

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
MAY 24, 2012**

(Approved: 6/28/2012)

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, 1:32 p.m., Thursday, May 24, 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. I'll call the meeting of the Board of Variances and Appeals to order. It is now 1:32 and we do have a quorum of five. If we can just take this out of order and get this dispersed quickly: Item C, Appeals, determine a hearings officer for an appeal. Trisha?

C. APPEALS

1. To determine a hearings officer to preside over the following matter:

JOSEPH A. DURAN of VALLEY ISLE AQUATICS appealing the Director of Parks and Recreation's decision to deny an Ocean Recreation Activity (Type III) Permit for the use of various swimming pools for a nonprofit organization. (BVAA 20120004).

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

Ms. Kapua`ala: And Board Members, kindly note that this meeting notice is not an ocean recreation activity permit. It is a Type III permit for the use of swimming pools. Here we have the applicant from Valley Isle Aquatics, as well as Corp. Counsel representing the Department of Parks and Recreation.

Mr. Joseph Duran: Hello. I'm gonna let my wife speak . . . (inaudible) . . .

Ms. Kelly Duell: Hi. I'm Kelly Duell. I'm the CEO of Valley Isle Aquatics.

Mr. Tom Kolbe: And I'm Tom Kolbe. I am the representative of the County of Maui, Department of Parks. I might be able to cut through the chase. I had a chance to speak with Mr. Duran prior to – just prior to us coming on the record. We've agreed that if it's possible that the BVA would hear this particular issue on June 7th, which is pretty, pretty expeditious. What we will need is some dates for exchanging exhibit lists, witness lists, and this type of a thing.

Chairman Tanaka: So this is not – we're not determining a hearings officer? You wanna defer?

Mr. Kolbe: Well, I have no problem with a hearings officer. It's my understanding that the appellants in this case want the BVA itself to hear the issue. My understanding is that they believe it's a complicated issue. I would, if possible, like to focus specifically on the issue before the Board, which is whether or not the Type III should've been appealed and to . . . (inaudible) . . . other legal issues.

Mr. Aaron Shinmoto: Mr. Chair, June 14th is our regular meeting date. June 7th—this room is taken by the Cultural Resources Commission meeting, so this room is not available. Anyway, June 14th is the next regular date.

Chairman Tanaka: Do we know what we – if there's, at this time, anything on our agenda?

Mr. Kolbe: Well, unfortunately, I am scheduled to be on the Mainland from June 8th until June 20th related to two business—

Mr. Shinmoto: Excuse me. June 28th is the next meeting after that.

Chairman Tanaka: Would the 28th be—?

Mr. Kolbe: I just set an arbitration on that day with Judge McConnell. I may be able to move that to the 29th, but at this point, I actually have a hearing set at 9:30.

Chairman Tanaka: I guess if there's no problem—

Mr. Shinmoto: One more thing, June 21st is available, but you would have to vote for a special meeting.

Mr. Kolbe: I believe we both could – both parties could be present on the 21st.

Chairman Tanaka: Board Members? Is there any timing issues regarding if it were set—?

Ms. Duell: Yes, sir, there is. This permit has been denied for us to continue giving swimming lessons to the keiki of the island. And the kids get out of school this week. So every day that we wait to have this issue heard and the decisions to be made on this issue, the children will not be having swimming lessons with our program. So the longer we wait, the less likely they'll have the opportunity to swim with us. And it's very important they have swimming lessons during summer when they're not in school.

Chairman Tanaka: Then I would—

Ms. Duell: I'd also like to say, too, that this has been an ongoing issue for six months that we've been trying to work through with the County for six months and it's now we're here. It's not a thing that just happened last week or something.

Chairman Tanaka: Your reasons for not hearing this issue today?

Mr. Kolbe: Well, we would involve a number of witnesses. I mean, to be honest, I believe that

there's one narrow legal issue that if we could resolve might give the Board enough information to determine whether or not the appeal is— But here's the thing: they've raised a number of issues from arbitrary and capricious to erroneous facts and conclusions. And their appeal is about five pages long. So to be fair to the County, in order for me to be able to address each of those issues, I'm gonna need several witnesses including the permitting agent. And since this was supposed to be for the setting of a hearings officer, I did not ask my staff to be present here.

May I make one other suggestion? Perhaps I can speak with Mr. Duran and Ms. Duell about a hearings officer, and see if they might be able to expedite the hearing with a hearings officer. I don't know. Is that practical?

Mr. James Giroux: That usually takes up more time because we have to get them on contract. The hearings officer usually takes longer.

Chairman Tanaka: Board Members, it has been presented to us that if we would like to – if we would be available on the 21st of next month. I'd like to hear from you.

Mr. Ray Shimabuku: I'm scheduled to be out of town, actually, on the 21st.

Mr. Patrick De Ponte: . . . (inaudible) . . .

Mr. Teddy Espeleta: . . . (inaudible) . . .

Chairman Tanaka: See, that's my biggest fear that if we schedule something, if we schedule a special meeting and we weren't – by some chance, we don't have quorum. I, myself, would be available. Clark, do you know—?

Mr. G. Clark Abbott: Checking right now.

Chairman Tanaka: I would hate to schedule a special meeting and we don't have quorum.

Ms. Kapua`ala: Mr. Chair?

Chairman Tanaka: Trisha, sorry. You were about to—

Ms. Kapua`ala: I just wanted to bring to the Board's attention that the calendar that's on the screen right now is the calendar for the conference room. And as you can see, it's quite booked up, but we do have some openings. And this is in the month of June. I don't know if you can see it clearly, but June 31st, a Friday – I'm sorry, May 31st, Friday, June 1st, Monday, June 21st is wide open. The 29th is also wide open. Any one of these other dates that you see something there, we could take a look at it to see if it's an all day booking or sometimes it's half a day, but we would wanna also consider the schedule for the conference room so that you guys can have a proper meeting.

Chairman Tanaka: James, if you can present – I mean, what you had just explained to me as an option.

Mr. Giroux: I'm just checking the rules real fast.

Ms. Kapua`ala: So for the record, Thursday, June 7th, there's a Cultural Resources Commission meeting all day, so that is not a possibility.

Mr. Giroux: Chair, I was trying to explore the issue of if we couldn't get quorum, if the Board also has the option of appointing one or more Members to be the hearings officer. That's another option. I don't think we've ever done it before, but seeing that there is a timing issue, I just wanted you to know that there is that possible option also.

Ms. Kapua`ala: And, Mr. Giroux, isn't it true that the hearings officer only provides recommendations to the Board for final action? So whoever is appointed the hearings officer would come back to the Board for a final determination, and that could be done on June 14th or 28th.

Mr. Giroux: Yeah.

Chairman Tanaka: Okay, so procedurally, we could move forward on that 21st whether or not we do have quorum. The Board Members who are available would present recommendations to the next Board meeting, and then we can take action at that point, if there is no objection from both parties.

Ms. Duell: I just want to make sure. So on the 21st, if there's a quorum, it'll be decided at that time? If not, then it would go to—?

Chairman Tanaka: No matter what, on the 21st, you'll just be heard. The representatives will then report back to the Board at the next official date, and then action will be taken.

Ms. Duell: So on the 28th, we don't attend that meeting? You just speak to each other about it?

Mr. Giroux: Well, like I said, we haven't done this procedure before, but what we're foreseeing is that at the first hearing, you would be presenting evidence and cross-examining witnesses. That would only be done in front of one or two Board Members. Those Board Members would make a decision based on the case, but that wouldn't be the final decision. The final decision would be based upon their presentation to the Board as a whole. Then the Board would then decide to either adopt those recommendations or not adopt those recommendations.

Chairman Tanaka: So any presentation of any evidence, facts, witnesses, would be on the 21st. The following date would, at that point, being heard, would've already been completed. Or if we do have, and that's quite possible that we do have a quorum on the 21st, then action could be taken on that date. By chance, Clark, do you know if you're available?

Mr. Abbott: I'm free.

Chairman Tanaka: Let's go ahead and set that then, the 21st. Is time – a certain time, do you have a preference?

Ms. Kapua`ala: Considering that this is not a normal, regularly scheduled Board meeting, we have no specific deadlines for prehearing documents such as exhibit lists and witness lists, etc. So I would leave it up to Mr. Kolbe and the appellants as to when they wanna trade their prehearing

documents, as long as we get a copy prior to the 21st.

Mr. Kolbe: I would just ask that we get our prehearing documents at least one week in advance of the hearing, so by the 14th. And I would ask that that be a list of the exhibits that they intend to introduce, as well as the name of – a witness list, who you intend to call. And I'll give that information, too.

Mr. Giroux: To the parties, not just the list, but the actual exhibits themselves.

Mr. Kolbe: I think that's fine. There was an outstanding request for information. I have completed compiling that. I haven't provided that to them yet. There's the issue of payment, but those documents are ready to be provided to them. I was going to ask the Board for permission to ask them for a few documents by way of discovery related to the status of their nonprofit organization, as well as any documents related to the charges within their appeal related to the arbitrary and capricious portion, maybe a couple of the . . . (inaudible) . . .

Chairman Tanaka: Okay, so if there are no objections from the Board, we'll go ahead and grant that request.

Mr. Giroux: We'll just clarify it. Can we just get that on the record clearly, because usually we—?

Mr. Kolbe: Specifically, what I'm asking for?

Mr. Giroux: Yeah.

Mr. Kolbe: Yeah. Any and all documents related to their 501C3 status including, but not limited to their letter of exempt status from the IRS, and any other documents to support their being a nonprofit entity. And secondly, any and all communications or documents related to their claims of discrimination or arbitrary and capricious acts by County employees.

Mr. Giroux: So that would be documents that they would be relying on during the hearing?

Mr. Kolbe: That's correct.

Mr. Giroux: Just to clarify. Okay. Is that okay with the appellants? Is that – do you have any objections to that?

Ms. Duell: I actually would like all that in writing so that I know specifically what exactly he wants. Verbally, it makes it a little more challenging by the time I get back to the office and try to figure out what exactly he wants.

Mr. Giroux: We can have Mr. Kolbe put that in writing. He can give you a copy and then he'll give a copy to the Chair to sign off on.

Ms. Duell: And also, we have provided some of the nonprofit documents to the County several times in the past. So we would ask that he ask the County personnel to supply those documents since they already have multiple copies of them.

Mr. Kolbe: Well, if I could just address that real briefly? The issue is that I think that there are some questions as to whether or not those qualify as substantial proof of a 501C status. And so we do have some documents. We have a DCCA certificate of standing, but we don't have anything from the Feds. So if there is something from the Feds that we don't have, that's what I'm asking for including, I guess, the – there's an application of Form 1023 application for 501 status. I'd ask for that also.

Chairman Tanaka: Okay, if that's reasonable, then we'll grant that, and to be accompanied in writing, and a copy be submitted back to this Board. Now, you talked about the 14th being the date, a week ahead of time. Trisha, when you receive that, will it be copied and submitted to us in a timely manner before the 21st?

Ms. Kapua`ala: Yes. Would all parties kindly submit the original plus 15 copies to the Department of all prehearing documents? And we will distribute it timely to you prior to the hearing date on the 21st. And just for – as a matter to keep order, could the appellants please use alphabetical exhibits: Exhibits A, B, C, D? And the appellee will use numerical: 1, 2, 3. Thank you.

Chairman Tanaka: Okay, can we set a time for the 21st?

Mr. Kolbe: I think I'm flying back on the 20th . . . (inaudible) . . . Can we try 10 o'clock?

Chairman Tanaka: Okay, so we'll set it for 10 o'clock on the 21st. Is there anything else?

Mr. Kolbe: The only other issue I'd just like to ask is I believe they're proceeding pro se. So I'm gonna assume that I can continue to contact them, and discuss this case with them, and just ask that if they do get counsel, if they can let me know who that is so I could confer with them.

Chairman Tanaka: Okay. So the item has been deferred to June 21st, 10:00 a.m., meeting here. Thank you. Back to Item B, Public Hearing. Trisha?

B. PUBLIC HEARING

- 1. WAYNE I ARAKAKI ENGINEERING, 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 Kawela Subdivision located at Honomaele, Hana, Maui, Hawaii; TMK: (2) 1-3-003:012 (BVAV 20120003).**

Ms. Kapua`ala read the agenda item into the record, and presented flood maps that showed the subject parcel and surrounding area.

Ms. Kapua`ala: Unfortunately, I cannot show you the road conditions, but Mr. Arakaki is here, and he has a power point presentation that will help you. So other than that, I'd like to turn it over to the applicant. So, Mr. Arakaki? And also, the Department of Public Works is represented by Lance Nakamura here, a civil engineer from Development Services Administration. And Mr. Paul Haake of the Fire Prevention Bureau was also in the audience earlier. He just stepped out a moment.

He's also here for your – at your disposal.

Mr. Wayne Arakaki: Good afternoon. My name is Wayne Arakaki. I'm an engineer and I've been working on this Kawela Subdivision for a number of years. This is a property that was obtained from Hana Ranch by the present owners. And we went to do an eight-lot subdivision about five acres or more on each lot. And this particular property does not have any kind of infrastructure. Ulaino Road is questionable whether it be owned by the State or the County. There's Hana Highway on the top. There's no County water. There's no County sewer lines. Drainage is just natural. There's no drainage system in the area.

So my presentation: Kawela Subdivision, Honomalee, Hana. And we're looking at two variances mainly for the improvement on Ulaino Road, and then to modify the fire protection requirements.

This is a location map. Right here is Hana Airport. And this is where the subdivision is located. This is Kaeleku Agricultural Park. This is Wainapanapa. Hana is located in this direction. Keanae is located in the other direction.

I have this other subdivision that I did for Hana Plantation, if you folks remember. We applied for the same variance that we're applying for today that was done last year, which we got approval from.

This is the final subdivision map where we have eight lots. This is Hana Highway and this is Ulaino Road. Along Ulaino Road just from the side over here, there's a gully that runs through the property here. And that's where most of the problem of drainage occurs. And this runoff actually comes from the mountains. The basin is like 2,400 acres, and it produces about 15,000 to 17,000 cubic feet of water.

The first thing I would talk about is the Ulaino Road improvements. It's a requirement for the subdivision because we're doing eight lots to do road improvements along Ulaino Road. On Hana Highway, which is a State highway, there was no requirement to do any kind of improvements along that road. So our request is trying to delete the paving and the realignment of Ulaino Road.

This is Ulaino Road. This is the showing the lower section of the subdivision. If you follow this, this is where the actual road is. This is where the right-of-way is. But what happens on this particular property, the road goes in this direction, in the north direction. It's right in this – here, over here. And the reason why is because it stays away from this gully which is prone to flooding. And also, the property on this side, which is a Smith Subdivision, it's another subdivision, the road is actually on private property. Ulaino Road is on private property. And the following project is actually – was the Hana Plantations, and then it's also on private property. It's not in where it's supposed to be and it's because of the drainage.

This is a picture of Hana Highway just above the subdivision, along the subdivision. This is a picture of Ulaino Road. Portions of the road are paved and some of them are gravel. This is another picture of Ulaino Road along the subdivision. This is a picture of when we had some flooding and then there was some erosion on the road. The County has managed to upkeep the road with just gravel and cinder to maintain the road. Parts of the road, you can see bits and pieces of A.C. pavement. Flooding, when it happens, that's what happens to it when you improve the road.

And there were – another case would be the – there was a – the County made a concrete ford at one time at one of the crossings, and the first storm just took everything away. So just to show you there is no drainage system, so this is a problem.

What we're requesting is to keep Ulaino Road as is. Well, talking to the people in the community, they really don't want this road to be paved because it just encourages more tourist traffic. There's a tourist attraction called Blue Pool, I believe, and a lot of people uses this road and goes over private property to get to this location. If there is any increase of paving, there's gonna be increase of runoff and erosion down to the properties. The realignment of the road along the stream bank will eventually be damaged because there's no public drainage system. And it's very difficult for one project to take care of the drainage system for the whole area.

The next thing that I wanna bring up is fire protection. This fire protection that we got approved of, on the construction plans was for a private system. In other words, the County does not have any jurisdiction. This private system is maintained by the landowners, and that's why it's called a private system. Again, there's no County water system in this area. We were required and we got the construction plans approved to do fire protection on Hana Highway and Ulaino Road. Normally, the stand pipes are 500 feet spacing with a 30,000-gallon storage water tank. What we're requesting is actually to modify the fire protection requirements.

This is a map of the subdivision. And this is what we have approved right now. The red dots are the locations of all the fire stand pipes that we have to install. And this is where the 30,000-gallon water tank is. That's our supply for the fire protection. So that would take care of Ulaino Road and also Hana Highway.

What we wanna revise is – or modify is that because there's no public water system, what we wanna do is put one water tank on each lot. So in other words, one lot would have a 30,000-gallon water tank, minimum, to do fire protection with a pump and a fire stand pipe. Each private fire protection system would be reviewed and approved by the Fire Department. The modification is this where we wanna construct the fire protection system when we apply for a building permit. Most of these lots now are vacant. There's nothing on the property.

Now, benefits on the fire protection system, if we do the modification is that water storage from 30,000 gallons would be 240,000 gallons. From seven stand pipes, we would have eight. And there's less chance of . . . (inaudible) . . . it's not one system. We're dealing with eight fire systems. And again, we're requesting to install one fire protection system for each lot of the eight lots that we have. Currently, the requirement is for us to install the fire protection system as you've seen on the plan before any building permit is issued. And again, you know, most of the lots are vacant.

In summary, we're requesting that Ulaino Road remain in its present condition with no improvements. And on the fire, to defer the fire protection system installation until a building permit application is made, and that final subdivision would be granted. You folks have any questions?

Chairman Tanaka: Board Members, any questions for Mr. Arakaki? Actually, before we proceed, before I forget, is there anyone in the public who wishes to testify on this matter? If you can please come forward, sign in, and we'll give you three minutes to speak to the issue. Okay, please speak

into the mic., and identify yourself.

Mr. Froyam Edel: Okay. Good afternoon. My name is Froyam Edel, my wife, Shone Edel, and we own the 5.679 parcel just before this subdivision. We border the subdivision. And our road in front of our subdivision, which was the Pearman Subdivision, had a new road put in by Sonny Vic in '04. And the road is perfect with all the traffic that's been there. . . . (inaudible) . . .

One of my concerns is if you improve Ulaino Road, all of the traffic that's coming down will ruin our road, and they're gonna build the road past us that will increase the traffic, increase the speed because people, about 20 to 30 people a day back into our driveway to turn around 'cause they see the road in front of them and they don't wanna go, which is good for the people down there because they've closed Blue Pool. They don't want everybody going down there. And the last time I drove down that road all the way, it was chewed up by the storm of four to six weeks ago. And that can happen anytime there's a storm. So the County can go in, or these people can go in, and spend a lot of money to build a road that a big storm can come along and wipe out.

So the traffic will increase. The speed of the traffic will increase. The noise, the mess, and possible getting wiped out, I don't see any reason to improve Ulaino Road. It's not gonna make anything better. It'll make everything worse. Thank you.

Chairman Tanaka: Thank you. Is there anyone else in the public who wishes to testify on this matter? Seeing none, public testimony is now closed.

Board Members, discussion, questions? Actually, Mr. Haake, if you can – my understanding is the original fire prevention plan has already been approved. So now he's switching this to eight individual systems for eight lots. I guess what I didn't see was your response. Have you reviewed the plan as far as what you see?

Mr. Paul Haake: Thanks, Chair. I haven't – this is the first time I've seen the plan on paper. I did have it in writing. My question would be, who's gonna pay for those improvements?

Mr. Arakaki: This is again, a private system. So it's gonna be paid by the landowners.

Chairman Tanaka: Okay, in your presentation you said that eight systems, it'll go in at eight different times, conceivably.

Mr. Arakaki: When they apply for building permit.

Chairman Tanaka: Okay. As far as flow and location, Mr. Haake, does that seem logical, sufficient?

Mr. Haake: Yes, as far as flow and the location of the stand pipes, more than enough required flow. And then the stand pipe locations look about the same as on the approved plan.

Mr. Arakaki: Yes, it is.

Mr. Haake: But the whole deal with that is the applicant for the subdivision must put this fire protection stuff in, not future owners of the property. That's the issue I have with that.

Chairman Tanaka: So if there is a fire, if there's a brush fire in the middle of one of the undeveloped lots, you don't have access to that water from the start. That's your concern?

Mr. Haake: No, my major concern is just that that requirement is being placed upon other people. It should be placed upon the applicant. So if the applicant wants to put up all those tanks and stand pipes, then okay, I'm fine with it, but I don't think it should be pushed onto future owners of these parcels. The future owners should have the minimum requirements in place already when they get these lots.

Chairman Tanaka: Yeah, I guess I can see that. I can see it from both sides that you'd like to defer this. Mr. Arakaki?

Mr. Arakaki: Well, you know, the owner is here. Maybe he would agree to that provided that we put in the system in when they apply for building permits. That's what we asking. We not trying to get away from not doing the fire protection, just that it's vacant now. Most of the property is vacant. I would say 80 percent. And then when they apply for building permits, we'll put it in at the same time.

Chairman Tanaka: Now, whether it be a year or ten years from now, any condition of a variance with the property at the time of building permit, there will be a red flag raised that says that as part of this permit, this fire system has to be in place. Is that – Trish?

Ms. Kapua`ala: Through our – the County's permitting system, we could do that, put up flags so that when that parcel, it's called genealogy, becomes multiple parcels that that flag carries over. Does your staff check flags in KIVA when you're reviewing subdivisions? So that's something that Fire would catch. They . . . (inaudible) . . . they would check that as part of our permitting system when they review building permits.

Mr. Abbott: Mr. Chair, I have a question, if I may? Not being really adept or informative, when a person or a developer makes a subdivision and divides it into individual lots that are going to be purchased down the road by somebody, does the subdivision owner not have to provide all the electrical, plumbing, and–? Sorry. My bad. Does the developer not have to put in the necessary electrical, water, or whatever else to each property line or to each property?

Mr. Arakaki: It's actually based on the existing infrastructure in the area. So for this particular area, there's no County water. So they have that option. And it's not a requirement, but they have that option of providing either a water well or rain catchment in the Hana area. But, you see, like water, in particular, the Water Department does not get involved because they don't have any jurisdiction on private water systems. And the only other department that handles this kind of thing is the Department of Health, the Drinking Water Branch. And they themselves accept catchment systems, but they don't have any jurisdiction either, but they'll let it go. And this subdivision was based on rain catchment. It wasn't based on doing a water system and all that. And septic in this area, that's allowed. Fire protection, we're trying to modify. But because there's no infrastructure, you know, it's not the norm like if we were to do a subdivision like in Kihei where everything is available.

Mr. Abbott: I'm just – I'm following up on our fire report there. If there is a fire from the one existing

tank that's away from there, there's no way they can utilize the water in that tank to help fight the fire. I realize it's a very rainy area.

Mr. Arakaki: You know, we had this question posed with Hana Ranch when I was working on Hana Ranch. And it came to a conclusion whether it be a private or public, the Fire Department has a right – every right to use whatever water source is available. And we just went through a variance with Hana Plantation, which is down the road from here. At that time, the developer proposed to put two large storage tanks so that the Fire Department can fill up their water trucks, two 60,000-gallon water tanks to fill up their water trucks. So this area, you know, it's not maybe the standard fire protection, but we're trying to do it privately, and install fire storage, water storage, and fire hydrants or stand pipes.

Mr. Abbott: No, I'm just concerned if the – where the 30,000-gallon tank is located if it's gonna take 900 feet of hose to get the water to a fire.

Mr. Arakaki: Yeah, again, the concern was like for brush fire. And on our Hana Plantation Board of Variance application, it was brought up that there was no brush fires in Hana, in the history of Hana.

I mean, the other thing is actually for a home, if there was a home built, and it's like 900 feet away, they would have to actually provide fire protection in order to get the building permit. So the Fire Department would review the documents. And in this case, what we're promising is saying that we're gonna have a 30,000-gallon water tank on the property, pumps, and stand pipe when they apply for a building permit.

Mr. Abbott: Okay, thank you.

Chairman Tanaka: Yeah, for myself, personally, having a condition attached to any future building permit would be sufficient.

Now, regarding the pavement and realignment of Ulaino Road, Mr. Arakaki, it was – I know you made reference to it that because Ulaino Road kinda goes in and out of private property. And the previous variance that was granted, please refresh our memories of–

Mr. Arakawa: Last year when we came in with this variance with Hana Plantation, this is this property over here, it's about 150 acres, and we did a seven-lot subdivision. And then we found out that this Ulaino Road was actually on private property. It was like about a hundred – no, I take it back, 50 feet away toward the ocean. It wasn't on where it supposed to be. And many times in this particular area, it gets flooded out. So when the County comes in and repairs, you know, they would repair the least expensive portion. So the road got pushed more and more back. So what we did is that the variance was allowed, but the road is still being maintained by the County. Whenever there's a storm they'll bring cinder, or rock, or whatever and fill it up and patch. But so far, I mean, it's where it is. It's not in the correct location, yeah? It actually starts from here. It swings out because again, the rain comes here, it follows Ulaino Road, and then it goes out into the ocean.

There was a County project. There was a concrete ford that was placed here. I think they spent

like \$250,000. Within one year, the thing was gone. There was one here and there was one further down.

Chairman Tanaka: Actually, I have a question for our testifier. Can you point out on that map where you are located?

Mr. Edel: Right here in the corner.

Chairman Tanaka: Okay.

Mr. Edel: Is it clear?

Chairman Tanaka: Yeah, thank you. Okay, Board Members, discussion? Any questions for any—?

Mr. Abbott: Just one question for me. It says that on the thing that there's going to be one storage tank for fire protection system and one for potable water with a filtration system. Is that when the lot is occupied or being used? Are they two separate—?

Mr. Arakaki: When we do a private water system, normally we like to leave the fire protection tank separate from the potable drinking water. Thirty thousand gallons doesn't take long for the water to get stagnated, but we need 30,000 gallons at all time. So it's better, especially, for the Hana area, and then with the rainfall, they probably would wanna go with like a 5,000-gallon tank with a filtration system. So there'll be two tanks.

Mr. Abbott: Okay.

Chairman Tanaka: Mr. Arakaki, just to be clear, your proposed individual systems will be in place at the time you would submit for any building permit?

Mr. Arakaki: Yes.

Chairman Tanaka: Okay. You have a comment, Mr. Haake?

Mr. Haake: You know, if the applicant's going to agree to put in eight tanks, fire pumps, and stand pipes, that's a really big cost than just this one system that was originally approved. So if that's what they're agreeing to, then I'm okay on the fire protection stuff, but it seems— When we talk about building permit, who puts it in, I'm assuming that all these lots are gonna be owned by other people, not the applicant today. So if the applicant is saying that he's going to put in that fire protection system when future owners build, I think that's a very generous offer.

Chairman Tanaka: I'm making an assumption here that you sell a lot, and part of the requirement is that the new owner would know that they're gonna have a substantial cost even before they apply for any kind of permit.

Mr. Arakaki: If you think that— Each lot does not have water. So do I put a — do I connect to a 30,000-gallon tank for fire protection? I still don't have water. So I would prefer to put a 30,000-gallon— Maybe it might be more than 30,000. I might wanna put a 50,000-gallon water tank. And

30,000 would be left for fire protection, but the other 20,000 is gonna be used for farming. But if I was to have – you know, tie into a common system, it's 30,000 for eight lots, yeah? So that's what the thinking was about. You know, it's actually, each lot does not have water, so we need the storage and it's for fire protection. And it won't cost that much more from 30,000 to up to 50,000. And then we can use the water for ag or whatever purpose, but at least we'll have the water available for each lot.

Mr. Haake: Chair, if the applicant's willing to do that, put in all these tanks for these lots, that's – I don't have no issues with the fire protection.

In regards to the road, when they came in to do the subdivision, we told them that they have to provide access to these new lots. Now, they're the ones that proposed to use Ulaino Road. And so now you come back and say that, oh, now we can't use Ulaino Road? In that case they should – I think, they should go back to a new design so that they can put in a road. Don't come in and agree to all this stuff and say that you can't do it. So that design was their design. What we going do with creating new lots is we're gonna have more people coming down the road anyway. So what we going be doing is saying that, okay, we allow this subdivision, but you guys go ahead and deal with the road. Whereas in the subdivision rules require that the applicant provide the necessary access which meets the minimum code. They don't have to use Ulaino Road. They can draw a road some place else down on their subdivision that ties into all their lots, and then put fire protection all on that road. They could draw it down the middle, coming across, put all the fire protection on that road, and Ulaino is out of the picture. So I just wanted to say that.

Chairman Tanaka: Thank you. Mr. Arakaki, is it possible to have access off of Hana Highway?

Mr. Arakaki: This particular subdivision got bonded final years ago, so everything is finalized.

Chairman Tanaka: Now, access to the three lots, I guess it was three lots fronting Hana Highway.

Mr. Arakaki: There was four lots.

Chairman Tanaka: Four lots, yeah, okay. Those four lots, access to those four lots are coming off – or does each lot have an access off of Hana Highway?

Mr. Arakaki: Yeah, each lot has an access off of–

Chairman Tanaka: Each of the four?

Mr. Arakaki: Yeah.

Chairman Tanaka: So that off of Ulaino Road–?

Mr. Arakaki: There's four.

Chairman Tanaka: Yeah. So that flag lot, that's the middle lot. Specifically for fire anyway, a fire truck comes down – has to come down Ulaino Road and then come up the flag to access that lot?

Mr. Arakaki: Yes.

Chairman Tanaka: Now, we saw the pictures of Ulaino Road and we saw it before in the previous – last year. The – to address Fire's concerns that if you bring a fire truck down there, you need access for a fire truck to get down, and up that flag lot, and into that – or whatever the case may be in any of the lots but especially, the four makai lots. Have you addressed that? Leaving the road as is, is that–? I know it's substandard, but as far as Fire is concerned, have you looked at addressing that issue?

Mr. Arakaki: You know, Hana being Hana, it's – I mean, there's no curb, gutters, or sidewalks, or large paved roads, yeah, like I said in the city. I have done subdivisions where gravel roads were accepted from the Fire Department. And I feel like this particular road, Ulaino Road, it's better than some of the other roads that I worked with. It's maintained by the County and if there is a problem, the people that uses the road, if it's for fire protection or whatever, would come out and repair it. I don't know what to tell you because actually nobody wants to take responsibility for this road. The County doesn't and the State doesn't. So say that we were to pave this road, and say a year or maybe two years from now, the storm comes in, who's responsible to pave the road? I mean, it's – there's no drainage system in this area. So whatever you improve, it's not gonna help. And then like I said, bits of pieces of A.C. pavement, that was on the last flooding. But the people in this area would still bear in mind, safety. They still need to get access off their road, so they'll fix it up or whatever the best that they can.

Mr. Haake: Is this damage along their frontage?

Mr. Arakaki: Yes.

Mr. Tony Wickey: . . . (inaudible) . . .

Mr. Arakaki: Tony Wickey, he's one of the owners of the property that's speaking now.

Chairman Tanaka: And because that roadway or the image that we're looking at now anyway, it's not actually in the right place either because I know it did further down the road kinda snaked in and out of private property.

Mr. Arakaki: Again, it follows the way the stream or when there's flooding, yeah. And the County people have tried to minimize the cost of maintaining that road.

Chairman Tanaka: You have a question?

Mr. Edel: . . . (inaudible) . . .

Chairman Tanaka: Please.

Mr. Edel: In two days, I'll have been here 36 years. And I've been in Hana most of that time, in and out of Hana. They're– It's a mile and seven-tenths from my property to the Blue Pool. There's probably 30 different properties going down that road that people live on, and they get into their property off of Ulaino Road. I think it's in better shape than Hansen Road. And improving it

wouldn't help anybody get into their property. And so I just don't see any reasoning for it. And I'm just a neighbor, but it doesn't seem like it's gonna benefit anybody, and it could cost a lot of money over and over again as the years go on. Thank you.

Chairman Tanaka: Thank you. Yeah, see, that's our dilemma: what the letter of the law says has to be done, what should be done, what shouldn't be done. And from a fire protection standpoint, to bring a fire truck down the road, ideally, you'd want a 20-foot paved surface. So that's why we look at this individually.

Mr. Edel: . . . (inaudible) . . .

Mr. Shimabuku: Mr. Chair, I guess I get a couple of questions. The first question is, if this is a private road, then how come the County is repairing it every so often? And the second question is, as far as accessibility and what you had mentioned to the makai lots, wouldn't that be a concern of the Fire Department and what their request for the access if the road is sufficient as it is now especially, that flag lot?

Mr. Lance Nakamura: Chair?

Chairman Tanaka: I guess, yeah, Lance?

Mr. Nakamura: Yeah, Lance Nakamura, Public Works. Just speaking to your question of maintenance, I was told by our Highways Division that they do not maintain this road, or they're not responsible for maintaining this road. I think in practice, they would all tell you that the County does go out from time to time and do maintenance on this roadway. So does the County feel that they are ultimately responsible for this road? I don't think we would say we are. But do they from time to time go out there and do some maintenance? They do. So that's all I can say. I cannot tell you why they do it, but they're trying to help the citizens. But are they ultimately responsible? Is this a County road that we think we have to do it? I would say no. So it's not something that you could always rely on.

Chairman Tanaka: I guess, Ray, your second question?

Mr. Shimabuku: I guess my second question would pertain to Captain Haake and his input on the accessibility of the road as it is now.

Mr. Haake: Excuse me, sorry.

Mr. Shimabuku: Are you – Captain Haake, are you satisfied with the conditions of the road as it is now as far as accessibility in case you guys need to get in there? You know, the neighbor is asking that we don't touch the road, but it comes to safety. That's your call. And I think we would have to adhere to your suggestions as far as the condition of the road and what you would recommend or request for the subdivision.

Mr. Haake: You know, if you ask me if the truck can go down the road, I going tell you yes. We going try get the truck any place where it has to go without getting the thing stuck. But what is the requirements for the thing? It's that they need to provide this surface. So that's kind of the line

where you guys gotta go. The road, we going go down, but the requirements for the subdivision is to provide a road that meets 20 feet wide, all weather surface. So that's the problem that I have with this is it doesn't meet that requirement. Can the fire truck go down? Yes.

Mr. Shimabuku: It just brought to my mind like Captain said that the truck can go down, but then what happens if it gets stuck, and then the property owner's house is burning down, or whatever is burning, they cannot get to it? Then does the owner put the blame on the Fire Department for not being able to get to the property?

Chairman Tanaka: Sounds like a James question.

Mr. Giroux: I don't know if I can answer that fully, but any time you're subdividing your – technically in the planning world, you're increasing density. So that means you're adding people. Now when you add people, you bring their problems with them. So you don't know who's gonna be living in that subdivision whether or not they buy the property, they know that road's there, they build their house, and then they're not happy with the road. That's something that's fully possible. It happens all the time. I mean, look at Kahakuloa. They're screaming at the County for having a deficient road, and the County is saying, we can't improve that road, it's impossible. Then their water pumps break and they want us to bring water. So you gotta realize that when you're subdividing, part of the process is that you're increasing density. You're bringing in people who are gonna expect that these things, even when they buy 'em, they're not there, they're gonna want them. And who are they gonna ask for? They're gonna ask the County. And so that's one of the things that we're finding is that we wanna keep things the way they are. Well, the way you keep the things the way they are is you stop subdividing. But Kihei, Kahakuloa, Hana, we wanna keep rural-rural, country-country, but we wanna keep subdividing. And that's the last people in who say, how come we don't have the roads? How come we don't have the water? How come we don't have the schools? How come we don't have the fire? How come? How come? How come? Well, because we decided to subdivide and keep it the way it was. And pretty soon, you gotta change the zoning. And by that time, it's too late. You've created an infrastructure that doesn't work with your planned built environment. So that's something to think about. If our rules and regulations don't accommodate subdivisions, then we need to look at why. And that's the burden that always falls on the deep pocket, and that's the County, and that's the taxpayer. Somebody in Wailuku is gonna have to pay to pave that road one day. Somebody in Haiku is gonna have to pay for a road in Hana. And the County right now is already making the effort to make that road passable because there's citizens at the end of the road. Are you gonna put more people at the middle of the road and ask them to chip in? Maybe they do. Maybe they don't. But this requirement at least takes something from the beginning of the process and puts something there. Now, the issue of maintenance is still gonna linger. But again, the fire truck falls off the road, rolls into a ditch, and somebody's house is burning down, I can guarantee you Maui County is gonna get a service, and we're gonna have to come up there and defend why we weren't able to put out the fire even though at the end of the day we can be successful in a defense that says that we are not responsible for acts of God. So that's just part of the analysis.

Mr. Shimabuku: Thank you. I think that was a good explanation and realize how actually it is. And with the testimony of a neighbor indicating that he would like the road to stay – remain as it is, I guess we, as the Members of the Board, would listen to that and probably grant the road stay the same. Well, that's how I feel, anyway. Then that's what we're here for is to satisfy the people in

the area where there's no opposition of trying to fix the road. I would lean to leaving the road as it is per the neighbor who testified.

Chairman Tanaka: As part of your question, if the fire truck got there, put out a fire, and in an attempt to turn around, went off the road and got stuck, that's another issue as well. So it's tough keeping rural-rural. In a perfect world, every street on this island would be 20 feet of pavement with curb, gutter, and sidewalk. I guess that being said, specifically to the lower lots, access would be off of Ulaino Road. And in a case where a fire truck – you know, that's its access road– comes down that road. And just for myself, if there were some measure to address the fact that a fire truck is a special vehicle, large, heavy, that even though we know that there are other trucks that are probably just as wide, possibly just as heavy that do use that road. If you look at that and address that, in the past we've come up with – just so that you, as a civil engineer, take a look at that.

Mr. Arakaki: As a compromise, one solution would be – this is – we don't have any turnaround. So Ulaino Road just goes all the way down. So I guess the main concern is actually what? The turning around of the trucks or–?

Chairman Tanaka: I guess anything, all issues of – especially in that length that we're looking at now. In some areas of the road, the picture that you had shown looked like pretty nice pavement. And in other areas, it's probably just gravel and dirt. Just to address the fact that, well, at least on this property's frontage, we'll say we don't have – it'll still be substandard as far as the Fire Department is concerned, but we have addressed it in this fashion whether it be cutting out swales to divert water away from – or, you know, anything along those lines.

Mr. Arakaki: Can you wait just one–?

Mr. Shinmoto: Mr. Chairman, while they're discussing there, we need to remember that the Fire Department did do an analysis and variances are criteria-based. So you need to make sure that the applicant has met the criteria if you're gonna look at granting the variance.

Mr. Arakaki: If you don't mind, I'll have Mr. Wickey speak.

Mr. Wickey: Yeah, Hana recently purchased a specialty fire truck. Are you familiar with that? It's like a 4-wheel drive fire truck that's specifically for going up these impossible roads that are all over Hana. And that truck would have no problem on that road at all.

Chairman Tanaka: Board Members, any questions? Any discussions?

Mr. Shimabuku: So that fire truck you just mentioned, did you actually see the truck come to your property or that property?

Mr. Wickey: No, we haven't had a fire.

Mr. Shimabuku: So how do you know that it has no problem coming to that road?

Mr. Wickey: Well, that road is not as bad as almost all the other roads in Hana besides just the Hana Highway. And I assume that's what they got it for. But, no, I haven't seen it go anywhere,

actually.

Chairman Tanaka: Captain Haake, that is true. The Hana Fire Station, actually even before this new vehicle, the size of the truck there that you do have there is smaller than the ones we see in Kahului and Wailuku. Is that true?

Mr. Haake: Right, Chair, that's correct. I don't believe it's a 4-wheel drive, but it's smaller and – you know, to accommodate the existing conditions.

Chairman Tanaka: Okay.

Mr. Abbott: Mr. Chair, is it a pumper truck?

Mr. Haake: It is.

Mr. Abbott: Self-contained?

Mr. Haake: It is. I think it has about 750 gallons of water.

Mr. Espeleta: Similar to like the one on Lanai? I know they bought one speciality truck for Lanai. That . . . (inaudible) . . . truck?

Mr. Haake: That one is a tanker.

Mr. Espeleta: That was one – it's not the same thing.

Mr. Haake: Right.

Ms. Kapua`ala: Mr. Chair, could I read something into the record from the Department of Public Works' staff report? It's already a part of the record but for the Board and the applicant, the Department of Public Works said that, "The Hana Community Plan says it is necessary to balance infrastructure needs with the environmental and cultural sensitivities of the residents of the region. For example, roadway improvements to Hana Highway are needed to maintain the safety of the traveling public. On the other hand, roadway design standards must recognize and preserve the historic nature of the highway and the rural character of the community it serves." So I'd just like to remind the Board that it is also your kuleana to pay attention to the community plan of the region. And thank you, Lance, for quoting that in your staff report.

Chairman Tanaka: Precisely stated. That's our dilemma for a lot of these. Any other thoughts, Members? You have a question?

Mr. Abbott: No, I was just asking– He made a statement while you were talking to someone, and I was trying to find out what he was talking about. He might repeat it.

Mr. Shinmoto: On most of these staff reports, the departments that are involved in the variance or appeal, they do prepare an analysis. So I'd like to make sure that you folks are aware of the analysis. And they do base their analysis on the variance criteria. So the applicant – both the

applicant and the department – I don't want to call it argue, but they discuss the criteria in the report.

Chairman Tanaka: Again, Board Members, if there are any other questions or discussions, I would entertain any motion you may have.

Mr. Shimabuku: I guess for discussion with that comment—the burden of putting a 30,000-gallon tank to the future owners—how can that be resolved? I know it was mentioned that it would be put in when building permit is issued, and the building permit is gonna be done by the owners of the house.

Chairman Tanaka: The new owners.

Mr. Shimabuku: How would that work? I mean, if I were to buy a lot, and then come to find out I gotta put a 30,000-gallon tank plus stand pipe?

Chairman Tanaka: Typically, as part of full disclosure, you'd have to disclose the fact that if you intend to build anything on this property that you're buying, one of the requirements is the cost and installation of—

Mr. Abbott: They would have to anyway. There's no other water possibility.

Chairman Tanaka: Yeah, true, in addition to their own private domestic water.

Mr. Abbott: And if we wait until people apply for a building permit to get the tank, then they can put the tank where it's close enough to the house to be a viable fire protection as well, because if we were randomly sticking the tanks, you know, it might be too far from the house.

Mr. Shimabuku: Well, they would have to adhere to the Fire Department's regulation as far as where the stand pipes – yeah.

Mr. Haake: Chair?

Chairman Tanaka: Yes?

Mr. Haake: If you waive the requirements for a fire protection, future owners, when they bought these lots, wouldn't have to put 30,000 gallons, a fire pump, and the stand pipe. They would have other options to do. So – but if you tag on what the applicant's saying that they're gonna do, it'll be definitely a burden. Right now, if you have a lot that does not have fire protection handy, you can sprinkler your home, or you can put a smaller tank that the water amount is based upon the cubic feet of the home. But on this issue, it has nothing to do with brush fires. They probably never had a brush fire ever. But it's when you do the subdivision, you have to put in these minimum requirements. If we wanted to make them put stand pipes so that every – wherever you built on this property, the structure would be within 500 feet, they would have stand pipes all over this whole thing. But based on the use, ag use, we came down with okay, you provide it on the access to these lots. If the future owners choose to build their home way deep in the back of the lot, then that's their choice. They going be farther away from the protection that was required on the

subdivision, and they gonna have to do more: sprinkler their home or whatever. So to tag on this 30,000-gallon tank with fire pump on this subdivision is not a wise decision. It should be either you waive the fire protection or not. Have the applicant put in all the tanks or just waive the fire protection. Otherwise, you guys going be passing that on to future owners.

Mr. Shimabuku: Because in the end the bottom line would be to satisfy your needs as far as the Fire Department is concerned. Whether it's to be sprinkler, whether it's to provide stand pipes, you're gonna have the last say actually when they do a building.

Chairman Tanaka: So it would still require your approval? It would not necessarily have to be a 30,000-gallon tank with—?

Mr. Haake: Correct.

Chairman Tanaka: You know, what you had proposed.

Mr. Haake: Correct. For me on this subdivision, waiving the fire protection or doing a little different fire protection, I think the Fire Department can live with that because we'll have something to start with when we get there, if there's something to do, some emergency to deal with. The critical thing for me is access to these lots. You know, you gotta get there first before we can do anything. And then we get there, create these new lots, we got roads that we can get to it. Now, if a new owner says, you know what? My house is way up there, at least the truck can start from a place that is solid, and then go up driveways or things like that. So in this subdivision, for me, the road is critical. And I dealt with another similar subdivision before. They proposed Ulaino as the access, and then they came in and said, you know what? We can't do any improvements to Ulaino. And then I was like, God, you know? For me, I don't like people coming in and saying I going do this and do this, so go ahead and approve it. We approve it and then they come back and tell me, you know what? We don't wanna do it. For me it should be then, you know what? Don't do the subdivision. Go do another plan, something that's doable, and bring it in. But that's how I think the thing should be driven. I don't know if that's what can happen here because all this stuff happened already, but to not come before this Board again for Ulaino Road, when subdivisions come in for – future subdivisions coming in using Ulaino Road, I'm gonna deny 'em.

Chairman Tanaka: Same thing.

Mr. Haake: Right. So, you know, this is already here. You guys gotta make one decision, and it's a hard one, but I hope to avoid future ones by not approving access off of this road.

Mr. Shimabuku: Well, with that said, I guess that's good to know that the 30,000-gallon tank is above and beyond what the Fire Department would request as far as protection.

Mr. Haake: Yeah, that's correct. And that's for building permits. There's the building permit process and there's subdivision process. So these guys are in the subdivision process. And the subdivision process requires this amount of water. If they were just coming in here for a building permit, it would be less.

Mr. Wickey: Can I say one more thing? The reason we did this subdivision is it's a group of Hana

people that we bought this land and we're subdividing it so everybody could build their own house. It wasn't a development plan. It was for Hana people to – it was a 74-acre piece that was – that we bought and divided up. Everybody knows that Ulaino Road is bad. Everybody knows that they have to have water tanks. And if anyone in the future, people that are in the partnership now say, sells in the future, it's as-is to all those people. And those people are gonna have to drive down Ulaino Road and look at it and go, is this what I wanna do? But the people that are there now all know.

Mr. Chairman: Yeah, that's the balance that from what you say that people know exactly what – that's exactly what they want. The difference is if one of your eight partners sells to someone, comes in, and says, well, where's my 20 feet of pavement and sidewalk–?

Mr. Wickey: Well, they will be buying something without 20 feet of pavement.

Mr. Chairman: Yeah, well, so that's, again, that's not part of the Hana character, not part of the Hana Community Plan. So that's the balance we have to find, and that's been tasked to us, the five of us here. Board Members, any other thoughts? Any other questions?

For myself, personally, regarding the fire protection system, period, what has been proposed, and if at the building permit process that an individual must be provided – for myself, I don't mind that it's passed on to the owner that just so long as – and they would do it anyway. They need to create a water system for domestic water as well as fire protection.

My issue would be the roadway. We went through this a year ago with the other subdivision a little down the road. Ulaino has – as we saw in the pictures, some of it looks a lot nicer than a lot of the roads that I've driven in more populated areas, but we've been doing this. And by that picture I say, yeah, a fire truck can, and we know a fire truck can. And Captain Haake says, yes, a fire truck can drive down there. But what's part of subdivisions are there are certain requirements. And as part of Public Works' staff report, it's also Hana, and Hana is unique. Hana and Kahului are two different entities. We have curbs, gutters, and sidewalks in Kahului and Wailuku. We don't want it in Hana.

Now, as further down the line, Mr. Arakaki, because of where we're at now, the process that it's been going through that subdivision approval has been granted. Now you're seeking a variance from these two items. What I was asking, I guess, is we've heard Captain say that it's – you know, I gotta make sure I can get my fire truck to the guys' driveway, and then from the driveway – you know. So if you can give us something, give this Board something to make it easier for us to grant this variance, please help.

Mr. Arakaki: Thank you. Okay, I guess one of the main concerns is this driveway here for this particular lot. I believe, and correct me if I'm wrong, normal driveways, I guess the minimum is eight feet, you know, eight feet wide. So do we follow that or do you think we need a special case where we gotta say it's 15 feet? I mean, even this is actually 20 feet wide, you know, for this particular lot. Normally, the standard is actually 12 feet. That's the smallest we can make it. But we made this road 20 feet wide. So minimum pavement is eight feet. I guess at the time of– Excuse me. Did anybody build on this lot yet? Is there a driveway there?

Mr. Wickey: Yeah, oh, yeah.

Chairman Tanaka: A gravel drive, is it?

Mr. Arakaki: Okay. I guess as a compromise on road improvements for this area, I talked to the owners, and at first I was thinking maybe we just widen the shoulder and put gravel, but they did tell me it's gonna wash away, and I agree with that. The only other thing that I can think of is actually to grade the shoulders and try to improve it as much as we can. Grass it for now and they're gonna be maintaining their frontage. And the road would be wider than what it is now. Right now, this is their side of the road. So what we can do is— Wait. Tony, this is your—?

Mr. Wickey: Yeah . . . (inaudible) . . . 20-foot driveway right here. And this is — the whole way along is just grass.

Chairman Tanaka: Please speak into the mic., sorry.

Mr. Wickey: Yeah, this side is where the river is. So any kind of improvement would be over here on this side.

Chairman Tanaka: Yeah, see, and I wouldn't want to see you go in there and grade a swale into that because—

Mr. Arakaki: So what we can do is actually maintain this paved section of this road, and then see wherever the right-of-way is, and then to grade the shoulders, and provide some drainage swales or whatever to take the water off the road.

Mr. Shimabuku: I think, Mr. Chair, I think no matter what you do, when the rain comes, going come and wash 'em out anyway.

Mr. Wickey: There's like seven rivers . . . (inaudible) . . .

Chairman Tanaka: Sorry, any time you speak, we need—

Mr. Wickey: There's like seven rivers that come down. And in the sugarcane days, they stopped the rivers at this road and forced them 90 degrees to go along the side of it. That's the problem is that every single of these old rivers used to cross Ulaino Road and go out to the ocean. And so they forced them into this — go along the side of this road. And that's the problem is when the rivers come up and they just jump right over the road.

Mr. Shimabuku: And then the County comes back, and fill 'em up with gravel until the next rain.

Mr. Wickey: Yeah. Last year it was like four or five times.

Mr. Haake: Chair, sorry. You know, if you sprinkler all your buildings, you can — the Fire Code allows variances for access. So if you thinking about waiving the road improvement requirement, then just maybe you could suggest any structure over 700 square feet be provided with fire sprinklers.

Mr. Giroux: It could be part of the conditions of the variance and then it runs with the land.

Chairman Tanaka: Would the applicant consider this? This would help.

Mr. Wickey: Yeah, they – everyone would get fire – sprinklers. I think that's gonna be the new law anyway soon, isn't it?

Chairman Tanaka: Captain, would a minimum – you said anything over 750 square feet?

Mr. Haake: Seven hundred.

Chairman Tanaka: Oh, 700 square feet. So the applicant, so you would be – in an effort to get to where we wanna be that fire sprinkler systems be added to structures within the subdivision.

Mr. Arakaki: Yes, the owner said it was – yeah, that can be included in the agreement.

Mr. Shimabuku: Mr. Chair, to clarify, so then your stand pipes and your water tanks would be dismissed?

Mr. Arakaki: No, it would still be necessary because that's part of the subdivision requirements.

Chairman Tanaka: And whether it be 30,000 or 50,000, that doesn't matter.

Mr. Arakaki: No, we still gotta do 30,000. That's the subdivision requirements.

Mr. Shimabuku: So that sprinkler would come as a condition?

Chairman Tanaka: Yes, that's what we would be adding as a condition of this variance.

Mr. Arakaki: And then correct me if I'm wrong, but that's to help with the condition of the road.

Chairman Tanaka: Okay, with that being said, Board Members, I would now entertain a motion.

Ms. Kapua`ala: Mr. Chair, the Department of Planning would kindly ask that you also consider the hold harmless agreement with the decision and order attached with these conditions to be recorded on all the future properties and not just the original TMK.

Chairman Tanaka: Okay. It would be recorded with all eight properties, not just the single TMK that we're looking at now. Okay.

Mr. De Ponte: I'll make a motion.

Mr. Espeleta: I'll second it.

Chairman Tanaka: Okay, if I can–? With the applicant's justification for the variance, is that what you are moving and seconding?

Mr. Espeleta: Along with the proposed changes that . . . (inaudible) . . . motion and second.

Chairman Tanaka: Okay, let me try. With the additional condition of fire sprinkler systems added to individual structures over 700 square feet, and that the standard hold harmless agreement be attached to all eight parcels rather than the single parcel that exists now.

Mr. Espeleta: Yeah.

Mr. De Ponte: Yeah.

Chairman Tanaka: Okay, it has been moved and seconded. Yes, Trish?

Ms. Kapua`ala: For clarification, is it structures or residences that require fire sprinklers for—?

Mr. Haake: Structures.

Ms. Kapua`ala: All structures?

Chairman Tanaka: What did I say? Structure or—?

Ms. Kapua`ala: You said “structures.”

Chairman Tanaka: Okay, structures.

Ms. Kapua`ala: And how is the condition – can we please add the condition pertaining to the stand pipes?

Mr. Espeleta: That’s already in. That’s the standard, the additions we agreed to, the standard, original standard, and the fire sprinklers.

Chairman Tanaka: Yeah, the addition would be the fire sprinklers. What was presented was eight individual systems with eight stand pipes.

Ms. Kapua`ala: Okay, thank you for that clarification. So the deletion only pertains to fire hydrants at 500-foot intervals. Okay, thank you.

Mr. Shimabuku: So to clarify would be to grant the variance as written with the conditions of sprinkler systems. Okay.

Ms. Kapua`ala: And would there be any insurance requirement as a part of this motion?

Chairman Tanaka: Apparently not.

Mr. Haake: Chair?

Chairman Tanaka: Yes?

Mr. Haake: Are you still including the storage tanks? You guys still including the storage tanks and stand pipes?

Chairman Tanaka: Yes, in addition to their proposed individual systems.

Mr. Abbott: Mr. Chairman, I think as long as the County Fire Department is gonna use that highway, as long as the County vehicles are going to go up there, I think we should have some kind of insurance.

Chairman Tanaka: I mean, in this case, particularly, or any – I mean, sticking to a fire truck entering properties before along Hana Highway, or off of Hana Highway, before off of Ulaino Road, it's coming off of a private road. Now legally, how does that affect a variance that we are granting with the possibility of any legal action at a later date? Would that be more necessary or not necessary?

Mr. Giroux: Well, I think the issue is that we're gonna have a road that's kinda substandard going into a neighborhood, basically. You're gonna have additional homes. Not only the homes, you're gonna have ohanas. You're gonna have other structures on it. So the idea is that if the County is taking the initiative and actually maintaining that road even if we don't own it, and something happens to and from that neighborhood to the highway, the County could be sucked into a lawsuit because a lot of lawsuits arise out of design and maintenance. And what I'm hearing is, is that the County is taking some initiative and maintaining it. So you have a heavy flood, parts of the road's taken out, the County goes in and fixes it, somebody drives over it, and then falls down, that creates a burden on the County. So I think this is one of the situations where I think we do have to be cognizant of the exposure of granting a variance to that. I want to make it clear that the subdivision requirement isn't strictly for the benefit of fire. It's for health, safety, and welfare. That means people traversing that road are gonna expect a certain amount of safety. By allowing it to be substandard and somebody gets hurt, that's usually the standard taken into the courts is that but for this variance, or but for the substandard condition of the road, or but for the negligence and maintenance, the harm wouldn't have been caused. So I think it is a – giving a variance on a gravel road like this, I think we do have to be cognizant of the insurance ramification.

Chairman Tanaka: Okay, with that being said, it has been moved, and seconded, and clarified. Do you wish to amend that motion to include insurance to go along with the standard hold harmless agreement?

Mr. De Ponte: If we take the advice from James, I think it's a better way to protect . . . (inaudible)
. . .

Chairman Tanaka: Okay, the typical number that has arisen in the past is a million-dollar policy. Would you like to use that number? Okay, it has been moved and seconded with the so stated conditions and the addition–

Mr. Nakamura: Can I ask a quick question? You're discussing just his variance or you're also discussing accepting the Title 18 variance also? Or you going get to the Title 18 one later?

Chairman Tanaka: I was kinda looking in terms of both simultaneously.

Mr. Nakamura: Okay, I just wanted to be clear that this is for both.

Ms. Kapua`ala: Mr. Chair, from a procedural standpoint, that means that when you say that you're adopting the applicant's justification for the variance, you're adopting five criteria from Title 14 and 16, and I think four criteria for Title 18. Or is it five and four? I'm sorry. Hold on, one moment. I switched that. I switched that. Title 18 has four criteria and – Title 18 has five criteria, and then Title 16 and 14 has four. Thank you.

Mr. Giroux: Yeah, just to make it clear, the criteria has to be separated just because it's a slightly different criteria. But in the final decision and order, there's only gonna be one requirement for insurance. It's not gonna be separated out.

Ms. Kapua`ala: These conditions would pertain to the entire variance, correct?

Mr. Giroux: Correct.

Ms. Kapua`ala: The entire decision and order. Yes, thank you.

Chairman Tanaka: It has been moved and seconded with the condition of additional fire sprinkler protection to individual structures over 700 square feet. That the condition be recorded with all eight parcels. The standard hold harmless agreement with the additional million-dollar insurance policy.

Ms. Kapua`ala: The applicant would have to maintain that for the life of this variance or future homeowners?

Chairman Tanaka: Well, because it's – it'll become a variance that covers eight parcels, that'll be recorded with all eight parcels. So it's with the– Help me out, James.

Mr. Giroux: Yeah, if it's recorded on each parcel, that might create a necessity for each homeowner to be carrying that amount of insurance.

Chairman Tanaka: How do we get around–?

Mr. Giroux: Seeing that each homeowner, once they move into that property, and this probably wasn't discussed on the record is, are they gonna be participating in maintaining that road in any way? And that's where, you know, again, every time somebody touches that road, it creates a liability for them. That's where your– The lawsuit is gonna arise from design and maintenance. Maintenance means you're taking care of it. If you're taking care of it and somebody gets hurt, they're gonna sue you. So, again, not to influence any policy, but the idea is that if anybody gets hurt on that road– Because without this variance, the subdivision would not be built, bottom line. The law says that. Right on the bottom of where it says you should improve the road, it says if you can't improve the road, you shouldn't be building the subdivision. You're giving them the subdivision. Now, it's like giving them a liability with, you know, beware of what you're asking for. You're getting what you want, but at the end of the day, it's the County that takes the burden of everybody's action. If we're going on that road and we're putting gravel, then we're taking the liability. If anybody from that subdivision is gonna go out and help and work on that road, they're

taking the liability. So what we're trying to do is, with insurance, spread that cost because at the end of the day, somebody in Lahaina, somebody in Kahului, and somebody in Hana is paying for that if the County gets sued. So what we're trying to do is create a defense. And with the insurance, it spreads that liability and it makes it so that if the unforeseen, and the unknown, and the unwanted happen that not one person is stuck with that, and not just the County has to pay. So that's what we're trying to do with the insurance.

Chairman Tanaka: So now like what Trisha's question was, okay, so now, but it's—

Mr. Giroux: It's recorded on the land, and then how does it play out if it needs to be recorded on each and every property.

Chairman Tanaka: Yeah, we're saying we wanna record it with every property but the variance is for — the variance is for all eight properties.

Mr. Giroux: For the subdivision as a whole.

Chairman Tanaka: Yeah. Okay, as long as the subdivision exists.

Mr. Giroux: And this wasn't put on the record either is how — is there gonna be a community association? Or how is this hui going to have — I mean, how is the process gonna work as far as ownership and subdivision?

Mr. Arakaki: I have a question. Lance, you know, we had a five feet road-widening strip that was dedicated upon demand. That would also require insurance?

Mr. Nakamura: It'll require insurance? We don't—

Mr. Arakaki: No, you know, when we do this road-widening strip, and then it says "dedicate upon demand," the landowner is supposed to carry insurance on that also, right?

Mr. Nakamura: You know, I couldn't tell you what that agreement says. I'm not aware of any insurance requirement that we've been tracking. I wouldn't imagine that we would.

Mr. Arakaki: Yeah, no, for like we get some road-widening in the future, and it's not dedicated to the County, it's kept to the landowner, but it's separated out.

Mr. Nakamura: I don't know if there's standard language like that in the agreement. If you want, I can go quickly check.

Mr. Arakaki: Okay, no I was just thinking that because we have that strip, it's just like we still have to have insurance on that anyway.

Ms. Kapua`ala: Mr. Chair, just to clarify the Department's concern as far as enforcement of the condition, is it — would you want the applicant to maintain the insurance after the subdivision is made, or would you like the future homeowners to be submitting their insurance certificates yearly?

Chairman Tanaka: No, I think that the subdivision—

Ms. Kapua`ala: The subdivider, applicants?

Chairman Tanaka: Yes.

Ms. Kapua`ala: Okay. So in that case, we would just need to just require an insurance certificate for a million dollars with the County named as additional insured, and that would be submitted yearly to the Department in order to upkeep this variance for the life of this subdivision.

Mr. Shimabuku: Mr. Chair, so the insurance portion would be as a whole for the whole subdivision rather than each individual lot, then?

Chairman Tanaka: Yes. I mean, that's what I'm envisioning. We got through all the conditions. With that, I'll call for a vote. All those in favor of the granting of this variance as so stated, please say aye. The Chair votes aye. Any opposed?

It was moved by Mr. De Ponte, seconded by Mr. Espeleta, then

VOTED: To grant the variance as so stated.

**(Assenting: P. De Ponte, T. Espeleta, R. Shimabuku, G. Abbott,
K. Tanaka.)**

(Excused: R. Tanner, B. Vadla, B. Santiago, J. Haraguchi.)

Chairman Tanaka: **The variance is granted with so said conditions.** Thank you.

Mr. Arakaki: Thank you.

Chairman Tanaka: Next item—Unfinished Business. Trisha?

D. UNFINISHED BUSINESS

1. **CHRISTINE A. GALE** appealing the Director of the Department of Public Works' Notice of Violation (V 20010069) for the construction of a mezzanine without first obtaining the proper building permit, for property located at 3975/3985 Lower Honoapiilani Road, #215, Lahaina, Maui, Hawaii; TMK: (2) 4-3-008:002:0041 (BVAA 20110003). (Deferred from the April 26, 2012 meeting.)
 - a. Appellee, Director, Department of Public Works, County of Maui's motion to stay appeal pending Appellant Gale's complete abatement of violation;
 - b. County of Maui's preliminary exhibit list;
 - c. County of Maui's witness list; and
 - d. County of Maui's certificate of service.

Ms. Kapua`ala: For Unfinished Business, the matter of Christine Gale appealing the Director of the Department of Public Works' notice of violation for the construction of a mezzanine without first obtaining the proper building permit, the Department of Corporation Counsel has informed me that Ms. Gale has yet to reach a settlement with the Department of Public Works. She is gonna be putting her request in writing. And at the point of settlement, when it's executed by the County, Ms. Gale would either submit a letter withdrawing her appeal, or the Department of Corporation Counsel will be drafting a stipulation to withdraw, jointly to withdraw, and settle the matter. So that's – Ms. Gale is not here today because of that.

Chairman Tanaka: Next Item, Director's Report.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: The only thing I have to report is that the appeal of – it was a Public Works' matter which you sent to Hearings Officer John McConnell. We have a prehearing set up for July, late July. And at that time, they're gonna – the prehearing is to decide whether they're gonna have a hearing or not. It's almost a mediation. So that's all I have to report. Other than that, you have the bulk of appeals coming to you to determine hearings officers within the next meetings.

Chairman Tanaka: Okay. Board Members, anything to discuss?

Mr. Abbott: The minutes from the last – we don't have any.

Mr. Shinmoto: The minutes are not ready yet. It'll be there the next meeting.

Mr. Shimabuku: Mr. Chair, before moving on, as far as the Christine Gale, unfinished business, so does that mean it's coming back to hear that again? Or is it just something that's gonna be resolved?

Ms. Kapua`ala: Yeah, it'll probably be resolved.

Mr. Shimabuku: So then we don't have to worry about our–?

Ms. Kapua`ala: Don't have to worry about it.

Chairman Tanaka: Yeah, whenever it does come back, it should just be a report on it was settled. Yeah, so before we adjourn here, I hate it when I see Captain Haake here because we all understand that his point is – I mean, it's pretty much black and white. He has a fire truck. He wants 20 feet of – well, not he wants, it is required that there is this paving, and he can turn around, and he can access everything. But the problem is when we come into these areas of Hana, Haiku. So we gotta keep in mind that there are different – yes, we don't want a truck to go sliding off and down into a gulch, but we don't wanna pave a 300-foot section of gravel road.

Mr. Abbott: His concern is specific. Ours has to be general, the overall everything.

Mr. Shimabuku: That's why I raised that I could bring up the issue and have a direct answer on what he's requesting. It makes it easier for us instead of kinda of guessing what he wants, or how much he going defer from the actual requirement.

Chairman Tanaka: Yeah, so every time he leaves, he looks disgusted.

Mr. Espeleta: But a sprinkler system for every structure, that's a lot.

Mr. Abbott: He got what he wanted.

Chairman Tanaka: And it's nice to come to a compromise, but that's something to keep in mind.

F. NEXT MEETING DATE: Thursday, June 14, 2012

Chairman Tanaka: Okay, so officially, the next meeting date is June 14th, and the 21st is our special meeting, but otherwise, thank you very much. Meeting adjourned.

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:31 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Ray Shimabuku
Patrick De Ponte
Teddy Espeleta
Gene "Clark" Abbott

Members Excused:

Rick Tanner, Vice-Chairman
Bart Santiago
Bernice Vadla
Jacqueline Haraguchi

Others:

Aaron Shinmoto, Planning Program Administrator, Planning Department

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Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Lance Nakamura, Civil Engineer, Development Services Administration
Paul Haake, Fire Captain, Department of Fire and Public Safety