

BOARD OF APPEALS
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
FEBRUARY 9, 2007

A regularly advertised hearing on the petition filed by **JALENE RAMONA HITZEMAN, TRUSTEE OF THE JALENE RAMONA HITZEMAN REVOCABLE LIVING TRUST (BOA 06-000036)** was called to order at 3:13 p.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Valta A. Cook presiding.

PRESENT: Valta A. Cook
George Curtis
David Drury
Diane Gentry
Peter Hendricks

ABSENT & EXCUSED: Anson Chong
Joel Gimpel

Pat O'Toole, Counsel to the Board
Alice Kawaha, Staff to the Board

Andrew Son representing Appellants
Amy Self representing Planning Director
Planning Director, Appellee

And 4 people from the public in attendance

PETITIONER: JALENE RAMONA HITZEMAN, TRUSTEE OF THE JALENE RAMONA HITZEMAN REVOCABLE LIVING TRUST (BOA 06-000036) - Appeal of Decision by the Planning Director dated November 9, 2006, relating to determination of preexisting lots of record. The subject property is located approximately 3 miles west of Mamalahoa Highway, Kaupakuea Homesteads, South Hilo, Hawai'i, Tax Map Key: (3) 2-8-2:12.

COOK: Jalene Ramona Hitzeman, Trustee of the Jalene Ramona Hitzeman Revocable Living Trust is our next agenda item. It is Board of Appeals No. 06-000036; and we have present here today the appellant. Mr. Son, would you introduce yourself and your associate, it looks like.

SON: Of course. Andrew Son on behalf of Jalene Hitzeman, and I have with me actually Jalene Hitzeman who's the fee owner of the property.

COOK: Okay. And Ms. Self, you're here representing the Planning Director and it looks like you have somebody sitting beside you.

SELF: Amy Self, Deputy Corporation Counsel, representing the Planning Director Chris Yuen who's on to my immediate right.

COOK: Okay, it looks like we have an interesting issue here before us today; and if I can maybe summarize what the Board is looking at today. It seems that the appellants here have filed a request with the Planning Director to recognize three, is it three lots?

SON: It's actually four, four.

COOK: Four lots from a currently tax map key one lot?

SON: Yes.

COOK: And the Planning Director has denied that. And as I understand the basis of the request was that a flume and a, what was the other?

SON: A ditch, also a ditch right-of-way, two rights-of-way.

COOK: Okay, that these two had in effect divided this lot into four?

SON: Yes, Chairman.

COOK: And your position, the appellant's position, is that those were not, well, the Planning Director's position is that those two items, the flume and the other item, were actually easements and therefore did not constitute a division of that property. And your position is that, in fact, it was not an easement but rather a reservation of a right and therefore it did, in fact, create the four?

SON: Yes, Chairman.

COOK: Okay, with that as a start I think I'll let you articulate your position on appeal; and then I'll let Ms. Self do her rebuttal; and then we'll determine whether or not in fact we have any factual issues, or whether or not this is just a question of law. So, Mr. Son, you have the floor.

SON: Well, the main points of our position are just outlined in the brief that we included. We don't have much in the way of supplementing that information. But I would like to at least paraphrase just the statements that we've made in the brief itself. And you are correct that the request for a determination was submitted back in '05 in August; and that determination was based on, number one, the land patent for that lot, the parcel 28, and also the warranty deed for parcel 28, which both included description of the entire lot and expressly state that the flume right-of-way and also the ditch right-of-way are accepted and reserved from those lots. And that's also supplemented by the calculation for essentially the net area for the lot. When we received our determination from the Planning Director in November, you know, the determination itself had stated that the flume and also the ditch right-of-way were actually easements and therefore they did not bisect the property. And we've included several exhibits, including the land patent and also the warranty deed, which expressly states that those reservations are there. Also, we've also included a determination dated 1999 for a parcel of land that is, I believe, which is two parcels east of Ms. Hitzeman's parcel; and on that parcel a similar request was made for a pre-existing lot determination. And the same exact ditch right-of-way and also flume right-of-way was determined to bisect that lot into three separate lots. So our

request essentially is that we would like to have a consistent determination. As you can see from these reservations, those are not easements but actually defined rights-of-way; and as defined rights-of-way they do bisect the lot into four separate lots.

COOK: Ms. Self, would you give us the Planning Director's position.

SELF: Yes. These are, rights-of-way are by law easements. You can look at the Amjur Second Deeds, Section 267. It says that whether used in a grant or in a reservation or exception, the words "right-of-way" generally denote an easement or servitude rather than an easement in a fee simple. And, also, the Hawaii Supreme Court has made that determination as well in the Henry Waterhouse Trust Company Limited versus Henry Freitas case. They have the exact same wording. If you look at the conveyance language of excepting and reserving, when you see that in a deed that means, and it refers to something like especially a right-of-way, that means that it's an easement; and that's what the Court determined. For instance, they said the language that was in a grant from the Territory of Hawaii contained the language "excepting and reserving the Makiki Stream and all riparian, and other rights in or to the stream and the waters thereof." They determined that to be an easement because that's what "excepting and reserving" is an indication for. The excepting part means they're given, essentially what they're going is they're giving a fee simple for the entire parcel of, let's say, the appellant's parcel, but they're reserving an easement in the ditch and in the flume. And a further indication of that is actually in the TMK Maps. If you go to the TMK, the bound TMK Maps that our Real Property Tax Office uses, in the beginning of that it says that "In 1932 a comprehensive plan for coordinated mapping system was adopted embodying such features as", and then they go through and they describe definitions, they give definitions, they give how things are to be depicted on the maps; and they did this so that everything would be consistent. And so -, and an ROW which means right-of-way, is an abbreviation for right-of-way, they define that as an easement over land for ways, public utility, etc. So a right-of-way, and accepting and reserving a right-of-way is actually an easement; and it's depicted on the TMK map as a dash line, which is also indicated in the Act that I just described.

Easements do not subdivide property. And the reason is because you are, the owner of the land owns the entire parcel. An easement just gives something the right to go across that parcel. So they already own the property, they have full right to go in where they want on that property. A right-of-way is just a reservation of an easement. So if there's anything else -.

COOK: Let me just ask you, one of the arguments of the appellant says that actually they did not convey the entire parcel. And I want you to address the issue of the gross square feet in the parcel versus the statement that the net amount of square feet that is conveyed is actually less by the, I guess, the metes and bounds of the two rights-of-way. How do you address that issue?

SELF: If you follow the metes and bounds description and you look, you follow it on the, I have a copy of the map from the Territorial days.

COOK: Is that part of -?

SELF: That's not. I would like to introduce that as an exhibit so that I could show -.

COOK: Okay. We'll actually get to the exhibits. I guess I'm sort of jumping here by asking these questions at this point. But go ahead.

SELF: But I can explain that by if you read the metes and bounds description and you follow it on the map, on that parcel, it does not, it includes the entire parcel. It does not set aside the ditch and the flume. If the ditch and the flume were not conveyed as part of the parcel, they would have had their own TMK. They would have had, the lines would have been solid lines as opposed to dash lines. That's just -.

COOK: Then, why did they say that the net amount that's conveyed is, I've forgotten the amount, but which is less than the entire square footage within the parcel? Why did they specifically say that both on the land patent and then subsequently on the conveyance deed?

SELF: It could be to show how much of the property is, the size of the easement, but it's included in the parcel. Otherwise, it wouldn't have been, it would have been left out of the metes and bounds if it wasn't intended to be part of the parcel. That's how you read a map, is you look at the metes and bounds and whatever is included in those metes and bounds description, that's what is being conveyed.

COOK: Mr. Son, if in fact that is not an easement and rather has been reserved, who owns that flume and that ditch?

SON: Well, going back to the original land patent, I mean if it's determined that the flume and the ditch right-of-way were actually reserved and not part of the initial conveyance then I guess the argument would be that that ditch, you know the .14 acre and the .22 acre are actually reserved to the State and the State actually owns those two parcels or the two lines.

COOK: Okay, why don't we, I was sort of asking these questions before we start here. You've made your opening statement. Do you have any evidence that you want to put on today?

SON: We do not have any additional evidence beyond the exhibits that were attached to both the general petition and my brief.

COOK: All right. So you're asking that we accept the attachments that were part of the record as exhibits, is that right?

SON: Yes, yes, Chair.

COOK: Okay. Does the Planning Director have any objections to that?

SELF: No.

COOK: Okay. And Ms. Self you indicated you had some exhibits also?

SELF: Yes. Should I introduce them right now or -?

COOK: Yeah, go ahead; and if you could describe them. And if you've made copies, if you haven't made copies maybe at a break you can give us the exhibits. What exhibits are you planning to enter?

SELF: Okay, first thing, I'm giving you copies of the pages from the tax map key books that describe how they describe the maps, what's in them, the definitions that I just read, and the way the easements are depicted in the TMKs. So this was to make sure that everything was consistent when drawing maps.

COOK: You have a copy you can give to Mr. Son there, to see if he has any objection to that?

SON: We don't have any objection.

COOK: All right. So we'll make that, I guess, -.

O'TOOLE: Appellee -.

COOK: Appellee's Exhibit A, I guess.

O'TOOLE: Alice, A.

COOK: Appellee's Exhibit A. Just for clarification purposes to make sure we've got the proper record here, I'm going to ask my legal counsel if she can tell us what exhibits we've already stipulated to. I think Mr. Son had exhibits, so if you can number those and then maybe we can just continue with Mr. Self's.

O'TOOLE: Well, Ms. Self submitted the Index to Record on Appeal.

COOK: All right.

O'TOOLE: And that ends at Number 17.

COOK: All right. So is everyone agreed that the Record on Appeal, the first 17 exhibits are entered into evidence by stipulation? Mr. Son?

SON: Yes, yes, Chairman.

COOK: Okay? And Ms. Self, that was your understanding?

SELF: Yes.

COOK: Okay. Okay, and then this last exhibit that you wanted, well, I'm not sure that it's the last one that you want to do, but it's the one that you're submitting now, would be, what would be the next number in order?

O'TOOLE: Eighteen.

COOK: Eighteen. And Mr. Son, I believe, has stipulated to that, that's the Tax Map.

SELF: Yes, they're 18 and 19. They are actually two sheets.

COOK: So 18 and 19?

SELF: Yes.

COOK: Okay. Is that agreeable, Mr. Son?

SON: Yes. Yes, Chairman.

COOK: Ms. Self, do you have any others?

SELF: Yes. I have the deed, this is an easement, this is a recorded document that provides an easement over the flume and the ditch on her property, all those properties up there. And so this would be Exhibit No. 20.

COOK: Mr. Son, can you look at that and see if you have any problem with that.

SON: No, Chairman.

COOK: No, sir, you have no problem?

SON: No, no problem.

COOK: Okay, all right. So that's in by stipulation to -.

O'TOOLE: Is that just one paging?

SELF: Nine pages.

O'TOOLE: So it's 20 to 28.

COOK: Okay, you have any more exhibits, proposed exhibits?

SELF: I have, the map I was referring to is too big to make copies of. And it's just showing, the significance of this is to show the easement, the document you just got. The easement that goes across the flume and the ditch, this is a map that shows those easements.

COOK: Could you identify that map a little bit for the record.

YUEN: This is an earlier map, this is just a homestead map.

SELF: Oh, I'm sorry. Okay, well, this isn't any different from what they already have in there.

YUEN: It's the same. This is the original homestead map showing -.

SELF: No, we won't enter this because this is just, you can see, we'll use it to -. Well, I guess we have to enter it. It just shows, it's larger, it's the homestead map that shows all these old homestead properties.

COOK: Okay, so you already have that in evidence? This is just bigger, is that what we're saying?

SELF: No. But it's similar to what is, what the appellant submitted, the TMK Map that they submitted.

COOK: It's a part of the Numbers 1 through wherever we are?

O'TOOLE: No, it's different. She's saying it's a different map.

SELF: Okay, this shows, actually this is the original homestead map from 1912. So it shows the flume, the layout of the flume and the ditch, and where they start and end.

COOK: Does that predate the land patent or afterward?

SELF: The land patent was dated -.

SON: I believe it was 1916.

COOK: Sixteen, so this predates the land patent.

SELF: Yes.

COOK: Okay. And do you have copies of that or is that the only copy you have?

SELF: No. This the only one we have.

COOK: So you want to introduce that? And if you do, then we'll, you can -. I think what we're going to probably do after we have all of the evidence here today is I think I'm going to ask that we have written arguments. Because you've made some legal points that, you know, you cited a case here that I have not read and there are other legal issues here. Mr. Son covered his side, I thought pretty thoroughly. But I really didn't get anything from, other than the decision itself from the Planning Director. So you can get a copy made of that. Let's go ahead and mark that as Exhibit -.

O'TOOLE: Twenty-nine.

COOK: Twenty-nine. So can you submit copies of that?

SELF: Yes.

COOK: Is that okay with you, Mr. Son?

SON: Yes, Chairman, that's okay.

COOK: Okay, any other exhibits?

SELF: That's all.

COOK: Alice is over there, maybe, you're just going to mark that now Alice?

KAWAHA: Yes.

COOK: Okay.

SON: Chairman, if I may, I would just like to ensure that our Exhibit D to the original petition, our Exhibit D to the original general petition for appeal is also included as admitted. It's the original determination for Parcel 9 regarding the lots of record. It's the last three pages of the initial petition, three or four pages.

COOK: Is it already in there?

O'TOOLE: Yes.

COOK: It's already in there.

SON: Okay, okay.

COOK: Do you have any more, Ms. Self?

SELF: No. I would like to call Mr. Yuen as a witness and ask him some questions, so that we can get it on there.

COOK: Okay, I think first we'll start, I want to make sure -. Mr. Son, you have any additional, either testimony or any additional evidence you want to submit or are resting at this point?

SON: We're resting, Chairman.

COOK: Okay, Ms. Self, you wanted to put on some evidence or you wanted to put on a witness?

SELF: Yes. I'm calling Mr. Christopher Yuen, the Planning Director.

COOK: Okay, Mr. Yuen, would you raise your hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

YUEN: Yes, I do.

COOK: I think I'll leave you there rather than put you way down here.

YUEN: Okay, let me just move to the end here so that Mr. Son can see me.

COOK: Okay, proceed, Ms. Self.

SELF: Okay, Mr. Yuen, could you explain for the Board the reasoning behind denying these pre-existing lots.

YUEN: As stated in the letter, the claim is that the lots are divided by the rights-of-way. The rights-of-way are easements. The law on easements is that when a right-of-way is designated by, particularly when it's listed for a purpose like a flume or utility purposes or a ditch and has this kind of accepting and reserving language, it creates, it indicates that it creates an easement rather than the grantor keeping the fee in the property. One consequence, if the State, if the Territory actually had kept the fee in the property, the owner of this parcel would have had to cross over, would have been cut off from parts of their own property by the State-owned property. And the areas of the, in other words the State would have, I mean the Territory would have given this lot and the parts that are separated from the Homestead Road by the, if it was owned in fee would not have access actually to the Homestead Road itself because they would be cut off by pieces of property, by Territorially-owned pieces of property that the grantee didn't actually own. So those are some of the things that indicate that this is an easement versus property that's owned in fee.

SELF: Okay, now what do you look at, what are the things that you look at, I mean, what are the indications for -.

YUEN: Well, in addition to just the language, there's also the way, these are indicated on the original homestead map by these dash lines. The earliest tax maps show them as dash lines which are also typically the way that the tax maps designate easements or indicate easements. Then, and this is not a necessary element of this. But in the case of this particular property, and this is the deed to the easement that was introduced as an exhibit here. The owner of this property in the 60's granted an easement across their property, including across the flume and the ditch for roadway purposes. So if that individual in the 60's, the owner in the 1960's, did not own the fee in the ditch and flume right-of-ways they could not have granted an easement to somebody else across the ditch and the flume. That, it certainly indicates that the owner of the property in the 60's felt that they owned the ditch and the flume, the fee and the ditch and the flume, and then were able to give an easement across the easement that existed. On the ground, there's no indication that the owner is prevented from crossing the ditch and the flume to get to the other parts of their own property. So those are the things that come to mind in this property that indicate that this ditch and the flume right-of-way reservation are easements rather than a reservation of a fee interest by the Territory.

SELF: Okay, under the Subdivision Code, Section 23-120, this is use of certain pre-existing lots and consolidation and resubdivisions, in that provision, in that Section of the Code it does mention a flume line. So are there times when a flume is considered a separate lot so that it would cut somebody off?

YUEN: You will find occasionally a flume lot on the Tax Maps. And you will trace back, if you look for deeds on that there will be specific lots created for flumes, not very

often for flumes but occasionally, more often for things like a railroad lot and the railroad typically was on a lot as it crossed all the properties. So if you have that, Section 23-120 recognizes that, first of all, that when you actually have a lot that's owned in fee by somebody else that separates your property that that does subdivide property and creates a lot on either side of the flume, what section, or railroad or whatever. But what Section 23-120 says is that you can't use that lot in addition to create a third lot for buildable purposes, that it was not intended as a buildable lot. So that's the significance of 23-120.

SELF: Okay. And how does this situation differ from say a government road that goes across a person's property?

YUEN: Well, at least with respect to the government roads under the Highways Act of 1892, we recognized those as subdividing property because the Highways Act of 1892 said that the government owns the roads in fee simple. So the road by virtue of that, if it's a road that comes under that Statute then we do recognize it as subdividing property.

SELF: Okay. Now in this instance where you have two rights-of-way which essentially are easements that go across the property, if it was set up, if it was really not an easement as the appellant is saying that it's cutting of her property, what would it mean if they didn't have access or they didn't have a right to cross the flume or the ditch?

YUEN: Well, this gets back to the earlier discussion because they're not, if it was kept in fee by the Territory they did not have an easement to cross it. So I don't see how they would have a right to cross that property to get to the rest of their property.

SELF: Okay. And can you describe for the Board the public policy regarding the creation of lots?

YUEN: Well, the general policy is that lots should be created pursuant to the Subdivision Code. There's a Subdivision Code for how you create new lots and they should be supplied with, we've talked about this before, road access, water, the density should comply with the zoning. So it's not a philosophy to just freely give out pre-existing lots. And the ordinance says that the burden is on the applicant to justify the pre-existing lots. We're certainly trying to treat people fairly with respect to these. But the overall policy is not to find any possible reason to grant them even when it doesn't really conform to, when it's not really justified.

SELF: Okay. And the appellant raised an issue of a previous Planning Director had made a determination that there were pre-existing lots on a parcel that is in the vicinity of their parcel because the same flume and the same ditch crossed the property. Would you consider that a mistake by that Planning Director?

YUEN: Yes. I have to say that, you know, mistakes are sometimes made; and that is a mistake. I think that the statement that the owner had no right to use a ditch or flume in that, I don't see a basis for that statement. I don't also see a real analysis of this easement versus fee question.

SELF: Now once you see a previous mistake made by the previous administration do you just go ahead, because they did it you go ahead and follow that mistake and make the same mistake?

YUEN: Well, you can't. You know, our administration makes mistakes too. But, for example, if somebody is allowed to build a house that's 40 feet tall in a residential zone instead of 35 feet tall, it doesn't mean that anybody that discovers that there has been a similar mistake gets to build a 40-foot tall house. There are times, you know, when we will, to stick with that same example, you know, if the Department mistakenly signs off on the building plans for a 40-foot high tall house and the person starts building on it, we will not interfere. We will stick by that mistake. But this isn't one of those situations.

SELF: So if there was a reliance on a mistake made by your Department then you would -?

YUEN: Well, if there's a specific request to an applicant, there's actually law on this as well, when is an individual entitled to rely on a mistake in a determination by the government; and all of the law really turns on the specific individual in question being given assurances of a right to proceed. It's never a question of one person was given one determination and you're trying to get a similar determination. So, in this case, you know, an individual can request this determination from the Planning Department on their property. And so they have the opportunity to do that. And it depends on, you know, I don't want to make any kind of over generalizations but it certainly, for somebody to make a claim that we have to act consistently and grant something, they need to have a determination that has been made with respect to them and their situation.

SELF: And are you aware of anyone in the Planning Department telling this appellant that she could get four, that there were four pre-existing lots on this particular parcel?

YUEN: No, I'm not aware of that.

SELF: Okay, thank you.

COOK: Ms. Son, do you have question for Mr. Yuen?

SON: Just a few follow-ups just for clarification. So I guess it's your position that the description in both the land patent and the warranty deed regarding the exceptions and reservations is that the conveyance of property was for the entire lot and was not subject to a fee simple interest by the State for just those two lines, the flume lines, and also the ditch line? Is that correct?

YUEN: Right. And I should mention that with respect to the question raised by the Chair, you see references to net areas of various types in the deeds. I've seen deeds that referred to a waste area and there's a net area, you know, like land over the edge of a cliff or something. The tax books refer to waste areas. So the indication of a net area does not necessarily mean the reservation of a fee interest. But that is our position, yes, that these are essentially easements retained by the Territory across a property for the purposes of a flume and ditch line.

SON: That's my only question.

COOK: Mr. Yuen, what do you consider the current status then of those two easements? In other words, does the State still have those easements? I guess it was a Territory before, and then the State would have acquired that as successor to the Territory. Do they still have that easement across this property for the flume and the ditch.

YUEN: I have to proceed under that assumption. We didn't try to research whether there had been any formal abandonment of those. There are provisions where the State can sell or abandon easements, rights-of-way, even road lots. We didn't try to research that. And so I don't know. But absent any indication to the contrary, I would presume that to be true. It indicates, the fact that it still shows up on the title indicates that there was not some kind of recorded release of it at some point. I don't know whether they're, I think obviously the flume is not active, whether the ditch is still active I don't know.

COOK: So the landowner, the current landowner, a possible remedy assuming you're correct then that this did not divide into four lots, a possible remedy would be to file some kind of an action against the State for any extinguishment or for recognition that the State has abandoned it?

YUEN: Well, if they care about it. If they don't want these things on title, they can go to the State and ask that they be abandoned. On the other hand, I mean, there's no necessity; if it doesn't bother them they don't have to.

COOK: But if they wanted to build a house across that flume they couldn't do that if it's an actual easement, right?

YUEN: That's true, that's true, they could not build. There are some things they can't do that would be inconsistent with the easement. If there's no flume there, they can go back and forth across it. But if they wanted putting a house across, if that's where they wanted to build their house, they would have to get that abandoned or extinguished.

COOK: Okay, does anybody else on the Board up here have any questions of Mr. Yuen? David, did you have some questions?

DRURY: One small thing. The excepting and reserving language was also used for streams in the original land patent. So does that constitute an easement or is that just the same language used for other things that cross?

YUEN: Yeah, I'm not, you know, I'm not sure why the appellant didn't, you know, that they're going for broke here, they could have claimed another couple of lots on the stream, I guess. But you're correct that the same language is used for the stream.

CURTIS: Could it be reasonable to assume that C. Brewer rather than the Territory owned that flume right-of-way?

YUEN: No, because of the original source of title here. This is a piece of, and this is the Homestead Map. These properties are one of the many properties that the original source of title is from the Territorial Homesteading Movement. Actually this started in the Republic of Hawaii in 1895, it's called the Homestead Act, and then continued into the Territorial Period. The Territory would set up subdivisions. They had the idea of getting land to small owners. So they mapped out the subdivision, that's the big map that you have. You'll see it has a Homestead Road. Because there were existing infrastructure like flumes or ditches, they would map those out on the maps. They would map out the lots. Individuals would lease the lots for a period of time. And if you lived on the property and leased the lot and farmed it, you could buy it fairly cheaply; and that's the original source of title. So this is land that was government land and then conveyed out to individuals under the Territorial Homestead Act.

COOK: Okay. Mr. Son, you have any more questions for him?

SON: Just one final point of clarification. For the easement, this is minor, for the easement document it describes the roadway easement which crosses the flume line and the ditch line but it doesn't in itself actual state an easement for the ditch and the flume line separately. Is that correct?

YUEN: That's correct.

COOK: I have one clarification. You indicated that there had been a conveyance by a subsequent owner of this property of an easement for, I don't know, maybe electric purposes or something. Is that deed part of the record here or -?

YUEN: Yes. That's, I think, the last exhibit that was introduced. It's a deed, it's a grant of easements for roads. There's a reciprocal grant of easements by C. Brewer and at least one of the landowners. I believe it's Mr. Kansaku who at the time owned this property that Ms. Heitzman owns currently. So what happened here is that Mr. Kansaku gave C. Brewer an easement over his property; and the easements crosses these easements.

COOK: But that is one of the documents that Ms. Self introduced?

YUEN: That's right.

COOK: Okay, I just wanted to make sure our record was complete. Ms. Self, do you have any other witnesses?

SELF: No, I don't.

COOK: Mr. Son, you had rested. Do you have any more?

SON: No, we don't.

COOK: You know, this is I think an issue of first impression for this Board anyway; and I'm not sure if whatever decision we make is going to stop here. So I think what I would prefer, and I'll leave it up, Mr. Son, I guess I'll sort of pitch the ball to you and to Ms. Self, I think I would prefer having written arguments from each of you as to your position on

this based on the record before us here. There has been some more testimony since you made your initial memorandum, and then Ms. Self has raised some legal issues here, and Mr. Yuen has given some testimony as to why he believes that these were easements rather than, I guess we would call those reservations of property. So I think I would like legal arguments; and then we can bring this up at the next time we meet in Hilo; and hopefully we will have that. And then if the Board Members have any questions then they can ask them, and then we can vote on this issue, and we can bring it to a speedy conclusion. How does that fit with the two of you?

SELF: That's fine with me. I would ask that you close evidence at this point though so that there's no additional evidence.

COOK: Yes, that's right. Yeah, I agree that we have completed. I asked both of you if you had anything further, so I'm considering that the evidence is closed now. So we won't accept additional, unless there's some motion or something to do so, we would not accept along with your arguments any additional, like exhibits or facts. Okay, is that acceptable to both of you?

SON: Yes.

SELF: Yes.

COOK: Let's set a 30-day period for making those final arguments; and then each of you if you want to respond to the other one I'll give you an additional 15 days. And then we will make our, well, we'll bring it up to the Board at the next meeting in Hilo. Is that acceptable to everybody?

SON: Yes, Chairman.

SELF: Yes.

COOK: Okay, then, thank you very much; and that will complete that.

The discussion ended at 4:00 p.m.

Respectfully submitted,

Sharon M. Nomura, Secretary