

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
MAY 23, 2013**

(Approved: 6/27/2013)

CALL TO ORDER

The meeting of the Board of Variances and Appeals (Board) was called to order by Deputy Corporation Counsel, James Giroux, at approximately, 1:30 p.m., Thursday, May 23, 2013, 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.)

Mr. James Giroux: Good afternoon. It's 1:30. So we're gonna start this meeting of the Board of Variances. We're missing both our Chair and our Vice-Chair, so we're gonna start with the elections for a Chair Pro Tem. And we're gonna take nominations. We don't need a second. And then we will vote in the order that those nominations are made. So the floor is open for nominations for a Chair Pro Tem.

After being duly nominated, it was unanimously voted to elect Mr. G. Clark Abbott to the Office of Chair Pro Tem.

Mr. Giroux: We're gonna open up to public testimony. We have two items on the agenda. If anybody can't stay till the end, this is your opportunity, if you wanted to testify on both of those agenda items, but you will not be allowed to testify when that item comes up. Mr. Smith. We have one person who wants to testify.

Chairman G. Clark Abbott: Could you come and identify yourself, please? Did you sign the . . . ?

Mr. Jim Smith: Yes, I did. Chair Pro Tem, Members of the Board of Variances and Appeals, thank you for serving. I am here to testify regarding Variance 20130004, which is to grant the variance to the distance from a property line and height of wind towers at the Kamaole Weir. OK? And I just begin by saying I really think that the application is inadequate. I don't believe you've been given enough information to make a good judgement. I know that in 2006, there was an amendment to a special use permit regarding the Kamaole Weir. And the items in the specific and general conditions, there are matters that concern. One has to do with no. 5 under General. And the number of this permit is Special Use Permit 820006. I'll give a copy to your secretary. No. 5 on that says basically that:

The applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining a special use permit. Failure to so develop the property may result in the revocation of the permit.

So in other words, this changes that. And to me, this has to be an amendment for a special use permit before it would come to a variance, because there has to be entitlements, I believe, underlying the development. And for me, that's . . . just pushing through these types of projects by a request of a proposal seems to circumvent this procedural protections that we have regarding the

Planning Commission, and conditions for special use permits, and regarding you.

The second one has to do with lights. The lights will face down. That's a special specific condition of this project: the lights will face down. Well, if you have towers that may be in airline pathways or around airline pathways, they have to have lights on them. So if these towers need lights, well then they're gonna be lights that are not downward, so they're gonna violate that condition.

So it seems to me that there hasn't been this for you, the scrutiny. So you need to look at these facts, significantly. I think there is definitely, a change that's gonna happen to the character when you look at the flatness. And you're gonna put up towers, windmills, coming down Baldwin Avenue. The proximity to Baldwin Avenue creates a big significant change to anyone coming down and to anyone looking across. So it seems to me that these are things that you need to consider.

The other thing is there does not seem to be at all a hardship from the County in this instance. It's just an economic opportunity. So if you're gonna give economic opportunity the credit of satisfying a requirement of a variance, well then you're not ever gonna have to deny one, because there's always that element. So it seems to me that's very significant with regard to this particular application.

There are Federal guidelines related to protecting endangered species from these windmills. Birds are hit. There's no yes, or yay, or any waiver of that involved with this. And they're gonna have an impact visually, on the view planes. They're gonna have an impact if, in fact, there are endangered species flying in the area. And none of this is addressed in this. And to me, that's a defect because it all should be addressed in no. 1 on page 1 of the form where it says you are to have it discussed. Did the Director of Water Supply sign and approve this, this particular project, and this commitment of money? Is this a capital improvement project that really should have Council oversight? We're talking about a major construction on an existing public facility?

The most obvious thing is that that land was there because this plant can expand. This plant can get more water processed with that land. And you're taking that land away? For what? A power plant to create a different kind of a facility on an existing wastewater treatment plant that is probably gonna get bigger before it gets smaller, and you're gonna use that land for economic opportunity and not hardship? It just doesn't quite ring true. And I would ask you to do a fact-finding on this because this application, OK, certainly doesn't address any of the actual feet-on-the-ground circumstance like a special use permit. How come? Was that in this request for a proposal? Or was this just part of a bundle, and everything gets granted, and then we'll sort out the difficulty? To me, that's subverts our political system and you oversee that. And that's why I'm so grateful you're here. Aloha.

Chairman Abbott: Thank you.

Mr. Ray Shimabuku: Question: what is your name again?

Mr. Smith: Jim Smith.

Mr. Shimabuku: Jim Smith.

Chairman Abbott: Any questions from the Board? Thank you very much, Mr. Smith.

Mr. Smith: You're welcome.

Chairman Abbott: Any further testimony? You are signed in, sir?

Mr. Kim Ball: Yes.

Chairman Abbott: OK. And your name?

Mr. Ball: Kim Ball.

Chairman Abbott: Kim Ball? Thank you. And we do have a three-minute clause, three-minute time limit.

Mr. Ball: OK. I'll be brief.

Chairman Abbott: I'm learning.

Mr. Ball: Pardon?

Chairman Abbott: I'm learning.

Mr. Ball: I'm here to speak on 20130005. My name is Kim Ball. I live just off Lahainaluna Road at the top of the Old Mill Camp. I've been a spotter for almost every football game that's been played on Lahainaluna fields since 2004, which was the first home football game in 50 years. My three sons graduated from Lahainaluna and I've been coaching at Lahainaluna since 1980. I'm here to speak in favor of deleting the parking requirement of 505 stalls for the proposed Lahainaluna High School Stadium Improvement Project. I'm also in favor of deleting the requirement of the extra parking stalls for Lahainaluna, and Lahaina Intermediate, and Princess Nahienaena Elementary Schools. The parking seems adequate to me. In four or five home games, we will have . . . and graduation. We all work together as a community to make it work. Carpools, walking, parking at Lahaina Intermediate or Princess, yeah, all seems to work itself out.

Chairman Abbott: Thank you. Any questions from the Board for the gentleman? Thank you. Sir, did you sign? Give us your name, please?

Mr. Sebastian J. Nola: Yes, I signed in. My name is Sebastian J. Nola.

Chairman Abbott: Thank you.

Mr. Nola: I'm a resident of Manaolu Plantation adjacent to the Kamaole Weir. And . . .

Chairman Abbott: Just to remind you, we do have a three-minute time limit. Thank you.

Mr. Nola: Yes, yes, sir. Thank you. As a resident of Manaolu Plantation, I just want to advise you that this project, first of all, does not affect any of our view planes. We are very cognizant of view

planes for our subdivision. It is located above our subdivision, number one.

Number two, this project being undertaken by the County is something that I personally support from the standpoint that the County is becoming a very aggressive developer of renewable and alternative energy to reduce the consumption of very expensive electricity generated by oil, as we all know.

This action is a major step forward considering, though, the project, 100 KW, two wind turbines, in essence, is very, very small but it is a giant step in improving the energy future of the County. The turbines that we're talking about are basically, on hundred-foot tall towers. They're not something that's going to be intrusive. They're what we call a distributed, generation-type of installation. And turbines of this size for these applications, you can't get them any smaller. You can put up a small turbine, a residential turbine. However, you're not going to get the energy production that you're gonna need to supplement the power usage at Kamaole Weir. So for those reasons, I think this is a very valid, cost-effective, and energy-wise project for the County to undertake, and certainly support it. Any questions?

Chairman Abbott: Thank you. Questions from the Board? Thank you very much.

Mr. Nola: Thank you.

Chairman Abbott: Appreciate it. Further testimony? Further input?

Unidentified Speaker in the Audience: Just to be clear, this is testimony from people who have to leave?

Chairman Abbott: Yes. Trisha, would you please read off the first item?

A. PUBLIC HEARINGS

- 1. LEILANI PULMANO of MUNEKIYO & HIRAGA, INC. representing LAHAINALUNA HIGH SCHOOL FOUNDATION and the STATE OF HAWAII, DEPARTMENT OF EDUCATION requesting parking variances from Maui County Code, §19.36A.010: (1) To delete the requirement of providing 505 stalls for the proposed Lahainaluna High School Stadium Improvement Project; and (2) To delete the requirements of providing 101 stalls for Lahainaluna High School; 42 stalls for Lahaina Intermediate School; and 25 stalls for Princess Nahienaena Elementary School--168 stalls total--assessed for the after-school use of the school cafeterias as assembly halls, for the three school campuses located at 980 and 871 Lahainaluna Road, and 816 Niheu Street (respectively), Lahaina, Maui, Hawaii; TMK: (2) 4-6-018:005, 011, 012, 013 (BVAV 20130005).**

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

Ms. Kapua`ala: So this is just to get you familiar with the area, the neighborhood, because these approvals are land-based. And other than, I'd just like to turn it over to the applicant. We have Leilani here from Munekiyo & Hiraga representing the Lahainaluna High School Foundation.

Chairman Abbott: Thank you, Trisha.

Ms. Kapua`ala: Thank you.

Chairman Abbott: Please introduce yourself, ma'am.

Ms. Leilani Pulmano: Good afternoon, Board. My name is Leilani Pulmano with Munekiyo & Hiraga. And we're the planning consultants representing the Lahainaluna High School Foundation and the Department of Education. I have a presentation to go over the variances that's before you today.

So the applicant is Lahainaluna High School Foundation and the Department of Education. And today we have Jeff Rogers, who's the executive director of the Foundation; and Principal Emily DeCosta. They're here with me today. The Foundation is a private, nonprofit organization whose vision is a superior high school experience for all Lahainaluna High School students by providing funding and capital improvement projects that promotes excellence in the education experience. So the variance, as Trisha was saying, is for Lahainaluna High School, and Princess Nahienaena, and Lahaina Intermediate School. And we're seeking approval for variances as she mentioned from Section 19.36A.010 relating to the designated number of parking stalls. And we have two parts to this request. Part A is the parking variance for the after-school assembly use of all three schools' cafeterias. And Part B is the parking variance for the proposed Lahainaluna High School Stadium Improvements.

As Trisha had just gone through, this is just showing where the campuses are. It's at the end of Lahainaluna Road. The three campuses are located at the top of the road here and this is a closeup view of that. Lahainaluna High School actually starts here and encompasses this whole area. This is Parcel 12. This is Parcel 11. This is actually the ditch that runs through Lahainaluna High School. And this is Parcel 5, this big area here. Parcel 13 has both the intermediate and the elementary school on it. And as you can see here, the stadium is located in this section here of the high school.

So as I mentioned, there are two parts of the variance. Part A is for the cafeteria. And each school has a cafeteria, and they have no parking requirements during the day because the cafeteria is part of the schools' daily operation. However, any after-school use of the cafeteria requires parking based on the assembly hall use. And examples of after-school uses are like parent-teacher night meetings and community meetings. And we're seeking a variance, a parking variance, for the after-school assembly hall use.

Part B of the variance is the proposed Lahainaluna High School Improvements. The Foundation is proposing to improve the stadium. We're replacing the existing bleachers with a new 3,000-seat bleacher, a new arrival building with a ticket booth, and new press box building. The parking for the improvements of the stadium would require 505 additional stalls. So Part B of the variance would enable the existing parking stalls on Lahainaluna Campus to be jointly used to satisfy the

parking needs of the proposed stadium improvements.

So I just want to take a little bit of time because this is a little bit complicated variance. Complicated for me because it's the first pretty complicated variance that I've had to do. So I just wanted to just go over a little bit what this all means.

So Part A is a cafeteria request and so each school has a cafeteria. But because they're used after school, they actually have additional parking requirements. And it's based on one parking stall per 100 square feet. So this table shows what the parking requirements are for the after-school use. The high school has 101 stalls required; the intermediate, 42; and the elementary, 25 stalls.

And you all have three criterias that you're allowed to grant variances. And the first criteria, just to paraphrase, is a criteria for an exceptional, unique, or unusual physical or geographical condition that would not alter the existing character of the neighborhood. And for Part A of this variance for the cafeterias, the cafeterias would require parking lots for each campus. And for example, it'd require a 101 parking lot for the high school.

So parking uses for the after-school meetings occur outside of the parking time for the school day uses during the evenings. And they currently utilize the daytime parking stalls. So the existing parking stalls on each schools' campus are sufficient to accommodate parking for both the day uses and the evening meeting uses for the cafeteria. You may all have attended night meetings at the schools where you'd park using the existing parking stalls because all the teachers and students have gone away, have left for the day. So existing open space that could be made into parking lots on the campuses would take up either playground or athletic fields on the campuses. So in this context, these are considered exceptional and unique conditions. So the resulting joint use of the existing parking stalls does not alter the essential character of the neighborhood and the school.

For Criteria 2, the strict compliance with the parking requirements would prevent reasonable use. And as I said earlier, the after-school use would take up additional . . . would require additional parking lots for each of the schools, and would take up land that could be used for better and higher school facilities like future classroom buildings, or what they're currently used for now, which is playground/athletic fields. So in this context, building the parking lots would prevent reasonable use of school lands.

In Criteria 3, this is a condition of hardship that's not a previous result of the applicant. And so the cafeteria parking is actually code interpretation. And it establishes a need for additional parking for the after-school uses of the cafeterias. So this variance is not a result of the previous actions from the Department of Education or the Foundation.

For Part B on the high school stadium improvement projects, the Foundation proposes to replace the existing bleachers with a 3,000-seat bleacher, a new arrival building to take tickets, and a new press box building. And these improvements would require 505 stalls as shown on this table. So as with the cafeteria, the major events at the stadium such as football games and graduation occurs evenings or weekends four to five times a year. And currently what happens during these major events is that people use the school day parking that's existing there now. That's 442 stalls, as you can see here. And when that's filled up, people go and park over at the intermediate school or

Princess Nahienaena, which there's some stalls at those schools too. So as you can see from the table, the existing school day stalls accommodates the required parking, amount of parking stalls that's needed for these major events.

And then in regards to the criteria, I'm not sure if everybody's experienced up at Lahainaluna High School, but it's pretty slopey. And so there's a lot of . . . there's not that many areas for flat lands. And building a 505 parking lot would take about four acres of land. The school, as you know, has been built in the 1800s and so the conditions don't make it very good to build a parking lot. And so we would consider this as a condition that's exceptional, unique, and unusual for the school.

Criteria No. 2, as I said the stalls, the parking lot, would take up four acres of land, and which could be used for a higher and better school use again, for classrooms or playgrounds.

And as for Criteria 3, the hardship condition, the existing topography and how the campuses are laid out, providing a 505-stall parking lot is not . . . the hardship is not due to the Foundation's actions, previous Foundation actions.

So in summary, we are seeking a parking variance from Section 19.36A.010 of the Maui County Code relating to the designated number of stalls. And we're here to answer any questions if you have any. Thank you.

Chairman Abbott: Questions from the Board? Is there any public testimony? No? Yes?

Mr. Mark Tillman: My name is Mark Tillman. I'm the current president of the Lahainaluna High School Foundation. And thank you for the privilege to address this Board today. I would just like to testify on behalf of the acceptance of this variance due to the fact of, as it was mentioned, the extreme hardship that it would be put on the Foundation to try to come up with funds to build a brand-new parking lot for this particular structure. As Leilani mentioned, there's about four to five events that need to take place at that stadium per year, probably four football games, and we'd like to move our graduation to that location due to the space constraints that we're experiencing with the ever-increasing student body. The typical parking situation that occurs especially with graduation since it's been going on forever is that the local population has already been using parking facilities at Princess and Lahaina Intermediate School. And so they're very accustomed to using that as overflow parking. And I think that with that comments, I'll conclude my testimony. Thank you.

Chairman Abbott: Any questions? Thank you.

Mr. Tillman: All right, thanks.

Chairman Abbott: Any further? We'll now close public testimony and take questions from the Board.

Mr. Shimabuku: Based on the findings of fact and conclusions of law, I believe that the applicant has met all the requirements for this variance as was stated in the application that there is an exceptional, unique, or unusual physical or geographical condition existing on the subject property

which is not generally prevalent in the neighborhood or surrounding area. That strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property. And three, that the conditions creating the hardship were not the result of previous actions by the applicant.

As recommended by the Department of Planning, I'd like to make a motion to approve the variance with the following conditions: that the variance shall be applicable only to the request as approved by and as reflected in the record of the Board. And two, in consideration of the Board's granting of the variance, the applicant, the applicant's heirs, assigns, and successors, and interests hereby agree to be responsible for and hold the County harmless for any damage or injury caused by the State's agents, officers, and employees in the course of their employment to the extent of the applicant's liability for such damage or injury as determined by a court or otherwise agreed to by the applicant. And the applicant shall pay for such damage or injury to the extent permitted by law and approved by the State legislature.

Chairman Abbott: We have a motion. Any discussion? Second?

Mr. Howard S. K. Kihune: Second.

Chairman Abbott: Motion, seconded. OK. Discussion?

Mr. Chad Fukunaga: I'm somewhat aware of the campus as I visited the campus. And I agree with Ms. Pulmano that the existing topography . . . I mean, it is on a side of the mountain. It's very sloped. It doesn't lend itself very nicely to flat areas for parking. I also realize that the school is a very old school. And I imagine the population in the area has grown quite substantially over the years whereas the actual school has not grown, so it's very deficient . . . well, there's not much extra space to expand the school. So I think it meets the conditions that warrant a variance.

Chairman Abbott: Anything further? We have a motion and a second. Can we have a vote? All in favor, aye? Any opposed?

It was moved by Mr. Shimabuku, seconded by Mr. Kihune, then

VOTED: To grant the variance with the conditions as recommended by the Planning Department.

(Assenting: R. Shimabuku, H. Kihune, P. De Ponte, T. Espeleta, C. Fukunaga.)

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

Chairman Abbott: **The motion is carried. The variance is granted with the conditions so set forth.**

Mr. Fukunaga: I have a question, I guess, for Joe. You asked us at one point to point out I guess ordinances that might warrant your looking at. And I wonder if this would be a good candidate. I

believe the ordinance states that you look at the structures or the uses on the property, and you total everything up to determine how much parking is required, but there's no real stipulation for time when these uses will be needed. And I wonder if that's something that should be looked at.

Mr. Joseph Alueta: Yeah, we are looking at that as far as part of our amendments. We already have parking waivers up to a certain point, but it doesn't expand to these types of facilities. They're more for mixed use facilities where you have a residential component of a commercial. We are in our proposed amendments that we'll be doing hopefully within the next few months. We're gonna take into account facilities like this, but also expand the waiver process for the Director to take into account mixed use of hours for sharing. It's a lot easier when you have a shared agreement. We allow certain shared certain agreements in the industrial area, and we'll expand it to the regular commercial area where say you have a retail shop that opens during the day, and then you have a bar that only opens at night. We'll try to get a shared or overlapping so they can share the same parking for their requirements, and then we'll tie that with the CO. So if there's any changes . . . It's easier with public facilities because it's one larger complex and you're normally gonna be pretty straightforward. It's only with somebody . . . the difficulty with that is that if somebody changes their hours of operation, they don't really have to come back in. So we're very . . . it has to be structured right so that you don't shift the impact of parking from a private facility to the general public or to the surrounding neighborhoods. So we are looking at it along with some other updates but, yeah, thanks, Chad.

Ms. Pulmano: Thank you.

Chairman Abbott: Board, Section 2. Trisha, could you read?

2. **LEO K. CAIRES of GEN-X ENERGY DEVELOPMENT, LLC representing the COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY, requesting variances from Maui County Code, §19.30A.030(E), for the following (2) non-dwelling structures proposed to be located within the County's Agricultural District, at the County of Maui's Water Treatment Facility located off of Baldwin Avenue, Makawao, Maui, Hawaii; TMK: (2) 2-5-004:080 (BVAV 20130004):**
 - a. **TURBINE "A": A 160'-6" high wind turbine energy system--which includes a 120' high tower, 31'-6" blade radius, and a 9' foundation--to be located approximately:**
 - A. **2'-1" away (at its blade tip) and 33'-7" away (at its tower base), from the front (southern) property line;**
 - B. **89'-3" away (at its blade tip) and 57'-9" away (at its tower base), from the side (southwestern) property line; and**
 - C. **90'-4" away (at its blade tip) and 121'-10" away (at its tower base), from the side (northeastern) property line,**

Whereas based on Turbine "A's" total height, a 150'-5" front yard and a 140'-6" side/rear yard is required.

- b. **TURBINE "B": A 180'-6" high wind turbine energy system--which includes a 140' high tower, 31'-6" blade radius, and 9' foundation--to be located approximately:**
- A. **54'-11" away (from its blade tip) and 121'-10" away (from its tower base), from the side (southwestern) property line; and**
 - B. **83' away (from its blade tip) and 114'-6" away (from its tower base), from the side (northeastern) property line,**
- Whereas based on Turbine "B's" total height, a 170'-6" front yard and a 160'-6" side/rear yard is required for non-dwelling structures within the County's Agricultural District.**

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

Ms. Kapua`ala: So with that, I'd like to turn it over to the applicant. Mr. Leo Caires is here and I believe he has a power point presentation.

Mr. Leo Caires: Good afternoon, everybody. Good afternoon, Chair, Board of Variance. My name is Leo Caires with GEN-X Energy Development. I know it's after lunch. I'll do my best to keep it short and on point in the presentation. But before I get started, I wanted to call upon the Director of the Department of Water Supply, Dave Taylor, just to share some comments about this project before I get started.

Mr. Dave Taylor: Thank you, Commission, for taking this up today. I'm Dave Taylor, the Director of the Department Water Supply. The Department of Water Supply is the single largest consumer of electricity in Maui County. We have been working diligently on electrical efficiency improvements and alternative energy improvements including photovoltaics and now, wind, to try to reduce the cost of providing electricity while providing clean, efficient water. The bottom line is this project . . . projects like this will translate directly into everyone's water bill so we can get some control over electricity which is our single largest cost. And again, we are the single largest user of electricity on the island. We always hear these terms about sustainability, and green energy, and these kinds of things, limitations of fossil fuel. As the largest user of electricity on the island, the Department of Water Supply feels responsible to do everything we can to do our part to pursue these goals. So we work very closely with the Office of Economic Development and a countywide process of putting in alternative energy at sites. We think this is a great fit for the plant and for the County. And so we'd appreciate, you know, assistance in moving this project forward. Thank you.

Chairman Abbott: Thank you.

Mr. Caires: OK. Thank you, David, again. I appreciate that. OK. Why don't I go ahead and get started? I'm gonna just lean like this so I can watch my power point for you guys. But honestly, this is a project personally to me that I feel most proud of because of what Dave alluded to just to the impact that it has on everybody. I've been involved in renewable energy for quite some time, over five years already. And this is a project I think I'm really most proud of in what it's able to do.

My presentation is really about I'm gonna take you through this journey of what we've already done. My background, I've founded this company called GEN-X Energy Development. Really focused on developing distributed energy projects including, solar, and wind, and efficiencies. In my presentation, I'm gonna give you a background of this project, how it relates to the overall objective of the County. I'm gonna talk a little bit about the already existing facilities that we've actually already constructed renewable energy technology on them, how we have evaluated what's the appropriate technology, and the design layout for each site that we've worked on, and how Kamaole Site, the Weir, Kamaole Weir is actually gonna be, I think, one of the first hybrid sites potentially in the County, and talk a little bit about the benefits. And then I'm gonna turn it over to Charles Newcomb with Endurance Wind Power who's our wind partner in this project. And he'll be talking about a few things as well.

So I wanna talk a little bit about the background of this whole project. You know, the real reason why I think obviously we're here is Hawaii's in a unique place. Energy costs are really high. All our fuel is imported and a high percentage of it is imported. So this renewable energy project with the County was actually initiated about two years ago, and it stemmed over . . . spread over about 20 sites and various types of sites. And we had to bid on this project. It was awarded in late 2011. And the purpose of the project was to create a long term structure so that it can really control its electricity costs.

The value and the cost of the project that we've already completed is over ten million dollars on the solar side. And we expect that the County will realize a substantial amount of savings by allowing this sort of private/public partnership to take place. So ultimately, the objective is to reduce costs. The interesting thing about this type of approach partnership is that it doesn't cost the County any money up front. It's all from our side to bring in the capital to build this for the County so it's no capital cost to the County.

Again, we've tried to explore creativity in some of the sites in how we can maximize energy production while not impacting any immediate or long term uses of the County's facilities. As a result of this project, it's really a true savings to the taxpayers of the County of Maui. And we really wanna focus on the long term for the County of Maui in terms of its energy price stability.

So again, the project stemmed over a number of sites. And these are sort of some of the facilities I just wanted to highlight from senior centers to police stations, water, wastewater, some of the community centers. And what I'm gonna go into next is just to show you on the solar side. I just wanted to put this up how much panels we've already installed on the County's facility that . . . on the rooftops and on the ground. So there's a substantial amount of work already done. Some of these sites, when you folks drive around the community, these are some of the completed sites already.

And I just wanna highlight a couple of things. You know, going into the project, we really had some goals of what we wanted to get on each site. But as we went through it, there's a lot of what I call situations that don't allow you to do exactly what you wanna do. It could be great capacity has changed, so you can't really put on what we had hoped we could get on. So we really tried to do the best we could with the time we had to get it all in. I really think this project . . . you know, we did it in a really short time in terms of what it should have actually taken. And it was . . . we couldn't

have done it without the help of everybody in the County, the team, to accomplish it.

This the Kihei Aquatics Center. And when I talked about just exploring creativity is we could've easily put the panels on all the rooftops, but we tried to explore a solution to provide a secondary benefit, shading, because a lot of kids use the swimming pools. And so when they park under it obviously, it can help keep the cars and vehicles cool. And so this is a pretty challenging project to accomplish and . . . but I'm glad we got that one executed.

This one was just to point out, you know, again, when Dave Taylor spoke about some of these wastewater and water treatment plants, they use a lot of power. And so one of the neat things I'm really proud of is the County actually possesses one of the largest single arrays on the Island of Maui right now in one of the wastewater treatment plants. It's just a little under I think a megawatt. And then on the other one, the other wastewater treatment plant, is about I think 500 or 600 kilowatts. So that's a lot of power and it's all gonna be used up. And so we really tried to design the facilities so that we minimize the export to the grid. And we wanna insure that all the power gets consumed on site. So this one is on the Kihei Wastewater Treatment Plant.

So again, going into the reason why we're here today again, Trish talked about the location of the project that we're here today. The basic reasoning here is how to save costs. And really, the value of proposition we brought to the table with wind energy is we can see that on the left side there on the column that Kamaole uses a lot energy. I mean, just 73,000 kilowatt hours, that's just in the month of April. And that's sort of the cost that they look at per month. Without incorporating what they call demand charges, the base price of the water plant pays about 32 cents per kilowatt hour. And so with this structure, with the power purchase agreement, we're able to deliver power to the County at a significantly reduced cost. We're really trying to maximize here, and so we expect the savings to exceed \$50,000 a year, and over the term of the project, again, a pretty substantial savings as well.

I just wanted to point out here when we kind of go into how we arrived to looking at wind energy, we tried to max out what's available on the site already. So there's already solar on this site. And we tried to put as much as we could. And it really stemmed from how much feasible roof spaces are available because we can't just plop it on any roof. We just have to make sure the roofs are structurally sound to carry the project over the course of the term.

This is another one on the right. That's the water filtration building. And going into this project, we thought we could use certain parts of the site. And we couldn't. And because there's certain plans that the Water Department has for long range planning, and we couldn't use certain parts of the ground, but . . . so space was very limited, obviously. And so we feel that we really maxed out the solar potential on this site here.

So just talking about the characteristics of the site, it is zoned in agriculture. It's . . . you know, wind energy is a permitted use on ag. In terms of the character of the area, there's actually a 60 to 80-foot wind turbine not too far away down from this site. It's actually on the Maui Job Corps that was installed I think two to three years ago. And obviously the way we arrived to looking at wind is because it's in a windy area. And the wind supports the use of wind technology.

So again, just to give you a sense of what's happening on the site, we are . . . again, you can see there's already solar existing on the water filtration and the office building. So I wanted to make sure I point something out that was important for clarification. On the top, Turbine B, the actual true height above the ground will be 171 feet. It's 180 and a half feet because we counted also the foundation height. And the foundation will actually be below grade. So that's just to support the tower. So on the same thing on Turbine A located here, the height above the natural grade is only 150 feet. Each . . . for Turbine B, the tower is 140. The reason why it's 140 is because you can't really tell, but from this point to this point, there's like a 20-foot grade difference drop that goes downslope. So this is like a steep decline into this area. And when Charles comes up, he'll speak more to . . . about the siting and why we went up that high. It also would actually match this turbine here which would be on a 120-foot tower. So we expect that the two towers will be balanced.

So I wanna bring Charles Newcomb up from Endurance Wind Power just to speak a little bit about the technical aspects of the project siting and some of the common concerns or questions that communities that we find have concerns or interests in understanding. So, Charles, if you'd like to come up?

Mr. Charles Newcomb: Thank you, Leo. Are you guys still awake? Everybody doing OK? . . . (inaudible) . . . is nodding off. The lights are on your side of the room so there's less . . . (inaudible) . . .

All right. So I think the first thing to talk about is why towers? Why can't we put these things on a 30-foot tower? You know, like why wouldn't you put it close to the ground where you could get to it easier? You know, it wouldn't be as visible perhaps. You wouldn't worry about a structural setback area, all these kinds of things. And there are turbines around the island that you see on very short towers and those are the residential turbines. And you also see the very tall towers over at Kaheawa. And this is something in-between. So if you haven't seen very many of these scales of turbines, I wanna kinda take you down a little path of what they look like, and why you put 'em on this specific tower height.

Small residential turbines generally cost anywhere between \$10,000 and maybe \$20,000 or \$30,000, right? And the tower cost of . . . for a tower that would get you kind up to where you'd start to see the wind is gonna maybe be \$10,000 or \$15,000. So you can kinda see how on the smaller turbines you might get a third of the cost in just the tower itself just to get it up to where it can access the wind. On a turbine like this, which is a quarter a million dollars for the turbine itself, you kind of invest a little bit more on the tower. You wouldn't . . . the tower itself might be \$50,000 or \$60,000, but you wouldn't put \$50,000 or \$60,000 underneath a \$10,000 or \$15,000 residential turbine. Does that make sense? It just wouldn't economically make sense. And nor would you put a turbine of a quarter of a million-dollar turbine on a short tower. It's kind of like putting a tomato plant in a vase or something like that. It's just not gonna grow very much. It's not gonna do much for you. So you actually have to put these things, if you're gonna invest a fair amount of money as an investor, as a project donor, you have to take the turbine and you have to put it on a suitable tower where it will have good access to the wind, and not just for visual reasons, but it's gotta have good access to the wind. And wind, as you know, is really dependent on how much clutter there is on the ground, and which direction it's coming from. And you guys are blessed. You probably don't realize that because you live in this paradise, but you're blessed with this tradewind thing

where the wind blows really consistently so much of the time so steadily. I come from Colorado where we can't just make wind . . . Yeah, you guys are looking at us like why do we care about wind? Well, you . . . I mean, when you're talking about making a more sustainable future for your County, I commend you on making the decisions you've made in order to try to wean yourself as much as you can from fossil energy which is all important, as Leo mentioned.

So a little bit about my background so you can throw rotten tomatoes at me later, I've been in the business for about 17 years. Twelve of that was at the National Renewable Energy Laboratory. It's a Department of Energy Laboratory where we studied this kinda stuff and tried to figure out where you put stuff, why do you put it there, how do you put it in, how do you work with communities, how do you make sure everybody's happy, how do you honor the perspectives like Mr. Smith had earlier today while at the same time meeting the goals and objectives of the community as a whole. And how do you listen respectfully, to individuals like that and say you're totally entitled to your perspective, and at the same time say what does the community wanna do, right?

There's an interesting case that just came out yesterday. The City of Falmouth voted . . . Falmouth of Massachusetts, very, very, very far away. They did a project that was quite a bit larger than this, and they had a few individuals in the community who were very unhappy because you are always gonna have somebody in the community who says, "Wait a minute. What happened? Who put that up?" And you're like, "Were you not paying attention for the last year of hearings? Were you not reading the newspaper?" And this happened in Falmouth, and they had a few people, literally less than a handful of people in a community of many thousands who finally after years of getting curtailment and making it really difficult, brought it to a city vote, and it was just absolutely . . . (inaudible) . . . "These things are staying. You don't get to take them out. You know, this is what we want to do as a community." And so it's always interesting to draw that line between community and individual kind of perspectives. And I can't imagine how hard a job that must be.

I think the other thing just sort of acknowledges the notion of a variance. And a variance doesn't say we're trying to circumvent the law. I don't wanna say we took offense at the comments earlier about sort of circumventing anything because it is a permitted use. But more along the lines, and I don't need to lecture you on this because you guys know this way better than I do, but from my perspective, a variance is something that is an exception to what was dreamed up when somebody was writing in the law, right? You can't write a law that covers everything forever in the future, right? You have to write a law that bundles as much as you can efficiently, and every once in a while, there's gonna be some exceptions that requires an individual look. And I think that's exactly what you're doing. So whoever said, sorry, your request is denied, we wanna look at this where you need a variance right on it, right? Because that's exactly what it deserves and that's what it requires. So that's a little bit of background. And what I look at a lot is where you put things and why do you put them there.

So what does a turbine look like? Now, it doesn't look quite like this because this is on a shorter tower. This is on a little . . . I think it's like an 80-foot tower, this particular one. So the turbine that you're gonna look at what we're proposing is 20 feet taller on one of them and 40 feet taller on the other. But it's not a Kaheawa scale machine. The diameter of that rotor is about the size of this room. So it's about 60 feet in diameter, just to give you a sense of scale. And what's interesting

is that there's some trees you'll see. And I swear to God we didn't . . . (inaudible) . . . the system. We just want . . . (inaudible) . . . Just so happens that there are trees out there that work really well from a visual perspective because the trees are about a hundred feet tall, and they act very nicely in terms of scaling it. Would I put a turbine behind a tree that's a hundred feet tall? Not in very many places, but you happen to have winds where we can kinda point to the direction of where the winds come from, and we'd say it's gonna come from that direction most of the time. Every once in a while, it'll come from behind a tree, but we're actually OK from a probability standpoint.

It's a 50-kilowatt wind turbine. That's its nameplate rating. It generates a little bit more than that when it's really windy. In the winds that Leo mentioned at around six and a half which is around 13 and change, 13 to 14 miles per hour average annual wind speed, they'll generate around 200,000 kilowatt hours, and at about a ten cent per kilowatt saving. That does add up over time. It's got a 20-year design life. And the nice thing is, is that the people, myself, who are proposing this project, and proposing to own the project, and sell the electricity also manufacture the turbine. So it's very much a Maytag leasing you a washing machine. Do they do this? Are they still around? That may not be a good example. Are they still around? OK, good.

Mr. Alueta: They're still around.

Mr. Newcomb: OK, thank you. But it's not a notion that if Maytag could lease you the washing machines to the guy that's sitting there bored out of his skull, you know, can sit there, that would also be a good deal, right?

And again, distributed. This is distributed wind versus utility scale wind versus residential wind. And to be clear, distributed wind, it's a definition that continues to evolve, but generally speaking, it's generating the power where it's being used. It's not meant to be exported. So the downside of exporting, I always think about energy like I do zucchinis. Do you guys grow zucchinis over here?

Mr. Alueta: Yeah.

Mr. Newcomb: And it works really well if you grow just enough for yourself. It doesn't work so well if you grow enough for your neighbors because it doesn't take very long before they start to grow this big because you can't get rid of them, right? Same kind of deal, you wanna grow just as much energy as you need on site. If you start to have to export it, and you start to give it away, the economics fall apart really quickly. So it's a project that is scaled to use on site as best we can. Now, we were limited in terms of machine size. I mean, the project actually could've used a much larger machine, but there was a pretty hard and fast rule that we were instructed to respect which is if a drop of water drips off of the corner of that blade when it's out horizontally, thou shalt not let that drop of water fall on your neighbor's land, right? It must stay. The drip line has to stay inside your property line. So we respected that. And when we maximized the machine which is the objective of the water district was when we maximized that, we then also had a sort of structural setback area that we were violating. And that's what this variance is about. It's about the 35 feet because we've got a machine that warrants a taller tower because we're trying to get more energy. And it's about the sort of structural setback requirement that we are violating because we're in a very constrained footprint.

So hopefully, you guys still awake? Still feeling OK? All right. So we did a couple photo simulations. And just to give you a perspective of where we took the pictures from, there's a main gate here, and you'll see in the picture, the gate. So you'll see that. And there's another gate over here that you can see. And here are these trees that I was talking about. Actually, these are the hundred-foot tall trees. And there's one turbine that we propose there, and one turbine that we propose there. So just to give you a sense.

So this is the project from further south and you can see that just so happens from this perspective that the second turbine is not intentionally hiding. It just happens to be behind this tree, literally, so you can barely see it. So they are about the size of those trees. So indeed, they do change to a degree, the nature of that vista, because if you don't have the turbines there, it doesn't look like that. But the fact that there's another wind turbine just off of the left side of the photograph means that the area isn't dramatically challenged.

I saw you doing a street view earlier up and down the road. And you can see these bushes. What kind of plant is this? Is that cane grass? Is it edible? Get the Mainlander to go out there and try to eat some. (Laughter) And everybody . . . OK. Anyway, but when you're driving down the road, you can't see through this. Unless you're driving in a London double decker, you won't notice the wind turbines unless you're alongside these two gates here. Generally speaking, it'll be hard to see. So again, because this turbine on the left is down in more of a hole, about a 20-foot hole, and it's on a taller tower by about 20 feet, the hub heights look very similar, and they are very similar.

This is the view from coming down the hill. And here's . . . is that Baldwin Road? Baldwin Avenue? And then the gate that I said you could be able to see is kind of hiding in the dark here. Sorry about that. But you can see the two turbines in the distance here. So again, you know, in my perspective, the distribution of energy is kinda neat because it's visible enough that you can actually see somebody is trying to do something, but it's not overbearing, although I would suggest that I'm sure that Kaheawa was contentious at one point. But now that you're seeing energy costs stabilize a bit as a function of that, maybe there's less, less so.

What about sound? You know, we were out at the site today taking a few measurements. And Leo mentioned this filtration building here, but there's also a Weir here where there's a lot of . . . there's a flow measurement here, and there's a Weir here for flow measurement, and those things are loud. They're 65 decibels when you're standing near them. And so in fact, you would be unable to hear the wind turbine from the base of the tower because they're being masked by all the objects around you. Right at the bottom of the tower, it's about 64, 63 decibels at the bottom of the turbine on a 120-foot tower. And so when I stood between these two buildings, I was reading 67 decibels, which is about twice as loud as the wind turbine remembering that three decibels is a doubling because it's . . . (inaudible) . . . scale.

Over here, we've got a house that's nearby. That's about a thousand feet from the turbine that we proposed here. And I don't know what the background noise level is here. The magic about wind energy and background noise is that someone might make the challenge that, listen, I don't wanna hear that. The wind doesn't always blow. And when the winds are not blowing, I can't . . . nothing's being masked by the rustle of the wind and the leaves. The advantage that wind has is that when

the wind's not blowing and the wind isn't rustling the leaves, it's not blowing the turbine either. So the turbine is very quite when the wind's not blowing. In fact, it's inaudible. So that shouldn't be a concern for these folks here, plus they're a thousand feet away. It's gonna be well under the 36 decibel number. And 36 decibels is very quite conversation, way quieter than I'm talking. It's to the level that when you're sitting in a living room, and you speak at that level, you have to say, "What did you say again?" Right? It's very, very quiet, extremely quiet. And these sound estimates are based on this report that we had done at East Ash in England in a similar agricultural environment. So it's a nice representative, I think.

Structural setback, I mean, you can call it whatever you want. We're choosing to call it "structural" just like we don't call it "noise," we call it "sound," because we're trying not to put some sort of feeling around it. But in fact, yes, there is a setback which is a fraction over the total tip height. So that's one thing we are violating is that we don't have the setback. The setback would be . . . we said 160 feet or so? And we just don't have that. We exceed it by quite a bit. But the question is, is that is that a problem when we're surrounded by ag land? And I'll let Leo talk about that to a larger degree. That's the question.

So I welcome as many questions as you can throw especially, technical, or about sort of social acceptance, and those kinds of things because I think those are important. You guys are embarking on a new phase of your clean and sustainable energy future. And what you're doing is you're embarking on a stage of it which is visible. Solar is very quiet and practically invisible in many cases. And wind is not invisible but it's also a statement. And if you're making a statement about going to more sustainability, then it's gonna be visible.

Chairman Abbott: Any public testimony?

Ms. Nicole Shipman: Hi. I'm Nicole and I live in Manaolu which was that subdivision right below those wind turbines. And I actually do have some concerns about them. And there isn't a lot of science behind it, but people are talking about this thing called "infrasound." So they're kind of like sound waves. You don't actually hear them, but they emanate off of these wind turbines. And those people in Cape Cod actually had signs of like dizziness, and vertigo, and some kind of different signs that started happening. So, you know, I have children and I just feel kinda concerned about having them so close to where I live. So I have a copy of . . . it was NPR which is an interview that they did with residents. So I can leave it if any of you are interested in reading about it. Thank you.

Chairman Abbott: Thank you.

Mr. Shimabuku: I have a question.

Mr. Newcomb: May I respond to that? I think it's important to inoculate oneself against those kinds of concerns including . . . Oh, sorry. There's a process that I'm absolutely violating and I apologize for that.

Mr. Giroux: We just gotta check if there's any other public speakers.

Mr. Newcomb: Oh, OK.

Mr. Shimabuku: I have a question for the testifier. Trisha, can you pull up that map? I wanted to know where she lives on that property. Where do you live? Come up. Where do you live?

Chairman Abbott: Please come up to the podium.

Ms. Shipman: I don't actually see . . . Kimo, can you see? This is Ohi. Yeah, right under this right corner. So if you . . .

Ms. Kapua`ala: This is Baldwin Avenue.

Ms. Shipman: Yeah, you gotta go . . .

Ms. Kapua`ala: Haliimaile Road.

Ms. Shipman: Yeah, it's further down.

Ms. Kapua`ala: Down?

Ms. Shipman: Down Baldwin.

Ms. Kapua`ala: Down Baldwin this way?

Ms. Shipman: No, the other way, yeah. We are Ohaoha. So I live right here. It's not right next to it, but a thousand feet, you know, the way that the wind blows, it blows down that way. So I don't know how this stuff travels. It's very new. There hasn't been a lot of science behind it, but I feel concerned, and I just want it to be taken into consideration. That's all.

Mr. Shimabuku: Mr. Chair, is the other testifier here as well? I believe his name was Sebastian. Is he still here? Where do you live on the property?

Mr. Nola: I live just around the corner from Nicole. If you want to look at the map, I live right here. And it's more, far more than a thousand feet. Where she lives and where I live is far more than a thousand feet. The thousand feet reference that Mr. Newcomb was talking about was at the house that's way up here at the very end of our subdivision. So Mrs. Shipman . . . (inaudible) . . .

Mr. Fukunaga: There's a scale on the bottom of that map.

Mr. Nola: Five hundred feet.

Ms. Kapua`ala: I can't . . .

Mr. Nola: No, that's not it. That's not the house.

Ms. Kapua`ala: Let's try from here to here?

Mr. Nola: Yeah, try from there to there.

Ms. Kapua`ala: It's 2,767.

Mr. Nola: Almost 3,000 feet. OK? And the house that Mr. Newcomb was talking about was right here. OK? And that's approximately a thousand feet.

Mr. Shimabuku: Also, you had mentioned in your testimony about . . . something about the view plane that it doesn't . . .

Mr. Nola: Yeah, in our subdivision . . . our subdivision was specifically laid out that each home site had a view plane corridor which is built into our CC&Rs. And the view plane corridor for every property is basically this way or that way. OK? It doesn't . . . We're down the hill from the Kamaole Weir. And the only way you can see the various . . . the landing pad, the helicopter . . . (inaudible) . . . is if you get to this point here in the subdivision, or this point here, and look back toward the Kamaole Weir. And all you see is the very top of the building, and you can see the windsock for the helipad, and that's it.

Mr. Kihune: Mr. Chair, I have a question.

Chairman Abbott: Please.

Mr. Kihune: Sebastian, I have a question.

Mr. Nola: I'm sorry. Go ahead.

Mr. Kihune: OK. No worries. Are you speaking for the . . . is there an association in your . . . ?

Mr. Nola: No, I am not.

Mr. Kihune: Is there an association at Manaolu?

Mr. Nola: Yes, there is.

Mr. Kihune: And how do they feel? And what were their comments? Did they discuss this at all?

Mr. Nola: The information was presented to the Board. Was presented at the board meeting last week. In fact, I made the presentation since I'm the president of the board. And I distributed or the board distributed all of the information that we have regarding this project to all of the homeowners and some of the homeowners are here today. Mrs. Shipman is one of the owners.

Mr. Kihune: Was there feedback from your meeting?

Mr. Nola: The board? None.

Mr. Shimabuku: What about the community, in general, at your meetings, though?

Mr. Nola: Pardon?

Mr. Shimabuku: What about the community?

Mr. Nola: I can't speak from the community. We distributed the information to the members of the community, and if they wanted to appear before this Board, they were free to do so. But I did not nor did the board take a poll of the community.

Mr. Kihune: So the board has no decision one way or the other, is what you're saying from your association?

Mr. Nola: That is correct. The Board did not take a position for or against the project. That is correct.

Mr. Kihune: Thank you.

Mr. Nola: OK. You're welcome.

Mr. Shimabuku: So, Ms. Nicole, is she still here? How did you get about all of this information since . . . ?

Ms. Shipman: From an e-mail. I received an e-mail with a little copy of what was in the newspaper, I guess. And . . .

Mr. Shimabuku: Was the e-mail from the board or . . . ?

Ms. Shipman: Was from our management company. We have a management company for our subdivision.

Mr. Shimabuku: Which is part of the association?

Ms. Shipman: Correct. Yeah, we pay them, I guess, to manage. But I wasn't concerned because it's not in my view, and I thought it was allowed, but actually when I heard this NPR story, I felt concerned because I thought, well, there isn't a lot of information on it. I mean, I don't wanna start feeling dizzy and having vertigo. I mean, they were talking about spending 14 million dollars to tear down two wind turbines. Granted, they were 400 feet, but 180 feet . . . like we have one near Job Corps, but it's like 60 feet. I mean, 180 seems pretty significant to me, and I just wanted it to be at least looked into.

Mr. Shimabuku: We supposed to get that report that she mentioned about? Take a look at it?

Ms. Shipman: It's just a transcript from a radio interview.

Mr. Doug McLeod: If the Board would allow, we could probably give some background on these issues, if you wanted.

Chairman Abbott: Please.

Ms. Shipman: I mean, it has nothing really to do with . . .

Chairman Abbott: Let's finish up public testimony first.

Mr. McLeod: Thank you, Chair. My name is Doug McLeod. I'm the Energy Commissioner for the County. And I wanted to respond to a couple things about the potential health issues.

So first, this issue actually came up with the employees of the facility. And I don't know if they're NPR listeners also or if they got the information other ways. And as a result, we did spend quite a bit of time reading all the information from the City of Falmouth and looking at it. And we concluded that it really is an order of magnitude difference that they had a . . . what we would call a pretty, poorly, designed project. They had kind of a . . . they felt they had too good a deal financially to resist, and they bought two turbines. The turbines they bought are of the same size and scale as what we have on Kaheawa. That means an output an excess of one a half million watts. These, in contrast, are 50,000. It's a true order of magnitude difference.

The health risk that people are pointing to was first discovered with people that operated jack hammers. And they have found that these sorts of subsonic noises can have a physical impact to your body, but that's why we moved away from the utility scale units with their very large size and vibration to these very small 50 KW units. So again, when you think about order of magnitude, the people in Falmouth had a bad situation where they were put right next to truly, truly giant units that are, in fact, emitting quite a bit more vibration.

So our view on this was that the science was not settled, but we didn't want any of the employees to feel a health concern. And that was really a driving influence. And if we talk more later about why this is where it is or how it was designed, you'll find that this has had a lot of input based on safety concerns from people at the facility. And again, in trying to address those, we have very carefully looked at the information that's available about the subsonic noise. And although I appreciate people coming out from the public, our number one concern here was we have employees there every single day, and we did not want them to be in a situation where we felt there was a health issue for them. Any other questions you may have about the project, I'm happy to try to answer, but I just wanted to chime in on that one point now. Thank you.

Chairman Abbott: Is there any more public testimony? Please.

Mr. Kimo Haynes: My name is Kimo Haynes. I live in Manaolu as well. And so I'm on the board with that. And I think there's . . . my impression of our last board meeting was there is a lot of concern or not . . . just interest in this project because there's not a lot of science or there's not a lot of information out there. I think as a . . . we . . . I'm the one that actually saw the notice. So most of the homeowners probably were unaware of it till we let them know about it.

But I think, like Nicole, I live a little closer than she does to the project. And my concern is just one, the noise; one, if there's anything to that health issue. And I don't know if I can ask you a question. When you talk about scale, is there any science to say where the breaking point is? I mean, if 1.5

million has some health issues, where does it stop?

Chairman Abbott: We'll take note of it.

Mr. Haynes: OK. But I think I'd like to just communicate that my impression of the last board meeting was there was some issues. The board did not make a position one way or another, but there were individual board members that had some concern there. Thank you.

Chairman Abbott: OK. Any questions from the Board? Any additional testimony?

Mr. Kihune: I have one question, Mr. Chair. Kimo, can I ask you a question? Would it make sense for your association to have a general meeting to discuss this, or is it just a board meeting, or the homeowners?

Mr. Haynes: It would probably be helpful for people behind the project to explain a little bit more to the homeowners since we're so close to the project. And there's times when we can actually hear the water treatment plant when the wind's not blowing. So that, to me, was . . . I saw what the map showed, and you can't hear this project at all, but in reality, that's not really true. But it might be helpful for the people proposing this to . . . (inaudible) . . .

Mr. Kihune: To meet your association, yeah, to meet your community?

Mr. Haynes: Yeah.

Mr. Kihune: OK. Thank you.

Chairman Abbott: Anything further?

Mr. Shimabuku: I get one more, I guess. Sebastian, as the representative for the association, have you made the attempt to contact all the homeowners?

Mr. Nola: Like I said, when we got the notice, when we saw the notice in the paper, it was distributed by our property manager to all homeowners, number one. Number two, after the board meeting, and I presented the information to the board regarding the location of the turbines and some technical information regarding the turbine specifications that Mr. Newcomb had covered, one of the board members suggested that we distribute all of that information that I had to the homeowners. And an e-mail went out to all homeowners. I believe yesterday, it was distributed, and with the recommendation that if anyone wanted to participate here at this hearing could, in fact, do so. And as you see, I'm here, Mr. Haynes is here, and Mrs. Shipman's here.

Mr. Shimabuku: Not so much on the notice as far as trying to get the community involved in this matter, from what I see. OK. Thank you.

Mr. Fukunaga: Chairman, I'd like to hear from GEN-X or any of their representatives. I think they had some response to some of the comments that were made.

Chairman Abbott: Are there any more testifiers?

Ms. Shipman: I was just wondering, is there a way to maybe like . . . I don't know, just as a maybe, a consideration, to turn it off at night, or is that when you generate your most power, or . . . ? It's running 24/7. Like your employees go home, but we're just inundated, you know, the whole time. And maybe that could be a consideration or . . . I just thought I'd bring it up. I don't know exactly how they work.

Chairman Abbott: I think we'll close public testimony now.

Mr. Fukunaga: Yeah, I'd like to hear from GEN-X or their representatives.

Mr. Caires: I just wanted to point something out. I always feel the right way to do things is in an energy space, you gotta work with folks, the community. It's really important.

On the notification process, I just wanted to point out that clarification. If we had gone down a special use permit process, we would have been required to notify every landowner within a 500 foot radius of the property. And in the case of the variance, as you all know, that the notice we had to give, mandatory, was to adjacent landowners. And it turns out that this spot only has two adjacent landowners, and that is A&B and EMI. And it's hard for me because I . . . you know, when there's projects in my area, I always think as developers, we should be compassionate to people's concerns. And so maybe that part of the process needs to be re-reviewed because when we go for a variance, it's only asking for adjacent landowners, but we, technically, weren't required to notify people within a greater radius. Obviously, if that was a requirement, that would be a key component here because I realize that's where it's coming from is the people who weren't part of the required notification. And so I just wanna address that I'm compassionate to that part. And we cannot go forward as a community if we cannot have consensus on some things. And if we can work toward some reasonable way to accomplish the objective here, I think that's important. So I just wanted to speak about that. I've been on both sides so I just wanted to let the folks know who testified that we're listening to them. So, Charles, do you have anything to address on the . . . ?

Mr. Newcomb: I wanna say that I can totally understand where you're coming from because, I mean, how would you know, right? You haven't lived next to a turbine before. So of course, you should ask the questions. No question about it.

The hard part for the industry is that infrasound is something that was perpetrated, I use that word, by a few individuals who had an agenda. And it's so easy to magnify and make immortal that agenda by enrolling people such as yourselves who are not . . . you don't have an agenda. You just wanna make sure your kids are safe, or make sure you don't have a headache, you don't wanna be dizzy. And so I totally get it. And that's really important to understand.

There was an interesting study done most recently about this wind turbine syndrome. And they were able to absolutely, definitely, say with statistical certainty that the sickness comes from your thinking you're gonna get sick. If you walk around and say, "You know what's gonna happen to you? You're gonna get a turbine next to your house, and you're gonna get sick." You go to you and say, "No, you're not gonna get sick. And you're gonna get sick. And you're not gonna get

sick.” It’s amazing. There’s that one-to-one ratio. So if you think you’re gonna get sick, you’re probably gonna get sick. But it’s really hard for us as an industry.

I think Falmouth is a great example. And the fact that it’s actually . . . (inaudible) . . . magnitude, right? Fifty, 500, and then into the . . . (inaudible) . . . space. So it’s like a really, really different scale. The machines already are . . . The vast . . . The hard part about media is that they want to interview both sides of the argument. So they’ll go to you, and they’ll say, “You think it makes noise?” Right? And then they’ll find somebody else who says it doesn’t make noise. And then it looks like a 50-50 kinda thing. But if you go to . . . (inaudible) . . . another great example in Maine, a community of 2,500 people and five people didn’t like the project. That is not even, right? It’s like not even close. And yet, whenever the media interviewed, they interviewed both sides, and it looked like a 50-50 kind of . . . I don’t know. It could be or could not be. And those kinds of things make it really difficult for us as an industry.

This machine is really quiet. It is quieter than this at your house. You will not be . . . (inaudible) . . . This is like in a high 50s to 60s decibel range, this sound of this air-handler. But if you walk outside, you can’t hear it, right? The sound falls off really quickly. And then the infrasound thing, it’s . . . (inaudible) . . . It is not supported by any science, absolutely. And the Department of Energy has been spending a lot of money to try to dispel this because they’re the Department of Energy and they’re trying to send good scientific out there. There’s no evidence. There’s just no evidence. You will find a few rogue doctors who have an agenda for whatever reason whether they have . . . you know, they can find some ties to somebody else who has an agenda who’s encouraging to have an agenda. But you can’t find any . . . It’s like trying to find a scientist who doesn’t believe there’s anything going on. It’s that hard to find somebody who has a reputation with a scientific standing who will then buy into it or just won’t do it.

So I think it’s really important for you to understand that you’ve got a community member who has a concern. That community member absolutely has to . . . should have that . . . deserve to have that concern aired and heard and valued, for sure. And I’m sorry that it comes from not understanding and I totally get it. Where else are you gonna get this information?

So I recommend . . . And I’m nervous about sharing the Massachusetts’ study. The Massachusetts’ study, look at this very carefully, it was from the Department of Health. And it was a literature review study, but it was for utility scale wind. It was for Falmouth. It was . . . (inaudible) . . . which are much larger machines. So I’m almost scared to even show that even though it shows a negative, there’s no effect, it’s still a utility scale. And I don’t want you to draw those inferences because again, it’s a . . . (inaudible) . . . magnitude difference. It’s just a big difference. It’s like I was describing earlier, it’s kinda like being worried about somebody wanting to put in a dock in for their . . .

Chairman Abbott: Sir, could you address the Board?

Mr. Newcomb: Yeah, oh, I’m sorry. I was trying to address her concern.

Chairman Abbott: I understand that, but we can’t hear a lot of the things that you’re saying.

Mr. Newcomb: I apologize. So what I was describing earlier is like somebody wanting to put in a landing, a slip for a rowboat, and somebody else saying no, but when you bring the cruise ship in, it's gonna be a problem, right? It's like this isn't a cruise ship, it's a rowboat. It's a very, very small turbine and it just doesn't have that effect. And the effect is shown not to really exist in the scientific community. So I think if you look at the Department of Energy, and you look at what they think about siting, and you look at Ben Hoen's work out of the Lawrence Berkeley National Laboratory, you'll start to see the pattern that it is a . . . it's an agenda that seems to be out there that the Department of Energy is expending great expense to show it for what it is. And that, in fact, when wind turbines are properly sited, and I would argue that a thousand feet away from a home is a good siting, and 3,000 feet away from your concerned landowner's home is like she'll never even know it's there. She'll have to slow down and look at it.

And then finally, you know, I think to Leo's point that the variance is about sort of a structural setback violation and a height issue as opposed to sound, right? Thank you and I apologize for speaking in the wrong direction here. Thank you very much for your patience.

Chairman Abbott: If it's all right, we're gonna take a five-minute break.

(A recess was then taken at 3:02 p.m. and the meeting reconvened at 3:08 p.m.)

Chairman Abbott: The meeting is now back in order. We'll continue where we left off, if we know where that is. Did the Planning Director wish to make some comments?

Mr. William Spence: Board Members, good afternoon. I just wanted to say a couple things for the record. And there was a couple of things brought up by . . . during testimony with regard to special use permits and those things. Maybe we can explain that later. But just in terms of the recommendation we made to this Board, we recommended denial simply because of the technical things in the law. It's not that we don't support this project because there's most definitely a public benefit to this, to the rate payers, certainly reducing the cost to government. Overall, the department believes this is a really good project. It's just unfortunate it doesn't meet just the requirements of the code in a lot of ways. We've discussed with Mr. Alueta earlier in the meeting, places where perhaps our code should change. And I think part of our code for this Body should be updated for perhaps things like projects with public benefits. So that's just for your consideration. I wish our code had kept pace with the needs of the County. I do believe this is a good project. If this Board finds for a variance, we would support that. Does that make sense? It's just a technicality that it doesn't meet the requirements.

Chairman Abbott: OK. Thank you. Any questions for the developer, or the staff, or anybody from the Board? Board, questions, discussions?

Mr. Kihune: Yes, Mr. Chair, I have a question for Mr. Caires. Can we put the overview of the plant on the screen real quick?

Mr. Caires: Sure.

Mr. Kihune: Thank you. OK. That's fine. That building over to the right, that white roof building,

what is that?

Mr. Caires: This one right here?

Mr. Kihune: Yeah.

Mr. Caires: Dave, tell me if I'm wrong, but my understanding is the water comes in here and it's stored. This is a water storage facility. And then I'll let Dave . . .

Mr. Taylor: Dave Taylor, Director of Water Supply. That is a finished water storage tank and chlorine contact time storage tank. So basically, that's treated water that needs a long time for the chlorine to contact with the water before it goes out into the system. So that's, I believe, a three million-gallon finished water storage tank.

Mr. Kihune: Nice-looking warehouse. The question I have is for Mr. Caires. And maybe at some point somebody can maybe give me some better understanding. That roof cannot be used for solar photovoltaic? Absolutely?

Mr. Caires: Good question. I was hoping that would be brought up because of a couple of things. And maybe Doug might be able to address this too.

So, OK, so this is what happened when we did this project. When you do your diligence on the sites, you really wanna understand ownership. Make sure the County owns the land because it's from a financing standpoint, those things need to be in place. So from when we did our due diligence . . . Because we also looked at this site here. I'm not going off too much, but just to make clarification, this is, I think, also in the plans for maybe another thing like this here. But this land, there's . . . I don't believe the County owns it so we cannot put something on somebody else's property.

Mr. Kihune: Is that a leased piece of property? Does anybody know who the landowner is?

Mr. McLeod: I can probably answer that, if that's OK. It's A&B. And there was an understanding that there would be a purchase but the comp. that A&B offered on that land were from Kula 200. And so the breaker pricing didn't really look reasonable to the Water Department folks.

Mr. Taylor: And again, Dave Taylor from the Water Department again. We are working to finish the transfer and take ownership of that property. It's a matter of time between us, the Department of Water Supply, and A&B, the owner. Everyone agrees that it will eventually be transferred to the County, to the department, but it has not been yet. So at some point, we will agree on a price and do all of the dotted I's and cross T's, but it will eventually be our land where our tank is.

Mr. Kihune: Let me state for the record, I mean, I'm a true believer of renewable energy, and I think that's the road we should go, but is that roof area big enough to carry the panels that would generate as much energy as you would from the two turbines?

Mr. Caires: To give some perspective . . . So the question, repeat the question?

Mr. Kihune: That roof area, if you were to develop photovoltaic on that roof, would that generate enough energy as the two turbines would?

Mr. McLeod: It would generate more in terms of the capacity, the theoretical capacity, but when you compare wind to solar, it's not quite fair in terms of . . . you know, you get some . . .

Mr. Caires: Yeah, that's kind of where I'm going with that was in a delicate way to say that you get more efficiencies. So for example, a hundred kilowatts of solar, you would get maybe 165, 175 kilowatt hours a year. With a hundred kilowatt turbine, you get between 200, 240, depending on the wind regimes. So you can get a lot more production. That's the only reason why we were driven to that was because of the efficiency side trying to make the project more efficient for the County. And it would ultimately be up to the department if they would want . . . allow us to either penetrate . . . because we gotta hold this thing down to support it. So from a structural design, because it's a safety issue, you don't wanna contaminate the water, I believe, but that would be a Water Department call. So I don't know what they feel. But I wanted to . . . I said that's a no-brainer to do it. I wanted to, but then we looked at, oh, OK, shucks, I don't want to put something on somebody's back yard. That wouldn't be prudent.

Mr. Kihune: Now, would that area that is adjacent to that structure be big enough to . . . ? Looks like there's another area there.

Mr. Caires: This area?

Mr. Kihune: Yeah. Would that be ideal for another photovoltaic farm, if you wanna call it?

Mr. Caires: Yeah, we'd love to because in going into the presentation, the only . . . the fallback was there are some plans to make a duplicate of this right here. So the challenge was, OK, if we put up this solar array farm here then we're gonna be in the way, and what happens in ten years? That would be a very complicated situation from a contract standpoint from the County. So technically, we would not do it today because of the impact we would have to the County's goals to provide this service to us. We also explored outside here, too, but . . .

Mr. Kihune: OK. You answered my question. Thank you.

Mr. Caires: You're welcome.

Mr. Fukunaga: Is that going into the grid or is that just going straight into the treatment plant?

Mr. Caires: Yes, so typically, a lot of the projects we would . . . so there's different types of interconnection agreements with the utility. And like I'll take an example of the fire station. So we used what they call a net energy metering agreement. And so if . . . just a snapshot of what that is, is we would design the system, and expect that we would export back into MECO's utility grid, but however, there would be credits that would allocate for our export to be credited against future billings. So we get . . . so it's this credit market we're working with the net energy metering.

For this project if . . . because the load is so big, if we pursue the net energy metering

interconnection, there's only one meter and you're limited only to a hundred kilowatts. So the alternative, how do we maximize production was we need to go down what they call a standard interconnection agreement, which basically would allow us to exceed the net energy metering capacity over a hundred kilowatts. So like in this instance, we'd be basically building out 165 of total capacity, the solar and the wind. And we would go down that route. However, we wouldn't find our own threshold in terms of the capacity because the facility has . . . (inaudible) . . . on how they use power. So we would target some area here to minimize the exporting. And the reason why we wouldn't wanna export any is because the County's buying electricity. It wouldn't be a good service to them if we're just putting out power and they're paying for it. They're not even benefitting from it. So the idea under a standard interconnection agreement would be we'd design this facility so that all of the energy that's generated by the solar and the wind gets consumed by the water treatment plant. So we wouldn't expect to export any, because if we do, it doesn't make sense. You know, they're paying for something they don't use. And for us, they're gonna pay for that power, but it's not the right approach to designing.

Mr. Fukunaga: In addition to the quantity of kilowatts being created, there is a benefit of the wind power being available 24 hours a day over a photovoltaic system?

Mr. Caires: Yeah, absolutely. You know, the idea . . . as an example, we built Hawaii's . . . one of I think is Hawaii's largest off grid, wind-powered, water-pumping facility on the Big Island. And the idea there is we really tailored the pumps and the loads, and we matched it to the wind output. So instead of typically just having the wind gushing and we're not pumping, we did the opposite so you control the loads to match the wind, and then you maximize the renewable energy availability for the site. Does that kind of answer?

Mr. Fukunaga: Yeah.

Chairman Abbott: Did Joe have a question?

Mr. Alueta: Yeah, just for clarification because based on what you're coming in for the variance and what Dave, Mr. Taylor, indicated on the acquisition of the property, given the . . . if the County acquires the rest of the property, or when the County requires the property, given the site parameters, is there a location in which you would be able to site the two wind turbines on that master property, and have the towers fit within a fall zone? Meaning it would be on the site, and it would meet the setback requirements meaning one foot from the property line so that it would not require a variance from the setback. That's what I'm trying to find out. Or is it the height of the tower, no matter where you put it on the site, it's still gonna require a variance from that provision?

Mr. Caires: That's a good question because there's a couple of things going on in that question. One was guidance from the department in their operations to not impact them. So we had some sites that we thought would work I think down here at the bottom. There was an old building, but this, I think, was demolished and then a new building was put up there. Another one of the sites, there was some, I think, major . . . I think there was some of those big pipes because all the pipes that run everything is all under ground. And that was an issue. So you have really . . . there's tons of pipes all in this area. There's a lot of stuff happening.

Mr. Alueta: So, no. OK, thank you. (Laughter)

Mr. Caires: Sorry, sorry. I get excited about this stuff, sorry.

Chairman Abbott: Any more questions? Discussion?

Mr. Kihune: Oh, one question, Mr. Chair. Mr. Caires, in regards to the agreement with the County, this 20-year agreement will be to maintain the turbines as part of the costs? That's correct?

Mr. Caires: That's correct. That's correct. Same with the solar.

Mr. Kihune: The County doesn't put out any money other than paying for electricity on site?

Mr. Caires: Yeah, I think why I'm really supportive of this structure is that there's no capital requirement from the customer, in this case, the County. And we would be obligated to provide the O&M for the facilities. And the neat thing I can point out about this is the facility, our facilities, we don't earn an income if we're not running. So we're highly incentivized to make sure the equipment is operating, operational, and has a high up time. If it's not working, we're not getting paid. Our job is to deliver as much renewable power to the site. And that's why I think this model is a really true win-win situation because the more we provide . . . the more we provide power . . . the more power we provide, the greater the savings is to the County because it's just very discounted power.

Mr. Kihune: Thank you.

Mr. Caires: You're welcome.

Chairman Abbott: Anything further?

Mr. Giroux: Can I just ask staff? Joe, as far as reading the law, the electricity use is accessory, right? Because it's only gonna be used on the property, so that's an outright use? Allowable use?

Mr. Alueta: I'm looking at my boss who's trying to jump in. We're still yet determining whether or not we're gonna consider this an accessory use to the existing special use permit which allows for the water treatment facility. Or if the system is of such a scale that we're going to require an amendment to the State special use permit that currently exists for the major utility which is what the water treatment plant is right now.

Mr. Spence: OK, so what's before this Board, of course, is just the height variance and not the actual use.

Mr. Giroux: That's what I was trying to get at is, also, I was reading that the way that this height issue reads is it seems like there is no restriction on the height. It's whether or not you can get that height to fit into a setback. Am I reading that accurately?

Mr. Alueta: Yes.

Mr. Spence: Right, if the turbine was for some reason to fall over, it's gonna fall over onto another

property. That's the issue. So that's the requirement of the code. And they're requesting a variance from that requirement. And there's nothing else around it. It's not like it can fall on somebody's house. And that's normally the concern when you get these height issues. The use . . . the Kamaole Weir Treatment Plan exists by virtue of a special use permit granted in 1982. The . . . and that falls under the Maui Planning Commission. The amendment that you heard the testimony about, I believe that was in 2006, and that was for the covered structure that Board Member Kihune pointed out and questioned. So that was an amendment to that permit. So the question is . . . And we're also mixing . . . there's some places where State law and County law overlap, and some places where they don't. And one of them is in the special use area. So we need to just discuss internally if something has to go back before the Planning Commission or not. But one way or another, they have to meet . . . we need to decide the special use permit thing, but one way or another, they would need a height variance. So just for the sake of discussion, not saying it would be a requirement, there have been instances with this Board and with the Planning Commission . . . they need a special use permit and a variance. One that comes to mind is Latter-day Saints Church in Lahaina where this Board granted a height variance for their steeple, and then they got their special use permit with the Planning Commission. So sometimes we have multiple boards involved, sometimes not. Definitely for this project to go forward, they would need a variance. One way or another, the special use permit issue will be resolved later.

Mr. Fukunaga: One of our criteria is that it reads, "That strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property." So reasonable use by . . . I mean, now we're not sure if reasonable use . . . the proposed reasonable use is if it's an allowable use or not.

Mr. Kihune: That's a question, gentlemen.

Mr. Fukunaga: I think it's a Catch-22.

Mr. Giroux: When Planning looks at the allowable use, they look at the use allowed by zoning and also allowed by code. And then we have also conditional permits that are uses that are not allowed, but then allowed by act of Council. And then you've got your variances that are kind of a different animal altogether sometimes. So the allowable use, as you can see, you can look at what is the use that it's being used for now, which would be under the special use. And I think what's causing a little bit of the confusion is that now that we're creating . . . we're generating energy for that allowable use, is the Planning Department looking at that as a separate use or is that an accessory use? And that's kind of why I wanted to get that on the table because if they were to bring generators onto the property, go off the grid, and only fill gas into their generators, would that be seen as a separate use when all they're doing is using the electricity to run the allowable use? And I think that's the thinking that I kind of wanna put on the table is they're not creating a different use. What we're looking at is, are these generators being put in places on the property that are allowable by the zoning? And I think if we look at that . . . and that's why I wanted to take it . . . it's not a height variance. It's a placement variance. It's a setback variance. And that's what needs to be focused on as far as how does that affect the neighboring properties, how is that changing the nature of the neighborhood that when you're looking at your analysis, if you can focus on where on this property . . . If that piece of property were a few acres bigger, and there was nothing in its way, and they could actually put this right where they needed it, it would be an allowable use, and

it would be an outright use. The issue is, is something in the way from them putting the tower where they need to put it. So I think if we can focus on that and to see what the dangers or what are the . . . I guess, what are the hardships that are created by this preexisting use in order to try to come into compliance with the State mandates and with our economic situation of being in a peak oil situation. I think then we can move further along in the discussion.

Chairman Abbott: Thank you. Comments? Discussion?

Mr. Fukunaga: I understand the reasoning that the site is very well used, very cluttered. There's a lot of underground utilities so there may not be a lot of areas to place such a turbine with the necessary foundation. I also understand that there is a certain height requirement that's necessary to . . . for efficiency's sake for this type of utility. In my opinion, I think they meet the requirements that . . . the analysis that they have to be where they are, and they have to be that height to meet the efficiencies.

Mr. Giroux: Is that a motion?

Chairman Abbott: Is that a motion?

Mr. Fukunaga: I thought we're just having discussion, but I will motion that we approve the variance.

Mr. Kihune: I'll second.

Chairman Abbott: It's been moved and seconded. Discussion?

Mr. Shimabuku: Yes, looking over all of this information, with the idea of renewable energy, definitely I'm in favor of such projects to use our resources here on the islands with sun and wind. But also hearing the testimonies from others who have concerns with this issue, and also of our duty as the Board to see the criterias are met, the three criterias are met. And at this point, I look at it as has it been met. So I won't be supporting the granting of the variance.

Chairman Abbott: What is the staff's recommendation?

Mr. Spence: This is really difficult for the department because technically, we don't feel it meets the strict letter of the law. But that said, like I said, some of our codes haven't really kept pace with the needs of society and the public good. So on the one hand, it may not meet the requirements of the code, but on the other hand, we support the granting of the variance. It's a hard position to be in. So technically, we recommend a denial.

Mr. Shimabuku: So for me, that's why I kinda . . . for me, that's what kinda I'm leaning toward because of our duties as far as looking at the three criterias. I mean, I understand that it's a good thing that we could use the wind energy and stuff, but technicalities get in the way. And it's something that's come before us before, I guess, and sometimes it's a hard decision. But for me, I would have to take a stance on what I believe.

Chairman Abbott: Any other discussion? Comments? Suggestions? Thoughts?

Mr. Fukunaga: I feel they do meet the three criteria. I think there is an exceptional, unique physical character to the property or to the project. I think strict compliance with the provisions prevent reasonable use placing such a wind turbine which is an allowable use in ag area. And I don't believe that the applicant . . . or the conditions creating the hardship are not the result of previous actions by the applicants. I don't believe they created the hardship and I think they meet the criteria.

Chairman Abbott: Thank you.

Mr. Shimabuku: But then the department has mentioned that it has not met all the requirements.

Mr. Fukunaga: That's their interpretation. We're supposed to make our own interpretation.

Mr. Shimabuku: Right. True.

Chairman Abbott: Mr. Attorney?

Mr. Giroux: That's the debate.

Chairman Abbott: Is there any further discussion?

Mr. Kihune: I have a question, Mr. Chair. Can I ask a question of Trisha?

Ms. Kapua`ala: Yes?

Mr. Kihune: Is A&B that's applying for that subdivision, the parcel next door?

Ms. Kapua`ala: The owners are Powerful Spaces, LLC.

Mr. Kihune: No problem. I just wanted to double check because I figure that if they had any comments, they would probably be here today regarding . . . because they've been notified, I'm pretty sure.

Mr. Alueta: Mr. Chair, if I may help your discussion? One way or another is that one of the unusual conditions . . . and that's why I asked Mr. Caires one of the issues of why those locations. And I think during the application, that wasn't clearly stated as to some of the piping configurations that are unique to the property and to the site. Another situation that could be taken into consideration for discussion is that how many water treatment plants do we have? That's one of the unique . . . I mean there's not that many public utilities out there so that's another unique situation. So the design of those public utilities facilities, and given the fact that this is an existing plant that has been there for several decades, you couldn't necessarily plan for future technologies that has occurred given the fact that in the 1980s, and I'm sure this plant was there prior to 1980s, that was the land of cheap oil. OK? We're talking \$20, \$30 a barrel oil. Wind technology was not there at the time. So I'm not supposed to write their variance but I'm trying to help the Board try to figure out alternatives in their findings, and that's why I asked some of the questions as far as why this location. And again, it's not so much a height variance. It is a variance from setback because of the unique height that they need. And the requirement of our code is that you need one foot. The

code allows for tall structures such as this. Non habitable structures can exceed but it just requires that any structure above 35 feet, we have to set back an additional foot. So given the location, the characteristics of the site, you can take those into consideration when making your decision.

Chairman Abbott: We have a motion on the floor that's been moved and seconded. Shall we vote or further discussion?

Mr. Fukunaga: I'd just like to clarify something with Joe. So, Joe, you're saying that if these wind turbines were located on the adjacent property, which is a much larger parcel, and they were located far enough away from any boundary line that it would be an acceptable use? I mean they wouldn't require a variance?

Mr. Alueta: Yes, again, if it was part of some facility. OK? Because this is part of a utility facility, it's considered an accessory to it. We would view it . . . And under the height structures, it's a non habitable structure. And that's why I asked if they had other locations. They just expanded the site and subdivided out a bigger area. The height, it wouldn't be a problem because it would have enough setback from the property line.

Chairman Abbott: Question for the Board—would you like to go into executive session to further discuss this, the rights, the duties, the liabilities, whatever of our Board?

Mr. Giroux: The reason I bring it up is because there is some concern of us not following the department's analysis. However, because of the hearing, there's information that we're being given that's different than what the department used to do their analysis. So just as part of your rights, duties, and liabilities, if you want to discuss that, we can do it in executive, but it has to be a choice of the Board to do that.

(There was not a general consensus of the Board to go into an executive session.)

Chairman Abbott: OK. There's a motion. It's been seconded. Let's call for a vote. All in favor? Any opposed?

It was moved by Mr. Fukunaga, seconded by Mr. Kihune, then

VOTED: To grant the variance.

(Assenting: C. Fukunaga, H. Kihune, P. De Ponte, T. Espeleta, G. Abbott.)

(Dissenting: R. Shimabuku.)

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

Mr. Caires: Thank you. Thank you.

Chairman Abbott: Thank you.

Mr. Spence: Thank you, Members.

Chairman Abbott: The next order of business? Minutes. Does anybody want to approve the minutes or whatever?

B. APPROVAL OF THE MAY 9, 2013 MEETING MINUTES

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

VOTED: To grant the variance.

(Assenting: C. Fukunaga, H. Kihune, P. De Ponte, T. Espeleta,
G. Abbott.)

(Dissenting: R. Shimabuku.)

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

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

E. NEXT MEETING DATE: Thursday, June 13, 2013, 9:00 a.m.

Chairman Abbott: The next meeting is June 13th.

Ms. Kapua`ala: Yeah, 9:00 a.m.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 3:45 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

G. Clark Abbott, Chair Pro Tem
Ray Shimabuku
Patrick De Ponte
Teddy Espeleta
Chad Fukunaga
Howard S. K. Kihune

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Members Excused:

Jacqueline Haraguchi, Vice-Chairman
Rick Tanner, Chairman
Bart Santiago, Jr.

Others:

William Spence, Director, Planning Department
Joseph Alueta, Acting Planning Program Administrator, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel