

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
JUNE 10, 2010**

(Approved: July 8, 2010)

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Randall Endo at approximately, 1:41 p.m., Thursday, June 10, 2010, 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 Randall Endo: Good afternoon. This meeting of the Board of Variances and Appeals will now come to order. It is 1:42 p.m. on June 10, 2010. Let the record reflect that there is a quorum present of five Members of the Board.

B. UNFINISHED BUSINESS

1. **VICTOR V. CAMPOS and MYRNA J. CAMPOS appealing the Planning Director's Notice of Violation (NOV 20090014) for the un-permitted storage of damaged vehicles on property located at 1215 Lower Main Street, Wailuku, Maui, Hawaii; TMK: (2) 3-4-039:076 (BVAA 20100001). (Continued from the February 25, 2010 meeting.)**
 - a. **County of Maui's Hearing Memorandum**
 - b. **County of Maui's Exhibit List; Exhibits "A" - "L"**
 - c. **Lance D. Collins, Attorney, for the Appellant, Requesting a Motion for an Order Directing the Parties to Mediation**
 - d. **Lance D. Collins, Attorney, for the Appellants – Notice of Withdrawal of Counsel**
 - e. **County of Maui's Memorandum in Opposition to Appellant's Motion for an Order Directing the Parties to Mediation**
 - f. **County of Maui's Amended Hearing Memorandum**
 - g. **County of Maui's Supplemental Exhibit List; Exhibits "M" - "O"**
 - h. **John S. Rapacz, Attorney, for the Appellant, Requesting for a Continuance of Hearing Scheduled for June 10, 2010; Memorandum in Support of Request for Continuance of Hearing**

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

Ms. Kapua`ala: And I'll let the attorneys make their appearances.

Ms. Mary Blaine Johnston: Corporation Counsel Mary Blaine Johnston . . . (inaudible) . . .

Mr. John Rapacz: . . . (inaudible) . . .

Chairman Endo: Hang on one second. We're having technical difficulties. Is it correct that the

parties have agreed to stipulate to a continuance?

Ms. Johnston: That's correct. Mr. Rapacz withdrew the motion for mediation. And we decided to go directly into seeing if we could settle and still going forward today. We're gonna go from here and see if we can come up with some kind of settlement. And if not, we'll need – you probably should give us a backup date to come back on your calendar in case we aren't able to reach a settlement.

Chairman Endo: Do you want 30 days?

Ms. Johnston: Thirty days will be fine, whatever the meeting it is that can accommodate us.

Mr. Francis Cerizo: June 29 or July 8th are open. I'm sorry, it's July 8th or July 29th.

Ms. Kapua`ala: July 29th is the contested case for Mr. Wisthoff, the Launiupoko wall that we continued. That was officially moved from the 22nd to the 29th. So keep that mind there'll be a contested case that day.

Chairman Endo: So we prefer the earlier July date.

Ms. Johnston: So that's July--? What was it?

Ms. Kapua`ala: July 8th.

Ms. Johnston: July 8th.

Ms. Kapua`ala: Thank you.

Chairman Endo: So if you don't settle, then you should be prepared to present your case on July 8th.

Ms. Johnston: Correct. And if we do, we'll let you know ahead of time so you don't have to stay up all night looking at the materials.

Chairman Endo: Thank you.

Mr. Rapacz: Thank you. And I just want to confirm that the Board did receive the withdrawal of the order, request for order to mediate. Has that been--? I know I filed it. I'm not just sure if it made into the record.

Chairman Endo: On our desk. Got it.

Mr. Rapacz: Just wanted to confirm that. Thank you.

Chairman Endo: Moving on to the next item. Oh, wait, before that, does anyone wish to speak from the public on this agenda item B-1, the Campos matter? Seeing none. Thank you.

2. **TOM PIERCE, ESQ. representing MARGARET ANN HECHT requesting variances from road widening, paving and fire hydrant requirements of Maui County Code, §§16.04B.140, 16.04B.400 and 18.20.040 for the Margaret Hecht Subdivision (Subdivision File No. 1.296) located at 39879 Hana Highway, Hana, Maui, Hawaii; TMK: (2) 1-6-008:023 (BVAV 20100006). (Continued from the March 25, 2010 meeting.)**

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

Ms. Kapua`ala: The applicant is here, Mr. Tom Pierce. And also for staff, we have Mr. Lance Nakamura, Civil Engineer, with the Development Services Administration, as well as Mr. Paul Haake, a Captain at the Fire Prevention Bureau.

Chairman Endo: Good afternoon.

Mr. Tom Pierce: Good afternoon, Mr. Chair. Tom Pierce on behalf of the applicant. And the first thing I wanna mention is that – since we were here at the last hearing, an estate planning transaction that we had in the works we weren't sure exactly when it was gonna happen has occurred, and the applicant has shifted to Margaret Hecht's son, James Greg Hecht. He's not here today, but he was here the last time, and made a short appearance. So there has been that change, and we did submit a change in title, and the authorization and, all that to the Board and also to the Planning Department. So if that's still in order, we'll proceed.

Ms. Kapua`ala: Yes, it's duly noted. It's in the record.

Chairman Endo: So I think what we should do, Mr. Pierce, is have you give a supplemental presentation, but also feel free to just summarize your original presentation. We do have at least one new Member who wasn't there at your original presentation. And after you're done, then we'll see if there's anyone in the public who wishes to provide public testimony before we deliberate.

Mr. Pierce: Great. Thanks for that opportunity to give a little bit of additional information to the new Member. And I have here, Rich von Wellsheim, who's the general manager of the Ola Honua Reforestation Project. And he made the presentation the last time. With your permission, I'll let him do it again, because he's right on the ground and he can do a good job of that. And we have some slides we can put up to kind of explain the program.

And we also do have – we did submit this a few weeks ago, and I think you all have been informed that our supplement somehow didn't make it into the packets that you all received, but we have done a supplement which has– I'll just mention at the last meeting, what you asked us to do is to go back and spend some time talking to DSA, as well as to the Fire Department, and we did do that. Rich was primarily the lead on that, and he'll be telling you about what transpired. But we did put that in a letter which Rich can go over with you that he submitted on behalf of the applicant and on behalf of their work that they're doing because this is really – we're helping them to pursue their employee-ownership of this property and possession of this property. We've also – I attached in my part of the supplement, I just explained our variance request, so you may wanna take a look at that. And I've highlighted in italics. We can go back over that at the end, but I've highlighted in italics. There was some questions regarding exactly what we're asking the variance and I've tried

to make it a little bit clearer. There is one change that we've made here based upon our communications with the Fire Department, and I'll have Rich explain that. And those just have to do with the difference between the fire hydrants and stand pipes. And if there are any questions, I'll be happy to take them after Rich does his presentation.

(Mr. Bart Santiago entered the meeting at approximately, 1:47 p.m.)

Mr. Rich von Wellsheim: Good afternoon. My name's Rich von Wellsheim. I've been involved with the project since 2003. So I just wanna go quickly through this program that we gave you last time because there's a new Member with you. And so bear with us a little bit.

So we're located in the Hana region in Kipahulu, Maui, way up there where the red arrow is. And I represent Whispering Winds Bamboo, which is an employee-owned agricultural business. We bought the business from the owner, Margaret Hecht, on the first of January of this year after many years of planning for the employees to take over. My copartner and employee, Ryan Zucco, is with me. We're the two employee-owners at this point, but the organization is set up such that subsequent employees do have the ability and right, actually, to become employee-owners as this project goes forward. And really, that's the key to the variance that we're asking you folks for today is to try to subdivide off what we've developed over the last ten years as the infrastructure of our agricultural concern.

This is the – it's actually three TMKs that we've been working on doing some reforestation activities, doing our bamboo plantation. We have a nursery facility, employee housing onsite. This map we've added, just so that you can be clear what we're doing, it's the parcel on the right that is being asked to be subdivided. When we applied for a subdivision sometime ago, and the County came back with the three requirements that we're asking a variance for. And those were two road-widening improvement requirements, and also, fire hydrants within the land.

So we're taking a very large parcel, subdividing it into a large and a medium size, the smaller around 15 acres, and the larger up around 60 acres. So this is just a dual lot subdivision that we're asking for. This is not land speculation. This is not for developing estate housing, that kind of thing. This is actually to help our agricultural concern.

It's in this portion of the whole project that all our infrastructure lies: our housing, our equipment shed. This is our nursery facility here. We actually have a permit. We applied for a permit to do a processing shed for our bamboo all within this area. And at the moment, Whispering Winds Bamboo leases this land from the owner. And so we would like to be able to lease this without encumbering that whole 75-acre parcel from the owners, and then be able to be a standalone entity on the project.

We added this parcel because there was some question about legal access that the Fire Department brought up last time. We just wanted to show you folks that we do indeed have a legal easement up along that side and back down over the top recorded in place to both the small lot down below and then the larger of the lots in the subdivision request across there. But what's interesting about this –

Let's just back up a little bit and talk a little bit about our forestry project. We've been involved in

a cost share program with the State of Hawaii, Department of Land and Natural Resources, Division of Forestry, doing a cost share program for native restoration work and commercial timber. And this is just some shots of our – those are teak plants that we put in 2003, small leaf mahogany, koas. This is our bamboo farm. We have 20 acres of timber grade bamboo just coming on now. That's a schematic of our plantation. That's an aerial photo of most of the bamboo, and you can see some of the timbers up around where his red pointer is. We've cleared and planted close to 80 acres. The growth rates are phenomenal. The Division of Forestry is very, very excited about what we're doing. In fact, Sherry Mann who runs that program that we're involved with her has submitted a letter on our behalf that I believe is in your file.

These are just some shots of the bamboo species that we've chosen. These are high quality clumping, noninvasive. They're not running bamboos. And they do produce a really high quality timber bamboo. And our whole goal and mission here is to provide a renewable green building material for the State of Hawaii.

This is our nursery facility where we grow all our own trees, all our bamboo. We also have a landscape nursery business providing again, clumping bamboos for the landscape industry. We have different heights for hedges and windbreaks. This is a picture of our equipment shop. Notice the tractors and excavators and whatnot. So we're up and running. This is something that the owners have put together and funded for the last really, 20 years since they've owned the property. This is a farm labor dwelling that we built a couple years ago permitted by the County for our farm employees. This is inside the building, more housing, another aerial shot.

One of the things that we've added was the new map that came as part of your amendment so we can look at exactly what we're talking about. Here's some shots of our access and easement. Some is improved, as you can see, and some is not improved. A lot of the upper reaches have this concrete strips. These are not up to County standards for a subdivision, and that's again, why we're here for this variance. We do believe that we provide adequate access to the parcel. It's just not up to the County standard in this case. Here we show a dump truck as we think is pretty big compared to a fire truck accessing the property driving right up there with no problem. That's a two-wheel drive truck.

Okay, so just wanted to be clear about what's happening here, and another, maybe help understand the variance request. Here's the Hana Highway. And right here at our entrance it's about 15 to 16 feet wide. So again, not up to County standards. This is the legal easement that comes up here and actually goes all the way to the top, and then all the way back down into the – these are the two parcels that we're asking to be created out of the one. And so to abide by the County's requirement of improving the easement from here all the way to here would add considerable more length to the access. Our access now, we have a 12-foot wide legal easement across the State parcel which is concrete strips all the way up. And so what we're asking is that the variance allow for this to be sufficient for our one-lot subdivision. And also we're asking about fire hydrants. We'll get to that in a minute. I just want to be clear. Part of this easement is unimproved. It's just gravel road. And then there's a concrete portion in here, and then it's gravel road up to here, a little bit more concrete, graveled here, and then concrete strips all the way up both the house, and the equipment shed, and over close to the nursery facility. So this easement is 40 feet all the way up to the property. And then the legs that go down here and down here are 24 feet wide, and that's all recorded in the deed.

We did not, however, go and survey that easement to verify that actually the road is in the easement. I've been living in Kipahulu for 20 years and watched the parcels all up and down that road be sold, changed hands. And the road, I've seen flags and surveying marks, and the roads are never changed as a result of any of that. So I can't verify the driveway is in the easement, but I certainly believe so. It would be a significant expense to go and do that should we be required to.

The third point in our variance that we're asking for is the difference between the fire hydrant request that the Fire Department has asked us to do in order to approve this subdivision. We had thought we had stand pipes. Captain Haake was kind enough to come to the site a month or two ago. And we do not have stand pipes. We have firefighting equipment under and near all our structures. We're willing to add stand pipes, not fire hydrants. And I believe Captain Haake feels that that would be sufficient. He agrees also that there is a fire suppression system onsite that we put in—a 60,000-gallon tank with enough head and flow, but no fire hydrants, and also, that the fire truck does have adequate access and turnaround space up on the project. So that's it. If you have any questions, I'm happy to try to answer them.

Chairman Endo: Actually, let's take public testimony first and then I'll let you ask them. So is there anyone in the public who wishes to testify on this matter? If not, we will— There is?

Ms. Tweetie Lind: Hi. Are you asking that I can testify or I can't testify?

Chairman Endo: No, you can. Now is your opportunity. Did you already just sign up over there?

Ms. Lind: I signed before, but I'll sign again.

Chairman Endo: If you could please use that microphone and state your name?

Ms. Lind: Because we don't have this kind things in Kipahulu. Anyway, my name is Tweetie Lind. I'm here representing my families, my native Hawaiian people that are in Kipahulu, and partial of the community who don't – who are not really aware of all these things that are going on. I have questions because one of the question is that that ahu – this here is one royal patterned and it was moved over. So the boundary and the metes was moved over.

Another thing is, where are they getting their water from? We understand from Koukouai. I kinda had to call up the County and find out, research. There is no record that Margaret has any kind of license removing water from Koukouai. On top of that, it's a known fact in the community, my family, who's been getting a lot of fish – I mean opais or walking up on Koukouai. And my husband was one of them with Mr. John Hanchett who had put in this pipe for Margaret Hecht back in the '70s.

So that's all my question is, and the reason is why we're questioning is because of the other end of the stream, which is Pualuu, our community who actually comes to be a private water company will not be give ten native Hawaiian families water. That's our question: how can the subdivision of this?

I love Rich. He's part of our community. He's one of the leaders of the community. And we're just kinda surprised why Margaret Hecht wants to do this. She already got two parcels of State land, three other pieces of land, and she keeps constantly telling me that I'm rich, which is fine. But there are many others who worked on this Whispering Bamboo—many others. These are not only the two. Many others who built it from the last ten years, local boys, all mixed in, people who they bring in to work on the project. I'm just afraid that this will start another subdivision again for Margaret Hecht. Look at the land she got. The bamboos are outside on State land, private, on her private land. Even if the State wrote a letter supporting this project, it was the Kipahulu Ohana who did the same thing. My husband's plan was to catch the goats, make the fence, the same thing what they're doing. Only thing it was on State land, private land, which we got the National Park to help us boys who made sure the fencing went up all with Rich. In fact, this weekend they gonna go again. So we support it in every part of everything that they're saying. The only thing is, we're against the subdivision because the lady across down the street who owns 200-something is a native Hawaiian. She cannot go subdivide. She's got 200-something acres that they won't let her subdivide because she doesn't have water. So now I hear as a lay person, no fire hydrant. You really make it easier for them to get hold of these things. That's how we feel. And, Rich, I love him. I love his family. But I gotta think of the future. This is not only my thoughts, but many other thoughts of our families out there. Margaret Hecht said she wanted to be a conservationist, a preservationist. She did all that. She donated parts of it to Maui Coastal Land and made sure everything is done, but the natives— In fact, Kaiu still owns that land. It's not even clear title. Even if they say I have a deed, it's a warranty limited deed. That is a royal patterned land that was cut in half. And do you know that the family just won't come ahead? They won't come forward.

Chairman Endo: Excuse me. You've reached your three-limit. Can you finish up?

Ms. Lind: I just wanted to say that we are against this subdivision as a whole, as a family. And the reason is 'cause this is not a good reason enough for us for them to do all this so easily. Thank you very much.

Chairman Endo: Any questions for the testifier? No? Thank you. Anyone else from the public who wishes to testify on this agenda item? Seeing no one approaching the microphone, we will close public testimony, and continue with the first question for the applicant.

Mr. Rick Tanner: On the road, they were talking about being improved but not widened. Is that poured concrete or is that paver stones? It's hard to tell from the photo, the photo with the dump truck on it.

Mr. von Wellsheim: It's poured concrete with . . . (inaudible) . . .

Mr. Tanner: Oh, okay. I see.

Chairman Endo: Could you please use the microphone?

Mr. von Wellsheim: It's poured concrete with a stamp.

Chairman Endo: Okay, so I have a question then. I believe the last time you were here, we – some of the Members felt that we just weren't sure what exactly the two things we were comparing was.

For example, for the pavement, without your variance, how much would you have to pay? With the variance, what are you allowed to get by with? And so at this point, could you answer that in your words?

Mr. von Wellsheim: In terms of the paving?

Chairman Endo: In terms of paving, yes.

Mr. von Wellsheim: My understanding is that if Public Works made us pave the entire easement, and that may not be required, they have a minimum requirement of the number of subdivided lots minus one, times a hundred feet, would be the minimum that they would allow to be improved. And that 20 feet would be some kind of concrete or asphalt. And so if the variance is granted, there'll be no cost involved to us at all. And that's why we're asking to incur no further road improvement cost. As you can see, the strips that we put on the easement in the places where it's been hard to get to has been at considerable expense and energy. So to do more along the easement or actually in talking with Mr. Nakamura, they could require us to improve the Hana Highway just at the entrance to the easement, and just upgrade the Hana Highway for a hundred feet of that, and make that 20 feet wide. I don't have a number of what that would cost, but paving a million dollars a mile is what I heard it cost to pave, that's after the grading would be in place, widening the road. The problem with the road there is it's not wide enough to be just paved to 20 feet wide. Or somewhere on the easement likewise would need a considerable amount of dozer work to widen that.

The other cost that's involved with that, and the reason why my answers are vague to you is that my understanding of the process is that we would hire or have our engineer, Stacy Otomo, make a recommendation to the County in terms of what would be the most advantageous hundred feet of road to improve. And that would require again, surveying and Stacy's time, and we didn't want to encumber those costs at this time because we thought that our request was clear.

Chairman Endo: Okay.

Mr. von Wellsheim: I don't know if that answers.

Chairman Endo: That's a good answer. Mr. Nakamura, is that the County's position also?

Mr. Lance Nakamura: Yeah, I think that's pretty accurate. I mean, for us to give a detailed – or come up with detailed requirements for this project would take more detailed information. For example, we would need to know, are those concrete strips even in the easement, that type of thing. It could require the survey that would cost them extra money. And I understand their position, but it is difficult for us. I know you wanna know exactly what our requirements are at this point, but given what we have, we cannot give that, yeah? But our hundred feet would've been more advantageous out on the highway, maybe, but at the same time, I'm not sure how much benefit that is when the rest of the roadway is not improved. So it's hard to say exactly what we would come up with. And our ultimate requirements would be not only from DSA, but with Engineering Division. So it would take routing and discussions even potentially with the Director.

Chairman Endo: So hundred feet would the minimum amount of pavement?

Mr. Nakamura: Yes.

Chairman Endo: You could require more if you deemed it necessary?

Mr. Nakamura: Yeah.

Chairman Endo: What about DOT? Is there any kind of – since that's a State highway, right?

Mr. von Wellsheim: I don't think it's State out there. It's County, yeah, Tweetie? Yeah. I believe it's the County highway out there.

Chairman Endo: Is that correct?

Mr. von Wellsheim: The State ends in Hana, and we're in Kipahulu, 11 miles south of Hana still.

Chairman Endo: If the Members don't mind, I thought we would try and focus on this paving issue first, and then try and get discussion and answer all your questions, and then we can move on to the fire hydrants, the stand pipes. That way we'd just stay organized. So any questions on the paving? Bill?

Mr. William Kamai: Yeah, I would like to ask Captain Haake a question regarding the paving.

Chairman Endo: Okay. Captain Haake?

Mr. Kamai: Captain, you said your department had discussions with the applicant regarding the pavement on the road?

Mr. Paul Haake: We just went over there to look at the access that they had on their maps. For our requirements, 20 feet wide minimum, all weather surface. So we really don't call out for paving. We want an all weather surface that's capable of supporting a 50,000-pound fire apparatus. So if an engineer comes in with a design and says that this design whether – whatever he uses meets – is capable of supporting the fire apparatus, then we take that. So it's not necessarily have to be paved.

Mr. Kamai: In your opinion, the current existing access road, what percentage of the existing road would you say is adequate to meet your 20-foot wide all weather surface?

Mr. Haake: This is the access and it's wide all the way through. And you saw from the pictures, he had the cement strips that we can drive up on. Well, that stuff all ends right there. The cement strips go this way and they come up a little bit here. This road just exists on this paper. You can't drive up this. Then this road is 12 feet. So it doesn't meet our requirements because this is only 12 feet and we're 20 feet.

Mr. Kamai: So if you were to follow the current road, access road, from Hana Highway, how wide is that road?

Mr. Haake: I didn't measure it, but I'd say– Help me out, Rich.

Mr. von Wellsheim: . . . (inaudible) . . .

Mr. Haake: Fifteen okay. I'd agree with that, 15 feet, but it stops right there. And this is their access right here. So I know the fire truck can come up here and get all the way to here on those cement strips. I'll agree with that, but it doesn't meet our requirements. And if there's any type of emergency, we want the 20 feet so we can do one vehicle coming in and other vehicles leaving so you have the ability to pass. They have the capability to improvement. I don't wanna say where they have to do the improvements, but right now, this is the access to their parcel. This is just here on this paper. So this is 12 feet right here. And then it ends someplace around here, and then we have no access up to the top. None that we can drive a truck up on.

Mr. Bart Santiago: . . . (inaudible) . . .

Mr. Haake: Right. You can't drive on this.

Mr. Tanner: . . . (inaudible) . . .

Mr. Haake: Not even that. It's on this paper. It's not there.

Chairman Endo: Members, could you please speak into the mic., because we need to transcribe everything?

Mr. Haake: What's supposed to happen is they're supposed to get an engineer to design an access for them so that we have access to this lot and this lot. That hasn't been done. So there's no way for us to comment on any type of improvements that can be done. And when I went out there, I just went out to see – to look at the fire protection system that they said they put in, and to look at this road. So I was really surprised to find out that this doesn't even – you can't even drive a car on it.

Mr. Tanner: The road that does exist, the concrete strips, how deep are those strips?

Mr. von Wellsheim: Four to five inches.

Mr. Tanner: I mean, in bad weather, say, is that gonna support your trucks—four to five inches of concrete that's only—? How wide are they?

Mr. von Wellsheim: They're 30 inches wide . . . (inaudible) . . .

Mr. Haake: That's hard to say in bad weather. He had pictures of the dump truck going up so it works in nice weather, but in bad weather, we'd have a hard time, I think. If we strayed off of the strips, we might get stuck on the side. It's possible. It's hard for me to comment on that.

Mr. Santiago: Question: how heavy are those dump trucks that you had depicted?

Mr. von Wellsheim: They vary about 12 to 14 tons. And I don't know what the gross vehicle weighs, but at least that much. Not more than 30 I think. They're big.

Mr. Santiago: I just want a perspective relative to a 50,000-pound fire truck.

Mr. Haake: Probably comparable.

Mr. Ray Shimabuku: Mr. Chair, I have a question. Captain Haake, right now your opinion on that road with the two concrete roadways, you mentioned the 20 feet requirement to have traffic flowing possibly both ways. At this time, that's not possible with what you saw, then? Because there's only – the picture shows only two paths. I guess, one side for each side of the truck. But if in case, there is an emergency like you say at this present time, there is no double lane that you can have two emergency vehicles crossing at the same time?

Mr. Haake: Right, that's correct. No way.

Mr. Tanner: Is there adequate space once you got to your destination to turn the truck around?

Mr. Haake: Fortunately, over here when we get in here, it's relatively flat, so we can do some turning around in there. But all the way up on this road, you couldn't – I'm sure there's some areas that you could pass, but it's not 20 feet all weather surface.

Mr. Kamai: One more question: is there any existing road that gives you access to the upper portion of the lot past that dotted line that they're asking to subdivide?

Mr. Haake: No. I would have to say no, because—

Mr. von Wellsheim: There are strips to this point. There's concrete strips to this boundary line.

Mr. Haake: Okay, yes, but not through this stuff right here, and this is their dedicated easement. And this is – I guess this was the way that everybody drove through it, but when they did this parcel, this is the dedicated easement. So if they did a design someplace over here— This road needs to be 20 feet. So I don't know how you have that done, but it needs to be 20 feet. It's only 12 feet now. When I went up there— I'm not in agreement with the subdivision. It doesn't meet any of our requirements. Fire protection doesn't meet our requirements. They have some fire protection up there, but doesn't meet our requirements. It's not designed how it's supposed to be for the subdivision. They have access, but it doesn't meet our requirements. And there was no attempt to try and meet it by providing construction plans. Well, that's why they're applying for the variance.

What they're doing is a worthy project. So I had – to maybe try and make it a little easier, I had some stipulations for you guys just in case you think that it's – you're gonna allow the variance so that we could go forward instead of just saying no, no, no. So again, it's a worthy project. What they're doing up there is big, but I'm not in agreement with the subdivision. But if you allow it, I think these are the stipulations that should be put into place. No more structures or subdivisions of land allowed on the larger parcel until improvements to the access and fire protection system are completed as required for subdivisions, because there is no access and no fire protection for that larger portion if you allow this thing. At least a 24-foot wide easement must be provided for that lower proposed parcel, not that 12-foot easement that goes across. Okay? That 24-foot wide easement should include that portion of the road because that's where they have the cement strips. And then the – in the earlier BVA that we had a while back, they said that they had a fire protection that was submitted and approved to our – submitted to our office and approved. That's not correct. So the fire protection plan that was stated as being provided, the plan that they had, must be

installed as shown because they had stand pipes on there, and they didn't have it up there. They had hose cabinets for one and a half-inch connections. The stand pipes are two and a half-inch connections. And that's something that we could use if we had to go up to that lower portion to protect the structures there. And then all future structures on the lower parcel must be protected with fire sprinklers. No structures allowed on the larger one. So the fire protection plan they have, they had some water up there. They have a means. They have some means, but it does not meet our requirement for fire protection for subdivision applications. They do have some water up there, though, for fire protection. So I'm in disagreement with the subdivision. Any questions?

Chairman Endo: Captain Haake, a question on your 24-foot wide easement. I think that was your second point. Right now, I guess it's a 12-foot easement and you're saying 24-foot, but you're talking about the legal easement which is just the legal rights to travel, but I think more importantly, you probably wanna talk in terms or speak in terms of a pavement or a surface that you can travel on, or do you mean 24-foot wide travel surface? You know what I'm saying?

Mr. Haake: Right. That's all up for debate for you guys. Yes, I want 20 feet all weather surface for the whole thing. That's what I want. That's what is required.

Chairman Endo: Okay. Sure. James?

Mr. James Giroux: Captain Haake, is it your understanding that if they wanted to build a structure or a dwelling on the larger parcel that that permit would be routed through the Fire Department for review on access, I mean, notwithstanding the easement?

Mr. Haake: It would be.

Mr. Giroux: And you would then have to independently review that for access despite any variance that we would grant today?

Mr. Haake: Right, but one of the exceptions to access is fire sprinklers. So if they sprinklered the home, then we wouldn't need access.

Mr. Giroux: You wouldn't need 20-foot all weather requirement?

Mr. Haake: Right. That's building permit, now.

Mr. Giroux: In this variance you're asking for a condition that goes over and beyond that normal procedure?

Mr. Haake: Right, just to not allow any type of development on there. That's what they're gonna do is farm, then farm plans.

Mr. Santiago: I have a question. If the existing structures in the lower lot are retrofitted with sprinklers, then does your requirement for a 20-foot road leading to that lower subdivision, is that then released, or will that be sufficient to release that requirement?

Mr. Haake: That's a good question. There's two different processes we're talking about right now.

The one that Rich guys are applying for is subdivisions. So on subdivisions, we're trying to make sure that you have minimum access to the new parcels created, and a minimum amount of infrastructure put in for fire protection. So the minimum access for a parcel is 20 feet.

Mr. Santiago: Regardless?

Mr. Haake: Right. Well, now once you have a parcel, if you have reasons that you can't reach the area, say if they had 20 feet right there, but they put their home all the way up at the top, then now they can come in and put sprinklers. So it's building permit process—subdivision. So on the subdivision, we want to make sure that the new parcels that are created have the minimum access that is required, because what happens is people come into the office now and they have problems with parcels that were created in subdivision processes prior when there wasn't these rules. So they have like 10 feet of access. And there's no way for them to recoup the amount of land from their neighbors because maybe money or whatever, so right now, we're involved with this process so that all new parcels that are created have the access already.

Chairman Endo: Mr. Pierce?

Mr. Pierce: I just wanted to clarify a couple of things on the roadway issues.

Chairman Endo: Sure. Sure.

Mr. Pierce: I just want to explain a little bit about the background and the history of how this got – how the roadway easements came about. This was back in the '80s. It was part of a subdivision called Aina o Kipahulu Subdivision. And it included this lot right here, including a lot down here, and it also included a lot right here that went all the way to the road. And then there was this company called Kipahulu Investment Company that came in and subdivided that big lot, which was about 225 acres into three lots. One of the lots was here. The other one was this big lot which is the one that we're talking about here. That's 175 acres. And then the one that went all the way down to Hana Highway was split off. So they needed to provide access at that point, and show the County that they had access to this middle lot. And there was this existing road that went all the way up to here. And that was the access that was provided. And that's the road that's been historically used for I don't know how long: 40, or 50, or 60 years or longer. So this has been around for a really long time. This goes through some State properties. Just to be clear, this is a 40-foot wide access all the way to this point.

When Margaret Hecht purchased the property, she went through a three-lot subdivision process mostly to just assist her with what has been this master reforestation project plan dealing with – part of it dealing with this employee-ownership project that we got going here. And so when that happened, they did a flag lot right here and made it 40 feet wide to provide access up to one of the lots.

What she also did, because this is – would be a very difficult one. It can be. And as you guys know under the rules, a lot of times what you need to show for the purposes of subdivision or at least at that point in time what you needed to show was that you had a paper right, not necessarily, the actual right. Okay? But what she went ahead and did was she spent time negotiating with the State. The State owns this triangular piece which complicates things dramatically, and dealing with

the State here as a private landowner in this case. And they ultimately permitted us to appraise this and purchase this easement, this 12-foot wide easement. And if you're also familiar, the State ordinarily doesn't want to grant anything wider than 12 feet. They try to keep it to the bare minimum. So we don't know whether they would grant it. If they did, this would be an extremely – I mean, this took years to get this easement right here. So it would take more years to get it through. So this is something that we really would like to try to avoid with widening it.

I guess one of the points I'd make, and I think the photograph show this out, and I think Captain Haake would agree is the roadway – in terms of the actual use of the road, there is no difference, any part of this. Although there's a difference in terms of the legal width, what you actually see in the easement documents, when you're actually out there driving you wouldn't notice any difference. In fact, you wouldn't even notice when you drove off onto the State property unless someone showed you where the turnoff is. So the one thing I wanted to point out is, we do have – and you'll see this in our first memo in the application, this is 2,000, almost 3,000 feet of distance to get from here to the road. Okay? So we're not talking about a small cost to do a survey or a small cost to do road improvements. We also are dealing with neighbors who really wanna try to maintain the rural atmosphere out there. They don't wanna see this widened. So that's the first thing I wanna mention.

The other one is, we also really have to keep in mind the fact that the fire truck is not down – or the Fire Department is not down here at the bottom of the road ready to be up there in case of a fire. The Fire Department would have to come from Hana Highway on a road that the County understands is – doesn't meet the County requirements. It doesn't meet any of these requirements here. And there's multiple places along there where a fire truck would have to back up if it meets a tourist coming in the other direction or any other car coming the opposite direction. So the same public and health and safety concerns that Captain Haake's talking about exists on Hana Highway. So I think this is kind of like asking an engineer why do you need a four-inch line at the end of a two-inch transmission line? I mean, it doesn't increase the flow. It doesn't increase the opportunity to service this. So one of the reasons we're doing this is not to try to shirk our responsibilities or to have anything here that would be a public health and safety hazard. Instead what we're saying is there's nothing here that would change. Anything we do here is going to be at significant cost, potentially make it untenable for us to continue to do this employee-ownership process we're doing to convey this parcel over time to the employees because of the cost. The cost would get prohibitive, which is always a struggle when you're trying to do these things at a small cost. And we fortunately have a real philanthropic landowner who's withstood more travails than any ordinary landowner would to get us to the point where we are right now. So the point I just wanna make is that we will not see a diminishment in public health and safety by doing this.

Mr. Haake mentioned future landowners who might be hurt by this, but that's why future landowners are supposed to look at documents. They can see if they wanna go and further develop the property, if that happens at some point, they've gotta go and spend the money. That's just part of doing your due diligence. So if they come and sing their sad songs to the Fire Department at that point in time, tough luck. But that's not the Fire Department's concern is whether or not a future landowner is going to be – you know, feel like they got a bum deal or something like that because they didn't review the documents carefully enough. The question is, are we providing anything here that would – are we causing anything by granting a variance that would diminish public health and safety? And the answer is no.

And we are very much— The other thing I just wanna mention is there's no need to do any retroactive fire sprinkler systems. Over the last six or seven years, we have installed, working with the County, fire sprinkler systems on all the buildings. Those are all permitted. And it's my understanding that at some point in time, those engineering plans actually went through the Fire Department. Mr. Haake's right. Captain Haake's right. There are two different processes that are involved here. So the first thing I just wanna be really clear is that everything here is absolutely done to County standards with respect to this one large lot. So building permits were all properly in place. Fire sprinkler systems are in place and for the sake of the Commissioners, the new Commissioners, who weren't here before, we have the 60,000-gallon tank that feeds two four-inch lines down to here.

The one thing that we found out in the process of going through this variance process is that the stand pipes, what we have in place right now do not constitute stand pipes. And as we mentioned in our supplement, we'd be happy to do that. The difference in cost between stand pipes and fire hydrants is substantial. I think the last time we were here, Stacy Otomo, our engineer— I actually had the number in my first application, but I think we're talking about a difference of \$30,000 to \$40,000 between the stand pipes and the fire hydrants. That's a significant cost for us because once again, we're trying to get this transferred over in time to the employees. So that's just one of those things that comes up. What's the difference in terms of public healthy and safety? The difference would be 250,000 gallons per minute. In other words, all the structures down here are permitted by code. Okay? But when you do the subdivision, the numbers get bumped up to a double amount. So the question is, is there going to be a problem as a result of that? And we're saying not really because we're not — our intentions here are not to further develop this property.

So I think that looking at the stipulations, a lot of these — that Captain Haake mentioned, a lot of these make sense, but we would probably have a problem with the stipulation that the State easement be 24 feet wide. It would probably take me working with the State a couple of years to come back to just tell you whether I ever got that. And that's just not tenable for our needs here. So we'd be asking for a condition like that to not go in here. What I would say in response is there's no reason for it because the fire truck would never see any difference on paper between that, the legal easement, if I was able to ultimately get that to the State. They're not gonna see any difference in that.

Now, if there's a problem in terms of— And Captain Haake's absolutely right. We do not meet the Fire Department standards. We know that and that's why we're here today is to ask for your guys' help. The fire protection system would need to— I think one of his conditions was that we would need to include the stand pipes. We'd be happy to do that, if I understand that condition correctly. Fire sprinkler systems in all structures, we have no problem with that, and that's actually already the case. The final one that I heard was no structures on the larger parcel, and we define this right here as the larger parcel in our first application. This is the smaller parcel.

My problem with that is that right now without going through a subdivision, we are entitled to put structures including residences up here. We still have building rights available. So on behalf of my client, I've got a problem with a condition that would limit us in a way that would be detrimental to us even if we didn't have a subdivision. So I would ask the Commission to not consider that condition because it really would — it's inconsistent with even what the current state of the property is. I just wanna point those things out hopefully, to help out, and I think that's it.

Chairman Endo: Mr. Pierce, I think just to elaborate a little bit, I think Captain Haake's rationale for no more structures on the big lot would be based on the fact that once you were granted a two-lot subdivision, which is what you're requesting, you would then be entitled to two primary residences: one on each lot, two ohanas, one of each lot, and then of course, any number of farm worker dwellings. So your entitlements would double with regard to the primary residence and the ohanas once you are given an additional lot.

Mr. Pierce: Right. I guess what I'm kind of looking at is the current situation which is that we have one farm labor dwelling. And just once again for the sake of helping the Commissioners out with the history on this, this is a really rare instance. There's one part of the County code that says you can have a farm labor dwelling, which means a dwelling that can be used by farm workers that are residing in the County and working in the County of Maui. And it says you can have that if you are generating enough income. And this what we have here is a viable farm operation that's generating sufficient income where the County was able to verify that from the tax records, and permit this farm labor dwelling. So we have that. And we still do have currently— The other house that you saw is actually on this lot right here. One of the farm manager houses is up here, or farm employee houses. So we actually have the right under current conditions to have one more – one house and ohana. And so, yeah, it could go up further, but right now, that house and ohana could be placed anywhere on here. So that would be – that's what I was talking about, if that helps.

Chairman Endo: Do you know what your plans are? Do you plan on having a residence and ohana on the big one, or the little one, or both?

Mr. Pierce: Right now the landowners, Margaret Hecht and her son, Greg Hecht, and that's who have maintained all of these properties since 1991 right along in there have never wanted to live here. It has been primarily – the goal has been to really see this reforestation project take off. She fell in love with this Koukouai Stream which we do consider to be very important and something to protect. And the whole goal here is to really have minimal development. I can't say that we would never have a house and ohana here though, because we do need some flexibility in terms of our ability to have things out there. So it may be something that her son ultimately decides he does wanna spend some time out here or to live here full-time. But right now, there's no plan. And our goal right here with this is to try to get this. This as Rich mentioned really is the workhorse for all of the farm work. And the whole goal was to have the employee project which is primarily funded through this bamboo, but also funding this tropical hardwoods restoration which is happening over the property mostly up in this area right here, including a native project because up to this area, the whole goal of that was to have this be the nucleus for that, not just spread it all over the place. So this is something that the landowners need less, but the employees really need it, and we wanna try to figure out how we can get that conveyed over at a reasonable price sometime in the future.

Chairman Endo: Well, if I were to follow up analysis then, if you believe the homeowner or the landowner would be – have a difficult time giving up the rights to build a residence on the larger piece, would they give up the rights to build a residence on the smaller piece?

Mr. Pierce: Potentially, that's something that we could consider.

Chairman Endo: Okay. Just brainstorming.

Mr. Pierce: Yeah. And you know, by the way, one thing once again, for the sake of the Commissioners, I hate to be redundant on this, but from this point upwards, this is all under conservation easement. One of the things to happen when I first got involved with the project, and in fact, this is one of the first reasons that Margaret Hecht originally came in to me was she desired to put this under a conservation easement. So in the process of putting about 72 acres under easement, this was granted to the Maui Coastal Land Trust. All the development rights went away with the exception of one small house lot that's right up here. It's actually two – potentially two house lots here. So there's a possibility that there could be one subdivision, but what we did was we took about – an opportunity to have about – I think there were about ten subdividable lots that were allocated to this part. So that went away to just two. And in the future, who knows what may happen? I mean, they may never actually come to pass where those occur. But she did already do a significant rezoning, so to speak, on her own property voluntarily.

Mr. Santiago: I have a question, Mr. Pierce. Given the constraint of widening the State easement, have you folks looked at the cost of improving that road that does not exist in the map going up and then coming back down to get it to at least the – similar to what you have from the Hana Highway, 44-foot road that you have?

Mr. von Wellsheim: Yeah, we have the terrain– The topography is really bad. It's steep. There's a dry streambed that goes and crosses through that. It's not really advantageous as access. And then to go all the way up there and all the way back down, I think in my amendment letter, I have the distance on that, but it would increase the response time for the Fire Department to go all the way up there, and then all the way back down into the village. The cost of the strips, we've been doing them for about \$50, \$60 a lineal foot for both. So it gets to be quite costly in the end for again, no improvement in public safety, we don't think, or response time is really what we're talking about. From Hana, it's already a 35-minute drive. So to subject an emergency vehicle to even more terrain just didn't make any sense to us. But we have looked at improving that. It's just really not – if we can avoid it at this point, it's really not worth the time and effort to do so at this point.

Mr. Santiago: Thank you.

Chairman Endo: Does the Department of Public Works or Mr. Nakamura have any comments on the County's position or comments on the Fire Department's position?

Mr. Nakamura: No.

Chairman Endo: No? Okay. We've been focusing mostly on the pavement of the road, but we should probably also since we're taking quite a while now, I think, Captain Haake, in your comments, you also discussed the improvements basically going up to stand pipes instead of fire hydrants – I'm sorry, going to stand pipes instead of whatever they have now as a middle ground, but not going all the way up to a fire hydrant. Is that correct?

Mr. Haake: Sorry. No, that's not correct. What they showed on their plans that they submitted earlier were stand pipes, but when I went up there, it wasn't stand pipes. I mentioned stand pipes because that's what we would be able to use for – if we needed fire protection.

Chairman Endo: Okay, but if they upgraded to stand pipes, then what would your position be?

Mr. Haake: That they have some fire protection.

Mr. Kevin Tanaka: Captain, have you seen what we're looking at, the map that what I'm assuming looks like three new locations for actual two and a half-inch stand pipes?

Mr. Haake: The red stars?

Mr. Tanaka: Yeah. And those locations are logical and agreeable?

Mr. Haake: For the subdivision process?

Mr. Tanaka: No, just for fire protection.

Mr. Haake: If they were stand pipes, then we could get water out of them. So in the beginning, they showed a plan. So I just went up there to see what the plan was, what was provided. It wasn't approved by our office. I think they just put it in on their own. And so when I went up there, they said this is what we have. And I said, well, we can't even use that. We'd need at least a stand pipe. So that's how the stand pipe was mentioned if we were to use that system to get water. It doesn't meet our requirements. I think when we talked about a simple design for the parcel, we looked at that top road that goes across and then comes down. And we looked at maybe that part being improved with fire protection there, and then driveways to both parcels like a design that we were looking at. But that road that goes up along the side, that flag to the top part doesn't exist. We were just throwing some things out in the office. So some improvements would be done over here with some fire protection provided here, and then these would be driveways to there, something like that. But this doesn't – it exists on the paper, but it's not an access. So right now, this is their access to here. So I don't know how to design something for that to give access to this and this. When I looked at the fire protection, they had connections similar to the things that you see maybe in a hotel with the hose already in there, inch and a half connection. On their plans they showed a two and a half-inch stand pipe, but they didn't put that in. So when I mentioned the stand pipe, I just said if it was stand pipes, then we could use it, not that if it was stand pipes, then I would be okay with the subdivision. That's not what I meant. When I mentioned it in my conditions was if you guys allow this thing, then we should have at least have those things as stand pipes so that we can get the water out.

Chairman Endo: Member Kamai, you have a question?

Mr. Kamai: Yeah, what was that mentioning of a sprinkler system? Was that part of it?

Chairman Endo: All future structures on the lower parcel should have sprinklers if we were to grant the variance. That would be the Fire Department's position.

Mr. Haake: Yes, that's correct. So no more structures on the larger parcel. If they're gonna do farming, you know, approaching you guys and saying this is worthy of that, because we're gonna do farming, so okay, do farming. No more structures on the top. Sprinkler the homes on the bottom, whatever left that they can build.

Mr. Tanaka: New structures.

Mr. Haake: Right. That's if you guys allow it. I'm against it.

Mr. Santiago: So new structures on the lower parcel is what you're mandating that sprinkler?

Mr. Haake: Right. Don't allow any more structures on the larger one. Sprinkler all the ones on the bottom or any more that they can build so you guys can move forward. I mentioned the 12-foot access, I guess. They already have the access on paper. So maybe that might've been a little too much, but I put it in my stipulations because when we went up there, Rich guys talked about that road that's on the paper. And it seems like it's not a viable – or one that could be improved later on anyway, right?

Mr. von Wellsheim: . . . (inaudible) . . . expense.

Mr. Haake: Right, would cost a whole lot of money. So right now if you're doing a subdivision, why don't you make a correct one for this new lot that you're doing? And then for the larger one, if there's any more subdivision for that larger one, then we can approach it then. But for the smaller one, we don't have to worry about ever having to improve that stretch that goes up and around. He already has that one increased. So that's why I mentioned that they should look into widening that one.

Mr. Kamai: Captain, can I see your list of conditions?

Mr. Tanaka: Trisha, actually, maybe you could answer this question for me. On the assumption that the subdivision is granted, and whether it be a year from now or ten years from now, the owners want to build structures on the larger lot, the building permit process would require that it goes through and pass through Captain Haake's hands?

Ms. Kapua`ala: Yes.

Mr. Tanaka: So that wouldn't even necessarily need to be a condition because the same comment would arise at that date that they need to provide access to that structure.

Mr. von Wellsheim: . . . (inaudible) . . .

Chairman Endo: Yeah, the requirements for a subdivision are more onerous than the requirements for a building permit.

Mr. Tanaka: But they wouldn't be able to subdivide anymore, anyway. Would it be possible to say any future, as part of the building permit process or application, can we hang that saying that okay, if a building permit is applied for that the subdivision requirement would have to be met? That access would also be a part of fire protection.

Chairman Endo: That's basically what Captain Haake was saying. He's saying that we're basically deferring the subdivision requirements until such time as you want to build a structure on the larger lot. So he wasn't saying you'd never build, but once you wanna build, then all of the exempted variances would go away, and you'd have to upgrade everything to meet subdivision requirements. That's I believe how he was phrasing his proposed condition.

Mr. Tanaka: Because, Captain, you actually said no structures to be allowed on the larger, but is that—?

Mr. Haake: That would be true, Chairman, if they came in with some construction plans that we could enforce later on, but there's nothing. You know, like if they had some construction plans, and we said, okay, you're gonna build something now, put all this in. They don't have any construction plans. So there's nothing that could say. So it's just a stipulation was no more structures on that one, on the larger one.

Mr. Tanaka: On the larger lot, but if they wanted to somewhere down the line, then they would have to go and say, okay, well, if you're gonna do this, you're gonna have to get a surveyor. You're gonna have to get a civil engineer. You're gonna have to go through all of these to meet that requirement.

Mr. Haake: Right, what would be required right now.

Mr. Tanaka: Yeah, what would've been.

Mr. Haake: Yes.

Mr. Tanaka: So basically it's a deferral of if they build – they wanna build something.

Mr. Haake: Yes, if you look at it that way.

Mr. Santiago: So the door's not close. There's the possibility of building structures on that upper lot could be had if they provide the construction requirement that you're mandating now in the future?

Mr. Haake: I guess so. Maybe improve the thing to how it's supposed to be to allow this subdivision without going through a BVA.

Chairman Endo: Just for procedural purposes, for background, I believe the way would be is that these would be conditions of the variance. So the condition is as long as you want this variance in effect, you can't build any structures on the larger lot. So once they wanna build a structure on the larger lot, then the variance goes away which would mean that they're not in compliance with the Subdivision Ordinance, so they have to go back and comply with all the things that they were exempted from? Is that correct, James? That's typically how the conditions work.

Mr. Giroux: Yeah, I believe that's how it would work. Typically, if somebody is not in compliance with conditions of a variance, then there would be a typical kind of like an order to show cause process in order to take away somebody's variance. They would have to come in and show why they feel they still are in compliance. So they would have a due process hearing. That would be in front of the Board of Variances. If in the future, that condition was on the variance, they went in for building permit, started building, the County says, hey, guys have a variance and you're not in compliance, they would give them a notice to come back to this arena to review why they wouldn't have that variance rescinded. Otherwise, they could go forward creating these compliances while they're getting the new building permits. And then, it wouldn't be an issue.

Mr. Tanner: I guess my question is, is the applicant interested in receiving a variance with those conditions attached, because he made it sound like we don't wanna give up our rights to build on that upper section which we have right now?

Chairman Endo: That's true. Maybe we should hear from the applicant. I mean, not saying— Nobody's made a motion, but I guess for discussion purposes, hearing from the applicant as to whether or not that would be — you'd be amenable to it or not.

Mr. Pierce: Yeah, the first thing is just an apology that I don't have Greg Hecht here with us today, but based upon the conversations I have had, and just based upon what would be common sense here, one of the things — this goes back to something I was saying before is, this is something I'd like to broach to Greg Hecht, the applicant, is this possibility if this is where it ends up going. But the way that I would suggest that we try to word it is, if we're going to go that direction, is to where any houses that would be permitted in addition as a result of the subdivision. And this just goes back to my point that right now, there is still an existing right to build a house and ohana on that property, if you can meet the building permit requirements. And we should have the right to do that anywhere we want. So I'd want it to be for any new rights that result as a result of the subdivision. I would not want to diminish our current rights.

Mr. Tanaka: You stated that there's a portion of that large lot that's high up that's designated for that possibility of a house and ohana. I guess what I'm thinking is, now, I'm not familiar with the area, I mean, I'm familiar with that side of the island, but not its exact location. Now, something way up on the mountainside and with all of that area and no one else around you, you have the potential to possibly build an extravagant home and sell it for a profit. And if you were to do that as a moneymaking venture then there should be things that — not just sell it out and put in an eight-foot dirt road that goes up to that piece. That's the thing. But if you build something that's just adjacent to the smaller parcel that's a home that the owner actually lives there and works there, I mean, you see the difference that I'm talking about. That's the concern, I guess. So if you did go and build something and sell it for a tremendous amount of money, part of that should be infrastructure costs for fire prevention.

Mr. Pierce: I do see your point. I guess I don't think it diminishes this point that I'm trying to make. Maybe if we can go back just momentarily to this map? You know, to build up here is not going to — I mean, anyone to build up I believe what's going to have to happen is they're gonna have to meet all the building permit requirements, which means it's gonna have to be a separate fire system because this fire system wouldn't be able to feed that one. So it would be significant, but what I guess I'm saying is under the current situation where we have a 70, around a 75-acre parcel, this altogether is a 175-acre parcel. When it's get subdivided, in the proposed subdivision, it'll be 63 acres and around 14 acres. I know my math's not quite — that didn't quite add up to the 75, but you get the idea. But anyway, what I'm trying to say is without us having a variance or anything, if the owner was to be able to financially pull off doing the improvements necessary, they could go ahead and do that, and they could sell that. And that's something that's just a very fundamental point I think. I don't think the Commissioners necessarily are wanting to cause there to be a diminishment in the current rights that this landowner has existing without going through the subdivision process. That's the thing I'm trying to avoid. That actually wouldn't be a really good thing for me to go back to the client with. I mean, you know, in other words, if we are saying, hey, you have just received new entitlements as a result of this subdivision, but you got there through a variance, and we

wanna make sure that this variance is just used for the limited purposes that you presented here, and that you can't get a windfall as a result of it, which is what I kind of hear you saying, I think that's something that the owner needs to consider. And then his option is either accept the variance or go through the subdivision cost, like you're saying, which would always be, is my understanding, was always going to be an option that's gonna sit out there. You know, subdivision, that's something that any owner whoever has this always has the option to doing because that's a point where they say, thank you for the variance, but we've decided we're gonna go ahead and put in the improvements, right? But under this current circumstance we're dealing with here, I think having something where that's being considered is fine. I think it's something that makes sense for me to take back to the owner and try to explain, but I would not want it to diminish the current rights.

Chairman Endo: Captain?

Mr. Haake: Thank you, Chairman. Part of the reason for that condition that I stated was because the sprinkler systems that they put in those homes is a different design from the commercial setting. So that gives you time to get out of your home. It doesn't put the fire out. It's not designed to put a fire out. So you could still have a fire in that structure, and you would still need the fire truck to come to that building to put it out. Ninety percent of the time, if that sprinkler system goes out, it's gonna put the fire out, but it's not designed to put the fire out. So for residential buildings, they lower the standard a little bit. Just design the system to keep the fire in its early stages so that it can be detected and so the people can get out. And the reason why I said no structures on the larger parcel is because we don't have no access if you allow the BVA. It all ends right there, right here. That's where our fire truck can get to, right there, at the current conditions. That's the reasoning behind that.

Chairman Endo: Thank you, Captain Haake. Members, I think we understand the issues pretty good at this point. Anybody wish to make a motion or not? Anybody have further questions or thoughts, then, they want to bring up?

Mr. Tanaka: Captain, one other question. The difference between the building permit process and subdivision process, now, in the building permit process, if you're building in Wailuku/Kahului where it's easily accessible, what kind of difference is there as far as access within – just as part of your building permit process?

Mr. Haake: We check for distance to fire hydrant that is located on a 20-foot wide all weather surface, Fire Department access road. It needs to be within 500.

Mr. Tanaka: Five hundred feet. Yeah, that was the only question. Thank you.

Mr. Haake: I got one more comment for you guys. Whenever we had these BVAs, it was always like I always thought I gotta convince these guys that, you know, not allow it, right? I don't wanna feel like I lost the BVA. But I understand that you guys gotta make some decisions, so that's why I put that stuff in. And when you allow the BVA, that just allows me to go back to my office and then put the same requirements that I put on these guys on the next applicant. And I understand that you guys gotta make one decision, so that's why I put in the stipulations to help you guys so you guys could move forward. And it's not about me trying to win every BVA that I come up to.

Chairman Endo: Thank you, Captain.

Mr. Tanner: Chairman, I would be hesitant to make a motion for a variance with conditions when the decision-maker isn't here to accept the variance. I mean, if we put the conditions on, my understanding is he then takes that and goes back with it. Can we do that? Can we say, okay, we'll make a motion to approve a variance on these conditions and he can't answer it?

Chairman Endo: Well, at that point, the landowner would have the option of giving up the variance. So basically we're giving a conditional approval. If they don't like the conditions, then they can just abandon their variance. So we can move forward and issue it with whatever conditions we feel are appropriate. Corporation Counsel? That's my understanding.

Mr. Giroux: Yeah, I think it's critical that your first analysis is does it meet the criteria to even give them a variance? That's your bottom line. The conditional variance is a procedure where if they've met the criteria for a variance, yet there's additional impacts that you're concerned about, then those conditions must be reasonably connected to those possible impacts. It's possible that a project meets a criteria of a variance, but there's concerns for the community, concerns for public safety. And you can put additional conditions on that would – you know, issues of timing, issues of possible exactions, things like that. So I think that's the framing that you have to look at. And as I stated before under a conditional variance, there's not a heck of a lot of case law out there, but the assumption is that the variance meets the criteria, the condition meets the standard of reasonableness. And that if the homeowner or landowner doesn't feel that for one – well, let's say the conditions are unfair, then they would just challenge the variance. Like Randy said, you basically are saying, well – you'd have to say that I didn't meet the criteria, so you shouldn't have never given me the variance, which means you lose out. It's a lose-lose scenario. The other option is that they do a petition back to this Board and ask for a modification of that condition, which you would then procedurally take up through a petition. I'm trying to think. There's always a third option.

Chairman Endo: The third would be they could appeal the condition as being illegal.

Mr. Giroux: Right. And then they would go to the circuit court and ask the court the condition to be modified.

Mr. Santiago: I do have another question for Captain Haake. Why would you not add as one of the conditions to retrofit the existing facilities or buildings to comply with the sprinkler standards for a commercial building?

Mr. Haake: All their structures are sprinklered right now.

Mr. Santiago: But you're saying it's not at the level that you would want it to be.

Mr. Haake: No, it's at the level that it's supposed to be for–

Mr. Santiago: Residential?

Mr. Haake: Right, and that level is not designed to put out fires. It's just designed to give you time

to detect the fire and get out.

Mr. Santiago: So you're okay with that existing sprinkler system and not getting it to the higher level for commercial buildings as an added feature for fire?

Mr. Haake: It's because we have some access to that lower parcel. That's right, we don't have no access to the upper parcel.

Mr. Santiago: Thank you. I do have one more question just for my understanding. Water rights from the stream that we're tapping into or you folks are tapping into, are there actual rights to that stream, or did we just decide to tap into it for the sake of tapping into it, and be able to irrigate what we're growing?

Mr. Pierce: I think I can explain that in a way that can give you a lot of comfort, which is that the County, when the original subdivision— I mentioned a couple of subdivisions. One was done by Kipahulu Investment Company. And all the records in the file show that the County signed off on an engineering plan for the initial fire flow system. By the way, one of the things we really didn't mention on here is there's actually another fire flow system that's on the property but that we don't tap as part of this. But during that process, that was confirmed through Koukouai Stream. And at the time, one of the things that they showed that the landowner at the time showed the County was that they had a diversion permit for the water rights on that, and that flows out of a 30,000-gallon. What happens is the water is diverted upstream. There's easements for that. And then it flows into a 30,000-gallon tank here, and then it's brought down, and services the rest of the property. So the answer is that that was approved by the County the first time of the subdivision, and continues to be our source of water. What actually we're doing is trying to run as much as possible, any new structures and things like that off the catchment. That's the other primary way we're doing things which ordinarily is a great way. It's been a little dry up there lately, but ordinarily, Kipahulu is just a fantastic place for catchment systems. Does that help?

Mr. Santiago: So the permitted diversion with the expansion of the farm, are you still within the limits of what's to be diverted?

Mr. Pierce: Yes. In fact, I mean, what the diversion originally was for was for agricultural uses which are way higher than residential uses. And in fact, one of the things we explained the last time here, we're really dealing with a fire flow. So that 60,000-gallon tank that was built here on Parcel 22 is filled up. And except for occasional evaporation which is fairly minor because that has a top over it, right, it's fairly minor evaporation. This requires almost no use of water.

Mr. Santiago: Thank you.

Mr. Pierce: One of the things, Mr. Chair, I don't wanna go over unless people – you know, the Commissioners feel like they need it, but the last time I was here I did quickly go over the criteria, the variance criteria, and why we felt we met them. If you folks want me to do a quick repeat of that, I'd be happy to. The only other thing I would like to do is at the point where the conditions get discussed is maybe – I think I wanna wait, but to the extent the conditions are placed, I'd like to make sure that it just provides what I think would be appropriate flexibility for the landowner to consider options but still maintain portions of the variance. I might wanna mention that at some

point during the discussion. But I'm happy to go over the variance criteria if anyone wants that.

Chairman Endo: Does anyone want to hear that?

Mr. Tanner: It's clearly written out. And as you put, our reasons are simple. And you've got your four reasons listed. I guess I just have a challenge taking what you've written and clearly showing to me that this meets our criteria because our criteria are pretty straightforward and are very limited. And whereas I certainly have sympathies for you in what you're trying to do, I'm still having difficulty seeing where that meets our criteria especially when we consider what we're trying to judge here is generations ahead and not just what you're trying to do right now.

Mr. Pierce: Right. And I think what you're referring to is the Whispering Winds letter.

Mr. Tanner: Yes.

Mr. Pierce: But what we have is – the first time we were here, our initial application, which was the more thorough one, we only did the supplement where it's needed on this one. That one, hopefully, there may be some copies there for you all. We weigh out each of the criteria and that starts on page 8 of our initial application. And we do speak specifically to each of the variance criteria. And I don't wanna get into them without you folks wanting to, but I could do like a two-minute summary of those again. But I absolutely agree that your job here today is to make sure that we've met the variance criteria. The Deputy said that as well. And I would like to the extent you're not persuaded, I'd like to real quickly tell you why I think you've got a really good case here why this is exactly the kind of place where a variance makes sense. And you could feel comfortable about it today and into the future.

Chairman Endo: Sure. Why don't you go ahead?

Mr. Pierce: Okay. The first condition or the first criteria is, is there special geographical or physical circumstances or conditions affecting the property that are not common to all property in the area? The biggest point here is that there's really two things that I would point out. There's a few other ones, but I'll just hit the highlights. Once again, we've got almost – and I'll check my numbers here again, but I believe it's almost 3,000 feet to get up to this property. We happen to be unfortunate in that this property is just very mauka of the public highway. Most properties just don't have this long of an easement that they have to go through. And we were faced with the possibility in our meetings, our initial meetings with Public Works, because we certainly didn't come to you Commissioners before we tried to research this. But what we realized is we're gonna have to provide DSA in order for them to make a decision was a whole lot of engineering and surveyor work – I mean, tens of thousands of dollars. And we just realized that that was going to be very difficult. And the end result could be that they didn't require just a hundred feet, but they'd required a lot more, which would be of significant cost because we're out in Kipahulu. It would be a significant cost anywhere but it would really be a significant cost in Kipahulu.

The second part is I think that's an unusual circumstance: the fact that the road from Hana Highway where the Fire Department is out to the private road is substandard. And I think that has to be taken into account. I think that is a unique situation. We certainly, if we were sitting in Central Maui, wouldn't be – feel as confident that this was the right thing for the Commissioners to be doing, but we're dealing with a part of the island that still has a lot of substandard features so we don't feel

like that improving this up to County standards makes a lot of sense under the circumstances. And I think that's something that you can really see as different from a lot of the other properties except those that are out in that area.

Going to the second criteria: the variance is necessary for the preservation and enjoyment of a substantial property right; there would be extraordinary hardship that would result in strict compliance. We've mentioned the cost. And I see here by the way that one of the cost we have here is that how the fire hydrant condition would result in approximately, \$40,000. That's the cost just for each of the fire hydrants that were required. Plus, we did have – and when Stacy Otomo was here the last time, I think he reported his numbers, but they're in the hundreds of thousands of dollars to do full improvements. We don't know exactly what it is, but we can tell it'll be a substantial cost here. So that's why we're asking for these two criteria: one is not to pave and leave the road as in the circumstances. The second one is the modified one from our original application, which is that we provide stand pipes, which up until recently was permitted under subdivisions in agricultural lands, but those restrictions have gotten a little more heightened in recent years.

The third one is special geographical or physical circumstances or conditions affecting the property are not the result of previous actions pertaining to the subdivision. And that's I think clearly the case here where there's nothing in this particular one that actually is relevant I think with this one. What I point out here is that we have done everything we can do to get all the current permits to make sure we are meeting the fire rules. And I think with the addition of the stand pipes, we'll be entirely up to code, and that was something that turns out to be an oversight.

The granting of the variance will not be detrimental to the public health, safety, or welfare. I think you guys have heard me talk about this a fair amount. And the point there is that we do have this onsite fire system which was really the best source of a system out there because of the difficulty in getting a fire truck out there. But we have I think shown– And Captain Haake, I think – I absolutely understand where he's coming from that he's not looking to see places like this pop up all over Maui, but I think he has – you know, even himself found that we can get a fire truck up there. And the conditions of our roads will be no worse than the conditions I think of the County road in a lot of those cases just in getting there.

This is the next criteria: the granting of the variance will not be detrimental to the public health, safety– Excuse me. I'm sorry. The property is appropriately zoned and we have met that as well. And if you have any further questions, I'm happy to answer them. Thank you.

Chairman Endo: I guess, Members, we would like to try and have a motion in the next ten minutes or so. I have to leave in about 15 minutes. Of course, if I do, you folks can continue without me. Mr. Tanaka: My question is if we can add the stipulation regarding that larger parcel so that upon that time whatever proposed action in the future for the larger parcel would trigger the Fire's review. I have no problems with the– I agree with what you're saying regarding the variance specific to this parcel: the additional fire protection for the parcel and what would be a very limited – very small roadway pavement access. I would say that's not a problem to grant a variance for. What I guess my concern is what Captain Haake said was that on the second parcel, and I agree that the second parcel that the owner should be able to do what their right is to do, but along those lines, basically – and, Captain, if you can correct me if I'm wrong, if they propose a building on that larger parcel that is not within 500 feet of a water source for fire protection, the building permit would not be

allowed.

Mr. Haake: (Inaudible)

Mr. Tanaka: Can this Board add a stipulation for scrutiny at a later date as part of a building permit for a specific parcel?

Ms. Kapua`ala: Yes. And I think Randy mentioned – stated earlier where the condition would be that the variance would exist to allow the processing of the subdivision. However, as soon as a building permit is applied for, we wouldn't be able to sign off on that building permit until the variance condition – I mean, we would be able to sign off on the permit as long as they provide the improvements. So the variance would exist to allow the subdivision to be processed, but would go away once the building permit is applied for, and then we can sign off, and then the variance will go away. Or do we have to do the order to show cause, James?

Mr. Giroux: I think the issue is in how skillfully we're able to craft the condition. I would suggest that if that's the direction you're heading, that you do wanna see the subdivision to go forward but your concern is that no further buildings are built in fear that you're going to be endangering either the community or firefighters is that the condition be very specific that in any future building on the larger parcel that all the requirements of access and fire are met. Because what you guys are having trouble with is they can always do an end-run around access. Just put a sprinkler system. So the condition has to be very specific that all requirements of access and fire. So I think that's where you would be able to catch a building permit on the larger parcel. And again, we're gonna have to see it, read it, look at it, and see if that works.

Mr. Tanaka: From what you're saying is, by putting that onto the building permit application of the larger parcel, they'd have to meet the standards of 20 feet, but that doesn't exist. I don't wanna go as far as that saying from Hana Highway up to that larger parcel, you gotta get 20 feet of pavement.

Mr. Giroux: I think the issue is that 12 feet going across State land. I think that's really the issue.

Mr. Tanaka: To the applicant, my feeling is that we're trying to get this through for what we see as a good cause, but to justify it without the additional expense, your additional expense of surveyors and designs of civil engineers, but to pose that and stick that to the larger parcel so that when you do propose something, that will have to be a part of your process. So basically my feeling is, okay, well, we wanna help you out now and not force you to spend money to do this, but we don't want to give you that option that later on for the larger lot, you use what we – a variance now and avoid that same thing down the line. I hope I made that clear.

Mr. Santiago: I have a question on the condition. If a home is to be constructed on the upper lot, it's situated where the spot is right now permitted to, wouldn't the conditional infrastructure be this unimproved road all the way up to the top here, the middle, instead of this – you know, satisfying the 12-foot State easement to 20? If they did that, you couldn't get to that upper lot.

Mr. Tanaka: No, well, that flag portion of that other lot, you could improve that section, cut across the—

Mr. Tanner: But he said he couldn't improve it because of the topography, right?

Mr. Tanaka: No, I mean, at the later date. It would be a huge cost, but a huge cost for the future parcel, but right now, that wouldn't be an issue. That's what I would like to try and word into this, if possible. That's my feeling. Can I attempt a motion?

Chairman Endo: Yeah.

Mr. Tanaka: Okay. I would move that we would approve this variance application. It is justifiable in the fact that there are special geographic conditions. There are no additional issues of public health and safety. But I would like to add as part of the variance that the large lot be subject to the scrutiny of the – as part of their building permit process, to be reviewed as part of a subdivision portion that we are waiving for this variance, for this smaller parcel. Excuse me. And also as part of it, what the applicant had requested would be the upgrades to actually include stand pipes, two and a half inch stand pipes rather than the one and a half hose connections that they have now. That would be my motion.

Chairman Endo: Okay, so the motion, if I might try to restate it is to grant the variance application with the condition that the time that any building permit is applied for on the larger lot that at that point, the subdivision requirements currently being waived would then be imposed upon the applicant. Is that correct?

Mr. Tanaka: Yes.

Chairman Endo: And then of course the other condition was the stand pipes be upgraded. So maybe you mean with subdivision, you mean also the original requirements relative to access.

Mr. Tanaka: Yes.

Chairman Endo: Okay. So that's the motion.

Mr. Santiago: I need clarity. Could the stand pipes be in place for this variance as opposed to a condition for a future subdivision?

Mr. Tanaka: No, no, no, the stand pipes will be put in place as part of this variance.

Mr. Santiago: Okay.

Mr. Tanner: And would we need to outline a timeframe that that would have to be done by?

Ms. Kapua`ala: Well, the variance would not be in place until all conditions are met, if that helps.

Mr. Tanner: I would second that motion.

Chairman Endo: Okay. It's been moved and seconded. Discussion?

Mr. Shimabuku: I have a question. So does that mean that the stipulation from Captain Haake, the

first stipulation, would be met completely?

Mr. Tanaka: No, because Captain Haake said no structures. What I'm proposing is that if there are – if and when they propose any structures on the larger parcel as part of their building permit process, they would have to comply with the subdivision requirement of access.

Chairman Endo: Mr. Pierce?

Mr. Pierce: One question on that condition, would we be talking about any structure or just dwellings because once again, going back to my earlier thing which I won't try to harp on too much is we're really trying to keep the flexibility that would have existed had the subdivision not gone through anyway. So certainly one of the things that we're trying to do out there is run a real legitimate farming operation. So if in fact it makes a difference from your perspective whether you're dealing with a dwelling as opposed to an – what would be under the code, an accessory structure, a farm accessory structure, that might be helpful to us.

Mr. Kamai: Question: Mr. Pierce, the existing structure that's there on the lot now, what is it?

Mr. Pierce: Right now all the structures in are – what we're calling the smaller parcel. And those are – we actually have photographs of them if you wanna see them again, but they include a shade house, a green house, a farm labor dwelling, an equipment barn store area, and then the final one is basically a farm storage building. I think I've hit all the structures.

Mr. Tanaka: Yeah, there are five structures that you show on your map, on your drawing.

Mr. Kamai: I would support any structure where that would house people.

Mr. Tanaka: Yeah, I wouldn't mind adding that as part of it—any residential unit.

Mr. Pierce: And so we could limit the condition to dwellings as opposed to any structure, is that what I'm hearing?

Mr. Giroux: Trish, for zoning enforcement, what is the language you use? Is it habitable dwellings, dwellings?

Ms. Kapua`ala: Farm dwellings. There's farm dwellings and there's also farm labor dwellings. No ohanas. So you're allowed two farm dwellings: one to exceed a thousand square feet, and a farm labor dwelling provided that you meet our criteria, two out of three criteria for every five acres of land.

Mr. Giroux: So "dwelling" would be sufficient?

Ms. Kapua`ala: "Dwelling" is sufficient.

Mr. Tanaka: So if it's worded as "dwelling," that's what we are proposing.

Mr. Pierce: Okay, thank you. And then the other one is just I think a fairly minor one. I think it is

– what I heard being said that once again what Mr. Giroux says, we really wanna make sure we get the right drafting of this. So what I spent some time just thinking about in my supplement was because you had asked us before, what is it that you're asking for? And when I think when we're saying the variance will be accepted, one of the things I'd just like to make sure we have somehow in the language was something that says no paving is required for the accessway to the proposed subdivision or additional right-of-way. And then the second part would be that rather than fire hydrants, stand pipes are permitted. You mentioned going the other direction from the one and a half inch up to the stand pipes, but I think the thing we gotta mention is that the current requirements are fire hydrants, so we need to make sure that it's clear in any variance order that it says stand pipes.

Mr. Tanaka: So we would word it as the two and a half inch stand pipe would be sufficient rather than a fire hydrant.

Mr. Pierce: That'll be helpful. Thank you. There was one other thing I just wanted to mention. And first of all, I just want to thank you all for taking – treating this so seriously and spending the time on it. The one question I've got is if we were able to obtain the right-of-way across the State property, widening that, would that be something that potentially permits us to have other structures?

Mr. Tanaka: Well, on the smaller parcel.

Mr. Pierce: In other words I'm asking is that something that we could add to the variance as a contingency where if we received it, it would increase our options, because that would certainly be something we'd try to do first rather than improving the other area? I'm sorry to muddy the waters with that one, but I wanna ask that.

Mr. Tanaka: It would be nice to have a 24-foot easement instead, but I would not say that that's an option.

Mr. Pierce: As changing the conditions? Okay. Thank you.

Ms. Kapua`ala: Excuse me, Mr. Chair? Would the Board also like to consider the conditions that the Board has the authority to impose based off of Section 12-801-76.1 which are usually the standard conditions that the variance shall be applicable only to the application in the record, and apply the hold harmless agreement with the liability insurance coverage at the Board's discretion as far as the amount?

Chairman Endo: The maker of the motion, do you wanna assume that that's part of your motion, or do you wanna amend your motion?

Mr. Tanaka: To always have the standard hold harmless agreement attached to any variance, my feeling about regarding insurance, I'd like to discuss that, I guess. Is a million-dollar necessary? Is any insurance necessary? Granted, I always have the same question on any variance.

Mr. Kamai: I think it does include State property, the easement to the State land. And by allowing it to remain substandard, I think we should imply some insurance to that.

Mr. Tanaka: Okay, to complete the motion I would add the standard hold harmless agreement and our usual million-dollar insurance.

Chairman Endo: Okay, so if there's no objection, we'll consider that part of the motion. Any objection? Seeing none, motion is amended by consensus. Okay. Further discussion on the motion? No? Before I call for the question then, I think the Chair would state his perspective that it's a difficult application. I think that what's being requested is kind of a lot in terms of what's being granted before. I'm not aware of this great a variance being granted in the past. And so it is a difficult situation. We have a very sympathetic worthy cause for the applicant. And we're trying to do what's right and do substantial justice as best we can, but it's a difficult vote for me. And I lost my train of thought. Oh, I was just going to say that the perspective of the Fire Department is duly noted that basically, we're not trying to take away rights of the landowner obviously, but at the same time, we are giving them rights by allowing the subdivision to go forward, and that confers a lot of additional rights and benefits to the landowner. And so we're conditioning it as best we can under the circumstances. So that's just some comments. Okay. Any further discussion?

Mr. Kamai: I just wanna say me, too. I'm having a hard time agreeing with this variance. The access to the property on a map, you heard the applicant say that it's substandard. It's a ditch that's listed as an easement for access. It's a substandard road that's only 12 feet wide going to State property and most of the road itself is substandard. The applicant was hesitating and agreeing to no structures being built on the large lot. If we were to be done with this variance, he would still have those rights to develop one house on that lot, and he doesn't wanna spend a dime to engineer or any improvements citing that it cost money to widen the road or have an engineer take a look at it. Without these conditions, I wouldn't support this variance at all.

Chairman Endo: Any further discussion? Otherwise, all those in favor of the motion to grant the variance with the stated conditions, please say aye. Okay, opposed, please say no.

It was moved by Mr. Tanaka, seconded by Mr. Tanner, then

VOTED: To grant the variance with the stated conditions.

**(Assenting: K. Tanaka, R. Tanner, R. Shimabuku, W. Kamai,
B. Santiago.)**

(Excused: R. Phillips, S. Castro)

Chairman Endo: **Okay, the motion passes five – or the motion passes. The variance is granted with the conditions stated.** Thank you. I gotta go. We'll do the rest of the stuff the next meeting. How's that? Meeting adjourned.

There being no further business to come before the Board, the meeting adjourned at 3:53 p.m.

Respectfully submitted by,



TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Randall Endo, Chairman
Kevin Tanaka, Vice-Chairman
William Kamai
Ray Shimabuku
Rick Tanner
Bart Santiago, Jr. (1:47 p.m. - 3:53 p.m.)

Members Excused:

Rachel Ball Phillips
Steven Castro, Sr.

Others:

Francis Cerizo, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Lance Nakamura, Engineer, Department of Public Works, Development Services Administration