

BOARD OF APPEALS
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
AUGUST 8, 2008

A regularly advertised hearing on the application of KOKO PALMS KEAUKAHA LLC & PACIFIC ISLAND INVESTMENTS LLC (BOA 08-000069) was called to order at 10:04 a.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i, with Chairman Joel Gimpel presiding.

PRESENT: Joel Gimpel
David Drury
Charlene Hart
Karen Maedo
Kim Tavares

ABSENT & EXCUSED: Peter Hendricks

Renee Schoen, Counsel to the Board
Alice Kawaha, Staff to the Board
Larry Higgins representing Appellant
Ivan Torigoe representing the Director of Public Works
Brian Kajikawa representing the Director of Public Works

And four people from the public in attendance

PETITIONER: KOKO PALMS KEAUKAHA LLC & PACIFIC ISLAND INVESTMENTS LLC (BOA 08-000069) - Appeal of the Director of Public Works' Decision for denial of use of alternate roofing materials and methods of construction relating to Section 62 requirements of the Hawaii Building Code. The subject property is bordered by Kalaniana'ole Street, Hapai Avenue and Apapane Street, near the County's Onekahakaha Beach Park, Keaukaha, South Hilo, Hawai'i, TMK: (3) 2-1-14:5.

GIMPEL: Next case for the morning, petitioner is Koko Palms Keaukaha LLC and Pacific Island Investments LLC (Board of Appeals 08-000069). And this is the appeal of the Director of Public Works' Decision for denial of use of alternate roofing materials and methods of construction relating to Section 62 requirements of the Hawaii Building Code. The subject property is bordered by Kalaniana'ole Street, Hapai Avenue and Apapane Street, near the County's Onekahakaha Beach Park, Keaukaha, South Hilo, Hawai'i. Tax Map Key Number is (3) 2-1-14:5. Are the parties here? Would you introduce yourselves, first to the petitioner.

HIGGINS: I'm Larry Higgins, architect.

GIMPEL: Use the microphone, please.

HIGGINS: I'm Larry Higgins, architect on this project.

GIMPEL: Thank you.

HIGGINS: The petitioner Gil Barden is out of the country and asked me to step in his stead.

GIMPEL: Thank you. All right. And the representative from the Department of Public Works?

TORIGOE: Good morning, Mr. Chairman, Honorable Board Members. My name is Ivan Torigoe, Deputy Corporation Counsel. I'm assisting Mr. Brian Kajikawa, who is the chief of the Building Division of the Department of Public Works, who is also present here.

GIMPEL: All right, thank you. All right, what we're going to do is first have just opening statements from each party. And then if you wish to call witnesses or testify yourself, as I understand you're the architect, we will then swear you in and you can testify. So, first, the thing would be what do you intend to show in this case. Go ahead.

HIGGINS: The information that we submitted to you indicates that this product has been tested by two testing laboratories and has shown to be a Class A roofing. We do not feel that a Class A roofing needs to be sprinkled. And the question isn't whether we're using this material or not, the question is whether it needs to be sprinkled. The Ordinance 62, part of the Code has a revision or a supplement to the Uniform Building Code of '91, was written ten years before this product was developed and tested. And since it has passed two extensive tests, one of them an Underwriter Laboratory test showing it's a Class A roofing, we request that Chapter 62 which requires sprinklers on thatched roofing not apply. This product is, technically if you use the word thatched, yes, it's thatched. But it's a Polyvinyl Chloride product that will not sustain flame and has been tested, as I said; and you have copies of that by two testing laboratories showing it's a Class A roof. I don't think this is any danger to the community whatsoever.

GIMPEL: Thank you. Mr. Torigoe.

TORIGOE: Thank you, Mr. Chairman. Basically the Building Division feels that the Building Code, Chapter 62, as has been stated by the appellant is very specific in its current wording. You know, the law is the law; and we have provided for you an Exhibit 2, a copy of that Building Code Section. And basically it requires that when you use any kind of thatched material, and Section 6201, it says, "When thatched material is used as permitted in this section, and an appropriate permit is obtained therefor, outside sprinklers for protection against exposure fires shall be required as hereinafter provided." It's very clear. I mean, you know, we sometimes wish we could do away with some of the wording but it's right there, it's very clear. And thatch is not defined in any way to exclude this kind of synthetic thatch. So basically the Building Division's position is, you know, that they have to abide by the plain letter of the law.

Having said that, we do recognize that the Board of Appeals has a certain amount of discretion under your Rule 8-16 to allow for alternative materials and methods of construction. And so, you know, we would recognize that it may be within the discretion of the Board to allow for the

use without sprinklers if the Board can find that all of the standards under 8-16 are met. And that is that: (1) the new or alternate materials, methods of construction, etc. meet the standards established by the Code; and (2) permitting the requested use will not jeopardize the safety of persons or property; and (3) the requested use will not be contrary to the intent and purpose of the Code. And, again, that's in your Rule 8-16.

Finally, if the Board decides that it wants to allow for this use of this thatched material without sprinklers the Building Division requests that a condition be included that says basically that the installation shall be done in strict compliance with the specifications for use as stated in the tested materials that resulted in the Class A rating. We want to make sure, you know, that if this material is allowed to be used without sprinklers that it is done in strict compliance with the conditions that resulted in the Class A rating. I don't know if Mr. Kajikawa has anything that you'd like to add at this point.

KAJIKAWA: No.

TORIGOE: Okay. Thank you. With that we will, actually we'd like to make sure that all the exhibits are in, Mr. Chairman, if that's okay.

GIMPEL: That was my next step. Well, one, the petitioner's exhibits were all attached to the complaint. And your exhibits have been filed, they consist of a letter from Mr. McClure dated June 19th and a copy of the Uniform Building Code. Can we have agreement from the parties that all the materials that have been submitted shall be admitted into evidence?

HIGGINS: I submitted a sample, a mocked-up sample, of the entire roof system. I don't see it here.

NOMURA: Microphone, please.

HIGGINS: I submitted a full sample of this roofing system which is a system, not just this material, and it was submitted along with our petition; and I don't see it here. But it may be irrelevant, I don't know.

GIMPEL: Do we have a copy of that or do we have -?

KAWAHA: I am not aware of that. I just, all I received -.

HIGGINS: It was large. It was this big and it was several layers of this over the roofing material, the weather part of the roofing material itself.

GIMPEL: I see.

HIGGINS: And that was submitted along with the papers.

GIMPEL: Let's take one thing at a time. Of the materials that have been submitted with your complaint, besides that, you don't have any objection to that?

HIGGINS: No.

GIMPEL: Okay. And do you have any objections to the materials submitted by the Director of Public Works?

HIGGINS: No.

GIMPEL: Okay. Do you have any objections to the complaint or materials attached to the complaint?

TORIGOE: No objection.

GIMPEL: Okay. So we'll admit what we have into evidence. If you have a sample of the material, we can then consider that as we take testimony, if you want to get that in. We don't have any record of receiving whatever else you submitted, apparently. Okay, all right. Would you like to testify, sir? If so, I can swear you in and then you can present your statement.

HIGGINS: All right.

GIMPEL: Okay. Do you swear to tell the truth, the whole truth and nothing but the truth?

HIGGINS: I do.

GIMPEL: Thank you. Would you give your name, address and then go ahead.

HIGGINS: Larry Higgins, architect, PO Box 1244, Volcano, Hawaii.

GIMPEL: Okay.

HIGGINS: I'm the architect on this project. It's a unique project built in a tsunami zone and we're trying to make it very blendable into the community. Thus, we have chosen to use this product which is a synthetic Polyvinyl Chloride material that resembles thatch. It is not the weather part of the roof. That's done underneath this. And the sample that was submitted would show that. It's like a roll of roofing with a granular surface. And this is applied over it in layers, overlapping strictly as a decorative surface. A question would arise if there was an external fire of some kind and embers or something landed on it would it be a threat in some way. And that's what the two tests that we submitted, one of them from the Underwriters Laboratory, show, that it is a Class A roofing. In effect, this material while it will char or melt when you take the source of flame away from it it goes out, just like an asphalt shingle would, a Class A rated asphalt shingle would. So it does not sustain fire, in other words. And we feel it's a perfectly adequate material to use as a decorative topping to the weather-type roll roofing that's underneath it and it gives a character to this project that we'd like to see. That's all. And it's

part of the design of the project aesthetically. I don't believe personally and from what I could gather from these tests that it's in any way a danger to that community or neighboring communities, any more than asphalt shingles would be. So, I have a list which I've shown to Brian of 313 uses of this product on residential and commercial projects that was submitted to me by the manufacturer just a couple of days ago. And of the 313 projects around the country that do not use sprinklers, 50 of them are in Hawaii. So we're not doing something brand new here.

The case I think that we have is that the '91 Code was supplemented by the building section of the County Ordinance, the County Code, and 62 refers to thatch; and I don't believe the Building Department has any discretion in saying that this is thatch. But that was adopted in 1993 to supplement the '91 Building Code. This was developed and tested in 2003 ten years later. So the Code didn't allow for something other than real natural thatch. It didn't define it either way. And this is a new product and it has been suitably tested; and I believe it should be allowed without the sprinkler system. That's all I have to say.

GIMPEL: Do you have any cross-examination, Mr. Torigoe?

TORIGOE: No, Mr. Chairman.

GIMPEL: No cross-examination?

TORIGOE: No. Except, I think Mr. Kajikawa would like to offer some rebuttal testimony.

GIMPEL: Well, first, let's see if the Board has any questions of Mr. Higgins. Anybody on the Board have any questions? Ms. Tavares, go ahead.

TAVARES: Good morning. I wanted to make it clear what product we're actually talking about. I can see it but I didn't see a specification sheet or any kind of documentation that says this product is composed of these materials, etc., etc.

HIGGINS: The statistic report that was submitted should be informative of that.

TAVARES: Yes, but there were two separate product names. One was Endureed -.

HIGGINS: Endureed is a product here, yes. Soprema is the underlayment -.

TAVARES: Right.

HIGGINS: That's a roll roofing is what it is.

TAVARES: But the Soprema is not what is at issue today.

HIGGINS: Correct, that's correct.

TAVARES: And that's what I think the test was. The test was not done on this Endureed, is that correct?

HIGGINS: Yes, it was. Endureed was on top of the Soprema in both cases.

TAVARES: Okay. And then there was a second Country Cottage Roofing?

HIGGINS: That's one of the names of the distributors, same product.

TAVARES: Well, I'm trying to determine whether it is a same product. Is there a spec sheet for the product that you're using?

HIGGINS: I don't have it with me.

TAVARES: Okay, thank you.

GIMPEL: Any other questions? Mr. Drury.

DRURY: Mr. Higgins, I see some approvals, tentative conditional approvals, from Maui and Honolulu for installing Endureed systems. Did you have any problems in those cases of installing the product in accordance with the manufacturer's -?

HIGGINS: No. I wasn't involved in those. This is the first time that I've been involved in this product, and I found the supplier to be very cooperative in giving us information. If we need additional information I'm sure I could get it.

DRURY: No, no. My question was more when it was installed in Maui and in Honolulu, both of the permits say with the qualification that you'd have to do it according to the manufacture's instructions, was there any problem in meeting that requirement?

HIGGINS: Not that I know. There are two alternates that were submitted. One is a fire proof, fire resistant, nothing is fire proof, fire resistant plywood, was this Soprema roll roofing on top of it, and then this laid over as a decorative surface. That's one test. The Underwriter Laboratory test had regular plywood untreated, I mean termite treated but not fire retardant treated, with a layer of gypsum sheeting, then the Soprema roll roofing, then this product. And I think that's what we intend to do. We will follow that specification that was listed in the test exactly. Oh, there it is.

GIMPEL: Yeah, we apparently found your submission. Thank you. Is there any objection to admitting this submission into evidence, Mr. Torigoe?

TORIGOE: No, Mr. Chairman.

GIMPEL: All right, thank you. We'll admit that, too. And you have no cross-examination. Are there any other questions of the Board of Mr. Higgins? None. All right, Mr. Torigoe.

TORIGOE: Thank you, Mr. Chairman. I'd just like to ask a few questions of Mr. Kajikawa.

GIMPEL: Sure.

TORIGOE: Mr. Kajikawa, you've heard a reference by the appellant to a list of some applications of this proposed thatching material without, well, actually proposed thatching material on the island. Do you know anything about those applications?

KAJIKAWA: No, I don't.

TORIGOE: Do you have any idea if those applications involved the use of sprinklers or not?

KAJIKAWA: At this point I don't know.

TORIGOE: Okay. Do you know if any of the applications on that list are on this island?

KAJIKAWA: He had shown me several that were on this island. However, whenever people came in for thatched approval or use of thatched material I always required it to be sprinkled because of what the Building Code has said. Basically the sprinkler system, it doesn't matter whether they have an attached roof with a Class A rating or whatnot, well, that's fine. In this particular case we're not talking about that. We are talking about protection against exposure fires, which means that this is a fire that might come on to the surface on contact from the other sources, outside. And the sprinkler is used to extinguish that. It doesn't matter whether the thatched material has Class A rating or not. Cause as it's written here "THATCHED MATERIAL ON EXTERIOR OF BUILDINGS; PROTECTOR AGAINST EXPOSURE FIRES."

TORIGOE: And what were you just referring to?

KAJIKAWA: That would be the section, Chapter 5, Section 5-1.0.132, Chapter 62 which is "THATCHED MATERIAL ON EXTERIOR OF BUILDINGS," and on that you also have "PROTECTOR AGAINST EXPOSURE FIRES." So it's not talking about the material itself. You're talking about exposure fires that come into contact. So that's what the sprinklers are used for, to put out the exposure fires.

TORIGOE: Okay. So, Mr. Kajikawa, what is your current occupation?

KAJIKAWA: I'm a Building Chief at the County of Hawaii, Building Division.

TORIGOE: And how long have you been in that position?

KAJIKAWA: I've been in, well, I think about five years now.

TORIGOE: Okay. And so in the time that you've been the Chief of the Building Division has there ever been any kind of a preliminary or initial approval of the Endured thatched material for use without sprinklers.

KAJIKAWA: No, because -. Well, we had, no; and also synthetic materials that came on, we also required those to be sprinkled. No.

TORIGOE: That's all the questions I have for Mr. Kajikawa. Thank you, Mr. Chairman.

GIMPEL: Thank you. Are there any questions from the Board of Mr. Kajikawa? Anybody?

DRURY: Yes.

GIMPEL: Mr. Drury.

DRURY: Mr. Kajikawa, on the exhibit list brought in by the appellant on page 2, I guess it's the third page of the large exhibit list, I'm sorry, there are no pages at the bottom. It says Pacific Island Investments 06/19/2008; and the third bullet point down says "Units 1-6 were previously permitted and approved with the same roof assembly covered under this appeal with the singular requirement that we use the Class A rated assembly." Is that correct? It seems to contradict what you just said.

KAJIKAWA: No. Their drawings were approved but there was also a note on the drawings to be sprinkled.

DRURY: I see. Okay, different line of questioning. Just for fun I looked up the word "thatch" in three different dictionaries. And I won't read you all the definitions. But I'll just read you one, "a roof cover made from vegetation such as straw, water, reed, sage, rushes, or heather." And all the dictionary definitions pretty much say the same thing. It's dead plant material that hasn't decomposed. In the Code and interpreting the Code, do you make any distinctions between thatch as we all know in the English language to be dead plant material and materials used for the aesthetic purpose of thatch? They're two different things.

KAJIKAWA: Yes. No, but we don't distinguish between the two. As long as it's called thatched roofing, we take it as that.

DRURY: Okay. So if you had corrugated iron and you cut it up in little strips and you put it at the top as a decorative covering on a standard roof, would you require a sprinkler system for corrugated -?

KAJIKAWA: If it's going to be called thatched roofing, yes.

DRURY: So just because it serves the aesthetic purpose of what we call thatch you would require a sprinkler system even if it were a rock?

KAJIKAWA: Right. As long as they have “thatched roofing” on the drawings, we’ll consider it as thatched roofing.

DRURY: Why do you do that?

KAJIKAWA: Cause that’s what the architect or the drawing says.

DRURY: No, no. Why do you interpret the Code that way?

KAJIKAWA: Because the Code says “thatched roofing.”

DRURY: I see. And so it doesn’t matter if there are extra costs or extra time and no functional benefit. Would you agree that there is no functional benefit to -?

KAJIKAWA: Well, I agree if there’s no functionability then they shouldn’t call it thatched roofing. It’s not thatched roofing. That’s on their drawings.

DRURY: So if it were called material used for the aesthetic purposes of thatch then that would be okay?

KAJIKAWA: Well, you said thatch again.

DRURY: No, no, for the aesthetic purposes, the aesthetic effect of thatch. There’s a difference between the material and the thatch -.

KAJIKAWA: Right. But the word is aesthetic looking of thatch. It’s a thatched material. As long as there’s a thatched material on that, made on the drawing, we’re going to say it’s going to be sprinkled.

DRURY: Okay.

TORIGOE: Mr. Chairman, may I comment?

GIMPEL: Yeah, sure, go ahead.

TORIGOE: Thank you. Just for your information, Section 6201, the second paragraph, it says that “The thatched material permitted in this section shall be used for decorative purposes on the roof or wall of buildings. The building, independent of the thatched material shall comply with all applicable provisions of the chapter.” So the Code acknowledges that the thatched material can be there just for decorative purposes, but it still requires sprinklers. That’s just what the Code says.

GIMPEL: Yeah. I think Mr. Drury was getting at the point, what if that material that that is made out of were not cut into strips, would you require a sprinkler system?

KAJIKAWA: Depends, well, what is it going to be called?

GIMPEL: Let's call it material, that same chemical composition put on the roof but not cut into strips would you require a sprinkler system?

KAJIKAWA: If it's not a thatch probably not.

GIMPEL: In other words the composition of the material, and I think this is a point that Mr. Drury was making, it's not the composition of the material that dictates your decision to require a sprinkler system, it's whether you call it thatch?

KAJIKAWA: That's right. If it's a membrane roofing we won't require to sprinkle -.

GIMPEL: Thank you. It's whether you call it thatch. Now if we look in the dictionary, we find that the dictionary definition of thatch is dead plant material. Thank you very much. Are there any closing arguments from either of the parties if there are no more questions? No more questions. Let's hear closing statements. Mr. Higgins.

HIGGINS: I have really nothing to add except that this material didn't exist when the ordinance was written and I think it should be allowed.

GIMPEL: Mr. Torigoe?

TORIGOE: Thank you, Mr. Chairman. Just very briefly again, you know, we're just here basically because the Building Division takes thatched material as it it's stated very literally, that the Code itself does not make the distinction between synthetic or dead plant material. And so I think Mr. Kajikawa simply feels bound by what he sees as the plain language of the Code. Again, having said that, the Board does have a certain amount of discretion. If you find that this appeal meets the standards under your Rule 8-16, it is something that you can consider. Thank you very much.

GIMPEL: Thank you. Can we have a motion? Is there any discussion by the Board on this before, I think we've heard all the evidence that we need to hear. Are there any questions by the Board?

HART: I do.

GIMPEL: Yes.

HART: I'd like to go back to what was asked earlier. Mr. Kajikawa, you said Units 1-6 were previously, the plans were previously approved?

KAJIKAWA: Right.

HART: But it noted that sprinklers were to be installed?

KAJIKAWA: Right.

HART: But were these units built?

KAJIKAWA: No. It came in for construction documents, for drawings, sorry, it came in for a building permit application for construction.

HART: So will sprinklers be required on 1-6?

KAJIKAWA: Yes.

HART: Okay, thank you.

GIMPEL: Any other discussion by the Board? Any other questions?

MAEDO: I have a question.

GIMPEL: Sure.

MAEDO: How often are these Codes revisited?

KAJIKAWA: Presently we're looking at revisiting it as State-wide; and that's hopefully becoming towards the ending or beginning of next, ending of this year or beginning of next year.

MAEDO: Thank you.

HART: I have another question.

GIMPEL: Go ahead, Charlene.

HART: Again, Mr. Kajikawa, if it is approved that 7-12 could be built without the sprinklers, how would that affect 1-6?

KAJIKAWA: It will, 1-6 would be not allowed, well, the sprinkler would not be used, we won't push that issue.

HART: Okay, thank you.

GIMPEL: I'll ask a question, Mr. Kajikawa. Do you know if this material has been approved by the Fire Department?

KAJIKAWA: I have no idea.

GIMPEL: Mr. Higgins?

HIGGINS: They signed off on the permits, that's all I know. They didn't ask the question actually.

GIMPEL: Okay, thank you. Are there any other questions?

TAVARES: My question is still the same. It goes back to what materials are we actually talking about and why wasn't some kind of a specification sheet submitted so that we'd know for a fact that that's what we're talking about? Because we could look at it and we could see it, and then you might find another manufacturer that makes it cheaper and then go with that one. And then it might be made out of something different and it might not be called thatch or it might be something else. So, you know, I have a hard time deciding whether or not it's okay or not to approve this.

HIGGINS: To the best of my knowledge this is the only manufacturer that makes this and it's made of Polyvinyl Chloride, that's all I can say.

TAVARES: Things like that come with sheets though. Anything that's synthetic -.

HIGGINS: Well, I can get that. I could get that. I didn't realize it would be an issue so I didn't submit that.

TAVARES: Well, if you're going to have something on your building you should really have that on your files, you know, what is it.

HIGGINS: I thought the two test results were sufficient and it's a brand name product.

TAVARES: Right; and that's the problem, we're using brand names as opposed to, you know, the generic name or the -.

HIGGINS: It's not a generic name. Endureeded is a brand name.

TAVARES: No, I understand that.

HIGGINS: It's what we intend to use.

TAVARES: But it's a brand. But what is it? I still have that question. You know, what's the composition, how much percent of this and how much percent of that, and what is its fire retardancy and all that kind of stuff? I would like to see that before I put it on my house.

HIGGINS: Well, we have two tests that show that it is fire retardant. It will not support a flame.

TAVARES: But the tests say "it." You know, it doesn't say what "it" is.

HIGGINS: Oh, I see what you mean.

TAVARES: Yeah.

DRURY: Mr. Higgins, isn't Polyvinyl Chloride, isn't that what this stuff is made from?

HIGGINS: It is solid, it's the same thing you make pipes out of, yes.

GIMPEL: Yeah, it's PVC thatched shingles as I see it. Okay.

TAVARES: I guess it's just because I'm familiar with working on government contracts and stuff like that where they ask for material safety data sheets and specifications and, you know, different things like that that you don't really know if it's the same product unless you've got that sheet that says this product is this.

HIGGINS: Well, we can guarantee that we'll use this product and this product is the one that was tested, is the best I can tell you at this point, because I don't have any other supporting data to give you.

TAVARES: Do they only make one product?

HIGGINS: They make it in a different form, one that looks like a broom, straws; and this is what they call palm thatch. That's the only thing, the only difference.

TAVARES: Yeah, I -.

GIMPEL: It's PVC, it's PVC period.

TAVARES: I get it. But, you know, if we didn't see a physical sample of it, we still wouldn't know what we're talking about.

GIMPEL: There it is. That's it.

TAVARES: But I can't tell you with my eyes what it's made out of.

GIMPEL: PVC, it's made out of PVC. That's what it says.

TAVARES: Okay, okay.

GIMPEL: Any other questions? Any other discussion? Can I have a motion from somebody on this.

DRURY: I move -.

GIMPEL: Mr. Drury.

DRURY: I move that the appellant's appeal be upheld with a condition that they use the tested product, Endureed, and that it be installed according to the manufacturer's instructions.

GIMPEL: Is there a second? I need a second.

MAEDO: I second.

GIMPEL: We have a second. Any discussion on the motion?

MAEDO: I kind of am in line with where Kim is coming from. Could you get that, an MSDS sheet or a spec sheet, to us? And I guess I'm the only one that didn't get that, this particular thing. I don't know why I, I didn't notice that I got it in the mail. So I would need some time to read it. I don't think I can vote on the issue today.

GIMPEL: Well, the only thing that we, you got a copy of the petition, didn't you, with the attachments?

MAEDO: This I got -.

GIMPEL: No, no, no.

MAEDO: I didn't get a copy of, I didn't get anything else but this.

GIMPEL: You didn't get the whole, the entire petition?

MAEDO: No. Well, I have to admit that this morning I forgot my things at home. I asked my husband to bring me all the packets which he did and it did not have that in it. So I should make myself clear that is not to say I didn't get it. It's that I didn't get -, it might be at home and my husband didn't lift up that particular bunch of papers.

GIMPEL: Because the petition was forwarded some time ago. I would hope that you got the entire petition.

MAEDO: Yeah, so it could very well be that it's at my house. It's that I didn't get to review it as I normally do before the meeting.

GIMPEL: Any other discussion? All right, the standards of our decision in appeals regarding the use of new or alternate materials would have to be: (1) that the materials meet the standards established by the Code; (2) permitting the requested use will not jeopardize the safety of persons or property; and (3) that the requested use will not be contrary to the intent and purpose of the Code. Now I presume that the intent and purpose of the Code is to provide fire safety to the maximum extent possible. And in my view this material had it not been cut into strips would have satisfied the Code, cutting it into strips doesn't change the fire safety of it. Two, permitting the requested use will not jeopardize the safety of persons or property, I think that follows because had it not been cut into strips it would have been fine without a sprinkler

system. And, three, because it's new or an alternate material, I think it meets the standards established by the Code. This is a Class A roofing material. Class A roofing materials don't normally require sprinkler systems if they're not cut into strips. Cutting it into strips doesn't change the fire hazard at all. Renee, you had something to say?

SCHOEN: Yeah, Mr. Chair, I just wanted to address Ms. Maedo's comment.

GIMPEL: Yes.

SCHOEN: She mentioned that she does not feel prepared to vote having not considered all of the documents. But I was wondering if the Chair might want to take a brief break to allow Ms. Maedo an opportunity to review the documents so that, just to address her statement that she does not feel that she's prepared today. She may review the documents itself, and that may refresh her recollection, and indeed indicate that she did review the documents.

GIMPEL: Excellent suggestion. Let's take a 10-minute recess; and you can review the documents.

MAEDO: I apologize very much for my oversight.

GIMPEL: All right. Thank you. We'll take a 10-minute recess. Thank you.

RECESSED The Chair called a short recess at 10:35 a.m.

RECONVENED The meeting reconvened at 10:45 a.m.

GIMPEL: All right, we're back in session. And, Ms. Maedo, have you had an opportunity to review the petition and the attachments to the petition that were admitted into evidence?

MAEDO: I have, thank you.

GIMPEL: All right. Ms. Tavares?

TAVARES: I had another idea to throw out. I don't know if we have to close out this motion first before I talk about something. But what I wondered is if there's a possibility to continue this so we could all see the spec sheet of the exact product that they plan to use. I think that's like the primary piece of paper out of all of this because we're all talking about "it" but we don't know what, I don't know what it is until I see that. He said he has it, so is it possible -?

GIMPEL: Well, Mr. Higgins, do you have the spec sheet handy or -?

HIGGINS: No. I'd get it from Florida from the manufacturer, but I can get it by email tomorrow or, I mean, Monday.

GIMPEL: It's PVC.

HIGGINS: It's Polyvinyl Chloride. I mean that's all it's going to say, is that it's Polyvinyl Chloride.

NOMURA: Microphone please.

HIGGINS: It's Polyvinyl Chloride, it's a known product. It's the same thing we make plumbing pipes out of.

TAVARES: Okay, well, the problem that I have is that in your documentation that is submitted there are two different product names, two different tests; and you stated that Endureed is the one that you're going to use. You also stated that Endureed makes more than one product. So there should be a specification sheet on what you're buying.

HIGGINS: No, they make more than one shape. I didn't say more than one product.

TAVARES: Okay, well -.

HIGGINS: The other looks like broom material. It's the kind that you see on Japanese buildings with a thick edge.

TAVARES: Well, I get it. But, you know, how do you know that you're getting what you're buying if you don't ask them?

HIGGINS: Well, do I test it when I receive it?

TAVARES: Well, you shouldn't have to if you have the specification sheet. But if you don't have a sheet that says what it is, you really don't know what it is. It could have been made in China, they put their name on it and then they sold it to you as what they make. And we don't know what they put in it when it was in China. That's just an example. But that's, you know, when you come to synthetic materials that's how it works.

HIGGINS: I can get the spec sheet.

GIMPEL: Would it be possible to get the spec sheet emailed to the Planning Department today so that we can -.

HIGGINS: Well, it's a six-hour time difference to Florida, so no.

GIMPEL: It's quarter to five in Florida now.

HIGGINS: I can try. I have their number here.

GIMPEL: Okay. Why don't we then -.

HIGGINS: Who does it get emailed to?

DRURY: Mr. Chair?

GIMPEL: Yes.

DRURY: In terms of, I'm not sure what the protocol is. But if we entertain this motion and took a vote and anyone who wanted to abstain could abstain and we had four yes votes, would that not serve? But I don't know in terms of protocol, would that completely close off the case if we didn't -?

GIMPEL: Well, but that would close out the case if all, not all, if four didn't vote for, to do it.

HIGGINS: In that event I still could get that sheet to rest your minds.

GIMPEL: Well, the point is if we take a vote on the motion now and it fails, then the case is closed, period. If we defer decision on the motion until we have an opportunity to review the spec sheet, then we could do that. So if you could get a spec sheet emailed to the Planning Department, and they will furnish the email, we can then defer decision on this until we have the spec sheet which could be in an hour -.

HIGGINS: Yes.

GIMPEL: Or in less than an hour. So we have a motion on the floor, can I have a motion to defer consideration on the motion?

TAVARES: So moved.

GIMPEL: Second?

MAEDO: Second.

GIMPEL: All in favor to defer consideration until we have a spec sheet in front of us aye?

MAEDO: Aye.

DRURY: No.

GIMPEL: One no.

HART: No.

GIMPEL: Two noes?

MAEDO: Aye.

GIMPEL: Aye.

TAVARES: Aye.

GIMPEL: Well, we have three to two. Motion fails. We need four.

SCHOEN: If the motion is to defer -.

GIMPEL: Defer, yes.

SCHOEN: Then that's sufficient because that's the majority of what you have today.

GIMPEL: Okay, all right. So we will defer until we get a copy of the spec sheet.

HIGGINS: What is the email that I need to send it to?

GIMPEL: Email address to send it to?

KAWAHA: I'll hand it to him.

HIGGINS: I'll get it from you.

GIMPEL: Okay. All right, thank you. We will then have a recess. We will return 11:15 to see if we have anything. And if we don't, then we'll go to lunch and move on from there. All right, thank you. We'll recess until 11:15. Thank you.

RECESSED The Chair called a short recess at 10:49 a.m.

RECONVENED The meeting reconvened at 11:15 a.m.

GIMPEL: All right, we're reconvened. I understand from Mr. Higgins that the specifications are not available right now because the manufacturer is not open, didn't respond to his request because it's late Friday afternoon in Florida and they're probably taking a long weekend and watching the Olympic games. We have before us however a motion that if I may paraphrase was to uphold the appeal with conditions, basically, that the material used be that specified in the tests that were conducted by various parties of product variously known as Colphene and Endureed, and Endureed being the current name. Is that correct, Mr. Higgins?

HIGGINS: Colphene is another name for that underlayment, the asphalt part of it.

GIMPEL: Oh, I see, the asphalt. But the product that we're talking about now is the thatched material, so to speak, it's called Endureed, is that correct?

HIGGINS: Yes.

GIMPEL: And so the motion is to approve the appeal, uphold the appeal, on the condition that Endureed be used. Is that basically the motion?

DRURY: Yeah, my motion was that it be the same material that was used in the tests that were presented to us and that it be installed according to the manufacturer's instructions.

GIMPEL: Yeah, and that material was Endureed; and that's a PVC material according to the information we have. And that motion was seconded. Do we have any other further discussion before we vote? Ms. Tavares?

TAVARES: Even after the vote I'd like to see that specification, if it comes through and if you get it.

HIGGINS: Sure.

GIMPEL: Okay. Can we call the roll.

KAWAHA: Sure. Mr. Drury?

DRURY: Yes.

KAWAHA: Ms. Maedo?

MAEDO: Yes.

KAWAHA: Ms. Hart?

HART: Yes.

KAWAHA: Ms. Tavares?

TAVARES: Aye, yes.

KAWAHA: And Chair Gimpel?

GIMPEL: Yes.

KAWAHA: Chair, there are five ayes. Motion is carried.

GIMPEL: Thank you. We will now recess for -. Oh, I want to get in the record the bases for our decision. We find that the new or alternate material meets the standards established by the Code, and permitting its use will not jeopardize the safety of persons or property, and finally that the requested use will not be contrary to the intent and purpose of the Code, under the motion as we have adopted. Thank you.

The discussion ended at 11:15 a.m.

Respectfully submitted,

Sharon M. Nomura, East Hawaii Secretary