

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
MARCH 22, 2012**

(Approved: 4/12/2012)

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, 1:40 p.m., Thursday, March 22, 2012, 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, it is now 1:40. I'll call the meeting of the Board of Variances and Appeals to order. First Item would be the resolution thanking outgoing Members, our Resolution thanking outgoing Members. Trisha are you or-?

B. RESOLUTIONS THANKING OUTGOING MEMBERS: RACHEL BALL PHILLIPS AND STEPHEN CASTRO, SR.

Ms. Trisha Kapua`ala: We have our Deputy Director here, Mrs. Michele McLean, if you'd like to read the resolution into the record.

Ms. Michele McLean: Thank you, Chair. Thank you, Trisha. Resolution of the Maui County Board of Variances and Appeals. Whereas the Maui County Board of Variances and Appeals was established in 1983; and whereas Rachel Ball Phillips has served the County of Maui since April 2007 as a Member of the Maui County Board of Variances and Appeals; and whereas Ms. Phillips has served with dedication, performed her duties in the highest professional matter, and provided valuable guidance in serving the needs of the people of Maui County; and whereas Ms. Phillip's term of office will expire on March 31, 2012. Now therefore, be it resolved by the Maui County Board of Variances and Appeals that it does hereby express its deepest gratitude and appreciation to Ms. Phillips for her service during the past 5 years; and does hereby extend its best wishes in her future endeavors. And be it further resolved that copies of this resolution be transmitted to the Honorable Alan M. Arakawa, Mayor of the County of Maui and the Honorable Danny A. Mateo, Chairman of the Maui County Council. Signed by fellow Members of the Board as well as the Planning Director and myself. And in addition, we have a certificate of appreciation and a letter from the Mayor.

Chairman Tanaka: Rachel, any speech?

Ms. Rachel Ball Phillips: Thank you. You all know I'm not a person of many words, but thank you. It's been a pleasure serving with all of you on the Board. And I also really wanted to express my thanks to the staff for all of their support. They've been invaluable throughout the term.

Ms. McLean: There are a couple of signatures missing on the Resolution, so we'll hold that back and once we get those, we'll mail it to you. Thanks.

Chairman Tanaka: Michele, were you going to read – does it need to be a part of the record for Stephen?

Mr. Aaron Shinmoto: While we have the Deputy here, we might as well take advantage.

Ms. McLean: Okay. Resolution of the Maui County Board of Variances and Appeals. Whereas the Maui County Board of Variances and Appeals was established in 1983; and whereas Stephen Castro Sr. has served the County of Maui since April 2007 as a Member of the Maui County Board of Variances and Appeals; and whereas Mr. Castro has served with dedication, performed his duties in the highest professional matter, and provided valuable guidance in serving the needs of the people of Maui County; and whereas, Mr. Castro's term of office will expire on March 31, 2012. Now therefore, be it resolved by the Maui County Board of Variances and Appeals that it does hereby express its deepest gratitude and appreciation to Mr. Castro for his service during the past 5 years, and does hereby extend its best wishes in his future endeavors. And be it further resolved that copies of this resolution be transmitted to the Honorable Alan M. Arakawa, Mayor of the County of Maui and the Honorable Danny A. Mateo, Chairman of the Maui County Council.

Chairman Tanaka: Thank you. I'd just like to say to Rachel and, well, Stephen, thank you very much for your time and efforts. You will be missed. I hope the two members, which to replace you are anywhere near dedicated as you were. Thank you.

Chairman Tanaka: The next item: Variances. Trisha?

C. VARIANCES

1. **JAMES W. GEIGER, ESQ. of MANCINI, WELCH & GEIGER representing HANA PLANTATION, LLC requesting variances from Maui County Code (MCC), §§14.05.090 and 16.04B.140 as it pertains to the installation of fire hydrants at 500 foot intervals along Hana Highway and Ulaino Road; and MCC, §18.20.040 as it pertains to the paving and realignment of Ulaino Road, for the Nabors Subdivision located at Honomaele, Hana, Maui, Hawaii; TMK: (2) 1-3-002:002, (BVAV 20110013).**

- a. **Decision and order**

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

Ms. Kapua`ala: We have the applicant's attorney here on behalf of the applicants. And before you, Board, we have a Decision and Order that Mr. Mancini himself prepared. It was the wishes of the Board that the Decision and Order come back to you before signed, before adopted.

Chairman Tanaka: Is there anything that you wanted to add?

Mr. Paul Mancini: Thank you for your time. Given to the variance, and I've prepared in concert which Trisha – from the minutes, the Decision and Order that's been circulated, as a side item, I don't know if any of you live in the Hana area, but there was a horrible storm out there the week before last and the roads that we're talking about here were totally impassable . . . (inaudible) . . . I bring it up to show you that we were worrying that such a thing would happen. It just happened a couple of weeks ago . . . (inaudible) . . . Any questions, I'd be happy to answer them.

Chairman Tanaka: Okay, Board, it was brought to my attention by James, I kinda – I didn't go over it with a fine tooth combed. I just kind of went over it with the assumption that it was just going to be discussed, then I guess if there was anything that needed to be changed. In reference on page 11 as far as the Decision and Order, Item No. 2, down at the bottom of the paragraph, the locations, I guess I'll read, "Which locations shall be established in consultation with the Department of Fire and Public Safety." I think, as far as exactly what our minutes said, I'm not to sure, but typically we'll say that it has to be approved by the Department of Fire and Public Safety. So that also comes down to no. 3, "The location of stand pipe shall be reviewed and located in concert with the Department of Fire and Public Safety," would say it should be reviewed and approved by the Department of Fire and Public Safety. Is that language--?

Mr. Paul Mancini: We don't have any objection to that. Initially, I think Trish brought to our attention that the conditions weren't stated when the motion was passed. Trish asked if we had any objections of the conditions we know. I can just give you – I can send to Trish, an insert new page, and it wouldn't – I could do it this afternoon too. It's very simple. And you can just insert that and put that language in there.

Chairman Tanaka: Board Members, any questions or discussion?

Ms. Kapua`ala: Excuse me Mr. Chair. I'd just like to add into the record that originally, what was adopted was only Condition Nos. 3 – 1, which is the standard language, 3 and 5. So in working with Mr. Mancini we realized that it was important to add Conditions 2 and 4. So when you adopt this D&O, it would be with these conditions that the Department felt was necessary in order to enforce the – properly enforce on the future subdivision and dwellings.

Chairman Tanaka: Okay, Trish just to make it. So, no. 4, "Stand pipes shall be located on flat, easy, accessible areas, " that was what you – were discussions added into as well as no. 2?

Mr. Mancini: Yes, I think we added all three. Two, three, and four, I think we added.

Ms. Kapua`ala: The Board actually approved the variance with the condition that two stand pipes shall be installed off of Hana Highway and two off of Ulaino Road. "The location of the stand pipes shall be reviewed and approved by the Department of Fire and Public Safety," even the standard Hold Harmless Agreement with no insurance requirements. In reading the minutes, it became apparent that part of the reason why the Board was agreeable to grant the variance was that also the applicant made a statement and representation that the owner would also put stand pipes within 500 feet of every dwelling, as well as give the Department of Fire and Public Safety access to those stand pipes. So, for in enforcement stand point, it's better that this D&O state that in the conditions, if you record it with the land, and so that the future parcels and building permits will see that, rather than looking through the minutes. Thank you.

Chairman Tanaka: And that is what was discussed and agreed upon?

Mr. Mancini: Just to clarify, in paragraph two, rather than being "established in consultation," we'd establish with the approval of the Department of Fire and Public Safety. And number four, rather than "in concert," "be located with the approval of Department of Fire and Public Safety."

Chairman Tanaka: Reviewed and approved by the Department.

Mr. Mancini: Yeah, I'll make those changes and get it back to staff.

Ms. Kapua`ala: Thank you Mr. Mancini.

Chairman Tanaka: Anything else from staff, or discussion, or questions from the Board?

Mr. James Giroux: . . . (inaudible) . . .

Chairman Tanaka: So procedurally, we will need a motion, a second, and vote to adopt the revised Decision and Order.

Mr. Rick Tanner: Chairman, I make a motion that we would accept the revisions.

Chairman Tanaka: Any second?

Ms. Phillips: Second.

Chairman Tanaka: Okay, it has been moved and seconded. All those in favor, please say Aye. Any opposed?

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

VOTED: To accept the revisions.

**(Assenting: R. Tanner, R. Phillips, P. De Ponte, J. Haraguchi,
B. Santiago.)**

(Excused: S. Castro, B. Vadla, R. Shimabuku.)

Chairman Tanaka: Thank you very much.

Mr. Mancini: Thank you for your time.

Chairman Tanaka: Okay, the next item. Trisha?

- 2. TOM LEUTENEKER of CARLSMITH BALL LLP, representing JUDGE BOYD P. MOSSMAN, COMMISSIONER, requesting variances from Maui County Code, Sections 18.16.220(A) "Lots-Size and Shape," and 19.30A.030(B) "Minimum Lot Width" for the Kipahulu Kai Subdivision located Hana Highway, Kukuiula, Kipahulu, Hana, Maui, Hawaii; TMK Nos.: (2) 1-6-001:006, (2) 1-6-009:012, and (2) 1-6-010:002, (BVA 020020).**

- a. Motion to cancel hold harmless agreement filed against Lot 1-A.

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

Chairman Tanaka: You have a presentation?

Mr. Tom Leuteneker: Yes, yes, I do.

Chairman Tanaka: We need you to speak into a mic.

Mr. Leuteneker: Oh, okay. Sorry.

Ms. Kapua`ala: I have a mic.

Mr. Leuteneker: Okay. Yeah, it works. We came in for a variance on three lots on this subdivision. It's a nine lot subdivision. And the reason for the variance was because three of the lots were not 200 feet wide at the midpoint, so they violated the ordinance to that extent. The three lots that are not 200 feet wide at the midpoint, are Lots 2B, Lot 2A and Lot 3B. This is a subdivision in Kipahulu. Lots – the two – and the variance was granted on those three lots, but this Board required a Hold Harmless Agreement. And there is a Hold Harmless Agreement that's recorded in the Bureau of Conveyances. The Lot 2B and Lot 2A are down here on the Hana Highway, Lot 2B and Lot 2A. And this Lot 3B is over here, all three on the Hana Highway. When the Hold Harmless Agreement was recorded in the Bureau of Conveyances, it referred to tax – all of the tax keys involved in this subdivision, and one of the tax keys is 1-6-1-6. Tax key 1-6-1-6 is the tax key for this mauka parcel which is Lot 1A, which is in the conservation district. And part of this quiet title and partition action provides that this Lot 1A will be deeded to United States Government National Park Service to become part of the Haleakala National Park.

I've been in touch with a lady in San Francisco about transferring the title. The title now to this Lot 1A is Boyd Mossman, who is appointed by the court as a commissioner. The lady with whom I've been speaking tells us that the United State Government cannot accept this Lot 1A so long as it is encumbered by that Hold Harmless Agreement. So we've come to this Board to ask if we could delete or eliminate this Lot 1A from the Hold Harmless Agreement. The justification for it is because there's no need for the Hold Harmless Agreement to apply to Lot 1A, and it shouldn't apply to Lot 1A, because we came in for the variance on these three lots on the Hana Highway, but there's no request for a variance on this Lot 1A. And hopefully, I've outlined what I've just said with a little bit more detail in the petition that I made to the Board. Basically, that's it. It's fairly simple. We do want to convey this property to the National Park Service, and as I said, they won't accept it so long as the Hold Harmless Agreement appears to encumber that lot.

Chairman Tanaka: Okay, thank you. Now Lot 1A, as part of the original variance, the variance was done in 2002, was it? It's because it was originally all – that entire piece was – yeah, so 2A and 2B was a part of the original from Hana Highway going all the way down?

Mr. Leuteneker: Actually, this is a little bit complicated. It was a – first, it was consolidation and resubdivision. We had three tax keys. The conservation parcel was one tax key, the parcel up to the conservation line was a second tax key, and then Mrs. Drummond owned a lot here, and she's part of this, and there was a third tax here. So we did a consolidation where all of these three lots were put into one lot, and then subdivided out, and then the three new lots as a result of the consolidation and resubdivision where themselves each subdivided into three lots. So we started out with three tax keys. We ended up with nine lots. We do have final subdivision approval. And just the other day, finally, it's been a 20-year process, we got tax keys for all nine of the lots.

Chairman Tanaka: So once this Board – assuming the Board removes that agreement from that Lot 1A, you will take it back to the Bureau of Conveyances and – is it a new document that's recorded?

Mr. Leuteneker: Yes, yes, sir.

Chairman Tanaka: Okay.

Mr. Leuteneker: I have the document. It's attached to the submittal to you folks.

Chairman Tanaka: No. Basically, and correct me if I'm wrong, Corp. Counsel, or – it's because the federal government is taking over that the county should have no jurisdiction any way. So that's why it needs to be removed, as far as the federal government goes.

Mr. Leuteneker: Yes.

Mr. Bart Santiago: So they won't accept the land with that encumbrance?

Mr. Leuteneker: Yes, that's exactly right.

Mr. Tanner: What's the disadvantage to Maui County to remove this?

Mr. Giroux: I really don't see much. I think logistically, the reason it got on to A1 was because they couldn't have subdivided out the parcels prior to A1. And so I guess in order to get the – in order to get the Hold Harmlesses on those two parcels, we kind of had to encumber the whole parcel because we were doing it prior to subdivision. Maybe you can clear that up a little bit. But that's the way I envision it is that it kind of sucked in the whole parcel, because those two parcels that needed variances weren't completely created at the time.

Mr. Leuteneker: I'm not even sure about that. And maybe it was just an error. We just all overlooked it. I'm not sure.

Mr. Santiago: It was their future plan to subdivide Lot A, and that's why it was encumbered with that, that clause.

Mr. Leuteneker: I think there's no intention to subdivide Lot 1A because it will just be added to the National Park.

Mr. Santiago: No, previously, when the variance was granted, was there plans to subdivide Lot A, or was it always earmarked to be conveyed to–?

Mr. Leuteneker: Yes, sir, it was always earmarked to be conveyed. Never was it intended to subdivide that parcel.

Mr. Giroux: As far as the County's position, as long as those parcels that have been subdivided out still carry the encumbrance of the Hold Harmless, we don't see a problem with that other parcel not having a Hold Harmless on it. We were asked – our office was asked to do it administratively. We didn't feel comfortable doing it. We wanted the Board because it's the Board's order for the Board to review that decision.

Chairman Tanaka: But that's the County's – yours, as Corp, Counsel, and the County's position as well that this does make sense or it should be done.

Mr. Giroux: Yeah, we wouldn't want to see a donation to the Federal Government, you know, being hamstrung from some procedural defect.

Chairman Tanaka: Okay, it seems pretty straightforward. So I guess we need – would it be worded this way: motion to cancel the Hold Harmless Agreement filed against Lot 1A and 1A only? Motion to cancel?

Mr. Giroux: Actually, it's a motion to grant – it would be a motion to grant the motion. It could be redundant.

Chairman Tanaka: Oh, okay.

Mr. Santiago: I'll go ahead and make a motion. I'd like to make a motion to grant the motion to delete the language that's encumbering Lot A in order to convey the land to the Federal Government.

Chairman Tanaka: Lot 1A, correct.

Mr. Santiago: Lot 1A.

Vice Chairman Tanner: It's actually . . . (inaudible) . . .

Chairman Tanaka: Okay, we have a motion. Do we have a second?

Mr. Tanner: Seconded.

Chairman Tanaka: It's been moved and seconded. With that, all those in favor of the motion to remove Lot 1A from the Hold Harmless Agreement, please say Aye. Any opposed?

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

VOTED: In favor of the motion to remove Lot 1A from the Hold Harmless Agreement.

(Assenting: B. Santiago, R. Tanner, R. Phillips, P. De Ponte, J. Haraguchi.)

(Excused: S. Castro, B. Vadla, R. Shimabuku.)

Chairman Tanaka: **Motion carries.** Thank you very much.

Mr. Leuteneker: Thank you very much.

D. APPROVAL OF THE MEETING MINUTES OF FEBRUARY 23, 2012

Chairman Tanaka: Okay, the next item would be approval of meeting minutes of February 23rd, 2012.

Mr. Tanner: Okay, I make a motion that we approve the minutes.

Chairman Tanaka: Any second?

Mr. Santiago: I'll second.

Chairman Tanaka: It's been moved and seconded. And all those in favor please say Aye. Any opposed?

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

VOTED: To approve the February 23, 2012 meeting minutes.

**(Assenting: R. Tanner B. Santiago,, R. Phillips, P. De Ponte,
J. Haraguchi.)**

(Excused: S. Castro, B. Vadla, R. Shimabuku.)

Chairman Tanaka: **Minutes approved.** Next item, Director's Report.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: There are no – there's nothing to report. There has been a recent appeal and you will see it at the end of April, the second meeting in April, to determine a Hearing's Officer. Other than that, you have a clear slate here.

F. NEXT MEETING DATE: April 12, 2012, Thursday

Chairman Tanaka: Wow. Alrighty. So, April 12th would be the next meeting date?

Mr. Shinmoto: April 12th is your orientation, So we would like all of you here. We do have two new Members. I don't know their backgrounds at all: Teddy Espeleta and Gene Abbott. G-E-N-E, so I'm assuming it's a – I don't know if it's a male or female, but again, I guess Pat has some background, but I don't know.

Mr. Patrick De Ponte: Yeah, I know him personally. He's a ILWU business relations.

Mr. Tanner: You know both of them?

Mr. De Ponte: Well, I know Stephen Castro, you know. Was part of the ILWU.

Chairman Tanaka: Okay.

Mr. Shinmoto: So next meeting is orientation, so we expect all of you here to learn until you guys get it right. Every year we're going to be doing this.

Chairman Tanaka: That'll be like probably, my 5th or 6th orientation.

Mr. Tanner: You can give the orientation.

G. ADJOURNMENT

Chairman Tanaka: Alrighty. Again, Rachel, thank you very much for your time, and efforts, understanding, patience, your opinions. You will be missed. Anything else, Board Members? Alrighty. With that, next meeting date, April 12th, orientation. Meeting Adjourned.

There being no further business to come before the Board, the meeting adjourned at approximately 2:06 p.m.

Respectfully submitted by,

CHALSEY RAE K. KWON
Secretary I

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Rick Tanner, Vice Chairman Tanner-Chairman
Rachel Ball Phillips
Bart Santiago
Jacqueline Haraguchi
Patrick De Ponte

Members Excused:

Stephen Castro
Bernice Vadla
Ray Shimabuku

Others:

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