

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JULY 24, 2008**

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 1:32 p.m., Thursday, July 24, 2008, 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: The first order, I guess, is Appeals. Staff, will you read that?

B. APPEALS

1. Determine a Hearings Officer to preside over the following matter:

PAUL R. MANCINI, ESQ., of MANCINI, WELCH & GEIGER representing MICHAEL MANCINI appealing the Planning Director's decision to deny the proposed relocation of a farm dwelling for property located at 718 Holopuni Road, Kula, Maui, Hawai'i (BVAA 20080007)

Ms. Trisha Kapua`ala read the agenda item into the record.

Vice-Chairman Shibuya: Thank you. We have representatives for the Mancini – Michael Mancini?

Mr. Paul Mancini: Good afternoon. My name is Paul Mancini. I'm representing my son Michael and my daughter-in-law, Heather, who's with me this afternoon. And they are the victims.

Ms. Madelyn D'Enbeau: And I represent the County, and we're the perpetrators.

Vice-Chairman Shibuya: And I understand that you are – you have some choices in terms of your Hearings Officers?

Mr. Mancini: Ms. D'Enbeau and myself chatted at the beginning of the week, and I think the priority list that we had decided upon was Judge McConnell, Judge Mossman, or Mark Honda. Those three would be satisfactory to us and I believe that order.

Vice-Chairman Shibuya: Is that agreeable?

Ms. D'Enbeau: That's correct.

Vice-Chairman Shibuya: Thank you very much. So the priority would be Judge McConnell, Judge Mossman, and Mark Honda, then.

Mr. Mancini: That's correct.

Vice-Chairman Shibuya: Okay, thank you very much. And can we put in a time limit on this, or will you be able to come back to the Board if you are in extension of it, or requesting more time?

Mr. Mancini: My suggestion is that Ms. D'Enbeau and I speak to whoever you choose within— I leave next Thursday for about three weeks. And we could speak to whoever that person is before Thursday, set up a scheduling with regard to briefing and a hearing, and then get back to you. This is not a type of case where there's a lot of factual issues involved. So I think it would be a rather expedited process. And I think it's just a matter of the parties' schedules during the summer months.

Vice-Chairman Shibuya: That's correct. I'm well aware of that. I just don't want it to drag on.

Mr. Mancini: We assure you, we won't drag the victims of being victimized. We'll do it quickly.

Vice-Chairman Shibuya: That's correct. Thank you. Shall we have the next one, please?

Ms. Kapua`ala: James, just for a matter of procedure, should we adopt that decision to choose those Hearings Officers?

Mr. James Giroux: Yeah, you can ratify the decision. It looked like it was by consensus, but just to make it clear, if you wanna take an official vote, or just ratify the consensus that everybody is okay with those Hearings Officers.

Vice-Chairman Shibuya: Any objections to Judge Mossman – I mean, Judge McConnell, Judge Mossman, and Mark Honda to be the – in that order of precedence, to serve as a Hearings Officer for this case? Hearing none, then it's accepted. Thanks.

Ms. Kapua`ala: Thank you.

2. Determine a Hearings Officer to preside over the following matter:

JAMES W. GEIGER, ESQ., of MANCINI, WELCH & GEIGER representing UWE H. H. SCHULZ appealing the Department of Fire and Public Safety's decision to require an automatic sprinkler system for an existing lanai enclosure (Building permit application no. B T20080351) at the Ka'anapali Royal Condominium located at 2560 Keka'a Drive, Ka'anapali, Lahaina, Maui, Hawaii; TMK: (2) 4-4-008:023-0059

Ms. Kapua`ala then read the agenda item into the record.

Vice-Chairman Shibuya: Thank you, staff. And we have representatives from both sides?

Mr. James Geiger: Good afternoon, Board. My name is James Geiger. I'm here on behalf of Uwe Schulz who cannot be here today and Ms. Johnston.

Ms. Mary Blaine Johnston: Deputy Corporation Counsel, Mary Blaine Johnston. I'm here on behalf of the Department of Fire and Public Safety.

Mr. Geiger: We also had discussions before we came here today. Did agree on a Hearings Officer—John McConnell. Ms. Johnston has talked to Judge McConnell who is willing to serve. And so it's just a matter of getting the agreement to him. We would suggest that after we've had our first conference with Judge McConnell that we jointly issue a report back to the Board as to the timing on it so that the Board can have some idea of how long it's gonna be. Again, this is not a factually intensive case, and we think it should go fairly quickly.

Vice-Chairman Shibuya: Alright. Thank you very much.

Ms. Johnston: I can corroborate that. I did talk to Judge McConnell, got his timeframe because he's very busy. And this is a case that we have agreed should be – should go as quickly as possible. And we have an idea of his schedule. And hopefully— Well, depending on when the contract – he's really on board, we're hoping to within four months, we will have it done. But we can give you a status report as soon as we've got the contract.

Vice-Chairman Shibuya: Thank you very much. Members, are there any objections to having Judge McConnell being the Hearings Officer? Hearing none, we accept. Thank you very much.

Mr. Geiger: Thank you.

Vice-Chairman Shibuya: We look forward to your report. Thank you.

Ms. Kapua`ala: Excuse me, Board, before you, you have a stipulation – I'm sorry, a petition to intervene on this matter. I'd like to introduce Mr. Mark Murakami of Damon Key Leong Kupchak and Hastert. He came from O`ahu to represent four different parties as intervenors in this case. And I think it would be in order to take up his petition to intervene.

Mr. Mark Murakami: Good afternoon, Board Members. I – we've just submitted the petition this week. And I apologize that it came in such short notice. And we did – I did trade emails with Corporation Counsel before. I'm not quite sure on procedure – on how to proceed. By way of background, on July 3rd, the County issued a letter to Martin Luna discussing lanai enclosures at the Ka`anapali Royal Condominium Complex. And there are a lot of folks with lanai enclosures there. Mr. Schulz was the – did appeal on the lanai enclosure issue. And my four clients– And I anticipate there will be further as more lanai enclosure-owning people out there discover about these proceedings. And they have an interest in these proceedings because the County's position is that however these proceedings go will affect the rest of the people out there. And so we filed a petition to intervene. We believe that we've set forth our – the justification for such intervention. And if it is appropriate at this time, we would ask that the Board allow such intervention. If it's not appropriate, as well as if the County some objection, then we don't mind coming back at the next Board meeting to address that issue once we've allowed the County to review our papers and whatnot.

Vice-Chairman Shibuya: Board Members, do you have any objections to accepting this?

Ms. Johnston: Mary Blaine Johnston, Corporation Counsel again. There are about 65 units that have lanai enclosure problems. Some of those units also have – they're called the loft or mezzanine problems where they have gone up into the – made extra room. Mr. Geiger and I have talked. And we want this particular appeal to focus only on the lanai people. We don't want the other issues in there. I think Mr. Murakami is in agreement with that. The problem is, I just got a copy of the application to intervene yesterday, and I haven't had a chance to even go over with my client. So I think we'd like to do – if we could continue this issue of the application for intervention for two weeks. And then that would give us time to – give me time to check with my clients and find out what their position is. So I don't Mr. Murakami has any objection to that.

Mr. Geiger: James Geiger on behalf of Uwe Schulz. First of all, we don't think there is a "lanai problem." We believe that what we did was okay, but we would again, ask that there be a two-week continuance on this to give everybody an opportunity to review the petition because I just received the petitions today.

Vice-Chairman Shibuya: Okay. Any comments from the Board Members or recommendations? Are we in agreement? If so, can I have a motion to accept the two-week period in which to accept the intervenors?

Mr. Stephen Castro, Sr.: So moved.

Vice-Chairman Shibuya: Anyone second?

Ms. Rachel Ball Phillips: Second.

Vice-Chairman Shibuya: Second. All in favor–? Go ahead. James, you wanna say–

Mr. Giroux: Go ahead and take the count. I'll make a comment after.

Vice-Chairman Shibuya: Okay. All in favor of the – allowing the intervenors at least two weeks to provide their information to this matter, say aye. Any opposed, say nay. None.

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

VOTED: To allow the intervenors at least two weeks to provide their information to this matter.

(Assenting: S. Castro, R. Phillips, W. Kamai, K. Tanaka, and W. Shibuya.)

(Excused: H. Ajmani, J. Shefte, S. Duvauchelle, and R. Endo.)

Vice-Chairman Shibuya: **It's unanimous.** All five of us have agreed to that. So we'll have a two-week stay and allow for the intervenors to prepare, and as well as you to prepare.

Mr. Geiger: A matter of clarification—I assume we're saying two weeks, but it will be the next scheduled meeting?

Vice-Chairman Shibuya: Next scheduled meeting is fine.

Mr. Geiger: Whatever that is. Okay.

Mr. Giroux: And what I wanted to clarify is that I guess if there is gonna be an opposition to the interventions, our rules say that a motion needs to be filed on that point, and I guess properly served on the parties.

Vice-Chairman Shibuya: Okay. Thank you very much.

Mr. Murakami: Thank you very much.

Vice-Chairman Shibuya: Okay, on the third item, the next item.

3. Stipulation for Dismissal With Prejudice for the following matters:

- a. **JAMES W. GEIGER, ESQ., of MANCINI, WELCH & GEIGER, representing HANOHANO, LLC, appealing (1) the decision of the Director of the Department of Public Works and Environmental Management, to amend his letter dated June 6, 2005, which granted approval to the preliminary plat for the consolidation and resubdivision; and (2) the decision of the Director of Planning that the zoning is Interim or otherwise improper for the uses permitted under the R-3 Residential District for two (2) parcels of land situated at Keahua, Kula, Maui, Hawai'i, TMK: 2-3-011:001 and 002. (BVAA2006002)**

Ms. Kapua`ala read the agenda item into the record.

Vice-Chairman Shibuya: Can we get the representatives again for both sides?

Mr. Geiger: Good afternoon, again, Chair and Board. James Geiger on behalf of the applicants, I guess.

Ms. D'Enbeau: Madelyn D'Enbeau on behalf of the County.

Vice-Chairman Shibuya: And your request is?

Mr. Geiger: This matter was resolved. I believe a stipulation for dismissal of each of the three appeals has been submitted to the Board. So we would like the Board to approve the stipulation for dismissal. Basically, clean up the paperwork and be done with the case.

Vice-Chairman Shibuya: Board Members, if I can have a motion?

Ms. Phillips: So move.

Vice-Chairman Shibuya: There's a motion to accept this stipulation for dismissal of this case with prejudice. Any second?

Mr. William Kamai: Second.

Vice-Chairman Shibuya: Second, Bill? Second. It's been moved and second to accept the stipulation of dismissal with prejudice on this particular matter. All in favor, say aye. Any opposed, say nay. None. There's five.

It was moved by Ms. Phillips, seconded by Mr. Kamai, then unanimously

VOTED: To accept the stipulation of dismissal with prejudice.

**(Assenting: R. Phillips, W. Kamai, S. Castro, K. Tanaka,
and W. Shibuya.)**

**(Excused: H. Ajmani, J. Shefte, S. Duvauchelle, and
R. Endo.)**

Vice-Chairman Shibuya: **It's unanimous—acceptance.** Thank you.

Mr. Geiger: Thank you very much.

Vice-Chairman Shibuya: The next item here would be— Let's see. Can you read that, staff please?

Ms. Kapua`ala: Shall we take up Item C?

Vice-Chairman Shibuya: You want to do Item c instead of b, Item b?

Ms. Kapua`ala: Item D, we can—the status of the BVA's contested cases.

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Ms. Kapua`ala: We just got back the Hearings Officer contract for West Maui Village Appeal which is a Maui Land and Pineapple appeal. We'll be proceeding with that. Other than that, there's no update.

Vice-Chairman Shibuya: Okay.

b. JAMES W. GEIGER, ESQ., of MANCINI, WELCH & GEIGER,

representing HANOHANO, LLC, appealing the Director of Public Works and Environmental Management's decision to deem the Kualono Subdivision (DSA File No. 2.2896) null and void for property located off of Haleakala Highway, Keahua, Kula, Maui, Hawai'i; TMK: (2) 2-3-011:001 and 002. (BVAA20060003)

- c. **JAMES W. GEIGER, ESQ., of MANCINI, WELCH & GEIGER, representing HANOHANO, LLC, appealing (1) the decision of the Director of Public Works and Environmental Management that the consolidation and resubdivision of two parcels of land situated at Keahua, Kula, Maui, Hawaii, bearing Tax Map Key Numbers (2) 2-3-011:001 and (2) 2-3-011:002 do not comply with Maui County Code, §18.04.030; and (2) the decision of the Planning Director that the zoning of those two parcels of land, situated at Keahua, Kula, Maui, Hawaii, bearing Tax Map Key Numbers (2) 2-3-011:001 and (2) 2-3-011:002 is Interim. (BVAA 20060004)**

Ms. Kapua`ala: Forgive me for the confusion. When I had read 3a, Mr. Geiger and Ms. D'Enbeau and addressed 3b and c. It's all – it was consolidated into one appeal.

Vice-Chairman Shibuya: That's correct. And that's what I was waiting to hear the rereading of the Item b and c.

Ms. Kapua`ala: Oh, yeah, forgive me. Before I even began to read on, it was addressed.

Vice-Chairman Shibuya: No problem. I think that was the intent for all of it. Thank you very much. Item C would be Approval of the July 10th meeting minutes—very short minutes.

C. APPROVAL OF THE JULY 10, 2008 MEETING MINUTES

Vice-Chairman Shibuya: Any objections or motions to accept?

Mr. Castro: So move.

Vice-Chairman Shibuya: So moved by Steve.

Mr. Tanaka: Second.

Vice-Chairman Shibuya: Second by Kevin. All in favor, say aye. Opposed? Nay? None.

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

VOTED: To approve the July 10, 2008 meeting minutes as presented.

(Assenting: S. Castro, K. Tanaka, R. Phillips, W. Kamai,

(Excused: **and W. Shibuya.)**
H. Ajmani, J. Shefte, S. Duvauchelle, and
R. Endo.)

Vice-Chairman Shibuya: **Unanimous.** Normally, the Chair does not vote unless it's a tie but in this particular case, if the Chair doesn't vote, then it's not good. The next meeting— Any matters that you have in mind that you'll like to talk about or discuss at this time? I'm just leaving it open now before we close. Any thoughts? No? None? Concerns?

E. NEXT MEETING DATE: August 14, 2008

Vice-Chairman Shibuya: The next meeting is actually August 14th 2008. Any problems with that? That's on the schedule.

Vice-Chairman Shibuya: We're open to hearing any adjournment

Mr. Castro: I usually don't know until almost the last day or the day before if I'm able to—

Vice-Chairman Shibuya: Come?

Mr. Castro: Yeah.

Vice-Chairman Shibuya: Okay, thank you.

Mr. Castro: Dealing with tourism, and a lot of layoffs, permanent layoffs, low occupancies.

Vice-Chairman Shibuya: Well, I appreciate you coming.

Mr. Kamai: I do, too, Steve, for the record.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 1:48 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Warren Shibuya, Vice-Chairman
Rachel Ball Phillips
Stephen Castro, Sr.
William Kamai
Kevin Tanaka

Members Excused:

Randall Endo, Chairman
James Shefte
Sandra Duvauchelle
Harjinder Ajmani

Others:

Aaron Shinmoto, Planning Program Administrator
Francis Cerizo, Staff Planner
Trisha Kapua`ala, Staff Planner
James Giroux, Deputy Corporation Counsel