

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
SEPTEMBER 27, 2012**

(Approved: 10/25/12)

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Kevin Tanaka at approximately, 1:32 p.m., Thursday, September 27, 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 now call the meeting of the Board of Variances and Appeals to order. It is now 1:32 and we have a quorum of six Members. The first item on our agenda, Trish?

B. PUBLIC HEARINGS

1. **TESSA MUNEKIYO NG, AICP of MUNEKIYO & HIRAGA, INC. representing GARY LEE PASSON and CHARLENE YVONNE SCHULENBURG, TRUSTEES OF THE PASSON FAMILY TRUST requesting a variance from Maui County Code, §19.04.040, as it pertains to the definitions of "Dwelling unit" and "Bed and breakfast home," to allow five (5) existing kitchens to remain in a main dwelling, whereas only one (1) kitchen is allowed, for the proposed Aloha Aku Inn Bed and Breakfast, located at 1390 South Kihei Road, Kihei, Maui, Hawaii; TMK: (2) 3-9-009:008 (BVAV 20120005).**

Ms. Trisha Kapua`ala read the agenda item into the record and presented depictions of the subject property and surrounding area.

Ms. Kapua`ala: Any of this is available for you should you need it to do your deliberation. And at this time, I'd like to introduce our Deputy Director, Michele McLean.

Ms. Michele McLean: Thank you, Trisha. Good afternoon, Chair and Board Members. I'm Michele McLean, the Deputy Planning Director. And I know it is unusual for me to appear at your meetings. I am here today, though, to express the Department's and the Administration's strong support of this variance application. As you'll hear from the applicant and as you see in the Department's recommendation, it's a combination of very unusual circumstances. We've been working with the applicant. It's actually going on one year now. Before coming to the meeting today, I looked in my email archives and found my initial emails with staff dating back to September 1st of 2011 trying to figure out how to help these folks get into – it's not even getting into compliance because they are in compliance today, but to make them eligible for a B&B. And it seems very simple, but every path we tried to go down, we ran into some sort of obstacle. And they've been delightful to work with. They've been just fantastic. And after looking at it every which way we could, we determined that

the variance was the most appropriate way to put them on the road to where they could apply for a B&B permit. The structure's lawful. You know, they have not done anything. They haven't crossed any lines. They haven't done anything wrong. They've been working in advance to comply with all of our processes. So because of these really special circumstances, I wanted to come in person and share that with you, and let you know that the Department supports the application and requests your support as well. Coincidentally, I also had a meeting with the Mayor this morning who knows the applicants and he asked me what was going on with this. And I told him we support it. And he wanted me to also convey his support as well. So if you have any questions down the road for the Department as we go through the discussion, I'll be here if I can answer them. Thank you for your time.

Chairman Tanaka: Thank you. Does the applicant have a presentation?

Ms. Tessa Munekiyo Ng: Good afternoon, everyone. Thank you very much for your time. My name's Tessa Munekiyo Ng. I'm here with Gwen Hiraga. We're from Munekiyo and Hiraga. And we're here today on behalf of Gary Passon and Charlene Schulenburg for their variance request for their proposed Aloha Aku Inn Bed and Breakfast. You all should have a copy of our power point presentation.

So Gary and Charlene are requesting a variance from the definitions of "dwelling unit" and "bed and breakfast home" to allow for five existing kitchens in their single family dwelling whereas the definitions only permit one kitchen. Gary and Charlene own a property on – located at 1390 South Kihei Road. It's in the vicinity of Lipoa Street adjacent to the Saint Theresa's Catholic Church. Here's their property here. It's located in the region of Central Kihei, and access off a private driveway from South Kihei Road. They purchased the property back in 2010 with the intent of operating a B&B here.

This is an aerial image of the area to give you a better sense of some of the surrounding land uses. The property and the surrounding areas are zoned A-1, Apartment District. And there are a number of existing multi family condominiums including the Waiohuli Beach Hale which is directly adjacent to the north, Kihei Gardens Estate also to the north, and the Kapulanikai which is to the south. And many of these condominium properties in the area were built a number of years ago and offer vacation condominium rentals. So that's the context that their property is located in.

This is a site plan of the property. So as you come in off the driveway, there are three structures on the property. The main dwelling here is a two-story single family home and that's the subject of the variance application today. Adjacent to that there's a carport, and finally, a second dwelling and garage. So that structure has a garage on the ground floor and a two-bedroom, two-bath dwelling on the second floor.

This is a photo taken from the driveway. The structure on the left in the background, that's the main dwelling. And then on the right, there's the garage with the second dwelling above it, and the carport located between the two. This here's a photo of the main dwelling from the makai side of the property looking towards the back of the house.

Okay, and here we have a floor plan of the first floor of the main dwelling. You can see that there are four guest bedrooms, and each of them have an attached kitchen, and sitting room, and a lanai.

And here in the middle, there's a common area and utility room. The second floor of the main dwelling is where Gary and Charlene reside. There are three bedrooms, three bathrooms and a main kitchen here. So in total, there are five kitchens in this single family dwelling: the main kitchen on the second floor, and three small – excuse me, four smaller kitchens on the first floor.

So Gary and Charlene propose to operate the Aloha Aku Inn Bed and Breakfast. And they would offer six of the total nine bedrooms on the property for overnight accommodations. And this would include the four bedrooms on the first floor that you saw on the floor plan earlier, and then two bedrooms, and the second dwelling above the garage. As I mentioned earlier, Gary and Charlene reside on the property and there's ample parking with eight parking stalls available. A County bed and breakfast permit application was submitted back in April of 2011, but that application's currently on hold pending the outcome of this variance. Operations of the B&B have not yet begun. It's noted that the previous owners of the property did operate short term rentals without a permit; however, Gary and Charlene wanted to insure that they're following the proper processes and applied for the B&B permit. And they did pass the County miscellaneous inspection back in August of 2011.

So as we discussed, the variance is regarding the definition of "dwelling unit" and "bed and breakfast home." So a "dwelling unit" means a room or group of rooms connected together constituting an independent housekeeping unit for a family and containing a single kitchen. So the "containing a single kitchen" is what we'll be talking about today.

And in regards to the "bed and breakfast home," the definition provides that it means the use in which overnight accommodations are provided to guests for compensation for periods of less than 180 days and no more than two detached single family dwelling units one of which is occupied by the owner/proprietor. Each bed and breakfast home shall include bedrooms, one kitchen, and living areas, and shall include no more than six bedrooms for short term rental. So as I mentioned there are two single family dwellings on the property. Gary and Charlene do live onsite. And they would offer six bedrooms for short term rental. So with the exception of the five kitchens in the main dwelling, the property does meet the definition of bed and breakfast home.

This here again is the floor plan of the first floor of the main dwelling showing the four kitchens that would need to be removed. And these kitchens are provided in conjunction with the guest bedrooms that would be offered for the guests of the B&B. And we'd just like to note that kitchens as a visitor amenity are unique from the typical single family kitchen use that you would think of. Breakfast will be served daily at the B&B. And guests usually spend the days out exploring and also like to try the different dining options on Maui. So the kitchens really would be used more on an occasional basis for cooking meals, or reheating or warming prepared foods. But it's not your conventional single family kitchen use where it would be used necessarily on a daily basis.

Despite this, the visitor industry has recognized the value of kitchens especially, the convenience for more cost-conscious travelers who are looking for an alternative to having to cook every – or dine out for every meal. And a number of newer accommodations on Maui have included kitchens. This includes the Honuakai, West End, Kaanapali Ocean Resort Villas in West Maui. And even the Courtyard Marriott property which recently opened near the airport has a number of suites with kitchens.

The zoning ordinance does provide a definition of "kitchen" which reads that it means a room or a portion thereof designed, arranged, intended, or used for cooking or otherwise making food ready for consumption, and within which there may be appliances for heating or cooking of food.

So during the process of preparing the B&B application, we consulted with the Department of Planning, and they noted that if the heating elements were removed from the four kitchens on the first floor, the main dwelling would not be – the kitchens would no longer meet that definition of "kitchen." So prior to April of 2011, Gary and Charlene removed the stoves and microwaves from the four kitchens. There were no ovens. So as a result of that action, there were no heating elements left in the kitchens on the first floor. However, subsequently, the Department amended its interpretation of kitchens, and now considers any room or portions thereof designed for cooking or preparing food to be a kitchen regardless of the presence of heating elements. So while the written definition of kitchen remains the same, the interpretation has changed, and as a result, Gary and Charlene still have five kitchens in their main dwelling. And in order to comply, they must substantially demolish the cabinets and counter tops, as well as downsize the refrigerators on the first floor. So as a result of this, the Department recommended that the applicant seek a variance to allow the existing kitchens to remain.

This is a photo of a typical kitchen found on the first floor. The four guest bedrooms have a similar layout so all of the kitchens would look something like this. You can see here in the cabinet there is an opening where the microwave used to be. That's been removed. Directly below it is where the stove top was, and that's also been removed and covered. Behind the guest bedroom here, you can see the door that goes from the kitchen into the guest bedroom.

So this variance has been analyzed with respect to the criteria for granting variances. First, whether there's a unique or unusual physical or geographical condition. This property, as I mentioned, is located in the A-1 Apartment District which permits both single family homes and multi family dwellings. So the five kitchens would be allowed if the structure were considered a multi family dwelling. However, it is a single family dwelling because it's connected – has connections throughout. But because of the five kitchens, it currently does not meet the definition of either a single family dwelling unit or a multi family dwelling unit. And in addition, because of the apartment zoning, single family homes are unique in this zoning district because they don't represent the highest and best use of the land given the apartment zoning. Typically, you would see condominiums or apartment buildings on land zoned – with this zoning designation. And also, because bed and breakfast homes are only allowed in single family dwellings, they wouldn't be found in – typically found in apartment districts, more commonly found in a single family residential neighborhoods. And this property, in particular, is surrounded by a number of other vacation condominium properties with the A-1 zoning all of which provide kitchens for their guests.

So another criteria is whether approval of the variance would alter the essential character of the neighborhood. And these kitchens are existing interior features. The previous owner, as I mentioned, did use the property for short term rental in the past with the four kitchens in place. And while these kitchens provide added convenience for guests, they don't change the proposed use of the property, and it wouldn't change the appearance of the property. So really, it wouldn't have an adverse impact on the neighborhood.

Compliance with the provisions prevent reasonable use. So in order to comply with the zoning

ordinance, the applicants would now have to remove the four kitchens from the main dwelling. If the home were not used for a B&B, and they were just using it for a single family home, removal of the kitchens would be difficult because the existing spacial configuration of the house doesn't practically allow for the kitchens to be converted to a typical single family use. If they were converted to bedrooms, they would limit the access to the existing bedrooms located behind the kitchens. Also, as I mentioned, this property was purchased with the specific intent of operating a B&B which is a reasonable use in a single family home. And in this unique circumstance, the lack of individual kitchens would create a competitive disadvantage for the Aloha Aku Inn B&B because of their A-1 zoning and the surrounding A-1 zoning and multi family condos in the area. So this could prevent Gary and Charlene's business from being a viable business.

And the final criteria is whether the hardships were caused by the applicant. So at the time that Gary and Charlene purchased this property, there were five kitchens existing in the main dwelling. In order to comply, or in an attempt to comply, they removed the four smaller – the heating elements from the four smaller kitchens, and passed the County miscellaneous inspection report in August of last year. However, the Planning Department's shift in interpretation of kitchens wasn't a hardship created by Gary and Charlene.

So just to summarize, this is a unique property and a unique structure in an apartment zoning district. And as Michele had pointed out earlier, there's no other option for allowing this structure to remain as-is. The variance process is really the only process that would allow this – the kitchens to remain. Approval of the variance would allow for individual kitchens to be offered as an amenity to the guests of the Aloha Aku Inn B&B, and allow for a consistent level of amenity compared to the surrounding condominium vacation rental properties. Retention of these existing kitchens would not adversely affect the neighborhood and the Aloha Aku Inn B&B has support of the community. So that concludes my presentation. Thank you very much for your time.

Chairman Tanaka: Thank you. Is there anyone in the public that wishes to testify on this matter? Please step forward. We'll limit you to three minutes. If you could state your name for the record?

Ms. Rhiannon Chandler: I'm so sorry. My nonprofit is in the County Fair Parade, and I'm like trying to just get down there. So thank you for letting me testify quickly. My name is Rhiannon Chandler. Thank you all for being here today. I serve on the Cultural Resources Commission. I know that this a big commitment so I appreciate you guys. I'm here today to request that you grant a variance for the permit to operate Aloha Aku Inn B&B.

I'm the executive director of the Community Work Day Program which is located in Puunene. We have been participating in the restoration project for that wetland at South Kihei Road. It's called Laie Wetland. We've been doing that for six years now. And that wetland borders this property. And so I have seen the neighbors. I have seen the previous owner of this property and I can't tell you how grateful I am to have Charlene and Gary there now. The change of ownership of that property took place a couple years ago and it has been a tremendous relief to our restoration project. The previous owner, he just, honestly, was really destructive to the wetland. Like, there was invasive plants that he was encouraging the growth of. The channel was getting clogged with mangrove. He liked it 'cause it was creating privacy for his guests. He planted like on purpose a bunch of water plants that weren't supposed to be in the wetland. They took over. We had to spend months cleaning it. I mean, this is a bigger deal than I could even say. So basically,

Charlene and Gary came in and they have been amazing. They came in like right around the time when we just started full on starting to really clean the wetland. And they just were like, how can we help you? I could tell just really genuinely that Charlene cares about just natural areas. I mean, business aside, whatever, I can tell that she just cares that it's like a wetland place. And just for all of you to know, wetlands are very, very important. They filter out storm water before it goes to our near shore areas. And we've lost most of our wetlands. So taking care of this one is very important. And having owners around them that care means more than I could even say. So I just wanted to say that they've been such a tremendous support. Literally, since they have been there, we've removed over 150,000 pounds of vegetation that's not supposed to be down there because of their help, because they allowed us access to parts of the wetland we couldn't get to because their driveway kinda borders it. And now they're nice, and the last person wouldn't let us go on the driveway and everything. So it's just really amazing. So I thank them. I thank you. I think it's like a win-win. It's so great. So thank you, guys. Have a great day.

Chairman Tanaka: Thank you very much. Board Members, any questions? No. We have— Sorry, I'm under the assumption this is all for the Aloha Aku Inn. Kimokea Kapahulehua?

Mr. Kimokea Kapahulehua: Aloha, Commissioners. My name is Kimokea Kapahulehua. I'm the president of ... Maui Fish Pond Restoration on Maui. Our fish pond is located down at the whale sanctuary. And we have three other fish ponds. And one of the fish ponds borderlines the applicant's home. And we had worked with Gary and Charlene in what we call ... a right-of-way of entry as a nonprofit to work in partnership with the Department of Land and Natural Resources. I'm not gonna repeat what Ray did, but we're part of the group that came in with the Department of Defense when we had the stimulus program. And we took that workers that work with us on the low tide at the pond. And with the high tide, then we moved to that project, and was able to remove all those evasive plants that she had. And as she said, the previous owner of this property was not really cooperative. In fact, the people we had with us is kind of a risk program. So when they were screaming at our workers in the stream, we had to gather them out of there so we don't get into any trouble. But when they purchased the property, Gary and Charlene, they're very, very cooperative in allowing us a right-of-way of entry to go through the property and cleaning up these evasive plants in the stream. And besides that, they also made a supplement donation to our fish pond in continuing the maintenance in that area. So every now and then, we would go down and look on the side of the hill making sure that this evasive lettuce does not grow again. And so that wetland is really important like Ray said for our storm drain. More importantly, keeping our evasive plants out of there so they wouldn't plug it up. I just wanna say that March 11, 2011, we had a tsunami that came in there, and again, we were very fortunate that we have these owners that would work with us in making sure that we were able to clean up the area to keep the wetland. So I, in summary, would like to tell you that we support this application and for you to grant them this permission. So thank you so much.

Chairman Tanaka: Thank you very much. Members, any questions? No. I apologize for this. I can read "Paul." I'm not sure what the last name is.

Mr. Paul Corarito: Corarito. Thank you having – letting me speak. My name is Paul Corarito. I'm the business manager at Saint Theresa Church representing the Roman Catholic Church in the State of Hawaii. And I'm going to read or speak on behalf of Pastor Monseigneur Terrence Watanabe who is out of town. I don't know if you have a copy of the letter or not, but both the

Roman Catholic Church and Pastor Terry, as well as the business manager, support this project, and hope that you would grant the variance to Aloha Aku Inn Bed and Breakfast.

Saint Theresa Church borders adjacent to the property. The rectory where the priests live are very close to the home. And they're adjacent to Charlene Schulenburg and Gary's property. And Char and Gary have proven to be very good and conscientious neighbors. Charlene is a returning resident having grown up here. And I'm speaking on behalf of Father Terry. He knows that it has been her dream to move back to her island home and run a bed and breakfast. And he can speak with direct experience how generous and how much Char and Gary have contributed to Maui's community. Saint Theresa Church has partnered with them many times. And they open their home and property for nonprofits such as fundraisers for Habitat for Humanity and United Way. They are on a number of boards and committees, and give generously of their time and resources as you already heard two other independent people say. And they intend to contribute that aloha spirit. They're upstanding citizens, strive to do the right thing, and share their good fortune including their home with the community. Father Terry has observed them making great improvements to the property and the surrounding area. In addition, they have volunteered their own time, monies, and efforts to help maintain not only the wetlands adjacent to their property, but also the DLNR property beach side of the structure. As far as their home itself, they have made minor changes to improve the look and feel of the property keeping in line with the entire neighborhood, the majority of which are condos, and do allow vacation rentals. Char and Gary have also been active in supporting Saint Theresa Church's Hale Kaukau Feeding Program, which serves the homeless, hungry, sick, disabled, elderly, and homebound. They're also a part of the neighborhood watch, which helps keep the homeless off the beaches and improves the reputation of the neighborhood. This helps us to maintain a neighborhood that supports tourism, creates a more friendly community. They also worked directly with DLNR and the Kihei Police Department to prevent crime, loitering, littering, and illegal camping.

Father Terry fully expected Char and Gary to have their bed and breakfast operating permit a short time after they have applied. However, they were gracious enough to comply with everything that was asked of them, and anything that would not adversely affect our neighborhood. Father Terry feels that the request is reasonably and completely in line with the area and zoning. Aloha Aku Inn would be a great addition to the area and would bring people from all over the world where they can experience a stress-free, non resort, family-style visit on Maui. Father Terry also serves on the board of Saint Anthony Jr. High School with Charlene. He has personally witnessed her commitment to her alma mater and the island she loves. She wants nothing more than to share her home and beautiful property with visitors. Please consider allowing the variance permit of Char and Gary to operate their B&B. Thank you very much.

Chairman Tanaka: Thank you. Board Members, any questions?

Mr. G. Clark Abbott: I have one question.

Mr. Corarito: Yes, sir.

Mr. Abbott: Not being familiar with it, and trying to keep the playing field level with the existing rental units available, is it at the same tax rate as the condominiums and the hotels are paying?

Mr. Corarito: Is their bed and breakfast property?

Mr. Abbott: Yes.

Mr. Corarito: I don't know that, sir.

Mr. Abbott: That's what I'm asking.

Ms. Richelle Thomson: Maybe the department might have an answer to that. We could look it up. It may just take me a few minutes.

Mr. Corarito: Any questions for myself?

Mr. Abbott: No.

Mr. Corarito: Okay, thank you very much.

Chairman Tanaka: Thank you. The last person on the list—Perry Artates.

Mr. Perry Artates: This is kind of a hard act to follow of what's been said before me because I sat on the Cultural Resources Commission, and I never heard of a family in this capacity engaging themselves in doing good things for the Cultural Resources Commission. But for the record, my name is Perry Artates with the Hawaii Operating Engineers Local Union No. 3, but I'm here testifying as an individual.

Well, I'm seeking your support in moving forward this variance. And basically, not only of what I heard as an element of surprise of what they've done for the community. It's being diligent in being in compliance to move forward in getting this property where it needs to be. It's been a long time. I jotted down some notes and as I listened, it seems like they're more givers than takers. And that's what I think we're bringing back to what we need to see in this County of Maui—not takers, but givers. They open their home to various nonprofit groups such as Habitat for Humanity. And they're board members of Habitat that are willing to volunteer their time just like you guys in putting roofs over families heads that are conditioned in the financial arena. What I mean to say is Charlene is a 1979 graduate of Saint Anthony High School. And that's proud to be, you know, an alumni for Saint Anthony High School. I think her dad has done his service being the general manager for Woolworth's. Does anybody know Woolworth's back then? That was the store at that time. But he set his precedence as a landmark of who he represented. And in conclusion, I don't have to really elaborate on anything that has already been said. But if we really look deep of what this family has done, I really appreciate what they have done for a lot of working families and families that do need homes. So I'm seeking your support in moving the project forward. And mahalo for your time in volunteering on this very vital Board. Mahalo. I'm open to any questions if there is any.

Chairman Tanaka: Thank you. Any questions? No. I see also we have another letter of support from Waiohuli Beach Hale from Mr. Kevin Costello who is the president of the AOA. Is there anyone else from the public who wishes to testify on this matter?

Mr. Jason Medeiros: My name is Jason Medeiros. I'm speaking as an individual. I'm a Kihei resident. And what you have here is a couple trying to comply with all the rules, not cutting corners, not taking shortcuts, not trying to circumvent the whole system. They are making an honest attempt to be good neighbors. I live in Kihei, you know. I think that neighbors that we've been getting in Kihei are strangers. They're not good neighbors. They're not out into the community and sharing their manao. Just found out she was a graduate from Saint Anthony. Maybe that's the reason—she's a Maui girl. I'm not gonna give any credit to Saint Anthony because I went to Baldwin and Lahainaluna. But that's— She's coming home. Let her come home. Okay? You have an opportunity to do something right that will not only help them, but to make a lot of people feel good inside, you know, that you guys helping too. Okay? Thank you.

Chairman Tanaka: Thank you. Any questions? Okay, there's — we've seen and heard overwhelming support for this. Trish, was there anything in opposition that came about?

Ms. Kapua`ala: The department received no letters of opposition.

Chairman Tanaka: Okay, thank you. Board Members, questions? Discussion? Oh, okay, yeah, we have an answer to the—

Ms. Thomson: Regarding Commissioner Abbott's question on the tax rate, currently, it's the homeowner, the homeowner tax rate. If they were to apply and receive a B&B permit, they'd be classified as commercialized residential. So it's a different tax class, if they follow through with the B&B permit.

Mr. Abbott: Thank you.

Ms. Ng: Can I also add to that? Gary and Charlene actually don't have a homeowner's exemption on the property right now, so they're paying their residential property tax. And in addition, because they're going through the B&B permit process, if approved, they would also pay the transient occupancy tax.

Mr. Abbott: Thank you.

Chairman Tanaka: Thank you. Any other questions, Board Members? If not, I'll entertain a motion.

Mr. Teddy Espeleta: I'd like to make a motion we allow the variance to pass.

Mr. Abbott: Second.

Chairman Tanaka: It has been moved and seconded. For our record, for documentation, I'd assume that you would say we would use the County's — sorry, the County's — the Planning Department's recommendation to our Board based on the applicant's application for the variance. And I would also assume that you wish to include the standard hold harmless agreement. Is that correct?

Mr. Abbott: Yes, absolutely.

Mr. Espeleta: Yes.

Chairman Tanaka: It has been moved and seconded that that— Yes, please.

Mr. Aaron Shinmoto: What about the insurance requirement?

Chairman Tanaka: Is there—?

Mr. Shinmoto: The insurance requirement.

Mr. Espeleta: Are they – what's their current insurance status?

Mr. Shinmoto: Typically, it's one million dollars. Are you waiving that or—?

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

Chairman Tanaka: Well, that is the question being raised. If you wish for the insurance requirement to be a part of this, please amend your motion and second.

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

Chairman Tanaka: Okay, so let's discuss this before we get to a vote. Teddy, your motion does not include – does include the standard hold harmless agreement without any additional insurance requirement, correct?

Mr. Espeleta: That's exactly what I – yeah.

Chairman Tanaka: Gene, your second is not – you will not second that without the additional insurance requirement? Is that correct?

Mr. Abbott: No, I would second. I agree with—

Chairman Tanaka: Okay. So it has been moved and seconded that we allow – we approve the variance application so stated without the additional insurance requirement.

Mr. Espeleta: Yeah.

Chairman Tanaka: Okay. Sorry, Trish, did you have any addition?

Ms. Kapua`ala: That's perfect.

Chairman Tanaka: You had the same question on insurance?

Ms. Kapua`ala: Yes. I would stress the condition of adding the hold harmless agreement, and the insurance requirement is completely up to you.

Chairman Tanaka: Okay. With that, I'll call for a vote. All those in favor, please say aye. Any

opposed?

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

VOTED: To approve the variance with the hold harmless agreement condition as discussed.

(Assenting: T. Espeleta, G. Abbott, B. Vadla, B. Santiago, R. Tanner.)

(Excused: R. Shimabuku, P. De Ponte, J. Haraguchi.)

Chairman Tanaka: **Motion passes. The variance is granted.** Thank you very much.

Ms. Ng: Thank you very much, Board Members. Planning Department, thank you.

Chairman Tanaka: Good luck to you. Okay, the next item on our agenda, Trisha?

- 2. SHELLY MADDIGAN and JOEL M. PARKER requesting a variance from Maui County Code §18.04.020(D) which states that parcels that have undergone a consolidation/resubdivision under this subsection shall not qualify for this exemption with respect to any subsequent consolidation/resubdivision for the Maddigan Subdivision (a.k.a. Haleakala Acres, DSA File No. 2.3153) located off of Haleakala Highway (Crater Road), Kula, Maui, Hawaii; TMK: (2) 2-3-013:032 and 054 (BVAV 20120006).**

Ms. Kapua'ala read the agenda item into the record and presented depictions of the subject property and surrounding area.

Ms. Kapua'ala: Thank you, Board Members. On behalf of the Department of Public Works, Development Services Administration, we have Ms. Lesli Otani, the civil engineer for the Subdivision Office that's available for questions. And I'd like to introduce the applicant at this time.

Ms. Shelly Maddigan: Good afternoon and thank you for listening to my request for this variance. I realize that why ever this law was put into place, there was reason for it. The reason that I am asking that it be waived under my circumstances, there are various reasons. My husband did this subdivision so that I – when I moved over from the Big Island that I would have orchard land incorporated into our home. Over the last few years, as you're all aware, our economy has changed radically. My husband was taken suddenly. And many circumstances leading up to the moment that he was taken from me unexpectedly, many things in our life financially, had changed. When he applied for this subdivision, we purchased this land, and with never intending to sell any of it. We preferred having the rural country feeling and that was his intent. And a lot of it was so that I would be more at home on Maui.

Over the last 12 years, I've become very embraced in the community and in my neighborhood where this property is. Over the last year, I have continued to take care of this land even though I'm not able to live there because of the situation that it's under. There is a trust that my husband left. And in order to fulfill the obligations of his trust for the bequeaths that he left, I have been forced to sell our home, which this acre and a half was consolidated into leaving me with an acre

of land that never really should have been subdivided because of the access problems. It's a very steep piece of land. It's a hillside. The only easement into this property is straight up hill. And you can't – you can get a car, you can get a truck, but if I ever wanna build or anyone ever wants to build on this acre, they're gonna have to take every piece of equipment up by hand because there are no trucks, there are no emergency vehicles, nothing could get to the top of this property the way it is.

I love this land. I love my location and my neighborhood. I believe I have the majority of my neighbors supporting that you allow me to put the boundaries back where they were originally. I'm not asking – I'm not subdividing the land ever again. I just want to be able to go home and build my home. And it's pretty impossible to do so on this acre as it is because of access. And – it's just impossible.

When this subdivision was done, it was done in just one of those, well, let's just split it off, and then if someday you need to sell it for an unexpected emergency, then you'll have that to do. Well, when my husband passed away, I put the acre on the market, and people did look at it. And they all said, we can't build here. There isn't anything we can do with this piece of land. It's just not as it is as one acre. It's not a usable piece of land. And so my request is not for making money on it. I just wanna go home. And as it is with this requirement of not being able to undo a subdivision, it's basically become a useless piece of land. It's basically sitting there as a useless, one acre piece because as I said, you can get a four-wheel drive car or truck up the driveway, but you cannot get building equipment, you cannot get emergency equipment. There is no way to develop that to build a home on it as it exists. Even if I were able to do that, I'm never going to be able to have enough space then to build my orchard, develop it. I've got trees in on the acre and a half that I am asking to put back together with the acre. And I have been continuing to keep the land clean and cleared. And I'm doing my duty as the caretaker.

The other requirements of the water tank for fire, which is a 21,000-gallon water tank, I'd be happy to put it, but I can't go to the ranch and tell them that I need land to put a water tank to the County. The County is the only one who can really step in to get a footprint to put a water tank in. My next door neighbor, Dudley DuPonte, I know he's requested to subdivide his two acres. And he's been told these are the same requirements, and – along with 2,400 feet of eight-inch water line, which would cost somewhere around the area of a million to a million and a half dollars.

I just want my home. And the only way I can build a home for myself, and grow food and trees, which is what I've done most of my adult life is to have this property cut back into one piece. I'm sorry. I just – It's my heart. It's my neighborhood. I'm not trying to make money off the situation, but I've been left with an impossible situation with trying to make this one acre piece work. It was never intended when the subdivision was done that it would ever come to a situation where it would be sold. That wasn't the intent. And now I'm just asking you to please allow me to have my property as it was originally. I'm not asking for anything. I don't need a water meter. There isn't anything I'm requesting of you other than to allow me to put my boundary line back where it was. And I guess that's all I can say.

Chairman Tanaka: Thank you. I am – I'm not seeing it, I guess. I see what's outlined as a 2.63-acre parcel. And it was – that 2.63 acres was subdivided into two pieces?

Ms. Maddigan: My husband consolidated. When this subdivision was done, he consolidated the 1.26 or 1.6 into our existing home which was on 1.78 acres. And that was so that there would be orchard land. And then he subdivided the one-acre parcel because his children are all born and raised here on Maui. And the intent was that if someday one of the kids wanted to, they could come and live or have that acre. It was never an intention to put that acre on the market and make money off of it. My husband and I both have been— I came from the Big Island. I have a macadamia orchard there. I came from living on 34 acres of land. And then I came to Maui and he knew that I needed trees and I needed some land. And so that's why he purchased the land next door and added it to our home because he never dreamed at any time that I would have to sell our home in order to cover bequeaths that he left in his will. But the market, the economy, did what it's done. He passed away in 2007. And the only option I have had is to sell everything that we've got in order to come up with enough money to pay off the debts and the bequeaths that were in his trust. And this acreage is all that's left. And I am begging that you allow me to put it back so that I can move home.

Chairman Tanaka: So—

Ms. Maddigan: I'm asking you to undo the . . . (inaudible) . . .

Chairman Tanaka: Yeah. Okay. I was just gonna ask Lesli a question. Trish, I was just gonna ask Lesli a question.

Ms. Maddigan: There are three houses, four houses, on Crater Road that border the entire 2.6 acres. So it runs along— So the driveway from Crater Road goes up between the houses and the access to the acre, then runs across the bottom behind my neighbor's houses. And it goes over to the acre. And then you have to go straight up to get to the top of the acre. Dudley DuPonte has a house right next door. His property borders the acre border. And his driveway isn't steep because he can go from the highway all the way up. I can't do that on this property. There's just no room. It goes—you pull in on the driveway and you go straight up. So it's very short. It's very steep. And there's no turning room. There's just no space. And unfortunately, my husband was able to make the subdivision with nobody looking at it to see if it made any sense. And it didn't matter to us because we really never intended to do anything with it other than keep it and keep it in the family. And as long as the piece that was consolidated into our home, as long as I have that piece, which is what I'm asking back for is just to put it back, then there is reasonable access to the top of the property. Without that, there is no way.

Chairman Tanaka: Yeah, sorry, if you wanna add to — yeah, if you can speak into a mic.? Identify yourself. Speak into a microphone and—

Mr. Steve Parker: My name is Steve Parker and I've been helping Shelly with this application. I'm a real estate appraiser and a broker. I lived in Kula for 40 years. The original two lots which we're talking about, the original house lot was — the boundary line was right here. Then they bought this two and a half acres. Then they did a boundary realignment. And they included this piece, this portion of this piece into this and then created this rather torturous access into this one acre piece. This is a one acre that's left over. These houses are fairly steep embankment below here. So anytime they're gonna do anything along in here and up into here is gonna be very difficult. Again, why they did it originally is probably questionable. It was done so Shelly could have this area to

plant trees on. So what Shelly's asking you to do is to undo this and put it back to where it was, so then she has a reasonable access into this piece of property. There is a— She's not asking for any water meters or anything of that sort. There is a meter for this and there's a meter for that. The ordinances that exist for a boundary realignment only allow you to do it once. And I have a real hard time with why that's there, why you can't do it more than once because she tried to do another one. She's not creating any more lots, but if she has to meet subdivision requirements, it's a 2,400-foot up to a water tank that would be up on here on ranch property. We'd have to require ranch property to put the water tank on, and 24 inches of eight-inch main. Dudley DuPont who lives right here is the engineer surveyor estimated the cost of a million-three. It can't be done. So the variance is really a request to – you know, your Window's undo button. Just wanna go back to where it was. And again, the ordinance say you can only do it once, the boundary realignment. Shelly's asking for a variance from that very specific rule.

Mr. Bart Santiago: As I understand, the lot below has been sold out?

Ms. Maddigan: The home.

Mr. Santiago: The home?

Ms. Maddigan: Yes.

Mr. Parker: Yeah, she had to sell this in order to – the main home was here.

Mr. Santiago: And the two lots above are still in . . . (inaudible) . . . ?

Mr. Parker: This is actually technically belonging to this. When we undo it, it'll go back into this. Okay? There are houses here, here, here, and here, and here. This is all Haleakala Ranch.

Mr. Santiago: When the lot with the house is sold, doesn't that lot above it go with it?

Mr. Parker: It technically went with this, but with an agreement that when we got – if we could undo it, it would go back into this. So there is an agreement with this owner of this property.

Ms. Maddigan: I was in the subdivision process when the house was sold. I was already in the subdivision process to move the line back.

Mr. Santiago: So there's a contingency on the sale of the house that if once you get the realignment, it would revert back to—?

Ms. Maddigan: Yeah.

Mr. Santiago: Okay. I see.

Ms. Lesli Otani: Steve?

Mr. Parker: Yes?

Ms. Otani: This is Lesli Otani with the Department of Public Works representing Director Goode. I'm sorry. Did you actually transfer the land or is it an agreement of sale?

Mr. Parker: It's under a purchase money mortgage.

Ms. Otani: Okay, so it hasn't been transferred?

Mr. Parker: Well, technically, a purchase money mortgage, it's in her name.

Ms. Otani: In whose name? In this trust or someone else bought it?

Mr. Parker: Someone else bought it. She had to sell it to satisfy the trust.

Ms. Otani: So if that's the case, the subdivision has to reflect that. We need new title documents and such. Right now, we have it as only the trust being the owner. And they purchased existing Lot B-1 or—?

Mr. Parker: Yes, no, the existing Lot B-1.

Ms. Otani: They purchased the whole thing?

Mr. Parker: The whole thing. This is B-1, correct? Yeah.

Chairman Tanaka: Okay, my question would be, how does what – the information just shared with us now, how does that affect the Department of Public Works' view of it? Legally, does it affect the fact that – I mean, if we grant the variance, are we granting it to the wrong person or— ? Please help. Lesli, I guess my question – well, before you brought that up was, please enlighten us on the logic behind subdividing and consolidating only once.

Ms. Otani: Okay. In 1994, there was an ordinance done to the Maui County Code, Title 18 Subdivisions. It's referred to as Ordinance 2372. And in the code, there's a provision where you can consolidate two or more lots and resubdivide into the same or fewer. So you can't create additional lots. And you're exempt from Title 18.16 which are the design requirements, and 18.20 which are the construction requirements. So in the case of Public Works, if it falls under Ordinance 2372, I wouldn't add on the requirements for adjacent roadway improvements, things of that nature. Typically, in those subdivisions, we send the subdivisions to the Department of Planning, for example, to check for zoning because they still have to comply, but we don't send it to the Fire Department, Water Department, those types of reviewing agencies. In the code it states that if you do a consolidation and resubdivision under that provision, it's a one time only. Because it is a favorable process where the applicant doesn't have to comply with things that would normally be required in Title 18, it's a one time only. And when this subdivision that was previously done in 2003, the final approval letter and the plat clearly referred to that code provision. If someone wants to come in and either subdivide to create additional lots, move a property line, absolve a property line, anything of that nature, they can still come into our office and apply for a subdivision, but they would go through the normal process. So at this time, what we're processing for Subdivision File No. 2.3153 is a normal subdivision, a regular subdivision. And when we issue the preliminary approval letter besides, you know, our requirements, there are also requirements from the other

reviewing agencies such as Water, and Fire, and Maui Electric, everyone else. So my understanding is that they're requesting a variance from the one time only provision so that they could try to utilize the favorable Ordinance 2372 for a second time.

Chairman Tanaka: Thank you. Okay. So this Board will have to look– Well, Board Members, do you understand what Lesli just explained to us? So there is definite logic to it. We, as a Board, would have to judge and that's our purpose here whether we would grant a variance from the code. Board Members, any questions for the applicant or Public Works?

Ms. Bernice Vadla: I have a question. Going back to the two lots that are now subdivided, B and A, correct? Lot 23? So what we're looking at is bringing those back together as one lot. And this house is already sold, correct?

Ms. Maddigan: Yes.

Ms. Vadla: And so the owner of this house would also, I mean, be part owner of the whole thing?

Ms. Maddigan: No, no. We have upon the sale of the house, I marketed and sold the house as the house and 1.87 or 1.78 acres, not including the property that we're talking about. And she purchased it with that understanding because I was already in the process of the subdivision. My application had been in and we were working on that. And so she accepted that with the understanding that I was working on trying to put that land back together. And so the woman who purchased it agreed to allowing me to see if I can get this done.

Ms. Vadla: So what does that do tax-wise and stuff?

Ms. Maddigan: I have to – if you will not allow me to put the land back together, then I will forever as long as I own the acre or the trust owns the acre, we will forever have to be partners with the lady that bought the house and pay those taxes on that property.

Mr. Parker: Let me address that since I was the agent involved in it. Shelly had to sell for the heirs and– So there was no let's wait to see. It should've been let's wait and get it done and then sell it. But we didn't – she didn't have the luxury. She had a lot of heirs demanding the money now. We don't care what you sell it at in the down market. So she did sell it with the caveat that we're gonna attempt to move the line back to where it is, and the person purchased it based on the value of the 1.75 acres and the house. Does that clarify everything?

Ms. Thomson: Can I ask a question? Can you kind of give us an idea of what the sale is? Is it an agreement of sale? Or is it a done deal?

Mr. Parker: It's a purchase money mortgage, so title has passed.

Chairman Tanaka: You know what? We'll take ten minutes for a consultation with staff. Ten minutes.

(A recess was then taken at 2:45 p.m. and the meeting reconvened at 2:49 p.m.)

Chairman Tanaka: We're back in session. The – we have the – it is necessary for us to defer this item, it sounds, because of the specific owners involved, because of the process of transfer in title. Do you wanna explain to–?

Ms. Thomson: There are two different things going on. One is the processing of the subdivision application. Staff is recommending that we defer the request for a variance until the subdivision application is updated with the new owners, because it's going to be, you know, a joint application. And they may also want to join with you in the request for the variance. So what I'm going to recommend is that we defer this request for a variance until staff has the time to work with you to update your subdivision application.

Chairman Tanaka: Yeah, just – I mean, if we were to take action and approve your variance, and through the process where the additional names should be there and are not there, it would kill our action. So we don't wanna move forward and take action, and later on have to say we were not in the position to do so. So that's why we'd like to defer this. Not "like" to, we "need" to defer this item to make sure that all necessary – all parties–

Ms. Maddigan: May I ask a question?

Chairman Tanaka: Yes.

Ms. Maddigan: Does that mean I'm back at square one, and I have to go through the whole application again, and all of the fees, and everything else?

Chairman Tanaka: No. Trish will–

Ms. Kapua`ala: Thank you. From a procedural standpoint, we can just defer the action on this application to a date in time in the future, and we could just pick up where we left off. So there'll be no future notifications or publishing in the newspaper. You've satisfied all your requirements to get to this point, so we would just need a date from you today of when you'd be ready to come back to the Board. And you can consult with Lesli as to a good time frame, how long, what she needs to get done, you know, how long that would take.

What we would require procedurally for the variance process is that the owner of Parcel 54 be either a co-applicant, so she signs your application, and provides a copy of her deed, or authorize you to be – represent her in this application. And we would still need a copy of her deed. So that's for the variance procedure. And you can work with Lesli to update your subdivision application. When that is done, we'd be happy to help you move this variance process forward.

Ms. Maddigan: Alright, so I understand, I need to get a letter, a notarized letter, from the lady that bought the house that she approves of this?

Ms. Kapua`ala: That she's authorizing this variance request and provide a copy of her deed.

Ms. Maddigan: And once I bring that to you then we move forward again?

Ms. Kapua`ala: Then I can move forward, but we will do this in consultation with DSA. So when

she's satisfied that the subdivision application can also be moved forward, then we'll go ahead and schedule your public hearing. But at this time, we'd like to at least schedule it far enough in advance that you have enough time to get all this done.

Ms. Maddigan: I can have it done tomorrow.

Ms. Kapua`ala: Lesli, how long will it take?

Ms. Otani: For our office, we need the standard proper title report and then the authorization on our standard form.

Mr. Parker: I understand what you need and we'll comply with it. The contract of sale also specifies that this owner agreed to this new boundary realignment. So we can provide you with the contractual—

Ms. Otani: For me, I can't take a private agreement between two parties. We need a title report and then a signature on our standard form.

Mr. Parker: Sure. Okay. We can comply with that.

Chairman Tanaka: Thank you. Okay, although we are – well, this item shall be deferred. Sorry.

Mr. Francis Cerizo: Well, I just had a – we have someone from the public who'd like to make some testimony on this item, so if you want to take it now or at the next meeting.

Chairman Tanaka: Okay. You are here to testify on this matter. Please step forward, sign in, state your name for the record, and we'll give you three minutes.

Mr. Dennis Morihiro: My name is Dennis Morihiro. Members of the Maui County Planning Department, Members of the Board of Variances and Appeals, I'm Dennis Morihiro. I'm here today to speak against the Maddigan/Parker application for a variance from Maui County Code 18.04.020(D). I own property adjacent to Mrs. Maddigan, Lot 31 on the map provided in the variance application. I have owned this land for 38 years. I'm a native of Maui. Raised my family here and spent most of my life here. I stand to be impacted by the results of the hearing so thank you for this opportunity to speak.

First, I want to preface my comment by saying that the notification packet about the variance was sent to me with what appears to be the wrong tax map sent by Steve Parker, Classic Maui Properties, July 25th 2012. Only yesterday did I learn from the Planning Department that there is another tax key, tax map. The map that was sent to me is different than what was shown on the viewer. This is confusing because I can't tell which map I should be referring to. Nevertheless, it is clear that the applicant subdivided or consolidated the property once previously. The County code is very clear that parcels that have undergone consolidation or resubdivision are not eligible, and are ineligible for a second chance to change boundaries, Maui County 18.04.020, Section D. My understanding of this code is that the County grants the landowner a one-time opportunity to change boundaries. This is a rule that is clearly stated and the landowner is responsible for abiding by this rule. Therefore, granting the applicant's request for a variance from this rule so that the lot

can be subdivided a second time is setting a precedence for everyone else. Also, the map originally provided to me by Steve Parker of Classic Maui Properties used in this variance application is the way the property was divided in the first place. So I'm confused about the applicant's request to just put it back the way it was. The way it was when? So I really feel I need more time to understand this map. But I was told by the Planning Department that this hearing could not be postponed. Therefore, I'm asking the Board to deny the applicant's request for this variance.

Two, if the applicant is seeking special consideration for special geographic or physical circumstances or conditions affecting the property, the applicant's property is not different and is the same as all the property in the immediate area. There appears to be no apparent circumstances or conditions affecting the property or issues preventing the applicant from enjoying the benefits of the land as currently configured. The petitioner has already had her land divided and is now asking permission to put it back as it was before. So in my view just because the applicant has changed her mind is not grounds for granting this variance.

Third, what protection will the variance have in place to protect neighbors, and owners, and County of Maui taxpayers with liability issues as a result of granting this variance? If there were to be liability events as a result of this variance, what protection will the County of Maui have as well as neighboring landowners? Whose responsibility will it be for any maintenance, or repair work, or any other service within the limits of this variance? As a taxpayer I'm very concerned that the County be protected from liability and as a neighbor landowner. I'm very concerned that my rights be protected especially, if this variance proceeds based on apparent erroneous and conflicting information from the two maps.

The requirement of such a variance should not be detrimental to the public health, safety, or welfare injurious to other properties in the vicinity, a requirement that I just don't see addressed in this variance application. I read the variance application document provided to me, made numerous phone calls to the Planning Department, took notes and studied the two maps. I did my best to comprehend the request and I thought I would get answers. But in the end, I found that I have many more questions than answers.

And in closing, I have to say that I'm concerned that the applicant believes that she can use phrases like "salvage my homestead," and "loss my spouse suddenly," and the "economy crashing has left her with only two acres of land." However, the tax map key which now I find out is different from what I thought it was because I thought she had 4.348 acres, now she's saying it's one acre. So again, there's a discrepancy which I don't understand because of the different maps I'm looking at.

I'd like to say that I'm sorry for the applicant's hardship, but we all have hardship and the down turning economy has hit us all. In summary, I oppose this variance for these reasons. The applicant has already had the one time opportunity to subdivide the land that she has already taken advantage of. Rules are rules, and granting another chance can set unwanted precedence on Maui. There are no apparent special geographic or physical circumstances or conditions affecting the property. The applicant's property is the same as all properties in the immediate area, including mine. How can I be assured that we'll not be held responsible should unforeseen liabilities occur if I were to support this variance? As a taxpayer, what protection would be provided to the County

of Maui from liability if someone in the future were to sue the County over an accident relating to this variance? Applications for variance containing erroneous information should be rejected and the request denied. Thank you.

Chairman Tanaka: Thank you. Board Members, any questions for the testifier? Okay, is there anybody else who wishes to testify on this matter? Please step forward, sign in, identify yourself.

Ms. Michele Parker: Good afternoon. My name is Michele Parker. I'm Steve Parker's wife and I'm here as a public citizen and neighbor. I live in Kula and a friend of Ms. Maddigan's. I really didn't think that I would be up here to testify today, but I'm doing so because I visited her property a number of times. I visited the property before she sold it and after. And I was able to drive up her original driveway many times. And Mr. Morihiro did not mention exactly where his property was and it was directly adjacent to the original driveway on the Ulupalakua side. And over the years, she's had difficult times with her neighbor, which Mr. Morihiro did not mention. And I don't say this to create a situation to further exacerbate what is already a difficult situation between them, but his trees, he did not take care of his property. It was overgrown. She had to expend a lot of money to repair her driveway because his trees created a hazard in her driveway. He had many trees growing over and falling down onto her property. And I just want to – I wish you would've asked some questions of him as to where his property is. He's been neglecting it for many years, and that's all I have to say. If you have any questions for me?

Chairman Tanaka: Board Members, any questions? None. Thank you.

Ms. Parker: Thank you.

Chairman Tanaka: Is there anyone else who wishes to testify on this matter?

Ms. Courtney Shuster: I'm Courtney Shuster. I am Dennis Morihiro's daughter. And I'm gonna go ahead and testify today, but I'll probably come back again when this gets heard again. So I'd just like to say one thing is that I did make copies of the map that she had sent to us and also the current 2003 map. And I tried to outline what she's asking, and I guess the discrepancy is that it sounds like what I thought she wanted and what I was hearing what she wanted – so I tried to outline them and put them in color so it makes it a little bit easier to understand.

But I'd just like to also strike the last testifier's information because although my dad does neighbor Maddigan's property, after we did – it was originally a Christmas tree farm, and my dad ended up – she took us to court and we did end up having to fix her driveway. And we ended up cutting down all of the trees on the property. And after we did all of that, she still complains now that there is noise, and traffic, and it destroyed the view and everything from her house. So I don't think it's right to take any of that into consideration in this variance.

But as for this variance, I, too, like my father feels that she used her one-time exemption, and there's limits, and there's restrictions, and she was well aware of it when she did it the first time. So I think on that alone she should be passed up for this variance. But I also think that no matter how high or low the cost of the requirements from the various agencies, it shouldn't weigh on approving this variance because the cost – I think the cost can be addressed – it's gonna have to be addressed either by herself or her new owner. Somebody is gonna have to take the burden

eventually for it.

And I also want to state that what I felt that all the parties weren't properly informed. The letter that she sent out and the map that went out was a little bit – it didn't answer everybody's questions. It didn't really inform everybody completely. And I think today everybody was a little bit – you know, it's just a little lost.

And lastly, I put in that on her request, she says that she wants to salvage her home and that the sudden death of her husband, but her husband actually died five and a half years ago. And it's also on public record that she sold this house, and it is actually in – the deed is actually in somebody else's name already. So I don't feel that – I mean, it already sold and then she applied for this variance. It wasn't that she applied for this variance first, and then the house was – you know, the deed and everything transferred over. So this actually – she applied – the deed was transferred at the end of 2011, and the actual – this paperwork that we were receiving and the letters actually happened in June of this year. So I think on that – some of those technicalities alone, her variance should not be granted. Thank you.

Chairman Tanaka: Thank you. Board Members, do you have any questions for our testifier?

Ms. Vadla: Can we go over those maps a little bit one more time?

Chairman Tanaka: Now, what you are looking at here is not– It's not a submitted– So if you have any questions, you can ask the question directly to–

Ms. Maddigan: If I may, sir? I'd just like to clarify that my application for subdivision, because that's what I was told I had to apply for before I could ever even come and talk to you was submitted long before the house was sold. It – my application for the variance came up after because of the requirements of the subdivision of the 21,000-gallon water tank and the 2,400 feet of water line which is what the subdivision required. And so that is when I was then advised by the Water Department and Public Works that I needed to come and apply to you for this variance. It – I didn't do anything except follow all of the rules and regulations that you put before me.

Chairman Tanaka: Thank you. Lesli, can you clear up something just so that I'm sure of where– Now, the subdivision, there was final subdivision approval for what is called Lot B-1-A and 23-A-1-A? So that subdivision does exist?

Ms. Otani: This is the map that was done and I think it was approved in 2003. And I think that might be on the exhibit that the woman just gave. I think it's one of her maps. But back prior to this receiving final subdivision approval, there was one lot here where there's – there's like a dotted line. It's faint. But that was Lot B. And this lot up here was Lot 23-A. So back before 2003, there were two lots: one lot here with the house and one lot above. And so this was a consolidation of 23-A and Lot B. So 23-A and Lot B into one lot and resubdivision into 23-A-1 and B-1. So then B-1 becomes this lot here which is the larger area around the house. And 23-A-1 is this piece that's one acre that goes from here down to there. So this is what is existing today. This is what the County of Maui recognizes as two legal lots. So currently, the subdivision they are proposing under our regular process was to draw the line down back here, and that's the subdivision pending which would create Lot B-1-A, and the remaining portion above that is supposed to be vacant would be

23-A-1-A.

Chairman Tanaka: Now, as far as Public Works' requirements, you described the logic behind a one time consolidation and/or subdivision would be the requirements that come with a subdivision. Please explain that. I wanna make sure if a resubdivision is applied for, that will trigger additional requirements that have not – that would trigger additional requirements. Is that correct?

Ms. Otani: Okay, so the way Section 18.04.020 of the Maui County Code reads when going through this Ordinance 23 Subdivision, compliance is required with Title 19 of the Zoning, 18.08 and 18.12 which are the plat maps that have to be submitted, and 18.24 which is the submittal's application fees. What is not included in that list of requirements is 18.16 and 18.20 which are the roadway and those types of requirements. So if you go under Ordinance 23.72, then you're exempt. If you go through the regular process, under Section 18.20 of Existing Streets, if you're consolidating and resubdividing into less than three lots, and there's provisions for churches and such, too, we actually don't have to require adjacent roadway improvements. So for ours, we didn't put that on for adjacent roadway improvements, but we send it to Water, Fire, Maui Electric, all those agencies so under their code, they would require whatever it is that they require. So you can still subdivide, there's not a prohibition on ever subdividing again. It's just that this Ordinance 2372 is one time only for consolidations and resubdivisions.

Chairman Tanaka: Thank you. Yeah, I think that's clear now. Board Members, any other questions? Now, at this time, we'll backtrack before we started public testimony. Sorry, is there anybody else who wishes to testify on this matter? Seeing none, public testimony is now closed.

Okay, the action today would be of a deferral because of the fact that there is additional – legally, anyway, there's additional title holders that must be either a portion of the application or a part to, so we will get that cleared up as well as we move forward. So pretty much at this point, we're just pressing the pause button until it is clear. Any other thoughts? Any other questions, Board Members?

Mr. Abbott: So you have a deadline or is there a time frame we should be working toward to – at?

Chairman Tanaka: Trish, can you–?

Ms. Kapua`ala: I would like to schedule that hearing for the next hearing today, but I'd also like to bring to the Board's attention, and Corp. Counsel can help me with this, the Board's Rules, 12-801-22(D), which says:

The Board shall render a decision on a variance within 60 days from the close of the public hearing on such variance otherwise the variance shall be deemed granted.
The foregoing shall not apply.

And Subsection 2 of that section – I'm sorry, Subsection 3 says that:

This rule shall be waived when review of the variance application has been delayed or deferred due to inadequate information concerning the nature, scope, or description of the subject matter of the variance application or due to a revision of

the variance application.

So I wanted to state that in the record that the applicant be mindful of that as well as the Board that as far as the granting of this variance, I'm not too sure if you wanna close this public hearing, but we definitely will be deferring it, and there will be no time constrictions or deadlines that will be applying to this deferral.

(Mr. Tanner then left the meeting at 3:17 p.m.)

And as far as the rescheduling of this hearing, the soonest we could possibly do it would be October 25th according to my schedule, but I would need some time to consult with the Board's secretary. Possibly, November?

Chairman Tanaka: Okay, my question to the applicant would be, would you be willing with what Trisha just said? By our rules, we have a 60-day clock running. Would you be willing to waive that?

Ms. Maddigan: I'm willing to come tomorrow with the information that you need.

Chairman Tanaka: If you would be – well, agree to that, to waiving that so that we can schedule it the soonest convenient time?

Ms. Maddigan: Sure. I thank you all very much for listening to me and accepting my application.

Ms. Kapua`ala: October 25th would be the soonest that we can accommodate your next public hearing date.

Ms. Maddigan: Okay.

Chairman Tanaka: Trish, you'll make sure that you're in communication with the applicant to make sure that anything that needs to be submitted in a timely manner?

Ms. Kapua`ala: Yes, sir.

Chairman Tanaka: Trish will help you out along the way. So at this point, we'll render this matter deferred to October 25th.

Ms. Maddigan: Thank you very much.

Chairman Tanaka: Thank you. The next item on our agenda, Item C, Appeals. Trish?

C. APPEALS

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

- a. FREDRICK HONIG appealing the Planning Director's determination that the following activities are not permitted within the County's**

Agricultural District for the Spirit of Aloha Botanical Garden located at 800 Haumana Road, Haiku, Maui, Hawaii; TMK (2) 2-8-004:032: (1) Classes, demonstrations, conferences, and seminars on plant-based nutrition, health and well-being (e.g., yoga, meditation, etc.); (2) Organic gardening, and environmental sustainability; holistic spiritual ceremonies (e.g., baptisms, bar mitzvahs, confirmations, weddings, anniversaries, initiations, etc.); (3) Day retreats (e.g., club gatherings; organization planning sessions; family reunions, etc.); (4) Food service (catered or prepared on the premises) offered in conjunction with garden activities; and (5) Retail sale of educational material related to plant based nutrition, health and well being (e.g., yoga, meditation, etc.), organic gardening, and environmental sustainability. (BVAA 20120007)

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

Chairman Tanaka: Okay, thank you. It is – we are here to determine a hearings officer for this matter. Is that correct?

Mr. Tom Kolbe: That's correct. May I make an appearance? Tom Kolbe on behalf of the County of Maui. . . . (inaudible) . . .

Mr. Abbott: Use the mic.

Mr. Kolbe: Sorry about that.

Mr. Abbott: Start all over.

Mr. Kolbe: Sure. Tom Kolbe on behalf of the County of Maui. Mr. Honig is also present to my right. This is to determine who the hearings officer is going to be, and I don't know if Mr. Honig is of an opinion on whether he wants the Board to determine it, or whether or not we wanna choose somebody from the list.

Chairman Tanaka: Okay. I have here – oh, well, we have in front of us a letter from Mr. Honig giving us a list of five people that he would approve of as – standing in as the hearings officer. Mr. Kolbe, do you have that letter as well?

Mr. Kolbe: I don't believe I do. Yes, I do. It's just been provided to me.

Chairman Tanaka: Okay. So let's see, we have our typical – and I shouldn't say a "typical" list, a list of names who the Planning Department, I guess, their approved hearings officers' list. I see off the top, Judge McConnell.

Mr. Kolbe: I could agree to Judge McConnell. He's on the approved list, correct?

Chairman Tanaka: Yes.

Mr. Kolbe: And I think that that's – according to this letter, that's Mr. Honig's preferred choice also. That's fine.

There's one other issue that I'd just like to raise with the Board. I don't know what your opinion is. The appeal appears to be of a decision from April of this year—a letter from Mr. Spence. I believe that there may be an issue that this court doesn't have jurisdiction because it's not timely filed. I think it might be prudent before we get into having to retain Mr. McConnell to make a determination of whether or not this Board even has jurisdiction over this matter. So if possible, I'd like to file a motion on this for this Board to hear prior to choosing and appointing Mr. McConnell as the hearings officer. And I can have the motion probably completed in two weeks.

Chairman Tanaka: Yeah, because our Corp. Counsel has advised me before we started the potential question of jurisdiction. Procedurally, would that be okay to proceed that way and we'd be able to wait and address a motion from Mr. Kolbe?

Ms. Thomson: You can set a prehearing motion, a hearing on Tom's motion for determining jurisdiction as a threshold issue prior to selecting the hearings officer.

Chairman Tanaka: As far as timing procedures of the BVA, my – it's on our agenda saying that we are determining a hearings officer, but now we're talking about – we're gonna question if we have jurisdiction before we even do that. So from what Mr. Kolbe described is that for our procedures, is that – it's okay to do it, proceed that way?

Ms. Thomson: Procedurally, you would defer this matter.

Chairman Tanaka: Okay, Mr. Honig, you're here. You've heard what Mr. Kolbe has just stated. Please step forward. Identify yourself, please.

Mr. Frederick Honig: My name is Frederick Honig. I'm the director of the Spirit of Aloha Botanical Gardens at 800 Haumana Road, Haiku, Hawaii.

Chairman Tanaka: Okay. There is a question whether this Board even has jurisdiction over the appeal. So what we would like to do would be to hear and make a determination ourselves before we actually go to the hearings officer. Would that be agreeable with you?

Mr. Honig: It's not preferable to me because we are a struggling nonprofit organization that has been serving the community for 19 years. And we are doing the same thing that all botanical gardens in the State do, and no one else is being hassled or having any problems. And I have used up my family's funds to move this forward, and my only intentions are to pass this on to the next generation as a botanical garden to be able to sustain it. I have no— I am not developing it. You know, the entire amount of square footage that we have on the property of buildings is less than 1,700 square foot. We don't have any mega mansions. And we are – we are doing programs for school kids to help them to learn Hawaiian, plant-based nutrition. Hui Malama is coming this year with their students to do programs and other schools are also interested. The Farmers' Union is interested in having their students also come there for teaching and educational programs. And so it does not seem fair to us that we should be held with our hands tied for indefinite amounts of time when we went to Trisha within the timeline when we were allowed to ask for a variance. We

went there. They took our \$500 and said, yes, they'll schedule us for this meeting. And I spent the whole day coming here when I also have important work that we need to do just in sustaining our organization. So for us to get lost into the cobwebs of bureaucracy is not what we would prefer. You know, we came here with the best of intentions to move forward with this, and we'd be so grateful that you look at it. It's not just for ourselves. This is for all botanical gardens on Maui. Like are you going to say that botanical gardens could have no educational programs? That we're not allowed to have students come to our 12 gardens and learn how to plant taro at our ancient taro fields? Learn how to pick ulu and cook ulu? And learn how to be part of the Hawaiian heritage? And so it's very important that botanical gardens, and not just us, have an ability to serve the community and to do what we're designed to do. So we would be so grateful if Judge McConnell would quickly be able to hear our concerns and be able to resolve these issues.

Chairman Tanaka: Okay. Thank you. You know, when it comes to matters of jurisdiction, for me personally, it should be determined by a Judge or Corp. Counsel. It should be— That's my feeling, personally. What has just been suggested to me and earlier was that possibly by going ahead and going through a hearings officer to first determine jurisdiction, and then if so, move forward. Is that—?

Ms. Thomson: The BVA can itself be the hearings officer for a limited purpose of determining jurisdiction, if you would like to take that on yourselves, or one or more of you being the hearings officer, or an independent hearings officer from the list. And you can so instruct that hearings officer to determine that threshold issue.

Chairman Tanaka: Members, you understand what our question is, then? Again, my personal feeling is that I would rather Judge McConnell say yes or no rather than—

Mr. Santiago: So we make a motion to elect the hearings officer at this point?

Chairman Tanaka: Yeah, although Mr. Kolbe wanted to—

Mr. Kolbe: I can weigh in. That's fine with me if you would like Judge McConnell to give you the jurisdictional determination also. I have no objections.

Mr. Honig: But then I'd like to ask that if one were speaking with Judge McConnell that he says yes that we do have it that we'd be able to proceed with him, and not that — adds a whole layer of complexity into us resolving the issue. Is that possible to word it that if he says yes, it's within the jurisdiction, then we can proceed with him to actually give our case?

Chairman Tanaka: Mr. Kolbe, is that possible? It's potentially two separate items that needs a decision.

Mr. Kolbe: I can prepare for both of them. I can prepare the motion for jurisdiction. But I will say this, it appears that I'm gonna be in a trial that's firm set that may take approximately, six weeks starting the second week of October. So realistically, if that is the case, then I don't know that I can accommodate everything two weeks from now. That's why I was trying to see whether or not we can make the jurisdictional determination first. I suggest this, if the court wants to — the Board wants to appoint Mr. McConnell as the hearings officer in this matter, I don't have any problem with him determining jurisdiction, and perhaps between Mr. Honig and I, we can meet with Mr.

McConnell and figure out when and how we'll get these issues resolved.

Chairman Tanaka: Yes, that is my hope, our hope. That is our assumption that it will happen that way.

Mr. Kolbe: Okay. I'd just like – unfortunately, can't commit to any specific timeframe at this time, but if Mr. – if Judge McConnell is gonna be taking this part over, then I guess we can sort that out.

Chairman Tanaka: Okay. Mr. Honig, is that satisfactory to you?

Mr. Honig: If I'm understanding correctly, may I just repeat what I understand? What I understand Mr. Kolbe to say is that we could meet with Judge McConnell, and if he chooses – if he believes that this is within the jurisdiction of his ability, then we can resolve all of this within just about a week, and come back to this Board for their final approval? Is that what you're saying?

Mr. Kolbe: No, I don't think Judge McConnell is gonna be able to accommodate us in a week.

Mr. Honig: No, within weeks. I mean, it's not – we're not talking about months because the thing is, is that we cannot, as an organization, go in limbo. And so we want to resolve this as quickly as possible. So that's what we're asking.

Mr. Kapua`ala: Excuse me, Mr. Chair. As far as contracting Mr. McConnell within a few weeks, that's just impossible for the Department to do. We need to set up a contract that's processed through the Department of Corp. Counsel, the Administrative Section, and then the Department of Finance. It's executed by the Mayor. The fastest way to have a hearing is with the Board as the hearings officer.

Mr. Honig: Can the Board become the hearings – do you mean that these people become the hearings officer?

Ms. Kapua`ala: Well, if you wanna request that, the Board still would have to appoint itself as the hearings officer. So ultimately, it's their decision.

Mr. Honig: Okay. Well, I would – if you would be wanting to do that, I'd be honored to present before you.

Chairman Tanaka: Board Members, your feelings? Now, realize that there's a panel of five of us sitting before you now. Board Members, I guess chime in on this.

Mr. Abbott: My only comment was – is if we're chosen as a hearing officer, are all – would you try for a quorum hearing officer so you wouldn't have to go back again to the Board as a whole? Or do you want two or three people to hear it and then go back to the Board which is taking more time and more time and more time? Are we saving any time by appointing the Board as a hearing officer?

Chairman Tanaka: Yeah, I mean, really, if the case was presented to an entire Board of five to nine Members, the Board could actually take action. So not necessarily be a hearings officer, but

actually hear the case. Is that correct?

Ms. Thomson: I would have to check on that, actually, unless Trish knows the answer.

Mr. Abbott: I believe that's what we did with the Valley Isle Swim Club. We appointed ourselves as – five of us, and ended up only four of us, and we had to go to the Board anyway for a decision.

Ms. Kapua`ala: The Board can appoint itself as a Board as the hearings officer or one individual as a hearings officer. If we're on a regularly scheduled meeting date, I think having a quorum is the goal, something that you agree to when you come on Board. If it's a special meeting day to have the hearing, I think that's when we run into problems because it's an additional commitment. So again, the Board can be appointed as a whole, and the quorum would suffice for any decision, or it could be a group, or one individual appointed.

Chairman Tanaka: Thanks, Trish. If there was no question regarding jurisdiction, again, I'll backtrack to what I stated that when it comes to whether the Board even has jurisdiction over this appeal that is what I'll lean towards.

Mr. Abbott: I think in the name of prudence and caution, this should be seen or heard by a judge, or a professional legal hearing officer.

Mr. Santiago: I concur.

Chairman Tanaka: Okay, gentlemen, it seems as though anyway–

Mr. Espeleta: I agree.

Chairman Tanaka: Okay, a majority or a unanimously. Apparently, Judge McConnell's a favorite. Now, you have a list, Mr. Honig, of five that I guess all appear on the County's list of hearings officers. If Judge McConnell is not available, if you could go down the list where yourself and Mr. Kolbe can agree, and move forward that way.

Mr. Honig: We really don't know these people. We just thought that a judge would be someone who may have the judicial expertise to be able to guide the County through such a critical area. So the other people, you know, I would have to use your discretion. Like maybe you could help guide us who you think would be somebody who understands that botanical gardens have a value to a community, and that it's not just ours. It's all of them and future botanical gardens that they should have some way to be able to serve the public. And otherwise, what are they for? For whose sake are botanical gardens existing that the public can't come there and use it as an educational facility?

Chairman Tanaka: Yeah, so I tend to agree with your statement. The decision should be made – well, as far as jurisdiction anyway, legally. The County of Maui, the Planning Department, has a list of hearings officers. I'm not sure if you have a list.

Mr. Honig: Oh, yes, I've reviewed that. John Min, you may know him, he's a member of our advisory board. He went over those. And I talked to our attorney. Anthony Ranken is also a member of our advisory board. And they excluded the others mostly because we've all worked with

them. They're somehow involved in this issue already so they could say that there's some kind of conflict of interest. These are people we just don't know. And so who of these other than John McConnell would be the best choice? We don't know.

Mr. Santiago: I've worked with Craig Nakamura quite a bit. He's very astute.

Mr. Abbott: Are we looking for legal knowledge? Are we looking for a decision? Everybody on this list should be qualified enough to answer the questions.

Mr. Santiago: From an engagement standpoint, it's gonna take just as long with everyone else. There's really no getting around that as far as the delay. There's gonna be a delay in getting people contracted from the County's standpoint. So I say we make a motion to appoint Judge McConnell as the hearings officer.

Chairman Tanaka: I understand, but if Judge McConnell is not available for the next five and a half months or something, you wouldn't wanna do that. I'd say that as long as the two parties agree to—

Mr. Kolbe: If I could just jump in? It appears from this letter that these five names are all acceptable to Mr. Honig. Numbers three and four, Mr. Leuteneker and Mr. Nakamura would be acceptable to me. So perhaps what we could do is contact Mr. McConnell, and if he's not available we could next go to Leuteneker and then to Mr. Nakamura.

Chairman Tanaka: Mr. Honig, is that satisfactory to you?

Mr. Honig: Yes. Yes, the only question that I have is the timeline for the whole procedure. And we can do like – I would like the County to say okay, because we're not hassling any of the other botanical gardens, you can just be until we deal with this.

Chairman Tanaka: I wish we had the power to say that, to grant you that request. Unfortunately, there are procedures that have to – that have to be – that have to take place in their – within their timelines.

Mr. Honig: What is the timeline?

Chairman Tanaka: That's something – we are not County employees so we – so as much as I'd like to say no problem, even if it takes six months, our Body, this Board, does not have that—

Mr. Espeleta: Have that authority.

Chairman Tanaka: Yeah, have that authority to do that. So while we feel for you, we can't go any further than what—

Mr. Abbott: It's just like we can't schedule your appointments nor anything you do because we have no idea. Nor can we schedule the appointments of any of these other people because we don't know what they're doing. So it has to go through a legal process.

Mr. Honig: Okay, so maybe what we should do then is say second, third, fourth, fifth, and maybe

we can get someone who has the ability to . . . (inaudible) . . .

Chairman Tanaka: Yeah, when you go down the list then whoever–

Mr. Abbott: You'll have to search for availability.

Mr. Honig: I mean, because maybe what we should do then is say maybe Judith is number four and William Kinaka is number five. And then we– Maybe somebody who will–

Chairman Tanaka: You can do that and speak with Mr. Kolbe.

Mr. Honig: Who will hear us within a reasonable period of time.

Mr. Espeleta: You're gonna have to just set the appointments.

Mr. Kolbe: I'll accommodate whatever the Board wants to do here. I actually don't wanna agree at this point to Mr. Kinaka or Ms. Neustadter only because I'm not as familiar with them. In terms of putting anything on hold in terms of conduct that we're objecting to, I'm not in that position to be doing that either. So it's my understanding that Mr. Honig has been served with five NOV's today.

Mr. Honig: Just this moment just before this meeting.

Mr. Kolbe: Right. And that process has to work itself out whether he's going to appeal those issues. In the interim, as I said, I'm willing to accept his first choice as Mr. McConnell. I would also agree with Mr. Leuteneker and Mr. Nakamura only because I know that they handle zoning and land use issues on a regular basis. If one of those is available quicker, I don't know that I have the time to track that down and make a comparison. And I don't know if the County can accommodate to that degree of kind of management. But I'm gonna defer to the Board. I'm gonna let Mr. Honig choose the Board, or whatever he wants to do, and then we'll just hear it as soon as we can get it scheduled.

Mr. Honig: Oh, so you're saying – basically, if I'm understanding you correctly, you're saying that if I choose, we could just have it with this Board and have that sooner.

Chairman Tanaka: No.

Mr. Kolbe: I'm not going to object to anything. I'm gonna allow you to request to the Board and then to make their decision.

Chairman Tanaka: Okay, so what was stated earlier on Mr. Honig's list, the first three, an attempt shall be made hopefully, in a timely manner that whichever is the most available within a reasonable time, whoever that is. If none of the three, then that is something that must be discussed between the two parties. And if they both agree, I believe this Board has no problems with the two parties agreeing.

Mr. Honig: So what you're saying is that as long as the two of us together agree on who of these five people is going to be it, then you're okay with that?

Chairman Tanaka: Yes.

Mr. Honig: So then if the other— . . . (inaudible) . . . give each other cards. Is there anything else?

Chairman Tanaka: So the Board will – well, out of the list of hearings officers, the Board will okay that list, or whichever is agreed upon between both parties. So there is no action to be taken or is that our action?

Mr. Santiago: We made a motion to . . . (inaudible) . . . elect ourselves as hearings officer, so we need to make a motion to—

Chairman Tanaka: Please.

Mr. Santiago: I'll make a motion to elect number one, two, and four, or whoever is available to be the hearing officer to make the determination on who has jurisdiction on this appeal.

Ms. Vadla: I'll second that.

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

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

VOTED: To elect number one, two, and four (per Mr. Honig's preferred list of hearings officers), or whoever is available to be the hearings officer to make the determination on who has jurisdiction on this appeal.

**(Assenting: B. Santiago, B. Vadla, T. Espeleta, G. Abbott, K. Tanaka.)
(Excused: R. Shimabuku, P. De Ponte, J. Haraguchi, R. Tanner.)**

Chairman Tanaka: **Okay, motion carries.** Thank you very much.

Mr. Honig: Sir, you might need to explain it to me because I'm not sure that I completely understood what your final motion was and what its implications are. Sorry. Would you be so kind as to just explain it to me one more time? Because – is it – am I understanding correctly that we have – say we do get Mr. McConnell, say, and say he said that he has the jurisdiction to be able to be the hearings officer in this issue, then we can proceed with him at that hearing rather than having to just say yes.

Chairman Tanaka: Yes, Mr. Kolbe has stated that he would be prepared for both contingencies.

Mr. Honig: Okay. That was clarified within this motion that you just made and understood here, is that correct?

Chairman Tanaka: Yes.

Mr. Kolbe: Assuming that Judge McConnell can accommodate us.

Mr. Honig: Okay, but if he's not able to, then the second, or third person, or whoever we had said, the second person of Tom or Craig, either one of those could also serve in that capacity if their timeline is more possible than Judge McConnell.

Mr. Kolbe: Yes. Yeah, I understand that some judges like to hear things, and then digest it, and rule later. So I don't wanna speak for the Judge is that we'll do everything in one day, but I'll try to accommodate you.

Chairman Tanaka: Alrighty. That's it? Thank you very much, gentlemen. Okay, next item would be approval of August 23rd 2012 meeting minutes.

D. APPROVAL OF THE AUGUST 23, 2012 MEETING MINUTES

Mr. Santiago: I'll make a motion to approve.

Chairman Tanaka: It has been moved. Do we have a second?

Mr. Espeleta: Second.

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

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

VOTED: To approve the August 23, 2012 meeting minutes as presented.

(Assenting: B. Santiago, T. Espeleta, B. Vadla, G. Abbott, K. Tanaka.)

(Excused: R. Shimabuku, P. De Ponte, J. Haraguchi, R. Tanner.)

Chairman Tanaka: **Minutes approved.** Next item, Director's report. Trisha, any-?

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: Up before you, I believe in October, I have to refresh myself, but will be the Piilani Promenade Appeals. That will come before you again. Other than that, I just have to try and process Mr. Honig's appeal as quickly as possible.

Chairman Tanaka: Thank you.

2. Report by Board Members who attended the 2012 Hawaii Congress of Planning Officials Conference

Chairman Tanaka: Let's see. We lost our – one of our two Members. Report by Board Members from the 2012 Planning Conference. Bernice, how was it? What did you do? What did you learn?

Ms. Vadla: It was very informative. We got to experience and be a part of a lot of new innovative approaches to sustainability. That's kind of where I really spent a lot of my time, and agricultural land, and stuff. They're really moving forward in trying to get our system on a GIS system, which is all mapping, and where people can just go right online and do everything. So it's gonna free up a lot of extra work, I think. And they're in the process of doing that now. Kauai is actually going onboard in about a month. So, I guess we're gonna be trying to do that soon.

Mr. Santiago: We'll let them be . . . (inaudible) . . .

Ms. Vadla: Yeah. But it's really amazing what they're incorporating into it. I mean basically everything you need to know from A to Z about property, or about roads, about – you know, what someone's building. Even like – even the bus routes and things like that. It's pretty neat for the community. So it was really informative. I would really encourage–

Mr. Santiago: It's an annual conference?

Ms. Vadla: Yes, it's a yearly.

Chairman Tanaka: Where is next year's conference?

Ms. Vadla: I think it's the Big Island. A lot of sustainability in the building codes now, too, like people building with green rooftops and stuff like that. There's a real move towards that and energy conservation. So it's good to see. Got to meet a lot of people.

Chairman Tanaka: Who from the Planning Department attended the conference?

Mr. Francis Cerizo: Yeah, I did. Carolyn, Paul, and Aaron from our Division. And we had a big–

Ms. Vadla: We had a big–

Mr. Cerizo: Current Division and Long Range Division, we all had participants. It's kind of . . . (inaudible) . . .

Chairman Tanaka: When does it come back to Maui?

Mr. Cerizo: I believe in two years. After Big Island, it comes back up. It goes up and down the chain.

Chairman Tanaka: Anything else to add? Anything . . . (inaudible) . . .

Mr. Cerizo: No, no. This was – Aaron and myself, this is our last year so we just went out there to–

Ms. Vadla: Hang out.

Mr. Cerizo: Hang out.

Chairman Tanaka: So, Trish, who is gonna take Francis and Aaron's place?

Ms. Kapua`ala: Not me. Not me. I'm making my exit hopefully, at around the same time.

Chairman Tanaka: Okay. Anything else, Members? Otherwise, thank you very much.

F. NEXT MEETING DATE: Thursday, October 11, 2012

Chairman Tanaka: Our next meeting date, October 11th. Thank you very much. Meeting adjourned.

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at approximately, 3:51 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Rick Tanner, Vice-Chairman (1:32 p.m. - 3:17 p.m.)
Teddy Espeleta
Gene "Clark" Abbott
Bernice Vadla
Bart Santiago

Members Excused:

Patrick De Ponte
Jacqueline Haraguchi
Ray Shimabuku

Others:

Aaron Shinmoto, Planning Program Administrator, Planning Department
Francis Cerizo, Staff Planner, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
Lesli Otani, Civil Engineer, Department of Public Works
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel