

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JUNE 23, 2011**

(Approved 7/14/2011)

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, 1:35 p.m., Thursday, June 23, 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: The meeting of the Board of Variances and Appeals will now come to order. It is now 1:35. We have a quorum of six Members. First item on the agenda is Communications.

B. COMMUNICATIONS

- 1. 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. (*Memo previously distributed to the Board with its June 9, 2011-packet.*)**

Chairman Tanaka: We had the discussion about possible Charter amendments and/or recommendations. Has anybody--? I kinda looked at it, and I said, well, I mean, what do we change? There is no-- James, anything?

Mr. James Giroux: All I can say, I guess, is for you to understand that in the Charter, you guys have your -- your jurisdiction is created by the Charter, but also by any rules coming out of the Council that would actually give you powers. So I think the philosophy is, you know, is the Board getting too much work? Too little work? Is jurisdictions being crossed? Efficiency issues. Are you guys being asked to look at stuff that you don't think that you guys should be? Or there are things that are coming to you that you'd rather have another board take jurisdiction of?

And I think just for your background, there's the Board of Code Appeals. That's another board. There's other boards that look at kinda similar issues, but the jurisdictions are a little different. I think Public Works has certain things that they have. And it really is funny because I -- unless you're like an engineer working at the department, it doesn't really make any difference. I think some people's philosophy is they'd rather just see one board deal with all appeals, so it's not confusing on where you go. And the other thinking is, well, if other boards have more specialty or specialized knowledge handled certain things, the outcomes might be different just because of the speciality. I mean, that's just philosophical. Coming from Corp. Counsel, we really don't have any input or suggestions for you.

Chairman Tanaka: Has any of our Members thought about what you saw and said, I wouldn't mind if this happened, or if we didn't have to look at this, or we had to, or we could decide on? Because it seems as though in the few years I've been on the Board, there are some things that it's tough

because we're making – we're asked to make a decision where I always think it's better left to – in the hands of a lawyer.

I noticed that there was a memo that said the submission to Josh Stone was put off. So if we did – we did actually have a little more time than we had originally thought. If there's any Board Members, if they have any input, via e-mail, we can always–

Okay, so move to the next item on the agenda, Approval of June 9, 2011 Meeting Minutes.

Mr. Giroux: So you'll be sending out a "no comment" letter or–?

Chairman Tanaka: I guess.

Mr. Giroux: With no objections?

Chairman Tanaka: Yeah, I guess. So if there's no objections, we'll just respond by saying "no comment." Okay, thanks.

C. APPROVAL OF THE JUNE 9, 2011 MEETING MINUTES

Chairman Tanaka: Okay, the approval of minutes. There wasn't much to– I guess to approve it, we'd entertain a motion to approve.

Mr. Stephen Castro, Sr.: So moved.

Chairman Tanaka: And a second?

Ms. Bernice Vadla: Second.

Chairman Tanaka: It has been moved and seconded. All those in favor say aye. Any opposed?

It was moved by Mr. Castro, seconded by Ms. Vadla, then

VOTED: To approve the June 9, 2011 meeting minutes.

**(Assenting: S. Castro, B. Vadla, P. De Ponte, J. Haraguchi,
R. Tanner.)**

(Excused: R. Phillips, B. Santiago, R. Shimabuku.)

Chairman Tanaka: **Meeting minutes approved.** Item D, Director's Report, Status on Contested Cases.

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Mr. Francis Cerizo: There's no change.

Chairman Tanaka: Okay, the next item would be the--

Mr. Giroux: Chair? Just to comment on contested cases, we have the Makila Appeal that is up at circuit court. My understanding is that the County had asked for a continuance as far as to file its initial brief. So once that brief is filed, we'll have, I believe, 30 or 40 days to respond. And I don't know if you want to go into executive session and talk about it, because I haven't seen their brief, but I've kind of -- you know, from the arguments that happened, I could probably kind of bring you guys up to speed about what I'm thinking as far as strategy on that case, because I'm basically, going to be the attorney kind of handling it for the Board. So if you wanna go into executive session and talk about strategy today, it'll probably be ten minutes or so.

Chairman Tanaka: Okay. Okay. So procedurally, how--?

Mr. Giroux: You just ask--is there a motion to go into executive session?

Mr. Rick Tanner: I'll make a motion to go into executive session.

Chairman Tanaka: Is there a second?

Mr. Castro: Second.

Chairman Tanaka: Okay, it's been moved and seconded. We are now considered in executive session.

Mr. Giroux: Yeah, and just to clarify for the record that we're going into executive session for the purpose of talking to your attorney about your rights, duties, and liabilities as regarding the Makila.

(The meeting then went into an executive session at 1:40 p.m. and ended at 2:00 p.m.)

Chairman Tanaka: The next item is the Planning Conference on Kauai.

2. Hawaii Congress of Planning Officials Conference on Kauai from September 21, through 23, 2011

Chairman Tanaka: Has everybody seen what Tremaine printed up for us? Is there anybody who really would like to go, wishes to go? I looked over what we got via e-mail. There are some interesting things. For me, personally, the only thing is because it's a Wednesday, Thursday, Friday, I'd hate to miss 60% of my work week. If it was Friday, Saturday, Sunday, I guess I'd say I'm in, but is there anybody who would like to go?

Mr. Tanner: I would.

Chairman Tanaka: You'd like to attend?

Mr. Tanner: Yeah.

Chairman Tanaka: Bernice or--?

Ms. Vadla: No, I'll be gone during that time. I did want to go but—

Chairman Tanaka: I know Ray had e-mailed saying that he has actually something else that weekend. Jackie?

Mr. Aaron Shinmoto: Rachel had indicated she wanted to go, if nobody else wanted to go. She'll defer, I guess, to you guys first.

Chairman Tanaka: Yeah, so, well, as of right now, Rick and Rachel, then. Terrific. We expect a full report from the two of you. So, Aaron—

Mr. Shinmoto: We'll take care of it.

Chairman Tanaka: Okay. Well, thank you very much, but seriously, you'll report back to us.

Mr. Tanner: Absolutely.

Chairman Tanaka: This is a yearly—? Next—?

Mr. Shinmoto: Next year is probably Oahu.

Mr. Tanner: The last year's was canceled, right?

Mr. Shinmoto: Yeah, Kauai had it last year, but because of budget constraints, they decided not to do it. So they're doing it this year.

Chairman Tanaka: So typically, it moves from island to island?

Mr. Shinmoto: Oahu, I think it's — I think neighbor island, Oahu, neighbor island, Oahu, neighbor island. Oahu has also State Planning and the City of County so they both do their own.

Chairman Tanaka: Alrighty. Thank you very much to the two of you. So is there anything else? Any other discussion items? Anything? None?

E. NEXT MEETING DATE: June 23, 2011, Thursday

Chairman Tanaka: Our next meeting is—

Mr. Shinmoto: July 14th.

Chairman Tanaka: July 14th. Alright, okay, meeting adjourned.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:04 p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Rick Tanner, Vice-Chairman
Jacqueline Haraguchi
Bernice Vadla
Stephen Castro, Sr.
Patrick De Ponte

Members Excused:

Rachel Ball Phillips
Bart Santiago, Jr.
Ray Shimabuku

Others:

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