

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
FEBRUARY 14, 2013**

(Approved: 3/14/2013)

A. CALL TO ORDER

The meeting of the Board of Variances and Appeals (Board) was called to order by Vice-Chairman Rick Tanner at approximately, 1:32 p.m., Thursday, February 14, 2013, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

A quorum of the Board was present. (See Record of Attendance.)

Vice-Chairman Rick Tanner: The Board of Variances and Appeals will now come to order. Let the record show it is 1:32 p.m. and we have a quorum. So at this time, will the staff read the notice of public hearing and state the purpose of this application?

Ms. Trisha Kapua`ala: Mr. Chair, the staff has a request—if you could take some things out of order and handle the appeals first. They're more like communications and shouldn't take more than five minutes each.

Vice-Chairman Tanner: That's acceptable.

Ms. Kapua`ala: Thank you.

B. APPEALS

1. Determine a hearings officer to preside over the following matter:

TOM PIERCE, ESQ. representing MAUI TOMORROW FOUNDATION INC., SOUTH MAUI CITIZENS FOR RESPONSIBLE GROWTH and DANIEL KANAHELE appealing the Planning Director's decision to not enforce the conditions of approval established by the State of Hawaii, Land Use Commission, for the Piilani Promenade development located at 376, 451 and 524 Kaonoulu Street, Kihei, Maui, Hawaii; TMK: (2) (2) 3-9-001:016, 117, 171, 172, 173, 174 (BVAA 20120008).

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

Ms. Kapua`ala: There's a stipulation that was handed to you today. The parties have agreed to continue this meeting to determine a hearings officer to April. And if you have any questions, James Giroux was actually at the Land Use Commission hearings on this, on the order to show cause. And I'd like to direct questions to him.

Mr. James Giroux: Yeah, Chair, I can answer any questions as far as procedurally of how . . . of why we were encouraging this to be continued.

Vice-Chairman Tanner: OK. The Board, questions?

Mr. Giroux: Just as a short background, basically, the LUC has completed what they're calling their first phase of the review of the order to show cause. They're gonna go into the second phase. So basically, as your attorney right now, I wouldn't be comfortable entering into any action right now until the LUC has completed its activities because we have a kind of a unique situation where it's almost an overlapping jurisdiction. So we'd like the State to finish their process first and then it would bring clarity to the process that if it . . . we were to have to make a decision.

Ms. Jacqueline Haraguchi: What is their estimated timeframe? Do you know?

Mr. Giroux: They were moving pretty fast, so probably within a next couple of months we should have a good idea of where they're at. So it's a stipulation to continue. Basically, the only thing that's gonna be necessary is that they've already agreed on the date. So they'll be given an official notice by staff, and then on that date, they'll appear. And I believe at that point, we'll either know whether or not they even wanna continue the process of the appeal.

Mr. Ray Shimabuku: What date was that in April?

Mr. G. Clark Abbott: April 25th.

Mr. Shimabuku: 25th.

Mr. Giroux: And the record will reflect that we have accepted the stipulation to continue.

Ms. Kapua`ala: Thank you, James.

- 2. RODNEY KILBORN appealing the Director of the Department of Parks and Recreation's decision to not allow a stand up paddle surfing event at Hookipa Beach Park located off of Hana Highway, Haiku, Maui, Hawaii; TMK: (2) 2-5-004:025 (BVAA 20120010).**
 - a. Proposed Findings of Fact, Conclusions of Law, and Decision and order.**

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

Ms. Kapua`ala: Board, you have the proposed findings of fact, conclusions of law, and decision and order in front of you. And we have the applicant or appellant here, as well as Deputy Corporation Counsel, Mary Blane Johnston, for the Department of Parks and Recreation.

Vice-Chairman Tanner: And there's no power point presentation for this, right?

Ms. Kapua`ala: No, sir.

Vice-Chairman Tanner: OK. Thank you. OK. So if the applicant wants to come up, and state their name for the record, and give a presentation?

Mr. Rodney Kilborn: Yeah, hi, good morning. My name's Rodney Kilborn. Happy Valentine's Day to the ladies first and the guys.

Vice-Chairman Tanner: Proceed.

Mr. Kilborn: I'd like to take some time to let you guys know first that I have no objections to the final decision and the . . . on the orders of our last meeting, December 13th, on the appeal. I think everything went great there. I'm very grateful, but I would like to address some things that I feel that you guys should know. And it's important that I get this off my chest. And if I'm wrong in saying things that would hurt feelings or not in your order . . . (inaudible) . . . me out. I'm more than happy to stop.

But on December 13th, yeah, I filed for the appeal. I was here and so and so. And then, there's some things that I could not testify or to move forward with. It was because of the Hawaii Administrative Rules that was brought up by the County and Parks. At no one time before that meeting I had received, or was denied, or was told about anything about that administrative rules, Hookipa zoning, for stand up surfing. From my understanding and from what I read from the minutes and everything, my appeal was denied because of the zoning. When I came in and I was addressed from the Parks Department for my denial, it was unclear from them from day one and from the things I've been hearing was other than the zoning.

Again, I'm very disturbed when I left because I was not given the proper presentation from the County side. And if I did, and if I had, I surely would've went back to the Department of Land and Natural Resources, and to get more clarification about stand up surfing, and what is stand up surfing, and surfing.

I was involved with that ocean, that management rules, back in 1980 with Hookipa wind surfing and surfing. I was part of the guys on that rules. The five and ten-men rules came up by myself so that we all could enjoy the ocean together. But because I did not . . . I did not want to present that at the time because again, there was a last minute thing that came, brought to my attention from the County and from the first meeting, December 13th, with the appeal.

With that said, I'd like to leave that alone. I'm gonna move forward and build a bigger and better bridge, and do what I think is right for our community, our Maui community first.

Again, I'd like to let you guys know that ever since after the meeting of some things that had taken place so that you guys are aware of where I'm at, and where things I had progressed, and what and how we are moving forward with this program.

I met with DLNR soon after. I'd like to say thank you to the Board for you guys questioning me for myself to move forward, and to clarify, to get more information. I had and I done. Soon as after, I sent a letter to the Department of . . . I was going say "transportation," but Administrative Division in Boating, Ocean Recreation. And asked them if they could clarify and get more about the zoning, and clarify between stand up surfing and surfing. I have a letter e-mail came back from Mr. Ed Underwood who is the administrative person for the State of Hawaii. He wrote back. And this is what he had said. And this has also been clarified from the U.S. Coast Guard. They also clarified this. Came out with the determination that "When a stand up paddle board is used in a swimming

zone or surf break, it is considered a surf board. " In this instance, I believe it would be considered surf boards. So this thing was stated before that meeting. It's just that I did not have enough time to get that clarification because I got thrown off by . . . I got thrown with a curve. And I call that to be very unfair practice.

But with that said, I have applied for the permits because that's all what I was told that to get clarification between a surf board and a stand up paddle board. I done that. With this letter, I went up to Makawao. Spoke with the district guy up there, the name of Billy Amoral, in charge of the division. Asked for one application, the first step. I was presented by him that after I finished the application . . . He was not there. I was in my truck. I done this the same day. So I tried to get this in as quick as possible. So I did. Apparently, he was in the office. He wasn't there when I first came. He was there the second time I went back in the office sitting in the parking lot. Gave 'em my application to the clerk, Charlene, which she was in front for the application. Billy was there. I heard his voice. I stuck my head, "Eh, hello." Billy came out. Talked to me. I was told by Billy that it was gonna be disapproved. And I said, "How can you disapprove it when it hasn't even gone through? On top of that, here's an e-mail letter and a letter stating that stand up paddle surf board is a surf board." And this is why I lost and been denied from the Board here, not people, and I was told about anything else. So anyway, he took it and that was it. It got lost for a couple weeks or a month. I called a few weeks before the 60 days, like four or five days before my 60 days up, some place in there. "Oh, I thought you never like me for turn it in. I thought you took it with you." I said, "No, I gave it to your secretary. You were there and you seen me hand it off."

So I'm frustrated because I'm afraid that this thing is a continual thing and it's not about what I thought it was. So after all this has been done, I recently when I made the phone call . . . And I was gonna stop and not be here. Once I was going get the approve and they said approve, I wasn't going . . . that was it. I'm done. Let's work forward. Apparently, you guys came in the minutes and I had to sign that 30 days' thing within that period. So it never got approved, and then it went through, so I had to be here. So this is why I'm here. And this is why I'm glad I'm here because I'm afraid on the phone call had last week Friday on the 8th by Billy Amoral saying that the County Parks Department is gonna approve my permits for the stand up paddle surfing. So I'm happy. I'm really happy. And when it was a Friday afternoon, Monday I was there, this past Monday, got all the paperwork. I ran around the whole day on Monday, got notarized and everything, got all my paperwork in there but the insurance that was requested by the applicant, step two. I got my insurance and everything today. OK? Took that and I forward it, e-mailed it, to Neil Pryde, who's the sponsor. Mailed one to the Department of Parks and Recreation for Ocean Management, and also to Billy Amoral. So I'm doing the best I can. I'm doing my homework.

And I not here to run an event for pocket, for money into my pocket. I'm here because our kids, our ohana, they are in need and more in need for more activities, not just surfing, but many more activities to keep Maui healthy. You wanna turn green, let's go green. You wanna turn your children and bring 'em up in the right environment, then give us a chance, people like myself and many more others out there that can help our keiki. I'm the last. I'm 61 turning 62. I'm the last kupuna or going be the last kupuna to be, and to follow, to do the lifestyle that we care about our keikis, and not just them, but the adults. Because the division that we have here, and are presenting, and trying to get permits for is from five years old all the way up to 50 to dead. So we're not here just for the kids, but for the elders. And this is why I stand here before you guys, and this is why I'm saying this, and this is why I'm bringing up this again, because I don't want to go back

to the garbage that I have to come back here again, and face the Board, and not be healthy with our County of Maui 'cause that is wrong. I here to build a bridge, not to tear it. So I got to say sorry with my expression, but I go back to Valentine's Day. Thank you.

(Mr. Kevin Tanaka entered the meeting at 1:37 p.m.)

Mr. Shimabuku: Question: so at this point, you do have a permit to hold your contest or your . . . ?

Mr. Kilborn: No. The State side of it has never denied the permit. They're for it. They're like they're ready to sign the thing. They always was there for me. Always was there. It wasn't about the zoning. Surfing, it's surfing. They wasn't against it. I'm waiting. I just had a phone message again, not an e-mail, but a message from Makawao yesterday morning at 9:45 or something like that. My cell phone don't work good in Haiku, in certain areas, but I got a message from him asking to call him right away. So I don't know what they asking for. But every time when I receive something like that, it's like, oh, you got the permit, you going get the permit, or you not going get 'em because la, la, la, la, la. So I'm afraid. I don't know. I believing that they gonna give me the permit. I put my faith in them. As far as with the Harbors Division, it's all fine and dandy as long as I get all my paperwork in there which is already in the progress.

Mr. Shimabuku: OK. 'Cause your contest actually was supposed, if I not mistaken the dates, beginning this weekend, right?

Mr. Kilborn: Yes.

Mr. Shimabuku: Originally.

Mr. Kilborn: Originally, we had to do that. This is why I had to go back to my insurance company, change the dates, pay . . . (inaudible) . . . to get things rolling for April 6 and 7. I'm asking for a one-day event. I asking for the date of April 6, 7. And 13 and 14 is rain dates. And it's so important because we get keikis in there, young people. It's an amateur event. I don't like to put them out in anything bigger than six feet. There's a size that I have to look at for safety and bad conditions. So we picked the rain dates only on the weekend. So first weekend, 6 and 7. The 7, if not. And then the 13, 14, if not. We should get something by then.

Mr. Shimabuku: Well, I feel your frustration, being a stand up surfer myself, in what you going through. Going over this information on now that they changed the rules as of August 2012, I don't know what the new procedures are, but I can feel your frustration. And I guess I need to apologize to you that I wasn't here on the last meeting in December that I could've put in my opinion.

Mr. Kilborn: Thank you, Mr. Shimabuku. And get back to the August thing when they changed the rules, it was right then when I first put my permits in to try to get it in February. So it's funny, all these coincidences that happened. I mean, all of a sudden, you grow feathers. I mean, I eat chicken. I still no grow feathers overnight, you know? I don't know if that made sense, but I just trying to be funny.

Mr. Shimabuku: Well, I hope you get your permit granted, and the events run so that, like you said, the keiki can enjoy, and the family can enjoy. And I look forward to having to see the OK that you

would get from the County for your event.

Mr. Kilborn: Well, you know, just to let you guys know . . . (inaudible) . . . just won the world . . . not world title, but won the championship at Sunset Beach just couple days . . . yesterday in stand up paddle. He's a very influential person for the Maui . . . County of Maui. And he's important. And we got not just him, but I can name ten people. One of the best stand up paddlers come from Maui and/or surfers. Surfing is not like the stereotype, "Oh, you one bum." That was my father's days. He used to tell us that. You know, today, surfing is so healthy for kids. They very much educated, too, because they get this system now like high tech is going for education for kids. And so it's on a good . . . (inaudible) . . . and I think it's healthy.

Ms. Haraguchi: OK. So I guess I would have a question for James. Being where we are right now with the finding of facts, does the Board have to accept this?

Mr. Giroux: You know, I wanna hear from the County first. And then what I wanna do is go into executive session, and then we'll discuss some of the procedural issues regarding these facts, and maybe some procedural issues with the hearing.

Ms. Haraguchi: OK.

Mr. Kilborn: Is that it? Take it easy on Mary. She's a good lady.

Ms. Mary Blane Johnston: I appreciate Rodney coming and updating us. We had the hearing. You've received the evidence. The findings of fact and conclusions of law were prepared based on that and the transcript. Mr. Kilborn's discovered a lot since then, but that doesn't change what was before you, or what you understood, or the ruling you made. So I would encourage you to go ahead and enter these. If he has to come back again, it would be a whole new ball game. Let's hope that doesn't happen, anyway. But if you wanna make . . . if there are changes or something that's inaccurate, of course, in the findings of fact, conclusions of law, I don't know that there's . . . maybe Mr. Giroux can tell you that . . . any provisions for reconsideration on newly discovered evidence or anything like that. You made a decision based on what was presented to you and that's reflected in this document.

Chairman Kevin Tanaka: Rick, I guess, I'll take action, take over as Chair. We need a majority to go into executive session to discuss what we had just stated.

Ms. Haraguchi: OK. I make a motion that the Board go into executive session to discuss . . .

Mr. Shimabuku: I second it.

Chairman Tanaka: We have a motion and second. All those in favor, please say aye. Any opposed? None.

It was moved by Ms. Haraguchi, seconded by Mr. Shimabuku, then unanimously

VOTED: To go into executive session.

Chairman Tanaka: **We are now in executive session.**

(The Board entered into an executive session from 1:53 p.m. to 2:27 p.m.)

Chairman Tanaka: OK. We are back in open session. James, can you explain to . . . what we had discussed?

Mr. Giroux: Rodney, can you take the podium?

Mr. Kilborn: You want me to say my name again?

Chairman Tanaka: No, we just . . . Go ahead.

Mr. Giroux: I just wanna address you as . . . as the Board's attorney, there's some concerns as far as the process and how, you know, the statements that you made as far as how the hearing went, and then your ability to present evidence. And we understand your position that you don't want to continue the litigation or whatever anymore, but we wanna make it abundantly clear that from hearing your testimony, we see a . . . we see on the record, a request for either a reconsideration or an opportunity to produce new evidence that if taken under oath, may or may not change the outcome of this Board. We want to give you that opportunity. If you want it, the Board will then vote on a decision of whether or not to proceed in that fashion, but it has to be your decision. We are going to take it as though we heard a request for it, and we are now clarifying whether or not that is something that you would like to do, and like to let you know that we are open to hear that, and to discuss it, but it has to be something that you wanna do.

Mr. Kilborn: I . . . because I not familiar with the procedures and what it's really entail, but again, I think it's secure that I do move forward with it instead of just holding back 'cause things can change. And I'm afraid to come back or another way if I don't proceed with this. So, yes. Will this cost me a lot of dollar signs? 'Cause my wife going get nuts.

Mr. Giroux: No. Rodney, basically, what it would entail, Rodney, is everything you said this morning that led you to believe that if that evidence that you presented were to be under oath and to be taken as true would change the minds of the decision-maker. They have made a decision. They did not have that information at the time. If you want that opportunity, we can open . . . we can reopen for a limited amount of time for you to present that, and for the government to rebut that, or to have any other evidence that they would wanna present that would clarify their position.

Mr. Kilborn: Reopen. I'm for it.

Mr. Giroux: OK. And so we're gonna discuss this, and we're gonna vote on basically, what the scope of that's gonna be, OK? And probably at the end of this discussion is we want to know exactly who you're going to bring in and what documents you wanna present. And that needs to be handed over to the government so that they have a full and fair opportunity to investigate that on their own and bring in whatever witnesses they want to rebut that.

Mr. Kilborn: Sure. Do I need to present? How much time do I have to come up with all this?

Mr. Giroux: Well, that's what we're gonna discuss during this motion. And basically, we're gonna proceed as though we are disposing of a motion to reconsider.

Mr. Kilborn: OK.

Mr. Giroux: And Ms. Johnston, at this time, if you have anything you wanna add to this discussion.

Ms. Johnston: OK. Well, just for the record, I'm gonna object to the matter being treated in this way, but it's up to the Board to make the decision.

Mr. Tanner: Chair, I would make a motion that we reopen the hearing based on new information and evidence.

Mr. Abbott: Second that.

Chairman Tanaka: OK. Is that the correct wording, "reopen?"

Mr. Giroux: Yeah, we're gonna grant the motion to reconsider, and we are going to allow for a further hearing to present the new evidence.

Chairman Tanaka: OK. So it has been moved and seconded. All those in favor, please say aye. Any opposed?

It was moved by Mr. Tanner, seconded by Mr. Abbott, then unanimously

VOTED: To grant the motion to reconsider and to allow for a further hearing to present new evidence.

Chairman Tanaka: **OK. The motion carries. We are now reconsidering this matter.**

Mr. Giroux: And we might as well take this opportunity to do kind of like a pre-hearing discussion as far as again, how much time are we looking at, how much . . . when will we do the next hearing, and possibly, who are the . . . well, how much time we wanna give as far as for the exchange of information regarding who is gonna be called as witnesses and what documents are gonna be presented.

Chairman Tanaka: Do we set that time limit?

Mr. Giroux: Yeah, let's start with staff to see what our parameters are on that.

Ms. Kapua`ala: Both hearings in March, March 14th and 28th are available. We could also start from Mr. Kilborn's ability to submit further evidence. So, Mr. Kilborn, more exhibits. You know, if you can, to get on the March 14th agenda, you would have to submit your documents no later than March 1st. Again, additional exhibits and witness lists, you know, if you are going to call more witnesses to the stand. And then we would probably, if that's acceptable with the County as far as exchanging those exhibits and those witness lists, see you on March 14th.

Mr. Kilborn: Just so happen on the 14th, I fly to Brazil.

Ms. Kapua`ala: So we're talking March . . . I'm sorry, April 11th or 25th, and we can work backwards from there. Could you remind us when your SUP contest will be if the County approves it--the one that's in process now? I mean, remind us the date so I . . .

Mr. Kilborn: It's on the April 6,7, or 13, 14 of April.

Ms. Kapua`ala: OK. If you would like to push it back to May because you have your SUP event in April, the dates would be May 9th or 23rd.

Mr. Kilborn: May 9th would be nice.

Ms. Kapua`ala: OK.

Mr. Kilborn: . . . (inaudible) . . .

Ms. Kapua`ala: The County's OK with May 9th?

Ms. Johnston: May 9th would be fine.

Mr. Abbott: What date?

Mr. Tanner: May 9th.

Mr. Abbott: May 9th.

Ms. Kapua`ala: So would you like a two-week or a four-week date for exchange of exhibits and witness lists?

Mr. Kilborn: . . . (inaudible) . . .

Ms. Kapua`ala: So that would mean the deadline to submit your witness lists, and exhibits, and exhibit lists, would be Thursday, April 11th. And again, original plus 15 copies, please. And can we follow the same protocol we did . . . as we did in the last hearing where the applicant will use alphabetical exhibits and the County will use numerical?

Ms. Johnston: The exhibits we've already . . . that we've already submitted just be able to start from there and add any new ones on after that?

Ms. Kapua`ala: That sounds reasonable.

Mr. Giroux: Yeah, we'll go on like as if it were a continued hearing.

Ms. Kapua`ala: So for the record, Mr. Kilborn, you ended your last exhibit with . . .

Mr. Kilborn: "N."

Ms. Kapua`ala: "N," correct. Correct. Thank you. And the County did five, one through five.

Mr. Giroux: Again, Mr. Kilborn, if cost is a concern, if you are not able to get those officials to come or be in here, if you would take steps to get either an affidavit or something signed and, you know, notarized, that is something that this Board can consider.

Chairman Tanaka: Is a notary required? A signed letter?

Mr. Giroux: It's not required. It's just a higher level of, you know . . . again, it's just a . . . it's an issue of if you can't get the person here that we are willing to take a written statement from these officials. We understand you're dealing with State and Federal officials, so we know that it would be difficult to bring them in as far as witnesses.

Ms. Kapua`ala: Mr. Chair and Mr. Giroux, I believe our rules also says that a subpoena must be submitted ten days prior to the hearing? So if you're gonna be submitting any subpoenas to subpoena a State or Federal employee, then I guess sooner or later . . . sooner than later would be better so that the Chair can aptly sign those documents. And we have templates as well for say, applicants, appellants, like yourself, for affidavits and subpoenas.

Mr. Kilborn: . . . (inaudible) . . .

Ms. Kapua`ala: Yeah, you can e-mail me. It's something I can e-mail back to you.

Chairman Tanaka: OK. So have all the dates been settled? It'll be heard in May and the . . . OK. OK. So this matter has been opened, reopened, for reconsideration, and is now being put on hold until May.

Mr. Giroux: And, Trish, on the agenda, can there be some notice to the Members that they are going to be looking at the prior decision?

Ms. Kapua`ala: OK.

Mr. Giroux: Because we may have new Members on, and they are going to have to review the entire record—the transcript and pleadings.

Ms. Kapua`ala: OK.

Chairman Tanaka: OK. So this matter . . . this item is now deferred. Thank you.

Mr. Kilborn: Thank you, guys.

Chairman Tanaka: OK. We jumped to this. Trish, are we going back to Public Hearing, Item 1?

Ms. Kapua`ala: Yes.

Chairman Tanaka: Oh, sorry, before we do, let's take a five-minute break. Thank you.

(A recess was then taken at 2:42 p.m. at which time Mr. Tanner left the meeting. The meeting then

reconvened at 2:48 p.m.)

Chairman Tanaka: Thank you very much. Trish?

B. PUBLIC HEARINGS

- 1. JEFFREE TRUDEAU for DAVID C. BOLLES requesting variances from the following sections of the Maui County Code: (1) §18.16.060 which states that the right-of-way access street to a subdivision shall have a minimum width of 24-feet; (2) §18.16.050 which states that the owner shall pave a 20-foot wide private driveway; (3) §18.16.130 which states that an agricultural district cul-de-sac shall be as short as possible and shall not be more than 800 feet; and (4) §18.20.040 which states that a subdivision shall have at least 20-feet of paved access, for the David C. Bolles Subdivision (DSA File No. 2.3115) located at 170 Door of Faith Church Road, Huelo, Maui, Hawaii; TMK: (2) 2-9-007:052 (BVAV 20120012).**

Ms. Kapua`ala read the agenda item into the record and presented depictions of the subject property and surrounding area with the aide of Mr. Wayne Arakaki, representing the applicant.

Ms. Kapua`ala: Mr. Arakaki was noticing that there is a gentleman here for public testimony and is asking if you would like to take that up before or after he presents. Mr. Arakaki has a power point presentation.

Chairman Tanaka: Yeah, after, after your presentation.

Mr. Wayne Arakaki: OK. Thank you. Good afternoon, Board. My name is Wayne Arakaki, engineer for the subdivision. I'm requesting variances for this David Bolles Subdivision. It's almost a similar request for the Ross Subdivision, which we did last year, and it's within the same area.

OK. David Bolles Subdivision—it's a 20-acre parcel, and then he's dividing this in three lots. So the smallest lot is about . . . approximately five acres. There's four applications . . . I mean, there's four variances that . . . sections that we're trying to cover. The first one is the 24-foot minimum from the project site all the way up to Hana Highway. We have to provide a 24-foot minimum right-of-way. The second one is the subdivision road within the subdivision. That has to be paved 20 feet wide. And there's another requirement of paving outside of the subdivision which is 100 feet per lot, so less one. So it's a three-lot subdivision and we're required to do 200 feet of additional paving, 20 feet wide. And the last one is the cul-de-sac shall be not more than 800 feet in the agricultural area. I'm gonna go backwards. Gonna take number four first.

Wait. Again, there's a location map. Back up. This is the project site and then this is the driveway. And then this is the Door of Faith Church Road that comes out here. This is the physical access and then it comes out to Hana Highway to this location. This area here is, I guess, is called Waipio Bay. The subdivision that we worked on the variance last year was the Ross Subdivision. It's located right up here. This was a five-lot subdivision. It's a similar request.

This is the layout of the subdivision. Again, the lots are more than five acres and there's only three

lots on 20 acres. There's a couple of water tanks, and there's fire protection, hydrants, pumps. This is the subdivision road which is a little over 950 linear feet. This is the Door of Faith Church Road. This is the ocean. There's a beach access that we came here from the Board before previously that runs along this side of the property.

The first thing is the cul-de-sac being more than 800 feet. We requested . . . you know, aside from applying for a variance, we requested to have this approved by the Director of Public Works. And since then, he has approved this. It's more than 800 feet, so he has approved the road. So I'll be taking that out of the request for the variance.

The second thing is pave a portion of the Door of Faith Church Road. I have the same argument as my previous on the Ross Subdivision. The paving would encourage traffic and, you know, normally it's usually a tourist kind of traffic. Paving will also concentrate on runoff so drainage would be a problem. There's no drainage systems in that area, public drainage system. And the road is not County or not State so it's not maintained by either. It's maintained by the residents in the area. So they manage to get by with gravel or coal-based. This is another picture of the typical road where it's gravel. And it's more like a country kinda setting.

The second is paving the driveway 20 feet wide. What we're proposing to do is to pave the road 16 feet wide. And on both sides of the paved road, we're gonna put two feet of compacted gravel. What we did was we checked with the Fire Department and they said that it was OK with them, but provided that we get a variance for it. There'll be grass swales on both sides. And then at the bottom of the road, there'll be a sedimentation pond. I had the construction plans approved, but it was approved for a 20-foot asphalt road, not with the two feet gravel additions here. And then there'll be landscaping, trees, and grass along the road, and that should minimize the erosion.

Here's a picture—a cross section of the road. Again, 16 feet would be asphalt, would be paved. And then two feet on both sides would be gravel, compacted gravel. And there will be grass swales on both sides. The road is quite large. It's 44 feet wide which normally it's only 40 feet wide, but this is 44 feet wide.

This is a picture . . . we did get construction plan approval, so this is the rough grading of the road. So you can see how large or how wide the road is—44 feet wide. And again, this is the drainage basin with the siltation pond located at the lower section of the road. This is another picture of the roads—again, quite large. And there's existing landscaping already in place on this road. So I don't think it will be a problem like for the Fire Department to come down this road.

The next thing is the 24 feet minimum width right-of-way. There's a portion of road that's along the Door of Faith Church Road that's actually going on private property. And it's been like that for I guess for many years. One thing is that if the variance is not granted, then legal access would be a question. This Door of Faith Church Road is the only access to the Huelo area. There is a road that goes in the Paia direction, but Waipio Road is actually a private road. And then if you go further on toward the Paia direction, there's a gulch. I mean, on paper, there shows a road, but there's a gulch so you can't really get access off there. This road has been in many years. There's a church, Kaulana Hueo Church, I guess was established in the 1850s and they're using the same road. And so far no one has questioned the road.

This is the Door of Faith Church Road and the physical access like it's on private land is

approximately right here. At one time, I was working with the landowners, the Wimberlys, and they were thinking about just granting this thing. They were trying to do a subdivision. And they were gonna just grant the road to whoever, but the question came about to the State or the County. And, you know, it really did . . . and then there's no association that would wanna take over it. So . . . and they ran into some other problems with the Planning Department so that's why they didn't continue on with the subdivision. But they didn't have any problems about granting the right-of-way which is this section right over here.

This is the road that is in question. It's paved more than 20 feet wide. And this is the church, Kaulana Hueo Church. This is a church right here. So a larger version.

You know, I did research in trying to find the right-of-way, and one of the maps that came out was a State survey map. And this particular property, that belongs to the State here, and it shows that it's 30 feet wide along the State's property. This is Hana Highway. And this remnant piece over here is called Huelo School. And there is also another map that I have that shows that this is being 30 feet.

This map is kinda hard to read but this map was done in the early 1900s. I got this from the East Maui Irrigation. And this is where the church is. And where the State ends, it shows a road, 30 feet wide similar to what's out there. But again, physically, the road is on private property. It's not where the map is located. That concludes my presentation if you get questions.

Chairman Tanaka: OK. Thank you, Mr. Arakaki. If we can . . . if there is anyone from the public who wishes to testify on this matter can please step forward, sign in, and state your name for the record, please. We'll limit you to three minutes.

Mr. John Baker: Hi. My name's John Baker. I've lived on what I guess we're terming the Door of Faith Road now since about 1976. My property is right before the subdivision if you go down that little road. It's been dirt ever since, of course, I've been out there. We do maintain it ourselves. And whenever it gets bad, usually Moki Kahiamoe or else we all chip in. We bring out gravel. We fill in all the holes. He's got a bulldozer that he can scrape it down so it's smooth again.

When my kids were growing up, you know, they learned to ride their bikes on that road. We would go for nice, long walks. We never had to worry about traffic because it's dirt. People respect that and they go slower. Now, my grandchildren are using that road to learn how to ride their bikes. I don't worry about them. If you pave it, people are gonna come down that road. And the minute they hit that pavement, they're gonna start going fast. And not only that, because now we . . . I guess there's gonna be a couple of mandatory parking lots for tourists to use to get down to some overlooks. We will be getting an influx of tourists. When some book called *Hidden Maui* or something came out and referred to the hidden cliffs of Huelo, my friend and I were putting up our catchment tank, and two loads of tourists show up wanting to demand to know where it was. We know the tourists are gonna come. They will see that pavement and then they're going to go faster.

The worst parts of our whole road are those parts that have been paved because rains out there are kinda hard to believe unless you live out there and see it. Water is gonna get under the pavement. Water will cause those potholes to develop. And potholes and pavement are far worse under vehicles than potholes and dirt.

Every neighbor I've talked to, and I talked to just about everybody who owns property on our little section, is against paving. They want the road to remain the way it is and we will continue to maintain it ourselves. We like it that way. The ambience of being . . . taking your little granddaughter walking down the dirt road in the country is a lot different than walking on the . . . (inaudible) . . . You know, you stop. It's still a small community even though it's much bigger than when I first built out there. Like you still stop. You talk story with neighbors. Other people drive down. They get out of their car. They talk. It just is gonna be a different feel if we have to have pavement there. And we don't need it. For 36 years I've been living out there, we've taken care of that road. And when I first got there, there were nights when my then wife, Judy and I, we couldn't even get to our property. It was so muddy. We had to walk carrying all the bags of groceries about the 900 last feet to get to the house. Now, it's never a problem. The road is a little bit narrow, but when you go down there, and my friend's coming the other way, I pull off. He pulls off. We each wave each other on. And we go, "OK, no, you go, I'll stay," and then we do it. All you gotta do is be careful. I would really like to see that variance granted.

As far as the ones on the property itself, I have no concern with whatsoever. So far Bolles has been a good neighbor. Construction has not overly been a problem for us at all. So I would ask that we just not pave it. Leave it the way it is and let us continue to take care of it. I really don't wanna have to start worrying about my four-year-old granddaughter being on the road with somebody just whipping down and seeing pavement for the first time. And don't forget, they're coming down . . . (inaudible) . . . where it's all dirt. And I know human nature is such when they make that right turn and see pavement, they're gonna go pretty fast. And right now, we can always know the grandkids can get the bikes out of the road in time. It's great. I wish you could come out and see it. You'd see what I mean. It's just very, very nice out there. So thank you very much for the chance to talk to you about it.

Chairman Tanaka: Thank you. Board Members, any questions for our testifier? None? Thank you. I have a question. Mr. Arakaki, OK, I'm looking at I think from your location map to the site, your subdivision map. And I'm still . . . from Hana Highway off of Door of Faith Road, what is this long, straight run that you actually . . . (inaudible) . . . off of and then down to the property?

Mr. Arakaki: That is part of Door of Faith Church Road.

Chairman Tanaka: That long, straight run?

Mr. Arakaki: Yes.

Chairman Tanaka: And then that right turn . . . ?

Mr. Arakaki: Actually, there's no name for that road but people just call it Door of Faith. It's a 30-foot road. It's 30 feet wide.

Mr. Baker: If I may? . . . (inaudible) . . .

Chairman Tanaka: If you could . . . yeah, could you speak into the mic.?

Mr. Baker: Up until last year, there were no house numbers out there. There's no official names

to the road. I still think my house is 210 Door of Faith Road, but I could be wrong. So that's why there's some confusion.

Chairman Tanaka: OK. Hang on. OK. So now Door of Faith Road . . . because we've seen pictures of some paved sections and some graded, gravel road. Now, describe for me the straight run and that right turn that you make getting to the flag or the arm of this lot. Is . . . that is what the area that you maintain as one of the owners?

Mr. Baker: Can you find a map there? Oh, here. Maybe I can show you. This is my property here and this is that road that we're talking about for paving. And this is coming down the Door of Faith Church Road. It makes a left. Comes all the way down. Of course, it continues, but then there's that right turn that goes here and this is where the Bolles would be in there. This is what we maintain and we also maintain here. The pavement stops about here. The only pavement . . . the reason we have pavement is Moki Kahiamoe knew people in the County. And when they come back from paving part of the Hana Highway, if they had extra pavement, they'd just come down our road and drop it off there. But the pavement itself sorta stops right about here and then it's all dirt for the rest of it.

Chairman Tanaka: OK. Thank you. OK, now, just so that I'm perfectly clear, Mr. Arakaki, if you can answer this, now what we just saw, the County requirement . . . OK, take us . . . the . . . I guess your Lot 1-D, I guess that's your roadway lot. The County requirement is 24 feet of pavement and that is what you are seeking a variance from?

Mr. Arakaki: No. The County requirement is 20 feet paved road.

Chairman Tanaka: And you're proposing 16, two and two, with . . . ?

Mr. Arakaki: OK. There's two sections. OK. OK, the first section is interior roads or subdivision roads. So what we're proposing in the subdivision, the subdivision road, we're proposing 16 feet asphalt with two feet of gravel on both sides, and these are compacted gravel. And again, we did check with the Fire Department. They said it was OK with them provided that we got a variance. And Lesli, correct me if I'm wrong, but this is a three-lot subdivision. Actually, 16 feet for three lots? Is that correct? I forgot . . .

Ms. Lesli Otani: Typically for . . . This is Lesli Otani with the Department of Public Works and the Development Services Administration. Typically, for roadways . . . There's two sections of the code. There's one that's the design. And then there's another section that's construction. And what's going on with . . . just referring to that roadway Lot 1-D, so within the subdivision, if it was only serving three lots, and there was a new roadway being created, they would have to do 16 feet of improvements within a 24-foot right-of-way. And in agricultural zoned land, we allow gravel if it's serving less than four lots. But in this case, there's also adjacent landowners, I believe, that are accessing the roadway. So now it's serving an excess of three. So it also triggers some of the 18, 20 requirements. And so then they have to do 20 feet of pavement with rails on the side. And typical . . . You know, in a 40-foot right-of-way so a typical, minor ag road.

Mr. Arakaki: OK. Thank you.

Chairman Tanaka: OK. And it's servicing what looks like maybe I guess five lots on the way down?

Mr. Arakaki: Yeah, five lots.

Chairman Tanaka: OK. You said you had . . . you spoke with the Fire Department. Do you have something documented from them that says that, yeah, it looks all right, or they won't put anything in official . . . ?

Mr. Arakaki: I guess if they were really . . .

Mr. Jeffree Trudeau: . . . (inaudible) . . .

Chairman Tanaka: OK, yeah, if you can answer that question. If you can identify yourself.

Mr. Trudeau: Hi. This is Jeffree Trudeau. I'm the owner's representative. They . . . Kono has been down there, and we have had the fire trucks down there. And I have photographs of the fire trucks down there, and he has given us the approval to have the road at 16 feet. So I don't know. We probably don't have a letter from him, but I can certainly get that.

Chairman Tanaka: No, at this point, no. I was just curious. I believe you've had that conversation. I believe you. Thank you.

Mr. Trudeau: There's a lot of questions that I might know more about than Wayne just because I'm in the middle of corresponding to everybody, so I'll try and help too.

Chairman Tanaka: Thank you. Wayne, again, the section I guess that T's off of and what you're still calling Door of Faith Road, that is the 44-foot right-of-way? What is the pavement section? And you showed us a photo?

Mr. Arakaki: OK, the pavement section that I showed was actually for the subdivision road. This particular road here or driveway is 44 feet wide. OK? Right here. That's the one that I showed with the 16-foot asphalt pavement. This other road here is another subdivision requirement that we have to provide another 200 feet of 20-foot pavement. And this particular road is 30 feet wide. I did this subdivision here. And then we gave a five-foot road-widening. And then similar, we have to give another five feet on this side. But this is just a gravel road.

Chairman Tanaka: OK. Board Members, any questions?

Mr. Santiago: A question: these improvements, where exactly is this relative to the map?

Mr. Arakaki: This is . . . the pictures that he shown, that's the roadway. It's right here. That culvert is located . . . This is like the center line of the stream. The culvert is located right here. The road crosses over the stream area.

Mr. Santiago: Is this existing or was it widened recently?

Mr. Arakaki: Yeah, it's . . . it was under construction. After we got construction plan approval, yeah,

we did the construction work.

Ms. Haraguchi: So it was just widened?

Mr. Arakaki: Yeah, because previously, you know, there was just guava trees and whatnot. Nobody was really using the road, yeah. So in order to abide with the County subdivision requirements, we had to improve the road.

Ms. Haraguchi: So is that . . . ? Does it have like a guardrail, or a little bit of pavement, or gravel, or anything on it so once it rains, it doesn't erode all of the . . . ?

Mr. Arakaki: There's grass swales on both sides of the road. And then it goes into a sedimentation pond before it goes downstream.

Mr. Santiago: But no guardrails?

Ms. Haraguchi: No guardrails?

Mr. Arakaki: No. Maybe Jeffree can explain.

Mr. Trudeau: The construction is actually now complete. The whole road is in. This photograph doesn't show any of it. You realize that, right? OK. So it's . . . the road is all done according to the construction plans. And we're going in to ask for the variance to get from the 20 feet down to the 16 feet, but the 16 feet is all there. The swales are there. It's planted out with grass. And instead of guardrails, we have big boulders going all the way around. It's completely protected down there. I have photographs of that that I can submit if we ever need it.

Chairman Tanaka: OK. So you actually paved 16 feet then. If you were required to, you would come back and pave that extra four?

Mr. Trudeau: We did it after we had Kono come out 'cause we knew . . .

Chairman Tanaka: OK, yeah, typically, that's pretty much our . . . since we've seen so many of these and specifically on this road, our biggest concern typically, would be can a fire truck get down there, can it turn around, can it make it back, will it get stuck. OK.

Back to Mr. Arakaki again. OK, so there are three items you are requesting: the 16 plus . . . 16, 2, and 2, rather than the 20-foot section; the additional pavement outside of the actual three-lot subdivision. What was the third?

Mr. Arakaki: The third is a minimum 24-foot right-of-way from the subdivision to Hana Highway. And again, there was a section of road that goes on private property.

Chairman Tanaka: OK. OK. Which was fairly . . . not even in the proximity of this subdivision. Sorry. Can you point that area out to us again?

Mr. Arakaki: Can you bring up the location map? This is the subdivision. This is the driveway that

comes up. It'll come up here—Door of Faith Church Road here. It'll come through here. And right over here, it takes a turn up to Hana Highway. It's right here is the problem area where it goes on private property. This is the church—Kaulana Hueo Church—right here. And then right in this section here.

Chairman Tanaka: OK. Thank you. And how much of a section doesn't meet that 24 feet?

Mr. Arakaki: Well, let me first of all say that I have maps to show that all of these roads are 30 feet wide. But this particular area goes on private property and that's on the Wimberlys' property.

Chairman Tanaka: OK. Thank you. Trish, I have a question for you. I guess maybe even for you and Lesli. We've seen a handful of these specifically on Door of Faith Road. So that would've been a requirement and that would've come to us? That same section of roadway would've been a condition to the other subdivisions that came before us, correct?

Ms. Kapua'ala: I believe so. In processing the Ross Variance, which is located here, we're talking about the same requirements. And, Lesli, please confirm since you're the . . .

Ms. Otani: Yeah, from my . . . I didn't staff that, but from my understanding it was very similar.

Chairman Tanaka: OK. Thank you. Yeah, I mean, I know we don't say that a precedent has been set but, Board Members, any questions?

Mr. Santiago: I just got a quick question. Wayne, as far as the requirements that are mandated when these subdivisions are triggered, have you done any kind of cost studies to determine what the cost would be if you had to comply? What's that dollar amount, you know, to comply with all the requirements? I'm it's a staggering amount.

Mr. Arakaki: Well, anyway, it runs in tens of thousands. It's more like \$18 a square foot when we do road paving. So it can add up pretty much. Two hundred feet, 20 feet wide, you know. And I guess the big problem is, who's gonna maintain? The developer's required to install that under the subdivision rules, but actually County or State will not say that that's their road. So that would be the more bigger problem.

Mr. Santiago: You probably could say that it would be very cost-prohibitive to comply with that kind of requirement?

Mr. Arakaki: Yeah, it would be difficult, yes, to do.

Mr. Santiago: OK.

Mr. Trudeau: . . . (inaudible) . . .

Mr. Santiago: Sure.

Mr. Trudeau: Just quickly. The cost, I was responsible for finding all the costs for everything there and managing the project. So the main reason for this part is not to do with cost as to do with

neighbors. They were the people that requested us not to have paving down that 200-foot part and not right in front of their house. John Baker is on one side of the road and all of the Tavares Family is the other.

Mr. Santiago: Understood. I'm just . . . my curiosity is what does that cost if you had to comply with code?

Mr. Trudeau: Well, we complied with everything on the 16-foot road and that cost about a hundred thousand dollars. And this extra little section, we got a price from Sonny Vick's was about \$52,000.

Mr. Santiago: Thank you.

Chairman Tanaka: OK. Members, any other questions? Discussion?

Ms. Kapua`ala: Mr. Chair, please keep in mind . . . Board Members, please keep in mind that the Department of Public Works provided a staff report with some analysis. The only comment they provided was that the Door of Faith Road is privately-owned and maintained. The primary issue as it relates to Section 18.16.060 is that there's a segment of the road that runs through private property. There's no designated right-of-way that the County is aware of. The staff would kindly ask the Board to address each criteria to explain the reasons for its decision.

Chairman Tanaka: OK. The report from Public Works, as Trish just stated, because of that . . . specifically that section of roadway that runs through privately-owned . . . well, the road is actually privately-owned and maintained, so it's outside of the County's responsibility.

Mr. Abbott: Is that the entire road is out of the County's responsibility?

Chairman Tanaka: Well, the whole road actually, but there is a section that it runs actually that owns out of the right-of-way. Lesli, you'd like to explain it to us?

Ms. Otani: Yeah. Up here is Hana Highway, the new Hana Highway. And that's maintained and owned in this area by the State. And there's a portion coming down here and my understanding is that that's actually State DLNR property. So it's not the same as a State highway, but State land. And they have a designated right-of-way. This portion, that's the private portion. And although the road physically goes through there, there's not a designated right-of-way where someone owns on this side and someone owns on that side, and there's a designated road going through. It's all, from my understanding, one big piece. And that's the issue with the code is that you have to prove you have a 24-foot legal right-of-way. So here, if it's 30 between this property line and that property line, that's designated right-of-way. In here, the road is just going through.

Then this area which in portions we have it labeled as I think West Waipio Road, but as Wayne pointed out, I think there's a gulch in this area that's difficult to cross. So people drive down here. This road comes down. When you get to this portion from here down, it was actually created as part of this partition I think in the 1920s or earlier. So from here down, you know, that's also just part of the partition.

And then this area right here towards the Tavares Subdivision, I believe in the past, that was

created with previous subdivision actions, as well as the flag or the 44-foot stem-like portion that's going down here.

So the last official State portion is actually Hana Highway and the County doesn't maintain. I think that's part of the issue is that this isn't County, and it's unlikely the County will take it over any time soon because of the various ownership and entities going down through.

Chairman Tanaka: OK. Thank you, Lesli. Members, any other questions?

Mr. Shimabuku: I have a question. Before us there's two letters of objections: one from an Edward Baker. Mr. Arakaki, which . . . where is this address—180 Door of Faith Road? Are you familiar?

Unidentified Speaker: . . . (inaudible) . . .

Mr. Shimabuku: Edward Baker.

Unidentified Speaker: He lives right here.

Chairman Tanaka: OK. Just pass the entry road.

Mr. Shimabuku: OK. So he objects to this request and so does David Brown. Does David Brown live in that area as well? He's the executive director of Public Access Trails Hawaii.

Chairman Tanaka: No, I think we can answer that and say no. We've seen correspondence like this for every single thing Mr. Brown submits to the County. And it looked like the other one from Edward Baker, it looks like his objection is he just believes that a subdivision would create more traffic. I think he's not objecting to the fact that they're seeking a variance from the paving or some of the pavement requirements.

Mr. Baker: He told me . . . (inaudible) . . .

Chairman Tanaka: Yeah. Yeah, so I mean, it's stated as an objection to the variance, where in actuality, an objection to the variance would mean that we would be saying that he would have to pave the road. OK. Discussion? Well, let me ask Lesli. I know Public Works, aside from the two statements, there is no recommendation from Public Works.

Ms. Otani: No, we're not objecting, but if the Board does grant the variance, I would ask that it's clear in the variance request that although they're asking for a variance from 18.16.050, that they still are required to do some improvements. And I think Mr. Arakaki explained they're proposing the drainage improvements, the gravel, the roadway. It would be, I think . . . I just would like it to be clear that if they do get the variance, they still have to be responsible and take care of the drainage, and put in the improvements that they're proposing, that it's not a complete variance from all requirements.

Chairman Tanaka: OK. Thank you. OK, now I just wanna make sure. 18.16 . . . ?

Ms. Otani: 050. 18.16.050 is for the interior roadway.

Chairman Tanaka: Thank you.

Ms. Kapua`ala: Also, Mr. Chair, Section 18.16.130 was verbally deleted by the applicant.

Chairman Tanaka: OK. Yes. Thank you. Feelings of the Board?

Mr. Abbott: Is it my understanding then the reason they want the road the way they're asking for it is they don't want to change the ambience of the neighborhood?

Chairman Tanaka: Well, that's part of the reasoning, anyway.

Mr. Abbott: And they find no safety or any other hazards that can crop up? I mean, if you're gonna put in a paved road, you're gonna have speed bumps to slow 'em down.

Chairman Tanaka: Yeah, but then you also accelerate the water that falls onto the paved surface so it's . . .

Mr. Santiago: We've heard a couple of these cases in the last couple years. And it's a community that, you know, dance together and maintain this road, this specific road. And then from all indication, they do a very good job in maintaining it, and keeping that ambience in place that's been there for quite some time now. And we granted those variances in the past based on some of those testimonials.

Chairman Tanaka: Mr. Arakaki, for us to add conditions, that happens a lot. But typically, what I would like to ask you is, representations made in your construction set is what you have been . . . you have submitted and have been approved for. Is that correct?

Mr. Arakaki: Yes. Yes.

Chairman Tanaka: OK, so legally, you're bound to build it as per plan.

Mr. Arakaki: That's right, yeah.

Chairman Tanaka: OK. Thank you. OK. It sounds like . . . OK. Let me get . . . Wait. Sorry. Lesli, your department, anyway, reviewed the construction set?

Ms. Otani: Department of Public Works, yes.

Chairman Tanaka: OK. And as far as you know, the representations that Mr. Arakaki has made to this Board and in this set that has been presented to us is satisfactory to what you have previously stated?

Ms. Otani: Well, I didn't review the construction plans myself, but based on what he said and what I see here, this seems consistent with the requirements.

Chairman Tanaka: OK. Thank you. OK. It sounds like more or less we're headed in the same direction. With that, I would entertain a motion.

Mr. Santiago: I'll make a motion to grant the variance and accept the justification that's been submitted by the applicant as outlined in . . . There's no pages here. What page? Form 1 in this booklet.

Chairman Tanaka: Yeah, the variance justification by the applicant. Bart, if you'd also like to include the wording that we just went over with Lesli and Mr. Arakaki that the representations of his construction . . .

Mr. Santiago: So contingent on their compliance of the agreement as far as construction of roadway as set forth by . . . what department would that be? Public Works?

Chairman Tanaka: Oh, yes.

Mr. Santiago: Yeah. That roadway improvements are in compliance with the Department of Parks . . .

Chairman Tanaka: Public Works.

Mr. Santiago: Public Works' requirement.

Chairman Tanaka: OK. And are you making . . . sorry . . . are you making a motion for all three items applied for?

Mr. Santiago: Yes.

Ms. Haraguchi: The one thing that I do wanna add is that they also . . . that they agree . . . that they comply with the agreement that was made with Public Works on the drainage part of this also.

Chairman Tanaka: OK. OK.

Mr. Santiago: Along with a hold harmless language.

Chairman Tanaka: OK. We have a motion. Do we have a second? It's been moved and seconded.

Mr. Giroux: Just clarification, is there a dollar amount on the insurance?

Mr. Santiago: I did not attach a certificate of insurance, just the hold harmless.

Chairman Tanaka: OK. It's been moved and seconded with . . .

Mr. Giroux: As Corp. Counsel, I just . . . because we're dealing with roads, part of the County's deep pocket always ends up being these roads. I would just ask with all respect that insurance be carried on this because it is a fairly large piece of property covering a large area of road. And I

would just like to see the County protected a little bit more than just the hold harmless.

Mr. Santiago: I'm trying to recollect our past dealings with a similar variance, what was granted. Did we attach an insurance clause to . . . ? Because I wanna be fair.

Chairman Tanaka: Trish can answer that question for you.

Ms. Kapua`ala: Thank you, Mr. Chair. To answer that question, the Ross Subdivision had an approval. Originally . . . I can't remember the first number, but you recently granted an amendment to the condition of approval reducing the insurance requirement to zero. I'm gonna continue looking for that.

Mr. Santiago: I think the issue was the applicant's inability to secure insurance. That there were no carriers out there that would insure a roadway. I think that was the issue and that's why we removed the insurance clause. So I would maintain that same position not to attach an insurance clause, but at least a hold harmless to get some kind of protection for the County.

Chairman Tanaka: OK. I'm actually gonna . . . I hate to do this, but I hate to disagree with James.

Mr. Giroux: Because we are merging with Risk Management, in all fairness, I think the Ross Family didn't have the assets that would allow an insurance company to go out and offer them this protection. I'm not sure what the position is of this developer, but looking at the equipment they're using and looking at the mass amount of construction material they're using, I would offer to say that there is an insurance company out there willing to offer them this protection because if somebody's driving around that equipment, I would hope that they have a million-dollar insurance.

Chairman Tanaka: Well, for the construction, definitely.

Mr. Giroux: Well, just to touch a machine like that, I think a carrier would want you to be carrying a million dollars insurance. I mean, one of those flips over, a dead body, that's gonna cost you something.

Mr. Santiago: OK. I'll amend my motion to include a million-dollar certificate of insurance naming the County as an additional covered party.

Chairman Tanaka: OK. An amended motion has been set forth. Jackie, would you . . . ?

Ms. Haraguchi: . . . (inaudible) . . .

Chairman Tanaka: OK. And the amended motion has been seconded. Discussion? All Board Members agree with that number.

Ms. Kapua`ala: Excuse me, Mr. Chair. Just for the record, the Ross Subdivision's original approval was for \$50,000 of liability insurance, and on July 12th 2012, the Board amended that condition of approval to reduce it to no insurance required.

Mr. Santiago: Wasn't there a typo--\$50,000? That it was \$500,000?

Chairman Tanaka: Yeah, that's . . .

Mr. Santiago: I think that was the case on that one.

Chairman Tanaka: Yeah, the applicant stated \$50,000, but I believe what was documented in front of us was \$500,000, but the Board Members did know that. We waived it from five hundred to zero. Now, does that have any bearing to what we are discussing now?

Mr. Santiago: No.

Chairman Tanaka: Yeah, I can't stall any longer. It has been moved and . . .

Ms. Kapua`ala: Mr. Chair, one more clarification for the record: that it be conditioned, and I'm trying to word what Jackie and Bart had stated into the record with Lesli's help as well, that the subdivider construct the roadway as proposed in the variance justification and mitigate any drainage impacts. So that would be part of the approval, a condition.

Ms. Haraguchi: In compliance . . . (inaudible) . . .

Chairman Tanaka: Yeah, that is correct, right, Bart, and Jackie?

Ms. Kapua`ala: In compliance with the County requirements. Thank you. I'll add that.

Chairman Tanaka: OK. It has been moved and seconded. We have been discussing this. All those in favor, please say aye. Any opposed?

It was moved by Mr. Santiago, seconded by Ms. Haraguchi, then unanimously

VOTED: To grant the variance with conditions as discussed.

Chairman Tanaka: **Motion carries. The variance is granted with conditions.** Thank you very much. Next item on our agenda, Appeals, C. We got a stack of paper here and nobody left.

Mr. Shimabuku: We went out of order so that appeal is done.

Chairman Tanaka: Oh, you actually addressed this at the first thing?

Mr. Santiago: Yeah, yeah, right, yeah.

Chairman Tanaka: I was prepared to say I want this Board to be the hearings officer. Here it is, now. So it went to a hearings officer?

Ms. Haraguchi: No.

Mr. Giroux: This one was deferred.

Chairman Tanaka: To go to . . . ?

Mr. Abbott: The attorneys are fighting it out.

Chairman Tanaka; But I thought I read it and it said the . . . to continue a hearing to determine a hearings officer. So they're putting this off just to determine a hearings officer. OK. Sorry. Approval of minutes for January 10th and January 24th 2013.

D. APPROVAL OF THE JANUARY 10, 2013 MEETING MINUTES, AND THE JANUARY 24, 2013 SITE VISIT AND MEETING MINUTES_____

It was moved by Mr. Abbott, seconded by Mr. Espeleta, then unanimously

VOTED: To approve all of the January 10, 2013 and the January 24, 2013 minutes as presented.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

Chairman Tanaka: Status or updates? Trisha is already out the door.

2. Financial Disclosure Statements

F. NEXT MEETING DATE: Thursday, February 28, 2013

Chairman Tanaka: OK. Next meeting, February 28th. Tremaine, do we have anything at that time?

Ms. Tremaine Balberdi: Yes, we do.

Chairman Tanaka: OK. We shall see you all then. Thank you very much. Meeting adjourned.

G. ADJOURNMENT

There being no further discussion, the meeting adjourned at 3:47 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Kevin Tanaka, Chairman (1:37 p.m. - 3:47 p.m.)
Rick Tanner, Vice-Chairman (1:32 p.m. - 2:42 p.m.)
Bart Santiago

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Gene "Clark" Abbott
Patrick De Ponte
Bernice Vadla
Jacqueline Haraguchi
Ray Shimabuku
Teddy Espeleta

Others:

Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel
Lesli Otani, Civil Engineer, Department of Public Works`