you're on the Board, people may approach you with conversation, so you just have to be aware what will it reasonably be on your agenda.

The exceptions—lawyers, we like to make the law, and then we like to make a hundred exceptions, and then exceptions to the exceptions. So there's some major exceptions that you can be aware of, but that we— This one, the investigative exception, I've used it in other boards. With this one, I don't think we've ever used it. The rule is two or more but not less than quorum of people can be appointed. The scope of investigation and scope of authority has to be defined at a meeting of the Board. That means you vote and you say, hey, I want this person, this person, and this person to be on this committee to investigate said thing. That committee then has to go and make findings. All findings and recommendations presented to the Board at the meeting of the Board. That means that group would go out, get the information asked for, come back and present it to the Board at a meeting. Now the next step is, deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the Board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the Board. So this is a two, three step process. Sometimes boards think, oh, we'll work more efficiently if we do an investigative committee. The truth is, it actually takes longer because you have to do a presentation, and then you cannot deliberate at that presentation. You have to then allow the public to look at what was presented, and come back at a next meeting, then you can deliberate and discuss. And like I said, I don't think this Board has done that because we usually do it as an adjudicatory function.

The other exception that benefits your lawyer is that executive meeting. This is a closed meeting. And in order to go into a closed meeting, you have to vote at an open meeting. You have to have two-thirds of the Members present. Now, the purpose when you look at the law, there's a lot of reasons to go into executive meetings. This Board, we usually use it to consult with the Board's attorney on questions and issues pertaining the Board's powers, duties, privileges, immunities, and liabilities. Usually if somebody says, if you don't give me this, I'm suing you, your attorney will grab the mic., and say, "I suggest we go into executive session." That is usually the call that says we should take a vote. Let's take a vote to see whether you want to discuss this in private so you can

ask me candid questions and I can be candid with you.

Also, it's confidential. When we go into an executive meeting, it's confidential. You shouldn't talk to anybody outside of the meeting about what happened in the meeting. And also, if you don't stay on topic – you announce the reason you're going into executive meeting, if you don't stay on that topic, somebody can open up those minutes to the public. They can challenge and open it up. So what you want to do is I will advise you when we go into executive session, please stay on this subject. We were told we were going to get sued if we did Action A. We're gonna talk about Action A and what are your options. Okay?

Mr. Kevin Tanaka: James, I have a question.

Mr. Giroux: Yes?

Mr. Tanaka: When you go into executive session, you said two-thirds must be present.

Mr. Giroux: Two-thirds of the Members present. So if you have five— And I'm not a mathematician. Usually the problem comes up when we have a bare quorum, right? So if five people show up, we need two-thirds of those people to vote in the affirmative. You have nine people. So if nine people show up, you need two-thirds of those people present.

Mr. Tanaka: And then you clear the room?

Mr. Giroux: Yeah, once the vote is taken, and it's announced to the public why we're going to into executive— It'll be part of the motion. We'll put it why we're going into it. And then once we do obtain the two-thirds vote, then the room is cleared, and you can advise who do you want to stay to help you clarify that issue. So if a staff member needs to stay or a supervisor, then you can request for them to stay, but everybody else has to leave.

The other exception is contested cases. You guys do mostly contested cases. A board exercising its adjudicatory functions governed by HRS Chapter 91-8 and 91-9 are exempt. And this came up a few weeks ago I think. I think you saw a member from the public show up at a meeting that we had recessed, and was very adamant that they had a right to testify, and that I was completely shutting down and violating the Sunshine Law. And that they were going to report me to OIP because I was being so mean. And so what happened OIP called me, and I explained that we were in the middle of our adjudicatory functions. We had already had a public hearing. We were in the middle of deliberation, and we were not going to open that part up to the public because we needed to finish our business. And that is a part of the expediency of being in your adjudicatory function is that once the public is allowed to testify, they are not allowed to continually interrupt your meeting. So that was a fun exercise for me. Bill?

Mr. William Kamai: In the beginning, why did we go back to – being that they didn't – any additions to the agenda? There was an attorney once a while ago, maybe four months ago, three months ago, that wanted to be heard, and we allowed him to.

Mr. Giroux: Yeah, that is an exception to the Sunshine Law. When somebody is in a contested case, and they are allowed to file a motion, that motion, because that's part of the adjudicatory

process, it's – anybody in a contested case can file a motion. That motion does not have to be posted because you're using your adjudicatory function. So if you're in the middle of a hearing, and it's a contested case, and two lawyers are involved, and one lawyer says, well, I have a motion to dismiss, and the lawyer says, no, you can't hear that, it violates the Sunshine Law, well, that's a misrepresentation because you can hear that motion. That motion is part of the case. And if the other party wanted to file a motion in opposition, they could also file that. It doesn't have to be on the agenda. I think that was the case in that situation. And also, we have intervenors. Sometimes people come and intervene. That motion does not – I don't believe has to be on the agenda. Somebody can file a petition to intervene and we can hear that petition. It doesn't have to be on the agenda.

Okay, violations of the Sunshine Law, what are the consequences? One consequence is voidability. Any final action taken in violation of Section 92-3 and Section 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within 90 days of the action. So that means somebody can, if they feel that an action was taken, and we had violated the Sunshine Law, if we hadn't published an agenda, or if we haven't done something in accordance to being in line with the Sunshine Law, they have 90 days to file a suit. The term here is "voidable," "voidable." That means a judge has to determine that you violated the law. It's not void. If you violate the Sunshine Law, your action is not automatically void. It's voidable, meaning that there has to be a lawsuit. The judge has to look at the record. He has to make a determination. And then he has to determine if there was a violation whether or not it rises to the effect of voiding your decision. So oftentimes, you'll hear the lawyers just requesting that you either clear an error, if you can, or to put something else in the record to clarify what we're doing and why we're doing it. And that's just so that the record is clear, if somebody does challenge it and it's reviewed that it will come down in your favor. Whatever action you took, we want to stick.

Enforcement: the Attorney General and Prosecuting Attorney shall enforce this part. The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other apparent remedy. I haven't yet figured out what the other apparent remedies are. But any person may commence a suit in a circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part, or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and cost to the prevailing party in a suit brought under this section.

The proceedings for review shall not stay the enforcement of any agency decision, but the reviewing court may order a stay if the following criteria have been met. And when we say "stay," we sometimes use the word "injunction," with the – somebody who's challenging your action will try to get your order to not go into effect. And so this is what they have to prove when they get to court is that there is a likelihood that the party bringing the action will prevail on the merits. Irreparable damage will result if a stay is not ordered. No irreparable damage to the public will result from the stay order. And public interest will be served by the stay order. So if you guys make a decision, you can assume that that decision is going to be in effect unless a judge says it has to stop. You've got to put the brakes on.

Now, this is the most egregious. It's the penalties. Any person who willfully violates any provision of this part shall be guilty of a misdemeanor. And upon conviction may be summarily removed from the board unless otherwise provided by law. And in Hawaii, a misdemeanor is punishable up to a

year in jail and a ten thousand-dollar fine. So we ask you not to willfully violate the Sunshine Law. If I say on the record, "I advise against this because we would most likely be in violation of the Sunshine Law," and you decide in your better judgement to go against that, the law would look at that as a willful violation because your attorney has advised you that what you're about to do will violate the Sunshine Law. If I see a gray area, and I advise you that this is going to put you guys in a real precarious situation here, but the law's not clear on this issue, then they wouldn't look at you as willfully violating. You're trying to interpret the law as best you can at the time, and making a decision based on the best information you have. So that's the difference between willful and – you know, just violating. It's a State law and it's open to interpretation sometimes. So my job is to just keep you guys out of court is usually my take on my reading of the law. I just try to keep you guys out of court.

Mr. Bart Santiago, Jr.: You had instances where there have been situations where—?

Mr. Giroux: The worst case that Maui County has had to deal with the Sunshine Law is with the Council. And even then, the courts were divided as far as whether or not we were violating it or not. So you can't really, in that situation, where two lawyers, two judges, and the Supreme Court really can't figure it out, you're not gonna get a willful violation. And that's it for that. Any other questions about the Sunshine Law? Alright.

Okay, we're on to Ethics. And again, this is coming from the Maui County Charter, Article 10, Code of Ethics. And that is also in your packet. I'm just going to touch on a few key issues. I really encourage you to read through the whole article. I'm just going to highlight some things.

The first thing is your prohibitions. I wanna highlight– The first one is about accepting gifts. You do not want to be accepting gifts that can be interpreted as trying to affect your independent professional judgement as being a Member of the Board. It really is going to have to be a call on your part. If you receive a gift, I think the first question you gotta ask is, does this have to do with my job? If it doesn't, don't worry about it. Aunties, sisters, cousins, it's Christmas, you get gifts. No problem. What you have to watch out for is that, if you get a gift from somebody who is going to have something come through the Board. That's where things get touchy. Hawaii, it's a small community. There is an understanding that there is such a thing as gifts of aloha that aren't meant to influence your decision-making. But when those gifts of aloha get too big, you better ask the question, is somebody going to question my ability to be independent because of this?

The other thing is you're prohibited from having a business transaction or activity, or have a financial interest which may tend to impair independence of judgement in the performance of official duty. So any type of job that – sometimes people will come in for variances that you have a professional relationship with, and so you just have to analyze that. Take a step back, say, you know, do I have any connection with this person in a way that it could be construed to interfere with my professional judgement?

The third one is your failure to disclose a financial interest. If your company is coming before the Board of Variances and Appeals to get a height variance, and you sit there, you discuss the matter, and you vote, and you fail to disclose that you're a principle or a president of that company, it's gonna create problems. The penalties for violating that section, that article, could be a fine, and you could be removed from office.

Your BVA Rules has a rule specifically for this situation, 12-801-23. Whenever a member has a conflict of interest, the effected Member shall promptly make a full disclosure of the circumstances to the Board, and refrain from participation, and discussions, and voting. So your – because of the nature of this Board, because of its adjudicatory functions, you're not even allowed to participate in discussion. So other boards – Planning Commission – well, Planning Commission is probably the biggest example. Their rule doesn't state this. They state that they have to make full disclosure. They can discuss the matter as long as everybody understands what their interest is, but they are not allowed to vote. So your rule is very specific because of the nature of your business. When in doubt, just like in soccer, when in doubt, kick it out. Get an advisory opinion from the Board of Ethics. That's why they're there. It says if any officer obtains an advisory opinion from the Board and acts accordingly, or acts in accordance with the opinions of the Board, the officer shall not be held liable for violating any of the provisions of this article. So if your sister is bringing a variance, and you don't think you have a financial interest, ask the Board of Ethics, and they'll write an opinion. And they'll probably say, yeah, it's okay. You can vote on that. You can discuss it. Just because she's your sister doesn't mean you have a financial interest. And that's what you want. You want to be clean. You don't want people after-the-fact saying, hey, you didn't even – you know, just because your names are different, right? So that's – my legal advice to you is probably – will probably be that. But if anything comes up, like a situation like that and you want to call me, call me. We can talk about it. I'll kick it around with you. We can come up with a strategy. You know, how do you think we should deal with this? Is this just a disclosure? Is this something we should get an opinion? What should you present to the Board of Ethics in order so that they can make a clear decision? I'm here for that. So you can call me and that'll be a confidential conversation. So I'm very open to that type of help. I'd rather deal with that than find out about it in the paper. So any questions about that? Alright.

Okay, this is the last one: contested cases. This is Hawaii Administrative Procedure Act, and it's Hawaii Revised Statute Chapter 91. And most of your procedures within your rules are within the bounds of this law. Your rules mirror this law. So I kind of – I wanted to put this together just because of the nature of contested cases. It's kind of unique. This Board is one of the Boards where 99% of your job is contested cases. So I'm just gonna go through this. And if there's any questions, just feel free to ask.

What is a contested case? A contested case means a proceeding in which the legal rights, duties, or privileges of a specific party are required by law to be determined after an opportunity for agency hearing. If that's not clear enough, we have case law. The last case that came out, ENJ Lounge Operating Company V. Liquor Commission of the City and County of Honolulu came out in 2008. I read it last night and I was still pondering the effect on Hawaii law because of this case. It's interesting, to say the least. And what I can tell you from reading that, conclusively, that if a public hearing is a contested case, all provisions of HRS Chapter 91 apply. So we have to figure out– I can tell you any variance, any appeal, whether it's got a public hearing or not is a contested case. We are dealing with contested cases. And the case I found for you is East Diamond Head Association V. Zoning Board of Appeals of the City and County of Honolulu. And this was – this came out when I was born in 1971. And it says a public hearing of a variance is a contested case. So the unique thing about your variance procedures is that it's regulated by your Charter. And it's your Charter that says you have to have a public hearing before you make a decision on a variance. That's unique because again, you remember I just told you Chapter 92 says if you're practicing your adjudicatory functions, you don't have to have a public hearing. So what we do is we follow the

Charter. The Charter governs in that aspect. If you look at appeals, that language is not present in the Charter for appeals. However, we do at times allow public hearing or public testimony just because it's on our agenda. So if that comes up, I can clarify it again as to why we may or may not allow public testimony at the time. But for variances, it's required by our Charter, but it is a contested case.

The requirements of any contested case is that the parties have to have notice. They should be allowed to submit evidence. They should be allowed to cross examine and have rebuttal of evidence. And this is very important, the party initiating the proceeding, shall have the burden of proof, including burden of producing evidence, as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. Now, that means that if somebody wants a variance or somebody's making an appeal, they're the initiators of that proceeding. So they have the burden. They gotta give you the evidence. They gotta persuade you. And they gotta do it to the preponderance of the evidence.

Ms. Kapua`ala: James, go over what is "preponderance."

Mr. Giroux: Preponderance of the evidence, that's a tricky one. In law, you have different levels of proof. And as a criminal defense attorney, I want beyond a reasonable doubt, right? I always want— The Prosecutor has to prove it beyond a reasonable doubt. And beyond a reasonable doubt is not beyond all doubt. It's a little bit less. It's beyond all reasonable doubt, but it's still really high. When you get into the civil arena, all of the sudden, this bar just drops like a lead weight, 51%, 51% easy. I tell you it's true. You believe me it's true. It's true. Easy bar. So preponderance of the evidence is, are you going to be persuaded enough by the information to make you believe that that person's reached the proper requirement that they need to meet? So it's a very different level of proof.

A lot of times you just have to look – your first question is, is there any evidence? Is there any evidence? Then once you cross that bridge, is it credible? And if you can walk across that bridge, and you get nine people here that agree or five people that agree, the courts will most likely look at the record, and see that there was a preponderance of the evidence. So that's something that when you're deliberating is you want to focus on what is the evidence, and whether or not you believe it's credible or not.

A requirement is the decision-maker shall personally consider the whole record or such portions thereof as may be cited by the parties. Every decision and order adverse to a party must be in writing and accompanied by separate findings of facts and conclusions of law. I think you've heard and you're going to hear in the future staff and your attorney talk about the findings of fact and conclusions of law. That's a document. It has to be produced. It has to be based on what happened at the hearing. And it has to justify the decision that you made. So those facts that you found to be a preponderance – to meet that preponderance goes into that document. And the law, as you find it, goes into that document.

That document has to be served on the parties, and those parties have the right to judicial review. They can take that to a higher court. When they get there at the higher court, it says, "Judicial Review, an administrative agency's findings of fact are reviewable for clear error while its conclusions of law are freely reviewable." So you're going to get more deference on your findings



of fact. If somebody – if people came up and said, the wall is blue, the other person said it's blue, it's blue, it's blue, and your findings of fact say, "The red wall was not in accordance with—" the judge is going to say, "Error. That's an error. All the evidence pointed to blue, and the error is to say that it's red." However, when the interpretation of the law is in question, and this, lawyers will debate, too, is it a fact or is it the law? Your findings of law will include a caveat that says some findings of facts may be conclusions of law if so construed they are. We like that. Why? Because sometimes the facts make the law. And sometimes the law makes the fact. And the lawyers and the judges have to clean that up when they start debating. But a question of law is going to be freely reviewable by the courts. They'll look at it. They'll look at the statute. They'll look at the Constitution. They'll look at the Federal law. They'll read it. And they'll say this is what the law says, but you've got to take your first whack it, and that's why I'm here. I help you with that. If you guys are looking at that, I'll say, well, here's the parameters. This is what you need to look at. This is the statute you're looking at. It's open to interpretation. So you just have to agree. You're going to debate. All nine people debate, come up with what the five people agree on, and that's what's going to be your conclusion, and then it has to go into writing.

So an administrative agency's findings of facts will not be set aside on appeal unless they are shown to be clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or the appellate court upon a thorough examination of the record is left with a definite and firm conviction that a mistake has been made. So that kind of – what I've just explained is the verbatim out of the law.

As a general rule, an administrative agency's decision within its sphere of expertise is given a presumption of validity. And one who seeks to overturn the agency's decision bears the heavy burden of making a convincing showing that it is invalid because it is unjust, unreasonable in its consequence.

So you are given a lot of deference. A lot of times people look at me and they say, "Corp. Counsel?" And I look back and I say, "The Body?" Because it's your expertise. We use the expertise of the Planning Department, but we are using your expertise. You are the Board of Variances and the Board of Appeals. So we are going to defer to your cumulative genius because when you guys make a decision, we have to live with it unless it's clearly— So a lot of times, you know, you'll ask me for guidance, and I'll just give you guidance. I'm not going to make a decision for you because I really believe that from debate and your expertise, you will find the decision that needs to be made. And so when I pipe in, remember, it's just my opinion, unless, you know, the other things that I bring up.

Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings, or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are one, in violation of constitutional or statutory provisions; in excess of the statutory authority or jurisdiction of the agency; or made upon unlawful procedure, you didn't follow your own rules; or affected by other error of law; or clearly erroneous in view of the reliable probative and a substantial evidence on the whole record; or arbitrary, or capricious, or characterized abuse of discretion; or clearly unwarranted exercise of discretion. So somebody who wants to overturn your decision has to run this gauntlet. They've got to prove this at the higher courts that this is what's going on in order to overturn your decision.

Things to remember: when dealing with a contested case, you are exercising your adjudicatory function. You must remain impartial and not openly make conclusory remarks until all of the evidence has been received. Your decision must be based on the evidence on the record. Avoid any statements that may be mistaken as an attack on someone's race, sex, gender, or religion. The other caveat is not to make comments that are so hostile to the applicant that it can be construed as malicious. Once you say something, I cannot make you take it back. A lot of times people who do not get what they want from a board or commission, will go back to the transcript. They will dig something up. And they will look for one word that will give them the right to go into the Circuit Court or Federal Court and say that their personal rights were violated. So I really wanna encourage that. I don't think we've gotten that from this Board. I'm trying to think of some boards past that some stuff was a little sketchy. I think I was like, oh, please, no. Hopefully, that didn't make it on the record, but you have to understand that you are responsible for your conduct. You want to be impartial. You want to be fair. You can be against something, but really be open to the findings of fact. Really focus on what is being presented as factual. And if you don't find it credible, then that is something that you have the right to decide based on the facts before you. So finder of fact, you can ask questions that will bring to light whether something that can be believed or not. Once you reach that stage of believability or not, you can, in your deliberations, comment on whether you believe those facts to be true or not.

So that being said, good luck. And I will be over there in the corner. And I am always available to try to explain the law, try to explain procedure. And again, I will leave the final decision-making up to this Body because that's its purpose, and will always respect a vote of at least five. Any questions?

Chairman Endo: Thank you, Deputy Corporation Counsel Giroux. Is that all for the orientation? I guess I should add very briefly that we'll be following *Robert's Rules of Order*. I'm not sure if the new Members got a copy of the rules, but basically, a couple of highlights that I like to point out is sometimes the debate might get a little bit heated. You might feel passionate about your position. Just keep in mind that when you're stating your position – say your position is directly opposite of Bill's position, when you're speaking passionately, don't stare him out, or stare at each other, and start shouting at each other. What you want to do is always speak your mind, but always look at the Chair. So sort of like a debate style. You don't get too personal about it. If you feel passionate about your position, by all means, speak passionately about how you feel, but in order to keep it from getting too intense, you don't want to look at the person that you might feel you have a direct opposite opinion with. And also we try not to – especially, if it's going to be – we don't always follow it, but we try to follow where especially, if there's a lot of people want to talk, just raise your hand, and I'll make a note, and recognize you in order of – that you raised your hand so that we don't get all out of control. And we try not to badger or get into arguments with parties. There's going to be a phase where we can ask them questions, ask for facts, and try to get whatever information you want out of them, but we're not trying to engage them in an argument. We get all the facts from them, then we discuss as a Body how to vote on an application. Okay.

Mr. Cerizo: Mr. Chair? We were trying to open up two video presentations, and she's going to try again because it wasn't working. So it's still not working, so maybe next time.

Chairman Endo: Okay.

**E. APPROVAL OF THE MARCH 25, 2010 MEETING MINUTES**

Chairman Endo: So everybody should have the March 25, 2010 meeting minutes in front of them.

Mr. Tanaka: So moved to accept the meeting minutes.

Ms. Rachel Ball Phillips: Second.

Chairman Endo: It's been moved and seconded to approve the March 25, 2010 meeting minutes. Discussion? Seeing none, all those in favor, please say aye. Opposed, please say no.

It was moved by Mr. Tanaka, seconded by Ms. Phillips, then unanimously,

**VOTED: To approve the March 25, 2010 meeting minutes.**

Chairman Endo: **The motion passes and the minutes are adopted or approved.**

**F. DIRECTOR'S REPORT**

**1. Status Update on BVA's Contested Cases**

Chairman Endo: Moving on to F-1, Status Update on BVA's Contested Cases. You should have a handout.

Ms. Kapua`ala: The only change is no. 2, the Makila Nui Ranches and Ranches Subdivision, which is four different subdivisions, which the applicant appealed a decision from the Director of Public Works in all four subdivisions. Judge McConnell has submitted his report and proposed findings of fact, conclusion of law, and decision and order. And because Judge McConnell will be having knee surgery in Wisconsin, he will not be returning until June or July. And therefore, we're going to be having the final hearing on that in August or September when the parties are also available. And other than that, there has been no change. The next appeal that will be before you is no. 5, item no. 5, which is the Victor Campos notice of violation appeal. So that, you'll be the hearing officer, and that will be before you on June 10<sup>th</sup>. That's all.

Chairman Endo: Thank you, Trisha.

**G. NEXT MEETING DATE: April 22, 2010, Thursday, on the Island of Lanai**

Chairman Endo: Our next meeting is April 22 on Lanai. Hopefully, we can have enough Members to make it.

Mr. Aaron Shinmoto: Mr. Chairman, just for scheduling, we do have enough quorum going over.

Chairman Endo: What's that?

Mr. Shinmoto: We do have a quorum going over.

Chairman Endo: Terrific.

Mr. Shinmoto: The boat leaves at 6:45 out of Lahaina. We need to be there by 6:15. We'll be leaving here at 5:15, for those of you who need a ride. And for those of you who need a ride, please don't be late. We've got to get out there.

Ms. Phillips: We can park in the lot?

Mr. Shinmoto: Put your card on.

Mr. Cerizo: If you're going to park in Lahaina, you shouldn't park in a time zoned area. The place I would park is on Wainee Street, which is a block over. It's a little walk, a good ten-minute walk from the harbor. Just go a little earlier and then walk down to the harbor.

Mr. Kamai: Or you can park in the back in the Wharf.

Mr. Cerizo: Yeah, as long as there's no time – a lot of places there's time – like there's public parking. It says 90 minutes or three hours. You're gonna be there for eight hours.

Mr. Shinmoto: Be careful because the County will probably not reimburse you if you park in a paid parking lot. Okay?

Ms. Phillips: Just meet right in the front?

Mr. Shinmoto: Yeah, right in the front, right in the front of the building. 5:15, we want to leave here at 5:15, so try to be here before that.

Chairman Endo: Also, I can't make it and Kevin can't make it. So you want to elect a Chair Pro Tem, or you can just do it then?

Mr. Shinmoto: I guess we need to vote?

Chairman Endo: You don't have to do it now. You can do it that day, unless you want to do it now. It's not agended.

Mr. Giroux: It's one of those we can add. We can add that.

Chairman Endo: Okay, who's going to go to Lanai? Okay, great, we got six. So will someone make a motion for a Chair Pro Tem for purposes of the Lanai meeting on April 22? So it'll be like Acting Chair for that day.

Mr. Stephen Castro, Sr.: I nominate Bill Kamai.

Chairman Endo: Alright, Commission Member Kamai. Any other motions or nominations? I'll consider that a motion. Any discussion? No. Okay, all those in favor of Bill Kamai as Chair Pro Tem for the April 22<sup>nd</sup> 2010 meeting, please say aye. Opposed, please say no.

The vote was unanimously taken as follows:

**To Elect William Kamai to the Office of Chair Pro Tem for the April 22, 2010 meeting.**

Chairman Endo: **Motion is carried, and congratulations to Bill.** Is there any other business of the Board? No? Okay, meeting adjourned.

**H. ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 3:05 p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Members Present:**

Randall Endo, Chairman  
Kevin Tanaka, Vice-Chairman  
William Kamai  
Rachel Ball Phillips  
Ray Shimabuku  
Steven Castro, Sr.  
Bart Santiago, Jr.  
Rick Tanner

**Others:**

Jeffrey S. Hunt, Planning Director  
Aaron Shinmoto, Planning Program Administrator  
Francis Cerizo, Staff Planner, Planning Department  
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