

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
NOVEMBER 8, 2007**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Vice-Chairman Warren Shibuya at approximately, 1:35 p.m., Thursday, November 8, 2007, 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.)

B. PUBLIC HEARING

- A. WILLIAM BETHEM representing JANE LEONG requesting a variance from Maui County Code, §19.36.010 to delete the requirement of providing eight parking stalls for a proposed 800 square foot expansion of restaurant seating area for Café des Amis located at 38 Baldwin Avenue, Pa`ia, Maui, Hawai`i; TMK: (2) 2-6-003:055. (BVAV 20070010)**

Vice-Chairman Warren Shibuya read the agenda item into the record.

Mr. Aaron Shinmoto: Mr. Chairman, this is being rescheduled to December 13th. There is a recalculation being done on the parking requirements, and the applicant will be revising his application, and coming in at that time.

Vice-Chairman Shibuya: Okay. Thank you.

C. APPEAL

- 1. NEWCOMER-LEE LAND SURVEYORS, INC., and KO`OLAU CATTLE COMPANY, LLC appealing the Director of Public Works and Environmental Management's determination that preliminary subdivision approval for the Waihe`e Valley Large Lot Subdivision (DSA Subdivision File No. 3.2118) is null and void for property located off of Kahekili Highway, in the vicinity of Waihe`e Stream, Waihe`e, Wailuku, Maui, Hawai`i, TMK: (2) 3-2-001:003. (BVAA20070001)**
- a. Appellee, Newcomer-Lee Land Surveyors, Inc., and Ko`olau Cattle Company, LLC's, Stipulation to dismiss appeal with prejudice.**

Vice-Chairman Shibuya read the agenda item into the record.

Vice-Chairman Shibuya: Staff, is there a power point presentation, or are there arguments here on this matter?

Mr. Francis Cerizo: Mr. Chair, this appeal, there is a motion to dismiss this appeal. And we have the two attorneys that are in this case represented by Paul Horikawa for the appellants, and Jane Lovell for our Corporation Counsel. So they'll be saying a few words on this motion.

Vice-Chairman Shibuya: Okay. Thank you.

Mr. Paul Horikawa: Good afternoon, Mr. Chairman, and members of the Board. My name is Paul Horikawa. I represent, as Francis told you, I represent the appellants in this matter: Newcomer-Lee Land Surveyor's, Inc., and Ko'olau Land – Cattle Company, LLC, but before I proceed, I just wanted to congratulate Mr. Cerizo on being named the Supervisor of the Year. I remember when I worked for the Corp. Counsel a while back Mr. Cerizo had a full head of hair. He didn't have glasses, and he was much more handsome, but congratulations, Francis.

Mr. Cerizo: Thank you.

Mr. Horikawa: As the members of the Board may recall, we had – my clients had filed an appeal of the Public Works Director's decision back in 2006 – I mean, excuse me, 2007, earlier this year. And as the Board may recall, you sent this matter to mediation before Judge McConnell. And Judge McConnell being the persuasive person that he is, he convinced us to resolve our dispute. As a result of this resolution, we also agreed to dismiss the appeal. The parties have executed the stipulation. It's basically an agreement among the parties to basically dismiss the appeal. We're just asking the Board to go along with that, and to authorize the Chair to go and sign this particular document as a decision of the Board.

Vice-Chairman Shibuya: Ms. Lovell?

Ms. Jane Lovell: Good afternoon, Chair, and members of the Board. My name is Jane Lovell, Deputy Corporation Counsel, and I represented the Department in these proceedings. Judge McConnell was quite helpful and persuasive. He twisted arms, knocked a few heads. The parties, I think, met in the middle. And we were able to craft an agreement that will be very, very specific to the facts of this particular case. Nobody admitted anything. Everyone shook hands afterward, and went away equally unhappy. So therefore, it's probably, by that definition, a good agreement. And therefore, the Department and the Director in this case, Mr. Arakawa, request that you do whatever is necessary to bless the dismissal of the appeal.

Vice-Chairman Shibuya: Okay. Questions from members or comments from members?

Ms. Kathleen Acks: I move that we bless the decision.

Mr. Stephen Castro, Sr.: Second.

Vice-Chairman Shibuya: It's been moved and second. Any discussions, members?
Yes, sir, Hari?

Mr. Harjinder Ajmani: I had just one question, and it's more like an explanation from you. What does this mean, "dismiss the appeal with prejudice?" What is the prejudice part?

Ms. Lovell: You can dismiss a case with prejudice or without prejudice. When you do it with prejudice, that means you cannot come back and re-file it. Sometimes a matter will be dismissed without prejudice meaning there might be something technically wrong with the papers. Those technical defects can be corrected, and then you can re-file. But it's just a lawyer's way of saying this is a done deal, and you can't come back and argue about it later.

Mr. Ajmani: Okay, thank you.

Vice-Chairman Shibuya: Any other discussion matters, members? Can we go for the vote, then? All in favor of dismissing – accepting this agreement with, I guess, prejudice say aye. Any opposed?

It was moved by Ms. Acks, seconded by Mr. Castro, then

VOTED: To accept the agreement to dismiss the appeal with prejudice.

**(Assenting: K. Acks, S. Castro, W. Kamai, R. Ball Phillips,
H. Ajmani and J. Shefte.)**

(Excused: R. Endo and U. Schulz.)

Vice-Chairman Shibuya: **It's unanimous.** Thank you very much, Mr. Horikawa, Ms. Lovell.

Ms. Lovell: Thank you.

Mr. Horikawa: Thank you, Mr. Chairman, members of the Board; and congratulations, Francis.

D. APPROVAL OF THE OCTOBER 25, 2007, MEETING MINUTES

Vice-Chairman Shibuya: The next item would be the review or at least the approval of the October 25th meeting minutes. This one is probably the shortest meeting we've ever had.

Ms. Acks: Today is shorter.

Vice-Chairman Shibuya: Oh, it is. Okay. Do I hear any discussions, corrections, additions, subtractions on this October 25th meeting minutes? If none, can I have a motion to accept?

Mr. James Shefte: So moved.

Vice-Chairman Shibuya: It's been moved to accept. Any second?

Ms. Rachel Ball Phillips: Second.

Vice-Chairman Shibuya: Second, thank you, Rachel. It's moved and second. All in favor say aye. Disapproving?

Mr. Ajmani: Warren, I abstain.

Vice-Chairman Shibuya: Okay. Because you weren't here?

Mr. Ajmani: I wasn't at the meeting.

Vice-Chairman Shibuya: I understand. Okay.

It was moved by Mr. Shefte, seconded by Ms. Ball Phillips, then

VOTED: To accept the October 25th meeting as presented.

**(Assenting: J. Shefte, R. Ball Phillips, K. Acks, S. Castro,
W. Kamai.)**

(Abstaining: H. Ajmani.)

(Excused: R. Endo and U. Schulz.)

Vice-Chairman Shibuya: **So there's actually all acceptance then.** Okay. Thank you.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Vice-Chairman Shibuya: There's a Director's Report, no. 1: Status Update on BVA's Contested Cases. Staff, are you able to provide us—?

Mr. Shinmoto: Not at this time. Trisha is out. She had some family illness today so hopefully, she'll be back at the next meeting.

Vice-Chairman Shibuya: Okay.

2. Schedule of 2008 Meeting Dates

Vice-Chairman Shibuya: Scheduled item for 2008 Meeting Dates. That was given to us. Any questions on it?

Mr. Shinmoto: If you do notice, the November calendar, the last meeting is on a Wednesday because Thursday is Thanksgiving. December, we have one meeting because of the holidays again.

Vice-Chairman Shibuya: That's right. Thank you.

F. NEXT MEETING DATE: November 29, 2007

Vice-Chairman Shibuya: So the next meeting would be November 29th. Are there matters that you'd like to discuss that's not on the agenda? None.

G. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 1:45 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Warren Shibuya, Vice-Chairperson
Rachel Ball Phillips

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Kathleen Acks
James Shefte
William Kamai
Harjinder Ajmani
Stephen Castro, Sr.

Members Excused:

Randall Endo, Chairperson
Uwe Schulz

Others:

Aaron Shinmoto, Planning Program Administrator
Francis Cerizo, Staff Planner
Carolyn Cortez, Staff Planner
Edward Kushi, Deputy Corporation Counsel