

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
MAY 27, 2010**

(Approved: July 8, 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, 1:41 p.m., Thursday, May 27, 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: Good afternoon. This meeting of the Board of Variances and Appeals will now come to order. It is 1:41 p.m. on May 27, 2010. Let the record reflect that there is a quorum present of five Members of the Board.

At this time the Chair proposes, subject to a consensus of the Board, to taking Item B-2 out of order. And the reason is the likelihood of a continuance of the matter so that way they don't have to stay for a long time just to get a continuance. But if as we proceed there's no consensus, or we can't get the parties, and it gets bogged down, we can always table it again, put them aside, and then go back to the regular order, agenda order. But because there is a good likelihood that it will get continued, that would be the Chair's suggestion to take it out of order. Is there any objection to that? Seeing no objections from the Board Members, we will proceed with Item B-2.

B. PUBLIC HEARINGS

2. **MICHAEL GRONEMEYER, MICHAEL MCDONALD & PHILIP SEGURA requesting a variance from Maui County Code, §19.30A.030 to allow an electrical pedestal wall within the 25 feet front yard setback to exceed the 4 feet height limit by 1-foot-10-inches to 3-feet-6-inches for an agricultural property located at 105 Awaiku Street, Launiupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-009:050 (BVAV 20100010)**
 - a. **Department of Planning, County of Maui's Motion to Intervene; Memorandum in Support of Motion**
 - b. **Michael Gronemeyer's Motion for Continuance; Memorandum in Support of Motion**

Mr. Francis Cerizo read the agenda item into the record. So, we have a request by the applicant for a continuance. There is a memorandum in support of a motion for continuance that's been placed on your desk. And the Department has no objection to the request for continuance. And I believe our Counsel may have other words to say on that same matter.

Chairman Endo: Okay, so for the record, we also have the Planning Department's motion to intervene as well as the applicant's motion for a continuance. Is that correct?

Mr. Cerizo: That's correct.

Chairman Endo: I guess we could take public testimony on this agenda item first, and then proceed

to address both motions. So at this point, if you are here and wish to testify as to Agenda Item B-2, please sign up on the clipboard right on the desk there. And you will be limited to three minutes of testimony.

Mr. Cerizo: I'd like to mention that we have two letters, comments, for the application. And one is by Craig and Kari Duvall, and copies have been made. A copy of that has been attached to your packet, and a second letter from Jay Wisthoff on the same application.

Chairman Endo: Okay. Thank you. Okay, we have four people who have signed up to testify. The first one is Mary Jane Brown.

Ms. Mary Jane Brown: I am here, as is my husband, to testify in support of the variance before you today. We have also put in a request for a variance, and ours is due to be scheduled next month with three other people.

We were one of the first ones to build up in Launiupoko. And our builder thought he had all the necessary permits put in. Attached – I have attached from MECO, including the diagrams and dimensions the power electric pedestals were to be built. MECO would not allow electrical meter installation any other way, so therefore, electrical service would not be provided to homes without a pedestal as it states in this letter. They specify height to be at from six to seven feet. Since we originally owned four acres, which was subdivided, we have four dwellings on the electrical pedestal. They also told us exactly where to put it. And so we had no idea that there would be any restriction of any kind, neither did our builder who had, I believe, moved off-island at this point.

MECO wanted a centralized meter reading points. And we were told we could not get electrical service without it done exactly as they wanted it. West Maui Land required owners to face the pedestals that were cement-block with rocks for a uniformed appearance in the neighborhood. Neither our builder nor the electrical inspectors were aware of any code regulation. MECO always referred to them in their letters as electrical pedestal. The wall thing was never mentioned. I also testified in front of the County Council Planning Committee in February. And that Committee at the time, the Chair of that Committee, saw – wrote a letter to Ms. Aoki requesting her to answer several questions, and requesting a suspension of enforcement until the Council had time to review the law. But the Planning Department refused to do this. That letter is also attached, and I will leave that with you here. We just believe the law was misinterpreted by the Zoning Department. And we would hope the interpretation could be clarified by somebody as it's affecting so many of us and causing us financial difficulty and emotional hardship. Thank you for your time.

Chairman Endo: Thank you. Any questions for Ms. Brown? Seeing none, thank you. Did you leave copies with the Department? Okay. Thank you. Next we have Susan Deloria. Okay, Susan Deloria. You have three minutes.

Ms. Susan Deloria: Aloha, again. Susan Deloria. I live in the neighborhood. I do not have a pedestal. I was here on behalf of Michael Gronemeyer and several of the homeowners. We had a pedestal committee that was set up in response to the number of homeowners that had talked at our homeowners' meeting who are quite distressed at the letters and the information that they were getting from the County Council.

So I just wanted to discuss again. I think that there seems to be some great misunderstanding as to what exactly went on ten years ago when these pedestals were built. This has been interpreted by the Planning Department as a wall. And they are citing code—Kathleen will know, I'm sorry, 19.2. something or other—as a wall. These homeowners were told to build. They were told by MECO where to build. MECO is very specific where it was to be built. And if you look at a plot map, most of these pedestals are built, you know, depending of the topography of the land, it made sense. There have been— Every single one was signed off on by the County. There are sign offs on numerous occasions. I believe you're an electrician, so you know the process where the electrician pulls the permits. The homeowner, as they're going through the process, the County comes out, expects, and it's actually – I believe it's the electrician that then calls County and says for a meter hookup. So all of these have been signed off on. They've all had a certificate of occupancy. And yet now, ten years later, homeowners are being told that they have to take two or three feet off a pedestal, and we just are dumbfounded at the amount of energy and time. And quite honestly, a lot of frustration has been generated in our community on this issue.

I think that's pretty much the points. I think you got it the last time—those folks that were here. You know, this is not an isolated case. There's a number of these in the community. They're appealing. They're not an eyesore in any way. They serve a function. And I think the homeowners are really feeling that this is – they've been pushed into a corner on this compliance issue. So I'm just here again in support of the variance for Mr. Michael Gronemeyer, and thank you for your time.

Chairman Endo: Thank you. Any questions for Ms. Deloria? Seeing none, thank you. Next we have Frank Sylva.

Mr. Frank Sylva: Hello, Members. My name is Frank Sylva. I wanna thank all of you for giving us the opportunity to come and express our issue we have here.

Now, when I first built my pedestal in 2001, I was directed by the developer where to place the pedestal. A pedestal was placed at the south corner of my front lot. I asked them I wanted to the north corner. They said, no. Maui Electric wanted it on the south corner of my lot so I went with the program. As the months went by, my big beef is this, is in 2001 when I built my pedestal, and for those before me, if this was corrected by the County, the people who built after 2002, 2003, or 2004 wouldn't be caught in this predicament. I know that we maybe at fault, ignorance of the law, we didn't know at that time. But I think the County is at fault, too, for not correcting us in 2001, 2000, or 2002. The only thing I can think is maybe somebody came out from Harvard or Stanford and just was hired to the County, and reading this, oops, all of a sudden, hey, people breaking the law here. People's pedestal are over the limit of four feet.

Now, you must realize that all us, we working people. We not lawyers. And when we build our pedestals, we had to call the County inspectors to come and expect our meters that was installed on the pedestals. And we pay for the County inspectors to come and inspect our meters. They came. They inspected. Approved, yeah? Approved the electrical box. Now, if at that time they told us that we was illegal at that time, had corrected us, a lot of people wouldn't pay fines. I was one of the people that really was against this, but one of my neighbors— I gave in. I cut my pedestal down. The parties on the pedestal, we paid \$6,500. In the initial letter, I was given a due date of May 19th to comply. And me and my wife was scheduled to go on the Mainland. And one of my neighbors was fighting almost to tears—the Mrs.—that we should give in to the County because

of – in my opinion, I call it a threatening letter of a thousand-dollar a day fine, and the initial thousand dollars. So I did. And our thousand-dollar fine, I thought we could negotiate it, but they said our initial thousand-dollar fine is not negotiable. So who I share the pedestal with, we have pay a thousand dollars, plus approximately, \$6,500 to have our pedestal lowered.

Like I say, we just ordinary people working. We not lawyers. If they had corrected us in 2001, I'm pretty sure all of us would comply. And just recently, Mr. Riley stated that he had–

Chairman Endo: Three minutes. Try and conclude, if you can.

Mr. Sylva: Okay. In conclusion, I wanna ask the Members of the Variance, Members of the Variance, that in this matter, please use open mind, good judgement, and good common sense to what's happening to all of us in Launiupoko. Thank you.

Chairman Endo: Thank you. Any questions for Mr. Sylva?

Mr. William Kamai: Yes, I do. Mr. Sylva?

Mr. Sylva: Yes, sir?

Mr. Kamai: So you built in 2001, and that developer told you where to put that pedestal wall?

Mr. Sylva: That's correct, sir.

Mr. Kamai: So you were the first person to have a meter mounted on that?

Mr. Sylva: No, I wasn't the first. I don't know who was the first. I was the 15th structure at that time, so kinda one of the first. I would think that maybe my pedestal went up, I was about maybe the first half a dozen pedestal. Had some people before me.

Mr. Kamai: So the location of the pedestal was told to you, or was to told by whom? By the developer?

Mr. Sylva: For me, it was told by the developer where my pedestal was gonna be placed. I had asked them to move it from the south end to the north end. He told me, no, that's where MECO want it, and that's where it's gonna be. So I just left it as is, and went with the program.

Mr. Kamai: So you wasn't the first guy to mount your meter on this?

Mr. Sylva: I wasn't the first. I was maybe the fourth or fifth up in Launiupoko to have this meter.

Mr. Kamai: I guess what I'm getting at is, MECO tell you where it's located because for whatever reason. They tell the developer. The developer tells the homeowner. But did the developer – were they specific in telling you the size, or the height, or the width, or anything like that?

Mr. Sylva: We was given a drawing of the pedestal, the length and the height of the pedestal. So we just complied and follow the drawing that was given to us.

Mr. Kamai: By the developer?

Mr. Sylva: Mine was given to me by the developer.

Mr. Kamai: Okay.

Mr. Bart Santiago, Jr.: I have a question. Since MECO mandated the structure size, height, and width for these pedestals, have you folks engaged with MECO?

Mr. Sylva: Yes.

Mr. Santiago: And what responses have you gotten?

Mr. Sylva: Yes, we met with MECO when this first stated in, I believe, 2009, February 2009. We contacted MECO and the developer to say what's going on? And we called for a meeting up in Launiupoko. And MECO said they would come up and listen to our – whatever we had to say, but they would make no comments. They wasn't willing to add anything or say anything at the meeting. So we had a meeting. A MECO representative was there, but only observing and listening to what we had to say. That's that one and only time that I recall that MECO came.

Mr. Santiago: So there's no accountability on their part for the confusion here?

Unidentified Speaker of the Audience: (Inaudible)

Mr. Santiago: It's clear in their mind what was required, but there's a conflict of what the County Code mandates. So there's the conundrum that we're in. Okay.

Chairman Endo: Excuse me. Just so you know, we can't have discussion between Board Members and the general public. We need to have everything on the mic., because everything gets recorded and transcribed. So please direct your questions to Mr. Sylva, yeah.

Mr. Sylva: I hope I answered your question.

Mr. Santiago: So that's really the crux of the matter is that MECO has mandated the structure which runs contrary to what the County Code requires.

Mr. Sylva: That's correct. That's correct. But the way I look at it is this, although if you say MECO was at fault, I also say the County was at fault, too, by not correcting the problem or nipping it in the bud in 2000. I came along 2001. Had people before me that built their pedestal. I'm in 2001. Had few people in 2000. So I feel the County's much to blame like all of us, ignorance of the law, at that time, I believe, in my opinion.

Mr. Ray Shimabuku: Mr. Chair, I have a question. So you had mentioned that you did comply and you did take your wall to the required height?

Mr. Sylva: That's correct, sir. So I did take it down this month. Our electrical person came down and took it out down May 17th, two days before we start getting fine of a thousand dollars a day.

Mr. Shimabuku: So you have about four different separate meters on that pedestal with your neighbors?

Mr. Sylva: That's correct, sir. Yeah, three of us.

Mr. Shimabuku: And Maui Electric came and did their re-inspections to the height of that meters? Were they involved at all with the lowering of the meters?

Mr. Sylva; I think they gave— I not sure. I think they gave some guidance to the electrical people that came to do our job, to lowering our walls.

Mr. Shimabuku: Okay.

Mr. Kamai: I think that's the responsibility goes back to who told you to put that wall there because it would be legal if it was within that 25-foot setback, I believe. Because being that they pushed that wall inside that 25-foot setback, which triggered the height being illegal, the point of the violation. What you would say, Mr. Sylva? Who told you to put that pedestal within the four-foot, 25-foot setback?

Mr. Sylva: Within the 25-foot setback, that was told to us. The location was told us. And I believe we had to sign papers because different owners for easement, to give easement to MECO. The location was given to us where to place our pedestal by the developer. And I also talked to, at that time, by a person by the name — I think his name was Greg Tremble that represent the developer. Is his name Greg Tremble? Glen, Glen Tremble. He and I spoke. And I asked him to move it from one spot to another. He said, no, that spot where is assigned to you is where your pedestal's gonna go. That's why I complied. I didn't know we was — you know, think that was illegal. Like I told you, they asked us to do things. We call the County. Our meters is installed. The inspectors came by, and signed approvals, things of that nature. Yet some eight, nine, ten years later, they come by and tell us we have to lower this with this certain cost.

My question to you is, I think what we doing in Launiupoko, if any one of you was caught in this situation, I think you would be doing the same thing especially, in these hard times. You know what I mean? That will be standing up and kinda fighting for what we believe is right for the people, for the people what the County is doing against us.

Chairman Endo: Any further questions, Ray?

Mr. Shimabuku: So you don't have a citation at this time, then?

Mr. Sylva: I had a citation. I had a citation. I had a citation.

Mr. Shimabuku: But you're taking care of the problem, though?

Mr. Sylva: Yeah, I had a citation. I had a letter. I had to take it down by May 19th. So I wanted to put in a variance, but I was asked by Kathleen Aoki and a Roy Sylva, back in February, I believe, hold off. I had my packet. Hold off, because we had a meeting with the Council Members at that time. And they say, wait to see what the Council Members said. So the Council had a hearing for

us on the 8th floor. And seven Council Members was present of the nine, and all seven was in our favor to have this reworded, and to help us to make this pono, make it right, make our pedestal right without these fines and things of this nature. So when I heard when— I was— I testified at that meeting, too. So when the Council Members, all seven, was in favor of remitting this for us, so I kinda sat back and relaxed, and say, okay, this gonna be taken cared of, because the Council they was going help us right after the budget, they work on the budget. Just prior or just after the budget, their budget sessions, which you know, and the Planning Department know that the Council was gonna kinda take care of our problem, all of a sudden, a rash of these letters went out to all of us.

Like I said, I didn't have time. I was going to the Mainland. Well, my neighbors was — the Mrs. was in tears. So I gave in. I gave in, my neighbor, I didn't want to upset her so I went with the program. Although mine is supposedly legal now, but I here in support for all my neighbors up in Launiupoko that don't have punch out the amount of money we have to in these hard times. I'm in full support for them. That's why I'm here. Although mine is cut down, but I'm in full support for them.

Mr. Shimabuku: Okay, so you did receive a letter from the County stating that you are in compliance?

Mr. Sylva: Yes, we did receive a letter. Was it in February?

Unidentified Speaker of the Audience: (Inaudible)

Mr. Sylva: Huh?

Unidentified Speaker of the Audience: (Inaudible)

Mr. Sylva: Oh, that we in compliance?

Mr. Shimabuku: Yeah.

Mr. Sylva: Oh, no. I didn't receive, no. We just fixed ours now. I didn't even receive a letter that we in compliance. No, I did not.

Ms. Kathleen Aoki: Mr. Chair?

Chairman Endo: Yes?

Ms. Aoki: If I might add that a draft is being done and a letter will be sent to them that they have complied. It's being drafted.

Chairman Endo: Okay.

Ms. Aoki: Thank you.

Chairman Endo: Thank you.

Mr. Santiago: I got a question. So there's not a need for re-inspection of these modified structures? A compliance letter is going up, but there is no re-inspection?

Mr. Sylva: Sir, I can answer that. We had call the inspector to come and inspect, and the inspector came, but I wasn't present, but the inspector came by and gave us a clearance that we in compliance. This was done, I guess, like about May 19th. So to my knowledge, right now, I'm in compliance.

Mr. Santiago: I just have one question to clarify. In your testimony, you had mentioned that you had paid the thousand-dollar penalty and the \$6,500?

Mr. Sylva: That's correct.

Mr. Santiago: Now, if you had completed the task on May 17th prior to the May 19th, why would you have to pay the thousand-dollar fee?

Mr. Sylva: The thousand dollars was – the letter – that received the letter, upon receiving of this letter, it's a thousand-dollar fine.

Mr. Santiago: Okay.

Mr. Sylva: Yeah, so we thought we could negotiate since we're gonna correct the problem. We was notified by the County that the first thousand dollars is nonnegotiable. Pay it and that's it. And I still don't think that's right too, but that's the rules. That's their rules. That's their rules. We abide by their rules whether I think it's right or wrong, pay the thousand dollars, nonnegotiable, so they say.

Chairman Endo: Any further questions for Mr. Sylva? Thank you, Mr. Sylva.

Mr. Sylva: Mahalo.

Chairman Endo: We have one more testifier who signed up to testify on this agenda item—John Kevan.

Mr. John Kevan. Thank you. My name's John Kevan. I actually – we are on the same pedestal as Mary Jane Brown, who was up here, was talking about. Our history's a little different. We weren't around when it was originally built. We didn't buy until the end of 2005, so we knew nothing of this to begin with. We had assumed that the County did its inspections. And if there's any issues associated with electrical pedestals or walls, that that would've been done when the building was built. So this is all news to us when we got the threatening letters from the County about tearing down – you know, tearing down the wall. The electrical pedestal that we have on our – was original four acres is a large pedestal. I mean, it's – where it's currently located for us to move it, we couldn't just tear down two feet of the top of it, and say there it is, make it work. The electrical and everything and would have to be moved around. So we're looking at a huge expense just to change this pedestal around to meet a rule that was enforced afterwards.

Let's see. I guess I don't understand. You know, Mary Jane has showed us the original letters

from MECO, the original – you know, I assume the County had to inspect when it was originally done way before we moved in. I guess I don't understand why we're even going through this process to begin with because it just amazed me that we have to deal with an issue that should've been dealt with the County back in – you know, four years before we even bought the place. And the major expense to us in terms of being able to afford this, being able to change the wall, and move it, and put up two walls and everything else is just way beyond anything that we can personally handle. My understanding is it's also potentially on the Maui Electrical easement, but I'm not sure of that because I haven't really – I don't know or understand exactly how that easement works, but again, we've got the papers from MECO stating this is the size of the wall. This is the way it should look. This is where you should build it. Rules are being followed. And if it was inspected at the time when it was put up back in the early 2000 timeframe, none of this would be an issue right now. So again, I support the variance that we're doing. We've got our variance hearing coming up. I believe it's actually at the end of this month to go through the same set of issues, but that's kind of where our position is. So any questions? Okay. Thank you.

Chairman Endo: Any questions? No? Thank you. Is there anyone else who wishes to testify as to this agenda item? Okay, please state your name, and then afterwards, if you can sign on this.

Ms. Debbie Arakaki: Debbie Arakaki. I was– I'm just– I'm gonna be brief. I'm sure it's been – between the last meeting and this meeting, you've heard it all, but I am in support of granting the variance. And I – again, it goes back to – you know, without just trusting that when we do – when we built, you know, we have a contractor. He goes and follows whatever rules. I personally don't know anything about electrical. I don't know anything about all those other rules and regulations. And we trust that the contractor does, and that he calls up MECO, and MECO tells him what's the thing. There's that little paper. You gotta do this. You gotta do this. So again, I'm just saying that I'm in full support. I think that's it. Thank you.

Chairman Endo: Thank you. Any questions for Ms. Arakaki? No? Thank you. Is there anyone else who wishes to testify on this agenda item? Seeing none, we'll now close public testimony as to this item, but when we do call the next item, if there are people in the public who wish to testify as to the other item, B-1, you may do so at that time.

Okay, at this time, I'd like to ask the parties to please step forward. And I think what we wanna do is rule on the motion to intervene by the Department of Planning, and then rule on the motion for a continuance. But if you like, you could give us your remarks as to both.

Ms. Madelyn D'Enbeau: Thank you. No, I was going to ask that we have the motion on the intervention before the continuance. We don't oppose the continuance, just so you know that off the bat. And we are asking to intervene. I think the County, the Department, can bring forward some evidence, that will answer a lot of the questions that have been raised here today. And we will be bringing a witness from Maui Electric, as well as from the developer. So that might help clarify some of the issues that the Board has. My concept of my job is to bring as much information to you as we can so that you understand the issues as well as you can, because you, of course, have an important, difficult decision to make. So we would ask for leave to intervene in this case. And we will be seeking leave to intervene in the other cases of the residences we're discussing for next month as well.

Chairman Endo: Okay. Mr. Gronemeyer?

Mr. Michael Gronemeyer: I mentioned in my motion— Oh, thank you for listening to my sad story. I mentioned in my motion that there were new developments that have come up very recently. And as a result of that, I think I might be able to get someone to make changes that will be acceptable to the County. And mainly, the development is the one that we just talked about. I don't know if you're interested, but I have a bunch of photographs that you can see, because I think photographs are worth a thousand words, but these— The development was that an electrician and MECO finally started cooperating, and the County and everybody got together, and we finally got the first pedestal with more than two meters actually reduced, and it's the first one on my street as well. So once I saw that, the very same day, May 17th, I was over there with my electrician. And we immediately had our drawings ready, and we took it to MECO, and we got a verbal okay. We met with the inspector, and he said, yes, we can measure from the slab. So we got a bunch of things all approved that week. And that's why I asked for a continuance because I think in the next few weeks, I can actually cut mine down similar to the way they did. I never really— You know, I've been trying to comply for a year and a half, and no one has cooperated. And the only reason I filed a variance is because I couldn't get anyone to cut the wall down. I can't go out and cut it down. It's got three meters on it for two other lots. Maui Electric has to approve. The County has to approve. I have to have a licensed electrician do all the talking. I don't even know really, what happened. All I know is that I had three electricians resign because I couldn't get anyone to approve the design. And finally, over the last six months, I've been working with West Maui Electric, and we talked about a million things, but once this new wall that Mr. Sylva was talking about got cut down, we put together plans very similar like the same day, and sent them up to MECO. And now it looks like they might get it done.

Anyway, if you'd like to see some pictures, this is mostly pictures of Awaiku Street. I don't know if that's kosher to hand out, but it's just pictures that I have. And basically, what I did was I started up the south end of the street, and went north. And it's a pretty short street. And I just took pictures of all the pedestals. And there are some interesting things. Most of them are right along the property line in the corner so that not only are they in violation of the front setback, but they're in violation of the side setback as well. And on the flag lots, you know, there's no room to move them back.

Anyway, I'm asking for a continuance because I'm committed to get it cut down. And at this point, I have verbal commitment from Maui Electric, but I don't have it in writing yet. We've pulled the permits, and the permits have been sent off to Maui Electric for approval. And as soon as we get those, the County will give us the permit numbers, and then we'll be ready to go. We've lined up the masonry guy that'll cut everything. All of the owners are in agreement. So that's why I've asked for the continuance because this was a major breakthrough. Up until the 17th of May, nobody would cooperate on cutting down the wall.

Chairman Endo: Okay, at this time, the Chair recommends that someone make a motion with regard to the motion to intervene by the Planning Department so we can resolve that motion and then move to the next motion to continue.

Mr. Kevin Tanaka: James, I guess I'm posing this question to you. Procedurally, if we denied a motion to intervene, because we know the fact that the case is in the process of being resolved,

does that eliminate steps? Does it matter?

Mr. James Giroux: Yeah, I think what you're trying to say is procedurally, what would happen if the County wasn't made a party. Well, then we would have to proceed with the variance process without the County as a party. So I don't know it would truncate anything. Whether the County is a party or not, you still have the ability to continue the case, wait for a solution. There's an ability to mediate or just continue it long enough that there can be a status if the parties waive any type of timeliness issue.

Mr. Tanaka: Okay. So I would move to accept the motion to intervene, the County's motion to intervene.

Chairman Endo: Okay. Is there a second?

Mr. Santiago: Second.

Chairman Endo: Okay, it's been moved and seconded to grant the Department of Planning's motion to intervene into this matter. Discussion? Hearing none, all those in favor of the motion to grant the motion to intervene by the County Department of Planning, please say aye. Opposed, please say no. The Chair votes aye.

It was moved by Mr. Tanaka, seconded by Mr. Santiago, then

VOTED: To grant the motion to intervene by the County Department of Planning.

(Assenting: K. Tanaka, B. Santiago, W. Kamai, R. Shimabuku, R. Endo)

(Excused: R. Phillips, S. Castro, R. Tanner)

Chairman Endo: **The motion passes, and the Department of Planning is now added as a party to a formal contested case proceeding.** So, now moving to the second motion which is the motion to continue. Do I understand it correctly that both the County and the applicant are amenable to a continuance?

Ms. D'Enbeau; That's correct.

Chairman Endo: Okay, do you have a date in mind?

Mr. Groenemyer: I would think that possibly, the 24th of June would be good because I'm counting on my electrician to follow up on this. He's fairly optimistic, but four weeks should be enough. So unless something comes up, I should be compliant by that time. I don't think I could go much earlier than that, but the 24th of June, I could probably continue to give you a status at that point.

Chairman Endo: Francis, is that date open?

Mr. Cerizo: We have two items on that date as of now.

Chairman Endo: Well, the suggestion of Corporation Counsel is that we make it a status conference and not the actual hearing. So if we have a report back date, you come back, tell us whether you settled or not. If you haven't settled, and you wanna move forward with the contested case, actual hearing, then it'll be after that date. So it'll be more of a status update. That way, hopefully, you won't have to prepare. I mean, hopefully, you'll just resolve it first. Focus on resolving it. And then if that doesn't work, then you gear up to prepare for the hearing. Is that okay? Okay, so we will— But I'm assuming also, and we need to put this on the record, that the applicant, Mr. Gronemeyer et al, are you amenable to waiving your rights with regard to time deadlines? In particular, the 60 and 120-day deadlines that would force us to act sooner but for this continuance?

Mr. Gronemeyer: I'm familiar with the section of the rules related to your deadlines on ruling, and I'm willing to waive those deadlines in the event that things take longer to get resolved.

Chairman Endo: Okay, that's great. So we'll just do that by consensus, if there is a consensus of this Board to allow the continuance as we've discussed to a status conference on June 24 in light of the waiving of the time deadlines and the possibility of settlement. We all agreed? Okay. So we're all set. Thank you. Okay, now going back to Item B-1.

- 1. WAYNE I ARAKAKI ENGINEER LLC representing MALAMA NA MAKUA A KEIKI requesting a variance from Maui County Code, §16.26.3304 to delete the requirement for road improvements for the proposed Malama Family Recovery Center located at 388 Ano Street, Kahului, Maui, Hawaii; TMK: (2) 3-8-032:004 (BVAV 20100004)**

Mr. Cerizo read the agenda item into the record.

Mr. Cerizo: I have a short video – not video, but a picture presentation. This is the parcel in question. This is Kaahumanu Shopping Center, Wakea Avenue, Kaahumanu Highway. And Sheik's is about in this direction here, so we're right across from Sheik's up the road, fourth lot on the right. The requirement is to require that the road improvements be along the frontage of the street. This is the site plan and it's for the full width of the property. And additional photos of the property is shown here. We're looking directly at the lot, right across the lot. I believe the lot's right – this is the lot here. And this is across the street. Representing the Department of Public Works, we have Lance Nakamura. He'll be providing any staff questions that you may have.

Chairman Endo: Is there anyone here in the public who wishes to testify on this agenda item? We could either take it before or after the presentation from the applicant, but I'm just checking. If there's nobody here, we will close public testimony as to this agenda item, and ask Mr. Arakaki to introduce himself and proceed with your presentation.

Mr. Wayne Arakaki: My name is Wayne Arakaki. I'm an engineer, civil engineer. And I got the opportunity to work with Malama on this project. It's located in a residential area. I have Judd Cunningham, which is the CEO for Aloha House and Malama, and which he may come up and also say a few things about the project.

But basically what it is it was an old residential home that was used by Malama. And they provide like counseling service to people that need help. And the building was over 30 years old, I guess,

and we decided to construct a new building. We did get the building permits. We got approvals from the Planning Department and the various departments. And it's actually constructed already. The only thing that's left is interior improvements like appliances, cabinets, and things like that. What we have not done yet was, of course, was the road-widening improvements, which is the curb, gutters, and sidewalks, and then the front driveway.

There is two cottages in the back that provides temporary housing for people that's in need. Over the years that Malama has been there, there has been no problems with the neighbors or anything like that. And it's a quiet environment in that area. So if you don't mind, I would like to turn the mic. over to Judd Cunningham. Thank you.

Mr. Judd Cunningham: Hi, I'm Judd Cunningham. And I'm CEO for Malama Family Recovery Center, or it's Malama Na Makua O Keiki, but doing business as Malama Family Recovery Center. And the history of the use of this building, because it's in a residential area is, I actually remember when I first came to the island in the early '90s, I was chief of the Maui Community Mental Health Center. And that building was under lease to the State at that time, and was called "Children's Team." It was actually a counseling center at that time, and it was under my area of responsibility. Subsequent to that, somewhere along the way, probably, 12 years ago or so, maybe a little longer, Malama, the 501C3 nonprofit organization came in and began to rent that house, the old house, and then subsequently used public funds to purchase, acquire, the property. And so there's been a continuance use for I know at least 20 years and probably, 25 or more years as a sort of a counseling or treatment center. When they bought the property prior to my being involved, when they bought the property, they bought the entire property so they could use the cottages in the back for housing. The program is actually intended for – it's a gender specific substance abuse treatment program for pregnant and parenting women. It provides an extremely valuable resource for the community.

And Wayne is correct when he said, you know, we've had very amiable relationships with the neighbors all along. We have some new neighbors, in fact, next door. I noticed recently about 30 roosters in the house next door are in the backyard now. So we're only too happy to have them wake us up in the morning. So that's pretty much what I have to say about it. I think Wayne can address the technical aspects of why we're asking, and of course, the County Planning Department can too.

In order to get the building permit, we had to an environmental assessment. So even though it's in a residential area, maybe one of the questions you would have, it was exempted by the Planning Department from the requirement to get any special use permit or conditional use permit because they consider it a public use. And so the documentation for that was provided, also at the time that we applied for the building permit. So we've been at this for a long time, and now we've built the facility. We're ready hopefully, pretty soon to move back in. But for reasons stated in the application, we feel that the requirement that's kind of – seems like a matter of course to create these street improvements would be kind of inconsistent with the character of the neighborhood. I'd like to think of it as the sidewalk to nowhere like Sarah Palin described – build a bridge to nowhere or something like that during the campaign that came up. That this would be literally, a sidewalk only in front of our place, and then it wouldn't connect to anything. So I'd be happy to answer any questions that you might have of me.

Chairman Endo: Is that it for your presentation?

Mr. Arakaki: Yes, unless there's any questions.

Chairman Endo: Okay. Thank you.

Mr. Santiago: What would be the cost to do that improvement—the sidewalk, curbside improvement?

Mr. Arakaki: We had an estimate from 3D Builders. They were looking at about \$30,000.

Chairman Endo: Francis, were there any letters in opposition or support of this application?

Mr. Cerizo: No, none in support or against.

Chairman Endo: Okay. Thank you. Ray?

Mr. Shimabuku: Being that this is in a residential area, the drawing that shows where the curb and gutter and the sidewalks is supposed to be in place, do they use that for parking? That black area on that board, is it used for parking at this time?

Mr. Arakaki: No, it's not. And in the future, it's not gonna be used for parking. We have parking in the property.

Mr. Shimabuku: Okay.

Chairman Endo: I guess I have one quick question for the applicant. I know it's not a confidential facility, but to a certain extent, do you want to blend in to the community in this facility? Because it would seem like having a curb and gutter only in front of here and nowhere would make it kind of stand out in the neighborhood. So is blending in a plus factor for your operation?

Mr. Cunningham: Most definitely, yeah. We've tried to maintain all the time that we've been there over the last 12 years, a low profile. And even the design of the facility, we took that into consideration, too. We built a new facility and it's a little larger footprint, but the idea is low key. There's neighbors around who— I've had this experience myself. It's an aging neighborhood, so there's a lot of elderly people living there. And sometimes I'll walk out of there, and the same person will come to me from across the street, and say, "What are you guys do in there?" And I'll kind of explain it, "Well, we help young mothers and children get better from their problems and that sort of thing." "Oh, okay." And then maybe a couple months later, the same person will ask me the same question, "What do you guys do in there?" But that's definitely a good point.

Mr. Tanaka: One question: your new building, it's just the amount of parking that you had before this versus now? You've added parking onsite?

Mr. Arakaki: Yeah. Actually, definitely, we have more parking. There was a time when this house was just like a typical Kahului house where there was only two parking stalls fronting the garage, but now, we have about four, actually, five stalls now.

Mr. Tanaka: And you still have that driveway going in the back?

Mr. Arakaki: That's right, yeah. That's to service the two houses in the back.

Chairman Endo: Bart?

Mr. Santiago: Yeah, the question I have is from the road to the stone wall or property wall, is that consistent throughout the subdivision – I mean, the space?

Mr. Arakaki: Yes.

Mr. Santiago: That's in front of the property. Is that consistent throughout the subdivision?

Mr. Arakaki: Yes, it is. We didn't give any kind of roadway dedication, so it's similar to the rest of the parcels in that area.

Mr. Santiago: Is that County property?

Mr. Arakaki: From the wall to the edge of pavement is County property, yes.

Mr. Santiago: Okay.

Mr. Kamai: This question is for Lance. Lance, in the staff analysis, it says that it typically does not apply in a residential neighborhood like this because single family dwellings are usually exempt. So what's the trigger for them, for the road improvements? Is it the new building?

Mr. Lance Nakamura: Yes. Whenever they do a new building, this roadway-widening is triggered, but the code also provides various exemptions. One is for single family dwellings when the number of dwellings are less than three. So most properties here can put a house and cottage. They're not gonna get to four dwellings on the property. So it's highly unlikely that anyone outside of this will get hit with the requirement, but I didn't do the building permit review on my own to review the requirement triggers, but I'm assuming it was triggered here because this facility is not a single family dwelling.

Mr. Kamai: But it could possibly be in the future, if the property was sold, say, or donated, or—?

Mr. Nakamura: Could the requirement come up again? Is that what you're asking?

Mr. Kamai: No, you're saying because the use is not single family that that was a trigger for the road improvement. That in the future if that was to return to a single family use, they would be the only ones with that road improvement in front of their property?

Mr. Nakamura: Yes, assuming they don't get the variance, then yes, I assume they would be the only one for the foreseeable future.

Mr. Tanaka: Lance, that wouldn't be possible, though, if there's three structures on a single lot.

Mr. Nakamura: That's what I'm saying, it's highly unlikely on a regular lot. You can normally put one – I understand you can put one dwelling if you have enough – because zoning is for 10,000 square feet. For every 10,000, you can put another dwelling on it. And then in addition to that, you can add the accessories. So if you had a lot in Kahului that was an acre, I guess you could put multiple dwellings on that you may get to four, but I don't think there are too many lots like that in the area.

Chairman Endo: Okay, any further discussion? Otherwise, the Chair would encourage someone to make a motion.

Mr. Shimabuku: Mr. Chair, looking at the pictures of the residential area, and going over the staff analysis, I would like to make a motion to grant the variance.

Mr. Tanaka: So second.

Chairman Endo: Okay, are you making a motion with or without the standard condition of insurance, and indemnities, and all of that?

Mr. Shimabuku: Would it be required to?

Chairman Endo: No, it's optional. It's up to the Body.

Mr. Shimabuku: I think, yeah, we can waive the insurance.

Chairman Endo: Okay, so you're gonna make it with the standard indemnity language, but no insurance requirement?

Mr. Shimabuku: Yeah.

Mr. Tanaka: So second.

Chairman Endo: Okay. And in terms of adopting our findings of fact and conclusions of law, you would adopt the Department of Public Works' report as the findings of fact?

Mr. Shimabuku: Yes.

Chairman Endo: Except that you're modifying it to find that all of the criteria have been met whereas it's sort of left open, to a certain extent, in the final conclusion.

Mr. Shimabuku: Adopt the applicant's.

Chairman Endo: Okay, yeah, adopt the applicant's proposed language. Okay?

Mr. Shimabuku: Yeah.

Chairman Endo: Alright. So we have a motion that has been seconded to adopt the analysis of the Department of Public Works with the exception of adding in the justification for granting of the variance, as submitted by the applicant, and with the standard condition that a hold harmless and

indemnity agreement be signed by the applicant. Essentially, you hold the County harmless from any kind of liability that might arise out of its granting of this variance. But at the same time, we're not requiring any insurance requirement. Any discussion of the motion? Hearing none, all those in favor, please say aye. The Chair votes aye. All those opposed, please say no.

It was moved by Mr. Shimabuku, seconded by Mr. Tanaka, then

VOTED: To adopt the analysis of the Department of Public Works with the exception of adding in the justification for granting of the variance, as submitted by the applicant; and with the standard condition that a hold harmless and indemnity agreement be signed by the applicant without any insurance requirement.

(Assenting: R. Shimabuku, K. Tanaka, B. Santiago, W. Kamai, R. Endo)

(Excused: R. Phillips, S. Castro, R. Tanner)

Chairman Endo: **Okay, so that's five-zero. The motion passes, and your variance is granted.**

Mr. Cunningham: Thank you very much.

Chairman Endo: Thank you.

C. APPROVAL OF THE MAY 13, 2010 MEETING MINUTES

Chairman Endo: Okay, has everyone had a chance to look at the May 13th 2010 meeting minutes?

Mr. Tanaka: Yes. My complaint is the Chair was not here. So move to approve.

Mr. Shimabuku: Second.

Chairman Endo: It looks like very thick minutes. Okay. It's been moved and seconded to approve the May 13th 2010 meeting minutes. Discussion? Hearing none, all those in favor, please say aye. Opposed, please say no. The Chair votes aye.

It was moved by Mr. Tanaka, seconded by Mr. Shimabuku, then

VOTED: To approve the May 13, 2010 meeting minutes.

(Assenting: K. Tanaka, R. Shimabuku, B. Santiago, W. Kamai, R. Endo)

(Excused: R. Phillips, S. Castro, R. Tanner)

Chairman Endo: **The motion passes—five-zero.** Moving on to Item D, status update on our contested cases.

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Mr. Cerizo: As you can see on the latest handout, we have four appeals or contested cases. The first item is being settled right now, so it's on the back burner. Number two is the County's working to resolve this with the applicant, so there's nothing planned for it right now. Number three, the Westin Kaanapali Ocean Resort, we have the hearing officer's contract being processed as we speak. And finally, the Victor Campos notice of violation, that is scheduled for our next meeting—June 10th 2010. That concludes my report.

2. Change of Meeting Date: July 22, 2010 to July 29, 2010

Mr. Cerizo: On the second item here, we have a request to change the second hearing date in July. Normally, it's scheduled for July 22nd. One of the issues that Mr. Wisthoff was supposed to have been – he's trying to get the meeting done as soon as possible. That was the meeting that was somewhat scheduled, but he won't be there that day. So we're trying to see if we could accommodate by scheduling on the 29th, which is the following week. So all the – I believe that's the only item that'll be scheduled that day so far is that item—Mr. James and Kathleen Wisthoff. So we're asking the Board to consider changing the date—from July 22nd to July 29th.

Mr. Shimabuku: Mr. Chair? I would be here on the 22nd, but I won't be here the week of the 29th—the last week of July and first week of August, actually. So I won't be able to make it the 29th if the date changed.

Chairman Endo: Okay. Any other comments, Board Members? At this point, both look open for me. What was this to address, Francis? It's the letter for enforcement?

Mr. Cerizo: This is for the variance for one of the electrical pedestal walls. In fact, it was the first one for Kathleen, James, Amy Martin, and Dan.

Mr. Tanaka: That was the last meeting.

Chairman Endo: Oh, okay, the last meeting. Well, do we need to know right now, Francis, or can we wait till the next meeting?

Mr. Cerizo: Well, I guess the more important is that the Board, you know, that we have a quorum. If we have a quorum, then, yeah, it can happen.

Chairman Endo: Right. So that was my question, though, since we only have five here today, I thought if we'd wait till the next meeting, we could—

Mr. Cerizo: Okay, so the next meeting of June 10th.

Chairman Endo: You can ask everybody then. Or if it's really urgent, I guess we could just e-mail everyone. Is it urgent that they know right now? Why don't we just let you guys do whatever you want. Just e-mail all the Members, and if there's enough people, then just go ahead and change

it.

Mr. Cerizo: Yeah, we're gonna have to check our publications because they're gonna have to republish. We would have to republish also. So, yeah, we'll take a phone tally to see, at least, if we have a quorum on that. And if so, we'll schedule it.

Chairman Endo: Okay.

Mr. Cerizo: That's all that I have.

Mr. Tanaka: Francis, one question: on the Victor Campos one, that's appealing the notice of violation. So it was appealing of fines? Can you refresh my mind?

Mr. Cerizo: Victor Campos—he has a garage down on Lower Main Street. And above his property, adjacent to his property, was a vacant lot. On that lot, he has used to store vehicles. So a violation was issued and he is looking to appeal that violation.

Mr. Tanaka: And he came back to us and requested a time extension, was that it?

Mr. Cerizo: Yeah, what happened was that when the first hearing came out that was scheduled, I believe he asked for a deferral because of counsel. He wanted to obtain counsel. So his first attorney—he came in, put in a motion, and withdrew the motion. He's not their counsel anymore. So he's looking for another person to represent him, and he's working on that. In any case, it's scheduled for June 10th.

Mr. Tanaka: Thank you.

E. NEXT MEETING DATE: June 10, 2010, Thursday

Chairman Endo: Alright. The next meeting is June 10, Thursday. Is there any further business of the Board? Hearing none, this meeting is adjourned.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:48 p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Board of Variances and Appeals
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Randall Endo, Chairman
Kevin Tanaka, Vice-Chairman
William Kamai
Ray Shimabuku
Bart Santiago, Jr.

Members Excused:

Rachel Ball Phillips
Steven Castro, Sr.
Rick Tanner

Others:

Kathleen Ross Aoki, Planning Director
Francis Cerizo, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Lance Nakamura, Engineer, Department of Public Works, Development Services Administration