

BOARD OF WATER SUPPLY  
County of Maui  
Regular Meeting  
Thursday, November 29, 2007  
9:00 a.m.  
Conference Room  
Department of Liquor Control  
2145 Kaohu Street, Room 105  
Wailuku, Hawaii 96793

CHAIR ALDRIDGE: We'll call the meeting to order. For the record this is a Board of Water Supply meeting, November 29<sup>th</sup>, 2007. Attendance for the record, the members present include Kelli Myers, Marion Haller, thank you Marion, Kenneth Okamura, Michael Howden, Kui Lester and Scott Luck. Members that have been excused from the meeting include Vice Chair Carl Holmberg and Phyllis Robinson, and I am the chair of the Board, Lee Aldridge.

Announcements, are there any announcements to be made?

(silence)

CHAIR ALDRIDGE: Hearing none let's go to the approval of the minutes. We have any comments or corrections to the minutes?

(silence)

CHAIR ALDRIDGE: Well, I do.

(laughter)

MEMBER HOWDEN: Surprise.

CHAIR ALDRIDGE: Surprise.

(laughter)

MEMBER HALLER: We leave that to you.

CHAIR ALDRIDGE: Thank you. Page 3, fifth paragraph down, the sentence, "Vice Chair Aldridge stated if you have a more than", that is replaced by than. Page 5, fifth paragraph down, asked, sort of this middle of the sentence, asked if portions of those salaries which are part of a capital improvement project. So, "which" goes between "salaries" and "are". Two more. Page 9, first paragraph, fourth line down, changes then your population is not gonna dramatically. So the word "not" between "is" and "going". And, let's see, one, two, three...five. Fifth paragraph down, fourth line, opportunity has driven this planning process and not constraint. So "planning process" after "this". Finally, page 14, fourth paragraph, third line down, middle of the line, none of us will be around by then. And that's it. Thank you.

Oh, I should also, I'm sorry, on the attendance I should also note that Deputy Director Yamashiga is here, Yamashige, I'm sorry. Director Jeff Eng is at another meeting. And the other staff members include Alva Nakamura, Herb Chang, Tui Anderson.

MS. HAYASHIDA: Ellen.

CHAIR ALDRIDGE: Oh yeah, and Ellen Kraftsow. Hi Ellen. Thank you. And Corporation Counsel Ed Kushi. Alright, we'll move to the first agenda item or item, I should say, VI. appeals.

MEMBER HOWDEN: Lee, do you want a vote on the minutes?

CHAIR ALDRIDGE: I'm sorry?

MEMBER HOWDEN: Vote on the minutes? Just for fun.

CHAIR ALDRIDGE: Ohhh, thank you. Those in favor of the minutes as amended?

(a chorus of ayes.)

CHAIR ALDRIDGE: So moved. Thank you for the reminder. Gaye, is there any testimony from the...

MS. HAYASHIDA: No, just two witnesses for the appellant.

CHAIR ALDRIDGE: Ok, great, thank you.

*APPEAL HEARING.*

Alright we'll move on to the appeal. I might say this is the, I believe, the first contested case appeal that this board has heard as board members, so we're all in a new process together. And I have a procedure that I'm to follow that I, that has been prepared by Corporation Counsel. What I intend to do is just go over this procedure so that we're all aware of how this process is gonna take place. And this is for not only the purposes of informing the appellant herself but also the other board members as well. And I will certainly try to, to enforce following these procedures.

This is an appeal by the appellant Cheryl Medeiros of the Director of Water Supply and for the purpose of Director of Water Supply I'll just be saying Director from now on or Department. Appeal of the Director of Water Supply's written decision or order dated May 22, 2007, which decision or order had denied her proposal for water services, Appeal No. 07-02.

The parties to this appeal are the appellant Ms. Cheryl Medeiros and your husband?

MS. MEDEIROS: Yes.

CHAIR ALDRIDGE: I'm sorry. Joe?

MR. MEDEIROS: Joseph. Joe.

CHAIR ALDRIDGE: Joe. And the Department of Water Supply or the Department. For the record, Ms. Secretary could you please confirm that there have been no petition to intervene in this appeal?

MS. HAYASHIDA: I have not received any.

CHAIR ALDRIDGE: Ok. Thank you. So we'll move on with the appeal. Ms. Medeiros and Mr. Medeiros, do you have legal counsel to represent yourself in this matter?

(inaudible)

CHAIR ALDRIDGE: Are you aware that you could...

MS. MEDEIROS: Yes.

CHAIR ALDRIDGE: ...if you chose to. Alright. And so you wish to proceed without...

MS.MEDEIROS: Right.

CHAIR ALDRIDGE: Alright. As far as the Department, Director Yamashige, are you having representation? Or are you gonna represent the...

Mr. Yamashige: (inaudible)

CHAIR ALDRIDGE: You will. Ok. I'll go over what the procedures are.

This is the order we'll follow. First, we'll allow the appellant to make an opening, a brief opening statement if they wish to, and I'm gonna give you three minutes to do this. This is just an opening statement. It's an outline of what your appeal is about or whatever you want to say about it within the first three minutes. Following that, the Department will have the opportunity to make a brief opening statement. Again, I'm gonna limit it to three minutes, just in the interest of time. After their opening statement we'll go back to the appellant and you can then proceed with a direct examination of witnesses. You can call yourself as a witness. And you have other witnesses that you're gonna call. And you can directly examine their testimony asking to testify for this board. When you're through with the testimony of the individual witness, the Department will have an opportunity to cross-examine that witness, and to ask questions of that same witness. Following the completion of that cross-examination the board members can ask questions of that same witness. And we'll go through this for every witness that you call to testify. I almost, I almost forgot something, I did. Each witness will have to be sworn in. They have to swear an oath that they're telling the truth. Then after the last witness testimony you can submit as part of the evidence any written documentation that you wish to submit. Might include exhibits that already have been provided or if there is anything else you wish to provide as paper documentation to support your case, you can do that at that time. Mark them as exhibits and it is up to the chair to accept or reject them. But, no reason for me to say that we wouldn't.

Alright, we've gone through the appellant's witnesses, cross-examination, board questioning, and presentation of written documentation, we then proceed with the Department calling witnesses. The Department can call witnesses. They have to be sworn in. They'll testify. Following their, following each witness testifying, the appellant has an opportunity to cross-examine the witness. Following the cross-examination by the appellant of the Department's witnesses, the board members can ask questions of the witness. And finally after all the witnesses have testified, been cross-examined and board members asked questions, the Department can also submit written evidence, documentary evidence into the record as well.

Now, we come to the rebuttal by the appellant. You can now ask for either the same witnesses or new witnesses to rebut all of the arguments presented by the Department. Now I am gonna give you a test after this.

(laughter)

CHAIR ALDRIDGE: No, don't worry about that. Now, so we go through the same process. Every rebuttal witness that you call can be cross-examined by the Department and asked questions by the board members and then again you can produce more documents in rebuttal if you have further documents to present as documentary evidence. Then after that's been done, the appellant can make its final argument before the board. This is sort of like the opening statement but I'm not gonna limit it to 3 minutes, but do be expeditious please. Following your final statement the Department will make a final argument. And following that, the appellant can make a final argument as rebuttal to the Department's argument. This is much more formal than the process we normally we've encountered.

Alright, there's a couple of rules and regulations that I need to cite before we even begin. And that is that in accordance with section 16-102-68 of the Water Supply rules, a proceeding such as this appeal shall stand submitted for decision by the board at our next duly noticed meeting, which in this case will be on December 27<sup>th</sup>, 2007 or January 24<sup>th</sup>, 2007. Any party may file a post hearing written brief in support of its position, as well as proposed findings of fact, conclusions of law, and decision and order. These documents need to be received by the board's secretary, Gaye Hayashida, no later than 14 calendars before the next scheduled board meeting. So if the next scheduled board meeting is December 27<sup>th</sup>, we have to receive documents from the appellant or the Department by the 13<sup>th</sup>. Also by this same rule the Board shall render its decision and order within 60 days of the date of this hearing, or the continued date of this hearing if in fact it had to be continued. So the board has sixty

days to complete its decision. Also in accordance to section 14.11.040 of the Maui County Codes, the standards of appeal that apply to this matter shall be that the board, by majority vote of its entire voting membership, may affirm the director's decision or order or may reverse or modify the director's decision or order, if the board finds that the substantial rights of the Appellant may have been prejudiced by the director's decision or order. And these are conditioned on three points. 1. that the decision was based on a clearly erroneous finding of material fact, improper procedure, or erroneous application of the law; or 2. arbitrary or capricious in its application; or 3. a clearly unwarranted abuse of discretion. Those are the 3 conditions upon which the board can make its decision. Not whether or not they feel good about it or feel bad about it but these items of law are the requirements.

Also, the appeals process pursuant to section 92-06, Hawaii Revised Statutes is not subject to the requirements of Hawaii Sunshine Law, meaning that if we have to re-schedule to continue this meeting it doesn't necessarily require the 2 weeks notice period, is that correct?

MS. HAYASHIDA: It doesn't have to be agendized

CHAIR ALDRIDGE: It doesn't have to be agendized. Lastly the board has to invoke the exclusionary witness rule and will request all witnesses to wait outside of this hearing room until it is their turn to testify. Now that applies both to your two additional witnesses as well as any Department witnesses. And that's a rule we have to operate by. So, Ms. Medeiros and your husband, you are both appellants you can stay of course but your witnesses... (laughter)... unless of course you wish not to. Your witnesses have to wait until you call them. They have to wait outside. And that applies also to the Department witnesses, staff members that they may wish to call as witnesses.

Let's see, is there anything else? Oh, if we are not, if the proceedings have not been concluded by 11:00 a.m. I'm gonna call for a recess, a short break, ten minutes. We'll come back, we'll adjourn, I mean we'll return to the meeting process. If we are not concluded, if the process isn't completed by 12:45, I'm gonna have to call an end to the meeting and adjourn and continue the hearing to another date, whether it's the next board meeting or the board meeting after.

MS. HAYASHIDA: Technically you gonna have to not adjourn, you gonna have to call a recess...

CHAIR ALDRIDGE: Call a recess...

MS HAYASHIDA: Until our next meeting...

CHAIR ALDRIDGE: Ok.

MS HAYASHIDA: Until another day can...

CHAIR ALDRIDGE: Until the following meeting?

MS. HAYASHIDA: Yeah, cannot adjourn.

CHAIR ALDRIDGE: Well, that's number four. I'm keeping count of all the mistakes I'm making.

MEMBER LUCK: We're all learning.

(laughter)

CHAIR ALDRIDGE: But, and I think I explained that to Ms. Medeiros earlier we only have this room until 1:00 p.m., somebody else will be taking over the room for another meeting. And we do need to clear it out and clean it up, so we have to be out of here by 12:45, ok?

So, with all that, before we proceed do you have any questions regarding the procedures?

MR. MEDEIROS: Can you read that over one more time?

(laughter)

MEMBER HALLER: I do, Mr. Chair.

CHAIR ALDRIDGE: Yes.

MEMBER HALLER: Is it, are these open to the public?

CHAIR ALDRIDGE: The hearing is not open to the public. Do I understand it correctly? I'll ask Corporation Counsel.

MR. KUSHI: Correction. It is a meeting that can be open to the public. The Board by a vote can close the hearing. But be careful about the witnesses. I would suggest and advise leave it open to the public. When you do, when this hearing, the procedures done and you deliberate you may choose to close the hearing and you'll deliberate in executive session.

MR. YAMASHIGE: I have a question Mr. Chair. Engineering Division will be presenting this, are they considered witnesses or are they considered staff?

(inaudible)

MR. KUSHI: Um there. See, that's the problem with the Department.

(laughter)

MR. YAMASHIGE: Come on.

MR. KUSHI: Since you don't have legal counsel and I'm legal counsel to the Board not to the Department today, ok. Since you don't have a representative, Engineering is gonna be the presentation, they're the witnesses, they'll be sworn in and you represent the Director. You represent the person who made that decision. You are deemed a party. The staff engineers when they do their presentation I consider them witnesses.

MR. YAMASHIGE: So the opening statement cannot be done by staff?

MR. KUSHI: Can.

CHAIR ALDRIDGE: It can or cannot?

MR. KUSHI: It can. A hybrid sort, because they're witnesses.

MEMBER LUCK: I have a question as well, actually maybe a couple. The voting takes place at the next meeting, correct?

MR. KUSHI: Yes, your rules for some reason which were done several years back, stated that you cannot make a decision until your next scheduled meeting.

MEMBER LUCK: Is it possible to vote in abstentia?

MR. KUSHI: No.

MEMBER LUCK: Ok. Also what would happen if there's a deadlock vote, we have an even number of people?

MR. KUSHI: There, you need five to go one way or the other.

MEMBER LUCK: Ok.

MR. KUSHI: You don't have five then the appeal stands, I mean, the appeal is not determined.

MEMBER LUCK: Ok.

CHAIR ALDRIDGE: And just to clarify that for the appellant, it requires a majority of the entire Board. The entire Board is nine members, so it requires five, even if there are not nine members present.

MR. KUSHI: Now, Mr. Chair, for clarification, you got two people missing here.

CHAIR ALDRIDGE: Carl Holmberg and Phyllis Robinson.

MR. KUSHI: Right, so even at the next meeting if they show up they will not be considered part of your deliberation.

MEMBER HOWDEN: But why? Why, Ed?

MR. KUSHI: Because they haven't been at this meeting.

MEMBER HOWDEN: Can't they review the tapes?

MR. KUSHI: If they review, if they want to, if they insist upon voting there's a whole new procedure that has to be done.

MEMBER HOWDEN: They can't just review the tape then?

MR. KUSHI: No. Then we have to issue proposed findings of fact, conclusions of law, the Department will have an opportunity to make exceptions to that, the appellant would have to do exceptions for that and because you have a sixty day time limit, I strongly advise you not to include them. Because I don't think we can do it within sixty days.

MEMBER OKAMURA: Question. Do we have to ask for deliberation or to discuss this in private or whatever, do we have to ask for an executive session? Is that like a usual procedure to do that before a hearing to deliberate in executive session.

MR. KUSHI: Before the hearing, or after...

MEMBER OKAMURA: After the hearing, before the decision is made. Do they have a discussion period amongst the board?

MR. KUSHI: That's deliberation.

MEMBER OKAMURA: Would it have to be done in executive session?

MR. KUSHI: It doesn't have to, but it can be.

MEMBER LUCK: Mr. Chair, I have one more question. Since we know that I'm not gonna be attending the next meeting on the date it is scheduled and we're down to six people who are potentially left, I wonder if we should see if there's any one else who might not be able to attend that date, 'cause if we end up with four then.

MR. KUSHI: Ok. If you're certain that you are not gonna be here on the 27<sup>th</sup> I suggest you schedule a special meeting, suggest that the board schedule a special meeting so all of you can be present just to deliberate on this item. Doesn't have to be at your next regularly scheduled meeting, just has to be a duly noticed meeting.

MEMBER LUCK: Everyone's looking at me.

(laughter)

MEMBER LESTER: You're on the spot.

MEMBER LUCK: I know I am. No, I'm just wondering if, if that would be even another reason to potentially re-schedule the regular meeting so we wouldn't have to have a special session.

CHAIR ALDRIDGE: Well, we would still need to have a special session otherwise we would have no (inaudible) December then.

MEMBER LUCK: Unless we move it the other way, right?

CHAIR ALDRIDGE: So we either move this, we have a special meeting before December 27<sup>th</sup> or we end up moving the meeting of December 27<sup>th</sup> and that becomes the continued hearing, but either way we would have two meetings.

MEMBER LUCK: Ok.

CHAIR ALDRIDGE: Kui, did you have a question?

MEMBER LESTER: No.

CHAIR ALDRIDGE: Are there any more questions?

MEMBER HOWDEN: I'd just like to comment, I think that in spite of the legal difficulties I think for a case of, you know, an appeal of this significance which raises foundational issues in terms of the Department's relations to the public that it would, we would do well to have Carl and Phyllis on board. You know, in spite of whatever the difficulties might be to bring them on board for this appeal.

CHAIR ALDRIDGE: Your comments accepted, we'll see what we can do. That's all assuming that we don't complete our deliberations today.

MEMBER HALLER: Not really. We have to decide that.

CHAIR ALDRIDGE: Well we will have to decide that after...Well.

MEMBER OKAMURA: At the next meeting we have to make a decision, right? Not at this...

MEMBER HALLER: No, we're talking about involving Phyllis and Carl.

MEMBER OKAMURA: Yeah, but even if they're not involved we have to make, we cannot decide today anyway.

MEMBER HALLER: No, the question is about deciding when, when do we make a decision whether or not to involve Carl and Phyllis. Do we do that now or do we do that after the deliberations. Seems to me almost a question we want to address now.

CHAIR ALDRIDGE: If you wanted to make that decision now, you would have to move the process where you'd have to have them involved in the process or we have to ask (inaudible) exceptions.

MEMBER HALLER: We do this.

CHAIR ALDRIDGE: Could you go back over that, Ed?

MR. KUSHI: Yeah, ok. If you want those who are not here to be involved, the law, the case law states that there is a separate procedure. After this is finished, the Department, the Board, meaning the board secretary would

have to draft proposed findings, conclusions and a decision and order. Give that copy, proposal to each party. Then each party would have an opportunity to do, to do comments, exceptions and submit their own proposed findings to the board's proposed findings. And it is a back and forth, ok. The reason behind that is the people who are not here would then have a better opportunity to find out what went on. In addition to listening to the tape if it can't be transcribed. If you don't include them you have seven of you here you can reach a majority. If you don't include them then you can go on and deliberate at your next meeting with proposed findings, conclusions and order, if they want. As you know, I made the script, they may submit. So that, I know it's complicated. This your first shot at it but it's a different situation if all of you are gonna participate.

MEMBER HALLER: My question, Mr. Chair, is just a what if scenario, we go ahead today at our next meeting we have Carl, we're all nine of us, Carl and Phyllis are present and are they able to participate in any further discussion but not vote.

MR. KUSHI: Not if they are gonna, if they're gonna not vote, they cannot participate. They can listen but they can't, I would suggest they don't say anything. Because they haven't been at this hearing, they don't know what the hell going, what went on.

MEMBER HOWDEN: Yeah. No I mean this is not a manini thing. I mean this is not just...

MR. KUSHI: No but this is the law, Member Howden. I'm advising you what the law is.

MEMBER HOWDEN: No, but, but I'm just saying that, that if, if it's, it's the intention of the board to have full representation of the board members, which I think would be very valuable in this case, then we ought to see a way to do that whether we want a recess this now and deal with it when we have Carl and Phyllis here too and hopefully Scott.

MEMBER HALLER: Do you want to make a motion? See if it flies?

CHAIR ALDRIDGE: Well, before he makes a motion I'd like to indicate that the appellant has waited a long time for this hearing. And rather than us just deliberating whether or not we should have all members present, I think we should also see if this reasonable in terms of their timetable.

MR. MEDEIROS: That puts us in a, in a...

CHAIR ALDRIDGE: In a difficult.

MR. MEDEIROS: In a difficult, yeah, because I'm taking off work today and who's to say that when we come to...

CHAIR ALDRIDGE: The next meeting.

MR. MEDEIROS: December 27<sup>th</sup> somebody else isn't gonna be here, or January 24<sup>th</sup>...

CHAIR ALDRIDGE: Absolutely.

MR. MEDEIROS: And then I'm back to square one. This is pretty much the problem we've been having with the Department of Water Supply. We just can't our issues on the same page.

CHAIR ALDRIDGE: I think my comment, Michael, is that it would be nice if all of us could be present but there's no guaranty that even if we re-schedule this to a special meeting that somebody won't end up sick and not be able to make it.

MEMBER HOWDEN: No, I know that.

MR. MEDEIROS: The, the part for me, excuse me. But the part for me that kinda is disappointing, the other 2 people might be more sympathetic to our position and that would be hurtful in, in our appeal here. I'm just hoping that, you know, we're able to convince 'cause we have less to people to convince now, yeah? I don't know how,



how it's gonna come out when this is all said and done. But I'd sure like more minds all looking at our situation and helping us solve our problem. But we're in a predicament.

MEMBER HOWDEN: Yeah, I acknowledge that you are in that sense. But because the issues raised by this appeal are so complex and so deep that for myself I think it would be better to have, if we can, to have closer to a full board. That's just simply my opinion.

MR. KUSHI: Mr. Chair, if I may. You know, you've gone fifteen minutes on this issue alone. I would suggest that, proceed with the hearing and during one of the recesses before we get back, call an executive session to discuss this matter with your attorney. And then hash it out there.

CHAIR ALDRIDGE: Right.

MR. KUSHI: Determine your procedure or continue on with it.

CHAIR ALDRIDGE: I, I agree. Let's proceed with the rest. Alright, the appellant may make an opening statement. Ms. Medeiros, are you gonna...

MR. MEDEIROS: I am. First of all, you know, I know on the board, Cheryl and I both dreaded to come. Appreciate you guys time. I know this is all voluntary so I'm gonna try be very controlled in, in my feelings 'cause this has been a, a long drawn out process and hopefully we can bring it to an end.

Cheryl and I have requested for water meters back in 2004 and it's been an ongoing battle since then. We have tried everything we possibly can to meet the requirements and have not even got past the first step. And we'll, I'm sure most of you have gone over the letters and what not. We've been denied access to other people's property to put a tank on, which I find even if I was approached as landowner somebody asked to put their tank on my property I would most likely have the same issue.

Ok, you taking away valuable land to just put your tank. This is our tank. This is ours. We have gone back and forth, letters back and forth, met with different people, called different people, done with the state and so on and so forth, and have gone nowhere. We've asked the Department for assistance, guidance, help us and they're the bank that says no, where they just don't help you. That's it. Here's what we, and we don't meet your standards. It came down to too bad, so sad. You know, there's nothing to help us. We came up with a proposal asking them to look at and again it was no, doesn't meet the standards. So again we're back to ground zero.

We started in 2004, we're at the ending of 2007. I'm fifty years old. I want to get this done before I die. The way it's going I don't see it even getting done before my grandchildren, and I don't even, they're not even born yet. So it scares me that it takes this long to get water. I don't, and the funny part is they never said that we couldn't have water, it's how we're gonna get it to our property. And we suggested in our proposal that we would and we've drawn out an outline and we're willing to work with them, but there's nothing. They have offered us nothing but the answer no. That's all they've given us. And now we're asking for your help. We're just local people trying, land that was given to us, we inherited, trying to make it so that we could eventually give it to our kids and we have hit that, that wall. And we're not going anywhere. So I'm asking for you guys help. We have nothing else to do. We certainly don't want to bring out a lawsuit and go through all that kind of stuff. We don't want to go that direction. And as you can see, the time period, how long we've been patient and trying work this out with the Department. And nothing's gone on. This is already well over three years. So that's why we're here today. Just asking for your guys help. Understand what's it like. We're not big money people. We're just simple local folks and we want, we're asking for your help. We'll get into more detail I guess as we go along, but that's my appeal to you and that's why we're here. Thank you.

CHAIR ALDRIDGE: Thank you, Mr. Medeiros.

MR. KUSHI: Mr. Chair, for the record you should ask him how many witnesses and who are they.

CHAIR ALDRIDGE: Alright. You heard the question?

MR. MEDEIROS: Yes. I have two, Lisa Starr and is it Allison?

MS. FELDMAN: Allison. Allison. Allison Feldman.

MR. KUSHI: Allison?

MS. FELDMAN: Feldman, and Lisa Starr.

MR. KUSHI: and Lisa Starr. Ok.

CHAIR ALDRIDGE: Will you testify yourself?

MR. MEDEIROS: Definitely. You guys can ask all you want and I'll tell whatever...

CHAIR ALDRIDGE: (inaudible)...witnesses. Department, opening statement?

MR. YAMASHIGE: This would be interesting because we had intended that Engineering Division's engineer Herbert Chang will do, presenting this. So does he present his opening statement and then be removed as a witness? That was my earlier question.

Mr. KUSHI: Ok. Mr. Chair, each party may do an opening statement. You don't have to. That being said, if you still want to and you gonna have one of your witnesses do an opening statement, I would advise the Chair to swear him in right now. If you waive your right to do an opening statement, that's fine. And Mr. Chang comes to back to present the case he'll be sworn in as a witness also.

MR. YAMASHIGE: I think we should (inaudible) opening statement.

CHAIR ALDRIDGE: (inaudible) Mr. Chang, will you please step up. Well, I guess you can just sit closer.

MR. CHANG: Standing (inaudible)

MEMBER HOWDEN: When do we apply the exclusionary rule?

MR. KUSHI: After the opening statements.

MEMBER HOWDEN: After the opening statements.

CHAIR ALDRIDGE: After the opening statements. Mr. Chang, do you solemnly swear or affirm that the testimony you are about to give before this board in connection with this case will be the truth, the whole truth and nothing but the truth?

MR. CHANG: I do.

CHAIR ALDRIDGE: Please make your opening statement.

MR. CHANG: In 1993 an application for a subdivision was submitted to the Department of Public Works. The subdivision would create three lots containing approximately six, two six, two six acre lots, one thirteen acre lot. Unfortunately, at that time two water meters that were needed for the subdivision were not available for the project. And so what happened, the Department defers the action on this type of subdivision, where we can't, there's no water meter therefore we deferred action. We can't do anything 'cause we can't approve it, 'cause there is no water meter available. Given this, the subdividers decided to go under a different procedure, under the Department's rules which would allow them to get final approval. This would be the entering into an agreement authorizing waiver for subdivision water systems. It's not really a waiver, it's a deferral. I don't know why they call it a waiver. It defers the water system improvements that, for fire protection and water service until such time that the members want water meters, want to built, coming for building permits. So that, agreement was entered until 1999. On March, excuse me. In 2003 the Department determined that there was water

available for the, this subdivision. So, two water meters were offered to the subdividers. For the first, anyway, the two, I think one of the reasons they denied the meters was that couldn't afford to do the improvements. I'm just guessing on that. Anyway, the bottom line goes, the meters were not accepted in 2003. In 2004, Ms. Medeiros contacted the Department saying she was an owner, why was she not notified. So the Department took that into consideration and felt there was fair to offer the meters again. And she did accept the meters, two meters for the subdivision with the knowledge that she'd liked to do certain improvements for fire protection, payment of fees and some other items. So the meters were accepted and in the situation now where they need to do, I guess like was mentioned earlier the stumbling block is to do the improvements that would meet the Department's standards. On Department side, all subdivision are required by the Department to construct certain water system improvements to provide adequate water service for fire protection and for domestic irrigation use. The rules and regs, section 2, covers this requirements. And essentially that's it. The Department has its rules and regs to follow and every subdivider needs to comply with these requirements, it's the rules and regs of the Department.

MR. KUSHI: Mr. Chair, you should ask the Department how many and who would be the witnesses.

CHAIR ALDRIDGE: (inaudible)

MR. YAMASHIGE: Thank you, Mr. Chair. We have one witness, Mr. Herb Chang.

MR. KUSHI: He's gonna do the case? No other witnesses? Alva's not gonna testify?

MR. NAKAMURA: Least I have one comment that I'd like to make if I could.

CHAIR ALDRIDGE: Then he has to be a witness.

MR. YAMASHIGE: Then we'll call Mr. Nakamura as a witness also.

MR. KUSHI: Ok. Ok. Mr. Chair, if, before you proceed all witnesses should get out of the room.

CHAIR ALDRIDGE: Right.

MR. KUSHI: Until you call them. You shouldn't have said anything Alva.

(laughter)

CHAIR ALDRIDGE: We'll have to ask for the witnesses to move outside. Ms. Medeiros, are you, who's the first witness you're gonna call. We'll have them remain if it's easier or...are you going to testify first? Ok then we'll have to ask your witnesses to step outside and also Herb and Alva.

MR. KUSHI: Herb...Herb can stay 'cause he'll be the party presenting the, correct?

MR. YAMASHIGE: Should we be there?

CHAIR ALDRIDGE: What about the other witnesses.

MR. KUSHI: They're not witnesses.

MR. NAKAMURA: I'm gonna go.

MR. KUSHI: But if I was gonna testify as a witness.

CHAIR ALDRIDGE: It's only the witnesses that have leave?

MR. KUSHI: You should swear in the parties 'cause they'll be testifying.

CHAIR ALDRIDGE: I'm not sure what I'd do without Corporation Counsel here.

MR. KUSHI: You'll get it.

(laughter)

CHAIR ALDRIDGE: You better not be sick.

(laughter)

CHAIR ALDRIDGE: Let's just swear both of you in at the same. I assume that you both (inaudible) testimony.

Do you swear solemnly swear or affirm that the testimony you are about to give before this board in connection with this case will be the truth, the whole truth and nothing but the truth?

MR. MEDEIROS: I do.

CHAIR ALDRIDGE: She kept nodding head, she has to...thank you. You may proceed

MR. MEDEIROS: Where do we go from this point? Just tell me what, how it broke down as far the events or would we just make our plea as...

MR. KUSHI: Mr. Chair...

CHAIR ALDRIDGE: I would, I would suggest that you try to make the best case you can for...I don't want to put words in your mouth, but I want to suggest that you tell us how you've tried to comply with the Department's requirements for water service and how, what you've done in respect of trying to get a water storage tank or other conditions that are required to be met, and what has transpired and why you think it's not possible, apparently because you're coming to appeal that.

MR. MEDEIROS: Can I give a little bit of history first?

CHAIR ALDRIDGE: Absolutely.

MR. MEDEIROS: Ok, into the real detail. That land was subdivided, and my brother-in-law owned one piece and Cheryl's uncle owned another piece; so there three different owners with three different tax keys. Ok. When this water meters were offered, there was offered only to my brother-in-law and uncle and not to us. So, we had to find out eventually that we never did get it. That we had to apply for these meters that's what Mr. Eng, I mean Mr. Chang, was replying in his statement. When we did that we were already behind the eight ball. Obviously, the Department didn't even recognize us as an owner. When we get our application it's for two meters. And, when I talked to my wife we had 30 days to make a decision and this all came about really quickly and I was kinda very happy that we were gonna get two meters. As, so we did. We put down our \$6,700 that we don't have and we put, got ahold of our meters. As time goes on, I find, lack of doing my homework, that's only reserving the meters. I forfeit 'em, that money, if I don't meet the requirements and that's why, the reason, part of the reason is to save my money here as well. Come to find out the two meters, only one is mine. I purchased the meter for my neighbor there, I never met, that bought the other lot from my uncle. That was never clear to me. So, I owning two meters that I found out later that I'm only gonna get one but you have reservations for two. So you guys can help me figure out that one as well. So, the frustration starts, we continue on even with that, we continue on. Our first hurdle was the location of the tank. We're not even getting into the purchase of the tank or the height, just location. It has to be off site, off our property. The people above us? No. The State? No. And we've asked what can we do next? Well, that's too bad. That's, we really can't help you. We made a proposal and again we did this the other day and we outlined again. That we'd be willing to go to the civil engineers and that I think was in exhibit K, yeah K, that we made a proposal that we would be willing to go work with the civil engineers, the Fire Department, to meet whatever requirements that the Department wants. Is it how many gallons per minute and whatever the Fire Department as far as sprinklers or whatever amount of pressure they want. And we'll work with the civil engineers and we'll come back with another proposal. Again, was denied. No, you don't meet our standards. Why? It's just no. And we keep hitting this wall. And the Department has become, it's not user, it's

not user friendly. Nobody's helping us. It's just like, hey, you come here and they just close the door again. And all we're asking for is somebody to hear out, give us an opportunity. And I don't think the question is, are the Medeiros' gonna drain the transmission line. I don't think that's the issue here. It's how we're gonna get the water up there. And we're saying, hey, we'll do that. Just give us a chance, tell us what your, your standards are. How much water do we have to get up there and we'll come back with a plan. K says our proposal and B was the denial. So we're right back to, who's gonna listen to us? And then we find out after we've gone through the denial, thanks to Gaye, that was telling you guys can appeal. And this is why we are here today. Now the detail parts, Cheryl's been doing all, as you can see every letter was, from Cheryl, going back and forth to the Water Department. It's just very frustrating. I, all we want is water. Our land has no value whatsoever. I can't, I own horses, I have to lease out. I have to lease property so I can raise my horses and my other animals. And I have six acres I can't use because I have no water. You know, we have animals, we raise animals and I can't even put 'em in our property because I have no water. So, this is my plea to you and again, we're willing to work with the Department. The Department seems to shut the door down, that's it, sorry we can't help you. Nobody will step up. There had, and I don't want to down the whole department because there has been some very good people that we have met that have been willing to help. But there has been a few that have just said no, doesn't meet the standards and the letters are here. Do you have anything to say?

MS MEDEIROS: I just wanted to mention we, we almost missed the chance to even have this appeal. We didn't even know there was thirty days. We happen to be at the County office, we got so frustrated being there we went to go see if we could have an appeal. And thank goodness Gaye said you got thirty days and I broke out in sweat like, Oh God, when was my last letter to the director. Was it within thirty days? Rushed home, I noticed I had four days left. And I started typing and got that letter and did whatever I could so I could make it. And I mean even that we almost missed out. They would have said, well you missed thirty days, you can't even have an appeal now. We wouldn't even have the opportunity, opportunity to even be here if, and that thirty days wasn't even mentioned, thank god I went to see Gaye and she told me. So it's like we would've not even have this opportunity.

MR. MEDEIROS: To make clear to you folks, our intention of the land at one time we totally gave up and we were gonna sell. We just, we wanted to keep the land but we just were, just so frustrated we wanted to sell it and just be done with it. But we have two kids both going in their twenties and as you can see how long this takes we don't see us ever going up there and living on the property. But we would certainly like to give it to our kids and start them off and that's, we're not looking to build a millionaire subdivision. We have no intention of that. It's basically at this point for our kids; that's it. And that's all we're asking for, for just asking for water. It's a simple plea. It shouldn't take that long. All I'm, all I'm asking, look at our proposal, give us a chance, we'll meet whatever, we'll try to meet, make it attainable, make it somewhat affordable for us, we're just local people. That's all we're asking for. We're not asking you guys to take the water up to us, we're just, make it so that we can do it. That we can attain this. I don't think we're asking a whole lot.

MS. MEDEIROS: It's basically what we're asking is if we could have a meter placed on the transmission line and we will work with whatever department we have to, to get it up to our property, to meet whatever requirements we have set forth by the other departments.

MR. MEDEIROS: That being the Fire Department and the water, Water Department to meet reasonable standards.

MS MEDEIROS: I also wanted to bring up, on the last letter that was mailed to us on November 20<sup>th</sup>, out of the Water Department, because, when they told us to get an off-site tank, they told us to seek people above us. We went to see the Marterie's which was in here that was denied. We also went see DLNR and we asked them the State, they said that that property was gonna be auctioned off in the future and it would just decrease the values, so they would not allow us to. The letter on November 20<sup>th</sup> states in there that we did, I guess there was another one they that they found, another tax key number 66, that we should try and approach. So they still want us to go and chase this and just to let you know that I have talked to DLNR and they do include the tax key 66 as being, and I the e-mail from him because it was such a short notice after this letter came, that he will not allow it, it's also included, 66 as being the state property that he will deny a tank being placed on.

CHAIR ALDRIDGE: That's the end of your testimony, I'll ask the Department if they wish to cross-examine.

MR. CHANG: Yaah.

CHAIR ALDRIDGE: Proceed.

MR. CHANG: Back in 1993, I think Cheryl you were one of the original app...

MS. MEDEIROS: I say yes.

MR. CHANG: You was the engineer that you worked with at that time back in '93?

MS MEDEIROS: I believe, actually I should say it was more my parents, I think in the '93's, in those years. But I believe the paperwork shows Otomo Engineering.

MR. CHANG: Oh. If you can answer this next question I can, how involved you were the process. In, I think it was two thousand...Otomo sent us a letter I think it was 2003? 4? Maybe in 1990, when he switched from, when the family decided to go with the 216 authorization waiver. My question is that, at that particular time was, did the family understand what it was all about, entering into this family agreement that would allow the subdivision to proceed to separate the 3, as far as my question, more specifically is, were they aware of incurring these water system improvements, what improvements were the physical improvements being referred?

MS. MEDEIROS: I can't speak for them obviously because I wasn't there, I don't really know what they know, I just that the Department told us that for my mom and her sister, for us to get it subdivided one big piece of really 28 acres, to get it subdivided we have to sign this agreement. The Department asked, this was the only way we had no option. We had eleven or twelve people whatever it was, all together and obviously we when you have two families on one property it just becomes a big headache. You know, so the best thing was to do, divide my mom and her sister's portion and that's when the county said you need to sign this agreement. And that's what we had to sign to subdivide. If not we would be one big piece and probably could not move forward with one big piece. So I guess when you look at the outcome that's what they did. They subdivided and signed that agreement. I think basically that they had no options.

MR. CHANG: Can I ask the Corporation Counsel something? I don't know if it is appropriate that's why, what I want, what I want to respond. If the statements weren't exactly correct in the eyes of the Department, can I just say something or just, do I have a chance later on?

MR. KUSHI: Mr. Chair.

CHAIR ALDRIDGE: Well, we'll be calling witnesses from the Department after this cross-examination so if there is a statement to be made by the Department I would presume it would be the witnesses of the Department to give the (inaudible).

MR. KUSHI: Mr. Chair, if I may, I would advise the Department to do it when your case comes up. You're, you're just asking questions of the testimony.

CHAIR ALDRIDGE: Any further questions?

MR. CHANG: Yes. Now that the other two properties of the three have been sold to non-family members, what are their roles in trying to help your family, your lot to obtain water meters?

MR. MEDEIROS: We don't, we haven't even met with, I don't even know who even. I know his name. I haven't even met the other landowner. And the other landowner is...

MS. MEDEIROS: Allison.

MR. MEDEIROS: Allison.

MR. CHANG: Have they expressed any willingness to help with the infrastructure and building?

MS. MEDEIROS: Ms. Feldman did. And I believe that's what she'll say. She's testifying...

MR. MEDEIROS: I, I think she is strapped as well as we are.

MR. CHANG: So she, she aware of the restrictions on water meter approvals and building permits that also affects her property as well as yours?

MS. MEDEIROS: Yes.

MR. CHANG: So pretty much the statement needs corrected which she can't do anything with her property until all these improvements are done?

MS. MEDEIROS: That's what you folks let her say, that nothing can be done unless all three parties.

MR. CHANG: She understands, yeah?

MS. MEDEIROS: Yes, she has the paperwork. I believe she does.

MR CHANG: In two thousand...we sent the letter to Mr. Medeiros in 2004, in that letter stated that water system improvements for fire protection and water service needed to be done as part of the conditions of obtaining the two water meters, yeah. Were you aware of what exactly the Department wanted and what was your understanding at that time, what would be needed?

MS. MEDEIROS: What we needed, we had the...you had the requirements there, we read it; we understood it. We tried to comply with the first requirement and this is where we are now. We can't even get past the first one. So we did know that we have to get an off-site location for the tank. So we're here now, we tried to comply with the first one and we're stuck.

MR. CHANG: Not only did you also know of the other requirements like booster pumps...

MS MEDEIROS: Yes, transmission lines, we do know that.

MR. CHANG: How much money at that time were you willing to spend for these improvements?

MS. MEDEIROS: I can't really say how much money...

MR. MEDEIROS: We don't, we didn't even know what the cost is, we really don't.

MS. MEDEIROS: We're trying to work forward.

MR. MEDEIROS: We were just trying to figure out how to even get started. We're just trying to figure out how to do it. I have, we've been quoted quite a, quite a few different prices, yeah. Again, though I, you know, what you're telling us, like you're combining us altogether, the other owners. We're just here representing ourselves. Ok? Just our family not, I'm not talking about Chevalier, I'm not talking about, is it Phil...

MS. MEDEIROS: Feldman.

MR. MEDEIROS: Feldman. I'm not talking about any of them. What we're concerned about is us. You know, if you look at it, we're, we're just trying to get water for our lot. That's all we're looking at. Ok. You're looking at building a big tank to care of all the other...

MS. MEDEIROS: Landowners.

MR. MEDEIROS: Lots, on either side of us. That's not what, I understand when we signed, when we applied for that meter we had thirty days to make the decision, otherwise you go back to the end of the list. So we're rushing

trying to figure out how we're gonna do this. But if we don't sign up and don't apply for it, you're off the list. But it says also you got two years to figure it out. But then there's the other catch, if in that two years you don't do it we'll give you an extension but if you don't you forfeit that money. So, we're, you guys got us tied. Everywhere we go we hit another wall, you hit another wall. Well, I got, can I ask a question of him?

MR. KUSHI: No. Mr. Chair.

CHAIR ALDRIDGE: You'll have an opportunity to do that when I call them as a witness.

MR. MEDEIROS: Ok, ok. I just bring up stuff.

MS. MEDEIROS: Write it down.

CHAIR ALDRIDGE: Any further questions?

MR. CHANG: Just one last question. So, tell me if you understand the, what the Department's standing on this is that when this agreement was entered to, both the 216 deferral, just the 216 agreement that doesn't matter who puts in the improvements, could be a neighbor that does the improvements, could be you or a joint venture. All those improvements needs to be made but we don't, the Department doesn't care who, just somebody within the (inaudible) of the properties needs to do the improvements before any water meters (inaudible). You folks do understand that or do not understand that?

MS. MEDEIROS: You ask me the other owners understand that?

MR. CHANG: Your understanding.

MS. MEDEIROS: I would think...

MR. MEDEIROS: I want to take that one for a little bit. What you just said, and I hope all of you heard, the Department doesn't care. That, that's a big star right there. The Department doesn't care who pays for it. And that's our whole issue. We keep, we don't care how it comes as long as it gets here. We don't care. And that's the attitude I get from the Department, we don't care as long as we meet this, we don't care how you do it. Hook, crook or steal, we don't care, we don't care. I want you guys to care because we're only looking for water for us. You guys got my in-laws to sign the paper 'cause you got 'em hostage. You don't get the subdivision unless you sign the papers. They sign the papers and they say look this is what we can give you but this is what we agreed to. Now, we're dealing with this. We're dealing with this ugly monster that we want just to get water. That's all we're asking for folks. That's all we're asking for is water. And the Department doesn't care. Yeah, main thing these other people all, everybody gets water. We don't care who pays for it. Yeah, we understand. Yeah, we understand.

MR. CHANG: No further questions.

CHAIR ALDRIDGE: No further questions. We'll open the questioning from the board members. Board members have questions?

MEMBER HOWDEN: Yeah, I have a few questions. I'd like to preface it by acknowledging that at, at one point when they were gonna sale this land, I was interested in purchasing it. So, I had the opportunity to study these documents, to meet the neighbors, ecetera. So, I'm quite familiar...

MEMBER HALLER: Ai yai yai.

MEMBER HOWDEN: With the actual situation, Ok. This was about three years ago, Marion. And at that point as they said they were desperate to sell because they were totally stuck with what I consider to be quite an inequitable requirements by the Department in '93 on the family subdivision. The other people involved, I mean Mr. Chang keeps saying well, you know, what about it, there is a statutory obligation under the subdivision, family subdivision that all three owners participate in improvements, yet the improvements, and I sought legal counsel



on this, often, especially like Public Works Department improvements are so inequitable that they're not enforced. I find it remarkable that we have for over a year now occasionally discussed the Department's role in determining what constitutes adequate fire protection and there's been a move on at least the administrations part ...

CHAIR ALDRIDGE: Michael.

MEMBER HOWDEN: To move the fire protection...

CHAIR ALDRIDGE: Michael.

MEMBER HOWDEN: What?

CHAIR ALDRIDGE: I need to ask you to go back to the question that you were gonna direct to..

MEMBER HOWDEN: Yeah, I'd like to, yeah, excuse me. I'd like to ask Mr. Chang if he considers that the requirements set down by county for the family subdivision would be...

CHAIR ALDRIDGE: That, that would have to be a question that's raised when Mr. Chang is the witness.

MEMBER HOWDEN: Oh, he's not the witness anymore?

CHAIR ALDRIDGE: He's not the witness right now. Right now it's the Medeiros'

MEMBER HOWDEN: Ok, I'll just be quiet for awhile.

CHAIR ALDRIDGE: Are there any...

MEMBER LUCK: I just had one question, on Exhibit K that's your letter from April 12<sup>th</sup>. This is a piece where I was having a hard time following it. If you could just in your own words describe what you are proposing, that would be...

MS. MEDEIROS: I believe that what we mentioned...

MR. MEDEIROS: This is what we're proposing.

MS. MEDEIROS: Did you want this?

UNKNOWN VOICE: Yes, please.

MS. MEDEIROS: This is like an outline to make it easier since everybody's here, of what we would, I think put it, is it ok if I...

CHAIR ALDRIDGE: Thank you.

MS. MEDEIROS: It kinda probably puts into perspective of what we're asking on the proposal.

MEMBER LUCK: Yeah, that would be great.

MR. MEDEIROS: I'm sorry, I should've had handed this out earlier.

MEMBER LUCK: Oh, that's ok.

MR. MEDEIROS: I didn't know what was proper.

MEMBER LUCK: We don't either, we're figuring it out.

MS. MEDEIROS: We're so glad we're the first.

MEMBER LUCK: Yeah, right.

CHAIR ALDRIDGE: Ok. I'm sorry.

MEMBER LUCK: Yeah, so my question is...

CHAIR ALDRIDGE: Your question is...

MEMBER LUCK: If you could just describe what you're proposing that looks like this will help us, if you could walk us through it that will be great.

MS. MEDEIROS: Basically, that the transmission line...

MR. MEDEIROS: Basically, what we're looking at is putting a meter right off of the transmission line. We have easement up to our property. Again, you know, we'll take care of, of getting the booster pumps to take the water up to a storage tank and meeting with the Department of Fire and whatever other requirements from the other departments or the county to make sure that our water is sufficient. Whether the pressure or if the Department requires sprinklers for any kind of house or whatever. Whatever it would take to meet those requirements. But all we're asking is you put the meter there and we'll, we'll work with the civil engineers we'll give you guys back an appropriate...

MS. MEDEIROS: To let you know that the other property, the first one, the existing meter is right there. So, we're asking to be placed with the other. Not in anyplace that's, you know, far out, it's right there where the other meter is.

MEMBER LUCK: Ok.

CHAIR ALDRIDGE: Are there any other questions from board members?

MEMBER OKAMURA: Question. Right here.

MEMBER HOWDEN: Lee, Kenneth.

MEMBER OKAMURA: All you're asking for is the meter, right now, you just want the meter. And then, you're assuming that later on in order to get the building permit or whatever, the Fire Department will require you to or the Water Department require to put other things in.

MR. MEDEIROS: Yeah.

MS. MEDEIROS: 'Cause they already awarded pretty much the water, we can have the water. It's just how to get it up there that's this big thing. So, if we could have the meter and then we will work...

MR. MEDEIROS: We can't get pass the first requirement...

MS. MEDEIROS: Which is the tank.

MR MEDEIROS: Off-site. And if it was for our own personal use I think we could go with a much smaller private type tank and let it be our responsibility. The responsibility of the Water Department would end right there at the meter and we will go from there. But we would meet the requirements of whatever other county departments. And as well as the Fire Department.

MS. MEDEIROS: We just, like I said, we tried to the best of our ability to comply with what the county set forth, the Water Department and you just can't get past it.

MR. MEDEIROS: Can't get past step one.

MS. MEDEIROS: Can't get past step one, so we just, we need more options and that's why we put our proposal out and then it was denied. So we have nowhere to go.

MEMBER OKAMURA: Are they requiring you to do, to work with the other people or you just, you can go along but...

MR. MEDEIROS: Here's the part of it, when, obviously we're kinda confused with everything that's going on because we reserved two meters that is not ours. So you can see we're, we're kinda of loss at what's happening here. And it seems like they keep looking at it as we're all three together, which is not the fact. We have our own tax key and we're a separate owner. And that's what we're looking at. And they keep referring back to, you know, what was done in the past or what they signed in the past. I'm just saying hey, let's look forward, help us here. We're the owner of this lot, help us with that. Stop looking back at, 'cause you guys got my mother-in-law, father-in-law to sign this, you know. So be it. You know, that's past, past. You know, I know there's other exemptions and exceptions that they've made before. Because this guy signed up in 2002, was able to get the water without any problem or you know whatever. That's all past. I'm looking at what we can do today. How can you help us today?

MEMBER OKAMURA: Which guy you talking about? In relation to your neighbor over there or somebody else?

MR. MEDEIROS: There's, I...

MEMBER OKAMURA: No, you don't have to say who but...

MS. MEDEIROS: We won't say. We have two tax keys numbers that we have heard that Department has altered the requirements, has helped. And I...

MR. MEDEIROS: We don't wanna go that direction...

MS. MEDEIROS: Like saying he can why can't we. We don't want to go there, but we have knowledge of it.

MR. MEDIEORS: We just want to deal with what, what we can do. Just help us, let us, help us get at the water. We don't want to look at anybody else's situation. How they deal with it that's up to them. We're just plea-ing to you, to you folks, that's all.

CHAIR ALDRIDGE: Any further questions, Ken?

MEMBER OKAMURA: No, thank you.

CHAIR ALDRIDGE: I have a question.

MR. MEDEIROS: Sure.

CHAIR ALDRIGE: I'll ask a couple of questions. Right now, the primary obstacle apparently, correct me if I'm mistaken, is trying to get an off-site storage tank location. Nobody's willing, at least nobody that you have contacted off-site adjacent to your property, not willing to grant you an easement and/or space for tank.

MR. MEDEIROS: It's gotta be above our property.

CHAIR ALDRIDGE: Yes, I so, I wanna follow up on, has the Department offered to work with you in terms of identifying the elevation and whether or not it's possible to put a storage tank on your property, elevated storage tank.

MS. MEDEIROS: They said off-site.

MR. MEDEIROS: That's all they've given us.

CHAIR ALDRIDGE: And why have they told you that? Is it specifically for elevation?

MR. MEDEIROS: Good question.

CHAIR ALDRIDGE: Let me ask you a related question. Do you know without the off-site storage tank, what sort of water pressure you would have?

MS. MEDEIROS: We've talked to some civil engineers, we've asked for their expertise and yes, we believe we would have adequate, I, we, we can't really understand why we have to go off-site. We really can't understand that.

MR. MEDEIROS: But this, you know, elevated tank or whatever, I'd be willing to work with civil engineers to meet whatever requirements, but we're not getting anything else. It's all...

CHAIR ALDRIDGE: It's beyond, beyond, aside from the inability to acquire the site for the storage tank, aside from that, if you were able to build a storage on the property is this something that you can afford to do for this water service?

MR. MEDEIROS: We haven't even gotten to that point.

CHAIR ALDRIDGE: Ok, you don't know what it's gonna cost you at this point.

MR. MEDEIROS: We, we really don't know, but we can't even get past step one.

CHAIR ALDRIDGE: Right.

MR. MEDEIROS: We're, we're locked up. And again I think part of that though is that we're looking, what they're requiring is basically to serve three different lots. You know, the other, our neighbors. And all we're looking for is just to serve us. We don't, we don't wanna supply all Kula with water. We just want to take care of our lot, our kids. That's all we're looking for. Make it reasonable for us that's all. Attainable.

CHAIR ALDRIDGE: Well, let me ask you one more related question.

MR. MEDEIROS: Ok.

CHAIR ALDRIDGE: Do you know whether or not your neighbors would be interested in sharing in the cost of the storage tank if it turns out that you are able to put a storage tank on your property of the sufficient capacity and height to provide you with adequate pressure to meet the district's...

MR. MEDEIROS: Well I know...

CHAIR ALDRIDGE: Pressure requirements.

MR. MEDEIROS: One for sure has no interest whatsoever.

MEMBER OKAMURA: And, and what parcel is that? Twenty-three?

MR. MEDEIROS: What parcel is Bob...

MS. MEDEIROS: Ahh lot...

MEMBER LUCK: They're 99.

MEMBER OKAMURA: The one below you guys or the one across? Ninety-nine?

MS. MEDEIROS: Yeah. Not the...

MEMBER OKAMURA: The bigger lot?

MS. MEDEIROS: Not the one below with Feldman. Not the one across, the 13 acres across.

MEMBER OKAMURA: They're not interested?

MR. MEDEIROS: Not at all.

MEMBER OKAMURA: Thank you. Thanks. Sorry, ehh.

MS. MEDEIROS: Not at all.

CHAIR ALDRIDGE: No, it's alright. Thank you.

MEMBER HOWDEN: Just one question. Given the steep slope of the land, could you not put a tank at the top of your land? A hundred feet above where let's say eventually you would be able to build and fulfill the requirements for the Department that way?

MR. MEDEIROS: Again, no. I, I would leave it all up to the civil engineers. I wouldn't know what the gravity or the pressure or whatever. If it meant putting boosters and whatever, give us some other options that we can work with, that we can attain. Nothing that is unreasonable, where we gotta supply all Kula.

MS. MEDEIROS: I guess we need to say it has to be a hundred feet or fifty feet. We would like to leave it up to the engineers, let us know what is the amount or what is the footage.

CHAIR ALDRIDGE: Ok, any other questions? That's the end of the questions for the board. You may wish to call other witnesses. We'll go through the same procedure.

MR. MEDEIROS: Dharma or Lisa? Lisa.

MS. MEDEIROS: Do we call? Lisa.

MS. HAYASHIDA: Lisa.

MEMBER HALLER: Could I just ask, were we aware Mr. Howden's familiarity with this situation? And did we, was it concluded that there was no conflict of interest. I'm just curious.

CHAIR ALDRIDGE: If you're asking me personally, no, as the chair I was not aware. I'm not sure that any other board members were aware. I'll bring that question to Corporation Counsel whether or not there is any kind of potential conflict.

MR. KUSHI: Let's talk about it in executive session.

CHAIR ALDRIDGE: Let's talk about that later.

MEMBER LUCK: They made you wait outside?

MS. STARR: Well, was nice. A beautiful day.

MEMBER LUCK: Oh, that's good.

MS. STARR: Incredible. Compared to yesterday. Am I speaking?

MS. MEDEIROS: I think you have to be sworn in.

CHAIR ALDRIDGE: Could you state your name please?

MS. STARR: Yes. I am Lisa Starr.

CHAIR ALDRIDGE: And your relationship to the appellant?

MS. STARR: I would say that I am, have become their friend. I would say I'm a friend.

CHAIR ALDRIDGE: I need to swear you in for testimony.

MS. STARR: Fine.

CHAIR ALDRIDGE: Do you solemnly swear or affirm that the testimony you are about to give before this board in connection with this case will be the truth, the whole truth and nothing but the truth?

MS. STARR: Yes, I do.

CHAIR ALDRIDGE: Alright.

MS. STARR: So, I should proceed?

CHAIR ALDRIDGE: Yes.

MS. STARR: I should say something?

CHAIR ALDRIDGE: Umm.

MS. STARR: Ok, I'll say something.

CHAIR ALDRIDGE: Or you may respond to questions from the Medeiros or you may just give us your testimony and make a statement.

MS. STARR: Well, just giving an introduction of why I'm here as a friend. The other witness, Allison Dharma, she's now known as Dharma, Feldman, wanted to purchase one of the properties, one of these three properties that are being discussed here and hired me as a real estate agent to represent her and this was at least two or more years ago. And she was actually trying to pursue purchasing the 13 acre piece that is adjacent. And it didn't end up working out for that to happen. And meanwhile, the parcel that she ended up buying didn't come on the market. In the process of representing her to make a simple purchase of vacant land, it was necessary for me to become familiar with all the agreements with the county, that were on the deed, recorded on the deed of this property. So, because of my association with professionals in the field of real estate and having to do with, all things to do with real estate related matters, I was able to ask for advice and explanations and have meetings with consultants, including my brother, Hugh Starr, who is a consultant, and bring light to these complex agreements that were on the deed, so that my client, Allison, would know what she was getting into. So, by the end of the time, which went on for, I think a year and a half at least, where she finally did end up buying the one piece that has the meter on it, I sort of became the friendly expert on these properties. And so, at that point, she had gotten to, started to get to know the neighbors, which are the Medeiros', and when they decided that they wanted to try to proceed with getting their meter, they asked me if I'd come talk to them and help them. So, I'm clearly not a consultant, but I think of myself as somebody who is fairly informed and knows how to be, be more, be, give good informed information, pass on good informed information and that's my relationship to them, so that's why I'm here, it's just to assist if they need it more than anything. As far as testimony and witness, the one thing that I, that I would like to say that wouldn't show up anywhere here is that the, there's three parcels involved here. The other owner, so, the other witness is the owner of parcel 23. She's the owner of there, the owner of parcel 98. The owner of parcel 99 is a gentleman named Mr. David Chevalier. He bought that property for cash a couple years ago. Kinda of out from under our attempt to buy it, but that's not a pertinent story. Fascinating but that's

not a pertinent story, fascinating but not pertinent. And at that time he told his realtor who passed on to me, that he was just land banking. And which I guess means you put your money, take it out of the bank and put it into the land. When the Medeiros' and I started trying to dissect this whole situation and analyze where are we, what do we do, who's involved, how is every, what's the relationship of the three different owners, because obviously it was one family property now it's unrelated individuals. I called Mr. Chevalier to ask him what part he wanted to play and to let him know that they had paid for two meters unknowingly, thinking that those two meter were gonna be meters for them. They didn't understand when they purchased those two meters, I'm pretty sure this is accurate, that the meter goes with the parcel, not with the people. So they actually paid out of their pockets the sixty seven hundred or something like that for two meters. And I informed him that they had done that and that in essence they had paid for and had reserved a meter for his parcel as well, unknowingly. And he said he really had no interest in this and that I told him that we were gonna proceed with trying to find a way to get the water meters actually installed, that time was running out, that the, one extension had already been taken at that time and there would be only one more extension and we needed to really get on the stick here and go to the Water Department and find a way to get these meters installed and he said he had no interest in this topic and never returned a call to be a part of any of this, so I wanted to testify to that, that, that, that's where he is as far as I know and I was slightly tempted to call him yesterday to let him know but then I remembered back to what he said and he said it's of no concern to him, of no interest to him at this time, that he was just land banking, so that's where he is in all this. Other than that, there's nothing really that I can be witness to or testify to that the Medeiros' aren't already completed knowledgeable about and I'm sure they're totally capable of having expressed their concerns and their frustrations and confusion and their wishes as well. Anything else? Is that helpful.

CHAIR ALDRIDGE: Any cross-examination by the Department? Any questions by board members?

MEMBER HOWDEN: Just one question. Lisa, did the 1993 subdivision requirements by the county, did those seem reasonable to you?

MS. STARR: Well, ha ha ha, no, they don't. In fact I talked to several people who are, have come up against this, individuals who've inherited this situation. It usually, the, this agreement, this family subdivision agreement, is that what you're talking about? The family subdivision?

MEMBER HOWDEN: Yes.

MS. STARR: On the surface appeared like a good solution to families, you know, usually probably your elder property owner who has some kids that they wanted to divide the property up and deed separately to the different individuals in the family. And on the surface it did seem like a good solution because all the expensive and complicated improvements would be deferred, so on the surface it seemed like a good deal and I've talked to a few owners from that generation as well as heirs, like these guys, who when they, it wasn't really until they got to the point of trying to get a water meter or make some progress in regards to getting a building permit or anything, that they realize the enormity of the situation and these guys were pretty much stunned when they understood, fully understood what it was going to take to, cost and the complexity and so, yeah, I don't, I don't, I think you know, I share the opinion that I've heard other people voice that this is an agreement that has probably done more harm than good, if I could be really blunt.

MEMBER HOWDEN: Thank you.

CHAIR ALDRIDGE: Any other questions?

(silence)

CHAIR ALDRIDGE: Thank you.

MS. STARR: I hope I've been helpful and thank you very much for what you can do for the Medeiros'. Ok, see you guys.

CHAIR ALDRIDGE: Ms. Medeiros, do you wish to call...

MR. KUSHI: She can stay if she wants.

MS. STARR: I can stay? Oh, ok.

MS. MEDEIROS: I'd like her to, too.

MS. HAYASHIDA: Next witness.

CHAIR ALDRIDGE: Next witness, Ms. Medeiros? You wish call.

MEMBER OKAMURA: I guess it builds peoples' expectation up if they do the, you know the family subdivision. And then later on...

MEMBER LESTER: It's not helping families.

MEMBER OKAMURA: Yeah. (inaudible) it up that they can...

MEMBER LUCK: Yeah.

MEMBER OKAMURA: But when they try to do something with it, it (inaudible) problems.

MEMBER LUCK: Yeah.

MR. MEDEIROS: Hi Dharma.

CHAIR ALDRIDGE: Are you ready?

MS. FELDMAN: Yup.

CHAIR ALDRIDGE: Do you solemnly swear or affirm that the testimony you are about to give before this board in connection with case will be the truth, the whole truth and nothing but the truth?

MS. FELDMAN: Yes, I do.

CHAIR ALDRIDGE: Could you state your name please?

MS. FELDMAN: Allison Feldman.

CHAIR ALDRIDGE: And your relationship with the appellant?

MS. FELDMAN: I own the property directly below the Medeiros', part of the, one of the three lots of the three lot subdivision, lot 23.

CHAIR ALDRIDGE: And we're open to hear your testimony.

MS. FELDMAN: Ok. Well I'm here in support of Joe and Cheryl because it also pertains to my particular situation. I'm fortunate enough to have the only water meter that is installed and working on this subdivision. So, I'm at least able to water my animals that I have up there. However, when I went to get a permit for a storage shed or tack room for my animals, I was denied. The KIVA system, I think it's called was red flagged right away and I was denied, being I would build something like that to store, you know, everything that I need for my animals, so that was a problem. And I'd just like to find a remedy for all of this, for all of us. We'd all like to be able live in peace up with the animals, you know.

CHAIR ALDRIDGE: Do you have anything else to say?



MS. FELDMAN: Please, help us find a solution to this, 'cause we've been trying and we haven't been able to get to that point yet and we're very willing to be able to work with everybody (inaudible) find the solution.

CHAIR ALDRIDGE: Thank you. Any cross-examination by the Department?

MR. CHANG: Uhh, no.

CHAIR ALDRIDGE: Any questions by board members?

MEMBER HOWDEN: Marion had a question.

MEMBER HALLER: Thank you. I'm just curious, were you given a reason beyond KIVA system, why you're. I'm just curious to understand what your motivation is.

MS. FELDMAND: Oh, ok.

MEMBER HALLER: And why you were turned...

MS. FELDMAN: Because of the land use agreements. The fact that we all have to have a working water system before we can build anything up there. As far as...

MEMBER HALLER: So, you don't have a house up there? You don't live up there?

MS. FELDMAN: No.

MEMBER HALLER: You just have your animals?

MS. FELDMAN: I have my animals.

CHAIR ALDRIDGE: But you do have a meter?

MS. FELDMAN: I do have a meter. I'm very lucky.

CHAIR ALDRIDGE: And you're the only one that physically, has a physical meter there.

MS. FELDMAN: I can turn on...

MEMBER LUCK: I'm just curious, if your, is your elevation lower than the other property then? Is that...

MS. FELDMAN: Yeah.

MEMBER LUCK: Ok. And also, as far as you know were you denied because of fire restrictions or just that you...

MEMBER LESTER: The agreement.

MEMBER LUCK: There needs to be a working water system?

MS. FELDMAN: Just because of the land use agreements.

MEMBER LUCK: Ok. Thank you.

CHAIR ALDRIDGE: Ken, so you had a question?

MEMBER OKAMURA: Oh, yeah, I wanted to know that, what is that KIVA thing system, yeah.

MS.FELDMAN: I'm not exactly sure; it's just a red flag that's in the system.

MEMBER OKAMURA: When you went to apply for the permit to build it?

MS. FELDMAN: Yeah, and it was just regular 10 by 20 storage shed and immediately it was red flagged.

MEMBER OKAMURA: And they gave you reasons, that, because of your previous agreements you cannot build on this until you develop your water system. Ok, thank you.

MR. MEDEIROS: That would be the agreement.

MS. STARR: Yeah, this is all...

MS. FELDMAN: It pertains to the agreement.

MR. MEDEIROS: We're all tied in to that.

MS. FELDMAN: Yeah, we all have the same...

MR. MEDEIROS: Agreement that was signed by the...

MEMBER OKAMURA: I see.

CHAIR ALDRIDGE: Any further questions?

MEMBER LUCK: I guess, I know the answer but I'm gonna ask you anyway. So you're willing to work together to come up with a solution that would help you both, even if that meant that one particular parcel was having the enhancements done to it, but you all benefited from a water, so you shared the cost, essentially?

MS. FELDMAN: We would prefer to have our own individual system, that would be simpler so that you're not tied into the other property and the third member of the, the third owner up there has shown no compliance or willingness to work with us whatsoever. So it would be better for all of us to have a individual systems.

MEMBER LUCK: Ok, thank you.

CHAIR ALDRIDGE: Any further questions?

(silence)

CHAIR ALDRIDGE: I guess not. Thank you very much.

MEMBER OKAMURA: Thank you.

CHAIR ALDRIDGE: Do you have any other witnesses that you wish to call? Let's, let's take a 10 minute recess.

MEMBER OKAMURA: Eleven o'clock was little bit...

CHAIR ALDRIDGE: Well, I thought it was little optimistic.

(Recess)

(Meeting reconvened)

CHAIR ALDRIDGE: All set.

MS. HAYASHIDA: Yeah.

CHAIR ALDRIDGE: We'll call the meeting back to order. We're at the next step and that is the Department's directs examination of witnesses and presentation of evidence. And so, I guess, Herb, you're speaking for the Department?

MR. CHANG: I can.

MR. KUSHI: Before we proceed, the, the Medeiros' presented this thing to us, would you like to put this into evidence?

CHAIR ALDRIDGE: Sure.

MR. KUSHI: I would suggest identifying (inaudible) appellant's number 1.

CHAIR ALDRIDGE: Thank you.

MR. KUSHI: And it's up to you to accept it.

CHAIR ALDRIDGE: Yes, thank you.

MEMBER OKAMURA: (inaudible) be ok?

CHAIR ALDRIDGE: I didn't like the way it was typed.

(laughter)

MR. CHANG: I would like to start off with some background on these 2-16 family subdivisions. Again, this agree, this type of agreement was entered into by the Medeiros family in order to obtain 3 lots out of that one, one lot. First of all, I'd like to say that the Department has had this option, 2-16 option since, I think it was 19, 1977. There are a few, there are, it has been used frequently, I'd say, in the past more often than present. There are still lingering agreements, what I mean by lingering is the improvements that were deferred have still not been complied with. So there are still this type agreements affecting lots on Maui, not only Upcountry but Hana, elsewhere, that are still out there. When these agreements are taken, first of all, the Department has never forces in these type of agreements on any, any subdivider. It is an option that's given opportunity for the subdividers to complete their land conveyance to family members. The intent of the 2-16 was to help families in case they wanted to settle their estate matters. There was a prime purpose to family needs, say you have an elderly person who wanted to, who feels like he's gonna pass on and he wants to settle his estate and he doesn't want to do the whether government improvements but you just, the main purpose is to pass on the land. So this is the main intent of the 2-16 family subdivision agreements that we have offered subdividers. Again, it defers all requirements so you get your subdivision divided without doing any kind of improvements with intent of, it's a family type of subdivision. When a property, any property that is, are affected by this type of agreement, when they, anybody comes in for a water meter or building permits the deferred improvements could be as much as the what the Medeiros' are faced with or could be as minor as just installing the service lateral. You got the whole range of improvements. Unfortunately, for the Medeiros' it's quite substantial. Whenever one property, say to this case, one owner asked for a water meter, assuming there is no restrictions on water meter availability, the Department would require under the agreement, that all the improvements for every single lot be completed before they issue the meter. That's probably, that's the way the agreement is made. That's the way the rules and regs are structured. Any one owner ask for a water meter or (inaudible) the complete subdivision requirements for all must, must be complied with. Deferred, all the deferred improvements must be installed for all three lots. That's the way it's structured. That's why, that's why the Department keeps bringing up the other guys, 'cause it affects everybody within the subdivision. The Department has water system design standards, construction standards, that it needs to follow for any type of subdivision, whether they defer under 2-16 or they're willing to construction improvements right away to get their water meters and subdivision finalized. The reason why we have these rules and regs is these infrastructure improvements whether it's water lines, fire hydrants, storage tanks and new wells to develop source are dedicated turned over to the county water department for maintenance. So pretty much it's like a, we, we become owners. The persons owning the lots to have done the

improvements have no longer any worries as far as maintaining, repairing. It's all the Department's responsibility to, to make sure the system works. That is why we have these water system standards, 'cause we need to make sure whatever is improved dedicated to the county, to water department, that it is built, constructed and designed to such standards that the water department want, will want to maintain. It is something that will last 30 years at least before we need to go in and do (inaudible). That's the general background on why we have the, our requirements that we impose on each subdivision, 'cause we do have to take care of the system. It is not a private system. I think that's all I have.

CHAIR ALDRIDGE: Ms. Medeiros, Mr. Medeiros, as the appellant, you have the opportunity to cross-examine if you wish.

MR. MEDEIROS: I got a, got a question. There's no private systems on Maui that...

MR. CHANG: There are.

MR. MEDEIROS: Oh, there is? So, when we're asking for us to be responsible from the meter on is that a possibility?

MR. CHANG: That...

MR. MEDEIROS: Or that's beyond the rules and regulations?

MR. CHANG: Well there, the Department has the rules and regs which require that, built to standards, Department standards, but there's always this, there is a clause somewhere where if someone doesn't want to have, say, say put it another way, if someone wants to go a private system, to a non, to a system that doesn't conform to ours, but they don't want to dedicate to the county, they just want to keep it private, this is why they have the appeals, it's part of the process, where...

MR. MEDEIROS: So we're in the right direction, then.

MR. CHANG: Yeah, 'cause the Department staff, engineering, doesn't have the authority to approve these type of non-conforming type of system, or private systems.

MR. MEDEIROS: How does the Department, you know when there's an agreement with a subdivision when there was, and there's three separate lots and then those three separate lots were sold to different owners, but yet you hold them all on the same standards, in other words they are all still together, is, does that make sense at all?

MR. CHANG: Well, that's the way it was drafted. I think there was, whoever drafted that ordinance had to have some structure to it and I think that they might have thought that because it was originally meant for family members it's like a whole, like a, that's a whole as a family, one of 'em wants a water meter then, because the family benefited by getting the final approval without doing improvements that it's supposedly still a family that's involved.

MR. MEDEIROS: But you, you recognize our situation as it is now, on either side is now different owners on that lot and yet we're, you're, the Water Department is forcing us, and I, I have to say forcing us, that we have to work together with them or you're on your own, but it will benefit all three. But we're not, I, m, I, I, excuse me but I'm not related to Dharma and neither am I related to Chevalier, they're not my family. And all I'm, I've been asking from the Water Department is just for myself, my individual needs at this point. And you're force, basically forcing me to take care of two other families. And as you heard earlier, the other guy doesn't care, could care less. He's just land banking but I would be forced to improve his place...

MR. CHANG: Right...

MR. MEDEIROS: But that's the rules and regulations.

MR. CHANG: Unfortunately that's the way it was set up, the 2-16 family agreement.

MR. MEDIEROS: Have any questions?

CHAIR ALDRIDGE: Any further questions?

MR. MEDEIROS: No, I'm ok. Thank you.

CHAIR ALDRIDGE: Members of the Board, questions? Scott?

MEMBER LUCK: I was just wanting to go back to the, the issuance of reservations for two water meters, and how that would come about, why there were two offered rather than just one. Just confused on that, still looking at the lots and all that, I'm sure it has something...

MR. MEDEIROS: Chair, can I ask...

CHAIR ALDRIDGE: Oh, I'm sorry. Pardon me. You wanted to ask a question?

MR. MEDEIROS: Well, I wanna kinda ask, ask something to what his question is. Or give you a little background, is that ok? Can I, can I...

CHAIR ALDRIDGE: I'm not sure, he didn't complete his question.

MR. MEDEIROS: Oh, I'm, 'Cause you were asking about water meters and I just clicked to my head.

MEMBER LUCK: That's ok.

MR. KUSHI: Member Scott, who are you asking the question to?

MEMBER LUCK: I'm asking of the Department.

CHAIR ALDRIDGE: Can I, will you keep it in mind, you have another opportunity in the rebuttal so jot it down, don't forget it and bring it up later.

MR. MEDEIROS: You bet, sorry. I'm sorry.

MEMBER LUCK: That's ok. So I'm just confused on why they were offered two water meters and then if you could just provide an explanation that'll be great.

MR. CHANG: It pretty much goes back to that original agreement again, the, the family agreement, where on the priority list, the reason why we offer it the property two water meters was they were on the priority list and the priority list was based on the subdivision application so when projects are offered meters on the priority list we offer them according to why they were on the, excuse me, why they were placed on the list in the first place. Being that this particular listing was for a subdivision and the subdivision needed two meters so when the opportunity came up we offered two meters for the subdivision, not really for the Medeiros' one property. So, that's what happened.

CHAIR ALDRIDGE: Somebody had their...

MEMBER LUCK: Marion.

CHAIR ALDRIDGE: Marion>

MEMBER HALLER: It's as clear as mud to me, but anyway. I'm not so much concerned about that, what I'd like to understand is could you explain to me what the Medeiros' proposal was of April 12<sup>th</sup> in which they made a

recommendation as to how to solve this problem. And what of their proposal is unacceptable to the Department of Water Supply? And there's a board up there (inaudible) if you wanna draw but...

MR. CHANG: I cannot think probably more beneficial for, to convey my thoughts. Correct me if I'm wrong that, that proposal is just concerning the tank, yeah?

MS. MEDEIROS: I believe it's stated that we would work with the engineer or work with Fire, excuse me, Fire Department. I think if you read the bottom...

MR. MEDEIROS: The tank brought about our proposal, that we would work with the civil engineer, the Fire Department and your department. The tank just brought upon, brought upon that we, we can't get this solved so, we just brought on our proposal 'cause it was nothing else to go by.

MR. CHANG: I'm gonna use the board to explain what the Department's asking for as far as performance to the water system. Does, everybody can see, yeah?

(inaudible)

MR. CHANG: This is not the way it's really, the way the subdivision is, is set up, just for discussion sake. Assuming this is the subdivision lot, this is like down hill, this is up hill. In this particular case, the waterline is on the bottom of the property and so as far as being able to serve the property, the Department's existing water system can, just for discussion sake, we can, if you're to try to open up a hose bib here, probably need to get water up to maybe, for discussion sake, half the property. This type of situation when somebody or who wants to subdivide the Department needs to make sure, if the Department approves the subdivision they want water service from the Department to maintain this (inaudible) one is fire protection the other is water service for the domestic irrigation. Usually the fire protection is the biggest one because it's the usually bigger flow. And we need to make sure that each, every portion of the subdivision site is provided with adequate fire protection and water service. This kind of situation because our service are can only feed the bottom portion there's no fire protection, no water service available this time for the top portion. We would require an off-site water tank above the whole subdivision site. We need to somehow boost the water up to the tank you got pumps and little control tank, so you have to have two tanks. This type doesn't have to be very big. This is the one, this is a big one where we had to store for fire protection. And from that tank there's another line that usually comes down and serves the subdivision site. The reason why we ask for this type of situation is we need to make sure every single area of the subdivision site can be provided adequate fire protection and domestic service. That's why it's always important to have your tank above the property so we can service the subdivision site not by pumps but by gravity. So, in this case where someone proposes to install a water tank on their property, obviously you won't be able to provide adequate pressure for every single area of the subdivision 'cause the tank is located on their, on the site therefore there's certain areas that will not have adequate pressure, just, physically because they don't have, in order to get pressure your tank has to be higher elevation. This type of situation would be non-conforming to system designs, water system designs.

MEMBER HALLER: Mr. Chang, I just want get clarified, the road where the waterline is now, I'm assuming that's Polipoli?

MR. CHANG: No, this is, top of the property is the road, but down here is, there's other lots. This is our transmission line coming through, coming through (inaudible).

MEMBER HALLER: So on the maps we have, we can't see your transition line.

MR. CHANG: Not on that map.

MEMBER HALLER: It would help me a lot to understand where this transition line is, could you...

MEMBER HOWDEN: It's the very bottom of parcel 23.

MR. CHANG: It runs along...

MEMBER HALLER: So down here.

MEMBER HOWDEN: It runs across, yeah, it's going...

MEMBER HALLER: Right there. This is the...

MEMBER HOWDEN: In the Ulupalakua direction...

MEMBER HALLER: This is, so it's the boundary of parcel 23...

MEMBER HOWDEN: The very bottom, yeah.

MEMBER HALLER: So in fact elevation-wise this map goes this way. So here's Polipoli Road here's the Medeiros' property, here's Ms. Feldman, I believe her name is, and here's that L property, is that correct?

MEMBER HOWDEN: Well, you know, county maps are always a mystery.

MEMBER OKAMURA: Polipoli Road is...

MEMBER HOWDEN: And it is a question whether it's actually Polipoli Road which is the connector road that leads to the mauka road or Waianu Road.

MEMBER HALLER: Ok.

MEMBER HOWDEN: In the tax map keys their address is listed as Waianu Road, which is another public access road.

MEMBER HALLER: Ok.

MEMBER HOWDEN: I mean just to add to the further confusion...

MEMBER HALLER: That being whatever, my question is, where's the elevation?

MR. CHANG: Elevation?

MEMBER HALLER: If you're asking for a tank to be built above the property does it have to be built across the street, across from Polipoli Road or whatever the name of the road? So, over here is what you're asking for.

MR. CHANG: Usually what the basic criteria is whatever your, within the subdivision site, say, say the highest elevation is three thou, thirty, three thousand feet, the tank would have to be at least a hundred feet higher than that. So, three thou, thirty-one hundred feet, would be suitable site wherever that elevation lies.

MEMBER HALLER: Ok.

CHAIR ALDRIDGE: Michael?

MEMBER HOWDEN: Yeah I was...

CHAIR ALDRIDGE: Were you through?

MEMBER HOWDEN: Oh are you still going?

MEMBER HALLER: Go ahead.

MEMBER HOWDEN: Ok thanks. And then feel free to interrupt. As I mentioned before it seems that the administration is moving more toward putting fire protection in the hands of the Fire Department as they're the

people who actually serve for fire protection. Do you really feel it is appropriate for the Water Department to continue to put fire protection requirements when it's really the Fire Department is better qualified to deal with this?

MR. CHANG: I think it's going, I think its, I think there needs to be some Water Department, still need to be some Water Department interaction because, and I think if the Fire Department were to be the sole decision maker as far as what infrastructure improvements were needed, I would still think we as the Department who will need to maintain the system would still probably end up with something like that.

MEMBER HOWDEN: Well, I mean, aside from the fact that, you know, I spoke with Wayne Arakaki about this and also Stanley Otomo and both of them seem to feel that you could set up a pressurized system that would meet fire protection needs. Although the Department seems not to have really listened to the Medeiros' request and Exhibit K. But I, I remember the first meeting when Lee and I and Kui came on the board, about a year and half ago. And the Department under Mr. Tengan was requiring the Duey's in Lao Valley with Lao Stream running through their property to put a 60,000 gallon tank in their front yard for fire protection. And then that went into a, an internal negotiation within the Department but it, it seemed to me and I think that that's a really good example that, that sometimes the requirements of the Department seem excessive and the, the, that perhaps a negotiated intelligent settlement would be more in the public interest than the county's interest. And I know for a fact, I mean, anyone who's live here for more than 20 minutes knows that over the years the Department has always made exceptions, you know, that, that people have been given water meters regardless of the Kula rule, I think a good example is that nice German who lives out Lualailua, who researched all the water meters that have been given in Keokea, Ulupalakua, etc, and really forced the Department to make a meter available to him in Ulupalakua. And I remember a meeting with Carl Kayama when Carl was a chief engineer, walking in on particular family who's asking water meters so they could subdivide their property in Ulupalakua. And without any hesitation he gave them the meters. And this is repeated over and over again. And here we're dealing with the, with a local family who's just trying to get access to water so that they can begin to use their land for themselves and hopefully for their family. And I, I don't understand the recalcitrant of the Department to accommodate and help get a reasonable settlement. I mean, why not Mr. Chang, why not?

MR. CHANG. I think it's a, it's a hard, when, when, when and if the Department negotiates, I'm not sure when, if it does, mostly, most of when I've been involved it's usually either the whoever has authority to make variances, approve variances, that's the authority that has the, makes those decisions, not staff, so, I don't know how to answer your question.

MEMBER HOWDEN: Yeah, I mean, I mean, I, I mean legally it raises a lot of questions. You know, but certainly in John and Rose Duey's case, they were able to negotiate something with the county, inspite of your Department's insistence on a 60,000 gallon tank on their property, given that they have (unintelligible) rights to Lao, Lao stream etcetera. I mean, all I'm suggesting is that I think that our function as a board is to suggest some, some kind of reasonable settlement, you know something that where you can work out and there's a level of compassion for people's predicaments, you know. With what I certainly consider to be very inequitable demands, you know based on the 1992 family subdivision agreement.

CHAIR ALDRIDGE: Any other questions? Marion?

MEMBER HALLER: Yeah, so, Mr. Chang, would, would the Department consider and again it's difficult without understanding exactly how the elevation works, can I, are you familiar with this property?

MR. CHANG: Not, not too much.

MEMBER HALLER: Not too much. May I just ask for clarification, as to where the top of the property is?

CHAIR ALDRIDGE: Sure, ask.

MEMBER HALLER: Could you show me on this map where the highest elevation is? Or pull yours out and point to it?



MS. MEDEIROS: Mine is large.

MEMBER HALLER: Yeah that's good, that's good, that means we can all see it.

CHAIR ALDRIDGE: The bigger the better. Sure bring, bring it up to...

MEMBER LESTER: Watch out for the wires.

MEMBER OKAMURA: Maybe Gaye can help you hold it?

MEMBER HOWDEN: You need to turn it, Gaye. Uh no, the other way, other way.

MEMBER OKAMURA: Maybe one more time, one more time.

MEMBER HOWDEN: Yeah one more time. One more time you get up.

MEMBER OKAMURA: Ok.

MS. STARR: They are here. This is the...

MEMBER HALLER: Right, and where's the highest point?

MS. STARR: Well, either that or on lot, Chevalier's would be...

MEMBER HALLER: Higher up there.

MS. STARR: Up here somewhere there and this is where the transmission line...

MEMBER HALLER: Ok.

MS. STARR: is down here. This is where the one water meter is down here and then there's an easement in place in these agreements that goes up along this boundary between this flag here and Chevalier here that goes all the way up here for the purposes of water distribution.

MEMBER HALLER: Ok.

CHAIR ALDRIDGE: What, I want to ask a related question. From the top of Medeiros property right there, let's say it's right there, down to the bottom property line...

MS. STARR: Yeah.

CHAIR ALDRIDGE: What's the elevation change? How far have we dropped?

MS. STARR: It's, it's pretty, pretty severe. I...

CHAIR ALDRIDGE: As in...

MS. STARR: Would say, let me see. Do we have a topo map? I, you know, I haven't, I, I can't remember right now, so shouldn't probably make a guess, but it is fairly, fairly steep and one idea that we have heard was that the same system rather than because they weren't able to put this system across the road on another, on, on a unrelated owner's property what about doing the same system here and having the same elevation by the time you were to try to do that and put that same tank here to create that kind of gravity pressure, which is what that system's about, is gravity pressure, you'd be way down here somewhere and a third, half to two-thirds of their property would be unusable.

MEMBER HOWDEN: Well, could you not...

MS. STARR: You know what I mean? So depends...

MEMBER HOWDEN: Could you not have a tank at the top?

MS. STARR: Then, then in essence they'd be saying that this...

(Member Okamura and Howden talking to each other while Ms. Starr is speaking)

MEMBER OKAMURA: That's what she's saying.

MEMBER HOWDEN: No, with booster pumps...

MS. STARR: This tank here then has to be...

MEMBER HOWDEN: Where you pressurize.

MS. STARR: Well, a hundred feet above it (inaudible) where it gets used, right? In order to, is that right Mr. Chang? In order to, to provide gravity pressure out of this tank, it has to be a hundred feet above where your usage would be, which would be your first hose bib, your house, whatever, your trough, whatever would be.

CHAIR ALDRIDGE: Is the lot buildable...

MS. STARR: Yes.

CHAIR ALDRIDGE: All the way up to the very top of the lot?

MS. STARR: Yeah, definitely.

MEMBER HALLER: Is it buildable to the bottom?

MS. STARR: Yeah. Yup, it's buildable, it's, it's rather steep and has a lot of topography to it.

MEMBER HOWDEN: So, Mr. Chang, if, if they had a pressurized tank at the top of their land, could they not meet the pressure requirements, depending on the booster pumps or whatever they had up there?

MR. CHANG: They would be able to meet it but not according to the county's, the Water Department standards. In order to build according to our standards the tank always have to be off-site, never on-site because the Department doesn't want to take over a system that we have to maintain the booster pumps just to run, it's always, everything's by gravity and nothing by, by a booster pressure pumps.

MEMBER HOWDEN: And, and the, they couldn't sign a hold harmless clause or anything like that?

MR. CHANG: You know, I'm having a hard time answering the type of questions where it varies from staff comes from, system standard, 'cause that's not my position as the Department to approve these things. It would be like someone in the position like Eric, Deputy Director would be. That type of question I can't really answer.

CHAIR ALDRIDGE: Well, I have a couple of related questions I think that you can answer. What is the basis for the 30,000 gallons, is that based on fire requirements for all three lots?

MR. CHANG: Yes, the, it, we have two criterias to determine water tank size. In this particular case, the fire protection, being it's ag zoned, 250 gallons a minute for two hour duration (inaudible) equals to a 30,000 gallons. That's how the 30,000 was derived for fire protection emphasis.

CHAIR ALDRIDGE: Ok, based on flow and duration and that would, wouldn't matter how many lots actually because it's basically for subdivision for residential...

MR. CHANG: Well, that's the way we, the other criteria comes in. If you come in for a like an ag zone again but a thousand lots you would use the other, the other criteria where we, if we say each, each lot requires a thousand gallons per day, then we would multiply a thousand by a thousand to determine tank size which we, pretty substantial tank. We use the worser of the criteria, this case there was only three lots, so the 30,000 was the greater of the criteria.

CHAIR ALDRIDGE: I have more of comment than a question, so maybe I can pose it as a question. What would the, what would the Medeiros' face as requirements if they were not part of this original subdivision agreement, if they were simply a lot, a single lot, right there on Poli, right off Polipoli, where they are now, and had never been part of a subdivision agreement and they came in for water service and water of course is available to make that assumption...

MR. CHANG: Ok.

CHAIR ALDRIDGE: What would they have to do?

MR. CHANG: Ok, if they are not involved in the subdivision, they just have an existing lot, they just wanna get, say, a first meter, section 3 of the rules and regs would apply not, not, see we have two main sections in the rules, one's section 2 which is the subdivision, section 3 would be just a water service request and it would fall under section 3. Being that there is fire protection, well, slow down a little bit, for section 3, when somebody comes in for a water meter we also, we always check for fire protection first and then, whether they had, there's adequate capacity from the system to provide domestic irrigation. But in this, in this particular case, we for, request for water meters, we do have an option where we would give the applicant service at a remote location but to just, but again this one doesn't really apply because the...

CHAIR ALDRIDGE: Well, I, I was saying what if, what if they had come in as an individual single property owner, not part of an original subdivision and applied for water service and you knew they wouldn't adequate pressure but they weren't gonna build a tank just for a single lot, what would you do?

MR. CHANG: We would probably, we might give an option of having them enter into an elevation agreement where...

CHAIR ALDRIDGE: Where they waive their right to the adequate pressure.

MR. CHANG: Adequate water pressure.

CHAIR ALDRIDGE: Right.

MR. CHANG: That would be one option we may possibly give them. But that doesn't satisfy the fire protection requirements. And, so that may, may be a dilemma on, again on this property 'cause in order, before we can give water service, fire protection should be adequate.

CHAIR ALDRIDGE: But that be something that the Fire Department could work out with the applicant?

MR. CHANG: Well, the Water Department needs to make sure that it's adequate. But then again, that's when need to talk to the Director 'cause if we were to require a, say a 30,000 gallon tank the issue comes up with water stagnation for just one user. It's a turnaround for this big, large capacity.

CHAIR ALDRIDGE: Right, so paradoxically one requirement is in conflict with another and that's water quality.

MR. CHANG: Yeah, correct. Does happen.

CHAIR ALDRIDGE: But if, if fire protection were to be provided to one structure on one lot it doesn't have to be provided through a fire hydrant and the calculation of the 30,000 gallon storage tank is predicated on the fire flow and duration of fire requirements from a fire hydrant to serve that subdivision.

MR. CHANG: Well, the size, if you're asking about the size of the tank or...

CHAIR ALDRIDGE: Well, yes. I'm talking about back to a single parcel. If it were a single parcel making application for a single meter and they were able to sprinkle their even with somewhat lower water pressure there would not be a requirement for a hydrant for a 30,000 gallon tank, is that correct?

MR. CHANG: Well, for water service the Department has been using something similar to subdivision as far as number required fire flow with, based on the duration, that's how we, that's how we determine the storage tank, so, in similar case, in ag we would still use the 250 and the required duration. So we still end up with 30,000 and as far as using sprinklers, the Department as of present, have not, do not really recognize sprinklers as a method to use, to provide fire protection in complying with our standards. Eventually, we think we have to because the direction the Department of Fire is going, they gonna allow require sprinkler systems in all new dwellings. For now, we're not allowing the option of sprinklers to satisfy subdivision requirements for water meter applications. For commercial structures, yes we do allow sprinklers.

CHAIR ALDRIDGE: Ok.

MEMBER HALLER: Mr. Chair, kinda along what you're asking, are there any fire hydrants or standpipes on Polipoli over here somewhere?

MR. CHANG: None. It's above our, the elevation's so high over there that we wouldn't be able to, there would be empty pipes, 'cause...

UNIDENTIFIED SPEAKER: I got a standpipe on Poli Road. But I have no water.

MR. CHANG: You have a private...

UNIDENTIFIED SPEAKER: And the county required me to put the standpipe in which I did and a 30,000 gallon water tank and the 250 gallon per minute pump, and still have no water.

MR. CHANG: (inaudible)

UNIDENTIFIED SPEAKER: I wanted to ask that question why does the Board allow, make us do all that stuff and we get none of it. You guys talking about all that and that's ridiculous.

CHAIR ALDRIDGE: This is a hearing, I'm sorry but you're talking out of turn. You could, please.

UNIDENTIFIED SPEAKER: Ok, I'll wait my turn then.

CHAIR ALDRIDGE: Please.

UNIDENTIFIED SPEAKER: But I already been through all that you guys talking about. And I still no more water.

CHAIR ALDRIDGE: Did you get your question answered?

MEMBER HALLER: Yeah. If the Department saying there's no, it's obviously not a, no functioning water hydrant...

UNIDENTIFIED SPEAKER: There would be if you gave me one meter.

MEMBER HALLER: But it's not functioning, so...

MR. KUSHI: Call a recess. You gotta leave.

CHAIR ALDRIDGE: Recess.

MR. KUSHI: You gotta leave, ok? You're disrupting this hearing.

MEMBER HALLER: The question I have is...

CHAIR ALDRIDGE: Gaye, are you on? Ok.

MS. HAYASHIDA: I'm on.

MEMBER HALLER: I guess the question I have is, for instance I come up with you know you have the issue of you need this equipment to be on deeded land so that you can control it. There's certainly a way to parcel off a corner, a quarter acre of the property and deed it to the county so that you can have your land. There's a way for you to put a water usage easement up and say, you can't build a dwelling or a need for water above this line on the property. It seems to me there are possible solutions that could be negotiated or looked at. And has, has the Department considered anything like that?

MR. CHANG: Not as, for this particular subdivision, no, we haven't got to.

CHAIR ALDRIDGE: Ken.

MEMBER OKAMURA: You had more questions about the...

CHAIR ALDRIDGE: Yeah, if you have more questions?

MEMBER OKAMURA: Yeah, I just one.

CHAIR ALDRIDGE: Yeah, please.

MEMBER OKAMURA: So, let's say if they get a water meter now and then when they want to build let's say a shed they still have to go in for building permit, but they won't be coming back to Water, right, Department or they would be coming back to Water Department. Let's say they wanted to build a shed, a storage shed, and they got a meter.

MR. CHANG: You're talking about...

MEMBER LESTER: Yeah.

MR. CHANG: Well, yeah, in this particular subdivision because of that agreement...

MEMBER LESTER: Nobody builds.

MR. CHANG: Saying that they're not gonna, nobody in the, on the properties, the three properties are gonna make a request for building permits, water meters until all the deferred improvements are installed, that's in the agreement.

MEMBER OKAMURA: Ok, but what I'm saying was that even if they did get a water meter now, you know, let's say the agreement didn't exist or, before they build anything like a shed or, or a hours, they have to come back for a permit, right, a building permit, and would the Water Department have to approve, sign-off on the building permit at that time also? Whether, let's say a storage shed.

MR. CHANG: You could say if the property had a water meter and there was no, no agreements, the Water Department would be involved for building permit applications, every building permit application we would be involved except for the first dwelling. For some reason we are not asked to approved the first permit for dwelling on the property.

MEMBER OKAMURA: I see. The other thing you mentioned was that, is, is, is private water system an option in this case? Whatever that means, I don't know. I know you were talking about it private water system and all that.

MR. CHANG: It could in several ways. One way would be, this is, we been, since we had this water, water meter issuance rule and since 1993 when we didn't have water meters available for the Upcountry residences, a lot of people been lot, very innovative and we have in the past couple years, the past three years allowed subdivision to go private. Private meaning that they when ask to totally disconnected from the Water Department, no meters. I'll give you an example. Say someone in Haiku has one meter, he wants to do a three lot subdivision and the Department does not have the two new meters to give 'em so he, pretty much he's stuck. But if he comes and say I wanna do a private system for the two lots but keep the existing meter for one lot, I'll do whatever improvements under our, Water Department's subdivision rules for the one lot to retain the meter, fire hydrants, whatever, but the other two lots, I'm not gonna ask for water meters, I wanna be totally private and in that case the Department has allowed it because under the Department's rules and regs for the private, the lots, the two lots that are being private under the rules, we don't have any jurisdiction to make any kind requirements because they're not obtaining water service from the Department. But for the one lot that retains the water meter we have full jurisdiction on making requirements, subdivision requirements.

MEMBER OKAMURA: So, one person has to own at least one meter, have at least one meter. Or the person who's gonna subdivide needs to have at least one meter.

MR. CHANG: No, if you wanted to, if you don't have any meters and you want to go totally private you just tell the Department, I'm gonna, (unintelligible) smack middle Haiku where we have like big lines but you said, I know you don't have water meters but I just wanna go totally private, I'm not gonna ask for any water meters, and drill their own well and off they go.

MEMBER OKAMURA: You need to have your own source.

MR. CHANG: Yeah. You have to tell the Department what your source is, and if it's something reasonable then the Department wouldn't have any objections to the private system.

MEMBER OKAMURA: So in this case it's pretty hard to, there's no source up there.

MR. CHANG: I can't imagine drilling a well that deep, pretty expensive.

MEMBER OKAMURA: So, it's not an option in this case.

MR. CHANG: I mean if they were, if they came to the Department say I wanna drill a well, but then again they got reservations for two meters, (inaudible) forego that.

MEMBER OKAMURA: Thank you.

CHAIR ALDRIDGE: One final question I think. So there are no private water systems that take water from the county water lines?

MR. CHANG: There are a few. I think was, in the late '70's, Kulanani (inaudible) they have one meter from the county and they, I don't know why, I don't have the background on why it was approved. That's one.

CHAIR ALDRIDGE: But there are, there haven't been any current approval of private water systems with a...

MR. CHANG: The gentleman that came in, Kimo Chung, he went to the Board in the early '90's, mid '90's. He was able to convince the Board to give him water meter where he would pump up with his own private system to a tank, so that would be a private system connected to the Department's system. There were a few that came to the Department (inaudible) that type of request and they were approved and there were some that got denied.

MEMBER HOWDEN: Waikoloa is, Waikoloa is a private system, isn't it?

MR. CHANG: That's one too, right?

MEMBER HOWDEN: Yeah.

MR. CHANG: That was a, probably in the '70's too. That one, they did an elaborate system, similar to the Kulanani. Unfortunately, both systems wanna turn, turn it over to the county for maintenance, 'cause they're finding that these private systems are expensive to maintain. A lot of headaches.

CHAIR ALDRIDGE: Ok. Any further questions?

MEMBER HALLER: Yeah, just quickly. Is there, I understand they have two years with which to comply and then two six month extensions, is this the process of this appeal? Does that postpone the due date?

MR. CHANG: I think the Director has, has to make that decision.

CHAIR ALDRIDGE: Is there any other documentation or a copy paperwork that you wish to submit as evidence?

MR. CHANG: (inaudible)

MEMBER OKAMURA: (inaudible)

CHAIR ALDRIDGE: Oh, I (inaudible).

MEMBER OKAMURA: One more question, yeah.

CHAIR ALDRIDGE: Didn't see you, sorry.

MEMBER OKAMURA: No, no. So if, if, if the party were to put in let's say a tank on their property it, it could, it might be able to, they might be able to work it out where they wouldn't like Marion was saying, they wouldn't build on a certain part of their property and maybe can, they can build anything in the future on the last one-third bottom part. That would be something they could work out, or how would they go about doing that? They would need to make a proposal to the Department again?

MR. CHANG: Well first of all, the Director has to, would be, be willing to accept something like that. That's the first step. And if the Director is willing then we just, see what his decision.

MR. KUSHI: You talking about an elevation line? A build no build line?

MEMBER OKAMURA: Yeah, I think Marion mentioned something, yeah, right, no build above a certain portion of the plot. Like was mentioned earlier, but the fear was, oh the concern was that you would lose lot of your property to build, you cannot build maybe on the upper two-thirds of, but right now it seems like you, you more concerned about trying to water your animals and use that property.

MR. MEDEIROS: I don't want to get into the same thing that my in-laws did and lock myself into an agreement like that, that now my kids cannot build anywhere on the property.

MEMBER OKAMURA: That's right, yeah.

MR. MEDEIROS: And, and if I agree to that I would be just doing the same what my in-laws did to us. I wanna be able to use my property completely. However, again, working with the civil engineers to develop a system that would meet their standards as well as the Fire Department. That's what I, I'm at.

MEMBER OKAMURA: Ok. I want to ask another question about that.

CHAIR ALDRIDGE: Yes, go ahead.

MEMBER OKAMURA: Herb, what, what, is there an option for, for the Medeiros's to go back and make another propose, develop another proposal and then come back? To the Department?

MR. CHANG: This is, I think the Director has to answer that.

MEMBER OKAMURA: I see.

MR. CHANG: Sorry.

MEMBER OKAMURA: I mean you don't have to answer 'cause you're not the witness, right?

MR. YAMASHIGE: I don't think I can speak.

MEMBER OKAMURA: Yeah, right, right.

CHAIR ALDRIDGE: Any other questions?

MR. KUSHI: Mr. Chair, if I may, Herb, you wanna admit into evidence all your exhibits A through T?

MR. CHANG: Yes.

MR. KUSHI: As a (inaudible) to your staff report? And, Madame Secretary, since he drew that map on, does anybody have a cell phone that can take a picture of that? I'd like to, you know, at least put that into evidence.

CHAIR ALDRIDGE: You need Herb to stand right?

MR. KUSHI: No, everybody knows what, at least the record will show that he drew a picture up there.

(inaudible)

CHAIR ALDRIDGE: Right.

MEMBER HALLER: Well, then we should also state for the record that when Gaye held up the map, the Medeiros' property is almost towards the top of the elevation, where's Mr. what his name, the property own, property 99...

MS. MEDEIROS: Chevalier?

MEMBER HALLER: Chevalier's actually, would actually be slightly higher but.

CHAIR ALDRIDGE: Right. Well, while Gaye is doing that, let's move on to the, the final phase here and (inaudible) the appellants' rebuttal.

MS. MEDEIROS: (inaudible) and I want to say something real quickly. I know Ms. Heeler's mentioned about my extensions for my water meters, and my letter to, the letter of the denial when you said we don't meet the standards, if you read below that he, the, Mr. Eng said please advise me how much additional time you would need. I wrote back saying I need time, you know, to get through this because it's very, it's going to be a hard process and I haven't heard back. So that's when I went for the appeal. So right now I don't know where I stand with my time line. He, he told me please advise him how much additional time you feel you require and I wrote back saying I'm gonna need considerable amount of time to work through this and I never got any letter back or, so I don't know where I stand with that which makes me a little nervous, because I don't wanna, you know, I never got a clear answer from them how long more I have.

MR. MEDEIROS: First, I remembered to ask the question you asked about the meters. This is something I wanted you guys to recognize as well. Three of the owners of the different lots all got a letter saying that you can reserve two meters, so if you, well, for me, when I read it, that means we would have had six meters if everybody purchased or which reserved at that time, my understanding 'cause we're talking to, I mean, we're not family so we're all (inaudible). I got two meters, (inaudible) got two meters, so it's very confusing but that's how each letter



states you have that option to reserve two meters. So they recognized the different owners and then they're saying here, they recognize the different owners but here's two meters but that meter is for the other person and that's what totally confuses me. I don't understand. Anyhow, getting back to the private, what we were trying to get across, as a private system, we're willing to work with the civil engineer, meet what requirements are needed, work with the Fire Department. Maybe we'd be the first, he said the sprinklers are something that they're looking into, maybe we'll be the first. If that's what it takes, but give us the opportunity, or give us some options versus build the tank, or too bad so sad. Your property is of no value. And that's basically what it comes down to and now that we've been refused by everybody, basically means our land has no value. And it's a pretty sad state of affairs that we can't even make use of the land that we've inherited and I cannot pass it on to my family. So as you can see, when the testimonies went on, how confusing this is and the response from the Department has been slow at best. And we don't even get sometimes a response. We don't know where we stand. We asked for help, we don't get any help. When we make a proposal it's no. So what else are we left to do? Does it take the act of Congress? Where do we stand here? And thank god, that you're just regular people like us, understand how frustrating this is. And we just wanna get pass that and just use our land, be able to use our land. Whether it be that I give it to my kids to build a home or to use just put our animals. And they're worried about fire protection? There ain't no fire protection up there now. They're worried about 30,000 gallons and there's nothing up there now. So the fire goes on, it's burn anyhow. So if I put a 10,000 gallon tank at least there's 10,000 gallons of water to fight. Right now there's nothing. Being, going back on the meters, if, if you gave, according to the letter I reserved the two meters. If you're giving the two meters thank you very much. If you guys saying that I only have, am allowed one meter then I would ask that I could be refunded back the money for the other meter, if that's going to my neighbor. I think that would be a reasonable request. But if you guys wanna give me what meters I'm willing to keep the two meters as well.

MS. MEDEIROS: He just made it clear that he doesn't want any involvement in this and for us that's struggling financially to pay \$3500 for somebody else and give it to them. It's, just doesn't seem right.

MR. MEDEIROS: That's all I have to say.

CHAIR ALDRIDGE: Yeah. Any cross...

MS. MEDEIROS: I think that's it.

CHAIR ALDRIDGE: Any cross-examinations? From the Department?

MR. CHANG: None.

CHAIR ALDDRIDGE: Board members? Kui?

MEMBER LESTER: Even if you get your meter, because the third person hasn't done it, you still can't do anything with your land. You just have a meter for your animals.

MS. MEDEIROS: Right, that's what we're trying to go for.

MEMBER LESTER: Is there any way they can get a variance on the subdivision or be pulled out of that so they would be acting on their own instead of having to...

MEMBER HALLER: Yeah, but if they, if they keep the application for two meters that they've got, build the infrastructure they can use their land, so can their neighbor, yeah. If they...

(Both Member Lester and Haller talking at the same time)

MEMBER LESTER: Oh yeah, if they do it for...

MEMBER HALLER: If they keep...

MEMBER LESTER: The third one. But that's fair to do it for the third one.

MEMBER HALLER: Not fair is not the issue here.

CHAIR ALDRIDGE: Marion, Kui, let's, let's try and keep this part of pace asking questions of the appellant...

MEMBER HALLER: It's hard.

CHAIR ALDRIDGE: Before we start doing (unintelligible) on ourselves. Just try to keep some order here.

MR. MEDEIROS: Question?

CHAIR ALDRIDGE: Did you finish your question.

MEMBER LESTER: Yeah.

MR. MEDEIROS: The question to me, it won't stop.

MEMBER LESTER: It, no the question is have you checked, is there any way you can get out of the subdivision agreement?

MR. MEDEIROS: That's what the Water Department is holding us to.

MEMBER LESTER: Yeah, I know...

MR. MEDEIROS: Everything that we do, we're doing it as a whole and we keep saying just treat us as owners of this one lot, that's all we've been asking from the get go.

MEMBER LESTER: They haven't answered that question, if you can...

MR. MEDEIROS: If you look they hardly answered whatever question...

MEMBER LESTER: Yeah, I know.

MR. MEDEIROS: You give 'em anyhow.

MS. MEDEIROS: But we, we have our own individual tax key, so we should be treated individually and that's what so frustrating and especially when you have a party that made it clear we don't want anything to do with it, how do you get that person to cooperate with you? It's impossible.

CHAIR ALDRIDGE: Any other questions?

(silence)

CHAIR ALDRIDGE: Alright, let's move on to, you can make your final arguments.

MS. MEDEIROS: Is that our final argument.

MR. MEDEIROS: Leave it up to (inaudible). My final argument is through this whole thing it's just been horrendous. I would like for you guys to give us some relief, some hope, some options. The answer no, we're very familiar with, give us something else, a maybe, I'll help you, let me assist you, we'll make it attainable, affordable, something that we can work with. At this point we feel like we have been, sorry, I feel like we've just been basically discriminated against because we're a local family. You don't have the money so we can just hold you to all these agreements. What my in-laws signed, they did it under the thought that yeah, that's the only way I can give to our kids. They were held to that. They were not forced but they had, if you don't the land stays the way it is. They wanted to separate from the rest of the family so they could give it to us. So again, we're held by each, each one you're held hostage. And again, we're being held hostage. You're not gonna get the water 'til you do this and you supply half of Maui with water, I'm sorry, I'm being a little facieous, but you gotta supply

other lot, owners water and that's not what I'm asking for. I'm asking for just a simply, simple family lot. And the water's never been really the issue. It's how do we get it up there, how do we answer to all the questions or their standard rules and regulations? Well, tell us what they are, let's work together, let's talk to the civil engineers, the Fire Department, let's come to a reasonable solution. We haven't had that opportunity. It doesn't make it, sorry. They don't mention about you can do this or you can do that, nothing. I mentioned to these two ladies before if anything, for me, today this meeting, I would really like that you would help us get our meter, get it in place so we can have water to our lot and start moving on and being able to use our lot. The other part of this is that you guys can recognize the Water Department needs to become more user friendly. They gotta learn to help people not just be there to shut the door on them. I, I hate to see other families go through the same thing that we've gone through. We're three years into this and we can't even get water. I'm going to sell my horses and buy camels 'cause that's the only thing that can go without water. They're not that good riding but what the heck. And this is what the county is forcing me to do. I, I'm just asking as just a regular local person, just give, give us some options. Help us out here. I don't think what we're asking for is unreasonable, when you talk about a meter that they privatize the system after, that's a whole subdivision you're talking about. We're not talking about a subdivision. We're talking about a family. I got a son and a daughter that's all we're talking and some animals. I'm talking about selling it to Oprah or anybody else. I just wanna take care of my family. Give that opportunity. Nothing more. Ok?

CHAIR ALDRIDGE: Thank you, Mr. Medeiros. Department? Closing arguments?

MR. CHANG: The Department you could say has marching orders with subdivisions. Fire protection, adequate fire protection, adequate water service for domestic irrigation, the Charter, the rules and regs pretty much tells the Department you have to do this. You have to implement your requirements, you have to build according to our standards, designs and constructed to our standards. And the Department, when we approved these subdivision we pretty much signing as, signing off with the responsibility to make sure these requirements are met. I hate to use the word liability but that's part of the subdivision process where the Department gets involved. You have to make sure certain standards of living is provided (inaudible) safety. Essentially that's where the Department has to set it's guidelines and try to follow as much as possible. That's it.

CHAIR ALDRIDGE: That's it. Appellant has final rebuttal on this. Do you (inaudible)

MR. MEDEIROS: My rebuttal would be we're not trying to get away from the liability, safety or the fire protection. We wanna ask, we want to find the solution to the, to this problem. We're not trying to get away from all, we don't need fire protection nor do we need the amount of water. We're just trying find out what it is that will meet all the requirement, reasonable requirements for just having, our, our, making use of our lot. Reasonable, that's all we're asking for. And if it's fire protection, we'll find out, what, what is their requirements. And we'll go through the civil engineer and draw up that proposal and try meet everybody and make a, get to that happy medium. But it's the concern that hey, this the rules and the regulations. We don't move or, or we're not gonna go anywhere, and we're not gonna go either or side. This is the straight line that we go. We know for a fact there are exceptions and exemptions to that. And what we're asking for, just tell us what is required and we'll try to make it happen. Whether it's booster pumps, gravity, whatever it takes to make that, that requirement and that rules. But we, we haven't got any. And when we put down that we wanna work with the civil engineer and your department and the Fire Department, that's not standard, no, no, no, no. I'm very impressed that you guys can speak and not say no, I'm glad the Department was able to speak and not say no. I, I thought you're only come go no, no. So this is a good change. A good change in itself. Anything you wanna say? No?

(laughter)

MS. MEDEIROS: Not at this time.

MR. MEDEIROS: Ok, that's all I have to say.

CHAIR ALDRIDGE: Right. Thank you. I'm gonna close the hearing at this time, before I'm, I wanna take a recess for ten minutes, but before we do that I'd like to get a sense of the Board as to whether or not we wish to deliberate in open session or in close session.

MEMBER HOWDEN: Well, we need to go into close session...

CHAIR ALDRIDGE: We will do that...

MEMBER HOWDEN: To determine.

CHAIR ALDRIDGE: To determine...

MEMBER HOWDEN: Yeah.

CHAIR ALDRIDGE: The issue of your potential conflict of interest but as far as deliberating on this matter.

MEMBER OKAMURA: Oh, you mean today or at the next meeting?

MEMBER LUCK: Both.

CHAIR ALDRIDGE: Well, we still can continue today. (inaudible) 45 minutes before we have to leave the room. I'm in favor of going with an open session myself.

A chorus of favorable responses.

CHAIR ALDRIDGE: Good.

MS. HAYASHIDA: Take a recess now?

CHAIR ALDRIDGE: Let's take a ten minute recess. We'll come back, we're gonna go into a close session.

RECESS

CHAIR ALDRIDGE: Alright. The meeting will come to order. By the way what happened to my gavel?

MEMBER LUCK: Yeah, I was wondering about that too.

MS. HAYASHIDA: Burned up in the fire. So we were using Planning Department's fire.

MEMBER HOWDEN: No fire protection.

CHAIR ALDRIDGE: No fire protection.

(laughter)

MEMBER LESTER: You mean Mike didn't take it with him.

MEMBER HALLER: There goes that theory, Michael.

CHAIR ALDRIDGE: Ok, (inaudible) I'm gonna entertain a motion to go into close session to confer with the Corporate Counsel and but before we do that I was informed by the secretary that we have this room 'til 3 p.m. So I wanna poll the Board whether or not you're able to stay until 3:00 or people have commitments and, that will need to adjourn the session early.

MEMBER HOWDEN: Yeah, I, I have a patient at 1 o'clock so.

CHAIR ALDRIDGE: Ok. Then I think we should probably...

MEMBER HOWDEN: But I might be disqualified anyway so.

CHAIR ALDRIDGE: Well, who knows. The other matter is that I should inform you that I had discussed the appropriateness of having the appellant here during the deliberation and, it's fine but you can't participate so I'm not sure you wanna be here in that case, while we deliberate among ourselves. And given the time, it may well be that we have to set a special meeting for the deliberations.

MEMBER HALLER: Isn't anybody else have time restraints? If nobody else does is it possible for you to postpone your...

MEMBER HOWDEN: I got a 1 o'clock, a 2 o'clock and a 3:30, so.

CHAIR ALDRIDGE: (inaudible) rest of the afternoon.

MEMBER HOWDEN: I gotta...

MEMBER HALLER: Thank you.

CHAIR ALDRIDGE: Yeah, so I think we need to (inaudible). So I'm gonna entertain a motion. What we'll do is if we reschedule for another deliberation we do that and but at this point I have to go and entertain a motion for a closed session to discuss whether or not (inaudible). Will somebody move?

MS. MEDEIROS: We're a little concerned that if he does get eliminated it leaves how many?

MEMBER OKAMURA: Six.

CHAIR ALDRIDGE: Six. You need five no matter what, for a decision that is.

MR. KUSHI: For the record, when we do, when the Board does take up this matter again, you're gonna advise staff to notify you by certified mail of the exact date, time and place of the hearing.

MS. MEDEIROS: So we come back.

CHAIR ALDRIDGE: Right, is there a...

MEMBER OKAMURA: So moved. I move that we executive session.

MEMBER HALLER: Second.

CHAIR ALDRIDGE: So we're going to closed session, executive session to discuss Michael Howden's potential conflict and we have to ask you to leave the room.

MR. KUSHI: Oh, you gotta take a vote.

CHAIR ALDRIDGE: Oh, I'm sorry.

MEMBER LESTER: Take a vote for what?

CHAIR ALDRIDGE: Yeah for the closed session. All in favor?

A chorus of ayes.

CHAIR ALDRIDGE: So moved.

MR. MEDEIROS: (inaudible) rest up. We coming back, yeah,

CHAIR ALDRIDGE: Yeah, go ahead (inaudible)

MEMBER LUCK: I'll watch it for ya.

MS. STARR: I'm confused. If two aren't here, one won't be here, one gets eliminated that leaves five out of nine, that means it would have to be unanimous, is that fair to an applicant?

CHAIR ALDRIDGE: That's why we have to, have to consider another meeting date...

MS. STARR: Yeah.

CHAIR ALDRIDGE: It's not going to be here, next regular scheduled date.

MS. STARR: 'Cause if it has to be five out five and there's only five the options, the odds are a little riskier for them that's all, yeah.

MEMBER HOWDEN: Better than Las Vegas though.

MS. STARR: There are, there are no odds. Oh yeah, I guess.

MEMBER LUCK: All or nothing.

MS. STARR: Yeah, it's all or nothing. That's how you go. Ok, I'm gonna take off. Thank you very, very much. It was nice to meet all of you...

MEMBER LUCK: Thank you for coming down.

MS. STARR: And very interesting to watch your proceedings and it's a very valuable and we appreciate your contribution. I do.

MEMBER LUCK: Thank you.

MS. STARR: Aloha.

*THE BOARD NOW GOES INTO EXECUTIVE SESSION.*

CHAIR ALDRIDGE: We're back in session. Despite the appearances that he's no longer a part of this case, he still is. We went into close session to determine he was not a conflict of interest so he will remain on this. He just had to go to work.

(laughter)

MS. MEDEIROS: We were worried about him.

CHAIR ALDRIDGE: But what we have, what we are gonna do is to, it's just getting too late, we're not gonna deliberate today. The Board will go into a special meeting for deliberation on December 13<sup>th</sup>. Now we've been advised by Corporation Counsel that even if you were there, you cannot participate in our deliberations so we're just gonna go into a closed deliberation. However, the actual decision that we make will not take place until the open meeting of the regular board meeting of the 20<sup>th</sup>. We moved the meeting, the regular, the next regular board meeting from the 27<sup>th</sup> to the 20<sup>th</sup> of December and that's where the final decision will be made. And I think you have, was it 'til the 12<sup>th</sup>?

MR. KUSHI: Yeah, the Board will allow if you want to, to submit a written, written brief, which is basically a memorandum. Doesn't have to be formalized, you know, just you know, a memorandum to the Board supporting your position, supporting your testimony, your arguments again. Don't re-hash, try not to re-hash everything you said today, we don't wanna read that. A written brief, a memorandum supporting your position as well as proposed findings of fact, conclusions of law and a decision order. I know it's all Greek to you but this is the way it is set up. You don't have to but you're allowed to submit it by the...

CHAIR ALDRIDGE: Twelfth.

MR. KUSHI: Twelfth, December 12<sup>th</sup> in writing. Like wise the Department would have the same opportunity. This is to help, help the Board in its deliberations. Maybe you forgot to say something that you wanted to say or whatever but a, again (inaudible) I mean, that would conclude your pleadings of your case. No other evidence will be introduced but the Board...

CHAIR ALDRIDGE: Besides what have been already.

MR. KUSHI: Right. Besides what been referred to. So try to get that in by the...

MS. HAYASHIDA: Twelfth.

MR. KUSHI: The 12<sup>th</sup>?

MS. HAYASHIDA: So, that we can bring to the 13<sup>th</sup>.

MR. KUSHI: Right.

MS. MEDEIROS: Evidence (inaudible) today. No more evidence?

MS. HAYASHIDA: I mean, you know, just to support your, whatever you said.

(inaudible)

CHAIR ALDRIDGE: We're gonna move the (inaudible) agenda items, right, to the next...

MS. HAYASHIDA: Ok. So are we done with the appeals?

CHAIR ALDRIDGE: Yes, we are.

MR. KUSHI: Yeah.

MS. HAYASHIDA: I'm gonna

MR. MEDEIROS: And so we're excused?

MR KUSHI: Yeah.

*BACK INTO REGULAR SESSION.*

MR. MEDEIROS: Before I go, Happy Holidays.

(laughter)

MEMBER LESTER: I think he's coming back before then.

CHAIR ALDRIDGE: I'm gonna go ahead and adjourn this meeting and continue all of this business to the next meeting.

MS. HAYASHIDA: So the meeting is adjourned?

CHAIR ALDRIDGE: Meeting is adjourned.

Prepared and submitted by:

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Gaye Hayashida  
Commission Support Clerk

Approved on: \_\_\_\_\_