

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
July 11, 2019**

(HYPERLINKS TO AUDIO RECORDING OF THE MEETING)

A. CALL TO ORDER

(00:00:02 of the Audio Recording Item A begins)

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Juanita Reyher-Colon at approximately, 1:34 p.m., Thursday, July 11, 2019, 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).

(00:00:16-00:09:06 of the Audio Recording, public testimony is open, taken and closed).

(00:01:09 of the Audio Recording Item B begins, Staff Planner, Ms. Ana Lillis reads item into record).

B. HEARINGS ON APPEALS OF NOTICES OF VIOLATION

The following Appeals of Notices of Violation are contested cases in which the Board is exercising its adjudicatory function pursuant to Section 92-6 (a)(2) Hawaii Revised Statutes and therefore Section 92-3 ["Open Meetings"] Hawaii Revised Statutes does not apply in such circumstances. Accordingly, the Board is not required to allow the public to testify with respect to such following Appeals.

1. **WAILUKU PLANTATION, LLC** appealing Notices of Violations for operating a construction baseyard located at 1503 Piihana Road, Wailuku, Maui, Hawaii; TMK: (2) 3-4-032:001 (BVAA 20190009)

(00:01:42-00:02:20 of the Audio Recording. Corporation Counsel Mr. Tom Kolbe speaks into the record, informing the Board Jason McFarland-representative for Wailuku Plantation will be arriving late due to road closure. Therefore requested to give him a few minutes to continue with presentation).

(00:02:22- of the Audio Recording, Chair Reyher-Colon agrees and proceeds with Item C of the agenda).

(00:03:22- of the Audio Recording, Acting Planning Program Administrator Mr. Danny Dias reads Item C into the record).

C. ADOPTION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER (D&O)

1. Having voted on October 25, 2018, to approve the variance for MUNEKIYO HIRAGA representing EXISTING CONDITIONS AT POLYNESIAN SHORES (BVAV Docket No. 2018/0003), the Board will consider and may adopt the draft Findings of Fact, Conclusions of Law and Decision and Order.

(00:03:36-00:03:46) of the Audio Recording, Chair Reyher-Colon informs the Board she will be giving everyone a moment to review the Decision and Order before proceeding).

(00:03:52-0:04:14 of the Audio Recording, Corporation Counsel Richelle Thomson speaks to the Board, reminding them what they are looking to do with the Decision and Order)

(00:07:31 of the Audio Recording, Chair Reyher-Colon asks the Board if they had a chance to review the D&O).

(00:07:38 of the Audio Record, Board Members reply: "Yes").

(00:08:34 of the Audio Recording, Chair Reyher-Colon asks Board if there is a Motion to Approve the D&O as is).

(00:08:35 of the Audio Recording, Vice-Chair Raymond Sung moves to approve D&O as is).

(00:08:45 of the Audio Recording, Member Max Kincaid Jr. Seconds the Motion).

(00:08:50 of the Audio Recording a vote was taken-5 "ayes", 0 "opposed", 3 "excused")

VOTED: Motion passes to Approve Polynesian Shores D&O (BVAV 2018/0003)

(Assenting: J. Reyher-Colon, R. Sung, M. Kincaid Jr. W. Kamai and T. Egge,).

(Excused: J. Borge, R. Shimabuku and Emmanuel Baltazar).

(00:09:00 of the Audio Recording Item C finishes)

(00:09:15 of the Audio Recording, Chair Reyher-Colon moves back to Item B).

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testify with respect to such following Appeals.

1. **WAILUKU PLANTATION, LLC** appealing Notices of Violations for operating a construction baseyard located at 1503 Piihana Road, Wailuku, Maui, Hawaii; TMK: (2) 3-4-032:001 (BVAA 20190009)

(00:09:20 of the Audio Recording, Chair Reyher-Colon asks if the appellant or representative is now present).

(00:09:25 of the Audio Recording, Attorney Representing Wailuku Plantation LLC Mr. Jason McFarlin is now present).

(00:11:02 of the Audio Recording, Corporation Counsel Tom Kolbe provides his opening statement).

(00:12:24-00:17:52 of the Audio Recording, Mr. Jason McFarlin provides his opening statement).

(00:18:06 of the Audio Recording, Corporation Counsel Ms. Richelle Thomson hands out Maui County Code Section 19.08.020 for Board's reference).

(00:19:06 of the Audio Recording, Mr. Kolbe proceeds with his witness and calls on Zoning Inspector Conklin "Kai" Wright).

(00:19:24 of the Audio Recording, Vice-Chair Raymond Sung swears Mr. Wright in).

(00:19:52-00:39:10 of the Audio Recording, Mr. Kolbe proceeds cross examination with Mr. Wright).

(00:39:45-00:44:58 of the Audio Recording, Mr. McFarlin proceeds cross examination with Mr. Wright).

(00:45:00-00:47:27)of the Audio Recording, Mr. McFarlin asks to provide the Board with additional photos for review...further discussion between Board, Mr. Kolbe and Mr. McFarlin).

(00:47:52 of the Audio Recording, break taken to make copies and review additional document submitted by Mr. McFarlin).

(00:48:14 of the Audio Recording, returning from break and resume cross examination).

(00:48:52-00:56:01 of the Audio Recording, Mr. McFarlin continues cross examination with Mr. Wright).

(00:56:16-01:09:37 of the Audio Recording, Board proceeds with questions for Mr. Wright and Mr. Dias).

(01:09:39-01:11:39 of the Audio Recording, Mr. Kolbe redirects).

(01:11:52-01:17:31 of the Audio Recording, Mr. McFarlin request to move Exhibits A through C into evidence with further discussion from Mr. Kolbe and Vice-Chair Sung).

(01:17:32 of the Audio Recording, Ms. Thomson interrupts discussion to inform Board and parties of Mayor's directive to send all County Employees home due to fire event).

(Item D to be discussed at next meeting).

D. DISCUSSION

1. Board discussion of Board powers, duties, and/or procedures, including without limitation regarding: contested hearing procedures; hearing officer assignments; status of and anticipated timetable for availability of written minutes (including substantially full transcripts of portions relevant to, and in advance of, anticipated D&O review and discussion and approval) of previous Board meetings; timing and method of distribution of relevant materials to Board members for review in advance of meetings; issues relating to quorum (or lack thereof); miscellaneous questions & answers and/or feedback with Staff and Corporation Counsel.

Public testimony may be received by the Board.

(01:20:20 of the Audio Recording, meeting rescheduled to August 22, 2019 by Chair Reyher-Colon).

E. NEXT MEETING DATE: July 25, 2019

F. ADJOURNMENT

(01:20:36 of the Audio Recording, meeting adjourned by Chair Reyher-Colon).

Meeting abruptly comes to an end due to Fire Event's and the Mayor's directive for emergency leave, this hearing will be rescheduled to August 22, 2019. This meeting was adjourned at 3:05 p.m.

Respectfully submitted by,

CHALSEY KWON
Secretary to Boards & Commission II

RECORD OF ATTENDANCE

Members Present:

Juanita Reyher-Colon, Chairman
Raymond Sung, Vice Chairman
Max Kincaid Jr.
William Kamai
Trisha Egge

Excuse:

Jeffrey Borge
Ray Shimabuku
Emmanuel Baltazar

Others:

Danny Dias; Acting Planning Program Administrator, Department of Planning
Ana Lilis; Staff Planner, Department of Planning
Christi Keliikoa; 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