

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
JUNE 9, 2011**

(Approved 6/23/2011)

**A. CALL TO ORDER**

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Kevin Tanaka at approximately, 1:41 p.m., Thursday, June 9, 2011, 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 Kevin Tanaka: Good afternoon. Meeting of the Board of Variances and Appeals will now come to order. It is now 1:41. Let the record show we have a quorum of five Members. See, first item, if we can take out of order: Items B-2 through 5.

**B. APPEALS**

2. **THOMAS D. WELCH, ESQ., MANCINI WELCH & GEIGER, LLP representing MAKILA LAND CO., LLC, appealing the Director of the Department of Public Works' letter dated March 25, 2008, amending the preliminary approval letter dated March 3, 2008 for the Makila Nui Subdivision (DSA File No. 4.957) located off of Pua Niu Way, Launiupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-001:025 (BVAA 20080003).**
3. **THOMAS D. WELCH, ESQ., MANCINI WELCH & GEIGER, LLP representing MAKILA LAND CO., LLC, appealing the Director of the Department of Public Works' letter dated March 25, 2008, amending the preliminary approval letter dated September 11, 2006 for the Makila Ranches - Phase 1 Subdivision (DSA File No. 4.924) located at 373 Haniu Street, Launiupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-001:027 (BVAA 20080004).**
4. **THOMAS D. WELCH, ESQ., MANCINI WELCH & GEIGER, LLP representing MAKILA LAND CO., LLC, appealing the Director of the Department of Public Works' letter dated March 25, 2008, amending the preliminary approval letter dated October 17, 2006 for the Makila Ranches - Phase 2 Subdivision (DSA File No. 4.927) located off of Kai Hele Ku Street, Launiupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-001:026 (BVAA 20080005).**
5. **THOMAS D. WELCH, ESQ., MANCINI WELCH & GEIGER, LLP representing MAKILA LAND CO., LLC, appealing the Director of the Department of Public Works' letter dated March 27, 2008, amending the preliminary approval letter dated October 17, 2006 for the Makila Ranches - Phase 3 Subdivision (DSA File No. 4.929) located off of Kai Hele Ku Street, Launiupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-001:030 (BVAA 20080006).**
  - a. **County of Maui, Department of Public Works' Notice of Appeal to**

**Circuit Court; Exhibit A; Settlement of the Case; Appellant's Designation of Record on Appeal; Order to Certify and Transmit the Record on Appeal; for Agenda Items B-2 through B-5.**

Chairman Tanaka: We'd like to defer that item.

Mr. Michael Hopper: I could explain what the history of that is, but if you want to move it to the front of your agenda, I think some people came here to – if you want to.

Chairman Tanaka: Yeah, please.

Mr. Hopper: That's up to the – if everybody's okay with that.

Chairman Tanaka: Yeah.

Mr. Hopper: My understanding on this item was that your Deputy, Mr. Giroux, wanted to take a look at – wanted to give you some information on this or at least advise you of some of what was ongoing in that case. I don't have the knowledge that he has of this and the background. And so, I did speak with him. He apologized that he couldn't be here, but he said that he'd like to see this deferred to a time where he could actually advise you on the item. I'm not as familiar with the background as he is. And he apologizes. It ended up on the agenda when he wasn't here, but that would be our recommendation is that you defer it until James is prepared to be present and advise you of the status of the case.

Chairman Tanaka: Okay. Thank you very much. We're back to Item B-1. Trish?

Ms. Trisha Kapua`ala: David Brown and Ann Brown--

Chairman Tanaka: Sorry, Trish.

Mr. Hopper: Sorry. I don't have the authority to defer it as an item. You'd need the Body to concur with that.

Chairman Tanaka: So we'd actually have to vote on it?

Mr. Hopper: You could say with no objections, this item will be deferred. And then if there's no objections, you could do it that way. I don't know if there's any public testimony on the item, but that would be sufficient if no one objected to deferring it.

Chairman Tanaka: So if there's no objections? Okay, the item is deferred. Okay. Trisha?

**B. APPEALS**

- 1. DAVID H. BROWN and ANNE WILMPJE K. BROWN of ANNE WILMPJE KALFF BROWN TRUST appealing the Department of Public Works' Notice of Violation for a dwelling determined to be structurally unsafe due to inadequate maintenance, dilapidation, obsolescence, or abandonment, thereby declared**

**to be a public nuisance for property located at 2525 Kahekili Highway, Wailuku, Maui, Hawaii; TMK: (2) 3-2-005:028 (BVAA 20110002).**

- a. **Director, Department of Public Works, County of Maui's Witness List.**
- b. **Appellee, Director, Department of Public Works, County of Maui's Exhibit List; Exhibits A - E.**
- c. **Appellant, David H. Brown and Anne Wilmpje K. Brown's Transmitting Additional Information**

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

Ms. Kapua`ala: And here representing the Department of Public Works is Ms. Deputy Corporation Counsel, Mary Blaine Johnston. And Mr. Brown and Ms. Brown are also here.

Ms. Mary Blaine Johnston: Thank you. Deputy Corporation Counsel, Mary Blaine Johnston, on behalf of the Director of the Department of Public Works. I'm happy to announce that we've reached a resolution of this matter. I've spoken a couple of times with Mr. Brown, and the agreement is that the County will be refunding the one thousand-dollar initial fine that the Browns have already paid, as well as the appeal filing fee. And this appeal will be dismissed. So that's taken care of.

Chairman Tanaka: Thank you very much. Do we need to accept? I know we were talking about this.

Mr. Hopper: No, that was actually – I was thinking about that for the other item. For this one, if there's been a settlement and the NOV has been settled or satisfied, I don't see any further action that you would need to take.

Chairman Tanaka: Yeah, there is no appeal. Okay. Thanks. Okay, we'll move forward. Trish?

## **C. COMMUNICATIONS**

1. **JAMES STANLEY DAUGHERTY of the 2000 DAUGHERTY FAMILY TRUST requesting a variance from Maui County Code §19.30A.030 to allow an approximate seven-foot tall, 16.5-foot long, electrical pedestal wall/structure to exceed the four-foot height limit for walls within the 25-foot agricultural setback area, for property located at 188 Awaiku Street, Launiupoko, Lahaina, Maui, Hawaii; TMK: (2) 4-7-009:066 (BVAV 20110009)**
  - a. **Department of Planning, County of Maui's Motion to Intervene; Memorandum in Support of Motion.**
  - b. **Withdrawal of Department of Planning, County of Maui's Motion to Intervene.**

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

Ms. Kapua`ala: Basically, this is for a Launiupoko pedestal wall structure. And with the previous administration, we, as the Department, procedurally intervened on every one of these cases. And with this new administration, we've since submitted a motion to withdraw the County's intervention. So basically, this is a communication for you today. I believe the Board does not have to take action on the withdrawal of the petition to intervene.

And also, Mr. Daugherty, due to improper notice, he failed to properly notify his neighbors and the public of the public hearing, so we had to cancel his hearing. That was supposed to be the last meeting. And he will reschedule with us. He has since sold the property, so they're trying to figure out how they're gonna handle the case. And should we go on to C-2?

Chairman Tanaka: Yes, please.

- 2. May 10, 2011-memo from Joshua Stone, Chair of the Maui County Charter Commission to Boards and Commissions requesting submittal of proposed charter amendments and/ or recommendations by June 30, 2011, as it relates to the BVA's powers, duties, and authority.**

Ms. Kapua`ala: Okay. I believe you have a memo before you from Josh Stone. He's the Chair of the Maui County Charter Commission, and requesting proposed amendments or recommendations for amendments for the Maui County Charter. I have the Charter on the Smart Board in front of you. And we'd like to ask you for comments. You can take a look at the Charter and maybe provide us comments by the next meeting, if you'd like more time. But any amendments that you would like to see pertaining to your powers and duties, we'd gladly take them, and draft them, and submit them to the Charter Commission for you.

Mr. Aaron Shinmoto: One thing, Mr. Chairman. You folks all received copies of the Charter in your – initially, here. So you have copies on that. Again, go home, study, come back at the next meeting maybe. It's in your binders.

Mr. Hopper: Just as a quick comment, just note that a lot of the stuff pertaining to – or the laws pertaining to you are in the County Code and in your rules. So not everything, obviously, governing the BVA is in this Charter section. The Charter is supposed to be for very broad – it's kind of the constitution of the County. And you are mentioned there, and it goes over your powers and duties. And if there's anything in there you think should be changed or maybe expanded, you can look at that, but usually a lot of the details are handled in the County Code and through your rules. So it wouldn't be necessary to change the Charter for a lot of the types of changes. And we can help you advise you on that, but just to note that.

Chairman Tanaka: What would be the process as far as changing it within the Code itself?

Mr. Hopper: If there is a Code change, I'm not sure how Planning would handle that as a request, but your rules, you can amend, and there's a public notice requirement for that. As far as the County Code, the only Body that can amend the Code is the County Council. I think you can initiate those changes. I could double check your rules. Or at least if you had an issue, you could bring someone from Planning forward to help draft the Code change. Say you want this Code changed, then they can – the Planning Director can introduce amendments to land use or land use

ordinances, which is where you're located, I believe. That would have to go to Planning Commissions actually, I believe, if it was in Title 19, and then on to the Council for final action, which is a less rigorous of a process than a Charter change, which has to go through either the Charter Commission or the Council, and I believe has to be put on a ballot for a vote. So that's a bit—

Chairman Tanaka: Alrighty. So, Trish, that's it, then, pretty much. Oh, the next item would be Item D, Approval of May 12, 2011 meeting minutes.

**D. APPROVAL OF THE MAY 12, 2011 MEETING MINUTES**

Chairman Tanaka: I assume that everyone had a chance to look at it. I'll entertain a motion to approve.

Ms. Bernice Vadla: I approve.

Chairman Tanaka: So moved.

Mr. Patrick De Ponte: Second.

Chairman Tanaka: It's been moved and seconded. **The meeting minutes are approved.**  
Director's Report.

**E. DIRECTOR'S REPORT**

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

Ms. Kapua`ala: I guess we can go one-by-one. The first item: the Andres Building NOV, the hearing scheduled for May 26<sup>th</sup>, the last meeting, was stipulated to be rescheduled at a later hearing date. This property is in the MRA, and the jurisdiction of the MRA, so they're looking at possibly going to a different Body to resolve this, but the appeal is still with us.

The Brown Residence: you just took care of that. No. 3, the North Beach Subdivision II-A: this one is— they're working to settle this one also before Judge McConnell. They've seen Judge McConnell twice. No. 4, the Mancini Farm Dwelling: the Planning Department is currently looking at the issue, and will eventually settle.

And then finally, no. 5, West Maui Village Appeal: this is where we scheduled a pre-hearing conference before Judge McConnell to force them to process. And they've since contacted us and asked for six more months. So they're rescheduling in January for a pre-hearing and hopefully to settle before then.

Chairman Tanaka: Okay. That was nice.

Mr. Francis Cerizo: We have a couple more items on the Director's Report. The annual Hawaii Congress of Planning Officials' Conference will be held on Kauai at the Grand Hyatt Hotel in Poipu, September 21<sup>st</sup> and 22<sup>nd</sup>. The Board is— It goes to the 23<sup>rd</sup>. And the Board is allowed to have two

Members. So typically, it's the Chair and Vice-Chair, but if the Chair and Vice-Chair cannot attend, other Members can attend in their place. We need to know by the end of the month. So if you check your calendars and come back at the next meeting to decide who wants to go. Typically, we cover all your travel costs, hotel costs. There's per diem. You pay for the first – hotel, fifty dollars, for the first night or each night. So you pay the fifty, and we pay the rest on the hotel. Cars should be – if you folks rent a car, you should actually not rent individual cars because you should share cars. More than one car, share a taxi. We'll also cover the program cost and any of the tours that go along there. We don't cover the – like golfing or fishing, that kind of thing, tennis. So those are on your own, but on the official agendas, yeah, we'll cover those.

Chairman Tanaka: Okay. So you need a decision by—?

Mr. Cerizo: By this month.

Chairman Tanaka: The next meeting?

Mr. Cerizo: Yeah, by the end of the month.

Mr. Shinmoto: One more thing is that again, we said it's typically the Chair and Vice, but you're allotted two slots. How you want to proportionate it out is up to the Board.

Chairman Tanaka: Yeah, if there's anyone on the Board who would like to go, please let – and I guess we'll discuss this at the next meeting. I guess, Tremaine, if you can let the Board Members who are not here that there is that option, and if anybody has – shows interest. I gotta think about that one. That sounds interesting.

Mr. Bart Santiago: What are the dates?

Mr. Cerizo: 21<sup>st</sup> through the 23<sup>rd</sup>.

Mr. Shinmoto: It's a Wednesday through Friday. Typically, Wednesday is the day you do your field trip, registration, this kind of thing. And the conference would be Thursday and half a day Friday.

Chairman Tanaka: How soon does an agenda or whatever—?

Mr. Shinmoto: We haven't seen the agenda yet.

Ms. Kapua`ala: What is the theme this year?

Mr. Shinmoto: There is a web site, but the web site, the last time we checked yesterday, there was no agenda. They do have a short blurb of what generally, the conference is about.

Ms. Kapua`ala: What is it called? Sustainable—?

Mr. Shinmoto: Sustainable communities or something like that. Kauai had it last year, but because of the economic turmoil, as well as the budget, and everything else, it was canceled. And so they're doing it this year.

Chairman Tanaka: Okay, thanks. Anything else from—?

Mr. Cerizo: No.

**F. NEXT MEETING DATE: June 23, 2011, Thursday**

Chairman Tanaka: Alrighty. So our next meeting date is June 23<sup>rd</sup>. Do we know what's on that agenda now?

Mr. Shinmoto: Right now we have nothing, so we may have to do a – some kind of telephone conferencing to get an idea or get the names of who's gonna go.

Chairman Tanaka: I wouldn't mind knowing exactly what kinda seminar—

Mr. Shinmoto: Well, as soon as we find out, we'll send it out.

Mr. Cerizo: Or you can check on their web site: Kauai County.

Ms. Kapua`ala: Oh, here, yeah. I can forward you this link, Kevin.

Chairman Tanaka: Oh, okay, yeah, please. Actually, to all of the Board Members.

Ms. Kapua`ala: Sure.

Chairman Tanaka: And then if—

Mr. Cerizo: It's on the Board now, if you wanna see it.

Ms. Kapua`ala: The one on Maui was really good. It was really enlightening for me as a Planner and just a government official. So they got competition, man, to show up.

Chairman Tanaka: Okay. So, yeah, if you can forward it to all the Members and we'll— And, Tremaine, is that something you can, two weeks from now, send out and ask the question if anybody's interested?

Ms. Tremaine Balberdi: Yes.

Ms. Vadla: Would it be possible, if the two Members – if there was two Members, and if you wanted to go that you could pay your own expenses, or is it just two slots?

Mr. Shinmoto: All we're saying is two slots that the County will pay for.

Ms. Vadla: Okay.

Mr. Shinmoto: You, as private individuals, can go, sure.

Chairman Tanaka: Okay. Is there anything else? That's it. Thank you very much. Meeting

adjourned.

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:00 p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

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**RECORD OF ATTENDANCE**

**Members Present:**

Kevin Tanaka, Chairman  
Rachel Ball Phillips  
Bernice Vadla  
Bart Santiago, Jr.  
Patrick De Ponte

**Members Excused:**

Rick Tanner, Vice-Chairman  
Jacqueline Haraguchi  
Ray Shimabuku  
Stephen Castro, Sr.

**Others:**

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