

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
January 22, 2015**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Vice Chairman Clark Abbott at approximately, 1:32 p.m., Thursday, January 22, 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.)

Vice Chairman Abbott: The meeting of the Board of Variances and Appeals will now come to order. It is now 1:32 p.m. and let the record show we do have a quorum.

B. PUBLIC TESTIMONY

Vice Chairman Abbott: It looks like there's public testimony. So, public testimony may be taken, will be taken at the start of the meeting on any agenda in order to accommodate those individuals who cannot be present when the agenda item is considered by the BVA.

However, a person testifying at this time will not be allowed to testify again when the agenda comes up. Unless, a new or additional information is added on. Public testimony will 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. Will the staff read the agenda item and state the purpose of the application please?

C. PUBLIC HEARINGS

1. GORDEAN L. BAILEY, TRUSTEE OF THE JOHN V. BAILEY EXEMPTION TRUST representing WAIAKOA HOMESTEAD SUBDIVISION, is applying for a variance from Maui County Code (MCC) §16.04B.140 Subsection 903.4.2 as amended, 1) to allow the Maui Fire Department (MFD) access to two (2) 30,000 gallon water tanks; 2) to equip future structures, 700 square feet or larger, with fire sprinklers; 3) to make available all water from the adjoining Bailey properties, and 4) to allow staging of all MFD equipment and personnel on those properties during an event of a wild land fire; instead of providing 1) fire protection at a minimum flow of 500 gallons per minute for a two hour duration; and 2) fire hydrants which shall be placed on the service road to all parcels with hydrant spacing maximum of 500 feet between hydrants for property located at Homestead Road, Kula, Hawaii; TMK (2) 2-2-008:009 (BVAV 2014/0007)

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

Vice Chairman Abbott: Thank you. Is there a presentation at this time?

Ms. Balberdi: Yes. The applicant has a presentation.

Vice Chairman Abbott: Thank you. Will you step forward, come to the mic and state your name please?

Mr. Timothy Paulokaleioki Bailey: Aloha! My name is Timmy Paulokaleioki Bailey and I'll be doing a . . . Hopefully you guys didn't have a big lunch, cause there's a 24 slide presentation. . . nah, I'm just kidding. It'll go fast.

Vice Chairman Abbott: Excuse me for interrupting. Are you agreeable to waiving the staff report?

Mr. Bailey: Yes. So this property here in Kula above Kula Nani Subdivision, so the presentation that I put forward, is just some information and for you guys to acclimate yourself with what we're intending to move forward on the variance. My mother's in the back of the room. Gordean.

I'm not sure if the lights can go down? So the location here, is off Google Maps which is our Kula Nani Subdivision and there's an existing Homestead Road that encompasses all these parcels here. So what's in highlighted here is our current parcels that we own. Roughly sketched.

Here's a little bit of a zoom in. As you can see, this is the Homestead Road and then it comes into our access road. That was built off an existing ranch road when we use to have cattle.

This is the entrance from this portion of this gate which remains open till this day. Is basically still part of the Homestead Road up till you crest here. And then it goes into our private owned cattle road. And this is looking down in the old text, the Homestead Road would continue downward through here and go over to Copp Road, which is a road adjacent to Morihara Store. If you guys are familiar with Kula.

So obviously that has not been maintained when the subdivision of Kula Nani was installed in the 80's. As you crest the hill, now you're coming into our old cattle road that has been improved to four wheel drive road, gravel road and we are going to improve it a little bit more. Up to the County's standards.

And this piece right here is the Community Archery Range that we've held numerous community events and Department of Land and Natural Resources uses it to teach their hunters education course.

And here's just an overview of where we're talking about, discussing it with Maui Fire of one possible staging area. If there was another fire say up in Polipoli again. And then as you guys crest the hill onto our property as you can see, it gets into a four wheel drive access road and there's really no water meter or water lines available in this property.

And here's the overview of what I just explained. So I brought you guys up to this line here, and this is the archery range and staging areas in Kula Nani Subdivision. As you continue up, it gets to a steeper grade where the fire apparatus would have a hard time and four wheel drive is a must at this point.

I took a picture of this tree, if you can see that little boundary pin right there. That is the boundary pin of the area where we would like to subdivide the four acre parcel. And in conjunction with the road, it's part of the flat road and then the flag lot will come basically to this point.

And then as you can see, to get up to our other properties, the Homestead Road is over here. It is open, no debris has been pushed on it. It just hasn't been maintained by the County for years. And we've never used the road in our whole time of owning the property. So this is the access that we get up to our Mauka properties.

So, in short if you look at it. This is where I just took you guys up on the journey. This is a long road here and then this is the parcels and then this is the area of where the subdivision is going to be proposed.

As you can the downhill road. This is about a 35% slope on the grade and there's been left over pavement from one of the persons who we sold the lot to where they can patch the road to help with the four wheel drive.

So, in short. This is the parcel that we're talking about. The four acre parcel. This is the buildings that have been constructed. None of them are houses. Eventually if he applies for a house permit, then all the things that we have included in the variance, he would be able to adhere to. And then this is the flag lot that goes to the road. And as you can see this is the road and then again the Homestead Road continues down this way. This is his access area to that lot and he has put in cement blocks and stuff for him to get in to his property.

Currently if you look on the proposed subdivision lot right here, where he has cleared, he has his two 30,000 gallon tanks installed here. What I've highlighted in red are currently our water sources. It's all catchment water sources that we've had since 1975 or so. Here's a ground view of the proposed four lot subdivision with his one 30,000 gallon and then his secondary on the opposite side. And that was the road access that I showed you guys with the cement driveway.

This is a ground surface tank that we have at the top of our property. So this has 10,000 gallons of water in it. This is the catchment off of an existing property on another lot. A 12 acre lot. This holds about 5,000 gallons. And just above that, we pump from that tank I just showed you, up to this tank and that's another 4,500 gallon tank.

So this is water that's used for the house, the only house that is on our whole 67 duplicate acre parcels. So, in the long run. This is our 12 acre parcel, we have our water catchments that I showed earlier. What I've highlighted here in yellow, are the proposed tanks that we're going to install for agricultural use. Which is basically, we use to own cattle a long time ago and hopefully when I retire from the Parks Service soon, I'll be getting back to ranging cattle and doing all that.

So these are the proposed tanks that we're going to install to keep our ag going. And it would be off of these tanks that we'd be more than willing to do quick connects. If Maui Fire has the capabilities to hook up in case of a wild land fire.

And to note, with our upgrade of this road and fencing off, we've actually created a larger fire break on a maintained road that we built versus the Homestead Road that has not been maintained in years.

And that's pretty much the gist of all of what we're trying to apply for. Any questions? I'll be more than happy.

Vice Chairman Abbott: We'll open up any questions from the Board.

Mr. Chad Fukunaga: Can we go back to that area where you were showing the. . . all you existing tanks?

Mr. Bailey: Sorry, we're just flipping through this. So, what's in the red is our existing. . . so these are the two that. . . if the subdivision is approved and Carter goes to get whatever permits he wants, those are the 30,000 gallon or 60,000 total. That could be required and the code that we discussed. These are the ones that we have, just for our ag use and to bring running water to this cabin that we have.

Mr. Fukunaga: So there's no interconnection between the tanks? They all stand alone?

Mr. Bailey: These. . . This one stands alone. These two are interconnected. This one, I have a Driscoll line (?) running down and the goal is to clear this area and then start farming. So this would be an ag water line. But there's no way to fill it but a catchment.

Mr. Fukunaga: And did you say. . . is it normally, or they normally filled? Or shall I assume its. . .

Mr. Bailey: Well, fortunately we've had. . . fortunately with the rain that we've had this year, it's been filled. When we lived here, we basically haul water for whatever purposes. This one has been filled because I have not cleared and planted yet. But primarily we're just waiting to see what we're going to get done here before we make our next moves and improve our infrastructure.

But, even during the drought there was enough water for our needs up in this area. Which is kind of an off grid life style.

Vice Chairman Abbott: Scott?

Mr. Scott Matsuura: The two 30,000 gallon tanks, are they connected?

Mr. Bailey: They house. . . whatever. . . I'm not sure, because I haven't Carter's property, parcel. But I believe they house whatever water use he needs in his property. But I'm sure if he was. . . according to the variance, if he was to actually get a permit to build his home, then he would have to install those in order to get a permit.

So I have no idea if they're interconnected but they are full. So basically this top tank is filled from the barn and this other tank gets filled from a . . . kind of a lean to structure.

Vice Chairman Abbott: Staff, are there any letters of support or opposition to the variance?

Ms. Balberdi: We have two letters of opposition that was included in the packet.

Vice Chairman Abbott: Do the Board members have it?

Ms. Balberdi: Yes, they do.

Vice Chairman Abbott: Thank you.

Mr. Fukunaga: Just to confirm, you're proposing to install fire sprinklers for. . .

Mr. Bailey: For any future structures that we would install fire sprinklers and have tanks charged to protect the homes. As far as we're concerned, we plan on just being ag and not subdividing any more lots.

Mr. Fukunaga: I'm sorry, you were saying the fire sprinklers, you said they would work off of pumps or pre-charged?

Mr. Bailey: The tanks would be full, they'd probably mounted above and then according to the pressure and codes with the fire then they'll have to have a pump system. I'm sure run by photovoltaic or back up generator.

Vice Chairman Abbott: At this point in time, I'd like to hear from the Fire Department on your take on this issue. Please. Thank you Lieutenant Davis.

Lieutenant Kono Davis: Hi! Lieutenant Davis from the Department of Fire and Public Safety, Fire Prevention Bureau, Plan Review. To answer your question, about the fire sprinkler requirement, it's not necessary that they go off of the existing tanks. There are ways of designing residential fire sprinklers, with just placing like a three to four hundred gallon bladder near the fire pump and that would suffice. So, it's not really locking them into utilizing those two 30,000 gallon tanks to supply the fire sprinkler system.

They can. If they come in with a design that conforms with 13D which is an NFPA standard for fire sprinklers in a residential home. Then they. . . of course, it'll go through the review process, it would show where the water source is coming from and then we'll handle it at that time.

So, not necessary needing the two 30,000 for fire sprinklers. But, what. . . if the variance is granted, like I think we've don't it recently with another variance. That we needed brush protection as well. So, the fire sprinkler option covers the structural protection, and we needed some option for the surrounding area and that was what they proposed. Which in the event, if we need to use that water, there needs to be a means or a way for us to get to that water.

In my comments and my summary, I did explain, like there are few or there's actually a lot of subdivisions that have unique characteristics to them, that doesn't necessarily align with the Fire Code. The way it's stated. And this is one of them. And basically it really doesn't make any sense for us to require for them to put this fire hydrant on a road that our fire truck cannot even get to.

So, it's a pretty straight forward deal here. And with the applicant willing to do ultimate means, this is kind of like what we like. We like for the applicants to provide us with something that we could use as an alternate means. So we can still conform to safety standards for the reason why we put the fire protection there. And yet, not have them do it to what the code reads exactly.

Vice Chairman Abbott: Thank you very much. Lieutenant Davis.

Lieutenant Davis: You're welcome.

Vice Chairman Abbott: I'd like to open the meeting up now to Public Testimony. Or open the Hearing to the public. Seeing none. Oh David. Ok. Could you identify yourself please sir?

Mr. David Henderson Brown: My name is David Henderson Brown. I'm here in the capacity as the Executive Director of Public Access Trails Hawaii of 501-C3. We do research, education and advocacy for public access to public trails. So essentially, what we try to do is to provide public access to public trails. We do not have anything to do with private property.

Unfortunately I'm here because, since 2010 when I wrote the Mayor, nothings been done about this Homestead Road as a Government Road. And you're going to hear a completely different story from Mr. Bailey who I respect greatly. I love our National Park. But, you're going to hear a completely different story from before. The only way you could determine the truth of this nature is to go there.

Homestead Road is a Government Road. It's on all the maps. Homestead Road has been closed by this fence. This is a 2011. And in deed, last Sunday, when you have the 2015 picture, the gate was opened. But the back of the gate has the sign that says "Private Property, Keep Out", both sides of the gate have "Private Property, Keep Out". And on 2011, this picture is here is the boundary pin showing that the owner's next to the road realized they don't own the road, because the road is not in their tax key.

There also, the Planning Department's aware of this. I sent them the two tax key numbers and this road goes all the way up to through the subdivision. Ok, now, I will agree with Mr. Bailey, the first part of the paved road is the Homestead Road. He says he never closes it, I disagree, it's often closed. We both agree that's a Government Road. He has a "Keep Out" sign, so even if he doesn't close the fence, there shouldn't be a "Keep Out" sign.

Now, the next part of the road turns right and Mr. Bailey. . . you saw a lot of bulldozing equipment. . . has bulldozed all that area and all these big trees have gone over into Homestead Road. Now, when he said nothing was on it, ok, I will grant there's not much dirt. But you have these 50 foot tall trees just all over the road. And because of the bulldozing, you can't separate out the public road that went through there and the private road. I will grant you that. I can't tell myself, nor can

he. You would have to look at it.

As a neighborly thing, our only purpose is to have public access to public roads. I'm not here, whether something burns down or not, it's bad luck. I would be greatly willing to compromise with the Bailey Ohana, if they could take down the "Keep Out" signs, put a "Welcome" sign for hikers and bicyclists and allow people to use that road. Which I would think, as a rational scientific person, is mainly public road. But there's also maybe some corners that are bulldozed off the public road. It's just hard to tell at this point.

Anyhow, I wish him well. Public Access Trails Hawaii, as you're well aware just finished the Haleakala Law Suit. And we opened up Haleakala Trail. And this is a very disturbing thing to me, that you Variance people, never look at the trails and accesses of the properties.

Now, you can go into closed session and determine that the Fire Department will allow you to give a variance. That's fine. But, nobody should ever come to you with dirty hands. And this group has dirty hands. They closed a Government Road. If you want to allow that, that's fine. But it's not the right thing to do. Thank you very much. Questions?

Vice Chairman Abbott: Any questions for the gentlemen?

Mr. Fukunaga: I got a question. So where does that road go to? That Homestead Road.

Mr. Brown: Which road are you talking about?

Mr. Fukunaga: The road that you have a problem with. Homestead Road.

Mr. Brown: You just have to look on the maps and walk there Sir. It has many corners and it essentially is the old access to this area. And they've kind of cut off corners and dug up. . . you really would have to go there. Even the maps. . . I could show you, wouldn't be fully explanatory.

Mr. Fukunaga: But is it a popular hiking trail? What is it's. . .

Mr. Brown: Well, it's right next to Kula Nani Subdivision and a lot of people live in the subdivision. A lot of people. . . I don't happen to live in Kula Nani, I live in Waihee. But people in the subdivision, are denied access for walking, or strolling or bicycling. And it could join up with coming down from Waiakoa and Polipoli Park. There's a lot of possibility.

Mr. Fukunaga: Ok.

Mr. Howard Kihune: Mr. Brown, I have a question?

Mr. Brown: Sure.

Mr. Kihune: I appreciate what your organization does and I think it's a great value to our community. But my question is. . . You know, we're looking at the subdivision not the road. That issue with the road, seems like. . . in my opinion, the gate needs to be moved higher up. Is that

correct?

Mr. Brown: Well, no. It would be a very expensive thing for the county ...(inaudible)... or for the Bailey people ...(inaudible)... But, there's a combination of two roads.

Vice Chairman Abbott: Sir, will you please speak into the microphone?

Mr. Brown: I'm sorry. Mr. Abbott. Unfortunately, it's a mish mash right now. And to answer your question, that wearily wouldn't be the right thing to do. It's just kind of a wild west corner of Maui and they have all these dirt roads up there. But, they're on top of the Government Road in general but not completely. So, to answer your question, to move that, that wouldn't satisfy us.

Mr. Kihune: I mean the gate that goes to the top of the crest where it turns off. . . where the Homestead Road turns right?

Mr. Brown: Yeah.

Mr. Kihune: Wouldn't that make any sense to have a gate there. So people can access?

Mr. Brown: Well. . .ok.

Mr. Kihune: I'm not here to solve that issue, but just trying to get some common sense.

Mr. Brown: Yeah. That's the unfortunate, you guys haven't been there. I would agree with you, except for one thing. Right there, you make the right hand turn, the Homestead Road has not been attended to. But, he made his other dirt road right next to it and pushed all these 50 foot trees.

Now, the easement is like 40 feet. So, here you have a 100 big huge trees, across this old road bed. The road bed is still in good shape. But you have these big trees over it. So, the road is unuseable.

Mr. Kihune: I think it's more of a County issues with trying to get that road clean. I think at some point. I'm just trying to get some sense of the whole thing.

Mr. Brown: Yeah. Well, the County's never responded to us. So. The reason I'm here is, this is a choke point. Obviously he wants something from Maui County, which is a free thing and it helps him. But, he should come with clean hands and do the right thing. That's all. Thank you very much.

Vice Chairman Abbott: Question Lieutenant Davis. Does the Fire Department have any intake on this private road, access? Whatever? I mean, what does it have to do with the Fire Department?

Lieutenant Davis: It doesn't.

Vice Chairman Abbott: Lesli, do you have any comments that you might be able to help us on this?

Thank you Mr. Brown.

Ms. Lesli Otani: First I want to clarify. Lesli Otani with Public Works. I do have a Land Surveying license but I'm not the Land Surveyor for the County of Maui. That position is in Engineering. So, I don't have the expertise in the road way matters.

From my limited understanding. There's many of these roads. Homestead Roads, sometimes there are paper roads. Sometimes, at one time, they may have been construct or not, that are neither maintained by the State or County.

When I personally went out to this property, sometime last year. The road itself from where I was, which was on the private property side, leading up. Right above the Kula Nani Subdivision, it didn't seem to be either in existence or maintained.

The lower portion by the gate, my limited understanding. Is that the Bailey family has been maintaining that area. So, it's kind of like, they maintain the portion leading up to where they have, I think an archery range. And then right there it branches off, where there's this, kind of old road that doesn't really exists. I mean it's there on paper. And then they made their personal road above. Which is what I believe he was showing the photos of.

So, you know, access is also a concern for many people. I think in this case, my limited understanding is that the County isn't maintaining that road way. I'm not sure that anybody actually, practically uses the roadway.

For our portion of the subdivision review, in speaking with the Design Engineer and Mrs. Bailey, they are complying with the Public Work's requirements, for the pavement and the access. So, you know, recently there's been several people who've approached the Board, for relief from some of the Title 18 requirements. My understanding is they intend to comply with the requirements and has submitted to us construction plans. So, as far as the pavement and the access, they are complying with the requirements in place for their subdivision.

Regarding the legality of the road and blocking access, you know, Mike Hopper may be able to say this better than I. But, I think that's more an issue that's not something that the County or our office would have jurisdiction in. It may be more applicable in the courts.

Vice Chairman Abbott: ...(inaudible)... Mr. Hopper?

Mr. Michael Hopper: The Board has no authority to determine whether or not a road is publicly owned, privately owned or whatever else. The issue would only be relevant if in reading the criteria of the variance, you determined it had some bearing on the criteria on granting a variance. You've got a staff report, with a five criteria, the Department's comments in that staff report. You can certainly consider public testimony.

But to impose conditions or to grant or deny the variance. It does have to be based on the criteria set forth in the staff report. And in your rules for granting a variance or denying a variance, with respect to the fire. . . the portion of the building code, that ...(inaudible)... also fire protection.

That's the focus of the Board. Public health, safety and welfare. Dealing with the actual variance request. So I would. . . I think that's a good way to focus the discussion. On that criteria, because you have a list before you. And whether or not a road is a public or private road, it is so or is not so, regardless what the Board finds. That would be a court matter. Or if the County has records generally a road is only maintained by the County or under County jurisdiction. If it has been accepted by the Maui County Council by Deed. Otherwise, it's not considered a County Road.

So, that's my background. I don't know about this specific case. But, that's the general advice I can give. But, in any decision making, the Board will need to focus on the criteria set forth in the code, that's given to you in the staff report. You can certainly ask questions of either testifier, the applicant or the staff with respect to that criteria.

Vice Chairman Abbott: Thank you very much. Is there any additional public testimony at this time? Then I will close the public hearing. Staff recommendation?

Lieutenant Davis: Let's see. So, I have it kind of written down in my summary. In the staff analysis and basically as discussed before, the only thing that is different that I wanted to add in this summary is that the second paragraph that says, "All structures that require a permit , built here after, shall be protected by an automatic fire sprinkler system, designed to use, to the use designation of the building..." What needs to be added in there is, "Structures over 700 square feet".

Vice Chairman Abbott: Thank you very much. Questions or discussion from the Board please.

Mr. Fukunaga: I have a question for Fire Department? Do you have any concerns with access for your vehicle? To get to the tanks or the . . .

Lieutenant Davis: Well, that's the actual issue, which is the reason why we're agreeing with the applicant that, fire protection doesn't need to be placed on the road that we're not requiring them to improve.

So, we do not have access as far as what our access requirements mean in the code. But that's why they're here for the variance. And basically, what we're asking them to do, is that with the existing 30,000 gallon water tanks, if they could provide a quick connect for us, that our wild land vehicles, which can access. . .but, that's not what we base the codes off of. But it will be able to access a water supply in the case that there is a brush fire. Does that make sense?

Mr. Fukunaga: Yeah.

Lieutenant Davis: So there's no legal access as far as our pumper truck making up there. Which is what we base our access on. But we will be able to get up there with out wild land vehicles and access water. But that's not for structural fire protection at all.

Mr. Fukunaga: Ok. And you have those off road vehicles available in that area?

Lieutenant Davis: In the area? The vehicles that I'm talking about, are specialized vehicles, and when. . . State force (?), they actually have that as well. But, it's not at Kula Station or it's not at

a station in the area. But, when there is a fire, we'll drive them up there.

Mr. Fukunaga: So, if there's a structure fire, then it's somewhat at the mercy of the fire sprinklers to put out those fires? Quickly extinguish those fires before they get out of hand?

Lieutenant Davis: The 13D System is based on life safety and not property protection. So, what's we're concerned about is the sprinklers working well enough for the occupants to get out of the house and be in a safe distance from the house. If the house burns down to the ground before we get there, then. . . that's what they're actually signing up for.

Mr. Fukunaga: Are there any special indemnities or some kind of Hold-Harmless Agreements that they would need to enter into with the County?

Lieutenant Davis: I wouldn't be able to answer that as far as the Fire Department's behalf. We don't have any Hold Harmless Agreements any more within the Fire Department. But the County may want to place something. . . put something in place.

Mr. Fukunaga: Ok. Thank you.

Vice Chairman Abbott: Scott?

Mr. Scott Matsuura: Just a quick question. You talking about the two 30,000 gallon tanks, that are harder ...(inaudible)... and you guys have an agreement with. . .

Mr. Bailey: We have a written agreement just for the subdivision. Along the parcel, and he is aware of the provisions if he was to build the building over 700 square feet. That-that would be his. . .

Mr. Matsuura: What are the two tanks currently used for?

Mr. Bailey: I have no idea. He has them off a barn and off a Lean-to. So, I mean he has ag, he has goats he has also. . . who knows what. . . I'm sure he's using it just for homestead use.

Mr. Matsuura: Does anybody know what those tanks?

Lieutenant Davis: No, but for conditions of the variance to make that, a question that can be answered for you. Is that the conditions of the variance would require a plan to be still submitted and approved, along with the variance that shows us that they are going to put these appurtenance to the existing tanks that they have there already. And then we'll go in and approve construction and eventually final. Along those lines.

So we would have a detailed plan to assure that they would be able to provide the connections that we're requiring.

Mr. Matsuura: I guess what I'm thinking more about is whether or not, the tanks were ...(inaudible)...

Mr. Bailey: To be honest with you, we're just trying to subdivide the four acres. I don't know what Carter's plans are. And the County could hold him accountable for whatever he needs to do on his properties.

Vice Chairman Abbott: I have a question. . . Actually, I'm not sure if it's a question or a thought, looking at our notice here. It says "Staging of all Maui Fire Department equipment and personnel" may be used on the 67 acres, which is owned by the Bailey family. Are those tanks applying fire protection for their entire 67 acres?

Lieutenant Davis: I believe that comment is, the Bailey family is willing for us to utilize their parcel, in the case that there's a large brush fire up in that area, as there was before. Excuse me. To have an area for us to stage. I believe that's what the intent of that part of the- -

Mr. Bailey: With history of the Polipoli fires in the 80's and the last one that we fought, up in Polipoli. We're willing to let. . . basically, our 67 acres be access for staging helicopter use or even bringing a dozer up to protect adjoining home. So, that's kind of what we're offering.

Vice Chairman Abbott: Just clarifying. Thank you. Any other questions?

Mr. Kihune: Yeah, I do. Mr. Bailey. With those two 30,000 gallon tanks, do you already have an agreement with Mr. Carter? Is that what you're saying? Or?

Mr. Bailey: The 30,000 gallon tanks are there available if there was a fire in the property. I'm sure he'd be more- -

Mr. Kihune: Would he agree to that?

Mr. Bailey: Yeah. He'd be willing to, whatever water's in there to be used. But, as of right now, there not. . . they're not built for fire, because we're trying to get the variance. So, I guess if he gets a permit to build a home, then he would have to comply to whatever the County would. . . in order to approve his permit.

Mr. Kihune: Right. Ok. But you guys have already had the conversation with him.

Mr. Bailey: Yes, he's aware of this and he has not submitted anything against it, as far as my mom. . . my mom talks to him, I don't talk to him.

Mr. Kihune: Ok. No problem. I just wanted to make sure there was some kind of- -

Mr. Bailey: Yeah. So he hasn't come back with any disagreement on it.

Mr. Kihune: Thank you.

Vice Chairman Abbott: Any other discussion? Do we have a motion?

Mr. Kihune: I motion. I'd like to motion to approve the variance, with the conditions that are put forth. The alternatives that were presented by the Bailey family. And also to make sure we include the 700 square feet, any additional or future structures that are built, would have to be approved through the County as normal permitting process. And also include the One Million Dollars, Hold-Harmless Liability standards.

Vice Chairman Abbott: We have a motion. Do we have a second?

Mr. Fukunaga: I second.

Mr. Hopper: Just for staff. Is staff clear on the conditions here? Or do we need to actually write them out? It was kind of general saying, "As proposed by the family? But, I want to make sure that staff is clear. So that they would be able to draft a Decision and Order with those conditions. That may be a little tricky.

But just so that everyone is on the same page and there's not questions. I don't know if you can look back at the minutes. But, seems like a lot was discussed and I don't know if the staff's prepared to put that in writing. Or if you would want some more time with the . . . either the family or the applicant or the Board.

Mrs. Carolyn Cortez: I believe that the conditions are stated already in the Public Hearing Notice. But, I would appreciate clarity from Member Kihune on the ones that he added about the 700 square foot. I wasn't quite clear on that.

Mr. Kihune: Yeah. I'm making sure that any future building or development of 700 square feet or larger, was added as part of the conditions. I'm sorry, for fire sprinkler suppression within those buildings. As part of the alternative for the condition. So Davis, did I state that right?

Lieutenant Davis: Yes you did. Yeah. I'm just showing her, on the summary basically. So, add in, right after that. "For structures that are larger than 700 square feet and require a permit." Yeah. That's all you gotta add in it. I can clarify that with staff.

Mr. Scott Matsuura: Just for clarification. For your motion. . . was to utilize the applicant's recommendation? Or the Fire Department's?

Mr. Kihune: Well, I believe the Fire Department and the applicant's are pretty much identical. The only thing was missing with the Fire, was the 700 square feet, the fire suppression sprinkler system, anything over 700 square feet.

Mr. Matsuura: I think you had the. . .

Mr. Kihune: I can amend the motion if you need me to.

Mr. Matsuura: ...(inaudible)... available water ...(inaudible)...

Lieutenant Davis: Try again.

Mr. Matsuura: Between your summary. . .

Lieutenant Davis: Yeah.

Mr. Matsuura: And what the applicant has provided, we're you working with ...(inaudible)...

Mrs. Cortez: Member Matsuura, can you tell us, where? Which. . . where exactly you're referring to?

Mr. Kihune: Page 10 and four is two different, applicant's submittal, which is form 1, on the bottom

page. And page 10 on the staff report you have that.

Vice Chairman Abbott: Look under summary?

Mr. Kihune: Under summary, correct.

Mr. Matsuura: ...(inaudible)...

Mr. Hopper: Is staff ok with adopting that-adapting that toward a list of conditions? Seems there's about three paragraphs. I just want to make sure staffs' ok with that. Because they're going to be the ones charged with writing up the conditions in the D&O.

Lieutenant Davis: I believe the summary that Fire provided, has a more accurate description of what we would request as far as if the variance is approved. But then I'm looking at this now and what's not in the Fire staff analysis is the access to the 67 acres for staging. Which I would like that to be included because, it's hard for us to find land use agreements for that kind of stuff. And if it's already in place, then it's great.

Mr. Kihune: Can I withdraw the motion and make another motion?

Mr. Hopper: Yeah. You can make a new motion, if the Chair allows it.

Vice-Chairman Abbott: Please.

Mr. Kihune: Let me withdraw my motion.

Vice-Chairman Abbott: Motion withdrawn.

Mr. Kihune: I'd like to make a new motion, and with that new motion, to adopt the conditions that were put forth by the County Fire Department. Maui Fire Department. To also include, which is on page 10, in the summary. Which should also include, "All future structures over 700 square feet or larger to be equipped with fire sprinklers to suppress any structure fire", And also to include... "The rest of the 67 acres, owned by the Bailey family, may also be used for staging areas for Maui Fire Department equipment and personnel, in the event of a wild and fire and adjacent public and private land, Polipoli State Park etc."

Vice-Chairman Abbott: We have a motion. Do we have a second?

Mr. Fukunaga: I second.

Lieutenant Davis: That and the Hold-Harmless Agreement? I mean the insurance?

Mr. Kihune: I'm sorry, my fault. And to also include our standard One Million Dollar Hold-Harmless Insurance for this County of Maui.

Vice-Chairman Abbott: Now, do we have a second?

Mr. Fukunaga: And I second.

Vice-Chairman Abbott: If there's no further discussion, I'm going to call for a vote. Seeing none. All those in favor? Say "Aye".

Members: "Aye."

Vice Chairman Abbott: Any opposed?

Vice Chairman Abbott: The motion is carried. The variance is approved and according to all of the conditions specified by Mr. Kihune, the Fire Department and this Land Use... whatever. Let's get everything under one roof. This was too many doors and not enough windows...laughter... Thank you.

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

VOTED: Motion to grant the variance with conditions specified by Mr. Kihune, the Fire Department and the Land Use.

(Assenting: P. DePonte, T. Espeleta, C. Fukunaga, H. Kihune, W. Greig, S. Matsuura)

(Excused: R. Tanner, R. Sung)

Vice Chairman Abbott: At this point in time, we're going to take a five minute break please. Thank you. We will reconvene approximately 2:25 p.m.

...Recess... (2:18 p.m. 2:26 p.m.)...

Vice Chairman Abbott: We're back in session. It's 2:26 p.m.

B. PUBLIC TESTIMONY (Cont...)

Vice Chairman Abbott: Again, if there's public testimony. It doesn't matter, because this is the only item left on the agenda.

C. PUBLIC HEARING (Cont...)

2. ELLIOT AND BARBARA LUKE representing LUKE FAMILY SUBDIVISION, is requesting a variance from Maui County Code (MCC) §18.16.130 "Cul-de-sacs" to allow the cul-de-sac on Anuheia Place to be more than 2,500 feet in length and to serve more than twenty (20) lots, when the code requires that a cul-de-sac shall not be more than 800 feet in agricultural areas, no more than 500 feet in other areas, nor serve more than twenty (20) lots, for property located at 233 Anuheia Place, Makawao, Hawaii; TMK (2) 2-3-008:034 (BVAV 2014/0008)

Vice Chairman Abbott: Will the staff read the agenda item and state the purpose of application?

Ms. Balberdi: Again, my name is Malia Balberdi, I'm from the Planning Department. *Reads item into record.*

Vice Chairman Abbott: Is there a presentation?

Ms. Balberdi: Yes, the staff. The applicant, sorry.

Vice Chairman Abbott: Would you please come to the podium and identify yourselves please? Thank you.

Mr. Elliott Luke: My name is Elliott Luke. Vice Chair Abbot, members of the Board, good afternoon. Again, my name is Elliott Luke and my wife is with me here today, Barbara Luke. Our Children, are Eric, Brandon and Charisse Luke and our three children are the reasons why we are here today.

I really don't want to be redundant and go over the items that we have in the analysis in the summary. I wanted to elaborate on item number two in the summary. And basically we are piece of property on Anuheha Place. It's an agricultural subdivision that was approved by Maui County in the late 60's.

You know, we convinced our children to move back to Maui, from the mainland and Honolulu. And our intentions were to subdivide the property to pass it on to them. My oldest son, our oldest son Eric, lives on the property and farms. He's built a home there. Our second son Brandon, he currently lives with us and moved back home with us in 2010. I again, convinced him to move back home. And our daughter, she's actually living behind our garage and she's still hasn't unpacked from her move from the mainland. Her furniture and her belongings. We told her that we thought that this could move along quite quickly. Which has not been the case.

Our daughter Charisse, she often feels that she can't afford to live here. Even though she's aware of our plans to subdivide the property. But, it's taking far longer than what she thought it would be, or what we thought it would be. She moved back to Maui in 2011 and at this point, if we can't get this through, she's going to move back to the mainland.

You know, interest rates are at an all time low and Charisse and Brandon are ready to build, once we can get the subdivision approval behind us. We're currently working on water, believe it or not Anuheha Place, does not have county water. But we are actually on the verge of construction shortly.

We're just trying to. . . we're just local people trying to give property to our children so that they can afford to live here. And we would want them to stay here and live on Maui and we know that they can contribute. They can contribute both to the community and the people of Maui.

Myself and my wife are happy to clarify and answer any of the questions that you may have concerning any of the analysis that was done. I also included a map, which is dated October 14, 2011. Which was drawn by Ottomo Engineering and this particular map was submitted to the County of Maui, Department of Water Supply. It is part of our water line construction and the water line is not part of what we're talking about today. But, that was the most current map and so I presented it.

We have some photos here of the property. I think. . . I don't know if you folks are aware of Anuheha Place, but, this grey spot right here belongs to the County of Maui. That is their football field, and soccer field and what not. Below the property is Kamehameha School and besides this football field, you got this parking lot you've got Long's Drugs and other commercial buildings right

here.

This particular road is Kula Highway, this is Lower Kula Highway and this road here is Anuhea Place. And it's 2,573 feet long and the subdivision was again approved in the late 60's early 70's by Maui County.

Our property is right here. And that's Eric's house. The property above us, subdivided and they put in their own cul-de-sac roadway here and there's four lots. Again, this is just a picture of the subject property right here. This green belt here is Kamehameha Schools. This is also part of Anuhea. So right below Anuhea Subdivision is Kamehameha Schools.

We are surrounded by gulches on this side, very steep and gulches on the other side and then. . . actually the gulches are partially owned by the State, I believe. This is a view of our roadway going into the property. And this is the lot above us and the cul-de-sac or the roadway that they put in. This is a view of the cul-de-sac at the end of Anuhea Place and what you see right here, that green roof is Kamehameha Schools.

This road here, leads to a church. So there's a church at the end of the road as well. I believe that ends my presentation. If there's any questions or clarifications that any of you may want. Be happy to answer that.

Vice Chairman Abbott: Are there any questions from the Board at this time?

Mr. Fukunaga: I have a question. So are you part of an association?

Mr. Luke: Are we apart of an association?

Mr. Fukunaga: Yes.

Mr. Luke: No we're not.

Mr. Fukunaga: So who maintains the side of the roadway along Anuhea?

Mr. Luke: Anuhea is a private road. Owned by the Church.

Mr. Fukunaga: And the church maintains the grass?

Mr. Luke: Well actually, there's an individual by the name of Poulson and he and his. . . he maintains the road. And mows the sides of the road and. . .

Mr. Fukunaga: And from the pictures you showed and from the aerial views, it doesn't seem to be a lot of traffic or parking along that roadway. Can you confirm whether there's a lot of overnight parking or a lot of cars that park along the shoulders?

Mr. Luke: None. Only once in awhile at the end of the cul-de-sac right there. Late at night you might find kids or others that go down there and do various things.

Vice Chairman Abbott: At this point in time, Staff, do we have any letters of support or opposition to the. . . ask for a variance? And we have the one from Lori Diez?

Ms. Balberdi: Chair. Lori Diez is for the previous variance that you heard.

Vice Chairman Abbott: Oh, ok sorry.

Ms. Balberdi: For this case, there was no letters of opposition or support.

Vice Chairman Abbott: I do have a question myself. I'm concerned about the water. You are not connected to water of any source at this particular time?

Mr. Luke: The home that my son has built is. . . we got a building permit and it was approved, he has a 30,000 gallon water tank there through a catchment system. And that's. . . and he has sprinklers in his house, it was only approved with sprinklers and such. At that time. And I guess it was in '07. But, we farm the property but we farm goats and we are on the verge of putting in the waterline. We're just. . .

Mrs. Barbara Luke: There are nine of property owners in Anuheia.

Vice Chairman Abbott: Are you Barbara?

Mrs. Luke: I'm sorry, I'm Barbara Luke. And I have been actively, pretty much spearheading the construction of the waterline. It should be again next month and every things in place. And as far as I know, to approve this variance, water was not one of the conditions. As far as the conditions for approval of our subdivision, or conditions were met. And then we just received this in January of 2014 as Condition Number 22. But all other conditions were met, Water Department as well.

Vice Chairman Abbott: I'm sorry, I didn't mean. . . I just. . . When he mentioned there was no water to the property, it sort of raised a red flag.

Mrs. Luke: There were no. . . there is no water to any of the properties in the neighborhood. Although the owners of the church dug a well, I don't think they're capable of using yet because they don't have the electricity to pump up that water. There were some people illegally using county water in the neighborhood. But, we are rectifying all of that. It's an old ag subdivision. Which there were initially five to almost 10 acre lots.

Vice Chairman Abbott: Any other questions for the Lukes?

Mr. Kihune: Mr. Chair.

Vice Chairman Abbott: Go ahead.

Mr. Kihune: Mr. Luke, do you have some more comments that you want to make?

Mr. Luke: No.

Mr. Kihune: Ok. Sorry.

Vice Chairman Abbott: Any additional public testimony at this time? Seeing none. May we have the staff's recommendation please.

Ms. Lesli Otani: Lesli Otani with the Department of Public Works. This is a very unique

circumstance, where the access leading to the property, although older. Is to the typical agricultural standards. It's wide enough and it has the proper shoulders and such.

I think the Luke's were. . . are in an unfortunate circumstance because of the way the code is written that limits the number of lots on a cul-de-sac to 20. So it was at the recommendation of the Director of Public Works, that they seek the variance and our hope is that. . . due to their unique circumstances and the road being accessible and improved, although older, but improved and maintained to the typical standards that the variance would be granted so they can continue with their process, separate from the department. That they can continue on.

Vice Chairman Abbott: Thank you. Any comments from the Fire Department at this time? Lieutenant Davis?

Lieutenant Davis: Lieutenant Kono Davis, Department of Fire and Public Safety. I'm not sure if the correspondence from Captain Haake made it to you. Which may be raising some questions and that's basically what I'm here for. To clarify that.

In our new code, which is not adopted yet. In our amendments we have a provision that mirrors DSA's provision for 20 lots or more you need multiple access roads. That code is not current. And so it's not applicable to the Luke's variance or subdivision. So basically we have no comment on this Title 18 variance. And that's all.

Vice Chairman Abbott: Thank you. Board? Chad?

Mr. Fukunaga: Yeah. So I always understood and Lesli can correct me if I'm wrong. But, part of the reason for this provision was with respect to Fire. The Fire Department's access. For their apparatus to traverse down along the cul-de-sac before they are able to turn around. I think they're trying to limit the lengths of the cul-de-sac so they don't have to travel such a far distance before they can turn around their apparatus.

And that's part of the reason why I asked about the shoulders. When I look at the pictures, the grass shoulders seem pretty well maintained and I don't believe there's a lot of cars parked along them. So, it may take more than one maneuver for an apparatus to turn around but. . . and Lieutenant Davis can correct me if I'm wrong. But, they probably could turn around if they needed to before the cul-de-sac.

I also understand that there is a loop hole to this ordinance. So say if someone were to build a cul-de-sac right at the end of this existing cul-de-sac, attach an other cul-de-sac and in thus, you're now shortening the actual length of what is technically a cul-de-sac. So you would negate or you would then be in compliance. Which to me makes no sense at all. So basically saying, if you add a cul-de-sac just before the end of this cul-de-sac, every things legal. And so I don't really understand what the difference that would make.

But that's the case. So, I guess what I'm trying to say is. . . I think what I feel is if the Fire Department doesn't have a problem with their fire apparatus being able to maneuver this roadway. Personally, I wouldn't have a problem.

Vice Chairman Abbott: Well, I think that Lieutenant Davis has an additional comment.

Lieutenant Davis: So, in actuality the 20 lots or more, that requires multiple access roads that is not in our current code yet but will be. Addresses multiple access meaning, you need another way into the subdivision. Not necessarily addressing the turnaround requirements, because you're absolutely right. So, say there wasn't even a . . . there is a required turnaround or a turnaround that conforms to our standards at the very end of the subdivision already, it's a cul-de-sac.

So, basically a provision in the fire codes, requires that any road that is in excess of a 150 requires and apparatus turnaround so we don't have to back the truck all the way to where we can turnaround. So, they accommodated that by putting a cul-de-sac at the end.

It's a total different requirement that we're going to implement with the 20 lots or more provision, which means you need a totally different access. So two roads coming in to serve more than 20 lots. Those are two different animals yeah. So you're right, you could put. . . you could actually not even have a turnaround and put another road within a 150 feet of the end of that road. And that would conform to a turnaround.

So you know, there is loop holes that could probably be. . . I don't want to tell them all right now but, you know. So, we'll just leave it at that.

Mr. Luke: You know there are existing subdivision so Maui - - two right across the highway from us. Kula 200 Ohana and Kula 200 Poapolua (sp?) both of which are cul-de-sac roads in excess of 500 feet with 51 lots or more.

And I don't know how. . . I mean I can understand how the new codes need to go in. But, I don't know how you're going to apply the new codes to some of these older existing subdivisions that were built in the 60's and 70's I mean it's a challenge for both Fire and the County. But, it's a long awaiting problem. But I don't think that-that problem should be the reason why any of you should not consider this variance.

Vice Chairman Abbott: Thank you. Any other discussion or questions from the Board members? Seeing none. Do we have a motion?

Mr. Teddy Espeleta: I'd like to make a motion to approve.

Vice Chairman Abbott: Would you add your requirements for the motion?

Mr. Espeleta: Yes, yes. The Hold-Harmless and the - -

Vice Chairman Abbott: The staff reports.

Mr. Espeleta: Yes. The staff reports in my opinion covered everything and with the Lieutenant's comments and - -

Vice Chairman Abbott: And Lesli?

Mr. Espeleta: Yes.

Vice Chairman Abbott: Ok. We have a motion. Do we have a second?

Mr. Patrick DePonte and Mr. Fukunaga: Second.

Vice Chairman Abbott: Two seconds. Choose which one of you wants to... laughter...

Mr. Fukunaga: Second.

Vice Chairman Abbott: If there's no further discussion, I'll call for a vote. All those in favor?

Ms. Balberdi: Wait

Vice Chairman Abbott: We have a discussion, I'm sorry.

Mr. Kihune: We gotta clarify.

Vice Chairman Abbott: Clarify. Sorry.

Ms. Balberdi: For clarification. Is one of the conditions to have a Hold-Harmless and a One Million Dollar policy?

Mr. Espeleta: Yes. The standard.

Ms. Balberdi: The standard?

Mr. Espeleta: Yeah.

Ms. Balberdi: And are you adopting the applicant's reasoning and meeting the four criterias? Or five criterias listed in the application or staff report?

Mr. Espeleta: Yes, I am.

Ms. Balberdi: Thank you.

Vice Chairman Abbott: Are we there now? All in favor? Aye or nay?

Members: "Aye."

Vice Chairman Abbott: Unanimous Aye. Thank you the **variance is granted**.

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

VOTED: Motion to approve the variance with the standard Hold-Harmless Agreement, One Million Dollar Policy and five criteria listed in the application and/or staff report.

(Assenting : P. DePonte, T. Espeleta, C. Fukunaga, H. Kihune, W. Greig, S. Matsuura)

(Excused: R. Tanner, R. Sung)

Mr. Luke: I have a question.

Vice Chairman Abbott: Sure.

Mr. Luke: On the Hold-Harmless. We have a Hold-Harmless on there right now. We've had it since we had I think Preliminary Approval. And we've been paying - -

Mrs. Luke: - - Well we've it since the variance for our fire flow situation. But, I just have a little problem with that Hold-Harmless. I mean it started out at \$550.00 a year for the Liability Policy and now it's up to \$750.00.

And that's in perpetuity right? I mean, that's pretty scary. And so, we just happened to be one of the lots. . . the other lots were just recently subdivided. In fact, some of the lots aren't even recorded.

So they got in before us, but they actually got their subdivision applications in, after us. Some like two, three years after us. So somehow, they quickly got theirs approved. Now, we're lot 21 or we're going over the 20 lot minimum. And now we have to do the Hold-Harmless Agreement and pay for this policy. I mean I just think it's unfair. It just seems like, ok anybody who comes in after. . .

The thing is we were at the end of our subdivision process. I was just waiting for the property tax clearance letter to come out. And they were just taking forever. I mean your talking many, many months. And I kept pestering them, even walked papers down to them. Otherwise we'd probably be approved.

Not that I want someone else to go through this. But, I'm just thinking, it's really off balanced in the fair area. I don't know, maybe I'm just being ridiculous. But, it is an expense and for someone to incur that forever. And each year, it goes up a little, just a little more. So, I don't know. . . I would ask that you would waive that.

Vice Chairman Abbott: I understand your position. But, if you want the variance granted, that's part of the stipulation that we grant the variance.

Mrs. Luke: Ok.

Vice Chairman Abbott: Unless - -

Mrs. Luke: I thought it was something that you could consider but you didn't necessarily have to -
-

Vice Chairman Abbott: It was approved with that ...(inaudible)...

Mrs. Luke: Yeah. Ok.

Vice Chairman Abbott: Unless the attorney. . . our Counsel has additional information.

Mr. Hopper: That's a condition of the variance, it's granted subject to that. If you wanted to look at the condition again. . . but before. . . you could. But before doing that, I want to advise in Executive Session, on that particular issue. It's up to the Board. But there's reasons generally for those types of those conditions.

Vice Chairman Abbott: Would this initiate a Board vote?

Mr. Hopper: Depends on what the Board would like to do. You already granted the variance. If you want to do a reconsideration, and take the condition off, you could try to do that. But again, before you would do that, I have advice to give you in Executive Session about not including the indemnity and insurance conditions in your variances.

Mr. Espeleta: Would that set precedence?

Mr. Hopper: Again, I would like to advise you in Executive Session on that issue. I would recommend first that if. . . Well, I guess we could do Executive Session before that, but there's no point if there's no desire to take the condition off or explore that.

The variance is granted at this point. Subject to that condition. At the same meeting you can do a reconsideration. If there's interest in doing that, I'd like to give you some advice in Executive Session. If there's no interest in doing that, then there's no point in going to Executive Session for that discussion.

Mr. Fukunaga: I'd like to hear.

Vice Chairman Abbott: We'd like the information. So let's go into it. We're going to go into Executive Session.

Mr. Hopper: You'd need to take a motion and have a vote to do that. And you need a 2/3 vote of the numbers present in order to that.

Vice Chairman Abbott: Do you want to make a motion to go into Executive Session?

Mr. Fukunaga: Chair, I'd like to make a motion that we go into Executive Session.

Mr. Espeleta: I second that.

Vice Chairman Abbott: All in favor?

Members: "Aye."

Vice Chairman Abbott: **We'll go into Executive Session**, which mean you have to leave the room. It's a private between the Counsel Corporation.

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

VOTED: Motion approved to go into Executive Session

(Assenting : P. DePonte, T. Espeleta, C. Fukunaga, H. Kihune, W. Greig, S. Matsuura)

(Excused: R. Tanner, R. Sung)

...Executive Session... 2:54 p.m. to 3:04 p.m.

Vice Chairman Abbott: We're back in session. It is four minutes after 3:00 p.m. Is there a motion to reconsider any of the dialogue concerning the variance from the Board? Seeing no dialogue or objections or information, the **variance stands at is**. As has been **approved**. Correct?

Mr. Hopper: Yes.

Vice Chairman Abbott: Thank you very much.

Mr. Luke: One question. That Hold-Harmless, is that forever?

Mr. Kihune: Perpetuity.

Mr. Luke: Perpetuity.

Mr. Kihune: It runs with the property.

Mr. Luke: I'm sorry?

Mr. Kihune: It runs with the land.

Mr. Luke: I see. So?

Mr. Kihune: Assigned so - -

Mr. Luke: No kidding. Ok.

Mr. Hopper: It will be set forth in a Hold-Harmless Agreement actually. Correct and recorded on the property.

Mr. Luke: Can I make a comment? It probably doesn't have any bearing. But, I think initially when we had a Hold-Harmless Agreement like that put on the property. It was because we didn't have water and it because of fire flow. And they wanted. . . so we've had a Hold-Harmless since then.

But, I thought that it was going to. . . once the waterline went in and we, the area got developed to county standards that-that agreement or that Hold-Harmless would not necessarily have to be in place anymore.

Mr. Hopper: If there's other Hold-Harmless Agreements that they may be separate issues. If there's a water Hold-Harmless. But if there's an additional variance or additional approval that's required that's not in conformance with the code. Then that would be a separate Hold-Harmless

Agreement for as long as that variance is required.

Now, if the Maui County Code changes or something and this is no longer a requirement, I suppose you could the Board to remove that as a condition at some point. If it's no longer required as a variance.

I don't know about those other agreements or their terms. They may well expire once something's up to county standards. I'm not sure. But, for this variance, this Hold-Harmless is for this variance specifically and what this Board granted. It has nothing to do with any of the other code requirements or anything else.

Mr. Luke: Ok. And the process to get it removed would be to come back to the Board and ask for a . . . Or what would the process be?

Mr. Hopper: You can go over with the department. . . it's essentially amending a variance to delete a condition. But, if the Board is not willing to do that right now, I'm not sure why they would be in the future. That would be up to the Board. You could ask I suppose.

But, if there's a case where the code actually changes and the variance is no longer. . . would have not been required. . . then maybe, that's certainly a change in circumstances. Basically, you're still in conformance with the code.

Now your old variance would've still been required but I don't know if that would be a justification to take off the Hold-Harmless Agreement. But for now, it's. . . the subdivision would not be in conformance with code but for the variance. And so, that's where the Hold-Harmless Agreement would come in.

Mr. Kihune: I would assume that if you have one for fire protection or water. . . once that is installed, the possibility that would come ...(inaudible)... whatever you have. But because this is over and above what the code is ...(inaudible)...

Mr. Hopper: I would read the terms of the Hold-Harmless Agreement, the previous one and what it's required for. And if it was a Department of Water Supply Agreement, that's a separate issue, again what the Board of Variances and Appeals is requiring for this variance.

But yeah, you would definitely want to consult an attorney. I can't give you legal advice on that realm. That's something you would maybe need to consult with an attorney on. And not knowing about those other agreements.

But, I can say this particular Hold-Harmless Agreement would protect the County based on any lawsuit against the County, based on the variance given. It wouldn't deal with any issues other than this variance given by the Board today. It's not a general indemnity, it's for dealing with the variance issue.

Mr. Luke: Thank you.

Mr. Kihune: Thank you.

Vice Chairman Abbott: Thank you.

D. APPROVAL OF THE NOVEMBER 26, 2014 MEETING MINUTES

Vice Chairman Abbott: The next item of business is the approval of the minutes and it's been requested by Mr. Sung that we not approve the minutes. As he has questions regarding typographical and a few things may have been left out and whatever else. And he would like, if at all possible to vote on the minutes at our next schedule meeting when he can be here to question.

Mr. Kihune: I make a motion that we hold off on voting our minutes from our last meeting to our next meeting. Postponed.

Vice Chairman Abbott: Do we have a second?

Mr. Matsuura: Second.

Vice Chairman Abbott: Ok. All in favor?

Members: "Aye"

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

VOTED: Motion approved to go approve the November 26, 2014 meeting minutes at the next scheduled meeting, February 12, 2015.

(Assenting : P. DePonte, T. Espeleta, C. Fukunaga, H. Kihune, W. Greig, S. Matsuura)

(Excused: R. Tanner, R. Sung)

E. NEXT MEETING DATE: Thursday, February 12, 2015

Vice Chairman Abbott: Thank you. It will be held off to our next meeting which is?

Mr. DePonte: February 12th.

Mr. Kihune: I won't be here.

Vice Chairman Abbott: You won't be here?

Mr. Espeleta: Same.

Vice Chairman Abbott: Now wait a minute, there's two absent already.

Members: Discussion and laughter...

F. ADJOURNMENT

Vice Chairman Abbott: Anything else today? If not, the meeting is adjourned.

There being no further to come before the Board, the meeting adjourned at 3:10 p.m.

Respectfully submitted by,

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

RECORD OF ATTENDANCE

Members Present:

G. Clark Abbott, Vice-Chairman Abbott-Chairman
Patrick De Ponte
Teddy Espeleta
Chad Fukunaga
Howard S. K. Kihune
William Greig
Scott Matsuura

Members Excused:

Rick Tanner, Chairman
Raymond Sung

Others:

Carolyn Cortez, Staff Planner, Department of Planning
Malia Balberdi, Staff Planner, Department of Planning
Chelsea Rabago, Staff Planner, Department of Planning
Lesli Otani, Development Services Administration
Peter "Kono" Davis, Lieutenant, Department of Fire and Public Safety
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel