

PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
APRIL 4, 2008

A regularly advertised hearing on the **PLANNING DIRECTOR'S PROPOSAL TO REVOKE SPECIAL PERMIT NO. 05-009 ISSUED TO MELVIN MIRANDA** and on the application of **MELVIN W. MIRANDA (SPP NO. 05-009)** was called to order at 9:18 a.m. in the County of Hawaii, Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawaii, with Chairman Rodney Watanabe presiding.

PRESENT: Rodney Watanabe
C. Kimo Alameda
Takashi Domingo
Shelly Ogata
Alvin Rho
Rene' Siracusa
Rell Woodward

ABSENT & EXCUSED: C. Kimo Alameda
Lani Bowman
Andrew Iwashita

Ivan Torigoe, Deputy Corporation Counsel
Christopher Yuen, Planning Director
Norman Hayashi, Staff Planner
Phyllis Fujimoto, Staff Planner
Jeff Darrow, Staff Planner

And approximately 12 people from the public in attendance.

INITIATOR: PLANNING DIRECTOR

Continued hearing on the revocation of Special Permit No. 05-009 (Melvin Miranda), which allowed the establishment of a contractor's baseyard on approximately one acre of land situated within the State Land Use Agricultural District. The property is located along the north side of the Hawaii Belt Highway (Highway 19) at the 47.5-mile marker, Kapoaula, Hamakua, Hawaii, TMK: 4-7-7: portion of 55.

APPLICANT: MELVIN W. MIRANDA (SPP NO. 05-009)

Request to amend Condition No. 2 (time to secure Final Plan approval) of Special Permit No. 05-009, which allowed the establishment of a contractor's baseyard on approximately one acre of land situated within the State Land Use Agricultural District. The property is located along the north side of the Hawaii Belt Highway (Highway 19) at the 47.5-mile marker, Kapoaula, Hamakua, Hawaii, TMK: 4-7-7: portion of 55.

WATANABE: If I may I'd like to take the liberty of combining Agenda Items 1 and 2. Agenda Item No. 1 is a Director-initiated revocation of special permit application (SPP 005-0009); and No. 2 is a proposed amendment to Condition 2 of Special Permit No. 05-0009. And the reason for this is they both are related, obviously, and it seems logical that we address Agenda Item No. 2 first. And in the event that Agenda Item 2, the recommendation in Agenda

Item No. 2 carries, then it's my understanding that the Planning Director will withdraw his proposal on Agenda Item No. 1. So with that, I would turn it over to Mr. Darrow.

DARROW: Thank you, Mr. Chairman. Good morning Members of the Planning Commission. Just for a brief history on Items 1 and 2, Item No. 1, the initiation by the Planning Director to revoke Special Permit 05-009 was heard before the Planning Commission on February 1, 2008. The Planning Commission had voted to defer the action for a period of sixty days to allow the Planning Department to process a time extension request that had just been submitted by the applicant. Agenda Item No. 2 is that request. The applicant is Melvin Miranda. He's requesting an amendment for a one-year time extension to Condition No. 2 of Special Permit 05-009. Condition No. 2 is the time to secure plan approval. So he's asking for a one year time extension

Just for a brief background, the location of the property is just north of Honokaa. Honokaa would be on the south side or the right side of the map. Waimea would be towards the north. We have Mamalahoa or Hawaii Belt Road running in a north-south direction. And we have the project site identified in this area on the map. This is approximately a 17-acre property. On August 6, 2005, the Planning Commission had voted to approve a request for an agricultural baseyard on one-acre of this approximate 17-acre parcel with conditions.

The applicant has submitted several items since our last hearing to be able to show compliance with these conditions. Basically Condition No. 2, plan approval, he has submitted plan approval; and that has been sent out to the Planning Commission. A copy of that has been given to our staff to be able to look over. If this application is approved or this request, then they'll go forward and process the plan approval. Along with the application is a map showing where the proposed structures, layouts are going to be, and also landscaping on the property. Additionally, Condition No. 8 needed to be submitted, which was to have the description of metes and bounds in map and written form of that one-acre area, so we could know where these different vehicles needed to be stored and where the proposed structures were going to be laid out. Since our last hearing we have received the map; and just this morning, it has been passed out to you, the applicant has submitted a copy of the description in written form. So we have received both of those items. Since our last hearing, additionally, we have received several letters, numerous comment letters. One is dated March 10, 2008 from the Department of Transportation. Additionally, we've received comment letters from Department of Health, Public Works, and Department of Land and Natural Resources, State Historic Preservation Division. Lastly, we've received a letter from the adjoining neighbor to the north of the property from their representative Mr. Paul Lal and that's dated February 13, 2008.

As Mr. Chairman had pointed out the Planning Director is recommending approval of the amendment request for Item No. 2. If approved then the Planning Director will withdraw his revocation and initiation on Item No. 1. Are there any questions?

SIRACUSA: Yes. With reference to the March 10th letter from the State Department of Transportation, they list several concerns, and I did not notice in the recommendation and conditions where those concerns were addressed. Is there a reason why they were not? For example they refer to Chapter 343, HRS 343, which deals with environmental impact statements,

for example, and they also discussed the unpermitted work that was done from the applicant's access road onto the highway. So I wonder if you could address those issues, please.

DARROW: I can try to answer that question. The violation that they're referring to actually was listed as within our notice of violation. But this is actually an area that Department of Transportation needs to work with the applicant on securing a permit for the driveway. In regards to the trigger of Chapter 343, they're saying that this project involves future use. So at such time that they end up triggering Chapter 343 they may be required to submit an environmental assessment for that particular use. So such time that they come in for this permit driveway for whatever work was done -. The applicant might be able to go into more detail as to what actually happened in regards to the paving of that particular area at the front of the property. At this point we are looking at it as any type of law, regulation, rule that is required to be complied with by the applicant. It's covered under No. 9 of our condition which is our basic condition that states that "The applicant shall comply with all applicable County, State, and Federal laws, rules, regulations and requirements."

SIRACUSA: So you're saying that it's sort of taken care of under that catchall condition?

DARROW: Yes.

SIRACUSA: Yes?

DARROW: Correct, from our standpoint. It appears the Department of Transportation also needs to take some sort of action for whatever is occurring in violation of their rules.

SIRACUSA: Then I hope that the applicant has taken due notice of this and that he has a copy of those letters from the State Department of Transportation and will not let that slide under the radar.

WATANABE: Do we have -? Yes, Mr. Rho.

RHO: On November 5th there's a letter that the Planning Commission or the Department received. It's from Boies Schiller Flexner, LLP. It's actually a letter of complaint, I guess. It's addressed to former Chairman Graham. And it outlines on page 2 a number of what they consider violations. That's 1, 2, 3, that's up to number 6, 6 concerns that they had. And my question is whether or not the Department responded in writing to this letter.

DARROW: If you can give me one second. This letter would have been part of Agenda Item No. 1, is that correct?

RHO: I believe so.

WATANABE: Mr. Darrow, I believe that same letter is also in the materials for Agenda Item 2.

DARROW: Okay, thank you.

WATANABE: And it's regarding, you know, the changing of oil, etc. and in having more than six vehicles on the property, and -.

DARROW: What happened, in result of this particular complaint on January 30, 2008 -. Just prior to our February 1st meeting we had two of our zoning inspectors go to the property and do a site inspection as a result of that letter to confirm or to find out if there were violations occurring. Through their site inspection they had stated that the applicant was in compliance with all the conditions. Prior to the zoning inspectors showing up there, there might have been these things occurring. But at the time that the inspectors showed up and did an inspection it verified that they had cleaned up the property, that all those items were taken care of, and that the conditions of Special Permit 05-009 were being complied with. The zoning inspector, I'm not sure, I don't think that they did a follow-up letter but what I can do is take note and ask them if they could do that.

WATANABE: Mr. Darrow, it's my recollection that the zoning inspectors also found that the oil was being changed over a paved area. Is that correct?

DARROW: Correct, and that the fuel storage containers were empty at the time.

WATANABE: Okay, thank you. Do we have any further questions for Mr. Darrow? No. With that then maybe I can call up the applicant. Mr. Miranda, are you here on your own without, just yourself, no representative?

MIRANDA: Yes.

WATANABE: Oh, okay, that's fine, that's fine. Have a seat. Would you raise your right hand. Do you swear or affirm to tell the truth now before the Planning Commission?

MIRANDA: I do.

WATANABE: Thank you. And prior to beginning your testimony, could you for the record state your full name and address.

MIRANDA: Melvin Miranda.

SIRACUSA: Please use the microphone.

WATANABE: The mike, please.

MIRANDA: I'm Melvin W. Miranda, Sr. My address is 43-500 Hawaii Belt Road, Kamuela, Hawaii. My PO Box address is PO Box 2000, Kamuela, Hawaii.

WATANABE: Thank you. Then you may begin with your testimony. Have you reviewed the material for Agenda Item No. 2 where the Planning Director -?

MIRANDA: Yes, I have.

WATANABE: And you have any further comments on that?

MIRANDA: In regard to the Department of Transportation, you know, they had a concern about their ruling on law and whatever. What I have to say is I have in my work there, I have not touched the State Highway. The road coming into my property and the other owners, it was an easement and it was already paved. The swale of the road from the State Highway has been there, I haven't touched that. At the end of the swale where the pavement ends was gravel. And then the inspector from the State Highways Division came out and checked that. And their concern was my trucks coming onto the highway or any vehicles not tracking any mud or debris to the State Highway. So at the end of the State's pavement where my road started and was gravelled I put pavement down; and it has been like that for four or five years, at least. And we don't track any gravel or mud or anything to the highway. So it's safe. But since they've written this I'll try and work with them and see whatever permit I need to do and whatever needs to be done to satisfy them. But this is what I've done; and I thought everything I did was to make the highway more safe.

WATANABE: Okay, thank you. Do you have any follow-up questions, Ms. Siracusa?

SIRACUSA: Yes. I just wanted to remind the applicant that in the past you had been unaware of some of the conditions that had been placed upon you; and I hope that you have had a chance to review and understand what those conditions are so that you will not be in a position of having to come before us again in the future and explain why you didn't do what, you know, you had agreed to do. Because basically when we give you the permit, what you're doing is agreeing to those conditions, you know. And so I would like to make sure that you understand what those are and are willing and able to comply with them. Cause we're going to hold you to it, you know.

MIRANDA: Well, I think I've complied with everything that was asked; and I've done it, and I don't know what else to do. But I've done it and everything is in place; and I expect to keep it that way.

SIRACUSA: Good. I hope so. Thank you.

WATANABE: Any further questions for the applicant? Mr. Miranda, I have one question. It appears that you've begun construction now. So you've poured the slab in and you're beginning to frame the building? Is that correct?

MIRANDA: Yeah, the building is all framed. I just need to put a couple more braces on and then the roof will go on.

WATANABE: Okay, thank you. Yes, Mr. Rho.

RHO: I guess I should ask my question; and maybe it's not a question. But did you get the last letter from the Department of Transportation to the Director dated March 10th?

MIRANDA: Yes.

RHO: And attached to that letter, at least my copy, there are two old letters from the Department of Transportation, one dated May 11th and the other one dated September 2, 2005, May 11, 2005 and September 2, 2005.

MIRANDA: Yes.

RHO: And then following that is the letter from the Department to you dated September 17, 2004.

MIRANDA: Yes.

RHO: And on the first paragraph of that letter it talks about in the last sentence it is, "It was also observed that you have paved the entry roadway leading into the contractor's yard with asphalt concrete, connecting to Highway 19." And if you look at the second page the corrective action No. 4 it reads "Submit and receive all necessary governmental approvals for connecting the asphalt concrete" etc. And you're telling us today that what they're describing in these letters doesn't exist or doesn't violate or doesn't touch the highway or whatever you're trying to tell us? Cause I really don't understand that. But what I do understand is that there are at least three letters that mentioned the connection to the State Highway, two of them from the State Transportation and one from the Director. And this goes back to September 2004; and I still don't have a clear explanation as to exactly what or what condition there is at that highway that the Transportation Department as well as this Department is objecting to. So I guess if I had gotten a letter like that I would have tried to respond and explain this away so that it's on record that I responded. But in my view the record is that you haven't responded. So when you say to us that you responded to everything, I take exception to that, especially in this specific item; and it is a very specific item. Whether you agree with it or not, it's documented in these three letters. And I don't see a response from you in writing explaining this thing to them so that they don't write letters like this. You know what I mean? If you took care of it, they won't write about this any more. But in their mind the problem still exists. So do you have a response to all of what I just said?

MIRANDA: You know, the inspector came out, I talked to him on the site at two different occasions. And it seemed like their concern was, as I said, it's like their main concern is not tracking any gravel or mud onto the State Highways, just for safety reasons. And I think I did all of that. And if you drive from here to Waimea, you'll find a lot of roads that are not paved, people tracking mud and gravel onto the highway, and nothing is being done. But they're not the people under the fire. I guess I am. And I think I've done everything. And it comes from the State Department of Transportation, whoever the, one from the boss in Honolulu whoever signs the letter. And the inspector that comes out, you know, his name is not even on the thing. He's the one that I talked to and he's the one that saw everything. And one of the main concerns was also having any water that would run off my road onto the State Highways. And I tell them come there and see when it's raining. There's not one inch of water that runs off the roadway in my place to the State Highways. It's all the water from the State Highway. And my water runs off in the pasture.

WATANABE: May I, you had a follow-up?

RHO: Did you have a specific one to this issue?

WATANABE: I might have one. Mr. Miranda, it's my understanding, I may be wrong cause I'm not an expert in this area, it's my understanding that when you connect to the State Highway you need to have a permit. I don't believe you ever obtained the permit to do that, yeah. And I think while you may have addressed what you feel the inspector communicated to you as potential hazards, yeah, you still haven't addressed the permit. Yeah? And I think that's really the larger part, well, it's part of the issue from a technical basis. The other thing is if you will recall, yeah, the State had real concerns about your trucks, you know, slower accelerating vehicles entering the highway where there's a 55 mile per hour speed limit. We went through that the first time, go around, yeah. And, you know, in fact they had indicated that they would prefer channelization which would mean deceleration, right turn lanes, acceleration right-turn lanes and a left-turn pocket, yeah. All of that is huge sums of money for the scale of your project. And so to some degree even this Commission is being sort of chastised for, shall we say, not paying as close attention to that, yeah. Cause within the response the State provided they said, you know, it seems like the Commission is just looking at the number of vehicles as opposed to their acceleration rate, yeah. And so, but from a technical standpoint I do believe you still need to get a permit. Irregardless if you made the improvements or not -. You have any response?

MIRANDA: I'll work with the State Department and get whatever permit that they require.

WATANABE: Mr. Rho, you have some follow-up?

RHO: Yeah. Going back to that letter on September 17, 2004, which is the last letter of this packet, I was actually surprised to get this packet. We just got this within the week. And I was surprised because I didn't realize, maybe I didn't read all the documents as they came forward because this has been an on-going issue for the Commission for the last couple of months anyway, right? I was surprised to learn that you were in violation; and this letter was generated because you were in violation. So on page 2 on the corrective action, No. 3, it asks that you apply for a special permit. So from the get-go you were in violation. You come to the Commission and you get approval of that special permit; and now we're back again because you're in violation. Do you have a response to that? I'm not talking about the specifics. I'm just talking about the general trend, I guess I want to call it a trend where you're in violation, the Commission comes, you come before the Commission, the Commission approves and you're in violation again. And for the traffic thing or the driveway thing, you have been in violation, I don't know, for at least four years. But is there a pattern that we're seeing, or I'm seeing?

MIRANDA: You know, I was surprised to get this letter from the State Department Highways also, just like you. Okay? The road that I'm using now was an existing road for I don't know how many years. But ever since that highway was made back I believe in 1966, right after I graduated from high school, it had an easement for Parker Ranch to get into that area; and they used that to haul cattle in and out of there. I believe from 1966 is when that highway was put in. Prior to that the highway to Waimea was the old Mamalahoa Highway.

And I know that, you know, it was used as pasture and that was one road that was there. I just paved the gravel.

RHO: The issue really is that you did something between that existing road and the highway, is what they're claiming. You touched their highway in some fashion, which they are objecting to. They're not saying the road shouldn't exist, whatever. It's because you did something they claim, not me, they claim that you did something. You touched their highway and they don't like it and they wanted you to do something. You haven't done anything since 2004 and even before that. You were in violation. You did not have a special permit prior to 2004; and in 2005 you got that permit, and then you're in violation again for various reasons. And I just wanted to give you an opportunity to respond to that because I didn't realize, I didn't know that you were already in violation prior to getting that special permit. And I'm asking you whether or not, I'll ask you a specific question, is this the way you operate?

MIRANDA: No. But if it's really a concern to you, I guess I could go back and dig out all the asphalt and leave it the way it was, which I think would be not the right thing to do.

RHO: I am not asking you to dig out the asphalt. I'm asking you whether or not this is your standard operating procedure where you get three letters and you don't respond.

MIRANDA: Well, I didn't expect to get the last letter because prior to the last letter the inspector came out to my place and inspected it, two different times. And I called him and he came and checked and we went over it. And I never expected to get this letter. But the only reason I think we got this letter is because we had to resubmit the special permit and the letter gets out to all of the departments, the Police Department, the Fire Department, the Health Department; and the State Department of Transportation was the only one that responded. So I believe they went back to whatever was in their file; and now there's a different guy that's acting head of the Department of Transportation so he responded in this fashion. That's the only thing I can see. And I don't believe he talked to his inspectors.

WATANABE: Mr. Domingo, did you have something?

DOMINGO: Thank you, Mr. Chairman. When I first started on the Commission, this issue or this permit was already approved and granted; and it was based on the conditions of certain conditions being met as stipulated in the permit. And, you know, I know perhaps most of us are critical of what has taken place and because of some of the inaction and what may have seemed to be flagrant, flagrant -.

WATANABE: Disregard?

DOMINGO: Disregard to the conditions. Thank you for putting words in my mouth, Mr. Chairman, I appreciate that. But, you know, Mr. Miranda at that time based his trust and the whole matter into someone who was his friend also. And apparently there was not a follow-through with some of the conditions in that regard and he was totally unaware of it I believe; and all the times that he has come to the Commission I have a feeling that he was sincere in what he was saying. And then this morning he said, "Look, I'll do whatever I need to do based on what the State Highways Division requires of me. I will do it." Yeah? And this is coming from him.

It's not from an attorney, or a friend, or whatever. He is telling it to us. And I know he's trying his best to comply. And oftentimes, you know, we may think that it's so simple for us to meet those requirements and that we can do it just like that. But for some individuals who haven't been within the loop and haven't gone through this kind of a situation, they're totally unaware about having to meet the requirements and what the ramifications and the result of not meeting those requirements would be. And I feel that was the problem with Mr. Miranda. And today he's telling us, look, I know I haven't complied with that in the past, but I will, I will certainly follow-up with this and see that it's done. Now in view of the fact that he has already performed some work on his property, and I believe a great amount of investment on his part with regards to time and money, you know I look at this and I'd like to look at it positively, you know, and consider granting him an extension so that he can work with the Department of Transportation and meet all the requirements required of him. And I don't think it will be a problem for him because he's, I have a feeling that he knows what he has to do now and that he will do it. And I think might be, you know, going as far as talking to those in the Planning Department staff and have them sit down with him and say, okay, let's go from 1, 2, 3, 4 and see if you already complied with that; and if not, this is what you've got to do. You know, oftentimes when we go through the permitting process we are unaware and we are ignorant to the fact of what's required of us. Many people go through that. You know, and might be, if we can do that with him and just go down the line by the numbers and I'm sure he will, at the end the result would be that total -- what's that word again, Mr. Chairman -- total compliance, total compliance, without a permit. That's the way I feel, you know. I like to look at it positively because throughout this whole week we've been getting nothing but negative news through the TV, and the radio, and through the papers. You know, when is this all going to end? Are we going to add to it?

WATANABE: Okay, okay. I appreciate your comments but I'd like to remind you we actually are not in deliberation yet and we do have an individual that wishes to testify. Ms. Siracusa?

SIRACUSA: Thank you. Mr. Miranda, when you said that you'd dig up the concrete, if that's what, you know, was wanted, I think you missed the point. The point was not that you should dig up the concrete but that you should work it out with the State Department of Transportation to get the permits retroactively for the concrete you already put in. Okay? Because on that 2004 letter from September 17th, they say, No. 4, in words, "Corrective action consists of." Do you see that on page 2 of the September 17, 2004 letter? In the middle of the page, I'll give you a minute to find that, in the middle of the page it says "Corrective action consists of", and then there's a list of four items. Let me know when you find that so we can go through this together.

MIRANDA: This is September 2, 2005?

SIRACUSA: No, September 17, 2004. Go back in time. It's a letter from the Director, from Mr. Yuen.

MIRANDA: Yes.

SIRACUSA: It's in that packet from the State Department of Transportation. It's actually the last item in that packet.

MIRANDA: Okay.

SIRACUSA: Because No. 4 the Director was telling you, and this is back in 2004, that corrective action consists of submitting and receiving all necessary governmental approvals for connecting the asphalt concrete roadway to Highway 19 from the State Highways Division. You've got to receive that approval not from us, not from the Planning Department, but from the Highways Division. And then once you get it, then you have to provide the Hawaii County Planning Department with a copy of all of those approvals so that the Planning Department's files are complete. Now on the next page of that same letter at the very end it warns you "Please be advised that in the future, if you violate Chapter 25 of the Hawaii County Code in the same manner as stated above, the violation will be considered as recurring and will be subject to an immediate fine, up to a maximum of \$500 per violation. In addition, a daily fine may be imposed." Now you remember that previously you were here and fines were imposed and you were, you know, appealing those fines. But this is all the way back in 2004. You've got a letter saying you've got to take care of this stuff by getting these approvals. Now I know you're not a paperwork person, Mr. Miranda, I mean you're a small businessman, you're a hands-on working person, you know. It's not like you're a big deep pocket developer that can hire fancy lawyers to do all your, you know, tell you in detail step by step what you have to do. And we've been trying to guide you along this, the Commission has and so has the Department. But we really need you to take care of the paperwork stuff; and if you're not good at it I'm sure that people in the Department will help you with it and guide you along the lines. But we can't have you continuing to violate because that sets a very bad precedent to anybody else who comes in here; and it sets a very bad standard, and it tells the general public that it's okay to ignore the conditions that they have agreed to. And I don't think that's fair to the people who do abide by those conditions. So can you give me assurances at this point right now that you will contact the State Department of Transportation in writing so that there's a paper trail, and work out the details and get your permits, and supply them to the Planning Department?

MIRANDA: Yes, I will.

The only thing I'll tell you though, one of the recommendations from the State Department was for me to put a turning lane and pull out lane, that I will not do. Until the State has the rest of the roads on this island done that way, I will not spend at least \$500,000 to do it because I don't have the money. Do you understand what I'm saying?

SIRACUSA: I understand that. But we were talking about the concrete that you put in, that part.

MIRANDA: I'll take care of that part.

WATANABE: Mr. Domingo, you have something to add?

DOMINGO: In deference to my colleagues, you know, sometimes I feel like I'm being redundant. You know, is that word to use, Mr. Chairman?

WATANABE: I don't want to put words into your mouth.

DOMINGO: Yeah. You know, Mr. Miranda said he'll do whatever he can to comply with it. And it seems like the highway issue has been the only concern here in this meeting today. But when you look, you know, physically at that area in which his driveway exits and you look at the configuration of the highway, you know, it's slanted towards the left, towards the side of the shoulders, and it's only because as you come further down there's a turn that you have to make and go down towards Scouts Camp. You know, so I don't know what or how serious a problem that is with the State; and, you know, I've seen other areas, other places where there are more serious concerns that exist; and, you know, those conditions haven't been corrected. But in this case, I think because Mr. Miranda is just using the property and because he has obtained a special permit based on the conditions contained therein -. You know, again, he has been somewhat negligent, and probably no fault of his because he thought somebody else was going to do it for him and remind him and do it step by step, and that's why we recommended might be the staff can help him. And I think somebody made a comment that, oh, if it was big developers no problem, they can do it right away, they can hire expertise and everything. But what we find here is an individual who, he owns a small business and is trying to make a living himself. In fact, a majority of the people on this island fall in that category. And I think, as I look at it, as I look at it, Mr. Chairman, we're here not to make it complicated or not even making a hardship for people to acquire the permit. We just want to ask, okay, comply with the conditions; and we help them as much as we can so they can go on with their lives and become successful in their business endeavors. So, you know, again, I say I'm for the extension of the time to submit the necessary plans and everything, and from there we go ahead and see what materializes out of this.

WATANABE: Okay. Well, I don't want to beat a dead horse but I think you get the message, yeah? And you kind of dated yourself when you said you graduated in 1966. Times have changed. So maybe in your mind you satisfied what you needed to satisfy by speaking with the inspectors and probably a long time ago that would have been fine, yeah. But, again, like I said, times have changed so, you know, you have to do the paperwork, too. It's a burden. I realize that you're a small businessman, you'd rather be hauling cattle than filling out applications; but, you know, you have to jump through the hoops like everyone else.

And while we're on that, the reason I'm bringing this up is, you know, you read through the conditions that the Director provided you, yeah? And what I'd like to point out is Condition No. 2, yeah; and what Condition No. 2 talks about is landscaping requirements. As you recall you've had a complaint from an adjoining property about the unsightliness, yeah; and I think it's going to be a little cleaner now that you're finally putting up the building, etc., assuming this passes. But there still is that requirement for landscaping which would help you be a good neighbor, yeah. And the reason I'm bringing this up is because we've seen in the past where this comes up where this condition was not met and, you know, the applicant is back in here again because we have a suggestion that the Special Permit be revoked. So, you know, let's hopefully address all of these things at an early stage so we don't have to be back here again, assuming things go well. Okay? Anyone else had any comments? Yes, Ms. Siracusa.

SIRACUSA: I just noticed something as you were reading that No. 2, that it refers to proposed auto repair operation. I think that got transferred over from another template because it shouldn't say auto repair operation. It should say, you know, agricultural baseyard.

WATANABE: Yeah, it's probably a typo. It's a good point so we -.

SIRACUSA: So I would like to make that on the record that that's a typo and -.

WATANABE: I appreciate that.

SIRACUSA: That Mr. Miranda, when you're looking at your paperwork you might want to cross those, on No. 2, it's the 1, 2, 3, 4, the end of the 5th line up from the bottom, the last three words in that line say "proposed auto repair" and you might want to just for your own record cross out off "auto repair" and put "agricultural baseyard."

DARROW: We'll go ahead and make that change. Thank you for that, Ms. Siracusa. Thank you.

WATANABE: Okay, Mr. Rho.

RHO: I want to ask a question of Mr. Darrow. On this recommendation, and they're Nos. 1 through 10, were these recommendations, except for those that are deleted or marked off on page 4, were these recommendations in effect when the Commission first approved this special permit?

DARROW: These are the original conditions, except for those that you see that have been added or deleted.

RHO: So in reference to the Chairman's reading of Condition No. 2 has there been any landscaping to address Condition No. 2 already taking place?

DARROW: The landscaping is usually taken care of in the plan approval process. And so at this time the applicant has submitted a landscaping plan. This is, it may be difficult to see but he has identified the landscaping I believe by "x's" on the property; and then he also, and in some of the material that you have before you you'll see that he notes where he's planning on putting all the landscaping. And based on the condition, the landscaping has to comply with Chapter 17.

WATANABE: Rule 17.

DARROW: Yeah, where it's going to abut a light industrial next to a residential. So it's going to be quite thick landscaping; and that will be approved and determined through the plan approval process.

RHO: So in fact I think this thing was passed, he got a special permit in 2005, I want to say may but I'm not really sure. So for about 3 years, 2 ½ years he has been operating his business without complying?

DARROW: Correct.

RHO: Okay, thanks.

DARROW: Well, without submitting the plan approval, and the other conditions -.
But at this time -.

RHO: It's like we're going in a circle, right? If you don't submit the plan, then you don't have to do the landscaping. So you operate your business without doing the landscaping because you didn't do your plan. I mean I don't want to get into this. I just want to end this at this point, so I won't ask you a question. I'm just pointing that out.

WATANABE: Okay. So I guess you're not entirely satisfied, but shall we move on. Okay. So I think you've got the gist of what we're saying, Mr. Miranda. And for the record I understand why you indicated you will not comply because you don't have the money to channelize. I understand why you said that. But for the record for this Commission to seemingly endorse that and completely ignore the State Highway's recommendation, that might be a bit of a stretch for us. And so I think, you know, when you're looking at, I believe it was Condition 9 where you will comply with all requirements from Federal, State, etc., that will be our official position, yeah, in this. You have any comments to that, Mr. Director?

YUEN: No. The permit was passed without a requirement that he make a channelized intersection. The only thing that he needs to do and actually the only thing that the letter is asking him to do is to get a permit to work within the State highway right-of-way. I think what's going on here, and I don't know exactly the specifics, but I bet you 90 percent, I'll give you pretty good odds that what's going on here is that whenever -. People, you know, they have property that abuts the State highway. If you want to make a driveway into the State highway, or if you have an existing driveway let's say gravel and you want to pave the portion that's within the State highway right-of-way, you need this permit to work within the State highway right-of-way. And it may, the right-of-way for the State, the highway, may extend beyond what looks like the highway, you know. There's a paved portion of the highway, there's a shoulder, and then the right-of-way may extend, you know, beyond that; and in this case, your driveway might be already in the right-of-way. And if you pave it, you know, technically the State doesn't want you to have this permit. It may look like, and they may be wrong, maybe you didn't pave within the right-of-way. Now I don't know -. How do you know where the right-of-way is? Do you have a pin there or does it really show you that?

MIRANDA: There's a pin on both sides, well, my property and the neighbor's property. On my side the pins are out where the State Highway paved. On the other side, it kind of angles off; and I probably paved maybe a foot.

YUEN: Well, you know, so if he did pave, you know, the State might not be correct, maybe he didn't pave in the right-of-way. But if he did pave within the right-of-way then he does have to get this taken care of. But as far as, there isn't a requirement in the permit that he make a channelized intersection.

WATANABE: Okay, thank you for that clarification. Mr. Woodward, yes.

WOODWARD: Well, I kind of came into this with the idea that, you know, there had been a long history of noncompliance. And I wasn't really ready to say let's keep this thing going. But I must say that I think Mr. Miranda has done a couple of things, even though, you know, better late than never. He has filed the required metes and bounds requirement, he has filed the site plan, landscaping plan. I think this thing about whether he happened to pave, you know, a foot of the State Highway's easement is a fairly trivial item, to be honest with you. It probably requires a permit but it's certainly not anything that's going to hurt anybody. And if we didn't require it previously that, you know, he have a channelized access, I don't know that we can require that now. So even given my previous presumptions about this, I think Mr. Miranda has done the job at least to try and keep up with things. And I think if we're going to, you know, approve an extension that it needs to be with the requirement that, specific requirement that he get together with State Highways Department about the permit for this question of the driveway.

WATANABE: Yeah. Thank you. Again, we're not quite in deliberations though, yeah?

WOODWARD: Oh, we're not.

WATANABE: No.

WOODWARD: Sorry.

WATANABE: No, not yet. I'm sorry. I do have an individual that would like to testify. So if there are no other questions for the applicant then, Mr. Miranda, you may be seated, yeah.

And I'd like to at this time call up the testifier. I have Steven Rybar who has signed up to testify on Agenda Item No. 2.

MIRANDA: Before I leave -.

WATANABE: Yes.

MIRANDA: I'd also like to mention I am not the only one that uses the road, you know. I have trucks that I run out of there, but there are also four other neighbors that use that.

WATANABE: I believe there's shared access, yeah.

MIRANDA: Yeah.

WATANABE: I recall that from the original application.

MIRANDA: Thank you very much.

WOODWARD: Let me just ask one question in that regard. Is the roadway on your property?

MIRANDA: No, it's on an easement.

WOODWARD Okay. So it's not physically on your property?

MIRANDA: No.

WATANABE: Okay, thank you. Mr. Rybar, would you raise your right hand, please, so I can swear you in. Do you swear or affirm to tell the truth now before the Planning Commission?

RYBARD: I do.

WATANABE: And would you then state your name and address for the record, please.

RYBAR: Yes, sir. My name is Steven Rybar, R-y-b-a-r. My office address is 5370 South Durango Drive, Las Vegas, Nevada. And I'm employed as the compliance officer and quality control director for CSA Claims Service of America.

My comments will not be lengthy. From the review of the information, I gleaned that the applicant has requested issuance of a special permit over 32 months ago, it's a conservative number. In review of the minutes of the August 05 Planning Commission meeting I observed that the statement was made that the property had rusty discarded equipment and was an eyesore. Again, this is 2005. What has changed since 32 months ago? The applicant is still requesting a special permit, this is a constant. The property is still not screened as we discussed; and I heard the issues discussed earlier as to the reasons. There is still trash, rusted equipment that has been partially rearranged on the property; however, essentially the property has not changed in its appearance. What has changed is pollution concerns have become alarming with obvious oil appearing stains on the property. And what appears to be discarded batteries as well as piles of bricks and rocks, which may be contaminated pollutants, are present on the property. Applicant's property line fence currently intrudes into the 60-foot right-of-way and he has his horse trailer parked within that right-of-way. Casual observation of the applicant's property as of midday yesterday provided all indicia of a junkyard.

I will read and recite a few items from my notes that I observed as of yesterday less than 24 hours ago: Rusted crane truck apparently abandoned, abandoned water trailer, 3 gravel trailers rusted with the appearance of being abandoned with little or no rubber on the tires and in some cases no tires on the wheels, scaffolding in random locations, approximately 5 tractors were present at that time. I observed an abandoned water truck, various piles of rock and gravel, two fork lifts and one crane in what appeared to be nonworking condition, i.e. no tires, rusted, looks like they were discarded. An abandoned case fork lift, and abandoned grader, piles of plastic pipe and debris, rusted water tanks, rusted small trailers, remnants, part of conex container in a rusted state, concrete pipes, rusted flat bed trailer, corrugated sheet iron strewn throughout, rusted caterpillar tractor, galvanized corral, gates and parts, logs of various sizes, plastic water tanks strewn throughout the property. Ten steel I beams in a rusted state, 15 to 20 sections of 15-inch pipe, various water hoses, trash piles of wire fence and wood, discarded stone and brick which could be, I'm not saying is, appears to be used in a refractory process, very well could be contaminated, could not be, but it is something that should be addressed. Telephone poles, various wood pallets strewn throughout.

To summarize, current easement is used by the residents with the adjoining property. The applicant has chosen to infringe upon that easement for his own comfort by changing the fence line of his property and parking his horse trailer possibly impeding or a very minimum taking the use of that easement away from the other property owners, this coupled with this total disregard for known and possible pollutants on his property, i.e. oil spills, batteries, and possible polluted refractory items. This has existed for a majority if not the entire 32-month period, the conservative 32-month period that I brought up to you. All these actions and inactions beg a question. What would his conduct be if the applicant were awarded or continued to receive this special permit when he currently demonstrates utter contempt for the land, for his neighbors, and this Commission through his refusal to comply for a minimum of 32 months with the Commission's request? CSA and Mr. Fujinaga respectfully demand that the applicant not be awarded any continuance or the use of his special permit in consideration of the arrogance and disregard he has displayed for this Commission and for its directives.

And I want to add a postscript. The applicant's comments at the prior meeting do not merit any comment by CSA or myself. However, a relevant misstatement made by the applicant regarding cattle on CSA's property must be addressed. CSA owns and has owned 26 head of cattle which graze the CSA property. Additionally, coffee and other agricultural efforts are on-going and have been so. I have no further statements. Any questions, I'd be happy to entertain.

WATANABE: Thank you. Fellow Commissioners, does anyone have any questions for Mr. Rybar? Mr. Domingo.

DOMINGO: How many residents reside in that particular area?

RYBARD: I believe one to two, to my knowledge.

DOMINGO: Is it an agricultural subdivision?

RYBAR: I understand that the entire area was classified as Agricultural.

DOMINGO: And you only subdivided it to provide for those in there, your residences?

RYBAR: I'm sorry I don't understand your question.

DOMINGO: Okay, you have a parcel, agricultural parcel, and now you're telling me that there are two residences on the parcel. Is that right?

RYBAR: I really, Mr. Domingo, cannot speak for the other residents. I understand there is another fulltime resident there. I can only speak for CSA'S ownership interest, which is the parcel that I'm concerned with.

WATANABE: Follow-up?

DOMINGO: Okay. Might be the Planning Department may have some information in that regard, whether it's an agricultural subdivision or not. Mr. Darrow?

DARROW: The surrounding properties are actually large agricultural properties. I believe CSA's property is approximately 160 plus acres in size. I don't believe anyone resides on that property. I think he was referring to surrounding properties, that there may be one or two residents. But these are all basically larger agricultural properties. I'm unaware of any surrounding residents, but the applicant might have better information regarding that.

DOMINGO: Okay, thank you.

WATANABE: Mr. Rho?

RHO: You represent CSA Service Center?

RYBAR: Yes, sir.

RHO: Do you know who Paul Lal is?

RYBAR: Yes, sir.

RHO: You do. Did you know he wrote a letter on November 5th or dated November 5, 2007 to the Commission?

RYBAR: Yes, sir.

RHO: You understand the contents of that letter?

RYBAR: Yes, sir.

RHO: There are six what he refers to as violations on the property.

RYBAR: Yes, sir.

RHO: To your knowledge, have you received a response on those six violations or that complaint?

RYBAR: To my knowledge, sir, none whatsoever.

RHO: So you didn't receive a letter, a written response from the Department in reference to this letter?

RYBAR: To my knowledge, no, sir.

RHO: Thanks.

WATANABE: Ms. Siracusa.

SIRACUSA: Yes. I'd like to ask Mr. Darrow if he could tell us when, do you have any record of when the last time the Planning Department's inspector looked at the property and if so, and also whether he made any note of the violations that the testifier has just referred to?

DARROW: Prior to our last hearing on February 1st we had two of our zoning inspectors conduct a site inspection, this was on January 30, 2008, to specifically be able to confirm or deny compliance with the conditions and also to address these items brought up by Mr. Lal in his November 5th letter. In your materials, that was in reference to Item No. 1, we had a list of pictures that were taken by the Zoning Inspectors; and at that time they were ready to testify in regards to their site inspection. But basically they had stated that they found that the applicant was in compliance with all the conditions of the special permit at that time, of the site inspection. The photos will also reflect what was on site at the time of the site inspection.

SIRACUSA: Follow-up, please?

WATANABE: Follow-up.

SIRACUSA: And that was January?

DARROW: January 30, 2008.

SIRACUSA: Okay. Because we have in the conditions that there should be, no more than six semi-trucks shall use the baseyard. But, of course, if a vehicle is derelict it's not using the baseyard except for parking, and there were other vehicles that this testifier referred to that were not semis. So I'm wondering if that's like sort of getting around the issue. But, you know, having say a D-9, or something like that that's not a semi, so it doesn't count? But there's also the, you know, the Condition No. 7, applicant shall collect and dispose of waste oil, batteries, tires, etc.; and it would appear that that has not happened. I'm wondering if possibly we need to send the inspector out to do another detailed site inspection to verify it. Not that I'm questioning, you know, your veracity because you have testified under oath, but to verify and to take detailed pictures of -. I wish you had brought in photos so that we could see for ourselves because a picture is worth a thousand words. But this is pretty serious to my mind because it's not only, you know, flaunting the conditions of the permit but it's also, we're looking at some possible pollution of the aina; and I take that very seriously.

I'm almost tempted to ask, you know, that we maybe consider continuing once again so that we can actually have a current site inspection, come out very, very quickly, and verify these allegations.

WATANABE: May I make a comment to that. I commented a little earlier by asking Mr. Darrow to verify that at the time of the inspection in January that they did verify that there was a paved area over which oil changes were being conducted; and the reason I brought that up is because that was one of the requirements in the original special permit. And he did indicate that the inspectors had verified that there was a paved area over which, in other words, he wasn't dropping oil just into the ground. Now I did ask anything with regards to storage of batteries or anything like that. However I do recall that at a previous meeting, and I don't recall exactly which one, I had requested a site inspection; and, you know, the County is pretty stretched, and

so it wasn't done then. However that January inspection was done subsequent to that. So to be perfectly honest with you, I tend to think that we're going to have to make a decision based on, enforcement is always an issue, but we're going to have to make a judgment based on whether we believe Mr. Miranda is going to comply in the long run, if he has learned his lesson, or if, you know -. Cause there's no way the County can continue to go out there week after week and inspect various properties. I guess that's my comment to that. Would you care to add anything to that, Mr. Yuen?

YUEN: Well, we still do recommend that the time extension be granted. We did bring this back to the Commission because we were not getting any action on the final plan approval and the metes and bounds. And we did do it, have the inspectors go out to check the physical compliance with the terms of the permit and found that the vehicles were contained to the one-acre area, that there was a paved area to do the oil changes; and you have a set of photographs of what's there on the ground. So there are a couple of issues remaining with the driveway. And, again, we would still urge the Commission to grant the time extension. He has submitted the plan approval. We haven't processed the plan approval simply because the timeframe ran out. So that's why we're here. We're asking the Commission to extend the timeframe on the plan approval. And he has submitted the metes and bounds, and that's fine; and so he's pau with that.

As far as violations and enforcement, we will route Mr. -, I'm sorry, I forgot your name, but we'll route the complaint to our enforcement section. Apart from there being a special permit here, this is an agriculturally zoned property. And it's quite common that in legitimate agricultural operations people will end up having some derelict equipment and end up having some piles of stuff that may be not that attractive, we understand that; and that's not a violation. At a certain point though it becomes a junkyard in the Zoning Code, and I can't remember -. There's a line that you cross and it's defined in the Zoning Code, and it becomes a junkyard. And we do cite people in residential, and in agricultural areas, for having too much junk, and that's a fairly common citation; and we do get people then to clean that up. I think that that's a matter that we ought to handle on an enforcement level, separately from the special permit. It's a kind of thing that we would handle normally, whether he had a special permit or not, if we had a complaint that somebody has accumulated, was creating a junkyard on their agricultural property. You know, we do have a lot of complaints and currently only two inspectors. But we do get to these and we do occasionally issue citations on that. And so the Commission, my recommendation here is that the Commission will leave that part of the enforcement up to the normal departmental channels and grant the time extension. So if we don't have the time extension, I don't know what we'd do -. We'd probably end up bringing this matter back to the Commission for another time extension request, which I don't think is necessary.

SIRACUSA: Well, I would like to consider the testifier's very comprehensive list of complaints, so that the Department has an official complaint that they can follow up on as far as the, you know, if Mr. Miranda has crossed the line into a junkyard. Whether he's maintaining it on that one-acre or whether it has spread out beyond that one-acre is, to me, irrelevant. It's still a junkyard and still violates the spirit, if not the letter, of the conditions. Looking at these photographs that were taken on January 30th, it sure looks like a junkyard to me. I would certainly not take these accusations lightly, considering that we do have some photos that bare it up.

WATANABE: Thank you. Any further questions for the testifier. None. Seeing none, thank you for your testimony, Mr. Rybar. And I guess you can expect a response from the Department, and I suppose we'll have some inspectors out there eventually.

RYBAR: Thank you very much.

WATANABE: Okay. Mr. Domingo?

DOMINGO: Thank you, Mr. Chairman. I surely concur with the Planning Director's appraisal of the whole situation. And I think with regards to the so-call violations that were mentioned perhaps the only ones that I would look at is anything that is within the right-of-way that goes to the property and beyond. I think anything else that's on the property in itself, you know, this is a contractor's baseyard, contractor's baseyard; and knowing the function of any contractor in construction, or steel works or whatever you'll see, there would certainly be a lot of equipment/materials that may or may not be stacked out properly or neatly, as indicated by some of these pictures that we see here. But I would defer to the Planning Director's comments; and if warranted, that they would do it. But, you know, I just, at the outset, I'm looking at this as a contractor's baseyard. And if anyone would go and see a contractor's baseyard in the Industrial area or wherever, you know, you probably would find the same conditions existing there and then out at Mr. Miranda's property. I can think of one situation in which it's not a special permit but it's a use in a residential area, probably two lots away from a restaurant, that is cluttered up with iron works and materials of that nature, and which certainly is or may be an eyesore to people who drive by there. But it's a use that has been granted. You know, that's my whole appraisal of things and my opinion.

WATANABE: Okay. Well, we're in deliberations now; and it doesn't seem like anybody has any pressing comments. But let me make this comment. You know, aesthetics is a real individual thing and times have really changed. There was a time when having a lot of junk around wasn't, you know, pardon the expression but "wasn't frowned upon." But this is why I specifically brought up the issue of Condition No. 2 which states that they will comply with the Planning Department's Rule No. 17, Landscaping. Because to Mr. Miranda some of these may be an organized mess and to Mr. Rybar's client maybe it's just a plain eyesore and a junkyard. I think these things would be very difficult and subjective. So, you know, I think the Planning Department went through great lengths to try and mitigate this by adding this in because really Rule 17 is a little, I think, little more than would be typically asked for in an agricultural area. And assuming that the plan approval process is going to address this Rule 17, the landscaping issue, I think you will have a tendency to mitigate much of this. I think the real issue here is whether Mr. Miranda now recognizes that the world has changed and, you know, it's not a cowboy town anymore. We have different people moving in. You have to be a good neighbor so you minimize complaints. And what used to go before, you know, in the sixties you could pave right up to the State Highway and nobody would say anything about a permit, that's not true today. Okay? And so, you know, it's an adjustment for everyone, I think, culturally and also aesthetically. With that, if there are any other comments -. Yes, Mr. Rho. It seems like you're ready.

RHO: If I can refer the Commissioners to the County Planning Department's background report. I guess it's dated, at the very top, February 19, '08 and it's kind of a thick packet. It's the same packet that contains black and white pictures that the planner or the inspector did on January 30, '08. And if you turn further to the back of or actually if you turn to the last several pages in the very back, you'll see the certified letter from Paul Lal who represents CSA Service Center. And then following his letter is a series of very poor photographs. And if you turn to maybe the third or fourth to the last photograph -- you can actually look at that photograph -- and then turn to the original photographs by the inspectors, you'll see the same picture or the same pose. It's of that, what looks like a forklift in front of what looks like a canvas or plastic tent. You can actually see the same photograph. It looks the same. It's taken obviously on different dates but it's basically the same thing. So I really do think the issue is whether or not the applicant will comply now after 2 ½ years, after violating or not having a special permit and conducting his business, or conducting whatever he was conducting for I don't know how long prior to 2004. He gets the permit in 2005 and doesn't comply. So his neighbors have to look at his operation that obviously by the photographs were taken in January -. I know we can differ on what a junkyard looks like or does not look like. But to have put in that condition of landscaping meant something. I'm not sure what it actually meant, but it meant something. And that wasn't done for 2 ½ years; and so the neighbor is now complaining.

I don't want to reiterate everything that we discussed for the last I don't know how long it has been. But I would like to point out a couple of things. We have these conditions for a purpose. Yes, he didn't file or he didn't get his plans approved so therefore he didn't do the landscaping. It's like a circular argument. We have I think coming up or we just discussed a similar circumstance; and we're, in my view, the Commission is forever giving in. And my guess is that the public believes that as well and so therefore these conditions are basically being ignored. I'm putting it bluntly, but at this point I'm not sure what else to say. So maybe we shouldn't have any conditions and see what happens.

The last thing I want to say is when this permit was approved the Commission took a leap of faith in not requiring, or not whatever you guys or whatever the Commission can do, requiring that channelization of traffic that was suggested or recommended by the Department of Transportation. It's written in the decision. If you read the decision it's written in there, forget about the channelization, no need. And yet we received a letter just dated March 10th that talks about the channelization. That letter refers to the channelization which appears on the letter that's dated May 11, 2005. And he claims in his letter of March 10th, this person, whoever this person is, the attached comments dated in '05 and, well, the two letters dated '05 are still valid and applicable. So the Commission takes a chance, bends over backwards for the applicants, and this is not just for this applicant, it's all the applicants. We do our best to assist the applicants, all the time. Almost two years that I've been on this Commission, we do our very best, each one of us do our very best, to bend over backwards for the applicant. I think the Commission needs to really look at whether or not that's the best thing to really do in the long term. Thank you.

WATANABE: Ms. Siracusa.

SIRACUSA: I find it very interesting that Commissioner Rho has made this statement. Because last night I wrote out for myself a very similar statement with some of the same concerns that I had. That by not obeying the agreed upon terms they gain two years grace

period, in some cases. Whereas, the applicant who follows the rules gets no such consideration. Is this fair? Not to my mind it isn't. We are rewarding misbehavior. As parents none of us would do this. So why should we send such a message that it's okay? Why even bother with conditions at all? I really have concerns that we're, it's like we're handing out lollipops, you know. We're saying you've been a bad boy, here's a lollipop, go forth and sin no more. And I think people are taking advantage of that; and the aina is suffering and communities are suffering because of that. And I'm really feeling that it's time that we take a much harder line.

I personally would be willing to grant Mr. Miranda one, you know, this one year; but only if we deleted the final condition that would allow him to ask for an additional extension of time beyond that. And this one year is where he would have to clean up that junkyard and take care of his paperwork with the State Department of Transportation. Otherwise, I wouldn't be willing to vote for that at all. And in that case I would support the Planning Director's initiated revocation.

WATANABE: Mr. Domingo?

DOMINGO: Thank you, Mr. Chairman. I think, you know, your comments are well taken, Ms. Siracusa, but I think only if the Planning Director determines that it is a junkyard and that it is in fact a hazard and something that is altogether aside or beyond what they would find in a contractor's baseyard. That determination has to be made. I just want to make that clear.

RHO: Mr. Chairman?

WATANABE: Ms. Siracusa -- I'm sorry Mr. Rho -- the condition you were opposed to was which one again?

SIRACUSA: Was 10(D), "If the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the Planning Commission for appropriate action." I'm objecting to that.

WATANABE: Now, Ms. Siracusa, I'd like to point out that it comes back to this body, which is much more stringent than the typical, and the Director has the discretion to extend for a similar period, which is the typical language that we use. So I understand your concerns but it would come back to this body, yeah, once again. So it could be addressed then again.

SIRACUSA: I recognize what you're saying and I recognize the distinction between those two forms of wording. And I certainly would rather it come before the Commission, although I really would like not to see Mr. Miranda in front of us again. But at the same time I feel that it has been extensions and extensions and extensions. And how much can you bend over backwards, you know, to give someone an opportunity to comply when they really by and large are not showing us much of -?

WATANABE: I can appreciate what you're saying. But shall we allow the Director to chime in, please?

YUEN: Yeah, in the interest of reaching a consensus on this and with what Commissioner Siracusa is suggesting here, we shouldn't just eliminate this entirely. What we could say instead is if the applicant does not perform the conditions in a timely manner the permit shall be brought to the Commission for revocation, rather than for a time extension. That, you know -. And the reason we had said that is that it does have to come back to the Commission for a revocation. You know, it does not just -.

SIRACUSA: Whereas that's the rules.

YUEN: Yeah, the permit would just not drop dead itself. But this, I think, in terms of providing a message that no time extensions should be sought, I think that that's fine and would meet your concern there. And I don't, you know, as I said a few minutes ago the time extensions were to secure final plan approval and the metes and bounds. He has submitted both documents and they look like they're either going to pass or they're close to what would pass. And so, and then we would work on this question of the violation as a separate enforcement matter.

SIRACUSA: Okay, I'm willing to accept that alternative wording, Director Yuen. But in that case I would certainly like to see Commissioner Rho's concern addressed. For example, right now the plan approval has come in to the Department and I wouldn't like to see Mr. Miranda waiting for another year before he even puts some plants in the ground, because then we would have to wait who knows how long before they're of a decent size in order to block the neighbor's view. I would like to see something in there that he start the planting process as soon as his plan approval is agreed to by the Department, or something like that, or that we talk about a certain size plant that has to go in in order to, for them to start mitigating the visual impacts as quickly as possible.

WATANABE: I understand your concern and obviously I share that concern, that's why I brought it up. On the other hand where I differ from you is, we do have an established rule, Rule 17. As I indicated earlier Rule 17 is much stricter than what you would typically require in an agriculturally zoned area. To customize each rule for every single applicant might be onerous. And, again, enforcement is another thing, yeah? I understand your concern and I'd like him to be a good neighbor. I think the rewording on Condition 10(D) where it becomes much stronger indicates that failing to comply means come back to the Commission for revocation, which is much stronger than reconsideration. And given the length of these proceedings and the previous proceedings if he doesn't get that message by now, what can I say, it'll probably get revoked. Yeah?

Along those lines, if that's okay with you, Ms. Siracusa, I'd like to make one comment with regard to some of the comments Mr. Rho made, and I don't take what the State Department of Transportation says lightly. If you go back to the original records, you will find that the Director was opposed to this special permit. I was pretty much was opposed to this. In fact, I had insisted on reducing the number of trucks, etc. I was very concerned about the potential liability because it is a highway and, you know, generally you would want to have, again, like I had mentioned earlier, right-turn acceleration lanes, right-turn deceleration lanes, and a left-turn pocket. However, you know, in the spirit of cooperation I did with those added conditions agree to go along with this. And there were special conditions in this in that Mr. Miranda's lease was being

terminated by Parker Ranch and Parker Ranch had then provided this property for him, for him to move the business. I believe it was the second or third time they had required him to move the business. Each time it had cost him significant sums of money to relocate. And then after he purchased the property he found out that, no, you can't do a baseyard here. That made it kind of difficult. So, yes, we did bend over. I was not entirely comfortable but now that we have bent over, and he has in my mind although not fully complied, I think he is beginning to get the message. And he has also expended quite a bit of time, energy and money, you know, in attempting to put up the structure and making something that would hopefully be more aesthetically pleasing in the area. And I'd like to remind you, too, that that one acre site as I recall was in a valley, so it's a lower lying area that's supposedly not visible from the road because of the natural topography. I believe that with all those efforts and all of these discussions hopefully we can get this, get beyond this, and hopefully we won't be addressing this again. But, anyway, those are my comments. It wasn't as though I didn't care about what the State Highway Division said. Anyone else care to make any comments at this point, or does anyone care to make a motion?

DOMINGO: Mr. Chairman?

WATANABE: Mr. Domingo?

DOMINGO: I move the additional extension of time be granted based on the Planning Director's suggestion on the proposal, the suggested wording.

WATANABE: That would include the revision to Condition No. 2 where we're referring to a baseyard as opposed to an automotive repair society and also the revision to Condition 10 where noncompliance would require a decision to come back to the Commission with a recommendation to revoke?

DOMINGO: Yes.

WATANABE: Okay. So we have a motion. Do we have a second?

OGATA Second.

WATANABE: Okay, Shelly, thank you. Any further discussion on this issue?
Mr. Darrow?

DARROW: Thank you, Mr. Chairman. The motion before us is to approve this special permit amendment request. Along with that we will have changes to Condition 2. Additionally Condition No. 10 it will not be Condition 10, 10(D), it will be the new Condition No. 10. All subsections are deleted. If this wording is correct, "If the applicant does not comply with conditions of the special permit within a timely manner, this matter will be brought before the Planning Commission for revocation." Does that sound correct?

WATANABE: That sounds correct.

DARROW: Okay, with that, I'll take the roll call. Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: Commissioner Rho?

RHO: No.

DARROW: Commissioner Siracusa?

SIRACUSA: No.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

WATANABE: Aye.

DARROW: The motion does not pass, four to two.

WATANABE: Do we have any suggestions for another motion with possibly different conditions? Earlier you made some comments, Ms. Siracusa, of landscaping.

RHO: Mr. Chairman?

WATANABE: Yes.

RHO: Can I just share that it's very difficult for me personally to vote for any motion on this applicant's special permit until I get assured that the applicant will actually comply. I didn't get that from the answer he gave me. I'm sure you were all listening to the question, or my whole spiel about it, and then my final question to him, which was basically, "are you going to really comply?" I didn't ask him that specifically, but I wanted some response from the applicant he could assure me that they were really going to comply this time. Remember, the Commission approved this special permit after the fact, he was already violating. The Commission not just ignored, the Commission debated the traffic issue. I'm not doubting that. I'm not doubting the competence of the Commissioners at that time. But they leaned over backwards to approve this special permit in terms of the traffic. The driveway issue and its connection to the State Highway, no progress, nothing done. Don't understand it? Maybe. He gets called in here to revoke the permit. We leaned over backwards, I was part of that. We leaned over backwards and extended it, or whatever we did. We didn't take action. I don't know how many months have passed since that time and we're back again on this same issue. And he did submit in that timeframe of, lets say, four months, I'm guessing, the plan and the

metes and bounds. But I still don't feel like that's enough. I'm not sure what he can actually do to show me that it's going to actually happen. I can't tell you I want this done, this done, this done. But one thing I will say, the inspectors are hardpressed, as has been mentioned. But when a complaint is received I would expect that the Department respond to the complainant in writing, especially when they document six, or they allege six violations and have it in written form to us, and I think that guy is representing the client and it's a law firm. So we don't respond to them for whatever reason and we don't have time to do the inspections. And I don't know, maybe if we could get some assurances that there are going to be like an immediate inspection within the week to determine whether it's a junkyard or not, whether or not there's oil on the ground or not, the six or ten items that the testifier mentioned, and a response in writing to each and every allegation made.

WOODWARD: Mr. Chairman?

WATANABE: Mr. Woodward.

WOODWARD: If I might suggest -. And I agree and I share a lot of Commissioner Rho's concerns. You know, we get tired of seeing the same people coming up before us for noncompliance. The one thing in this situation that has changed my thinking a little bit is that we have, albeit late, had compliance with a majority of the things that we had asked for, the site plan, the metes and bounds. And we now have concerns about the State Highway access and some of the complaints from the neighbors. I might suggest perhaps as a compromise, and I'll just throw this out and see if it sticks, perhaps we would be willing to give a six-month extension, and within that time have a site visit by the inspector prior to the end of that six-month period of time, and be sure that the appropriate documents from the State Highway Department have been complied with. I think that might be something that would be a compromise. So I'd be interested to see what everybody else thinks.

WATANABE: Mr. Yuen, you're probably more familiar with the timeframes and, you know, as you stated earlier the staff has stopped work on this because the time extension had gone by. And I'm wondering if, although I appreciate your willingness to compromise, Mr. Woodward, I'm wondering if it's possible, you know, where his approval -. Cause a lot of times, you know, building permits take three or four months and then so we think we're giving him six months but he has a little over 30 days. And I'm not picking on the Department, you know, it's just reality. That's what happens.

YUEN: No, I would expect that with the paperwork that has been submitted, from that point of view, the outstanding things that we saw had not been done, would be, could be done within six months. If the Commission also wishes, I don't think I can promise that we would get an inspector out in the next week, but we can have an inspector within the next month.

WOODWARD: Mr. Chairman, I was just suggesting that we have an inspection prior, if we approve a six month extension not necessarily have it next week or next month but before the end of that six-month period, perhaps closer to the end of that six-month period so we see what's really happening at that time. I don't think we need that immediately if we're going to make a decision to grant a six-month extension. The things we'd be looking at are has he complied with the State Department of Transportation's rule regarding access to the highway, his paved

driveway; and then we can do the inspection sometime fairly close to the end of the six-month period of time and make sure that, in fact, it's not a junkyard.

WATANABE: Ms. Ogata.

OGATA: Actually I think that we should probably have an inspector go out soon and then another one afterwards, because we do need to document if there are any current violations. And if we're going to take the testifier's information as a possible complaint then wouldn't an inspector need to go out like right away, and then again as Commissioner Woodward suggested towards the end of the timeframe, so that we can see the progress or if there's continued noncompliance?

WOODWARD: That would be fine with me.

SIRACUSA: I agree.

WATANABE: Mr. Yuen, so say within 30 days, cause you did indicate 30 days, maybe we do an inspection?

YUEN: Yes, and if the Commission would like we can arrange to have an inspector go out say within a month of the six-month time deadline to verify that everything is okay on the ground. If everything is okay, I would not schedule this. You know, I would only bring it to the Commission if something was wrong, let's put it that way. And I would like us, you know, we have spent a lot of time on this; and I would like to see if the Commission can achieve a consensus so that we don't have to continue this on the agenda. And so, you know, I do think certainly that we can have somebody, an inspector, go out to the property and take a look within the next month and again in about five months.

SIRACUSA: I have a procedural question.

WATANABE: Yes, Ms. Siracusa.

SIRACUSA: If we were to make that same motion again but shortening it from one year to six months and including within 30 days an inspection by the Planning Department's inspector, could we make that approval contingent upon a determination that it is not a junkyard? So that if the inspector comes along within a month's time and says yes this is a junkyard then the condition would become null and void, I mean the approval to extend the condition would become null and void? Is that possible procedurally? Should I be asking Ivan that? I think he's leafing through -.

WATANABE: I see, while the Director is mulling an answer, let me -.

WOODWARD: Mr. Chairman, while everybody is mulling, I might make a comment. I think the reason for having an inspection in a month is a baseline.

SIRACUSA: Yes.

WOODWARD: And then we've shorten the duration to six months so that if it is a junkyard, well, hopefully you'll clean it up before the inspection, but if it is then he has got another four months to clean it up before, you know, the hammer hits. So if it's appropriate, does anybody have any other comments before I make a motion?

WATANABE: Yes, Mr. Rho?

RHO: I do. I don't think we should just restrict the inspection to a determination of whether it's a junkyard or not a junkyard. I think we should base it on the 10 to 15 items, whatever the number was of the testifier as he's filing a complaint. And if we addressed those issues, then, I mean he mentions junkyard as one of those issues, so that will be covered. But I don't think and I may be just exaggerating, but I don't think the inspector should go out there, walk around and say, no, this is not a junkyard, this is an agricultural -, they are able to have the pictures look the way they looked on January 10th so everything is cool and fine.

WATANABE: I don't think that was the intent though. I think -.

RHO: I understand that but I just want to make it absolutely clear. I don't want to come back again.

WATANABE: Right.

YUEN: Well, and could I just jump in with -?

WATANABE: Sure.

YUEN: Explaining, you know, how we would look at the situation from a violation point of view. And that is that when this, you know, the Department did oppose the special permit in the beginning but the Commission granted it. And from that point on, we are implementing the decision of the Commission. We're not trying to backdoor and get the Commission to reconsider its decision. So specifically on the equipment that's stored on the property, when the special permit was granted if you go look at page 2 on paragraph 3, there's a list of equipment that was stored on the property. The permit was granted with that list of equipment to be stored. That's part of the permit. That's not a violation. Now the neighbor may not, I don't know what happened, maybe the neighbor didn't own the property the 167 acres at the time. The neighbor I know did not come in and oppose the special permit. Now the neighbor doesn't like that assortment. I think a lot of the things that are described by the neighbor are the same things that were on the property when the special permit was granted in 2005. There's a complete list of this equipment when the special permit was applied for. So we are not going to consider that to be a junkyard. That's part of the permit. There's a limit of six tractor trailers, all right. And we, you know, as I say, we're perfectly willing to go out and inspect the property and see if there is a junkyard on the property. But as far as this list of equipment, if it's stored on the one-acre, given the special permit, that's part of what was decided already. We're not going back and now say, well, don't have this stuff stored there. Okay? So, and the way that, in the special permit, and the Commission made this decision, and as the Chair keeps saying, the way that that's dealt with is that it's supposed to be landscaped. You know, we wanted it moved, the site is moved way from the road. When we originally

issued the citation it was parked along very close to the highway, everybody driving along could see it. The application came in to move it to this low point that you couldn't see from the highway. And then in order to shield it from the neighbors, whether they complained or not at the time, we do want it shielded. So there is this landscaping condition; and we will follow up and make sure that they implement, that he implements the landscaping condition. But just so everybody understands what we're going to be considering as a junkyard and not a junkyard, he had this equipment.

WATANABE: Commissioner Siracusa.

SIRACUSA: There were a lot of items listed in the testifier's comprehensive list other than those heavy equipment that was in the permit, pieces of pipe lying around and roofing tin, and all of those kinds of things. So I think we could expect that those are not part of the original permit that was approved and that we would be asking for piles of batteries, that sort of thing.

YUEN: Right.

SIRACUSA: And although, I just want to say one thing quickly, that it was mentioned that, yes, he has put in a concrete slab and that's for changing oil, but there's no guarantee that he is changing oil on the concrete slab. You know, so I still would like, I would feel more comfortable if the inspector went and looked and verified those things: Is he indeed changing his oil on the slab, or does he have a slab and he's using it to put the building on but he's changing the oil and it's still going into the ground, that sort of thing.

WATANABE: Yeah, that would be, if I may comment, that would be a violation that would be issued.

SIRACUSA: That would be the sort of things I would want the inspector to look for.

WATANABE: Yeah, and violation issues were something that we, I think, agreed upon. I think what the Director is also trying to point out, and he kind of alluded to this earlier, is that okay, look, the environment, the culture is changing, there are a lot of things usual and customary to farming that may not be quite as appealing. And that's why I did indicate, you know, aesthetics is very personal and very subjective, and it's difficult to police from that end. You know, if you're going to police from an already established law that says, okay, you can't store batteries here, he has to dispose of them properly and, you know, you can throw tires in a junkyard, and you can't drop used oil into the ground, that makes sense. But, you know, to go beyond that I think the furthest we could go beyond that is that planting screen, which, again, I'll indicate, is far more than we would typically require in an agriculturally zoned area.
Ms. Siracusa.

SIRACUSA: I am a farmer. I know how things can accumulate. Stuff breaks down and then you wait around to see if you can get somebody to fix it; and you have to depend on that guy's schedule. And then it starts raining and then you have to wait some more, and things, you know, get rusty. And I understand how that happens. But this is obviously, looking from the photographs, he obviously has got years and years and years worth of procrastination that is lying on the ground. And there's a limit to everything, you know, you get to a point where you

cross a line. And I'm not saying that oh, he has, you know, a couple of pieces of roofing tin lying around. I got a couple of pieces of roofing tin lying around. But, you know, there comes a point where the roofing tin is no longer serviceable and you just haul it off, you know. And he certainly has the equipment on his property to be able to haul off a lot of the garbage.

WATANABE: Mr. Domingo, looks like you have a comment.

DOMINGO: Thank you, Mr. Chairman. I'm wondering how many of us on this Commission have ever made a site visit. I mean we're just listening and we're looking at pictures; and I think we're making some conclusions already by what we're hearing and what we see. I don't think that's totally fair to the applicant, you know. Like I said, you know, it's a construction baseyard; and I don't know that whoever the contractor may be would always keep their yard as clean as we think it should be. You know, what we're looking at is, you know, the neighboring residents, they're in agriculture, yeah, they're in agriculture. And because they pass the lot they see what they think is an eyesore, it's something that hurts them. But they have a legitimate function going on there granted by a permit. And, of course, you know, not wasting any time by reiterating all the concerns that we've been through, you know, that's a construction baseyard, that's it.

WATANABE: May I point out -?

SIRACUSA: I just want to say it's not a construction baseyard. It's not supposed to be. That's not what the permit is for. It's supposed to be an agricultural contractor's baseyard; and there's a difference.

WATANABE: Okay, okay. Mr. Rho.

RHO: This is my last statement. We wouldn't be here today except for the fact that the applicant didn't follow up on the conditions that the applicant was supposed to follow up on. That's the bottom line. If he had followed up on his end of the bargain and a complaint came in about this, that, junkyard or whatever the allegations are, it would have been handled by the inspector and the Department without bringing it up here again. Somebody would have gone down there and said, no, this is an agricultural zoned thing, he got a special permit, he's allowed to have "x" number of trucks, roofing tins, water tanks, he is not pouring oil into the ground, he is not putting gas into the ground, he is in compliance to all of those things. And even if he wasn't, the inspector, I assume, would have handled that by citing him, pointing him in the right direction, getting him some assistance, whatever. The plants would have been grown by now. After 2 ½ years we wouldn't be here. So the real issue is whether or not he is really going to comply in the next six months to a year. And I haven't heard anything yet that leads me to believe he's going to comply.

So my solution was to have an inspector clear off the allegations like yesterday within a week and then bring this up again at the next meeting - don't have any, well, I don't know if you can just ban testimony - and look at that report and pass or no pass this applicant's request. So it might take another meeting, but I think it will be well worth it.

SIRACUSA: Perhaps you would like to make a motion, Commissioner Rho?

DOMINGO: We already have a motion?

WATANABE: No, no. No, we don't have any motion at this point. Yeah, it's kind of an unusual meeting. Typically this wouldn't be the process, but -.

MIRANDA: You know, Mr. Rho, as far as plants and landscaping, the whole top section, as you drive down, you cannot see my place from the highway, okay. The first complaint we had from that attorney's, the neighbor, anyway, they were concerned. They told me they were planning to build their house on their property in this area. When they looked to my property they could see containers and my cattle trailers, and they didn't like that. Okay? So we came to the hearing, and I remember, Mrs. Siracusa, we went into a long discussion, and I moved everything from the top of the highway out of everybody's sight to my lower property as I developed the one-acre area. Okay, everything was moved out of his sight as he was planning to build his house in three or four years. I said, you know what, I plan to build my house over here also. I said all of this is going to be gone, which is gone, okay.

One of the complaints now, he just said, oh, I get rock and stuff dumped there. He doesn't know what I have. I have slate there, slate that is shipped in from Idaho. And down at Kukio they're building these \$25,000,000 homes. Okay the left-over slate is what I got. It's dumped on the ground. It may look like rubbish to somebody else, but that's slate. I've got \$50,000 in slate there. My neighbors are already coming to see me if they can have some, the people that live down the road. This guy he doesn't know what he's seeing. Okay?

Then he talked about batteries, you know. I don't have old batteries stored on my place. The batteries that I have, I take out of one fork lift and I put it on the other. If it's outside, it doesn't mean that it's old batteries. It's still working; and it's good batteries. If you've worked on a ranch or on a farm, you need all of this -. You know, I don't have enough money to buy one battery for every piece of equipment. So the equipment that I'm using this month, I may take the battery and put it into the other. Okay?

Then the trailers that he talked about, they're my dump trailers. I got them all parked in line. Well, it rains a lot and that's why I'm putting up a shop. They may look rusted and to him it looks like junk, you know, but I cleaned most of my junks out of there. And when I got the special permit they agreed totally. They weren't against it. I had a lot, at that time I had a lot of junk stuff that I kept for parts. I got rid of 90 percent of that. The stuff that I have is like good junk that I'm going to use.

RHO: If you completed the plan and put the landscaping up 2 ½ years ago, would your neighbor be able to see what you actually have on your land?

MIRANDA: You know, 2 ½ years ago I didn't know that we were supposed to -.

RHO: No, the question is -.

MIRANDA: No, I'm telling you -.

RHO: Whether or not the neighbor could actually see your one acre parcel where you're using as your baseyard? Would your neighbor, if the landscaping was mature, be able to see that one acre?

MIRANDA: I have the landscaping in, I planted all the trees.

RHO: Yeah, if you planted all the trees -.

MIRANDA: The trees are growing now. From their area when they drive, right next to my place, they can see it. Where he's going to build his house, he cannot even see nothing of my property. Got one hill that is about 60 feet high with ohia trees.

RHO: So you would agree, would you agree that the landscaping would have helped shield your property from viewing by your neighbors?

MIRANDA: It would help some, it would be growing taller at this point. But all the landscaping is -.

RHO: Okay, so, that's all we wanted you to do, is plant the plants. That was one of those conditions, right? But because you didn't do that, we're now in this situation where you're getting these complaints. So what I'm trying to do is settle the complaints, settle the complaints. And I'm assuming that you have no violations whatsoever on your property. When you come back again, this is my proposal, we would agree, okay, you can proceed, the special permit is approved, or we won't revoke it, or I'll vote to not revoke it. But right now you have 10 to 15 allegations, allegations, not proof, allegations, that are still outstanding. And you're asking me or the Commission, in my view, to approve with those allegations still outstanding after you didn't comply for 2 ½ years, and probably for 4 ½ years it would be my guess. But I'm just guessing, because you were conducting this business prior to 2004 on that property. So to me that's the issue. I don't know whether somebody can make sense of that, but that's my personal issue with this whole thing. And I don't know how to actually resolve it; and I'm not in any position to make a motion.

MIRANDA: Maybe I'm wrong, but I think I've complied with everything that needed to be done, except now with the Highways Division with that permit. All of the rest of the things that was required by the Planning Department I've done. I've moved everything to my one acre. The iron roof and lumber that he sees, that's not my trucking stuff. That's what I plan to build stuff for my livestock. I think that's a whole different deal. But if my neighbor wants to criticize he can, that's fine. He's entitled to his own opinion. I know they want to buy my property from me, so this is why they keep coming after me. They invited me to dinner, and with the whole purpose of asking me how much will it take for them to buy my property. So maybe you folks don't understand but I know why they're putting all the pressure, because they want to buy my property. And if I don't get the permit, well, then they think, well, I'll have to move to some place else. They don't even live here. They get couple containers with a roof on that's illegal, no permits. I'm not turning them in. You know, the inspector came to inspect my shop and he looked down at their place and he said, three times he asked me, Melvin, you want me to write them up? I said, no, I don't turn nobody in, I just want to do what I'm doing, my own stuff. You know, but this is what goes on. And you think it's fair?

You know, I've planted trees. I've planted koa trees now, Mr. Rho, three or four years ago. Those trees are almost as high as this ceiling. They're at least 6 or 7 feet tall, so it blocks off the area where he has his containers where they can see my shop. These koa trees, I planted 25 or 30 koa trees, and they're all growing. Right where my shop is I have construction going on so I didn't want to plant right next to the road. But they cannot, when they drive down the road they can see my place; but if they're in their property, there's a hill that's at least 50 feet high with ohia trees that are another 30 or 40 feet high. You know, they'd have to climb over, walk to their boundary, to look down to my place. Where they plan to build their house, again, I'll tell you, they cannot even see my place. All my trucks are all in my place down in the hole; and if you came out there and looked at it you know the thing is hidden from the highway, from everybody.

You know, I drive from Hilo to here, and how much trucks I see on the side of the road? I'm not complaining all about the trucks in Ninole and Papaikou and all over the place. Parker Ranch where I was at and West Hawaii Concrete they got rezoned 15 acres. You talk about a junkyard, yeah, they got one junkyard in there. They've got like 150 or 200 cars. I don't know what kind permit they got, I don't really care. Next to it, they leased out places to different lot owners, they get junk boats, all kinds of stuff piled high. They get portable toilets. You go down another lot, they got stockpiles of material. They've got old trailers, water tanks, everything, all in that industrial area. So is it a construction yard or what? I don't know. I'm only concerned about my place where I park my trucks, and I'm just trying to make a living.

WATANABE: Okay. Wait, wait. Typically it's like we're extending the testimony now, so it's getting a little more difficult, yeah. This is not quite the order that we would typically follow. So I appreciate your comments. I'm not sure you're going to convince everyone anyway, so let's try to see if we can work some type of compromise out here. And if that's not possible at this meeting it may require us to come back to another meeting. But, you know, this has gone a little bit too far already with the additional testimony. So I'm going to have to ask you to sit down, okay, Mr. Miranda. Yes?

DOMINGO: Mr. Chairman, could I have a few words?

WATANABE: Yes.

DOMINGO: You know, I'm glad you came up and voiced your concern. It was due, long overdue. And every time when we deal with issues we deal with the question of fairness, you know, is it fair for an individual as to what they're doing.

WATANABE: Okay, I'm not cutting you off. But so that we don't have additional testimony going on, okay, Mr. Miranda, would you kindly be seated. And then we'll try deliberate on our own and see what we, you know, what we can arrive at. Okay.

MIRANDA: Let me just state one more thing. You know, talk about Department of Transportation, you know, De Luz Trucking runs their quarry out of Ahualoa. They come to Lakeland, there's no turning lane, no pull-out lane. In five minutes, get more trucks that pull onto the Highway than my place in one week. You go to West Hawaii Concrete, it's the same

way, you know. In five minutes, I've timed it, get more trucks and cars pulling out to the highway with no turning lane or nothing than I get in one week or two weeks. Thank you.

WATANABE: Okay, Mr. Domingo, go ahead.

DOMINGO: I yield, I yield.

WATANABE: And continue.

DOMINGO: I yield to you, Mr. Chairman.

WATANABE: No, I wasn't trying to cut you off. I just, you know, it's highly unusual to have additional testimony at this point, yeah.

DOMINGO: Well, I just wanted to say that, and I'm glad that Mr. Miranda came up and he cleared, he made things more clearer for me as I look at this issue. That's it.

WATANABE: Okay, thank you. Well, I'm still hoping for suggestions if we can work this out. And I would appreciate it if we could work this out. I understand the concerns and I'm not totally in disagreement with either side. But for myself I'm convinced that Mr. Miranda understands what is being asked of him. So I'd be open to any suggestions.

RHO: Mr. Chairman.

WATANABE: Yes, Mr. Rho.

RHO: Can I ask the Director if he'll commit to the following? One, to have an inspector address the testimony provided today by the, well, provided today, within two weeks time, that's No. 1. No. 2 is -.

WATANABE: You want to come back?

RHO: No. 1 is to do the inspection within two weeks. No. 2 is that the Department provide, and I don't know how to describe that, but basically more assistance to the applicant than normally provided, like guidance, more direct guidance in the next three months. And I don't want to specify like meeting with him, or calling him up, or checking on him every other week. But I really think that the applicant needs assistance. And if the Director can agree to those two conditions, then I would be able to go along with even the original motion.

WATANABE: One year?

RHO: Even one year. I mean I wouldn't have any problem with that. But, you know, after hearing the testimony before or hearing the applicant before, actually I heard him three times now, and today, I really think that the Department needs to play a bigger role in this applicant's application. And yes we don't have manpower; yes we have all kinds of problems with the inspector not having enough, etc., etc. But I think the Director or the Planning Department needs to make an exception.

YUEN: Well, we would like to help the Commission come to a consensus on a decision today and so, yes, it can commit that we'll give the applicant additional assistance if necessary and send an inspector out within two weeks.

WATANABE: Mr. Domingo?

DOMINGO: Mr. Chairman, you know, I think it was in January they went to inspect to see if they were in compliance; and they were in compliance. After four years after the acquisition of the permit they were in compliance.

WATANABE: That's correct.

DOMINGO: Okay. And now we're going to do an inspection to see if there is -?

WATANABE: Additional violations?

DOMINGO: Yes. Thanks again for putting words in my mouth.

WATANABE: Sorry, for putting words into your mouth.

DOMINGO: If there were violations of the contract, yeah. That's what they're going to do. And I think the other issue of whether it's a junkyard or what, that's another issue altogether from what we should be concerned about.

WATANABE: Right.

DOMINGO: Okay, I just want to make that clear.

WATANABE: Yeah, it's strictly for violations and to satisfy Mr. Rho, really, that they're going to address the ten, or dozen, or whatever issues that are reflected in the minutes and indicate to him that, yes, this is proper to the zoning, not proper, whatever. Okay? And the Director has agreed to the two-week period and also agreed to provide Mr. Miranda with some additional assistance as needed; and it's my understanding that Mr. Rho has indicated he has an inclination to stick with the original one-year period. And so does anyone care to make a motion? Yes?

SIRACUSA: Well, before we get to the motion, I just wanted to say that from Mr. Miranda's previous statement just a little while ago where he was pointing out everyone else's violations, it seemed like he was just saying, well, why are you bothering with me because everyone violates also. So that doesn't sound to me like someone who was really looking to clean up his act, shall we say. I just wanted to point out as far as the Department of Transportation's letter and their requirements, we do have a standard condition that says that the applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements. So that was already in there in a sense by default, you might say. I am not prepared to make a motion.

WATANABE: Is there anyone else? Mr. Domingo?

DOMINGO: Mr. Chairman, I move for the extension of the permit that would enable the applicant to meet the requirements of the use permit.

WATANABE: Yeah, that would be with revisions to No. 2 and also the revision to No. 10. It used to be 10(D) but now it's a new No. 10, right?

DOMINGO: Yes. Yes.

WATANABE: Okay. And just for clarification, with the one year time limit?

DOMINGO: Yes.

WATANABE: Okay. That's the exact, same -.

DOMINGO: I think, Mr. Chairman, that -.

(Chair had discussion with counsel.)

WATANABE: Oh, motion to recount, or -.

YUEN: Or would be, we are also adding that the inspection be within two weeks, to make it a different motion. It should be slightly different at least from the previous motion.

WATANABE: I stand corrected. So we would add in Mr. Rho's conditions which is site inspection for violations within two weeks and special assistance as needed to ensure compliance. Okay, so we have a slightly different motion.

DOMINGO: And I think that motion expresses the concern that Mr. Rho expressed. That would be in keeping with his desires.

WATANABE: Okay, thank you.

RHO: Second.

WATANABE: We have a second. Thank you, Mr. Rho. Any further discussion? Mr. Darrow?

DARROW: Thank you, Mr. Chairman. If I could just get clarification. What I'll be doing, if it's okay with the Commission, is revising Condition No. 10 to include the previous language and also add in that the Planning Department will be conducting a site inspection of the property within two weeks of this amendment and will make efforts to assist the applicant in achieving compliance with the conditions; and then to continue with what we had before, if the applicant does not comply with the -.

WATANABE: In a timely fashion.

DARROW: Correct. Then we'll move to revocation.

WATANABE: Exactly.

DARROW: Sound okay?

WATANABE: Sounds very good.

DARROW: Okay, with that I'll take the roll call. Commissioner Domingo?

DOMINGO: Aye.

DARROW: Commissioner Rho?

RHO: Aye.

DARROW: Commissioner Ogata?

OGATA: Aye.

DARROW: Commissioner Siracusa?

SIRACUSA: Aye.

DARROW: Commissioner Woodward?

WOODWARD: Aye.

DARROW: And Mr. Chairman?

WATANABE: Aye.

DARROW: The motion passes six to zero.

WATANABE: Okay, so you're going to be informed in writing, Mr. Miranda. And I think you understand now, yeah. And if you have questions, I would highly recommend that you, you know, talk to the staff in the Planning Department. They'll try to help guide you along this process. And if there are, again, anything that you've heard of that might be offensive, I would highly recommend that you get that out. You've got two weeks, right? Okay.

SIRACUSA: Procedurally, do we now have to go back to agenda Item No. 1?

WATANABE: Exactly right. So, you're going to -.

WOODWARD: Mr. Chairman?

WATANABE: Yes.

WOODWARD: I believe the Planning Director said he would withdraw Item No. 1 if we passed Item No. 2. Is that correct?

WATANABE: That is correct, that is correct. I'm not sure if you want to take the podium, or you just withdraw here, or -?

YUEN: Well, we would withdraw the request. I don't know if that needs a motion or not.

TORIGOE: No.

YUEN: No, okay.

TORIGOE: I think basically if there are no objections from the Commission, then you can just consider it withdrawn at this point.

WATANABE: Do we, for the record, have any objections to the -? .

WOODWARD: No.

DOMINGO: No.

RHO: None.

DARROW: Commissioner Ogata?

OGATA: None.

DARROW: Commissioner Siracusa?

SIRACUSA: No.

WATANABE: None from me. Okay, thank you.

The discussion ended at 11:41 a.m.

Respectfully submitted,

Sharon M. Nomura, East Hawai'i Secretary