

**BOARD OF VARIANCES AND APPEALS  
REGULAR MEETING  
OCTOBER 25, 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 Endo at approximately, 1:30 p.m., Thursday, October 25, 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.)

Vice-Chairman Warren Shibuya: Randy Endo is absent and we have a bare quorum today.

**B. APPEALS**

- A. MAUI LAND & PINEAPPLE COMPANY, INC. appealing the Director of Parks and Recreations' requirement of \$4,433,610.00 for the development of a park in Napili for the West Maui Village Affordable Housing Development located off of Honoapi`ilani Highway, Alaeloa, Lahaina, Maui, Hawai`i; TMK: (2) 4-3-001:033. (BVAA 20070007)**

Vice-Chairman Shibuya: The first item here would be the Maui Land & Pine Company issue. We'd like to have staff read the case into the minutes, please.

Mr. Aaron Shinmoto read the above agenda item into the record.

Vice-Chairman Shibuya: Thank you. Staff, what is the purpose of this variance application?

Mr. Shinmoto: You are here to select a hearings' officer for this case. And I believe we have Ms. Jane Lovell from our Corporation Counsel's office and Mr. Greg Garneau representing Maui Land and Pine.

Vice-Chairman Shibuya: Both parties here?

Mr. Greg Garneau: Yes, we are. Greg Garneau. I'm the attorney on behalf of Maui Land & Pineapple Company. Good afternoon.

Ms. Jane Lovell: Good afternoon. Jane Lovell, Deputy Corporation Counsel appearing on behalf of the Department of Parks and Recreation.

Vice-Chairman Shibuya: Thank you.

Mr. Garneau: Members of the Commission, Ms. Lovell and I did have a chance to speak prior to today's date. And looking at the list of potential hearings officers that the Commission – the Board provided us, rather, we were able to agree on the following three hearings' officers. We thought we would submit three names in order of preference in case some of them might not be available or might have a conflict.

Vice-Chairman Shibuya: Thank you.

Mr. Garneau: You're welcome. The first name was Mr. John McConnell. The second name was Mr. Dennis Niles. And the third name: Mr. Boyd Mossman.

Ms. Lovell: And for the record, the Parks Department is fine with any of those gentlemen.

Vice-Chairman Shibuya: In that order?

Ms. Lovell: In that order is fine with us also.

Vice-Chairman Shibuya: Thank you very much. Members, they have recommended that we have a hearings' officer, and it will be former Judge McConnell, Judge Niles, and Judge Mossman as a hearings' officer in that precedence, in that order. Are there any discussions on this matter or questions that you'd like to ask counsels? None? If not, could we have a motion to accept?

Ms. Kathleen Acks: I'll move that we accept.

Mr. Stephen Castro, Sr.: Second.

Vice-Chairman Shibuya: Moved and second. All in favor for this – or to have discussion on this matter? No? Let's have the vote, then. All in favor say aye. Any opposed? No opposed.

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

**VOTED: To approve the following selection of Hearings' Officers in the order of preference:**

- 1. Judge John McConnell, Retired**
- 2. Judge Dennis Niles, Retired**
- 3. Judge Boyd Mossman, Retired**

**(Assenting: K. Acks, S. Castro, R. Ball Phillips, J. Shefte, and**

**W. Shibuya)**  
**(Excused: R. Endo, H. Ajmani, U. Schulz, and W. Kamai)**

Vice-Chairman Shibuya: Let the record reflect that there's – **all five members accepted this motion**, as well as the precedence with Judge McConnell, Judge Niles, Judge Mossman, all these retired Judges to be the hearings' officer. And this will be the precedence in which we would be requesting each of these hearings' officers. Thank you very much, both counsels.

Mr. Garneau: Thank you.

Vice-Chairman Shibuya: Thank you.

- 2. ANTONIO PANLASIGUI, JR. and LEE-ANN PANLASIGUI appealing MICHAEL RAMICK, Building Inspector of the DEPARTMENT OF PUBLIC WORKS' decision to issue a third notice of warning requiring the appellant to obtain an after-the-fact building permit (Building permit application no. B T2006/2879) or the removal of a retaining wall for property located at 57 Pi`ina Place, Lahaina, Maui, Hawai`i; TMK: (2) 4-3-009:070. (BVAA 20070009)**

Vice-Chairman Shibuya: The next case, staff, would you read the notice for a public hearing?

Mr. Shinmoto read the above agenda item into the record.

Mr. Shinmoto: You have in front of you a letter dated October 24<sup>th</sup> from Paul Horikawa who represents the applicants withdrawing the notice of appeal.

Vice-Chairman Shibuya: Okay. Thank you very much, staff. I have a correspondence here, and I believe staff has that correspondence too. I'll go ahead and read it into the record here. It's from the Law Offices of Ing, Horikawa, and Jorgensen. It's October – dated October 24<sup>th</sup> 2007. It was hand-delivered. It was addressed to Mr. Randall Endo, the Chair of this Board of Variances and Appeals. And the subject matter is: In the Matter of the Request of Mr. and Mrs. Antonio Panlasigui, Jr. – BVA No. 20070009.

Dear Mr. Endo:

Please be advised that Mr. and Mrs. Antonio Panlasigui hereby withdraw the Notice of Appeal which they filed in the above-referenced matter. Mr. and Mrs. Panlasigui timely obtained the building permit for the construction of that wall that is located on their property and do not wish to

pursue this matter further.

Very truly yours,  
Paul Horikawa

He is their legal representative. Members, is there any questions on this or discussions on this matter? No? If not, are there – is there any motion to accept this letter and close this case?

Mr. James Shefte: So moved.

Mr. Castro: Second.

Vice-Chairman Shibuya: Moved and second to accept this letter and the closure of this case. All in favor say aye. Disapproving of this say nay. Hearing none.

It was moved by Mr. Shefte, seconded by Mr. Castro, then unanimously

**VOTED: To accept applicant's attorney, Paul Horikawa's letter dated October 24, 2007, for the withdrawal of the appeal, and to close the case.**

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

**(Excused: R. Endo, H. Ajmani, U. Schulz, and W. Kamai)**

Vice-Chairman Shibuya: It's unanimous again. **All five members approved the acceptance of this notice of appeal to dismiss this case.** So there's no other active cases right now, at least agendaed items here.

### **C. APPROVAL OF THE OCTOBER 11, 2007, MEETING MINUTES**

Vice-Chairman Shibuya: The next item on the agenda would be the approval of the October 11<sup>th</sup> meeting minutes. Are there any questions on this, or additions, revisions that anyone would like to put in?

Ms. Acks: I'll move that we accept.

Vice-Chairman Shibuya: There's a motion to accept the minutes.

Mr. Shefte: Second.

Vice-Chairman Shibuya: Any discussions on this? Hearing none, we'll have a vote. All those in favor of accepting the minutes as written say aye. And anyone with – disagreeing say nay. Hearing none.

It was moved by Ms. Acks, seconded by Mr. Shefte, then unanimously

**VOTED: To accept the October 11, 2007 meeting minutes as written.**

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

**(Excused: R. Endo, H. Ajmani, U. Schulz, and W. Kamai)**

Vice-Chairman Shibuya: **The minutes are accepted.** For the record, these are accepted and placed in the record.

#### **D. DIRECTOR'S REPORT**

##### **1. Status Update on BVA's Contested Cases**

Vice-Chairman Shibuya: Director's Report. We'd like to find out the status on the update of the BVA's contested cases. I believe we have several of those, but they're in various stages of action, I believe, now.

Mr. Shinmoto: Yes, we don't have a current update for you. We'll provide it at the next meeting.

Vice-Chairman Shibuya: Okay. Thank you. Any items that the members would like to bring up or discuss? Hearing none, the meeting is adjourned.

**E. NEXT MEETING DATE: November 8, 2007**

#### **F. ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at approximately, 1:38 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE**

**Members Present:**

Warren Shibuya, Vice-Chairman  
James Shefte  
Kathleen Acks  
Rachel Ball Phillips  
Stephen Castro, Sr.

**Members Excused:**

Randall Endo, Chairman  
William Kamai  
Uwe Schulz  
Harjinder Ajmani

**Others:**

Aaron Shinmoto, Planning Program Administrator  
James Giroux, Deputy Corporation Counsel