

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

(Approved: July 29, 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, July 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: Good afternoon. The meeting of the Board of Variances and Appeals will now come to order. It's July 8th, 2010. Let the record reflect it's 1:41 p.m. and we have a quorum present of eight Members.

B. INTRODUCTION OF NEW MEMBER: BERNICE VADLA

Chairman Endo: At this time the Board would like to welcome our newest Member: Bernice Vadla. Did I pronounce that correctly?

Ms. Bernice Vadla: Vadla.

Chairman Endo: Vadla. Welcome.

Ms. Vadla: Thank you.

Chairman Endo: Alright. And the public's very lucky today, we have eight Members, which is more than normal for our meeting. At this time I would like to call our first item on the agenda, Item C-1.

C. PUBLIC HEARINGS

1. **WILBUR AND SOCORRO WONG requesting a variance from Maui County Code, §19.30A.030 to allow the consolidation of three (3) parcels and resubdivision into two (2) parcels of 2.302 and 0.923 acres, whereby the minimum lot area for agricultural lots is two (2) acres, for property located at 360 and 370 Hahana Road, Kaupakalua, Makawao, Maui, Hawaii; TMK: (2) 2-7-0013: 072, 076, 077. (BVAV 20100011) (Rescheduled from the June 24, 2010 meeting.)**
 - a. **Wilbur & Socorro Wong requesting a deferral.**
 - b. **Letter from Lloyd Poelman, Attorney, advising that Philip Valentine has filled a lawsuit in regards to TMK: (2) 2-7-0013: 076 and (2) 2-7-0013: 077.**

Ms. Trisha Kapua`ala read the item into the record.

Ms. Kapua`ala: And, Board, for the Board we have letters in your packet requesting a deferral, and also a letter from Attorney, Mr. Lloyd Poelman, advising that a civil suit has been filed at circuit court. Mr. Wong, are you in the audience? Please come to the front.

Chairman Endo: Please state your name for the record.

Mr. Wilbur Wong: Good afternoon, Mr. Chairman, Members of the Board. My name is Wilbur Wong.

Chairman Endo: Good afternoon. Do you know--? Is Lloyd Poelman your attorney?

Mr. Wong: No, he isn't. Lloyd Poelman is the attorney for the plaintiff.

Chairman Endo: Oh, got it, for Philip Valentine?

Mr. Wong: Correct.

Chairman Endo: Okay. So you're requesting a deferral of your matter? Is that correct?

Mr. Wong: Yes, until such a time as this legal litigation is resolved.

Chairman Endo: Okay. I think the problem is that if it's a quiet title litigation, that could take many months to many years, and the Board would generally not like to keep matters on hold for an indefinite period of time. Do you have any idea of how long the litigation will take?

Mr. Wong: We've already been through two sessions of pre-trial meetings where we attempted to settle the issue. We have a trial date set for December the 6th. Originally we had a trial date set for July. That has been moved to December and hopefully we should have it resolved by that time.

Chairman Endo: Okay. Is there any position or comment from the Department of Planning?

Mr. Aaron Shinmoto: Generally, we don't wanna hold the application forever. Six months is a little too long for us, but we'll go with what the Board chooses.

Chairman Endo: Okay. Should the Board grant you a deferral of the matter, are you willing to waive your statutory rights of 120 and 60 days which require the Board to take action?

Mr. Wong: Okay, I'm not so sure I understand.

Chairman Endo: There's rules that require that if we don't make a decision within 60 days and 120 days depending on -- there's two different rules that then you would be granted your variance automatically. And so if you don't waive those, your rights under those deadlines, then we would have no alternative but to take action now.

Mr. Wong: Yes, I would be willing to waive my rights.

Chairman Endo: Okay. Okay, the Board have any questions for the applicant?

Mr. Shinmoto: Mr. Chairman, maybe we could bring up – bring this case up maybe monthly so at least Mr. Wong can give us a status report? Either that or again, it's kind of far down, but we also don't wanna – if he we extend it, he has to reapply and go through the whole process again: filing fee, notification of neighbors, this kind of thing.

Chairman Endo: Okay, how about if we – rather than monthly, what about three months from now? How does that sound? Okay, so if there's no objection by the Board and if we have consensus, we will allow the matter to be deferred for three months. So if the Planning Department could give us an October date?

Mr. Francis Cerizo: October 28th.

Chairman Endo: Okay so, Mr. Wong, you understand that you have to come back on October 28th for a meeting of the Board of Variances?

Mr. Wong: Would it be possible to have another date? I'm scheduled to go on vacation so I would be out of town on October the 28th.

Mr. Shinmoto: Which date? Would you be here early October?

Mr. Wong: Excuse me. Let me try to collect my thoughts. Yes, I will be available October 28th. October 28th, I will be available. Yeah, excuse me, I was thinking of September.

Chairman Endo: Okay. Before we conclude this matter, is there anyone in the public who wishes to testify on this agenda item? Seeing no one coming to the podium, we will close public testimony as to this particular agenda item. So if there's no objection from the Board and having heard that the applicant has waived his rights to the time deadlines for us to take action, if there's no objection, we will allow this matter to be deferred to October 28th. Hearing no objections, the matter is deferred.

Mr. Wong: Thank you.

Chairman Endo: Okay. Members, at this time, since we have a full agenda, and I believe three of the next five items can be exposed of very quickly because they've either settled or are being deferred, I'd like to take up those procedural items first, and then go on to the two remaining items that will take longer. And those would be items C-2 and C-3. Are there any objections from the Members to taking the items out of order? Alright. In that case, we'll move to Item D-1.

D. APPEALS

- 1. To determine a hearings officer to preside over the following matter:**

MAUI BEACH RESORT LIMITED PARTNERSHIP appealing the Director of the Department of Public Works' decision to require a letter of authorization from every property owner for a condominiumized property (Honua Kai) in order to subdivide land for conveyance to the State of Hawaii (North Beach Subdivision IIA, Subdivision File No. 4.960) for property located at 130 Kai

Malina Parkway, Lahaina, Maui, Hawaii; TMK: (2) 4-4-014:006 & 008 (BVAA 20100002).

Ms. Kapua`ala read the item into the record.

Ms. Mary Blaine Johnston: Good afternoon. Deputy Corporation Counsel, Mary Blaine Johnston, appearing on behalf of the Director of the Department of Public Works. We're here to get a – have the Board designate a hearings officer. Blaine Kobayashi represents the Maui Beach Resort Limited Partnership, but I spoke with him this morning, and we are asking the Board to appoint Judge McConnell as the hearings officer. The issue is really purely a legal issue and so we thought it would be very good to have somebody legally trained to take a look at it. So if that's okay we'd like to proceed forward. And Mr. Kobayashi indicated he would not be coming this afternoon.

Chairman Endo: Okay. Is there anyone in the public who wishes to testify on this agenda item? Seeing none, we'll open and close public testimony as to this item. Is there any disclosures that the Members wanted to make before we continue?

Mr. Rick Tanner: Yes, Chairman, I'd like to disclose that I'm a current resident at the Honua Kai Resort.

Chairman Endo: Okay, but you don't have a—?

Mr. Tanner: I'm not an owner there, no.

Chairman Endo: So you have no pecuniary interest in the property?

Mr. Tanner: No.

Chairman Endo: Okay. Ms. Johnston, do you know if you folks have a second choice in the event that Mr. – Judge McConnell is unavailable?

Ms. Johnston: We really didn't discuss a second choice. If the Board would like to designate somebody a second choice, that'll be fine, from the list. Again, if you wanted to designate Judge Mossman as a second choice, that would be okay.

Chairman Endo: I think in general, we like to designate at least one or two additional alternates just in case.

Ms. Johnston: Okay. That's fine.

Chairman Endo: Okay. So the parties have agreed on Judge McConnell. Is there any comment from the Board? Questions? How about we go with Judge Mossman as second choice and Paul Horikawa as third choice?

Ms. Johnston: Okay. That'll be fine.

Chairman Endo: Okay. Is there any objection from the Board? Otherwise, by consensus, we will

appoint the hearings officer for this matter to be Judge McConnell as first choice, followed by Judge Mossman, followed by Paul Horikawa as a second alternate. Any objection? (No objections were noted.) Okay. Alright. Thank you.

Ms. Johnston: Thank you. I'll notify Mr. Kobayashi.

Chairman Endo: Okay. Okay, moving on, still out of order, to Item E-1.

E. UNFINISHED BUSINESS

1. **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) (Continued from the May 27, 2010 meeting and rescheduled from the June 24, 2010 meeting.)**
 - 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**

Ms. Kapua`ala read the item into the record.

Chairman Endo: Good afternoon. Please state your name.

Mr. Philip Segura: Good afternoon, Mr. Chair and Members of the Board. My name is Philip Segura. Thank you for your time this afternoon. I'm here basically representing myself obviously being attached to this as well as Michael McDonald, and especially, Mr. Michael Gronemeyer both of which are out of town. What we have here at this point in time is we have taken down the wall, the electrical pedestal, rather. The Maui Electric, and the County, all parties involved got together and approved the work to be done. The work was actually done on the electric on the 16th of June. And the few days that followed, the actual wall came down. I have a photograph of that. I believe the Planning Department as well has all that information as well as the photographs. Basically what we're here to do – what I'm here to ask today again representing especially, Mr. Gronemeyer is due to the intensive time and effort that's gone into this, what we're asking is before we withdraw our application for variance, we're just requesting an official letter from the Planning Department stating that we are in complete compliance.

On the hearing of May 27th, I believe, Mr. Frank Sylva was up here giving testimony and an item came up with regards to the same thing. He had complied by taking the wall height down. And you had asked him had he received the letter pertaining to that, to acknowledge that, and his answer was no. At that time, I believe Kathleen Aoki asked to intervene. And she said that at that point, a draft was being made in her office and a letter was going to be sent out to Mr. Sylva. And again, that's all that we're asking is an official letter stating that we are in a hundred percent compliance so that there's no hiccup, so to speak, down the road.

Chairman Endo: Any comment from the Planning Department?

Mr. Shinmoto: Mr. Sylva was sent a confirming e-mail. We'll be following up with a hard copy and we can do the same for you. We have confirmed that you are in compliance.

Mr. Segura: Has Mr. Sylva – did you say Mr. Sylva did receive that?

Mr. Shinmoto: He received a confirming e-mail. We'll be following up with a hard copy letter. Oh, Gronemeyer, Gronemeyer, sorry.

Mr. Segura: If I may ask with all due respect, and again, this is coming from Mr. Gronemeyer, with that being said and going down on record in this room, is that solid enough for us so that won't resurface?

Mr. Shinmoto: Yes. No, we will send you one also, if you want a letter to you.

Mr. Segura: Yes, please, I'd appreciate that.

Mr. Shinmoto: We'll take care of that.

Mr. Segura: Okay. Thank you. So – well, again, we – if that is the case, if we are in complete hundred percent compliance, and we've done what was asked, and again, I believe – sir, do you have the photographs and–?

Mr. Shinmoto: We do.

Mr. Segura: Okay. And so if we're all good then we feel there's no need to continue with our variance request.

Chairman Endo: Okay. So you're at this time withdrawing your application?

Mr. Shinmoto: We have closed the case, officially.

Ms. Kapua`ala: As far as the variance is concerned, after he receives his signed letter from the Department closing the RFS file, then when we receive his letter for withdrawal, I can bring that to you as a communication item so that the public hearing item will not show up again. It'll just be a communication that the withdrawal has been made. Is that okay?

Chairman Endo: Yeah, that's fine.

Mr. Kevin Tanaka: What is your timetable on that for going from an e-mail to an actual hard copy that's put it in the mail?

Mr. Shinmoto: As soon as our inspector here drafts it, it gets – time-wise, mailed out, we're looking today's Thursday, I'm looking probably early next week, beginning of next week. Once you get that, then you can officially withdraw. You can write back after you get our letter.

Mr. Segura: And so it's my understanding then our request will remain open for variance until—

Mr. Shinmoto: Another week, I guess.

Mr. Segura: Very good.

Chairman Endo: So technically, then we're continuing your matter. We're continuing until the next meeting, but you should send in your withdrawal, then it'll be taken off the agenda of the next meeting.

Mr. Segura: Yes, sir. Thank you. Thank you, sir.

Chairman Endo: Is that okay? Member Kamai?

Mr. William Kamai: Mr. Segura, do you know how much fines Mr. Gronemeyer has accrued thus far?

Mr. Segura: Sir, are you addressing me with that question? No, I do not.

Mr. Sonny Huh: The notice of violation was never issued to Mr. Gronemeyer due to the fact that they applied for a BVA right after they received the first notice of warning.

Mr. Kamai: So the clock starts ticking upon they getting the notice of violation—the fines?

Mr. Shinmoto: Yeah, Mr. Gronemeyer received a notice of warning. In other words, he—

Mr. Kamai: He complied before the violation?

Mr. Shinmoto: He complied before he even got a violation and a fine.

Mr. Kamai: One more question. Mr. Segura, you said that you met — your group met to decide what to do with the wall? Present at this meeting was you mentioned Maui Electric.

Mr. Segura: Yes. Mr. Gronemeyer and myself met with some electricians as well as we requested a file case with MECO, and we met with — I believe his name was Hirono, one of the field electricians that came out. This was — seems like about a year ago. From the very beginning, I think— Well, before I continue, Mr. McDonald is not in town that often. So he physically didn't meet with the two of us and MECO and electricians; however, we kept him up to speed through e-mails and phone conversations. Mr. Gronemeyer and I did meet. Our full intent was to try to resolve this in the beginning. Saying that, that doesn't nullify my support for my other neighbors. This has been round and round for a long time here. And I won't go into detail, but I do think it's wrong what's going on; however, we pulled together, and it was our decision to do what was requested and demanded to take this wall down. What had happened was in the beginning there was a lot of confusion. And it we were finding it difficult to get all parties involved to reach a consensus of how it was gonna be done as far as height that MECO would allow the meters to be set at, so forth and so on. So after these proceedings had taken place, finally everyone came together and agreed on it. MECO came forward and said, yes, we'll go ahead and allow the meters to be dropped to

accommodate the wall height. And soon as we got the word to do that, through again Mr. Gronemeyer went ahead and found an electrician to agree to do the work. And he went forward, got all the required permits and whatnot, and the work was done. So it was our intent to get this done.

Mr. Kamai: Was there anybody from the County present at this meeting?

Mr. Segura: There were several meetings, sir. Again, it was – basically meetings being us walking up there, and taking pictures, and deciding what we wanted to do, and looking at our homes, and deciding the runs that MECO did not want to really reset the meters down on the houses. From my understanding – I'm not – I wasn't the original owner of the lot, but my understanding was in the very beginning, MECO had stated, look, we don't wanna drive up and down two, three, 400-foot driveways to service meters to read them. So that's when they proposed the pedestals. Now, as you well know, sir, there's been a lot of controversy as, you know, did the chicken or the egg? What came first? Who said what? What was legal? What was permitted? What was inspected? On and on and on and on. But these meetings again were just informal meetings between Mr. Gronemeyer and myself trying to decide and trying to find people and get people together all the required parties to make this happen to where we're at today which is according to the Planning Department, a hundred percent compliance.

Mr. Kamai: And was there anyone from the developers, a representative of the developers at this meeting?

Mr. Segura: No, not when I was involved, sir. And I know Mr. Gronemeyer talked to more people than I did, and he really laid out the ground work, spent the lion's share of all of the hours putting together the documents and copies, and coming to the meetings, and whatnot. So I cannot speak for Mr. Gronemeyer. He may have met with some of the developers and other people involved, but to my knowledge, no, sir.

Mr. Santiago: I'm curious. Do you mind divulging the cost of the project to reduce the height?

Mr. Segura: Right now, that's still being tabbed because again, the work was set up by Mr. Gronemeyer. I'm gonna take a guess from what we've discussed because there were attorney fees involved and whatnot, we're looking at about six to eight thousand dollars, and that's gonna be split between the three of us homeowners.

Chairman Endo: Any further questions? Okay, so the matter is officially deferred to the next meeting. And hopefully, you will withdraw it before then.

Mr. Segura: Thank you, sir. Thank you for your time.

Chairman Endo: Alright. Moving on to Item E-2.

2. **VICTOR V. CAMPOS and MYRNA J. CAMPOS appealing the Planning Director's Notice of Violation (NOV 20090014) for the un-permitted storage of damaged vehicles on property located at 1215 Lower Main Street, Wailuku, Maui, Hawaii; TMK: (2) 3-4-039:076 (BVAA 20100001). (Continued from the**

June 10, 2010 meeting.)

- a. County of Maui's Hearing Memorandum**
- b. County of Maui's Exhibit List; Exhibits "A" - "L"**
- c. Lance D. Collins, Attorney, for the Appellant, Requesting a Motion for an Order Directing the Parties to Mediation**
- d. Lance D. Collins, Attorney, for the Appellants – Notice of Withdrawal of Counsel**
- e. County of Maui's Memorandum in Opposition to Appellant's Motion for an Order Directing the Parties to Mediation**
- f. County of Maui's Amended Hearing Memorandum**
- g. County of Maui's Supplemental Exhibit List; Exhibits "M" - "O"**
- h. John S. Rapacz, Attorney, for the Appellant, Requesting for a Continuance of Hearing Scheduled for June 10, 2010; Memorandum in Support of Request for Continuance of Hearing**
- i. County of Maui's Second Supplemental Exhibit List; Exhibits "P" & "Q"**

Ms. Kapua`ala read the item into the record.

Chairman Endo: Will the attorneys please make an appearance?

Ms. Johnston: Good afternoon. Deputy Corporation Counsel Mary Blaine Johnston appearing on behalf of the Planning Director.

Mr. John Rapacz: Good afternoon, Mr. Chairman and Board Members. John Rapacz on behalf of the appellants: Victor and Myrna Campos.

Ms. Johnston: I'm happy to report that we have reached a settlement. We're in the process of finalizing the terms and preparing the official settlement agreement. So just to give you the general idea, once it's signed and signed by the Mayor, then we give you more specifics. But basically, what we have done is we've worked out a schedule for Mr. Campos to remove the vehicles to give him time. There are a lot of intricacies in his having to move. There's a lot of different problems. We have agreed to a fine amount. And we've also agreed to a timetable. And if they're not removed within a certain timetable, he will continue to incur fines. And like I say, I'll be able once we have the agreement finalized to give you very specific details about it.

Mr. Rapacz: I'm in agreement with that statement. So it sounds like we are requesting a deferral of the item until we can actually produce the final executed agreement. We think that would be by – in a month.

Chairman Endo: Okay. So if there's no objection then the Board will allow this matter to be continued for one additional month to the next meeting date in one month. Okay. At this time we'd like to call Item C-3.

- 3. STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES requesting variances from Maui County Code §§19.62.060(A)(3)(a) and 19.62.060(G)(1) relating to Flood Hazard Areas, Standards of Development, to**

allow development of portions of a comfort station building to be located below the 11 feet mean sea level base flood elevation for property located at 101 Maalaea Harbor Road, Maalaea, Maui, Hawaii; TMK: (2) 3-6-001:002 (BVAV 20100013)

Ms. Kapua`ala read the item into the record.

Ms. Kapua`ala: And I do have a video for the Board. Right now, I'm on Maalaea Road. This was taken today. So that view at the opening of this video was the old Olowalu Store. That is the Coast Guard building. This tile building is where the comfort station will be located. Again, Maalaea Road. Further, we have the Shops at Maalaea. Again, this is the Coast Guard building, Maalaea Road, the location of the proposed development and the harbor area. At the break wall, this variance was approved I believe in 2007 – 2008, thank you, Mich, where that building was to be demolished and replaced by another comfort station ferry terminal building. So this building is to familiarize yourself with the surrounding area. Again, the location of the proposed development. Okay. And with that, I'd like to call up the applicant, Mr. Mich Hirano of Munekiyo and Hiraga representing the Department of Land and Natural Resources.

Mr. Mich Hirano: Thank you, Trisha. And good afternoon, Chair Endo and Board Members. My name is Mich Hirano with Munekiyo and Hiraga. And our firm is representing the Department of Land and Natural Resources for this variance for a comfort station for proposed improvements at the Maalaea Small Boat Harbor. We prepared a power point presentation for the Board just to again, familiarize the Board Members with the unique circumstances and conditions at the Maalaea Harbor.

The purpose of the variance application is to seek relief from the Maui County Code in two sections: Sections 19.62.060.A.3.a. and 19.62.060.G.1. And these are standards of development which relate to the flood hazard area. The first part of the code states that new construction and substantial improvements except those in Zone AO shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation. I know that there are new Members of the Board. When we originally went for a flood variance from these same chapters of the code two years ago for the other improvements at the Maalaea Harbor, but Maui is zoned – there's a Federal Insurance Rate Map that designates flood areas on Maui. And then with those flood areas, they have base flood elevations. And this pertains to the base flood elevation at the Maalaea Harbor.

The second code requirement that we're seeking relief from is that it states that new construction and substantial improvements shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor excluding the pilings or columns is elevated to at least one foot above the base flood level. And so our variance request is to allow the Maalaea Small Boat Harbor comfort station to be built with the finished floor elevation at 9.5 feet mean sea level which is 2.5 feet below the base flood level requirement. So we're seeking relief for about a distance about this much, my arm length, in terms of the building.

Just to again, give some orientation to the site, this is Honoapiilani Highway. This is the parcel lot of Maalaea Harbor. And as you can see from the highway, there's a very narrow piece of land that

is the proper harbor property boundaries. And this is where the proposed comfort station is being developed. And it's a very narrow piece of property. This is the harbor in this particular place, and then it's bounded by Maalaea Road. And then beyond that is the Maalaea commercial shopping area.

Two years ago, we came in with a flood variance request for the proposed inter-island ferry terminal which is at this location along the south mole, and as well, for three electrical buildings that were positioned along the south mole and one along this particular area. At that time as well, the comfort station was to be developed at this particular location out above the flood hazard limits level. However, due to problems with the landowner, that property is no longer available. That's on a long term lease by the Department of Land and Natural Resources. And so those improvements were excluded from the project scope. And as a result of that, the comfort station had to be relocated from this particular location down into the harbor property. And so that's why we didn't have the variance for the comfort station at that time. Circumstances had changed, and the site had to be reevaluated, and the comfort station was then relocated at that particular site.

This is the Flood Insurance Rate Map that's prepared by the Federal Emergency Management Agency. Again, as you can see, this is Honoapiilani Highway. This is that southern mole. It's what they call the southern mole. And this narrow strip of land is the Maalaea Harbor proper property. And the comfort station location is located approximately at that position. And this blue wavy line or black wavy line is the zone that is called the Zone DE. And that's the kind of the wave inundation zone, tsunami zone. And along this area, they have minimum flood levels. And so at this point it's 12 feet. And at the comfort station location, it is 11 feet. And so the requirement is to place the lowest floor of the building at 12 feet or one foot above that flood level limit. This is a site plan of the comfort station.

Again, this is the overall Maalaea Harbor and this is where the comfort station will be located. This is Maalaea Road. This is Maalaea Harbor at the bottom of the screen, the parking area, the comfort station, parking again, sidewalk, Maalaea Road, and then the bank on the other side of the road. And when we look at the building and site section which sort of portrays the building in relation to the – this is again, the harbor and we're going across from west to east, so this is sort of zero feet mean sea level. This is kind of the harbor bulkhead. The finished floor elevation is at 9.5 feet which is what you saw in the video in terms of where the parking lot ground level is existing at this time. The flood hazard limit is this solid line. And as you can see, that whole area of the harbor is below the flood limit. And only as it hits the bank which then starts getting outside the property does the land rise above the 11-foot flood elevation. And then the new flood requirements need one foot of free board, what they call free board. So the minimum flood level is at 12 feet, and that's how it looks in terms of – in relation to the building when you look at the – sort of a section through the building. It'll just be two and a half feet above on the building floor.

And again, this is just the floor plan of the building. It's four water closets on the mens' and womens' side, and a janitor's room, and just an entry, and some storage areas. Very small comfort station. It's 14 feet in width and about 52 feet in length. And it was modified to fit the site because as you can see from the photographs that it's a very constricted site. This is Maalaea Road on the left-hand side of the screen. This is their driveway entrance. This was the Coast Guard facilities that you saw. And this is the harbor on the right-hand side of the screen and the existing parking lot. So the comfort station will kind of sit in this particular area. And it'll take out about seven stalls

of parking, but there's ample parking within the Maalaea Harbor. There's about 380 parking stalls. And again, this is similar to the video you saw this morning or earlier. And again, this is the comfort station location, the roadway, parking area, and again, Maalaea Road on the right-hand side.

In terms of variance justification, you look at the code and you say that – you see that variances may be issued for new construction or other proposed new development necessary for the conduct of the use that cannot perform as the intended purpose unless located in close proximity to the water. And the comfort station– And they say that such uses shall include only docking and port facilities. And the comfort station is very much a part of harbor amenities that needs to be located in close proximity to the harbor users. It has to be a convenient location for the harbor users and therefore by necessity, it has to be located close to the water.

There are three variance justifications that we go through in terms of justifying whether or not it meets the criteria and the variance should be granted. The first is that there is an exceptional or unusual physical or geographical condition existing on the subject property which is not generally prevalent in the neighborhood or surrounding area. And the use sought to be authorized by the variance will not alter essential character of the neighborhood. And our response is that the unique and physical geographical conditions that exist at the site is the narrow coastline at Maalaea as you've saw from that FIRM map. The DE Zone really just goes right up against the land and it takes out a lot of the usable land and space of the harbor. And that most of the harbor is below the 12-foot mean sea level. And granting a variance for the comfort station will not alter the character of Maalaea neighborhood. The Maalaea Small Boat Harbor was built in 1953 and is an essential component of the neighborhood. So we feel that the variance is justified based on the geographical conditions at the harbor and that it will not alter the character of the harbor but will be a necessary convenience and amenity for the harbor patrons.

Variance justification criteria no. 2 is that strict compliance with applicable provisions of this title would prevent reasonable use of the subject property. And again, the developable land base at Maalaea Harbor is restricted by the base flood elevation. Most of the Maalaea Harbor property is below the base flood elevation. The siting of the comfort station has to be designed and established in context of its functional and spacial relationships to existing harbor facilities and uses. And the strict compliance with the provisions of those sections of the code would prevent reasonable use of the property. There are three comfort stations throughout the harbor: one at the south mole where the new ferry terminal will be. There's also a comfort station at the head of the harbor near Buzz's Wharf Restaurant. And this comfort station is located in kind of the northeastern portion of the harbor so that spatially there'll be a convenient comfort station throughout the harbor and people won't have to walk a mile to go to the washroom.

And then the third criteria in terms of the variance justification is that the conditions creating the hardship were the result of previous actions by the applicant. The actions by the applicant really – the existing conditions at Maalaea Harbor were established to create a functional commercial harbor at that particular location at which through necessity needs to be close to the water. And the conditions were kind of preset in terms of the functional requirements of the harbor. Again, I'd like to just refresh the Board's memory to the flood elevation and the Maalaea Harbor property in relation to that elevation. This is where the 11-foot mean sea level elevation is. And as you can see, most of the property within the Maalaea Harbor is outside or makai of that zone or below the base flood level.

And it's not as though the Department of Land and Natural Resources is just seeking relief and not doing other measures to protect the building and the facilities at the harbor. As you can see from our application, the building is designed to withstand the tsunami forces so it has been designed for the location so that if there is a tsunami or a hundred-year flood that the building will withstand it. It's been engineered so it is a very strong and stable structure. Sometimes buildings below the flood elevation have breakaway walls so that the water will just go through. But this building has actually been engineered to withstand that. So it's a very strong building and a very safe building. I'd like to also note that the Board of Variances previously approved the variance in December of 2008. I'm sorry. It was December of 2008, not '09, for the Maalaea inter-island ferry terminal building and the three electrical buildings. And the justification for the comfort station is similar to the previous variances granted.

In terms of the staff report and the proposed conditions, if the Board does grant approval, the Department of Land and Natural Resources agrees to comply with all proposed conditions of approval. And we feel that the application meets all the criteria for variance approval. And just to comment on the staff report where they recommend denial because we don't prove hardship, the hardship is not really as stated in the report of complying with the American – the ADA requirements. We're saying that complying with the ADA requirements would make it difficult to do, but really the hardship is the location and the relationship of the harbor to the upland facilities, and that we really can't locate the comfort station outside the flood limit because most of the property is below the flood limit.

So thank you. I'd just like to say that the consultant's engineer, Royce Fukunaga; and the Department of Land and Natural Resources' representative, Marshall Sakai, an engineer with the DLNR are available to answer any questions that the Board may have. So thank you very much.

Chairman Endo: Thanks. Before we deliberate on this item, is there anyone in the public who wishes to testify on this agenda item? If so, please come up and sign your name on the clipboard at the desk. Seeing no one approaching, we will close public testimony as to this item and proceed to have questions and deliberation from the Board.

Mr. Tanaka: Mich, I have a question. In part of the report, just so that I'm clear, the ADA access issue, now, the facility will be ADA accessible?

Mr. Hirano: Yes, because it's at – it'll be built at grade, it's ADA compliant.

Mr. Tanaka: So the ADA issue would've been if they had to go up three feet?

Mr. Hirano: Yeah, if they had to go up.

Mr. Tanaka: Okay. Thank you.

Chairman Endo: I have a quick question, Mich. What is the status on the other construction? None of it's been built yet?

Mr. Hirano: Actually, Chair Endo, that's a good question. I wanted to mention that the contract was initially bid out in 2008 and it was protested. And that protest was accepted and they rebid it

recently in June. And the low bid was Hawaiian Dredging Company, but that contract has not been awarded. They're reviewing the bids right now. So they're hoping to get under construction as soon as possible. The funds are available and it came in at a very favorable sort of cost.

Mr. Tanaka: June of this year or June of--?

Mr. Hirano: This year, just last month, yeah. The bids closed on the-- Yeah, the bids were opened last week.

Chairman Endo: If there's no further discussion, the Chair will request that a Member make a motion either to deny or grant the variance.

Mr. Tanaka: I would so move to grant -- the granting of this variance as stated for -- the granting of this variance as stated. That it is a unique-- Help me out.

Mr. Tanner: It meets the criteria.

Mr. Tanaka: It meets all three criteria.

Mr. Tanner: I would second it.

Chairman Endo: Okay, it's been moved and seconded to grant the variance request. I assume that you mean that to adopt as your findings of fact the proposed rationale as set forth in the application of the applicant. Is that correct?

Mr. Tanaka: Yes, correct.

Chairman Endo: Okay. And are you going to add any of the conditions such as the ones proposed by the Planning Department staff on page 22 of their report, including four parts: A, B, C, and D? It's up to you. They include hold harmless, evidence of self-insurance, that the variance only apply to this matter, and that they comply with other County permits.

Mr. Tanaka: Yes.

Chairman Endo: Okay. So is that okay?

Mr. Tanner: So seconded.

Chairman Endo: Okay. So by consensus the motion is amended to include the four proposed conditions set forth on page 22 and 23 of the Department of Planning's staff report and recommendation. Okay. Discussion? All those of favor of granting the motion as stated to grant the variance, please say aye. Opposed, please say no.

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

VOTED: To grant the variance as stated.

**(Assenting: K. Tanaka, R. Tanner, R. Shimabuku, W. Kamai,
Stephen Castro, B. Vadla, B. Santiago)**
(Excused: R. Phillips)

Chairman Endo: **The motion is carried and the variance is granted as described.**

Mr. Hirano: Thank you very much, Members.

Chairman Endo: Now moving to Agenda Item C-2.

2. **RICHARD LOPEZ, JULIE VERMAAS, JOHN & SHARON KEVAN & BROWN REVOCABLE TRUST requesting a variance from Maui County Code, §19.30A.030 to allow an electrical utility pedestal wall within the 25-foot front yard and 15-foot side yard to exceed the 4-foot height limit in the County's agricultural district by 3 feet for property located at 70 Paia Pohaku Street, Launiupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-009:061 (BVAV 20100012) (Rescheduled from the June 24, 2010 meeting.)**
 - a. **Department of Planning, County of Maui's motion to intervene; memorandum in support of motion.**

Ms. Kapua`ala read the agenda item into the record.

Ms. Kapua`ala: And I also have a video for the Board. This is the utility pedestal wall in question, the two properties. We'll come back again and you can always ask me to play this again, if needed. Paia Pohaku Street. Awaiku is actually this way, going this way down here. Awaiku is where the Gronemeyers' and Segura residences are. Again, the subject property, the subject wall. This is where the property line is. So this lot is condominiumized. No, I'm sorry. That's wrong. The other lot is condominiumized and this is just one parcel. Again, Paia Pohaku Street. (Inaudible)

Mr. Huh: I do not know what the address is. Oh, yes, I believe there is one.

Ms. Kapua`ala: There's an existing ongoing investigation on this property. Their pedestals are above the four-foot height limit as well. I'm sorry. Is it called a pedestal?

Mr. Huh: Perimeter wall.

Ms. Kapua`ala: Perimeter wall?

Mr. Huh: Yes.

Ms. Kapua`ala: This is the back of the subject wall, electrical pedestal wall. There are four meters serving the two properties. Right about there is the property line. I believe this is the last shot of the video. Thank you. Oh, I could not find the pin, but according to the applicant's application, there is about two feet and some odd inches between this wall and the property. And I took this shot because when I was on the property, it was – one of the owners came to me and said that expanding the wall was going to be difficult because of that two feet difference. Expanding

meaning things would be the meters would be lowered, and therefore, to fit it all, the wall would have to be lengthened. Okay. Thank you. And, Board, we do have a motion on the floor by the County. Representing the County of Maui we have Ms. Madelyn D'Enbeau, Deputy Corporation Counsel, representing the Department of Planning.

Ms. Madelyn D'Enbeau: Good afternoon, Chair and Members. Yeah, the County Planning Department has made a motion to intervene. This afternoon, I filed an amended motion. The contents are exactly the same, but we realized that our caption was incorrect in some regards in terms of the various – names of the various owners. So that has been corrected. And that's why there's an amended motion to intervene, but the body of the motion is the same. The Planning Department seeks to intervene in order to present testimony and documents or evidence to have a full record for the Board of Variances and Appeals. And for your information, we've asked a representative from MECO to be here today; answer questions about the Maui Electric's involvement. And we will be calling on representatives of the Planning Department if we're allowed to intervene as well. We also requested the attendance of – two subpoenas of the developers, but apparently both of them, both Mr. Riley and Mr. Martin are off island somewhere. We request respectfully, excuse me, request leave to intervene in this matter.

Chairman Endo: So you're prepared to proceed if granted the motion?

Ms. D'Enbeau: Yes, we are.

Chairman Endo: Does the applicant wish to comment on the motion?

Mr. Richard Lopez: Hi. My name is Richard Lopez. I'm here on behalf of my wife and I, the Browns, Ed and Mary Jane Brown, owners of the property left of the video that you saw, and also John and Sharon Kevan who are the owners of the other condominiumized property that is part of our subdivision.

I don't understand why the County would intervene. We're not planning on filing any legal action. We're here to make a simple request that an existing structure that we did not put in remain because of the hardship that it would cause. I also brought a photo that would perhaps show the Members. May I give this to you, Trisha? We have the hedge cut back so that you could see all of the equipment there. So I guess I'm objecting to the intervention because I think it's a simple request that we ask the Board as members of the community to grant a variance for an after-the-fact permit for a wall that contains all of this equipment.

I'm prepared to present my testimony. I was given the packet by the attorney with all of her information just as she came into the meeting. I looked through it very quickly. I didn't see anything that, you know, I objected to. We may have differences of opinions on certain things. I have a letter from MECO. So I'm prepared to give that testimony. I don't know how you want to proceed at this point.

Chairman Endo: Have you – when were you first aware that the County was filing a motion to intervene?

Mr. Lopez: I think this goes back almost a year ago. Oh, to intervene?

Chairman Endo: To intervene in this case.

Mr. Lopez: Well, we were here for the other applicants for the variances so we knew that the County was going to intervene. I guess we're the first to actually have the variance heard and voted on.

Chairman Endo: If we were to grant the motion to intervene – well, actually, just–

Mr. Lopez: I'm not sure why this would become a legal thing when we're asking the community to grant a variance of something that we don't believe is harmful to anybody.

Chairman Endo: Well, just to clarify and we can ask Corporation Counsel to chime in also, basically the County is asking to intervene as a party to the matter so that they have a stronger procedural right to present more evidence the way they wanna present it to bring witnesses on and ask them questions. And you will be allowed to cross-examine and bring in your own witnesses. So it's more a matter of changing the format of the proceeding a little bit and giving them a little bit more opportunity to be heard. And so that's why they are intervening. It doesn't change the legal status of our decision either way. But what we would wanna do because the format changes, once we grant an intervention, if you felt that you needed more time to prepare because of this change, the Board might consider your request if you wanted to make one, but then again, maybe you don't wanna have to come again.

Mr. Lopez: Did you see this stack of stuff I have? I mean, it's been very stressful. And the amount of time has just been incredible. I think you need a Ph.D. in document preparation.

Chairman Endo: Has the County given you a list of who they're gonna call as witnesses?

Mr. Lopez: We've just received that.

Chairman Endo: Okay.

Mr. Lopez: I think we wanna proceed. We wanna get this over. We're all law-abiding citizens. I'm a former policeman. I worked with the County of Kauai as an investigator. Always tried to abide by the laws. We will do what we're requested. At this point, it would be a hardship.

Chairman Endo: Okay. So at this time we would like to just rule on the motion first to intervene, and then we'll deal with the matter in earnest. So questions from the Board to–?

Ms. D'Enbeau: Just a point of information . . . (inaudible) . . . the Chair had asked. We did serve the initial motion to intervene . . . (inaudible) . . . That was May 13th is the day . . . (inaudible) . . . Excuse me. We did serve the initial motion to intervene May 13th in anticipation of the earlier proceeding that Mr. Lopez had mentioned.

Chairman Endo: Okay. Any questions for the applicant or the County Department of Planning? No? Otherwise, the Chair would request that a Member make a motion either to grant or deny the motion to intervene.

Mr. Tanaka: I would move to grant the motion.

Chairman Endo: Oh, is that a question, Member Kamai?

Mr. Kamai: I'm just wondering as to the timeliness of the intervention. Was it filed timely?

Mr. James Giroux: Staff, can you clarify that for us as far as the filing date of the intervention? I believe our rules say that – it says "reasonable time," so there's no drop deadline, right?

Ms. Kapua`ala: The original motion was filed on May 13, 2010. The original scheduling of this variance was— What was your original hearing date? Was it May 27th? June 24th? Thank you. June 24th.

Chairman Endo: Okay. Let me interject first. We should actually see if there's a second first for the motion since the motion has been made to grant the motion to intervene. Is there a second?

Mr. Tanner: I would second it.

Chairman Endo: Okay. It's been moved and seconded to grant the Department of Planning's motion to intervene. Now, going back to Member Kamai.

Mr. Kamai: It's just that this Board has denied interventions in the past based on their timeliness and that's just what I wanted to clarify.

Mr. Giroux: Yeah, in accordance to your rules, it says that the intervention shall be served upon the applicant within a reasonable time before the meeting in which the subject matter of the intervention is to be heard. So that's as far as the – I believe staff mentioned that there was an original date that was continued to this date. And I believe according to staff that the original intervention was filed prior—

Ms. Kapua`ala: More than a month.

Mr. Giroux: Prior to the original date. So I guess it's up to the Board to interpret that as being reasonable. I think in the past where we've actually started taking testimony and people then filed interventions, I think we found that as not being reasonable. But the rule does allow people to file interventions all the way up to the time that there's a final vote on the matter. Once there's a final vote on the substantive part of the case, I think we would absolutely see that as not being reasonable.

Mr. Kamai: What about the amendments to the original motion?

Mr. Giroux: Usually in the law when something's amended, as long as it's not a substantive amendment, you would look at the first filing as being meeting the deadline. Usually in court, if there's major amendments, then that would trigger a different analysis.

Mr. Kamai: Substantive, what we received today when we arrived was fatter than what was in our packet.

Mr. Giroux: Yeah, that might go to more of an issue of scheduling the hearing in and of itself, but

not to the merits of intervention.

Ms. Mary Jane Brown: I'm Mary Jane Brown. I'm one of the people involved.

Chairman Endo: You want to say something? Please come to the microphone.

Ms. Brown: Well, I don't know if there's any ruling that you're talking about. We had to submit anything we wanted you to look at to the County in a certain frame of time. Once, they sent us a notification of intervention. They did not send us anything but handed it to us when we walked in the door today. That would be the only thing that I could see might be considered as untimely in this matter.

Mr. Lopez: Yeah, you can imagine the kind of a shock we feel when we're handed this packet by the attorney with a lot of materials. So it just didn't feel right.

Mr. Stephen Castro, Sr.: Did you have a chance to review any of the material?

Mr. Lopez: Only when it was handed to me here. I tried to go through it very quickly. I understand that you're saying that we can request a continuance because of that to study it or present anything else, but we've been so long with this, we really want to get it over. It's just been very difficult. And we're not trying to make anything difficult for the County or the staff. We just want to make a simple request. It's a wall. Yes, it wasn't according to the law, but we didn't build it. So I'd like to present my statement.

Mr. Giroux: As far as – you know, we're trying to narrow down the issue to – just the issue of whether the County's going to be in or out of these procedures, the amount of formality that both parties are allowed is able to be waived. So really, right now, we're just trying to reach the threshold of if the County enters into this as a party, all the rights of both parties are triggered. There's a lot of formalities that you can take advantage of, a lot of procedural things that you can take advantage of: cross examining of witnesses and such. It turns more into more like a legal type– It looks more legal. It's not more legal. It just looks more legal, but you–

Mr. Lopez: I feel like I have to go out and get an attorney to do this, and we're here for a board of our peers to hear this issue.

Mr. Giroux: But I just want to explain to you that all of the rights that you have you just have them. If you don't want to take advantage of them, you can waive them just as the County can decide to waive all of the procedural issues. And that's why we're asking you on the record, do you want a continuance? If you do, you have the right to it. You don't have to. You can waive that.

Mr. Lopez: We really don't want a continuance, but we'll leave it to your decision.

Chairman Endo: Okay. Well, as Deputy Corporation Counsel Giroux mentioned, we need to first decide the first question which is whether to allow the intervention or not. And then if we allow it, then we can address whether or not there's any concerns of prejudice of preparation or anything for the hearing. So further discussion on the motion to intervene? Okay, all those in favor of the motion, please say aye. Opposed, please say no.

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

VOTED: To grant the motion to intervene.

**(Assenting: K. Tanaka, R. Tanner, R. Shimabuku, W. Kamai,
Stephen Castro, B. Vadla, B. Santiago)**

(Excused: R. Phillips)

Chairman Endo: **The motion passes and intervention is granted.** So now, Mr. Lopez, we will have a more formal contested case hearing which just means rather than you're speaking there, we have you sit somewhere over here. You can call witnesses. You can pretend you're in a courtroom. And – but it's basically the same thing. And what we can do actually as a preliminary matter would be to– We have a list of witnesses and proposed exhibits from the County. And normally what we do is have them – they can go through and introduce all of them one by one, and we can go through a more formal procedure, but have you looked through the County's exhibits?

Mr. Lopez: We did look through the exhibits. I didn't see anything that I objected to.

Chairman Endo: Okay, so seeing no objections, we will allow – admit all of the County's proffered exhibits into evidence in the record. Now, do you have your documents, anything additional to what you've already provided that you want to give to us today?

Mr. Lopez: I'll present that with our statement, if that's okay?

Chairman Endo: Well, usually, we'd want to allow the County to take a look at it at some point also, but if you're not fully set, that's fine. Just whenever you have a new document that you want us to consider and have it part of the record, just make sure you give a copy to the Planning Department and–

Mr. Lopez: Yeah, I'm not sure I have additional copies. I will present the actual design as evidence.

Chairman Endo: Okay.

Mr. Shinmoto: Mr. Chairman, do you guys want to take maybe a five-minute break? You've been at it for a while.

Chairman Endo: Okay, we'll take a two-minute break, but keeping in mind that Member Castro has to leave at 3:30, so we want to move quickly. So we'll recess for three minutes.

(A recess was then taken at 2:58 p.m. and the meeting reconvened at 3:08 p.m.)

Chairman Endo: Okay, we're back in session. We're now ready to proceed with the contested case hearing. There are people who signed up to provide public testimony. And so I'd like to allow them to speak first, unless they want to be called as witnesses by one of the parties. It doesn't matter. Okay, so we'll open up public testimony. We have two people signed up. The first one is Mr. Frank Sylva. Mr. Sylva, you have three minutes to speak, and I'll let you know when your time is up.

Mr. Frank Sylva: Aloha, again. My name is Frank Sylva. I'm a resident of Launiupoko. I'm here in support of the – Sunny and – Richard and Sunny. First, let me ask you a question. I mailed a package to you, to the Chair. Did you receive my packet of my written document what I had for you and the minutes from the Council? I addressed it to the Chair and Could-Chair. Did you folks have received anything from me? I mailed it sometime in May because I was gonna be off-island.

Chairman Endo: Usually what happens is you're still mailing to the Board so then the Planning Department receives it. So, Trisha?

Ms. Kapua`ala: Yes, we did receive a copy in our record. Was it on your table when you came here dated June 14, 2010 regarding Sunny and Richard Lopez? The first page is called Public Hearing Testimony. And attached, like he said, are the minutes from the Maui County Council Planning Committee.

Chairman Endo: Oh, okay. I got it now. This is the one that's stapled? It's pretty thick?

Ms. Kapua`ala: Pretty thick, yes. Thank you.

Chairman Endo: We just got it.

Mr. Sylva: You just got it.

Chairman Endo: I think. Oh, no, maybe this was in our mailing. Was this in our mailing?

Ms. Kapua`ala: I think it was. I was notified maybe a day or two after the agenda was mailed out. So I think it was mailed out in a separate packet or it might have been on your table.

Chairman Endo: Okay. Yeah, we got it now.

Mr. Sylva: Today?

Chairman Endo: I think so.

Mr. Sylva: I mailed it about a month ago. Anyway, before I start, I just wanna bring one thing accurate that the County said that e-mailed me a letter was sent that I'm in compliance. As of this date, I didn't receive any. Zero. Although Kathleen Aoki said I was in compliance and a letter would be forthcoming, he mentioned today that I have a letter, an e-mail, till today, zero, I don't have anything in writing or e-mail, just for your information.

Instead me reading this to you, you already have it. I just wanna highlight what it is, how strong. Number one, when the Planning Department bring lawyers, my understanding of people for this variance here is when we have conflict with the County, to make it easy, you folks see us. But when we wanna present ourselves to you, they come in with lawyers. I just kinda – in my opinion, I no think as right. They not giving us the fair opportunity because we against what they doing. That's why we come here with you-issues with the County.

Just couple things I wanna highlight in my letter is that– Oh, before I start, thank you, Chairman, and all you Members for listening to our issues in Launiupoko. It says it's been very stressful for

us and thousands of dollars have been spent by individuals up in Launiupoko.

The last meeting I was here we talked about – some of you asked question about, oh, maybe MECO was at fault with their design. The developer was at fault. Some said maybe the County. In my opinion, in my judgement, is that three wrongs no make a right. MECO, if they at fault – I feel they at fault. I feel maybe the developer. But the ultimate responsibility lie on the County. If they had corrected the pedestal drawing, they had corrected us when we first call for inspection for our meters, this wouldn't have happened today. Why didn't they correct us ten years ago? Why they come to us today and say we in violation? They the cause of all this problems we all face up in Launiupoko. They got the lawyers. We don't. We working people. We not lawyers. Why didn't they correct us? If not, 40 or 50 or more people wouldn't be caught in this predicament.

Like I say, I complied because I was on the way to vacation. I was pressured by my other homeowner. I did comply. I don't have to be here. I am in compliance, but I feel very strongly in support of all the people Launiupoko with these pedestals what they going through. Believe me. It's real stressful. Really, really stressful. So again, if you folks have any questions for my letters, I'd be glad to answer them.

And you know when we delay this issues like this, this is what we go through. They ask for delay one month. I don't know how long, but their letters still forthcoming in violation. Correction by this date. Correction by this date. Is that their tactics so everybody fall in line? Well, let's face it. My pedestal cost us \$7,700 to be corrected. That's including the thousand dollars fine upon receipt of the letter with no – none negotiable on the first thousand dollars. So, you know, if they come – if they delay this for let's say, 30 days, amount: \$30,000. I mean, everybody gonna comply. To us, it's the fear factor. Am I gonna win? Are the Variance Committee gonna judge in favor for us or for the County?

Chairman Endo: Can you finish up?

Mr. Sylva: And one thing, let me mention again, I hope that all you Members use good judgement and good common sense, and put you folks' feet in our shoe, read the minutes with a – Council Members, all one hundred percent of the seven present said they gonna remedy this for the people. And they asked – they wrote to the, at that time, Deputy Director for Planning, Kathleen Aoki, to word it, make it pono, make it right for the people. Till then, they didn't. Now you tell me if that's fair. If they have no respect of the Council Members what kinda fair play they give us the people? To me, it's kind of – to me, it's arrogance in their part. They don't respect the Council's request. Who are we? We're nothing. I'm a retired person. Stomp on um. Let um cut down. Let um pay. I talked to another neighbor yesterday who said they give up everything on this. He paid for his rock wall, \$18,000. I give you the name, Dr. Kadohiro. And now they after him for his pedestal. You know, come on, is that fair when the Council said they gonna remedy this for us and they keep issuing their letter to us like this? Read the minutes from the Council. One hundred percent of the Council Members in support for us. Just to be sure, that was months ago, I called a couple Council Members.

Chairman Endo: Mr. Sylva, you're over your time limit. If you wanted to, though, you could ask Mr. Lopez to call you as a witness if you wanna speak more.

Mr. Sylva: Right on. Okay, sure.

Chairman Endo: But I have to cut off your time now.

Mr. Sylva; Right on. Thank you very much. Aloha.

Chairman Endo: Okay, next we have Mr. Gordon Firestein.

Mr. Gordon Firestein: Thank you. Good afternoon, Chair and Members of the Board of Variance. Thank you for this opportunity to speak. I'm here to respectfully urge you to approve this variance. We're in a similar situation with the pedestal in Launiupoko. Our experience with the Planning Department staff to date has been cordial and polite. We found them to be professional and competent. And we understand they're trying to do their jobs to the best of their abilities and enforce the laws as they understand them. Your role here as our last opportunity for relief is different from the Planning Department staff. It isn't just to determine the facts of the case. And it isn't just to apply the law and the kind of strict black and white by the book manner that is required of the Planning Department staff. Your role as citizens doing a valuable public service I believe is bigger than that. Our system of government is one of checks and balances. And this is clearly a situation where a reality check is required, and where some balance in the form of thoughtful judgement of perspective of common sense is sorely needed. This is your charge. In fact, you're the only ones who can play this role in this situation. This kind of case is exactly why we have a Board of Variance. Every law or ordinance carries with it the risk of unattended consequences in a situation that could not be foreseen at the time. And this one's no different. This ordinance was intended to prevent the blocking of views and no views are being blocked in this case. But the unintended consequences of the law are severe and unjust. Enforcing it in an automatic way without providing some check and balance simply punishes the innocent without doing anything to achieve the goals for which the ordinance was originally adopted.

I'm sure that if you look at the situation from this point of view, stepping back and considering the larger perspective, bringing your good judgement and humanity to bear, you will see that the group applying for this variance and the rest of us in similar situations are innocent bystanders caught in a Catch-22. This pedestal was built in good faith and in accordance with the requirements of the developer and MECO. In fact, MECO stipulated at the time that any pedestal that was too low would mean that power would not be connected. All of us in the situation are faced with substantial costs to correct the situation that was not of our making. The ordinance in question was not intended to create a situation like this, but that is the effect. Any objective observer given the same facts would conclude this is simply unfair. You have the opportunity perhaps even a duty using your judgement and common sense under our system of checks and balances to make this right. I respectfully urge you to do so today by granting this variance.

Chairman Endo: Are there any questions? Ray?

Mr. Ray Shimabuku: I have a question, Mr. Chairman. Mr. Firestein, do you currently have a notice of violation on your meter?

Mr. Firestein: Not a notice of violation, but a notice of warning. We have an application pending also for a variance.

Mr. Shimabuku: Okay, thank you.

Chairman Endo: Any further questions? Thank you.

Mr. Firestein: Thanks.

Chairman Endo: Is there anyone else in the public who wishes to testify on this agenda item? If you do, please come forward. After you're done speaking, if you could sign up on the sign-up sheet? And you have three minutes.

Unidentified Speaker: Okay, again, thank you, Mr. Chair and the Board. Just real briefly, again, I share a common with Mr. Sylva that it would appear that our arduous journey with this is at a near end. However, as I stated before, I don't want the Board and the Members to get me wrong. I'm here to fully support this variance as well as the ones that are going to follow it. I think this is wrong. And I'd like to ask— I think Mr. Firestein may have answered my question. If you could give me a quick education here because I am a common man, what was the original purpose and intention for this ordinance and law? Was it a view blockage, vista blockage? Does anyone know? Can anyone answer me that? Why is the law in place? Is that what it is?

Chairman Endo: Your testimony isn't allowed to be questions. So it would have to be rhetorical.

Unidentified Speaker: Okay. Okay. Well, let me put it this way. It's my belief if what I heard that that is indeed the reason behind this. And again, I haven't seen any notices of violation concerning landscape so – and I happen to be a landscaper. I am licensed in the State of Hawaii. So my argument is, what's the difference? I cannot have a wall exceeding a four-foot height in level because it may block a view, but on the other hand there's no setback that says I can't plant a 12-foot naupaka hedge or a 25 to 30-foot hedge of areca palms. I mean, that's basic. That's common sense.

Also, as far as the law and the ordinance, again, as Mr. Sylva stated, this has been ten years. I lived there for almost eight years before I received a notice. And we're talking about law and ordinance. If someone holds up a convenience store, believe me, the authorities aren't gonna wait eight or ten years to pursue that, so someone is at fault here. The blame needs to be dispersed. It's not these people standing and sitting behind me. It wasn't me. We caved. We did what we thought we needed to do. By all means, I am not a rich man. I'm up there on a song and a dime. And, yeah, it's gonna hurt me, financially. I got two small kids and whatnot. So again, I just urge you, do the right thing again, as Mr. Sylva has said. Look at this matter in great detail because again, it's – a lot of these owners are third and second owners of these properties. Had no idea what was coming. And again, remember, hedge, wall, not much of a difference. Thank you.

Chairman Endo: Any questions? No? Thank you. Okay, is there anyone else in the public who wishes to testify on this item? Seeing no one, we will close public testimony. And as far as his question, we can pose it to the Planning Department later on during the proceeding, or it can actually be asked during the witnesses' testimony. So, Mr. Lopez, do you know who you wanted to call as your witnesses?

Mr. Lopez: Well, I would call the other owners.

Chairman Endo: Because you can call yourself also because we're informal. I just have to swear you in if you just want to testify yourself. Okay. So how many do you have, approximately?

Mr. Lopez: Three.

Chairman Endo: Three? Okay. And then the County has approximately, two witnesses. Is that correct? So it's not looking too good that we're gonna actually finish today, but what we can do is, we can get started. And is there any special circumstance where any witnesses are gonna be unavailable later and need to go earlier than later?

Ms. D'Enbeau: We did call the gentleman from the Electric Company. (Inaudible)

Chairman Endo: Mr. Lopez, is that okay if we take the Maui Electric representative first?

Mr. Lopez: Yes.

Chairman Endo: Okay. Normally – since we know the background of your matter already, we can dispense with an opening statement unless you wanted to make some opening remark.

Ms. D'Enbeau: I would like to just lay a little bit of background if I could, but I know we're short on time, but I think there's testimony . . . (inaudible) . . . a little bit of background.

Chairman Endo: Okay, how about if we allow you no more than five minutes? And then, Mr. Lopez, if you want something similarly, it's up to you. Just sort of like an introduction about what you want prove with your testimony, what major points you wanna make.

Ms. D'Enbeau: Thank you. Essentially, the hearing memorandum that I passed out today is the opening statement. So you can follow along if you like because there's lots of dates and things in here, but just to lay the background, when Launiupoko first went in for subdivision approval of the two phases, was two phases of Mahanalua Nui, the Ag Ordinance had not yet been passed. Quick background here, in 1998 when they went in, when they purchased the land – excuse me, 1997, late 1997, Jim Riley and Peter Martin acting as Launiupoko Associates purchased 5,000 acres of former sugarcane land from Pioneer Mill. Okay, at that point in time, the County's position was land that was zoned interim could not be subdivided. Some of you may remember that. That's ten years more ago, but that was the position. And most of Maui County was zoned interim back then. So the zoning needed to be changed to agriculture only we didn't have an Agricultural Zoning Ordinance. So we were in a Catch-22. The Council worked very hard during those years to get an Agricultural Ordinance passed. And again, as some of you who were here then remember that probably. So that was taking place at the time that Mr. Riley and Mr. Martin were trying to subdivide these first two sections of Launiupoko.

So the Ag Ordinance as it eventually was adopted is very pertinent here because the Ag Ordinance called for a four-foot limit to walls within the setback. Ordinarily, no structures are allowed within the setback. Setback is defined and that's in my memo. I won't cite the ordinances, but a yard where you have a setback, nothing's allowed, no structures. It was an exception in the Ag Ordinance for ag zoned properties. You could have a wall within your setback, but no more than four feet high unless you got permission from the Public Works Director because you need it for

health safety purposes to contain soil or water. So basically, that's how the Ag Ordinance set up standards for the ag district. And this is all happening at the same time this application for a subdivision is in from Mr. Martin and Mr. Riley for the subdivision that these people live in today.

So when the subdivision application originally went in, it was the majority of four-acre lots for phase one, and some two-acre lots. In the matter – in the usual course of business, things are submitted to Maui Electric, Water Department, all the various departments to find out if there's recommendation for approval. And initially, I believe, Mr. Kauhi will explain this better than I can, but my understanding is initially, Maui Electric looked at the engineering drawings that were done by the developers and said, this is fine, good. But then right before they were ready to make their recommendation, they learned that most of the four-acre lots were going to be subdivided into two-acre lots. Okay, that's what I understand created the problem. There wasn't enough infrastructure to support the two-acre lots, and so they required the developer to tell the purchasers of the four-acre lots, if you're gonna subdivide, there's not enough infrastructure here for you to do that, and therefore, the only way it can happen is if the electrical meters are within a certain distance of the infrastructure that's already there. And then the people who build will be responsible to carry forward from the meters. And so just – I just wanted to say that a little bit before I ask the questions of Mr. Kauhi, and he can probably do a better job of explaining that than I can.

Then the specific property that's the subject of this application, and I hope I've got this right, it's somewhat confusing, but it was immediately – once it was purchased, it was immediately subdivided into two two-acre lots. One of those two-acre lots was later condominiumized. The original – so that there's actually – the County doesn't really recognize the condominium as a separate two lots, but there are two owners for the condominium. The other lot remains in the ownership of the original subdivider, as I understand, in any case. So everybody got a notice from the developers about this electrical situation, including drawings of a wall the developer wished to have to make it more attractive that they would group their meters together, and the wall would be a certain appearance and so forth. So I don't wanna take any more of your time. I know we're really pressed, but most of this information is in my hearing memorandum. And I'd like to call Greg Kauhi.

Chairman Endo: Before you do that, Mr. Lopez, did you wanna say anything?

Mr. Lopez: Yes, you know, again, in my opening statement I said that basically, we're not contesting that – you know, it seems like we're trying to put blame on somebody for this and that may well be. What we're asking is that we just put that aside because this was not our responsibility and we're just asking simply to receive a variance for a wall that does not comply. Okay?

Chairman Endo: Okay. Thank you. Okay, so at this time, I'll inform all of the witnesses that we're gonna swear you in, and although this appears to be an informal proceeding, the Board is empowered by law to swear people in, and your testimony, your sworn testimony, subject to liability if it's untrue. Is that correct, Mr. Giroux?

Mr. Giroux: I think what's Randy trying to say is don't lie to us.

Chairman Endo: So, Mr. Kauhi, would you please raise your right-hand? Do you swear or affirm that the testimony that you're about to give is the whole truth?

Mr. Greg Kauhi: Yes.

Chairman Endo: Okay. Thank you.

Ms. D'Enbeau: Could you state your name and your occupation for the record, please?

Mr. Kauhi: My name is Greg Kauhi. I'm the engineering manager for Maui Electric.

Ms. D'Enbeau: And, Mr. Kauhi, are you familiar with the circumstances you heard me describe earlier about the subdivision in Launiupoko, Mahanalua Nui?

Mr. Kauhi: Yes.

Ms. D'Enbeau: And can you explain why the infrastructure, briefly, in lay terms why the infrastructure would've not been sufficient for a further subdivision of those four-acre lots into two-acre lots?

Mr. Kauhi: Okay. When the developers came and approached us, they told us they had so many lots in phase one . . . (inaudible) . . . and the last . . . (inaudible) . . .

Ms. Tremaine Balberdi: Can you see if that's on? I'm sorry.

Mr. Kauhi: Okay, so when the developers approached us, they brought us what we normally require which is a subdivision map. When they do bring us the subdivision maps, based on what they provide us, we will then make that sure we design the system to handle the infrastructure we needed to provide the proper service you require at your homes. That was based on two houses 'cause County Code only allows two dwellings on a piece of property. So based on that, we designed the system for two residences. Okay. After we completed the design, after the developer had installed the infrastructure, at the very back end of the subdivision is when they told us these lots are subdividable; therefore, we now go from two homes per lot to four homes per lot. That is double the infrastructure required in order to provide the proper electrical power you need for these homes.

So we then redesigned the subdivision, approached the developer and said, you need to change your infrastructure that you have already just installed, take it all out, and redo it in order for us to provide the proper power to each home and have the meters on your homes. Okay. And it's not because the meter reader is lazy to walk 300 feet up to your house and read your meter. So when you approach the developers, that means that their cost for the electrical infrastructure has just gone up by one hundred percent. And they have already invested that money in the infrastructure that's there in the ground. So like anything else, the developers will approach us and ask us how can we keep what we have done already so we don't get any more costs because if the cost is added to the infrastructure and then redo all infrastructure that would then mean the end product which is the lots that they're gonna sell to customers is gonna go up. So we came up with the only way we can stay in tariff, and meet the requirements, and tariff is the law that the meters have to be located at the front end of all the properties. They agreed.

The walls that these people have is not our design. We have documentation that we asked the

developer to provide us structural drawings of the wall that you want, and if you recall, most of them have what? A rock wall facade. Maui Electric don't care how nice your wall looks. That was provided by the developer. That's their requirement. Bundling the meters had to be by the developer. They didn't wanna see meter sockets or meter pedestals on every lot. So they decided to bundle it, which is why you have one set of meter walls that provide power to two lots or three lots. It's their decision. We just said, our minimum requirement, the meters have to be up front.

Now, if we were told by the developer that the Planning Commission had a ruling that stated that the only way you can have a wall taller than four feet would be beyond 25 feet, we would have allowed that. They never notified us. From what we understand, they knew about it, though. We just weren't just informed. Same way we weren't informed that the lots were subdividable until the back end. And this the history.

Ms. D'Enbeau: One question, Mr. Kauhi, you mentioned toward the front of the lots. Can the meters be 25 feet? Could they have been beyond the setback so they wouldn't have been an issue at all? They could be as high as—?

Mr. Kauhi: Yes, we would've allowed the meters to be back 25 feet just to make the requirement.

Ms. D'Enbeau: That would've met the tariff requirements.

Mr. Kauhi: And one thing, when we found out about this which is late last year, Maui Electric decided to make what we call waivers to our requirements. And we have then notified the Planning. We were contacted by the Planning Commission to let us know that we're — our meter pedestals were then — were in noncompliant. And then if you recall, some of the homeowners have actually redid their walls. Our requirement for our meters is at a five and a half-foot height which means will exceed the four-foot wall. We have allowed, knowing the situation with the homeowners, to lower our requirements. So we have provided that. That's why some of them have been able to comply. And we're still willing to do that and work with the homeowners in order to have them comply to the law. Unfortunately, as they stated, it comes at a cost.

Ms. D'Enbeau: Thank you very much. I don't know if Mr. Lopez has any questions.

Mr. Lopez: I do. Mr. Kauhi?

Mr. Kauhi: Yes?

Mr. Lopez: You recognize this drawing here?

Mr. Kauhi: Yes.

Chairman Endo: Excuse me. One second. Just let the record reflect that Member Castro has to leave now. Go ahead.

(Mr. Castro left the meeting at approximately, 3:41 p.m.)

Mr. Lopez: Okay. Could you read the bottom of that line, please?

Mr. Kauhi: I agree. We provided that only because of the fact that the service request from all homeowners come to us. It doesn't go to the developer, but on record—

Chairman Endo: Hang on one second. Hang on one second. We need to know what you're referring to 'cause the transcript won't say.

Mr. Lopez: Well, in his testimony, he said that—

Chairman Endo: No, no, no, the document.

Ms. D'Enbeau: We have it here. It's Exhibit B. So if you wanna use that document— Isn't that the same?

Mr. Lopez: That's the same one.

Ms. D'Enbeau: It's a portion of Exhibit B from the County.

Chairman Endo: Okay. Go ahead.

Mr. Lopez: Basically, I thought I heard him say that they did not provide the drawings or the pedestals.

Mr. Kauhi: No, I said we did not design it. What we— We not building people. And what we do when we talk to our customers is there's several codes that everybody must follow. What is built — anytime you build a structure in the County of Maui, you need to take out a building permit. Well, we don't do building drawings. We do electrical.

Mr. Lopez: It's very confusing for us because this drawing on the bottom says "Maui Electric Company."

Mr. Kauhi: That's true.

Mr. Lopez: A concrete pedestal. It is a drawing that was followed apparently, by our previous builder.

Mr. Kauhi: Yes, but what we did is request of the developer to provide us with the wall configuration which then we took that information, put it on our Maui Electric thing so that we could pass it out to the homeowners so everybody build it the same way, and on record we have — actually, it was done by Satish.

Mr. Lopez: Okay. I also would like to submit into evidence a letter here from Maui Electric Company. Was that also in —one from Ralph Kubota, Land Agent, from Maui Electric Company?

Chairman Endo: What's the date of the letter?

Mr. Lopez: This letter is dated May 3rd 2001. It's addressed to Mr. Donald Johnston, Donald B. Johnston. I don't believe they have it. I have received it from a homeowner who is in the same

position we are. Actually, this is part of Mr. Firestein's submittal, I believe. And we could get copies of this to you, but at the bottom of the letter, Mr. Kubota states:

By copy of this letter, Launiupoko Associates LLC is advised that all future meter pedestal installations within the Mahanalua Nui Subdivision shall comply with a MECO approved standard pedestal detail. No further exceptions shall be made.

This is part of our problem. And again, I'm not trying to—

Chairman Endo: Okay, Mr. Lopez, right now – I mean, you can make – give your testimony, but for now, we need – you need to focus on only asking Mr. Kauhi questions. You can provide your own testimony later on when I swear you in.

Mr. Lopez: Okay. Had you seen that letter? Were you aware of that letter? Do you know Mr. Kubota? Is he still employed with the Maui Electric Company?

Mr. Kauhi: No, he's not.

Mr. Lopez: (Inaudible) No further questions.

Chairman Endo: Okay. Unless there's any rebuttal questions, which I don't think there are, I'm gonna allow the Members of the Board to ask Mr. Kauhi questions. Go ahead.

Mr. Tanner: On the drawing that we're talking about here, my understanding from you is Maui Electric's portion of this drawing is really just the electrical portion that the pedestal, that the concrete footing and stuff, that was information provided by the developer. You just used that to kind of overlay for your electrical?

Mr. Kauhi: True, because as a customer, you come in and you see one person, which is Maui Electric. And then you ask us how do I get power? Several things. Even when you do your house, you come to us and you tell us, I want power and we gotta then work with your house plans in order to make sure you comply to our requirements. So we touch a little into Building Codes and stuff like that, but if we know what the rules are, then we will make sure we try to comply. In this case, what we didn't know is that there was a four-foot minimum height and that the only way it would work would be beyond the 25 feet. So guess what? Because of that, and now we're educated about that, we're making sure that anybody building in an ag zone subdivision know the requirement, but it's beyond us. It's not our job to actually manage Planning Commission rules and regulations because we don't get the letter. We are not the developer. The developer gets the requirements and the letters from the Planning Commission upon the approval of their subdivision. If we provided that, maybe we would know, but we are not the police of this ordinance. We just police our stuff and we just tell them what we need.

Chairman Endo: For the record, you said "four-foot minimum." You meant "four-foot maximum?"

Mr. Kauhi: Maximum, four-foot maximum.

Chairman Endo: Okay. Any further questions?

Mr. Shimabuku: Mr. Kauhi, what is the main purpose of having the meter height at a minimum of 5'6, maximum of six feet?

Mr. Kauhi: For most of the cases, the reason why is over time, over history of doing what we do, okay, the company has learned through history that the better height for the meter socket to be managed, because we do have to – every so many years, we actually replace your meter socket – I mean, I know we go to your house and we change it. Or in some cases, you have an electrical problem which then requires our what we call trouble man to go and manage. We find that five and a half feet is about the right height so that our people because if you read the tariff, and in the beginning of the tariff, it states that as a public utilities we need to not only manage the safety of our employees but the safety of our – of the general public. So in the safety of our employees, basically to deal with back issues, we find that five and a half feet is right.

Mr. Shimabuku: So now that you are allowing it to be at a lower rate as some pictures had been shown to us, in your opinion, would that become a safety issue in regards to back injury, personal injury, any kind of hazard because the glass of the meter is at a lower height that can be subject to damage or safety issues with customers and bypassers?

Mr. Kauhi: Yes, that is also always a possibility. So what we will do in-house is notify the personnel that have to deal with that what they are dealing with so they can prepare themselves ahead of time go into that. What you don't wanna do is have 80% of the meters all be at that height. So in most cases, most of our meters are at the correct height where we can work at and just a few that aren't. And in those that aren't, we notify our personnel to make sure they are prepared to know that they're gonna work with a short meter. Maybe we'll send a short man.

Mr. Shimabuku: Okay, so up until today, you are still requiring minimum 5'6"; however, you are allowing meters to be lower than the 5'6"?

Mr. Kauhi: Well, we make an exception for Mahanalua Nui Phase One. We know that's where it started, but I'm understanding now that in some cases, there are some owners in Mahanalua Nui Phase Two that might've done the same thing. Okay, but it wasn't a requirement for Mahanalua Nui Phase Two, so they must've did it on their own, but–

Unidentified Speaker: (Inaudible)

Chairman Endo: Don't get into a conversation with the public, yeah. Any questions?

Mr. Shimabuku: Okay. No further questions.

Chairman Endo: Okay. Any other questions?

Ms. Vadla: I have a question.

Chairman Endo: Sure.

Ms. Vadla: I'm a little confused. Back in the development stage, you had stated that the developers came in and gave you a set of plans of the development and the four-acre parcels. And then as

time went, you designed the infrastructure and got it all finished to your specifications into the power consumption. And then they came – who came back and said now they're gonna be divided into two acres?

Mr. Kauhi: The developer.

Ms. Vadla: So they didn't know that from the beginning?

Mr. Kauhi: They knew that from the beginning. They just didn't mention it to us. So what happened is at the back end when after we do our inspection of the infrastructure, we then say, okay, you're okay. You built it according to the way we designed it, and now we're at the point where you're gonna pay us, and then we're gonna go out and install the electrical system. At that point is when they said, oh, by the way, these lots are subdividable and can be broken down into two two-acre lots.

Ms. Vadla: So would that have been a moot issue if they would've told you that at the very beginning? Would you have designed to where this trouble wouldn't have happened?

Mr. Kauhi: Right. And I believe they would have actually built the subdivision if they had notified us up front correctly. What became the problem is, and what people don't realize is, whenever you remove something, there's a cost to it. It's not free. Somebody gotta get paid to remove it. So for them, they had to remove part of the infrastructure that they just had built. That comes at a cost. So that removal cost and then the rebuilding cost is what they could not accept or did not want to accept because it's more cost.

Ms. Vadla: Well, that was on their mistake, though.

Mr. Kauhi: Yes.

Ms. Vadla: I just have a problem with the developers not being up-front about it. I mean, maybe it should maybe be going back to them.

Mr. Kauhi: Maybe.

Mr. Santiago: I have a question. You stated in your testimony, in your statement, that these pedestals were designed for one meter, or the specs that you folks put forward as far as MECO is concerned was designed for one meter?

Mr. Kauhi: No, I stated that we would allow each lot owner to have their meters in front of their lots. In other words, if I had a four-acre lot, and I was only gonna put up one meter, I would build only one house on four acres and never subdivide, then my meter would be up front for one house. Okay. Being that it was subdividable, we just said the meters just gotta be up front. It doesn't matter where up front as long as it's up front. Okay. The developer decided that they didn't want it and have all these meters up front anywhere that the homeowners wanted it. Why? Because they trying to sell a product. So they decided that they wanted the meters to be grouped so they can have less meter pedestals. You can ride along the street and if you have 50 homes on that street, you going have 50 meter pedestals as compared to grouping them into groups of what?

Three. And you now have 20 meter pedestals instead of 50 meter pedestals. And so we have specs.

Chairman Endo: Any further questions? Bill?

Mr. Kamai: Mr. Kauhi, if you could look at Exhibit K, please? It shows – it has a picture of this handsome inspector who's measuring this wall. But if you look at the last page, and you see all the meters that's located on the wall, yeah, now, I'm no electrician or work for Maui Electric, but it seems like all that pipes, boxes, glass needs to be there. Is that right?

Mr. Kauhi: Okay. Let me answer this as easy as possible. Whenever you do construction and you go out and get bids for your home, doesn't the electrician come in and you go and get bids from three different electricians? They not all the same, right?

Mr. Kamai: Right.

Mr. Kauhi: And you know why? Because each electrician will then determine what equipment they gonna purchase for your home to make it work. There's several different ways you can do it like plumbers. You have a plumber come plumb your house, you can have one plumber that do it for two thousand and one plumber that does it for three thousand. Ultimately, what happens? It works. The two thousand-dollar guy or the three thousand-dollar guy will make it work. What the difference is how they do it, how they build the manifold, what equipment they purchase. So the equipment you see here is not by our choice. We just say you need what we call a self-contained, single face, meter socket. And if you go to Wal-Mart – not Wal-Mart, say you go to Home Depot and you ask the guy you wanna know a single face, meter socket, he'll show you seven. Look at the price range, they can go from anywhere for \$125 to up to \$500. They're the same thing. So what you see there is not what we say you need. All we say you need a meter socket so we can put our glass meter in it. How you do it is up to each electrician. The more equipment they buy, the more it costs you. They could also do it simple and make it a lot easier, yeah. So, yeah.

And that wall is so huge because part of the equipment is not required by us, but the equipment is required by the electrician. After – you have power or requirements before the meter, and then you have requirements after the meter. The requirements before the meter is us, Maui Electric. The requirements after meter is the County of Maui. So it depends on what you are doing.

At this moment, they have four meter sockets, so I can assume right now, there's four dwellings on that property. So you're gonna have the main dwelling by code for each of the two-acre lots, right? And then you can have an ohana dwelling. That's automatic because that's by code. That's not my code. That's not this Planning – oh, it might be Planning Commission's code or Zoning Code, but it's by code. We didn't make the code. We just try to comply with it. So, yeah, I saw the equipment. And I know there's a lot of equipment, but every meter pedestal wall is different.

Have you ever gone up to Launiupoko? They not all the same because we go back to the difference of it depends on who the electrician is and what the electrician is required to do to meet the requirements of what the house uses. All the houses are different. Some houses probably draw two and half PW load, and others probably draw five. It all depends. It depends on how much – how big – how much you have for your A.C. and how often you run it. That'll determine the size

of your cable, determine on the size of your breakers. It'll determine a lot of things. The electrician gotta take that into consideration to make sure by County Code that states that your breaker and all your equipment that's in your home must be designed to connected load. Connected load means that every outlet in your house, every light in your house, and every appliance in your house is all on at the same time. That's connected load. We don't design by connected load, but that is connected load, and that's County Code. So you wonder why you have in some cases some people have 200 amp break . . . (inaudible) . . . as their main breaker because your total connected load equals 200 amps.

Mr. Lopez: May I ask a question?

Chairman Endo: Hang on one second. Okay, are you done, Bill?

Mr. Kamai: No.

Chairman Endo: You got one more question?

Mr. Kamai: Yes.

Chairman Endo: Okay, go ahead.

Mr. Kamai: So ultimately, it's Maui Electric who looks at the meter sockets and gives their approval that it is – it meets your folks' standards?

Mr. Kauhi: Yes, we would inspect the meter socket.

Mr. Kamai: Anything else that's on that wall besides the meter sockets?

Mr. Kauhi: In most cases, where our cable goes. So in regards to this photo, we'd probably be the what we call splice cans below the meter socket because we would . . . (inaudible) . . . our cable in the splice can.

Mr. Kamai: And that would mean that the power to that lot or house – I guess just the meter socket itself is what you look at?

Mr. Kauhi: Yes.

Mr. Kamai: And that splice can is adequate to supply that meter?

Mr. Kauhi: Yes. And 12 years later it should be working fine, right?

Mr. Kamai: And that 5'6" height, you guys arrived at as – arrived at that height because it's safe, ideal, reasonable?

Mr. Kauhi: Yes, reasonable.

Mr. Kamai: What would you consider unsafe: a tripping hazard, maybe; flood damage?

Mr. Kauhi: No, I don't consider flood an issue. And the reason why I don't consider flood an issue is because this County and many people are of the opinion that we should go underground. So if you put anything underground, any water on the surface is gonna be a flood consideration for us. So the system is designed to be it could handle some portion of water. If the system fails because of water, then it's probably due to us not doing the right maintenance. That's off the subject.

In regards to your other question, though, I will say anything lower than three feet would be in my opinion, a safety hazard as far as meter heights 'cause the minimum height we allow for meters is three feet, but the difference is we allow it indoors and not outdoors. So it would be in like the a meter closet. So if you go to commercial buildings or condos, you might see – if you go into the meter room, you might see a whole wall of meters. They will range from five feet to four feet to three feet because it's a . . . (inaudible) . . . We usually do it indoors. So when we said we would allow them to be lower than five and a half feet, which is outdoor, we were basing on the fact that we do have meters at that height, but we wouldn't wanna go lower than . . . (inaudible) . . .

Mr. Kamai: Ideally.

Mr. Kauhi: Yes.

Mr. Kamai: Or anything mount exterior.

Mr. Kauhi: Yes.

Mr. Kamai: Every one on those meter sockets, there's a piping above it, and it feeds into a – what do you call that?

Mr. Kauhi: The one above is called a gutter.

Mr. Kamai: That can with the pipe connected to the can above?

Mr. Kauhi: Yeah.

Mr. Kamai: Is that a standard thing?

Mr. Kauhi: For electrical, yes.

Mr. Kamai: Okay, so if you got your meter socket at three feet, what would you say that that can would be?

Mr. Kauhi: Don't know.

Mr. Kamai: Can it be mounted–? Is that pipe necessary or can it touch the meter box itself?

Mr. Kauhi: The requirement for us is we need six-inch clearance above the glass. It can get lower, okay, if they want to, but you're trying to do engineering here for this particular set. What would happen is if they decided to actually hire an electrician, the electrician will make sure several things. They will make sure that it complies to us. They'll check with us. And the other thing they'll make

sure is that it complies to County ordinance, which then means – and then it also has to meet another item, which is beside of the fact . . . (inaudible) . . . to make sure that they get the power that they need in their house, because you can actually short change somebody and then all of the sudden when you go home, you turn on some switches, some things go off. You don't want that going on in your house. So it depends on your electrician. The electrician can eliminate the gutter, but you may have to make amends or different criteria in order to make it work at ultimately where? At the home.

Mr. Kamai: So ideally, three feet would be the top of your meter socket, the glass?

Mr. Kauhi: No.

Mr. Kamai: What?

Mr. Kauhi: Three feet goes to the center of that glass meter.

Mr. Kamai: Okay. And then six inches above the glass?

Mr. Kauhi: If anything, any obstruction whether it's a roof, it's a gutter.

Mr. Kamai: So that would be your minimum wall – has to be at three feet?

Mr. Kauhi: So we're okay with four feet. We can make it work, but it depends. The electrician may have to review what he has to work with in order to determine what he's gotta do, what type equipment he's gotta use in order to reconnect that house. What you going actually do is divorce all power to the house. That's what you gotta do. He can't do it hot. And he can't do it in the same spot. So the first thing he's gonna do is call us up and say disconnect. Disconnect the whole thing and that house has no power. If he doesn't finish it within a day, they go home with no power. He's gotta have several things. Not only he gotta rebuild all that, he gotta remove that plus rebuild it, and not cut the wall. He can cut the wall later. What he's gonna do is lower that to the height requirement that is needed. After he does all that, he has to do it by the end of the day before they come out. Now, if he can't make it, they go home to no power. And if he can't get the County approval by the end of the day, right, then we don't go back and hook up. Why? Because tariff says we have to have County approval before we go back and we install. And County law says we need County approval. So we try to balance everything. We try to meet everybody's rules and regulations. So it's not easy, but it can be done. And it's not easy. I . . . (inaudible) . . .

Chairman Endo: Okay. Members, any further questions?

Mr. Kamai: No.

Mr. Santiago: I do have a question. I'm trying to establish a timeline in my mind. This schematic, the drawing, that depicts what the wall and the measurement, the height, '7, which was provided to, I guess, Mr. . . . (inaudible) . . . from Ralph Kubota, was the intent to provide him guidance of how the wall was to be constructed, the size of it, placed beyond the 25-foot setback?

Mr. Kauhi: No.

Mr. Santiago: No.

Mr. Kauhi: The information we provided had nothing to do with the 25-foot setback. We didn't know about it. Okay. So what we provided is you need to build a wall so that we can mount your meter socket to it so that you comply to the limitations of the infrastructure in the subdivision. It had nothing to do with the setback. We're saying when we did this design, you are stuck with the fact that your meter gotta be up front, unless the developer decides to redo all the infrastructure and make it reasonable for each homeowner to now have the meter at their house. The developer said no, so what we did was say this is what we're gonna say you need to do minimal in order to get power from us, and that included guidance to how you build your wall. You could've made it much bigger, much wider. We don't care as long you did the minimal requirement of putting up a wall for us. Now . . . (inaudible) . . . change the code, but it used to have a code on the electrical side they said they had to be noncombustible. Now if you had to put electrical on the noncombustible wall, what is noncombustible? CMU.

Mr. Santiago: That's a lot of technical stuff. But my – what I'm trying to establish in my mind is how we got to the seven-foot wall that's noncompliant based on the agricultural zone or laws that were enacted that said – mandated a four-foot wall. So this schematic was issued – dated February 10, 2000. So I guess my question is when was the agricultural zoning or–?

Mr. Kauhi: I believe it was 1998 when the law was passed.

Mr. Santiago: And when the meters were installed, it would've been permitted also by the County with a seal of approval that it's okay?

Mr. Kauhi: . . . (inaudible) . . . here now based on what they're going through is the fact that the law was in place in 1998, okay, which then said that when they did the subdivision . . . (inaudible) . . . 2001 is when we completed. The law was already in effect. Okay. The problem is that we didn't know about it and we weren't informed about it. If we were, we probably would've made some changes and adjustments so that we would comply, but we didn't know about it. So we found about – actually, we found out about this law last year.

Mr. Santiago: So I guess my question is when the wall's constructed, the meter is installed, is there a permitting process for this by the County?

Mr. Kauhi: Yeah, building.

Mr. Santiago: Once the meter's installed, it's permitted or – permitted at the front end or the back end?

Mr. Kauhi: They have to be permitted at the front end, always at the front end. (Inaudible) Permits are at the front. Okay.

Mr. Santiago: But they need to inspect it on the back end to also give it a seal of approval?

Mr. Kauhi: Right.

Mr. Santiago: Okay. I'm clear. Thank you.

Chairman Endo: Any further questions from the Members for Mr. Kauhi otherwise I'm gonna allow very quickly because we're running out of time and we're gonna have to stop already. Mr. Lopez, you wanted to ask a followup question?

Mr. Lopez: I just had a quick question for you. If we were required to put the meters on the home, or move them in this case across two driveways to the other property, the lines would not be installed by Maui Electric. Is that correct?

Mr. Kauhi: . . . (inaudible) . . . clarify. Maui Electric will install equipment up to the meter. If the meter moves from where it is to your house, then the power from the roadway to your house then becomes our cable and our maintenance, but there's a cost to it. Right now the way it is and the way your homes are designed, the cable from your meter socket to your home belongs to you. Okay. If you base on what was happened or what the current County Codes are, you had or you purchased a property that installed copper wire because County Codes requires that from— The meters we allow to install is what we call aluminum. Aluminum cables are cheaper than copper. County Code requires you to install copper so you paid good money for it on that. . . . (inaudible) . . . in the price that you purchased it. So actually you bought the copper cables. You can remove it, if you wanted, but I wouldn't because it's a better cable.

Mr. Lopez: But would the County install the meter on the home with our lines in there, or would you require that your lines be installed, and we would have to pay for it?

Mr. Kauhi: Okay. It has nothing to do with electrical. You'd have to pay for it. And yes, there's a reason. For Maui Electric to accept or own ownership of properties owned by someone else, but it's County, State, or homeowners, we have to do a transference. We have to accept what you have. In other words, you have to deal with the . . . (inaudible) . . . And what it takes is more paperwork than it's worth because we are a regulated utility company which by law we can be audited any time by the PUC. Therefore, in— Like the County. The County has risk management issues that they have to deal with all the time. So in order for us to accept your cable, we have to do the proper thing. We have to then have a bill of sale. We have to go through our lawyers, make sure the language is correct, and move that asset into our asset. So all of that might require that we have to then file with the . . . (inaudible) . . . application with the PUC, just to let you know. It takes us three months to actually do a PUC application. And it takes the PUC six months to actually accept. So you're talking nine months and you may get a rejection.

Mr. Lopez: That was our understanding.

Chairman Endo: Okay. Any further questions? Otherwise, what we're gonna do is let Mr. Kauhi go. Thank you very much except he talked so much that now we have to end. And hopefully with the other witnesses would go much faster, but we won't be able to finish today, so we'll need to continue the matter. And I'll ask the Planning Department for a new date.

Ms. Kapua`ala: If the Board – if it pleases the Board, we could probably go on to the next scheduled hearing date which a special meeting, July 29th. You are scheduled to hear Mr. Wisthoff's variance again, which the County has been allowed to intervene in that case. So we could continue this

matter as well as take up the new item which is the contested case for Mr. Wisthoff on the 29th. Other than that, it would be August 7th? I'm sorry, August 12th.

Chairman Endo: Okay, do the parties have any preferences?

Mr. Lopez: The neighbors aren't gonna be here . . . (inaudible) . . .

Chairman Endo: So you like the July 29th date? How about the County?

Ms. D'Enbeau: That's fine.

Chairman Endo: Okay.

Mr. Lopez: Can we go first so we can finish?

Chairman Endo: Yeah, we'd let you go first. Okay, so that's it then. We will continue that matter to the – this matter to the 29th. Alright. We'll table all the rest of the items or you wanna finish up?

Ms. Kapua`ala: It's just adopting of the minutes, the Director's report, which is the update, which really there's no update, and the next meeting date.

Chairman Endo: Okay. Does anyone wanna approve the minutes?

F. APPROVAL OF THE APPROVAL OF THE MAY 27, 2010 MEETING MINUTES (Deferred from the June 10, 2010 meeting.) APPROVAL OF THE JUNE 10, 2010 MEETING MINUTES

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

VOTED: To approve the minutes as presented.

**(Assenting: R. Tanner, B. Santiago, R. Shimabuku, W. Kamai,
K. Tanaka, Stephen Castro, B. Vadla)**

(Excused: R. Phillips)

Chairman Endo: **The motion is carried and minutes are approved.**

G. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases


H. NEXT MEETING DATE: July 29, 2010, Thursday

Chairman Endo: The next meeting is July 29, 2010. The meeting is adjourned.

I. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 4:18 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
Ray Shimabuku
Rick Tanner
Bart Santiago, Jr.
Steven Castro, Sr.
Bernice Vadla

Members Excused:

Rachel Ball Phillips

Others:

Aaron Shinmoto, Planning Program Administrator, Planning Department
Francis Cerizo, Staff Planner, Planning Department
Sonny Huh, Zoning Inspector, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel