

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
August 9, 2018**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Raymond Sung at approximately, 1:30 p.m., Thursday, August 9, 2018, 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 Raymond Sung: The meeting of the Board of Variances and Appeals will now come to order, it is 1:38 p.m. and let the record show that we do have a quorum.

B. COMMUNICATION (*Time 1:38p – 1:52p*)

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 zipline 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), (J. Rapacz/D. Dias)

- a. As requested by the Board, Appellant's counsel and Corporation Counsel will provide an update on the status of this appeal.
- b. Discussion and possible action regarding the Hearing Officer and contested case hearing, including but not limited to: status and schedule of the hearing; status of the hearing officer contract and billing; whether the board or designated members of the board wish to serve as hearing officer.

No public testimony will be received.

[Joint Status Report](#) [MPC Notice Letter](#) [Opposition Letters](#)

Mr. John Rapacz: Reads Joint Status Report into record.

C. PUBLIC HEARING

1. **PAUL L. HORIKAWA** representing **HUI KUAI AINA O ULUMALU PARTITION** is requesting a variance from the following Maui County Code sections: (1) §19.30A.040(A) to allow the subdivision of 6 lots into 4 with a maximum lot allocation of 5 lots, whereas the code allows for a maximum lot allocation of 4 lots; (2) §19.30A.030(A) to create a lot of 18,858 square feet whereas the code requires a minimum of 2 acres; (3) §19.30A.030(B) to allow 2 lots to have lot widths of approximately 100 and 125 feet, whereas the code requires a minimum lot width of 200 feet; and (4) §19.30A.030(C) to allow a building to be located zero (0) feet from side yard the property boundary, whereas the code requires a minimum 15 feet side yard setback; for property located at 4148, 4150, and 4166, Hana Highway, Haiku, Hawaii, 96708; TMK (2) 2-8-002:046 AND 269 – 273 (BVAV 2018/0002). (P. Critchlow)

Mr. Paul Critchlow: Reads item into record.

PUBLIC TESTIMONY (ALL SUPPORT Testimony given-time 1:53p-2:15p)

Testimony Given by the following:

-Kimokea Kapahulehua: Opening prayer and Support

-Robert Kuya Alamodin: Support

-David Wertheim: Support

Ann Wertheim: Support

Liz Wertheim: Support

Guinevere Skellie: Support

PUBLIC TESTIMONY CLOSED: 2:18P

Chairman Sung: And once more if you could state your name for the record.

Mr. Paul Horikawa: Hello, my name is Paul Horikawa. I represent the applicants in this particular preceding.

One of the things I'd like to first do is thank staff. Michele and David Goode. We filed the application in 2014, that was the first time that we filed the application and since that time we've probably met with David Goode the Director of Public Works as well as Michele who was the Deputy Director but she has since been promoted and is now the Director. We've probably met three or four times and we've revised the application and have gone through a really long process almost four years now to get to where we are today. I'd like to thank them for their patience...they've been really helpful in putting us in the right directions so that we could be here today to ask for the relief that we are seeking in this proceeding.

By way of background. Let me just state that this is a portion of land that was part of ... (in audible)... Ulumalu is a name of an Ahupua'a that was awarded to someone by the name of Namaau in 1852. What happened was a group of individuals called the Hui Kuai Aina O Ulumalu. There was a group of about 50 people who got together in 1883 and they purchased about 1,500 acres of land from Namaau and they appointed someone by the name of E.D. Baldwin who is noted in the supporting documents that we submitted to you.

His job was, he was appointed by the court in an equity proceeding called a partition and his job was to subdivide the property and after the subdivision was completed he deeded the property out to various individuals. The major individuals who got the paper were people who were engaged in agricultural activity in Haiku. You had Haiku Food Company you had Maui Agricultural Company as well as HC&S.

We have some photos here and I'm just going to go through and give you a brief background about the property. I'm not going to really have a long presentation today because we have a lot of speakers.

The first picture that is take from Hana Highway. This is at approximately mile marker 14.2, this is about a half of mile in the Kahului direction near the Jaws store that is out in Haiku. That's one of the famous land marks. This is the entrance to Hui, this is on the Mauka side of the road and it was being paved. This is a picture showing the partition. I think we have a rendition of this part of the document that the staff provided to you.

This particular map...and you also have a copy of this and this shows the seven parcels that are involved in this application. This particular photo, you also have which is a copy of the proposed consolidation of every subdivision in the property.

Going through what's on the property, this is the buildings that are located on the proposed the lot 11A that are owned by David Wertheim who spoke a few minutes ago. These are the dwellings that are located on the proposed lot 11B that are owned by the Lynne Armitstead and Wendy Wootton.

This is proposed lot 12A with the structures that are owned by Joy Morris or Jutta Morris. And this is proposed lot 13A that shows the dwelling or house that's owned by Daniel Karp.

As noted by the previous speakers, this parcel of land is located pretty much as you can see from the photographs in a heavily vegetated area of Haiku. As noted by the previous speakers also, the land is being used for agricultural purposes and after the subdivision is completed, it will continue to be used for agricultural purposes. The intent here is not to subdivide these lots into little lots but to basically consolidate the six lots, the subject of the application and to subdivide them into four lots.

When Paul Critchlow was giving his presentation, he mentioned something that I just wanted to - - a thought I wanted to complete. Mr. Critchlow's analysis was correct in that one of the lots meets the variance which is proposed lot 14A and B. This particular lot here. That needs a lot allocation of itself, that's how come we need a lot allocation of five. The Director of Public Works found that the lot allocation was four and we need five.

We need the variance in order to give lot 14 its own allocation. The granting of the variance does not mean that the owner of lot 14 will be allowed to subdivide that particular lot to create another lot. The reason for that is that particular lot is 1.9 acres, so it's pretty much not capable of being subdivided. It just needs its own allocation it's not for the purpose of subdividing that particular lot. If they did want to subdivide that lot, which I'm going leave to Planning to see if that's feasible. But they would need an additional variance for the lot allocation and an additional variance for the lot area, because that lot is less than two acres. It's possible but not probable.

I just wanted to make mention that this variance is not to create additional lots. What we're doing here is we're going from six lots down to four lots. Not to go from four to six. The idea of this variance will result in a configuration that is less dense than what is existing at the present time.

By way of background, if you grew up on Maui in the 60's and the 70's, Haiku was kind of a wild place, it was pretty much country and you had places like Banana Patch and all of those infamous communities. But at that time various individuals -this is before time, they began living there, they didn't really comply with the building codes and so you had a lot of haphazard construction which results to the reasons as to why we're here today.

As noted by several of the speakers, we're here to basically ask for the variance so we can clean up what has happened in the past. And that's how come we have the support of not only the Planning Department but also the Department of Public Works to get us through this particular process.

Couple of events that I would like to note that's a part of the record that you have before you. Is that the lot- - land at one point in time was several parcels, many parcels of land but for whatever reason one of the owners went down and put them down under one tax map key. That had consequences down the road, because in 1998, the County of Maui adopted an ordinance. It was the Ag Ordinance and what the Ag Ordinance did is it established the maximum number of lots you could create and you had to do what was called a lot allocation. But the number of lots that could be created were determined upon what the tax map rules indicated in March of 1998 and at that time the property was under one tax map key number.

What happened after that is- - and the process was on going. As you can see from the exhibits that you have before you, in August of 1998. . . The same year that the Ag Ordinance was revised. The Department of Public Works issued a letter. They said that

based upon the research we find that you have seven lots. If the determination had been made prior to March, we would be dealing with seven lots instead of one; and that's one of the problems that we are having in this case. The ordinance was adopted on December 31st, 1998. That resulted in a lot of problems as to why we're here and one of them is the lot allocation that set forth in the Maui County Zoning Code and that's one of the reasons why we have to ask for a variance from that particular provision.

I will note that one of the things that the Planning Department as well as Public Works is that the parties apply for a consolidation and resubdivision of the property. That was done in 2016, so that is in process and one of the recommendations was we'll get the variance from the Maui County Board of Variances and Appeals.

The four variances that are here before you today, those are the variances that were set forth in the Subdivision Preliminary Approval letter that was issued by the County of Maui.

As noted by Mr. Critchlow earlier this afternoon, basically we have four variances before you. One lot allocation variance, a lot size variance, a lot width variance and a side yard setback variance. We acknowledge receipt of the Planning Department Staff's report that was issued on June 9th of this year. At that time the Planning Department recommended approval of the subdivision- - Oh excuse me, they recommended approval of the subject variance.

There were findings on why they recommended - - Why the Planning Department recommended approval, we fully join in that request. I'm not going to really go into detail of the justification because it is set forth in the application that's set before you. I just want to get to the end of it.

I'm just going to say that one of the things that's unique about the property is that there's a determination, there's a separate lot determination. I've done maybe half a dozen of these but they're not real regular but all of these lots are really small in sizes, you can see from the maps that you have. Country too, the Haiku East Subdivision, which is adjacent to this, basically they are all two acre lots. There's another subdivision that's in the Hana-Haleakala direction which again is a subdivision of considerable lots.

This particular subdivision with these lots of variance size from less than one tenth of an acre to four acres, they're not what's common that you find in that particular area. Also, as we noted in the justification in the variance, this is a particularly steep lot and so we're going to ask you to concur with the findings and the recommendation of the Department of Planning and find that there are exceptional and unique circumstances regarding this particular subdivision.

I'm not going to address the other justification of the requirement that we proof or establish facts that the denial of the variance will prevent reasonable use of the property. I think those are fully explained in the justification of the variance which was reviewed by the Planning Department.

But I did want to focus in for a few minutes before I conclude in a short while on the element about the previous actions that the owner did not create the hardship. As we noted in the justification for the variance. A lot of the hardship that was created was just facts- - ya know, the adoption of the Ordinance 2749 back in 1999 that referenced a date back in March. The Public Works Department had issued its letter five months after the date referred to in the ordinance. If all of these dates had lined up just a little better, we wouldn't be here today and we wouldn't be needing the variance. And we consider that to be a unique fact and not at the fault of the owner. I'm not blaming the Maui County Council, they had to perform and at that particular time there was a need to amend the Agricultural Ordinance, I don't have any hesitation about that.

One of the things I wanted to talk about as far as the owners not creating the hardship is that as it relates to Daniel Karp Residence because that's one of the request for variance that's on the table today and it is in the justification that the house was built by an individual by the name of Joseph Feigelson and there was a representation when the house was sold that it was located on the lot that he was selling and secondly that it complied with the applicable building codes. It was only when the owners were processing their subdivision request that they found a lo and behold the house is too close to the-- well actually crossed over the boundary lines. So Daniel Karp would have to remove a portion of this house to comply with the setbacks actually so that it wouldn't encroach into the property.

That particular adjoining parcel is owned by EMI-East Maui Irrigation. Included in the packet is a letter from Mr. Vaught who is the Vice-President of EMI. He reviewed the survey the post construction survey and he confirmed that Mr. Karp house does not violate or encroach on EMI's property and EMI is supporting the variance before you.

I would note that a lot of these setback variances raise issues concerning the neighbor's property, are they in danger? Well, as noted from the photos, immediately adjacent to Mr. Karp property is a road, it's a service road for the EMI ditch. This particular road is about five or six feet above Mr. Karp residence and it provides an effective barrier for any spread of any fire or any type of hazards that could be created by the denial because it's too close to the boundary.

On top of that what you have adjacent to the maintenance road is the Lowrie Ditch itself the famous Lowrie Ditch that takes water from. . . well it transports water all the way from the east end to the central plains. That particular ditch I would guess it to be about 15 to 20 feet wide and it still continues to- - water is still running in the ditch. So it does prevent the spread from any potential fire.

As far as these particular structure was not- - I would submit to the Board were not the result of the previous action of the Board.

I was speaking to Paul Critchlow this morning and one of the things we discussed is that there is a lot of support for the variance. He mentioned something around 40 letters. I would just note that there's some pretty interesting individuals, pretty famous individuals who have supported the variance. You have the Mayor Alan Arakawa, Mike White, you have the Departments, both the Planning and Public Works. I would just ask for your support and ask that you grant the variance.

I'm going to turn it over to Joy or Jutta Morris right now and if you have any questions, I'm available to hopefully to provide answers to any questions you might have.

Ms. Joy or Jutta Morris: Good afternoon. May I ask you, I have a slideshow prepared that steps the audience through how we arrived to this new configuration of lots and how we justify it? I'm thinking that it may not be necessary to do it but I'm happy to do it, if there's an interest in saving time.

Chairman Sung: Members, does anyone wish to see an additional presentation that explains or justifies the proposed configurations of the lots?

Members: No.

Chairman Sung: It's not necessary, unless you really want to. But it's not necessary.

Ms. Morris: I'm happy to do it. We'll try to do it quickly.

By now that view is probably familiar to you, that's the Google earth image. It's a very odd shaped piece that as Paul mentions was once combined all under one tax map key number even though it was technically seven lots. Here's another view that's closer again without the internal boundaries. And here they are, you can see that the surrounding areas have much more open spaces. From what I understand this was an old eucalyptus forest when it was purchased and there's a fair amount of slope to the property where not much else but trees can really be cultivated.

Here's the current configuration and note there's seven lots presented without any letter. Again, these were all bundled under one tax map key number during the 60's by the previous owner for the sake of convenience.

I wanted to speak to you briefly as Paul already did about lot 14 which is here labeled as number seven of the partition. In our earliest proposals lot 14, currently at 1.9 acres, was set to receive additional acreage along the border with remnant E4 which is actually number one here. . . in order to become a size conforming lot of two acres.

In 2015 the then owner of that lot decided that she did not want to participate in the time and the expense in joining the rest of us in this process and thus opted out of the subdivision. So it was originally intended to be seven lots to five became six to four and

that's kind of an interesting wrinkle because we still have to allocate, as Paul said, to the non-participating lot.

As we wrote or as we rewrote the application at that time we learned about the fact that lot 14 having been a part of the 1998 bundle of lots currently possesses a subdivision potential of one-meaning it cannot be subdivided further and must therefore also be given an allocation potential of one following our resubdivision even though it is not actively participating.

Basically even though it's not changing, lot 14 needs to be factored into the lot allocation map. We'll come back to this later in the presentation.

Here you now have a more detailed look at the six lots we are seeking to reconfigure into four with the setback issues that we're facing all drawn in and I need to point out that these are not drawn to scale. So we're starting with six lots only one of which the size is conforming - meaning it's larger than two acres. Only one, that same lot is wide enough by modern standards. We have 11 internal setback issues and two on our perimeter. One of which Paul already covered that's the one along the EMI Canal.

We're now proposing three consolidation in order to save structures. The first consolidation which is highlighted there in green is to merge lots 12 and 13 together. Which will eliminate setback issues number 10 and 11; and there they've gone were down to nine internal setback issues. We now have two sized conforming lots because of the merger of 13 and 12 which results in 13A is now larger than two acres. (Merger of 12 & 13)

When initially considering the conundrum of too many structures located in setbacks to internal boundaries the conclusion was that adjusting the various lot boundaries ought to be more efficient than moving the buildings. Of course back in 2012 we had no idea that adjusting these lot lines to save these buildings would blossom into a full fledge subdivision process and the length of time that it would take us to accomplish that.

The following walk through the anatomy of our shape shifting basically is meant to illustrate that nothing we are proposing to do is in itself controversy or any way extravagant. It would all be routine if it were not for the 1998 Ag Zoning Ordinance imposing a limit of four lots or a potential of four lots going to the overall size that was recorded in 98' when unfortunately all seven lots existed under one tax map key number.

Our next step is to consolidate the remnants is actually a remnant of lot 33 of the former Kuiaha Kaupakalua Homesteads and remnant E2 where we have a setback issue that's labeled number eight and nine. When we complete that step we have emerging proposed lot number 12A. We have reduced the internal setback issues further down to seven as the table above indicates. Actually, I should step back and say what is being saved at that particular moment happens to be my home and it happens to be the former community school house. So it has some historic significance to all of us.

Next, the third consolidation is to merge lot 11 with remnant E4 or at least most of it. Upper segment is merged into lot 11, the lower segment is shared by 11 and 13A. With this one scoop we saved the remaining seven structures because we now have no longer internal setback issues. We have saved the Wertheim Residence the Wootton Residence, My Residence and Mr. Karp's Residence to the extent that it is too close to an internal lot line, we still have to address the external variance that's needed for his proximity to EMI Canal.

This is basically the result of conforming three consolidations and one lot line adjustment. We have eliminated all setback issues except for the two on the boundaries.

Bringing lot 14 back into the picture, the one that's not participating leaves the subdivision to look as shown here. The six participating lots have been reconfigured into three and the mandated inclusion of lot 14 puts us right at the overall maximum limit of four. So if we were to stop right there we would all be well and the lot allocation variance, which is Item 1 of your application would not be needed. However, we do need to subdivide lot 11, which is now in excess of five acres and therefore 100% eligible to be split into two based on its size alone. However, we cannot accomplish this as we are already at the lot allocation limit imposed on us by the 1998 Ag Zoning Ordinance written language. In other words, the need to add back the non-participating lot into the allocation map makes it impossible for us to take the final step which is to divide lot 11. Splitting lot 11 in half would otherwise normally be perfectly straight forward if the three families that own it were able to act independently of the results of an act of convenience undertaken by a previous owner in the 60's. Lot 11 back then was bundled under one tax map key number along with the other six parcels, when the other six TMKs were dropped off the books for a time.

If we are allowed to split lot 11, this would be the final configuration. We now have three or four size conforming lots. Two lots conformed as to width. There are no more internal setback issues and of course the two external ones remain and they will be addressed separately.

Again, the very essence of what we are asking you to do or to grant us is to allow us to subdivide in half, well three consolidations and to subdivide in half a lot that would be perfectly eligible to be subdivided if only it had regained its own tax map key as the cutoff date in 1998. While it was confirmed to be a separate lot in August of 98' by Public Works, it was not tracked as such by the Real Property Tax office at the time. This might be called an administrative inconsistency and from this circumstance arises all manners of difficulty for us. It's really this quirk that's at the heart of variance one.

Here I recap for you a table of the key results of the steps we are proposing. We started with only one lot that's size conforming, we now have three or four that are that way, we started with only one lot that was conforming as to width and we now have two or four that are that way, we have zero internal setback issues and then with regard to the external ones you'll be deciding on Building W which is the designation given that by the

Building Inspectors. It's the Karp Residence too close to the EMI Ditch and Building E which is owned by Lynne which is not here today. She's planning to remove the western most four feet of that structure and join it- - because it's a studio and join it to the main Ag dwelling as soon she's issued a building permit to accomplish that.

I don't know if you can see this but this is my favorite slide because I always think of our building inspector who has gotten very, very impatient with us and I don't blame him. But when I showed him these two to show him this is where we are and this is where we are proposing to go- - he say's "Well, what's the problem?" And a picture is worth a thousand words, the proposed outcome is certainly a lot more streamlined and even looking.

Lastly we have what I call "the something for everyone slide", in the event that you grant our variances you will be saving four homesteads, mainly Wertheim, Karp, Wootton and our own. You will be saving five other structures among them is our well pump shed, we are on water system.

The variance is really the only remaining thing that stands in the way of our subdivision finding completion in which case our building permits will be issued and we can get to working on our structures and we will be able to move forward with fire protection plans, we would be able to settle the enforcement action and pay additional fines, we have paid quite a few already. It will enhance the Maui County tax base and it will certainly eliminate a big administrative burden that we have been placing on Maui County.

Thank you very much.

Chairman Sung: Thank you Ms. Morris. Mr. Horikawa is there anything more on your presentation?

Mr. Horikawa: May I have Noah Stern come up and say a few things? Noah Stern, he lives on the property where Daniel Karp lives. Daniel Karp is one of the owners. He made a special flight to be here on June 14 and unfortunately the meeting was canceled and he couldn't be here today, so he sent Noah to speak on his behalf.

Mr. Noah Stern: Hi and thank you to everybody here in taking the time to hear all of this information. I'm going to read:

Mr. Chair and Members of the Board, my name is Noah Stern. I'm Daniel Karp's caretaker for his property and I am here to represent him. Daniel Karp was here for the BVA meeting that was canceled last June. He could not be here today because he is currently teaching at his annual seven day music camp which he has produced and have been a part of for the last 16 years. He would've had to let go of his seven days of work to be here today. That's a lot of income, a lot of planning and a lot of income to walk away from. As well as it's been a long held tradition of his, this music camp. So Daniel has sent his statement and I'm here to read it to you today.

Dear Chairman and Members of the Board. My name is Daniel Karp. I purchased this home in the classic Hui exactly 20 years ago. I'm now finding myself in this difficult situation like a square peg in this round hole, I am sincerely hoping that you can help us out. I found my way to Haiku in 1985 as a professional musician. I have an extensive performing history of both here the islands and around the world. I've performed with Honolulu's Taiko Master Kenny Endo and in the early 90's have had the great honor in performing with Henry Kapono, including opening up for Bob Dylan at the Waikiki Shell.

After many decades of touring and performing primarily as an accompanist which I might add does not pay very well. At 64 years of age I'm looking forward to retirement. Fortunately I've paid off my mortgage before the collapse of the record industry but now my income has dropped more than 50%. Needless to say the cost of tear down renovations would be quite the hardship.

Now as to my part in our application. Variance number one pertains to me because it makes sense to consolidate my driveway lot 13 into one parcel with lot 12A. This also relieves the setback issue with my garage and then for the whole, it support the goal of consolidating six to five lots.

Variance number three, lot width. Variance three pertains to my home because the current law requires lot 12A to be 200 feet wide. Unfortunately I can't change boundaries that already existed from the days of the old Hana Belt Road. Strict compliances with this provision would prevent me from reasonable use from my house and property.

Variance four applies specifically to me. The previous owner and builder of my house had told me it was located legally beyond the setback requirements with my neighbor EMI and its Lowrie Ditch. We did not survey when I purchased because the mortgage was owner financed.

Fifteen years later when the violation notice arise from the County our surveyor Mr. Edgardo Valera revealed the situation to me and I immediately notified EMI. I then removed a small corner of the house as directed by Mr. Valera and invited EMI Vice-President Mark Vaught to come out and inspect the situation. He asked us to remove a few more inches of the overhanging eve of the roof. He returned another day to okay the removal and then kindly provided me with the letter from EMI stating no opposition of my house being within the setback. This letter is also in the application before you.

I am now going to address the unique and unusual characteristics of my home and how its location could never affect anybody in the neighborhood. There's an excerpt from the letter submitted in this application from my consulting architect John Cassel, "The house is located on a steep hillside and is anchored at the top where it stands within the 15 foot setback of the EMI Border. It would be impossible to move the entire house due to the sloping terrain. If the 750 square of the offending portion located within the 15 foot setback were to be removed, it would require substantial architectural elements to be replaced and it would degrade the character and use of the portion of the structure. Furthermore,

it should be noted that although the dome and the pyramid are located only partially in the setback they both would have to be entirely removed due to the nature of their interlocking construction.

However, due to its location surrounded by jungle and the 40 foot wide EMI property on the offending border, the house as it exists now would never be a hazard or inconvenience to its neighbors and its unique and extensive construction would be much safer and stronger if left as is."

I'd like to finish by saying that I'm very happy to be able to bring my property into compliance with the County. I'm very grateful for the letters of support from all our friends but especially to Mayor Arakawa, Council Chairman Mike White, Will Spence as well as the invaluable assistance from Mrs. Michele McLean, Paul Critchlow and others in the County Government and especially to Joy Morris for shepherding a group of naive owners through a very complex transition.

Thank you very much. Mahalo nui.

Chairman Sung: Thank you.

Mr. Horikawa: Guinevere will now speak on behalf of her mom.

Mrs. Guinevere Skellie: This will be easier no more tears, it's written down. My mother Lynne Armitstead, this is quick too.

Dear Chairperson Raymond Sung and Members of the Board. My name is Lynne Armitstead and I am one of the 4150 Haiku Hui Homeowners. I've lived there for 40 years, my three daughters were born and raised there having a blessed childhood growing up with the other Hui neighborhood children. We the Hui were the only folks in the area at such a different time and mentality. We lived simply growing our food and caring for our land and the extra money I made went into our home and other than my children it's my life's work.

I'm so grateful for this opportunity to make things right. I'm sure it is difficult to understand how we lived in violation for so long but the era of the 70's etcetera and even Maui herself was a different world back then.

Now it is such a gift to be supported by so many in the county and our community to do what is required for legality. I thank you with humbleness for your time and consideration. I have been working on the mainland to be able to pay for the changes necessary for our process so I am unable to attend the hearing. Every day away is like a prison sentence.

My daughter Guinevere who lives and cares for our home with her husband and two children are third generation there will be representing us. Again, thank you and with hope, Lynne Armitstead.

Ms. Morris: Aloha kakou once more Mr. Sung and Gentlemen of the Board. I really don't have any words for how grateful I am for this opportunity. I've called Maui home for the past 16 years. When not working on the matter before you I'm self-employed in the destination wedding business here on the island. Reflecting on what I might say to you here today I was struck by how similar this was to my divorce proceedings decades ago. Just as my ex-husband and I back then went through some pretty challenging times hashing out the terms of ending our relationship our Hui has done the same thing and we now need the affirmative action of a third party (which is you) to be able to legally finalize the terms of our separation.

I and We stand before you here today asking you to bless the terms of our Hui divorce. Just like a divorce court judge you have just as much power to shape the lives and future of this entire group including mine. Have you ever viewed yourself as functioning essentially like a divorce court judge? I would find that very trippy. Of all the owner/applicants involved in this action, I am the most recent and last one to come on title and that was five years ago. At that time the Hui had been grappling for over a year with resolving compliance issues and the County's enforcement action seeking a way to legalize our little village that have flourished nearly two generations. You might have called me the Johnny Come Lately Outsider back then.

I happen to have a long ago background in audit and regulatory compliance work which has proven helpful in my quest has the designated project manager.

Six years ago I was asked by my dear friend John Ramsey who founded the Hui in 1977 along with Liz Wertheim who is still with us. He asked me to step into his shoes, he was in his mid-70's then, suffering from emphysema and on oxygen 24/7, struggling to comprehend what was happening to him, his custom built little home that we had to tear down, and the community he was instrumental in bringing to life in the late 70's.

I assumed what in Hui parlance is called his sphere of influence in 2013 and well let's just say there have been times where that decision looked pretty foolish never mind regrettable. I became John's roommate and caregiver, we had many let's call them spirited discussion about the compliance conundrum we were and still are facing. John himself doubted that this very moment would ever come about at all. My resolve naïve as could be back then was to prove him wrong and to do so expeditiously. Sadly it never happened before he passed on in November of 2015.

Speaking of all the time this has taken: in 2012, our group was given by our very first consultant a projected time line for bringing our little village and our homes into compliance. His projected completion date after graphing out a very elaborate flow chart of all the bits and pieces needing to fall into place and the logical order was May 2014.

As the Hui point person, I have spent the last five years of my life in a place I've liken to the point of contact between to tectonic plates, one being the County of Maui's bureaucracy and the other being the Hui Group, it's not a fun place to be. As time went

by, turnover was a constant, we are now working with our third planner, Mr. Critchlow at the Planning Department. We have worked with four different consultants privately. Our surveyor recently retired and we can only pray that our AutoCAD records and maps are not lost. At DSA we are lucky that our third subdivision review person also happens to be our first, Mrs. Lesli Otani. At Maui Electric I'm working now with the third engineer assigned to our project on the plans for a new power line extension into our neighborhood.

We've had deaths, births and a major divorce on the Hui - on the human front. But somehow work has progressed in spite of all these various discontinuities. It remains our objective to meet all the conditions set by Public Works for our resubdivision. The most critical, significant, and substantial of all of these conditions detailed in Exhibit C of our application are the variances before you here to today.

I'm proud to say that we have already met some of the other conditions, some of them even out of rational sequence. For instance a more cautious or conservative group may not have invested in the State DOT mandated driveway improvements which you saw on the first slide to our subdivision prior to the variance being in place. But we went ahead and had the work performed anyway and it costs us about \$30,000.00.

Likewise, we went ahead and ordered our new water storage tank shipped to us all the way from Australia costing about \$30,000.00 also. Its components sit waiting for assembly at the site of our well water association easement, pending the issuance of the proper building permit for its concrete foundation, which again will require approval of these variances.

In terms of logical sequencing we could of easily have held off on moving forward on these cash burning projects until after your decision but we just decided to proceed in order to demonstrate good will and diligence by taking these actions and checking them off our to do list as soon as possible instead of waiting.

Through this work and progress, I personally have gained a whole new appreciation for real estate developers on Maui. It is generally accepted that developing property on Maui is not easy. In fact not so long ago Mayor Arakawa informed me that it took him 12 years to subdivide his family land in Kula.

Circling back to John, the Hui Founder, my predecessor and deceased best friend. John was all too aware of all this. It was his firm conviction that this resubdivision we are asking you to in effect ask you to approve today would be impossible to bring about. John felt that between the two tectonic plates I like to joke about, the County with its codes and the assorted departments being one and the Hui with its quirky and diverse ways of doing things. Never mind shallow as opposed to deep pockets on the other side, the deck wassurely stacked against us. Further he argued that was simply there no off the shelf recipe for essentially reverse engineering a little village such as ours. True, if there were a how to guide book on the required steps for that I would be the first in line to buy a copy for each and every one of us.

So, in a place where the process of constructing a legal subdivision for a small village from scratch is tough enough, accomplishing that in reverse, meaning bringing to code an already existing unpermitted one is a tougher challenge all together.

Fred Astaire and Ginger Rogers come to mind as they say Ginger had to do everything Fred did in high heels and backwards. Just as we are dancing backwards and with limited resources to put our illegal subdivision together after the fact.

Administratively the bureaucracy is really not well geared to handle cases like ours. To add to the psychological difficulty, all of this transpires as it has for us under the specter of exponentially increasing fines. Last I checked the total fines were in the \$26 million dollar range meaning the prospect of losing it all to eviction or forfeiture has been all too real and terrifying.

But incredibly seven years and more than a quarter of a million dollars later here we are. It is a long awaited moment and privilege to stand here today and respectfully ask for your approval of these variances.

My sincerest mahalo goes to all and everyone involved for the gifts of your time and energy and for allowing us this welcome chance at a fresh start. Especially to Michele McLean and staff for their kindness and support and to the folks at DSA for bearing with us all these years. With respect to King Kalaukua and to the Aloha State, "Ua Mau ke Ea o ka Aina I ka Pono." Mahalo and Aloha kakou.

Chairman Sung: Thank you Ms. Morris. I understand that's the end of the presentation?

Mr. Horikawa: Yes Chair.

Chairman Sung: I forgot to say Mr. Horikawa, do you waive the reading of the staff report?

Mr. Horikawa: Yes.

Chairman Sung: Thank you, I appreciate that. Members do we have any questions for staff or for the applicant?

Vice-Chairman Juanita Reyher-Colon: Chair Sung I have a question. In the interim I see you folks have been moving forward with the fire protection plan so in the interim what are you folks doing to meet the fire protection right now?

Mr. Horikawa: As you can see from one of the photos ... (in audible)... it's so far away from the Fire Department if there was a fire and if the Fire Department could respond, it's just too far away.

Ms. Morris: May I elaborate? We have our own well. About three years ago or maybe four years ago we looked very hard at fire protection options and in fact we paid Linda Taylor, the Engineer a significant fee to study our options, connecting to the Maui County waterline which happens to pass right along Hana Highway on our boundary and running a line in and back out because they don't like a stagnant dead end line, was then estimated at \$150,000.00. We simply couldn't come up with that kind of money.

Ultimately the decision was made where we would equip all our homes with sprinklers and that we would upgrade our existing infrastructure to deliver the 60 gallons a minute. That's what the new tank is for and there will be new pumps purchased. So we will then have our own, approved by the Fire Department, fire protection system. But at the moment we're at the mercy of the closest station which is in Paia.

Vice-Chairman Reyher-Colon: Thank you.

Chairman Sung: Any other questions or comments for staff or the applicant?

Member Bill Kamai: Yes, well done on the application.

Chairman Sung: I agree.

Ms. Morris: Mahalo.

Ms. Richelle Thomson: Chair, would you like to have the staff's recommendation?

Chairman Sung: Yes please.

Mr. Paul Critchlow: Based on the foregoing findings of facts, conclusions of law, the Director recommends approval for the subject variance. If the Board decides that the applicant has met all of the requirements for the granting of the subject variance, the Director recommends the following conditions: That the variance shall be applicable only to the Property located at 4148, 4150 and 4166, Hana Highway, Haiku, Hawaii; TMK's (2) 2-8-002:046 and 269-273.

Chairman Sung: Members, any comments or questions based on that staff recommendation?

Vice-Chairman Reyher-Colon: Chair, I would like to go ahead and make a motion.

Mr. Horikawa: I know the staff report had recommended three addresses but we would humbly ask that you would add one more address and that's 4174 and that's where David Wertheim lives.

Chairman Sung: Ok.

Mr. Critchlow: And the reason the numbers are that way is because we are using the Real Property Tax office's addresses that they but those addresses are probably going to get further identified if the subdivision is approved and for each of the separate TMKs.

Chairman Sung: Ok, so I would ask that if there's a motion from the floor regarding this variance that it take into account the addition of one more address, that being of Mr. Wertheim as reflected in the record by Mr. Critchlow.

Vice-Chairman Reyher Colon: Was that 4147?

Chairman Sung: Ok, Members is there a motion?

Vice-Chairman Reyher-Colon: Yes. Seeing that the applicant has met all the requirements I would like to make a motion to approve the applicant's variance to include for properties located at 4148, 4150, 4166 and 4174 Hana Highway.

Ms. Thomson: For clarification, are you adopting the Planning Department's recommendations?

Vice-Chairman Reyher-Colon: Yes, with the adoption of the recommended conditions from the Director.

Chairman Sung: Including the standard conditions of the insurance and the - -

Mr. Critchlow: We were - - on this one only recommending that condition one is applicable only to as it is requested. We are not recommending the insurance unless you folks would like to add that.

Chairman Sung: Ok, thank you for the clarification. Do I hear a second?

Mr. Willy Greig: Second.

Chairman Sung: Ok, let's vote. All in favor please say "Aye."

Members: "Aye"

Chairman Sung: Any opposed? Seeing none, **motion approved**. Thank you.

It was moved to vote to approve the variance application then,

VOTED: Motion to approve variance application.

(Assenting: R. Sung, J. Reyher-Colon, W. Greig, W. Kamai, T. Egge)

(Absent: M. Kincaid Jr., J. Borge, R. Shimabuku)

D. DIRECTOR'S REPORT

a. Approval of the 2019 BVA Meeting Dates

[2019 BVA Meeting Schedule](#)

It was moved to vote to approve the 2019 BVA Meeting Schedule then,

VOTED: Motion to approve 2019 BVA Meeting Schedule.

(Assenting: R. Sung, J. Reyher-Colon, W. Greig, W. Kamai, T. Egge)

(Absent: M. Kincaid Jr., J. Borge, R. Shimabuku)

E. DISCUSSION (Deferred/Continued from July 12, 2018)

a. Board discussion of Board procedures, including without limitation:
Preparation of written minutes; Procedures for setting agendas;
Procedures for canceling Board meetings.

No public testimony will be received.

F. NEXT MEETING DATE: August 23, 2018

Chairman Sung: Our next meeting is August 23, 2018.

G. ADJOURNMENT

Chairman Sung: Meeting adjourned. It is now 3:50 p.m. Thank you Board members.

Respectfully submitted by,

Chalsey Kwon

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

RECORD OF ATTENDANCE

Members Present:

Raymond Sung, Chairman
Juanita Reyher-Colon, Vice Chairman
William Greig
William Kamai
Trisha Egge

Excused:

Max Kincaid Jr.

Jeffrey Borge

Ray Shimabuku

Others:

John Rapacz; Planning Program Administrator

Danny Dias; Supervising Planner

Paul Critchlow, Staff Planner

Ana Lilis; Staff Planner

Christi Keliikoa; Staff Planner

Chalsey Kwon, Secretary to Boards & Commission II, Department of Planning

Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel