

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
February 12, 2015**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Rick Tanner at approximately, 1:37 p.m., Thursday, February 12, 2015, 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 Tanner: The meeting of the Board of Variances and Appeals will now come to order. let the record show it is 1:37 p.m. and we do have a quorum.

B. PUBLIC TESTIMONY

Chairman Tanner: Public testimony will be taken at the start of this meeting on any agenda item to accommodate those individuals that cannot be present when the agenda item is considered before the BVA.

However, a person testifying at this time will not be allowed to testify again when the agenda item comes up before the commission. Unless new or additional information will be offered, Pubic testimony will also be taken when the agenda item is taken up by the Board. There will be a maximum time limit of three minutes.

Is there anyone from the public who wishes to come forward at this time? Seeing none, we will close Public Testimony and I will ask Staff to read the first item on the agenda into the record.

C. APPEALS

1. JENNIFER A. BENCK representing PATRICIA K. YEKNICH appealing the Planning Director's determination of compliance with Condition 14 of the State Land Use Commission Special Use Permit (SUP2 2011/0006) and Condition No. 6 of the County Conditional Permit (CP 2011/0006) for Arks Ceramics located at 45-575 Hana Highway, Hana, Maui, Hawaii; TMK: (2) 1-5-008:010 (BVAA 2014/0012)
 - a. JAMES W. GEIGER representing ARABELLA ARK submitting a PETITION TO INTERVENE, EXHIBIT "A" and CERTIFICATE OF SERVICE dated January 29, 2015 on the request by JENNIFER A. BENCK representing PATRICIA K. YEKNICH appealing the Planning Director's determination of compliance with Condition 14 of the State Land Use Commission Special Use Permit (SUP2 2011/0006) and Condition No. 6 of the County Conditional Permit (CP 2011/0006) for Arks Ceramics located at 45-575 Hana Highway, Hana, Maui, Hawaii; TMK: (2) 1-5-008:010 (BVAA 2014/0012)

Ms. Malia Balberdi: *Reads item into record.*

Chairman Tanner: Thank you. At this time will the applicant come forward and speak your name into the mic for the record?

Mrs. Jennifer Liem: Good afternoon Chair and members of the Board. My name is actually Jennifer Liem now. When I filed I was Jennifer Benck, I got married early in October. So I am now officially Jennifer Liem and I am the attorney representing Patricia Yeknich.

Chairman Tanner: Ok. Are you in agreeable to the waiving of the staff report?

Ms. Malia Balberdi: ...(inaudible)...

Chairman Tanner: Sorry?

Ms. Balberdi: There's no staff report.

Chairman Tanner: There's no staff report? Ok. So, at this time if you can make your presentation?

Mrs. Liem: Ok. Thank you very much. Perhaps first, I'll respond if I may, to Mr. Geiger's Petition to Intervene. Just to get that out of the way, and then make my presentation?

Chairman Tanner: Ok. At this time, we will take up the Petition to Intervene. Mr. Geiger?

Mr. James Geiger: Hello. Good afternoon. I'm James Geiger. I'm here on behalf of Arabella Ark to intervene in this appeal of a determination by the Planning Director. There are standards that must apply for an appeal, it's in our Petition.

Basically, we have to have an interest that's different from the public. We do because; the appeal and most permits are issued to my client. So she has an issue that would be different from the public. We have to reside on the property involved; she lives on the property involved. And we also have to have an interest. Which we do because it's our particular permits.

There have been no opposition to our request to intervene and the rules of the BVA say that "you shall grant intervention freely." So we would ask that our intervention be granted.

Chairman Tanner: Ok. Does the applicant at this time have any comments with regards to the Petition to Intervene?

Mrs. Liem: I do thank you. We have no opposition. As the Board knows, we didn't file any opposition and in fact, truth be known, we welcome the participation of James Geiger and Arabella Ark because in fact this is a dispute. Although, my client's dispute is over the Planning Director's decision. You know, very narrowly.

Chairman Tanner: Right.

Mrs. Liem: But ultimately, should we be proven ...(inaudible)... the ongoing difficult is that these two neighbors is having over this roadway, will continue. So perhaps, through this intervention it will provide an opportunity for the parties to come to a more comprehensive solution then what's gone on in the past.

So those are my comments on that. No opposition whatsoever and we hope that through the Contested Case Hearing process, which I anticipate we'll start talking about today in terms of what information you would want filed at what time. We will be given that opportunity to present additional evidence to this Board. And also like I said, perhaps find opportunities to work with Mr. Geiger and his client Ms. Ark.

Chairman Tanner: Ok. So since we've taken up the Petition to Intervene, I will open the floor to questions from the Board to Mr. Geiger.

Ms. Richelle Thomson: Perhaps the County could have an opportunity too.

Mr. Tom Kolbe: Right, I apologize. Tom Kolbe on behalf of the County of Maui. We also, don't oppose the intervention in this matter. But we would like to address the Board prior to any presentations going forward in terms of how we would like to proceed procedurally in this case. So, I'll pass it back to Mr. Geiger.

Chairman Tanner: Ok. So I feel outnumbered with attorneys in the room.

...Laughter...

Chairman Tanner: But at this time, Board members, questions?

Mr. Raymond Sung: Of course. I have perhaps a naive question and maybe this would not be the best time to ask it. But I'll ask it anyway and if the answer should be deferred till later, that's fine too.

Just reading the materials that were presented to us. I'm presuming, but I'm going to ask for confirmation. Is it the case that the parties are not amenable to working out a modification of the easement so that it will then match the current contours of the driveway? And then were done?

Mr. Geiger: I can answer that. Although it's not part of the petition. This is Land Court property. So, in order for anything to change. You would have to go to Land Court and get an amendment to change to everything. The easement is not on the land on which the easement sits. It's not owned by either of the parties before you.

Mr. Sung: But the Bank of Hawaii as trustees?

Mr. Geiger: They're not on the easement. They have a right to use the easement, as does my client. But the owner of the easement is a third party not before anybody.

Mr. Sung: And has anyone tried approaching that third party to agree to modification of the easement?

Mr. Geiger: The problem would be that I think Ms. Benck's. . . Excuse me, Mrs. Liem's clients would have to agree to a modification and without being to facetious, that would be as likely as North Korea and South Korea changing ...(inaudible)... ?

Mrs. Liem: If I could respond to that.

Mr. Sung: Please.

Mrs. Liem: It's. . . Although, I have not directed that question directly to my client at any point. I think it would be highly unlikely, because there's no need. There is, as Mr. Geiger as indicated, a clear Land Court easement. That's what his client has, by right under her Deed to get together with this easement.

Now the fact of the matter is that, that easement has some obstruction in it. So over the course of time, the people have swerved out of the legal boundaries of the easement and in fact on to the Trust property. So, rather than the Trust giving up some of its' property to create additional roadway. . .

Mr. Sung: Ok.

Mrs. Liem: I believe the preference would be, as the Commission and the Council determined you know, when they issued the permits, "No, let's go ahead and make the road through to the easement". So, my answer would be, "Highly unlikely."

Mr. Sung: And a follow up question please.

Mrs. Liem: Yeah.

Mr. Sung: If you take the mathematical. . . the sum total of the surface area of the driveway and the sum total of the surface area of the easement? Are they more or less the same but they're just positioned in different places? Or is the net difference quite material?

Mr. Geiger: The area of the pavement that exists on the Warren Trust property is at most about eight feet and at least none; and it goes for a distance of maybe 60 feet. The easement area is 30 foot wide and goes for 100 feet. . . well actually couple hundred feet. But the portion that our clients use is only about a 100 feet. So, the easement area is significantly larger then the area of the pavement that is on the Warren Trust Property.

Mr. Sung: So in effect, if there were a modification, hypothetically, of the easement to cover just the driveway that's actually currently being used. It would actually be a net gain of surface area to. . . I guess the purpose of my question is, are we talking about a manini difference or material difference as to. . . on a net basis? Because, I'm not advocating or even questioning adding more space because of the current contours of the driveway to the easement area.

I would say, make the easement fit the driveway or the path that's used by vehicles so that essentially whatever's not being used, that's in the current easement area, would be essentially given back. That way really, all that one party wants to be able to use is just the access and not the extra land that's not being used by vehicles. Right?

Mr. Geiger: You're correct. The roadway, the driveway . . . excuse me, the paved area has been there for quite a while. The challenge is that, that would require the Warren Trust to grant an easement hold to my client and to the owner of the adjacent land who granted the easement to my client and subsequently to the Warren Trust. And that property is being developed and that would probably not be a sufficient. . the driveway probably wouldn't be sufficient for the development that they're going to do. So, it seems likely that they would not be interested in receiving an easement in that sense or fashion. I don't know if that makes sense to you. You're looking at me like I didn't make sense.

Mr. Sung: It does and doesn't. It's not my place of really to be an advocate for a position even it's a comprised solution. But, it just. . . I felt that I wanted to at least hear both parties say whether there was a snowball chance of reaching a sensible not a contested solution..

Mr. Geiger: I think I might, if I could just to follow up on that. If that would've been possible, it would have come out before the Planning Commission under the State Land Use, Special Use Permit. Or it would've come out before the Maui County Council on the County Conditional Use Permit. And both of those were opposed by Ms. Yeknich and the Warren Trust. Excuse me, Ms. Yeknich. The Warren Trust did. . . I think the Warren Trust opposed. . .

Mrs. Liem: If I may. I actually have the correct, what Mr. Geiger is saying. Because, unlike this situation where his client is asking for permission to intervene in this proceeding. My client was never afforded that opportunity to ask to intervene at the Planning Commission proceeding.

He is correct that we challenged the decision to the Circuit Court, once the decision finally came out. But during the real nitty gritty, when the Commissioners' were making decisions and even the Advisory Committee, my client was there apparently to give public testimony, but wasn't actually a party. So didn't have the opportunity to present evidence, didn't go through the Contested Case Hearing they anticipated to have here.

So, whether or not that would've come out, that problem solving would've come out. . . if they had been a party and had gone through that proceeding, I don't know but we didn't have that opportunity.

Mr. Geiger: And if I may, just to be clear. If the intent of the Yeknich is to use this proceeding as an attempt to get the Contested Case that they didn't because they didn't ask for it in the other proceeding. Then we're going to have a problem.

Mrs. Liem: ...Sorry for this back and forth with your permission. But that is absolutely not our case. As I said to Mr. Geiger informally, before the hearing started. The Conditional Use Permit and the Special Use Permit, allowing the activities that Ms. Ark can now do in her home. That ship has sailed ok. I mean those permits were issued and we're not here to revisit that, we don't have a right to revisit that. That's done.

We're here really on real narrow grounds. That the Planning Director made a decision that she had complied with the conditions and my client said, "Heck no she didn't, look here are some photographs." And through further evidence that we can submit ...(inaudible)... what we provided for our initial filing. I believe we can prove that to you.

But that is separate and a far from going to your point Mr. Sung. Which is are there other ways that this can be resolved. And I think an idea that we can talk about, is rather than moving an easement, a Land Court ...(inaudible)... is how can the parties insure that the roadway by the condition of the permit that the roadway is in the legal easement area? How can we insure that that roadway is put in there and put in there property. And not causing drainage problems, or erosion problems or liability risks. Because there's areas aren't paved and then there's areas that are.

So when I talk about the opportunity to perhaps work collaboratively on a solution. That's my resolution on the property.

Ms. Thomson: If I could just kind of bring this back to. . . currently there's a Petition to Intervene before you and so what you need to decide is whether it's mandatory granting of the Petition to Intervene or whether it's permissible. So based on the record, you need to decide whether the interveners. . . whether she has a property interests in the subject, in the land subject to the Board action. Which it doesn't appear that to be Contested at all.

So that would be the first decision you need to make. Is whether or not to grant the intervention and then we can get more into procedurally where we go from here.

Chairman Tanner: So with regard to the Petition. . . the granting to Intervene. Are there further question for Mr. Geiger on that requests? So if there are none. The Board is open to a motion to either grant or deny the Petition to Intervene.

Mr. Sung: I make a motion to grant permission to intervene. . . or the Petition to Intervene.

Chairman Tanner: Ok. Do we have a second?

Mr. Scott Matsuura: Second.

Chairman Tanner: So we have a motion to grant and a second. Any further discussion? Seeing none I'll call for a vote. All those in favor?

Members: "Aye."

Chairman Tanner: We have five. . .Any opposed? So it is unanimous and the **Petition to Intervene is granted.**

It was moved by Mr. Sung seconded by Mr. Matsuura then,

VOTED: Motion to grant the Petition To Intervene by James W. Geiger representing Arabella Ark.

(Assenting: T. Espeleta, C. Fukunaga, W. Greig, S. Matsuura, R. Sung)

(Excused: C. Abbott, P. DePonte, H. Kihune)

Chairman Tanner: So this time we will circle back to the applicant and I will open the floor to the Board. I'm sorry, yes?

Mr. Kolbe: I'm sorry, Mr. Chair person? I was hoping that we might first address the issue about. . . in terms of procedure for motions, deadlines and maybe a hearing date. And the reason I bring this up is because I intend to file a motion that challenges jurisdiction of this body to rule on the issues raised in the appeal.

And so, I think that before we get to far into a presentation, I think we should give us an opportunity to address whether this is the proper form for the relief that she's seeking.

Chairman Tanner: I would definitely agree with that. So at this time if you would like to speak to that issue, the floor is yours.

Mr. Kolbe: Well frankly, it's a complicated area that involves an analysis of both the rules for granting Conditional and Special Use Permits. What I would like to do is be able to brief it. Be provided a deadline for Mrs. Liem to respond to our motions and to set some type of a hearing.

Preferably not too far into the future, so that we could resolve this issue of jurisdiction. Before we go into a full-fledged hearing on the merits of whether or not they ought to be changed as to the Conditional Use or Special Use Permits.

Chairman Tanner: Right.

Mr. Kolbe: That's my other question.

Ms. Thomson: Do you have any proposed deadlines? As far as motions and opportunity to respond and a hearing date?

Mr. Kolbe: I would suggest that if you could put us on your calendar for next month. I don't know when it is. But, if you have time. . . room to put us on the calendar for next month, we'll just look back from there. And have the motion due two weeks before the reply. Well, actually probably three weeks before the reply, two weeks before or the opposition two weeks before and then a reply week before that way the Board would have the opportunity to see all the briefing. And then schedule arguments. I guess it depends on when the date is.

Chairman Tanner: Yeah, go ahead while they're looking at dates.

Mr. Sung: And I believe there's a threshold question on whether this Board would want to hear the Contested Case directly or refer it to a Hearings Officer. Is that correct?

Ms. Thomson: A motion to dismiss can be filed and heard at any time. Either before or during the Contested Case. So, since a jurisdictional issue has been raised, I think that it would be the best use of time to go ahead and hear . . . you know . . . receive their arguments and then have a hearing on that. And depending on where you go with that issue, then you go either choose a Hearings Officer or decide to hear it yourselves as a hearing body.

Mr. Sung: But . . . so, the threshold question of jurisdiction would be heard by this Board as opposed to a Hearings Officer or?

Ms. Thomson: I think that-that would be better. Rather than involving the cost and expense and time of a Hearings Officer. It'd be better I think to have this body hear that motion.

Chairman Tanner: And the dates that we're talking about are dates to hear that motion?

Ms. Thomson: Right. So the . . . what the County has proposed is that and they'll be filing a motion to dismiss this appeal based on lack of BVA jurisdiction. So you'd be hearing that motion and the arguments for and against. And based on what you decide, you know whether you feel like you do have jurisdiction or do not have jurisdiction the appeal may be dismissed or it might be upheld. And then if the appeal is upheld you'd go on through probably selecting a Hearings Officer.

Chairman Tanner: And that's actually not that uncommon for this Board.

Mr. Sung: Ok. So it's not uncommon to ask the very same body to decide on the issue of whether that same body has jurisdiction to hear the . . . ?

Chairman Tanner: Right.

Ms. Thomson: Correct.

Mr. Sung: But we would have jurisdiction to be sure of whether we have jurisdiction . . . ?

Chairman Tanner: We could make a determination, that doesn't mean that it can be appealed further beyond that. But, we can decide that . . . you know. . . that we don't feel that we have jurisdiction to answer or to decide on this and then it goes forward. Yes sir?

Mr. Geiger: If I may, two comments. One a court always has jurisdiction to determine whether it has jurisdiction or a Board always has that power. Second thing, advised by the clerks or the staff rather than the next hearing date would be April 23. So that would make the motions due by April 2, oppositions by April 9 and reply is April 16. If that would work with the Board, I think that's acceptable to all parties.

Chairman Tanner: No, I won't still be here. My term ends the end of March. But that doesn't apply to.

...Board discussion, laughter...

Mrs. Liem: Chair, if I may for the record. I just want to ask Mr. Kolbe to clarify a statement that he said. I just want to make sure. . . I understand the motion to dismiss on jurisdictional grounds. But you said that were challenging the conditions? I just want to make sure I've got the correct ...(inaudible)...

Mr. Kolbe: Yeah, I don't want to paraphrase but I think that this appeal is not lodged in the correct form. I think it ought to be in front of the Maui Planning Commission. That's my position.

Mrs. Liem: And appeal the Planning Director's decision that the conditions have been met? Should be in front of the Planning Commission?

Mr. Kolbe: Yes.

Mrs. Liem: Ok. That clarifies, that's what I wanted to know.

Chairman Tanner and Ms. Thomson: ...(inaudible)...

Mr. Sung: Chair? One question if I may?

Chairman Tanner: Yes?

Mr. Sung: Do the County and Mr. Geiger's clients currently have any opposition to just moving it to the Maui Planning Commission to hearing this straight away? Without having to go through the process of briefing this Board on the issue of jurisdiction?

Ms. Thomson: I can answer that question. So, they could voluntarily withdraw the appeal. But, as far as . . . there's no mechanism to transfer between those bodies. So, they'd have to withdraw

the appeal and file... like an order to show cause or something of that nature in the Maui Planning Commission.

Mr. Sung: And so then the question I would have, is this something that all parties would prefer to do or do you still want to go through the process of briefing this Board of the jurisdiction issue?

Mr. Geiger: We would have to be appellants.

Mrs. Liem: Because we believe that what we're appealing is the Planning Director's determination under the zoning code. That which is separate and apart from every other different mechanisms or appeal. We would prefer to stay with this body.

Does that mean that we may never bring some sort of . . . to the Planning Commission? No. But, I do think that this body is actually the appropriate body for this kind of decision making. Again, it's a very narrow question. Did he make the right decision or the wrong decision? And we proved by evidence that it was the wrong decision ...(inaudible)...

Mr. Sung: Just thought I'd ask. Thank you.

Chairman Tanner: So, we have a hearing date of April 23rd. Is that acceptable to the Board?

Mr. Sung: Is that a regular scheduled hearing date? Or is that a special?

Chairman Tanner: I believe it is. Yeah, that's a Thursday, regular . . . yeah.

Mr. Sung: Ok.

Mr. Matsuura: Do any of the deadlines . . . do they apply to other applications that come before us...apply under this circumstance?

Ms. Thomson: You mean as far as when you need to act on it? Since intervention's been granted different, it really extends the deadlines. So you're not operating under a time constraint with these April deadlines.

Mr. Matsuura: Ok.

Ms. Thomson: So procedurally from here you'd be deferring this appeal to April 23rd.

Mr. Geiger: It'd probably be a continuation rather than a deferral.

Chairman Tanner: So, do I need a motion for that? Or? Ok. So do we have a motion to continuation of this hearing until April 23rd?

Mr. Sung: I so move.

Chairman Tanner: Second?

Mr. Matsuura: Second.

Chairman Tanner: Discussion? All those in favor?

Members: "Aye."

Chairman Tanner: Any opposed? So that is **approved and we have a continuation to April 23rd.**

It was moved by Mr. Sung seconded by Mr. Matsuura then,

VOTED: Motion for a continuation on this hearing at the April 23rd meeting.

(Assenting: T. Espeleta, C. Fukunaga, W. Greig, S. Matsuura, R. Sung)

(Excused: C. Abbott, P. DePonte, H. Kihune)

Mr. Geiger: And just for clarification. When we have the Board actually adopt the briefing schedule we talked about, filing a motion by April 2nd, oppositions by April 9th and replies by April 16th?

Chairman Tanner: Yeah. I couldn't hear all of that.

Mr. Geiger: Ok. Can we get the Board to also confirm the briefing schedule? Which would be motions by April 2nd, oppositions by April 9th and replies by April 16th?

Chairman Tanner: Ok.

Mr. Geiger: My sense is that I'm going to direct this to the Corporation Counsel but I suspect that-that's something that the Chair could do.

Ms. Thomson: This body can set the hearing schedule. So, if you have no problem with that schedule you can just make that. So add it to your record.

Chairman Tanner: Ok. So if there is no objection to that schedule. We will accept that into the record. Any objection to that? Seeing none. That is the schedule.

Mr. Geiger: Thank you.

D. APPROVAL OF THE NOVEMBER 26, 2014 MEETING MINUTES

Chairman Tanner: Thank you. Moving on to the next item on the agenda. Approval of the November 26, 2014 and December 11, 2014 meeting minutes. Do I have a motion to approve?

Mr. Sung: Question?

Chairman Tanner: Yes.

Mr. Sung: So, I have certain corrections to introduce. Would you make those corrections first for proposal for adoption?

Chairman Tanner: I think so. Right.

Ms. Thomson: I think that . . . you know and I wasn't here last time but I understand that there was some discussion between correction of the verbatim minutes and the inaudible portions. So, my take on it would be that you can read those into the record now as far as correcting the inaudible portions. What you'd be doing would be is stating them on the record for the minutes of this meeting.

Mr. Sung: So the minutes don't actually get corrected and then adopted like that?

Ms. Thomson: Right. Because they're verbatim minutes. If it's inaudible, it's inaudible. But, what you're putting on the record today is that your best recollection of what your intent was at that portion. And then you can read that into the record.

Mr. Sung: And then just point of clarification as to any typographical errors, spelling errors of that nature? Do those actually get corrected? Or are they still only corrected by my reading them into the minutes?

Ms. Thomson: No. The typographical errors, definitely you'd be correcting those. Yeah.

Mr. Sung: Ok. So, I'll make it a point to distinguish between the two as I read each one.

Ms. Thomson: And as far as typographical errors too you could, if you marked up your copy and there's simply correcting you know t-h-e-i-r instead of t-h-e-r-e, you know if it's those kinds of changes you can give those to staff so that they have a better . . . you could just say various typographical errors rather than having to go through all of them.

Mr. Sung: Ok. Thank you.

Chairman Tanner: Ok so . . . hearing that do we just move forward?

Mr. Sung: I'd like to speak up?

Chairman Tanner: Ok.

Mr. Sung: So, flipping pages on the November 26 minutes. There are various typographical errors that I have marked on my copy of each of the November 26 minutes and the December 11th minutes. Which I will give to staff. I've used standard proof reader and editing marks for those.

As to other corrections...starting first with page 3. About half way down, the paragraph that begins, "we want to concentrate on the rear property" it should be... delete a period, insert a comma "the back of the house." -period, end of sentence.

Page 7-top quarter of the page... "Vice Chairman Abbott, if I may please" ... comma staff comma, little c, could you please . . . I believe the word was elucidate.

Page 9-near the bottom...last paragraph of Mr. Sung. Third line should read "encroachment and if it's your contention not contingent.

Last line of that same paragraph- "the land" insert a comma, delete sort of, insert the words so to and then continuing speak, comma, that would be most helpful.

Page 12-about a third of the way down under Mr. Skowronski- "the only way that encroachment can be removed by agreement is at... the word should be insistence not instancing-and the instigation would continue on."

Page 15-very first word...instead of the word "weary...w-e-a-r-y it should be wary...w-a-r-y

Page 16-half way down under Mr. Sung...the third line begins with..."let's just and in parenthesis inaudible... what should be there were the words "mirror-image rule" and then continuing argument that because the residential building is subject to a six foot etc."

The next paragraph, still under Mr. Sung's testimony. Second line, the sentence that reads "it just seems unfair to me comma and..." the rest of the sentence are consist of these words "I'm sort of just anew to this profit" I know I didn't say that...I think it would be better to just say that was inaudible. I don't remember what I said, but I'm 100% confident that I did not use those words.

Same page 16-three quarters of the way down... pardon me for possibly mispronouncing your name Mr. Rapacz?

Mr. John Rapacz: Rapacz.

Mr. Sung: Rapacz. Well from the technical stand..."well you've sited...should be cited with a c not an s".

Page 20-a quarter of the way down...Mr. Stone's testimony...this is really more just a remark. The text itself near the end of that paragraph reads "there is no partnership with him on the purchase"... I don't know where that is coming from and I recall that the gentleman Mr. Stone was referring to Mr. Baskin and pointed to Mr. Baskin. And I just wanted that to be clear, because it wasn't clear from the transcript itself.

Page 22-near the bottom next to the last paragraph, they begin so at this time... third line where it reads "many of them are just playing", p-l-a-y-i-n-g...wrong instead of playing the word should be plain, p-l-a-i-n.

Last paragraph on that page 22-the last two words currently read off-set, that should be corrected to outset, o-u-t-s-e-t.

Page 29-Mr. Garneau's testimony near the top quarter page, fourth line down, begins "... (inaudible)..."those words to the best of my recollection were "proceed on the substance". Where the current ... (inaudible)...currently sits.

About half way down under Mr. Sung, third line reads "Garneau's request to spend..." the word should be "suspend, s-u-s-p-e-n-d...that pending any perceivable questions being determined".

Three quarters of the way down, Mr. Sung's portion of transcript, third line reads, no second line reads "time and side the matter" it should be "time and decide, d-e-c-i-d-e".

Page 35-about three thirds of the way down, "Ms. Thomson's text, why don't we go ahead and with your concurrence go ahead and just..." instead of differ, d-i-f-f-e-r should be defer, d-e-f-e-r, that item".

Then just an inconsistency on page 37-near the bottom there's an asterisks that reflects "Scott Matsuura left half around 3 pm. That's inconsistent with page 18, which had a similar notation that reflected a specific time of 2:45 pm.

And those are my comments in addition to the other typographical corrections on the November 26th minutes. And thank you very much to the Board for agreeing to defer adoption of these minutes until today. Thank you. And then I'll get to the December 11th.

Chairman Tanner: So at this time, I need a motion to adopt those minutes with described changes.

Mr. Matsuura: So moved.

Chairman Tanner: So moved? Do I second?

Mr. Sung: Second.

Chairman Tanner: Ok. We have a motion and a second to adopt the minutes with changes. All those in favor?

Members: "Aye."

Chairman Tanner: Any opposed? And the **minutes are adopted.**

It was moved by Mr. Matsuura seconded by Mr. Sung then,

VOTED: Motion to adopt the November 26, 2014 meeting minutes with described changes.

(Assenting: T. Espeleta, C. Fukunaga, W. Greig, S. Matsuura, R. Sung)

(Excused: C. Abbott, P. DePonte, H. Kihune)

Chairman Tanner: So unless there is opposition or other business...there is other business.

Mr. Sung: Well, it's the December 11th minutes now.

D. APPROVAL OF THE DECEMBER 11, 2014 MEETING MINUTES (cont...)

Chairman Tanner: Oh we did November 26th. Ok. So the December 11th minutes.

Mr. Sung: Correct. Same deal.

So beginning on page 7-half way down, under Mr. Sung. It reads “so you’re saying that it’s already done there? It’s a clean vegetation” not a clean vegetation it should be corrected to be “It’s cleared of vegetation?”

Page 26-and perhaps staff could confirm, but down at the bottom, the second paragraphs of Mr. Herling’s testimony or transcript. There are two references to the term “collective road” but is it the correct term “collector road”? So, in the first line in the third line of that paragraph where it says “collective, c-o-l-l-e-c-t-i-v-e road” it should be “collector, c-o-l-l-e-c-t-o-r road”.

And those were these more substantive. The rest are just typographical corrections that I’ll give to staff. Thank you.

Chairman Tanner: So do we have a motion to accept the minutes of December 11th with stated changes?

Mr. Matsuura: So moved.

Chairman Tanner: Second?

Mr. William Greig: Second.

Chairman Tanner: All those in favor?

Members: “Aye.”

Chairman Tanner: Any opposed? **So we have adopted the December 11, 2014 meeting minutes.**

It was moved by Mr. Matsuura seconded by Mr. Greig then,

VOTED: Motion to adopt the November 26, 2014 meeting minutes with described changes.

(Assenting: T. Espeleta, C. Fukunaga, W. Greig, S. Matsuura, R. Sung)

(Excused: C. Abbott, P. DePonte, H. Kihune)

E. NEXT MEETING DATE: Thursday, February 26, 2015

F. ADJOURNMENT

Chairman Tanner: And if there is no further business before the Board and no opposition we will conclude business. Thank you very much.

Members: Thank you.

There being no further to come before the Board, the meeting adjourned at 2:19 p.m.

Respectfully submitted by,

Chalsey Kwon

CHALSEY R. K. KWON
Secretary to Boards & Commission II

RECORD OF ATTENDANCE

Members Present:

Rick Tanner, Chairman
Teddy Espeleta
Chad Fukunaga
William Greig
Scott Matsuura
Raymond Sung

Members Excused:

G. Clark Abbott, Vice-Chairman
Patrick De Ponte
Howard S. K. Kihune

Others:

John Rapcaz, Planning Program Administrator, Department of Planning
Carolyn Cortez, Staff Planner, Department of Planning
Malia Balberdi, Staff Planner, Department of Planning
Chelsea Rabago, Staff Planner, Department of Planning
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Tom Kolbe, Deputy Corporation Counsel, Department of the Corporation Counsel