

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
NOVEMBER 10, 2011**

(Approved: 11/23/2011)

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Kevin Tanaka at approximately, 1:37 p.m., Thursday, November 10, 2011, 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 Kevin Tanaka: Good afternoon. The meeting of the Board of Variances and Appeals will now come to order. It is now 1:37, and we have a quorum of five. The first item on the agenda, Trish?

(Ms. Jacqueline Haraguchi entered the meeting at 1:38 p.m., and Mr. Bart Santiago entered the meeting at 1:40 p.m.)

B. PUBLIC HEARING

1. **DAVID M. JORGENSEN of TAKITANI AGARAN & JORGENSEN, LLP representing CLARENCE A. TAVARES and C&S LAND, LLC requesting variances from: (1) Maui County Code (MCC), §18.16.060(C) requiring rights-of-way width for access streets to be at least 24 feet; and (2) MCC §18.20.040 requiring pavement on existing access streets to be at least 20 feet in width, for an agricultural subdivision (Land Court Application 342 Subdivision; DSA File No. 2.3053) located at 337 Naele Road, Kula, Maui, Hawaii; TMK: (2) 2-3-003:068, (BVAV 20110014).**

Ms. Trisha Kapua`ala read the agenda item into the record, and gave a brief presentation showing the subject parcel and surrounding parcels.

Ms. Kapua`ala: Representing the applicant is Mr. David Jorgensen is here, and I'd like to turn it over to him. Thank you. Also, staff is here: Mr. Lance Nakamura of Development Services Administration. Thank you.

Mr. David Jorgensen: Good afternoon, Chairman Tanaka, and Members of the BVA, and Staff. My name is David Jorgensen. I'm the attorney for the applicant, Clarence Tavares; also, his wife, Sarah Tavares; Sean Tavares and Mike Tavares.

The owner of the land is C&S Land. I just wanna clarify early on that it's – the reason the LLC was created, C&S Land, was as a result of some financial planning advice they received. The property was put into this LLC with the goal of once the property is subdivided, the different parcels would be conveyed out to the family.

Again, we're here to – seeking a variance from the right-of-way widths of at least 24 feet for various portions of the roadway leading from Kula Highway down to the actual parcel. Naele Road is a private road all the way in from Kula Highway down to the parcel and other parcels that are in the area. We're also seeking a variance from the minimum road width of pavement of 20 feet. The pavement width from Kula Highway down, it varies in width but there are places where it's very narrow, and I have some pictures I attached that ranges from 11 feet to slightly more than 20 feet.

If you look at some of the pictures, and I've tried to – when you get the pictures, the page before the first page of the pictures is a rough map that has numbers on it, and that's where the pictures – you can follow where the pictures are. It's a very interesting area up there where the roads are. If you look at the first pictures, that's looking back towards Kula Highway. So you're coming off Kula Highway, and if you look at the second picture, Naele Road proceeds down straight, but there's also – you can see it shoots off to the left. If you look at the third picture, there's actually two roads that proceed down the hill. The one of the left is a roadway that the neighbor on that side, Mr. Green, put in, and that's wholly on his property, but it creates a very interesting situation where you have the total width from one outside edge of the pavement to the other outside of the pavement is quite a wide area. And then you have in effect, a median strip in the middle. That road on the left there proceeds down about two-thirds of the way, and you can't really see it on that map. You can see it on the 11 by 17 that I passed around. You can see it's actually maybe more like three-fourths of the area, the one that's on the lower portion of Naele Road. And he had put that in several years ago in connection with the subdivision of that big parcel into Lot 221, 222, and 223. The road is currently – this section is currently smooth, but one of the concerns some of the neighbors have raised as far as making it even wider connecting the whole thing is that it might become some sort of drag strip or a speedway going down the hill. And so we're certainly trying to avoid that.

If you continue on in the pictures, and they essentially, take you down the hill, and when you get to Picture 7 and 8, in Picture 7, you're coming up on the turn that would go to the left on the map I passed out where the yellow turns to the left. And then Picture 8, you can kinda see actually where it turns. Pictures 9 and 10 are really the – kinda the biggest issue where the road comes through. On the one side, it's a gulch that drops down onto the adjoining property. And on the right-hand side, a lot of it is – there's the hill and we have MECO power lines. Once you get to Picture 11 looking back towards the area of Picture 10, from that point down, the road width, and you can see it in Picture 12, the road width and paving width down to the entrance to the Tavares' property are of sufficient width. So it's those two other areas coming in off Kula Highway, and then once you make that turn passing through that admittedly, narrow area is where we have the problem.

Essentially, what we're trying to accomplish is the Tavares Family bought these ten acres several years ago with a plan that they're gonna subdivide. And then Mr. and Mrs. Tavares would keep one lot and each of the three children would get a lot so they can build a house. And obviously, as you all know, the goal would be for the kids to be able to own a house and stay on Maui. So Mr. Tavares or any of the family members and I are all available for questions if there's any other information that you need. And while you're reviewing that, one of the – the picture – the map after the last picture is the subdivision map, the proposed subdivision showing the four parcels that would be created.

Chairman Tanaka: Is that—?

Mr. Jorgensen: That's all we have for now, unless there is any questions. Thank you.

Chairman Tanaka: Thank you. Before we continue, I just wanted to state for the record that I am a direct family relation to the civil engineer to the applicant. I discussed this with Corp. Counsel and should have no conflict.

Before we get into discussion or questions, is there anyone here from the public who wishes to testify on this matter? Seeing none, public hearing is now closed for this. Any questions by the Board Members for the applicant? Trish, we have the staff report. And there was – can you kinda give us an overview of what we were given in our packet as far as PATH, and the police, and I guess, Fire?

Ms. Kapua'ala: The Fire report, we can put on the side for the second public hearing item. What we're looking at is BVAV 20110014, which is purely a Public Works' request. And other than the applicant's application itself, the Department of Public Works did a very brief analysis of the application and pretty much had no comments. It's gonna be for the applicant and the Board to draw facts from this packet and statements provided today to make their decision. But Lance is available for your questions. We did receive three e-mails. Actually, two are from David Brown of Access – Public Access Trails Hawaii, PATH; and a second e-mail from Ann Brown, his wife, in opposition. You can construe it as opposition to this variance request. And also, this two-page sheet – I'm sorry, three-page sheet, is in response to both public hearings today. Mr. Jorgensen briefly mentions the topic. The concern is widening the streets and what the effect would do to the neighborhood. So other than that, the Police Department did comment. You'll see a Police memo that was routed through the proper channels.

Chairman Tanaka: Thank you. Board Members, any questions for the applicant?

Mr. Jorgensen: Chair, if I may? Sorry. And I mistakenly understood that a letter had gone to the BVA, and maybe it was just sent directly to me. One of the neighbors, Harriet Taniguchi, did submit a letter in support of the application, and I apologize that it's not in your packet. I can provide it to staff. The main part of her letter says, "I'm one of the neighbors and in favor of his request, Mr. Tavares' request. The agricultural subdivision will enhance and improve agricultural area."

On Mr. Brown's comments, and I had actually seen some letters from Mr. Brown to the Editor before I even got involved with this particular project, I understand he's with PATH, Public Access Trails Hawaii. And one of his big concerns is insuring that there's public access to public lands. In this particular case, I'm not sure if it would've made a difference, but I'm not sure he understands this is – number one, it's a private road; number two, it doesn't lead to any public lands as we would normally envision them: the beach, a national park, a State park, or other public lands. The letter from Ms. Boteilho, I understand I believe she lives in Olinda. She lives in Olinda. And I had gotten – actually, when I got her letter, I got a comic that came with it. I don't know if she sent the cartoon, but I liked it. I liked it a lot. I could use that later. But it's – we understand the – it's kind of the same argument that Mr. Brown made that, in general, there are rules, and the rules should be enforced, period. And so, those would be our comments. But I did wanna make sure that the Board had the letter from Ms. Taniguchi who is an adjoining neighbor. And in discussions between

the Tavares Family and other neighbors, they are generally in favor. Well, I would say they are in favor of the application. We didn't get any opposition to the application, but they did not submit any letters.

Ms. Kapua`ala: Mr. Chair, I should read it into the record from the Police Chief in summary what Officer Kahookele said was this area is in within a remote area of Kula, and the roadway consists of local traffic only. Vehicular and pedestrian traffic is minimal in this area. Any improvement to the existing roadways would make it easily accessible to law enforcement and emergency vehicles; however, currently, there is no direct impact to Police from a law enforcement perspective.

Chairman Tanaka: Thank you, Trish.

Ms. Kapua`ala: Thank you.

Chairman Tanaka: Mr. Jorgensen, the area – the variance request is for a – the 24-foot pavement section becomes very difficult in what you had described as – what was it? Photos – specifically, Photo 10. Is that the only – is that the extent of it? It's a very fairly short piece that the 20 feet would not be able to–

Mr. Jorgensen: There are some portions of the stretch from Kula Highway down to the first left turn where it does get narrow. If you look at the pictures, I mean, it's not – you're correct that the main area where that occurs is in Picture – looking back, in Picture 10 back up the road. And I apologize for the pictures. Mr. Tavares and I were out there for a while taking pictures. It does drop off a pretty good distance down to – there's a house down below and their yard. On the left where that – you can see the bushy bush, the green bush on the left there. It drops kinda right off from there. And there's some waterlines that run along on the right side, and then cross over to the left side. That is the primary area where the roadway does get particularly, narrow.

Ms. Bernice Vadla: Excuse me. So how much footage is there that we're seeing in that 9 and 10? Do you know the length of it?

Mr. Jorgensen: You mean the width?

Ms. Vadla: The width and the length.

Mr. Clarence Tavares: The width of the lane is approximately, ten feet to . . . (inaudible) . . .

Mr. Jorgensen: It runs for about a hundred feet. When I measured the length of it, it was – the more area of concern was the more condensed area. Then it does widen. You can kinda see it widens out on both sides.

Ms. Vadla: Yeah.

Chairman Tanaka: So, Mr. Jorgensen, so specifically to this area, what you're asking for with the variance would be that there would be no improvements made in specifically, in this area or–?

Mr. Jorgensen: Well, the request – the way the preliminary approval came from the County was that

we basically, had to get a variance or we had to show that we had the width. There are again, various areas where it is less than 20 feet from Kula Highway down. It's certainly not the whole length, but there are different areas. So our request is not just for a variance in that one little stretch. It's for a variance from the requirements for the length of Naele Road. And that's something that maybe it's not confusing to you guys, but it was confusing to me. Naele Road is kind of – it's unclear where Naele Road stops whether it goes straight down all the way down the hill or turns left. The Tavares property is a Naele Road address. And because it's a private road, the name of the road, what we're calling Naele Road is from Kula Highway down to the entrance to the property. But it's really for – I guess I would say the first two segments, the first two or three segments that we're asking for, if you will, a general variance from the requirement for a 24-foot road width and 20-foot pavement because there are portions up above where it is narrower than that. And so – but the primary area that is I guess I would say noticeably more narrower is that area running by that gulch area.

Mr. Bart Santiago: I have a question. That narrower area, is it this strip right here?

Mr. Jorgensen: Yes, sir.

Mr. Santiago: Okay.

Mr. Jorgensen: More in the area where it's actually even shaded. You can see on the map it says "Gravel Road." And it's kind of – if you look at the – in Picture 10 in the application, you can kinda see where it's a little more gravel than the other portions.

Mr. Santiago: Another question: this is an existing subdivision up here? These lots?

Mr. Jorgensen: Yes, sir. . . . (inaudible) . . .

Mr. Santiago: Wouldn't this issue have come up when those subdivisions were granted?

Chairman Tanaka: Trish, do you have – do you know? Or maybe even Lance might know. I mean, over an extended period of time, these issues would've come up when some of these other lots were subdivided as well.

Mr. Lance Nakamura: The standards do change over time. So I don't know when those lots were created. I know with respect to the roadway pavement width that the requirement wasn't triggered in the past if you had a lot – or a subdivision with three lots or less. So if it were three lots or less, the pavement requirement would not have come up. The right-of-way requirement would likely have come up. And it's a standard requirement that has come up since the beginning of our processing of subdivisions as far as I know. So it's likely that it was somehow addressed, although I cannot tell you specifically without going back and checking the final.

Mr. Santiago: It might be worth looking into.

Chairman Tanaka: From our little sampling of the exhibit we were given, that may be the case that it doesn't look like any of these were subdivided into more than three. So that wouldn't have triggered the pavement requirement anyway.

Mr. Nakamura: And, Chair, the requirement can be satisfied through separate private easements. So just because they don't have an easement, doesn't mean another lot doesn't potentially have a different source of access to the property.

Chairman Tanaka: True.

Ms. Vadla: Which could be the reason for that one private driveway all the way from the top down. Is that correct?

Mr. Nakamura: Possibly. I'm not sure, but possibly.

Mr. Jorgensen: I believe that part is correct. If you look from Kula Highway on the lower side of the map, I think that is why that one – I'm not sure why it doesn't start until after about 50 feet, but from there, down, I believe that was the purpose of that one. And as Mr. Nakamura was mentioning, some of the – obviously, some of the requirements change over time. And so when some of the subdivisions were done, there may not have been certain requirements. And we did inquire about being able to use some of these other easements to get the right-of-way and we were unsuccessful in talking – because they are private roads. So there's no – you didn't really have the ability to enlist the help of the County on some of the areas.

Mr. Rick Tanner: With this subdividing, are there any plans for any improvements to the road?

Mr. Jorgensen: Mr. Tavares, the family company, is a paving company. So they have – occasionally, some of the work you see on the road that is there, they have done. If they had the area and the ability, they would like to make it wider and more paved. It's just in the area that we were pointing out where it gets real narrow, there's only so much that can be done without seriously imposing on the house and the yard that's down below. But as far as the road width, if we are able to get a wider right-of-way at some point, then there would be a hope to do that, yes.

Mr. Tanner: I saw a paver out here in the parking lot. Is that what you drove here to the meeting?

Mr. Tavares: Yes, didn't you see the logo? County of Maui?

Mr. Jorgensen: Yeah, that one's not his, but he parked his over in my lot over at my place.

Mr. Santiago: I have another question. I apologize I was late for the meeting, but I see the letter from the Police Department. Was there comments by the Fire Department?

Mr. Jorgensen: We had not received any comments from them. I know one of the – this is not really directly answering your question, but I'm assuming it's – you know, as far as fire trucks being able to get in. And there is – the Tavares Family does have ag operations going on the property. And so in order to clear land, they have brought some of their equipment to work the land. And they haven't – it does get narrow, but it's sturdy, that area. And our belief is that the Fire Department would not have a problem getting in. The Picture no. 8, you can see where the – there's the black area, where that was shored up. And it's a turn, but it's kind of a gradual turn. And then if you look at Picture no. 11, when you come out of that real narrow area, it's a very wide area. So as far as vehicles being able to get in, my understanding of the Police Department's comment was

improvements would make it easier. But they didn't say they wouldn't be able to get in. In fact, to answer your question specifically, we did not receive comments from the Fire Department.

Mr. Nakamura: Chair, can I make a quick comment on that? Fire Department is a standard agency for us to route to and process through. So they're gonna be a reviewing agency. The variance – I mean, should you choose to grant this variance, it would have no impact on Fire Department requirements. If Fire wanted to require road improvements or things like that, they still have the ability to do so, and the applicant will be required to fully satisfy Fire requirements regardless of what you do here. This is only a variance from Title 18, Public Works' requirements. And Fire has their own code that they enforce.

Mr. Jorgensen: Yes, I'm sorry. I should've clarified that. As part of the subdivision process to hopefully, subdivide the ten acres into the four lots, there will be and have been comments from the Fire Department. I mean so the final subdivision approval would not be granted unless until those concerns or any concerns that the Fire Department, as well as other Departments were addressed.

Mr. Tanner: I have a question for staff with regard to the letter from the Police Officer. It was a little bit confusing to me whether that was written on behalf of that Office, or as a citizen, or was it written on behalf of his official position within the Police Department representing them?

Ms. Kapua`ala: It's supposed to be written on behalf of the Department.

Mr. Tanner: It was? Okay.

Ms. Kapua`ala: Yes. It's written by the Officer, and signed off by the Sargent or Captain that's in his chain of command on behalf of the Department.

Mr. Tanner: Okay, thank you.

Mr. Jorgensen: And actually, if you – I believe it's the same that's in your packet. There's actually two pages. One is a to/from from the Officer to her supervisors. The first page is signed off by the Chief, which I believe was the specific response to the Department, if I'm not mistaken. Actually, Assistant Chief Ramos signed off on it for the Chief in transmitting the memo from the Officer.

Chairman Tanaka: Board Members, any other questions?

Mr. Ray Shimabuku: I have a question. How many residences are there on that road?

Mr. Jorgensen: From Kula Highway down?

Mr. Shimabuku: Yes.

Mr. Jorgensen: Give him a second to think. You can see from the pictures, there's not a lot of residences, but you can see some on the side. I know there's two on the right-hand side when you come in.

Chairman Tanaka: There aren't many that's below your property.

Mr. Tavares: Sixteen, total. . . . (inaudible) . . . I would say it's between 14 to 16 resident homes. And what was the second part?

Chairman Tanaka: Well, 14 or 16 on the way down to your parcel.

Mr. Tavares: Well, they're all on the same road, if you will.

Mr. Jorgensen: From Kula Highway down in the whole area, I think he's saying approximately, 16.

Mr. Tavares: Yeah, I'm counting from the State highway, when you turn off the State highway onto Naele Road, there's three immediate on your right, and there's four on your left. And then as you come down along straight away and you take that sharp left, there is another branch that goes or spur that goes to the right. And there's two more homes down there. And as you take the left and you have immediate – one, two, three on your immediate right.

Mr. Shimabuku: And where does Ms. Harriet Taniguchi live?

Mr. Tavares: When you come down Naele, and you coming to that fork or that immediate left, she has a gate. I not sure–

Mr. Shimabuku: Before or after your property?

Mr. Tavares: Before.

Mr. Jorgensen: Picture 8.

Mr. Tavares: Oh, yeah, Picture 8 has a gate right that's in front of that cone, that traffic cone, and that goes straight forward.

Mr. Shimabuku: So Picture 8 is by the left turn? Picture 8 is right by the left turn?

Mr. Tavares: Yeah.

Mr. Jorgensen: So if you go straight instead of turning left, you can go straight kinda down, but right at the curve, you can go straight and go through her gate into the Taniguchi property.

Mr. Shimabuku: So this Taniguchi property is before that dip on page 10? Picture 10? You had any comments from those below that portion?

Mr. Tavares: Yes, there's–

Mr. Shimabuku: Any comments from the neighbors?

Mr. Tavares: There was one from Harriet, who was kinda wanting me to–

Mr. Shimabuku: Only Harriet?

Mr. Tavares: Yes. I asked other people to support it with a letter, but we only talk between each other, yeah, so–

Mr. Jorgensen: And when we were up there, the day I was up there taking pictures, we did talk to some of the neighbors who came out, and they were supportive in kinda offering comments about the history of the road, and how the easements had originated. And I would characterize and represent they were supportive, but we did not get any letters from them.

Mr. Shimabuku: Mr. Chair, I guess this would be an internal question, but if the variance was denied, is it possible that they make the road wider because it's so narrow now?

Chairman Tanaka: Well, specifically, I believe – my understanding is that in Photo no. 10, the only way to fulfill that 20-foot pavement would be to build a retaining wall, and fill in that area, which would be a fairly substantial undertaking, a costly one.

Mr. Jorgensen: And, I guess, again, I just wanna emphasize, I don't know if I said enough, Ms. Taniguchi's letter does point out that it is an agricultural area, and there are certainly – the intent, if you went up and looked at the property, there's quite a bit of agriculture going on right now. And that is – the hope and desire is to keep it in ag, as well as the children, the family, being able to live there.

Mr. Shimabuku: Yeah, but my concern was that she's before the subject area.

Mr. Jorgensen: Yes, yes.

Mr. Shimabuku: I was wondering about the people below.

Mr. Jorgensen: And the only contact on this, Mr. Tavares and his family have talked to them. But I met with a couple when I was up there, and there was I would say a very pleasant meeting. We didn't receive any opposition or any adverse comments.

Mr. Shimabuku: Okay, thank you.

Chairman Tanaka: Board Members, any other questions? Any other discussion? It seems as though what Lance has told us that – Bart's question regarding Fire, the action of this Board at this point anyway, doesn't cover that aspect of it. So we're looking at just the variance from the two items of the 20-foot pavement section in some areas, and the 24-foot easement – 24-foot right-of-way in other areas. If there's no other discussion, I would entertain a motion by– Oh, sorry.

Mr. Michael Hopper: Trisha or staff, is there any sort of recommendation prepared, or any conditions written up at all for the Board? Because it would – I don't know if they'd a motion, if they wanted to add conditions, if there is an approval, would they need to basically, verbally spell out every condition? Or do you have a set of standards that you have? Because I didn't see a recommendation with a draft order like I have seen in the past for this application.

Mr. Nakamura: Public Works doesn't have any recommendations or suggested conditions. I know Planning sometimes has standard conditions for a hold harmless or those types of things, but that would be it.

Mr. Hopper: So essentially, the Board would have to draft its own conditions on the floor if it wanted conditions added to it?

Mr. Nakamura: If they wanted conditions, they're free to add them.

Mr. Hopper: Okay.

Chairman Tanaka: Board Members?

Ms. Vadla: I have another question. This section here that we're speaking of that seems to be the main subject here, who maintains this? I mean, it looks like if there's some weather problems— Or has it ever washed out? Has there ever been a problem where people couldn't get through?

Mr. Tavares: As far – as long as I have owned the place, there hasn't been washed out, but it has a collection of potholes like maybe 4x5 or so. And that kinda – you know, when you do have a pothole, it rots, and the tires kick it up. So occasionally, neighbors will come and fill that up. So the water comes off, and it actually falls into that little right side edge, that little gully, yeah, or ravine.

Ms. Vadla: So it's kind of everybody's collective at kind of policing the area or keeping it maintained?

Mr. Tavares: Yeah, I could say that. I do have a gentleman here that takes care of the bank. He sprays all the grass, keep it from overgrowing, so we can see each other as we make the turn. And I kinda take care of the road stuff. We do have another woman who lives down below, Dale Ito, her husband maintains part of that too. It all depends who's ready. I'll do it kinda thing.

Mr. Jorgensen: And, Mr. Tavares, because his business does have the equipment, the material, so a lot of times, it does end up being him that fills the potholes or maintains the road.

Ms. Vadla: And so there's how many people below you then? How many more?

Mr. Tavares: How many more below me? We have two: Robert Ito and Dale, again.

Ms. Vadla: And you've talked to them? You've had conversations with them?

Mr. Tavares: Yeah, Dale – I'm sorry, Robert, and Dave, and I have kinda pulled this one together prior to this.

Chairman Tanaka: Any other discussion?

Mr. Tanner: I'll make a motion, Chair.

Chairman Tanaka: Thank you.

Mr. Tanner: I would make a motion that the variance be granted with the standard hold harmless agreement but without additional insurance requirements.

Mr. Shimabuku: I'll second that.

Chairman Tanaka: Alrighty, it's been moved and seconded. Any other discussion by the Board? None? With that, I'll ask for a vote. All those in favor of the approval of the variance as so stated, please say aye. Any opposed?

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

VOTED: That the variance be granted with the standard hold harmless agreement but without additional insurance requirements.

(Assenting: R. Tanner, R. Shimabuku, P. De Ponte, B. Vadla, J. Haraguchi, B. Santiago.)

(Excused: R. Phillips, S. Castro.)

Chairman Tanaka: **The variance is granted.** Thank you.

Mr. Jorgensen: Thank you very much. Have a good day.

Chairman Tanaka: As part of the meeting, I'd like to take a quick three-minute break. Three minutes. Thank you.

(A recess was then taken at 2:16 p.m., and the meeting reconvened at 2:22 p.m.)

Chairman Tanaka: Okay, the meeting is now back in session. The next item on the agenda, Trish?

- 2. JAMES W. GEIGER, ESQ. of MANCINI, WELCH & GEIGER representing HANA PLANTATION, LLC requesting variances from Maui County Code (MCC), §§14.05.090 and 16.04B.140 as it pertains to the installation of fire hydrants at 500 foot intervals along Hana Highway and Ulaino Road; and MCC, §18.20.040 as it pertains to the paving and realignment of Ulaino Road, for the Nabors Subdivision located at Honomaele, Hana, Maui, Hawaii; TMK: (2) 1-3-002:002, (BVAV 20110013).**

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

Ms. Kapua`ala: Oh, forgive me, Mr. Mancini, he was the original applicant for this application. Mr. Mancini is here representing the applicant, and I see Mr. Geiger is here as well. On staff, we have Captain Haake for the Department of Fire, and again, Lance Nakamura, for DSA. I do have a very short presentation just to familiarize the Board with the area.

Ms. Trisha Kapua`ala then gave a brief presentation showing the subject parcel and surrounding parcels.

Ms. Kapua`ala: So I'll be happy to bring up any of this imagery should the Board want to see a better picture of the area. Other than that, I believe the applicant has an elaborate power point presentation with a lot of pictures as well. Thank you.

Mr. Tanner: Staff, I'd like to make a statement for the record. I'd like to state that the attorney, Mr. Jim Geiger, who's representing the applicant is also general counsel for my employer, Whaler on Kaanapali Beach. I do not, however, believe that this represents a conflict of interest, nor would it impair my ability to objectively consider this application, the applicant's request for a variance.

Chairman Tanaka: Okay, thank you. You have a presentation?

Mr. Paul Mancini: Good afternoon. My name is Paul Mancini and I'm representing Hana Plantation LLC today. The LLC is owned by a Rich Coleman who unfortunately, with some serious personal problems couldn't get here today. Wayne Arakaki who is the engineer for the project is here, sitting here. Harry Coon, who's worked on the property for a number of years is here, and later, I think he'd like to testify as a citizen of Hana on the matter. I'd like to make hopefully, a brief presentation to you. Trish said I'd get punished if we don't get out of here by 3:30. So I'll try to make it as brief as I can on it.

We think this is a rather unusual situation here. We'd like to make a presentation to you on the code, on the unusual circumstances that envelope this property here, and some – what we see are some serious unintended consequences by implementing the code provisions here. And we're trying to make, we think, some suggestions, I think common sense suggestions, to us, to deal with the situation, and not just forget about it—the issues. And again, it's the code, and like all of you, I've lived on Maui for over 40 years, and I've always supported the code. The code makes this a better place to live, and we ought to enforce it, because without it, Maui isn't the place it should be, and our families live in safety because of it. But the code is for public good, and we all live with the Housing Code, the Building Code, the Fire Code, the Water Code, and that all works for us. If any of you have ever developed a subdivision, involved in subdivisions, you know, you've got to – each Department, you go to the Department of Planning, the Department of Public Works, the Water Department, the Fire Department, to all the State departments, the Transportation Department, Maui Electric, and they all put requirements on the subdivision. And all these requirements, theoretically, fit together in a nice piece, and they work well for the benefit of the community. Sometimes some of these pieces don't fit together. Just like putting a puzzle together and all the pieces have to come together, fit together, to make everything work, once in a while you get a square peg into a round hole, your round into a square – and it doesn't work. And that's what we think we have here. We can tell you the reasons we don't think it works here. It doesn't come together as a clean picture as a result of applying the code. And what happens is you get these unintended consequences. And the lawyers usually call it the law of unintended consequences. That's when you have a requirement. The requirement intervenes in a rather complex scenario, and the outcome is unfortunate. And this happens sometimes because we don't look at past history. Sometimes it happens because of the complexity of what you're dealing with, and sometimes just because not understanding what people are about. But we've got that situation here. And the pieces don't fit together. And that's what I'm trying to show by this little diagram here. The code is supposed to protect us, and be helpful, and create safety. And those are the purposes. When those purposes can't be met, I think you have to take a look at what the result is, and whether it's good for the community or isn't good for the community. Here, we think in the past, there's been a lesson to be learned on this property in these areas, and that's what we'd like to present to you briefly today.

I think Jim will show you where we are in the region here. You might take a look at Hana Highway.

And Hana Town is a bit off of the map over here. If you're familiar with Hana, you would know where Wai'anapanapa is. You'd know where the Hana Airport would be. And you can see the property in question here is about 135 acres off of Hana Highway and off at Ulaino Road. This picture gives you an idea of the slope of the property and how it comes down. And that's one of the difficulties and unique circumstances with regard to the property. This doesn't light up very well, but this tries to show you the topo of the property. To my right over here is the architect's topo of the property. You've got maybe I think a total of 400 feet coming down from Hana Highway onto it. And we've got a drainage basin over 2,300 acres moving down into the property with two significant gulches moving onto the property.

The conditions we're asking you to consider here are two conditions, specifically, three code provisions. One is to waive the requirements to realign and improve Ulaino Road. And I think our reasons will be shown by these various pictures. The second is to waive the requirement to install fire hydrants or stand pipes on Ulaino Road and Hana Highway. We believe we've got some suggestions, and will take them as conditions as alternatives to these stand pipes. But that's what we're looking at this point in time to get—

This is a picture of the property and the history of the property. Initially, it was part of a larger property that T.V. personality, Jim Nabors, bought sometime ago. And it's located about three miles from Hana, and it slopes down, as I said, about 400 feet onto it. It's about 420 feet. The past uses of the property were for, I think, as long as we could get from our history profiles into the '70s, into sugarcane; '70s into '90s, into cattle grazing.

Rich Coleman purchased the property in 1999. And I represented him when we purchased— I've known him for a long period of time. And Rich's idea was to create a coffee plantation on the property. He thought he could create a new industry in Hana. And he had researched it, and he felt he could create an industry with this property here. He spent three to four years in attempting the coffee plantation. He planted about 12,000 plants on the property, spent close to two million dollars in developing the property, had three or four different types of consultants on the property. And then he came in contact with a very difficult fungicide – fungus called fore serum. He tried to work with EPA in dealing with the fungus for a number of years, but the fungus loved wet weather, and the fungus loved heat whereas on the Big Island with the cooler weather, the fungus doesn't really hurt the coffee plant, trees, that much. The dry areas on Kauai and the dry areas of Lahaina, the fungus basically, isn't it, but he couldn't really deal with the fungus. And he had to abandon the coffee plantation after all that time and all the work around 2003, 2004. He went with Hana Coast Realty, Carl Lindquist, to see what might make sense, and with Wayne Arakaki, came up with a subdivision plan for agricultural lots that they thought would make sense on the property.

Here's sort of a picture of the subdivision itself. And you can see the seven lots. Lots A through D get access off of Ulaino Road. There's a flag lot off of it up to D. And then there are three accesses off of Hana Highway: Lot E, F, and G.

We tried to look at these code provisions. After he had received preliminary subdivision approval, construction plans approval, and final approval going back to 2007, he went and he completed all of the conditions required of the subdivision but two. And one is in regards to the paving, the second is the stand pipes. And the road requirements are to pave one-half of Ulaino Road and pave a 20-foot wide strip lane on the makai portion of the road. And the purpose of it, of course,

is to enhance public health, safety, and general welfare. It's to benefit the community to do the paving. We don't think that that's the end result and we'll show you why. We don't think the public health is enhanced. We think it's impaired. We think safety's diminished. And we think the general welfare is compromised by doing this. And I think a little bit of the past history of this will show you our reasons for this.

The stand pipes on the property are to be 500-foot spacing on the public roads, and this is to protect persons and structures from loss. The houses on this property are gonna be far and excess of 500 feet from the public streets. Each of the houses will have its own stand pipe. This was a requirement the Fire Department put on, and it's a good requirement, and it will be maintained. We agree with that. The stand pipes on Hana Highway, we have difficulty saying first, if they can be built. And if they can be built, we don't think we can get access, but we had a couple of alternatives to that. Any stand pipes on Ulaino Road we don't think are gonna serve any purpose, and we think they'll ultimately be detrimental to the community. So that's how the pieces sort of don't fit together.

The main problem here is a regional infrastructure problem. When the County Code meets serious regional infrastructure problems, you enter into a rather complex web. And it's quite difficult to satisfy it. You can see here, we've got two gulches coming down 2,300 acres. And one is an unnamed gulch that comes down onto Ulaino Road, and another is the Honomaele Gulch that comes down. They both come down parallel to the road. And you've got a confluence of these two gulches basically, at one point. I don't know if you've ever read the book or seen the movie, "The Perfect Storm." Well, that's the best analogy I can see. This is a perfect confluence. It's ended up having past tremendous problems on this road. And what we're trying to do is avoid what has happened in the past. This picture just gives you some idea of the type of damage this has created in the past on this type of road.

Now, these are pictures, and we've passed out better pictures so you can see better, of the damage to the roadway over time. And this type of damage seems to take place at least every couple of years. Here, we have pictures of 2006, 2008, 2011. And if you have time, I don't know if you'd had an opportunity to read the application we filed with you, but— And a number of times, the National Tropical Botanical Gardens has approached me on this project. And they wrote a letter. They were one of the parties that felt so strongly and passionately that this road should not be improved. And that letter is a part of our application. And in his letter, I won't read the entire letter, but there are a couple parts of it I think are relevant and important. He, in the letter, goes into when the County paved this road or portions of the road before. And he says, you know— I'll just read a few sentences. He's asked them not to do it. He says it was paved. And the project— He asked them to stop, and obviously, they paved it. He said the second time the gulch ran after the completion of the project, peeling away of the asphalt on the sections of the road knocking down one of the columns. The flooding events washed out other sections of the road over the next two years and just a few Sundays ago. This was in 2006. Four inches of rain devastated the road when the river flooded the road. He indicates over every two or three years, this is gonna happen, and basically, has the same problem occurs. And the second page of the letter he says we should basically, learn from past history and avoid the mistakes that were made in the past. And his property is right at the confluence of where it happens, but he relates to different—

This is a picture of the flooding looking toward Hana, looking up the road to show you how the water comes down on the road. This is looking toward Nahiku. This is looking makai on the property.

Jim, show them where the pavement would be if – that's where the pavement would be if it's required. And the property line we have is about where the fencing is there. It gives you an idea of the difficulty. This is looking toward Nahiku halfway down the road. And again, you can see where the pavement would be, where the property line would be on it. And this is at the confluence there. And these poles are over four feet. You can tell the volume of water that comes down there and what happens at the end. This is just showing the past pavement where this happened with the past pavement on the road. And what happens with this past pavement is it gets down to the ocean. It just moves, moves down, gets stuck on the road, and moves down on the pavement. This just shows you the cleanup areas on the roadway in the past when it occurred.

What we have here is trying to show you where the right-of-way is and where the road is. And if we were to pave the road, the point of this on the right-of-way as required by the code, our road would be sort of a Sarah Palin road. It would lead to nowhere because it doesn't connect to the road that's out there. And this will show you where the right-of-way is. You can see the blocked area of the right-of-way. That's what we would pave. And you can see where the road is. If you would come to where our property is, that's the end of the property, you can see that the road has moved. Nature's moved the road significantly over time. This shows you there's a natural channelization. There's a natural gulch that's come in here. And Harry Coon is there, and Harry's maybe 5'8", 5'10", and you can see the volume of the water that comes into there. It has to be eight to ten feet high that comes into that channel that exists there. Now, the sugar plantation days, they created a channelization of the gulch feeling if they channelized the gulch, then basically, water would run down the gulch there. The channelization, obviously, doesn't basically, hold the water back or we wouldn't have this problem. It's a very serious regional problem.

This slide shows kind of the Z-turn. If we were to pave the road, the road would be paved up to a point. It would end. And then there'd have to be a 90-degree turn. We call it a "Z-turn" here, take it back, and find the existing road. The road would just not be used. You can see where it is there. Where that little cart is there is where the road would end. There would have to be a 90-degree left turn to get back onto the actual road that exists. And that's approximately, 80 feet. That's a turn to go down there. People would continue to use the existing road. It just wouldn't be – And plus, it's not a healthy situation, that type of turn. We tried to determine if that type of road would be – meet Federal and State standards. We didn't really get that far.

This diagram shows the people – location of people who have signed the petition not to pave the road. Much of this was done by the Botanical Gardens and others in the area. It's not something that the community wants because it's been – What happens when this road basically goes under, all traffic stops there. And when it's paved like this, it stops for a long period of time.

The Board is subject to certain conditions to justify a variance. One is geographic conditions. Here, the regional drainage will damage the road. The improved road will not be aligned. The improved road will create a hazard. What we're gonna be doing is channelizing more water down the road with greater velocity coming down to the road. The geographic conditions are unusual. The hardship will result in the road to the community. The conditions are not due to the applicant. This has been a regional problem there for hundreds of years because of the nature of the topography. We believe it's clearly detrimental to public health or safety. The channelization of the waters by creating a road there just is not a reasonable thing to consider of the situation. And those community people who would use the road do not wish it to be improved. And I think that's

obviously, highly significant. We think it's – we think to improve the road, we would be highly irresponsible. We understand the code deals with issues. The code makes requirements, but it's just not reasonable to do this under the circumstances.

The second variance we're looking for is on the stand pipes or hydrants on the road. Here, this picture shows the location of the fire hydrants within 500 feet both on Ulaino Road and on Hana Highway. The code – provisions of the code, Chapter 14 and Chapter 16 require this. And we've walked the section there and we've taken pictures. If you go to our variance application, there were two pictures that we've got, and actually Mr. Haake suggested I take these pictures of the locations of where they would be, if we put the stand pipes. They're the last – next to the last picture on our variance application itself. There is almost no access off of Hana Highway to get to their locations. There's a steep drop from those locations. And obviously, they're not gonna be in proximity to houses. There, the houses are gonna be basically, in the middle of lots. Each of the houses will have stand pipes.

So the question is, what's the purpose of these? Normally, what you have is a residential subdivision that works off of streets. And the fire hydrants are within 500 feet of the houses on the streets. When you have an agricultural subdivision, this provision of the code doesn't work very well. And not only doesn't it work very well here, it's highly impractical. It does nothing of a benefit. We think it would be a detriment to do it.

On Ulaino Road, we have the same situation—five hydrants. These hydrants are not going to be close to any house there. And if you took a look at the storm water that would come down there, not only would we have pavement on the streets, we're gonna have fire hydrants on the streets. It makes no sense. But what we were trying to do is do something reasonable, and would suggest – we're, obviously, encouraging this as a condition, because I think we're gonna do it anyways unless obviously, the variance is granted.

We suggested, and we looked on Hana Highway to find a location where a fire truck could get onto the property safely, and could hook up to a stand pipe, which is then connected to a water tank. It's a 55,000-gallon tank here. And that tank will basically, be connected to a stand pipe. It's a flat area. There would be access there. The fire hydrant could get – the fire truck could get in there. It could fill up its—

If it's for the purpose of brush fires, that's one of the questions we were trying to figure out why the stand pipe here. We researched it, and as far as we can tell, there's never been a recorded brush fire in Hana. I don't know if you've been to Hana often. I live there sort of part-time. I spend a lot of time there. And when the rain comes, the rain comes every night. It's beautiful rain. It's gorgeous. But sometimes it comes, you've got a wall of water. But in any case, we thought it was to create public service to create a stand pipe up in the area. I don't think there's one in the area of Hana there. So this is our suggestion as an alternative to create some access off of Hana Highway if the fire truck wants to get access to water.

We had the same situation up Ulaino Road. We went in and investigated a location, which would be mauka of any flooding, which would be safe. The stand pipe would not be harmed by any degree of water coming in there. That is then tied into another tank built in that area there. And we would fill up that, and the Fire Department would have a clear access or safe access to get into

the property on it. What we were trying to do is just apply some common sense and say, look, let's try to create something that's functional that can be used. And this is what we came up with after we spent some time on it.

The stand pipe variance geographic conditions, structures are not located within 500 feet of the roads. The purpose of that code section just is not fulfilled by it. The stand pipes will be next to the houses. That's a requirement we now have and – which will be fulfilled. The placement of the roads results in the damage. Not only are we gonna have pavement there, we're gonna have stand pipes floating around. The conditions are not due to the applicant here. The topography has created all of this. The topography off of Hana Highway, it's just very drastic topography. If you've ever ridden that road there, you'll know. You look down, there's a tremendous slope. And there's no detriment to the public. In fact, we think it's a benefit to the public to basically, create the stand pipes where we're suggesting rather than under the code. We think it enhances public safety.

Again, we've got two requests before you. The road improvements, we don't believe are in public interest. Rather than solving a problem, which the code is gonna do, it creates problems. It creates a road to nowhere. It creates the Z-turn. It creates basically, strong, potential for repair and damage. It channelizes an area where we'll have stronger sheet flow. And you have to remember, cars do float. And you channelize that road there, and they do float on it. The community doesn't want this as shown by the petition we have. And we believe it's in the public interest if you grant it.

The stand pipes on the streets, we don't believe are in the public interest. They wouldn't be used. If we put them in, the longevity would be limited, and we don't believe they'd be used. We don't know how we'd do it on Hana Highway with the slope. And we don't know the Fire Department could get access off of that. There's no protection to persons, the structures, on the streets. It's not usable due to the topography. The damage is due to the regional conditions. It's not to the applicant. And they create a false sense of protection.

We believe our suggestions– We were trying to get some analogy. You put a puzzle there, and the whole point was these pieces don't fit together. I've obviously, had situations where for many years, I've promoted the code, and enforced the code, but sometimes you gotta take a look at what's going on, and see whether it really makes sense. I apologize for taking more time than I thought I would. Any questions, I'll be happy to answer them. And you may wanna– I think Harry who lives in Hana for–I don't know–30, 40 years for public testimony might make sense for him to give his comments.

Chairman Tanaka: Thank you. So that would be the next part. Open to public testimony. We have one name on our list: Harry Lee Coon. Mr. Coon, I'll give you three minutes for your testimony. Thank you.

Mr. Harry Coon: Alright. I've been familiar with this road since 1969. And up until the '80s, there was another access from Hana Highway on the Nahiku side of Honomaele Gulch. It was the old piggery road across private property. And that was regularly used because this road does wash out so often. And also, most of the residents – all of the residents in those days were on that side of Honomaele Gulch.

But in the '80s, the County started more aggressively maintaining the stretch that we're talking about in front of Hana Plantation, because there were children living down in there that needed to get school. And in fact, there were even a couple of school teachers who lived down there at that time, and so they stepped up their maintenance on it. And that road comes down the hill off of the Hana Highway, which is on high ground, and then drops down, and it's paved all the way from Hana Highway until it drops down into the flood plain, and then turns to cinder. And that's how they've maintained that road. It regularly washes out, and they just haul more cinder in and doze it in.

But in '92, I was hired by Kahanu Garden to do regular work down there and worked there for many years. And then '92, I was – or '99, I was hired by Rich Coleman to develop this farm and cattle ranch. So I've been involved in that part of the road for 20 years almost, and I've seen it washed out numerous times. The worst time was in 2000, that Halloween night that really devastated Hilo and Hana. And it washed big gulches on this property, on all the properties mauka of this road, and gouged out ten-foot deep pukas in the cinder road, and flattened all of our steel posts, and broke 'em off at ground level. The County actually had to use our pasture for weeks as they started rebuilding that road, and everybody that was past Honomaele Gulch there had to use our pasture. And if pavement had been there in that storm, it definitely would've ended up out on the reef. And that's the complaint or not complaint, but that's the reason many of these people have signed this petition is because of the ecological damage that will take place. And Kamaui Aiona, the Director of Kahanu Garden, National Tropical Botanical Gardens, that's what he expressed in his letter that they've seen that happen already, and that he doesn't wanna see that much pavement washed on down.

And many of the times, I was working in Kahanu Garden, that whole garden used to fill up with all of this water. It used to flood in there completely until they widened the stream, and built a berm that led down to the ocean, which actually helped the drainage and keeps them dry. But like so many trails from the pre-Territorial days, which this is one, just continued to be a road. And really, it was there originally because it's in a flood plain, and it was easily accessible. Anyway, that's kind of the history of the road as I know it. And even though I'm involved in this project, I'm just testifying as a community member for the people who couldn't be here. Thank you.

Chairman Tanaka: Thank you. Board Members, any questions for Mr. Coon? Is there anyone else in the public who wishes to testify on this matter? Seeing none, public testimony is now closed.

Ms. Kapua'ala: Mr. Chair, just submitted to me is a four-page petition and I'll read it into the record:

Petition in opposition to the pavement of Ulaino Road. The undersigned are opposed to the County of Maui requirement to pave Ulaino Road, Honomaele, Hana, Maui, Hawaii, along the frontage of TMK: 1-3-002:002. The undersigned believe that such paving would not be in the best interest of those who use Ulaino Road and not in the best interest of the Hana community.

So about three pages, actually, of signatures, and I can pass it around.

Chairman Tanaka: Thank you. Do you have any more to your—?

Mr. Mancini: No, I'm just here to answer any questions you might have or can be helpful to issues.

Chairman Tanaka: I guess since we have Captain Haake here, I guess my question would be— I kinda read over what your comment letter or analysis specifically, talking about the fire protection part of this variance application. Is it something whether it be in your opinion where the 500-foot requirement, the 500-foot spacing fire hydrant requirement, what the applicant has stated that basically, it's — if they were there, they'd be nowhere near any structures, or anybody that would need the water with the exception of a brush fire? Is that something that with your feeling is you would rather have a fire hydrant in everybody's back yard versus the way — what's required by code? I guess I wanted to get the feeling that — because what was shown was, I guess, nine marks on the map. And that would pretty much be in the middle of close to nowhere versus what I believe what was proposed would be that the stand pipes would be located near — in and around—

Mr. Mancini: There would be a stand pipe within 500 feet of every home. In addition, there'd be a stand pipe off of Hana Highway where there'll be access to it. And there'd be a stand pipe off of Ulaino Road where there would be clear and safe access to it.

Chairman Tanaka: Captain Haake, would that be satisfactory to you?

Mr. Paul Haake: Chair, the Fire Code is a minimum. So when it's stated 500 feet spacing, you know, that way they can place it all along their access roads, and then that would set a minimum amount. Yes, we'd like to have stand pipes everywhere, but the code sets the minimum. So that's all we're asking for. And when this — if you read in my staff report, the main thing here is that we just tell them the requirements. They came back with the plan to say how they were going to meet our requirements. We did not tell them put a stand pipe here, here, here, here.

Chairman Tanaka: So this report dated — it's today's date.

Mr. Haake: My report?

Chairman Tanaka: Yes. So that is in response to comments that you made to them, they took and designed, and this is your review of that design?

Mr. Haake: Well, we gave them comments, and they provided this plan, and they showed us we're gonna meet your requirements for access off of Ulaino Road and Hana Highway. And we're gonna meet your requirements for fire protection by putting these stand pipes here. And then we said, okay, that meets our requirements. It's good.

Mr. Mancini: Could I respond to that?

Chairman Tanaka: Yes.

Mr. Mancini: The code requires that. I think the Fire Department is only implementing the code. The code itself says 500 feet spacing on public roads, and that was set on it, and that was the requirement in the preliminary subdivision approval. And the engineer basically, went and constructed drawings based upon it. When he went to place the drawings onto the construction, all of a sudden, nothing made sense, and that's why we're here. If we could do it, if it made sense, we wouldn't be asking for the variance. But as Paul indicated, that's the code requirement. And if we had to put the code requirement in, we'd have to put 'em on Ulaino Road. We don't think it

makes sense. We're gonna put the hydrants, the stand pipes, by each house. We are also looking to put in a safe location on Hana Highway as an alternative. And we just think it makes more sense than the specific adherence to the code. The Fire Department's obligation is to basically, enforce the code like Public Works and others. Your obligation is to see whether those code requirements make sense under the standards of a variance. And I'm not saying that the Fire Department isn't doing its job. They are there to enforce the code. We're saying that unusual circumstances exist, and that's where you come into play in the situation.

Mr. Tanner: Mr. Mancini, is that a topo model of the property itself?

Mr. Mancini: Yes, that's coming from Hana Highway down to the base of Ulaino Road. The architect did that when they were first looking at the development of the property in trying to basically take a look at roads and other ways on the property.

Mr. Tanner: Can you show on that model where the two gulches are?

Mr. Mancini: Two gulches? One of the gulches comes down off the property here coming down into here. Is this the gulch down here, Jim? Here? Down in here coming down like this? Coming down like this. And then the other gulch, you could look at it over here. The gulch is identified here. This gulch is identified over here. And this gulch moves down like this and comes around here. And the confluence is right there, is down here. So you've got one parallel down here. And the sugar plantation basically, tried to accommodate it, and tried to channelize it down here because obviously, it was coming down. This one hasn't been channelized, but you got the confluence here. And you've got a very unusual geographic situation especially, with the sheet flow coming down.

Mr. Coon: I'd like to just make a quick comment. Excuse me. This gulch is a main drain for here, but also, this stream continues on out here so water is actually coming down off the mountain over here and running in, and this gulch is added to that water, so there's even more water. It's all that first topo they showed you, the 23,000 acres or whatever it is, is channeled into this very basin.

Mr. Mancini: If you wanna take a look here, actually, there are two confluences. The stream over here, the stream coming over here together with this gulch here, and then this gulch down there with the confluence over here. So it's an extremely unusual situation.

Chairman Tanaka: How is it directed to cross Ulaino Road?

Mr. Mancini: I don't understand your question.

Mr. Coon: It's right along the mauka side of Ulaino Road. And Ulaino Road is built right next to that. That's why the County at the time has moved the easement out of the right-of-way quite a ways. And they did that because the stream regularly ran out into the road.

Mr. Santiago: That's where you have the picture of the fence with the water running along the road mauka of that?

Mr. Coon: Yes, that's right. It pops out of that stream into the pasture and then into the road.

Mr. Santiago: So the required additional paving would be where that water sits?

Mr. Coon: Yes. That's why the County at the time moved it further makai. And it's actually on private property.

Mr. Santiago: And that's where the stand pipes would be also located?

Mr. Mancini: Yeah, the stand pipes would be down on the right-of-way which is technically, not the road. The road is off of it in up on this highway. And with the slope there, that creates the other geographic unusual situation.

Chairman Tanaka: I guess I have a question for Lance. Two things: one is, Ulaino Road is not owned or maintained by the County of Maui, but part of their presentation is that the County has come in and done some improvements.

Mr. Nakamura: Yeah, just to clarify, when I read the report, and they were indicating about all the maintenance that previously had been done, that's the reason I routed this down to our Highways Division for them to review and comment on the application. And I guess through that review, they determined this Ulaino Road is not our road. And I believe the applicant is correct that they have – it does sound like they have in the past done certain amounts of maintenance on this roadway. They're now saying that they don't own the road and they're not gonna maintain the road. So as far as – the reason I put that statement in here was more from the Public Works' standpoint of does our Highways Division care if it's paved or not paved, or do they have a preference? And the reason I added that in is that they really don't have a preference because now they're saying we don't maintain it anymore. We don't really care if it's – I don't know if they're saying they don't care. They're just saying they don't maintain it anymore, and that's the reason I put that in.

Just for your information also, while I'm at it, I also wanted to route this to our Engineering Division who they will look at the various design aspects of our construction plan, drainage report, things like that because they made a lot of statements about the drainage on the road, and the impacts, and things like that. So I routed the report up to our Engineering Division, and the Engineering Division came back with no objections to their, I guess, statements made in the report.

Mr. Tanner: What was the purpose of the County's more aggressive maintenance of the road for that period of time? Did they just have the understanding that it was a County road and–?

Mr. Nakamura: I think that's the case that they may have over time, just done it over time maybe without really checking who owns the road. I'm not sure.

Mr. Coon: They're still doing it. Just last week, they brought in a whole . . . (inaudible) . . . cinders and smoothed it . . . (inaudible) . . .

Mr. Mancini: I think it's an open question.

Chairman Tanaka: Lance, I guess another part of my question, I mean, you've seen where the right-of-way line is versus where the existing gravel road is. Just in general, how would you address that?

Mr. Nakamura: That something that comes up a lot of times. You know, these old government roads, these roads don't – they're not in the right-of-way, so it is a difficult circumstance, and I guess, unusual circumstance that he points out. It does cause difficulty for us because the requirement is to improve that road and that's the road. So we recognize that it's – doesn't make too much sense to dead-end the road at – you know, going nowhere, I guess, unless you think that that road is gonna be improved, and continue to be improved. With now we're saying it's not a County road, I guess it's more unlikely that the County would do it. So we recognize that it's an unusual circumstance.

Chairman Tanaka: Board Members, any questions for the applicant, or Public Works, or Fire?

Mr. Shimabuku: I think I just have a comment. I can understand the situation with the road being washed out. And I would be in favor of granting the variance for that. However, when you come to public safety, and as Mr. Mancini said, there's no sense in that public safety with the fire hydrants or that minimum requirements. You know, you cannot fool around with public safety. And the Fire Department, Mr. Haake, recommends the minimum requirement. So I just wanted to say that I would be in favor of granting the variance for the road not being paved, but I don't know about the fire hydrant issue.

Mr. Santiago: Can I get a clarification? I'm a little confused from Captain Haake. Are you – do you accept their proposal in lieu of the stand pipes every 500 feet, or with the stand pipes also in place—their recommendation as far as the alternative solution?

Mr. Haake: You know, the roads are important for us. If you put a hydrant or a stand pipe some place where the truck can't get to it, then it makes no sense in having the stand pipe. You know, I think in the beginning, they should've looked at all these circumstances prior to telling us that this is what we're gonna do before moving forward. And then they could've had all this stuff addressed. This subdivision has moved to a point where there's no turning back already. I believe – well, I'm guessing, but have some of the parcels been sold?

Mr. Mancini: No.

Mr. Haake: No. So they're still under control of one owner?

Mr. Mancini: Correct.

Mr. Haake: Right. So maybe the owner needs to go back in and redesign his subdivision so that he doesn't have to rely on Ulaino Road as his access. But they came to us and told us that this is the road we're gonna use, and we need a road to get our fire truck there. And they told us this is where we're gonna put the stand pipes, and now they're saying they can't put it there.

Mr. Santiago: I guess I'm confused on the alternative solution. Mr. Mancini, you indicated that access to those locations would be in place?

Mr. Mancini: That's correct.

Mr. Santiago: But you're not aware of those accesses? The Fire Department's not aware of that

access?

Mr. Haake: I haven't seen any details on any roads. It does not meet our minimum requirements, so I have to push for the minimum.

Mr. Mancini: The minimum – we're here because the code requires the minimum. The code requires 500 feet on the streets. The plans were developed basically, to adhere to their code. It's not practical and some place not possible to put those within that term. We came back and we found that out during implementation of it. And when Ulaino Road, it seemed it wasn't gonna work, when it seemed it wasn't gonna work on Hana Highway, we then went to the Fire Department, and said I think these would be a better alternative basically, finding a location that would serve your purpose. To put the fire stand pipes, the fire hydrants, on this road is not gonna serve public safety. Even though it might implement the code, it's not gonna be used, and all it's gonna do is create a waste.

Now, the point that it should've been dealt with at the point in time when construction drawings were put together, the point is construction drawings have to be developed consistent with the code or you come for a variance. Construction drawings were put together for the code, but we came for a variance. We did talk to the Fire Department. I talked to the Fire Department in Hana. I did meet with Mr. Haake on the situation. We think it works. We think it's a practical alternative. And to put the stand pipes both on Ulaino Road and on Hana Highway just doesn't make any sense. It's just not common sense. We think with common sense is our access – giving them access and putting it there. If they wanna meet with us on the location, we don't object to a condition that they would be sited on a location identified and approved by the Fire Department. That's an easy condition to put on there, and then, they can basically, agree where that siting would be for that stand pipe . . . (inaudible) . . .

Mr. Shimabuku: I have a question for Captain Haake. So your minimum requirement of 500 feet is required on public property and not private property, correct?

Mr. Haake: The requirement is for the hydrants that are on–

Mr. Shimabuku: Public property?

Mr. Haake: On the access road for their parcels, on the road that they say is gonna serve their parcels. So the top portion they're saying is Hana Highway, for the three lots on the top. And for the bottom portion, they're saying it's on Ulaino Road.

Mr. Shimabuku: Okay. And, Mr. Mancini, you had said that you are gonna put stand pipes at each residence or at each location?

Mr. Mancini: Within 500 feet of each residence.

Mr. Shimabuku: Of each residence.

Mr. Mancini: Plus, the two stand pipes: one off the Hana Highway, and one off of Ulaino Road.

Mr. Shimabuku: So if the variance is granted to delete or to not have the fire hydrants in place, but your stand pipes is on private property a thousand feet away from the roadway, the Fire Department wouldn't have access to that stand pipe, correct?

Mr. Mancini: No, we've set a situation where they would have access to it.

Mr. Shimabuku: But it's on private property?

Mr. Mancini: Yeah, it would be on the property there, yes.

Mr. Shimabuku: So my concern is if there was – if the house was a thousand feet away from Ulaino Road, and you don't have a fire hydrant, and then you cannot get to – and the fire's right there on Ulaino Road, then there's no place for the Fire Department to hook up their trucks to get water. Then who knows? They might not be granted access into private property to get water.

Mr. Mancini: We would give them easements. We would give them public access easement to that. There would be no question there.

Chairman Tanaka: Correct me if I'm wrong. This is my understanding that there will be as part of what you're requesting, there will be two stand pipes: one up near Hana Highway, one near Ulaino Road. In addition to those two, there will be access off of Hana Highway to the top four lots, and access to the bottom three lots from Ulaino Road. So in a fire event, a fire truck can get onto and more or less the entire—?

Mr. Mancini: The fire truck would have access to each of the fire stand pipes. That's the purpose of the stand pipes.

Chairman Tanaka: Yes. And in addition to that, if seven structures existed on the subdivided lots, there would be at least seven additional stand pipes within 500 feet of a structure?

Mr. Mancini: That's correct. There would be a stand pipe within 500 feet of each structure.

Chairman Tanaka: As far as legal access to a lot, and if, Ray, if this what – the direction you're headed, if there's a fire, the Fire Department drives onto anybody's driveway to fight that fire whether it's a State highway, a private road, a driveway. Somebody, help me. That is correct? That is the case? It's not, oh, you cannot enter my property to fight the fire.

Mr. Shimabuku: That's what I'm afraid of. Maybe somewhere along the line that the owners of the property would say you're not allowed on my property to get water. And more so if the trucks do go or they do have permission to go on the property, and there's some kinda damage, then the property owner gonna file suit against the County or the Fire Department for repairs or whatever damage occurred to the property. But if you have it on the public access, then it's public access, then nobody's privately involved.

Mr. Mancini: We would have no problem with a condition indicating that with the stand pipes, there would be provided legal access to the County of Maui for access to the stand pipes. Why would we want a stand pipe without access to it?

Mr. Shimabuku: Well, I was thinking that the stand pipe within the 500 feet of the structure would be for the structure itself, and not necessarily for the neighbor's brush fire.

Mr. Mancini: Well, I'm not sure if there would be a brush fire, but if the Fire Department needs – wants access to the stand pipes, they would do it. They would get access to the stand pipes.

Mr. Hopper: I'm just not sure. The Chair was asking me to comment. I'm just not sure how that would work. You would talk about a separate easement for every parcel? And I don't know substantively, how the Fire Department handles that situation. I think you should ask the Department if you believe that that's – if the Department believes it's sufficient, or has any comments on heading onto private property to fight fires. If they do have some kind of a limitation of access to that property, or if it's basically considered – you know, if it's an emergency situation. I just don't happen to know that offhand. If there is an access easement that would be legal, I'm just not sure the form of the easement documents for every single one of these properties, where it would start and end, and where it would be through, and things like that. I just don't know those offhand.

Mr. Mancini: The easiest thing would be to put a declaration of the property encumbering the property with that. Wayne had an issue, I guess, somewhat similar to this. And he wanted to make a comment on it.

Mr. Wayne Arakaki: Thank you. Wayne Arakaki, Engineer. I worked in the Hana area for many years. And one of the projects that I did was Hana Marketplace. It's not in operation, but it was a commercial mini mall or whatever. It's located next to that Hana General Store. And we had to provide 2,000 gallons a minute because it was a commercial development. And the only system that was allowed – I mean, the only system that was available was Hana Ranch, which was a private fire protection system. And the Fire Department – both the Fire Department and the Water Department accepted that fire hydrant, which was located near that Hana Marketplace, because their reasoning was this, if there's a fire, whether it be private or public, they're not gonna – they're gonna use it. This is for the public safety. It's nothing saying that, oh, it's private so I can't touch it. That doesn't make sense. So with that in mind, we got our permit and we built Hana Marketplace. Thank you.

And then another thing that I wanted to bring out that on the Hana Plantation, there is a shop building, maintenance building, and one of the requirements was that we had to put a tank. And there is a stand pipe right next to the maintenance building for fire protection.

Mr. Tanner: I have a question for the Captain with the Fire Department, because I thought I understood you after your comments to the Chair when you originally spoke, and then now I'm not sure I do. The first question is, you fully understand the plan that the developer's come up with as an alternative plan, right? I mean, you understand what he's trying to do, and you understand where these are gonna be and so forth? You've had a chance to look at it and review what they would like to see done with regard to their variance on that? I guess, my question is, understanding the purpose of the code is for the safety of the public, do you believe that their plan better serves the safety of the public, or do you feel it's not adequate?

Mr. Haake: Would their plan be just the two water tanks and the two stand pipes?

Mr. Mancini: Plus, the stand pipe within 500 feet of every structure.

Mr. Haake: You know, I like the fact that they do have a plan, but I think if we don't address access now, and create more lots, no, I don't think it'll be helping the public. On the top portion off of Hana Highway, in their original design, as I look at it now, it might be a good idea to move the stand pipes on the top to the access to the properties. That'll be a start on addressing the top, because if you have access off of Hana Highway, you're gonna need to be able to bring cars and stuff down there. So if we located the stand pipes on Hana Highway next to the access for those properties, you might be addressing – we'll be addressing the top properties. For the bottom set, I really think we need to get some type of access in place dedicated. Even though – you know, if they met these requirements, the road and the water, because of the size of these lots, they would still have to do something else because on a building permit application, you need fire protection within 500 feet. So then, they're talking about putting tanks. They would still have to put tanks or some other fire protection. Now, that stand pipe that they put in for this home, now we'd have to be – we need to worry about the driveway. Does the driveway – will the driveway support our truck? But if we deal with it as the access on the bottom, at least when we get in there, we know we can get there, and we can set our truck, get some water, and make a plan to the structure. So that's why on this subdivision, we push for these minimum access and water protection requirements so that we have some place to start our plan. I wasn't able to look at their alternative for the bottom part in great detail, but I would still be concerned about access. You can put the stand pipes there, but if we can't get our truck there, then it's no use to us. The road is critical.

Mr. Tanner: But at the same time, if the structure is more than 500 feet from the stand pipe, that doesn't do you any good either.

Chairman Tanaka: Well, in addition to these, they would still need one 500 feet from as part of the building permit.

Mr. Haake: We can at least get our truck to some water. We can be confident that we can get our truck there, and that's where we'll do our plan. If that thing's there, we're gonna stretch hose all the way up. But if they put a stand pipe way up there and we can't get our truck there–

Mr. Tanner: So is your concern legal access, or the condition of the driveway to support your trucks, or both?

Mr. Haake: Well, if we allow them to just put stand pipes where the structures are, then now, what about the driveway, yeah?

Mr. Tanner: So that's your concern?

Mr. Haake: Yeah, so – but initially, if we have the road, at least we have something to work from with the fire protection there. But now, if you just allow – we'll build our house way up here, put a stand pipe here–

Mr. Shimabuku: Mr. Chair, I think that's the point I wanted to make that right off of Ulaino Road, the Fire Department can just bring their trucks there, and like he said, if they gotta hike up to the upper part of the property, they would have water on the bottom waiting. Where if you delete all that 500

feet on the bottom, then the truck cannot go up. There's no way you can get to the fire.

Chairman Tanaka: Yeah, but specifically, for this, because it's a two-part variance request, if we stuck to the 500-foot fire hydrant, it'll be in the bushes 50 feet away from the gravel road. So literally, the fire truck wouldn't have access to that hydrant. So that compounds this specific variance request.

Mr. Mancini: Our point and position is that we would create the two stand pipes off of Hana Highway and off of Ulaino Road in a situation where it would be acceptable for access to the Department, and we'd provide that access to that Department. Our position is if we put 'em on the road, they're gonna be no good to anyone because they're not gonna be there . . . (inaudible) . . . If we put them on the locations on Hana Highway without access, it's the same issue. They're not gonna be subject to access. They're on a cliff. It's not gonna work. So in both issues with regard to the location, we have no problem dealing with the access to be adequate for the Fire Department to get there. So I just don't see the problem.

Chairman Tanaka: Can we add this as a condition that Fire Department access must be – how do we say? Does it need to be approved?

Mr. Shimabuku: Their driveway gotta be 20 feet wide so their truck can go in, then.

Mr. Hopper: I wanted to ask this of the Fire Department. They mentioned that there's a separate Building Code requirement for fire protection within 500 feet. Yeah, because the section that the amendment is requested from, 16.04B.140, states in addition to the fire hydrant requirements that the fire hydrant shall be accessible to the Fire Department apparatus by roads meeting the requirements of Section 902-2. And I don't know exactly what that section is, but I would presume that that's a – it sounds like a standard section for Fire Department access. I don't know if that requires a certain easement area or area for the Fire Department to reach. There's a variance from that section, but it sounds like there might be standards already existing for Department access? Again, I'm not an expert on the Fire Code, but that is a reference in the Fire Code. I don't know if that helps. I mean, if you're looking for a condition for some kind of access, it sounds like the Department is saying they would maybe wanna see what that is. I don't know if you want to see draft easement documents or something, or would be sufficient to say "access," and leave it at that as a condition, because there's a variety of different ways to provide access, and I think Mr. Mancini has come up with some ideas. But I don't know how specific you would want to be as a Board on a condition like–

Chairman Tanaka: It sounds like the Fire Department approved access. Can we add that into–?

Mr. Mancini: Why not just maintain that the stand pipes to be constructed in lieu of code requirements shall adhere to access requirements by the code? We would have to–

Chairman Tanaka: Then you'd have to meet that–

Mr. Mancini: We'd have to meet the code access requirements. There's nothing wrong with that, and that takes care of both the access and the nature of the access.

Mr. Haake: Chair?

Chairman Tanaka: Yes?

Mr. Haake: Then each – if you put that in, that would require that everybody’s driveway be 20 feet wide, all weather surface. And if it’s in excess of 150 feet, then it needs an approved turnaround. So, you know, that 500-foot statement there is to let the subdivider know that, look, even though you bring us this road, and you put this fire protection on this road, if this fire protection is not within 500 feet of the structure that anybody intends to build, you will need to do more. But if you put that condition on them, then now what that makes them do is make them do driveways exactly what we want Ulaino Road to be right now. Where does the new road exist? Does it exist on your property or the property that you guys represent?

Mr. Mancini: The landowners.

Mr. Haake: Not the new road, but the road that has moved.

Mr. Mancini: No, no, that’s not – the road that has moved basically, is not on our property.

Mr. Haake: It’s below?

Chairman Tanaka: Yeah.

Mr. Haake: So it wouldn’t be something that you guys could dedicate also?

Mr. Mancini: We don’t own it, no. But going back to the point, each property owner, when he builds his house is required to create a stand pipe within 500 feet. He’s required to meet the code for that and the access requirements required by the code. We’re not looking for a variance for that. We’re looking for a variance with regard to the public – the stand pipes on the public street. And as an alternative to the public street stand pipes, we’re saying let us put one off of Ulaino Road at a location with access to the Fire Department, and one off of Hana Highway, and we’ll meet the access requirements of the Department so they can get their trucks in there. We just think it’s much more common sense approach than the issue of putting stand pipes on a road that won’t be there very long, and stand pipes that won’t be able to be used off of Hana Highway because there’s no access on the locations. Because the code is developed basically, for residential subdivisions. It’s not developed for this type of unusual circumstance. So my suggestion is that the variance be granted with regard to the stand pipes with the location of the stand pipes providing access to the Department of Fire Control as required by the code.

Mr. Shimabuku: So as Captain Haake had mentioned, would it more sensible to put the stand pipes at the entrance of the property both on Hana Highway and Ulaino Road?

Mr. Mancini: That’s what we’re looking to do: put a stand pipe on both Hana Highway and off of Ulaino Road.

Mr. Shimabuku: But only one on each, though?

Mr. Mancini: Yeah, one on each. Yeah, that's correct. I mean, that--

Mr. Shimabuku: What about the access to the other property?

Mr. Mancini: There'll be a stand pipe within 500 feet of every structure.

Mr. Shimabuku: But not at the access from Hana Highway, though.

Mr. Mancini: Well, there'll be access by their driveways to get up to those places same as any road.

Mr. Santiago: The additional stand pipes will come when the structure of the permitting happens. So for now, it's the two stand pipes with the water tanks as the alternative. When the structures are built, then the new stand pipes will need to be located within 500 feet of the structure.

Mr. Shimabuku: Okay, if you look on page 31, there's a tank on Lot 3E, and that's where the tank and the stand pipe would be located. What about Lot 3G, the access from Hana Highway onto 3G? So if the Fire Department comes down to Lot 3G, its closest stand pipe would be within 500 feet of that structure in that 3G, which would be significantly far away to the water tank the stand pipe available in Lot 3E. So like Captain Haake said, if he had one at each entry to the lot, then at least that way each lot would have their own protection.

Mr. Mancini: We plan to have each lot to have its own protection by having a stand pipe within 500 feet of the structure.

Mr. Shimabuku: So the question comes in now, what if your access to the -- the driveway to the house is not within the requirements of the Fire Department?

Mr. Mancini: When they build the house, they have to meet the code. We're not looking for a variance from that requirement. All we're worried about is putting it on the streets where they wouldn't be used.

Mr. Santiago: I guess we're -- just to make things clear, the alternative that you're proposing is to be in place so that you're not having to put the stand pipes that's required, minimum requirement, by the Fire Department for the subdivision. Once the subdivision is granted and permitting for building is done, then the stand pipes for those buildings, those structures, will be in place 500 feet from those structures.

Mr. Mancini: Correct.

Mr. Santiago: So I think we're getting things mixed up a little.

Mr. Shimabuku: But the thing is, is there a guarantee that the access to the stand pipe would be accessible to the Fire Department?

Mr. Santiago: That would be part of the permitting and what's required.

Mr. Hopper: I just want to insure again that this Section, 160.41B.140, which mentions the location

number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be provided on the public street or on the site of the premises or both. Granting a variance from this section will have nothing to do with what you're saying is a separate Building Code requirement, because this also has the standard Fire Department access, and there'd be a variance granted from that section as well, as I would understand it. So is there a specific access section in the Building Code as well that deals with the Fire Department getting their trucks in? Because this is the section that has the reference access, and the reference access says unobstructed width of not less than 20 feet, unobstructed vertical clearance, and things like that. So that would be the only concern is the granting of the variance from this section here somehow granting a variance from any Fire Department – something that would prevent the Fire Department from having a road that's 20 feet? And if the access is just off the road, then obviously, there'd be a variance from the road itself meeting those standards because it wouldn't be 20 feet wide with pavement and things like that. So I don't know if something would be built to allow the Department to come further or something like that. That's the only concern.

Mr. Mancini: With regard to the stand pipes that we propose to put in, we are not asking a variance from the code for that. We would put them in and would meet the code requirements for access to the Fire Department on it.

Mr. Hopper: Isn't part of the requirement that the access roads to those meet these standards? And so this road would not meet those standards, right? It wouldn't be 20 feet wide.

Mr. Mancini: Whatever the requirement is for the Fire Department to get access to the stand pipes that we are going – to be put in, we're not asking for that at all. We just want it for the obligation to put them – five on Ulaino Road and three on Hana Highway. We don't believe it's reasonable to do that.

Mr. Hopper: So is the Fire Department requirement for access from a public street to be – have an obstructed width of not less than 20 feet in those requirements? That would be met throughout here, so the Fire Department would be able to get from a public road with a 20-foot – unobstructed width of 20 feet and all those requirements to these stand pipes?

Mr. Mancini: Off of Hana Highway. Hana Highway is a public road. There's no question about that. This seems to be a factual question. Ulaino Road is a public road. Whether it's private road or public or not, there'd be access from Ulaino Road to meet that 20-foot pavement requirement onto the new stand pipe. So I think our intent is to meet all of your concerns.

Mr. Hopper: Yeah, I think that's clear. I just want to make sure that the variance, when granted, accomplishes that because if this section's exempted, I'm just not sure what remaining – I mean, maybe we could put conditions or something along those lines, but I'm not sure what remains as far as spelling out the access the Department would need, and what would satisfy the Department.

Mr. Mancini: We'd be pleased to draft a proposed order to adhere to that, and submit to you to take a look at to make sure that your concerns are fulfilled.

Chairman Tanaka: For our concerns, I mean, no matter what happens, there are seven lots. If there are seven structures, there will be seven stand pipes with access to – for each of those

buildings. So now we're just looking at, well, if it were every 500 feet, there'd be nine. But doesn't make sense to put a stand pipe on the edge of a cliff. It appears that the other stand pipe 500 feet away would be really close to the probable location of a structure. It wouldn't – in this case, maybe it looks like it might be 50, 80 feet away across the drainage. So for what we're looking at for access, and we are not commenting on access, legal or physical access to the individual subdivided lots. It would just be – well, they're proposing two when at every 500 feet, there would've been nine.

Ms. Jacqueline Haraguchi: They want to do two instead of nine for the public, correct?

Chairman Tanaka: Yeah. In the case of Ulaino Road, because the road is so far off, and I'm assuming – well, I'm leaning towards – you know, I would support that variance because of its circumstances. And as far as Hana Highway's concerned, there are three lots that are – their access will be directly off of Hana Highway. One of them looks like it's at the top bank of a gulch. I don't know. Board Members?

Mr. Shimabuku: Yeah, you mentioned about the road being far off. Maybe to you, doesn't make sense, but at least there is water for the Fire Department to hook up in case there is a fire and the need on Ulaino Road. Then that's a different subject as far as water availability to fight the fire. And that's what I'm leaning to – making sure that the Fire Department has the ability to hook up to some place to get water rather than not having the stand pipes, and you'd have no water at all, and they cannot do nothing. Whether they gotta drag another hundred feet, 200 feet of hose, at least it's there, and they can do something about it to possibly save a life or property. But to take it out completely, that's why I think public safety is an important thing in this matter.

Mr. Haake: Chair?

Chairman Tanaka: Yes?

Mr. Haake: Chair, for – again, for the Hana Highway, I agree with the applicant that it does not make sense to put the stand pipes where they are shown on the plan, but if we could locate those stand pipes to the access to those properties, then we may solve the fire protection issues on the top properties. For the bottom properties, maybe we could come up with a plan that would give us access to some water at least near Ulaino Road. And then we could address the fire protection requirements that way. And then maybe future structures be protected with fire sprinklers, so then we wouldn't have to worry about access to these structures.

Chairman Tanaka: Mr. Mancini, in the past with listening to Captain Haake and Scott who often represents the Fire Department, it seems as though that the code says one thing, and what we have been granting through variances, there is – there can be some compromise, anyway, not necessarily – Now, as far as the powers of this Board, can we do that and say, you know what? With the approval of the Fire Department?

Mr. Hopper: You're empowered if the criteria for a variance is met to grant a variance with conditions. And I think those conditions would – you don't necessarily have to grant just a blanket variance. I think you could grant a variance with – in a manner that kind of provides an alternate location or alternative. I don't necessarily think you would need legally, approval of the Fire Department since you're granting a variance, but it's not to say that wouldn't be something you

should look at and consider. There is language for conditions. Basically, it's conditions necessary to prevent any detriment to the public interest, health, safety, convenience or welfare, and to insure substantial compliance with representations made by the applicant. So I think that gives you a fair amount of leeway as far as conditions. And you do have authority to grant variances from these code sections again, if you find the criteria for the variance has been met.

Chairman Tanaka: But we would have to outline those specific conditions, not saying that we trust that the Fire Department and the applicant can reach some compromise?

Mr. Hopper: Well, I suppose a condition could be worded, "as approved by the Fire Department." Another alternative is to defer action today. And if the Fire Department and the applicant can work out a condition, that's certainly happened before. You don't have to actually draft a condition. You do have to adopt it. So anybody can really draft it. The applicant could. The Fire Department could. The Planning staff could. Or you could come up with it on the floor, either way.

Chairman Tanaka: How does that sound to you, Mr. Mancini?

Mr. Mancini: It seems to me, unless I'm missing something, and listening to Paul, his major concern is that the location of the stand pipe off of Ulaino Road and off of Hana Highway were subject to their approval for location and for access. And it seems to me that condition would satisfy him. You approve the variance with regard to the locations of the stand pipe off of Ulaino, off of Hana Highway, such locations, such access shall be subject to the approval of the Fire Department. I think that would satisfy his concerns. We don't have any problems with that.

Ms. Vadla: Does that sound correct, Captain?

Chairman Tanaka: Well, meaning that you'll see a revised plan.

Mr. Haake: Yes.

Chairman Tanaka: And need to approve it.

Mr. Mancini: Subject to your approval.

Ms. Vadla: Subject to approval.

Mr. Shimabuku: Therefore then, I would entertain a motion to grant the applicant the variance for the first part of the application for the road to leave it as it is and no upgrading. And secondly, for the applicant to be in compliance with the recommendation from the Fire Department based on all this information that was before us.

Chairman Tanaka: Was that a motion?

Mr. Shimabuku: Yes, I'd like to make a motion.

Mr. Hopper: Just quickly, A, if there's any conditions, they should be set out now, including hold harmless or anything else. And, B, if you want something that's going to require a revised plan to

be submitted and approved prior to final subdivision approval or something like that, then I would be very specific with that to make it clear that, yes, a variance is granted, but that the Fire Department retains reapproval authority, and that a future entitlement of a final subdivision approval can't be granted until Fire is satisfied. I don't know if – I guess, Lance may have a comment, but if you're gonna do it that way, I think it should be made clear what they would have to do, and that it's not a blanket variance.

Mr. Nakamura: I'm just gonna comment that since they already have final subdivision approval, it's bonded, it should be – I guess the threshold could be release of bond.

Mr. Mancini: That's fine. That'll be fine. But I think the condition, if I understand it correctly, would be the variance with regard to the stand pipes is granted, subject to the location of the stand pipe off of Ulaino Road and off of Hana Highway are subject to the approval of the Fire Department.

Mr. Hopper: Just to clarify, is the plan here to make this motion, approve it, and then have an order circulated for the Board to see a condition, review it, and approve it at a future meeting?

Mr. Mancini: That would be fine with us.

Mr. Hopper: That may be the safest way if you're talking about a very specific condition. I don't know if that's what you want, but if you don't have it in writing now, it may be difficult to phrase. I'm not sure.

Chairman Tanaka: So it would come back to us. The Fire Department approved–

Mr. Hopper: In any case, any variance with conditions has to be recorded on the property in a unilateral agreement. So I would presume in all cases, an order is going to be circulated or some document that's recorded. I know everyone's in a hurry, but this is, I think, very important to how the variance is going to apply to this property.

Chairman Tanaka: Okay, Ray, try that again.

Mr. Hopper: You could say with the understanding that an order will be circulated for final action by the Board.

Mr. Shimabuku: Okay, so–

Chairman Tanaka: So procedurally, the motion has been stated. Is Ray amending his motion? And we need to–

Mr. Mancini: Was the motion seconded? I don't know.

Mr. Tanner: No.

Mr. Santiago: Well, we need to add that condition before someone can second.

Chairman Tanaka: So procedurally, there is no–

Mr. Tanner: Friendly amendment to the motion.

Mr. Hopper: It's just him restating the motion. There was never a second, so I think it's . . . (inaudible) . . .

Mr. Shimabuku: Okay, so I'd like to make a motion to grant the variance in regards to the roadway to leave it as it is, and no further action be taken. And the issue of the stand pipes that we have the circulation be— Help me on that one.

Mr. Hopper: That you could state the condition and then say, any decision and order setting forth the condition shall be reviewed and approved by the Board.

Mr. Shimabuku: So—

Mr. Hopper: But I think you would need to state the condition, though, that whatever the Fire Department has to approve, if you were talking about — if you're talking about the stand pipe locations and access be reviewed and approved by the Fire Department, or whatever that statement was.

Mr. Shimabuku: Yeah, exactly. The Fire Department would have the final approval for requiring where those locations are.

Mr. Hopper: To give Mr. Mancini, I think, some guidance in how to draft the condition for the Board.

Mr. Shimabuku: It's a tough one. Would that be okay?

Mr. Hopper: Well, it depends on what the wording of the condition is, and then just say it's subject to the review and approval of an order.

Mr. Shimabuku: Yeah, so we do the subject and approval of the order for the Board.

Mr. Hopper: Is everyone clear on what the wording of the condition would be, though? Think Mr. Mancini has enough to—?

Mr. Mancini: Let me restate it. I think the motion is to approve the variance with regard to the pavement and realign Ulaino Road. To approve the variance with regard to the obligations to place stand pipes in the public streets subject to the location of the stand pipes proposed by the applicant on Ulaino Road and on Hana Highway shall be subject to the approval of the Fire Department.

Mr. Shimabuku: Okay.

Chairman Tanaka: And which will be drafted and returned to us.

Mr. Hopper: Yeah, with the understanding that an order is gonna be circulated to the Board at a future meeting and approved.

Mr. Santiago: I will second that.

Mr. Shimabuku: Thank you.

Chairman Tanaka: Okay, it has been moved and seconded. Any other discussion? Any questions by the Board Members? Any other comments?

Mr. Tanner: I would add a friendly amendment that we would include the hold harmless agreement.

Mr. Santiago: I will second that again.

Chairman Tanaka: So an amendment has been added to the original motion and seconded that we add in the standard hold harmless agreement for the County.

Mr. Aaron Shinmoto: Is this with or without the insurance?

Chairman Tanaka: The insurance has not been stated at this time. Apparently, without.

Mr. Shimabuku: Without.

Chairman Tanaka: Any more discussion? No? Okay, so with that I'll call for a vote. All those in favor of the approval with conditions, please say aye. Any opposed?

It was moved by Mr. Shimabuku, seconded by Mr. Santiago, then

VOTED: To approve with the conditions as stated.

**(Assenting: R. Shimabuku, B. Santiago, J. Haraguchi, P. De Ponte,
B. Vadla, R. Tanner.)**

(Excused: R. Phillips, S. Castro.)

Chairman Tanaka: **Motion carries. The variance is approved with conditions.**

Mr. Mancini: Thank you for your time. I appreciate all the time. We almost got out of here by four o'clock.

C. APPROVAL OF THE MEETING MINUTES OF THE OCTOBER 27, 2011 MEETING

Chairman Tanaka: Okay, the next item on our agenda: approval of minutes of the October 27, 2011 meeting.

Mr. Tanner: I would make a motion to approve the minutes.

Ms. Haraguchi: Second it.

Chairman Tanaka: It has been moved and seconded. All those in favor of approving, please say aye. Any opposed?

It was moved by Mr. Tanner, seconded by Ms. Haraguchi, then

VOTED: To approve the meeting minutes of October 27, 2011.

**(Assenting: R. Tanner, J. Haraguchi, R. Shimabuku, B. Santiago,
P. De Ponte, B. Vadla.)**

(Excused: R. Phillips, S. Castro.)

Chairman Tanaka: **Minutes approved.**

D. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Chairman Tanaka: Director's report, status, Trish?

Mr. Shinmoto: No new status.

Chairman Tanaka: No new status. Next meeting, November 23rd. That is a Wednesday.

Mr. Shinmoto: We have the approval of your 2012 BVA meeting schedule.

2. 2012 BVA Meeting Schedule

Chairman Tanaka: Oh, okay. Did everyone receive it? It's the typical two Thursdays a month with the exception—

Mr. Shinmoto: Note that November 21st is a Wednesday. Thanksgiving—

Chairman Tanaka: Yeah. And only one meeting in December. So we need to approve this?

Mr. Shinmoto: Yes.

Chairman Tanaka: Okay. With no objections from the Board Members, we'll approve the schedule for 2012.

E. NEXT MEETING DATE: November 23, 2011, Wednesday.

Chairman Tanaka: Okay, next meeting, the 23rd. That's Wednesday. Trish, what is on our agenda for that day? Do we have — do we know?

Ms. Kapua`ala: That's just the — what was that one called? The deferral.

Chairman Tanaka: That was the appeal? No? No, that was six months.

Ms. Kapua`ala: Yeah, the appeal, six months. Grantham, the setback variance in Lahaina.

Mr. Shinmoto: There's also MOBI PCS.

Ms. Kapua`ala: Oh, yes, it's a cell phone antenna to be located in the B-CT district. And it needs a variance as far as setbacks.

Chairman Tanaka: Alrighty. Just out of curiosity, 2012, are we losing anybody in 2012?

Ms. Tremaine Balberdi: Yes, Rachel and Stephen.

Chairman Tanaka: Okay, so we'll see you all next month. With that, meeting adjourned.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at approximately, 4:05 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman
Rick Tanner, Vice-Chairman
Ray Shimabuku
Bernice Vadla
Patrick De Ponte
Jacqueline Haraguchi (1:38 p.m. - 4:05 p.m.)
Bart Santiago (1:40 p.m. - 4:05 p.m.)

Members Excused:

Stephen Castro
Rachel Ball Phillips

Others:

Aaron Shinmoto, Planning Program Administrator, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Lance Nakamura, Department of Public Works, Development Services Administration
Paul Haake, Captain, Department of Fire and Public Safety, Fire Prevention Bureau