

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JANUARY 27, 2011**

(Approved: 2/10/2011)

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, 1:36 p.m., Thursday, January 27, 2010, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Chairman Randall Endo: This meeting of the Board of Variances and Appeals will now come to order. It's January 27, 2011. It's 1:36 p.m., and we have a quorum of six Members of the Board. At this time, we'd like to proceed with our first item on the agenda: Item B-1.

B. PUBLIC HEARING

- 1. WILBUR AND SOCORRO WONG requesting a variance from Maui County Code, §19.30A.030 to allow the consolidation of three (3) parcels and resubdivision into two (2) parcels of 2.302 and 0.923 acres, whereby the minimum lot area for agricultural lots is two (2) acres, for property located at 360 and 370 Hahana Road, Kaupakalua, Makawao, Maui, Hawaii; TMK: (2) 2-7-0013: 072, 076, 077. (BVAV 20100011)**

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

Ms. Kapua`ala: I don't have a video, but I do have several maps on the smart board that you can see. This is Hana Highway. The ocean is here on this side. This is Parcel 77, Parcel 76, and this roadway is Parcel 72. So again, the proposal is to consolidate and resubdivide virtually keeping the same lot line between the two parcels except this will be adjusted just a little to allow for a flag stem for access on Hahana Road. And this roadway lot will become part of the Lot 2. This is actually a flood map which the advantage of this is you can see imagery, along with parcel lines. This is the Bing map. Again, Hana Highway, Hahana Road. The ocean is on this side. This map has 360-degree birds' eye views. So this might be more representative of how it would look if you're coming from the Paia area coming down, you would take a left. And this is from Google Earth. The subject parcels are in here. So these are available if you ever need them. Thank you.

Chairman Endo: Thank you, Trisha. At this time, we'd like to ask the applicant to come forward and introduce themselves. After that, we'll allow them to make a short presentation. And thereafter, we'll have public testimony.

Mr. Wilbur Wong: Good afternoon, Mr. Chairman, Members of the Board. My name is Wilbur Wong. I am the co-applicant. I would like to apologize at the moment because my wife, who is a co-applicant isn't able to make this meeting. Unfortunately, her mom passed away, and she had to go to the Phillipines for her services. She was unable to get a flight back in time for this hearing. So I'd like to apologize for that. I do want to mention that she's my right arm as far as all

my filing and paperwork. So if during the process, I may seem a little disorganized, it's because she's not here. Mr. Chairman, did you want me to proceed with my presentation or public testimony?

Chairman Endo: Yeah, give your presentation, and then we'll ask the public if they want to testify.

Mr. Wong: Steve Tamashiro, the owner of Property 77, thought he was gonna proceed me, so he has some maps. So may I have your permission to pass the maps out to your Members?

Chairman Endo: Sure.

Mr. Wong: What I'd like to point to you is the pink represents Parcel 77, which is owned by Steven and Penelope Tamashiro who's present at this time. The little red mark indicates the current easement. We have an easement agreement regarding the property. My wife and I own the green, Parcel 76 and Parcel 72. The little yellow mark is an abandoned roadway. So essentially, my application is – we have three substandard ag lots right now. And these three lots were the result of the new Hana Highway pushing through towards the Kaupakalua Bridge. Originally, Parcel 77 was part of Parcel 27. Twenty-seven and 77 were actually one parcel. And between those two parcels is the new Hana Roadway. Parcel 76, and this is my understanding, was part of Parcel 26. So it was one parcel and the roadway cut right through. Parcel 72 is the old remnant roadway that used to be the very old road to Hana. And that led to a wooden trestle bridge that kinda loops around. I guess if any of you were driving around in the 1940s up to maybe 1950s, you would use that road to Hana.

What I'd like to do is kinda fix the situation and correct some of the things that I felt should've been done a lot earlier, because for one thing, Parcel 76 is – has no access, so an easement had to be put in.

So regarding my application, I would like to emphasize that although my subdivision and reconsolidation result in one substandard lot, it's important for the Board to understand that we are starting with three substandard lots creating one standard lot with the remaining substandard lot, which is what Steve owns. It doesn't change in size. It remains the same. I also wanna point out that the properties are unique in a sense that each of the substandard lots were created by the realignment of the Hana Highway. At least two of them, the remnant roadway, was definitely substandard. And Parcel 77, which Steve and Penelope owns right now may have been substandard, but I think it was very close to two acres. Therefore, in order to create a standard lot out of the three substandard lots, the reconsolidation and the subdivision makes a lot of sense in this unique situation.

I would like to point out page 10 of the Department of Planning's staff analysis prepared for the Board of Variances and Appeals. I would like to point out that in the staff analysis, it says that "We would concur. However, the granting of the subject variance would not alter the essential character of the neighborhood." I just wanted to emphasize that. I would like to acknowledge that the Planning Department also does – that my wife and I acquired the properties in its present configuration. And I think Steve Tamashiro here will tell you that he inherited his property in the present configuration.

I wanna point out that the other item which is somewhat unique is the current access because – to the roadway, which is Lot 72. The remaining roadway, the balance of the roadway on that little map that I gave you, which is the yellow, has not been maintained by the County. So in my application, I indicated that it's subject to deterioration. And during heavy rains, I have problems accessing the lower portion of my property. The proposed consolidation of the two parcels create an all-weather access without a roadway maintenance issue. I want to point out also what we're trying to do is that little red easement which is currently under an easement agreement. I'm trying to exchange that easement for property on Parcel 76. And I'll show you the reconfiguration of what my surveyor has done.

I would prefer to have access to my parcel to property that I own for all the reasons I stated in my application. The elimination of the easement will also benefit the Tamashiros. I'd like to point out staff analysis on page 11. And they indicate that:

Easements should only be used when they are absolutely necessary, and it would be a more reasonable approach to create a flag lot as opposed to the current easement for access purposes, which brings forth a whole series of related issues relating to joint maintenance, conflicting uses, and constant unavoidable interaction between neighbors.

And this is what I'm trying to do: exchange the easement for property in an equal amount.

I feel very strongly that a unique situation as a result of how these three substandard lots were created – I feel that it is a unique situation. And I feel that the Board has a unique opportunity for us to create at least one standard ag lot, which would be a flag lot, and correct an access oversight. As I indicated earlier, that one substandard lot would not change in size.

I would like to show you what my surveyor has prepared. Mr. Chairman, do I just try to hold it up? I just have one copy.

Chairman Endo: Sure.

Mr. Wong: Or is there somewhere I could tack it on? This is Parcel 72, Parcel 76, Parcel 77. This is the current easement. In exchange for this easement, I would exchange this easement for this little triangular property going north to south. Should we pass it out so you can take a look at it?

Chairman Endo: Just to help you clarify, is that dated – is that the survey dated May 20, 2008, or is that a "6?" It's over here on the bottom left corner.

Mr. Wong: Yes, May 20, 2008.

Chairman Endo: Okay, so we have the small copy.

Mr. Wong: Alright, alright, that's fine.

Chairman Endo: And just for the record, also, when you talk about the triangular piece, I believe you're talking about the one that has the dotted line.

Mr. Wong: The dotted line represents the current boundary line, correct.

Chairman Endo: The current boundary, and then the dark--

Mr. Wong: That's the proposed new boundary.

Chairman Endo: So that makes the triangle.

Mr. Wong: That's correct.

Chairman Endo: Okay.

Mr. Wong: And it's an equal square footage as the easement.

Chairman Endo: Okay. If any Member wanted to see the larger map, let me know. Okay, go ahead.

Mr. Wong: All I'm asking right now is the Board's favorable consideration. I'm open to any questions at this time.

Chairman Endo: Did the Tamashiros wanna say anything as part of our presentation?

Mr. Wong: Yes, I'm sure he does.

Chairman Endo: I think we'll probably just listen to both sides provide their presentation, and then we'll take the public testimony, and then we'll ask you folks more questions.

Mr. Wong: Sure, that'll be fine. Thank you very much.

Mr. Steven Tamashiro: Good afternoon. My name is Steven Tamashiro, and along with my wife, Penny, own Lot 77. I'd like to give you a little background on the three lots in question that my family owned and the house on Lot 77 was my first home after my birth. Lot 77 fronted on Old Hana Highway, now, Hahana Road. On the west side -- fronted Hahana Road on the west side, and Peahi Road on the south side. Lot 76 fronted on Peahi Road on the south side. Lot 72 was the old Hana Highway remnant when the new Hana Highway from Peahi Road eastward was cut. They split Lot 76 and 77 into four pieces. Seventy-seven and 27 was one lot and became two lots, and 76 and 26. Lot 77's access was on the Old Hana Highway, now, Hahana Road. Lot 27's access was on Peahi Road. Lot 76, as I understand, the Territory of Hawaii did not provide an access and was now landlocked. Lot 26's access was on Peahi Road.

My grandfather traded a piece of 77 that the new highway took for the old Hana Highway remnant, Lot 72. Some time soon after the cut for the new highway was made, my grandparents acquired Lot 76. They treated it as though the three lots were one. And access to Lot 76 was through Lot 77. In 1999, my father deeded Lot 72 and 76 to my brother, and Lot 77 to Penny and me. At that time, he created and recorded an easement through Lot 77 to access Lot 76.

I would like to see this variance granted because of my concerns as to the necessity to keep two

gates closed in order to keep livestock enclosed. Both coming and going, it's now necessary to open and close two gates. The granting of this variance will not change the size of Lot 77. We now have over 2,200 square feet which is not usable to us, which we would then be able to use for grazing. The unique configuration was created by the new Hana Highway thereby making it substandard in size, and that is how we inherited it.

On the map that Will passed out, I would like to bring your attention to Lot 75 on the map which is a flag lot similar to what we wanna create.

Ms. Bernice Vadla: Where's 75?

Mr. Tamashiro: It's actually cut off on the bottom. You see Lot 73? Right next to 73, you see that flag going to "3" in a circle? That's lot 75.

Ms. Vadla: Where the no. 3 is?

Mr. Tamashiro: Yes, no. 3 is Lot 75.

Mr. Wong: This is Peahi.

Mr. Tamashiro: That's Haiku Road.

Mr. Wong: Haiku Road is here.

Mr. Tamashiro: And that's all I have.

Chairman Endo: Okay.

Ms. Penelope Tamashiro: Hi. I'm Penny Tamashiro, and Steven and I own Lot no. 77. And I'd just like to point out that once the State cut the Hana Highway and reconfigured the lots, the current zoning was in place. Lot 76 was then left without access. This is the way we inherited our property, a substandard lot. At that time, the two-acre minimum was not yet in place. This would in no way affect either the size or the number of structures which can be built on either sets of property. It would be much more convenient for Lot 76 to own their access area in exchange for over 2,200 square feet of usable grazing land for Lot 77. Thank you for your consideration on this situation. And we hope you will come to a conclusion which benefits everyone.

Chairman Endo: Thank you. Does that conclude your initial presentation? I'm sure we're gonna have questions for you, but right now, we'd like to ask anyone in the public who wants to testify to please sign up on the sign-up sheet. If you're wishing to testify on a different agenda item, we just wanna know how many people we're gonna have. So we would like you to come up and sign up now even if you don't wanna testify on this item. We'll call for public testimony again when we finish this item and move to the next one. We just wanna be efficient in— Okay. So we got three people who have signed up and all testifying on this agenda item that we're considering right now. Each person will have three minutes to testify, and I will time it, and let you know when you've reached your maximum. And if I tell you that you've reached your three minutes, you can conclude your statement, but don't keep going on and on. Okay? So first of all we have Phillip Valentine. Please

step up to the microphone.

Mr. Gerald Johnson: I'm his attorney. I'll just – gonna briefly introduce him . . . (inaudible) . . .

Chairman Endo: Sure.

Mr. Johnson: My name is Gerald Johnson. I'm the attorney for Phillip Wong and – Mr. Valentine. I'm sorry. Mr. Valentine owns Parcel 23, an adjacent lot. And Phil filed a civil action for adverse possession. He and his family have owned Parcel 23 since 1950. And he had a barn on the property which is the subject of this variance. That's what he is seeking. What happened in his civil case was he didn't get a chance to go to trial. He basically lost on a technicality. I came in afterwards, and we're appealing, but it is premature to rule on this variance while the question of title to this property is still an issue, because Mr. Valentine will testify as to he occupied this portion of the property, and has – now owns it by adverse possession. And that's what we're seeking. It's too early to consider a variance while title is at issue. So that's all I have to say.

Chairman Endo: Okay, since you spoke first, Mr. Johnson, does anybody have any questions for Mr. Johnson? No? Mr. Johnson, so you're saying you folks – your case is on appeal right now, but you lost at circuit court.

Mr. Johnson: That's correct.

Chairman Endo: Did you folks file any bonds?

Mr. Johnson: We didn't file a bond, no.

Chairman Endo: So there's nothing stopping the subdivision from proceeding or from this Body from taking action on this variance, then?

Mr. Johnson: I believe that's true, only the question of title.

Chairman Endo: Okay. Thank you. Any other questions? No? Thank you.

Mr. Johnson: Thank you.

Mr. Kevin Tanaka: I have a question for our Corp. Counsel.

Chairman Endo: You need it to be asked now?

Mr. Tanaka: No.

Chairman Endo: Okay. So let's go back to Phillip Valentine.

Mr. Phillip Valentine: I'll use both maps: the one up here and that on the board there. My name is Phillip Valentine. I got the property from my dad, but it was not the way it is now. I'll show you now what area I am presenting to the Board.

Chairman Endo: Mr. Valentine, we're gonna give you a microphone because we're recording everything.

Mr. Valentine: Okay. Very good. Property 23, when my dad bought it, it went from this part here over to here. And this part here was— Tamashiro's had that portion of the property. And when Mr. Wong came, he changed this to this property here, his boundary line. And then Ted — Steve, that's your dad? Yeah, Steve's dad put this property line on because the property we had was from here to here, and back to here. And this property here was the access to the back property to the slaughterhouse that was here, and to the pig pens back here. And we never used this boundary which is from 1912. We never used it because the Tamashiros had this property here, and they had our front lot. But when — I guess his grandfather passed away. The property was then turned over to the eldest son, which is Steven's dad, Ted.

I'm gonna refer to Steven's dad's dad, as the Samurai, and Steve's dad as Ted, and Steven as Steven.

This is the boundary of 1912. The Samurai had the property from here to here and this front portion. When I guess he passed away, that's the only way I can see it where he's taking charge of the property at this moment, and then he went and said it was here and was here. And I told him, we never used this property, and he knew where the boundary was that it was back here and came back this side. And then at this part here, they had our front, and we had the back. And at that moment, I asked him why don't he just go back to the boundary on this side. He says, "No." He's saying, "This is our boundary." I insisted with him. "We never used it, and you know it. And you know the boundary goes from here to here." And he said he's gonna do what he needs to do. And what he did is that he took it from this way to this point, and then when he seen the fence here, he told me, "Oh, ayah, the fence is here." I said, "Yeah. Now, since you came from this part to this part, I want you to go from this part to the boundary, to the pins." At this point here, there was a rail. And this comes across from the only road right across to this railroad track being here. At that moment he said, "Oh, I didn't know what to do right now." I said, "No, all you do right now is go from here to here, and then from here to here." And he says— We got into an argument. And he told me this part was his. I said, "Whatever you wanna say, you can say, but for me, if you guys — if the bridge is being built here, and you guys — and they're gonna build a bridge, you guys' area should be closed off with a fence. And your fence cannot go here 'cause we're using this property. We've used it since we moved there, since 1950." And they had our property here.

All of a sudden, I find out that he erased this part here, and this part here, not using the pin, not using the rail, but using a pin, a half-inch pin. And at that moment—

Chairman Endo: Mr. Valentine, you've gone over your time limit. If you could try and just summarize.

Mr. Valentine: Okay, summarization on this, the property we had was from here to here, and back to here, back to here. And then the Tamashiros did this, and claimed here, and then we went to court, and I won this fence here. And then this was Ted put the boundary on that.

So what I'm considering is that at this moment, because I did not represent myself yet in court, because of some kinda technicality, but then — because I dropped the lawyer that I had and was

in the process of getting another lawyer, and also gonna file charges against the lawyer that I just fired. And then I found out I had to go to Honolulu. And when I was in Honolulu, I found that certain things were already done, and that I already lost. How did that happen? And then they went through some technicalities, and then I have some technicalities that are in question right now as to how did I lose my opportunity. So my conclusion right now is this should be considered because they never had that property that we had that when my dad bought it. And we bought it from Mr. Ling.

Chairman Endo: Okay, so you're saying, just to summarize, since we're going over time, you're saying that you have a claim, and you're appealing the current quiet title lawsuit as to a portion of Lot 76, or 77, or both?

Mr. Valentine: I'm objecting to what they're doing on Lot 76.

Chairman Endo: Seventy-six, okay.

Mr. Valentine: 'Cause on 77, since the boundary was already changed, and that was changed by Steven's dad, Ted, that I'm not contesting that. But I'm contesting as to what Mr. Wong did – the boundary line.

Chairman Endo: Okay. Alright. Any questions? Okay, thank you.

Mr. Valentine: Thank you.

Mr. Tanaka: I just wanna know when– Okay, the property lines changed. When was it recorded?

Mr. Valentine: Right now when we bought our property, it was on record that that boundary line there, the one from 1912, was our boundary line.

Mr. Tanaka: The line that you were–?

Mr. Valentine: The one that they're saying that's what we used all the time. But I already went to court on that, and I won the fence line, which was different, which was our fence line.

Mr. Tanaka: So the line that we see between 23 and 76 is the legal recorded property line? Is that correct?

Mr. Valentine: As of 1912, but the Tamashiros own from this way back. That's when the Samurai, they bought the land before we did. When we got our land, it was like this, 'cause they had our front at the time, and we had the back 'cause they took our front. And that was according to the Samurai. And then when Ted came, he wanted everything changed to what was a long time ago, 1912. See, right now, my house is illegal. On this boundary right now, my house is illegal. When this wasn't here, it was stay like this, my house was legal. And that's the question I wanna find out: how come I lost my rights to my property and how come my house now is illegal?

Mr. Tanaka: So the original property line that you understood when you purchased the lot was wrong?

Mr. Valentine: Yeah, 'cause the Tamashiros had their property here, this side, and our front.

Mr. Tanaka: I'm still confused. If it was recorded as of 1912 and you purchased the lot in 1950, how is that?

Mr. Valentine: Okay, they bought the property, my understanding, from George Rosa, who owns the property back here somewhere, yeah, back here 'cause he owned the gulch before. But I went all the way to Honolulu and found out when – this was from 1912. And then they had a mark in here that they built the wooden bridge, which then they took down, and now they have a concrete bridge. But when the bridge was gonna be built, their area had to be fenced off to say that everything's legal. And when they tried to go on this area and put up a fence, I told them they couldn't. I talked to the foreman, and the foreman said, yeah, we gotta go take it to a civil court.

Ms. Vadla: Mr. Valentine, can I clarify that one more time?

Mr. Valentine: Yes.

Ms. Vadla: So when you bought the property, was it – it was recorded the way that you showed going across?

Mr. Valentine: The 1912 boundary was here from Oli Road. Oli Road's back here, and then it came down to the pin. And then from the pin–

Ms. Vadla: Can you go back to the old map? Thank you.

Mr. Valentine: Oli Road over to the pin here, and then from that pin, they went this way. There was a telephone post here. And then the telephone post went to that point and then here. But this part is our property, and this part is the part we purchased.

Ms. Vadla: So that was recorded?

Mr. Valentine: I don't know if it was recorded, but there was an understanding that they was on this side, and we were on this side. So till this very day, I still got a question: how come my house is illegal now? And they had access to the back through– This area here, they had access until Ted put the fence here. And then Ted, my understanding that Ted mentioned that he gave this back to us. He never gave us anything back, because he wanted this property plus this. And I objected to that. And later on, when they took me to court, the State of Hawaii took me to the court, then I won the fence.

Mr. William Kamai: Question, Mr. Valentine, so you won possession of the back half where – what about the front half that was you guys' one that was–?

Mr. Valentine: Okay, for me, my understanding was the fence was supposed to go like this in back. This is the highway, the old Hana Highway, but there's a drop on the roadway. Like the road's down here, then it goes up and slope. So this part was sloped. Part of it was sloped, and part of it was flat. And that's – we had this area.

Mr. Kamai: So what about the front half where you said the line--?

Mr. Valentine: The front half here?

Mr. Kamai: Yes.

Mr. Valentine: My understanding was we're supposed to just fence it this way, but Ted did not want that. Ted wanted the back. Apparently, they made a deal, and the back was part of the deal. I think the road is part of the deal too. But my understanding is that it should've been this way here, and then back here. See, it doesn't really go right to the road. It comes back here and then to the point. And back here, it's steep. Then down here is like a gradual 45 from the top down. That's what it used to be. Now it's flat 'cause they--

Mr. Kamai: So the easement now that's on 77, that's to access Lot 76?

Mr. Valentine: Yeah, now they're accessing here. And that's why I mentioned to Steven at the time. Yeah, he tells me this has always been the easement. I said, no, it never was because the telephone poles here to this pin was the entry to this back side. And they never even came in. They came this way and they went back here. And then this is also a steep gulch here from zero to 45 up to the flat point. And at this point here, the slaughterhouse was in this area, and the road came right on the side of their building, and they had a garage. And then it was on the side there, and it came moved back there. And I used to help the -- Steven's uncle with the pigs and stuff like that, and their nephew. What's his name? What's your nephew's name? What's your nephew's name?

Ms. Tamashiro: Leslie.

Mr. Valentine: Leslie, yeah, Leslie. I remember Les from grasshopper days, but that's what been happening so far. So right now, I having questions as to how I lost my -- my house is now illegal.

Mr. Kamai: But I thought you said you won that court case.

Mr. Valentine: I won the court case in 2000. In 2000, the State of Hawaii came against me on felony charges for cutting the trees in this area here, and for moving the fence, 'cause they had the fence start to go here, and I said, "No, you guys cannot. You gotta move the fence." And that's what happened.

Chairman Endo: Maybe I can read from this document that will maybe make it a little clearer for everybody. And I'll let Mr. Valentine comment on it.

Mr. Valentine: Yeah, okay.

Chairman Endo: According to this letter from Gerald Johnson, which includes a January 24, 2011-letter from Mr. Valentine, there was a criminal case in 2000 where he was charged with criminal charges for cutting down trees, basically, that area that he was talking about.

Mr. Valentine: Yes.

Chairman Endo: But then those charges were dismissed by the criminal court because he alleges that they found that Mr. Valentine had a valid claim, or at least sufficient enough of a claim to cause the criminal charges for property damage to be dismissed. But the point would be that this – assuming that's true, that's a criminal case. It has nothing to do with actually quieting the title. And now he's come with a quiet title action. That's the one that got dismissed and is currently on appeal. Is that correct, Mr. Johnson?

Mr. Johnson: That is correct. That's a good analysis.

Chairman Endo: Okay. So when you say you "won," you mean you won in the criminal court, but you didn't actually win a quiet title case.

Mr. Valentine: No, I did not win a quiet title case. What I won– They charged me on felony – it started with felony charges, then they lessened it for cutting the trees in this area where I live, and also for moving the fence to where the boundary was. And also, I had back here imus. We've had– I used to lease the land to some Tongans, and he had imus and stuff like that by our pig pen. There was a pig pen in the back there.

Chairman Endo: Okay. So I think we kinda know what happened now, generally. Any other questions? Okay, we got one other person who signed up to testify: Mr. John Burkhardt.

Mr. John Burkhardt: Good day. I own Parcel 154 across the street. And all I have to say is these are very good neighbors: the Wongs and the Tamashiros. And I'm just here to back'em up. Thank you.

Chairman Endo: Okay. Any questions for Mr. Burkhardt? Hearing none. Okay, is there anybody else in the public who wishes to testify on this agenda item?

Mr. Wong: (Inaudible)

Chairman Endo: Yeah, you're not the public. You're the applicant, so yeah. So we're gonna close the public testimony. And now you can come on up and – Mr. Wong.

Mr. Wong: Thank you again. My name is Wilbur Wong. And I almost felt like I was going through circuit court again because all the testimony that Mr. Valentine has brought up has all been hashed out in circuit court. And I want to introduce to you, and these are my only copies, that I have a summary judgement signed by Judge Joel August. The summary judgement is in the favor of the Defendant, which is my wife and I. And I have that here. They appealed the Judge's order. And the order – the Judge signed another order denying the Plaintiff's motion to set aside the judgement of fact. That's here.

And I want to add two items that these two judgements, there is no stay on the Judge's order, which means that as of this time, title is not an issue because his ruling is in effect. Everything else that was brought up are just hearsay items, and we've been through all of this in a circuit court already.

Chairman Endo: Okay. Questions from the Members for either of the co-applicants? I guess we should ask Mr. Giroux for some advice on how we should treat a potential claim that's existing

where there is an appealed file from an existing judgement, but where no supersedeas bond or other stay has been granted.

Mr. James Giroux: Thanks, Randy. Well, I guess a couple of matters. I don't see a petition to intervene being filed. It's a letter. We handled it as public testimony. Also, absent the bond, the order as made is a valid order until it's overturned and remanded. So absent the bond, your job as a finder of fact in law in a setting such as this, an administrative hearing, the effect of your ruling basically, doesn't grant anybody an entitlement, per se. What it does is it opens the door for future development that may or may not happen. So a variance, if granted, runs with the land, but it doesn't mean that it bestows on one person or another more of an entitlement than if it didn't happen. That being said, you're not bound by an objection to not take action. But as far as the issue of ownership, you can look at that as a factor in determining granting or not granting the variance in that in looking at a variance, you have to look at the standards that allow for a variance to be granted. And part of that may be an analysis or looking at what's been presented as part of one of those factors possibly looking at the character of the neighborhood, and topography, uniqueness, and that type of analysis. It's basically, just one more fact in the body of findings of fact that you would be making, and then applying the law as has been stated as far as the factors necessary for granting of a variance.

Chairman Endo: Any questions? Statements? Member Kamai?

Mr. Kamai: Mr. Wong.

Chairman Endo: Mr. Wong, would you please approach?

Mr. Kamai: So, Mr. Wong, according to this map, you're going to swap the easement in lieu of reconfiguring the two lots?

Mr. Wong: That's correct, yes.

Mr. Kamai: Yet maintaining the same amount of acreage?

Mr. Wong: Mr. Tamashiro's lot would remain exactly the same, no changes.

Mr. Kamai: So with the easement gone, do you have access to 77?

Mr. Wong: I have it through the abandoned road but—

Mr. Kamai: Seventy-two?

Mr. Wong: To 72, but not to 77.

Mr. Kamai: No, but the abandoned road is – I thought that was Lot 72 as well? No?

Mr. Wong: Let me point out to you here. This is Lot 72. This is the abandoned road. The improved road ends right about here. And the State has jurisdiction of this road up till right about this area here. The road improves here, then it's pretty deteriorating in this particular area. And when it rains, the topography slants this way, and it really floods. We all know Haiku rains a lot, yeah?

The easement makes it much more convenient. There is that easement agreement, so we can use it. But for all the reasons we stated is why we want to exchange the property.

Mr. Kamai: No more questions.

Chairman Endo: Any other questions? I have a couple of background questions.

Mr. Wong: Sure.

Chairman Endo: Mr. Wong, how far along are you in getting the subdivision? Are you only at the very beginning stages?

Mr. Wong: I'm only at the variance stage right now.

Chairman Endo: Oh, okay, 'cause they wouldn't let you process your subdivision until you get your variance?

Mr. Wong: No. The advice given to me was to process the variance first because if I couldn't get the variance, and I tried to process it simultaneously, and I didn't get the variance, then I'd be out of a sum of money for the subdivision process.

Chairman Endo: Okay. And I think for me, well, not me, I mean, well, yeah, me, if you were in the worst case scenario, I guess, worst case for you, if you were to lose an appeal and eventually lost a portion of your property, you would be forced to subdivide off that section and give it to the other neighbor, Mr. Valentine. But that wouldn't necessarily affect your – you'd still have the flag lot. You'd still have the benefit of what you're doing now, 'cause that portion that you're talking about that's in dispute is the triangular section that we were just learning about earlier? Is that correct?

Mr. Wong: It does go into 77 a little, but not a great deal. I can point out to you. Mr. Tamashiro indicated that Phil mentioned to you, the Board here, that he had no problem with Parcel 77. But I do want to point out that in Mr. Valentine's adverse possession claim, which we did receive a summary judgement already that it does include a small portion of 77. It's just a matter of some square footage, and I can point out to you where it is.

Chairman Endo: If it's that corner which is sort of like that middle point of all three lots—

Mr. Wong: It would affect the easement.

Chairman Endo: It would eventually become all part of your lot, then.

Mr. Wong: That's correct.

Chairman Endo: So then he'd only have to fight with you instead of two people.

Mr. Wong: I wouldn't use the terminology, "fight." We have a disagreement. We've been through circuit court already. The process in law is you always have a chance to appeal.

Chairman Endo: I guess where I'm coming from, just so everybody knows I'm not trying to ask you questions for no reason is that I think we've heard from our Corporation Counsel that we don't have to deny your request for a variance just because there's a pending appeal on a quiet title especially, where there's been no stay of enforcement or posting of a supersedeas bond. But then on the other hand, we like to look at things from a practical perspective and consider all the different scenarios because we don't want to create situations that might just get more complicated for everyone. So that's why I was just asking you about what could potential happen if they were to succeed on an appeal. But it sounds to me, based on your answers that those two items: the issue of a title dispute can pretty much go on a separate track from this variance and subdivision. And if Mr. Valentine should win in his appeal, that can be dealt with later. And that disputed sections of land can be cut out or carved out as deemed necessary by the court. So that's all I'm trying to get to.

Mr. Wong: Alright. Fine.

Mr. Tanaka: Sorry, just reaction to what you just said, but this – the variance has no bearing on the appeal, and the appeal has no bearing on this variance application.

Mr. Giroux: That's affirmative.

Mr. Tanaka: Thank you.

Mr. Wong: Mr. Chairman, am I excused to go back to my seat or--?

Chairman Endo: Is there any further questions? Sure.

Mr. Wong: Thank you.

Chairman Endo: Okay. Oh, I'm sorry. Does the Planning Department have a recommendation?

Ms. Kapua`ala: Based on its analysis, the Department of Planning finds that according to the subject application, the applicant has not provided evidence illustrating that there is an exceptional, unique, or unusual physical or geographical condition existing on the property which is not generally prevalent in the neighborhood or surrounding area; and as a result, the conditions creating the hardship were the result of previous actions by the applicant. In other words, proposing to consolidate and resubdivide the parcels.

Based on the foregoing findings of fact and conclusions of law, the applicant has not met all of the requirements for the granting of the subject variance. Therefore, the staff recommends denial of the subject variance.

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 the January 27, 2011, meeting. And authorize the Planning Director to transmit said findings of fact, conclusions of law, and decision and order on behalf of the Board of Variances and Appeals.

Chairman Endo: You have something to say? Discussion?

Mr. Tanaka: Yeah, it's interesting. What was just stated and what we have just listened to for the last 45 minutes, in my opinion, this is a unique circumstance that will not alter the essential character. The flag lot proposed would just – would create access to lots – to Parcel 76. Reasonable use of the property along with previous actions by the applicant. The realignment of Hana Highway created this circumstance. And there is no access to Lot 76 from Hana Highway, which does prevent reasonable use of the property. So with that, I would propose a motion.

With that being said, I would like to propose – to move that we accept the variance or approve the variance as so stated by the applicant.

Mr. Rick Tanner: I would second.

Chairman Endo: Okay. It's been moved and seconded to grant the requested variance. A question whether or not you are adopting any proposed findings, or I'm sorry, if you're accepting anything proposed by the applicant as the findings of fact.

Mr. Tanaka: As proposed by the variance justification from the applicant.

Chairman Endo: In their written application?

Mr. Tanaka: Yes.

Chairman Endo: Okay. And if you are proposing any conditions or not.

Mr. Tanaka: Well, with the typical hold harmless agreement with the County.

Chairman Endo: So the conditions would be the standard provision set in Section 12-801-76.1, including the hold harmless and indemnity provisions, but without the insurance requirement?

Mr. Tanaka: Yes.

Chairman Endo: Okay. Is it still seconded?

Mr. Tanner: I'll still second it.

Chairman Endo: Okay. It's been moved and seconded.

Mr. Kamai: Discussion?

Chairman Endo: Yeah, discussion.

Mr. Kamai: So the application is for the dotted line, giving up the easement of Lot 77 to be inclusive in Lot 76? Because there's this one dark line that the easement is still within 77, and there's the dotted line where the easement is giving up in square footage.

Mr. Tanaka: Yeah, the dark line is the variance, right?

Chairman Endo: Well, actually, the variance is that the new lots that are created are all less than two acres. So under the Subdivision Code, they wouldn't allow lots less than two acres. So all of these lots are less than two acres. All of these lots will be less than two acres. They started substandard and they'll end substandard, but they're asking for a variance to allow that in these circumstances.

Mr. Kamai: I think one is gonna be—

Mr. Wong: . . . (inaudible) . . .

Chairman Endo: Oh, sorry, one is going to become standard because you're adding the roadway lot to it. Yeah, yeah, sorry. So one will become over two acres, and the other one will remain substandard.

Mr. Kamai: But I still think we gotta be clear in including the line that subdivides 76 and 77 to include that easement, or are we gonna go with the dotted line?

Chairman Endo: Well, actually, just by way of background, this dotted line you see on this map represents the existing boundary line. And then the dark line is the new boundary line. So basically, they're showing the boundary line moving. So it's not a matter of the easements. In fact, I believe the easement might be extinguished.

Mr. Kamai: I think it's the opposite, eh? I think it's the opposite of what you described.

Chairman Endo: No, I don't think so. We can ask Mr. Wong to come up. Mr. Wong, this triangular, the smaller lot is gonna increase in size from the dotted line moving out to the dark line.

Mr. Wong: Correct.

Chairman Endo: And then you're giving up the land to create—

Mr. Wong: The Tamashiros will give up the land so it becomes a flag lot, and they would gain that little triangular section rear of the lot.

Chairman Endo: And then you folks will probably extinguish the easement because it would be no longer needed.

Mr. Wong: Correct. And I do want to emphasize by consolidating Parcel – the roadway with my existing parcel would make the lot – my lot would become standard where it is right now, substandard.

Chairman Endo: Further questions or discussion? Okay. All those in favor of the motion to grant the variance with the conditions as stated and adopting as findings of fact, the proposed rationale in the application of the applicant, please say aye. Opposed, please say no.

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

VOTED: To grant the variance with the conditions as stated and adopting as findings of fact, the proposed rationale in the application of the applicant.

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

Chairman Endo: **Okay, the motion carries and the variance is granted.** Thank you.

Mr. Valentine: Some things are not clear to me yet. Who do I talk to and who do I see?

Chairman Endo: I would think you should talk to your attorney who can help you. But what we said, Mr. Valentine, was this proceeding basically, runs independently of your claim of title. So to the extent you should prevail in your appeal or other quiet title actions, you would be able to prevail. This variance being granted doesn't stop your quiet title appeal.

Mr. Valentine: Even the easement that they do have now because he's already taking part of my property on 77?

Chairman Endo: Yeah, everything – we're only granting a variance from a subdivision requirement requiring minimum lot size. So we're not adjudicating title at all.

Mr. Valentine: Okay. That goes to the other courts, then?

Chairman Endo: Yeah.

Mr. Valentine: Okay. But he's saying that we went through it. I never did. They went through it, but I never did. And yet, I'm the guy that's opposing it. So that's still pending, right?

Chairman Endo: Yeah.

Mr. Valentine: Okay. Thank you very much.

C. APPEALS

- 1. DANIEL and KYOKO WIGHTMAN appealing the Director of the Department of Public Works' Notice of Violation for an addition of a second floor lanai deck without a building permit for property located at 7 Puukani Street, Kahului, Maui, Hawaii; TMK: (2) 3-8-070:037 (BVAA 20100007)**
 - a. Applicant's motion requesting a time extension for filing a notice of appeal and applicant's memorandum in support of motion requesting a time extension for filing notice of appeal.**

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

Ms. Kapua`ala: Here today is the Wightman's son as he has brought to the County, a Power of

Attorney Document to represent them in this case. Also, we have Deputy Corporation Counsel, Counsel Kimberly Sloper, who will be representing the Department of Public Works. And by the way, Board, this hearing is set for February 10. Should you grant today's motion to request a time extension, we will proceed to have this hearing with you as the Hearing Officer on February 10.

Mr. Austin Russell Wightman: Aloha, Mr. Chair and Board. My name is Austin Russell Wightman, Kalolo Wightman. I'm here representing my father, Daniel Wightman, and mother, Kyoko Suzuki Wightman, regarding 7 Puukani Street. I would ask for your leniency and acceptance of my late application of appeal due to the fact that my father is living in the Mainland and a long truck driver, state-to-state. It made it difficult to put all the documents together that were needed in order to get it here in time. I know – I believe it was three days late or three or four days late, although there was, I guess, an Aloha Friday. What was it? A furlough Friday, which the day that I turned it in would've been furlough Friday, but I didn't know it was furlough Friday. But even at that point, it still would've been a day late, as well as the fact that there are other – it was so complicated trying to put the documents together, and understanding the documents, and the process of when the actual due date was versus when the date of delivery date was, 30 days from date of delivery, 30 days from mailing. That was all unsure as well. That's the reason the application was late as well as confusion on this particular property being initially, a one-story with a basement, and we didn't know which way to go, because now they're saying it's a two-story house, which is kind of putting us in a situation of where we have setback problems, although the footprint never changed. So I'm just requesting your approval on our appeal.

Chairman Endo: Okay, so you filed a late notice of appeal. Is that correct?

Mr. Wightman: Yes.

Chairman Endo: And now you're asking to be – for us to allow your appeal to proceed even though the notice was filed late?

Mr. Wightman: Yes, correct.

Chairman Endo: Okay. Ms. Sloper?

Ms. Kimberly Sloper: Thank you, Chair, Board Members. I believe the standard under your rules would be that you have to find excusable neglect on the part of the applicant. And I apologize for not submitting something in writing. I was under the mistaken belief that everything was scheduled for February 10th, including this hearing, this motion. I wasn't clear on that. However, the NOV was served on Mr. Wightman on October 4th 2010, so the 30 days would've been November 3rd, 2010.

My understanding is that the owners, Daniel and Kyoko Wightman, did provide a power of attorney to their son, which would mean that in the Department's position, the delivery would've been when this Mr. Wightman received notice. It was also mailed to the actual owners, his parents. Mr. Russell Wightman has been in active consultation with the Department since at least January 21st of 2010 on this issue. He, in fact, wrote a letter to the Inspector in September of 2010. So it's not as if the violation is a new thing or was a new thing in October. Within the motion before you today, he actually – or they actually acknowledged that they knew the 11/3/2010 was the date to file the appeal. So we would ask that you not find that there was excusable neglect and deny the motion.

Chairman Endo: So how many days late was it, ultimately? Three? Sure, you wanted to say something?

Mr. Wightman: Yeah, actually, my power of attorney only went into effect as of today is when I turned it in as far as being fully – what would you say? Empowered. As well as the 3rd, I only as of the 3rd as being the deadline within a couple of days of the 30 days' deal. It was so confusing. I was just trying to understand the wording of the appeal. I didn't even know we had an appeal process being that the letter went to my father. And the way it's – I have an eighth grade education. I'm ashamed to say that, but I graduated from high school, but trying to understand some of these legaleze stuff is difficult. I think it stated, "This order effective immediately. You have 30 days from the date of service to appeal this order. Date of service means mailing of certified mail or personal delivery." So I thought that the 30 days was the date of delivery. Personal delivery meaning the date my father signed for it. You know, this stuff is really difficult to understand. I'm not an attorney. I actually went to Jennifer Oana's office, Bradford Ing, I put in a request with him to be seen prior to this, like three days prior to I thought the deadline of Friday. And I waited three days to get a call back. And then by then, it was too late, and I was forced to – forced all this paperwork together, and understand, and word it, and get it turned in. So I wasn't neglecting. Yes, I've been working on this process. And at no fault of my own, had not been able to push it through.

I mean, when you buy a house initially, thinking it's a one-story with a basement, and you turn in paperwork, and they deny you, and say, oh, no. it's a two-story because of height. But then I had to go through and read through these definitions and look and see that, no, I'm within the guidelines with roof heights and below ground, what they call ground level. When the ground level is up here, and they turn around and say it's down here, it makes it difficult.

Chairman Endo: Okay. Yeah, we're just here to decide whether the late appeal should be granted or not.

Mr. Wightman: I'm just – I'm sorry. I'm emotional. This is difficult. So I just wanna – I didn't wanna seem like I neglected it. I apologize if I was abrupt or . . . (inaudible) . . .

Chairman Endo: Okay. Before we take questions from the Board, is there anyone in the public who wishes to testify on this agenda item? Please step forward. Seeing none, we will close public testimony as to this item. Member Kamai?

Mr. Kamai: I just got a question for Mr. Wightman. And I think he started to get into it at the tail end of what you were talking about. What do you think your stay or your time extension is gonna provide you that you cannot present before this Board on the 10th?

Mr. Wightman: Well, I think – Extension for what? The extension for the Building Department?

Mr. Kamai: Yeah.

Mr. Wightman: First of all, I'm hoping that the Board can decide what – how my house is classified or my father's house is classified as. Because when my wife and father – or my wife – my ex-wife and sister bought the house. My father subsequently, purchased it from them. It was under the assumption that it was a single-story home with a basement. And currently –

Chairman Endo: Okay, okay, hang on. I think we're going off of the topic. And I just wanna try and help – the Chair would like to try and help move this or keep this focused. I think, Member Kamai, we should ask maybe Corporation Counsel to help us understand because I thought – the Chair thought that basically what we're trying to do is whether or not to allow the appeal to proceed. Because if we don't allow – if we don't grant the motion allowing a late appeal or notice of appeal, then that's it. You can't appeal. So we're just allowing – basically, allowing this appeal to go forward or not go forward. Is that correct, Mr. Giroux?

Mr. Giroux: That's correct. And as far as just for clarification of the nature, it is on the agenda that the nature of the appeal is what has been described by the applicant. So that would be the position that if it were granted, he would have a chance to bring this before you. And you would be hearing the facts of the case, and you would be the arbitrator on the law and on the facts of the case. So we just don't want all the facts to come out about the case today because we're gonna have to get that on the record in the future, and that's gonna be what we're gonna base the decision on.

Chairman Endo: Member Kamai, was that enough for you? Okay.

Mr. Tanaka: But, Trish, you did say that this is on the agenda on February 10th?

Chairman Endo: That's assuming that we grant the motion.

Ms. Kapua`ala: Yes.

Chairman Endo: If we deny the motion, then there is no appeal. No, it's pau. We would – if we deny the motion, then we say you cannot appeal because you filed too late. So that's it. It's over. There's no appeal. Is that correct?

Mr. Giroux: Right. Yeah. And a judgement would be entered as far as if there's any fine or anything. There are fines that has been—?

Ms. Kapua`ala: A fine has been accruing, and he would have to work with the Department. The order would be final. The Department can, of course, settle at any time.

Chairman Endo: So, Mr. Giroux, could you help us on the standard for ruling on the motion? Is it what Counsel said or is it something else?

Mr. Giroux: As far as your rules, you would have to look at the – coming out of your Rules of Practice and Procedures, Section 12-801-18, Section D, labeled, "Extensions of Time." There's different standards for different times when an extension of time is requested. This – listening to the facts would fall under Section D(3) in order to permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to be the result of excusable neglect. So the standard of excusable neglect is basically, one, was there neglect? And the answer to that in listening to the facts is that the deadline was missed. The assumption is that it was due to some action of the applicant. The real question is, is it excusable? Is it something that can be foreseen as being understandable in light of whether or not the person's education, skill, expertise, familiarity? Those types of things courts look at in order to see whether or not somebody has missed the deadline due to pure negligence or excusable negligence. Courts have also used the

standard that ignorance of the rules of being if somebody has a Juris Doctorate is not an excuse of missing the deadline. However, if the rules are stated in such a way that there's a reasonable misinterpretation of that rule, or misinterpretation of how to calculate, or where the deadline would fall on the calendar, then some courts have found that to be excusable in that an attorney with a reasonable amount of skill may actually, make a mistake in that area. So you can use that standard seeing that you're dealing with a lay person, seeing what kind of diligence they did do in order to try to meet the deadline, and also, what the person's skill level is or familiarity is in the field. So I think with that legal standard, I think you've heard pretty much all of the facts that you can apply the facts to, to that legal standard.

Chairman Endo: Thank you.

Mr. Tanner: Chairman, I still have a question. I have a question for the applicant.

Chairman Endo: Sure.

Mr. Tanner: You mentioned that you had an eighth grade education, but that you graduated from high school. Did you get a GED or--?

Mr. Wightman: No, my grade level. I mean, through -- I was injured in an accident, became disabled, and through some psychology, and through, I guess, counseling, the counselor stated that my education's of eighth grade level. I mean, this is as of maybe ten years ago, but still, I mean, that's where it's kind of left at. I've learned a little bit here and there, but still trying to learn.

Chairman Endo: Okay. If there's no further discussion, the Chair would like somebody to make a motion up or down.

Mr. Tanner: I'll make a motion that we grant the request for an extension of time based on the fact that it's an excusable. I understand that the process is confusing. And the way it's worded can be misinterpreted easily. And I accept that argument.

Ms. Phillips: I'll second the motion.

Chairman Endo: Okay, it's been moved and seconded to grant the motion to grant the time extension. Discussion? All those in favor of the motion, please say aye. Opposed, please say no.

It was moved by Mr. Tanner, seconded by Ms. Phillips, then

VOTED: To grant the motion to grant the time extension.

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

Chairman Endo: **Motion is carried and your motion for a time extension to file a notice of appeal is granted.**

Ms. Kapua`ala: Mr. Chair, could we state into the record, prehearing documents will be due

because the hearing will go forward on February 10th. And I think it was clarified today with Ms. Sloper that we'll be expecting your documents by 12:00 noon on Wednesday, February 2nd.

Chairman Endo: Okay, is that – did you guys hear all of that? Both sides?

Mr. Wightman: Yes, I have.

Chairman Endo: Is that okay? No problems?

Mr. Wightman: That's acceptable.

Ms. Kapua`ala: Mr. Wightman, could I also make sure that you – whatever you submit to the Department is one original plus either 15 or 20 copies? Fifteen copies, one original, plus 15 copies. And could you also serve an additional copy to Ms. Sloper at Corporation Counsel's office, third floor, at the County Building? You can always call me.

Mr. Wightman: Thank you, folks.

Chairman Endo: Oh, and, Mr. Wightman, you could ask your opposing counsel to point out the relevant sections of the code, of the rules of procedure that you might wanna take a look at before the hearing. It just has basic procedural rules.

Mr. Wightman: Okay, thank you.

D. UNFINISHED BUSINESS

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

- a. Status report.**

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

Ms. Kapua`ala: And we do have the Appellant, Mr. Campos here, as well as Deputy Corporation Counsel, Mary Blaine Johnston, representing the Director of Planning.

Chairman Endo: Okay. Is there anyone here in the public wishes to testify on this agenda item? Seeing none, we'll close public testimony. And may the parties please introduce themselves?

Mr. Victor Campos: Victor Campos.

Chairman Endo: Good afternoon.

Ms. Mary Blaine Johnston: Deputy Corporation Counsel, Mary Blaine Johnston, representing the Director.

Chairman Endo: Good afternoon. Ms. Johnston, do you have something you wanna give us?

Ms. Johnston: Yes, I was a little surprised to see this come up on your calendar because actually, the appeal, Mr. Campos' appeal, was – the stipulation to dismiss the appeal was filed on January 5th. However, I believe – I would like the Board to know what has happened in this matter. It may help you in considering other cases in the future.

We came in on October 28, and at that time, we were supposed to have the hearing. At that time, Mr. Campos was represented by counsel, and we had agreed to a general agreement of settlement. And we did draft out a settlement agreement. It was signed off by Mr. Campos on December 2nd of last year, and the Mayor signed on December 3rd of last year.

And the terms of the settlement, just very briefly, were that Mr. Campos was going to pay a two-thousand-dollar fine. He was going to provide an inventory of all the vehicles on the property that were being – he was storing vehicles that didn't run. That's what he was cited for. He was given till December 31st to move the vehicles off. In the event that the vehicles were not moved off by December 31st, he would pay a thousand dollars a month for January and February. And if they weren't moved off by the end of March, he would then – the fine would then go to a hundred dollars a day. We're here now in January while he signed off on the settlement agreement. And he signed off on the stipulation to dismiss the appeal which was part of the settlement agreement.

He has done nothing else under this agreement. He has not provided the inventory which was to let us know – he had claimed that he had some vehicles that he owned. We said, "Fine. You provide us an inventory of the ones you own, so we'll know which ones have to go." That has not been provided. No fines have been paid. Three thousand dollars of fines are due now. And we have no assurance at all that he is going to proceed to live up to the terms of the settlement, which leaves us with what's the next step? And that's what we're working on. I did write him. I sent him a letter yesterday on what he needs to do to get back into court to get the settlement agreement back in place. So we're moving along on that and actually following through.

Unfortunately– And I'm gonna pass these out just for you to look at. I had these for the hearing at October 28th. We didn't use them. So you might as well– Some of you or all of you may be familiar with the property on Lower Main Street. There have been numerous complaints. It presents traffic hazards when the tow truck drives up to put more vehicles on. I only have two sets of these. Trish, if you would? So that was October 28th. And there's a group of pictures that were taken this morning. If you look at them, it shows essentially no removal. If anything, there are more vehicles than there were back in October. So I don't know what Mr. Campos' intentions are. There are other options open to the County to try to enforce this. And I'm very sad. I thought we had a good settlement agreement. He was relieved of a great deal of – very high fines by entering into this settlement agreement. And we're left now with maybe having to come back before you at some point.

Chairman Endo: What does the settlement agreement provide if there's a breach of the settlement?

Ms. Johnston: I can take it to court, basically. Because basically, we settled that NOV. There's nothing to bar the County from citing him again because he's – you know, you don't just get cited once and keep going. You get a traffic ticket. You pay it. That doesn't mean you don't have to pay

the next traffic ticket. So we're trying to consider the options to encourage him to follow through on what he promised. I would be interested if he has anything to say what his intentions are.

Mr. Tanner: I have a question on the most recent photos that went out. You said it's clear there are more cars. Are the cars parked on the outside of the fence next to the road? Is that part of it or—?

Ms. Johnston: No, we're looking at just the cars that are inside the fence on his property. However, I understand that some of the cars that are parked on the street may also be cars belonging to him. I don't know, but he wasn't cited for those. The way you can tell there are more cars, if you look at the big tow truck, you can see that in October, it was further in the back lot. Now, it's further up on the lot, so there are more cars behind there. And as I say, we have not had an inventory, so we have no way of knowing if he's gotten rid of some, but it does appear that they're still coming in, which is, to me, really bad faith in trying to resolve this problem.

Chairman Endo: Mr. Campos, do you wanna say anything?

Mr. Campos: Yeah, we did the settlement and everything. And what happened is I never move into the settlement because of – apparently, I went go into denial of this thing because I threw away the cars that I suppose to throw. And we sent them the letter, the customer, like I told them, the Corporate Counsel that I will be sending in the letter. It takes a longer process because the owner of the vehicle I think went move on to a different place. So now, in six months, you still can return and say, "Hey, Vic, where's my car?" So what's happening is I went go to court, nine cars. I gotta pay each individual car, and who's gonna help me? I never give the inventory to them because I getting hard time finding all these customers that left on the property. Yes, I was throwing away a lot of cars. But the problem is, I stay moving around. They think– Which one came in? Which one is last? It looks like get plenty again because like I said, I stay moving. And I get some letters that came in that I went go to *Maui News* and publicize all the cars. I can give you guys a copy of the paperwork that I did that will be disposed on the vehicle. But in time manner, I did not respond to them because what I'm gonna do? I cannot do nothing. I tried my best and I still need your guys' help in extending of this thing. I ask humbly that you guys gotta extend it. I've been having fine, hiring lawyers, dragging on with the hours, pay thousands and thousands of dollars. From two lawyers, I paid over \$12,000. Companies that I worked for, they filing bankruptcy on me. Missing of \$350,000. I'm broke. I'm trying to work with my bank for make one loan so I can build the building. The blueprint's in process to put a building in there so I can operate on that piece of property.

Chairman Endo: Okay, well, I think this matter is actually not really before us anymore because you settled it. So there's really nothing for us to decide at this point. It's really between you and the Department of Planning or – you know, it's between you and the County at this point as far as enforcement of the settlement terms, and whether or not you're gonna get cited again for another violation. We – if you get cited for another violation, then that could come up before us, if you appeal it. But at this point, we're just here – I guess this was just scheduled just to hear the status, but we're not here to – there's nothing for us to decide, actually.

Mr. Campos: Yeah. And then she think that I'm not trying to . . . (inaudible) . . . Believe me. If I had my way, that will be disappeared in 48 hours, but I still get some more cars that I go work with and throw it away. And then with all these holidays came in, sure, I could not finish my job.

Mr. Tanaka: Mr. Campos, my advice to you would be to keep the County informed.

Mr. Campos: That was my fault, because I was in denial when I had this – you know, nine cars that I gotta pay for'em now.

Mr. Tanaka: Because from the photos, it looks like there are more cars. So it looks like you're not doing anything. So when you are, just keep the County informed. That's just my advice to you.

Mr. Campos: Thank you.

Ms. Kapua`ala: We apologize, Board. The reason why this item is before you is because there was no communication. And the last direction from the last meeting was to put it on the January agenda should we not come with any settlement or status by December.

Chairman Endo: Oh, this was actually supposed to have been canceled, this agenda item, if there was a settlement.

Ms. Kapua`ala: Yeah, if we had heard if there was a settlement, then we would've canceled. I apologize.

Chairman Endo: But that's okay. It's alright because it's sort of like things going on, so it's alright.

Ms. Johnston: That's the status. So now you know.

Chairman Endo: Alright. Thank you.

Ms. Johnston: Hopefully, we won't be back on this.

Chairman Endo: Okay.

Mr. Campos: Thank you.

E. APPROVAL OF THE JANUARY 13, 2011 MEETING MINUTES

Chairman Endo: Members, you should have your January 13, 2011 meeting minutes.

Mr. Kamai: Mr. Chair, move to approve the minutes.

Mr. Tanaka: Second.

Chairman Endo: Okay. It's been moved and seconded to approve the January 13, 2011 meeting minutes. Discussion? Hearing none, all those in favor, please say aye. Opposed, please say no.

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

VOTED: To approve the January 13, 2011 meeting minutes.

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

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

F. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Chairman Endo: Trisha, is there an update on BVA contested cases?

Ms. Kapua`ala: Well, the BVAA 20070007, which is Item no. 1 on this document I have on the smart board, the West – no, I'm sorry, the third one, 20090004, Mimi Johnston is actually the Department of Public Works' attorney, and John Rapacz is representing SVO Pacific. Judge McConnell is kinda tired of them going back and forth and not resolving anything, so he's gonna just set a hearing date. We're gonna meet next Wednesday, and he's not accepting any excuses already. I think he's not used to being yanked around. So he's not appreciating the treatment he's getting from the attorneys. So he's gonna get aggressive on this. And other than that, I have no status update for you. The Campos Appeal will be taken off your report.

Chairman Endo: Thank you, Trisha.

G. NEXT MEETING DATE: FEBRUARY 10, 2011

Chairman Endo: Our next meeting is February 10, 2011. Is there any further business of the Board? Hearing none, this meeting is adjourned.

H. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:18 p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Randall Endo, Chairman
Kevin Tanaka, Vice-Chairman
William Kamai
Rachel Ball Phillips
Rick Tanner

Bernice Vadla

Members Excused:

Ray Shimabuku
Bart Santiago, Jr.
Steven Castro, Sr.

Others:

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