

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
OCTOBER 10, 2013**

(Approved: 11/27/2013)

A. CALL TO ORDER

The meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Rick Tanner at approximately, 1:33 p.m., Thursday, October 10, 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.)

Chairman Rick Tanner: The meeting of the Board of Variances and Appeals will now come to order. The time is 1:30 p.m. and we do have a quorum. At this time, we're gonna open the meeting for public testimony. If you would like to speak on any of the two items on the agenda, you may do that now or you can wait until the agenda item comes up. If you choose to speak now, you will not be allowed to speak again when the agenda item comes before the Board. So you have that option to choose right now. Do we have any member of the public that would like to speak at this time so that they could leave early? No? OK. We'll get right into it, Trisha, and ask staff to read the first item on the agenda item into the record.

B. PUBLIC HEARINGS

- 1. GARY A. YABUTA, CHIEF OF POLICE, of the MAUI POLICE DEPARTMENT requesting an amendment to the existing height variance for the Kihei Police Station, to allow an additional 11 feet for the construction of a 63-foot tall radio tower structure-consisting of a one (1) foot concrete slab and footing; a 40-foot steel tower; a 12-foot pole extension; and a 10-foot lightning rod-to exceed the Public/Quasi-Public District's height limit by 28 feet, for property located off of Piilani Highway, near its intersection with Kanani Road, Kihei, Maui, Hawaii; TMK: (2) 2-2-002:070 (BVAV 20100005)**

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

Ms. Kapua`ala: So with that, I'd like to turn the podium over to the applicants. We have here, Sharon Wright, of Michael Wright and Associates.

Ms. Sharon Wright: Thank you. Good afternoon. My name is Sharon Wright, Michael Wright and Associates. And we're presently the construction manager finishing the managing, the construction of the Kihei Police Station. I've brought today, Walter Pacheco, who is the communications specialist for the County for all systems of the County. And Walter's gonna run through the power point with you. So I'm going to turn it over to Walter, our expert.

Mr. Walter Pacheco: Good day. I'm Walt Pacheco with Maui Police Department. I am the Communications Coordinator. And my responsibilities include the maintenance and operation of the countywide public safety radio system of which this tower's a part of we'll be supporting.

OK. The Kihei Police Station has been coming up for a while now. And they've been taking some very good aerial photos as we proceed along. And what we're looking to do is install a communications tower, a lightning rod to protect that tower, and the extension to give it the height it needs to be above the tower to afford the proper protection.

Back in August, they asked for a variance for the construction of the police station whose roof line is at 44 feet. And at the time of the request, the radio tower was not completed. It was still in some design work. And they proceeded with the building in advance of this. Today, we're here to ask for an amendment to allow us to construct the tower, and be able to proceed with the links and other things that are associated with that to support the police as well as countywide communications.

OK. This photo shows where the radio tower is gonna be installed. This would be north at the bottom of the picture. So the tower is tucked away behind the station. Piilani runs this way. So what the tower will provide for us is the ability to connect this station to the rest of our network, and also to support our dispatch center which is gonna be located within the building. So it handles both land mobile communications which is my job, but it also connects to the County's network to support data being transported in and out of South Maui.

The primary purpose for the tower is to support a microwave link from our site at Ulupalakua . . . (inaudible) . . . It's a former Hawaiian Tel site that's up in the ranch. And there's a direct line of sight to the station. So we'll be able to then connect the station via microwave in addition to fiber optics which are buried in this area.

Microwave links are preferred with public safety communications. They're a lot more robust than fiber in a lot of respects. Data and voice will traverse the fiber as well as the microwave, and it offers a backup to the communications for public safety as well as the County operations.

These alternate routes are kinda important for us because at the end of the day, we cannot not be . . . we must be able to talk to everyone. That includes the community. That includes the Police, Fire, Public Works, everyone who is responding to support an emergency within the communities that we serve.

Fiber optics are very reliable. We can move a bunch of data through these things. They are great. They are not without their own hazards, however. We've had in the past, a backhoe, just down the road at Lipoa took out the fiber optic lines coming in through Kihei. We've had several occurrences in Kihei alone where brush fires also burnt the fiber that was coming into Kihei. Lahaina has been cut off several times again, by brush fires destroying the fiber optics. So they're great. They do provide the ability to move a lot of data around, but they're not indestructible. So what we do is we layer on top of that microwave, which will allow us to route those calls via the microwave, through the system, so that we're always able to communicate with our people as well as into the communities.

Everyone here has some kind of a wireless device, I am certain. How often have you not been able to use your cell phone or your telephone? It's an inconvenience. The cable T.V. goes out. It's an inconvenience. Public safety communications is always about life and safety, and it's a matter of always being able to communicate.

The structure that we're looking to put up is essentially, something very similar to this. It's an open lattice design, four legs, some lattice to add structural strength to it, a lightning rod at the top, and a radio antenna for the communications from the dispatch center that is gonna be built within the station. Primarily, it will be as a stand-by. We'll be communicating over the microwave through the larger radio network, but should there be a problem, again, always having a backup, the antenna would provide us that opportunity to then to be able to communicate through the system. The microwave dishes are those broad connections to the other sites that then provide that infrastructure support for public safety communications as well as the County communications: voice, data.

The finished height of the tower is gonna be 63 feet. The slide shows 62, but there is an additional foot of rise above grade, so it's 63. What would be visible considering that the building that is mostly obstructing is at 44 feet will be the lightning rod which is about three-quarters of an inch in diameter, and an antenna which is as large as three inches. It'll probably be much smaller. The three inches is our worst case. And the tower is gonna be painted a very light gray so it should disappear into clouds in the sky.

This is a view coming up the drive as you turn off of Piilani Highway and you turn up towards the station. And the tower would be located in this back corner here. And again, it could be shorter than the main roof line of the building at 44 feet. The tower itself, the main structure of the tower, will be at 43 feet. The tower height itself is only 40 feet, but it sits on top of a curb and on top of a pedestal which then raises the height just a little bit. Again, located in the very back corner of the building and tucked up tight against the building.

The next slide shows the landscaping plan that is around the station. The kamani trees are big shade trees that will grow over time and help obstruct the view from the roadway, as well as the palms that'll be planted along the drive. And that's pretty much everything I have. If you folks have any questions about the project.

Chairman Tanner: So at this time, the Board Members have any questions for the applicant?

Mr. Bart Santiago, Jr.: Just a question. So the tower itself from the Piilani Highway being located at the back, it will not be visible?

Mr. Pacheco: I'm sure it'll be – a portion of it will be visible as you come into Kihei or heading toward Wailea along Piilani. It will be almost completely obstructed from the Wailea side coming out.

Mr. Santiago: It will be just the antenna and the lightning rod?

Mr. Pacheco: The lightning rod will appear above the roof line. The antenna, depending again on the actual size that we'll be required to put up once we get into the building and see what kind of signals we're getting, it may come up a bit as well but that is again, a three-inch diameter.

Mr. Santiago: Is there any way to design those, that antenna rod and the lightning rod, to retract when it's not in use because it just an alternative . . . (inaudible) . . . ?

Mr. Pacheco: There's no way to do that. Someone would have to physically go and do that. That's not typical. You're probably thinking about like a crank up tower kind of a thing?

Mr. Santiago: Automatic, retractable antenna that would be . . .

Mr. Pacheco: The tower's designed to meet the TIA, the Telecommunications Industry Association, TTTG standard which is the current . . . it's the most current iteration of their wind ratings. So the tower actually is built to survive a hurricane as long . . . as well as the building. And a retractable system would probably not be able to survive that.

Mr. Santiago: Has anyone looked into it?

Mr. Pacheco: No, and it's not something that's common in the industry.

Mr. Santiago: Thank you.

Mr. Ray Shimabuku: I have a question. So when they were planning this building, were you involved from the very beginning with this?

Mr. Pacheco: We came in initially looking at the possibilities. And what we begun to do is in fire stations and police stations looking at them as points of communications within the County that allows us to get communications closer to the street. The way cellular works is they're everywhere on the street. We have . . . we don't have that kind of concentration. We're generally high sites. And again, what would be the purpose for that particular tower? So because there was a small dispatch center in there, we did put some work in on putting a tower initially. Before it went to bid, I believe that was pulled back because of some cost concerns, and it was put back into the project. So the tower was in the project plan as it went forward. It was initially in there. They did not initially put it in the bid. That was one of the things they optioned out, and then put it back in there.

Mr. Shimabuku: So as far as the height is concerned, would that be the minimum heights of the dish and . . . ?

Mr. Pacheco: For the microwave connection, yes. Because we'll have people working in the back driving around in the back, we'll have the microwave dish center line at about 33 feet. It'll probably be as large as ten feet and it'll be on the south side of the building. So it'll be tighter into the building, but it needs to be above where people are traversing or driving around. So that height is 33 feet up to 38 feet to the top of the dish well below the roof line, but still able to see Ulupalakua from where it sits.

Mr. G. Clark Abbott: I have a question. The ten-foot lightning rod and the 12-foot extension, these are roughly three-quarters of an inch in diameter?

Mr. Pacheco: Yes.

Mr. Abbott: Both of those or is the extension pole larger to support the additional 12, ten feet?

Mr. Pacheco: The actual measurement is it's five-eighths of an inch so we round it to three-quarter

just so it's simple for people to grasp. They thread together and they become a part of the entire steel structure of the tower.

Mr. Abbott: My real question is, you have 22 feet of wiggling pole. Is there any way of . . . ? In the wind, it's gonna be whipping around like you wouldn't believe all over the place. Is there any way of securing it so it's more . . . it's safer because it could snap off?

Mr. Pacheco: It's designed for this purpose. And these are what the tower manufacturers are putting up on towers. They are designed to be at the top of towers above the height of your maximum antenna to be able to give you the protection from lightning. So it'll be the highest object that the lightning will see and then be shunted to the ground. It's designed to be up in the wind.

Mr. Abbott: If it's moving around, boy. Never mind. OK.

Mr. Pacheco: Our antennas will wiggle in the wind. They're a lot larger in diameter. And there will be some wiggle but that is part of the design of the rod.

Mr. Abbott: Because it's 22 feet of wiggling.

Mr. Howard S. K. Kihune: I have a question, Mr. Chair. When this was originally designed, was this the original height of this tower, or was there a different tower that was proposed at that time?

Mr. Pacheco: We originally were looking at 60 feet. And in the process, we opted to 60 feet if I have to turn into a transmitter. Right now, the only thing that's in the building is a control station which does not have to be where it peers over the building. So our initial design of the tower is 60 feet. The tower is designed. All the structural members are built to support a tower at 60 feet. We're only asking to build 40. The foundation will support 60, but I can only pour concrete one time. So we designed it big and we're installing 40 feet.

Mr. Kihune: Now, with this microwave tower, is the entire County gonna tie into this including Fire, all the emergency services?

Mr. Pacheco: Yes, we are in a very close partnership with the County's ITS section where they handle all the data network. We transport County data today into Hana on our system. We're carrying it to Molokai today on our system. It's all part of it. I needed to build a microwave infrastructure for radio. It just cost just a little bit more to go from large to double extra large. So we built the capacity as large as we could and the County is traversing this. This will provide broad data through put should Kihei get cut off again by a backhoe or a brush fire. And they'll be able to route through Ulupalakua back to this location without anybody really knowing anything happened.

Mr. Kihune: Another question regarding your mention of a large to an extra large system. Is this system gonna be outdated in ten years from now or 15 years from now?

Mr. Pacheco: We're just putting in a new radio system as we speak. And we are projecting it to be 15 to 20 years for this land mobile radio system. The microwave infrastructure, the equipment may change out periodically; however, the dish sizes should remain the same. The structural load should remain the same. The equipment on the back end will change. So we're not necessarily

changing a lot of stuff physically on the tower. We'll change antennas and feed lines every five to ten years just out of practice, but we're not necessarily adding much to it. We're just changing . . .

Mr. Kihune: Or more height or anything like that?

Mr. Pacheco: Generally not. Not unless there's a need for coverage on the new system. We may have to come back and say, OK, remember we asked about that? I gotta come back to you for that additional 20 feet. We didn't wanna put it up, but in order to be able to cover everything, I have to. Our best view of the whole thing is when the new system goes in, we're not gonna have to worry about it because it's a lot better than the system that we have today.

Mr. Kihune: OK. Thank you.

Mr. Shimabuku: I have another question, Mr. Chair. Is there an alternative plan should this variance be denied?

Mr. Pacheco: Well, if not, we will have to find another way of getting connected. It does . . . this does take out the direct ability for us to provide that alternate path into Kihei. We would have to find another facility to be able to do that. As far as the dispatch center, this gave us a great place to hang an antenna because we had to put it up for the microwave anyway. We'll find another means of hanging that particular antenna but it will be a small antenna tower.

Mr. Shimabuku: So basically, the tower would sit somewhere else?

Mr. Pacheco: We would have to find another location that would provide that type of view to the site that we would be able to then develop as a link into Kihei. This gave us the opportunity . . . the Kihei Station just gave us an opportunity on a Kihei property, on a County property, to develop that alternate route.

Chairman Tanner: Trisha, do we have any letters of support or opposition?

Ms. Kapua`ala: None.

Chairman Tanner: None? OK. Any other questions from the Board?

Mr. Kihune: One more question. Mr. Pacheco, right?

Mr. Pacheco: Yes.

Mr. Kihune: It looks like the foundation is already poured for this tower.

Mr. Pacheco: It had to go in before they could finish the concrete. So we went ahead and put the foundation in because they needed to progress on the facility otherwise I'd be trying to dig up a large area of pavement and concrete, blasting or digging again into the blue rock, and then redoing the foundation. It's better to do it while they had all the equipment and everything there already.

Mr. Kihune: Thank you.

Chairman Tanner: Any other questions? OK. At this time, I'm gonna open the meeting for public testimony. If there's any member of the public that would like to speak on this agenda item, now would be the time to do that. OK. Seeing none, I will close public testimony. You do have a staff's recommendation in your report, very detailed. So at this time is there any discussion with regard to the staff recommendation?

Mr. Kihune: I got a question for Counsel regarding the height limit amendment. Does that impact the entire site or just the actual tower itself?

Mr. James Giroux: I think you gotta look at the request, I guess, on its four corners is that you'd be granting specifically what is asked for. So you're not giving a 43-foot variance for the variance. You're giving a 43-foot variance for a tower. So it's gonna be very location specific.

Mr. Kihune: I just wanted to clarify that just to make sure we all understood that.

Chairman Tanner: If there's no other discussion, I'm open for a motion.

Mr. Abbott: I'll make the motion to approve.

Mr. Santiago: Can I just make a comment? I'm sorry. Sorry about that. I'm a little slow on the update here. I guess my only concern is that it's a good thing, right, but who's to stop . . . if we grant this variance, who's to stop any of those locations in the Maui Technology offices to be able to build towers such as this 60-foot tower for their communication needs?

Chairman Tanner: Well, the height restriction remains in place. They would have to come for a variance just like and show that they meet the criteria and . . . yeah, but I see what you're saying. It's going to be a precedent.

Mr. Santiago: It's a precedence, a dangerous precedence. That's all.

Chairman Tanner: OK, if there's no other discussion, a motion.

Mr. Abbott: I'll redo my motion to approve the variance with the staff's recommendation and all articles in it.

Chairman Tanner: So assuming everybody is familiar with those recommendations, you have the motion. Is there a second?

Mr. Kihune: Second.

Chairman Tanner: I have a motion and a second. Any further discussion? I'll call for a vote. All those in favor? Any opposed?

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

VOTED: To approve the variance with the staff's recommendations and all articles in it.

(Assenting: G. Abbott, H. Kihune, C. Fukunaga, B. Santiago, R. Shimabuku.)

(Excused: P. De Ponte, T. Espeleta, J. Haraguchi,)

Chairman Tanner: **The motion passes. The variance is granted.** Thank you. Will the staff read the next item of the agenda into the record, please?

2. **MAUI COUNTY COUNCIL, LTD, BOY SCOUTS OF AMERICA for the STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES requesting a variance from Maui County Code, §19.36A.080 to retain their parking lot's current gravel surface instead of paving it with asphalt or concrete, for Camp Maluhia's proposal to construct a new dining hall, located off of Kahekili Highway, Kahakuloa, Wailuku, Maui, Hawaii; TMK: (2) 3-1-001:001 (por.) and 0028 (BVAV 20130012).**

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

Mr. Chad Fukunaga: Chair? Excuse me, Chair? Before we go any further, I have a question for Corp. Counsel.

Chairman Tanner: Yes.

Mr. Fukunaga: My son is in Cub Scouts and I'm an assistant den leader for his pack. Is that a conflict for me to preside over this matter?

Mr. Giroux: I think the Code of Ethics under Article 10 states that you have to have a direct or indirect financial interest. I appreciate your disclosure. As long as the other Members of the Board understand your participation, I guess, in the organization. My understanding is that the individual councils or what do they call them, troops, actually don't have a possessory or financial interest in the properties of the council, and they're held separately. So I don't think you would be recused . . . or have to recuse yourself from discussion or voting.

Mr. Fukunaga: OK. Thank you.

Ms. Kapua`ala then presented depictions of the proposed site and surrounding area.

Ms. Kapua`ala: OK. With that, I would like to turn the podium over to Mr. Michael Munekiyo of Munekiyo & Hiraga.

Mr. Michael Munekiyo: Good afternoon, Members of the Board. My name is Mike Munekiyo. And I'm here on behalf of the Boy Scouts of America. We have a very short presentation in two parts. First of all, I'd like to introduce our scout executive, Robert Nakagawa. He'll give a brief overview of the scouting program and what's gonna occur at the camp. And then I'll go through a very brief power point to talk a little bit about the technical elements of the proposed variance. So I'd like to

introduce at this time, our scout executive, Robert Nakagawa.

Mr. Robert Nakagawa. Good afternoon, Members of the Board. I'm Robert Nakagawa, the executive director of the Boy Scouts here in Maui County. Currently, serve almost a thousand youth in about 70 units throughout the County and various organizations. And the camp property, for those of you that have been there, you know it's been there for a while. It's been built in the '30s and it's seen much wear and tear. Hence, the reason we're here this afternoon is we're seeking a variance because the current dining hall that we've been utilizing is in great disrepair. And as we continue to grow the scouting program, we're looking at increased use of the dining hall, which the current dining hall wouldn't facilitate. So we're looking at new dining hall for the safety of our youth as well as the community that utilizes the camp.

Currently, we even have a camp center stage which is part of the Lao Theater. They're using the camp right now with about 40 youth. And just this past weekend, ended today, they had a girls camp as well at the camp. So not only do our thousand scouts currently active in the scouting program utilize the camp throughout the year especially, during the summer, but throughout the year, we have a lot of other organizations that utilize the camp from the Rotary, the Rotary Youth Leadership Academy. We have Lahainaluna and a number of other organizations from Maui Taiko, and churches, and other school groups, Lao Intermediate, that utilize the camp throughout the year for their own purposes. So we're just seeking a variance because of our new dining hall.

Mr. Munekiyo: Thank you, Robert. So really, the impetus for this afternoon's request before the Board is the new dining hall which triggered parking requirements. And as Trish had mentioned, we do have two parking areas. And let me just go through the power point very briefly.

Again, the applicant is the Maui County Council Boy Scouts of America. There are two tax parcels involved in the variance request. Parcel 28 is that campsite parcel which was shown in the aerial photograph. And that is owned by the Boy Scouts of America. Parcel 1 is an approximately 194-acre parcel leased by the Boy Scouts of America from the State of Hawaii. And by the way, Mr. Daniel Ornellas, who is a State District Land Agent was unavailable to attend. And Mr. Larry Pacheco who was Assistant District Land Agent was planning to be here but he took ill today. So unfortunately, neither of them are here, but we have been working with them. They do support this variance. And of course, they have signed a letter of authorization which is contained in our variance application allowing us to move forward with this application.

So briefly, we are seeking from the Board, a favorable consideration for a variance from Section 19.36A.080 relating paving of off-street parking. And again, this is just a very general schematic overview of the campsite. This is Parcel 28, the largest State-owned parcel, which is leased by the Boy Scouts of America. And you saw on the aerial photo, two parking areas referred to as Parking Area 1 and Parking Area 2. This shaded area is a proposed waterline which would be developed in connection with the dining hall, but the interest for today would be these two parking areas which are located on the State-owned parcel.

Just for background for Board Members, approximately 33 of the 41 existing camp structures were built between 1930 and 1950. And the parking ordinance, I believe, was enacted in early 1960s. So 33 of the existing structures are considered existing nonconforming with respect to the parking code. And the remaining eight are subject to parking requirements. Up to this point, those eight

other structures were built after 1960.

But let me just summarize for you what the parking requirements are. To get to the dining hall, which requires 37 paved parking stalls, and the other structures which requires 52 paved parking stalls, a total of 89 paved parking stalls are required to service the camp. The two parking stalls or parking areas that you noticed on the aerial photograph provides 104 stalls. And these parking lots were created in the mid-1990s. So from a parking capacity standpoint, we do have excess parking available. It is that these parking areas are gravel-surface as opposed to paved.

Again, the two parking areas more in an illustrative format. In Parking Area 1, we have capacity for approximately 25 stalls. In Parking Area 2, capacity for approximately 79 stalls, and that's where a total 104 stalls comes about.

Again, this is just a recap of what Trisha had shown you. The parking area here . . . I'm sorry, Camp Maluhia . . . the Camp Maluhia area here, Parking Lot No. 1, Parking Area No. 2 in that location.

So again, to recap, our request is to seek your consideration for a variance from 19.36A.080, which would allow the existing gravel surface areas to continue as is rather than having it paved with an asphalt to concrete or a concrete surface. Just to show you what that condition looks like, this is the Parking Area 1. You can see that it's a fairly well, stable, compacted base gravel and hasn't been a maintenance problem for all of these years. Just another view of the same parking lot looking to the camp in the background. This is looking towards the Parking Area 2 from Parking Area 1. Again, the same type of compacted gravel surface in both areas.

And so let me briefly go through the criteria that the Board needs to consider in rendering a decision on this matter. So I'll go through the criteria briefly. As the Board Members know, there are three criteria which we do need to address. And the first one is that there should be . . . or there shall be an exceptional, unique, or unusual physical or geographical condition which is related to the proposed request. And some of you may have been up to Camp Maluhia. Those of you who have not, you know its location is fairly remote. It actually is a wilderness camp for community's youth. And its remote location really creates a unique geographical condition not only from its geographical location but from its functional standpoint as a wilderness camp.

Secondly, I think it's important to note that use of the parking lot is intermittent primarily during weekends, of course, and during camp for the scouts during the summer. And, of course, with this intermittent use pattern, the gravel surface has over the years really withstood well with that use, and maintenance really has not been an issue.

And finally, the gravel surface allows for pervious surface management, runoff management. Again, this is compared to a paved surface, a hardened surface, with a greater amount of storm water runoff.

The next criteria which the Board needs to consider is this: whether compliance with the parking requirements would prevent reasonable use of the property. And again, what we look at is the purpose of the camp as a wilderness camp, and its use as such for more than 80 years. And really what we're looking at right now is the application of urban paving standards to a very rural

wilderness area. And that is somewhat of a misfit in terms of application of standards.

The second point we wanted to note was that again, if we were to provide or apply urban paving standards to this area, we would provide for runoff mitigation, storm water runoff mitigation. And typically, that's provided in the form of detention basins. And the retention basin would be somewhat burdensome because the area . . . although the parking areas are flat, the immediate areas downstream of those areas or downslope of those areas are extremely rugged. And again, it's not obvious from this photo, but we have the parking areas, but the areas in this location, topographically, are very rugged, very undulating, and again, somewhat burdensome from an engineering standpoint to mitigate storm water runoff associated with urban-related paving standards.

Finally, the final criteria is that the conditions creating the hardship should not be a result of previous actions of the applicant or the Boy Scouts of America. The hardship here is a result of application of urban- based design standards for parking lots. And again, in the context of the unique, geographic condition of the camp, it's something that's not really attributable to the applicant or the Boy Scouts of America.

And finally, the parking lots have served the camp's parking needs for more than 16 years, and it does serve a unique set of geographic conditions, and the objectives of the camp as well are unique. And for these reasons, we are asking for the Board's favorable consideration for this variance. We're happy to answer any questions the Board may have at this time.

Chairman Tanner: Thank you, Mike. Any questions from the Board?

Mr. Abbott: Yes. Would it be possible . . . I don't know how to do this, but would it be possible to have communication with Corporate Counsel on a personal basis on this?

Chairman Tanner: You want to go into executive session? Is that . . . ? Yeah, so we'll do that. Before we do that, I'm gonna open the meeting to public testimony for all those that would like to speak on this agenda item. I've got one person on the sign-up sheet: Mr. David Brown. So we'll start with Mr. Brown. You'll state your name and you've got three minutes. If you'll state your name into the microphone and you have three minutes.

Mr. David Brown: Good afternoon, Board. My name is David Brown. I do wanna mention in about 15 seconds, I was a scout. My brother was a scout. My father and uncles were scouts in 1914. So they go way back. The scouting was only about ten years old. I'm here to help the scouts today. And it's tough love. I don't come here. I'd like to do a lot of other things today.

You have my sheet here. I have seven reasons why this variance should be denied. No. 1, Maui County Code, Variance Standards, Title 12, the exception or variance shall not affect the safety or convenience of the public. Two, Maui County Code, Variance Standards, Title 16, the granting of the variance shall not be detrimental to the public, health, or safety. Three, Maui County Code, Variance Standards, Title 18, granting a variance shall not be detrimental to public health and safety. Four, Maui County Code, Variance Standards, Title 19, desirable relief may be granted without being detrimental to the public interest, convenience and welfare.

So the first four of those say that if you believe a paved parking lot and a gravel parking lot are the same safety-wise, I would disagree with that.

Now, No. 5, State of Hawaii . . . I do wanna enter there was a little confusion from Mr. Munekiyo. If you read Mr. Ornellas' letter which is present in your file, you will see he was neutral. He allowed them to apply for a variance and that was it. And if you read the State lease, the State lease requires them to treat everybody with a physical handicap equally. OK. So we have a gravel parking lot. Have you ever pushed a wheelchair through gravel?

And today, I have a seventh reason not to allow it. Unfortunately, no MEO bus can stop in a gravel parking lot. I don't have that written down. I've contacted two people who use MEO buses and who go in rural places. MEO buses for people over 55 or any age cannot stop on gravel or let you out on gravel. They have to stop on a paved area.

Now, No. 6, the Americans with Disabilities Act requires accessibility for people with disabilities. So you're telling me a gravel parking lot is equal to a paved parking lot. I don't think so.

OK. A few extra little points. They say this is remote. I live in Waihee Valley. This is six miles from Wailuku. This is the most used parking lot in the entire island for hikers. Up to a hundred people a day hike the Waihee Ridge Trail and that's not mentioned in the article, but the . . . (inaudible) . . . mention that. In the 106 pages from the . . . (inaudible) . . . that's not mentioned at all. This is a very used parking lot. I was up there today at 7:30 and we were the second car.

OK. The second thing is, this shouldn't be allowed because it hasn't been allowed in the past. Now, they're saying they're remote and they can use gravel. They're not as remote as the gun range. Anybody been to the gun range? Anybody shoot? Clark, you've been there? OK. You go to the gun range, it has an ADA-approved, concrete parking lot. That's right. And I think the gun range is really kinda remote. Not so many houses, but they have an ADA-approved parking lot which this does not.

Now, the last thing is . . . Well, I've gone over everything. OK. Under three minutes. Thank you very much.

Chairman Tanner: Thank you, Mr. Brown. Appreciate it. So we have a request to go into executive session. We need to take a vote on all of those Board Members who would agree to go into executive session and discuss with Corp. Counsel. All those in favor? Any opposed? OK. So, folks, we'll go into executive session at this time. I don't anticipate it'll take very long, but we're gonna have to ask you to step outside for that period.

Mr. Giroux: And just for the record, it's to discuss the rights, duties, and liabilities of the Board.

Chairman Tanner: It's what?

Mr. Giroux: Rights, duties, and liabilities of the Board as . . . I guess, Clark, do you wanna clarify? I guess everybody left already, but as far as just so we don't stray from the purpose of the executive session.

Mr. Abbott: My only question is, I want to know this troop's or these people's attitude towards the new gay thing which the Boy Scouts is fighting like you . . . like the Jesus, just stop gay kids from being . . . or gay instructors or whatever from being in the Boy Scouts.

Mr. Giroux: Let's go into executive session and dispose of that.

Chairman Tanner: OK. So we're in executive session now.

(The Board went into an executive session at 2:17 p.m. and returned to the regular session at 2:28 p.m.)

Chairman Tanner: Folks, we appreciate your patience. We're back into open session now. At this time, unless there is anyone else, we're gonna close public hearing. OK. And at this time, we're gonna open the floor to questions from the Board for the applicant.

Mr. Kihune: I guess I'll ask the question. Mike, how are you? Question: just for our own . . . I think for the Board as a whole, and I think for maybe people that are here, what is your plan for ADA? Is there an area that you guys already designed that'll be for ADA that'll be paved or anything like that?

Mr. Munekiyo: There is. And I wonder, Mr. Chair and Board Members, if I may ask the project architect to respond? He's very familiar with the design of the dining hall and its related improvements. So Calvin Higuchi is our project architect.

Mr. Calvin Higuchi: I'm Calvin Higuchi. I'm the architect for the dining hall. And as far as the ADA requirements for parking, we're actually providing three stalls that are gonna be right adjacent to the dining hall on the campgrounds. And that's pretty much it as far as the ADA for a regular parking. As far as the bus parking, there will be a loading stall adjacent to the dining hall as well that can be used for bus parking.

Mr. Kihune: Are those paved?

Mr. Higuchi: Yeah, they're all paved.

Mr. Kihune: So they would meet the code, then?

Mr. Higuchi: Yes.

Mr. Abbott: Is three the required code for the project?

Mr. Higuchi: Yeah, as far as I know because there's . . . actually, the required is 89, and I think three is required for that amount. I'll check that again.

Mr. Abbott: Thank you.

Mr. Kihune: Thank you.

Chairman Tanner: Any further questions of the applicant?

Mr. Shimabuku: I have a question for Mr. Brown. Mr. Brown, are you a participant of this property of some sort?

Mr. Brown: No.

Mr. Shimabuku: So you're just a . . . ?

Mr. Brown: Just a second. Let me take that back. You have to be very clear that I am a part owner of this property because it's State-owned property. What the Boy Scouts do on their property is their own property is their own business. I wouldn't be here. This is State-owned property. And everything the gentleman just said about the bus parking area and the ADA parking area you find it in the 106 pages, and let me see it. I would not be here today if what they're saying was written out in that document. And it's not in the document. They solved their problems. They haven't solved mine.

Chairman Tanner: And I understand that but you . . . Maybe you're not clear with regard to a variance. and how it works, and what it allows. Our variance, if a variance is granted, does not change their ADA requirements one iota. I mean, we cannot . . . we don't supercede the ADA. We can't grant a variance of any kind to say you can ignore what the ADA says. That's not at all what we can do here. There's still under every one of those requirements.

Mr. Brown: I understand that perfectly. In the 105-page document, which I read twice, I didn't see ADA listed once.

Chairman Tanner: That's because it doesn't relate to the variance. I mean, their ADA requirements sit with the ADA and them, not with us.

Mr. Brown: Oh, OK. Thank you. Any other questions?

Mr. Kihune: One more question, Mr. Munekiyo. The ADA parking stalls are actually on the County-owned, Boy Scout property, correct?

Mr. Munekiyo: The Parcel 28, this parcel here, where the campsite sits is owned by the Boy Scouts of America. And the dining hall is on that property, and the related ADA stalls will be adjacent to that dining hall on the property, correct.

Mr. Kihune: OK. I just wanted to clarify that. Thank you.

Chairman Tanner: So at this time, if there are no further questions from the Board, I'll be open for a motion.

Mr. Kihune: Motion to approve the variance as requested by the applicant taking into consideration the recommendation from the Planning Department.

Chairman Tanner: So the recommendation from the Planning Department, so we're all clear,

requests a hold harmless agreement. Do we have a second to the motion?

Mr. Shimabuku: I second.

Chairman Tanner: So we have a motion and a second. Any discussion? So at this time, I'll call for a vote. All those in favor? Any opposed?

Mr. Abbott: I recuse myself.

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

VOTED: To approve the variance as requested by the applicant taking into consideration the recommendation from the Planning Department which includes the hold harmless agreement.

(Assenting: H. Kihune, R. Shimabuku, C. Fukunaga, B. Santiago, R. Tanner.)

(Recusing: G. Abbott.)

(Excused: P. De Ponte, T. Espeleta, J. Haraguchi.)

Chairman Tanner: **The motion has passed and the variance is granted.** Thank you very much. I appreciate your patience.

Mr. Munekiyo: Thank you very much, Board Members.

Chairman Tanner: So at this time, we'll move on to the next agenda item which is the approval, denial, or deferral of the minutes.

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

VOTED: To approve the minutes of the September 26, 2013 meeting minutes as presented.

(Assenting: G. Abbott, R. Shimabuku, C. Fukunaga, H. Kihune, B. Santiago.)

(Excused: P. De Ponte, T. Espeleta, J. Haraguchi.)

Chairman Tanner: **The minutes are approved.** If there is no other business before the Board, no other objection, we will close the meeting.

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

E. NEXT MEETING DATE: Thursday, October 24, 2013

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 2:34 p.m.

Respectfully submitted by,

TREMAINE BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Rick Tanner, Chairman
G. Clark Abbott
Chad Fukunaga
Howard S. K. Kihune
Bart Santiago, Jr.
Ray Shimabuku

Members Excused:

Jacqueline Haraguchi, Vice-Chairman
Patrick De Ponte
Teddy Espeleta

Others:

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