

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
September 22, 2011**

(Approved: 10/13/2011)

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, 1:32 p.m., Thursday, September 22, 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: I would like to call the meeting of the Board of Variances and Appeals to order and it is now 1:32 p.m. We have a quorum of five. Just to let everyone be aware we have a bare quorum up until 2:40. So we got just over an hour to get through, so if we can move as expeditiously as possible. The first item on the agenda, Trisha?

PUBLIC HEARING

1. **PAUL L. HORIKAWA, ESQ. representing JONATHAN ROSS and SEAN ROSS requesting variances to delete: (1) The requirement that right-of-way access streets be a minimum width of twenty-four (24) feet, as required by Maui County Code, §18.16.060; and (2) The requirement to pave a portion of Door of Faith Road, as required by MCC, §18.20.040, for the Huelo Hui Partition Lots Subdivision (Ross Subdivision) (Subdivision File No. 2.2063) located at 215 and 295 Door of Faith Road, Huelo, Maui, Hawaii; TMK: (2) 2-9-007:020, (BVAV 20100001).**

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

Ms. Kapua`ala: And I do have some imagery for the Board. This is the Hawaii flood hazard assessment tool, which actually has satellite imagery underneath TMK. This is Hana Highway. Here is the access street which is Door of Faith Road. Again, using the technology available to us, this is another satellite image of the property located here. Google Earth is not much different. And I'll be happy to show any of this should you want to see the topography or surrounding areas. And other than that, I will allow Mr. Horikawa to do his presentation. Also, Board, we have Mr. Lance Nakamura, Civil Engineer, from the Department of Public Works, Development Services Administration, available for you.

Mr. Paul Horikawa: Hi. Good afternoon, Mr. Chairman, and Members of the Board. My name is Paul Horikawa. I represent the owners of the property which Trisha just showed you. That would be Jonathan Ross, Sean Ross, and also present, who we have present today are Jill who is Jonathan's wife. I guess she's shy. And we have David who is Jonathan and Jill's son. Wayne Arakaki is supposed to be here in a few minutes. We also have Mr. Izumigawa. What I would like to do is quite a few people have taken time out of their lives to come and testify in support of the variance. If I may with your blessing, Mr. Chairman, what I would like to do is have them testify, and then I'll just go into our presentation. And because of the time constraint, I'm gonna – I'm not going to take an extended time in making a presentation. but I would like to at least get their testimony

on record in support of the variance.

Chairman Tanaka: I guess that's what we'll do, say that we'll open the meeting to public testimony. If there's anyone who wishes to testify, please come forward. Sign up. We will limit you to three minutes to testify. The first name we have is Mr. Lance Holter.

Mr. Lance Holter: Good afternoon. My name's Lance Holter. I've known Jill and Jonathan for most of my 30 years here in Maui. I'm a realtor and building contractor for 26 years, and very familiar with the rural setting of Door of Faith Road. I also have known Stanley and their father, Jill's father. He's a bronze star awardee from – served with the 100th battalion. He once – I asked him to please introduce Senator Inouye at a gathering of over 350 people honoring the Senator, and he gladly did that. And I understand that the purpose of this project is to build a home for Stanley on the family property. I believe that the cost of this project in that they would have to pave Door of Faith Road is estimating around two and a half million dollars. And I believe that this definitely would qualify under a – the hardship clause. And number two, I also believe that in number one that it is situated at the end of Door of Faith Road requiring this massive amount of paving, I also believe that it would also qualify under number four, and that it is not detrimental or a public safety hazard, their subdivision, but in fact, this rural road has been like this for more than the 30 years I've ever driven on it. But further, I know that should it be paved all the way to the end, I think it could actually become of issue regarding speeding and a danger to the kids that live down Huelo Road.

I've always believed that we should support quiet rural communities, and I know that the families that you're probably going to hear from, they have been maintaining successfully, Door of Faith Road for 30 years, and longer. And I know that it's one of those unique places that's rural and we'd like to see it stay rural.

And finally I've always known the Board of Variances and admired the Board of Variances in the fact you've been able to support citizens. You're a citizens' group that serves our community. And I've always felt that the Board of Variances is the one successful way that we can help pursue public happiness, support families, create a better life, and help families look after the elders. And I want to thank you for your service to our community, and I hope that you can find a way to help the Rosses complete their subdivision. Thank you very much.

Chairman Tanaka: Board members, any questions for Mr. Holter? None. Thank you. The next person, Cindy Biggers.

Ms. Cindy Biggers: Aloha, Board. My name is Cindy Biggers. And I have been a resident on Door of Faith Road for ten years and been neighbors to the Rosses. And I also caretake three other pieces of property out there on that road and we love the road the way that it is. It's funky, and bumpy, and everybody has to slow down. And we love our trees, and we love that the kids can ride their bicycles, and not have to worry about speeding. It is a rural neighborhood. It's growing very slowly and we all love that. We support our neighbors in their subdivision, and we would really love it if you guys would let them leave the road the way that it is, 'cause we're all very happy with that. And that's about all that I have to say. Thank you very much.

Chairman Tanaka: Any questions? Thank you.

Chairman Tanaka: Next person, David Ross

Mr. David Ross: Hello. I'm David Ross and– Hello? Alright. My name is David Ross. And I've been raised in this neighborhood all my whole life. And I wouldn't like to see this road paved because it's almost sort of a safety hazard. And the rural setting is nice, seeing as I have to walk down the road every day. And on the bumpy part of the road, usually people tend to drive a lot slower than the part that's already been paved. Thank you.

Chairman Tanaka: Thank you. The next name, Jeanne – sorry, I – Dusseau?

Ms. Jeanne Dusseau: Hello. I live in Huelo. I do support this variance. I walk my dogs down the road. And the setting is just perfect for family and living in the area. And I also support the fact that paving may be dangerous. Thank you.

Chairman Tanaka: Thank you. Questions? Is that a Donna Wood?

Ms. Donna Wood: Hello. I'm Donna Wood. And I've lived on Door of Faith Road for 20 years. And I just love the country and I wanna keep the country, country. If we put in black top, it just wouldn't be the same, and it would be a speed trap. It would just be lovely to keep it as it is. Thank you so much.

Chairman Tanaka: Thank you. Questions? Moses?

Mr. Moses Kahiamoe: Hi, everybody. I'm Moses Kahiamoe, Sr. I guess everybody knows me pretty much. And I was born and raised in Huelo all my life and still there yet. And I own property right next to Jonathan Ross and Sean Ross and his properties. The road, I'd like to see that road stay like that. I don't mind fixing. And I doing the road all the time. Jonathan, Sean and I, we have our own equipment. And I used to work Fong Construction, 20 years. I retired now from them. Thank you.

Chairman Tanaka: Thank you. Any questions? Next, Stanley Izumigawa.

Mr. Stanley Izumigawa: I am Stanley Izumigawa, retiree, resident of Kula. And I am related to the Ross Family in that my daughter is married to Jonathan Ross. This subdivision is strictly a family subdivision. And I fully believe that the request for a variance is fully justifiable. And on that basis, I fully support the request. Thank you.

Chairman Tanaka: Thank you. Sorry about this one. Is it Frank Ichelli?

Mr. Frank Ichelli: Hi. My name is Frank Ichelli, and I live at 260 Door of Faith Road directly across the street on the ocean side from Jonathan Ross. And we've known Jonathan Ross, and Sean Ross, and their families for a number of years now. And my wife and I moved to this area specifically where it is because of the rural atmosphere. We love the road that way it is. And you heard previous testimony, people do not speed on this road. And that's just such a plus. I can't tell you because there's a lot of children, lot of things going on. So we really support the variance. Do not pave this road.

One of the other things is I consider this different. We know the Rosses. It's just a family subdivision. It's not like we're developing it into multi lots, so we could sell it, and do whatever with it. That would feel differently. They're just a family subdivision. This property between the brothers are what the family left them.

And I'm also concerned that just paving— I live on the ocean side of the road. Just paving the one side closest to Jonathan, I'd be downside from them. I'm really concerned about extra water flow coming onto my property. It's another important reason why I'm up here. Thank you very much.

Chairman Tanaka: Thank you. Any questions? Is there anyone else from the public who wishes to testify on this matter? Seeing none, we'll close that portion of public testimony. Mr. Horikawa?

Mr. Horikawa: Thank you, Mr. Chairman. First of all, I'd like — I'd like to do first of all is thank all of the individuals from Huelo who came up, and Cindy, and Jeanne, and Donna, Moses. And thank you for coming down. I noticed that Lance didn't mention one thing. He's probably very humble about this, but just so that the people would know, Lance is a former Member of the Board of Variances and Appeals, as well as a former Chair of the Variances and Appeals. So he comes before you with some degree of credibility, and the weight, I'm gonna leave to you folks.

There's a couple of things that I wanted to speak about. And what I — I'm not really gonna go into detail on the elements because it's part of your packet, and I know because of prior commitments, we're not gonna have a great deal of time to meet and discuss the requests that are before you today. So I'm gonna be somewhat brief today. But if you have questions on whether or not the elements have been met, I would submit based upon our submittal, they have been met.

But I'd like to give you some background as you consider this request. Mr. Izumigawa was very correct. The purpose of this subdivision is not to go and cut the lot up and sell the lot. Originally, the lot was acquired by Walter Patrick Ross and Stephanie Marie Wright Ross: Jonathan and Sean's parents. And at the time they had acquired the property, Mr. Ross, Jonathan's Dad, he was a professor of culture at University of Hawaii. And he had this vision: when he retired, he would come to Maui and start his chicken farm out in Huelo. Well, it never really happened, and eventually the plan became to give the property to the children. And that was idea of the subdivision. And then Mr. Ross, Senior Mr. Ross, had other parts of the plan. So it ended up that Jonathan and Sean acquired this property. And what they wanted to do is subdivide the land, keep one lot of each of them, and Davie — David, who testified earlier today, he'll hopefully get one parcel of land. And the idea is to give Cassidy another piece of land, and basically to subdivide the lot, and give Sean and Jonathan's children a parcel of land. They also hope to build another structure so that Mr. Izumigawa can also be on the property.

One thing that Mr. Kahiamoe talked about but was not maybe is not real clear is that for the past 30 years, Mr. Kahiamoe, Sean, and Jonathan, they have been paving Lower Huelo Road. And so if you look at the pictures, the road is in pretty good shape, and the reason for that is because of their willingness to put in time and to use their machinery to make the roadway passable.

I would note that the upper portion of Huelo Road where it comes right off of Hana Highway has been paved to a certain extent. I was told that when Mayor Lingle was the Mayor, Charlie Jencks came in and he paved the upper portion of it, not all the way down to the property, but he did pave

a portion of the property.

And so that's kind of the background of why we're here. This is not to create a subdivision so that we can speculate and so that the Rosses could make money. This is basically a form of estate planning to pass the land on to their children.

But subdividing land in the County has its problems and requirements. And one of the requirements is to have a minimum right-of-way of at least 24 feet. We're not – the Rosses are not trying to get away from that requirement in the area where the subdivision fronts their property. The subdivision map that was submitted shows that Door of Faith Road in the vicinity of this property is at least 30 feet in width. And on top of that, they've already – the road-widening lots have been cut out, and they're gonna be dedicated to the County of Maui. So if the other – if the owners on the other side of the property comply with the same request, this road is gonna be 40 feet. So the problem is not in the vicinity of this particular subdivision.

What has happened, and Wayne Arakaki, the engineer, will come in and talk to you more about that in detail, but about – I guess it's about a quarter of a mile from Hana, there's a parcel of land that is owned by the Wimberly Family. And I think there's a belief or there may be a belief, I should say – I don't think the cards have really fully played on that issue. But there is a belief that the road may not – the Door of Faith Road may not be 24 feet in that location. And Mr. Arakaki will talk about that. But whatever it is, what we didn't want to do is wait until this issue got resolved: is Door of Faith 24 feet in width at that place or is it not? Rather than have that, what we're gonna – what we've come before you today is to ask for a variance on the requirement that it be 24 feet.

And one of the requirements was the hardship. And we did meet with Lance and David Goode on this issue. And one of the concerns that was raised that I was unaware of is that you've had all of these subdivisions being approved over the years, and suddenly you're finding out that, hey, there's an access issue. And one of the concerns that was raised by the Director was we may not be able to issue building permits for lots that are below the Wimberly property. And my client's property, it is makai of the Wimberly property. And so it is a concern. They do wanna build a house for Mr. Izumigawa down the road. And Davie would like to build a house. So we're here before you maybe prematurely, but we have to resolve that issue. I don't know how long these types of issues will resolve. Mr. Arakaki will present his thoughts on that on why the road is more than 24 feet. Aside from the Wimberly property, I don't think there's any doubt that it's an excess of 30. It's just they had a little issue there. But nevertheless, that's why we're here today. We're requesting a variance from the requirement that there be a minimum access of 24 feet.

We're also asking you to grant the variance from the requirement that they pave Door of Faith Road from – I guess from where the yellow marker is on the upper left-hand, not only along the property, but conceivably, up to Hana Highway. We would ask that that be waived. That's about a mile. If you were to assume \$500 a foot, it's 2.something mil. I don't know. Mr. Holter had the number, but it is a hardship to come up – I mean, I don't think even the County can come up with money out of hand just to go and pave it.

And there are other issues of hardship. I think Frank brought out that if you pave this road, it's gonna create some liability for and some problems for Frank. In a way, it creates a hardship. And we did cite you the decision last December in which the current Director of Planning on behalf of

the Lewises asked to delete the road paving requirement because of the flooding that would occur. And Frank brought that out, but it's a real concern. And with that in mind, the Board did grant the variance on behalf of the Lewises. And it's cited in the material that we've submitted to you.

I'm open for any questions, but I would also like to bring Mr. Arakaki on to explain to you what the 24-foot issue is. And I know that Sean would like to give you his thoughts on why you should grant the variance. So if you have any questions, I'm available. If not, with your – if I could, I'd like to ask Mr. Arakaki, and then conclude with Sean, if that's okay, Mr. Chairman.

One of the other individuals that was gonna testify on behalf of the variance is Lucienne deNaie. And if it's okay, Mr. Chairman, we'd like to allow her to testify on this matter.

Ms. Lucienne deNaie: Thank you. Nice to see you all again. My name is Lucienne deNaie, and for the last 20 years, I've had the honor and privilege of chairing the road committee for Door of Faith Road. And that's why I wanted to come today because I know a lot about the paving on the top of the road. The committee worked very hard to get that little section sort of resolved so it wasn't always washing away. And we had to deal with the jurisdictional issues. And in the end, the County paved the road so there must've been a way to deal with those jurisdictional issues there because they come down. They maintain it once in a while.

But this matter, I totally agree with the Ross Ohana here. These folks are just trying to do a family subdivision. And they're a real farm family with real farm animals, and real trees, and real kids that wanna grow up on the farm, and follow mom and dad. And Grandpa Stan wants to move in. So we just gotta figure out a way to make this practical. No one in our community wants that section of the road paved because we have runoff problems. We all take care of the road now. And we bring in the gravel, and we do the site work, and so forth. And although we all pay taxes, we charge ourselves for doing that. And what we found is that when you start paving, then it starts interfering with things. We only paved the top section because it was so steep, and it was just washing away all the time. And after spending several thousand dollars in culverts, and everything else, and maintaining them, we just felt like, okay, we gotta bite the bullet and do something. And the County was willing thanks to Mr. Goode, and Mr. Jencks, and Mr. Tom Morrow.

But in this case, this is a road that's used by pedestrians, horses, so forth and so on. It's nice to have it a well-maintained gravel road where the rain can perc. in, and not wash off, and cause problems on the neighboring properties. And that's what we see when you have the paved sections. Then it's beyond the scope of our taking care of it. Then we have to wait for the County. We're costing the taxpayers a bunch of money whereas we can kind of handle it ourselves as long as we can leave it a nice dirt road. And the section in front of the Rosses is really – it's nice and wide. They've made the swales there. They've always taken good care of it.

So I would just recommend to you if you could consider this variance for both matters, for both the 24 feet at the top of the road. I mean, we all drive this every single day. It's like – it's manageable. The big trucks manage to get down. We have to do a little polite country kind of pullover to the side, but that's true along the whole length of the road even though it's a 30-foot right-of-way it's – you know, 15, 20-feet wide in different places. And it's just country living. And we're happy with it. So I think every person here is happy with the way things are. And we hope you'll let that continue, and let the Rosses move forward, and have their family dreams realized. Thank you.

And if you have any questions why things are, we road committee people, Mike Garnier, myself, the Rosses, we can tell you a little bit about it. Thank you.

Chairman Tanaka: How many consist of this committee and what--?

Ms. deNaie: The road committee is ad hoc, but there's three people that are signatories on the checkbook: and that's myself, Judy Bettner, and Sharon Stone. And we're signatories because we're people that are around a lot of the time, and so forth and so on, and everybody knows who we are, and we're not gonna abscond with the funds. And then the ad hoc committee includes the Rosses; Kahiamoes; Mike Garnier, who's one of the neighbors along the road; Hale Akua, you know, that contributes to the road fund. And it's just-- you know, we get together, and we need to figure out-- John Henderson, who always orders the gravel. You know, it's just a get 'er done kind of committee.

Chairman Tanaka: Thank you.

Mr. Bart Santiago: I have a question just so I have a little bit of a perspective. Along that one mile road, Door of Faith Road, how many homes are on that road, approximately?

Ms. deNaie: That's a good question. I'd say probably--

Unidentified Member of the Audience: . . . (inaudible) . . .

Ms. deNaie: Yeah.

Unidentified Member of the Audience: . . . (inaudible) . . .

Ms. deNaie: But all the way down?

Unidentified Member of the Audience: . . . (inaudible) . . .

Ms. deNaie: Yeah, we'd say between 30 and 40 because some people have ohanas, and they're a whole separate little family and everything. There's a bunch of people using the road, yeah.

Mr. Santiago: Thank you. And Door of Faith Road is not a County road?

Ms. deNaie: Well, it's a-- This is very interesting. It's a government road. It is a government road, so it was a traditional access. It's old maps from the Kingdom time. And it was part of the old plantation, the old Huelo plantation from the 1880s, so before the Overthrow. However, it is not an official County road. So they have never been willing to do much maintenance on it unless Moki can kind of sweet talk them into something every once in a while. The Kahiamoes sort of had a special relationship. But it is a public road. And there are private roads that have separate TMKs and they're very distinct from the public road. So it's a public road. It's a traditional access that is now a community road. And of course, a number of lands have been subdivided over the years that-- you know, a number of large parcels, 20, 30-acre parcels, that are now served as two-acre lots along that road.

Chairman Tanaka: Maybe you can, or Wayne, or – is there a TMK associated with that Door of Faith Road?

Mr. Horikawa: I would defer to Wayne. I'm not real sure.

Mr. Wayne Arakaki: The name is Wayne Arakaki. I'm an engineer. The – I guess the question was if there's a TMK. I've done about eight subdivisions in this area. And I never did find a TMK associated with this lot – with the road.

I want to show you Wimberly's map. This is the area. Before Wimberly, I went back and checked, I guess it was owned by Mr. Ralph Yagi. And I have a title report from Mr. Yagi. So outlined in green is his property that's described here. And in the deed, they described exceptions. And these exceptions are road access. We have Exception 3 and Exception 4. Exception 3 is this yellow one and Exception 4 is the blue. The blue is actually – I guess people used to call it the Old Hana Highway. Well, anyway, that property that Yagi owned, actually the road was going over his property. So what he did was created one exception where this was taken out. And then the yellow portion, there's a church. I forgot the name, but there's a church here.

Unidentified Member of the Audience: . . . (inaudible) . . .

Mr. Arakaki: No, it's not Door of Faith. And I think this is where the confusion comes in because on the deed it says, "Exception 3, right-of-way for road to church." So everybody thinks it's for the church, but it says "to church." It doesn't say "for church." And when I looked at the old maps, I went down to A&B Properties, and then I found this map and it says "30 feet right-of-way." It doesn't say that it's for the church. It just says "30 feet right-of-way."

We also found a map. This map is an East Maui irrigation map, map no. 3. It was generated in 1926. And if you can see in the yellow, that's where the church is. But the road that goes to the church, it's not an easement. It's just a government road. So there's nothing special about it saying that it is exclusively for the church. And that map was done in 1926. So again, with this, and then the confirmation with the preliminary title report that we got, it shows that actually – like, I don't know where's the question: what's the problem? I have, like I said, I've done eight subdivisions, and I've used the same argument over eight of these. And it has been accepted by the County. So if you folks have any questions?

Mr. Santiago: How recent was the latest subdivision that was approved with the same argument that you say you've used?

Mr. Arakaki: The latest subdivision that I did was probably – and again, I'm guessing, probably about four years ago. It was a Honolani IV Subdivision. It was along the shoreline. It was a two-lot subdivision. And then this was the access road that we used to go to Hana Highway showing the minimum 24 feet. And that Honolani Subdivision I did in that particular area, we did three subdivisions. And also, we did come before the Board of Variances because they were required that we pave the road. And that variance was granted. We didn't have to pave the road.

Chairman Tanaka: Just as part of the history of this, the preliminary subdivision approval was granted – was it in '92, was it? And part of that preliminary approval was the road paving? Now,

but – yeah, was–?

Mr. Arakaki: The rest of the subdivisions that I did were three lots or less, so we could sign the agreement where we didn't have to do any kind of paving. The only subdivision that I had to come in for a variance was the Honolani Subdivision. That was a five-lot subdivision on 45 acres, so I had to come in for a variance on that. And that was done in – prior to Year 2000. I think it was done in '98, I guess, or '99.

Chairman Tanaka: Any other questions for Mr. Arakaki? Paul, I guess, if I can ask you, or Wayne, or – you know, in our packet, we have a series of photos showing some dirt, some gravel, and it looks like some paved sections. But I'm not sure what it's linked to, where these photos– So I guess I'd like to know the section actually fronting the subject property.

Unidentified Member of the Audience: . . . (inaudible) . . .

Chairman Tanaka: Yeah, if you'd like to step–

Unidentified Member of the Audience: . . . (inaudible) . . .

Mr. Horikawa: What happened is he took some recent pictures, and he was gonna speak, but he wanted to have the pictures shown to show you currently what the road looks like.

Mr. Sean Ross: . . . (inaudible) . . .

Chairman Tanaka: If you could come up to the mike and identify yourself?

Mr. Ross: I'm just gonna start back, then I'll be done. My parents' names are Ernest and Mary Ross. Okay? And my parents bought the property in 1970 with the intention of maybe a farm, but four kids, five lots, one for each of us, and one for them. Eventually, maybe a cottage. The farm deal went downhill real quick. My dad was a professor at UH, but economics, demographics were the problem. Eventually– So we started this 40 years ago. And that's why there's five lots instead of three or two. And in 1995, my parents split up and they had to divvy up the property. So they just gave me and Jonathan, Huelo; my sister, the Honolulu home; my brother, the Laie property. So that's how we ended up with it.

At a point, we said, why don't we just go for a family and just do it? They said, well, since all the work has been done on five, it's better to keep it five so you don't have to reinvest in surveys. It was all surveyed. Like he said, it was finalized. . . . (inaudible) . . . surveyed it. Pins were in. Everything, you know. And so what I wanted to show you was just how long we've been working on it. We planted these trees as part of the original subdivision requirement. . . . (inaudible) . . .

Chairman Tanaka: Sorry, we need you to speak into a mike.

Mr. Ross: So if you look at those trees, that's how long we've been working on it. That's our maintained property. The shower trees were part of the requirement for ornamentals. The grass area on the side is where we mow along our property as a walkway. And that is our maintained road. My brother and I bought a bulldozer. Moki Kahiamoe does the work. Jonathan also has a

loader and now Moki has a loader. We do all the work. We do all the maintenance. So anyway, that's how it looks now. I don't know what the pictures you got at what time. There's been— You know, it goes through cycles: heavy rain, fixing. So anyhow, that's pretty much what I'd like to say as far as that.

And there's been obviously, a big delay, and we want to get it done because as we get older, we realize we gotta get in for our kids' names separately before something happens to one of us. So the subdivision is more for protection for all of us, as well as giving our kids something concrete for their future. So that's pretty much it. Both our parents died two years ago within a month of each other, so they're not here to— So we just got Stan, and my mother-in-law, who seemed to have drifted away. So any questions for me as far as what our intents are? And we're both working folk. No trust funds. No lotteries. We tried. Went to Vegas. Came up broke.

Chairman Tanaka: Thank you. I do have a question, I guess, for Lance. Part of what Paul had said was that you've had — they've had discussions with you. What are the issues that you have, or recommendations, or — officially, from Public Works?

Mr. Lance Nakamura: I think the one that is out— The pavement one is just, I mean, it is what it is. That's just one of the standard code requirements. The right-of-way I think is the bigger issue that has come up that we were still discussing. And I'm just trying to look at some of the notes that I had. And it seems like that it's — he's right that there have been many subdivisions approved in this area in the past with documentation submitted showing that their — that 24-foot requirement was accepted. And I did go back and looked through many of these old subdivisions going back through many years and there were documentation. There was documentation on that. I think only recently, our Subdivision Section, maybe with some guidance from the County Surveyor, began to question this right-of-way within the Wimberly property. Not exactly sure how that came about, but that issue has come up again for this property. And I know that we talked about getting more — it seems like Wayne has maybe done more research. That is an issue that can be potentially resolved in the Department. It seems like Wayne may have done some more research, and they would need to present that to the Subdivision Section and the Surveyor to verify— You know, there's a specific requirement for a 24-foot right-of-way. And they would need to present whatever research they've done to the Subdivision Section. I guess as — maybe they've determined this might be a better path, though, since it is question of whether that documentation would be adequate.

Chairman Tanaka: Now, Mr. Horikawa, you talked about — I guess this is my — I'm still not clear on. There is the — at least 24-foot width available. Now, you talked about a roadway-widening lot, and I'm not sure how that plays into it. As of now, there is an excess of 24 feet or—?

Mr. Horikawa: Okay. Let me tell you what my comment was. Okay, one, let me talk about the five-foot road-widening strip. The five-foot road-widening strip is only in the property that's being subdivided. This is just down there. The Wimberly property is located about half a mile mauka towards Hana Highway. Wayne talked about the deed to Mr. Yagi, but I think it goes back even farther than that because I mentioned the exchange deed between EMI and Mr. Brun. And even in that deed, there is a 30-foot right-of-way exception. And that, according to what I've been told by Wayne, that yellow road that you saw — I mean, that yellow strip, there still is some type of access over that property. But what had happened was because that area is quite high, people

started going off to the – in the Hana direction, because it was lower, and it met up with the Old Hana Highway. And so it was just an easier road. And I think what happened after that, this is my understanding, is that because that was the more traveled section of the road, the County went in and paved it. So that's kind of why that particular road is now in the Wimberly property. That's my understanding, but technically, from a legal standpoint, that 30-foot yellow strip that you saw on Mr. Arakaki's, I think that's still a public highway. I think Lucienne deNaie, she's well respected. She knows these things. But I agree with her conclusion or her statement that it is a public road, and there still is access over that. It's just that because the County paved it and it's nicer, more people travel along that portion of the road. That's kind of where it's at. Mr. Chairman, Mr. Garnier did wanna say something, if that's okay with you.

Chairman Tanaka: Come up and please identify yourself.

Mr. Mike Garnier: Good afternoon. My name is Mike Garnier. I live at 100 Door of Faith Road which is across the street from the property you're discussing for the– In fact, it's Lot 62 in the lower corner of that map. And I am also the first person in charge of the Huelo Road fund many years ago. I've lived at this location for–I can't believe it–33 years. And over the time of our trying to figure out how we were gonna take care of our road when we thought that there was going to be some other agency we could petition for, it became – we became aware of the fact through John Baker, who was one of our neighbors and also an attorney that the standing of the road is a privately-owned, public road, and that we were pretty much on our own. And as much as that was shattering to some of our hopes, it was actually the thing that caused all of us to pull together and begin to take care of the road. So now we have people who contribute money for gravel and it gets delivered. We have people that distribute the gravel. We have people that put up money for the diesel for those machines. And the very active pulling alongside the road to allow someone else to pass is just representative of the way we feel about our community. This road, if it were to become wide and paved would be a hazard to quite a few of us. And because of the nature of our community, this small village, we really appreciate the fact that the road can be small, and that we can walk along it, and see each other, and say hello, and do all the things that really fitting in a community, and that you see in areas where they have high speed, paved roads. So if I could just add my voice to the chorus maybe for a different reason, we'd like to see the road remain a 24-foot road, if possible. Thank you very much.

Chairman Tanaka: Any questions? Thank you.

Mr. Horikawa: Mr. Chairman, we also have a petition that I'd like to submit as part of the record. It was signed by people who wanted to be here but couldn't be here to testify on behalf of support of the variance.

Chairman Tanaka: In support of. Are those the remaining residents along Door of Faith Road?

Mr. Horikawa: I don't think all of them.

Unidentified Member of the Audience: Some of them are. The reason is . . . (inaudible) . . .

Chairman Tanaka: I guess my question would be to, I guess, to Trisha. As far as – well, it's just Public Works that has an analysis done? It's not Planning because this is specifically for the

roadway improvements?

Ms. Kapua`ala: That is correct.

Chairman Tanaka: Receive into the record, a petition in support for the variance. Is there anything else? Anything else as part of the presentation?

Mr. Horikawa: No, Mr. Chairman. We're here to answer any questions you may have regarding the request.

Chairman Tanaka: Has this gone to--? A lot of times, input comes from the Fire Department. Has there been any contact with the Fire Department that--? That's a typical concern that--

Mr. Horikawa: Yeah, what happened is we were concerned about the requirement that there be a 20-foot impervious surface. Mr. Arakaki can speak to that, but my understanding is they did meet with the Fire Department. And he spoke to them, and I think they're satisfied. He's gonna provide a certification that it's wide enough to--

Chairman Tanaka: For fire truck access.

Mr. Horikawa: And according to my clients, the fire trucks have gone down the road as well.

Chairman Tanaka: I guess -- yeah, I guess, Mr. Arakaki, if you can just -- if you can verify what was just stated?

Mr. Arakaki: Wayne Arakaki. When I was-- You know, this subdivision has been ongoing for a long time. So we did manage to get the approval from the Fire Department on the private fire protection system. And they installed the system. And it was approved. In fact, I believe there is a letter stating that the Fire Department will sign off.

Chairman Tanaka: Okay. Thank you.

Ms. Kapua`ala: Excuse me, Mr. Chair, I'd just like to throw something out there into the record that perhaps, the applicant could address. I did get an e-mail from Mr. Paul Haake, the Captain of the Fire Prevention Bureau, and I'd like to read his response into the record, please.

Thank you for this opportunity to comment. At this time, the Fire Prevention Bureau has no specific comments regarding the request for variances applied for this subject variance and related Subdivision Application File 2.2063. This was submitted prior to our office being included in the subdivision process. As of 2002, the Fire Prevention Bureau has been included. We have reviewed this application. This five-lot subdivision would have required a 20-foot wide, all-weather, fire apparatus access created between its boundaries and along its frontage, and our code would've been included in this variance. Our office was included in the subdivision process to insure that the proposed parcels are provided with required access to allow for compliance of fire apparatus access requirements for future subdivision and building permit applications. Past subdivisions were allowed without

providing minimum access requirements, as well as monies for installation. Future owners were left to deal with the dilemma of this oversight.

Unidentified Speaker: . . . (inaudible) . . .

Chairman Tanaka: Yeah, and when it went – in that sentence specifically, the 20-foot. What was the term used as far as impervious–?

Mr. Arakaki: Paul Haake, you know, since we were doing this subdivision, he's relatively new. I don't think he really checked back the records, but we did get one approval letter from the Fire Department on the private fire protection system.

Now, this is a private fire protection area where there's no County water. So actually the landowners are on their own. I've done several private fire protection systems, and the most recent one was in Hana, and a gravel road was accepted. It was paved, 20 feet wide. It was accepted.

Chairman Tanaka: Gravel, 20 feet.

Mr. Arakaki: I guess that's considered an all-weather road.

Chairman Tanaka: All-weather.

Mr. Arakaki: Yeah.

Mr. Nakamura: Chair, if I could make a comment also? This variance does not impact the Fire Department requirements. It's a Public Works or Title 18 Maui County Code requirement. The Fire Department, they have their own set of standards and requirements. So whether you grant this or not, I do see that they are included on having to sign off for the final for this subdivision. And I don't know what their requirements are, or whether gravel or pavement is gonna be required, but this variance does not delete their standard fire code requirements.

Chairman Tanaka: Yeah, we are not giving a variance from Fire Code.

Mr. Nakamura: No.

Chairman Tanaka: Just the pavement.

Mr. Nakamura: Yes. So if they were gonna require it, they still will require it. This doesn't change anything. I don't know what they're gonna require, but this doesn't impact their requirement.

Chairman Tanaka: And that's as part of the final subdivision approval that Fire – I mean, the Fire Department has to sign off on?

Mr. Nakamura: Yes, they do need to sign off on final, which at that point they would basically be saying that all of their requirements have been satisfied. Again, I don't know what those requirements are, but they do need to sign off on the final.

Ms. Kapua`ala: And, Mr. Chair, one more comment from the Department of Planning on behalf of the Police Department. They went through the proper channels, and this memo signed by the Chief, Gary Yabuta, in summary says:

The roadway conditions of Door of Faith Road are unpaved and any paving or improvement would make it easy accessible to law enforcement and emergency services. However, currently, there is no direct impact to Police from a law enforcement perspective.

Chairman Tanaka: Any questions from the Board for any of the testifiers or agencies?

Ms. Bernice Vadla: I have a question. So the committee has been in process or together for how long?

Ms. deNaie: Thank you. Lucienne deNaie speaking for the Huelo Road committee. We've had a road committee probably for – I don't know, Mike, what? Thirty years?

Unidentified Speaker: . . . (inaudible) . . .

Ms. deNaie: Yeah, so 30 years.

Ms. Vadla: And have you had just a legal agreement together? You said it's like ad hoc, so it's–

Ms. deNaie: No. I'll tell you why. Because we discussed this with our friend, who's an attorney, and he said, "Look, if you don't have any legal entity, and someone breaks their leg, there's no one to sue." And since the County didn't want to take responsibility for the road even though it's a public road, and there's plenty of roads in Maui that are public roads that the County has not adopted. They're called roads in limbo, but people use them and they're essential to our communities. So because the County does not want to officially adopt this road, and because it's actually not a private road, it doesn't have a TMK, and it is a public road, and nobody can put up a sign and say don't go on this road because it's a public road, we just thought the simplest thing was just to have this kind of loose knit little committee. And then fortunately, knock wood, no one has ever decided that we've done a bad job, and – you know. If you were there in the old days, I mean the road was so bad in the old days, I mean none of us think that anything is – you know, is hard to overcome now cause we used to have to pull cars out with backhoes. James knows. He grew up in Huelo. He knows. Anyway, I hope that answers your question.

Ms. Vadla: Yes. And so in all of these years, has there ever been any – you know, like accidents or serious problems in that manner?

Ms. deNaie: No, because, see, people slow down. We have little speed bumps. People ride their horses. The kids ride their bikes. You know, everybody walks. You know, in the evening, everyone's out walking on the road, walking their dogs, walking over to the neighbor's house. It's a widely used– You know, you they talk about these fancy things, the complete streets, the walkable communities. We have it. We already have it right there in Huelo. It works out very good. And that's why– You know, the whole paving thing, all of a sudden all the cars speed up, and then you have to have a bunch of speed bumps, and it's just easier to let kinda nature handle it. It's a

nice road. It's a very nice road. Police come down, fire trucks come down, we've never really-- The main thing that they've worried about is addresses, 'cause it's hard to find places. So now we all have addresses. We have street addressees so it's a little bit better. But, you know, the road is in good shape.

Ms. Vadla: Speaking of which, do you have the mailman come down that way?

Ms deNaie: No, they won't deliver mail down there. No, we have mailboxes at the top of the road, and they get vandalized, so we have to go to the post office mostly. But some people still gets it at the top of the road. No, Fed Ex will come down. UPS will come down. I mean, their trucks will all make it down.

Ms. Vadla: Right. And never any problem with getting stuck back there, like in a weather condition, or--?

Ms. deNaie: No. Not since the good old days, eh, Moki? No, the last 15 years, we just solved those problems, you know, together as a community. Over the years we put in culverts. We put in little dip crossing things. And it's just now nature. We're working with nature and, you know, it works out. That's why we don't want to mess up a good thing.

Ms. Vadla: Thank you.

Ms. deNaie: Okay.

Mr. Santiago: Lucienne I have a question. As for as the funding, since you're not an association, per se, at least in this community, you self assess that?

Ms. deNaie: Yes. Yeah, yeah, yeah. It's sort of ad hoc, too. The call goes out, "We need some gravel, can everybody chip in?"

Mr. Santiago: It's not one or two individuals that are funding the process?

Ms. deNaie: Well, I will be honest. Our most frequent contributor is the Shangrila Farm. And they were a Bed and Breakfast before. And when the law changed, they converted to a farm center, and education center, and they're just a great place. And they chip in like, I don't know, a hundred bucks a month, something like that, because, you know, they have more wear and tear than many of us. But all of us contribute. The Rosses have contributed a lot over the years, the Kahiamoes, Mike, folks down our end of the road. I live towards the end of the road. At one point we had an elaborate assessment system, where if you lived a mile down, you paid one fee, and if you lived a quarter of a mile, you paid another fee. But then we didn't have anyone to manage that, so we've just gone to the -- when we need money, we go and pass the hat and get some money. But, you know, we have a little bank account. There's always enough to buy some gravel, and pay for some diesel fuel, and these guys give us great rates to work on the road. So, it works.

Chairman Tanaka: Any other questions from the Board?

Ms. Vadla: I have a question for Counsel. So liability-wise, whose onus is it if--?

Mr. James Giroux: You mean, in the big picture?

Ms. Vadla: Yeah.

Mr. Giroux: Or just for the variance? Well, I think that's something that a lot of times— I mean, on Maui it's so prevalent with these government roads that they— You know, I mean, if somebody has an injury or something, the lawyers, they just — they put out that net, and they try and get a settlement. They try to get it settled. But it's really prevalent on Maui. I mean, even if you drive under the tunnel you know, there's State above you, County on the side, you know, and they're looking for the skid marks, and they're trying to figure out where contact was. So everybody's splitting jurisdiction and trying to say it's not me, not mine. But, in the end I think, you know, after it drags out along the way, there's usually a settlement, you know, as far as what needs to be taken cared of, as far as if there was an injury, or if there was something that needs to be paved, or does there need to be a sign put up, or — along the way. So, it gets really complicated. Especially in Huelo, there's a lot of roads where the State — when the State put in the Highway, they cut a lot of roads right in half. And so, the people living out there actually had to kind of ad hoc, get access along, you know, areas along the Hana Highway from Peahi all the way out to Huelo. So, it's pretty common. It's more common than we think.

Ms. Vadla: So our decision wouldn't be — we wouldn't have any liability?

Mr. Giroux: No, what would happen, you know, with any variance, we look at the insurance issue for the variance. So the decision would be made — as far as the County, we would be covered by that indemnity clause, and personally, you are all volunteers working under the purview of a quasi-judicial body.

Chairman Tanaka: Any other questions? I do have just one, just to clarify for myself. Mr. Horikawa, I guess you can answer this. Now, you're looking to — I guess that's why I asked the question earlier, you're looking to delete the 24-foot wide road right-of-way?

Mr. Horikawa: Access right — access right-of-way requirement.

Chairman Tanaka: And delete the 20-foot pavement section?

Mr. Horikawa: Yeah, and delete the paving requirement.

Chairman Tanaka: Yeah, the pavement requirement. Discussion by the Board?

Ms. Jacqueline Haraguchi: Apparently, the road is 24 feet? Is that what it is wide, as we look at it in these pictures right here?

Mr. Horikawa: Yeah, it's 30 feet at least or more. The issue of the 24 — the access right-of-way is up above, quarter mile mauka of these photos in the Wimberly property, which Mr. Arakaki was talking about.

Chairman Tanaka: Yeah, so that may be an issue someday. May be or may not be.

Mr. Horikawa: Yeah, what we wanted to do was get a variance from the requirement that the minimum width of the access be 20 feet, 24 feet.

Ms. Vadla: 24 feet.

Mr. Horikawa: The code requires a minimum width of 24 feet on the right-of-way access street.

Mr. Ray Shimabuku: Mr. Chair, I have a question.

Chairman Tanaka: Yeah, go ahead.

Mr. Shimabuku: In regards to this issue, aren't we just talking about that area, 215 and 295 Door of Faith Road, instead of further up the road?

Chairman Tanaka: Yeah, but the code is the access – includes at the Wimberly property, which is a half mile up the road.

Mr. Shimabuku: So it's looking at the whole road itself as far as adding to the variance?

Chairman Tanaka: And the 20-foot section of pavement that would be fronting the property itself.

Mr. Horikawa: Well, it goes all the way up though.

Ms. Vadla: A mile long, all the way up.

Mr. Horikawa: To Hana Highway. Well, it's fronting as well as all the way up to Hana Highway.

Chairman Tanaka: Any other questions? I was– Well, looking at the staff comment from Public Works, and just my feeling, anyway, of that – I guess the Wimberly property is in question. So having it recorded through the Bureau of Conveyances so that it would be on record that there is that question there. So by granting the variance we're saying that there still is that question.

Mr. Horikawa: Well, I would ask that, that particular condition be deleted because, you know, I'm not at all convinced. In fact, I have a contrary conclusion regarding that. Okay? I mean that's just my opinion but – because from what I saw, especially from the petition deed that was recorded in 1937, now that is an exception, to me. And that, to me, is what Ms. deNaie characterized as a government road. To me, there is no legal access issue, but there is that growing concern. But what I would not want to do is encumber title to my clients, cause it's gonna– I really haven't checked with the title insurance company, but if there's an issue of legal access, it becomes problematic in terms of one, issuing policies; two, getting the mortgage companies to getting their insurance on the loan. Perhaps the variance would– I can't say for certain that the variance would obviate that necessity, but it raises the concerns when you start recording titles especially, when the property that is in question, is not really their property. It's a property that's a quarter mile up the road.

Chairman Tanaka: Okay, I guess my question is to our Corp. Counsel. If we– Whichever way we take action on this– But because of the fact that there is a possible question, it could potentially

be a legal battle anyway. So does this Board by taking action, by granting the variance, and if the question arises later from somebody else who purchases a lot along that that needs access, how does that work?

Mr. Giroux: I think what you need to look at is that you're specifically giving a variance from the subdivision requirement. So any other legal impediments that arise in the future, you're not, you know, your not obviating that.

Chairman Tanaka: Okay, thank you. Board Members, is there any feeling from the Board on—? If there's – I would entertain a motion or any other discussion. Okay, I guess the Chair would entertain a motion to approve the variance as submitted with the justification of the applicant, the applicant submittal.

Ms. Haraguchi: I just have to be clear on one thing, again, and again, and again, because I'm reading what has been passed down to us from the Department. So if we grant the variance, and just grant the variance, and then have them have the hold harmless clause without the Wimberly included in it, is that a better way of wording it to protect this homeowner and their property as far as the conveyance goes, the Department of Conveyance? Or is that our concern at all?

Mr. Horikawa: Mr. Chairman, can I make a suggestion, or just put a thought before you? They still have to come in for final down the road. Why not leave that issue about the notice on the side? And hopefully by the time my clients ask for final subdivision approval, because this is in the hands of Public Works as to what final gets approved, why don't we leave that for discussion with the Department when they come in for final? That's just my thought.

Mr. Giroux: Yeah, to answer your question. The variance doesn't grant or deny access. So you don't have to address that issue as far as your variance. It's just that if in the future, that portion of the Wimberly property is deemed either public or private, whether or not that has to be widened or not is going to be another issue.

Ms. Haraguchi: Yeah, I'll make a motion to grant the variance, and also have the hold harmless agreement condition included.

Chairman Tanaka: I have a motion to approve. Is there a second?

Mr. Santiago: I'll second.

Chairman Tanaka: It's been moved and seconded. With that, I'll call for a vote to approve the variance as stated. Sorry. Trish.

Ms. Kapua`ala: Would the Board like to consider the insurance requirement to indemnify the County in the case a lawsuit arise?

Chairman Tanaka: Is there a number that you have in mind?

Mr. Santiago: Doesn't the indemnification cover?

Chairman Tanaka: Yeah, typically, that's been my feeling, in general, but– Yes, sir?

Mr. Aaron Shinmoto: The reason the Department requests the insurance is you can indemnify somebody, but you still can get sued and somebody gotta pay. Typical indemnity is a million dollars, but the Board has discretion, I guess, on the amount. In other words, I could indemnify you all I want to, but if you get sued I'm not gonna – I don't have money to pay the judgement against you.

Chairman Tanaka: Well, no, I understand. Okay, so with the addition of a million-dollar insurance policy.

Ms. Haraguchi: Yeah.

Chairman Tanaka: Would you second that amendment to the motion?

Mr. Santiago: Without the insurance clause.

Chairman Tanaka: We need a second to the motion including a hold harmless and a million-dollar insurance.

Mr. Santiago: Could we set the amount at a lower amount? Five hundred thousand?

Chairman Tanaka: That can still be discussed. And I have a feeling it's going to be brought up right after the motion anyway.

Mr. Santiago: Do we know what the cost is for a million-dollar coverage, approximately?

Mr. Horikawa: Why don't we handle it this way? And I've done this before, on previous issues before the Board. Why don't we for the time being, set it at half a million dollars, and have us – at least give us the opportunity, if its cost-prohibitive to come before the Board and request that you modify the order? I know the Board has done that in the past, but I would suggest is that we go down that road and just see where that goes, if that's okay with the Chair and the Members of the Board.

Chairman Tanaka: Is that agreeable to–?

Ms. Haraguchi: Yeah.

Chairman Tanaka: Okay so.

Ms. Vadla: Yes, will you repeat all that?

Chairman Tanaka: Want to give it a try?

Ms. Haraguchi: Okay, I make the motion to grant the variance with the identification clause and insurance of five hundred thousand dollars.

Mr. Santiago: I'll second.

Chairman Tanaka: So it has been moved and seconded. And the previous motion of a million dollars is--

Ms. Haraguchi: Withdrawn.

Chairman Tanaka: Has been withdrawn. So it's been moved and seconded. With that, I call for a vote. So all those in favor, please say aye. Any opposed?

It was moved by Ms. Haraguchi, seconded by Mr. Santiago, then

VOTED: To grant the variance with the identification clause and insurance of five hundred thousand dollars.

(Assenting: J. Haraguchi, B. Santiago, R. Shimabuku, B. Vadla, K. Tanaka.)

(Excused: S. Castro, R. Phillips, P. De Ponte, R. Tanner.)

Chairman Tanaka: Motion carried. The variance is approved with those conditions.

Mr. Horikawa: Thank you, Mr. Chairman, and Members of the Board.

Chairman Tanaka: Thank you. We are about to lose quorum now so can we--? So can we move to adjourn before we lose quorum? Okay, Ray, give me thirty seconds here. We'll forego everything.

D. APPROVAL OF THE SEPTEMBER 8, 2011 MEETING MINUTES (Deferred to the 10/13/11 meeting.)

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases (Deferred to the 10/13/11 meeting.)

F. NEXT MEETING DATE: October 13, 2011, Thursday

Chairman Tanaka: The next meeting date is September 8th.

Ms. Haraguchi: September 8th?

Chairman Tanaka: Oh, September 8th--sorry-- meeting minutes. October 13th. Okay, thanks Ray. Meeting adjourned.

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:46 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Ray Shimabuku
Bart Santiago
Bernice Vadla
Jacqueline Haraguchi

Members Excused:

Rick Tanner, Vice-Chairman
Stephen Castro
Rachel Ball Phillips
Patrick De Ponte

Others:

Aaron Shinmoto, Planning Program Administrator, Department of Planning
Trisha Kapua`ala, Staff Planner, Department of Planning
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Lance Nakamura, Department of Public Works, Development Services Administration