

**BOARD OF VARIANCES AND APPEALS  
SITE INSPECTION  
MARCH 10, 2011**

**(Approved: 3/24/11)**

**A. CALL TO ORDER**

The site inspection of the Board of Variances and Appeals (Board) was called to order by Chairman Pro Tem William Kamai at approximately, 8:46 a.m., Thursday, March 10, 2010, at a property located off of Mauna Lei Drive, Lanai, Hawaii; TMK: (2) 4-9-017:019.

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

Chairman William Kamai: The meeting for March 10, 2011 is now in session. Let the record reflect that we have a quorum with Members Santiago, Tanner, Shimabuku, Phillips, and Kamai. Staff?

**B. SITE INSPECTION**

1. **CASTLE & COOKE RESORTS, LLC requesting a variance from Maui County Code, §19.70.030(B)(6) to allow 8 buildings (7 duplexes and 1 single unit), ranging from 31.35 to 41.14 feet in height, to exceed the maximum building height requirement of 30 feet for the Palms at Manele Bay-Phase II, located off of Mauna Lei Drive, Lanai, Hawaii; TMK: (2) 4-9-017:019 (BVAV 20110003).**

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

Chairman Kamai: Is there anyone in the public wishing to testify on the agenda matter? State your name for the record.

Ms. Caron Green: I think we are.

Chairman Kamai: State your name for the record.

Ms. Green: David and Caron Green.

Mr. David Green: Do you mean now or at the hearing?

Chairman Kamai: Both, up at the hearing as well.

Mr. Green: I will wait till up at the hearing.

Chairman Kamai: Okay. Ms. Green, you have the floor.

Ms. Green: We have the house that you can't see between there, but when you go up there— So these buildings will impact our view plane. Our view is, because there's a hole in the trees here is more this way. If those trees ever come down, we'll see the whole thing. For us, the problem is they put the pole right here, and the trees block it, so we have no idea what it's going to do to our view plane. And so it's pretty hard for us to say. But we did go up, and I would advise maybe you

all to do it, too, if they'll give you golf carts. This is the 10<sup>th</sup> fairway up here. And if you go up there, these buildings at that height will hide every view here except for the top of Haleakala. So it's – you know, we don't know what it's gonna do to our view.

Chairman Kamai: Any questions for the testifier?

Ms. Green: You might also take a moment to go up there. There's a street up above here. You drove by on the way. Those are lots that are for sale in the future. And those lots will have a view this way. I don't know. Clay, I think from some of those lots, you can see this pole, yeah?

Mr. Clay Rumbaoa: I went and stood on that street, and I didn't see it so– That was street level, though, so–

Ms. Green: Yeah, it's a concern for those houses, too, what this is gonna do for their view planes.

Chairman Kamai: Members, any questions for the testifier?

Ms. Green: If I may just say one more thing? We would recommend single family homes here. That would eliminate one story and take care of the view planes.

Mr. Bart Santiago: I have a question. This single lot or area here, what the added height relative to what was previously approved?

Mr. Rumbaoa: In terms of added height to the whole project, I'd say at the most for this particular area, it might be a foot at the most.

Mr. Santiago: A foot.

Mr. Rumbaoa: A foot. That's some of the revisions we have to make. So it's not drastic.

Mr. Santiago: Okay. Because, I mean, from the list that's anywhere from ten feet to–?

Mr. Rumbaoa: That's the overall.

Mr. Santiago: Yeah.

Mr. Rumbaoa: Yeah, right.

Mr. Santiago: For this particular area, it's less than a foot or two feet?

Mr. Rumbaoa: Yes, exactly, yeah, yeah.

Chairman Kamai: Excuse me. Could you identify yourself, please?

Mr. Rumbaoa: Yes. My name is Clay Rumbaoa. I'm with Castle & Cooke, the applicant.

Chairman Kamai: Okay. Any more questions for the testifier?

Ms. Green: Can I just tell you, you spell my name C-A-R-O-N, but Green just like the color?

Chairman Kamai: Any more questions for the testifier, Members? Hearing none, would the applicant wanna address the Members?

Mr. Rumbaoa: Yes. Good morning, Members, Board Members. Welcome to Lanai. My name is Clay Rumbaoa. I'm the Director of Engineering for Castle & Cooke. And we are the applicant for this project.

Just to kinda give you an overall view of the project, the Palms is a 12-acre site—Phase I and Phase II. Phase I is already complete. That's on the lower tier. And when we go to the edge, we can see that. Now, this application is for the Phase II of the project, which is this third tier where we're standing right now and the middle tier down below.

Mr. Francis Cerizo: Can you identify on the map where we're at?

Mr. Rumbaoa: Okay. Based on Figure E.2, we are standing on the third tier at this point right here towards the end of the cul-de-sac and of Auwikiwiki Place. So we're right around here.

Mr. Cerizo: So this is Phase I?

Mr. Rumbaoa: Phase I is these homes, the first tier, right down below that we should on Exhibit E, the outline of the homes. So that's already complete and built.

Mr. Santiago: And that home is directly—?

Mr. Rumbaoa: This house is right here kinda north – I guess that's west. No, northeast, sorry.

Mr. Santiago: So the view plane impact would be directly this way.

Mr. Rumbaoa: That's correct. Yeah, they have this way, this way.

Mr. Santiago: But their view's this way.

Mr. Rumbaoa: Right. Golf course. And this is kinda gives you again, the lay of the land. North of the project site is a drainage channel right here, and then Hole 10 right above. And further beyond that is this subdivided lot that's been – already been marketed for sale, but there's no homes there yet. To the south of this is again, the Phase I portion that's complete, and the 18<sup>th</sup> hole. And further below that are single family lots. Well, we have one home down there, but they're not impacted. To the east of it is our clubhouse, golf clubhouse, the parking lot right down there. And then to the west that way is our future development where we will be moving as we progress through the project district.

Ms. Green: . . . (inaudible) . . . single family homes?

Mr. Rumbaoa: Which one?

Chairman Kamai: Please identify yourself.

Ms. Green: I'm sorry. Caron Green again. The homes to the west are all single--?

Mr. Rumbaoa: Yes, the future development to the west will be all single family homes.

Mr. Ray Shimabuku: Mr. Chair? On the other map, where would be the Green's home? The Green residence?

Mr. Rumbaoa: It's right here.

Mr. Green: Right there.

Mr. Rumbaoa: Oh, no, I'm sorry. Yeah, that's right. This one right here.

Mr. Green: Right there.

Mr. Rumbaoa: And we're standing right around here right where the arrow head is, and that's their home right there, correct. You can't see it. It's behind the kiawe trees.

Mr. Shimabuku: Is this a separate property?

Mr. Rumbaoa: That's correct, which is further east of it.

Mr. Cerizo: So all the houses are above the green. This is where the greens is?

Mr. Rumbaoa: This is Hole 10, that's correct, adjacent to the property, to the subject property.

Mr. Cerizo: Right there.

Mr. Rumbaoa: Right here.

Mr. Santiago: What's the grade from the Green's home down to where we're standing? What's the height?

Mr. Rumbaoa: I'd say about 80 feet or so.

Mr. Green: From our home, did you ask--?

Mr. Santiago: Yeah.

Mr. Green: Our finished floor is at 292 feet.

Mr. Rumbaoa: 292. Okay, about -- we're about finished grade 230, so 60 feet.

Mr. Cerizo: This is 205 down here.

Mr. Rumbaoa: So we're standing on the upper tier.

Mr. Santiago: So the top of the – the top would be 40 feet?

Mr. Rumbaoa: No, that – those ribbons signify the top of the two-story, which is about 25 feet from the finished floor.

Mr. Shimabuku: And that's the highest point?

Mr. Rumbaoa: Of that building on this side from this portion right here.

Mr. Santiago: So 25 feet, and you got a 60-foot differential?

Mr. Rumbaoa: Yeah.

Mr. Cerizo: When was this graded?

Mr. Rumbaoa: This was graded– I was gonna go through the entitlement process. Back in–I have my list here–2004, we got Project District Phase III approval. And later in 2004, we got our grading permit and our Project District Phase III approval. And the grading permit required us to install or observe and protect the waters along here which is Class AA waters. So based on that, we're required by the County to put in – to collect all the runoff and silt to prevent it from going into the AA waters. So we were – we put in these storm chambers, underground water collection devices, which is about ten-foot in diameter and about 400 feet long. So there's one set on the second tier and on the first tier. And so that created us to put in these fill heights or this fill. And that's why you see these walls, this tiered elevations, because of the underground storm drainage system that we put in.

Mr. Cerizo: So this was done in 2004?

Mr. Rumbaoa: Yes, the grading permit requirement required it. And then we completed Phase I back in 2007, but the sidewalk for the second tier and the third tier was already ongoing because it was all under the same grading permit.

Mr. Cerizo: So you did all the three phases in one–?

Mr. Rumbaoa: The site work, that's correct.

Mr. Cerizo: The grading work, and the water, and the sewer.

Mr. Rumbaoa: That's correct. That's why you see all the stub-outs for utilities, power, telephone, water, and then these vaults for all the electrical.

Chairman Kamai: What triggered the variance now if all the permits were approved?

Mr. Rumbaoa: What happened was as we completed Phase I, we decided to implement more safety precautions. So we lowered the walls on both tiers. And as we lowered the walls, we had

to – it created a – the depth of the back yards became less, obviously. So based on that, we had to put in – we had to connect the garage and the dwelling unit together, and that was not something that you can just handle through a minor change. We were required by the County to resubmit our building plans for review. And based on that, they actually granted us a Project District Phase III approval. But when the Building Department reviewed it to actually give us the building permits, they gave it to the Planning Department, and they looked at it, and that's when they said that we did not meet the ordinance for building height. Although the first phase, the original plans, we had already – 11 of the buildings already exceeding the 30-foot limit, and we had approvals for those. We didn't think that we were going through this problem again since they were already approved once.

Mr. Cerizo: The permits were approved for all of this? The building permits?

Mr. Rumbaoa: The initial, correct, all units, all buildings.

Chairman Kamai: Question: the kiawe trees, is that a feature that the golf course would consider trimming or taking down?

Mr. Rumbaoa: Yeah, it's within the golf course property. And we – there's certain requests – we're not required to, but as a request, we could bring them down if they get totally overgrown. And if they horizontally grow this way, yeah, we'll trim them back.

Chairman Kamai: Kinda Catch-22, yeah? You can't see the ocean now. You can't see the buildings now because of the trees, but upon they trimming the trees, you're gonna be seeing the buildings.

Mr. Green: Actually– David Green. Actually, we had an agreement with the prior Director of Development with Castle & Cooke where they were going to take down the kiawe trees and plant lower level trees. There was an infestation of the wiliwili trees here. And when they were taking those trees down, they asked us if we wanted these cut. We love trees, so our only concern was if they cut the kiawe trees, we wanted them to replace them with something that would be limited in height and wouldn't need any maintenance. You know, maybe a 30-foot tree or something like that. And our only – what we said because we were concerned that part of the project that happens in the second part would be a concern. The kiawe trees would be cut down and the second level of trees would never be – the replacement trees would never be put in. So we said we don't want you to cut the kiawe trees until you're ready to put in the replacement trees, and here we are, four years later.

Ms. Green: May I add something? Caron Green. I think I said earlier, too, and you're all welcome to come up to our house if you wanna see from there, but because this is open here, we do – and we sit out, we have a view this way also. We have a 180-degree view. So we not only look down this way and straight ahead, but right now, we have a beautiful view this way. I don't know how high the houses will be to obstruct the view to this direction. But as you see, there's kind of a gap in the trees here. They aren't nearly as tall as they are over there, so we do see a lot of ocean at this time.

Chairman Kamai: One more question: so if the Company were to have built the original plan as

designed, it would've impacted their view anyway.

Mr. Rumbaoa: Yeah, correct, yeah. We had the permits. And actually, we started on the second tier. We had built the framing on the first three homes on the second cul-de-sac, but because we made those safety changes, we felt that – we had to resubmit again to the County and we got demo permits to tear down what we had just built.

Mr. Santiago: I have a question. When you say you've made the changes to the safety infrastructure, why was that done?

Mr. Rumbaoa: Well, actually, it's to further enhance the safety features. As you'll see when we go that way, there's a two-tier wall system, and the first tier is about ten feet. So it's almost 20 feet. And then the back yard kinda goes to the edge of the wall. So we were afraid that even though we may put in railings or what have you that a little kid could potentially fall over. So we lowered the wall, and then you'll see we created a two-to-one slope. That way they're not right at the edge. So that caused us to again, to redesign the footprint. So we had to combine the garage and the dwelling unit together unlike the first phase which are separate.

Mr. Santiago: So it's not a lessening of the safety structures. It's just a redesign of it.

Mr. Rumbaoa: Right, but then with safety in mind, though. And it wasn't required. We took it upon ourselves to do it that way. After we saw the finished work up here, we said, wow, it's pretty tall, the wall there.

Mr. Shimabuku: Mr. Chair, I have a question for the Greens. From your residence now, looking towards these kiawe trees, what do you see as far as – can you see the horizon of the ocean from your view above the trees?

Mr. Green: Yes. Above the – Straight through? We look through straight through over the kiawe trees now.

Ms. Green: Well, you see just the horizon.

Mr. Green: Just, yeah. The trees are probably right at the horizon.

Mr. Shimabuku: Right at the horizon.

Ms. Green: You're welcome to come up and see.

Mr. Green: I will also just mention that when the – this was originally permitted, we didn't own the lot and the house wasn't here.

Chairman Kamai: Would the applicant like to take us to the edge?

Mr. Rumbaoa: Sure. So, I guess, to kinda continue, the wall actually was up to the elevation of the pad right here. So – and the yard continued all the way to the wall. So we've kinda, again, self-imposed the safety issue where we lowered the wall, created this slope, and then we would put a

railing down there and some planting so there was more of a setback. If the kids were playing back here, they won't fall right over.

Ms. Kapua`ala: The property line is--?

Mr. Rumbaoa: The property line for this phase is actually down on that side.

Ms. Kapua`ala: Oh, right.

Mr. Rumbaoa: Yeah.

Ms. Kapua`ala: And then is it gonna be condominiumized?

Mr. Rumbaoa: Yeah. That's Phase I Palms. They have their own CPR AOA. And then this second tier and third tier will be their own CPR.

Mr. Cerizo: Where were the ones that you destroyed?

Mr. Rumbaoa: It was on that side. We started building the first three units on that side. We had again, put up the framing, and then when we did the redesign, and started to modify things, we got a demo permit and demoed it.

Ms. Green: Caron Green again. Clay, how come the wall stops there and then the grade is up here? Are you taking it down even further?

Mr. Rumbaoa: No.

Ms. Green: You're gonna add back to the wall there?

Mr. Rumbaoa: No, no. The wall was actually at this level. And that's where we lowered the wall and created the slope to create a further setback from the edge.

Ms. Green: So that will have planting?

Mr. Rumbaoa: That's correct. We'll have a railing right by where the wall is, and planting to again, have a setback so people don't -- you know, in the evening when they're drinking wine and admiring the view, they don't fall.

Mr. Santiago: So there will not be any obstruction here or a wall here against the railing?

Mr. Rumbaoa: Correct. We'll have again, bougainvillea or some kind of planting to prevent them from going all the way to the edge.

Ms. Kapua`ala: And some type of soil-retaining?

Mr. Rumbaoa: That's correct. In our design, we have some kind of . . . (inaudible) . . . material to allow the green grass to grow or vegetation.



Ms. Green: Caron Green again. If I may speak again?

Chairman Kamai: Sure.

Ms. Green: I wanna further answer your question about the kiawe trees. Our house, if we took the kiawe trees, would have this view right now. It would be – and actually, you see the tree there, the heliotrope, this heliotrope that's right up above the middle car there, we had three trees planted because we were tired of looking at the gravel, the weeds, and the orange fence. The trees haven't grown to obstruct that view, but if we had taken all these down so we could have our ocean view, we would be looking at this all the time. And that's why we have not taken the trees down. Our preference would be to have our ocean view, but in the current circumstances, we've left the trees there. You can barely see the house from there now. So that's why the trees are there, and we don't have a total ocean view.

Mr. Rick Tanner: Now, when you say you left the trees there, those are your trees?

Ms. Green: No, they're the golf course trees, but the golf course offered to take them down if we wanted to take them down.

Mr. Tanner: Take them down or trim them.

Ms. Green: No, take them down. There's a long story on all that, but they did that for a while and the 10<sup>th</sup> fairway for the condos, but it became such a maintenance hassle with every year having to come and trim them, but they said they'd take them down for us, which would be nice for the ocean view, but we didn't want to see this. So we said leave them for now until this is developed into something that's a little more pleasant to look at.

Mr. Rumbaoa: In addition to the storm chambers that I mentioned to collect the silt runoff as required by the County, the road, Maunalei, that you guys drove on, and the single family homes, the lot that's beyond this 18<sup>th</sup> hole was constructed under a separate permit. So when we came in and designed the Palms, we had to tie into the existing road where the main utility lines are, the sewer lines are, the water lines. So in order for us to make the utilities work for this site, our sewer line which is in the back here is gravity-fed. And so with the storm chambers, drainage system, and the utilities, that was one of the reasons why the silt was added.

Mr. Kamai: So would you say that Maunalei Road would be the closest reference point to a natural grade?

Mr. Rumbaoa: That's right. Maunalei is probably the closest reference to the natural grade. And as you can see on the other side of Maunalei, it's natural grade. So this side was a dip also, a valley, this area.

Ms. Kapua`ala: To clarify, the condition for the drainage improvements was a condition from the Planning Commission on your grading permit?

Mr. Rumbaoa: That was from Public Works, the grading permit. I think Public Works issues the grading permit, and they required us to observe or protect the Class AA waters here. This is not

to allow silt to run into the ocean. So we had to collect that through these underground storm chambers. That's actually underneath this road and Phase I.

Mr. Karl Hynes: Excuse me, I have a question.

Chairman Kamai: Please come and identify yourself.

Mr. Hynes: My name is Karl Hynes. I'm a resident of the Palms Phase I. I live right down there. Why wasn't I notified of this meeting?

Mr. Rumbaoa: This is the site tour. There's a 9:30--

Mr. Hynes: There was no notification that said 9:30 up there. That's all I wanna know is why wasn't I notified.

Mr. Rumbaoa: I don't know. I mean, we were required to notify for the meeting up there.

Mr. Hynes: So we're only doing what we're required to do. Got it. Thank you.

Chairman Kamai: Members, any more questions for the applicant? Applicant, are you done?

Mr. Rumbaoa: Pretty much, yeah.

Mr. Hynes: While we're here, have you been down on the road down there on Uhaloa?

Chairman Kamai: Not yet.

Mr. Hynes: Okay. Are you going down?

Chairman Kamai: Only if any of the Members choose to.

Mr. Hynes: Oh, okay. The concern has been, and I have confronted Mr. Rumbaoa about this several times is when they took the wall down, and they reduced the wall level--

Chairman Kamai: This wall?

Mr. Hynes: No, that wall. That's the wall that they took down.

Mr. Santiago: The wall was taken down.

Mr. Hynes: Yeah. That's the one that we're concerned about because it's obviously, right against the property there. The grading hasn't changed any. I'll save my questions for the hearing, but what I want you to see is they took it down, but the grading level is still the same as it was for the previously approved project. So if you just see the magnitude of that and where it's at right now, that would be helpful.

Chairman Kamai: Members, any questions for Mr. Hynes?

Mr. Shimabuku: I guess I do have a comment. So what you're saying is if you look at the end, the edge of the orange fence, then you can see the wall to the right, is that what you're talking about as far as the level is still the same, but yet the wall is further down?

Mr. Hynes: Well, you can't really see – well, yeah, this is where you see the way the wall is there. It was up five feet higher, that retaining wall. And so now they lowered it five feet.

Mr. Shimabuku: So what you're saying is, if we go down to that orange fence, it'll be the same as this right there.

Mr. Hynes: Yes, it's gonna be – you know, looks like–

Mr. Shimabuku: And that's your concern?

Mr. Hynes: That is a concern, yes, because all the fill in behind it, you're gonna put more heavy homes behind it. Is that engineered the way that it's supposed to, or was the engineer – was it over engineered before when it was five feet higher?

Mr. Shimabuku: I guess I need clarification as far as – well, what you're saying is you're gonna put–

Mr. Rumbaoa: Well, the structures will be probably about 20 feet away from the edge, 15 to 20 feet from the edge. So the structure won't be right on here where the loading is gonna impact the wall. When we took it down, we went to our structural engineers who recommended this wall system, and we ran this scenario by them, and they assured us that it's fine in terms of the interior of the wall. And so – and we submitted all those information to the County Building Department for their review.

Mr. Santiago: I have a question, Clay. This wall here, it was higher by what?

Mr. Rumbaoa: It was actually about to the grade of where you're standing right now.

Mr. Santiago: So when you lowered it down, you took out some of the fill, hauled it away, so you have this slope.

Mr. Rumbaoa: That's correct. Yes, it's about a two-to-one slope.

Mr. Santiago: And what your structural engineer is saying is that the integrity of the wall hasn't been compromised?

Mr. Rumbaoa: That's correct.

Mr. Santiago: And that's been submitted?

Mr. Rumbaoa: Yes.

Mr. Hynes: So if I understand this correctly, the wall was here with the fill behind it. We've lowered the wall five feet and the fill is at the same level.

Mr. Rumbaoa: But we have this setback about – at ten feet from it, from the wall, so the–

Mr. Hynes: I guess my concern my wife had when we called you down before was that how's this dirt gonna not come down because the wall was there to retain it. Was that purposeful or was it just window-dressing?

Mr. Rumbaoa: Well, the wall is to actually retain the soil, but–

Mr. Hynes: Right, at the previous level, it was there to retain the soil.

Mr. Rumbaoa: Yeah.

Mr. Hynes: Now it's five feet lower and we haven't changed the grade here.

Mr. Rumbaoa: Well, we have this slope so this wall is not abutting. Obviously, it's not holding up – this wall's not holding this up.

Mr. Hynes: I guess, I don't – it seems from a physic's standpoint how it's not holding that up. It certainly is.

Mr. Tanner: How is this related to the variance? It has nothing to do with it, so there's really no point in us discussing this.

Mr. Hynes: I'd like to understand what the purpose of the variance is.

Mr. Tanner: Well, I think you can do that at another time. It has nothing to do with us.

Mr. Hynes: I thought it had to do with the variance.

Mr. Tanner: No, absolutely not.

Chairman Kamai: Members, any more questions for the applicant?

Mr. Hynes: Excuse me, who are you, so I understand?

Mr. Tanner: I'm on the Board of Variances and Appeals.

Mr. Hynes: Okay. Well, I just didn't know who – and I'm just here to find out–

Chairman Kamai: Any more questions for the applicant, Members? Any more questions for the testifier, Mr. Hynes? Anything else you wanna say, Mr. Hynes?

Mr. Hynes: I'll save this for the hearing.

Chairman Kamai: Okay. So at this point, this meeting stands in adjournment until our 9:30 meeting up at Hale Mahaolu.

**C. NEXT MEETING DATE:** March 10, 2011, 9:30 a.m., at the Hale Mahaolu, Hale Kupuna O Lanai Community Hall, 1144 Ilima Avenue, Lanai, Hawaii.

**D. ADJOURNMENT**

The site inspection ended at approximately, 9:17 a.m.

Respectfully submitted by,



TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

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**RECORD OF ATTENDANCE**

**Members Present:**

William Kamai, Chairman Pro Tem  
Bart Santiago, Jr.  
Rick Tanner  
Rachel Ball Phillips  
Ray Shimabuku

**Members Excused:**

Randall Endo, Chairman  
Kevin Tanaka, Vice-Chairman  
Steven Castro, Sr.  
Bernice Vadla

**Others:**

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