

WATER RESOURCES COMMITTEE

Council of the County of Maui

MINUTES

August 5, 2015

Council Chamber, 8th Floor

CONVENE: 9:05 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Gladys C. Baisa, Chair
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Stacy Crivello

EXCUSED: VOTING MEMBERS:
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Mike White

STAFF: Sharon Brooks, Legislative Attorney
Gregory Garneau, Legislative Attorney
Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: David Taylor, Director, Department of Water Supply
Edward S. Kushi, Jr., First Deputy Corporation Counsel,
Department of the Corporation Counsel
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel

Seated in the gallery:

Herbert Chang, Engineering Program Manager, Department of Water Supply
Jase Miyabuchi, Civil Engineer, Department of Water Supply
Scott English, Lieutenant, Fire Prevention Bureau,
Department of Fire and Public Safety

OTHERS: William Jacintho, President, Maui Cattlemen's Association
Lisa Starr
Annette Niles
Sherman D. DePonte
(3) additional attendees

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

ITEM 28: UPCOUNTRY WATER METER INSTALLATION (CC 15-174)

CHAIR BAISA: . . .*(gavel)*. . . Will the regular meeting of the Water Resources Committee please come to order. I am the Chair of this Committee, Gladys Baisa, and today is Wednesday, August 5, 2015, and it's approximately five minutes after nine in the morning. Before we get into our work today, I would like everyone to please put their cell phones in the silent mode and I'll do the same. Thank you very much. And I'd like to introduce the Members that are here with us and the folks that are here to help with the meeting. There's Mr. Robert Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR BAISA: And he's our guy from East Maui. I had the opportunity to go out there yesterday and it was wonderful.

COUNCILMEMBER CARROLL: I'm glad you went yesterday 'cause it fell down today.

CHAIR BAISA: I heard. We were on a tight schedule. I'd like to also introduce Member Elle Cochran from West Maui.

COUNCILMEMBER COCHRAN: Aloha. Good morning, Chair.

CHAIR BAISA: Aloha, Elle. And we have Don Couch from South Maui.

COUNCILMEMBER COUCH: Aloha and good morning and very curious as to what happened on East Maui.

CHAIR BAISA: A lot of rain came down at the most inappropriate time during lunch.

COUNCILMEMBER COUCH: Oh.

CHAIR BAISA: Yes. Other than that, it was wonderful. And we also have Member Stacy Crivello from Molokai.

COUNCILMEMBER CRIVELLO: Aloha and good morning, Chair.

CHAIR BAISA: Aloha and good morning and thank you very much, Members, for being here this morning. We have some Members that are excused, Mike Victorino from Wailuku is excused and Council Chair Mike White, our Makawao-Haiku-Paia person, our Council Chair, is excused. He's got some real important business on Oahu that he's taking care of for the Council today so he had to leave us on our own. Also, we have from the Administration this morning, we have Dave Taylor, the Director of Water Supply.

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MR. TAYLOR: Good morning.

CHAIR BAISA: Good morning, Mr. Taylor. And we have also Ms. Jennifer Oana.

MS. OANA: Good morning.

CHAIR BAISA: Good morning. And we also have our faithful Deputy Corporation Counsel...First Deputy Corporation Counsel Ed Kushi.

MR. KUSHI: Good morning.

CHAIR BAISA: Thank you, Ed. And also sitting in the audience this morning and he's been spending a lot of time with us lately, and we're very happy to have him help us, Lieutenant Scott English from the Department of Fire and Public Safety. And he'll be joining us down here if we need him later. We also have our Committee Staff this morning. We have Sharon Brooks who is our Legislative Attorney and we have our Secretary, Clarita Balala. And sitting in here, he's coming right up to assist Sharon Brooks, is our new Council Services attorney and this is Greg Garneau. Thank you very much, folks, for being here. Okay, I guess we're ready to rock and roll. We would like to...oh, and our District staff. We have our office out there too. We have Dawn Lono in Hana, we have Denise Fernandez in Lanai, and Ella Alcon in Molokai. Members, public testimony will be limited to the item on our agenda today. If you wish to testify, please sign up at the desk located in the lobby or at one of the District Offices listed on your agenda. Testimony is limited to three minutes and upon request, up to a minute to conclude. At three minutes, the light will turn yellow, and at four minutes, it will blink red. If you're talking at the four-minute mark, please stop. When testifying, please state your name and if you're representing any group...anybody but yourself. We have established a connection to the District Offices and to be fair we will rotate through each of the sites. In the Hana Office, Dawn Lono, do you have anyone wishing to testify?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR BAISA: Good morning, Dawn, and thank you so much. We had a wonderful time in your area yesterday except for some heavy rain during the noon hour. In the Lanai Office we have Denise Fernandez. Do you have anyone wishing to testify?

MS. FERNANDEZ: Good morning, Chair. This is Denis Fernandez on Lanai and we have no one waiting to testify.

CHAIR BAISA: Thanks, Denise. And in the Molokai Office we have Ella Alcon. Do you have anyone wishing to testify?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

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CHAIR BAISA: Thank you, Ella. Okay, well, we're going to come to the folks that want to testify here in the gallery at the moment. Ms. Brooks?

MS. BROOKS: The first testifier will be William Jacintho, followed by Lisa Starr.

CHAIR BAISA: Good morning.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. JACINTHO: Good morning, Chair Baisa and Members of the Water Resources Committee. My name is William Jacintho, President of the Maui Cattlemen's Association. Here today to support the intent and purpose of the proposed bill on helping Maui County families acquire water meters. There is a concern with the language of the bill on Chapter 14.13.065, Section I, referring to subdivisions for only two lots. While the language prevents real estate abuse, the bill limits the number of a family's ability to subdivide family property according to the allowable use in the Planning Department has in place. If a private approved home fire system is in place for one or two homes and is proven safe, I really don't see it any different if there's another one. The systems all isolate the problem on their own. In addition, I'm not sure how this language would affect allowable farm employee housing as well. Please take another moment to discuss this concern in today's meeting and not all TMKs are of the same acreage and understand density is a concern, and again, discussion is healthy.

CHAIR BAISA: Members, any questions for our testifier?

COUNCILMEMBER COCHRAN: Chair?

CHAIR BAISA: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair, and good morning, Mr. Jacintho --

MR. JACINTHO: Good morning.

COUNCILMEMBER COCHRAN: --for being here. Let's see...in that sentence that states, home fire system is in place for one or two homes and is proven safe. I really don't see any difference if there's another one. Another one meaning a home?

MR. JACINTHO: Another...yeah, home.

COUNCILMEMBER COCHRAN: Dwelling...another dwelling. Okay. Okay.

MR. JACINTHO: Basically, looking at how Planning has three allowable and that's about all. But...and like I mentioned, I do understand about density and if that's an issue, you gotta make a call on that.

COUNCILMEMBER COCHRAN: Okay. Thank you for your time.

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MR. JACINTHO: Thank you.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR BAISA: Any other questions for the testifier? Seeing none, thank you very much for being here.

MR. JACINTHO: Thank you.

CHAIR BAISA: Ms. Brooks?

MS. BROOKS: The next testifier is Lisa Starr, followed by Annette Niles.

CHAIR BAISA: Good morning.

MS. STARR: Good morning, Chair Baisa and Members of the Water Resources Committee. I'm Lisa Starr. I'm here representing myself and maybe I could be so bold to say many other people. . .

COUNCILMEMBER COUCH: Excuse me, Madam Chair, could you have her use the microphone?

CHAIR BAISA: Ms. Starr, would you get closer to the mic, please.

MS. STARR: Hello. Like that?

CHAIR BAISA: Yeah, we need to get all of what you have to say --

MS. STARR: Okay.

CHAIR BAISA: --on the record.

MS. STARR: Alright.

CHAIR BAISA: Thank you.

MS. STARR: So to repeat, I'm Lisa Starr representing myself and perhaps also many people across the County who have waited and hoped that someday they could do a small subdivision of their small acreage land in order to...for family planning. I'd like to express my support of this, Item WR-28, and I would like to compliment and thank Chair Gladys Baisa, the Committee, and the representatives of the Fire Department, and Corp. Counsel for arriving at a solution which will clearly provide some relief for subdividing and building for applicants on the Upcountry Water Meter List. I would further like to request and urge that subsequent to the approval of the bill there be a follow-up in the very near future to expand the exemptions allowed here to all property owners who are impacted in much the same way by lack of infrastructure in rural

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areas throughout the County. The fire control conditions for subdividing into two or three parcels often for family planning purposes, not for profit, can be very onerous and often financially impossible. Yet, the solutions provided by this bill do provide feasible conditions. I ask that the intent and language of this very bill be reviewed in light of being applied to all property owners on and off the grid. As has been expressed, this bill will be an avenue for clearly needed housing to be built where it was not possible. It also would make it possible for so many families to give their children a parcel of land, a place for a home. For me, this bill brings hope for important possibilities. May I also suggest that the once very workable deferrals for three lots or less subdivisions which was withdrawn in about 2006 be re-examined and seriously reconsidered. Thank you.

CHAIR BAISA: Thank you very much, Ms. Starr. Members, any questions for the testifier? Seeing none, thank you. Ms. Brooks?

MS. BROOKS: The next testifier is Annette Niles, followed by Sherman DePonte.

CHAIR BAISA: Good morning. Welcome back.

MS. NILES: Good morning. Thank you, Council. My name is Annette Niles. I'm here in support of this bill, and well, William said what mostly I was going to say the same thing about trying to understand like more than having to have two lots because to me her house would have each tank and I wouldn't see a difference adding on another one. But I mean we have laws and we are getting good agriculture bills coming through right now and we all need to be on the same page so we can all, you know, help our local people and get these things going. That's all I have to say. Thank you.

CHAIR BAISA: Thank you very much. Members, any need to clarify the testimony? Seeing none, thank you.

MS. NILES: Thank you.

CHAIR BAISA: Ms. Brooks?

MS. BROOKS: The next testifier is Sherman DePonte.

CHAIR BAISA: Good morning --

MR. DEPONTE: Good morning, Chairperson --

CHAIR BAISA: --and you have your red shirt.

MR. DEPONTE: --and Council and Staff. Hey, I'm Sherman Dudley DePonte, 17529 Haleakala Highway, and I'm also a licensed professional land surveyor. I've been doing this for 40 years in this County and up in California. I looked at this bill we presented to Council...to Baisa's office and everyone else on it. The reason is I'm looking for an out for the Upcountry people, not only myself, but for everyone else up

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there so they can do something with their land that they are already zoned for. If the density is too dense, then the zoning was supposed to go down. It didn't. We're still at the same zoning. I'm paying taxes for half-acre zoning that I cannot even use. People with agriculture land that wants to go down to two acres from say 10 acres cannot. We've been held back for years and years on this thing. The infrastructure, the requirements that is required of us for fire protection. We've laid out for you a fire protection plan that can save lives. The percentage was mentioned at the last meeting. Almost 90 percent of the fire will be put out by the sprinkler system. Whether it's 80 or 90 percent I know one thing for sure, it's better than zero. And anyone in that house can be protected by this fire protection. And the protection is simply this - the fire goes on, the sprinkler system comes on, the fire goes out or most of it at least. Give it a chance, give the people a chance to get out. Now whether it's one house, two house, ten houses, the density already has been established by our Planning Department with our laws. Now we have infrastructure that is not in place. We need checks and balances on that. Again, the infrastructure held us back...it's holding a lot of people back from doing their subdivisions. I say this with experience from my own. You know, doing Akamai Land Surveying and trying to get people to be able to subdivide their land and watching their dreams go up in smoke as I call it all the time and also our bill is being watered down. I would like to see it brought up to the three lots or less which they stopped about 2006, 2007. Last time I mentioned about the three lots or less I was a little bit naïve but I got myself up to speed with the DSA and what it was all about. What the three lots or less basically is for families basically to at least have two lots extra for two kids because the families build-up of two, two and a half, that's an average. That's not just making up stories. That's what it is. So now with only one house or one meter you get a big house and then a cottage, if that. So now it's kind of like we need to be able to pass the land on to our children nicely and out there.

MS. BROOKS: Three minutes.

MR. DEPONTE: In any case, I've been here before. You've seen it. I'm wearing the red. We're still praying and I'm hoping that you, Council Members, will step forward. This is a good bill. It's a start. It's a step in the door. It's moving forward. I hope we can even move further with this and give us a little bit more leeway. One more lot is not asking for too much. Thank you.

CHAIR BAISA: Thank you very much. Members, any need for clarification? Seeing none, thank you.

MS. BROOKS: There are no further testifiers in the Chamber.

CHAIR BAISA: There are no other testifiers who have signed up to speak in the Chamber. Would anyone else like to speak? I don't see anyone in the Chamber. Let's go back to the District Offices. Ms. Lono in the Hana Office, has anyone come to testify?

MS. LONO: There's no one waiting to testify in Hana.

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CHAIR BAISA: Thank you. Ms. Fernandez in the Lanai Office, has anyone come to testify?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR BAISA: Thank you. Ms. Alcon in Molokai, has anyone come to testify?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR BAISA: Thank you very much, Ella. There are no people in the District Offices or appearing in the gallery, unless somebody runs up. Seeing nobody, Members, there's no one else wishing to testify. Without objections, I'd like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR BAISA: Thank you very, very much.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR BAISA: Members, we had hoped that we were going to try to pass this bill out of Committee today, however, there are some changes that have come up at the last minute that I feel are important enough that we would want to meet again for the very last time and I promise you this is going to be the last delay because I'm going to try to get this out of Committee. I'm not going to try. I'm going to get it out of Committee with your help on August 19, which is our next Water Resources Committee meeting. But we've had some recommendations from Staff, and of course, you have been listening to the public testimony and you know what's coming in. Unfortunately, my Staff who normally handles this Committee is ill and...seriously ill, and so she's not here with us, and so we've had to try to work without her assistance. Also, the things that came up last minute I think are important that we try to incorporate them in the draft bill that all of you Members and all of the public will have an opportunity to see before we meet. I have serious concerns about bringing up changes in a bill at the last minute other than what was circulated that are important because that means that the public hasn't seen them and you haven't had a chance to see them before we sit here and I don't feel comfortable with that. So what I would prefer we do today is that we defer the final discussion and the final voting on this bill until our next meeting so that we all have adequate notice to take a look at the final changes that are being recommended and to have the public get input on it also. So Members, that's where I'm at and I'm open to any reaction from you. Are you okay with that? Any objections, let me know.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MPV and MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

COUNCILMEMBER COUCH: No objections. Are you gonna have any kind of discussion now on. . .

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CHAIR BAISA: I would prefer not to.

COUNCILMEMBER COUCH: Okay.

CHAIR BAISA: I would prefer not to. I find that when we talk about things and we're not sure what we're gonna agree on, what happens is that people get excited and think we're gonna do something and then we change our minds and it just makes everybody crazy. I don't think that that's a constructive use of time. I think it would be better if we just postponed the discussion, include the changes in another draft bill, get it out there to the public and to ourselves so we can take a look at it and we'll be ready to vote at the next meeting.

CHAIR BAISA: We're gonna have a brief recess. Hold on. . . .(gavel). . .

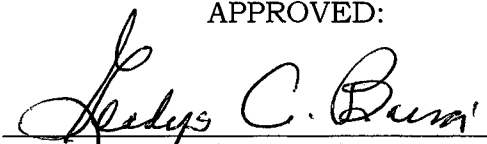
RECESS: 9:23 a.m.

RECONVENE: 9:23 a.m.

CHAIR BAISA: . . .(gavel). . . Some of the changes that are pending here, if you can hold on for just a moment. Corp. Counsel has a draft of the changes that came up and they would like to pass that bill out now and we can do it because we are in session. So without objection we're going to do that. If you don't have it, we're gonna do it and we'll also make it available to the members of the public. There are a few other changes that are nonsubstantive and they are simply references to different sections that have to be corrected. But these changes I would like all of you to have and the public. We'll give it one more go and we'll again take a look at what came up today in testimony and what I'm getting and what all of you are getting I'm sure. And we'll have a final draft for the 19th. I also will feel more comfortable because unfortunately, today turned out to be a day with a lot of conflicts and some of the Members that I would really like to have here is the Chair and Mr. Victorino and they were not able to be with us today. So I'll feel better if more of us can vote on this. That way when we take it to full Council, we'll be comfortable as a Committee. So without further work on the Committee today, Members, this meeting is adjourned. I'd like to thank everybody for being here. . . .(gavel). . .

ADJOURN: 9:25 a.m.

APPROVED:



GLADYS C. BAISA, CHAIR
Water Resources Committee