

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
June 28, 2012**

(APPROVED 7/12/2012)

Mr. Rick Tanner: We don't have a quorum yet. The Chairman, Kevin, is actually on his way, so we're just going to be a few minutes late.

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, 1:55 p.m., Thursday, June 28, 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: I apologize for the delay. Sorry. I'll call the meeting of the Board of Variances and Appeals to order. It is now, sorry, 1:55 p.m. First item, Trish?

B. APPEALS

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

JAMES W. GEIGER, ESQ. of MANCINI, WELCH & GEIGER, LLP representing CAMERON MAUI TRUST appealing the Director of the Department of Public Works' decision to not approve an application for an after-the-fact building permit (Application No. B T2010/1509) for an apartment's mezzanine, because the Department of Fire and Public Safety could not approve, for the Hoyochi Nikko Ocean Condominiums, Unit No. 205, located at 3901 Lower Honoapiilani Road, Kaanapali, Lahaina, Maui, Hawaii; TMK: (2) 4-3-008:006 (CPR No. 0014) (BVAA 20120002).

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

Ms. Kapua`ala: The parties are here to make their appearances.

Mr. James Geiger: Good afternoon, Chair, Commissioners. James Geiger appearing on behalf of the petitioner.

Ms. Mary Johnston: Good afternoon. Deputy Corporation Counsel, Mary Blaine Johnston, appearing on behalf of the Director of the Department of Public Works.

Chairman Tanaka: Thank you, before you start, sorry, Rick?

Mr. Tanner: Yeah, I'd just like to state for the record that Mr. Jim Geiger is also general counsel

for my employer, but I don't consider that a conflict, and will listen to the case.

Mr. Geiger: Chair, I think we're here today on something that's just administrative. It's for the, I guess, appointment of a Hearing Officer for a contested case. I've spoken with counsel for the County, and we are willing to have the Board act as the Hearing Officer for this case. I've talked to staff, and I think you folks have available September 13th for this case to be heard. And so with the Chair and Commissioners' approval, we would like to go ahead and just schedule it for a hearing on September 13th, I'm sorry, I said 3rd, before the Board as the Hearing Officer.

Chairman Tanaka: Okay, and you're in agreement?

Ms. Johnston: That's correct. But I will point out that I had my gang here ready to go, but we are – they'll be even readier in September, so that's fine.

Chairman Tanaka: It seems to me that the Board needs to approve?

Mr. James Giroux: Yeah, you can discuss that. I mean, it's something that's open for discussion.

Chairman Tanaka: Board members, any comment or any—? Excuse me.

Chairman Tanaka: Okay. So, Trish, is that September 13th, that has been confirmed as an available date?

Ms. Kapua`ala: Yes, sir.

Chairman Tanaka: Okay.

Ms. Kapua`ala: So, Mr. Chair, I will send out proper notice, Mr. Giroux. And I would also request that since we're here, have the pre-hearing discussion now and we can probably set pre-hearing document deadlines. The County would kindly request, one (1) original, plus fifteen (15) copies of all pre-hearing documents and I'll let the attorneys discuss what documents they'd like to submit. Our deadline would be two (2) weeks prior to the September 13th hearing date.

Mr. Geiger: I think that the exhibit list, witness list and exhibits would probably be sufficient for this case.

Ms. Johnston: Yeah, I think so, yes. And you said witnesses? Yeah.

Mr. Geiger: Yeah. So those documents, the exhibit list, the witness list and the exhibits, the original and fifteen would all be due on August 30.

Ms. Johnston: And any pre-hearing statement.

Mr. Geiger: Plus, any pre-hearing statement, yes.

Chairman Tanaka: Okay. Rick, on the 13th I know in advance I will not be available. Will you be?

Otherwise, somebody else can be the Chair – I mean, temporary Chair.

Mr. Giroux: I guess just one more item. Is there anticipated to be any pretrial motions?

Mr. Geiger: I don't believe so.

Ms. Johnston: I don't anticipate any at this point.

Mr. Giroux: Just in case your un-anticipation is a – I guess we'll just make the August 30th the deadline for everything. And if motions do come up, that would be the deadline.

Mr. Geiger: Yes.

Ms. Johnston: Okay.

Chairman Tanaka: Okay. So, we'll set September 13th for the date with deadlines that have been duly noted. Item is deferred.

Ms. Johnston: Thank you.

Mr. Geiger: Thank you.

Chairman Tanaka: And again I apologize for you sitting here waiting for me.

Mr. Geiger: No problem.

C. APPROVAL OF THE MAY 10, 2012 AND MAY 24, 2012 MEETINGS' MINUTES

Chairman Tanaka: Okay. The next item is approval of two (2) sets of meeting minutes: both the May 10th and May 24th meeting. With that, is there a motion – any comments or corrections? Otherwise, we need a motion to approve.

Mr. Tanner: I make a motion to approve.

Mr. G. Clark Abbott: Second.

Mr. Chairman Tanaka: For both these sets of minutes?

Mr. Tanner: Yes.

Mr. Abbott: Yeah.

Chairman Tanaka: It has been so moved and seconded. All those in favor of approving, please say "Aye." Any opposed?

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

VOTED: To approve the minutes of May 10, 2012 and May 24, 2012.

**(Assenting: R. Tanner, J. Haraguchi, P. DePonte, C.Abbott)
(Excused: B. Vadla, R. Shimabuku, B. Santiago, T.Espeleta)**

Chairman Tanaka: **Both sets of meeting minutes have been approved.** Next item, Director's Report. Status. Trish?

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: The next meeting on July 12th, you have an appeal scheduled. The Department of Public Works issued a grading permit for the Piilani Promenade, which is a large shopping center to be erected mauka on Piilani Highway in Kihei. That appeal will be before you on July 12th to determine a Hearings Officer.

Chairman Tanaka: So it should be as straightforward as – because both, it's the Hearings Officer, we will not act as–?

Ms. Kapua`ala: That is your decision.

Chairman Tanaka: Okay, because also, right? Isn't the 12th the date that the Valley Isle Aquatics is scheduled for?

Ms. Kapua`ala: Oh, yes, correct.

Chairman Tanaka: Okay.

Mr. Aaron Shinmoto: And you might have people show up for that Promenade one, because–

Chairman Tanaka: Because it's highly volatile. But it should be as straightforward. It's just a Hearings Officer. Okay, again the – as part of that Valley Isle Aquatics package, you received the – it actually came in my mail today, and I was actually looking at it. So, the minutes for the–

Mr. Patrick De Ponte: The 88 pages.

Ms. Jacqueline Haraguchi: I got mine today.

Chairman Tanaka: Okay, I got mine today. So if you could–?

Mr. Tanner: Wait. Are you talking about physical or the e-mail?

Chairman Tanaka: No, the physical.

Mr. Tanner: Oh, no, I read it on the computer. It was like \$8.00 worth of electricity to keep that

screen on that long.

Chairman Tanaka: Yeah, okay. So we'll complete that appeal on that July 12th date.

Ms. Kapua`ala: The parties have already submitted their proposed Findings of Fact, Conclusions of Law, Decision and Order, as ordered by the Board. That will be e-mailed to you, most likely tomorrow.

Mr. Tanner: They've already done that?

Ms. Kapua`ala: Yes. And then the exceptions to that is due seven (7) days, in seven (7) days, so next week Thursday. And then you'll receive all the physical documents, I'm not sure if it's ASAP or with your agenda, but you will definitely be e-mailed so that you can read up.

Chairman Tanaka: Yeah. So I think it's – from what – from what we've discussed, while we were here that we'll act as a Hearings Officer to the Board, make our recommendation, and then we'll hear their – we'll adopt whichever–

Mr. Giroux: And they can comment on their exceptions.

Chairman Tanaka: Yeah, and then we'll throw in, or delete, or add any other exceptions that are submitted. Okay.

Mr. Tanner: For that hearing, do we only require five (5) members here, or do we need more than that?

Mr. Giroux: It will require five (5) affirmative votes to take action. So if only five (5) show up, then all five (5) have to . . . (inaudible) . . .

Chairman Tanaka: Yeah. Now, being the four (4) were Hearings Officers to the fact, that doesn't affect the count in any way as far as–?

Mr. Giroux: No, you would vote like a Member.

Chairman Tanaka: Okay. Anything else that we need to know? For something that lasted eight (8) minutes, I apologize that I made you wait that 25 minutes.

E. NEXT MEETING DATE: July 12, 2012, Thursday

Chairman Tanaka: Okay, next meeting date, July 12th. Meeting adjourned.

F. ADJOURNMENT

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

Respectfully submitted by,

CHALSEY R. K. KWON
Secretary I

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Rick Tanner, Vice Chairman
Jacqueline Haraguchi
Patrick De Ponte
Clark Abbott

Members Excused:

Bernice Vadla
Ray Shimabuku
Bart Santiago
Teddy Espeleta

Others:

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