

**BOARD OF VARIANCES AND APPEALS
REGULAR MEETING
MARCH 27, 2008**

A. CALL TO ORDER

The regular meeting of the Board of Variances and Appeals (Board) was called to order by Chairman Randall Endo at approximately 1:31 p.m., Thursday, March 27, 2008, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Chairman Randall Endo: The first item on today's agenda – well, actually, why don't we open it up for public testimony on any agenda item. Is there anyone in the audience wish to testify on any matter today? Seeing none, we'll now close public testimony, and move to our first order of business, which is the resolutions thanking our outgoing members: Uwe Schulz and Kathleen Acks.

B. RESOLUTIONS THANKING OUTGOING MEMBERS: UWE SCHULZ AND KATHLEEN ACKS

Ms. Colleen Suyama: It seems like the only time I come to this meeting is when it's the outgoing members. We do have resolutions for the outgoing members. The first one is:

Whereas, the Maui County Board of Variances and Appeals was established in 1983; and

Whereas, Kathleen Acks has served the County of Maui since April 2003 as a member of the Maui County Board of Variances and Appeals; and

Whereas, Ms. Acks has served with distinction and has performed her duties in the highest professional manner; and

Whereas, Ms. Acks's term of office will expire on March 31, 2008; now, therefore,

Be it resolved by the Maui County Board of Variances and Appeals that it does hereby express its deepest gratitude and appreciation to Ms. Acks for her service during the past five years; and does hereby extend its best wishes in her future endeavors; and

Be it further resolved that copies of this resolution be transmitted to the honorable Charmaine Tavares, Mayor of the County of Maui, and the Honorable G. Riki Hokama, Chairman of the Maui County Council.

Congratulations

Ms. Kathleen Acks: Mahalo.

Ms. Suyama: The second resolution is:

Whereas, The Maui County Board of Variances and Appeals was established in 1983; and

Whereas, Uwe Schulz has served the County of Maui since May 2004 as a member of the Maui County Board of Variances and Appeals; and

Whereas, Mr. Schulz has served with distinction and has performed his duties in the highest professional manner; and

Whereas, Mr. Schulz's term of office will expire on March 31, 2008; now, therefore,

Be it resolved by the Maui County Board of Variances and Appeals that it does hereby express its deepest gratitude and appreciation to Mr. Schulz for his service during the past four years; and does hereby extend its best wishes in his future endeavors; and

Be it further resolved that copies of this resolution be transmitted to the Honorable Charmaine Tavares, Mayor of the County of Maui, and the Honorable G. Riki Hokama, Chairman of the Maui County Council.

Congratulations.

Chairman Endo: Thank you, Deputy Planning Director Suyama. Do any of our members wish to give a parting speech? Final words? Mr. Schulz, no?

Ms. Acks: I'm just gonna say hang tough. You know, I think I learned – I think I've really learned a lot. And in two years, you might see me back for better or for worse. I think this is a really important Board. I've appreciated having the opportunity to have my voice heard. And I hope we have the support of the County Council that – to implement some of the things that we feel – to have listened to our recommendations. Thank you.

Mr. Uwe Schulz: I just would like to say that it was a real pleasure to work with my fellow Commissioners on this Board. And also we've not always agreed on the same matter, but it was still enjoyable for me, and I want to thank you for the time we have spent here. And I also would like to thank staff who have diligently informed us and kept us informed of the proceedings. And I have a high regard for staff and their

professionalism. Mr. Chair, I want to thank everybody.

Chairman Endo: Thank you. Okay, and just to clarify, I think you can come back in one year, not two. I think you could reapply because I think prohibition is just on consecutive terms. So you can reapply in one year. Okay. All right. If there's no other discussion on this matter, we'll move on to the next item on our agenda.

Mr. Harjinder Ajmani: Can I make a--?

Chairman Endo: Oh, sure.

Mr. Ajmani: You know, I have worked with both Uwe and Kathleen for the last three years. And I'm proud to have served with them. And I think you have brought the kind of issues to the discussion table and so on which were very valuable. So thank you for your service, and I really enjoyed your company and insight. Thank you.

Ms. Acks: Mahalo.

Chairman Endo: Ditto for me. Okay, so moving on. Ms. Cortez, do you wanna announce the next item?

C. APPEALS

- 1. TOM W. WELCH of MANCINI, WELCH & GEIGER representing DAVID Y. S. KONG, WINONA K. KONG and NONA LANI COTTAGES LLC appealing the Planning Director's order to cease operation of a transient vacation rental, for property located at 455 South Kihei Road, Kihei, Maui, Hawai'i; TMK: (2) 3-9-041:001 (BVAA 20070011)**

- a. Stipulation to Dismiss Appeal**

Ms. Cortez: Thank you very much.

Ms. Cortez then read the agenda item into the record.

Chairman Endo: Good afternoon. Would you like to enter an appearance?

Ms. Mary Blaine Johnston: Yes. Deputy Corporation Counsel Mary Blaine Johnston on behalf of the County. I'm not sure whether Mr. Welch was aware that this was on the agenda for the day. I haven't talked with him. Basically, we were able to reach a settlement on the appeal that he had presented on behalf of the Kongs. We submitted a stipulation – a signed stipulation to dismiss the appeal to the Board. So I guess it's

just before you just to call it up on the agenda, but we've had a satisfactory resolution of this matter. If you have any questions, I'd be happy to answer them.

Chairman Endo: Any questions from the Board?

Ms. Acks: Yeah, I just kind of like to know how it was resolved, if that's appropriate for us to—

Ms. Johnston: Yes, we looked – at the time that – it was an actually an appeal of the statement in a letter that Mr. Hunt wrote in the middle of October saying you must stop operating as a TVR. And they appealed that. And we took the position that you can't appeal a notice of warning. You can only do a notice of violation. We got into discussions about that and about the whole situation. And they – we were provided further information by the Kongs' attorney that we hadn't had. We took another look at the case, and decided that in fact they looked like they had provided evidence to support that they were a legal nonconforming use because they've been operating since the early 1970s continuously as a TVR. So once we had all the information, we looked at it. We were able to change the recommendation, which is fine if they continue to operate. And I think the proceeding, they had to get a change in the designation to hotel so that they will be a legal conforming use for the—

Ms. Acks: So they've been informed of what the process will be so that they can—?

Ms. Johnston: My understanding is that they're already in that process.

Ms. Acks: Terrific.

Ms. Johnston: They've already been in about a year, so I don't know how much longer that's gonna take.

Ms. Acks: Thank you.

Ms. Johnston: But that should work out.

Chairman Endo: Let the record reflect that as of 1:38 p.m., Member Kamai has now joined us. Okay, so, Deputy Corporation Counsel Giroux, do we have to do anything?

Mr. James Giroux: No, once the appeal's withdrawn because the County no longer wants to pursue it, we would lose the jurisdiction anyway. So we don't have to take any formal action.

Chairman Endo: Okay, thank you. All right. Moving on, we have the approval of the March 13, 2008 meeting minutes.

D. APPROVAL OF THE MARCH 13, 2008 MEETING MINUTES

Mr. Schulz: I so move – my last movement.

Ms. Acks: I'll second.

Chairman Endo: I assume you mean move to approve the minutes?

Mr. Schulz: Yes.

Chairman Endo: Okay. All right. It's been moved and seconded to approve the minutes of March 13, 2008. Any discussion? Seeing none, all those in favor, please say aye. Oppose, say no.

It was moved by Mr. Schulz, seconded by Ms. Acks, then

VOTED To approve the March 13, 2008 meeting minutes as presented.

**(Assenting: U. Schulz, K. Acks, R. Ball Phillips, S. Castro, Sr.,
H. Ajmani, W. Kamai.)**

(Excused: J. Shefte and W. Shibuya.)

Chairman Endo: **Okay, motion is carried—the minutes are approved.**

E. NEXT MEETING DATE: March 27, 2008

Chairman Endo: Our next meeting is April 10, not March 27 of 2008, I believe. And I believe at that time we will have our new members come on board—our two new members. And I think that's about it. Is there any other announcements? Questions? Discussions from the Board? Anything from the Planning Department? Corporation Counsel? All right. One of the shortest meetings ever. Thank you, everyone. And good luck to Kathleen and Uwe. Hopefully, we'll see you back in a year. If not here, in some other Commission.

Ms. Acks: I think we spent as long finding a parking spot.

Chairman Endo: All right. Meeting adjourned.

F. ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at

1:40 p.m.

Respectfully submitted by,

TREMAINE K. BALBERDI
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Members Present:

Randall Endo, Chairman
Kathleen Acks
Harjinder Ajmani
Rachel Ball Phillips
Uwe Schulz
Stephen Castro, Sr.
William Kamai (1:38 p.m. - 1:40 p.m.)

Members Excused:

Warren Shibuya, Vice-Chairman
James Shefte

Others:

Colleen Suyama, Deputy Planning Director
Aaron Shinmoto, Planning Program Administrator
Carolyn Cortez, Staff Planner
James Giroux, Deputy Corporation Counsel