

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
JULY 29, 2010**

**(Approved: 8/12/2010)**

**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, 1:59 p.m., Thursday, July 29, 2010, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Chairman Randall Endo: Good afternoon. This meeting of the Board of Variances and Appeals will now come to order. It's July 29<sup>th</sup>, 2010, and it is 1:59 p.m., and we have a quorum present of five Members of the Board.

If there's no objection from the Members, the Chair suggests that we proceed with Unfinished Business in order to finish up a contested case hearing for Mr. Richard Lopez since we were in the middle of testimony. That way we'll hopefully finish up with that matter and then jump back to Item B-1. Is there any objection from any of the Members? Okay, hearing no objections, we will call Item C-1 first.

**C. UNFINISHED BUSINESS**

1. **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, Laniupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-009:061 (BVAV 20100012) (Deferred from the July 8, 2010 meeting.)

Chairman Endo: Okay, at this point we would like to continue taking testimony. As you recall we had Mr. Kauhi testify and we completed his testimony at the prior meeting. We took him out of order even though he was a County witness because he had a scheduling issue, but at this time, we'd like to switch back and go to the applicant's witnesses. I believe you have about three witnesses?

Mr. Richard Lopez: Yes, sir.

Chairman Endo: Okay.

Mr. Lopez: Good afternoon, everybody.

Chairman Endo: Pardon me?

Mr. Lopez: I said, good afternoon, everybody.

Chairman Endo: Oh, good afternoon.

Mr. Lopez: For your time again. So the witnesses I'd like to call are residents of Launiupoko, Mahanaluia Nui. And they have information that we're sharing. I believe you have copies of the Sol Kaho`ohalahala letter and a letter from MECO. I'll call Frank Sylva first.

Chairman Endo: Before we begin, the applicant has provided three new exhibits which they have shared with the Deputy Corporation Counsel. Is there any objection from the County to admitting these into the record?

Ms. Madelyn D'Enbeau: There's no objections.

Chairman Endo: Okay. Mr. Lopez, do you remember whether or not you submitted exhibits already?

Mr. Lopez: We have the packet with the application, and then I believe the one that has the Launiupoko Associates LLC as the cover letter, and then there's the letter behind that from Maui Electric Company explaining what was required. Launiupoko's front cover letter explains what the residents must do. And then there's the letter from Sol Kaho`ohalahala, and a response from the Planning Director Kathleen Aoki.

Chairman Endo: Okay, so if you don't mind, we'll just mark them one, two, three.

Mr. Lopez: Fine.

Chairman Endo: So, the Launiupoko Associates will be Exhibit 1. Then the— I take that back. I guess we'll call your application packet, the fat one, Exhibit 1. If you don't mind, we'll call the Launiupoko May 8<sup>th</sup> 2001-letter and attachments, no. 2. The March 11, 2010-letter from the County Council as Exhibit 3, and the Department of Planning, April 14<sup>th</sup> 2010-letter as Exhibit 4 of the applicant.

Mr. Lopez: Okay, and last month I also submitted a picture to everyone to see the equipment.

Chairman Endo: Okay. So we'll call that no. 5, applicant's no. 5, Exhibit No. 5. And we'll consider them all a part of the record for this matter. Before we begin taking testimony, I just want to let everyone know that we're trying to do the best we can, but also to try and move expeditiously so that you don't have to keep coming back for more and more meetings. So although the rules of evidence do not apply in an administrative hearing, one of the key tools that can be used by the Chair is to preclude duplicative and irrelevant testimony. So what I would want you to do is keep in mind that the basic facts of the case are pretty simple for the most part. And the Board heard a lot of testimony about it and is pretty familiar with what's going on. So if you could try and focus in on the most key points you wanna make and key facts you wanna bring out. And try not to go off too much into other issues. And if you do, I'm gonna try and redirect both the questions and the testimony. Okay.

Mr. Lopez: So I'd like to Mr. Sylva to clarify his position, and how he came about meeting with Sol Kaho'ohalahala, and just a brief statement about that part of it.

Chairman Endo: Okay. So before Mr. Sylva testifies, could you raise your right hand? Do you swear or affirm that the testimony you're about to give shall be the whole truth?

Mr. Sylva: . . . (inaudible) . . . yes.

Chairman Endo: Thank you. Okay.

Mr. Lopez: Okay. Frank, would you like to make a statement? I mean, you know what you wanna say.

Mr. Frank Sylva: Okay. I was asked to make a statement. I'll make it as brief as possible because I think you've heard this before, so I don't wanna be repetitious. But the point I wanna highlight is when we met with the Council Members, seven of the Council Members was present of the nine. And I had given you the minutes so you folks could go through it, but at that meeting, all seven was in favor of correcting. And one of the Council Members had asked at that Deputy Director Kathleen Aoki to help them maybe rewrite to make it right for the – I talking pedestals and not rock walls, for the pedestals. They was asked by the Member from the Council. And that they would give – to give them– They have also asked the Planning Department to stop finding the people and writing letters to the people for fines. And that was one. And they also asked her to help the Council – the Council in correcting the language which they said would only be few words to correct the language to make the pedestal right. They also said that they'll be in budget session so give them time after the budget for few months to get back with this matter.

My line of thinking is this, if the Department and the County waited ten years to issue us letters of violation, why is it so hard to give us – give the Council few months to resolve this or remedy this problem which they said even in Sol Kaho'ohalahala's letter that they gonna meet on this? To me, it's mind-boggling to me when we have no cooperation or the hard approach that the County is taking and the Planning Department against the landowners and the working people of Maui County. When they take ten years to cite us and then they don't even give us a few months to have the Council Members resolve this matter for us is mind-boggling to me. And I guess that's my highlight I wanted to make for your folks. So any other question you have for me?

Mr. Lopez: Yeah, I wanted to ask, Frank, you built your home, correct? I mean, you had it built. You had a contractor? A licensed contractor?

Mr. Sylva: That's right. That's correct.

Mr. Lopez: You had licensed electricians?

Mr. Sylva: That's correct.

Mr. Lopez: So when you built your home, it was your understanding that the electrical pedestal was according to requirements?

Mr. Sylva: That's correct.

Mr. Lopez: You have since had your pedestal torn down or actually one of your neighbors did, correct?

Mr. Sylva: Yeah, well, the pedestal belonged to three of us, three owners. We gave up easement rights to MECO to there, so I'm one of the owners for the pedestal.

Mr. Lopez: And why was your pedestal – why did you take it down?

Mr. Sylva: I took my pedestal down in the month of May. My wife and I was scheduled to go on a trip on May 8<sup>th</sup> and our notice to us on May 3<sup>rd</sup> which I received that the fine would start – the thousand-dollar fine upon receipt of the letter and thousand dollars beginning the 19<sup>th</sup> of May. We was coming home on the 17<sup>th</sup>. So we was kinda uptight and one of my neighbors, Jeff Hunt, former Planning Director was getting me to cut down, but I said – cut down the wall for some months, but my answer to him was that, eh, I feel that I have my rights to come to the variance, a meeting, and present myself and see if, you know, if the wall would be allowed. But with much discussion and I guess he had a lot of pressure, so I kinda yield. I yielded. I was gonna on a trip and I said, okay, we'll cut it down. We cut the pedestal down. So I'm in compliance. We did cut the pedestal down. But I'm here for the rest of my friends and neighbors up in Launiupoko that they don't have to go through the expense that we went through.

Mr. Lopez: Have you met anyone in the neighborhood who objected to the pedestals?

Mr. Sylva: Objected to the pedestals? Honestly speaking, no, but not personally, I didn't talk to anybody from our neighborhood that told me they objected. But to my knowledge, two people from Launiupoko they was cited for some other reasons. I guess sour grapes, they went around and start pinpointing all these things to the Planning Department. That's to the best of the knowledge.

Mr. Lopez: I have no other questions. Okay. Ms. D'Enbeau?

Ms. D'Enbeau; I have no questions.

Chairman Endo: No questions? Okay. Does the Board have any questions for Mr. Sylva? Hearing none, thank you.

Mr. Sylva: Mahalo. Thank you.

Mr. Lopez: Okay. I'd like to call Mary Jane Brown.

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

Ms. Mary Jane Brown: Yeah, I do.

Chairman Endo: Thank you.

Mr. Lopez: Hi, Mary Jane.

Ms. Brown: Hi.

Mr. Lopez: You are also an original owner/builder, is that correct?

Ms. Brown: That's correct.

Mr. Lopez: And you had a licensed electrician?

Ms. Brown: Yes.

Mr. Lopez: And just like Mr. Sylva, you were under the impression that you were doing everything in compliance with the County rules, and regulations, and building codes?

Ms. Brown: Yes.

Mr. Lopez: And you also received the same drawings that everybody else received?

Ms. Brown: The drawings and the letters in the packet are from my files in our variance packet.

Mr. Lopez: And did you have any other statement you wanted to make?

Ms. Brown: I do. I wanted to tell how we happened to place the wall where it was from the owner's standpoint at the time. I thought that would give you more information to make your decision. I'm not here to fight you. I will abide by your – we will all, you know, abide by your decision, but I just thought you would like to hear the perspective from someone that was there since 1999 in this process.

So my husband, our daughter, and I are the owners now of Lot 16-A. We are also three of the original owners of Lot 16, the four-acre lot. And we were one of the first families to build our home there nine years ago. We purchased the four-acre lot in 1999 and built our home in 2001 with two of our children. Our builder was Maui . . . (inaudible) . . . Steve . . . (inaudible) . . . His electrician was Valley Isle Electric. I'm a retired teacher. My husband's a retired paper maker. And our daughter has taught on Maui in an elementary school for 20 years.

We wanted you to look more closely at the letter in Exhibit B from the County's exhibit, which is one of the letters in our variance packet, too, that we received. And if you would look – our lot's even mentioned at the end of the first paragraph: "Lot 16 through 26." But go down to the last paragraph in Exhibit B, the letter on the first page. And you'll see that it says, "Our engineer suggested, and Maui Electric will conditionally allow, the placement of electrical service meters on a common, permanent pedestal at the street," I just wanted you to look at that language to see where I'm coming from when we got these letters, "rather than at the residence." "The pedestal shall be established by Maui Electric prior to the customer's installation." And then the next paragraph at the top goes to explain that we should allow the easement to the pedestal for Maui Electric, correct? And then at the bottom of page 2 again it says, "With the meter at the property edge." "With the meter at the street," on no. 2. And so we kept seeing this referred to over and over again. At the end, "This is the solution we're going with. If you want to subdivide the property, this is the only avenue available to you at this time."

Along with this letter and the diagrams behind it, I received a cover letter with this that was faxed to us with this letter from Maui Electric to Thomas Welch. That is in our variance packet. I can direct you to where it is in the variance packet. Otherwise, I've actually made copies of it and I can show them to you right now. It's up to you. Otherwise, I tell you where to look in the packet. It's about two-thirds of the way back in the variance application. There is a section back here titled, Documentation. And the first thing you see after that will be the letter that was attached to the Exhibit B letter faxed – with a faxed stamped dated 2/10/2000. If anyone doesn't have that, I have extra copies of that cover letter here.

Ms. D'Enbeau: Excuse me. . . . (inaudible) . . .

Ms. Brown: No, about two-thirds of the way back. I wasn't – it's documentation from Maui Electric Company, West Maui Land Company. Two-thirds of the way back through our variance packet.

Ms. D'Enbeau: Maybe just . . . (inaudible) . . .

Ms. Brown: Sure, I'll just give you a copy because the rest of it's just what you have in Exhibit B. I'm sorry, but this was faxed – as far as my files–

Chairman Endo: For the record, you're referring to a February 10, 2000-letter from Maui Electric?

Ms. Brown: Yes, faxed by West Maui Land, but it was Maui Electric's letter. Apparently, they faxed it to – West Maui Land faxed it to us. And the same Exhibit B letter was with it along with the first diagram that's behind it. It even refers to the letter. I just wanted you to see that maybe that should be with it.

And then if you found that part of my variance packet, if you continue past that letter, you'll see the letter that Mr. Lopez just handed you dated May 10<sup>th</sup> 2001. And that letter, if you'll look at it, the one that's dated 2001 actually is from West Maui Land specifically specifying that we should contact Maui Electric directly with the placement of these pedestals. You see that letter? And then attached to that is a very similar letter to the one that the County had in Exhibit B except if you look at the second page of it at the top, it actually specifies that we should grant an easement for the pedestal to Maui Electric not just for the lines to the pedestal. So it's actually kind of leading us to believe that we need to put that pedestal at the street in the Maui Electric easement that we give them. So you can see where our thoughts were going there? At that point we gave the letters to our builder, and he worked, and his electrician worked with Maui Electric before constructing our pedestal. And neither the letters nor anyone else referred to them by anything else than meter pedestals. So you can see, we weren't really just trying to build anything by ourselves. I guess I wanted to get that point across.

Mr. Lopez: Let me ask a question. The drawings that you were given by Launiupoko Associates, this is part of Exhibit No. 2?

Ms. Brown: Right, Rich gave you those just today, I believe.

Mr. Lopez: And on the bottom of that first drawing, it was labeled, "Maui Electric Company Limited, Kahului, Maui, Concrete Pedestal or Meter."

Ms. Brown: And that's the drawing that was with my letter.

Mr. Lopez: And those were the letters and the drawings that you received?

Ms. Brown: Yes, that particular one was that one that I received, right. I also received the one that you gave them just today which is also part of this packet. That's also in here with the one that's referring to, you know, the actual easement for the pedestal.

So given that, we gave them to the building who worked with his electrician who worked with Maui Electric. We've never built a house before. This was a brand-new experience for us. And we didn't realize we built a wall until 2009 when Mr. Lopez and Mr. Kevan were cited by the Department. Both MECO and the County of Maui approved the meter pedestal at our final electrical and home inspections in 2002. And it was placed on the Maui Electric easement referred to in the County Exhibit D, which is our original land deed on page 10. So if you go to County Exhibit 10, which is our warranty deed, go to page 10 of that deed, and look at the bottom of that page no. 2, it says "Lease of right-of-way in favor of Maui Electric Company Limited and recorded in the Bureau," and so on, "Each 25 feet width in depth to build, construct, rebuild, repair, maintain, and operate full wire lines, etc." We took the etc. to mean a meter pedestal. We didn't think we were building anything other than what we were told to be building.

So I guess that's what I wanted to say is that as you've read in the letters and heard in the testimony from Maui Electric's representative that testified, the electrical service would not be provided to the homes on the four-acre lots without a pedestal which was agreed upon through months of discussion between West Maui Land and MECO. We received that letter in 2001, May, when we first started building our house which was started in February of that year. Without electricity, we would've been prevented reasonable use of our property, the dimensions agreed on by West Maui Land and MECO, MECO's height and clearance requirements. And only in the past few months has MECO agreed to let some owners lower their pedestals. West Maui Land required owners to place the pedestals with rocks for a uniformed appearance, and we incurred an extra expense of several thousand dollars to build a meter pedestal, which is fine except now we're gonna have to pay another ten thousand dollars or more to change it.

I just wanna make one observation as a homeowner, not just myself, but my husband, myself included that living there while we were building the house, we found out that in storms, which we don't get often up there, but when we do, you know, water can come down. So in the process of building the home, we found out we had to put a swale in the cement driveway to keep it flooding the driveway in our house and the road, and West Maui Land— We happen to be in a very steep grade on our street right there. So right above our lot is a cement section. I believe, in my lay opinion maybe it's for erosion. Maybe it's by code that if it's that steep, you have to have a whole cement section. And then below us there's actually a cement section, too. So they put a swale in the road there. So then our swale would carry the water to their swale in those storms and actually direct it so that it didn't flood roadways, driveways, and other people's properties. So I just wanted to make that clear to you, too, what happened when we were building, how we found out we had to do that before we even got the cement put in on there. That's just another observation that I think you should be aware of when you make your decision. So, you know, sometimes when we get these storms just as a lay opinion, it kinda seems like the pedestal's also stopping the water because there's dirt behind the pedestal and plants from getting somewhere where it shouldn't go.

And in our unprofessional observations, if we put it at a lower height, the meters, on the wall, it appears to us that the equipment could be damaged in a bad storm which we have been known to have, and then we'd be liable for changing the meters for a third time. And this appears to be a unique physical condition on this property, which would kind of cause undue hardship to us and stress because of having to do it three different times: two now and maybe a third one.

So I guess I just wanted you to know where we are coming from here. I'm not mad at anybody. I know you're trying to do your job, but we were not the ones that chose where to put the metered pedestals that all of a sudden turned into a wall. I guess I've given you a somewhat clearer understanding that will help you make an informed decision. That's basically all I have to say except that we did get a letter yesterday from Peter Martin of West Maui Land supporting this variance. I'm assuming you got a copy of that.

Mr. Lopez: I have no other questions.

Chairman Endo: No further questions?

Ms. D'Enbeau: . . . (inaudible) . . .

Chairman Endo: Ms. D'Enbeau, could you use a microphone?

Ms. D'Enbeau: . . . (inaudible) . . .

Ms. Brown: Correct.

Ms. D'Enbeau: . . . (inaudible) . . .

Ms. Brown: Which we found out in 2001 as we were building?

Ms. D'Enbeau: . . . (inaudible) . . .

Ms. Brown: Yes, we were told that.

Ms. D'Enbeau: But you had not . . . (inaudible) . . .

Ms. Brown: We really weren't given that option. And we bought the four acres with two of our children, and hoped to have enough dwellings with three families there at the time we bought it, which of course we couldn't do on four acres, so two families were living together once we did complete, you know, the house.

Ms. D'Enbeau: . . . (inaudible) . . .

Ms. Brown: We really weren't given that option being one of the first people to build. We understood according to my knowledge that we probably had to go with that meter pedestal.

Ms. D'Enbeau: Because you had always planned to subdivide, isn't that correct? You're not sure?



Ms. Brown: No, I can't . . . (inaudible) . . .

Ms. D'Enbeau: Alright.

Ms. Brown: I'm not exactly what – I don't even remember having that discussion. I just remember getting the letters and giving them to the builder. I don't remember even thinking about–

Ms. D'Enbeau: Did you yourself ever research any of the laws applying to agricultural zoning?

Ms. Brown: We hired a builder who we thought was reputable enough to do that for us.

Ms. D'Enbeau: You relied on your builder?

Ms. Brown: We relied on our builder.

Ms. D'Enbeau: And today you're aware of the fact that there are no structures at all permitted in the setback except for a wall not exceeding four feet in height?

Ms. Brown: Does that include mail boxes?

Ms. D'Enbeau: I'm just reciting to you what the law says. Are you aware of that?

Ms. Brown: I'm really not completely aware of what the law says.

Ms. D'Enbeau: Okay. Alright. Thank you very much. I don't have any other questions.

Chairman Endo: Board Members have any questions for this witness?

Mr. William Kamai: I do. Ms. Brown, just to reiterate what you said, you started building in 19 – or you bought the property in 1999?

Ms. Brown: That's correct.

Mr. Kamai: And you started building when?

Ms. Brown: By the time we got all permits and the loan, it was – ground was probably broken before – before they actually started the building was February 2001. We were one of the first ones. It was really hard to get all the permits from the different departments.

Chairman Endo: Ms. Brown, could you put the mic. a little closer to your mouth?

Ms. Brown: I'm sorry. I'm not used to this.

Chairman Endo: It's just for recording purposes.

Ms. Brown: Sure. Thanks. Yeah, we– I forgot the question.

Mr. Kamai: No, you said 2001 is when you—

Ms. Brown: Yes, it was February of 2001 that the builder started the actually building of the property, right.

Mr. Kamai: And you moved in, in—?

Ms. Brown: February of 2002.

Mr. Kamai: And you received a certificate of occupancy?

Ms. Brown: That's right. The cottage was a couple of months later than that.

Mr. Kamai: So to receive a certificate of occupancy, you called for an inspection, a final inspection?

Ms. Brown: Yes, our builder called for a final inspection, electrical inspection.

Mr. Kamai: And there was no mention of a—?

Ms. Brown: No, nobody told our builder or us that it was a wall and that we should look into the legality of it.

Mr. Kamai: Okay, thank you.

Chairman Endo: Okay, no further questions, thank you.

Ms. Brown: Thank you very much.

Chairman Endo: Who's your next witness?

Mr. Lopez: John Kevan.

Chairman Endo: Okay. If you don't mind, I'm gonna take just a very, very short one-minute, two-minute break, and we'll resume in two minutes. Okay? We're at recess.

(A recess was then taken at 2:33 p.m., and the meeting reconvened at 2:36 p.m.)

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

Mr. John Kevan: Yes.

Chairman Endo: Okay, if you could begin by stating your full name and spelling so that the transcript has everything correct?

Mr. Kevan: My name is John Kevan, J-O-H-N. My last name is K-E-V-A-N.

Mr. Lopez: Hi, John. I just wanted John to make a statement. He's a co-applicant also on the electrical pedestal. So, John, do you know how many feet you are away from the electrical pedestal?

Mr. Kevan: Oh, probably about 700 feet, 600 feet.

Mr. Lopez: When did you purchase your home?

Mr. Kevan: I purchased my home at the end of 2004.

Mr. Lopez: And as far as you know, you were in compliance at all?

Mr. Kevan: Yes. I mean, my home was a newly constructed home at the time. I had been driving around the area and looking for a home. I had seen those pedestals up and down all the streets. They're not exactly well hidden. I mean they're kind of like right out in the open. They're not hidden behind any bushes or anything. So I never knew it was an issue. I assumed when I bought my home and I was told that all the inspections by the County had been done and completed for me to actually purchase the home. I was working with my real estate agent at the time who was actually Rachel who's on this Board, and we found nothing at that point in time that we had any issues with any type of variance or anything else.

Mr. Lopez: So as you were driving around looking, did the pedestals impinge on any views?

Mr. Kevan: No, because we're all pretty much at the road which is below the line of sight for most of the houses or all the houses. Depending on the angle, most of the walls, you can't even see unless you're really looking for them depending on where you are and the house you're looking at. So there's no line of sight blockage that I can see from anybody. The line of sight, I have a neighbor who's building a 30-foot areca wall in front of me. No one seems to care about that, but a two-foot pedestal wall seems to be an issue, but I'm not sure why.

Mr. Lopez: We placed a gate at the entrance to our property. We share the same . . . (inaudible) . . . Can you tell them why that gate was put in there?

Mr. Kevan: Security. You know, making sure people— It was a long driveway with no sight, line of sight to the road, line of sight to pretty much any other houses. We were concerned about some security up there with people driving down driveways and causing some problems that had happened in the area. And being, you know— Rich's house is I think is probably 400, 500 feet back from the road. Mine's around 700, so being that far back, we decided to put in a gate for security purposes in making sure that we're, you know— So especially I used to do a lot of traveling before I retired. And while I was gone, the wife was always concerned about no one being around and her being that far from anybody knowing where she's at.

Mr. Lopez: Okay. So people would drive in there just on their own?

Mr. Kevan: Random, yeah, for looking around, and I don't know, looking at houses, people trying to sell something whichever the case was.

Mr. Lopez: I have no other questions.

Mr. Kevan: But I do have a few comments. I mean, I did – I mean, when I bought my house in 2004, I did drive the area for a while before I purchased it. And these pedestal walls as I noted were very obvious on the street, never seemed to be an issue. I would assume when I was here the last time MECO said they weren't even aware of the law until 2009, but the County made the claim I believe that the law started in 2000, or I'm sorry, 1998. I'd have to believe somewhere the County Inspectors were doing their job from 1998 to 2004, 2005 that they had to be up in that area hundreds, if not, thousands of times seeing those walls. And it was never an issue until 2009. So I guess that – I don't understand it especially since it doesn't seem to be having any impact on anything but our potential expenses out of our pocket. Based on what MECO was saying, based on what I'm seeing from – I saw from Rich, I saw from Mary Jane, the history with MECO and the complexity of what's been going on, as Rich stated last time, I think we're just asking for a variance for a wall that's not bothering anybody that's not impacting any line of sight. That as you saw the size of the complexity of what we're gonna have to move and potentially bring down, it's a pretty awesome, you know, expensive thing to do especially, when I don't think we need to do it. It's nothing that I ever even believed that I would have to worry about when I was buying a property up there. I assumed the Inspectors had done their job and I was clean in terms of what I was buying. And that's pretty much it. I'm just hoping this Board can look at the requirements, look at what the situation we're in and hopefully support the intent of the law, and not the letter of what the rule has now changed to, and we can go forward from this. That's all I have to say.

Chairman Endo: Ms. D'Enbeau?

Ms. D'Enbeau: Yes, I'd like to show the witness the Exhibit K from the County's list of exhibits. I hope everybody has a copy of that. Mr. Kevan, this is pictures that were taken by our Inspector. Do you recognize that as the wall there inside your property?

Mr. Kevan: Yes.

Ms. D'Enbeau: And you don't have any disagreement that it's indicated here approximately, seven feet in height?

Mr. Kevan: No.

Ms. D'Enbeau: And approximately, 22 feet wide?

Mr. Kevan: I never measured the distance but, yeah, sounds . . . (inaudible) . . .

Ms. D'Enbeau: And from this photograph here, do you agree that it's within the 25-foot setback?

Mr. Kevan: Yes.

Ms. D'Enbeau: Thank you. I don't have any other questions.

Chairman Endo: Members, you have any questions? No? Okay.

Ms. D'Enbeau: I believe— Excuse me, Chair, I think we admitted these items into evidence in the last hearing.

Chairman Endo: Actually, I can't recall. Do you know, Mr. Lopez, if you had any objections to those?

Mr. Lopez: No, we didn't.

Chairman Endo: Okay.

Ms. D'Enbeau: I'd like to move all of the County's exhibits in at this time.

Chairman Endo: Okay, since there's no objection, we'll admit all of them into the record.

Mr. Kevan: Yeah, I don't think we ever questioned what it is.

Chairman Endo: Yeah, the facts of the case are not that complicated. I mean, the basic facts.

Mr. Kevan: Right.

Chairman Endo: Okay, thank you.

Mr. Kevan: You're welcome.

Chairman Endo: Alright. Is that your last witness for the applicant? Okay. So now we will turn over to the County Department of Planning. You previously called Mr. Greg Kauhi and he's finished.

Ms. D'Enbeau: He has finished. Now we'll call Mr. Sonny Huh.

Chairman Endo: Please raise your right hand. Do you swear or affirm that the testimony you're about to give is the whole truth?

Mr. Sonny Huh: Yes.

Chairman Endo: Please start by stating your name.

Mr. Huh: My name is Sonny Huh. Last name is H-U-H. I'm a Zoning Inspector for the County of Maui.

Ms. D'Enbeau: Thank you very much. Can you explain how it is that you came to inspect the property on 72 Paia Pohaku Street?

Mr. Huh: There was a request for service filed for the subject violation.

Ms. D'Enbeau: What is a request for service?

Mr. Huh: A request for service is a request to investigate an alleged violation.

Ms. D'Enbeau: And what was the alleged violation at this address?

Mr. Huh: It was the structure that is erected in the setback that exceeds the height limit.

Ms. D'Enbeau: And did you in fact go out and measure the structure?

Mr. Huh: Yes.

Ms. D'Enbeau: And did you discover that the structure was approximately, 22'5" wide and seven feet in height?

Mr. Huh: Yes.

Ms. D'Enbeau: And had you occasion to also inspect other walls in the Launiupoko neighborhood?

Mr. Huh: That's correct.

Ms. D'Enbeau: And are there other walls that initially were not in compliance?

Mr. Huh: I don't understand.

Ms. D'Enbeau: Other walls that initially exceeded the height limit of four feet?

Mr. Huh: Yes, there are other walls like that.

Ms. D'Enbeau: And did any of those walls – were any of those walls corrected?

Mr. Huh: Yes, many of them have been corrected.

Ms. D'Enbeau: Do you have any information about how many people have corrected their walls?

Mr. Huh: Just simple statistic, there have been 58 violations and 39 has complied so far.

Ms. D'Enbeau: And do you have indications that others are intending to comply?

Mr. Huh: Yes, I do.

Ms. D'Enbeau: Do you know how many others are intending--?

Mr. Huh: At this time, three or four more, from what I understand. And they still have until the end of this month to contact with me to coordinate possible future due dates.

Ms. D'Enbeau: And those people who have complied, they have been able to reduce the height of the – what's been described as the meter wall to four feet?

Mr. Huh: Yes.

Ms. D'Enbeau: And do those have multiple – some of those have multiple meters on the wall?

Mr. Huh: Yes, they do have multiple meters on the wall.

Ms. D'Enbeau: So would you agree then that strict compliance is possible in the Launiupoko neighborhood?

Mr. Huh: Yes, I believe so.

Ms. D'Enbeau: Is there anything exceptional, unique, or unusual about the Lopez/Brown/Kevan property as compared to other properties in the neighborhood that you're aware of?

Mr. Huh: No, not that I'm aware of.

Ms. D'Enbeau: They all look pretty much the same?

Mr. Huh: Yes, front and side yard setback.

Ms. D'Enbeau: In terms of the testimony that you gave with respect to walls that have been changed, I'll call your attention to Exhibit L that the County submitted. Exhibit L appears to be some other walls not on the subject property. Can you explain to the Members of the Board what those pictures represent?

Mr. Huh: Well, this picture represents the over-height wall. The following page shows that there are two meters on this – I would say about, eight-foot wide, seven-foot – 6'10" tall, 6'8" tall was reduced to four feet.

Ms. D'Enbeau: And that's the second page?

Mr. Huh: Yes, that is the second page, following page.

Ms. D'Enbeau: And that second page on the bottom, it shows a four-foot high wall?

Mr. Huh: Yes.

Ms. D'Enbeau: And there are pictures in that series. Is that the same situation where people have reduced their walls? And these are pictures before and after?

Mr. Huh: Yes, that is correct.

Ms. D'Enbeau: Okay. Thank you very much, Mr. Huh.

Mr. Lopez: How are you, Mr. Huh?

Mr. Huh: Fine. Thank you.

Mr. Lopez: Going back to the original intent of this law, 1997, 1998, I understand, is it correct that

this was brought about because of the Maui Country Club walls that were built and people complained about that?

Mr. Huh: I have no idea, sir. I was not involved in the decision-making.

Mr. Lopez: Okay. Have you heard this before?

Mr. Huh: Actually, I have not.

Mr. Lopez: Okay. Are there other neighborhoods in Maui that you're aware of that have this pedestal situation?

Mr. Huh: I think following this event, some— I can't name the Requestor that have filed the complaints against other subdivisions, and in fact, I am enforcing that currently.

Mr. Lopez: Do you know how many of those are?

Mr. Huh: There are approximately about eight parcels? Not quite certain, but about eight or nine parcels.

Mr. Lopez: And that's island-wide?

Mr. Huh: Actually, it's in Lahaina, West side.

Mr. Lopez: So are they also in the West Maui Land Developments?

Mr. Huh: I'm not sure. I do not— I'm not aware of that. I don't look into who developed the land.

Mr. Lopez: Do you know which subdivisions they're in?

Mr. Huh: Without looking at the records, no, I do not.

Mr. Lopez: Is it the subdivision just to the north of—?

Mr. Huh: No, it's not. It's actually over there by Kaanapali by McDonalds.

Mr. Lopez: But basically, would you say that this is rather unique that there's so many in the Launiupoko area?

Mr. Huh: I don't understand what you mean by "unique."

Mr. Lopez: That there's so many in the one area.

Mr. Huh: I do not know the reason why there's so many in the Launiupoko, but there are in the Launiupoko.

Mr. Lopez: Okay. You go out and when someone has requested – what do you call it?



Mr. Huh: A request for service.

Mr. Lopez: Request for service, which is basically, a complaint.

Mr. Huh: Well, you could say that.

Mr. Lopez: Do you know how many people complained for the Launiupoko area? Was it two? One?

Mr. Huh: What do you mean?

Mr. Lopez: How many people?

Mr. Huh: Are complaining about Launiupoko?

Mr. Lopez: Yeah, how many filed a request for service?

Mr. Huh: Many has, and I'm not allowed to give names or statistics on the number of Requestors. I could tell you it started back in 2008.

Mr. Lopez: Okay. So if we were required to cut down our wall, does this also mean that we would have to bring the pedestal in 15 feet from the side setback?

Mr. Huh: I think that was our Department's interpretation that we're gonna call it a structure/wall so that you could keep it in the setback area, but lower it to four feet in height.

Mr. Lopez: So only the top would be – have to come down?

Mr. Huh: Yes.

Mr. Lopez: Okay. I heard earlier, and I wanted to know if you also said that no structure is allowed within that 25-foot setback?

Mr. Huh: According to our code, yes.

Mr. Lopez: Okay, but yet, you've driven up Kai Hele Ku many times, correct?

Mr. Huh: Well, ever since the complaint came, that's when I started driving up there.

Mr. Lopez: Have you seen the electrical box that's right there at the park?

Mr. Huh: There were so many electrical poles and stuff.

Mr. Lopez: So this does not apply to electrical structures?

Mr. Huh: I do not investigate into matters that I've been – has not been given a request for service for. So I did not investigate, so I do not know.

Mr. Lopez: But would you agree that there are electrical structures within these 25-foot setbacks by MECO?

Mr. Huh: I would say so.

Mr. Lopez: Okay. And that is a structure. I mean, basically, we were told that here.

Mr. Huh: I think if my understanding is correct, certain things are allowed in the right-of-way, public right-of-way, like utility boxes are allowed, like—

Mr. Lopez: Okay. So it's your understanding that if someone cut their wall down but if they left the electrical equipment sticking up, would that be allowed?

Mr. Huh: It is our interpretation it's not allowed.

Mr. Lopez: Not allowed. But we do have electrical structures within the 25-foot setback. Okay. I appreciate the difficulty of your job. I used to be an Inspector for the Liquor Department so—

Mr. Huh: Thank you very much.

Mr. Lopez: I know how it is to be on the other end. I have no more questions.

Mr. Huh: Thank you.

Ms. D'Enbeau: I have one followup. I'd like to show Mr. Huh County Exhibit M and ask if he'd explain the photos in County Exhibit M represent.

Mr. Huh: These are basically pedestal structures that are placed out of the setback area. On the second page of Exhibit M, it shows a property that is located approximately, just judging from the distance, about 300 feet away from the street, and the electrical meter is placed on the wall. Page 3 is another electrical meter placed on the building, which is about a hundred feet away from the street, which is out of the setback area, as well as there's another street that depicts there had been no pedestal walls in this – not a cul-de-sac, but roundabout kind of street.

Ms. D'Enbeau: And do these appear to be lots that were – you described them as deep lots, so these lots do not appear to have been subdivided?

Mr. Huh: That, I cannot say for sure.

Ms. D'Enbeau: When you say "outside the setback," you mean the wall itself is placed more than 25 feet from the property line?

Mr. Huh: Yes, ma'am.

Ms. D'Enbeau: And that can be of any height once it's outside the setback, is that correct?

Mr. Huh: Well, as long as – from my understanding is that if it's over six feet, you need to apply for

a building permit because DSA requires any structure over six feet to have a building permit. So if that structure out of the setback area is over six feet, in fact, they should apply for a building permit.

Ms. D'Enbeau: So that would be a violation perhaps, but with the Public Works Department?

Mr. Huh: That has to be dealt with DSA.

Ms. D'Enbeau: And as far as you understand it, Public Works or DSA requires a building permit only if the structure, the wall, is more than six feet in height?

Mr. Huh: Yes.

Ms. D'Enbeau: Thank you.

Chairman Endo: Ms. D'Enbeau, do you have any – are you done?

Ms. D'Enbeau: Yes, thank you.

Chairman Endo: Members, you have questions? Member Kamai?

Mr. Kamai: Inspector Huh, in answering Mr. Lopez's question regarding anything protruding above the four-foot height limit wall, that's not allowed?

Mr. Huh: Well, considering this being an electrical meter, it is actually a structure. Therefore, it is not to be allowed in the setback area. However, I think to work with the homeowner, in order to place that structure out of the setback is more costly than just to lower it. Therefore, we called it a wall/structure so we would give them the opportunity to lower the wall instead of relocating the structure out of the setback area.

Mr. Kamai: So if a homeowner was to lower his pedestal wall, but what's considered gutters or the actual meter socket is higher than the wall, would that be allowed?

Mr. Huh: No, everything has to be under four feet.

Mr. Kamai: Who makes that determination?

Mr. Huh: Who makes that determination? County Code makes that determination. You mean, the interpretation of the code?

Mr. Kamai: Yes, as to – I know it's the wall. It's the wall that has to be lowered, but who makes the determination that the sockets, the gutters, the—

Mr. Huh: Well, as I stated earlier, those pedestal structures are technically a structure which are County Code, in the ag zone district, does not allow any structures to be in the setback. We're allowing them to lower the pedestal wall to four feet so they can keep it in within the setback. That's the best way for us to actually help the homeowners in the Launiupoko or any ag district.

Mr. Kamai: But again, who makes that determination? Is it you?

Mr. Huh: I think the Department makes this determination as a whole. I can't pinpoint to one person. And I think this matter has been discussed with Corporation Counsel as well.

Mr. Kamai: Saying that the gutters, the pipes, the meter sockets cannot exceed the height for the four-foot wall?

Mr. Huh: As I stated, those gutters, meter sockets, and then boxes are structures; therefore, cannot be in the setback. For us to allow to help the homeowners to decrease the cost of relocating, we called it a wall/structure. They could lower the wall to four-foot; therefore, complying with the Zoning Ordinance.

Mr. Kamai: Okay.

Mr. Bart Santiago: I have a question. Is it Mr. Huh or Ho?

Mr. Huh: Huh. You can call me "Sonny," sir.

Mr. Santiago: "Sonny," okay. I've never built a home so I'm trying to understand the process of the certificate of occupancy and building permits. When the certificate of occupancy is issued, it's issued by your Department?

Mr. Huh: No, it's not. The certificate of occupancy, if I'm not mistaken, is issued by DSA. However, a certificate of occupancy for residential homes are only issued when the permit was a plan review waiver permit.

Mr. Santiago: What does that mean?

Mr. Huh: What that means is that the Department has – I guess the County has issued them a permit depending on that everything will be a-okay. So the inspection will be conducted after.

Mr. Santiago: So the certificate of occupancy is secured, an inspection is done on the property level to insure that everything is in compliance?

Mr. Huh: Yeah, by all departments.

Mr. Santiago: Okay, so that process–

Mr. Huh: Basically, it's not going through the review of the Water, the Planning, the whole thing.

Mr. Santiago: So physical inspection of the property is done in order to make that certificate of occupancy valid?

Mr. Huh: Well, the permit is issued based on a plan review waiver permit. And the actual physical inspection is conducted every stage.

Mr. Santiago: So DSA did do a physical inspection?

Mr. Huh: I did not look into the DSA permit inspection.

Mr. Santiago: It would be safe to assume that it was done, though?

Mr. Huh: No, actually, it's not safe to assume that it was done. We have to look at the record first.

Mr. Santiago: So a certificate of occupancy can be valid even without an actual inspection being completed which is a requirement?

Mr. Huh: No, that is not correct. I don't think I should answer those questions because I'm not a Building Inspector. I'm not equipped to answer that question. I'm sorry.

Mr. Santiago: Is there a way we can find out?

Chairman Endo: Later on, you can ask the Department. I think just to clarify, generally, if you get a normal building permit for a residential project, residential home, you don't get a certificate of occupancy at the end. You get intermittent checks along the way, but you don't get a C.O. You're required to get a C.O. for a commercial project or other types of projects, but not a residential. A plan review waiver is a special method that's only utilized at times to speed up the process. You get an architect to sign off basically committing that the project will meet code and everything. So they issue your permit to begin construction without actually going through the building permit review. You actually bypass the building permit process. And in that case, they back-end it with a certificate of occupancy requirement so then you need all the inspections before you get a C.O. So in a typical case, you would not get a C.O. for a residential construction. I hope that makes it clearer for you, but we can ask more specific questions about this particular property of the Planning Department later on, but we need to focus on this witness right now.

Mr. Kevin Tanaka: I have a clarification question for Sonny. So you are a Zoning Inspector, not a Building Inspector?

Mr. Huh: Yes, at the present time.

Mr. Tanaka: Just out of curiosity, there are a couple of things along the line of questioning. Is your enforcement – are you designated to the West side or all of Maui?

Mr. Huh: We have new— I personally just do West side, and Lanai, and a portion of Maalaea.

Mr. Tanaka: I'm just curious. Your request for service, does that need to be written or can somebody call?

Mr. Huh: It could be either way. We are instructed to take all concerns from the public. Some of the stuff has to be backed up by some – some allegation has to be backed up with some proof of evidence. But if it's something that you can drive by and look at it, we take it in, just drive by, and look at the site.

Mr. Tanaka: And I'm just curious. Can one person request service for 58?

Mr. Huh: If that one person would like, they can do that. However, this is not– Oh, well.

Mr. Tanaka: Thank you.

Chairman Endo: Okay, any other questions? Thank you, Sonny.

Mr. Huh: Thank you.

Chairman Endo: Okay, was that your last witness, Ms. D'Enbeau?

Ms. D'Enbeau: Yes, it was. Thank you.

Chairman Endo: Alright.

Mr. Lopez: We– Can I say something? On the witness list was James Riley.

Ms. D'Enbeau: Oh, I'm sorry. Thank you very much for reminding me. I stand corrected: Mr. Riley. I've got one eye on the clock and realized we still have a whole 'nother hearing to go. So I didn't mean to neglect Mr. Riley. And the County did subpoena Mr. Riley to come and testify today.

Chairman Endo: Mr. Riley, if you could raise your right hand, I'll swear you in. Do you swear or affirm that the testimony you're about to give shall be the whole truth?

Mr. James Riley: I do.

Chairman Endo: Thank you. Could you begin by stating and spelling your name?

Mr. Riley: My name is James Riley, R-I-L-E-Y.

Chairman Endo: Thank you.

Ms. D'Enbeau: Mr. Riley, what was your involvement with the Launiupoko Subdivisions?

Mr. Riley: I was one of the partners in the – of the new development LLC.

Ms. D'Enbeau: And do you yourself own a lot in Launiupoko?

Mr. Riley: Yes, I do.

Ms. D'Enbeau: You heard the testimony a little bit earlier about the letter that was written about Launiupoko Associates to the owners of the four-acre lots about the questions MECO had – Maui Electric had raised with respect to electrical service? Are you familiar with that letter? Would you like to see a copy of it?

Mr. Riley: I'd like to see a copy of the letter you're referencing.

Ms. D'Enbeau: I'm gonna show you County Exhibit B and ask you if you recognize that.

Mr. Riley: I'm gonna say I recognize it, but it's ten years old, and I think I was – I think I saw this letter in the last few months. So I'm somewhat familiar with it, but other than that, I would not have remembered it.

Ms. D'Enbeau: And this letter does have to do with the subdivision of four-acre parcels, isn't that correct?

Mr. Riley: I believe so. I believe it is only designating the lots that were four acres as opposed to the majority of lots that were two acres.

Ms. D'Enbeau: And this is because the subdivision of the four-acre lots into two-acre lots would create more of a load on the electrical infrastructure that was constructed for the project, is that correct?

Mr. Riley: I'm not positive that I'm versed enough in engineering, electrical engineering to answer that. There was definitely a concern of Maui Electric as to how they were gonna service those potential subdivisions of four-acre lots.

Ms. D'Enbeau: Did you recall that concern?

Mr. Riley: Yes.

Ms. D'Enbeau: And you do recall that the developers, Launiupoko Associates LLC, and that you were a member of that LLC?

Mr. Riley: Yes, I am.

Ms. D'Enbeau: And were, I guess, at the time?

Mr. Riley: Yes, I was.

Ms. D'Enbeau: Okay. And the indication in the letter is that the developer decided that it would be too expensive about \$300,000 to upgrade the infrastructure, and would take too much time, and therefore, they were leaving it up to the individual lot owners to put the infrastructure in from the street to their houses, is that correct?

Mr. Riley: Yeah, I think we're going back to a time when this subdivision was under construction, and the individual lots had been sold, and individuals owned each of the lots, and were not in a position to be able to begin building until the infrastructure was completed, or at least until certain fire and other parts of the infrastructure was completed. So the majority of the lot owners were desirous of the infrastructure being completed as completely, as quickly as possible. It came to the attention, and I'm not sure exactly what brought this to Maui Electric's attention that if an individual wished to further subdivide a parcel, the infrastructure that had been designed by an electrical engineering company and approved by Maui Electric that infrastructure would not necessarily in all cases handle future subdivisions of those lots. So Maui Electric – we tried, Launiupoko Associates, tried to work out a solution to that with Maui Electric while the subdivision was being built. Tried to do that on the fly. But the requested changes from Maui Electric were so extensive

that it would've required getting new electrical boxes made, those large concrete boxes, and retrofitting the subdivision that had already been completed, and we did not think that was a prudent thing to do during the construction of the initial subdivision.

So with consultation from electrical engineers and with Maui Electric's concurrence that it would work from an electrical engineering standpoint, we proposed a concept of metering homes that were going to be built originally I think on just lots that were gonna be subdivided, although I think it has expanded since then, metering those lots at the street. And the pedestal wall was something that was designed by an engineer that we hired. It was proposed by Maui Electric as a solution. And we thought it was a viable solution to what appeared to a problem that was going to occur very shortly after the subdivision was completed.

Ms. D'Enbeau: And how is it, sir, that you were aware of it very shortly after the subdivision, the four-acre lot owners were going to want to resubdivide into two-acre lots?

Mr. Riley: I don't know the answer to that.

Ms. D'Enbeau: You don't know how you knew that, or you don't know that you knew it?

Mr. Riley: I don't know either of the above. You're going back ten years. I don't know what would've triggered that. I don't know what was the trigger that caused this to come to the forefront.

Ms. D'Enbeau: This being the desire of the four-acre lot owners to subdivide into two-acre lots?

Mr. Riley: I did not own a four-acre lot so I had no direct knowledge of someone wanting to do that. I think I knew of numerous people who owned four-acre lots who wished to subdivide into two two-acre lots. I guess that's the answer? I don't know. I don't know. I mean, I know a number of people who bought four-acre lots who desired to subdivide into two two-acre lots.

Ms. D'Enbeau: And it was those individuals because of their desire to subdivide into two two-acre lots that had to use the – had the power from the street, and then take care of the infrastructure themselves, isn't that correct?

Mr. Riley: They would have to take care of all of the requirements of subdividing that parcel into smaller units.

Ms. D'Enbeau: I'm just talking about the electrical service right now.

Mr. Riley: They definitely would've had to supply electrical to any and all future subdivided lots. And they would've had to work with Maui Electric and the County to create the ability to do that.

Ms. D'Enbeau: But that's what the letter is talking about: the agreement that you already reached with Maui Electric. I'm talking about you as Launiupoko Associates that that's how it would be handled.

Mr. Riley: Our agreement with Maui Electric was that we would not – we would not, Launiupoko Associates, would not upgrade the infrastructure of the original subdivision to bring it to a level that



would accommodate future subdivisions of the lot. That's what our agreement with Maui Electric was. We also came up with a possible other solution that lot owners were made aware of, but it wasn't their only option. I mean, we weren't telling them that was their only option. We were simply telling them that this is an option that appears that it would work.

Ms. D'Enbeau: In terms of the requirements of the Agricultural Ordinance, what we call the Ag Bill, you participated in the County Council hearings, attended and testified?

Mr. Riley: Yes.

Ms. D'Enbeau: So you were aware of the various requirements of the Agricultural Ordinance?

Mr. Riley: I was very aware as that piece of legislature was being drafted and written. And I don't know that I totally remember every paragraph of it, and I don't know when my lack of memory would've set in, but when that law was passed, I was definitely very familiar with it.

Ms. D'Enbeau: And you would agree that was in 1998?

Mr. Riley: Correct, yes.

Ms. D'Enbeau: And the letter from Launiupoko LLC is in 2000, a couple of years later?

Mr. Riley: Yes.

Ms. D'Enbeau: So probably at that time, your memory of the provisions of the Ag Bill were better than it is now?

Mr. Riley: Definitely better than it is now. And I think my memory was a lot better ten years ago than it is now.

Ms. D'Enbeau: I think that's all that the questions I have. Thank you very much.

Chairman Endo: Cross examination?

Mr. Lopez: Yes. Mr. Riley, so when people purchased the four-acre lots, they understood that they could subdivide?

Mr. Riley: Not necessarily. When they purchased the four-acre lots, they knew that under the current County zoning, they had the opportunity to attempt to subdivide. That the four-acre lot would suffice size wise to accommodate two two-acre lots.

Mr. Lopez: Okay. The drawing that's attached to Exhibit No. 2, is that the one that he has? It says at the bottom there, "MECO Electric Company, Limited, Concrete Pedestal for Meter?" That's this one here.

Mr. Riley: I got a different one, but it's very similar.

Mr. Lopez: Okay. And is that one signed at the bottom by who?

Mr. Riley: This is signed by Gholkar and Associates.

Mr. Lopez: And this one here? Is that the same?

Mr. Riley: Maui Electric Concrete Pedestals? Is that—?

Mr. Lopez: Yeah. Can I read into the record, the letters that we have as Exhibit 2 or a portion of it just for the Board of Variances?

Chairman Endo: Is that pertinent sections?

Mr. Lopez: Yes, I think so.

Chairman Endo: Yeah, sure.

Mr. Lopez: The first page, Launiupoko Associates, LLC, signed by James Riley:

We would like to make certain that all owners of four-acre lots are aware Maui Electric Company will require full compliance with one, its approved standard details for construction of meter pedestals and two, conditions for related easements.

It goes on to say to:

Contact MECO directly prior to construction of the pedestal in order to avoid delays and difficulties in obtaining electrical service for your property.

On the next letter, second page, next to the last paragraph, I think it's highlighted, it says:

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

Is that what you recall as the requirements for those lots?

Mr. Riley: Yes, but it's not a requirement. It's an option.

Mr. Lopez: Well, it does say here that "No further exception shall be made."

Mr. Riley: In the design of the pedestal, but a person could've totally ripped up all of their electrical infrastructure in the street, and got different wires pulled, and different conduits in place and spent, you know, a couple of hundred thousand dollars to retrofit the subdivision, and then they would've been able to subdivide their lot, you know, without a pedestal. It wasn't – at the time, it appeared to be a viable solution. It wasn't the only possibility.

Mr. Lopez: Okay. I understand. Thank you. I have no other questions.

Chairman Endo: Questions from the Board? Thank you, Mr. Riley. Okay, now is that the last witness?

Ms. D'Enbeau: Thank you. Yes, Mr. Chair, that's our last one.

Chairman Endo: Okay. Alright, at this point, we would like to begin deliberations, allow the Board Members to ask questions of the County, but before we do that, we're gonna allow closing arguments by the parties. Usually, we let the applicant go first, and then the County, and then the applicant can actually save time for rebuttal. So you can actually speak twice if you wish, but if you wanna completely go second, that's fine.

Mr. Lopez: No, I will go according to procedure. I guess I can sit here and use this. In my closing statements, I just wanna say to the Board of Variance, we're seeking a variance and after-the-fact permit to our electrical pedestal so that it can remain. You have heard many, many people who have supported this.

The electrical pedestal services four dwelling as you know: ours, the Kevans, the Browns, the main house, and their guest house. To cut down the wall in order to comply with the County ordinance will cause us great financial hardship. The Browns are retired and so are the Kevans except now in these difficult financial times, the Kevans have had to return to work. Our pedestal I think as you can see is not an eyesore, is not a visual impedance to any view planes nor does it block air flow from any point of reference. We purchased our home in 2005 and had nothing to do with its construction in any way.

We do have a unique and unusual physical and geographical condition existing on the property which is not prevalent in other neighborhoods. Our home and the Kevan's home are over 500 and 700 feet away, respectively, from Paia Pohaku Street where the primary electrical connections are located. You heard me ask Mr. Huh about if there were other situations like this around the island. I felt that, you know, perhaps this was a question Kathleen Aoki could answer, but she's not here. She was on the witness list. In our experience in talking to many, many people, we're not aware of this situation existing in other neighborhoods, so we think it's unique. Our driveway is steep. We believe that the majority of the residents in our community support allowing the pedestals to remain. We have not seen one person come to all these hearings that we've had to say that they object. We believe and what we've heard through the coconut wireless is that there were only one or two people who were upset about something that was complained about their property.

If we had to comply with the County's height limit of four feet as evidenced by the photo, there would be absolutely no room for all of the equipment. I think you have that photo in front of you. If we were not to – if we're not able to put that equipment on there, and this would require that we would cut across two driveways and build a second wall or place the equipment on our respective houses. At the last meeting, you heard Mr. Kauhi of MECO state that in the event we were forced to do either of the above, MECO's policy is that they would not accept any of the electrical lines because they were not installed by MECO. Mr. Kauhi stated that our electrical lines were most likely copper, which were superior to the aluminum cables that they would install, and that the process would be very expensive, and would take a minimum of nine months to get the approvals to do that, and he had some question whether or not that approval could be received at all.

Residents – you heard us talk earlier about the structure. And you can drive anywhere on any of the streets and see structures by Maui Electric that are these huge boxes. We've all seen them that exceed four feet. In fact, at the little park on Kai Hele Ku, that box is approximately, five to six feet high. When I spoke to the Planning Department, they suggested that we put the meters on the homes. The other alternatives would be to move the two meters to the Browns' property putting the meters on the houses, moving them to the other side of the two driveways would be extremely difficult and very expensive. And as you've heard Mr. Kauhi say, the process could be nine months or longer, or it's doubtful or questionable whether or not it could even be received.

The conditions creating this situation were not the result of the homeowners but the developer of the subdivision, MECO, and perhaps a failure of communication with the County. We're not sure, but how can 58 pedestals go without inspection? I think it defies logic that all of those would not have had inspections.

The Board of Variances has stated at the beginning of the first hearing that I came to that each case would be judged on its own merits. Again, we are seeking an after-the-fact permit for something we did not create. We understand that one of our reasons that the new Ag Ordinance was adopted was due to the subdivision like Maui Country Club's walls blocking views to the ocean. I mean, I don't know what the difference is if you have walls or intense vegetation as they have, which still blocks the views to the ocean. We block no views. And as I stated earlier, there's no hindrance to air flow. We're also concerned about the wall being a safety issue for electrical equipment if it is lowered beyond the customary standard 5'6" required by MECO. You heard one of your own constituents state that he would have a problem with this at one of our meetings and I believe he was an electrician. Is that correct? And we have been told by other electricians that it could present a safety hazard in the event of an extreme rain or flood that if the water came up and hit those meters as you heard Mrs. Brown state, then we're responsible for that cost again.

We pray that you understand our issues and vote in favor as it is extremely important to us. And we are innocent homeowners in this situation. Thank you very much for your time.

Chairman Endo: Ms. D'Enbeau?

Ms. D'Enbeau: Thank you very much, Mr. Chair, Members of the Board of Variances and Appeals. This is a simple case in many ways. The facts aren't disputed. It's complex only in trying to understand how this all came to be, and that's why the Department has gone to some effort to give you some background information so you can see how the situation arose. And in my memorandum that I filed, the hearing memorandum, I went through some details about the different purchases of the property and how this all came to be. I think it's fairly clear from the evidence that initially when this Launiupoko area was subdivided and these four-acre lots were created, the infrastructure was not – electrical infrastructure was not in place to allow further subdivision of the four-acre lots into two-acre lots. At the time there was some serious question about whether that would in fact be allowed by the County, but when the Ag Bill passed, it had an exemption – exception, I'm sorry, for properties that had preliminary subdivision approval, which Launiupoko did, which meant, oh, okay, now we can subdivide these four-acre lots into two-acre lots. I think that conclusion was probably not terribly clear until the bill was in its final form and passed. For those of you who followed any of that remembered, it was quite a contentious process, getting the bill passed.

So since the electrical infrastructure wouldn't support the normal situation, which you've heard testimony about, and you know from your own experience, your meter box is on your house, and you're only responsible for the wiring from the meter box throughout your home and not for any wiring from the street. MECO takes care of that. But in this case, because of the problems with the infrastructure, anybody who wanted to subdivide, now, that's the key, people bought these four-acre lots and there was plenty of electrical infrastructure for the use of the four-acre lots, which were farm lots, and there were a lot of testimony about the ag use that was anticipated in those lots, so it was a choice on the part of the person who purchased to go ahead and subdivide. And in fact, in this particular case, the Lopez, Brown, and Kevan property, it was subdivided, and then one of the subdivided lots was then condominiumized. So that's why you have so many owners appearing before you today. And that created the necessity for all of these multiple meters. And because they couldn't be on the walls of the houses the way that the infrastructure was done by the developer, they were on these other walls.

I don't think there's any question that the developer and the contractors knew or should've known what the zoning requirements were. It's right there in the code. You can have nothing in the setback except a wall no more than four feet in height. The reasons why these pedestal – so-called pedestal walls weren't placed beyond the 25-foot setback, you'd have to look at the different diagrams that you've been shown about the way the property, once it was subdivided from four acres into two acres. It's a long, narrow property. And so the subdivision required an easement driveway and there wasn't a whole lot of room. But again, this was a choice of the initial purchaser. This was not something that was forced upon them by the County or anyone else. So I think that's important to understand that this is a situation that arose because of the understandable desire of the purchases of the four-acre lots to create – to subdivide into two two-acre lots and sell off one of the lots – hard to understand about that.

The standards, so now we have a law, we have an ordinance, a County Code that says within the setback, which is 25 feet front setback in the ag district, you can only – you can't have any structures at all except you can have a wall four feet in height. And the applicants here are asking for a variance from that ordinance. And although they have given testimony – And it's understandable, they don't understand why the ordinance exists. It doesn't make sense to them why can you have a hedge and so forth and so on. And that's not the issue, obviously, before you. The ordinance is the ordinance. And if the legislature, the County Council, wants to change it, that's a separate issue. But here you have a clear ordinance and you have a clear violation of that ordinance.

You're only permitted as a Board to grant a variance if you find the three criteria that I'm sure you're all familiar with. There has to be something exceptional, unique or unusual on the property that is not generally prevalent in the neighborhood or surrounding area. I don't think there's been any testimony that there's anything unusual about this lot that's not prevalent in the neighborhood or surrounding area. There was some testimony that it was a steep lot, but there wasn't any testimony that the neighboring lots were not also steep.

The second criteria is that strict compliance would prevent reasonable use of the property. And I don't see any way that that particular criterion could be met because we know that numerous other landowners in the area have reduced their walls. So there is a reasonable use of your property by reducing the wall.

And the third criterion is that the conditions creating the hardship were not the result of previous actions by the applicant. This gets a little murky because some of the applicants were purchases from the original – I guess the Browns in this particular case were the original purchasers, and some of the other purchases – other owners came along later, but in any case, this – you have to find that all three of those conditions in order to grant an exemption, and I don't think that the first two could be met. Thank you very much.

Chairman Endo: Mr. Lopez, you wanna–?

Mr. Lopez: Yes, I would like to have a rebuttal. We also looked at the variance standards very closely. That's why we filed our application 'cause we felt that we met all three of them. As you heard us present, these are unusual circumstances. The lots are unusual. The distance from the electrical conduits are very far away. We had to be in strict compliance of the provisions of this Title. We would not have electricity to our house because we can't afford to do this. There's– No one wanted to cut down their walls. You could go to every single person and none of them wanted to. They were very scared when they received letters saying that they were subject to one thousand dollars a day fine and criminal penalty. That's enough to scare the bejeezus out of anybody. And that is why people are tearing these walls down. Then there were a couple of people who wanted to leave the electrical structure up behind it. And then they were told they could not do that.

Without a doubt, the conditions creating this hardship were not the result of the previous action of the applicants. You heard Ms. D'Enbeau say that the Ag Bill was not clear. We are innocent victims. If it's not clear to her or the other lawmakers here, then I feel that this is the purpose of the Board of Variances is to hear these issues, to find a fair resolution to this. I think that's all I have to say. We just pray that you see our situation. Thank you very much.

Chairman Endo: Okay, at this point, we're gonna go into deliberation. We can– If no Member– Some of you had questions for the County. I think you wanted to – Member Santiago, you wanna ask a question of the County Department of Planning about the certificate of occupancy or not?

Mr. Santiago: Well, I had a question regarding the timeline and when the property and new home would've been certified to be occupied, and if there was a physical inspection of that home prior to the issuance of that permit or C.O. I'm not sure who to address it to.

Chairman Endo: Can somebody from the Department of Planning address that question?

Mr. Aaron Shinmoto: We can't answer that question. That's a Department of Public Works' issue. We don't handle that part of the certificate of occupancy.

Chairman Endo: The building permit process.

Mr. Santiago: The gentleman from DSA or–?

Chairman Endo: Nobody here–

Mr. Santiago: No, he was – Sonny was a Zoning Inspector.

Chairman Endo: A Zoning Inspector, part of the Planning Department. Well, is there any other discussion or other questions?

Mr. Tanaka: Specific to that?

Chairman Endo: No, anything.

Mr. Tanaka: Just as a part of discussion, overall discussion on this matter, and numerous others that we have seen portions of, the physical facts are not in dispute. There is a structure, whether you call it a wall, a pedestal, that exceeds four feet within the setbacks of the ag subdivision. The reasons— Is it a big deal? No, it's not a big deal. Does it—? But it does not— It violates the letter of the law, not necessarily the intention of the law. So I just wanna kinda get out, I guess, my point of view, my opinion. Do— These walls do not alter the character of the existing neighborhood. From what I've seen specific to this letter dated from Launiupoko Associates, if I were a home buyer, my understanding would've been that these pedestals were required or spend an exorbitant amount of money looking for another option. Does it create a hardship? Yes, it does. We've seen from others that have complied I think a number was \$6,600 or something like that, which I consider a substantial hardship.

Chairman Endo: Okay. I think one point that we should keep in mind is that the fact that a number of homeowners have corrected the situation needs to be kept in context. It shouldn't be a matter of, oh, well, since 20 homeowners or 40 homeowners corrected it, therefore, we should feel compelled to force the applicant to correct it on some kind of quid pro quo or fairness type of issue. The purpose of hearing about how other people have corrected it should go more to the feasibility of whether or not it can be corrected to the four feet and things like that. That's the pertinent part. I don't think we should try and go too far off. The merits of the individual application should be looked at primarily by themselves, you know, whether or not you believe they met the criteria for a variance, and not try and figure out that they have to be in the same boat just because another homeowner corrected it. I think that— But it's a tricky thing.

So as far as Member Santiago's question about the building permits and inspections, maybe you could ask the parties. It's basically up to the applicant or the County to present the best case they can. So if you feel like your question about whether or not there were inspections by the County, if you put it to them, ask them what they know, and make your best decision based on whatever evidence has been presented at this point.

Mr. Lopez: I just want to reiterate what I said earlier that it would defy logic to assume that 58 of them did not have inspections. If they had inspections . . . (inaudible) . . .

Mr. Huh: May I correct the — I'm sorry, may I correct the statistic? Fifty-eight is not all pedestal walls. The 58 is the number of violations that includes perimeter walls as well. The statistic on 58 is not narrowed down to just specific pedestal walls.

Chairman Endo: Okay. Sorry, we can only hear from the applicant. The applicant needs — wants to answer the question—

Ms. Brown: Well, I'm the applicant.

Chairman Endo: No, no, the other guy.

Mr. Lopez: Yes, as Mrs. Brown stated, on the – what was it? The–

Ms. Brown: The County web site, you can you can easily look up the permits, and who inspected them, and what dates they were inspected, and what dates they passed. The electrical permits are in there as well as the final inspections. And I'm sure all of the others are in there also. I only looked up the electrical and the final in the County – in the code.

Mr. Tanaka: Well, the inspections, building inspections, correct me if I'm wrong, just to keep that number of 58, although I know that's not an exact number, if 58 building inspections took place and were signed off on, was done by the Building Permits in DSA, and no inspections were done at that time by yourself because you're with – it's a Planning Department issue, not a DSA issue, so that was the, I guess, oversight in that it's two separate departments inspecting conceivably, the same thing. So that's why it was never brought up in 2001 because the Building Inspector did the inspections. Our Zoning Inspector went out and did the measurements nine years later because someone complained or made a request for service, correct?

Mr. Shinmoto: We aren't saying these – let's use the number 58. We're not saying these 58 passed building inspection. Some of these walls never got permits.

Mr. Tanaka: Possibly.

Mr. Shinmoto: A lot of the walls never got permits. So again, we're not making the allegation that, yeah, they all passed final inspection. We don't know that. Public Works has to say that.

Mr. Tanaka: Oh, yeah, sorry, that's what I meant that it's Planning Department and DSA is two separate entities although under one Maui County roof.

Mr. Santiago: I guess my comment is DSA or the Maui Planning, they're all governed by the same ordinance, right? The ag zone, the ag codes. So I guess it boggles the mind why that would not have been cited to begin with.

Mr. Shinmoto: Excuse me. We are not governed by the same code. Public Works has their own codes. We have our own. We both enforce our own.

Mr. Santiago: So is the ag code not applicable to–?

Mr. Shinmoto: The ag code is only for the Planning Department.

Chairman Endo: In other words, what they're saying is that the Building Inspectors would be checking for Electrical and Building Code compliance. And if you look in the Electrical Code or Building Code, they don't say anything about setting up a wall within the agricultural zone setback. The agricultural zone prohibitions come from the Zoning Code which is a section of the Maui – but you're right, they're all part of the Maui County Code. They're all ordinances. They're all laws that apply to everyone, so I think that's what you meant.



Mr. Lopez: Another confusing thing is that the allowable wall height in subdivision, in residential, is six feet. And why would it be so different for ag is very confusing. (Inaudible)

Ms. D'Enbeau: I don't think it's appropriate for us to be making comments, but since Mr. Lopez is, let me just say that this wall is seven feet tall.

Mr. Kamai: Question for Mr. Huh. Mr. Huh, how many violations was for a pedestal wall itself in Launiupoko?

Mr. Huh: I do not have that statistic at this moment. We don't have the computer program that extracts that information. In order for me to do that, I have to go one-by-one by TMK that I had been given a notice of warning, find out what the structure of violation was for either perimeter or pedestal wall, and count one-by-one. If you would like me to do that, I can do that, and we could postpone this thing if you like. But I do have— Well, my statistic basically says it started – the very first complaint started back in 2008. Mr. Greg Brown, Brown Development, has just lowered the wall. And just name a few names: Mr. Jim Riley, Mr. Frank Sylva and Mr. Hunt, Ms. Debbie Arakaki, Mr. Barry Cohn, Greg Brown, Mr. Posely all have lowered their walls.

Mr. Kamai: The names you mentioned, are those individual violations or are those clustered?

Mr. Huh: Some are clustered and some are individuals. For example, Mr. Frank Sylva and Mr. Jeff Hunt's pedestal wall, which I measured at about ten foot width, four-foot height was able to fit all four meters there.

Unidentified Speaker: Three.

Mr. Huh: Three meters? I think that was four meters. I counted them.

Mr. Kamai: Can I ask you to take a guess, Mr. Huh?

Mr. Huh: Yes, what guess would you like me to take?

Mr. Kamai: How many pedestal wall violations was issued?

Mr. Huh: You know, out of 58, perhaps maybe less than half of them are pedestal walls.

Mr. Kamai: Twenty-four?

Mr. Huh: I do not know. Thirties? Thirty? Twenty-five? See, I can't guess that because I just did the structure and setback that exceeds the four-foot height limit statistic. I did not segregate it between perimeter walls and "pedestal" walls. I'm sorry. I should've been better prepared.

Mr. Kamai: No other violations regarding a pedestal wall was issued by yourself in any other subdivisions in the area that you're responsible for— West Maui?

Mr. Shinmoto: We have other pedestal wall complaints island-wide. Launiupoko just happened to have the most of it. We have some in Upcountry. We have in Kihei, West Maui. I mean, it's not

restricted to Launiupoko except that's where we got most of the complaints.

Mr. Kamai: Can I ask you to take a guess on how much of those complaints came from island-wide?

Mr. Shinmoto: Aside from Launiupoko, probably eight or nine more island-wide.

Mr. Kamai: So maybe 20 up in Launiupoko itself, roughly? Guesstimate?

Mr. Shinmoto: Twenty-plus. Other than Launiupoko, there's maybe eight or nine elsewhere.

Mr. Kamai: Island-wide?

Mr. Shinmoto: Yeah, not counting Launiupoko, eight or nine.

Chairman Endo: Okay?

Mr. Santiago: I have a question. Of those eight, nine other citations or complaints, you said Kihei and Kula, are they all on ag zones, also?

Mr. Shinmoto: Yes.

Mr. Santiago: They are?

Mr. Shinmoto: Yes, ag and rural. Maui Meadows is rural.

Mr. Santiago: Are there any ag in Kihei? Alright.

Mr. Shinmoto: This same four-foot height limit applies to rural lands also.

Chairman Endo: Would any Member like to make a motion either to grant or deny the variance request?

Mr. Tanaka: I'll volunteer. I would move to grant the variance application as although not necessarily a unique physical condition, the walls do not alter the character of the neighborhood. That it appears as though MECO required the pedestals which would – without the pedestals would prevent reasonable use of the property. And lastly that removal or renovation of these walls to lower it to four feet would create a substantial hardship.

Chairman Endo: Are you making a motion with or without the standard conditions?

Mr. Tanaka: With the condition of the standard hold harmless agreement, not necessarily requiring any insurance to go along with that as I cannot foresee any possible foot and a half, 15 square feet of wall would require that additional protection.

Chairman Endo: Okay, so the motion as stated would be to grant the variance under the findings of fact as stated without the insurance requirement but with the hold harmless as stated in the

standard conditions. Is there a second?

Mr. Tanner: I'll second.

Mr. Shinmoto: Excuse me. I believe you said the first statement this was not a unique?

Mr. Tanaka: Although not unique, it does not alter the character of the neighborhood.

Mr. Shinmoto: You need to find all three as being unique, does not alter, and there's no hardship – hardship was created. You cannot pick–

Mr. James Giroux: I think the initial motion should just be your desire is to grant the variance. That's the motion. You have a second. During the discussion, you can augment the areas of what you need to base your findings on, on the facts that you've heard in order to see what the criteria is and how it matches with the facts that you've heard.

Chairman Endo: Okay, so it's been and seconded to grant the request for a variance. And perhaps we should discuss how you would find there is a unique circumstance as one of the criteria.

Mr. Tanaka: Well, by just eliminating the beginning of that statement—"It would not alter the character of the neighborhood." And you could argue that any lot, even two lots next to each other in Kahului are unique. So as part of – could I amend my motion or no?

Mr. Giroux: No, there's no need to amend the motion. It's just that other Members can voice their positions on that issue also, if they've seen or heard facts that may corroborate that position.

Chairman Endo: Just to clarify, though, Criteria 1, we need you to find both parts: that there is an exceptional, unique or unusual physical or geographical condition existing on the subject property not generally prevalent in the neighborhood; and that the use sought to be authorized by the variance will not alter the essential character of the neighborhood. So both parts of the first criteria have to be met. And so you could say something like you find that there is exceptional, unique or unusual physical or geographical conditions on the subject property based on all the testimony that you've heard and in the record, in particular being the topography, the steep slope, the unique factual situation of how this subdivision was created, and everything else involved in this project and the particular lot. Something like that.

Mr. Tanaka: Yeah, I mean, maybe you could argue that like I said, two 10,000 square foot lots in Kahului next to each other in a subdivision could be defined as unique. In this case, up on a hillside in some severe slope conditions, looking at the pictures, anyway, both by – specific to this one and others that have passed before us, in my opinion, I would view it as unique.

Mr. Kamai: Also, Mr. Chair, why I'm supporting the motion is that the – I agree with the applicant's – what he stated about the distance from the road right-of-way to the residence exceeding the distance MECO would allow for service; and MECO did not want multiple meter points of service; MECO provided owner specification showing dimensions on a pedestal wall; to be told by the developer that they had to comply; to be told by MECO and given a drawing that this is your standard pedestal wall and to follow through and build it, I think that's – only to find out later, eight

years later, and only through you getting a call from somebody complaining, I find that exceptional, unusual, and unique. That's why I'm supporting the motion.

Chairman Endo: Okay. Further discussion? No? Okay, all those in favor of the motion as stated and clarified with additional discussion as to the factual findings of fact, please say aye. Okay, the Chair votes aye.

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

**VOTED: To grant the variance as stated and clarified with additional discussion as to the factual findings of fact.**

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

Chairman Endo: **And so the motion passes five-zero, and the variance is granted with the condition of the hold harmless agreement.** Alright. Thank you. Okay. It's almost four o'clock. How much more time do we have today? Does any Member have to leave by a certain time? 4:30? 5:00? 3:30? The County owes you time. If the parties for the— Let's call the next matter and then discuss whether or not we think we can finish today.

## **B. PUBLIC HEARING**

1. **JAMES and KATHLEEN WISTHOFF, AMY MARTIN-WISTHOFF and DAN MARTIN requesting a variance from Maui County Code, §19.30A.030 to allow an electrical pedestal wall within the agricultural setback area to exceed the 4 feet height limit by 2 feet, 7 inches for property located at 130 Awaiku Street, Launiupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-009:023 (BVAV 20100007) (Rescheduled from the May 13, 2010 meeting.)**
  - a. **Department of Planning, County of Maui's Hearing Memorandum**
  - b. **Department of Planning, County of Maui's Witness List**
  - c. **Department of Planning, County of Maui's Exhibit List; Exhibits "A" - "F"**

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

Chairman Endo: Is there anyone in the public who wished to sign up for public testimony on this agenda item? If you do, please come up and sign on the sign-up sheet?

Mr. Lopez: Do you want me to sign up after all of this?

Chairman Endo: It's up to you. We have to officially call for it.

Mr. Lopez: Okay. I will . . . (inaudible) . . .

Ms. Kapua`ala: And Board Members, I do have a video if you're interested in watching.

Chairman Endo: Okay.

Mr. James Wisthoff: (Inaudible)

Chairman Endo: Okay, seeing no one signing up, we'll now close public testimony on this agenda item. I guess before you do that, or while the Planning Department is setting that up, do the parties – you think we can finish in half an hour? Maybe we can try and do an abbreviated version and just discuss any differences in your project from the one just prior.

Mr. Wisthoff: I'm willing to stipulate most of the facts . . . (inaudible) . . .

Chairman Endo: Ms. D'Enbeau?

Ms. D'Enbeau: Yes, and one of the remaining issues was we didn't call Mr. Kauhi from the Electric Company again because of the length of this testimony. And we'd like to ask that that testimony be admitted as part of this proceeding as well.

Chairman Endo: Was there any objection to that, Mr. Wisthoff?

Mr. Wisthoff: No.

Chairman Endo: Okay. So it looks like the parties wanna try and see if we can get to a vote in about half an hour. Is that what I'm sensing?

Mr. Wisthoff: See, I had to make a special trip back for this meeting because they wouldn't move me to August. So I'd really like to get it done today.

Chairman Endo: We're gonna try our best, and we're gonna talk really fast, and stick to the most pertinent facts. So we'll start with a video.

Mr. Wisthoff: Actually, before we start, I'm not even sure if I need to go through that because the facts are almost identical. I have one technical issue I wanna bring up, I guess. Corporate Counsel left. At the end of the last meeting, the County filed a motion to intervene that was pulled because they had the TMK wrong, they had the addresses wrong, some typographical errors. And at the end of the meeting, they said they were gonna re-file their motion to intervene. And we received a witness list, and we received their other information, but we've never a motion to intervene on the part of the County in this case.

Chairman Endo: Okay. Ms. D'Enbeau, do you know the status of that?

Ms. D'Enbeau: Yes, as far as I know, it was filed. I don't know why it wasn't received.

Chairman Endo: Anybody in the Planning Department, can they confirm the status of the motion to intervene? Maybe we could watch the video while somebody checks on that.

Ms. D'Enbeau: Before we watch the video, apparently, the motion to intervene is not in the Planning Department file either.

Chairman Endo: Okay, so is that correct in that we don't actually have a pending motion to intervene?

Ms. D'Enbeau: It appears to be the case.

Chairman Endo: Okay, so what we are going to do, I guess, is not grant intervenor status to the County, but we hope to move so quickly anyway that it would not be as formal anyway. So I think we should be okay.

Ms. D'Enbeau: What I would suggest is the intervention status of the County was for the purpose of letting Mr. Huh testify and explain the situation. And if the Commission feels like it would be appropriate to hear from him in any case, which I imagine if the Commission would – I mean, excuse me, the Board would feel, then that would really resolve the problem. He would be able to testify as to the height of the wall, and the circumstances, and answer whatever questions you might have.

Chairman Endo: Okay, that's duly noted. We're gonna proceed without granting intervenor status to the Planning Department. Yeah, we can always ask Sonny questions as a resource person. Okay.

Mr. Wisthoff: Okay, this is a view of our pedestal. We're the pedestal on the right side. And as you can see, we've landscaped–

Ms. Kapua`ala: Excuse me, Mr. Wisthoff. Let me go ahead and do this so we can do it properly.

Mr. Wisthoff: Okay. Oh, that's not our–

Ms. Kapua`ala: Yeah.

Mr. Wisthoff: Okay. I thought that was our presentation. Go ahead.

Ms. Kapua`ala: I can go ahead and do that after. This is just to familiarize the Board with the area, and we want them to draw their own conclusions.

Mr. Wisthoff: Okay.

Ms. Kapua`ala: This is not the wall. This is the wall. Am I correct?

Mr. Wisthoff: Yes, correct.

Ms. Kapua`ala: This is Mr. Wisthoff's driveway and again, the wall in question. This wall would serve the adjacent property. This is not a part of this variance request. This is the rear of the subject wall with the pedestals in question, electrical pedestal meters. Thank you. I'll go ahead and pull up your presentation. Mr. Wisthoff has a power point presentation.

Mr. Wisthoff: I'll try to get through this real quickly. We're applying for a variance on the electrical pedestal at 130/138 Awaiku Street. Pictures of it were just shown to you. And here again you can see the front of the pedestal. You can see that we've landscaped it. We've got several large coconut trees, palm trees, as well as plants around it. One of the things I would like to mention is one of our concerns again is safety. When we bought the property in 2003, that year there was a huge rain in that area. And water came rushing down that mountain, down our driveway, and completely washed out the vegetation on the other side of the wall. If the pedestal had been down anywhere near ground level or if the electrical meter had been anywhere down near ground level, it would've been completely inundated with water. And that's why we put the small – there's a small-like 18-inch wall going around the bow there. And this is the back of the pedestal. And you can see it also, it's a very low point. It's the lowest point on either of our properties. And I'm gonna pass the definition of a wall. I think we've beaten that to death.

For variance standards, there was some discussion on number one, and I think the unique nature of our property is the fact that our – in our case, there are two two-acre lots, and we're on a flag lot. And so we're up – we're 500 feet from the road to start with, and then our house is up on top of that. And so we're, you know, seven or eight hundred feet from the road. And to get electrical service from the road up at this point would be a considerable expense. And I think that just the fact that when they put these in, you had two two-acre lots top – stacked on top of each other that could both accommodate two homes made it very difficult to plan for the electrical situation that was gonna come years down the road when those houses were finally developed.

Strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property. And again, you've seen the exhibits where it was clear that the owners of the lots at that time felt like it was required. The letter from Launiupoko Associates saying there would be no further exceptions. If you want electrical service, you put up a meter. Here's your specifications. In our case, too, at this point, we own – operate a bed and breakfast. It's permitted by the County on our property. When we first got the letter, we checked with several – two electrical contractors and neither of them could guarantee that our property – that our power would not be off for more than a day. And we have guests in the house. It's just untenable that we would have people coming to the island, and staying in the house, and telling them we're not gonna have power tonight, or hot water, or any of the other amenities. And since then, we've talked to a couple of contractors who said they think they can get it on within eight to ten hours because I'm not sure what the technical process is, but they have to physically disconnect the power, remove the structure, put something else in, and then turn the power back on. And if anything goes wrong in there, they tell us that there's a reasonable chance, there's some chance that we won't have power at the end of the day. And so that makes it difficult for us to be able to enjoy the use of our property. This is the pedestal requirements that you've already seen from – with the MECO Electric Company legend on it.

And number three, originally in the Department of Planning's recommendation report, conclusion of law, at our May meeting, and I didn't receive a notice from the County this time, so I don't know if it's still there or not, but they added on the end of number three that it was the previous actions by the applicant and/or the owner of the property, which is not part of the variance standards listed on the County documents. And so they've added that basically so that they can include actions by people previous to us.

And so in summary, the Planning Department, we feel like they misinterpreted the definition of a wall. The pedestal does not alter the essential character of the neighborhood. In fact, they are nicely landscaped and are not an eyesore in anyway. Unique or physical conditions, geographical conditions, existing on the subject property prompted MECO to require construction of the pedestals. And it's clear that in 2001, the owners were required to construct pedestals to receive service from MECO. And the conditions creating the hardship were not a result of the previous action by the applicant. As I mentioned, we purchased the property in 2003, and it was already done and ready to go. The granting of the variance will not be detrimental to public safety and the welfare of the general public.

One point that I wanted to make when you were asking earlier about inspections, as part of our B&B permit process, I'm not sure, they didn't call it a certificate of occupancy, but they had – we had to go through and prove that all final inspections were done. And in one case, I think the swimming pool was still open, that it hadn't been inspected. And so we had to call an inspector two and a half years after-the-fact to come out and inspect it, and close the file. And so the Planning Department required us to make sure that all our inspections were complete before issuing that permit. And that's all I have.

Chairman Endo: Is there a Planning Department recommendation?

Ms. Kapua`ala: The Department found that the applicant did not meet all three of the criteria for the granting of the variance. Would you like me to read the entire recommendation into the record?

Chairman Endo: We have a copy of it.

Ms. Kapua`ala: I'll give you just the last paragraph. In consideration of the foregoing, the Department recommends that the Board of Variances and Appeals adopt the Department's staff and recommendation reports prepared for today's meeting and authorize the Planning Director to transmit the findings of fact, conclusions of law, and decision and order on behalf of the Board of Variances and Appeals.

Chairman Endo: Anybody have any questions?

Mr. Tanaka: Mr. Wisthoff, I have one question for you. Have you—and I apologize if you already stated this—have you researched what the cost would be to make this wall comply?

Mr. Wisthoff: I have not. I've heard from other owners that have done it that it's anywhere from about \$7,000 to \$12,000. And there's some estimates that have been way up there completely off the charts that I've not paid any attention to, but, yeah, it's a significant number.

Chairman Endo: Ms. Kapua`ala, are you sure we got a copy of that recommendation because – was it previously distributed, or could we borrow a copy?

Ms. Kapua`ala: This hearing was originally set for May 13.

Chairman Endo: So you have it in front of you, though?



Ms. Kapua`ala: I do have a copy of the staff and recommendation report in front of me.

Chairman Endo: Okay. Just checking.

Ms. Kapua`ala: Did you receive an agenda with the report for the May 13<sup>th</sup> hearing?

Mr. Wisthoff: Yes.

Ms. Kapua`ala: It probably was distributed to you as well.

Chairman Endo: Okay.

Mr. Wisthoff: And just so you know, I did have a handout with the power point presentation, and I think it's identical to the one that you just had at the last hearing: the same letters, the exhibits.

Chairman Endo: Okay, Mr. Wisthoff, I believe – did you say you were amenable to allowing the prior testimony of Greg Kauhi from Maui Electric Company to be considered as part of your matter?

Mr. Wisthoff: I don't think I have any reason to object to it. I'm not – since the County's not intervening, though, I'm not sure that it would be necessary.

Chairman Endo: Well, the – well, my thought was that there still could be a potential appeal to the decision, so it's better to have as much of a full record as part of your–

Mr. Wisthoff: Okay, I have no objection to including it.

Chairman Endo: Okay. And similarly for the testimony which you've heard in the prior matter from the Inspector Sonny?

Mr. Wisthoff: Yes, I have no objection to including that.

Chairman Endo: Okay, so we will consider all of that testimony as part of your record.

Mr. Wisthoff: Okay.

Chairman Endo: Alright. Is there a motion or further discussion? Yes?

Ms. D'Enbeau: (Inaudible) There was one other witness as long as . . . (inaudible) . . .

Chairman Endo: Mr. Riley?

Ms. D'Enbeau: Mr. Riley.

Chairman Endo: Oh, yeah. Did you hear Mr. Riley's testimony earlier?

Mr. Wisthoff: Yes. I have no problem with that being included.

Chairman Endo: Okay, so we'll consider his testimony as part of your record also.

Mr. Wisthoff: Okay.

Chairman Endo: Okay. Okay, the Chair would urge a Member to make a motion one way or the other.

Mr. Tanaka: I would so move to approve the variance application as is justification that this is a unique physical condition that will not alter the character of the neighborhood. And that the requirements for the pedestal would've prevented reasonable use of the property, and that lowering of the wall or renovating the wall would create a hardship. I would also recommend that with approval of this variance that the standard hold harmless agreement be a condition without any additional insurance requirement.

Chairman Endo: Is there a second?

Mr. Tanner: I'll second.

Chairman Endo: Okay, it's been moved and seconded to grant the application for a variance with the hold harmless agreement as a required condition. Discussion?

Mr. Kamai: Mr. Chair?

Chairman Endo: Yes, Member Kamai?

Mr. Kamai: For the record, I'll be supporting the motion. And I would like to adopt the reasons submitted by the applicant as the reasons why we support this motion.

Chairman Endo: Okay. You mean everything in this packet, including the definition of a wall and all that?

Mr. Kamai: Everything, Mr. Chair. Yes, everything.

Mr. Giroux: Just for the record, it's the document that accompanied Mr. Wisthoff's power point.

Chairman Endo: Okay. Discussion? Further discussion? No? All those in favor of the motion to grant the variance as stated, please say aye. The Chair votes aye.

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

**VOTED: To grant the variance as stated.**

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

**(Excused: R. Shimabuku, S. Castro, R. Phillips, B. Vadla)**

Chairman Endo: **The motion passes five-zero, and your variance is granted.**

Mr. Wisthoff: Great. Thank you.

Chairman Endo: Trisha, you want me to call the next item or you wanna defer?

#### **D. COMMUNICATIONS**

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)**
  - a. **Letter dated July 12, 2010, from Kathleen Ross Aoki, Planning Director, to Michael J. Gronemeyer, Michael McDonald, and Philip Segura confirming wall/structure violations have been rectified.**

Ms. Kapua`ala: Mr. Michael Gronemeyer, Michael McDonald, and Philip Segura, TMK: 4-7-009:050, BVAV 20100010. On your desk when you arrived, there was an additional letter from Mr. Gronemeyer withdrawing his variance application, and that is because the letter you received with your packet, the Department of Planning stated that the property was in compliance.

Chairman Endo: Thank you. I see that. We all see that? Moving on, we have the July 8, 2010 meeting minutes.

#### **E. APPROVAL OF THE JULY 8, 2010 MEETING MINUTES**

Mr. Tanaka: So move to approve.

Mr. Tanner: Second.

Chairman Endo: It's been moved and seconded to approve the meeting minutes of July 8, 2010. Discussion? Hearing none, all those in favor, please say aye. The Chair votes aye.

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

**VOTED: To approve the July 8, 2010 meeting minutes as presented.**

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

**(Excused: R. Shimabuku, S. Castro, R. Phillips, B. Vadla)**

Chairman Endo: **The meeting minutes are approved.** Moving on to Item F-1, status update on Board of Variances' contested cases.

#### **F. DIRECTOR'S REPORT**

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

Ms. Kapua`ala: It's pretty clear. We're processing hearings officer contracts. Other than that, there's really nothing.

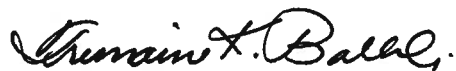
Chairman Endo: Okay. Our next meeting is August 12<sup>th</sup>. If there's no further business of the Board? Hearing none, this meeting is adjourned.

**G. NEXT MEETING DATE: August 12, 2010, Thursday**

**H. ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 4:22 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  
Rick Tanner  
Bart Santiago, Jr.

**Members Excused:**

Rachel Ball Phillips  
Ray Shimabuku  
Steven Castro, Sr.  
Bernice Vadla

**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