

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
APRIL 11, 2013**

(Approved: 4/25/2013)

A. CALL TO ORDER

The meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Rick Tanner at approximately, 1:33 p.m., Thursday, April 11, 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.)

Chairman Rick Tanner: The meeting of the Board of Variances and Appeals will now come to order. Let the record show the time is 1:33 p.m. and we have a quorum. So we have no hearings today. We have the elections and then we have the orientation. And I have it on good authority the orientation shouldn't be more than about an hour and a half. And it's pretty interesting. They didn't say it was interesting. They said it'd be about an hour and a half. I thought it might be interesting. We'll see how they do. Trisha does a good job and James does a good job of that. So at this point, I guess we'll go right into the elections.

B. WELCOME NEW MEMBERS: CHADWICK (CHAD) FUKUNAGA AND HOWARD S. K. KIHUNE

Chairman Tanner: Oh, welcome new Members. I apologize. We got two new Members. I believe, unless I'm mistaken, both from the West side? Is that right?

Mr. Howard S. K. Kihune: No, south side.

Chairman Tanner: No? South side. OK. So, Howard, how do you pronounce your last name?

Mr. Kihune: "Kihune."

Chairman Tanner: Kihune. OK. So we have Howard Kihune from the South side. Where specifically?

Mr. Kihune: Kihei.

Chairman Tanner: Kihei.

Mr. Kihune: Right.

Chairman Tanner: So there could be a car pool, but . . . (inaudible) . . . And, Chad, you're from the West side?

Mr. Chad Fukunaga: I work on the West side.

Chairman Tanner; You work on the West side.

Mr. Fukunaga: But I live in Waikapu.

Chairman Tanner: In Waikapu. OK. And how do you pronounce your last name?

Mr. Fukunaga: "Fukunaga."

Chairman Tanner: Fukunaga. OK. Outstanding. Well, welcome to the Maui County Board of Variances and Appeals. Have either one of you served on this Board before?

Mr. Fukunaga: Not on this Board.

Chairman Tanner: You served on another County board?

Mr. Fukunaga: Subdivision Engineering Standards.

Chairman Tanner: Oh, fantastic. That's great background. That's gonna be really helpful.

Mr. Kihune: Not on this Board, but Traffic.

Chairman Tanner: In Traffic. OK.

Mr. Bart Santiago: Can you tell us a little bit about yourselves?

Chairman Tanner: Yeah, please do. Your background?

Mr. Kihune: My background—originally, I worked in the golf business for about 20 years as a golf professional, PGA Member for . . . still a PGA Member. Married 32 years, three kids, two in college, one still in high school. Currently, I do a lot of real estate consultant, development consultant work, and real estate sales, so that's what I do at this time.

Chairman Tanner: Also a good background for this, I think. Chad?

Mr. Kihune: Civil engineer. Born and raised on Maui. Married with almost ten years next month, and I have two young boys. And I work for Kaanapali Land Management Corp.

Chairman Tanner: OK. Well, let's start with Bart in the interest of our new Members.

Mr. Santiago: Yeah. I grew up in Lahaina. I think I know your brother and sister, Rhonda and . . .

Mr. Kihune: You graduated the same time?

Mr. Santiago: A year ahead. So I've been on the Board for what now? Three, four years? I can't remember. I work for the Grand Wailea for seven years after 20 years on the Mainland.

Mr. Kihune: And came back home.

Mr. Santiago: Yeah, I came back home. And a very different home from when I left.

Chairman Tanner: Bart's modest. He's the Director of Finance for the Grand Wailea. Jacqueline?

Ms. Jacqueline Haraguchi: I'm Jackie Haraguchi. I work for the Maui Contractors' Association. I have been there for 11 years now. I'm in Wailuku. I have two children in school right now. That's it.

Chairman Tanner: Clark?

Mr. G. Clark Abbott: My name is Clark Abbott. I am retired. I owned my own paint store for 25 years on Alamaha Street and moved here in 1978. And I've seen the change too.

Chairman Tanner: And I'm Rick. I've been on Maui for five years now, five years in May. I'm General Manager for the Whaler Kaanapali Beach in Lahaina. And I have two boys. My oldest is . . . just turned 16 and he's finishing his freshman year at the University of Hawaii, Maui College. And my youngest is 14. And I've been married 18 years now. And Bart and I came on the Board at the same time about three years ago.

Mr. Santiago: I've got two kids too. Forgot about that. A minor detail. (Laughter)

Mr. Abbott: I don't have any.

Chairman Tanner: James?

Mr. James Giroux: I'm not a Member, but I'm your attorney, James Giroux. I'm with Corporation Counsel, and I think I've been advising boards and commissions with the County for about seven years now, and mostly in the land use area, and then I do a lot of administrative law—law that just deals with government. So good fun stuff. And you'll learn about it today too.

Mr. Teddy Espeleta: My name is Teddy Espeleta. I'm currently with the ILWU. Been with the ILWU for 12 years. On the Board, this is my second year. I work out of Honolulu. I have two kids, both in college, a senior and one sophomore. And I've been married for 25 years. I'm from Makawao.

Chairman Tanner: I didn't know you worked out of Honolulu. One of the commuters.

Mr. Espeleta: Just started—January.

Chairman Tanner: Wow. Ray?

Mr. Ray Shimabuku: Ray Shimabuku. Let's see. I've been on the Board for four years now. I guess my term ends next March, I believe. Let's see. I'm actually a licensed electrician by trade for the past 33 years. I do currently work for the Electrical Union Office as a business representative here on Maui. I, too, have two kids—a boy and a girl, 30 and 24. Kind of know Lahaina. Went to Lahainaluna High School in the board department. And it's been great on the

Board. Thank you.

Chairman Tanner: You hear Ray's name on the radio every now and then. OK. How about . . . ? I think we probably have some time. Let's do staff as well. Trisha?

Ms. Trisha Kapua`ala: Aloha, Board Members. This is . . . I'm Trisha Kapua`ala. I am your Planner. I've been your Planner for the past ten years about. I was hired straight out of college from Seattle University. And when I came here, I was unmarried. And now I'm married with four children. We're making 11 years married together next month. Other than that, I'm a full blown soccer mom and wife. And I'm also studying education. It's gonna be nine weeks away from a master's in education. So other than, I'd like to introduce my Administrator, Acting Administrator, Joe Alueta.

Mr. Joseph Alueta: How you guys doing? I've been with the County for 21 years. So . . . and I'm a local boy. Born and raised. Went one year to U.H. with Chad. And then I graduated from University of Southern Oregon—my bachelor's. And then my master's degree from the University of Hawaii. Actually, I write ordinances for the most part with Corporation Counsel, but I'm Acting Administrator right now for the Zoning Administrative Division. And that's who basically staffs this Board which is an oddball. And then as you know, the Planning Department staffs a lot of other boards that I also work on. But I deal mostly with code revisions and amendments. And as you go through some of these variances, some of the notes I take in the background is what are the most common variances that you do. So if you're granting a lot of variances for the same thing over and over, is there a problem with the code? So that's what I'm kinda looking for.

Ms. Kapua`ala: And we also have Chalsey, Chalsey Kwon. She is under the mentorship of Tremaine and has been doing an excellent job.

Ms. Chalsey Kwon: Hi. I'm Chalsey. My last name is Kwon. Yes, Tremaine is your head Board Secretary, but when she is unavailable, I am here to help her. I've been working for the Department of Planning for about five years now and trying to help the BVA Board for probably a year. And if you have any questions, I can try my best to help you. Thank you.

Ms. Kapua`ala: Chalsey is our Division Secretary. She came from the Long Range Division. And then other than that, we have Allan DeLima who's gonna be doing the first item on the agenda.

Chairman Tanner: Excellent. All right. Thank you. We only get to do this once a year so it was good to take the opportunity to hear that again from everyone.

C. ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR THE 2013-2014 YEAR

Chairman Tanner: At this time, we're gonna take nominations for the Chair and Vice-Chair. And the way we'll do it is we don't need a second for this. We'll just take the nominations, all of the nominations, and then we'll have a vote on each set from there. So at this time, I would open it up for anyone that would like to make a nomination.

After nominations were duly taken and discussion ensued, the following were elected:

Rick Tanner to the Office of Chairperson and Jacqueline Haraguchi to the

Office of Vice-Chairperson for the 2013 to 2014-year.

D. ORIENTATION

- 1. County of Maui Sexual Harassment Policy**
- 2. Area Variances**
- 3. Use Variances**
- 4. Rules of Practice and Procedure for the Board of Variances and Appeals**
- 5. Title 12, Streets, Sidewalks, and Public Places, Maui County Code (MCC)**
- 6. Title 16, Buildings and Construction, MCC**
- 7. Title 18, Subdivisions, MCC**
- 8. Title 19, Zoning, MCC**
- 9. Ethics**
- 10. Sunshine Law**
- 11. Discussion of Boards and Commissions Booklet distributed by the Department of the Corporation Counsel**
- 12. Maui County Charter**
- 13. Chapter 91, Administrative Procedure, Hawaii Revised Statutes (HRS)**
- 14. Chapter 92, Public Agency Meetings and Records, HRS**

Mr. Allan DeLima: Good afternoon. My name is Allan DeLima. I'm the Administrative Officer for the Planning Department. And I'm here this afternoon to give you a brief overview of the County's Sexual Harassment Policy. That's the most dramatic slide in my whole presentation. I spent many years as an Emergency Manager before I came here. I did presentations on hurricanes and tsunamis. It was easy to keep everybody's attention with images of roofs flying off and waves rolling in. Sexual harassment does not let itself the drama, so what I'll do is I'll just keep it short, sweet, and to the point.

The first slide is the cover of the County's Sexual Harassment Policy. And those of you who are new Members should have that in your orientation packet. And I encourage you to get yourselves familiar with it.

The definition of sexual harassment means unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct, or visual display of a sexual nature directed by an officer or employee to another officer, employee, or a private individual. And I could never dress up this presentation because any exhibits of these examples violates the policy.

Now, all personnel must refrain from the following conduct: making unwelcome sexual advances or requests for sexual favors, making remarks of a sexual nature, using gender-based or sexually abusive language and sexual innuendos, visually displaying materials of a sexual nature, physical contact of a sexual nature, any other similar actions.

Now, the County of Maui has a zero tolerance policy against sexual harassment, and will not condone or tolerate sexual harassment in the workplace. This policy is applicable to Board and Commission Members, as well as County officers and employees.

The process for filing a complaint: an individual who feels subjected to sexual harassment should

immediately make a complaint to his or her supervisor. For Board or Commission Members who feels subjected to sexual harassment, they should make a complaint to his or her Chairperson. If the Chairperson is the alleged offender, the report should be made to the County's Equal Employment Opportunity Officer. And the County's EEOO Officer is our Director of Personnel Services.

The options for filing a complaint would be with the Planning Director; the Planning Deputy Director; the Board or the Commission's Chairperson; the Director of Personnel Services, again, who is the County's EEOO Officer; the Hawaii Civil Rights Commission; and the Federal Equal Employment Opportunity Commission. But you are encouraged to first seek internal remedies before going to these outside agencies as we try to police our own issues. Now, a complaint may be informal, which is a verbal or written and unsigned allegation, or a formal written and signed allegation.

And as for the investigation process, the investigation will be conducted in an unbiased, fair, and discrete manner. There will be all the appropriate safeguards to maintain confidentiality and protection from embarrassment that the law allows. An individual who is found after an investigation to be an offender shall receive the appropriate warning or discipline. Any disciplinary action prior to implementation will be reviewed by the Director of Personnel Services and approved by the County's EEOO Officer. There shall be no retaliation or discrimination against an individual who has made a complaint, conducted an investigation, or acted as a witness. Retaliatory conduct is illegal and constitutes a separate violation.

I told you it would be brief. If there's any questions, I'd be happy to entertain them. If not, thank you very much for your attention.

Chairman Tanner: Thank you.

Ms. Kapua`ala: We have a lot to cover, and I really wanted it to be a more talk story kinda session. So feel free to ask questions, make observations, talk to each other, you know, anytime. I don't want it to be like a lecture.

So we're gonna be going over variances; the authority that comes from the Maui County Charter and the County Code; the difference between area variances and use variances. And you basically use to this day, a Corporation Counsel memo that was written by Kelly Cairns. Maui County Code Titles 12, 16, 18, and 19--these are the codes which you have the jurisdiction over. And appeals--where the authority comes from, the standards of appeals, and the procedures.

The Maui County Charter authorizes the Board to hear and determine applications for variances from the strict application of any zoning, subdivision, or building ordinance.

The Board of Variances and Appeals shall comply with the General Plan and the community plan provisions of the County. We can go more into that later.

The Board shall not grant an application for a variance which requests a use which does not conform to the applicable community plan designation for the subject property. Have you guys been keeping up with the General Plan Update? Some? Have you, James?

Mr. Giroux: Seven years and counting. Not done yet. (Laughter)

Ms. Kapua`ala: You staff some of the GPAC Committees, is that correct?

Mr. Giroux: Yeah, the Lanai, and plus, we're done with the implementation plan yet.

Ms. Kapua`ala: And once that's pau, you go to Council?

Mr. Giroux: Yeah, well, the implementation plan has gotta come out of Council, but they already started on Lanai Community Plan. That has to go back to Council after it's done.

Ms. Kapua`ala: So if you're not familiar, the community has the opportunity to come to these board meetings and tell the board what they want for their community, you know, whether it be infrastructure, streets, social aspects, economic aspects. And then it becomes the plan. And the Board must stick to that. So throughout all of Planning's processes, we look at the community plan and we align ourselves with it.

The Board may grant a variance if it finds that due to the particular physical surrounding, shape, or topographical condition of a property, compliance to the provisions of this chapter would result in hardship to the owner, which is not mere inconvenience or economic hardship on the applicant. This is the key, right? I mean, the Board Members that have been with us understand this is the most . . . that variances are land-based approvals and not applicant-based approvals. It's not based on . . . it's not like a special use permit, or a transient vacation rental permit, a bed and breakfast permit where it's granted to a specific applicant who presents its circumstances and it's approved by the County. This is a land-based approval that no matter who owns the land, the circumstances surrounding the . . . the facts surrounding your approval will stay the same no matter who the owner is. So if you were to grant something based off of economic hardship, which is the number one reason, it's too expensive to pave my road so I can have my subdivision, or put in a fire hydrant, or what else? It's height limits. But if that's the case, the Board would be granting variances to poor people and rich people wouldn't qualify. You know? So again, it must be topo. It must be geographical, physical. And that's what we really try to have you key on. And that's why our staff reports are so strict.

So two types of variances: area variances. Area variances have to do with height, setback, length, physical features whereas use variances have to do with how you use the land. And that's gonna be from Title 19. That's what the Planning Department has the jurisdiction over, Title 19, which are uses. Zoning, that's what zoning's about.

Area variances are based on practical difficulty, which is considered a less serious deviation from the zoning standards. The greater the deviation from what is allowed, the more scrutiny should be given. We give you staff reports, and in that staff report, what we'll do is kind of give you a breakdown as far as percentages, which I'm sure you'll appreciate being an engineer. And also, we give you abstract deviations, considerations, like balancing the need from the harm.

This is Kamehameha Schools. They have applied for variances three times for buildings as well as structures within their stadium. They're in the public/quasi-public district, which has a height limit of 35 feet. And they asked to exceed that. Sometimes, like, to be 41 feet. In the case of the score

board and the lights, hundred-plus feet. And for all three variances, the Board granted them, of course, because they're unique. They're a school in the Upcountry rural district. They have a very rocky terrain surrounded by gulches.

This is the Wasson property that we just saw. It's actually here, the shed. So this is an agricultural subdivision in Spreckelsville. And there was a shed that was built too close to the property line, 13 feet away whereas 15 is required. And they're saying it's not my fault. I hired a contractor. I hired a plan maker. He made the plans 13 feet. I hired a contractor. The contractor built it at 13 feet. It was less than 200 square feet so I didn't need a building permit, but now that he wants to put solar panels, PV panels on his property, and needs a building permit, we wanna . . . we have to make that compliance. Yeah, so this was interesting. He also said because I'm in the ag district . . . no, because I have orchards on my property, and because I have this drainage reserve, I can't put my shed anyplace else. And what the Department tried to say is that there are drainage reserves on every property with the requirement of the subdivision. This is also an agricultural subdivision and they're, in fact, required to do ag if they want a second dwelling. Or maybe they cannot have second dwellings in this subdivision. Their CC&Rs might prevent it. But the Department realized that the . . . Oh, another layer is that it's in the flood zone. It's in the flood zone. But based on elevations, meaning the potential flooding was 15 feet from sea level. So the Department realized that the plumbing and electrical work that they had in the shed would have to be removed and rerouted, the concrete slab underneath, everything moved and brought up to code, which means elevating the plumbing and electrical work, as well as putting vents to alleviate the flooding. That doing that would be more harm than really just letting it stay there. And although we couldn't say that the applicant met its requirements, we asked the Board to dig deep and you made it happen. You granted the variance.

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

Ms. Kapua`ala: We still wanted them to comply with flood permits. So that was just the last meeting, I think.

Mr. Fukunaga: Do we ask the neighbors for any input?

Ms. Kapua`ala: Yes. Actually, through this process, the applicants are required to notify their adjacent property owners. We publish in the paper 30 days prior to the hearing. And the applicant publishes three times once a week for three consecutive weeks prior to the hearing. So that's the opportunity for the public to be notified and submit their testimony whether it be written or oral here at the hearing in support or opposition. And this obviously is a tight neighborhood. We had a lot of people in support. Sometimes . . .

Mr. Giroux: Pursuant to the Charter also, there's a public hearing on variances as opposed to appeals.

Ms. Kapua`ala: Oh, yes. Thank you, James. Only variances are public. Appeals are not considered public hearings. Yes, so when it comes public hearings, testimony from the public is relevant and can be under consideration whereas appeals, unless they're listed as a witness, and through the examination process, they cannot . . . their testimony cannot be considered.

Mr. Kihune: Trisha, a question.

Ms. Kapua`ala: Yes?

Mr. Kihune: Does that actual decision set precedent on anybody else, property owners in the subdivision?

Ms. Kapua`ala: It could.

Mr. Santiago: Like the Launiupoko utility walls. All . . . (inaudible) . . . They're too high.

Mr. Giroux: And like Joe mentioned, if you notice that, you know, the whole neighborhood needs a variance, the most likelihood is that it is a zoning issue. That there probably needs to be a change in the zoning ordinance in order to fix that and not grant 20 variances for the same thing. So that's something. We had legal issues when we . . . for Maui Lani, I believe it was. And the Judge was very clear that he didn't want to see the County processing all of these height variances for all 40 properties. He would consider that a violation of the Charter because it's the County Council that does zoning ordinances, and it's us who looks at the parcels, the individual parcels, to see if there's a necessity for a variance from that ordinance. So that's kind of the separation of powers. And sometimes Council gets all out of shape because there was a variance given or whatever. But as long as you can defend . . . on your record and your findings of facts that you have logical, and reasonable, and believable reasons, we try to uphold as much . . . you know, your decision-making as possible.

Ms. Kapua`ala: If James or I start raising our hands or . . . it's because we're concerned about your legal . . . the legal ramifications. Everything that you do is appealable and that goes to Second Circuit Court. What the court can do is remand that decision back to you for further deliberation because if the facts don't line up, you didn't do your job. Or they could just reverse your decision altogether.

OK. Back to area variances. Again, practical difficulty is the measure we use for area variances. And there's five criteria to consider according to Corp. Counsel, which is the need, the harm, the alternative solutions. These five criteria are not substitutes for variance standards as mandated by County Code. They are simply additional guidance. So this is not the five criteria, but this is what balances it or what we balance with the five criteria.

No.1, how substantial is the variance in relation to the requirements; the percentage of deviation from the Maui County Code.

If the variance is allowed, the effect of the increased population density thus produced on available governmental facilities. We rarely introduce this, yeah?

Maui Memorial Hospital got a height variance from being in the residential district. Did they ever get a change in zoning?

Mr. Alueta: No, but the public/quasi-public bill . . . (inaudible) . . .

Ms. Kapua`ala: It's gonna automatically . . . ?

Mr. Alueta: No, they'll have to apply for it, but this is . . . To tie in how your variances will generate potential ordinance changes, you have not only Kamehameha School in public/quasi-public, you also have MCC which is also in the residential district, as well as a little bit of industrial. They were constantly getting height variances, as well as Maui Memorial Hospital. So we have amended . . . well, we have for the last two years, a bill to create or amend the public/quasi-public district to create two basic districts: a P-1 and a P-2. One would be a P-2 which would be a bigger lot that would allow for an incredible . . . more height to accommodate for not only heights of hospitals, large schools, large universities, but also gymnasiums. You know, we also have like . . . I mean, normally gymnasiums need a higher height limit.

Mr. Santiago: You've got the churches with that or is that covered . . . ?

Mr. Alueta: These . . . public/quasi-public is also . . . is P-1 and P-2 depending on what the . . .

Ms. Kapua`ala: So what's the height on the table now for P-2 because we get quite a bit of steeples?

Mr. Alueta: Yeah, yeah, yeah.

Ms. Kapua`ala: Five of them.

Mr. Alueta: Not off top of my head. It's been a couple years since . . . it's been sitting up there, so I've been waiting for it to come up.

Ms. Kapua`ala: Thank you. That's the finished building. OK. The third criteria: whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to the adjoining properties created.

Whether the difficulty can be obviated by some other method feasible for the applicant to pursue other than a variance. This is real important, right here. This is . . . the variance is the expeditious, cheapest choice, but it's supposed to be the most difficult. It shouldn't be where if you go through the effort of doing the public hearing process, filling out the application, and doing the notification, showing up to the hearing that you get a variance. You have to meet the criteria. And the Department's always gonna look at what other ways are there to obviate the hardship than the granting of the variance. And that's why we're so strict in our staff reports.

No. 5, whether in view of the manner in which the difficulty arose and in consideration of all of the above factors, the interest of justice will be served by allowing the variance.

And here we are at Launiupoko. Kai, it's what? Six feet? Little less than six feet? The wall or the columns are probably about eight-ish. So rather than going for the variance or appealing the notice of violation, they lowered their wall. And there were lots of walls up there. Lots. This is a wall. And you guys are all aware of the pedestal wall scenario we had. Forty-eight inches? Sad, yeah? The wall is pretty nice. Now it's ugly.

Use variances: use variances may be granted based on unnecessary hardship. So this is the criteria that we use, which is generally subject to a higher level of scrutiny than that of area variances.

So again, I brought this up last year as well. This is the Ritz Carlton. And they have a use variance to allow a telecommunication tower, a stealth tower in the form of a flag pole. They're in a golf course district which doesn't allow telecommunication facilities. So again, this is the Ritz Carlton Bay Course. And there's their stealth monopole. The Board only said . . . granted it based on the condition that it be earth-tone, I believe. And we should've said you have to put a flag on it. I don't know if they do. And I don't necessarily know if the applicant met the criteria. If they didn't get this monopole, they . . . that means if they didn't get this monopole granted, they couldn't otherwise use their lot. If I have a hardship, I can't maintain my property if I don't have this extra income. You know what I mean? Does that make sense, James? Am I . . . ?

Mr. Giroux: Wasn't there an issue of a preemption with the telecommunications law also? Was it . . . ? No? Not this one?

Ms. Kapua`ala: That's always in play, yeah? It's difficult.

Mr. Alueta: That's only with the ham radio guys. The ham radio, they had an issue.

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

Ms. Kapua`ala: That's true. Did we have a lot of support for this one? 'Cause there's condos all around and they have bad reception. So then it's the Board's job to take care of the issue then of not being able to have a telecommunication ordinance to just allow these things? It becomes the Board's job to comply with Federal law?

Mr. Santiago: Do you recall the specification for granting the variance?

Ms. Kapua`ala: I can look. I mean, we can look now if you're really curious.

Mr. Alueta: PUC, if it's PUC-regulated such as the MECO or anything like that, the Supreme Court has ruled that they have sole authority over heights. So the County doesn't have any height limitations for it. That's why you have these 199-foot power poles. Otherwise, you would never be able to do that. I know that we've been . . . we've also had issues with ham radio operators because somehow it's qualified through another Federal communications. But the cell towers for like AT&T and all that are not covered under that. So they are required to meet ordinances, be granted variances. And we do have some ordinances, again, that are gonna allow for . . . needs to be attached as part of existing structures to allow for accommodating heights, and not so much the freestanding. There's only a few areas we're gonna allow for freestanding. In golf courses, we are gonna allow for that, because why wouldn't want them in the golf course? They're out in the middle of nowhere, basically. So we are amending the PK . . .

Ms. Kapua`ala: Well, this is for use, and you guys usually see height ones, height variances. Thank you very much, Joe.

Use variances: there are three elements in considering unnecessary hardship. The land cannot yield a reasonable return if used only for the purposes allowed in that zone. So you're allowed a golf course. I can't get a reasonable return unless I . . . my golfers can have cell phone coverage. The plight of the owner is due to unique circumstances and not to general conditions of the

neighborhood which may reflect unreasonableness of the zoning ordinance itself. So unreasonable standards, unreasonable requirements, should not be misinterpreted as unreasonable use of the land. If there's a problem in the requirement, or the standard, or the ordinance, then that's Joe's job to change it otherwise, the Board is gonna be granting way too many variances. The use to be authorized by the variance will not alter the essential character of the locality.

Reasonable return: the land cannot yield reasonable return if used only for the purposes allowed in that zone. Look at the permitted uses determined by the zoning ordinance. This criteria is met if none of the uses would allow the landowner to get a reasonable return. The next time we have a use variance, we'll go into this in the staff report. We'll lay it out for you. A reasonable return does not mean maximum return, or the desired or best use of the property. If the Board finds that the zoning prevents a reasonable return of the land, the variance is thus used to prevent what would amount to confiscation of property or regulatory taking due to the application of the zoning ordinance. What does that mean, James? Could you help explain?

Mr. Giroux: The regulatory taking?

Ms. Kapua`ala: Yes.

Mr. Giroux: Yeah, that's a little complicated, but once the government has regulated your property to the extent that you can't use it anymore, basically, you have a right to compensation. And so basically, they would make the case that in applying this ordinance, I've lost all use of my land and they want compensation. It's basically if the government should've gone in and condemned it, and paid the person for the property, it's basically the same concept under the Fourth Amendment.

Ms. Kapua`ala: Compensation of property, could that mean the bank taking it back because you can't pay for it anymore?

Mr. Giroux: No, not necessarily.

Ms. Kapua`ala: It's always gonna be regulatory taking or government taking?

Mr. Alueta: You restricted the use of land to a certain extent that they cannot . . . what they thought they could use it for is no longer applicable.

Mr. Giroux: Yeah, like an example would be if we wanted greenways going up to . . . from Wailuku or Kahului to Kula, and we wanted all of that land on the side of the road to remain green, and we said you couldn't build anything on that, we would have to compensate the owners of that land, because they wouldn't be able to build anything on that land. And they could . . . one step before they went into court would be to try to come and get a variance.

Mr. Alueta: James, just for clarification, you know on the reasonable return? Does it mean a guy over pays? How does that . . . ? Meaning, oh, there's a piece of property here, and I paid a million dollars. It's really worth only a hundred thousand dollars. For me to get a reasonable return on my million-dollar property, I have to do all of this.

Ms. Kapua`ala: A short term rental.

Mr. Alueta: Yeah or something. That is exactly what happened.

Mr. Giroux: The law uses the expectation back investment basically, but it's not that you get that return that you expected. It's that . . . is it . . . are you gonna get a return that's reasonable meaning that if you buy two acres, ag land, and you can't build a home on it, but the zoning said you could, but another regulation interferes with that, then that expectation that I would at least be able to build a home, that's what's the compensation. You're gonna have to get compensation for that—compensable. So you're looking at that expectation of what the zoning . . . But if somebody owns a piece of land that's zoned hotel, and there's some type of regulation that would interfere with building a hotel, but the zoning allows him to build a home, then he still has reasonable return on that land because he could get ten million dollars for building a home on hotel property right next to the ocean. So that would be the . . . you know, where you're doing that balancing test of what is reasonable.

Ms. Kapua`ala: Thank you. Chad and Howard, did you realize this was gonna be so much law? This is the other side of what you guys do, yeah?

OK. Three elements for reasonable return. The applicant or landowner's burden . . . it's the applicant or landowner's burden to prove that the land cannot yield a reasonable return. Five types of evidence to be considered: the initial purchase, price of the property, the market value of the property, the expenses for maintenance of the property, the amount of mortgage, the annual income. I think James just said all that. Failure to sell the property for a permitted use after vigorous effort to sell is also evidence that the land will not bring a reasonable return.

This is Maui Lani. So obviously, this is an outdated picture. This is the Maui Lani Sand Hills. This is the old Sand Hills, phase one. And the developer filled, in some cases, hundreds of feet of sand, and this subdivision sued. At that time, the Department of Planning did not look at grading permits, and the Department of Public Works does not measure height the way we do. So they would grant a grading permit and it came very obvious that we were not looking at height properly for mass grading . . . mass graded subdivisions. Our definition of height is the finish grade or the . . .

Mr. Alueta: The original grade.

Ms. Kapua`ala: The original grade or the finished grade, whichever is lower. So the original grade being here, the fill being there, the only way for some of these properties to develop would be to cut down so that they could have a 30-foot house. And like James said, Judge August was very explicit in his judgement and said that this is not what a variance is made for.

OK. So unique circumstances, this is one of the three elements of unnecessary hardship. The focus must be on the features of the land rather than the circumstances of the owner because variances run with the land. Personal situations of the present landowner should not be a consideration. Financial hardship should not be considered evidence for the granting of a variance. This is all codified. Again, this is Maui Lani. A lot of people bought lots thinking they could buy . . . build a house, and that wouldn't be a good reason for the granting of a variance.

The use to be authorized by the variance would not alter the essential character of the locality. This consideration is important to prevent a use variance which results in an intrusive, incompatible use.

The Board must not only consider the applicant's interest but also protect the interest of the neighboring community.

OK. Very quickly, I'm just gonna go over every title that the Charter as well as the code gives you the authority over. These are the criteria that the applicants must meet. And again, it's their burden. The burden of evidence is on them. Their application must prove to you why they meet the criteria. It shouldn't be where the Department or you have to dig deep. Everything that is said is what you use. The exception or variance desired arises from peculiar physical conditions not ordinarily found in most districts or because of the peculiarity of a business. The exception or variance desired is not against the interest, safety, convenience and general welfare of the public. The granting of the permit for the exception or variance would not adversely affect the rights of adjacent property owners or tenants. And the strict application of the terms of this chapter will work unnecessary hardship and practical difficulty on the property owner or tenant. You don't see too many of those, yeah, Title 12, Streets, Sidewalks, and Public Places? But you can see the language, yeah, throughout all that we've been talking about. Do you want me to read every single one? It's all laid out in your BVA packets, your binders.

This is for Title 16. Title 16 is heavy on health, safety, and welfare. But it does talk about practical difficulty and unnecessary hardship. You see a lot of those.

Title 18, Subdivisions, another popular variance request. Similar to Title 16. Public Works administers both. So here's the uniqueness. This is also uniqueness. This is whether it's the fault of the applicant; health, safety, and welfare. You must also have the proper zoning. If you're in the interim district, you're not allowed to subdivide and therefore, you're not allowed to get a variance. Feel free to jump in.

Title 19, and we go purely off of the uniqueness of the land. And we wanna see a link between that uniqueness and how it causes a hardship. And that the conditions creating the hardship or the uniqueness that creates the hardship were not the result of previous actions by the applicant. So what you'll find is a lot of these hardships are self-imposed. You know, buying a property that has noncompliances is not a good reason. You buy yourself into the problem. Whether it's ignorance or accident, we cannot accept those as reasons for granting a variance. Am I being too strict, James?

Mr. Giroux: . . . (inaudible) . . .

Ms. Kapua`ala: Yeah, the Board does a good job at balancing the Department because the Department is always gonna go letter of the law. We're gonna uphold the code. And balancing the need, the harm, is your job. A lot of times an applicant will come here with his wife and his kids, and show you pictures of their pot belly pig. And it's like the heart knows what is the right thing to do, but you still gotta find a way. And the Public Works Department, they don't give recommendations. They're very neutral. They wanna preserve their right to appeal just in case you grant something that they don't want. And so it's your job to balance what we say, what James called mean.

So interim, unnecessary hardship, public interest, convenience, and welfare without being detrimental to public interest, convenience, and welfare. The interim zoning . . . the interim district

is different where you are just a recommending Body, and Council has the final action. The interim district was meant to be interim. And Council . . . in the interim district, you can't get a special use permit, a conditional use permit. If you wanna use the property other than a single family dwelling in agriculture, you have to change the zoning. In other words ask Council or you have to get a variance. Oh, am I wrong? Sorry.

Mr. Alueta: Well, no, in the interim district, you can have farming. You can have single family residence. You can also do a sanitarium. You can do hospitals. There's a lot of things. You just can't do commercial. It actually was adopted and basically, to almost recognize the existing land use patterns that were going on. It predates the zoning code. That's why it was called interim. The idea was that the County would come in and had they zoned and adopted zoning maps, they would get rid of the interim district.

Mr. Santiago: Some of them have been in place for 30, 40 years.

Mr. Alueta: Yeah, the issue . . .

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

Ms. Kapua`ala: Kula Lodge.

Mr. Alueta: Well, yeah. There's also the fact that some people like interim district, and it's hard because it does allow for a wide variety of uses that are not . . . that you don't get a mixture of uses. And so people have a hard time. And Council has been leery on doing comprehensive rezoning. We have done it for the agricultural district, for the rural district, for the business country town district, and some of the urban areas like Paia. All of Lanai City was rezoned. And it's been very sparse. A lot of times it's . . . I call it "Pinata Zoning." People wanna come in. Council wants a whack at the developer and see what kind of candy will come out, and what goodies they're gonna get to grant that zoning. If you do a comprehensive zoning like we've attempted in several instances, you've all of a sudden granted a zoning entitlement without going before Council or going before somebody. And that's one of the reasons interim has been very difficult to get rid of, but we're trying. A lot of the areas have been changed out over the years especially, with the agricultural bill in '98, I guess it was. But there are a lot of different uses that you can do.

Ms. Kapua`ala: Are you saying it's a power trip with Council?

Mr. Alueta: I'm saying it's been a power trip with . . . I think it's a power trip with everyone. I don't think it's just Council. I think everyone has had their . . . they want their little whack at it.

Ms. Kapua`ala: You know, interestingly, Hana, when the rural ordinance got adopted, if you're zoned . . . if you're in the community plan rural district, and the State land use rural district, and your County zoning was interim which all of Maui was at one point, then you automatically become RU-0.5 or rural half acre. You deal with residential properties or commercial?

Unidentified Speaker: Both.

Ms. Kapua`ala: Both? Accept for Hana, Hana has this condition where they have to do a . . . is it

a cultural overlay in order to get the rural zoning, which never happened and therefore, a lot of Hana is still zoned rural . . . I mean, interim, which kinda is good. You cannot subdivide interim. It kept Hana, Hana, for the past how many years since the rural ordinance? That was in the 20th century, the 1900s.

Mr. Alueta: Yeah, right after the ag bill. Right after the ag bill, it was . . .

Ms. Kapua`ala: '99 must be then.

Mr. Alueta: County interim, State rural, less than 15 acres, and community plan rural, and not in the Hana East . . . in the Hana community plan region. Everybody was basically . . . So large, large lots that were more than 15 acres were excluded. So they remained either interim and they would have to come in on their own. Or in the case of Hana, it just was one of those things. I'm not gonna say it was the Bill Fuhrman amendment but it was Bill Fuhrman testified to Council that he didn't want to have that happen. So they did not include them in the comprehensive rezoning. And there is quite a bit of rural. Rural lands on the State level, Maui County has the most of any other County in the whole State. Oahu has no rural lands. Their island has no rural lands only primarily on Maui.

Ms. Kapua`ala: So what is the percentage of urban? Ten?

Mr. Alueta: How much percentage is urban?

Ms. Kapua`ala: Urban.

Mr. Alueta: Of all the lands in Maui County, less than five percent is urban.

Ms. Kapua`ala: Oh, five. OK. So this interim, you grant the variance or you deny a variance. It becomes a recommendation for Council action to deny or grant the variance. The Council may override any action of the Board and either grant or deny relief as the case may be by an affirmative vote of at least five of its Members.

OK. Appeals, the authority comes from the Maui County Charter, the standards, and what was that? Sorry about that. The Maui County Charter authorizes the Board to hear and determine appeals alleging error from any person aggrieved by a decision or order of any department charged with the enforcement of zoning, subdivision, and building ordinances. And per the Charter, which allows any department to give you the authority via their code, you also have the jurisdiction over Parks' appeals, and water codes, water standards, when it has to do with a subdivision. Other than that, there's a . . . does the Board of Water Supply deal with variances, James, and appeals? Does the Board of Water Supply do variances and appeals from the water code?

Mr. Giroux: No. They're only appealing the decision of the Director.

Ms. Kapua`ala: I see. You staff that Board as well.

Mr. Giroux: Yeah, for their contested case. Usually it's the denial of a water meter.

Ms. Kapua`ala: Water. You do the . . . (inaudible) . . . too?

Mr. Giroux: No, that's Jane.

Ms. Kapua`ala: Lovell. The Board is also authorized to hear and determine appeals from the Parks Office, ocean and recreation activity permits, as well as denials for the parks. You're gonna see a lot of those. Mr. Kilborn's gonna come back, by the way. He signed the stipulation to dismiss his appeal. So he's gonna come back and tell you why.

The appeal may be granted only if the Board finds one of the following. So for variances, you have to find that all the criteria is being met. For appeals, just one. That the subject decision or order was based on the erroneous findings of fact, or erroneously applied to the law. Let me say that again. The subject decision or order was based on an erroneous finding of material fact or erroneously . . . should be application of the law. That the subject decision or order was arbitrary and capricious in its application. That the decision or order was a manifest abuse of discretion. Any questions? This is why you exist that government cannot just make a decision and that be the final answer.

Mr. Alueta: But don't do it a lot. Don't overturn . . . I mean, that's . . . be careful when you do that.

Ms. Kapua`ala: Be careful when you overturn a decision of the Director?

Mr. Alueta: Just from an administration side, I would say just be leery on that because it's like in the court of law, the courts pretty much will not always side with government, but will give the benefit of the doubt to the government agencies that they trying to do their best. And so keep that mind that you have the Director and their staff are trying to do the best they can within the law. They're not out there to try to . . . they're there to help the public get what they want as best they can within their rules, but they're trying also to protect the use of the public. So don't try to . . . like I say, try to give them some benefit of the doubt.

Mr. Giroux: Yeah, I guess from the legal side, what Joe's trying to say is that when an administrator makes a decision, it's not our job to say if we would've done something different. It's our job to say did he not see the facts as they were? Was there a misinterpretation of the facts? Or is he so wrong that all of you agree that there was something the administrator should've seen and he didn't see it? Or is he not calling the duck, the duck? That's a duck, isn't it? That's the duck. Well, how come he's not calling it a duck? It looks like a duck. And if you all agree that that's a duck and the administrator doesn't, then that's the level of, hey, you're missing something huge there. Or that he's applying the law wrong. He's trying to interpret the law but he's not doing a great job of it. We had the what is surfing? And we're going, wait a second, where did you . . . and you're trying to get it from the administrator, and you're not getting an answer.

Unidentified Speaker: Because.

Mr. Giroux: Because. And that's . . . you know? So it's really frustrating when the public comes up against that and it's the Board's job to vet that out. OK. What is the because? You can't just say "because." And so that's another level of, OK, so that's your interpretation of the law, but five reasonable minds disagree that that's not the interpretation of the law.

And number two is the arbitrary and capricious. And it's almost the same idea is that when the answer is "because I like," and there's no other reason behind that, it's just "I like," you're gonna have a hard time overcoming the arbitrary and capricious. You've got to have a reasonable reason and be able to explain it as an administrator as to why you're doing that.

And, yeah, the other one is it was a manifest abuse of discretion. And that's when . . . they do have discretion. There's an area. Well, it says, "Well, I didn't think that it was safe." Well, if you didn't think it was safe, why are we letting all of these five other activities that are exactly the same happen in that area? So there must be a protocol or there must be a way that you can make it safe instead of just saying "no." And if you say yes to ten and you say no to one, you should have a reason that distinguishes that out. So that would be your, you know, is somebody abusing their discretion because the law should apply equally to everybody. And you wanna see everybody treated fairly. And so that's where it's really important when we're doing appeals. That's why they're not public hearings, they're contested cases, because we have to get that evidence on the record. And you have the ability to ask those pointed questions of, hey, if "A," "B," "C," "D," and "E," how come when we got the "F" it's different? And who did you talk to? And what kind of documents did you get to support that? You can do that questioning to get to the bottom of why is the administrator doing what he's doing, and is it fair? Is it a fair interpretation of the law? Is it applied fairly? And is there enough reason behind it to convince you that that's . . . you know, OK, I may not have done it that way, but you know what? Fair enough. That explanation cuts it. And that's kind of how the judges are gonna look at it, too, as far as what is the expertise of the administrator. They're gonna give him the benefit of the doubt, but it's our job to vet as far as why would we deviate from that decision. And again, it's not just because we like. Because then we're gonna be judged on the same stick. Why did you overturn this decision? Oh, 'cause we like. And the Judge is gonna look at that and say, well, we're gonna have to have a better . . . you know, we need more facts than that, or we need more reasoning than that. So it goes around. I mean, this whole appellate process, it goes around to . . . you know, it comes to us, it goes to Circuit Court, the Circuit Court goes to Appellate Court. It could be taken to the Supreme Court, get remanded back to us. So what we wanna do is we wanna do the best job we have with the information we have and have the best discussion about it. And then come up with at least five votes that five reasonable people can agree on, and then move forward from there.

Ms. Kapua`ala: Thank you. So any questions? OK. Let's go home. (Laughter)

Upon being given a notice of appeal, the Board shall conduct a contested case hearing. It says "shall." In a contested case hearing, the Board may act as the hearings officer or appoint one to conduct the contested case. And this is where we appoint other attorneys or retired judges of the popular vote to conduct the actual hearing because it's a complex matter of facts, or law, or history that the Board is not necessarily trained to do. What happens there is the hearings officer will come back with their report to you and you can make . . . you are the ultimate authority and make the final decision.

In order to provide expedited relief, appeals of notices of violations must be heard by the Board. So it cannot go to an outside hearings officer, which means a contract; a court reporter; tons of discovery, which means interrogatories and subpoenas; and a drawn out deposition . . . drawn out process. When it comes to the Board, you're given a fine, and you must comply within 30 days or you can appeal, and the Board could overturn your decision, and that's the only way to get rid of

the NOV unless you fix the violation and pay up. After 30 days, it accrues a hundred dollars a day, which doubles every 30 days up to a thousand dollars per day. So we wanna give an expeditious hearing and you are the Board, the Body, that they seek relief from.

Mr. Giroux: Yeah and, Trisha, as a background is that we basically came up with a separate Subchapter 10 in order to deal with the notice of violations because what we're noticing is that with using our regular appeal process that a person with a violation could draw it so long that it would almost become absurd by the time the fines were calculated whereas a simple violation, if cured, would not be a big deal. But three years later, because of this appellate process, and then they . . . it goes through a hearings officer, the hearings officer schedule cannot accommodate everybody, or everybody's gotta be on vacation, and then a year and a half later we're still getting reports that they might be talking about possible settlements, and then, oh, that fell apart. So three years later, we're like, "Dude, is it a wall or isn't it a wall?" It's like what? Take a picture. Let's make a decision. And that's the type of thing is that we wanna process these violations as quickly as possible not just to get somebody, but if it's not a violation, then let's get real with it. Let's stop this craziness because a three-year litigation over was your wall three-foot past the boundary line, it doesn't help the County, it doesn't help the applicant, it doesn't help anybody. And everybody just gets stuck in a limbo. So the idea is we gotta get the evidence, get it on the record, make a decision, and move on from there. And that way the fines stop accruing. And if the person hasn't done a violation, if it's, oh, wait, we made a mistake on our line on the map, well, shoot, we should get that done with as quick as we can. We should dispose of those types of violations which are not violations or saying that somebody needs to do something when the law doesn't say they need to do something. So it works both ways. What we've tried to come up with is a really streamlined methodology and getting rid of the whole discovery process. Here's what the ticket says, and if you didn't do it, show us how you didn't do it. And if you did do it, then we need to find that you did, then we can figure out what the fines are. So it should be . . . what we're hoping for is for more of these to be actually processed quicker. But again like you saw, what, four weeks ago? The motions start coming in, the lawyers start jumping in, the paperwork starts flying, and it's just a matter of trying to keep focused on why are we here, what are we doing, why is this . . . is this a violation or is it not.

Ms. Kapua`ala: And you're the judge and jury. You know, I think judges automatically get that respect, and you should have that mindset that you have that authority. Because I was in agreement with Jackie in that hearing that you asked for this hearing, and now you're saying you can't show up. This is the hearing date, figure it out, be here. I don't think judges are always that lenient. Right?

Mr. Giroux: Yeah. I mean, there's an issue about being accommodating, but there's an issue about expediency. And when you know there's a thousand dollars a week being tallied onto somebody, and they're asking for a continuance, and you're going, are you sure you want that? Are you sure you want that continuance?

Ms. Kapua`ala: Howard, Chad, this is for a short term rental.

Mr. Kihune: Is it a . . . ?

Ms. Kapua`ala: A notice of violation for running a short term rental.

Mr. Kihune: Right. My question was gonna be what was just stated by James is that in some way, can we demand that . . . say they ask for a continuance, and we can demand that, OK, at our next meeting, if you're not prepared, we're gonna make a decision on what you've got and that's it? Can we demand that too?

Ms. Kapua`ala: Yes, your rules allow you that, exactly.

Mr. Kihune: Because I don't want something to drag on for two years, like we just mentioned, that doesn't make any sense. If you're not prepared, you're not prepared, then we'll make a decision based on what you bring forth.

Ms. Kapua`ala: And it's backed up by law. You have that authority to make a decision if they have been served proper notice, and they don't show up, you can move on without them.

So the BVA rules provide all the framework for pre-hearing, hearing, and post hearing procedures. You'll get very familiar with that very shortly. The hearing for that short term rental is coming up in June because they were out of the country in May. And they were denied a motion for continuance, but they couldn't make any of the meetings we suggested.

Aggrieved parties of appeals have the right to appeal to Second Circuit Court within 30 days and the Supreme Court after that.

The Board has 60 days from the close of the public hearing to make a decision on applications for variances. This is very important. We've had two variances so far granted because a decision couldn't be made within 60 days from the close of the public hearing. So we open up a variance, the applicant speaks, the staff report is in your hand, the public is offered the chance to testify, we close the public hearing, we discuss amongst ourselves, and we can't come up with a motion, everything dies. We can't get a quorum to vote in favor or in opposition. So we continue it and we keep on doing that. For some reason, 60 days passes, and their variance is automatically approved unless there's an intervention.

Are you familiar with the intervention process? So in any hearing, public hearing, there's . . . you have the right to intervene if you're an interested party. If you can show standing, which means that you are directly affected by the contents of the hearing, the matter, you can intervene. So what are some popular interventions that are always in the paper?

Unidentified Speaker: Isaac Hall?

Ms. Kapua`ala: Oh, intervenors.

Mr. Giroux: Usually in the SMA area, we get . . . you know, when they're building near the shoreline or there's intervention.

Ms. Kapua`ala: Yes. And so for this, too, what's something that . . . ?

Mr. Giroux: A height variance. We've had two . . . well, is it two or one for height variances?

Ms. Kapua`ala: Oh, for the church, Inglesia Ni Cristo.

Mr. Giroux: Yeah, but I think that was . . . that's . . .

Ms. Kapua`ala: They tried to intervene but were denied.

Mr. Giroux: And then we had another one out in Maui Meadows where there was a height intervention. The neighbors didn't want the variance for the height.

Ms. Kapua`ala: Oh, and that one was also approved by accident. Sixty days, the last hearing where you could possibly make a decision, we couldn't get a quorum. So the next day, and the next hearing happens, and then they put a motion for granting the variance due to this rule, 12-801-whatever.

Mr. Fukunaga: . . . (inaudible) . . .

Ms. Kapua`ala: I'm sorry?

Mr. Fukunaga: Who determines if you have standing?

Ms. Kapua`ala: You do. You do. That's something to consider. And the appellant, I mean, the opposition to the intervention might not bring that up to you. A good attorney will attack that right away, right, whether you have standing.

Mr. Giroux: Right. And usually, I mean, if you're in . . . a neighbor, an immediate neighbor, usually has. And sometimes when you look at the impact on the neighborhood, if you live in the neighborhood, sometimes you have standing. But usually you're looking for some property interest. You know, does the person have an easement through it? Or are they . . . I mean, some other impact that the person would be affected by. In the SMA arena, the intervention has been interpreted so liberally by the Supreme Court because of environmental issues that if you go to the beach in the neighborhood, then all of a sudden you're like a user of the beach so therefore now you have standing. So at the SMA level, it's really broad. Here, where it's more of a neighborhood impact issue, I think that you have to look at . . . give it real good scrutiny as to does this person have standing, and what would be the impact on him if we granted this variance?

Ms. Kapua`ala: James staffs the Planning Commission as well. So he's very familiar with the SMA cases. This is another reason why the 60 days would be void, the application is referred to another agency or organization for comments. If the applicant requests a deferral or fails to appear at the hearing, then by default, you don't get the 60-day rule anymore.

Decisions from appeals have no time limit. The Board may grant or deny appeals. The Board may deny or grant variances, or grant variances without . . . with or without conditions, it's supposed to say, or grant variances with conditions. Appeals don't have conditions. You either grant an appeal or you deny an appeal.

Standard conditions include the execution and recordation of a hold harmless agreement. And this just says that they . . . the applicant, the owner, the lessee will hold the County harmless should be

there a lawsuit, death, or injury that arises as the result of your actions—the granting of the variance. Sometimes that comes with an insurance requirement, and thankfully, we have a Director of Finance on the Board who we trust whether it should be a million, or three million, or ten thousand dollars of insurance. I did a typo one time and required five hundred thousand instead of fifty.

Any decision of the Board shall be set forth in writing by way of a separate findings of fact, conclusions of law, decision and order. And this is something that typically, the Chair and the Vice-Chair only sees. And typically, they don't read. They just sign. But whatever you present, whatever is on the record during your deliberation is what we use to come in the final decision and order and is appealable. So if you don't say anything and just move to grant a variance, then someone could easily take that decision and order to Second Circuit Court and say the Board found these conclusions to be true, but there's no evidence of it.

Mr. Santiago: You never let us . . . (inaudible) . . . though. You always remind us that we have to attach . . .

Ms. Kapua`ala: Nowadays, yes. Nowadays, I exert my authority, my mastery. (Laughter)

It is critical that the Board discusses on record, the reasons why the facts and conclusions that the decision is made . . . is being made. Thank you. So, James, Sunshine Law and ethics.

Chairman Tanner: So, James, if we could take a short break before we continue? Five minutes good enough? All right. Five minutes, so 3:05.

(A recess was taken at 3:00 p.m. and the meeting reconvened at 3:05 p.m.)

Mr. Giroux: I think most of you have seen this one before, it's always helpful to go over it. And there's been a few changes in the law with our Open Meetings Law, the Sunshine Law, HRS Chapter 92.

So what is the Sunshine Law? The Sunshine Law is Hawaii's Open Meeting Law that governs the manner in which all State and County boards must conduct their business.

What is the general policy and intent of the Sunshine Law? Well, it's to open up governmental process to public scrutiny, to conduct business as openly as possible. And the Sunshine Law is to be liberally construed in favor of open meetings. Exceptions to the Sunshine Law are to be strictly construed against closed meetings. Absent a specific statutory exception, Board business cannot be discussed in secret.

Open meetings: every meeting of the Board is open to the public and all persons are permitted to attend. All interested persons shall have an opportunity to submit data, views, oral arguments in writing on any agenda item. All interested persons shall have the opportunity to present oral testimony on any agenda item. The Board may make reasonable time limits of oral testimony. And this Board usually gives three minutes and we find that to be defensible. I think Honolulu has gone to one now.

One of the requirements is notice of the meeting. Written public notice at least six calendar days

before the meeting is posted. The list of all items to be considered at the meeting are on the agenda including, the date, time, and place. And no additions are made to the agenda once it's filed unless it's a two-thirds vote of all Members to which the Board is entitled. So in order to add something, you have to have a super majority. But even after that you have to make a finding that . . . it says, "No item shall be added if it is of reasonably major importance and action thereon will affect a significant number of persons." So if something is gonna affect the public, even if you get a two-thirds vote that you wanna add it to the agenda, you have to make this finding that it's not gonna affect a majority of the people. A lot of times like if there's something that we just want to figure out, you know, are we gonna have snack lists, or something super just internal, then we can put it on. Or if we wanna discuss, you know, say, hey, are there some things that we wanna put on the agenda next time, we can have that discussion, but we're only gonna discuss what we're gonna put on the agenda, we're not gonna discuss that agenda item. So if that ever happens, you know, I'll probably chime in as far as what my take on it is—if it's gonna affect people, or if it's just something internal. And a lot of times we just have to take care of housecleaning stuff.

The other mandatory requirement is your minutes. At a minimum, you gotta have your date, time, and place of the meeting; the Members of the Board recorded as present or absent; substance of all matters proposed, discussed, or decided; and a record of any votes taken; and any other information requested to be noted by Members. And the public record is to be made available within 30 days of the meeting.

So you guys have verbatim minutes so Chalsey's in charge of that. She basically . . . what happens is it comes back to you for approval, but if it's not done within 30 days, it still has to be made available to the public.

Chairman Tanner: James, I have a question. Why do we do verbatim minutes?

Mr. Giroux: Because a lot of the stuff we do is quasi-judicial, and it's so controversial sometimes that to be just taking action minutes on these types of things wouldn't . . . I don't think it would . . . not just for the Sunshine Law but for the litigation of the case, we're probably safer to have verbatim minutes.

Chairman Tanner: So for everybody's information, if you stutter, it's in the minutes. I'm not exaggerating.

Mr. Abbott: But can't you say, "not on the minutes?"

Chairman Tanner: I say that and it's still in there. And I then I say, "oh, don't put that," something I said. That's in there, too, so I don't wanna do that. No, I don't know. (Laughter)

Mr. Giroux: And if there were action minutes, you can ask to actually enhance the minutes, you know, say, "Oh, wait, didn't we discuss this, this, and this? And shouldn't that be in there?"

A very important thing for you to understand about the Sunshine Law is what is a meeting. And HRS 92-2 defines meeting as:

Meeting means the convening of a board for which a quorum is required in order to

make a decision, or to deliberate toward a decision upon a matter over which the board has supervision. More than two Members of a board cannot gather to discuss board business.

And then we have the exceptions, investigative exceptions.

What is Board business? This is important to understand what a meeting is—matters over which the Board has supervision, control, jurisdiction, or advisory power, and that are before or are reasonably expected to come before the Board. So this is pretty broad because you saw what your jurisdictions over variances are, what your jurisdictions over appeals are. But the . . . what's important is that because you have such broad jurisdiction is the test of what is reasonable expected to come before the Board. So as far as discussing, oh, you heard that the Planning Director made such and such decision, or you saw it in the paper, play it through your mind. Is that going to come to the Board for an appeal? Or is it at the Planning Commission? Or is that just gonna through Council? If it's not gonna go through you, then it's not gonna be Board business, then you can talk about it all you want. But it's when it's foreseeable that it is gonna be Board business that you don't . . . you wanna avoid having a "meeting," and we'll discuss more about what kind of interactions are permitted.

So the permitted interactions in the law when you have that raw code, HRS 92, it's really important to understand what's allowed during your permitted interactions. And what I like to do is kind of cut it down to how many . . . once you understand what a meeting is and what's Board business, to divide it up as to how many Members we're talking about.

So the first one, two Board Members. Two Board Members may discuss Board business outside of a meeting as long as no commitment to vote is made or sought. Nevertheless, it would be contrary to the Sunshine Law for a Board Member to discuss the same Board business with more than one other Board Member through a series of one-on-one meetings. So what that's talking about is your serial communication. It's OK if two of you meet at the grocery store. You can talk about, hey, I heard the appeal's coming up, so and so filed, blah, blah, blah. You can talk about that, but what you can't do is say, well, I'm gonna vote this way and I expect you to do the same. You can't get that commitment to vote, but you can talk about that it's coming up, and that certain things have happened, or whatever. But you can't make that commitment to vote. And then you cannot go leave Safeway and go to Costco and have that same conversation with another Member.

One of the exceptions, the investigative exception, two or more but less than quorum. And quorum is for you guys, five, because you have nine people allowed on the Board. So two or more but less than five. In order to do this investigative exception is you have to have the scope of investigation and scope of authority defined at a meeting of the Board. All findings and recommendations presented to the Board at a meeting of the Board. And deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the Board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the Board. We rarely use this because we're already quasi-judicial and we usually have everything we need to do on the record. If it's not on the record, the other thing we usually do is a site visit. But this is used by other Boards. And some people have requested that we use this because they think it's going to be a faster way of getting business done. But with this methodology, you end up with a minimum of about three meetings before you can even get to the decision-making. So if you look

at the way we've . . . we do it more like a court room style where we have the evidence presented, we have the hearing, we have the meeting, we ask questions to the applicant and to the . . . whoever's here. And then at the end of the day, you can make your decision. If not, you can defer, ask for that more . . . whatever document or whatever was mentioned to be brought, and then you can finish it up then. But with this one, you actually have to go out. You have to pick your . . . the Members who are gonna do it, give them the scope of authority. They go out. They do their investigation. They come back. They do a report. At that meeting, you don't even get to deliberate. You gotta come back to a subsequent meeting because the public would have to have a chance to make comment on the report. And then after that, you can make your findings. So that's the investigative exception.

Mr. Santiago: They used that for that baseyard up at Kula. (Laughter)

Mr. Alueta: It's popular on Molokai also. The Molokai Planning Commission has used it a couple times. And it's . . . again, as James pointed out, they dragged the whole process out.

Mr. Giroux: Yeah, and during the General Plan Advisory Committee, they just stretched it so far in trying to get these investigative committees and it just dragged it on. It's just . . . it's like, hey, here's the information. We got all the documents. Let's just discuss it as a group. And they had 25 members. So that's why they were like, oh, let's . . . they thought it might go faster, but no.

This is a new one: the acceptance of testimony at canceled meetings. This one is just a new one where there's a lack of a quorum. If only four people show up, but the community shows up for public testimony, you can still take their testimony. So Board Members present can receive testimony and presentation of an agenda item; may ask questions as long as no deliberation or decision-making at the canceled meeting is made; they must create a record of the meeting; and at a next duly noticed meeting, there can be deliberation, a decision-making after the Members receives copies of the testimony and a presentation, and receives a report about the testimony and presentation.

And here's another new one is the attendance at informational meetings or presentations. So two or more, but less than quorum can go to an informational meeting. Example, legislative hearings, conventions, seminars or community meetings, which are not specifically directed at the Board Members. And there's no commitment to vote on a matter. The same thing as when two people meet on Board business. And then a report is made at the next duly noticed meeting. So it mirrors again the investigative process almost.

And this is my favorite, the executive meeting. Because you guys are dealing with such controversial issues and you are dealing with quasi-judicial matters, the executive meeting is a meeting closed to the public. A vote is taken at the open meeting of two-thirds of the Members present in order to go into the executive session. If you don't get the two-thirds vote, whatever you're discussing stays out on the open. And basically, there's a lot of reasons why you can go into executive session, but my favorite is to consult with your attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Sometimes you'll hear like, "Well, I'm gonna sue you guys." Alright, then I wanna go into executive session and discuss, OK, this is what this guy's talking about. These are our options, and these

are our duties and liability. In certain situations we can go into executive session to formulate your order like if you're . . . if there's a question of, OK, are we meeting the legal criteria to grant this variance, and what are our options as far as looking at topography, hardship, those types of things. As long as all of these criteria are met, you can go into executive session. Also, the Board has to announce why they're going into executive session. And once in executive session, we have to stay on point because if we don't stay on point, what happens is that somebody can challenge it, and all of our discussion then becomes an open discussion. The court can open up those minutes and then it's opened.

Another important thing to understand is that even those these executive meetings are confidential that once your decision is made and it's no longer necessary to be confidential, then it may be open to the public also. So it's just a warning that . . . the purpose I wanna go into executive session is so that we can be as candid as possible, but also, don't be so free as to wander into other violations of law, Federal protections, and such, the Constitutional issue.

Contested cases, that's another exception. And that's usually when we're exercising our adjudicatory functions. And like I said, we do that . . . when we're doing a variance, it's a contested case. It's an adjudicatory function. When we're doing appeals, we're dealing with our adjudicatory function. The only difference is that because of the Charter, when we do variances, we do take public testimony because of the Charter. So it's kind of finding your way through this what's public, what's private, what can we do without a public hearing, what can we do without it. That's kind of staff and I will usually these words, "OK. This is where we're at. We're in a contested case and we can now take testimony," or "We can go into executive session if the Board votes to do that."

Is that it? Oh, enforcement. OK, enforcement. What I like to tell my boards and commissions is, I am not the Sunshine Law cop. I have never arrested anybody for violating it, but there is consequences. And for us at Corporation Counsel, we really are concerned about keeping on track with the Sunshine Law so that there's not voidability. If there's a violation and somebody challenges our actions and raises the Sunshine Law, and they win, then whatever action was taken, the courts can void. And that's called the voidability. The other thing is that if the public convinces the Judge that whatever variance or permit or decision we did violated the Sunshine Law, they can file for an injunction. And if the Judge grants it, whatever activity that permit allows would stop. On a higher level is that you can be found guilty of a misdemeanor and if found guilty, you can be removed from the Board. And that would be prosecuted from the Attorney General's standpoint. So that's not . . . that's somewhere . . . where they would jump in is if there's really obvious and chronic abuse of not following the Sunshine Law. Any questions?

Mr. Abbott: Yes, who can ask for an executive session?

Mr. Giroux: Anybody on the Board, if they feel that they're going into an area that's protected under the executive session. So again, if you're looking at discussing your rights, duties, and liabilities, which are usually everything you're dealing with because you have a lawyer over here and a lawyer over here. When we get to the point of deliberation, usually, is once we start talking and we start getting . . . discussing the issues, we usually find ourselves looking at, OK, are we meeting the legal standards, are we interpreting the law correctly, how does the law connect with the facts that we're looking at, those types of things.

Mr. Abbott: Thank you.

Mr. Giroux: OK. Moving right along, we've got ethics. And this is found under your Maui County Charter, Article 10, your Code of Ethics. And it applies to this Board because we're a County Chartered Board. And there's certain prohibitions that you have to be aware of. And that's the prohibition about accepting gifts. And you cannot have a business transaction or activity, or have a financial interest which may tend to impair independence of judgement in the performance of your official duty. And you cannot fail to disclose financial interests.

As far as accepting gifts, what I always tell the Board Members is that it's not about you accepting gifts, it's about why is that person giving you that gift. Your daughter comes home for Christmas, it's your birthday, no problem. But if your neighbor has a variance pending and all of a sudden he's give you some really big engine parts or something substantial where you're going, hey, this is kinda awkward. And if you feel that somebody from the outside looking in would say, hey, that could impair your ability to be fair and impartial, or look at this case in its totality, then you should let the person know this shouldn't happen. Thank you, but I can't because of my position. If that happens or if you wanna talk about that, you can call me as your attorney, and we can talk about that in confidentiality and find out is this gonna be something that's a red flag, is this something we should be concerned about, or is this just neighbors being friendly, gift of aloha. This is not something that would actually impair your independence of judgement. The lei, the flower lei, is not gonna change your mind about the facts of the case, those kinds of things. So we understand that there's a line. There's a balancing act to be made. And we just wanna make sure that you stay out of that firing line because your job here can become so controversial at times.

And then the failure to disclose the financial interest, it's just a matter of if you've had business transactions with people who are before us, or if you've either worked for or they've worked for you, to just put it . . . basically, disclosure is always the safest thing because what you don't wanna do is have your action . . . have an action and then this issue come up afterwards. There are penalties for violating those prohibitions. There's fines. And you can be removed from office.

Your rules, 12-801-23, states that "Whenever a Member has a conflict of interest, the effected Member shall promptly make a full disclosure of the circumstances to the Board, and refrain from participation, and discussion, and voting." Yours is one of the stricter rules. Planning Commission and I think a few other boards, they'll actually allow discussion even though you have a financial interest. You can discuss technical aspects of the project, that kinda stuff. But for some reason, your guys' rules are really strict and it doesn't allow participation or discussion. And this is one of the reasons is that when in doubt, get an advisory opinion from the Board of Ethics because you may think you can't participate, but if you get an opinion from the Board, they may think otherwise. They actually may say, well, that's not . . . that's tenuous, or that's not a . . . it's not gonna affect your ability to serve on the Board on these matters. So the big thing is is that if you do get an opinion from the Board of Ethics, the Charter says, "If any officer obtains an advisory opinion from the Board and acts accordingly or acts in accordance with the opinions of the Board, the officer shall not be held liable for violating any other provisions of this article." So if the Board of Ethics is wrong, and somebody says, "Hey, you, that's a conflict of interest," or "Hey, the Board, they gave their opinion, and we acted accordingly." And that's the, I think, the biggest benefit to officers is that they can rely on that opinion unlike my opinion. Mine is just a risk management type of level. OK. Let's see if we're comfortable with that. But if I'm wrong, you don't have that protection. I mean,

you can say I talked to James, but I'm just a Corp. Counsel. These guys have the authority of law to say, "Hey, you know what? We told him he could participate. He participated."

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

Mr. Giroux: . . . (inaudible) . . . Any questions?

Mr. Abbott: I don't know if this is the time to bring it up but I have a friend who's very active in the Kihei Community Association, and I keep getting blasted with all of the minutes from these meetings that keep going on. And I know this is coming in front of this Board and I wanna know how to tell to shut up.

Mr. Giroux: I got Spam blocker. No. (Laughter)

Mr. Abbott: Unless it's published in the newspaper, it's privileged information, isn't it?

Mr. Giroux: You mean the meetings of the Board or their board?

Mr. Abbott: Their board and public meetings that aren't published yet.

Ms. Kapua`ala: But they're giving it to you 'cause they want you to know just in case it comes to you in the future.

Mr. Abbott: I don't wanna be put in the position of knowing something before I'm supposed to know it.

Mr. Giroux: Yeah. I would . . . if you feel that so much of their business tends to look like it would come before the Board, I would probably just say, hey, if you're not a Member of the Board or . . . in that capacity, I would say I'm gonna stop taking these flyers because I just don't want it be taint.

Mr. Abbott: . . . (inaudible) . . . decisions.

Mr. Giroux: Right. Because, I mean, not to be paranoid or nothing, but the flip side of that, they can say, well, we want you recused because we know you have privileged information that you weren't supposed to have before the meeting. And that's the other thing is that all of your findings of fact, decision and orders have to be from materials that were at this meeting, at the meeting. So you can't be making decisions based on, oh, I read a newspaper article, and it said, dah, dah, dah, dah. If that information wasn't presented at this meeting, that's not information you can rely on. It's not the . . . you know, your totality of your memory. It's the totality of the facts that were presented at the meeting. And that's why it's quasi-adjudicatory is because you're looking at the record. They call that the record. And if somebody like a Judge or another attorney can't read the record, and find that, and yet it's fact that we relied on, they're gonna say that we relied on facts not on the record, and that's gonna taint your findings.

Mr. Abbott: OK. Thank you.

Ms. Kapua`ala: Any discussion? That looks like it's the end of the orientation.

Mr. Fukunaga: I have a question. To what you just said about this newspaper article, but prior to that you said we shouldn't be reading articles that we think might come before the Board, but what if we do read something and it's not presented, but we asked whoever is presenting at the moment, we read this in an article, is this true or not? And they . . . (inaudible) . . . that it's true. Then does that become . . . ?

Mr. Giroux: Right. What you're doing is you're making sure that that information is . . . they're allowed to bring . . . if it's wrong, they're allowed to bring information that would contradict it. And if it's correct, they can augment the record by putting it in there. Yeah, it's a hard balancing act between being ignorant and being impartial. And the thing is is that the reason you're on this Board is because we believe you're not ignorant. You guys are active in the community. You're keeping up with what's in the paper. You have a pulse of the community. It's just that when the decision-making comes up, we have to be very conscious that the decision was made based on what was presented at the hearing. So it's really difficult. Like for a jury, I've done a lot of jury selection when I was younger, and the joke was is that you wanna get rid of all the smart people. Well, that's not so true because you want people who actually can put the two and the two together. You want people who actually are functioning to the level that says, oh, wait, a second, that doesn't make sense and this is why. You know what I mean? But it has to be on what's presented to them, what's in that record. So the issue is usually not Sunshine Law. It's about impartiality.

And the other thing that came up at the other meeting was, well, what about site visits because we all live on Maui, we grew up on Maui, we know what places look like? And the bottom line is you're not gonna stop driving around Maui. It's just that when you go out into the field, or you go to a project, and you start measuring, and you start collecting your own evidence, then that's gonna cross the line of that impartiality. If there's a question about how many feet across is the property or how far back are these setbacks, the participants should be able to give you that information. If they're not, then we'll go do a site visit. If a site visit really is important, bring it up before the hearing, say, hey, I'm not comfortable going forward with this project without having a site visit, can we do that? Is that feasible? And that's fair enough. But it has to be a group decision. There have been cases that have been overthrown because one Member went out, collected his own data, and then when the hearing was going was confronting the experts with his data. And that was only data that he was privy to. So the other Members couldn't substantiate whether or not his data was accurate, how did he go about collecting it, so those are the checks and balances that we wanna see when we're dealing with impartiality.

Ms. Kapua`ala: Very much like what you see on T.V.

Mr. Santiago: Ironside.

Mr. Giroux: Law and Order.

Ms. Kapua`ala: That's what it says, or criminal law is what you usually see, yeah, the burden of proof is called beyond a reasonable doubt. So 99.9 percent sure that the evidence presented that they are guilty or innocent. But when it comes to civil law, which is what you have jurisdiction over, the burden of proof is less. It's called the preponderance of evidence. So now we're talking 50.1 percent, 51 percent, so the burden of proof is lesser. But an appeal is very much like a hearing that you would see on T.V. or Judge Judy.

Mr. Giroux: The NOV's, too, because in the zoning category, the County can choose whether or not to go after zoning violations criminally or civilly. And 100 percent, we go after it civilly. And that means that we are relying on the burden of proof being a preponderance. That the County does not have to prove violations beyond a reasonable doubt, or even beyond all doubt. It's just that can the County collect enough information to convey to this Body by a preponderance of the evidence that a zoning violation has been committed. And to hear the other party to say, well, has any mistakes been made? Is there a mistake of law? Is there a mistake of fact? Is there a mistake of application? And it's not that scrutiny that we give to criminal defendants of, well, this guy's going to jail, so we're gonna give him a . . . he needs a higher level whereas we're giving somebody a fine, this is the level of proof we need. In the TVR area, we just had real difficulties. You know the history of first there was the non-enforcement, and then there was, oh, too much enforcement, and then there was the, oh, why aren't you guys busting anybody? The issue is is that when somebody runs an operation like that, to have them . . . (inaudible) . . . is pretty difficult especially, for the County where we only have five Inspectors. But they go out and they can collect enough information to bring the reasonable person to conclude that there's something going here and it's not long term rentals. And that's what we're . . . when the Investigators go out and they collect their evidence, they're really not sure about how much evidence they need to bring. But it's not to be weighed like, did you get fingerprints, did you get DNA, did you get the receipts. That's not the level of proof we're looking for because there's an operation going on. It's not like the CSI. There's no dead body that we can take forensics from. So it's really important for you to understand that the methodology we're using looks a lot like that Law and Order, but we are at a civil level where the penalty is fines. And the level of proof we need is, are five people on this Board convinced that what the County says is true is, in fact, true. And that's what we're looking at as far as we're using our Subchapter 10 process because you're not gonna get that volumes and volumes of discovery. We're not gonna go out and sequester somebody's Swiss bank account to prove that they put in a rental fee. We're not gonna go to that extent, but we are going to get that evidence into this room and on the record so that you can deliberate, discuss, and make a decision.

Ms. Kapua`ala: Not just for violations . . . (inaudible) . . . preponderance of evidence. . . . (inaudible)
. . .

Chairman Tanner: No, I think we're probably about done. Before everybody heads out, I just wanna say thank you to everybody for your vote of confidence. Looking forward to the next year. Will do my very best, but will let you know upfront, I will fail you in one specific way. I will mispronounce streets, towns, names. I barely speak English so you add Hawaiian in there, and I'm at a huge disadvantage. So know I will do my best. Thank you very much. And next meeting date is Thursday, April 25th, 1:30 p.m. And you'll be sent out reminders and agendas. So unless there are any other questions, we shall adjourn.

Mr. Giroux: And to the new Board Members, feel free to call me if any of these issues that have come up. I have an open door policy.

E. DIRECTOR'S REPORT

1. Status Update on BVA's Contested Cases

F. NEXT MEETING DATE: Thursday, April 25, 2013

G. ADJOURNMENT

There being no further discussion, the meeting adjourned at 3:39 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
Bart Santiago
Gene "Clark" Abbott
Bernice Vadla
Jacqueline Haraguchi
Ray Shimabuku
Teddy Espeleta

Members Excused:

Patrick De Ponte

Others:

Joseph Alueta, Acting Planning Program Administrator, Planning Department
Trisha Kapua`ala, Staff Planner, Planning Department
James Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel