

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
October 8, 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, October 8, 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 Clark 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.

B. PUBLIC TESTIMONY

Chairman Abbott: As there is only one item, public testimony can come during the item.

C. PUBLIC HEARING

1. **WILLIAM KEONI FOX, of ALI'I WIRELESS SPECIALISTS, LLC representing GLOBAL SIGNAL ACQUISITIONS II LLC, (LEESEE) and SADIE S. FUJINAKA, SUCCESSOR TRUSTEE OF THE GARY N. FUKINAKA TRUST, and the FUJINAKA FAMILY PARTNERSHIP (OWNER)** applying for a variance from §19.24.050, Maui County Code, (MCC), "Development standards for M-1 Light Industrial District", to allow an existing steel monopole with attached associated antennas and lighting rod to be 122 feet in height and to remain 90 feet from the front property line, 91 feet from the rear property line, 101 feet from the south property line, and 3 feet from the north property line, when MCC states that a free standing antenna shall have a maximum height of 75 feet and shall be setback 1 foot for every foot in height (122 feet) from all property lines for property located at 1058 Limahana Place, Lahaina, Hawaii TMK (2) 4-5-007:023 (BVAV 2015/0015)

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

Ms. Malia Balberdi: Hi my name is Malia Balberdi from the Planning Department. *Reads item into record.*

Chairman Abbott: Is there a presentation?

Ms. Balberdi: Yes, just a brief one.

Chairman Abbott: Thank you.

Ms. Balberdi: Ok, so you all have copies of the PowerPoint. This is an aerial view of the property; to the left of it down the screen is Front Street. This yellow line represents Honoapiilani Highway where you would take a right at Hinaiu Street; it's by the Pizza Hut and left at Limahana.

This map of this building here is located next to the Mind's Eye Square and what's pointing it, that's the location of the monopole. This is a northeast view of the monopole if you were standing on

Limahana. There's another antenna in the back, but that doesn't pertain to the variance. And this is an east view of the tower if you were standing on Limahana.

Chairman Abbott: Will the applicant please come forward, speak into the mic and state your name please?

Mr. Keoni Fox: Good afternoon Commissioners, my name is Keoni Fox, I'm with the company called Ali'i Wireless Specialists and we are consultants for the applicant, Global Signal Acquisitions doing business as Crown Castle.

Chairman Abbott: Thank you. Are you agreeable to the waiving of the staff report or do you wish it be read?

Mr. Fox: Yes, we agree to the waiving of the staff report.

Chairman Abbott: Ok, thank you. Would you like to make a presentation please?

Mr. Fox: Just thought I'd give some brief history of the facility. The telecommunication facility was permitted back in 1996 by Prime Co. I'm not sure if you folks remember Prime Co but they were bought a few years later by Sprint PC and then subsequently Sprint sold their communication towers to a national communication tower company called Global Signal.

Global Signal then was acquired in 2007 by Crown Castle, who's a larger national tower communication company. So Crown Castle, they're not a mobile wireless service provider, they simply provide the infrastructure upon which wireless carriers install their antennas and their other telecommunication's equipment to provide everybody with their wireless services.

At that time, the permits were only given a 10 year term, so the permit has expired and that's why we're here today to seek renewal of the permit to allow the facility to continue operating.

Since Prime Co subsequently Sprints developed the tower, there were two other wireless carriers who co-located antennas onto the tower. One was AT&T and the other one is ClearWire which provides wireless internet service. They use that tower to provide general service for all of Lahaina Town. To my knowledge, those wireless service providers only have one other facility in Lahaina and it's actually on a roof top structure on Front Street.

That facility really just provides in-billing coverage for areas of the population where there's a high concentration of use. Whereas this tower provides the broader general wireless coverage as well as coverage of the highway, south towards Maalaea and north towards the resorts at Kaanapali. This tower also provides wireless coverage to the north side of Lana'i and maritime travelers better operating within the `Au`au channel

And one other thing I'd like to add is that it's my understanding back in '96 Prime Co originally picked this location because geographically it had line of site for most of Lahaina town as well as the highway going north and south toward Maalaea and Kaanapali; and that's pretty much why they selected this location. But also, I think from a zoning perspective it was used for a commercial and industrial purpose and because of the height of the tower and its commercial nature, it was Prime Co's objective to try to put these facilities where they wouldn't be obtrusive or visually obtrusive to neighbors or within residential areas, so that's why it was an ideal location for the facility at that time.

The only thing I didn't add is that AT&T has proposed to add two microwave dishes on to the tower and this is to provide Lana`i with higher speed data and 4G wireless services. The one site for AT&T on Lana`i is actually on the top of Lana`i Hale and it looks down upon the north shore of Lana`i.

I know there are not a lot of people that live down there but there are a lot of tourists and locals that do use those areas for fishing and site seeing and that side is critical for communications there and within the channel. So these dishes . . . since there's no telephone service going to that facility on top of Lana`i Hale, these two microwave dishes will provide that back hole to allow for the 4G services on that tower site.

Thank you.

Chairman Abbott: I'll open it up for the Board for questions for the gentleman Mr. Fox. Anybody have any questions or discussions?

Mr. Max Kincaid: Do you guys run a regular maintenance program for that area? *...(inaudible)...*

Mr. Fox: Crown Castle actually has a maintenance manager that is dedicated to Hawaii only and she is actually responsible for all the maintenance. She does the inspections herself but they actually do hire tower crews to do rust mitigation, to look at tower structurally to make sure they are being well maintained, especially out here in Hawaii where they have really harsh climates and a lot of salt air. That's a good question.

Chairman Abbott: Raymond question?

Mr. Raymond Sung: Yes, please. Just a clarification for this current variance request; so the original one that was granted in 1996 had a finite term of 10 years, that would've made it expire in 2006. Why was it not renewed in 2006 and were now nine plus years later. What's going on?

Mr. Fox: That's a fair question. The truth of the matter is I don't know for sure. I do believe it may have had to do with the amount of transfers and assignments of the facility over the last 10-15 years. Just within the 15 years its existence the facility's actually transferred three times.

The 10 year requirement, the expiration date, it's my understanding that-that was a common condition for these types of permits and conditional use permits previously. There was some changes in the zoning code I believe in 2012, so that the new permits don't have these types of expiration dates.

Also, to my knowledge that was something that was pretty unique in Maui. So a lot of these companies have towers in a lot of different sites throughout the State of Hawaii. But the other counties didn't have any expiration dates on their permits. So that may be another reason why it was overlooked.

Mr. Sung: As a follow up for clarification, this current variance request, you are essentially requesting a variance in perpetuity as opposed to run with the land as opposed to merely extending it another number of finite years and also blessing I guess the time gap in which your client operate without a variance?

Mr. Fox: It would be our preference not to have an expiration date on the permit and the reason is- - there's a lot of people that rely on these communication services. So if there is a possibility that the permit could expire and not renewed; and the application to renew is not granted. It puts the site in

jeopardy. There really is a lot of work involved to find location for these types of sites. We have to find a willing landowner and it has to meet certain constructability requirements, we need utilities.

So we'd like to know that we have some security I think in the facility and we'd like to be able to convey that to the users as well who rely on the phone system.

Chairman Abbott: This question's for staff. John. I want to know why the business was sold in 2004 and then again in 2007 concerning this pole. Is that not correct? Am I misspeaking? I know in 2004 it was sold to somebody and they sold it to somebody in 2007 or someone else took over.

Mr. Fox: Yeah, I have better dates for you. So Prime Co transferred the facility to Sprint in 1999 and in 2005 the facility was acquired by Global Signal, a communication tower company. Global Signal was acquired by Crown Castle in 2007. A lot of that is just the nature of the industry. There's just been a lot of mergers and acquisitions over the years with the different wireless companies.

Chairman Abbott: No, I understand that. My question is why the Planning Department didn't catch it? Because if the original variance expired in 2006, did the new owners not have to come forth? To reissue the variance for this pole? I'm a little bit confused here because it seems that we have a lapse of nine years of no jurisdiction.

Mr. John Rapacz: Right, thank you Mr. Chair. Unless there was some specific requirement in the 1996 variance stating that the applicant shall notify the County or something like that. I don't know if that the County would've been notified simply because a corporation or property changed hands. So I don't think it would've come before us.

Chairman Abbott: But then does that put the new owners in violation?

Mr. Rapacz: Well, I think right now - -

Chairman Abbott: For penalty purposes? I'm really - -this has passed by way to far.

Mr. Rapacz: Sure as of 2006 when the variance expired then there would be a violation on the property. I guess because the county wasn't aware for whatever reasons back then and because no one complained about it and instituted an enforcement action then there was no enforcement for that violation.

Chairman Abbott: I'm not picking on you. . .

Mr. Rapacz: Sure no problem.

Chairman Abbott: I'm just curious how this happened.

Mr. Rapacz: Overall, I think things occurred without it being brought to anyone's attention.

Chairman Abbott: Raymond?

Mr. Sung: At your discretion Mr. Chair, at some point soon I would suggest that perhaps an executive session be called for this Board to consult with its' attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities pursuant to the applicable HRS Section.

Chairman Abbott: Are you calling for an executive session?

Mr. Sung: I'm requesting or suggesting and or discussion.

Chairman Abbott: Ok.

Ms. Richelle Thomson: You need a motion and a vote.

Chairman Abbott: We need a motion and a vote to go into executive session.

Mr. Sung: I don't know if whether now is the time or if we should finish.

Chairman Abbott: I'll turn this to Richelle.

Ms. Thomson: Also, to call for an executive session we need to state the purpose. So generally, it's to consult with the attorney on that. Probably specifically you are looking for guidance as to the expired variance and then the ramifications of granting the new variance or not granting it because there's an existing - -

Mr. Sung: Potentially and including without limitations those items?

Ms. Thomson: We could either do it now or if you have any other discussion that might clarify some of the points you can get that out of the way. John's got something to say.

Mr. Rapacz: Just a thought Mr. Chair, if there is any public testimony you may want to take that and that may be something that's relevant.

Chairman Abbott: Ok. Thank you.

Mr. Rapacz: Thank you.

Mr. Fox: Can I add one more thing Chair?

Chairman Abbott: Please.

Mr. Fox: I just wanted everyone to know that Crown & Castle did not receive any violation notice. This was brought to our attention when AT&T had submitted a building permit to do some upgrades, they had checked in with the Planning Department and it was discovered that the term for the variance had expired.

As soon as Crown Castle found out about that, they did reach out to myself and some other individuals who could take on a project like this and submit the application to you folks. So that's actually why we are here today. Crown Castle . . . they are very responsible when it comes to things like this. This was very unusual because it was an acquired facility but they do have a system of checks and balances to make sure that this doesn't happen.

Chairman Abbott: Any other questions? Any public testimony? Would anyone like to say anything to give us any more information?

Vice-Chairman Chad Fukunaga: I have some questions Chair.

Chairman Abbott: Questions Chad?

Vice-Chairman Fukunaga: The original variance was for a 120 foot tower and now the request is for a 122 foot tower. Was there any modifications done to the antenna or tower?

Mr. Fox: The reason for the two foot height difference, the pole itself is only 120 feet but there's a two foot tall lighting rod at the top. And that's why I figured we better come in for the actual height of the facility itself, not just the tower.

Vice-Chairman Fukunaga: Did the installation of the pole require a building permit?

Mr. Fox: Yes.

Vice-Chairman Fukunaga: And you suggested that you guys are looking at further modifications or adding further implements to the pole. Would that also require a building permit?

Mr. Fox: Yes. And actually that would be applied for by AT&T who is a tenant on the tower.

Vice-Chairman Fukunaga: And I'm assuming that would require a structural engineer to design off on it.

Mr. Fox: Absolutely, correct.

Vice-Chairman Fukunaga: I think the question was asked earlier about ongoing maintenance or more so inspections. Could you repeat again? Is there a plan to inspect it on a regular basis or have it inspected by a structural engineer?

Mr. Fox: Correct. Well there is a maintenance manager that does survey all the sites on a regular basis. I don't know how frequently but she also does outsource some of that work, especially the structural analysis part. She has a checklist and she monitors every site, she needs to look at the footings and the bolts. And she takes pictures and sends it to structural engineers and if there's a problem, she does outsource that work, so a structural engineer will actually come out and evaluate the site and they'll make an analysis whether or not repairs are required.

Vice-Chairman Fukunaga: And that is performed for in house purposes or is that a requirement of some other government agency or some other approval- -As a result of some other approval?

Mr. Fox: Ok. I think I understand your question. It's done in house,. I don't think there's another agency that monitors the conditions of the towers. But, when we go in for building permits and we do the structural analysis that structural engineer takes into account the current condition of the tower.

So although the tower may have been built for certain wind speed, sometimes they'll still reject a structural analysis or it will still fail because they'll notice that there's corrosion on the tower that needs to be taken care of. So that does come up during that structural analysis process.

Vice-Chairman Fukunaga: Is there a requirement- - I don't know if you have a lender or insurance or what not. I mean, is there something else besides in house that is requiring you guys to do the maintenance? Cause if not, then you guys could just decide not to do it.

Mr. Fox: Do you mind if I ask my colleague here to answer that question?

Vice-Chairman Fukunaga: Sure.

Mr. Fox: Thank you.

Chairman Abbott: Please state your name sir please.

Mr. Eric Schotz: Good afternoon. Eric Schotz, project manager with Crown Castle. If I understand the question correctly . . . is there a requirement beyond our own in-house policies about these inspection regiments? I think the only real requirement isn't a regulatory requirement; it's a good business practice requirement. So we have an annual inspection that takes place on ground level that looks at bolts, base plates, evidence of corrosion, the safety climb, and corrosion on the carrier equipment, their antenna mounts and antennas- - the clips that hold their cables on to the pole. That's done on an annual basis.

The towers actually climb depending on the type of tower between every three and five years and that's an exhaustive from the base plate to the top, taking pictures at every level, every antenna, and every mount. And that gets put into our data base and if there starts to be evidence of corrosion, then that gets entered into our corrosion control program and they start to go about and look at corrosion mitigation. At some point if the tower reaches its end of its useful life and it needs to be replaced; and we've done that at a number of sites in Hawaii and across the nation as well.

Does that help answer the question?

Chairman Abbott: What is the pole's useful life?

Mr. Schotz: A monopole like this could go 40 years pretty easily.

Chairman Abbott: And what is it made of? Is it stainless steel?

Mr. Schotz: Galvanized steel.

Chairman Abbott: Galvanized?

Mr. Schotz: Yes.

Mr. Sung: Up to 40 years but . . .

Mr. Schotz: That would be a typical number. It really depends on how well the pole has been maintained. We acquire this pole fairly, early in its useful life. Crown typically doesn't sell assets once they've been acquired.

Mr. Sung: So we're at about year 19 or 20 of that projected years of its useful life?

Mr. Schotz: Yes.

Mr. Sung: Thank you.

Chairman Abbott: Howard?

Mr. Howard Kihune: Question for the applicant.

Chairman Abbott: Excuse me Howard, if I may...

Mr. Kihune: Go ahead.

Chairman Abbott: Is there any further public testimony? If not, I'm going to close public testimony. Ok, Howard please.

Mr. Kihune: Just a quick question. Since the time lapse was brought up, my only question would be – there was Hold Harmless that was required by the county in 1996, during that lapse period, was that Hold Harmless in place with the County during that period between 2006 & 2007 till today?

Mr. Schotz: I believe it was recorded on the property so it's still in effect.

Mr. Kihune: Thank you.

Chairman Abbott: Raymond?

Mr. Sung: This may be a question for the applicant or its' advisors or for staff. The first part of the question is really just to confirm my understanding of the actual location of the pole and the applicable setback requirements.

So as I understand it, that the pole is standing in a location where it is 91' from a property line. The pole itself though, width, light and rod (?-in audible) would be a 122 feet, so theoretically if the pole were to fall down at its based where it's connected to the ground, that pole would fall and roughly 31' of hole in structure would fall outside that rear property line.

And obviously it's some other distance from a different property line. But my question for the applicant or the staff is, what exactly is within a 90' radius of the pole? Is it just empty space or are there structures and pedestrians that are frequently within that 90' radius with a pole. And what else is in an extended radius of approximately 122' from the base of the pole?

Mr. Fox: Ok just by graphics, just to help me sort of understand it, I've drawn two concentric circles, roughly 90' and 122', I just want to know what's inside those circles.

--I'm just going to look at the site plan that Malia had posted before. I don't have the exact measurements with me, but on this property, on this subject property within 90' is the warehouse for Napa Auto Parts and the Ameritone Paints. There's also a parking lot there.

Extending beyond that to the rear, which is actually the Westside. The Westside's actually going to be kind of the top of the photo there. It looks like there's some more warehouses - - I'm sorry those are storage units.

...(inaudible discussion)...

Mr. Fox continued...- parking lots and then the north side of the property, looks like a driveway and some office space there as well.

Mr. Sung: I'm sorry where's the north property line?

Mr. Fox: Where it says location of antenna, right above that.

Mr. Sung: So this is three feet away from a structure there.

Mr. Fox: I'm not sure if that is a dumpster area. Are you talking about immediately to the north?

Mr. Sung: I'm having difficulty even figuring which way is north. But I want to know what lies three feet, 90' and 122' feet to the north.

Mr. Fox: Well, it looks like there's a real small building right there- -

Mr. Kihune: That's a covered carport, I know the place well. You see where it says location - - that's a covered carport.

Mr. Fox: Oh, ok. It looks like other parking lot areas and of course this office building, carport there and then to the rear - - the Westside up to the right.

Chairman Abbott: Let me call on John please, he has some information I think might benefit us.

Mr. John Rapacz: Thank you Mr. Chair. And just so that the record can reflect what's happening right now in the meeting. We are looking at a slide in the powerpoint presentation called "location of monopole" with an aerial photograph on the left side of the screen at this point and the question was which way is north on that aerial photograph.

So if we can have that for the record then we might be able to reference the four distances that are listed in the staff report on page three.

Vice-Chairman Fukunaga: I believe north is the upper left side, upper left corner.

Mr. Rapacz: So where the slide says and it's hard to read it from here- - I think in small text says "location of monopole" and its pointing to it on the left side, on the upper left corner of the aerial view. Three feet from where that is would be the north property line. Is that correct?

Mr. Fox: Correct.

Mr. Rapacz: Ok, thank you.

Chairman Abbott: Are we waiting for a decision?

Mr. Sung: I think I know more now as to what to ask for an executive session.

Chairman Abbott: Richelle?

Mrs. Richelle Thomson: As we've discussed on similar applications, there's a Federal Law called Federal TeleCommunications Act. What that requires of you is not only to look at your variance criteria but also to have an overlay- -its additional level of scrutiny of that Federal Act.

Basically, we can't act or prohibit cell coverage in an area. The applicant needs to show you that

there's a gap in coverage and also that this location is either the location or the only potential site or facility like this to service that coverage area.

So they've provided information on both of those points and you need to decide whether that's adequate. You can also consider difference to the prior BVA analysis and decision that was regarding a height variance so it wasn't regarding a setback but it was height and you're being asked for height and setback at this point.

So that's the general context on it. It is a little bit significantly different I should say then the prior application, because it is existing.

Mr. Sung: May I make a motion at this point?

Chairman Abbott: Sure.

Mr. Sung: Mr. Chair, I would move to move into executive session, as previously discussed.

Mr. Teddy Espeleta: Second.

Chairman Abbott: Any discussion? All those in favor of the executive session say Aye.

Members: "Aye"

Chairman Abbott: Any opposed?

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

VOTED: Motion to move into executive session

**(Assenting: G. Abbott, C. Fukunaga, P. DePonte, T. Espeleta, H. Kihune,
W. Greig, R. Sung. J. Reyher-Colon, M. Kincaid)**

EXECUTIVE SESSION @ 2:03 p.m. TO 2:45 p.m.

C. PUBLIC HEARING (*Continued...*)

Chairman Abbott: Mr. Fox if you would step up to the podium again. If we have questions or anything from the Board or discussion.

Mr. Sung: Mr. Chair?

Chairman Abbott: Yes?

Mr. Sung: Would you educate the Board on what your current liability insurance coverage and property insurance coverage is regarding the tower please?

Mr. Fox: I might have to defer to my client.

Mr. Schotz: Are you looking for a specific amount of insurance that we issue a COI for?

Mr. Sung: I just want to know what insurance you have regarding your tower and your operations.

Mr. Schotz: We issue a Certificate of Insurance to our landlords; and Maui County . . . many times there's a condition for a Certificate of Insurance to be issued directly as itself that's true here. Crown is a big enough company that it self-insures so there's not a specific insurance policy number that I can point you to. Crown owns about 40,000 towers in the U.S., but a 170 here in Hawaii.

Is there a specific number that you were looking for? Or?

Mr. Sung: I just really wanted to get a gage on and so I am - - surprise is not the right word- - I would've thought that you would've had outside insurance, but since you're saying that you're self-insuring it- - do you have an actual number as far as reserves that the company has set aside for this self-insurance?

Mr. Schotz: I wouldn't have a number in my head. I'd have to go and do research on that.

Mr. Sung: And not just generally companywide but specific to this location and this tower and the operations for the tower. Because that's what's relevant to (*...inaudible...*) thinking. . . I think.

Mr. Schotz: Can I ask what the exact concern is?

Mr. Sung: It's really just wanting to know about, if something goes wrong - - who pays and how much is there available to pay?

Mr. Schotz: Crown is a publicly traded company. It's got about 3 billion dollars in annual revenues. Cash reserves are in the order of 100's of millions of dollars- - so if you're looking to see is Crown going to disappear tomorrow if there's a disaster? No, Crown's not going to disappear tomorrow if there's a disaster.

So all those documents are publicly available, they are a part of the filings that we do at the CSS.

Mr. Sung: And thank you very much but with all due respect, I personally am not going to go look at CSS files, file documents to try to figure it out for myself and that's why I'm asking you. Thank you.

Chairman Abbott: Further questions? Any discussion? Max.

Mr. Max Kincaid: We would like to see this (*...inaudible...*) variance granting a regular maintenance program that can be forwarded our way in case of any problems or anything that you come upon maybe once a year or so.

Mr. Schotz: I think that we should be able to comply with that. We do an annual inspection as I said earlier on ground base inspection that generates an internal report. It's not a very principal report but I'm sure we can come up with something that would meet your needs.

Chairman Abbott: Thank you.

Mr. Sung: Just to clarify. Is that an internal inspection and generated report or is that an outside inspector and outside generated report.

Mr. Schotz: The annual report is done by our staff. And it's done on our computer systems and as a part of our tracking system. The periodic tower claims we hire a third party inspector to come out and do that.

Mr. Sung: Ok. Thank you.

Chairman Abbott: Any further discussion? Do we have a motion? Sorry, may we have the Staff Report and Recommendation please?

Ms. Balberdi: Based on its analysis the Director has concluded that the applicant has met all requirements. The Director finds based on the application that there is an exceptional unique or unusual physical condition, geographical condition existing on the subject property which is not generally prevalent in the neighborhood or surrounding area.

That strict compliance with the applicable provisions of this title would prevent reasonable use of the subject property; and

The conditions creating the hardship were not the result of the previous actions by the applicant.

Mr. Kihune: Question for staff. Did we get any letters for or against the variance?

Ms. Balberdi: No, we didn't.

Mr. Kihune: Thank you.

Chairman Abbott: That was my next question. Thank you. Any other discussion? If not, anybody have a motion?

Mr. Kihune: I would like to make a motion to pass or recommend this motion to allow the variance.

Chairman Abbott: With the staff's recommendations or with any caveats? Or?

Mr. Kihune: With the staff's recommendations and a higher threshold on the Hold Harmless for the County and I'd like to make that recommendation at \$3 million instead of \$1 million.

Chairman Abbott: Any term limit as to the length of the variance?

Mr. Kihune: No. But I do want to mention that based on their criteria that I believe that they've met all the criteria to allow the approval of the variance and also based on looking at TeleCommunications Act, it would be deemed that should the variance not be passed. . . it would be something that would be detrimental to the community of West Maui. Based on the Federal Communications Act.

Chairman Abbott: We have a motion with addendums or whatever add ons to it. Anybody?

Mr. Sung: Question. If we wanted to discuss possible changes to some of those conditions in the motion and frame work as proposed by Member Kihune, would the appropriate way to do it is to second his motion and then in the discussion phase talk about it, and then if necessary amend his motion or would it be appropriate to make a second, different, alternative motion to consider with the possibly different terms included with that?

Ms. Thomson: So, there's a motion on the floor that needs a second for discussion and your first route is the accurate route to go. So you would discuss that motion, you could offer an amendment to it, which we would vote on first and then go back to the main motion either as amended or as not amended; depending on the faith of that second motion. Rather than having two live motions at the same time.

Mr. Sung: Ok.

Mr. Teddy Espeleta: I second the motion.

Chairman Abbott: Motion made and seconded it. Discussion?

Mr. Sung: So discussing the motion on the table, I agree that there should be a higher amount for the indemnity and hold harmless. I would like there to be consideration by this Board for a higher amount than \$3 million dollars and I would propose for sake of discussion, \$10 million dollars and we can talk about that or something in between.

I would also propose a finite time limit on the duration of this new variance request. In light of the fact that the applicant has testified that the projected remaining useful life of the tower structure is approximately 20 to 21 years; and we get that by simple math because he said that there it was project to be a 40 year total life and we know that this tower is approximately 19 years old or so. Or at least the variance that was granted was in 1996, the old variance.

So I would propose a 20 year finite time limit on that to consider or amend Member Kihune's motion. Then I would ask as a question, which is an indemnity and hold harmless is one thing but to also possibly require an actual insurance policy which is separate and apart from the hold harmless and indemnification agreement. And I understand from the testifier that they self-insure but never less I would be looking at an outside insurer to provide the policy.

Ms. Thomson: You could require that they obtain independent insurance if you feel uncomfortable with self-insuring. Right now though they - - with the condition as recommended by staff, which is in the present motion is found on page 13. So we require indemnity, the limits that we're talking about as far as dollar limits are as to the insurance policy itself.

Mr. Sung: Ok. So the indemnity is just the indemnify for what it is and the dollar amount is a minimum \$1 million dollars for an insurance policy?

Ms. Thomson: Correct.

Mr. Sung: Thank you for the verification.

Ms. Thomson: So as the motion on the floor though is for \$3 million.

Mr. Sung: For insurance?

Ms; Thomson: Yes.

Mr. Sung: I would propose an amendment to \$10 million dollars, subject to discussion and further modification and the finite time limit of 20 years. And I would also add an affirmative obligation of the

owner—well, I guess it would be the owner of the structure or both the applicants and their successors and interests; an affirmative obligation to promptly notify in writing the company that the County as to any material adverse changes with respect to the structural integrity of the tower, the soil conditions or the condition I guess generally of the tower and its operations. Thank you.

Chairman Abbott: So we're adding on to Howard's motion?

Ms. Thomson: Currently, there's a motion to amend the main motion, so it needs a second for discussion purposes and then you vote on the amendment first and then you go back to the main motion.

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

Chairman Abbott: You'll second the amendment? Ok, back to discussion again. I'm not sure if the 20 year maximum extension point is reasonable because it might be 32 to 38 years it might be 42 years. The pole life is 40 years, I understand that. But that could be replaced sooner, it might take 43 years, I don't know. But I don't see finite term of 20 years on it. I just think that's non-productive. I think the people are smart enough to realize if there is a problem with their pole at their annual inspections and every three month physical climbing the pole inspections, I would think that the pole would be rather well checked for safety. And I just don't feel it's necessary to put a finite on the first one - - as they did on the first one. That's just my opinion.

Mr. Kihune: I think your comments right on Mr. Abbott. I think that should the pole be inspected and found to be inadequate or structurally inadequate of some sort that it would have to be replaced and at that point that it has to be replaced, the new building permit would have to be filed for- -

Chairman Abbott: Right.

Mr. Kihune: And another variance would have to be granted. If I'm incorrect, Mr. Rapacz can probably correct me. But, should that structure have to come down Mr. Rapacz....because of a structural failure, a new building permit would have to be applied for correct?

Mr. Rapacz: That's correct. But it's not clear that a new variance would have to be required. I think this variance would apply to allowing a structure of that size, height, location etc.

Mr. Kihune: I'm sorry, you're right. Thanks for clearing that up.

Mr. Sung: For that reason, I would again- -my personal perspective and approach on this would be to want a time limit on it (...inaudible-sound system failure...)

Chairman Abbott: So we're back to the motion. . .

Ms. Thomson: As of right now you have the amendment on the floor so if there's no further discussion on the amendment, you can take a vote on the amendment.

Mr. Sung: Should we make two separate ones? One on the increased dollar amount and one on the time limit? Or do you tie the two together?

Ms. Thomson: You've already have- - the motion is for three things; it's for a \$10 million insurance limit, 20 year time limit and then the condition as to an affirmative obligation to notify the county in

writing as to any material adverse condition etc. So the motion is a three part motion. So if it fails, you could offer it to amend and just go one by one.

Mr. Sung: But we'd want to know if it failed or if anyone (...inaudible-sound system failure...) as to which aspects or all three aspects that they are proposing.

Ms. Thomson: Well, I think you could do that during discussion . . . but the vote has to be up or down on all three right now. You could offer a different amendment - - if it fails, you could offer a different amendment that would just have one of those things and have them step by step.

Mr. Sung: I would almost ask- - I understand that we have to do it that way ok. . . but it doesn't seem to be the most efficient way to act to discuss it. So if we wanted to discuss any objection or concerns regarding one particular component of the motion then let's do it now so that we can streamline what it ultimately gets voted on; because at the same time I know that you have to go and- -

Ms. Thomson: Well, it gets a little bit complicated but it's not there yet. You can do- - you can amend your amendment. But I'd flush it out in discussion then go ahead and vote on it.

Mr. Sung: But we're in discussion right now right?

Ms. Thomson: Yes.

Mr. Sung: So I would like to flush out as of right now . . . I think that there may be concerns regarding the proposal for the time limit as much as the proposal on the obligation to notify the county of material adverse changes and is there any objection or opposition or concern regarding the component regarding increasing the insurance required dollar amount. That's open for discussion.

Mr. Kihune: Well, for discussion I would not be in favor of a time limit upon the variance and I have a difficult time with the \$10 million dollar hold harmless insurance. But the third item I have no issues with that.

Mr. Sung: So you'd prefer to stay at the \$3 million that you proposed?

Mr. Kihune: I'm reaching for \$3 million, I think that's fair. I think based on the applicant's comments with regards to Crown Capital, I feel comfortable with their situation financially. I don't know their company very well but I'm comfortable with \$3 million.

Chairman Abbott: Any discussion.

Vice-Chairman Fukunaga: I agree with Mr. Kihune. I think the company themselves and the nature of what they're doing. . . I believe there's enough safe guards and I think they have just as much if not more to lose from a structural (...inaudible...) So, I would not support the amended motion but I'd probably support the original motion.

Mr. Espeleta: That goes for me too. I would agree with Mr. Kihune's analysis and like as Chad said, I think that the safe guards are there.

Chairman Abbott: I'm only going to speak from personal knowledge and when I was in business, my company purchased was by Sherwin-Williams which is the largest paint company in the world, which

is self-insured and I have no qualm about excepting their self-insurance because you don't get in to that position without being financial stable and financially secure.

I know from my own personal experience that at the time when I left Sherwin-Williams, they had a billion dollars just in cash, available for whatever was going to happen. And I find the additional insurance is not necessary. I do agree with Howard, three to five million is more than enough in my opinion. I think 10's a little steep.

Mr. Sung: I threw out the 10 just for discussion.

Chairman Abbott: No, I understand.

Mr. Sung: So, I'm really not looking to put a motion out for 10 if it's not in support for 10. If there's thinking that three is sufficient then that can be it, but if there's thinking that a number between three and ten is sufficient that we can push that up too.

Mr. Kihune: I think at this point we would have to vote on the amendment, up or down; then another amendment to add in the third item for the maintenance. Or acknowledgements to the county through those records if there's any structural- - I didn't have that in my original motion.

Mr. Sung: And I didn't have that in my amendment. (...inaudible...) So I did not make a motion to add (...inaudible...)

Chairman Abbott: Ok, so where are we Richelle?

Ms. Thomson: Ok. Where we are right now is we're considering the amendment to the main motion and the amendment is \$10 million dollars insurance, the time limit of 20 years for the variance and the affirmative obligation as stated previously to notify the county as to material adverse condition.

So we would either vote on that motion as stated or if there's amendment to that amendment, you could offer that and then - -

Chairman Abbott: Or we could drop the amendment?

Ms. Thomson: No, it's the property of the Board right now so it needs to be voted on one way or another.

Mr. Sung: So basically if that doesn't work . . . reject or deny that amendment and try another amendment.

Ms. Thomson: Yep.

Mr. Sung: So let's get it over with and move on.

Vice-Chairman Fukunaga: Do we need another amendment or does- - if that fails, then we go back to the original one?

Ms. Thomson: If that fails you can still offer an amendment, then if there aren't any then you would go back to the main motion.

Mrs. Reyher-Colon: So we could do an amendment to amendment simply squashing the first two and going back to the original motion with the added on the report and upon request and - -

Ms. Thomson: Yes.

Mr. Sung: - - And the affirmative obligation to notify the county in writing to any material adverse condition.

Ms. Thomson: Right. So what you're talking about is getting rid of the first two, the \$10 million and the time limit.

Mr. Espeleta: We gotta vote on that first.

Ms. Thomson: Yes. So if you wanted to offer that, you would say that you are offering a motion to amend the amendment that's on the floor by deleting the first two implements.

Chairman Abbott: I make that amend- - I make that motion. To not consider the time limit and the monetary; I make that motion. Anybody want to second that? Max, seconded. Ok.

Ms. Thomson: Ok so now- -

Chairman Abbott: As the gentleman is trying to get our attention. Is he allowed to speak?

Ms. Thomson: It's to your pleasure. If you'd like to hear from him, you can.

Chairman Abbott: Please.

Mr. Fox: I just wanted to make some quick comments on the amendments. It's my understanding that the million dollar liability insurance policy was a just a standard and I just kind of want to get a better understanding why the Board is interested in increasing in increasing the limits?

I know my client is agreeable to the \$3 million they can do it. We do need to speak with our insurance agent. But I just want to make sure that there's reasoning behind it and not just throwing out random figures. I mean if the County is concerned about liability and a lawsuit, the County needs to prove that they have an insurable interest. And again, I'm just worried about what kind of precedence we're setting here and the reasons behind the figures and where they're coming from.

Chairman Abbott: May I answer or would you like to?

Mr. Sung: I'll take a shot and then you can jump in as appropriate.

Chairman Abbott: Well ok, it's very simple.

Mr. Sung: This came about because - - we are talking about a new variance request, but the previous variance that was granted in 1996 was a height variance request only that was granted. This new one is a variance regarding height and setback. Again, using very rudimentary drawings here, not very scientific at all but if the middle of the two concentric circles is the tower structure . . . there's a 90' property line somewhere, there's a 101' property line somewhere and a 3' property line somewhere. And then the outer concentric circle is 122' which represents the total height of the tower plus lighting rod.

So the concern is that there may be property and persons at risk within those concentric circles should there be a failure of the structural integrity of the tower; or if there was some kind of accident. To me the location of the tower in West Maui in its present location is of some concern so to the extent that you are asking for a setback requirement as well given the height of the tower, I believe some consideration should be given to higher insurance limits.

Mr. Fox: Ok. I understand that. I guess the important point to make here is that nothing's changed with the tower. This is the same tower that got put there 15 years ago. It was the zoning code that actually changed.

Mr. Sung: But there may have been an increase in concentration in what's surrounding the base of the tower since 1996.

Chairman Abbott: I think the basic thing we all have to consider is a lot has happened since 1996 in expansion of property, property values, different occupants, more occupants, higher crowding and it's simply a safety measure. It's as simple as that.

Mr. Fox: Are you saying a million dollars 15 years ago isn't the same as a million dollars today. I guess there's that argument as well right?

Chairman Abbott: I think we've beaten this to death. I think that's enough on this discussion let's carry on with our motion if we can please.

Ms. Thomson: Just to remind everybody where we are. We are amending the proposed Commissioner Sung's amendment, so by deleting the first two and only having including a condition that addresses the applicant's affirmative obligation to notify the County in writing as to any material adverse condition affecting the structural integrity of the tower and also including soil conditions for the operation of the tower. We'll clean up the language.

Mr. Sung: And I would say promptly notify in writing.

Ms. Thomson: Ok. So that is the amendment on the floor.

Chairman Abbott: And that's the amendment of the floor.

Ms. Reyher-Colon: I call for the question.

Chairman Abbott: Question?

Mr. Espeleta: No, question means we're ending debate.

Chairman Abbott: Oh ok. Sorry, I misunderstood that one. So we're back to Howard's original motion.

Mr. Kihune: No, we need to vote.

Ms. Thomson: We need to vote.

Chairman Abbott: Ok. Does Howard have to withdraw his motion first?

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Ms. Thomson: No.

Mr. Pat DePonte: Just vote on his amendment.

Chairman Abbott: Ok.

Mr. Kihune: The amended amendment.

Chairman Abbott: All those in favor for the amended amendment?

Members: "Aye"

Chairman Abbott: Any opposed?

Vice-Chairman Fukunaga: Opposed.

Chairman Abbott: Ok. Eight yeses and one no.

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

VOTED: Motion to approve the amendment to Mr. Sung's amendment to Mr. Kihune's original motion by deleting the 20 year finite time limit and increase of the \$1 million dollar insurance policy to \$10 million and only include an affirmative obligation condition for the applicant to promptly notify the County in writing as to any material adverse condition, including soil conditions affecting the operation of the tower.

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

(Dissenting: C. Fukunaga)

Ms. Thomson: So now we're back to Board member Sung's amendment so that is to amend the main motion by adding the condition as we just stated.

Mr. Sung: So to recap. It's Howard's original motion, which is \$3 million dollars; no time limit . . . was there anything else besides that?

Mr. Espeleta: That was it.

Mr. Sung: And we've added now- -

Chairman Abbott: The maintenance- -

Ms. Thomson: We haven't added it yet because we have to back track two steps. So we're just going back now to your motion as amended. So it's your amendment as amended. So we need to vote on that. If that passes then that amends the main motion and you just vote on that.

Mr. Sung: So right now it's just talking about the affirmative obligation to notify the County in writing promptly. And that's it?

Ms. Thomson: Correct. That's it.

Mr. Sung: We're not talking about written reports unless Max wants me to add that.

Mr. Kincaid: No.

Mr. Sung: Ok.

Chairman Abbott: So now we vote on the amendment.

Mr. Espeleta: Someone say the amendment for clarity.

Chairman Abbott: For clarity. Yes.

Ms. Thomson: So, we're voting on Board member Sung's amendment as amended to state that the applicant has an affirmative obligation to notify the County promptly in writing as to any materially adverse condition regarding the structural integrity of the tower or the soil conditions or any other condition that would adversely affect the operation.

Chairman Abbott: Ok, vote. All in favor.

Members: "Aye."

Chairman Abbott: Any opposed. Alright, the amendment is now secured.

It was moved by Chairman Abbott and seconded by Mr. Kincaid then,

VOTED: Motion to approve Mr. Sung's amendment to Mr. Kihune's original motion to include a condition that the applicant has an affirmative obligation to notify the County promptly in writing as to any condition that would adversely affect the operation integrity and soil conditions.

(Assenting: G. Abbott, C. Fukunaga P. DePonte, T. Espeleta, H. Kihune, W. Greig, R. Sung. J. Reyher-Colon, M. Kincaid)

Ms. Thomson: So now we're going back to Member Kihune's original motion is to adopt the Staff's Report and Recommendation with the following changes. As to number two, increasing the insurance limit to \$3 million and then including the additional condition of affirmative notification of the County as just previously stated.

Mr. Rapacz: Mr. Chair, if I could just to clarify. Because the Board, a couple of Board members did refer to self-insurance, just to be clear the motion - - the main motion as it sits now is to adopt the Report and Recommendation which specifies that the applicant would obtain an insurance policy. It would not be self-insured.

Ms. Thomson: If I can address that. I would recommend leaving the language as is to require the insurance policy because there's no guarantee that the applicant will not sell this tower or transfer title, there's nothing to prevent a different entity from owning this tower at some point in the future.

So I'd recommend leaving it as is, from a practical standpoint. What will happen is that our risk manager will take a look at their self-insurance certificate or notification and will see if that's adequate and if it's not adequate then they need to get a policy that's separate.

Mr. Sung: Thank you.

Chairman Abbott: John?

Mr. Rapacz: Thank you Mr. Chair. That's not what the Department is recommending. The Department is recommending that regardless of qualifications for self-insurance that the applicant obtain an insurance policy as stated in the recommendation.

Mr. Sung: In that case I will – now do I have to make an amendment to Mr. Kihune's original motion to take into count that specific insurance policy and not self-insurance?

Ms. Thomson: I think like I was just saying, I believe that our risk manager will be able to handle that on a case by case basis but I don't think that you'll need to change this.

Mr. Sung: So the motion as made and amended would contemplate the outside insurance policy with the minimum of \$3 million, is that correct?

Ms. Thomson: It says a policy or policies.

Mr. Sung: Right. But that's an outside policy.

Ms. Thomson: We're not requiring that. What we're requiring is a level of protection and it would be our risk manager or County's Risk Manager is our authority on insurance coverage.

Mr. Sung; Which is against the recommendation as staff currently discussed. Is that correct?

Mr. Rapacz: That's correct.

Ms. Thomson: I think that the condition doesn't state that it is an outside or independent insurance policy.

Mr. Sung: It just needs to be policy?

Ms. Thomson: It's a coverage limit.

Mr. Sung: And does Corporation Counsel have a view as to whether self-insurance constitutes a policy of insurance.

Ms. Thomson: If you wanted to change it, what I would do is leave it as and at the end of condition number two, you could say self-insurance as approved and accepted by the County may satisfy this condition.

Mr. Sung: That works for me, if we can do that.

Ms. Thomson: So go ahead and do that by a motion. So a motion to amend to add that sentence.

Mr. Sung: I would make a motion to add that sentence to item number two which is again if you can correct me, self-insurance as may be approved, reviewed and approved by County, would be acceptable to satisfy. Something like that. Thank you.

Vice-Chairman Fukunaga: I second.

Chairman Abbott: Any discussion first? No. Ok, we have a motion and a second. All in favor?

Members: "Aye."

Chairman Abbott: Any opposed?

It was moved by Mr. Sung and seconded by Vice-Chairman Fukunaga then,

VOTED: Motion to add language that "self-insurance as approved and accepted by the County may satisfy this condition" to item two regarding the applicant's obligation to provide an insurance policy that indemnifies and holds the county harmless.

(Assenting: G. Abbott, C. Fukunaga , P. DePonte, T. Espeleta, H. Kihune, W. Greig, R. Sung. J. Reyher-Colon, M. Kincaid)

Chairman Abbott: Ok, now we're back to Howard.

Ms. Thomson: Yes.

Chairman Abbott: Ok we have a motion on the floor to approve the variance with modifications and conditions and amendments listed by the Corporate Counsel here. We have a second.

Mr. Espeleta Second.

Ms. Thomson: You don't need to move and second. It's already on the floor so all you need to do I vote.

Chairman Abbott: Any further discussion.

Vice-Chairman Fukunaga: Yeah, I want to say something really quick. Just for the record, I work in the area so I know the area for the last 10 years, so I'm familiar with where the tower is located and I would agree with the applicant that it is an ideal location. Given the zoning, given the site line to the West Maui area, I agree that is a good location in the West Maui.

Mr. Sung: May I make one more comment before I take a vote? I would also just say for the record that we consider very much so the needs of the County of Maui and the Federal Communications Act requirements for cell coverage, communication coverage in that area and the area it serves in that particular location and the fact that it has collocated equipment of multiple companies on that tower and that was significant in our determination to grant a variance or at least have a motion on the floor to grant that variance in some shape or form and we were really more talking about what the elements of the shape and form are as opposed to whether or not to have a variance in the first place for that tower. Thank you.

Chairman Abbott: Thank you. I'm now going to call for a vote. All those in favor of granting the variance as stated say "Aye."

Members: "Aye."

Chairman Abbott: Any opposed? The motion the **variance is granted.**

Mr. Fox: Thank you.

It was moved by Mr. Kihune and seconded by Mr. Espeleta then,

VOTED: Motion to approve the variance with modifications and conditions and amendments listed by the Corporate Counsel

(Assenting: G. Abbott, C. Fukunaga , P. DePonte, T. Espeleta, H. Kihune, W. Greig, R. Sung. J. Reyher-Colon, M. Kincaid)

D. APPROVAL OF THE AUGUST 13, 2015 MEETING MINUTES

Chairman Abbott: Approval of the August 13th minutes.

Mr. Kihune: I make a motion to approve.

Mr. Espeleta: Second.

Chairman Abbott: We have a motion to approve and we have a second. All in favor, any discussion?

Mr. Sung: Discussion, I have some changes for this please. . .

Chairman Abbott: We still have a quorum.

Mr. Sung: So on page six of the August 13th minutes. It shows that I, R. Sung was assenting to it but in fact I had been excused because if you look at page five, I left the meeting room it reports the time that I returned but it was the case that the vote was taken while I was outside of the room and so I didn't vote at all. So I should be listed R. Sung as "Excused" not "Assenting" for purposes of that particular vote on page six. So I did not assent, I did not vote and I was excused.

Chairman Abbott: Right, I remember that.

Mr. Sung: So if the change will be made by the Secretary, to show under excused R. Sung and not under assenting on page six then I can support the approval of the minutes. Thank you.

Chairman Abbott: Chalsey, take care of that yeah? Anything else? All in favor of accepting the minutes say "Aye."

Members: "Aye."

It was moved by Mr. Kihune and seconded by Mr. Espeleta then,

VOTED: Motion to approve the August 13th meeting minutes

(Assenting: G. Abbott, C. Fukunaga , P. DePonte, T. Espeleta, H. Kihune,
W. Greig, R. Sung. J. Reyher-Colon, M. Kincaid)

E. NEXT MEETING DATE: OCTOBER 22, 2015

Chairman Abbott: Ok, next meeting is the 22nd of October. Any other questions?

F. ADJOURNMENT

Chairman Abbott: We are adjourned.

There being no further to come before the Board, the meeting adjourned at 3:25 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
Chad Fukunaga, Vice-Chairman
Patrick De Ponte
Teddy Espeleta
Howard S. K. Kihune
William Greig
Raymond Sung
Juanita Reyher-Colon
Max Kincaid Jr.

Others:

John Rapacz; Planning Program Administrator, Department of Planning
Carolyn Cortez, Staff Planner, 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