

WATER RESOURCES COMMITTEE

Council of the County of Maui

MINUTES

October 13, 2009

Council Chamber

CONVENE: 9:03 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Sol P. Kaho'ohalahala
Councilmember Danny A. Mateo
Councilmember Michael J. Molina

NON-VOTING MEMBERS:

Councilmember Wayne K. Nishiki

EXCUSED: Councilmember Bill Kauakea Medeiros

STAFF: Kimberley Willenbrink, Legislative Analyst
Tammy M. Frias, Committee Secretary

ADMIN.: Jeffrey Eng, Director, Department of Water Supply
Jane Lovell, Chief, Litigation Section, Department of the Corporation Counsel
Edward S. Kushi Jr., Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Randy Endo, Vice President, Maui Land & Pineapple Company, Inc.
Additional attendees (5)

PRESS: *Akaku--Maui County Community Television, Inc.*

CHAIR VICTORINO: . . .(*gavel*). . . Good morning and welcome to the Water Resources Committee meeting for October 13th, 2009. It is 9:03 and I apologize for the few minutes delay. We have a quorum present this morning and let me introduce the Members. First of all, Members that are present. . .Vice-Chair Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR VICTORINO: Good morning. Vice-Chair of the Council, Michael J. Molina.

COUNCILMEMBER MOLINA: Good morning, Chair.

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CHAIR VICTORINO: Also the Chair of the Council, Mr. Danny Mateo.

COUNCILMEMBER MATEO: Good morning, Chair.

CHAIR VICTORINO: Yeah. Good morning. Our wonderful Upcountry representative, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair. . .

CHAIR VICTORINO: Good morning.

COUNCILMEMBER BAISA: ...and welcome, and congratulations.

CHAIR VICTORINO: Thank you. Thank you very much. And our Member from Lanai, our, our. . .distinguished Member from Lanai, Sol P. Kaho'o...ho'ohalahala.

COUNCIL MEMBERS: . . .(*chuckle*). . .

CHAIR VICTORINO: Some days it comes out easier than others. I apologize, Sol.

COUNCILMEMBER KAHO'OHALAHALA: Ho'o.

CHAIR VICTORINO: Ho'o. Okay, got it. Excused today is Bill Medeiros, and I hope he gets well very quickly. We have one Non-Voting Member today and that is Mr. Wayne Nishiki from South Maui. From the Administration we have the Director of the. . .Water Supply, Mr. Jeffrey Eng.

MR. ENG: Good morning.

CHAIR VICTORINO: Good morning. And from Corporation Counsel, Deputy Corporation Counsel Edward S. Kushi.

MR. KUSHI: Good morning.

CHAIR VICTORINO: And we have Jane Lovell from the Corporation Counsel here this morning also. So thank you, Ms. Lovell, for being present. And, of course, we cannot do without our Committee Staff. We have our Legislative Analyst, Ms. Kim Willenbrink and also our Committee Secretary, Ms. Tammy Frias. Thank you, ladies, for all your hard work.

ITEM NO. 12: WATER AVAILABILITY (C.C. No. 09-282)

CHAIR VICTORINO: Ladies and gentlemen, we only have one item today and the item is WR-12, Water Availability. This, this Committee is in receipt of County Communication No.

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09-288 [*sic*], from the Director of the Water Supply, transmitting a proposed bill entitled A BILL FOR AN ORDINANCE AMENDING CHARTER, CHAPTER 14.12, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY. The purpose of the proposed bill is, one, exempt large lots, as a defined in Section, as defined in Section 18.16.270, Maui County Code, from the requirements of Chapter 14.12, Maui County Code, if no permits or approvals are required...or request for water services are sought; two, clarifica..., clarifying that the requirements of 14.12, Maui County Code, only apply to subdivisions, as defined in Chapter 14.01.040, Maui County Code; and thirdly, clarify the appeals that the Director of Water Supply's decisions, made pursuant to Chapter 14.12, Maui County Code, shall be heard by the Board of Variances and Appeals. That was a mouthful in my own regard.

So what we'll be doing is we will take public testimony first and then after that is completed, I will ask the Director to clarify what specifically he is requesting for these changes. So with no objections, I will start public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. We have one testifier signed up so far for WR-12, that's Mr. Randy Endo, and Randy will be speaking on behalf of Maui Land & Pine and he is the Vice-President of Maui Land & Pine. Mr. Endo.

...BEGIN PUBLIC TESTIMONY...

MR. ENDO: Good morning, Committee Chair Victorino and Council Members. My name is Randy Endo and I'm speaking on behalf of Maui Land & Pineapple Company in support of WR-12, a proposed bill amending Chapter 14.12 relating to Water Availability. The bill will exempt large lots under--oh, sorry. The bill will exempt large lots from Chapter 14.12 in certain circumstances. To be specific, it will exempt large lots as defined in Section 18.16.270 of the Code, provided that no permits or approvals which require water service are sought. This new exemption is, in essence, just an example of a situation that fits within the already-preexisting general exemption--you know, there's an exemption that says that subdivisions that do not require water service, such as family subdivisions, et cetera, are exempt. So this bill simply makes it explicitly clear that large lots are one of these types of subdivisions that are exempt from the "show me the water" ordinance. The exemption does not allow anyone to circumvent the intent of Chapter 14.12 since the subdivider cannot request a single water meter for any large lot that qualifies for the exemption. In essence, the exemption merely defers application of Chapter 14.12 until such time that the development of the lot actually occurs. And if I might just give one really quick example how it's important to certain, certain landowners. For example, if we owned a really large piece, say 1,500 acres, and we only wanted to develop, you know, 10 acres near, near the highway on the ocean and the rest of it was just going to be, you know, kept as is and we're not doing anything with it, we would do a large lot exemption--I'm sorry--we would do a large lot subdivision and that large lot, we wouldn't touch it at all and so...and we wouldn't be requesting any water meters for that large, giant remainder lot. And in that situation we just feel that it's commonsense and fair that that large lot that nothing's happening with

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doesn't have to come in and try and show that there's an adequate water supply for this 1,500-acre remainder lot. So that's the reason why Maui Land & Pineapple feels that it's a, it's a fair and a reasonable exemption of this ordinance. Thank you for considering Maui Land & Pineapple's comments.

CHAIR VICTORINO: Thank you. Questions from the Committee Members? Mr. Molina, please.

COUNCILMEMBER MOLINA: Thank you, Chairman. Good morning, Mr. Endo. Thank you for your testimony. You know, you represent a company that we kind of have the general idea that is having difficult. . .it's going through difficult times with the economic downturn. Do you see this bill having any type of benefit economically throughout the community? I mean if this bill goes as is, this exemption, is there some economic benefit?

MR. ENDO: Yeah. I would say that I don't have any specific numbers or anything, but in general, I believe that this would help not only Maui Land & Pineapple but many other landowners. Whether you're creating a new high school in Kihei or a new treatment facility somewhere and you need to chunk out big chunks of land from a larger parcel, it facilitates that process and by facilitating that process you would actually get to construction of, of projects faster. So, I believe it would have a positive economic impact to the County, yeah, and private, private enterprise.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Mr. Chair.

CHAIR VICTORINO: Thank you. Any other questions for the testifier? Seeing none, thank you, Mr. Endo. Mr. Endo was the only one who signed up to testify. I will--no one else has signed up, yeah? I will give one more opportunity to anybody who wants to testify on behalf of this bill, to please come forward. Seeing no one charging to the podium, I will with, with your consent. . .close public testimony on WR-12, if no objections.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: Okay. Members, I will direct you to some background information dated October 12th, 2009 that you have been provided, relating to the history of the "show me the water bill". . .it's in your binders and it was dated October 12th. Also, I will at this time like to introduce the Director from the Water Supply, Mr. Jeffrey Eng, to explain the reasons for the bill and why it was transmitted to us. And we have Ms. Lovell from Corporation Counsel for some questions, if any questions arise about some of the things that we, that the Director is presently trying to introduce. So, Director Eng, if you would like to, please?

MR. ENG: Thank you, Mr. Chairman. And good morning, Committee Members.

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COUNCIL MEMBERS: Good morning.

MR. ENG: As the Chairman spoke in his introduction this morning of this bill, he basically covered all the areas that we wanted to actually clarify or do some housekeeping to help administer this, this ordinance. And basically, as Mr. Endo pointed out, when we were administering this ordinance, the large lots were somewhat, somewhat ambiguous and so it, it really clarifies that ambiguity. Another thing is there are essentially housekeeping issues. So, you know, we hope that you will support our proposal. Again, it, it'll ease the administration of this ordinance. Thank you.

CHAIR VICTORINO: Thank you. Questions for the Director?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR VICTORINO: One moment. Let me--any Member have a question first?

COUNCILMEMBER KAHO'OHALAHALA: Yes.

CHAIR VICTORINO: Okay. Mr. Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. Director, can you explain the ambiguity that you're describing in the bill? What is it that's, that you're referring to?

MR. ENG: Well, basically, you know, the ordinance did apply to subdivisions. And in Maui Pine's case when they came in with a large lot subdivision, the question is was the existing ordinance applicable. . .and, and that's where we had some uncertainty. So we took the position a year and a half ago or so that it was applicable, apply it to all subdivisions whether defined by large lot or not. And, and so again this, again, provides a clarity, you know. It does exempt large lot subdivisions; however, provided that no permits or approvals which require water service or request water service are sought. So this actually allows them to at least do that first step if they have a very large parcel, as Mr. Endo illustrated, and proceed with at least cutting that up. They still need to, again, comply with the ordinance later on as they further subdivide those larger parcels. So it makes a lot more sense for the Department in administering the ordinance.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Is this the only entity that is affected by, by this?

MR. ENG: I believe there would be other entities. Any large property owner who wants to do a large lot subdivision for further, potentially further subdivision or other reasons, it could impact. So no, they are not the only landowner that this would be applicable to.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you for that clarification.

CHAIR VICTORINO: Thank you. Other Members with questions? Yes, Mr. Pontanilla?

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VICE-CHAIR PONTANILLA: Thank you. I don't know if this pertains to this particular ordinance, but I do remember several weeks ago we approved a subdivision which was a large lot subdivided, and we gave that particular developer entitlements. But again along with that, though, we added a lot of conditions in regards to, number one, water availability. So here we are--and I, I take a look at this and, and, you know. . .it's something similar in a way, you know. We. . .on the other hand we gave that person the entitlements, but again he need to show me the water before he could develop or get his building permits. So I, I look at this somewhat in the similar fashion. Thank you.

CHAIR VICTORINO: Thank you. Other Members with questions? Yes, Ms. Baisa?

COUNCILMEMBER BAISA: I understand what we're doing here, and as long as we're not waiving. . .*(cough)*. . .the eventual need to show me the water, then I can live with it.

CHAIR VICTORINO: Thank you. Any other questions? Then, Mr. Nishiki, you had some questions?

COUNCILMEMBER NISHIKI: No, I don't now.

CHAIR VICTORINO: . . .I'm sorry, Mr. Nishiki?

COUNCILMEMBER NISHIKI: I don't now.

CHAIR VICTORINO: Oh, okay. I apologize. Thank you, Mr. Nishiki. Okay. If seeing no other questions, then I will make my recommendation.

COUNCIL MEMBERS: Recommendation?

CHAIR VICTORINO: Okay. If there's no further discussion, I will entertain a motion to pass on first reading the proposed bill, as revised, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.12, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY", and the filing of County Communication No. 09--oh, hold on. Oh, it wasn't? Oh, we didn't revise? Okay. Can I, can I scratch that and do this over again, please? I apologize. Okay. If there is no further discussion, I will entertain a motion to pass on first reading the proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.12, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY", and the filing of County Communication No. 09-282.

VICE-CHAIR PONTANILLA: Mr. Chairman, I move to move on first reading "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.12, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY", and the filing of the communication.

COUNCILMEMBER BAISA: Second.

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CHAIR VICTORINO: Oh, there was a second by Ms. Baisa. If you speak into the mic so that we, we know the public has heard that, yeah? So a motion was made by Mr. Pontanilla and seconded by Ms. Baisa. Any further disc..., discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record read six ayes; one excused, Mr. Medeiros; and no nays.

VOTE: AYES: Councilmembers Baisa, Kaho‘ohalahala, Mateo, Molina, Vice-Chair Pontanilla, and Chair Victorino.

NOES: None.

EXC.: Councilmember Medeiros.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FIRST READING of bill, and FILING of communication.

CHAIR VICTORINO: Ladies and gentlemen, I don't know about world records, but. . .

COUNCIL MEMBERS: . . .*(chuckle)*. . .

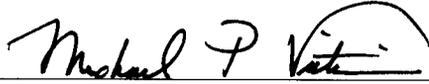
CHAIR VICTORINO: . . .I am, I only made this one item 'cause I thought it was going to be long and arduous, but I think everybody got the message. So if there is no further business or any, any announcements, I will rec..., I will adjourn the meeting for the Water Resources Committee for October 13, 2009. . . .*(gavel)*. . .

ADJOURN: 9:19 a.m.

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APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

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Transcribed by: Tammy M. Frias