

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JANUARY 13, 2011**

(Approved: 1/27/11)

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, 1:32 p.m., Thursday, January 13, 2010, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Chairman Randall Endo: This meeting of the Board of Variances and Appeals will now come to order. Let the record reflect that it's 1:32 p.m. on January 13th, 2011. And we have a quorum present of six Members of the Board. We're hoping that a couple more Members will show up in a few minutes, but we wanted to get underway as we have several items to get through today. Before we begin with our first agenda item, we'd like to note for the record the presence of our Planning Director, Director Spence. Would you like to say a few words?

Mr. Will Spence: I just wanted to say hi to the Board. My name is Will Spence. If you don't know anything about me, I was a staff member for ten years. And for the last eight years, I was a consultant mostly representing smaller landowners, mostly the kinds of things that you guys look at—you know, smaller variance kinds of things. So I understand where the applicants come from. I only appeared before this Board once, and if you remember, I think it was the last one in December. So anyway, I'm very glad to be on board. If my office can do anything for you at all, talk to Aaron. He'll get you whatever you need. No, serious, give us a call. We're happy to do whatever – what the Board needs to do to do their functions. Any questions for me, just give me a call. Thank you much.

Chairman Endo: Thanks, Will. Okay, if there is no objection from the Members, the Chair would suggest that we take Item C-1 out of order because it has been represented to the Board that it's just going to be a very quick representation of a dismissal. Is there any objection? Hearing none, we'll take Item C-1.

C. APPEALS

1. **MAUI'S BEST GIFT & CRAFT FAIR, LLC.'s appeal of the Notice of Violation issued by the Director of Planning in regards to the use of property located at 270 Lahainaluna Road, Lahaina, Maui, Hawaii, TMK: 4-6-010:025. (BVA 20050013)**

PETER A. HOROVITZ representing BARRY BROWN appealing the Planning Director's Notice of Violation for "noncompliance of conditions set forth in the Conditional Change in Zoning" for the Maui's Best International Marketplace located at the intersection of Honoapiilani Highway and Lahainaluna Road, Lahaina, Maui, Hawaii; TMK: 4-6-010:025. (BVA20050024)

WILLIAM F. CROCKETT representing MAUI'S BEST GIFT & CRAFT FAIR, LLC appealing the Planning Director's Notice of Violation (V20050070) for the operation of Maui Best International Marketplace located at the intersection of Honoapiilani Highway and Lahainaluna Road, Lahaina, Maui, Hawaii; TMK: 4-6-010:025. (BVA20050027)

- a. **James Geiger, Attorney for Appellant, Barry Brown, transmitting to the BVA a Stipulation for Dismissal of Appeal document.**
- b. **Anthony Ranken, Attorney for Evelyn Goo (Maui's Best Gift & Craft Fair LLC), and Kimberly A. B. Sloper, Deputy Corporation Counsel of the Department of the Corporation Counsel, informing the BVA that Evelyn Goo hereby dismisses with prejudice the two abovementioned appeals by letter dated January 4, 2011.**

Ms. Kimberly Sloper: Good afternoon, Chair and Members. I'm Kimberly Sloper, Deputy Corporation Counsel. I do have a letter signed by Mr. Ranken and myself stipulating to the withdrawal of the two Evelyn Goo matters before the Board.

Mr. James Geiger: Good morning, Chair, Board Members. James Geiger. I represent another Appellant in this matter, and we have a stipulation for dismissal of appeal that has been signed by Corporation Counsel and myself. And we'd just ask that the Board approve the dismissal of our portion of the consolidated appeal also.

Chairman Endo: Okay. Are there any questions from the Board?

Mr. Geiger: That effect of all that we're asking you will be that the entire appeal, the consolidated appeal, will be gone.

Chairman Endo: Okay. I don't think we need to do a motion to approve it. It's just acknowledging that it has occurred. It's within the right of the parties to always dismiss an appeal. So thank you for coming.

Mr. Geiger: Thank you.

Chairman Endo: Okay, let the record reflect that we now have an additional Board Member here—Member Santiago.

(Bart Santiago entered the meeting at 1:36 p.m.)

Chairman Endo: Members, at this time, we had scheduled on the agenda an orientation workshop, Items B-1 through 5, but my understanding is it was primarily for our new Board Members. I think in particular, Member Vadla never went through the orientation yet. Did everybody else go through the orientation?

Mr. Santiago: The first meeting I attended had the orientation.

Chairman Endo: Yeah. Okay, so I think what we're going to do since we all have perfect memory,

and we don't need to hear the orientation presentation again, we will – the Chair will recommend that we defer the matter till the end of the agenda because Member Vadla might show up a little later. Then we can do it. Is that okay with everyone? Okay. All right. So in that case, we'll move on to call Item C-2.

2. **DOMINIC and ANN PISTILLO of the DOMINIC AND ANN PISTILLO TRUST appealing the Planning Director's Notice of Violation for the construction of a wall which exceeds the four (4) foot height limit for walls within the yard setback area for property located within the agricultural district at 51 Paia Pohaku Street, Lahaina, Maui, Hawaii; TMK: (2) 4-7-010:023-0001 (BVAA 20100004)**
 - a. **Department of Planning, County of Maui's Motion to Intervene; Memorandum in Support of Motion**
 - b. **County of Maui's Witness List**
 - c. **County of Maui's Exhibit List; Exhibit's A to D**
 - d. **Withdrawal of Department of Planning, County of Maui's Motion to Intervene; Memorandum in Support of Motion**
 - e. **Department of Planning, County of Maui's Hearing Memorandum; Certificate of Service**

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

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

Mr. Dominic Pistillo: Hello. My name is Dominic Pistillo, Dr. Dominic Pistillo. And this is – my wife is going to be participating with me, if that's okay, Ann Pistillo. And I'm here representing myself. We are not represented by counsel.

Chairman Endo: Thank you. Was there anything from the Planning Director, initially?

Ms. Kapua`ala: No.

Chairman Endo: Okay, the motion to intervene was withdrawn. Is that correct?

Ms. Johnston: Yes. There's no need to intervene. We represent the Planning Director. I think Ms. D'Enbeau got confused with all the pedestal wall issues where we did have to intervene.

Chairman Endo: Okay. So we will just proceed then.

Ms. Johnston: Okay. May I give just about a two-minute opening statement, as it were?

Chairman Endo: Sure. So just to go over the procedure–

Mr. Pistillo: Will we have any public comment before we get started?

Chairman Endo: Yeah, we can do that. We can do the public testimony first but keeping in mind that those people are not sworn or anything. So actually, if you wanted to call somebody as your witness, you wouldn't ask them to speak as a public witness. Just have them speak during the actual case. But at this point, I—

Mr. Pistillo: In response to that, there's really not many people here because most people thought the road was closed. So there's only one that would like to speak, and I'd like to do that outside because I didn't intend to call him as a witness, or to do anything under sworn testimony.

Chairman Endo: Okay. Did — whoever wants to testify, can you sign up on the sign-up sheet?

Mr. Richard Lopez: I already signed up.

Chairman Endo: Okay. Could somebody pass that to me? All right. So we'll open up this matter to public testimony on this agenda item. We've got only one person signed up—Mr. Richard Lopez. You have three minutes.

Mr. Lopez: I think we're all about on a first name basis because I've been here so much regarding these pedestal wall issues. I am a neighbor across the street from the Pistillos. I'm here. And my wife and I are in support of their request for a variance. We're very familiar with the property. They have developed a beautiful home and farm, along with a barn. They are actually involved in agricultural activities.

I don't consider that they have a wall. Their primary wall is four feet. The columns that they have I think are what's of issue. And the ordinance as I understand it says that you may put a wire fence or barrier on top of a wall in an agricultural area. If you were to put a fence on this, I think it would certainly be much less attractive. The columns I think would support whatever barriers they do need for their agricultural activities.

All of our neighbors, as far as I have talked to, a number of neighbors are in support of their variance. They find as we do that the wall is not objectionable. It is actually, attractive. I have a letter from Gordon Firestein, whom you've heard before, and 25 copies of his letter. If you'd like me to read it into the record, I can. And we have additional neighbors who have signed in support of the Pistillo variance. How'd you like me to proceed on that? Would you like me to just give you the copies or—?

Chairman Endo: It's up to you. In a minute and a half, you might not have time to read it.

Mr. Lopez: Yeah, I'll just give you the copies and just continue on. This law as we have come to understand with the many hearings that we've had was originally designed to handle an issue where walls were built that obstructed view planes to the ocean. This is certainly not the case here. We have appealed to the County Council. I think they are in agreement that the law is flawed. We all need to work together to correct it where there's no blockage of view planes. This certainly doesn't block view planes. It does not block airflow or anything else, but is in the ordinance. I find it a stretch to consider that the columns are walls. So we are in support of the Pistillo variance. I think that's about it.

Chairman Endo: Okay. Thank you. Any questions for Mr. Lopez? Just to clarify for the record, Mr. Lopez, you realize that they filed an appeal. It's not a variance request.

Mr. Lopez: Yeah. Whatever it is—appeal. Yeah, they were issued a citation, I guess, so they're appealing that.

Chairman Endo: Yeah. Okay. Any other questions?

Mr. Aaron Shinmoto: We're having recording problems right now. It's breaking up a little bit.

Chairman Endo: We'll take a short recess. Thank you, Mr. Lopez.

Mr. Lopez: Okay. Let me submit the 25 copies for the Members. Trisha, you want me to give this out or do you wanna take this?

Ms. Kapua`ala: Yeah.

(A recess was called at 1:45 p.m. and the meeting reconvened at 1:58 p.m.)

Chairman Endo: At this time, if there's no objection from the Members, we're gonna allow the parties who have stepped outside to the notice of the violation hearing. They're discussing a potential settlement. So we're going to – what would be the technical word? Table? Not table. I'm just going to recess that item. And we're going move on to some other administrative items that we can do and get out of the way. So at this time we're going – if there's no objection, we're gonna move to Item D-1 entitled, "James Giroux." Is there any objection? Hearing no objections, we'll go to Item D-1. It's all yours.

D. COMMUNICATIONS

- 1. JAMES GIROUX, Deputy Corporation Counsel, Maui County Department of the Corporation Counsel, transmitting a decision of the Intermediate Court of Appeals of Hawaii regarding Waikiki Marketplace Investment Company v. Chair of Zoning Board of Appeals of the City and County of Honolulu.**

Mr. James Giroux: This is a case coming out of Honolulu. And I thought that the Board might wanna see it. It's a Board of Variances case. And there's a couple of rulings coming out of this. And this case is actually a little older. It's coming out of 1997, but there was two issues that were really interesting is that one of the points coming out of the case was the issue of how does the Board of Variances deal with this bifurcation of findings of facts when something's a violation versus what the Director does as far as assessing fines. And in Honolulu what happened was the attorney who does my job told the Board, "Well, you don't have jurisdiction over the fines. That's the Director's kuleana." And if you look at the Charter, their Charter that established the Board of Variances and our Charter is very similar. And what the court found was that the Charter does give the Board the authority to look at how the Director assessed the fines in order to find if they were reasonable.

So what it's saying is that when you're looking at a case of a violation, not only are you given the

mandate of saying, is there a violation or isn't there, but is the fine reasonable or isn't it. Especially, if the code has a ceiling when it says "up to" so much a day, or if there's an allegation of a reoccurring or a continuing violation, you should look at the facts and determine whether or not that's actually what's happening. And sometimes there needs to be a finding of what is their remedy and when did that happen, because that affects the daily fines. And that is an issue or reasonableness. So if there is a finding that the violation was actually remedied on a certain date, and the fine goes up until the day that there was found that there was a – the day of the hearing, let's say, then that can be seen as an unreasonable fine because there was an actual finding that it was remedied on a certain date. So that's one issue.

The other issue is that in this case, it was an appeal of a Director's decision to give a fine, and the Board failed to come to a decision-making. They weren't able to make a majority decision. And it just so happened that the Board has a rule, and you have administrative rules, but in their rules, it's stated that the failure of the majority to reach a decision on two separate meetings would constitute a denial of the appeal.

Mr. Santiago: I have a question on that. If we met twice then, what if we took a vote or not?

Mr. Giroux: Well, with their rule. You don't have that rule right now. So I wanted to bring that to your attention if that's something you wanna discuss, because I believe we've seen the scenario. And there really much guidance on how we were gonna deal with it. Without the rule, right now, we kind of wait for a quorum. What we're doing is we're just recessing it to the next meeting, and trying to get quorum. And those people who were missing have to get up to speed. They have to read the whole transcript, and then they have to vote on something that they weren't really present to. They didn't hear all the evidence, that sort of thing.

Mr. Santiago: This language doesn't say that they take a vote. They just meet. They meet two consecutive times. And if they don't come to an agreement, then it's--?

Mr. Giroux: Right, right.

Mr. Santiago: It's not necessarily a vote.

Mr. Giroux: Well – and I think that's something that could be looked at in crafting the rules to clarify: what would you mean when you--? Do you want it to--? Because if you look in your rules right now, and we'd probably be advising you in the future to modify that rule also, in your variance rules, you have an automatic granting of a variance, which the State has passed legislature that says you really don't need that rule. That rule was created in response to another legislative action that said that in Chapter 91, which said that if you're reviewing something that has to do with a development, then you need to make a decision within a reasonable time, and the Board chose 60 days. If you didn't make a decision within 60 days, then it would be automatically granted. The legislature came back and after a court ruling that said that actually, variances aren't development permits. Therefore, they're excluded from that. So your rules actually has a remnant that needs to be looked at again.

So what I'm doing is I'm bringing these things forward to kind of keep the Board in contact with the rule-making. And as the laws change and– We're looking at statutes, and we're also looking at

case law to help you craft the rules in order to make sure that they're up to date. And so that's the purpose of this is to just bring to discussion. And you don't have to make a decision today, but I wanted to give you the case so you could read it, understand why it's here, and in the future, if you wanna just put it on for discussion, or if you do want to propose that a rule be made to conform to the case, or somewhat like the case that you request that the staff come up with draft language. They could bring that language back to you. Corp. Counsel would help in reviewing it. You would have to have a public meeting. It would have to be posted. You'd have to have a public meeting. You'd have to follow all the procedures as in Chapter 91 for your rule-making procedures. And then once that happens, it becomes a law of the Board. It's an administrative rule that the Board would then be able to follow, and everybody else would understand why the Board was making certain rulings.

So it's open for discussion. I don't think you need to make a decision today. It's just a communication item. And if you wanna bring this up in the future, just have it as an agenda item to discuss. And you can put time aside to actually discuss the merits of it, the pros, the cons, even come up with somewhat of an indication or inclination of some policy that you would want. Like Bart was just saying, well, would it mean meetings, or would it mean voting, or would it mean—? What about loss of quorum? Are all of these indicated in the rule? And that's very important questions to ask when formulating – during rule-making. So any questions?

Mr. Santiago: I think we should be in step with the – there's already presence, yeah? We should be in step with some of these other boards, some . . . (inaudible) . . . Just a personal observation.

Mr. William Kamai: Leave it up to the attorneys to decide.

Mr. Giroux: No, don't do that.

Mr. Kamai: Let them explain it to us.

Ms. Johnston: Are you ready for us?

Mr. Kamai: This came from Honolulu, yeah?

Mr. Giroux: Honolulu, yeah.

Mr. Giroux: So just to repeat, you don't have the rule that they're talking about in there. And if you would like it, just let us know.

Mr. Kamai: So in the meantime, that 60-day rule, we still—?

Chairman Endo: We still have that rule.

Mr. Giroux: It's still on your books and it's still right from litigation. Every time we use it, both sides, the County and the applicant, still have – looking at the statute, case law, and your rules, there's still a lot of room for litigation, which lawyers, your lawyer, doesn't like. So that means you have the power to go in and clarify that rule, bring it up to speed with what we're advising you to be the current case of the law, which we feel would be, if ever challenged, would be defensible.

Mr. Kamai: And at the point, the appeal from the losing attorney would be brought before us and we would have to decide whether to adopt it or—?

Mr. Giroux: No. Actually, your rules are your own purview. You don't have to— And basically, what my job is, is to actually show you that there's room for change, show you want the status of the case law is at the time, and to help the staff to draft that law, put it into form and legality, and then once you have a public meeting where everybody can come and make their three minutes, then at the end of that meeting, you vote to adopt it or not.

Chairman Endo: Any further discussion on this item? Okay. We will now jump back then to the item that was recessed—Item C-2.

2. **DOMINIC and ANN PISTILLO of the DOMINIC AND ANN PISTILLO TRUST appealing the Planning Director's Notice of Violation for the construction of a wall which exceeds the four (4) foot height limit for walls within the yard setback area for property located within the agricultural district at 51 Paia Pohaku Street, Lahaina, Maui, Hawaii; TMK: (2) 4-7-010:023-0001 (BVAA 20100004)**
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Ms. Johnston: Deputy Corporation Counsel, Mary Blaine Johnston again. We've been able to reach a settlement of this matter. I'd just like to put it on the record. The Department is going to withdraw the notice of violation that was issued. The Pistillos are going to dismiss this appeal. And the Pistillos are to finish the work on their fence, which is to put the metal strips in, which are not there, within six months.

Chairman Endo: Okay. Is that correct?

Mr. Pistillo: Yes. That's what we agreed to.

Chairman Endo: Okay. All right. Any questions or comments from the Board? No? All right. Thank you. Thank you for saving us time in working to resolve your matter. I would say for the record, though, that I think that had you gone forward, it would've been a difficult case. The criteria for an appeal is much different from that of a variance. In an appeal, you're saying there was an error of law or an error – abuse of discretion or application of a law. Whereas in a variance, you acknowledge that the law exists, and maybe it 's a little quirky, and you want to just be allowed to not abide by the law. So it's a very different argument that you would be raising. So I'm glad that you folks were able to resolve it. Thanks. Okay.

At this time, we'd like to recognize the presence of Deputy Director of Planning, Ms. Michelle McLean, and allow her to say a few words, if there's no objection. Seeing none.

Ms. Michelle McLean: Good afternoon, Board Members. Thank you for allowing me to say a quick hello. And I sincerely apologize for not being here at the beginning of the meeting. I got tied up in a previous meeting, but I did just want to say hello to all of you, introduce myself.

Just a real brief background, I most recently was the Deputy Director of the Kahoolawe Island Reserve Commission, which is the State agency responsible for the management and restoration of Kahoolawe. So in that role, I had administrative responsibilities for the agency: budget procurement, personnel, things like that. So I bring that to the department. Prior to that, I worked for a developer, for Smith Development, as an in-house land planner. Before that I did some consulting on my own and actually appeared before this Board a few times in that capacity. And prior to that, I worked for the Maui County Council for five or six years as a legislative analyst staffing the Land Use Committee. So that was when all planning issues were handled by just one Committee at the Council. We did community plan updates, applications. It's when we did the initial B&B Ordinance, and the Ag Bill, the Rural Bill, a number of things. So I've seen it from the Council side. So hopefully, coming from the department side, we can work in concert with the newly elected Council. A lot of familiar faces here. So I'm looking forward to continuing to work with the staff and certainly, one of your resource for the Board as well. So if there's anything I can do to assist you to provide more support, please don't hesitate to contact me. Thank you.

Chairman Endo: Thank you. Any questions? No? Thanks.

Ms. McLean: Aloha.

E. APPROVAL OF THE DECEMBER 9, 2010 MEETING MINUTES

Chairman Endo: Okay. Everyone should have their December 9, 2010 meeting minutes in front of them.

Mr. Kevin Tanaka: Move to approve.

Mr. Ray Shimabuku: I have a question.

Chairman Endo: Oh, sure.

Mr. Shimabuku: I wasn't here at that meeting, but looking over the minutes, I kinda was lost of what happened at the end.

Chairman Endo: What page you looking at?

Mr. Shimabuku: I guess what was the final outcome as far as the fines, or what they need to remove, and all that stuff? I'm looking at what's the next step for them. I don't know if this is the appropriate time.

Mr. Kamai: Commissioner Shimabuku is talking about the Nishida appeal. Don't ask me and

Rachel because we voted against it. Leave us out of it.

Chairman Endo: We're not officially talking about the matter, but with regard to reviewing the minutes, and making sure it's all accurate, I believe what happened was we denied the appeal. So then they were subject to the fines. And although— And this kind of goes back to—

Mr. Shimabuku: There was a long discussion after the voting and that's where I'm kinda lost. I wanted to find out what was the outcome.

Chairman Endo: Well, my recollection—

Mr. Kamai: That's what we were wondering, too.

Chairman Endo: You know, similar to what we just read in that case, we actually have the ability to review imposition of fines afterwards and say whether or not it was an abuse of discretion. So to try and help them out, the parties, even though no fines were actually set yet, we sort of gave the parties our — like an advisory opinion or just our thoughts on what we thought would be appropriate. That way, if it's more than that and they appeal it, then they'll be ready for us to possibly reverse it or anything. So basically, we sort of — we couldn't tell them what the fine is because we don't have that power to set the fine, but we're just advising the Planning Department and the parties what we thought would be roughly, an appropriate fine.

Mr. Tanaka: A start fee, that was sort of discussed.

Mr. Shimabuku: So are they gonna come back to the Board and—?

Chairman Endo: No, I think they're only going to come back if they disagree. You know, like if they feel like the fine that ultimately is imposed is too high, they could file an appeal of that fine.

Mr. Giroux: Procedurally, because there was no ultimate finding of certain facts that what they're going to do is they're going to negotiate, they're going to attempt to negotiate a reasonable fine. And if they don't, there's a possibility that they may come back for additional argument and possibly, for findings of fact, if those haven't been established yet. So there may be a possible future hearing.

Chairman Endo: So we think the minutes are accurate and reflect what happened. Okay. Any other questions about the minutes or future discussion? It was moved. Was it seconded?

Mr. Kamai: Second.

Chairman Endo: Okay, so it's moved and seconded to approve the minutes of December 9, 2010. Any further discussion? Hearing none, all those in favor, please say aye. Opposed, please say no.

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

VOTED: To approve the December 9, 2010 meeting minutes as presented.

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

Chairman Endo: **Motion is carried and the minutes are approved.**

Mr. Tanaka: I have a general question.

Chairman Endo: Okay. Let's see. We'll take that up at the end. What does it have to do with?

Mr. Tanaka: Just a question regarding what could've been presented to us.

Chairman Endo: Oh, okay. No, it's on the agenda. We can talk about that, but let's finish up the other stuff first, then. Is there a Director's Report on BVA cases?

F. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: Other than what just happened, there is no update. You have a few other appeals coming before you in the near future. So those things don't get back on the list until – they're pending in the Board's pool of appeals.

G. NEXT MEETING DATE: January 27, 2011, Thursday

Chairman Endo: Okay. Then our next meeting is on January 27, 2011. But then we said we were going to take up Items B-1 through 5, the orientation workshop, but Member Vadla's still not here. So is it okay if we kind of convert it to a Q&A instead? We'll just skip your presentation and just ask you questions.

Mr. Giroux: Yeah, that's fine.

Chairman Endo: Okay.

B. ORIENTATION WORKSHOP

- 1. Use Variances**
- 2. Area Variances**
- 3. Appeals**
- 4. Ethics**
- 5. Sunshine Law**

Mr. Tanaka: My question?

Chairman Endo: Yeah.

Mr. Tanaka: Actually, this is a question for the Planning Department, Aaron, I guess. I was reading through this and he had sort of like a timeline of things. And there was – he was directed to write a letter to Jeff Hunt regarding some desired action, and what he's claiming is that there was no response.

Mr. Shinmoto: I talked to him about it. Usually when we have walls, we regulate the walls. Fences on top of walls is a Public Works' thing. And I told him, I'm not making excuses, but I don't know if we still have the letter or it was sent to Public Works and they never responded, but we don't have jurisdiction over the fence. We're just the people they mail it to, then we send it to Public Works. And again, we don't know what happened. He said he did it twice.

Mr. Tanaka: I imagine if we had heard it, he would've brought that up.

Mr. Shinmoto: And I'm not gonna doubt it. I'm not gonna doubt that he had to send it twice.

Mr. Santiago: It was during that transition period . . . (inaudible) . . .

Mr. Tanaka: Well, this was dated – I mean, it was originally in 2009. I just was curious.

Mr. Shinmoto: The other thing we can do is if we're not gonna do the training today, April is coming around, new Members come in, we can wait until– I'm guessing we're gonna have new Members. We could do it at that time.

Mr. Giroux: If anybody has any questions on the Ethics or Sunshine, because I know that we've given the handout before, we've given the discussion, and so – and even if today, you don't ask questions, feel free in the future. If you just wanna call me directly, and if you have a question on either of the subjects, I'm open to that. That wouldn't be a violation of the Sunshine Law as long as only one of you call at a time. So I just wanted to open up that invitation to the Board just so you know it's there as a resource.

Mr. Santiago: Do you have an e-mail address?

Mr. Giroux: Yeah. It's–

Mr. Santiago: Are you on the distribution? The one that Tremaine sends out?

Mr. Giroux: I can give it to you.

Mr. Tanaka: So the only two Members we're losing is Bill and Randy?

Chairman Endo: Okay. We can talk about that after, I guess. Right? Is there anything else on the agenda? Any further business? Because you can talk story afterwards since Tremaine has to type up everything that we say. Okay. So there being no further business of the Board, happy new year, thanks for coming today, and we'll see you folks in two weeks. Meeting adjourned.

H. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:23 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
Steven Castro, Sr.
Rachel Ball Phillips
Ray Shimabuku
Bart Santiago, Jr. (1:36 p.m. to 2:23 p.m.)

Members Excused:

Rick Tanner

Members: Absent:

Bernice Vadla

Others:

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