

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
September 24, 2015**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Abbott at approximately, 1:30 p.m., Thursday, September 24, 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 Abbott: The meeting of the Board of Variances and Appeals will now come to order, it 1:31 p.m. Let the record show we do have a quorum.

D. UNFINISHED BUSINESS

1. **CALVERT G. CHIPCHASE AND CHRISTOPHER T. GOODIN OF CADES SCHUTTE LLLP** representing **D AND S VENTURES, LLC** Appeal of the Planning Director's Notice of Violation (NOV 2014/0013) for the zip line activity within the County's Agricultural District without a Special Use permit pursuant to MCC §19.30A.060 (H) for property located at 2065 Kauhikoa Road, Haiku, Maui, Hawaii; TMK (2) 2-7-012:086 (BVAA 2015/0002); (M. Balberdi)
 - a. Thirty day status report regarding filing of permit application.

Chairman Abbott: At this particular time with your understanding, I would like to have Mr. Kolbe update us on this Item D. in the agenda because it will only take a very short period of time. It's an update on an ongoing situation. So Mr. Kolbe do you have the update? Thank you very much.

Mr. Tom Kolbe: Thank you Mr. Chair. Yes, Tom Kolbe on behalf of the County of Maui. I'd like to provide a status update regarding the submission of the SUP Application. The application has not yet been filed. I've been in communication with D&S's attorneys, and they have assured me that they will have the application filed by September 30th. They have engaged a planning firm from Oahu called PBR Hawaii and Associates.

The reason it wasn't filed is that they were waiting for a "No position" statement to be filed by the co-owners and that process has all been ironed out and so I anticipate that the application will be submitted and then we can provide further information to this Board regarding that application and we would be then requesting a continuance so that-that application process can go forward.

Chairman Abbott: Ok. Then will you be providing the Board an update within say a 30 day period or sooner?

Mr. Kolbe: Yeah. I would just suggest- - well, if we do 30 days I'm certain that-that's enough time for me to get that and for the department to weigh in and let me know whether the application has been accepted and sent out for review.

Chairman Abbott: Right. I just want to make sure we can schedule it for meetings.

Mr. Kolbe: Yes, please do. That's my request.

Chairman Abbott: Any questions for Mr. Kolbe? Raymond?

Mr. Raymond Sung: What's the Plan B? Just in case it turns out that they for whatever reason fail to get that application filed by September 30th?

Mr. Kolbe: Yeah. This is how I would kind of envision that . . . if in fact they don't do what they've kind of represented that they would do, I'll have communications with them and get the department's take on whether they want to go forward with the hearing at whatever next date that they'd have and we can go ahead and do that.

So Plan B is that if they haven't submitted this application, there is still a pending NOV which needs to be resolved. They may ask for more time but at this point I don't think that-that's anything they've spoken to me about. They just said that we'll have it in, we have our associates looking at it and September 30th is the day that they have advised them to complete and submit the CUP.

Mr. Sung: To the extent that it's appropriate for you to communicate to them the following, I would hope that you'd do so. Which is no dawdling, no screwing around, get to it. Thank you.

B. PUBLIC TESTIMONY

Chairman Abbott: Is there anyone in the gallery who has information concerning this or would like to testify at this particular time? I'll hold it open. Seeing none, I'll close it.

D. UNFINISHED BUSINESS (Continued...)

Chairman Abbott: Any other questions? Howie, please.

Mr. Howie Kihune: Mr. Kolbe, thank you for time and the update. I'd like to get this done in front of the committee only for the one reason that we got some neighbors that sent us some comments and letters of - - I would say probably against the project. And I'm pretty sure they've dealt with this for so long and too long that I'd like to see this come to some resolution quickly. So if we can get them to move quickly, that would be great.

Mr. Kolbe: Absolutely. And hopefully in the permitting application they'll have a chance to come in and provide their views on that.

Mr. Kihune: Thank you.

Chairman Abbott: Anything further? Thank you Mr. Kolbe, I appreciate your update.

Mr. Kolbe: Thank you. Do we need to set up confirm that there's a - -

Ms. Thomson: Do you want to set a date for the next update?

Ms. Malia Balberdi: The next 30 days from now is October 22nd.

Mr. Sung: For clarification, we're all hopeful that they'll file their application promptly and diligently pursue it. In the event that the Hearings Officer will need to be appointed for the appeal, we still - -just to clarify, have not settled on one yet; so it is still within this Board's purview to essentially appoint this entire Board as the Hearings Officer or one of its members as a Hearing Officer, rather than send it outside at Maui County's taxpayer's expense. Is that correct?

Ms. Thomson: That's correct.

Mr. Sung: And I would suspect that if it were to be kept internally we would just remember certain things. Thank you.

Chairman Abbott: I'm sorry, I didn't get the date, was it October what?

Ms. Balberdi: October 22nd.

Chairman Abbott: Thank you very much.

Mr. Kolbe: Thank you.

Chairman Abbott: Thank you very, very much. Thank you for your patience. I appreciate it.

C. PUBLIC HEARING

1. **TRISHA KAPUA'ALA** representing **CELLCO PARTNERSHIP DBA VERIZON WIRELESS AND MGM, LLC, (OWNER)** is applying for a variance from §19.24.050, Maui County Code (MCC), "Development Standards" to allow a 60-foot and 6-inch monopole with attached antennas to be located 10 feet and 2 inches away from the front (eastern) setback and 10 feet from side (southern) setback when the MCC requires a 60-foot setback from all property lines (1 foot for every foot in height) for property located at 0 Pakana Street and 483 Pakana Street, Wailuku, Hawaii TMK (2) 3-5-027:005 & 006 (por) (BVAV 2015/0014); (M. Balberdi)

Chairman Abbott: Ok, as we don't have any public reading of anything. Will the staff read the agenda item and state the purpose of the application please?

Ms. Balberdi: *Reads item into record.*

Chairman Abbott: Thank you. Staff, is there a presentation?

Ms. Balberdi: No, the presentation will be done by the applicant.

Chairman Abbott: Fine thank you. Will the applicant please come forward, speak into the mic and give us your name please?

Mrs. Trisha Kapua`ala: Aloha Board members, Corp Counsel and staff. My name is Trisha Kapua`ala, appearing on behalf of Verizon Wireless and the property owner MGM, LLC.

Chairman Abbott: Ok. Trisha, may I ask, at this time are you willing to waive the reading of the Staff Report?

Mrs. Kapua`ala: Yes sir.

Chairman Abbott: Thank you very much. Please proceed.

Mrs. Kapua`ala: I really want to thank you in advance for being here and taking on the difficult tasks of balancing the need, the harm and the alternative solutions in this case. I have a Power Point presentation, could somebody assist me with the lights please? Thank you so much Chals.

So the Maui County General Plan 2030, adopted in 2012 for the MIP, sites Waikapu as the key area for expansion within the economic and population center of the island. With economic opportunity and improvements of the island's business climates being the County wide goal, the MIP encourages upgrading, maintaining the quality of and improving access to the telecommunications infrastructure as a means towards enhancing a higher quality of life; intellectual infrastructure such as universities and research laboratories; producing a highly skilled technical workforce and cultivating an entrepreneur culture.

The MIP acknowledges technology as a critical means for a critical emergency industry. For the county's well-being depends on the essential support of high quality telecommunication systems, to support economic diversification and growth. To accomplish this objective, the policy of supporting the development of telecommunication systems was established.

As you may know, compliance to the Community Plan is a responsibility and a factor requirement of the Board. The applicant respectfully submits that the purpose of the proposed cell tower supports as in-in fact is in perfect alignment with the policy and objective set forth in the MIP, especially considering the anticipating growth within the Waikapu area.

So, this map is a projective growth map that was adopted by the County. The subject property- - let me frame the property- - this is Honoapiilani Highway. We have here the Wailuku Height Subdivision, and you can see all of the anticipated growth for the area. In the Waikapu area especially as supported by the MIP. The subject subdivision is right there between Waiale Road in an intersection with Waiko Road.

So, as one of the fastest growing regions within the county ... (inaudible)...telecommunication means in 2015 and 2030 is critical for the Wailuku-Kahului Community Plan area as residential and commercial development within the region expands telecommunication services will also need to expand to service these areas.

Additional, as the population grows within existing developed areas telecommunication capacity will need to be increased to meet the growing demands. And this is from the Maui County General Plan 2030 and it's a telecommunication assessment.

According to Verizon, the Wailuku-Waikapu areas are projected to be - - what they call "Capacity Broken" by the end of 2016. This means that existing cell sites within the area will be insufficient to facilitate the community's needs. The quality of service within the area will significantly diminish, where cell phone users will be unable to make or receive calls. Voices may be gargled, fade in and out, more drop calls, in building penetration or one's ability to send or make or receive calls in a building while shopping in their homes or offices will be greatly impaired. Especially when it comes to data, opening emails, downloading pictures or sending a pdf.

In the case of an emergency where 911 services are needed, this anticipated fact is quite alarming. Many residence especially those who belong to my generation or generation XY, I'm a millennium - - we rely on our cell phones as the only means of contact and we don't have land lines.

Should the threat of a natural disaster arise, families would be using cell phones to call or text each other at a higher capacity to make preparations for safety and to insure each other's safety. In this scenario actual 911 calls could possibly not go through, may not be heard or calls may be dropped in progress. This is exactly what Verizon is attempting to prevent and why the application is before you today.

With this foresight, the applicant is taking proactive measures to maintain, increase- - and increase the quality of cell service in Waikapu. At the cell phone industry's core is a Telecommunications Act of 1996 or the TCA. It's the first major re-write of Communications Law in 62 years. At the Telecom Industries- - sorry the Tele-Comm Act's core, is the purpose and intent to preserve in advance, universal service, protect public safety and welfare. To insure the continued quality of telecommunication services and safe guard the right of consumers.

The Wireless Communications and Public Safety Act of 1999 followed 3 years later, to promote enhanced public safety through the use of 911 as a universal emergency assistance number. Further deployment of wireless 911 services support of state in upgrading 911 capabilities and related functions encouragement of construction and operation of a seamless, ubiquitous and reliable network for personal wireless services and for other purposes.

With the 99' Act, anyone with a charged cell phone including those without service or not initialized, they have no cell phone contract, has the ability to call 911 and receive emergency text. For example, presidential alerts or alerts concerning national security, limited threat alerts such as threats of natural disasters and also Amber alerts to help law enforcement search and locate missing children.

To bring it home, you may recall receiving two alert texts last month in August when it was a potential of flash flooding. The 99' Act initializes the government's ability to deliver emergency help more quickly and effectively. Today enhanced 911 or E-911 systems have the capability to identify the phone number and location of a caller using a cell phone, which represents 70% of 911 calls nationwide.

So according to the FCC, for many the ability to call 911 is the main reason one owns a cell phone. It's a vital part of our Nation's emergency response and the disaster preparedness system with the prompt deployments of nationwide wireless communication, infrastructure being the driving force behind the law.

So balancing the community's need, health, safety and welfare with the importance and universal right to self-service is an increasingly frequent saga being played out nationwide. Between local zoning boards, municipalities and wireless service providers across the state. Specifically pertaining to the placement construction and modification of personal wireless services, the Telecommunication Act preserves the state and local authority over decisions subject to five limitations.

A state or local government or instrumentality thereof such as abhor, one should not prohibit or have the effect of prohibiting the provisions of personal wireless service to shall act on any request for authorization to place, construct or modify a personal wireless service facilities within a reasonable amount of time after the request is dually filed with such government or instrumentality taken to account the nature and scope of such request. Any decision to deny, to place, construct or modify personal wireless service facility shall be in writing and supported by substantial evidence contained within a written record. May not regulate the placement, construct and modification of personal wireless services; services facilities on the basis of the environmental effect of radio frequency admissions. To the extent that such facilities comply with the FCC's regulations concerning such emissions.

And any person adversely affected by the final action of failure to act by a state or local government or instrumentality thereof that is inconsistent with these limitations, may within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a state or local government or instrumentality thereof that is inconsistent with the clause may petition the FCC for relief.

So the applicant is indeed a federally licensed provider of personal wireless service and telecommunication service, operating within the Hawaii market. In order to construct new cell towers and maintain its licensure Verizon must comply with the FCC standards to insure safe distances and exposure limits of radio electromagnetic fields or RF fields. Essentially cell phone companies build its site in compliance and standards set up by the FCC.

Early this year, the applicants issued a letter addressed to the Planning Director to confirm that Verizon Wireless will be in compliance with the FCC's safety guidelines. And that's Exhibit 2 with your supplemental exhibits.

Additionally, we wanted you to know that the FCC requires approval from local boards and county governments. Compliance with the National Environmental Policy Act, compliance with the National Historic Preservation Act, notification to the Federal Aviation Administration, also Antennas Structure registration with the FCC.

So, you may rest assure that the proposed cell site will be in total compliance with the FCC. However, understandably there are natural concerns that arise. Is this monopole safe? What will happen if it falls? From the abundance of caution, the applicant is proposing to erect a tower that is designed to withstand a category 4 hurricane, which is up to 165 miles per hour.

From an engineering standpoint it is highly unlikely that the proposed tower will fail structurally. In its letter dated September 23, 2015- - and this is I believe Exhibit 5 . . . Exhibit 5 which is part

of your supplemental exhibits- -I apologize for not putting page numbers on this. From an engineering standpoint it is highly unlikely that the proposed tower will fail structurally.

The applicant's pole manufacturer stated that in over 32 years of business in providing consulting services, designing analysis of antenna support structures and specialty fabrication towers and tower components, none of its service monopoles have failed due to weather induced overloading including past hurricanes Hugo, Andrew and Katrina.

As you may recall, Hurricane Iniki was the most intense hurricane to hit Hawaii back in 92'. With wind speeds ranging from 40 to 144 miles per hour, it was a category 4 hurricane on one day of the six day storm. The greatest wind speeds recorded since hurricane tracking was initiated in the 1950's.

As previously mentioned, the subject monopole was designed to withstand the highest category of hurricanes to hit Hawaii. All other hurricanes usually are category 3 or below. More over a minimum safety factor of 25% is added to include wind pressure and steel strength capabilities. So in the off chance that the wind speeds do increase beyond the capacity of the built in safety factors to the point of failure, according to the manufacturer the built in safety factors the failure would most likely occur at 0 to 34 feet; and again we're proposing 60 feet high, which is the highest stressed area of the pole.

So this 50% radius or buckling bow in other words it's going to fall over onto itself, on to the portion below. This creates a 0% or no foul zone for this project; if the failure occurs in the western-northwestern direction. If you're familiar with the application you might've seen that this proposal is directly adjacent to a warehouse.

Climatologically speaking hurricanes or tropical cycles are steered primarily westward coming from the south, so from the Kihei side. This is 2015 map that tracks the hurricanes as of September 8th and you'll see that Hurricanes Ela, Hilda, Ignacio, Guillermo they all came from the south and how that relates to the subject property.

This is flood map. The highest speed of winds caused by a storm would come from the south and it is highly unlikely that the failure would occur in the direction of the adjacent property's warehouse. Although no expert could possibly guarantee the fall direction it's reasonable to conclude that ...inaudible)...on to itself would impact the property owner's property only.

Thankfully it is rare that tropical storms or hurricanes actually affect Hawaii. However, these facts of storm generation the towers, wind speed capacity, the buckling nature, the zero failure in the history of the manufactures design warrant due to consideration, considering safety.

So in its application, the applicant provides written facts and justifications; explaining how and why it believes it makes the three variance criteria. Respectfully the applicant argues the he unique circumstances of the property cannot be separated from the nature of the structure itself and that the Federal overlay of the Telecom Act warrants unique considerations in the decision making process by the Board.

The goal of providing quality service for a certain geographical area in fact involves identifying a unique property and a specific area within that property with conditions not prevented in the surrounding area.

The essential nature and function of a telecom siting is to close a targeted coverage gap and not any parcel would be suitable to build a cell site. Telecom siting requires all of the following characters just to be present to viably accommodate a cell site; site location so a unique latitude longitude to make coverage objective gaps in quality service elevation, operational suitability, access to infrastructure to insure uninterrupted or 100% up time, especially in the case of 911 emergency services are friendly propagation. So no natural or manmade are of interferences- - radio frequency interference.

So, to further develop the record and explain to you cell site acquisition may I introduce to you Mr. Dominic Cooper?

Mr. Dominic Cooper: Good afternoon Chairperson, ladies and gentlemen of the Board and guest that are invited. My name is Dominic Cooper; I do site acquisition consulting for Verizon Wireless. I'll give you a little history of how we find sites here.

Our engineers are sent down ahead of time, maybe about six months to a year on an area that's deemed the problem. They drive test the site, they've got their communication equipment as well as software and then they're giving us a directive on where they want to put the cell site. In this particular cell site, they wanted pretty much right on top of the base yard, because they saw future growth surrounding them. They say what happened to their other site further down the hill by Kihei Gardens and Landscaping, which I also did.

When I did that site, there was nothing but raw land. Now when we see the cell site we can't even see it, all these buildings are coming up; this site is going to actually help that site. So what I did was, I contacted all the landlords after a qualification process, which is- - I looked at three things. Can we construct it? Is the utilities close by Power and TeleCo? Is the zoning favorable, it's not going to be difficult? And do we have favorable landlords?

In the case of...there's two areas in this location, there's two base yards- I call them. I looked around on each one and I disqualified a lot of the sites because there's not enough space. They've already built up their base yards, there's not enough room for an equipment area. The one's that seem kind of interested, I noted them down, I had about a dozen candidates after I looked through this whole thing. I disqualified raw lands sites because a lot of times there's no power going there and possible future development we were unknown what the owners were going to do with the land.

So it came down to three sites that I recommended to Verizon. Right here is one of the candidates I suggested. AT&T got there before us, I guess they got the zoning approved, they met the setback requirements, I believe they're putting in a 48' pole, so in order for us to go on that pole, we'd have to be at a higher height so maybe ask for 60'-65'. Problem with this is probably about 20'-30' from this location, so that pole would actually have to be taller to satisfy Verizon's RF needs.

The second site, which is here the Mobi site, that was something that we looked at as well. But there weren't favorable landlord conditions and this time we were dealing with Mobi, there was no

inclination that Mobi was going to start moving off that site and give it to Verizon-sort of speak to use. So there was a difficulty of trying to get a lease with them.

So that's where the third site Miyake Lumberyard was recommended because a few years ago I did Clearwire Sites in the area and this was a candidate that was interested in putting a TeleCom site. So he met the three criteria, leasing favorable, zoning and construction. Right next to his property is a transformer and a MECO box.

I submitted those three to Verizon and they made their determination that Miyake Lumberyard would suit their needs at that height for 60'.

I'll explain some of the sites I saw. This is the DMX which was that lower base yard. They at first seemed interested and I pointed out this area to them and said "Can we use this area?" And they said initially yes, but as things progressed they said, "No, we're probably going to use that for more storage." They have a lot of big rigs there, they store their pallets. So I marked this off, this is not my three.

This one is also in that lower base yard. When I talked to the owner about it, he's kind of using this as extra parking space; it's a really small lot. But if he allowed us to use this, this would've been a good location. But I think Verizon discounted it because this is at that lower elevation, they really need to have the pole at 60' at the higher elevation.

This is a lot that we considered, I discounted as well because as you can see, there's no power Telco into the facility. So we would have to figure out where we're going to put this and not knowing what the owner would say. And there was no call back anyway as far as an interest.

Like I said, I start with a bound of candidates, I whittle it down to about a dozen and then from then I pick my best three; and I make my recommendations to Verizon which candidate they should choose based on that.

I'll just give you an example, this is the Mobi site. Not shown in this picture are Caterpillars and tractor trailers, which is the area that we would probably propose to put equipment and that sometimes poses a problem especially when you heavy machinery of possibly banging into the poles, that's why you see the bollards here. So that's why this was ranked as our number two and Miyake number one because if it was set off closer to the street, it wouldn't be running into it.

This is the picture of the AT&T site that we also considered with the lower elevation. As you can see, they've already put the foundation in. We had not really discussed if the lease area could be used because apparently this is- - I want to say mobile trailers and they move their trailers all around the place. So that was an unknown to exactly where they were going to put us, was it going to be here? Or was it going to be in front of the AT&T compound. But like I said Verizon didn't consider it because of the lower elevation.

Here's a picture I took up on the dunes looking at the embankment. As you can see the reason I proposed or I suggested we put the tower on this side is we need 24/7 access for any type of emergency to get to the cell tower, because we do have a backup generator. When cell service goes down or electricity goes down the generators kick in and we'd have to come in and refuel them. He has a storage here of not only the lumber but I've seen tractor trailers parked here during

the process of loading and loading with their fork lifts. So putting it on this side just made it easier for servicing incase the techs had to come up and pull up to the side of it, refueling and decrease the amount of heavy machinery running into the monopole.

Thank you.

Chairman Abbott: Thank you.

Mrs. Kapua`ala: Thank you Dominic.

Also from a land use perspective looking at the property- - so here's the subject property and the adjacent property is also owned my MGM LLC. The applicant because of this use is required parking stalls, landscaping and irrigation and those irrigation lines are located adjacent to parcel five. Additional to that, there's public infrastructure underground in this corner. So that was part of the ruling out process as far as why these corners weren't chosen. The center regarding 24/7 access and this is all stated in the application is difficult for the applicant for the industry because again 24/7 access to be able to repair - - say a little thing like a conduit remote radio unit versus a big thing like bringing in a cherry picker to access the antennas on the top of the pole normally you'll see MECO do that all the time; and what they do is block off a section on the street and they do what they gotta do with their heavy equipment.

In the case of emergency- - say pau hana time or even three o'clock in the morning if it's in the center of the property the applicant will need to contact the owner if there's any lumber or heavy machinery there it's inaccessible and therefore causing a greater concern as far as emergency services.

That's the same scenario for this corner of the property. Even if the applicant had a pathway strictly for its purposes of accessing the heavy machinery that might be possibly needed or even its service truck cannot drive back there without getting access from the property owner into the site and again the operation of the lumberyard is an issue. So that's how this corner was chosen.

As far as the Mobi PCS site that is located here, it was constructed at the time that a zero setback was required. There was no specific TeleCom area standards so it was basically an umbrella zoning that allowed the use and 48' was the blanket height limit for the M-1 Industrial District. So if you see any industrial monopoles, its able to be zero at zero because its grandfathered in. So in 2012 as the department noted, the M-1 Ordinance was amended to explicitly allow for TeleCom antenna structures with the 75' height limit, so we'll able to go higher, however the one to one setback standards was established and that's why we're here today.

This specific site is at 48' and according to the applicant is unsuitable to meet the radio frequency needs, the RF coverage needs that it projects in the future at the end of 2016. So what we would need to do is beef up the antenna because Verizon's equipment is heavier than Mobi's. We would also need to go higher and therefore requiring compliance to the current code.

So it'll be intensification of the structure that would need a variance anyways. So when it came down to deciding which variance to go for, of course you might understand building a new tower is more desirable verses collocating with another pole owner. The pole owner's always going to

want the top of the pole. So this way Verizon can meet its needs and it's the same situation as the AT&T site.

To explain radio frequency, I'd like to bring up another expert Mr. Chuck Sherman from General Dynamics.

Mr. Chuck Sherman: Good afternoon Mr. Chair and Board Members and guests. My name is Chuck Sherman; I'm the regional manager for General Dynamics Wireless Services. We are a full turnkey vendor for Verizon Wireless. We've been developing and building cell sites for them since 1995 and I've been managing the market here since 1999.

Which he has up here is Verizon's current coverage maps and - - currently this is the Waiale cell site- - what's the landlord's name there? It's the landscaping company there. When we first built the sites there our height limit there were 35'. . . so we have a relatively small tower there. But as Dominic mentioned earlier there was almost nothing there it's really built down here; and as a result of the growth of the area the- - possibly the sites' been exceeded here.

Partially the sites coverage has been reduced because of structures, trees etc. and also the effective coverage of the site has been reduced due to capacity issues. So I wanted to kind of point out in this coverage map and this is from Verizon's Arch Engineer who's responsible for Hawaii, he lives in Portland. But the green sections he points out are minus ADBEM coverage areas- -projected coverage areas. Minus ADBEM from a cellphone users perspective is like four to five bars. The yellow areas are worse than minus 90, so that's four bars or less here.

The coverage maps taken account topography there are some slopes but they do not take in account buildings and trees etc. So with the development of the area it has led to the greater performance of that site here.

We wanted to point out there's two elements of coverage . . . there's the signal strength that this map here is showing but there's also the capacity of a site and this is probably the more interesting note here- -how many bars do you have on your phone doesn't necessarily equate to how good your service is going to be. The weakest link in the cellular system is the signal from your cellphone back to the cell site. And in cellphones in order to control background noise which I'll explain a little bit more further on and to conserve your battery they're going to power up enough so that the cell site can hear them. So the worse your path back to the site is, the more the phone as to power up, because it's gotta power up to the cell so it can hear it. So the weaker the path the more your phone power is out here.

The problem is now you get more users out there, you got more phones out there, they're all sort of say raising their voice so their cell site can hear them and it just increases the background noise, kind of liking sitting in a noisy restaurant. . .everybody starts talking louder. And with everybody now powering up more, background noise goes up and it's just a soft filling of evolution here.

Then that result to the data capacity of the cell site goes down and then it bring it to a screeching halt actually and then throw in an emergency situation that's compounded by the influx of many more users and the site can pretty much become inoperable.

So the other side here is . . . that's to allow- -that's the proposed dune site here and that area is being developed and what they're projecting here- -and this is again signal from the cell site to the user but again more importantly is the capacity of another cell site. But as you can see coming down this way we've got one site and more sites here now we're- - got Waiale and going to Dunes as we head towards to Ma`alaea you see what- - Through years ago, this is the Wailuku cell site and that was the only site there and in the recent years we've added Valley Isle . . . (inaudible). .

Chairman Abbott: Mr. Sherman, please speak into the microphone.

Mr. Sherman: I'm sorry. East Kamehameha- - So the progression is going to be headed this way. So trying to better improve the coverage from the Dune site the RF Engineer wants to build a 60' to better coverage and overcome the development that's in process there right now and it'll also help bridge to Ma`alaea and otherwise you'd be looking at having to develop further sites headed down that way and what are either in a residential or agricultural land here.

That's really the driver for the location and the height that they are requesting for the Dunes.

Mrs. Kapua`ala: Thank you Chuck. So again the 2016 capacity broken fact that I stated earlier with the erection of the proposed site will off-load the Wailuku sites as well; so better coverage will be experienced. It's a very technical web that's interlocking and affects each other.

Concerning criteria number two or reasonable use of the property, this is where the Board must weigh the need, the harm, the alternative solutions in order to determine whether or not the applicant as met the practical difficulty test. If this variance is granted it obviously will have a tremendous positive affect on the communities increasing population within the area; including government functioning especially the County's emergency response capabilities, for example fire, police, civil defense.

Cell towers are a permitted use within the M-1 Light Industrial District thereby making the proposed land use appropriate for the subdivisions zoning district. Therefore the proposed tower will not produce a substantial change to the character of the neighborhood.

Based on the westward northwestward traveling nature and history of tropical cyclones, hurricanes the proposed monopole's engineering zero falls in 30 plus years, the buckling, the category four hurricane standards . . . the applicant respectfully submits that the proposed development will not be a substantial detriment to the adjoining properties', in fact the applicant believes that the denial of the application would actually create a greater detriment to the public's health, safety and welfare that significantly outweighs the highly unlikely chance of the proposed variances' harm.

As previously mentioned by Dominic, there are no other feasible sites within the area for the applicant to pursue without pursuing a similar variance or a variance period. It would be different circumstances obviously because it's a different site. The other properties were ruled out as unsuitable for an operational standpoint or a construction standpoint; radio frequency perspective being too low not meeting the coverage objective or was simply unavailable for lease.

From the wireless service industry's perspective not just Verizon, practical difficulty arises when considering the importance and necessity for 24/7 unrestricted access when you're dealing with monopolies.

Considering all the aforementioned facts to determine practical difficulty the applicant believes that the interests of justice will be served by allowing this variance. The need for this variance greatly outweighs the potential harm or to put it another way, the potential harm experienced if this variance is not granted outweighs the potential harm if the variance is granted.

Finally, is this a self-created difficulty? Respectfully, we submit that the applicant's difficulty of zoning compliance is not the result of its own actions. We acknowledge that the burden of positively of meeting variance criteria is difficult for the telecommunications industry to meet. The inherent nature of wireless infrastructure, closing RF coverage caps through antenna heights maintain 24/7 access, unrestricted access, with zero down time, does not easily meet the qualifications of the granting of a variance.

County policy suggests that adopting a comprehensive telecom ordinance to address this issue would be wise. However to date, no such ordinance exists. Variances then become the only feasible method to close coverage gaps while insuring the seamless and ubiquitous service with 100% of up time, especially in the case of an emergency.

In closing, the applicant believes that through its application, its presentation, that there's a substantial amount of evidence for the Board to make a positive decision in its favor. Considering the text, purpose and intent of the TeleCom Act and other communication law, the applicant requests warrants unique considerations.

Again we are grateful for your time and service to Verizon, the applicant and also greater Maui Community. Mahalo nui and I'm happy to answer any questions, I would love to have a dialogue.

Chairman Abbott: Ok.

B. PUBLIC TESTIMONY

Chairman Abbott: I think before we do that we'll open - is there any public testimony wishing to come forth at this time? Seeing none, I'll close the public testimony and refer to the Board for questions or whatever they - I'll open it to the Board now, for questions to whomever they would like.

C. PUBLIC HEARING (Continued...)

Mr. Kihune: Question Mr. Chair for the applicant.

Chairman Abbott: Yes Howie?

Mr. Kihune: Can you go back to that coverage that we were just looking at? With the Waiale site that you have, that zoning for that site is agricultural? Or is it M-1 also, for the Kihei Garden site? Well, it's a two-fold question because my question is if that is zoned M-1, why would it not be

imperative to take that site and build upon that site? Which is probably less than quarter mile away from this existing site?

And secondly, more of a comment would be- - I've seen a lot of cell site now in the mainland that are decorative . . . palm trees whatever may be. My comment would be that I would assume and hope that the TeleCom industry moves in that direction for the State of Hawaii, because some of these things become eye sores after a while. So that would be my comment and recommendation in the future as you look at other sites you could maybe decoratively hide these so called towers. They're pretty attractive; I've seen them on the mainland.

Chairman Abbott: Has he answered your question to your satisfaction?

...(inaudible)...

Chairman Abbott: Thank you.

Mr. Max Kincaid: What was the direction of the Iniki coming from?

Mrs. Kapua`ala: Unfortunately I don't have internet access, that's the only way that I'd be able to show you that. I am not a flood expert.

Mr. Kincaid: It came from the southeast direction.

Mr. Sherman: It was coming from south of the island.

Mr. Kin: From Kaua`i. The opposite direction from the ...(inaudible)... My other question is, that was maxed out at a 100- -

Chairman Abbott: Max....microphone please?

Mr. Kincaid: Iniki came from Kaua`i this way and the maximum wind was at 145 mph. That's right at your strength capability of your tower.

Mr. Sherman: We specked at the category four hurricane top end as 156 and they further said they over designed by 25% which would actually put it to about 195%, if the strength of the tower is an issue- - raising the bar is certainly probably one of the simplest things we can do is just tell them design a more stronger tower and it'll increase the cost of the tower a little bit, they'll have to dig up the hole in the ground and put more concrete and steel in the ground to anchor it. But, I'm confident that we can build a tower there that would be the last structure standing and if we need to go up from a 156 mph that to me is a minor consideration. That was just kind of the criteria that was thrown at us was for a category four hurricane which is 156 at the top end.

Mr. Kincaid: Ok now, the breaking point fold over - -that's from the northwesterly wind direction?

Mr. Sherman: It would be logically in the direction of the wind, but again it's as they had described that it's going to fall over on itself and not tip over like a tree and fall on the adjoining warehouse. That's what the first man engineer was saying. More to the point I think that the tower could easily be designed to be stronger and almost fully mitigate ... (inaudible)... failure. Strengthen it and

adding a little more steel . . . that's the simple solution. It's predicting the wind direction . . . dealing with hurricanes, you know if you get the 'eye', the winds are one way and when it crosses over it's another way, so you'll get both directions.

Mr. Kincaid: . . . (inaudible). . . for the reason that same kind of winds are prevailing right now in Hawaii and even worse right?

Mr. Sherman: Right.

Mr. Kincaid: And I'm concerned about that. The other thing is I don't understand if you're mentioning height is 75' for these towers, why jump through all these hoops and not go for the 75'?

Mrs. Kapua`ala: Hi Trisha Kapua`ala. The higher the height the more setback it needs to be and the applicant is satisfied with 60' to meet this RF objective and again the reason for it being in the setback-10' away from the property lines approximately, is because of its need for 24/7 access in the case of an emergency.

Chairman Abbott: Raymond?

Mr. Sung: Partly comment and partly questions I think after the comments. I thank you for your very comprehensive presentation. I think that in some respect it was over comprehensive because really what in my view what we're dealing with is a very narrow question which is for this specific parcel there's a one foot per height foot setback requirement, which you do not want to comply with and therefore are asking this Board for a variance. You want to place it 10' or 10' and a few inches from one property line or the other rather than the 60' 6" I guess or 60' that the formula would require.

So I would just comment that many aspects of your presentation although interesting, although informative, did not directly address the issues before this Board and that I personally was hoping that you would better and more directly address to make your case.

A question I guess I have for Corporation Counsel is whether it is better to engage a prolonged discussion of essentially what was missing or what was weak in their presentation in addressing certain points or whether it is better to state that I find informative and persuasive the Staff Amended Report and Recommendation and just leave it at that and go with a vote?

Ms. Richelle Thomson: Thank you. Let me just back up a little bit as far as what you're considering today. So yes, it's a request for a variance from the zoning setback requirements. The department has provided further information on why you have zoning setback requirements for towers, primarily health and safety for if the tower would fail it would fall and what would be damaged in the path.

There is the TeleCommunications Act considerations that are somewhat of an overlay to your decision making and they require basically a couple of other steps that you need to go through in the case. So you go through your normal variance considerations but you also consider what the applicant has put before you in terms of whether there's a coverage gap, whether this area on

this property is the only place where they can fill that coverage gap. So you have to decide, have they shown you that there is actually a coverage gap? And is there any other alternative that you feel they either haven't explored or is there another alternative on that property that could be liable?

Mr. Sung: A question on that last point which is for us to consider that do we have to consider coverage gaps on a cell provider or cell service provider, company by company basis or on an aggregate basis on whether one, two, three or ten or umpteenth number of cell phone companies have towers in an area? Does the aggregate have proper cell phone coverage or do we have to kind of one by one, individual company only basis look at whether that specific company and no other has sufficient coverage in the area?

Ms. Thomson: That's an excellent question. The TeleCommunications Act, one of the considerations is that a local authority shall not and reasonably discriminate among providers of functionality equivalent services. What that translates to in the cases that have looked at that and have had lawsuits and all of that . . . is that yes, you have to look at it as a provider by provider. So does Verizon have a cell service coverage gap in this area? Or does it look like they have coverage but they're showing you that they have a need. And then secondly, whether this property and this area on the property is the only way of filing that need.

Mr. Sung: Are we allowed to consider why there - - regardless of whether the applicant finds colocation desirable or preferable or not . . . but are we allowed to consider whether if in fact that an alternative exists that would constitute sufficient alternatives for their reaching the coverage requirement as opposed to saying "Well, we just don't find it suitable, so we're coming to you to say, give it to us".

Ms. Thomson: Right. I think the variance application is a large lot; there is an area in the lot that meets the setback requirements, that's not the ideal location. The more ideal location from the provider's point of view is more of a corner area. Or colocation, colocation is a consideration that you can take into account. Obviously you can't tell them to do it but it's something that you can consider and whether or not they have alternatives as to that one site.

Mr. Sung: Well, without turning this into a prolonged or overly prolonged hearing on demerits of every single point one at a time. I believe that this Board can sufficiently and satisfactory take into account those extra considerations that are required by the Federal Communications Commission's Act and Standards. And also abide by our own analysis for whether a variance is appropriate or not.

So, I look forward to any other questions and then bring this matter to a vote.

Chairman Abbott: I have a question for staff and it may have been answered, I'm not sure, I don't understand all of the ramifications of some of these decisions and bills. But the decision before us is to approve a 60' pole that is roughly 10' 6" from the property line.

My question is- - does all the apparatus at the top of the pole-which according to their instructions comes within six inches of the property line- - do we take the exemption from that? Or is the pole itself? Because it doesn't seem realistically to me; I understand if we put a 60' pole in the air and

then we add 20' on top of it . . . well that's not- - I don't think in keeping with the thought of the one foot per foot away from the property line.

Mr. Sung: As I understood it there was a 75' max overall limit. So if they're building a 60' monopole then whatever else they might stick on top of that monopole structure, still has to stay within the 75' and I guess my question is . . . is that correct?

Mr. John Rapacz: Thank you Mr. Chair. That's a very interesting question; we're just checking the zoning definition of what's called a "yard", which is essentially where the setback comes from. I believe that's in your reports on page seven. And it talks about "a yard means an open space on a lot unoccupied and unobstructed from the ground upward by any structure.

So if there is equipment on the pole that is going beyond the pole and into the setback, my reading of that is that-that portion of the lot below would be obstructed from the ground upward by whatever is above it in the setback.

I haven't - - this is the first time I've had to consider that language in this context so that would be my reading of it. That these items are obstructing from the ground upward in the setback.

Chairman Abbott: So play with me or bear with me a little bit here. So if the equipment as it were was placed on the bottom end of the pole . . . it would constitute a different scenario if placed on top of it?

Mr. Rapacz: No, I don't think it would make any difference. It's from the ground upward. So if the equipment were to be placed on the ground next to the pole that would be in the setback. If it were placed any height above that, it would also be in the setback.

Chairman Abbott: So realistically the 20' above on the top of the pole is only six inches of room from the property line, if I understand what you're saying.

Mr. Rapacz: That would be my reading of it at this point. The only thing that gives me pause and I don't know whether this is done by policy or practice- - is that I know that in some cases when we're talking about roof overhangs, in those cases I know that sometimes we measure from the building wall and do not include an overhang of up to three feet.

I believe that-that is simply then an internal practice of the department, I don't believe that-that's in the code.

Chairman Abbott: Thank you.

Ms. Thomson: Just to clarify though, the variance request is just for a 60' height variance. It's not 60 on up to 75', it's just to 60'.

Mr. Rapacz: Correct.

Chairman Abbott: Trisha, please.

Mrs. Kapua`ala: May the applicant further clarify? It's actually not a 60' height variance it's a 10' 2" and 10' setback that we're asking a variance from.

Mr. Sung: Right, it's the variance from the one foot property line per one foot in height requirement.

Chairman Abbott: Right.

Mr. Rapacz: Right.

Mrs. Kapua`ala: May I also state into the record that the applicant's initial application for requesting a variance did account for the antennas distance from the property line and asked for both setbacks from the antenna and the pole. However we we're advised by the Department of Planning to revise our request to only request a variance from the pole.

So, if a re-notice due to Sunshine Law- - please Corp Counsel, advise me if that's required. We would just like to request that we can return to you in an expeditious way and if there's any other considerations that you'd like us to look into to bring you more evidence, we would like that opportunity to do so.

Chairman Abbott: Thank you. Have we come to an answer to your question Mr. Cooper?

Mr. Cooper: Just to answer for the zoning, that one is Ag and it's 40'- -the height limit is 40' with additional one for one setback over 35'. Now this site was built in 2009 so it might've changed.

Mr. Howie Kihune: Right. Thank you.

Mr. Rapacz: Mr. Chair?

Chairman Abbott: John, please.

Mr. Rapacz: Thank you and Malia has just advised me that when the applicant did initially speak with the department, they were told to provide measurements from the pole itself.

Chairman Abbott: From the pole itself?

Mr. Rapacz: And apparently not from the antenna equipment. I'm not sure why that is and I'm not saying that it's incorrect. I just want to be clear that-that is what the applicant was told and it was presented that way.

Chairman Abbott: So it is what it is? Ok.

Mr. Rapacz: Yea.

Chairman Abbott: Any other comments or questions? Howard?

Mr. Kihune: Should we get clarification on the antenna itself before we make a decision? I mean should we get an explanation from the department why just the pole? According to John, it sounds like they are actually more of a six inch setback instead of a 10' 6" setback.

So, do we need clarification on that from the department?

Mr. Sung: Without taking an actual vote I think that-that's a questions Howard where we would be inclined to possibly grant the variance but then we're talking about 60' verses 10' 6" verses well. . . have they satisfied the criteria for a variance from that 60' position in the first place.

I'm personally am not persuaded by anything they've presented. I find persuasive the Department's analysis and recommendation. I have further taken into account the additional considerations that the Federal Communications Commission requirements would seem to request and taken into account.

So, I don't know other than for the sake of satisfying curiosity whether it makes sense to ask that question but possibly delay the decision but I myself would like to put to a vote, I think the question of have they satisfied yet through criteria and are they therefore entitled to a variance from that 60' position in the first place. Thank you.

Chairman Abbott: John?

Mr. Rapacz: Thank you Mr. Chair. That was my inclination as well is that hopefully we'd be able to move forward today without resolving that issue where it seems- - I don't know how significant that difference will be when it comes to deciding whether the criteria have been met or not, when we're talking about an initial requirement of 60'. And I would agree with the Board member that-that essentially would be the determination. When it comes down to whether it's 10' or six inches, I think first you have to find that the criteria have been met in order to grant a variance at all.

Chairman Abbott: I understand, makes sense. Ok, any other questions? I'm open for a motion.

Mr. Sung: I motion to deny the variance request.

Chairman Abbott: Per the Staff Report?

Mr. Sung: Yes.

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

Mrs. Juanita Reyher-Colon: I'll second.

Chairman Abbott: We have a motion and a second. Any discussion or questions? I'll call for a vote. All those in favor of denying the variance, say "Aye."

Members: "Aye."

Chairman Abbott: All those opposed say "No." How many do we have? Howard, you're a No?

Mr. Kihune: No.

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Chairman Abbott: No vote? Alright.

Ms. Thomson: Just to remind you. . .

Mr. Kihune: I Understand.

Ms. Thomson: Ok. Any abstinence abstaining from voting is a vote in favor of the motion.

Chairman Abbott: So we have . . .

Ms. Thomson: So the motion does passes.

Chairman Abbott: The motion does pass. Ok, The motion does pass, **the variance is denied.**
Sorry.

Mrs. Kapua`ala: Thank you very much.

It was moved by Mr. Sung seconded by Mrs. Reyher-Colon then,

VOTED: Motion to deny the variance application as submitted.

(Assenting: G. Abbott, R. Sung. J. Reyher-Colon, M. Kincaid, W. Greig)

(Abstaining: H. Kihune)

(Excused: C. Fukunaga , P. DePonte, T. Espeleta)

E. APPROVAL OF THE JULY 23, 2015 MEETING MINUTES

Chairman Abbott: Onward and upward. Seeking approval for the July 23, 2015 minutes.

Mr. Sung: Corrections Chair.

Chairman Abbott: Yes.

Mr. Sung: On page nine of the middle of the page. John's statement where that begins "right and in fact we've allowed swimming pools in the setback, so long that"- - I believe that the word "No" is missing and it should be that' "So long that no part of the pool extends above the ground.

I would John to please confirm whether that is in fact correct.

Mr. Rapacz: Yes, that is correct and that is how we've handled pools in the setback, that no part of the pool can be above the ground.

Chairman Abbott: Ok. We've checked that one.

Mr. Sung: Thank you.

Chairman Abbott: Anything else? Ok I'll call for an approval of the minutes or further discussion, whichever.

Mr. Sung: I make a motion to approve the minutes as corrected please.

Chairman Abbott: We have a motion to approve the minutes as corrected.

Mr. Kihune: Second.

Chairman Abbott: We have a second. Any questions? All in favor please say "Aye."

Members: "Aye."

Chairman Abbott: Any opposed? **Minutes are accepted.**

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

VOTED: Motion to approve the July 23, 2015 meeting minutes with corrections as noted by Mr. Sung.

(Assenting: G. Abbott, H. Kihune, R. Sung. J. Reyher-Colon, M. Kincaid, W. Greig)

(Excused: C. Fukunaga , P. DePonte, T. Espeleta)

F. NEXT MEETING DATE: OCTOBER 8, 2015.

Chairman Abbott: Yes?

Ms. Thomson: On the vote of the cell tower I just wanted to confirm that the Chair voted in favor of the motion to deny.

Chairman Abbott: That's correct. Yes the Chair voted No.

G. ADJOURNMENT

Chairman Abbott: Ok. We are adjourned. Thank you very much.

There being no further to come before the Board, the meeting adjourned at 2:46 p.m.

Respectfully submitted by,

Chalsey Kwon

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

RECORD OF ATTENDANCE

Members Present:

G. Clark Abbott, Chairman
Howard S. K. Kihune

William Greig
Raymond Sung
Juanita Reyher-Colon
Max Kincaid Jr.

Members Excused:

Chad Fukunaga, Vice-Chairman
Patrick De Ponte
Teddy Espeleta

Others:

John Rapacz, Planning Program Administrator, Department of Planning
Malia Balberdi, Staff Planner, Department of Planning
Chalsey Kwon, Secretary to Boards & Commission II, Department of Planning
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

Others Excused:

Carolyn Cortez, Staff Planner, Department of Planning