

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
March 28, 2013**

(Approved: 4/25/2013)

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Vice-Chairman Rick Tanner at approximately, 1:32 p.m., Thursday, March 28, 2013, in the Department of Planning 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.)

Vice-Chairman Rick Tanner: The Board of Variances and Appeals will now come to order. It is now 1:32 p.m. and let the record show that we have a quorum. Public testimony will be taken at the start of the meeting on any agenda item in order to accommodate those individuals who cannot be present when the agenda items are considered before the BVA. However, a person testifying at this time will not be allowed to testify again when the item comes up before the Commission unless new or additional information will be offered. Public testimony will also be taken when the agenda item is taken up by the Board. There will be a maximum time limit of three minutes. Is there anyone at this time from the public who wishes to come forward now or you can wait till the agenda item comes up?

Vice-Chairman Tanner: If you'd speak your name and agenda item into the mic.

Mr. John Bendon: All right, my name is John Bendon and I'm here for the Wasson Variance. And I'm here to support their variance request and I'm here representing the neighbors that have given them letters of support already.

My property is the property directly adjacent to the Wasson's and it's the only property that you can even see the shed from, and from that we can barely, barely even see it 'cause their trees are so mature. We fully support the shed staying where it is and the variance being granted. It has no impact on us or our property and moving the shed would be really impractical, we think. It's a shed that has a poured concrete base. There's a bunch of irrigation equipment that goes into it and the . . . creating waste here in Maui unnecessarily, on an island that we've got full landfills anyway, really does not make much sense. They would be having to send stuff to the landfill and it would also disrupt their fruit production because the irrigation all comes into there and they sell all their plants to Mana. So, we strongly support them getting the variance and really encourage the Board of Variance here to grant that for them. Thank you.

Vice-Chairman Tanner: Thank you very much. We appreciate you taking time to come in and speak to the Board on this matter. Is there anyone else who would like to speak at this time?

Vice-Chairman Tanner: OK. Seeing none, we'll ask the staff to read the Notice of Public Hearing.

B. PUBLIC HEARING

- 1. DAVID JENKINS of CREATION DESIGN COMPANY representing EUGENE WASSON and LINDA WASSON requesting a variance from Maui County Code**

§19.30A.030 to allow an existing shed to be located 13-feet away from the northeastern boundary line whereas a 15-foot setback is required within the County's Agricultural District, for property located at 161 Makahiki Street, Paia, Maui, Hawaii; TMK: (2) 3-8-002:115 (BVAV 20130001).

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

Ms. Kapua`ala: I do have a very short presentation that I can show the Board. Chalsey can you help me get the lights, please? Thank you. Perhaps it's easier to see without the TMKs. This is Kahului Harbor, Hana Highway going towards Paia, the property is located in Sprecklesville. Again, this is Hana Highway. The subject property is highlighted. Makahiki Street. The TMK imagery is a little off, but here's the subject property. The date of this imagery is in 2008, and this is the shed that is in question. So I'm sure the ag here, this agricultural subdivision, has matured a lot. Let's zoom out just a little. Let me show you the flood map. Again, this flood zone data, the imagery is a little off, as you can see here, you can see my cursor where the shoreline is versus where the flood zone is. So if you can imagine this probably pushes a little bit in and the shed would be located approximately here in the flood zone AE.

This might be a better view for you. Right here is the subject property. And all of these are ag lots and all of these are located in the flood zone. And then here. So the flood zone potentially hits one, two, three, four, five, six lots.

So with that I'd like to introduce the applicant, Mr. David Jenkins, of Creation Designs, representing the owners for this property. So, thank you very much.

Vice-Chairman Tanner: Sir, if you would speak your name into the microphone for the record.

Mr. David Jenkins: Sure. My name is David Jenkins of Creation Designs Company. I was hired by the Wassons, Eugene and Wasson Linda here . . . oh, I should say Eugene and Linda Wasson, I should say are here today. So, if you have any questions for the applicants, they'll be happy to answer those. I'm their representative, and I'd like to thank you folks for this opportunity today. Also, would like to commend this Planning Staff as well on a great report, which they made and I believe you all have. I'll just refer . . . actually, since they have found justification for the variance, I believe if you look at the bottom of page 11, in the middle, maybe I'll just read that paragraph:

Given all of the aforementioned considerations, Planning concedes that the applicant's perceived hardship, i.e., alternative solution of relocating the structure outside the setback, greatly outweighs the potential harm created by allowing the structure to remain in its present location. Therefore, the granting of the subject variance is justifiable. However, the applicant must still meet the MCC criteria, numbers one and three above.

Now, those two criteria, maybe I'll take them out of order. Item number three, the conditions creating a hardship were not the result of previous actions by the applicant. Now I'm sure it could be argued that the applicant of course built the shed, so that's his actions. However, the applicant hired professionals. He hired a firm to draw up plans, and that was one of the exhibits that is in the application. That plan maker, I believe, probably just had a typo. I'm familiar with these fellows and

I know that they know the proper setback, but unfortunately, they put a 13-foot setback on the plan.

Actually Trisha would you mind putting that exhibit up one more time? Then the Wassons hired a contractor to follow that plan and erect the shed. That contractor put the shed up. He measured 13 feet from the property line and built the shed there. So, we're basically here today as a result of a typographical error by the plan maker which was then followed by the contractor. My clients had no reason to try and sneak the shed closer to the property line or anything. They just basically wanted to build the shed and this is how we ended up where we are today.

Yeah, you can see there on the screen, there's the 13-foot setback. Now these are the original plans that the contractor used to get that. The reason we're here today actually is, the Wassons were . . . they applied to put in a photovoltaic array in their backyard, and that's when the County saw this plan, which they submitted to show you know where they want to put photovoltaic array and then it was like, oh, ah huh, there's a . . . you know, they should not have not been 15 feet, and where is it really? Well, there really is 13 feet and not 15 feet, so that's why were here today. So that's item number three.

Item number one, basically, that deals with the character of the neighborhood. The use sought to be authorized by the variance will not alter the essential character of the neighborhood. Now we've had one of the neighbors, the next door neighbor on the property line, that has this shed adjacent to it, testify. He's also here to testify on behalf of the six neighbors surrounding the property which have sent in letters. And those are all in your packets, I believe.

So, what we have here is the community that makes up the neighborhood, coming out with overwhelming testimony to support this variance application. So their opinion as the community, as the neighborhood, that this . . . the granting of this variance would not alter the nature of their neighborhood. I believe that's all I have. I'm happy to take any questions from you folks.

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

Vice-Chairman Tanner: Go ahead.

Mr. Shimabuku: Looking at that map that was shown earlier with the 13 feet setback, so your clients assumed that with this plan, the County had approved the plans to go ahead and build.

Mr. Jenkins: There's . . . this plan is less than 200 square feet. And in the agricultural zone, when you want to put up a shed for an agricultural use as this one has, it doesn't require a permit. And so what they did is they went to have someone design the shed, and hired someone to build it, and the County wasn't involved. The first time the County had a chance to look at this was when they came in for the photovoltaic array.

Mr. Bart Santiago: So anything under . . . is it 200 square feet?

Mr. Jenkins: Yeah, and this is one is 192 square feet, 2x16.

Ms. Bernice Vadla: How long ago was the shed built?

Mr. Jenkins: 2007.

Vice-Chairman Tanner: I see the letters in support of and we've got testimony today in support of. Is there any opposition? Any letters or . . . ?

Ms. Kapua`ala: No letters in opposition.

Vice-Chairman Tanner: At this time, Board, if there's no further questions, we'll continue with public testimony on this. Thank you. We'll bring you back up if necessary.

Mr. Jenkins: All right, thank you.

Vice-Chairman Tanner: So, we got one more on the list for public testimony. If you would come up and state your name in the microphone for the record, please? And you have three minutes.

Mr. Ron Sandate: Thank you. My name is Ron Sandate. I'm here to speak in opposition to the request. I believe the client has not met the criteria for a variance. The applicant has been very vehement in speaking against his neighbor on the opposite side who had the exact situation, and I find it a little bit hypocritical that he should come before the Board and ask for the same thing, which he basically condemned someone else to follow the rules at great expense.

And the fact besides the criteria, it is in a flood zone, and there's been no permits or anything applied for it to address the flood zone issues that I'm aware of. And if the Board should grant this variance, it's going to set a precedent that, well, we didn't know and it's a little bit appalling that the person that designed it would call for a 13-foot setback. And as a contractor, generally that's one of the basic things you know—what the setbacks are in any given neighborhood. Mostly it's a fact that if you ask somebody and you condemn them for one thing, how would you have the gall to come in and ask to be forgiven for a situation that's no different?

Vice-Chairman Tanner: Well, in this case, we can really only address this variance, not something that happened in the past with regard to a different variance.

Mr. Sandate: I'm aware of that. And I'm speaking my opposition, just giving certain facts. That's all.

Vice-Chairman Tanner: Thank you. Any questions?

Ms. Vadla: Did you say that you were a neighbor?

Mr. Sandate: Yes.

Ms. Vadla: And what side . . . where's your property?

Mr. Sandate: I live across the street.

Ms. Vadla: Across the street?

Mr. Sandate: I'm not affected by it at all, except for knowing all the things that have occurred in this

neighborhood regarding that.

Ms. Vadla: So the shed is not in view of your property?

Mr. Sandate: No.

Vice-Chairman Tanner: Thank you.

Ms. Vadla: Thank you.

Vice-Chairman Tanner: If we can have the representative come back? I've got a question. In your earlier testimony, you had suggested that it may have been a typo that caused that. That you know the contractor that designed this, in all likelihood knew what the setback was and it may have been a mistake of typing in "13" as opposed to "15," and then the contractor just went on that--what he saw.

Mr. Jenkins: Right.

Vice-Chairman Tanner: Ok.

Mr. Jenkins: Yea. And Mr. Sandate brought up the issue of the flood zone, and that has been brought to the applicant's attention. And they . . . there are some modifications to the pumping system within the shed that may need to be brought up. They're willing, and able, and happy to do so.

Vice-Chairman Tanner: And I did see that outline in the County's assessment. So for anybody looking to write a motion after this, if they want to review what the County recommends with regard to the flood zone, that's very important.

Mr. Jenkins: Also, my applicant let me know that apparently he did not have any opposition to the neighbor in question, and did not . . . is not sure what is being mentioned as having opposed another neighbor for a variance.

Mr. Bart Santiago: I have a question for the gentlemen that testified. Are you part of the subdivision of two parcel acres also? Are you part of that subdivision of two-acre parcels? OK. And you just happen to be across the street from the applicant?

Mr. Sandate: Yes.

Mr. Santiago: Thank you.

Vice-Chairman Tanner: OK, at this point, unless there's anybody else, we will close public hearing. And we'll open discussion for the Board.

Mr. Santiago: There was a reference of the letter supporting the applicants-- the request for a variance. I see one letter from one individual, Marc Stone.

Vice-Chairman Tanner: I noticed that too. And I thought I saw a reference to something like six letters but I've only . . . I only saw the one in the packet. Trisha do we have more or . . . ?

Ms. Kapua`ala: I'll be happy to pass this around. I'll be happy to pass the letters around.

Vice-Chairman Tanner: I think the . . . for the Board, the third paragraph on page 11 also, is worth re-reading the paragraph that starts out "However."

Mr. Clark Abbott: Which paragraph, I'm sorry?

Vice-Chairman Tanner: Under staff analysis. Actually under staff analysis on page 11, it would be the second paragraph after staff analysis, which I think the Planning Office did a very good job of putting all of this together for us.

Mr. G. Clark Abbott: I have a question if I may please?

Vice-Chairman Tanner: Yes, Mr. Abbott?

Mr. Abbott: Page 7, Article 10, through the flood permitting process, the applicant will be required to comply with MCC 19.62.060. What will be required for the process?

Vice-Chairman Tanner: Right. And I think that's outlined in Item No. 3, on Conclusions of Law. You got that? It's not within the larger one, but it should be a separate one headed like this.

Ms. Vadla: Conclusions of Law.

Vice-Chairman Tanner: Yeah. So if you look at the back of that one, Item 3, goes into detail on that.

Ms. Kapua`ala: Excuse me.

Vice-Chairman Tanner: Trisha? Yeah, when I read that too . . .

Ms. Kapua`ala: Thank you, Mr. Chair. The special management area process, is simply environmental review. The flood permit process will require an architect or engineer to certify the elevation of the structure and flood proof it, meaning the electrical and plumbing work must be raised above the base flood elevation of 15 feet. So, according to FEMA, in the case of a flood, this property will flood 15 feet above sea level. So, my understanding is the applicant is at the . . . in the process of trying to determine the grade level of their property. They will have . . . again, they will have to raise the electrical and plumbing work above the base flood elevation of 15 feet, and as also vent the structure as to . . . what's the word? Alleviate the water from entering the building, the structure.

Ms. Carolyn Cortez: Hi, I'm Carolyn Cortez and I'm also with Zoning Administration and Enforcement. And actually, County Code requires the base flood elevation plus one foot of freeboard. So, I wanted to clarify that that it will actually be 16 feet mean sea level. That structure either needs to be elevated to or there are other construction standards that need to be met if . .

. for a non-habitable structure like the venting.

Vice-Chairman Tanner: So my understanding, if this Board were to grant a variance, then the applicant has to meet these other requirements with regard to the flood, and the SMA, and so forth?

Ms. Cortez: Yes, that is correct.

Vice-Chairman Tanner: So a variance would not alleviate him from any of these other restrictions? And that would probably need to be worded within the motion?

Ms. Kapua`ala: Yes.

Mr. Ray Shimabuku: Excuse, Mr. Chair. Do we have any idea of what the base height is at right now?

Ms. Kapua`ala: This pictometry imagery, which is amazingly accurate, does have a height tool, but I can't verify for sure. And according to pictometry, this is about 10 feet something high, and I'm not sure how close that is to the actual local tide datum, base flood elevation we use. You know this is a . . .

Mr. Shimabuku: So in order to meet . . . if the variance is passed, in order to meet that condition, they might have to go two-story then?

Ms. Kapua`ala: Not two-story. They of course, can do that, raise the entire structure to meet the flood proofing requirements. Or they have to raise the electrical and plumbing work above. And Carolyn said 16 feet.

Mr. Shimabuku: As long as it's above the 16 feet?

Ms. Kapua`ala: Yes, and then do the venting. In the applicant's . . . in the application itself, you'll see pictures. And this is the only way we knew that there was work there that would be in danger should there be water.

Mr. Santiago: It's about three, four feet . . . (inaudible) . . . but it's already ten feet up—the waterline. So it looks like they might have to raise it to about four feet depending on how accurate that plan is.

Mr. Shimabuku: So you looking at that equipment being closer to the height of the structure? Closer to the ceiling or the roof?

Ms. Kapua`ala: Excuse me Mr. Chair. We have elevation drawings from the applicant. and it looks like the structure itself is 10' feet 6" inches high. Oh, that's the roof. Is it a pitched roof?

Vice-Chairman Tanner: Oh, just from the base to the roof?

Ms. Kapua`ala: Yeah.

Vice-Chairman Tanner: OK.

Ms. Kapua`ala: But is this the height of the structure itself or is it pitched inside? OK. So the height, the total height is 10' feet 6" inches.

Vice-Chairman Tanner: Mr. Jenkins, can you come up again? I've got a question for you?

Mr. Abbott: Me, too.

Vice-Chairman Tanner: And Mr. Abbott.

Vice-Chairman Tanner: So the applicant does understand the requirements, I mean, the understanding that if the Board grants a variance for the setbacks, that doesn't give alleviation of any of these other issues and they fully understand?

Mr. Jenkins: Yeah, they fully understand that and they're already working on it. They've hired a surveyor to give them the elevation. By the way, . . . (inaudible) . . . information just from comparing the neighbor's properties and whatnot, they feel they're in the neighborhood of around 12 feet, so approximately where the shed is, but a surveyor will be able to get it to within a fraction of an inch.

Vice-Chairman Tanner: OK. Mr. Abbott

Mr. Abbott: I'm a little bit confused here. If the variance is granted and this additional work that will be necessary to approve the flood zone, tada, tada, tada is going to . . . would it not be . . . this is my only question, if we have to raise the entire shed or build another new shed, then the variance is new unless your going to put in . . . ?

Mr. Jenkins: Well, to comply with the code, basically the shed could remain as long as the venting issues are addressed and . . . but the main thing would be to get those irrigation pumps and their electrical systems up off the ground. So if the foundation is at 12 foot, then to get up to 16, they'd come four feet off the ground, which is doable within that shed.

Mr. Abbott: I understand that. I'm still questioning if we've got to raise the entire structure or part of the equipment that's in the structure to prevent this flood zone thing, granting the variance, if we've got to change the whole building, and the plumbing, and everything, granting a variance for two feet, he can move the thing in two feet.

Vice-Chairman Tanner: But I don't think the building would move or change, it's just that the pumps and so forth, you'd just re-pump, elevate them up and that's all that you would do.

Mr. Jenkins: It's a fairly simple task.

Mr. Abbott: So are the pumps in the building?

Vice-Chairman Tanner: Yeah, there's pictures of 'em.

Mr. Santiago: So the electrical would have to be relocated to where . . . (inaudible) . . .

Mr. Abbott: . . . (inaudible) . . . you got four feet of water up the side of the shed. The pumps are reserved for the shed, isn't it?

Vice-Chairman Tanner: I don't know what the shed's made out of.

Mr. Abbott: Wood.

Vice-Chairman Tanner: But even if you would move to 15-foot, that doesn't change that. Moving it two feet wouldn't change whether it's going to get flooded or not.

Mr. Shimabuku: It'll still be in the flood zone, yeah?

Vice-Chairman Tanner: Yeah, yeah.

Mr. Abbott: I'm just trying to justify.

Vice-Chairman Tanner: Right, I understand. OK, any further questions for the applicant? No? Thank you.

Mr. Jenkins: Thanks.

Vice-Chairman Tanner: So we've got the staff recommendations. Any further discussion by the Board? OK, hearing none. I'm prepared to hear a motion. And again, in considering a motion, the staff's conclusions of law on the second page are a good, helpful outline to make sure we have that included in the motion.

Mr. Abbott: Well, I'll make a motion to approve the variance with all of the other ramifications, and flood management, and whatever else, and following all necessary things. And based on the recommendations of the Planning Department, I see no reason why not to as long as everything is followed to the letter, every requirement is met.

Vice-Chairman Tanner: Including the standard hold harmless agreement for Maui County?

Mr. Abbott: Yes, including the standard hold harmless.

Vice-Chairman Tanner: OK, so we have a motion to approve the variance with the standard hold harmless agreement in place for the setback with the understanding the applicant follows through with the staff recommendations for the SMA, and flood control, and so forth. Do I have a second?

Mr. Santiago: I will second it.

Vice-Chairman Tanner: So we have a motion and a second. Before we have a discussion, Trisha?

Ms. Kapua`ala: Thank you, Mr. Chair. Could we please discuss the facts that justify the exceptional, unique, unusual, physical or geographical condition that exist on the property which

is not generally prevalent in the neighborhood or surrounding area, and why the conditions creating the hardship were not the result of the previous actions by the applicant?

Vice-Chairman Tanner: You might want to go back to . . . and if I can remember what page that was discussed on . . . was it eight? Trisha, it was specifically, no. 1 and no. 2 of the criteria that you were referring . . . ?

Ms. Kapua`ala: No. 1 and 3, sir.

Vice-Chairman Tanner: One and three. I'm sorry. OK. At this time, we're going to go into executive session for about ten minutes. So, if I could ask everybody to exit the room and be ready to come back in at about a quarter after, maybe a couple minutes more, and then we'll open back up again. Thank you. An executive session is to discuss rights, duties and liabilities.

(The Board then went into an executive session at approximately, 2:05 p.m., and reconvened at approximately, 2:20 p.m.)

Vice-Chairman Tanner: OK, we're back in open session. I apologize for the delay, and thank you for your understanding. At this point, we have a motion on the floor and we have a second. We're going to continue with discussion, the frame work of the motion. I'll attempt to restate the motion that the variance be granted with the standard hold harmless agreement. That the applicant understands that the variance applies to the setback only and they're responsible to meet any and all other requirements with regard to flood zone, SMAs, and so forth. We have a second on the motion and further definition and clarification of the motion. So, Bart?

Mr. Santiago: In order to meet criteria one and three, one, being the exceptional, unique, physical or geographical condition existing in the subject property, there does exist a condition on the property on this document, plan, that indicates there's a drainage reserve adjacent to the shed. So, that is the condition that is prevalent. So that would satisfy item number one. With respect to criteria number three, that the hardship were not the result of previous actions by the applicant, the reason that . . . the justification for that is that the applicant contracted professionals to draft plans, and hired a contractor to build the shed, and relied on their professional acumen, but in return, they created a situation that is noncompliant. So from that perspective, I believe criteria number three is also . . .

Vice-Chairman Tanner: Any further discussion from the Board? Seeing none, I'll call for a vote. All those in favor? Any opposed?

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

VOTED: To approve as discussed.

**(Assenting: G. Abbott, B. Santiago, B. Vadla, R. Shimabuku,
P. DePonte)**

(Excused: K. Tanaka, J. Haraguchi, T. Espeleta)

Vice-Chairman Tanner: **The motion is approved and the variance is granted.** Thank you very

much. At this time we'll take the second item on the agenda.

C. APPEALS

1. **WILLIAM C. BYRNS of MACDONALD RUDY BYRNS O'NEILL & YAMAUCHI representing LINEX INVESTMENTS, LLC appealing the Planning Director's decision to require a fifteen (15) foot agricultural setback for a garage/storage structure on property located at 3412 Kalua Koi Road, Kaluakoi, Molokai, Hawaii; TMK: (2) 5-1-007:064 (BVAA 20120001).**

- a. **Stipulation to Dismiss Appeal**

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

Ms. Kapua`ala: The Board should have the County's stipulation to dismiss this appeal. I'm afraid that none of the Corp. Counsel . . . none of the attorneys that worked on this case is here to report. If you'd like, we can request their presence at a next meeting if you have questions about this appeal.

Vice-Chairman Tanner: No, I don't think that'll be necessary.

2. **MAUI BEACH RESORT LIMITED PARTNERSHIP appealing the Director of the Department of Public Works' decision to require a letter of authorization from every property owner for a condominiumized property (Honua Kai) in order to subdivide land for conveyance to the State of Hawaii (North Beach Subdivision IIA, Subdivision File No. 4.960) for property located at 130 Kai Malina Parkway, Lahaina, Maui, Hawaii; TMK: (2) 4-4-014:006 & 008 (BVAA 20100002).**

- a. **Stipulation to Dismiss Appeal**

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

Vice-Chairman Tanner: Yeah, that one I'm curious about, so they need to show up and . . . yeah, I would like to hear that one.

Ms. Kapua`ala: Yes, sir. We will have that scheduled on the next available agenda.

Vice-Chairman Tanner: And that being the last, we have approval for minutes from the March 14, 2013.

Mr. Abbott: What did we decide on Linex?

Vice-Chairman Tanner: On what?

Mr. Abbott: The Linex Development.

Mr. Santiago: Do we discuss that? Do we vote to accept that . . . ?

Mr. Abbot: The 15-foot setback on the . . .

Ms. Vadla: To dismiss it.

Mr. Giroux: Just from Corp. Counsel, as far as . . . because both of these are . . . they're not variances but they're appeals, so basically, once the applicant and the Department reach a settlement, you basically lose jurisdiction because the person has withdrawn their disgruntlement with the County. So there's really no accepting it or anything. But what it does, what this document does is it cleans it off your docket.

Mr. Santiago: It's more informative than action.

Mr. Giroux: Yeah, it's an FYI. And if it were a variance, then it would be a different matter because you're the final authority. Just because somebody works something out with the . . .

Mr. Santiago: So with number two, can we require to be present in front of us?

Mr. Giroux: You can ask, but again, once it's filed, you've pretty much lost jurisdiction. There's nothing gonna change as far as the settlement.

Mr. Santiago: So we shouldn't even ask what the . . . (inaudible) . . . ?

Mr. Giroux: It's open for discussion. It's just for your knowledge. Sometimes . . .

Vice-Chairman Tanner: Could we get a statement maybe, as opposed to having them come down here and taking their time . . . ?

Mr. Giroux: Maybe just what the settlement was or how it was resolved. And that might shed light in the future when . . . if you guys are required to litigate a case to kind of understand the issues as far as how the Department's looking at those types of issues.

Mr. Santiago: . . . (inaudible) . . .

Ms. Kapua`ala: It's no problem for the Deputy Corp. Counsel to just run on down and maybe the appellant doesn't have to show up from Carlsmith Ball.

Vice-Chairman Tanner: Trisha, do we have anything else before the minutes?

Ms. Kapua`ala: Before the minutes, no.

D. APPROVAL OF THE MARCH 14, 2013 MEETING MINUTES

Vice-Chairman Tanner: OK. At this time, I will hear a motion to approve the minutes for the March 14, 2013, Board of Variance and Appeals regular meeting.

Ms. Vadla: I'll make a motion to approve.

Vice-Chairman Tanner: Second?

Mr. Abbott: Second.

Vice-Chairman Tanner: We have a motion and a second, all those in favor? Any opposed?

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

VOTED: To approve the minutes of March 14, 2013.

**(Assenting: B. Vadla, G. Abbott, R. Shimabuku, B. Santiago,
P. DePonte)**

(Excused: K. Tanaka, J. Haraguchi, T. Espeleta)

Vice-Chairman Tanner: Thank you very much. And we have nothing else. We'll adjourn.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

F. NEXT MEETING DATE: Thursday, April 11, 2013

Mr. Abbott: When's our next meeting?

Vice-Chairman Tanner: Oh, we don't have any.

Mr. Santiago: April 11th?

Vice-Chairman Tanner: Some of us still have meetings, not all of us.

Ms. Kapua`ala: And as a reminder, April 11th is scheduled for new Members' training, orientation. Thank you, James. And we will be welcoming two new Members to our Board.

Vice-Chairman Tanner: Do we know who they are?

Ms. Kapua`ala: Yes.

Vice-Chairman Tanner: Is it a secret or you can say?

Mr. Santiago: It was in the papers.

Vice-Chairman Tanner: Was it really?

Mr. Santiago: Yeah.

Mr. Abbott: I didn't see that and I've been watching.

Vice-Chairman Tanner: One's from Moloka'i . . . And speaking of which, are we still going to Molokai coming up or no?

Ms. Kapua`ala: That application . . .

Vice-Chairman Tanner: Was that the one?

Ms. Kapua`ala: Hasn't been resubmitted. No.

Vice-Chairman Tanner: Oh, OK.

Ms. Kapua`ala: But if you hold on one moment, the two new Board Members are Chad Fukunaga with Ka`anapali Land Management Corporation and Howard Kihune with Windemere Valley Isle Properties.

Vice-Chairman Tanner: Valley Isle, that sounds familiar. We need another one from the West side.

Mr. Santiago: Yeah.

G. ADJOURNMENT

Vice-Chairman Tanner: All right, we are adjourned.

There being no further business to come before the Board, the meeting ended at 2:27 p.m.

Respectfully submitted by,

CHALSEY R. K. KWON
Secretary I

RECORD OF ATTENDANCE

Members Present:

Rick Tanner, Vice-Chairman
Bernice Vadla
Ray Shimabuku
Bart Santiago
Patrick De Ponte
Clark Abbott

Members Excused:

Kevin Tanaka, Chairman
Jacqueline Haraguchi

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Teddy Espeleta

Others:

Carolyn Cortez, Staff Planner, Department of Planning

Trisha Kapua`ala, Staff Planner, Department of Planning

James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel