

BOARD OF APPEALS
COUNTY OF HAWAII

HEARING TRANSCRIPT
OCTOBER 12, 2007

A regularly advertised hearing on the petition filed by **DERRICK AND SONIA LIU (BOA 07-000046)** at 1:55 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
David Drury
Peter Hendricks
Joel Gimpel
Diane Gentry
Kim Tavares

ABSENT & EXCUSED: Kelly Ann Soo

Brooks Bancroft, Counsel to the Board
Alice Kawaha, Staff to the Board

Derrick Liu and Sonia Liu, Appellants
David Kaapu representing Appellants
Christopher Yuen, Planning Director
William Brillhante representing Planning Director

And 9 people from the public in attendance

PETITIONER: DERRICK AND SONIA LIU (BOA 07-000046) - Appeal of Decision by the Planning Director dated March 19, 2007 First Recurring Violation (ZCV 06-019E) relating to operation of an "Amusement and Recreation Facility, Major Outdoor" (motorcycle and dirt bike race track) in an Agricultural District. The property consists of approximately 19.5 acres and is located on the south side of Kapuna Road, Ahualoa Homesteads, Hamakua, Hawai'i, TMK: (3) 4-6-8:24.

COOK: Hawaii County Planning Board of Appeals will come to order. We are reconvening for the, we have two more items on the agenda. The first one is Item No. 8; this is Derrick and Sonia Liu, Board of Appeals 07-000046. And this is for accepting testimony of this contested hearing. I'd like to have the parties first identify themselves, counsel and their clients that are with them. We'll start with the Appellant. Mr. Kaapu.

KAAPU: Good afternoon. My name is David Kaapu, and I represent Sonia and Derrick Liu who are present.

COOK: Mr. Brillhante.

BRILHANTE: Good afternoon, Mr. Chair. I'm Bill Brillhante, and I represent Mr. Chris Yuen, Planning Director of the County of Hawaii.

COOK: Okay. Well, we've received I believe a written argument, or a written statement from the Appellant, and we have the record on appeal. And I think the procedure we generally follow is to see if we can have a stipulation as to Exhibits first. And I'll start with the Appellant. Do you have Exhibits that you would like to offer at this point?

KAAPU: Yes, Your Honor, I'm sorry, Mr. Chairman.

COOK: Thank you, thank you.

KAAPU: My first time appearing before the Board. We have Exhibits 1 through 7. And I spoke with Counsel, and I believe that we have a stipulation as to they're received into evidence.

COOK: Good. I was going to ask Counsel that. Do we, Mr. Brilhante?

BRILHANTE: That's correct, Your Honor. We don't object to the entering of the Exhibits 1 through 7 as provided for in the Appellant's position statement.

COOK: All right. So Appellant's 1 through 7 are accepted into the evidence. Does the Planning Director have Exhibits?

BRILHANTE: Nothing further to add other than the record on appeal, Your Honor, that is already provided to the Board.

COOK: All right. We would consider then the items in the record of appeal as also being Exhibits and evidence. Let's see, I'd like to get some idea of how long this is going to last. I apologize, the traffic was quite heavy, it was hard to find a place to eat, so we are a little late getting started. But I would like to get some idea. I'd like to finish today, if possible. We have a lot of spectators here too, and I'd like to be able to finish with this case today. Mr. Kaapu, what do you anticipate in the way of witnesses and testimony?

KAAPU: Mr. Chairman, I am anticipating five witnesses, and probably no more than an hour, an hour and half at the most.

COOK: Now these are the witnesses that you've listed. I think you had your two clients as witnesses -.

KAAPU: That's correct.

COOK: You had one of the, I believe Mr. Yuen was listed as a witness and Mr. -.

KAAPU: Mr. Usagawa.

COOK: Usagawa?

KAAPU: And also I have Mr. Jason Yadao who is present and in the corner.

COOK: Okay. I think your clients of course can stay because they are parties, and Mr. Yuen is also basically a party, so -. But I think we do have a rule, so those, if you have independent witnesses, we would ask them to wait outside. I know it's sort of hot.

KAAPU: The exclusion rule would apply?

COOK: Yeah, we have the rule in effect. Mr. Brillhante, so -. Wait a minute. Can you – I know you don't know what kind of cross-examination you'll have – but what do you anticipate in the timeframe for your witnesses?

KAAPU: Maybe an hour. I don't actually anticipate that long, but an hour and half at the outside.

COOK: We're looking at 2:00 now; that would be like 3:30, at the outside. Well, it's not quite 2:00 yet, so maybe 3:00, 3:15, anyway. Mr. Brillhante, what do you anticipate?

BRILHANTE: I anticipate Mr. Yuen and Mr. Usagawa the inspector, so two witnesses. There is potential for one of the parties that gave prior statement this morning. So at most it would be three; Mr. George would be the potential third -.

COOK: So you anticipate having one of the parties that made statements this morning, have him as a witness, correct?

BRILHANTE: That's correct, Mr. Chairman.

COOK: Okay. That would be whom?

BRILHANTE: That would be Mr. George.

COOK: Okay. That's fine. Because I wanted to make it clear, and I tried to make it clear this morning for those of you in the audience, that the statements that we had this morning are part of the record, but they are not testimony or they are not evidence. So in order to be evidence, you have to be under oath and be an actual witness. So Mr. Brillhante has added a witness.

KAAPU: For the record, Mr. Chairman, the name of the witness, Mr. George, was not disclosed to us.

COOK: Well, he wasn't disclosed, but you know we are pretty lenient here, and you certainly have had advance warning of what his testimony was going to be because there have been letters and so forth that have been introduced.

KAAPU: That's correct. That's just for the record.

COOK: Yeah. I thought Mr.-, maybe I made a misstatement about something, Mr. Brillhante, did you have something you wanted to add?

BRILHANTE: Well, the question we have is, it's our understanding that the letters of public testimony should be included as part of the record and -.

COOK: They will be included as part of the record, that's true. And by the way, now the only caveat I have here is the -, Mr. George has written a letter and we accepted that, as well as his public, as public comments, but not as evidence under oath. So I'm not sure exactly how that's going to work because we do want to recognize the letters that we have received here, so that the record is clear as to what we have before us.

Okay, the letters that we have received to date and will be part of the record: We have a letter here from Peter H. Wolff, "To Whom It May Concern" and it was received - I don't think it's dated - but it was received on, I'm sorry, it's on July 20, 2007. We have an additional letter from Alan P. Sobczak - let me spell this, S-O-B-C-Z-A-K - to myself among others, and again this one is I don't believe dated, but it was received on October 1st. We have a letter from Jerry Hiatt to the Board of Appeals dated July 24, 2007. We have a document entitled "Testimony of Paula Nurse" and that's dated July 23, 2007. We have another one that's headed "Testimony of Pamela Elsner" - I think Ms. Elsner spoke this morning - and that's undated, but it's received on October 1st. Then we have a letter from Jacqueline Becker to the Board of Appeals dated August 10, 2007. We have a letter from Richard Spiegel to the Planning Board of Appeals dated August 14, 2007. We have a letter from Lauren Denise Johnsen - S-E-N - to the Board of Appeals dated August 18, 2007. We have a letter from James E. Foss to the Board of Appeals dated September 17, 2007. We have a letter from Beverly Kalani to the County Board of Appeals dated September 21, 2007. We have a letter from Alice Guild to the Board of Appeals dated September 22, 2007. We have a statement to the Board from - it's headed up Lava Rock and I think it might be an attachment to - it's unclear what this document is; it was part of the attachment to, I believe Mr. George presented these documents, so -. This is, part of it's cut off, so I can't really identify it. And then we had also, we had a, I think we have a letter here - not think - we do have a letter here from Alice Guild to the Board of Appeals dated September 22, 2007. We have a letter from Donald Threlfall to the Board, October 1, 2007. And we have a letter from Patricia Montgomery to the Board dated October 1, 2007. And we have a letter from Brian K. Gleason to the Board - I don't see a date on that - but it was received on, October 1st is our date; I'm sorry there is a date at the bottom, August 14, 2007. I believe that completes the -. Oh, and we did have a letter from Emily Naeole to the Board; she testified but also she submitted this letter and it's undated, but we received -.

BRILHANTE: That's in another matter.

COOK: I'm sorry, is that a different case? I'm sorry, folks. Okay, that's not part of the record of this particular case. Okay. What I would propose to do now is I'll have brief opening statements by each party, starting with Mr. Kaapu. And then I would anticipate Mr. Kaapu starting his case. He can call his witness. The opposing party, the Planning Director's attorney, can cross-examine. I'll give you a brief redirect, and I think we'll stop there; we're not going to go back further than that. And then once you've completed your presentation of your case, then the Planning Director will present his case. So Mr. Kaapu, you want to start with a brief opening statement?

KAAPU: Thank you, Mr. Chairman. And just for purposes of my own housekeeping, does the Chairman entertain objections, or do you prefer not to -?

COOK: Oh, definitely, we entertain objections.

KAAPU: Okay. Good afternoon. As you heard earlier this morning when there were a number of people that presented their public comments to the Board, and as you have read the letters that have been received by the Board of Appeals, you've heard from the neighbors as far as what they feel about someone riding motorcycles in Ahualoa; and, but this is not a case about whether or not you like motorcycles or whether or not you want to have motorcycles being ridden in Ahualoa. This is a case about permitted uses on land that's zoned Agricultural, and whether or not household members on agricultural land can ride motorcycles on their property. And if that is the standard that has been utilized by the County Planning Department, the question today is whether or not the Planning Director erred or abused his discretion or was arbitrary when he denied the Lius the ability to ride motorcycles on their property.

In November of 2005 there was a case before the Board of Appeals, the Shirakawa case, which was heard. And at that hearing, this Board heard from Daryn Arai from the Planning Department, who testified that if household occupants on agriculturally zoned land rode, in that case ATVs, that that use would not be considered to be a major outdoor amusement facility, and no Special Use Permit would be required. In the Shirakawa case, if you recall, that was riding of ATVs on a Residential zone property, but that was his testimony as far as Agricultural property was concerned and the position that the Planning Department would take regarding that.

In March of 2006, Mr. Robert Usagawa the inspector -. Are they still here?

BRILHANTE: Oh, I think -. You know, that's a good point. I think the Chair has ordered that the proposed witnesses under the witness preclusion rule be -.

COOK: Yeah, unless they are a party. And I've consider Mr. Yuen a party; but I think Mr. Usagawa, maybe he should step out until he is called. Mr. Usagawa?

KAAPU: And also Mr. Yadao.

COOK: Yeah.

KAAPU: And I would guess Mr. George as well, if he's going to be called.

COOK: Yeah, I think that's true. Did Mr. George go out? I didn't see -. Thank you, gentlemen. We'll call you when you're up.

KAAPU: I'm sorry, Mr. Chair. I should have noticed that earlier. In March 2006, Mr. Robert Usagawa the inspector for the Planning Department investigated a complaint concerning the riding of motorcycles on Ag land in Ahualoa on the Appellants' property. After, when he was investigating, he actually visited the site. He spoke to Mr. and Mrs., well, Mrs. Liu's daughter, Kanoe, and to Jason Yadao who's going to be a witness. And he said that he was there to look at the track. The testimony that you will hear today is that he -, the track wasn't as big as he expected it to be. And he asked who was riding; when he was told that it was the immediate family, he said as long as it's the family, you can ride.

Following that, on April 17th a letter from the Planning Director to the Lius reiterated the testimony given by Daryn Arai in the Shirakawa case that dirt bike riding on Ag land by household members did not require a special permit. You'll hear evidence that the Lius felt that their immediate family could ride. The letter does say that it's, it says household members, but they interpreted that to mean that their family could ride. There were -, they tried to get in touch with Mr. Usagawa, as was suggested by the letter; they played phone tag back and forth. They never actually spoke to him until after a notice was received on October 23rd that they were operating a major outdoor amusement and recreation facility, and to cease and desist immediately. They were also suggested to contact Mr. Usagawa at that time. The evidence will show that the Planning Director's classification of this use on the property as a permanent facility is in error. And there is a, if you read the County Code under Chapter 25, it states that a major amusement facility has to be permanent in nature. And you'll hear evidence that, although they cleared some ginger from the property so that they could actually get through, the actual track was just a result of them riding around, until later when Mr. Liu built a couple of jumps with dirt.

From October 23rd they did speak to Mr. Usagawa who told them that unless they had, unless the members that were riding were residing on the property, all outsiders could not ride. And from that point on, you'll hear testimony that that is what they did.

On December 6th the Lius received their first notice of violation, and they were ordered to cease and desist the use of the dirt track. The problem was that the letter said that they had received reports that people had been riding, but no one had called them to verify that in fact someone had been riding that wasn't a household member. And their understanding was that as long as they were household members, and based on the letters that they had received from the County, that they could continue to ride, that the cease and desist applied to members, riders who didn't reside on the household property.

Then again on December 28th of 2006, the Appellants received another letter from the County Planning Director; the letter reiterated that the restriction on riding applied only to persons who did not reside on the property, and suggested that the Lius apply for a special permit to allow outside family members not residing on the property to ride. You'll hear testimony that Derrick spoke to Mr. Usagawa, that Mr. Usagawa asked him to do him a favor and not ride on the property for until -, what Mr. Usagawa said was until this matter was resolved. Mr. Liu asked him, are you telling me I can't ride? And he said, no, I'm asking you to do me a favor; and he said, okay, then I won't ride for a few months. And after that December 28th letter, Mr. Liu did not ride until March of 2007.

In March of 2007 when he rode, he then received a letter from the Planning Director not stating that only household members could ride, like the previous letter had, but stating that no one could ride on the property until a special permit was received.

And so we believe that the testimony will show that based on the conflicting representations made by the Planning Director to the Lius, the Planning Director's actions were arbitrary in nature. You'll also see in Exhibits 1 through 7, actually 2 through 7, letters that have been sent by the Planning Director to others who were alleged to have violated the Zoning Laws and were riding dirt bikes; and you will see that it is consistent that they say, or that the Planning Director

has told them that household members who reside on the property are entitled to ride. And you will see that through the Exhibits that are in evidence.

The standard which we think the Board of Appeals should apply in this case is that Zoning Codes are to be considered in derogation of Common Law; and Common Law presumes that you have the full and unfettered right to use your property however you want to. And the significance of that is that if you are going to imply restrictions on the property, that has to be based on what, on language that is in the Code, and it cannot be implied in the Code. And if it is an implied definition, then that should be disregarded.

Finally, we believe that the evidence will show that the Planning Director erred in his decision, that the decision violated Chapter 25 and Chapter 205 of the Hawaii Revised Statutes, and that the Planning Director's decision regarding the Lius was arbitrary or an abuse of discretion, and essentially unfair based on the representations made to the Lius. And based on the evidence that will be presented to you, we will ask that the Board of Appeals reverse the decision of the Planning Director. Thank you.

COOK: And Mr. Brillhante?

BRILHANTE: Yes, thank you very much, Mr. Chairman, Board Members. Basically the way the Planning Director looks at this case, it comes down to two issues. First on December 6, 2006, a notice of violation was sent to the Lius, in which it stated that they were in violation of the Hawaii County Zoning Code, and that they were illegally operating a dirt bike track on their agriculturally zoned property. In that letter it specifically stated that the recourse to the notice would be to file an appeal within 30 days; that appeal was never filed. Instead, the Lius decided that they would terminate or stop using the race track in their backyard. Therefore, it's the Planning Director's position that the Lius have waived their right to appeal that issue since they didn't file an appeal within the 30-day time period from receiving that first letter on December 6th.

On March 19, 2007, a first recurring violation was sent to the Lius, in which it specifically stated that they continue to be in violation of the Zoning Code, and that corrective action needed to be taken immediately; it set a deadline of April 24, 2007 for the Lius to cease and desist any further use of the dirt bike track or a future use of the track on their land. It assessed a civil fine of \$500, and if the fine was not paid by April 24, 2007, then a daily assessment of \$200 would be added to the \$500 civil fine. Therefore, the only issue – and that is the specific letter that the Lius filed a request for appeal to – therefore, the only issue that should be considered before this Board is the amount of the assessment or the fine. Now, from April 24th to present, there was a \$200-per-day fine that totals \$34,200, plus the \$500 initial assessment. Therefore, the only item that should be at issue today is whether or not a \$34,700 fine should be assessed on the Lius because they failed to submit the request for appeal following the initial notice of violation on December 6, 2006.

COOK: Okay, thank you, Mr. Brillhante. Did you want to make any response to the Planning Director?

KAAPU: Not at this time.

COOK: Okay. I have one -. I wanted to take a look at that, because I don't remember that issue having been raised until you raised it today, Mr. Brilhante; in reading the documents here I don't recall that issue having been raised about them waiving from the first notice. So I want to take a look at that. It's probably on the record on appeal. We'll take a short break in place to take a look at this letter.

Okay, I think we are ready – the Chair, anyway. Does anybody else need more time to review that? Then we'll move forward. Mr. Kaapu, do you want to put on your evidence? So you can call your first witness.

KAAPU: Yes, thank you. We would call Jason Yadao.

COOK: Mr. Yadao, would you -?

KAAPU: He's right outside. I'll get him.

COOK: Get him from outside? Okay.

Before you sit down, would you raise your hand? Do you vow or swear to tell the truth, the whole truth and nothing but the truth?

YADAO: Yes, sir.

COOK: Okay, please have a seat, and please talk into the microphone. And if there is an objection, wait until we've decided that objection, and then continue with your testimony.

KAWAHA: Microphone.

GENTRY: Val, Val, yeah.

COOK: Can't hear me without microphone, huh? Anyway, I'll repeat that. You're going to be questioned now first by Mr. Kaapu, and please answer your questions into the microphone, so we get it on the record. As I pointed out, I didn't; then they didn't get me, so I repeated it. And if there is an objection, wait until the objection has been ruled on, and then you'll know whether to continue with that particular question or not. Okay? Okay, Mr. Kaapu.

KAAPU: Thank you. Can you state your full name and address for the record, please?

YADAO: Jason Travis Yadao. And I live in Waikoloa, 68-1686 Alana Street.

KAAPU: Okay. And do you recall an incident taking place on Sonia Liu's property in March of 2006?

YADAO: Yes.

KAAPU: Okay. Where were you at the time?

YADAO: I was in Mrs. Liu's house.

KAAPU: Okay. And who was with you?

YADAO: Her daughter, Kanoe.

KAAPU: Okay. And what do you recall taking place?

YADAO: I remember a vehicle driving up into the driveway and I went out there. And I went out there and I asked the guy if he -, well, first he said he was, you know, he said who he was from the County, and I asked if he saw the no trespassing or if the gate was closed. And he said the gate wasn't closed and he didn't see any signs, so he just came up. And he was asking if this is the place where the dirt bike track was, and I said, yes. And then he started to look around, and he made a comment saying that it wasn't as big as he thought it was. And I asked if, you know, there was a problem; and he said that as long as just, you know, the family is riding, then there shouldn't be a problem.

KAAPU: Okay. And do you remember that person's name?

YADAO: Usagawa, I think.

KAAPU: Okay. Was he the gentleman that was outside with you?

YADAO: Yeah, yeah.

KAAPU: Okay. Mr. Robert Usagawa?

YADAO: He looked familiar.

KAAPU: Did he ever tell you that the residents on the property could not ride?

YADAO: No, sir.

KAAPU: And what happened after you had that conversation?

YADAO: He gave his card to Kanoe, Mrs. Liu's daughter, and he left. He wasn't there long.

KAAPU: Okay. I have no further questions.

COOK: Mr. Brilhante?

BRILHANTE: Jason, is that okay if I call you Jason?

YADAO: Yes, sir.

BRILHANTE: Are you an owner of the property?

YADAO: No, sir.

BRILHANTE: And how are you familiar with the Lius?

YADAO: Am I familiar with them?

BRILHANTE: Yes.

YADAO: Yes, sir.

BRILHANTE: No, how are you?

YADAO: Oh, how am I familiar with them?

BRILHANTE: Yes.

YADAO: I used to date Mrs. Liu's daughter.

BRILHANTE: Okay. Now since that incident, which you described, in April 2006, have you had any further communications with either Mr. Usagawa or Mr. Yuen regarding the matter?

YADAO: Not in March?

BRILHANTE: Pardon me?

YADAO: March?

BRILHANTE: March of 2006, correct.

YADAO: And what was the question, sorry?

BRILHANTE: Since that incident, in which you described in March of 2006, have you had any subsequent conversations with either Mr. Usagawa or Mr. Yuen?

YADAO: No, sir.

BRILHANTE: Okay, thank you. That's all I have.

COOK: Does any-. Do you have one more, do you have a redirect?

KAAPU: Nothing.

COOK: Anybody on my left of the Board have any questions? On my right? Okay, thank you, Mr. Yadao. Your next witness, Mr. Kaapu?

KAAPU: Thank you. My next witness would be Sonia Liu. Should she stay here, or go to the -?

COOK: She can just stay here.

KAAPU: Okay.

COOK: It's easier for us not to crane our necks over there.

KAAPU: Thank you.

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

LIU: I do.

COOK: Okay. Mr. Kaapu, you may continue. And the same instructions I gave to Mr. Yadao: Wait until, if there is an objection, wait until it's ruled on. Okay, Mr. Kaapu.

KAAPU: Thank you. Can you state your name and address for the record, please?

LIU: My name is Sonia Liu. I live at 46-496625 (sic) Kapuna Road, Ahualoa.

KAAPU: Okay. And are you the owner of property, which has a Tax Map Key 4-6-008-24?

LIU: That is correct.

KAAPU: How long have you owned the property?

LIU: I received the property approximately 4 years ago when my mom passed on.

KAAPU: Okay. And how long has the property been in your family?

LIU: Roughly I would say about 60 years -.

KAAPU: Okay. And do you -?

LIU: Fifty, excuse me. Fifty years.

KAAPU: Fifty years. So since the 1950s, then.

LIU: Correct. Early 60s.

KAAPU: Okay. And do you know what the zoning is for that property?

LIU: It's Ag-5.

KAAPU: Okay. And what uses have been made of the property by your family?

LIU: When my father first acquired the property, he raised cattle, macadamia nuts, and he also trained horses.

KAAPU: Okay. And do you still have macadamia nuts on the property?

LIU: Yes, we do.

KAAPU: Okay. And are you married?

LIU: Yes, I am.

KAAPU: And who is your husband?

LIU: Derrick Liu.

KAAPU: Okay. And how many children do you have?

LIU: I have three children.

KAAPU: Okay. How many of them reside with you on the property?

LIU: My three children and a grandson.

KAAPU: Okay. And does your husband have children from a previous marriage?

LIU: He has three children as well.

KAAPU: And do any of them reside with you?

LIU: His oldest son. One.

KAAPU: Okay. And do you -?

LIU: May I, I'm sorry, and I also have a niece, my late brother's daughter, who resides with us as well there.

KAAPU: Okay. And do the two children that don't reside with your husband fulltime, do they live with you from time to time?

LIU: Every other weekend.

KAAPU: Okay. And why is that?

LIU: It is the arrangement between himself and his ex-wife as mandated by the court.

KAAPU: Okay. At some point did you and your husband start - (Outside noise)?

COOK: Can you hold up just a minute?

KAAPU: Okay.

COOK: Okay.

KAAPU: Thank you. At some point did you and your husband start riding motorcycles on your property?

LIU: Yes, probably about 4 years ago when Derrick started to clear the property of large trees and ginger that was running over our property at that time.

KAAPU: Okay. And who rode on the property?

LIU: Basically he taught all of us to ride.

KAAPU: Okay. And how often did the family ride motorcycles on the property?

LIU: When the track was first put in, probably about twice a week.

KAAPU: Okay. And then until March of 2006, had you received any complaints from any of your neighbors?

LIU: I'm sorry, up until?

KAAPU: March of 2006.

LIU: No.

KAAPU: Okay. And you heard the testimony and you have read the letters that were submitted to the Board of Appeals. Is that correct?

LIU: Yes, that's correct.

KAAPU: Okay. And other than Mr. George, had any of those people that submitted letters to the Board of Appeals ever complained to you about noise or you using, riding motorcycles on the property?

LIU: No, no one but Mr. George.

KAAPU: Okay. And when was the first time Mr. George complained to you?

LIU: You know, I'm sorry I can't remember, David.

KAAPU: Okay. Do you remember the substance of his discussion with you?

LIU: Yes, that we -, the noise, actually, of the dirt bikes was really intruding on his bed and breakfast.

KAAPU: Okay. And did you try to accommodate his requests?

LIU: Absolutely.

KAAPU: What did you do?

LIU: Agreed that we would not ride prior to 10 o'clock and not after 5 o'clock, and also let him know that if there is a time that he does have guests at his bed and breakfast that, if he informed us, we would not ride on that weekend or -.

KAAPU: Okay. Did the police ever come to your property at anytime?

LIU: Yes, they did.

KAAPU: And do you know why they came to the property?

LIU: They had a noise complaint from one of our neighbors.

KAAPU: Okay. And did they bring noise monitoring equipment with them?

LIU: Yes, they did.

KAAPU: Okay. And where the bikes were being ridden at that time, they monitored the riding or the noise?

LIU: Yes.

KAAPU: And did the noise being generated violate or, yeah, violate any laws as far as they saw?

LIU: No, it did not read on their meter.

KAAPU: Okay. Did you receive a letter from the County Planning Director on or about April 17, 2006?

LIU: Yes.

KAAPU: And let me show you that, which is Record on Appeal pages 2 and 3. And after you received this letter, what did you understand your rights to be regarding riding motorcycles on the property?

LIU: As long as it was my family who rode on our property, that we would be able to ride.

KAAPU: Okay. At that time, did the County or through the Planning Director inform you that they felt you were operating an amusement and recreation facility that was a major outdoor facility?

LIU: At this time?

KAAPU: Yeah.

LIU: No.

KAAPU: Okay. And had you received any other complaints as of March '06, other than from Mr. George?

LIU: No.

KAAPU: The letter suggests that you respond to or call Mr. Usagawa. Did you try and contact him?

LIU: Yes. We played phone tag for a long time; I left him several messages that I can remember, and I know that he left me several on my answering machine as well.

KAAPU: So between March of 2006, I'm sorry, April of 2006 and October 23, 2006, did you have a chance to speak to Mr. Usagawa?

LIU: I spoke to Mr. Usagawa once; I'm not sure exactly when it was, though, sorry.

KAAPU: Okay. And did your family continue to use the property to ride motorcycles?

LIU: Yes.

KAAPU: Okay. And by October of 2006, how often were you riding?

LIU: It was probably just once a week.

KAAPU: Okay. And was there any particular day that you were riding?

LIU: Normally, Sundays are our family day.

KAAPU: Okay. I'd like to show you what is in evidence as Exhibit 1, which is record on appeal pages 5 through 8. Did you receive this letter?

LIU: Yes.

KAAPU: Okay. Did it surprise you when you received it?

LIU: Yes, it did.

KAAPU: Can you tell the Board why?

LIU: Because we didn't, because we weren't doing anything wrong or we weren't trying to break any laws.

KAAPU: The letter states at paragraph 9 on Record of Appeal 6, it says, "We have received reports that trucks arrive carrying motorcycles to the property and the track is heavily used, most recently, October 8, 2006, between 12 noon and 4 p.m." Do you remember if your family was riding on that day?

LIU: I believe they were, but I can't be positive.

KAAPU: Okay. Did anyone from the County contact you to ask you what were the circumstances of the riding?

LIU: No, no one.

KAAPU: Had, as far as you know, anyone visited the property to see, or to ask or to see who was riding on the property?

LIU: No. The only visitor was the one time that Mr. Usagawa came. That was the only time -.

KAAPU: And that would have been in March of 2006?

LIU: Correct.

KAAPU: So do you know who the report was received from?

LIU: No, I do not.

KAAPU: And the letter doesn't say, state that, does it?

LIU: No, it does not.

KAAPU: Okay. And the corrective action that it sought directs you to cease and desist the use of the bike track on the property immediately. Do you see that?

LIU: Yes.

KAAPU: Okay. Did you feel that that applied to you and your, or the people that resided on the property?

LIU: No, I did not.

KAAPU: Okay. Who did you think that applied to?

LIU: Any outsiders.

KAAPU: And what was that based on?

LIU: My interpretation was based on?

KAAPU: Right.

LIU: This letter and the information that I was given.

KAAPU: Okay. The prior letter that said that the household members could ride?

LIU: Correct, correct.

KAAPU: I'd like to show you the December 6, 2006 letter, record on appeal pages 10 through 14. Now from October 23rd through December 6th, did your family that resided on the property continue to ride motorcycles on the property?

LIU: Yes.

KAAPU: Okay. Did you allow anyone else who was an outsider not residing on the property to ride motorcycles on your property?

LIU: Just Derrick's two children that come on every other weekend.

KAAPU: Okay. So if they had to be there because there was a court order, then you consider them to be part of household?

LIU: Correct.

KAAPU: Under paragraph 3, which is record on appeal page 11, there is a definition of an "amusement and recreation facility, major outdoor." Do you see that?

LIU: Yes, I do.

KAAPU: And it means it's "a permanent facility providing outdoor amusement and entertainment." Do you see that?

LIU: Yes, I do.

KAAPU: And was your dirt track permanent in nature?

LIU: No.

KAAPU: Okay. Was there any structure that had been built that was permanent in nature?

LIU: No.

KAAPU: Basically it was just dirt. Is that correct?

LIU: Correct.

KAAPU: Okay. And if you didn't ride, what would happen?

LIU: The track would become overgrown.

KAAPU: Okay. Grass would grow, in other words?

LIU: Yeah.

KAAPU: Did the letter of December 6, 2006, say that there had been any other reports of violations other than the March 7, 2006 site inspection, the letter of April 17th, and the fact that they said they had received reports that trucks arrived carrying motorcycles to the property and the track is heavily used, most recently October 8, 2006; other than that, does the letter state that any other violation has been noted?

LIU: No, it does not.

KAAPU: And the letter asks you again to cease and desist the use of the dirt bike track. Is that correct?

LIU: Yes.

KAAPU: Okay. And did you feel that that applied to you and your family who resided on the property?

LIU: No, I did not.

KAAPU: Why not?

LIU: Because we, anybody who lived in my household, according to the inspector, was allowed to utilize or to ride.

KAAPU: I'd like to show you what's in evidence as record on appeal pages 18 and 19. Do you remember receiving this letter?

LIU: Yes, I do.

KAAPU: Okay. Had you contacted the building inspector, sorry, the zoning inspector, or had that been your husband?

LIU: That had been my husband who finally contacted him.

KAAPU: Okay. So the discussion in the last two paragraphs where, that was a discussion that took place between Mr. Usagawa and Derrick Liu, and not yourself. Is that correct?

LIU: Yes, I believe so.

KAAPU: Okay. And, but did you have any discussion with Derrick as far as what you understood you could do on your property after receiving this December 28, 2006 letter?

LIU: Yes.

KAAPU: And what was that?

LIU: We can still ride, but if we would want my sister's family who actually lives in Kona, who I feel has rights to the property as well, to ride, we would have to get a special permit to do that to allow them to come to ride.

KAAPU: Okay. Did you ever submit a special permit application?

LIU: No, I did not. The special permit application came to us; I believe Mr. Usagawa sent it to us along with one of these letters. And when I read over what's required to get a special permit, that was not, it was not what we were looking for. We are not, we don't feel like we are operating any kind of amusement facility; this is for my family's use. And I thought getting a special permit would entail writing my sister's name down on a piece of paper, so that her children would be allowed to come and ride. But after reading everything over, it was not what it was proposed for us to be, yeah? Does that make sense? I'm sorry.

KAAPU: Okay. Uh huh. And between March of 2006 and December 28, 2006, had anyone come back to the property to verify whether or not, or verify who was riding on the property?

LIU: No, no one.

KAAPU: Did anyone ever call and ask you the question, who was riding on the property?

LIU: No.

KAAPU: Okay. Did you ever agree that residents in the home would not ride on the property?

LIU: No, I did not.

KAAPU: Okay. Now I'd like to show you the March 19, 2007, which is record on appeal pages 20 through 24. And the letter states that "We have received information that you have violated your agreement to 'cease and desist use of the dirt bike track'" Do you see that?

LIU: Yes, I do.

KAAPU: Okay. Do you know who gave that information to the County?

LIU: No, I do not.

KAAPU: Okay. And again, had anyone from the County contacted you to verify that anyone had been riding on the property?

LIU: No, no one contacted us.

KAAPU: Okay. As far as you know, had anyone come by the property from the County to verify that the track was being used?

LIU: No.

KAAPU: Okay. On the second page, paragraphs 1) and 2), it tells you to cease and desist any further use of the bike track immediately, and then 2) says no future use of the dirt bike track by anyone. Was this the first time that you had been told that residents or people who resided in your household could not ride on the dirt bike track?

LIU: Yes, that's correct.

KAAPU: Okay. And based on that language that says that no one could use it, you filed your appeal. Is that correct?

LIU: That's correct.

KAAPU: Okay. Thank you. I have no further questions for this witness.

COOK: Mr. Brillhante?

BRILHANTE: Thank you, Mr. Chair. One second. Let me get my letters here in order. Mrs. Liu, you testified that you received the December 6, 2006 letter, correct?

LIU: Correct.

BRILHANTE: And then you testified that you felt that it didn't apply to you, correct?

LIU: Correct:

BRILHANTE: And the reason you felt it didn't apply to you was that, you testified, because you had a prior discussion with Mr. Usagawa who indicated that your family members, or you felt your family members could ride -.

LIU: That is correct -.

BRILHANTE: On the property.

LIU: Yes.

BRILHANTE: And that since there was no outside members riding on the property, that this letter didn't apply to you -?

LIU: That is correct.

COOK: Would the two of you make sure the other has completed their question before you answer and vice versa?

BRILHANTE: The letter that we just discussed, the December 6th letter, can you please show me in the letter where it states that it only applies to people riding from outside of the family and that family members riding are permitted?

COOK: Yeah, go ahead.

LIU: I, I'm sorry, I got that information, sir, from the previous letters that were sent to me.

BRILHANTE: So in actuality the letter on December 6th never specifically said that, correct?

LIU: No, the ones prior, sir.

BRILHANTE: No, but specific to the letter of December 6th, that's just an assumption that you made that it didn't apply to you, correct?

LIU: Correct.

KAAPU: Objection. She had testified that it was based on prior letters that she had received, so it wasn't just an assumption.

BRILHANTE: You know, I think the question was pretty specific.

COOK: I think the record is pretty clear on that.

BRILHANTE: Referencing the December 6, 2006 letter, which is pages 17 through 19 on the record of appeal, you testified that you were in receipt of that letter, correct?

LIU: Correct, the December 6th letter.

BRILHANTE: And in that letter, it specifically -.

COOK: Mr. Brillhante, I'm looking at the record on appeal here; you referred to page 17 -.

BRILHANTE: Yes.

COOK: Of the record on appeal. I don't see but one page -.

KAAPU: Yeah, it's the -.

COOK: I'm sorry?

KAAPU: Yeah, it's the first page of the December 6th letter.

COOK: Oh, it's just a repeat -.

BRILHANTE: Oh, I'm sorry, I'm sorry -.

COOK: I wondered if there were two December 6th's.

BRILHANTE: Yes. I'm sorry. There is a first page, and I mistakenly referred to that; that's page 17. But it's page 10 through page 14.

COOK: Okay, fine. I just was confused because it looked like you had two December 6th letters. Okay.

BRILHANTE: Yes. I apologize, Mr. Chairman.

COOK: My understandings.

BRILHANTE: Mrs. Liu, I'm referencing the December 6, 2006 letter, pages 10 through 14 on the record of appeal; you testified that you are in receipt of that letter, correct?

LIU: Yes.

BRILHANTE: Okay. And that letter correctly identified your property in Ahualoa as parcel 46-3925 Kapuna Road, Ahualoa Homesteads, correct?

LIU: Correct.

BRILHANTE: TMK: 4-6-08-24?

LIU: Yes, sir.

BRILHANTE: Okay. And that letter specifically stated that the Planning Department verified that on March 7, 2006 during the site inspection that the subject property was being used as a motorcycle and dirt bike race track, correct? Under No. 7.

KAAPU: Objection. The document speaks for itself.

COOK: I think he is making a point -.

BRILHANTE: The question was posed -.

COOK: Repeat -.

BRILHANTE: Could the witness please respond -?

COOK: I'm sorry, Mr. Brillhante, repeat the question, please.

BRILHANTE: Under the item No. 7 of the letter in question on December 6th, it specifically indicated that during the site inspection of March 7, 2006, that a portion of the property was being used for a motorcycle and dirt bike race track, correct?

KAAPU: Objection. It states "resembling" a motorcycle and dirt bike track, racing track.

COOK: I think that's a good objection. You want to rephrase your question, Mr. Brillhante?

BRILHANTE: I'll rephrase the question. You previously testified that the December 6, 2006 letter indicated that your property in Ahualoa was being used as a motorcycle and dirt bike race track, correct?

KAAPU: Objection. It misstates witness' prior testimony.

BRILHANTE: Your Honor, I believe she directly testified to that under the direct examination Mr. Kaapu asked her.

COOK: You are asking her if the prior letter, if she admitted that the prior letter in March stated that it was being used as a motorcycle and dirt bike race track. Is that the question you are asking?

BRILHANTE: That's correct, Mr. Chairman.

COOK: Okay, well, she can answer that question. You understand the question?

LIU: I'm sorry, I do not.

COOK: Let him repeat it. Repeat it, Mr. Brillhante, one more time; I want to get this record straight on that.

BRILHANTE: In your previous testimony, you indicated that the December 6, 2006 letter indicated that during the March 7, 2006 site inspection that your property was being used as a motorcycle and dirt bike racing track, correct?

KAAPU: Same objection.

LIU: I'm not sure. I, I'm sorry, I'm not sure.

COOK: I think your answer is that she either, that she doesn't understand the question; I think that's her answer.

KAAPU: She's not sure.

BRILHANTE: She's not sure. To your knowledge, why were you in receipt of the December 6, 2006 letter?

LIU: Because there was an additional complaint.

BRILHANTE: A complaint regarding what?

LIU: Regarding noise on our property.

BRILHANTE: And the noise is related to what?

LIU: The dirt bikes.

BRILHANTE: The dirt bikes used on your property, correct?

LIU: Correct.

BRILHANTE: And the dirt bikes were riding on a track on your property, correct?

LIU: Correct, there is a track on our property.

BRILHANTE: And the dirt bikes were riding on that track, correct?

LIU: Correct.

BRILHANTE: And the letter indicated that on March 7, 2006, a site inspection indicated that there was a motorcycle, there was resemblance of a motorcycle and dirt bike racing track, correct?

LIU: Correct.

BRILHANTE: It further stated under No. 8 that we requested further information in our letter to the property owner dated April 17, 2006, but no response was received, correct?

LIU: Correct, that is stated.

BRILHANTE: And it further stated that they received reports that trucks arrive carrying motorcycles to the property and the track is heavily used, most recently, October 8, 2006, between 12 noon and 4 p.m., correct?

LIU: Yes, that is stated in that letter.

BRILHANTE: At any time from December 6th going back till when this incident first came to the Planning Department's attention in April of 2006, have any outside members ever used the dirt bike racing track on your property?

LIU: Outside members, yes, that were my family, sir, which -.

BRILHANTE: So outside family members during that time have used the dirt bike racing track to ride motorcycles, correct?

LIU: Correct.

BRILHANTE: And the December 6th letter specifically stated for you to cease and desist use of the dirt bike track on the subject property immediately, correct?

LIU: Correct.

BRILHANTE: And furthermore it indicated under Section 25-2-20 of the Hawaii County Code, Rule 8 of the Board of Appeals, and Section 6-10.2 of the Hawaii County Charter, you may appeal the director's decision as follows: (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the Board of Appeals, correct? That was correctly stated in that letter, correct?

LIU: Yes, that's in the letter, sir.

BRILHANTE: And is it true that you did not take any action to appeal within the thirty-day time period, correct?

LIU: No. We had placed several calls, sir, to the inspector -.

BRILHANTE: Answer the question.

LIU: Throughout this time.

BRILHANTE: The question was -.

LIU: Oh, I'm sorry.

BRILHANTE: Did you take any action within 30 days to appeal your decision with the Board of Appeals?

LIU: Sir, I do feel that we did, yes; that would be my answer.

BRILHANTE: You did. Did you file a request for appeal with the Board of Appeals within 30 days of the December 6th letter?

LIU: I don't think so, sir. I think I just placed some phone calls.

BRILHANTE: You placed some phone calls. Did the letter say to place phone calls, or did it say to write, to file a request for appeal with the Board of Appeals within 30 days?

LIU: I'm sorry. Can you please repeat your question, sir? I'm sorry.

BRILHANTE: Did the letter say to place some phone calls, or did it specifically say to file a written appeal within 30 days to the Board of Appeals?

LIU: It said to telephone Robert Usagawa by telephone and in writing; that's what it says on this statement right here, sir.

BRILHANTE: Can you show me where in the December 6th letter it says that?

LIU: On page 12, sir.

BRILHANTE: Where on page 12?

LIU: In the bold letters under "IMMEDIATELY."

BRILHANTE: And what does it -, could you please read that to me?

LIU: "Upon completion of corrective action, you are responsible for contacting Zoning Inspector Robert Usagawa by telephone and in writing to the Planning Director to verify the completion"

BRILHANTE: And the first part of that sentence was "Upon completion of corrective action," correct?

LIU: Correct.

BRILHANTE: Did you complete -, did you take steps to complete corrective action?

LIU: No. I wasn't doing nothing wrong.

BRILHANTE: So within that - so just to clarify the record - within that 30-day period from your receipt of the December 6, 2006 letter, you never filed a request for appeal with the Board of Appeals?

LIU: I don't think so, sir.

BRILHANTE: Okay. Now let's move forward to the December 28, 2006 letter. I believe that's record on appeal - let me confirm - pages 18 and 19. Now in that letter, the first paragraph specifically states - oh, let me ask you this - you testified that you are in receipt of this letter, correct?

LIU: The December 28th letter, yes, sir.

BRILHANTE: Okay. Now in that letter, it indicates that, it specifically states, “Thank you for contacting our Zoning Inspector on December 27, 2006 to inform him that you will complete the corrective action listed on our December 6, 2006 letter as directed, and ‘cease and desist use of the dirt bike track on the subject property immediately.’” Isn’t that a correct statement of what transpired on December 7, 2006, December 27, 2006?

LIU: I’m sorry, sir, that call was placed by my husband, and I’m not sure exactly what was stated between the inspector and him.

BRILHANTE: So your testimony is your husband may have made that call on December 27th?

LIU: If it’s there, he did make the call. What was said between them, sir, I’m not sure.

BRILHANTE: So would that be a misstatement of the current situation involving your property, you -?

LIU: I don’t understand -.

BRILHANTE: Go ahead.

LIU: Sorry. I don’t understand your question, sir.

BRILHANTE: Did you or your husband – let me rephrase that – did you agree to take corrective measures as stated in the December 6, 2006 letter to the zoning inspector, Mr. Usagawa?

LIU: Did I? No.

BRILHANTE: No. Did your husband, to your knowledge?

LIU: To my knowledge, I don’t know, sir.

BRILHANTE: Now in that letter dated December 28, 2006, it specifically stated that a special permit may be obtained in order to utilize your property for motorcycle and dirt bike racing, correct?

LIU: That’s correct.

BRILHANTE: Did you or your husband, to your knowledge, ever apply for a special permit?

LIU: No, we have not.

BRILHANTE: And also accompanying with that letter, there was application for a special permit, correct?

LIU: I believe it was with this letter, sir.

BRILHANTE: Okay. Now as to the March 19th letter in which you testified to – I believe that’s Items 20 through 23 on the record of appeal – you were in receipt of that letter, correct?

LIU: Yes.

BRILHANTE: And that letter, under the subject line, it indicated that the subject was a “First Recurring Violation” to Violation of Section 25-4-4 and Section 25-5-72(d), Hawaii County Code, correct?

LIU: Correct, sir.

BRILHANTE: And in that letter it indicated that you would be subject to an immediate fine of up to \$500 per violation, correct?

LIU: Yes, I see it there.

BRILHANTE: And on page 21, which is page 2 of this letter, there are corrective action consists of, it’s outlined, enumerated four specific criteria that needed to take place, correct?

LIU: I see it.

BRILHANTE: And No. 1 is to cease and desist any future use of the dirt bike track on your property immediately, correct?

LIU: Yes.

BRILHANTE: No further use of the track by anyone, unless you obtain a special permit to do so, correct?

LIU: Correct.

BRILHANTE: Pay a civil fine of \$500 for this first recurring violation by April 24, 2007, correct?

LIU: Correct.

BRILHANTE: And then if we do not receive this civil fine payment by April 24, 2007, a daily fine of \$200 per day will be added to the \$500 civil fine for this First Recurring Violation until the payment is made, correct?

LIU: Correct.

BRILHANTE: Now isn’t it after receipt of this letter that you then filed a written request for appeal to the Board of Appeals?

LIU: I believe so. I’m sure, I’m sorry, I’m not sure of the date, sir.

BRILHANTE: But to your knowledge, it was -?

LIU: Yes, to the best of my knowledge -.

BRILHANTE: After receipt of the March 19, 2007 letter?

LIU: Yes.

BRILHANTE: Okay. Now from the time that you received the December 6, 2006 letter through your filing of your appeal with the Board of Appeals following the March 19, 2007 letter, did anybody from the Planning Department ever tell you that only family members could, that family members could ride on the dirt bike track and outsiders were prohibited from riding on the dirt bike track?

LIU: Yes.

BRILHANTE: And when was that?

LIU: Numerous times, sir, I mean it's in these documents here.

BRILHANTE: Numerous times. When was it specifically?

LIU: When the inspector came up to our house, he stated that.

BRILHANTE: When, what was the date of that?

LIU: I'm sorry, I can't remember; it was sometime in February, March.

BRILHANTE: March of when?

LIU: March of '05, I believe -.

BRILHANTE: Let me restate the question. From December 6 -.

LIU: Oh, okay -.

BRILHANTE: Two thousand and seven through, I'm sorry, December 6, 2006 through March 28 of 2007, did anybody from the Planning Department or a representative from the Planning Department indicate that family members were permitted to ride dirt bikes or ATVs on your dirt bike track on your property?

LIU: Yes.

BRILHANTE: Okay. Then the question is specifically when was that?

LIU: It's going to take me some time to look through this.

COOK: Yeah, go ahead. If you need the time, take it now; we are -.

LIU: Oh, thank you. Thank you, Mr. Chair, I appreciate it. There is one on December 28, 2006, page 18.

BRILHANTE: December 28, 2006, page 18?

LIU: Twenty-eighth, yes.

BRILHANTE: Okay. And is that -, where in that letter is that?

LIU: In the fourth paragraph, “The operation of a motorcycle and dirt bike track is not listed”

BRILHANTE: Uh huh.

LIU: Let’s see, “In the agricultural district, if property is used intermittently for dirt bike riding only by people residing on the property,” Do you see that?

BRILHANTE: Yes.

LIU: Okay. That’s what I’m referring to, sir.

BRILHANTE: Didn’t it further indicate that a special permit requires, needed to be obtained?

LIU: Right, if the area is 15 acres or less. Isn’t that correct?

BRILHANTE: I think you are correct. Mr. Chair, I have nothing further.

COOK: Mr. Kaapu, do you have any redirect?

KAAPU: Just briefly. Ms. Liu, on the December 28th letter that you were referring to, if you look at page 2; can you read that, those last two paragraphs?

LIU: “Our inspector informed you -.”

KAAPU: No, the one before.

LIU: “During your discussion?”

KAAPU: Sorry, yeah.

LIU: “During your discussion with our inspector, you indicated that your family (your grandson, three daughters, and yourself) who reside on the subject property use the dirt bike track, as well as your sister’s children from Kona, and your two sons from Waimea.

Our inspector informed you that having ‘persons who do not reside on the property’ use the dirt bike track is prohibited, even though they are your family. Possibly, only through the approval of a special permit will this be allowed. Therefore, due to your request we have enclosed a copy of an ‘Application for Special Permit.’”

KAAPU: So, Ms. Liu, the reason for the special permit was to add persons who do not reside on the property. Isn't that correct?

LIU: That is correct.

KAAPU: There is nothing in this letter that says you, residents of the property, cannot ride on the property. Is that correct?

LIU: Yes, that is my understanding.

KAAPU: No further question.

COOK: Does anyone to my left have any questions of the witness? Anyone to my right have any questions to the witness? Okay, at this point, we are going to take a short break. Let's make it -, try to do it in 5 minutes, give people a chance to use the bathroom. So we'll take a break in place for 5 minutes – not in place, I'm sorry – take a break for 5 minutes.

RECESSED The Chair called a short recess at 3:17 p.m.

RECONVENED The meeting reconvened at 3:28 p.m.

COOK: Okay, we'll reconvene the Planning Board of Appeals. Mr. Kaapu, your second witness please.

KAAPU: My second, third witnesses -.

COOK: Oh, third, I'm sorry, third.

KAAPU: Would be Robert Usagawa, please.

GENTRY: He was out that side.

KAAPU: He found a shade.

GIMPEL: Works for the Planning Department, must be smart.

TAVARES: Oh, the other people are supposed to be out or in?

HENDRICKS: Mr. Chairman, out or in?

COOK: What?

BRILHANTE: Oh, yeah, we should invoke the witness exclusionary rule.

COOK: Yeah, you need to go out again, we're still -.

PUBLIC: Okay, I just -.

COOK: You can use the shade also.

GIMPEL: Well, he could take a chair out there if he wants to sit.

COOK: Mr. Usagawa, why don't you remain standing until I swear you in. Do you swear to tell the truth, the whole truth and nothing but the truth?

USAGAWA: I will.

COOK: Okay, please have a seat and Mr. Kaapu will be questioning you. If there's an objection, wait until we ruled on it; and then answer the question, or however we rule. Okay.

KAAPU: Can you state your name and address for the record, please.

USAGAWA: My name is Robert Usagawa. I'm a zoning inspector. My address, personal is, well, work address?

KAAPU: Work address is fine.

USAGAWA: Planning Department.

KAAPU: And how many years have you been a zoning inspector?

USAGAWA: Since June of 2003.

KAAPU: And are you responsible for alleged zoning violations or zoning violations in the Hamakua district?

USAGAWA: Yes.

KAAPU: Okay. I'd like to show you what's been marked in evidence as record on appeal 2 and 3.

COOK: The record will show I believe that you gave him that record on appeal.

KAAPU: Exhibit -.

COOK: And you're referring him to pages 2 and 3 of that?

KAAPU: Correct, and to save time and myself getting up and down I've provided him with all of the letters; and we'll just review them in sequence.

COOK: Yeah, I think Mr. Usagawa indicated he needed to be gone by 4 o'clock, so move ahead.

KAAPU: Thank you. In looking at record on appeal pages 2 and 3, Mr. Usagawa, did you write this letter?

USAGAWA: I wrote the draft.

KAAPU: Okay. And what happens after the draft is written?

USAGAWA: It goes to my supervisor for review.

KAAPU: Okay. And who is your supervisor?

USAGAWA: Daryn Arai.

KAAPU: Okay. And then who ultimately signs this letter?

USAGAWA: Mr., my boss Mr. Christopher Yuen.

KAAPU: Okay. And so which portion of this letter did you write, sir?

USAGAWA: Well, I drafted the whole letter basically. I started the whole thing.

KAAPU: Okay. And if you can look on page 3, it says that an inspector visited the property and spoke to a woman who claimed to be the daughter of the property owner. Do you know if that was Kanoe Patterson?

USAGAWA: She said she was the daughter of the property owner, but she didn't give her name.

KAAPU: Okay. And when you went on the property, what was the purpose for going there?

USAGAWA: To investigate a dirt bike track.

KAAPU: Okay. And who had complained about that?

USAGAWA: I cannot tell you that.

KAAPU: Okay. Why not?

USAGAWA: Cause I cannot tell you that. It's against the Zoning Code. I cannot give out that information, I still cannot. I work for the Planning Department and the Zoning Chapter 25 says I can't say that.

COOK: Mr. Brilhante, you wanted to address that issue?

BRILHANTE: That's correct, Your Honor. I believe that is the case under Chapter, under the Zoning Code, is that the name of the complaining party has to be withheld.

USAGAWA: And I will refuse to say it.

KAAPU: Well, we would note our objection, Mr. Chairman.

COOK: All right. Well then move on because I don't have that ruling before me and I'm not in a position to rule on it. So you can reserve that issue.

KAAPU: I would reserve that issue.

COOK: All right, go ahead then.

KAAPU: And when you went on to the property, what did you see?

USAGAWA: I saw jumps, or you can say areas to the right of their driveway that was kind of graded to look like what I would presume to be a small dirt bike track.

KAAPU: Okay. And was there anything that looked permanent to you regarding that dirt bike track?

USAGAWA: What do you mean by permanent?

KAAPU: I'm just asking you your definition.

USAGAWA: Well, permanent is in, well, I'm an inspector but being an inspector of another sort before, permanent is anything more than 30 days. But, I don't know, I cannot explain because permanent is something that I think is longer than, it's there.

KAAPU: Okay. Do you know how the Zoning Code describes permanent?

USAGAWA: No.

KAAPU: Okay. Did you report your findings to Chris Yuen?

USAGAWA: You mean after I did my site inspection?

KAAPU: Yes.

USAGAWA: No.

KAAPU: Okay. Were there any structures to this motorcycle dirt track that used anything other than dirt?

USAGAWA: I don't understand your question.

KAAPU: Okay. Was the dirt track that you described constructed of anything other than dirt?

USAGAWA: Only dirt -.

KAAPU: Okay.

USAGAWA: That I could recognize.

KAAPU: Okay. And when you spoke to the woman, was she also accompanied by her boyfriend, Jason Yadao?

USAGAWA: I think so, but I don't recall real good. I don't remember his face. I don't even remember her face.

KAAPU: Okay. Do you remember your conversation with them?

USAGAWA: Well, she said what she says over here, only the immediate family ride, use the track.

KAAPU: Okay.

USAGAWA: That's what she said.

KAAPU: Okay. Did you tell them that that was okay, if only the immediate family used the track?

USAGAWA: I don't recall exactly what I said because it was in 2006.

KAAPU: Okay. So you might have said that, you just don't recall it?

USAGAWA: I just don't remember.

KAAPU: Okay. Do you remember telling either Kanoe Patterson or Jason that the riding trail was smaller than you were led to believe?

USAGAWA: No, I don't remember saying that either.

KAAPU: Okay. Did you ever tell Jason and Kanoe that no one could ride at all on the property?

USAGAWA: No. I cannot make a determination in the field.

KAAPU: Okay. Can you look at the October 23, 2006 letter, please, which is record on appeal 5 through 8. Did you write this letter as well?

USAGAWA: Draft I did.

KAAPU: Okay. Can you tell me what was the basis for writing this letter?

USAGAWA: Well, we have to, the basis is to issue a violation.

KAAPU: And what was the basis of the violation for the October 23, 2006 letter?

USAGAWA: Well, if you look at the April 17th letter, we requested information but we didn't get any information from them. So we had to basically issue a violation letter to get some kind of a response from them. And it lists basically general format of what all our violation letters state.

KAAPU: Okay, so this letter was generated because you hadn't received a response from them?

USAGAWA: Yes, sir.

KAAPU: Do you remember playing phone tag with Sonia Liu as far as leaving messages and her leaving messages for you but not being actually being able to speak with you?

USAGAWA: No, I don't have any, no, I don't remember. I may have.

KAAPU: Okay.

USAGAWA: I don't know.

KAAPU: It's just that you don't have a recall of that at this point?

USAGAWA: No.

KAAPU: Okay. The letter on page 6, the record on appeal 6, paragraph 9, states that "We have received reports that trucks arrive carrying motorcycles to the property and the track is heavily used, most recently, October 8, 2006, between 12 noon and 4 p.m." Again, it's your position that you cannot tell me who you received that information from, is that correct?

USAGAWA: That's correct.

KAAPU: Okay. And, Mr. Chairman, we would reserve again on that issue.

COOK: Okay. Move on.

KAAPU: Thank you. Between April 17, 2006 and October 23, 2006, did you go back to the property?

USAGAWA: I don't recall when I went back but I remember trying to go back several times but I cannot get on the property because they posted no trespassing signs. And in order for me to enter I need an owner's permission

KAAPU: Okay. And did you notice that no trespassing sign the first time you went on the property?

USAGAWA: It was not there.

KAAPU: Okay. It was not there or you didn't see one?

USAGAWA: It was not there.

KAAPU: Okay. Did you ever call and try and verify who was riding on the property between April of 2006 and October 23rd when this letter was issued?

USAGAWA: April, no, I don't think I did.

KAAPU: Okay. And did you ever send a letter to the Lius requesting permission to come onto the property after your March 2006 initial visit to the property?

USAGAWA: No.

KAAPU: Why not?

USAGAWA: I don't know. I cannot give an answer.

KAAPU: Okay. Was it your understanding in October 23, 2006, that residents who resided in the household were allowed to ride on the property?

USAGAWA: That's our generalization usually on all these cases.

KAAPU: I'm sorry, I couldn't hear you.

USAGAWA: Yes.

COOK: Yeah, I can't hear you because of that -. Can you hold on just a minute. There's a noise behind you there, so -. Okay go ahead and try to speak a little louder.

USAGAWA: Can you repeat your question?

KAAPU: Yes. Was it your understanding that from April of 2006 until October 2006 that if there were residents that resided at the Sonia Liu property that they were allowed to ride motorcycles on the property?

USAGAWA: Yes. But I didn't know who -.

KAAPU: Okay. So you don't know if this report that you received in October 23, 2006 was a report of people who lived on the property or people who did not live on the property, is that correct?

USAGAWA: That's correct.

KAAPU: Can you look at the record on appeal, pages 10 through 14. Do you have that in front of you?

USAGAWA: Yes, sir.

KAAPU: Okay. Did you draft this letter as well?

USAGAWA: Yes, sir.

KAAPU: Can you tell the Board why you drafted this letter?

USAGAWA: Because this letter is actually a notice of violation and order. The one prior to that is an alleged zoning violation because it's almost like a, well, we need to, based on Corp., well, it's a notice of violation and order, basically, because its subject is violation of the sections. It's giving them an order, another order, basically in the form of a violation order.

KAAPU: And, but when this order had, issued on December 6, 2006, you didn't have any verifiable information that there had been a violation, is that correct?

USAGAWA: The verifiable information, I did, based on a complaint and what I saw.

KAAPU: Okay. But what you saw was a dirt track, is that correct?

USAGAWA: Yes, sir.

KAAPU: But you didn't have any verifiable information that persons other than household residents were using that dirt track, is that correct?

USAGAWA: Yes, sir.

COOK: I think there's either an inarticulate question or answer. I'd like you to repeat that question for the witness.

KAAPU: If it was inarticulate it is my fault, I apologize. I guess I can hear myself think now. Between March of 2006 and December 6, 2006 had you verified a violation of the Zoning Code on the Liu's property?

USAGAWA: I could not enter the property because of the no trespassing sign.

KAAPU: Okay, so your answer is you could not verify that, is that correct?

USAGAWA: No, I did not.

KAAPU: You did not verify a violation?

USAGAWA: I could not go on his property.

KAAPU: Okay.

COOK: I'm sorry, I didn't get that there. Either one was talking over the other or I just didn't hear it. Could you repeat that last answer?

USAGAWA: I couldn't go on his property to verify because of the no trespassing sign.

COOK: Okay.

KAAPU: But you issued the violation letter on December 6, 2006, is that correct?

USAGAWA: I wrote the draft.

KAAPU: Okay. And who is this approved by?

USAGAWA: Christopher Yuen.

KAAPU: Did you have any discussions with Mr. Yuen regarding the facts of this case before this letter was issued?

USAGAWA: I don't recall.

KAAPU: Did you keep any notes regarding the basis for issuance of this violation letter?

USAGAWA: Basically only what's been saying.

KAAPU: Okay. Now I'd like to refer you to record on appeal pages 18 and 19. Do you recall having a conversation with Mr. Derrick Liu?

USAGAWA: On December 27th it says. Yes.

KAAPU: Okay. And do you recall the substance of that conversation?

USAGAWA: Well, he wanted a copy of a special permit application so he could apply for a special permit.

KAAPU: Okay. And do you recall as part of that conversation asking him to voluntarily stop riding until the matter had been resolved?

USAGAWA: I don't recall.

KAAPU: Did you draft the December 28th letter as well?

USAGAWA: Yes.

KAAPU: Okay. And in the fourth paragraph you included a paragraph that states that "In the agricultural district, if property is used intermittently for dirt bike riding only by

people residing on the property, we are considering this level of use to be below the threshold of activity that we will enforce, but if it exceeds this level, we consider it an activity that requires a special permit.” Is that correct?

USAGAWA: That’s correct.

KAAPU: Okay. Was that your understanding as of December 28, 2006?

USAGAWA: Yes, sir.

KAAPU: Okay. If you look on page 19, there’s, the top two paragraphs, do you recall having any conversation with Mr. Liu indicating that the family who resides on the property uses the dirt bike track?

USAGAWA: Basically it started from the girl that I spoke to the first time I went on March 7th. She’s saying that only the people that reside on the property use the dirt bike track. But if you read this paragraph, it says sister’s children from Kona, two sons from Waimea; and those people do not reside on the property because one is from Kona and two is from Waimea.

KAAPU: Okay. And so therefore a special permit for those people would be required, is that correct?

USAGAWA: The special permit is for the activity. That’s what it’s for, not to determine who rides on the property. It’s a special permit for the activity.

KAAPU: Okay. The special permit is not required if only the people who reside on the property are using the dirt track, is that -?

USAGAWA: Yes, but there was no proof.

KAAPU: Is that correct?

USAGAWA: Yes, but there’s no proof. There was no conversation, there’s no, from the April 17th letter that requested more information, they didn’t say anything. They didn’t respond to us.

KAAPU: Do you remember having a conversation with Sonia Liu?

USAGAWA: When?

KAAPU: After October 23, 2006.

USAGAWA: No. I don’t recall.

KAAPU: Okay. Do you remember other than this conversation of December 27th at least two other conversations with Derrick Liu?

USAGAWA: I may have but I don’t recall. I don’t write it down.

KAAPU: Okay. So you could have had contact by telephone, is that correct?

USAGAWA: Well, we could have.

KAAPU: Okay. Was there any information that you received that indicated to you that persons other than residents of the property were using the bike tract?

USAGAWA: No, I don't recall.

KAAPU: Okay. Did you tell Mr. Yuen that the violation or the purported violation had not been verified?

USAGAWA: No, I don't think I said that to Chris. It's just that because no information was received from the party -.

KAAPU: Okay.

USAGAWA: Except for this date.

KAAPU: Okay. So as we sit here today, Mr. Usagawa, you don't have any information that people other than residents actually used the motorcycle track on the property? Is that true?

USAGAWA: No, except for what it says right here.

KAAPU: Except for -?

USAGAWA: Page 2 of December 28th letter.

KAAPU: Okay, your conversation with Mr. Liu?

USAGAWA: Uh huh.

KAAPU: Do you remember Mr. Liu telling you that after October 23, 2006 that outside residents or people that did not reside on the property were no longer allowed to use the motorcycle track?

USAGAWA: I don't recall.

KAAPU: I'd like to have you refer to record on appeal pages 20 through 24. And before I ask you, was it your testimony, and I apologize if I didn't hear you correctly, was it your testimony that you do not recall a conversation with Mr. Liu in which he voluntarily agreed not to use the motorcycle track for a few months?

USAGAWA: I think that's what he said when this December, I mean, I remember him saying that he was going to stop -.

KAAPU: Okay.

USAGAWA: And he was going to apply for a special permit.

KAAPU: Okay. And do you remember him asking you if he, you could force him to stop?

USAGAWA: No, I don't remember.

KAAPU: Okay, do you remember telling him that you were asking him as a favor to stop riding until this matter was resolved?

USAGAWA: I don't recall saying that either.

KAAPU: Okay. Did you write this letter dated March 19, 2007?

USAGAWA: I drafted it.

KAAPU: Okay. And why did you draft it?

USAGAWA: Well, because he said he was going to stop; and I sent him the application for a special permit; and then we got a complaint that he started again.

So that's considered to me, when he said he would stop to me would be like it ended. There was nothing going on for a while. Because this was March 2007, the last correspondence was in December.

And based on the fact that it had stopped, he said he was going to stop and he was going to apply for a special permit, that would legally, to me, close the first violation because it was going to stop. Maybe I wasn't supposed to assume it, but I assumed it.

KAAPU: Okay, and did he indicate to you that no one in the household would be riding?

USAGAWA: No, I don't recall him saying that. He just, he told me he was going to stop and he needed a copy of the special permit because he wanted to apply for one.

KAAPU: Okay. And so you don't know if the reason for the special permit was for him or for his sister-in-law's children?

USAGAWA: No.

KAAPU: Okay. Can you tell me on page 21 why the corrective action would consist of no future use of the dirt bike track by anyone?

USAGAWA: That's like, I think it was for the purpose of having him cease what he was doing, based on the cease and desist order.

COOK: Sorry, I didn't hear that last part.

USAGAWA: What's that?

COOK: I didn't hear the last part of that answer.

USAGAWA: It says no future use of the dirt bike track by anyone, that was for the purpose of having him stop what he was doing based on the cease and desist order.

KAAPU: But in March 19, 2007, it was your understanding that residents of the household were entitled to ride dirt bikes on the property, correct?

USAGAWA: That's correct, but I didn't know who was riding.

KAAPU: Okay, thank you. No further questions.

COOK: Fine. Mr. Brillhante. Mr. Brillhante, you had listed Mr. Usagawa as a witness too, can we just consolidate him and consider him -. Or did you plan to cross-examine him now and call him again as a witness?

BRILHANTE: You know, just for judiciary economy here, I think I can consolidate the two, both direct and cross-exam under one questioning session.

COOK: All right. Mr. Kaapu, that's okay with you?

KAAPU: That'll be fine with me.

COOK: All right, thank you.

BRILHANTE: Mr. Usagawa, do you go by a nickname?

USAGAWA: Yes, sir.

BRILHANTE: And what is that?

USAGAWA: Moose.

BRILHANTE: And would it be -?

USAGAWA: M-O-O-S-E.

BRILHANTE: Would it be okay for me to address you by your, by Moose?

USAGAWA: If it's okay with the Board.

COOK: Go ahead.

BRILHANTE: Thank you. Moose, in your opinion, what constitutes something as being permanent in nature?

USAGAWA: Try again.

BRILHANTE: In your opinion, you previously testified that the dirt bike track was permanent in nature, correct?

USAGAWA: Yes.

BRILHANTE: In your opinion what constitutes permanent in nature?

USAGAWA: In my years of experience as a, my old profession of a building inspector, anything more than 30 days is permanent, in my understanding of permanent.

BRILHANTE: Can you elaborate by anything more than 30 days?

USAGAWA: Well, anything that stays in the same place for 30 days or longer is permanent. That's how I think of it, in my personal thinking of permanent.

BRILHANTE: Okay. In your opinion, if an object or an entity was made of dirt, would that have by any chance to be permanent in nature? Could that be permanent in nature?

USAGAWA: Well, yes, in an extent.

BRILHANTE: Now as it relates to this dirt bike track, how would this, how did you perceive this dirt bike track to be permanent in nature?

USAGAWA: Because of the way, it's not smooth ground, well, it could be smooth ground to be permanent. It was actually dug-out areas. There were berms, there was a berm on the side, there were dug out areas that had, you know, turns on them and looked like a small dirt bike track.

BRILHANTE: In your opinion, did you opine that, it appeared that portions of the tracks were actually graded?

USAGAWA: It could have been graded, yes, because there was no surface grass, or grubbed, you can say.

BRILHANTE: Could you describe what grading means?

USAGAWA: Grading is when you move the earth, actually you change the contours of the land.

BRILHANTE: And is that a permanent change to the contour of the land?

USAGAWA: It could be.

BIRLHANTE: Okay. Now you indicated that you have prior inspector's experience, correct? Can you elaborate on that?

USAGAWA: I was a building inspector for the Kona side of this island from August 1, 1997 to September 6, 2002.

BRILHANTE: And during that capacity, did you have to investigate Code violations?

USAGAWA: Building Code violations, yes.

BRILHANTE: And what did that, I guess, -?

USAGAWA: Well, Building Code violations, if you have a structure that's over 6 feet high and it doesn't have a permit you're breaking the Building Code.

KAAPU: I would object as to relevance and it seems that he's -.

COOK: Yeah, Mr. Brillhante, where are you going with this? It seems to be a little out of -.

BRILHANTE: Well, we're establishing, the Code says, I think the letter indicated that the track seemed to be permanent in nature. I'm just trying to -.

COOK: Trying to show his experience and background?

BRILHANTE: Yeah, elaborate on Mr. Usagawa's or Moose's -.

COOK: Okay, well, try to tie that up pretty soon or go to another area.

BRILHANTE: Okay, I will. Taken your previous experience and upon, when you went to the residence in April 2006, I'm sorry, March of 2006, was it your opinion that the race track, dirt bike track, was a permanent structure?

USAGAWA: Yes.

BRILHANTE: And what is that opinion based on?

USAGAWA: Based on what I saw. To me it's temporary if the ground is slightly marred, means the occasional use. There were deep, you see gouges in the ground. It's hard to explain because it's in my head; but deep gouges, meaning like used often where you would dig out the earth, and turns, and then this berm where you can see actually how they jumped on. But other than that, there's no other way to describe it. But there was no grass growing. So being, if it's occasional use to me grass will grow back. But there wasn't any grass growing on the area that I noticed this change of the surrounding area, put it that way. The rest of the land was not, it didn't look like this area, this one area.

BRILHANTE: How large was the track on that day that you were there?

USAGAWA: Well, I didn't measure it but it was bigger than my car. I don't recall how big it was. I know it was on the right side of the driveway, closer toward the end of the driveway as you go up to the house.

BRILHANTE: In your opinion, did the track appear to be something that was frequently used or sporadically used, based on the evidence that you saw in front of you on that day you visited the property?

USAGAWA: I would say frequent.

BRILHANTE: And again the basis for your opinion?

USAGAWA: Because of the way vegetation doesn't grow back.

BRILHANTE: Anything else?

USAGAWA: No.

BRILHANTE: Okay. Now you previously testified that you requested information from the Lius but it wasn't provided, correct?

USAGAWA: Yes, sir.

BRILHANTE: Specifically what information did you request?

USAGAWA: I requested anything based on the intended use of the land, like the letter says in the front this April 17th letter.

BRILHANTE: And -.

USAGAWA: Request for information on intended use of land.

BRILHANTE: And historically what type of response do you get with the -?

USAGAWA: Well, in the past we've gotten responses from other property owners giving us in detail what they're going to do with the property.

KAAPU: Objection, relevance.

COOK: Well, we'll take it for what, I think it goes to the weight, not the admissibility. We'll go ahead and we'll allow that. Let's move on.

BRILHANTE: In your opinion, have the property owners been cooperative with your request?

USAGAWA: Not until we spoke on that day, that day on the -. I don't recall other times that I spoke with them, because I don't record them. I mean, maybe it's my fault that I don't record them. But only when I could get some information.

BRILHANTE: On the December 6th letter under No. 9, page 11, you said you received reports that trucks arrive, such and such, most recently October 8th. Specifically, what reports did you receive? Do you recall?

USAGAWA: Reports from people, complainants.

BRILHANTE: And how many complainants?

USAGAWA: I don't recall how many. I think at least – and maybe just one.

BRILHANTE: And can you briefly describe the nature of the complaints?

USAGAWA: Well, basically I take it from, I take the information from what it usually states. I don't make up my own words when it involves information from other people.

COOK: Mr. Brilhante, what exhibit are you referring to? What page number on the record on appeal?

BRILHANTE: It's indicated page number 11, No. 9.

COOK: Thank you.

BRILHANTE: Now you indicated that you drafted the December 6, 2006 letter, correct?

USAGAWA: Correct.

BRILHANTE: Now what was the basis for drafting that letter?

USAGAWA: That was the issue of violation letter, a violation notice.

BRILHANTE: Why were you issuing a violation notice?

USAGAWA: Because I felt it was necessary.

BRILHANTE: Necessarily, necessary in regards to what?

USAGAWA: Basically we're issuing a violation based on the violation of this section, Section 44 and 5-72 of the Zoning Code.

BRILHANTE: And you said you felt that it was necessary?

USAGAWA: I mean basically I was going by the fact that, yes, this dirt bike track is in violation of the Zoning Code.

BRILHANTE: What was that based on? What was that opinion based on?

USAGAWA: Based on what I saw in March of 2006 and based on the fact that I had no prior information given to me when requested. So I have to go by an assumption that they have to, they have to fight to basically find out, to fight their case to make it, I can say, I'm trying to find the word for it -. Well, we're citing them as a violation of our Zoning Code. So it's for them to respond to say that, no, they're not doing that; and by, in this case, appealing. But to the extent that they, that's the only way I probably can, you can get a response. You have to send a violation notice. It's hard for me to say things because I don't do this very often.

BRILHANTE: That's fine, you're doing a good job. You indicated that you had a phone conversation between yourself and Mr. Liu on December 27th, correct?

USAGAWA: Yes, sir.

BRILHANTE: Okay. Do you recall what was discussed during that conversation on the 27th?

USAGAWA: Well, I have to find that first.

BRILHANTE: The reference would be the October 28th letter, I'm sorry, 23rd letter.

COOK: Twenty eighth, isn't it?

BRILHANTE: Twenty eighth, yes.

COOK: Page 18 of the record on appeal.

USAGAWA: Eighteen and nineteen?

COOK: Excuse me?

USAGAWA: Page 18, sir.

COOK: Yeah, that's my understanding is where you're referring to, isn't it, Mr. Brilhante?

BRILHANTE: I'm sorry, yes, December 28th, yes.

USAGAWA: Yes, I remember. Based on what's written I can read that we spoke.

BRILHANTE: Do you recall, and who was that conversation with?

USAGAWA: Derrick Liu.

BRILHANTE: And do you recall statements that were made?

USAGAWA: Well, he said he was going to stop and he wanted a copy of a special permit application probably to apply for a special permit.

BRILHANTE: Could you just elaborate by you said he said he was going to stop.

USAGAWA: He was going to stop what he was doing.

BRILHANTE: Could you explain stop what he was doing.

USAGAWA: Stop is to cease.

BRILHANTE: Cease what?

USAGAWA: Cease riding dirt bike tracks, I mean, dirt bikes, sorry, excuse me.

BRILHANTE: Did he indicate that nobody was going to ride on the -?

USAGAWA: No.

BRILHANTE: Bike track or no outside family members? Could you elaborate as to what specifically was the statement regarding to?

USAGAWA: I don't recall exactly what he said but the conversation was about him stopping what he was doing and he was going to apply for a special permit.

BRILHANTE: So how did you interpret his statements to mean? What did you interpret his statements to mean?

USAGAWA: That he was going to stop his activities.

BRILHANTE: Completely?

USAGAWA: Yes.

BRILHANTE: And then what did you do based upon that, his statements?

USAGAWA: I issued him, I sent him by regular mail a special permit and I drafted this letter.

BRILHANTE: Okay. At that point in time, did you feel that this matter had been concluded?

USAGAWA: Yes. I hoped so.

BRILHANTE: And what was the basis?

USAGAWA: By him saying that he was going to stop and he was going to apply for a special permit.

BRILHANTE: At any time during that conversation on the 27th did Mr. Liu indicate that he was going to appeal the December 6th notice of violation?

USAGAWA: No.

BRILHANTE: Did you tell him not to appeal?

USAGAWA: I can't say that to people. They have the right to appeal.

BRILHANTE: So you never directed him not to appeal?

USAGAWA: No.

BRILHANTE: Now from your conversation on December 27th through March 19th what transpired? Did anything transpire in this case? Did any new complaints come in?

USAGAWA: Well, based on the March 19th letter he says that, well, basically nothing had gone on, okay, until we got another complaint saying he's at it again.

BRILHANTE: Could you please describe that complaint, what did it entail?

USAGAWA: Well, basically there's a complaint saying that, just what I stated, that, and basically gives in detail what transpired on a certain, certain date. I cannot tell you exactly what it states because I don't remember, I don't have it with me, in front of me, except for what it states on the letter.

BRILHANTE: Okay, did it relate to continued use of dirt bikes on the subject property?

USAGAWA: Yes, and saying that he started his activities again.

BRILHANTE: Okay. Did it indicate how often, if you recall?

USAGAWA: I don't recall.

BRILHANTE: Okay. Well, thank you very much. I have nothing further, Mr. Chairman.

KAAPU: Mr. Chairman, I have some cross. I'm wondering how long are we going today?

COOK: Well, we're going to finish this witness today for sure.

KAAPU: Okay.

COOK: And then we'll take a look at it. But probably after that we're probably going to be stopping fairly quickly because we've got a lot of witnesses, if the parties continue to call the ones they listed. So I don't see how we can finish today.

BRILHANTE: Mr. Chair?

COOK: But let's go ahead and finish with this particular -.

BRILHANTE: Yeah, I think, Mr. Chair, Mr. Yuen indicated that he's going to have to be, he has a prior engagement, he's going to have to be leaving soon.

COOK: You need to leave now Mr. Usagawa?

BRILHANTE: No, Mr. Yuen.

KAAPU: Mr. Usagawa had mentioned to me that he had to leave at 4. So, and I have some cross-exam, and I also have reserved questions based on him -.

COOK: All right. Why don't we do this: It's already after 4 o'clock, 4:15, and we have staff here, and I don't like to keep my staff past 4:30; and since we have quite a bit, quite a few more witnesses scheduled, and I think what we'll do then is we'll continue this matter till the next hearing in Hilo. And, Mr. Usagawa, you can, if you would please come back at that hearing we'll have you as the first witness; and at that point hopefully you will have had a chance, Mr. Kaapu, to research the question of privilege that he has claimed; and if you could give us some advance, maybe a memo or something on that. Both parties can do that, so -.

KAAPU: I'll submit a memo

COOK: Cause that is an important issue for us. Okay, we'll continue this matter until the next hearing of the Board in Hilo.

KAAPU: Does the Chair know when that is?

GIMPEL: December 14th.

KAAPU: December 14th. Okay, thank you.

COOK: Okay. Thank you.

The discussion ended at 4:15 p.m.

Respectfully submitted,

Noriko Sauer
West Hawai'i Secretary