

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
COMMITTEE OF THE WHOLE MEETING

Taken at the HGEA Conference Room, David Trask
Building, Wailuku, Maui, Hawaii, commencing at
11:00 a.m. on June 8, 2000.

Reported By: Rachelle Primeaux, CSR #370
Iwado Court Reporters, Inc.

ATTENDANCE:

Members Present:

Elmer Cravalho
Peter Rice
Bob Takitani
Mike Nobriga
Clark Hashimoto
Orlando Tagorda, Chair

Staff Present:

David Craddick, Director
Howard Fukushima, Corporation Counsel
Fran Nago, Secretary
George Tengan
Mike Quinn
Herb Chang
Herb Kogasaka

BOARD OF WATER SUPPLY
COMMITTEE OF THE WHOLE MEETING

CHAIR TAGORDA: I would like to call to order the meeting of the Committee of the Whole. It's Thursday, June 8th, 2000. It's 11 a.m., and we're having this meeting at the HGEA Conference Room, David K. Trask Building, Room 207, Wailuku. In attendance, Fran, would you call the board members present.

MS. NAGO: We have Board Members Clark Hashimoto, Peter Rice, Elmer Cravalho, Orlando Tagorda, Committee Chair, and Robert Takitani. We have staff David Craddick, Howard Fukushima, Mike Quinn, Herb Chang, Herb Kogasaka and George Tengan, Deputy Director. We have Doug Sameshima and, I'm sorry, I didn't get you folks' names.

MR. SAMESHIMA: This is Mr. Henry Lindsey and Arlene Lindsey.

MR. TAGORDA: Do we have anyone who wants to give testimony, Fran?

MS. NAGO: Testimony, did you folks wish to give any testimony now?

MR. SAMESHIMA: I want to give testimony on the record regarding our matter. I don't know if you want it now.

MR. TAGORDA: I think I'm asking for the members of the public.

MR. SAMESHIMA: Well, I'm an advocate.

MR. TAGORDA: You can just wait. We have two items on the agenda. Read the first item, please, Fran.

MS. NAGO: Communication 00-11, Request from attorney Douglas J. Sameshima on behalf of PF2 Partners and PF3 Partners for a petition for a declaratory order in the matter of the interpretation of Department of Water Supply rules and regulations concerning subdivision water systems.

MR. SAMESHIMA: Good morning, Mr. Chairman and committee members. My client is asking this committee to consider its petition for declaratory order regarding the subdivision water improvements for Piiholo Subdivision 2. The petition seeks a ruling that the additional approximately 700-foot extension being required by the Department of Water Supply is not applicable under the facts of this petition.

Land development is an evolutionary process, and that's what happened in this case. As outlined in the statement of facts contained in the petition, the initial application and water system requirements were for a two-lot subdivision. My client then evolved the subdivision into a three-lot subdivision.

This called for redrawing of lot lines in conformance with new lot boundaries. In accord with the boundary changes, plans by Toma Engineering were presented to extend adequate water supply and fire protection to the subdivision as it evolved and under the currently proposed boundaries, all of the lots fall within the required 500-foot radius for both water supply and fire protection.

This would be from standpipe 72 as indicated in Exhibit E attached to our petition. Unfortunately, while this evolution was taking place, the initial requirement to extend the six-inch water line further along Piiholo Road was not addressed. However, as a result of the current evolution of the subdivision, it is not necessary to extend the six-inch water line along the road because, number one, as stated above, the evolved subdivision is now legally covered through the modified lot lines as currently set forth.

Number two, this coverage is adequate under current rules for both water supply and fire protection. Number three, there was no further access to the subdivision below the point of adequacy and entry at standpipe 72. That access is prohibited by subdivision conditions imposed by Land Use and Codes

Administration and physically impossible given the lay of the land as there is a ten-foot embankment at the bottom of the subdivision preventing any entry or exit to Piiholo Road from the subdivision.

So, therefore, under the subdivision that's currently proposed, the additional extension is not required by the law nor necessary to adequately supply the subdivision. As outlined in our petition, my client has spent over \$100,000 on the water system. Given the modifications to the subdivision and the feedback regarding plans for extensions to the system for Subdivision 2, my clients acted with the understanding that the requirement for the additional extension had been superseded.

This was a logical presumption given the fact that such an extension was not required to provide adequate water supply or fire protection. They have complied with all other requirements of the Department. And as indicated, the proposed extension is not a minor item. The cost would be an additional \$54,000-plus to my client and this is at a time when they thought they were at a position to receive final subdivision approval.

And another consideration is why if it is not necessary for water supply and fire protection should they be -- should my clients be ordered to extend the water line, and for whose benefit is that? It's not for my client's benefit or necessity. The only one that would benefit would be any possible developers further down the road and at an unfair and substantial cost to my client.

We're not asking to modify any subdivision requirements. What we're saying is that this extension, this requirement is not really a requirement anymore. The subdivision has changed. As argued above, the evolution has made it moot, a nonissue, and my client should be given final subdivision approval based on the water system as currently contemplated and completed. Thank you. Are

there any questions?

MR. TAGORDA: Any questions from the Board?

Mr. Sameshima, I had one question about the stand pipes that was spaced 350 feet apart that was changed from 700. Was there any reason why it was placed 350 feet apart instead of the 500 feet?

MS. SAMESHIMA: Well, obviously the 350 feet is better essentially. As the subdivision evolved, it allowed my clients -- it seemed to become unnecessary to put in that extra extension. And since they were putting in, they did put in over 700 feet of pipe, so rather than space them 500 feet, then 200 feet, they basically took that extension that they did install and split it in two so the stand pipes would be relatively equal length apart.

MR. TAGORDA: The reason why I brought that up is in one of your concerns is that the Department wants you to add one more stand pipe and you stated there that adding one more stand pipe is not necessary because those two lots will be covered with the radius of 500 feet, so there's no need for one stand pipe or that stand pipe 72.

MR. SAMESHIMA: No, stand pipe 72 is in.

MR. TAGORDA: Yes, yes. But adding one more stand pipe --

MR. SAMESHIMA: Beyond that would not be necessary given the final configuration that was applied for for the subdivision, which is what it is now. The entire radius -- the entire subdivision lot is within that 500-foot radius.

MR. CRADDICK: The staff has not finished their report preparation on this matter yet, and in light of this being handled with an attorney, we're also trying to get our attorney involved in it, and I think until that happens, I would appreciate it if the matter was deferred until we could get a report to the

committee.

MR. TAGORDA: Can I entertain a motion.

MR. TAKITANI: So moved.

MR. CRAVALHO: Second.

MR. TAGORDA: So moved and seconded that these matters can be deferred and until the Department can give it to the staff and talk with its lawyer.

MR. SAMESHIMA: One of our concerns is the time involved. As I indicated in my testimony, this is at the end of a subdivision process that has gone on for approximately seven years, and we're in a market that avails itself to sell these kinds of properties, which is that happens to be good timing.

But the problem is if we have an open-ended extension, how long is that going to be, how long do they need to do a staff report? The real question, the factual question is does, in fact, stand pipe 72 provide the required safety and water supply necessary under the rules, and our position is that it does. All you need is a compass to go around there and see if everything falls within 500 feet. I'm not sure how complex a staff report you need to determine that.

MR. TAGORDA: Go ahead, David.

MR. CRADDICK: I hear him keep saying the fire improvements for the subdivision. But let's say they weren't providing any fire improvements. We asked for a hold harmless not only for their improvements but those outside that are damaged from allowing them to go forward. And when fire improvements are put in, they're not only to protect the improvements that go in, but they're to protect people outside those improvements that could be put in further jeopardy because of the increased that goes on inside there, so can a fire come down a straight-up cliff?

MR. TAGORDA: How soon can you be ready to answer -- have your staff report so we can put this in the agenda?

MR. CRADDICK: Herb.

MR. CHANG: I think we made the response to your April 17th, we have some feedback for attorneys to look at, so we can give it to Howard today.

MR. CRADDICK: So then if the meeting were scheduled in another two weeks, theoretically, there might be enough time for --

MR. TAGORDA: Would that be okay with you, sir, while we can have this on our -- coincide with our Regular Board Meeting on the 22nd?

MR. SAMESHIMA: That would be fine.

MR. TAGORDA: Okay.

MR. SAMESHIMA: We appreciate you accelerating the process. Thank you.

MR. TAGORDA: Do we need a vote to defer this, consensus?

MR. CRAVALHO: Consensus, Mr. Chair.

MR. TAGORDA: Thank you.

MR. SAMESHIMA: And just for the record, what time is that?

MR. TAGORDA: It's going to be 11, same time.

MR. SAMESHIMA: Okay. Thank you.

MR. TAGORDA: The second item, Fran, please.

MS. NAGO: Discussion/possible action regarding computer security.

MR. TAGORDA: Do we need to go into executive session here, David?

MR. CRADDICK: If you want us to discuss anything about it.

MR. TAGORDA: That's the pleasure of the members?

MR. CRADDICK: We have a report here.

MR. TAGORDA: Can I entertain a motion to go to executive session?

MR. CRAVALHO: Mr. Chair, I'm not prepared to make a motion, neither am I in favor of going into executive session. If this is the same matter that I had discussed with Mr. Craddick sometime ago, I express some very deep reservations as to the protection of confidentiality that's contained therein if that was the same proposal. It ostensibly makes reference to computer security, but if that is the same agreement with the FBI --

MR. CRADDICK: Yes.

MR. CRAVALHO: -- the contents of that agreement also provides, as I understand it, for the potential to use a vernacular squealing and testifying and charging by members of this group or whatever against anybody and everybody if so desires. It is more than meets the eye, and I believe that I am right.

And, therefore, I will be very much, very reluctant to go into an executive session, and this is a matter that will be -- have an impact potentially on a entire community. It sets up the potential for an information system putting into operation with freeing people who function in this capacity. Perhaps that is the method by which justice moves, and I have my reservations about that.

I think we have to protect the confidentiality, especially this time, yeah, of anybody and everybody. If I may, Mr. Chairman, I don't know if this particular provision -- this particular document provides for the so-called opting out situation with respect to security. When the Congress and/or the Federal Government or anybody, for that matter, makes a proposal of rules and regulations and procedures that would have the effect of law and contain therein that affected people would have the opportunity to opt out, that means everybody is included in until such time as they opt out.

The average person does not pay that much attention to that provision, yeah, of opting out. Now, we go through it all the time in the credit union, whether it's past rules and regs, they say, well, they can opt out. We say, huh-uh, not as far as our credit is concerned. If a person wants, he can opt in if he wants to, but you don't blanket him in and give him the opportunity to opt out. And the document is all full of legalese.

Whatever the Board decides and whatever the Committee of the Whole decides, referring to the full Board, whatever the case may be, we can take up that discussion at that time. And Mr. Craddick more than likely has expressed my concerns to the parties involved.

MR. CRADDICK: Well, that's what I want to pass out here.

MR. CRAVALHO: I have no objection to that. I prefer having this so we can respond to that, too.

MR. CRADDICK: I guess the problem is this organization does not want the information made public. It defeats the purpose of being a party to this organization.

MR. CRAVALHO: But Mr. Chairman, Mr. Craddick, that's not all that it proposes to do. If it were

limited to that only, the protection, yeah, of the confidentiality only without the authority to the potential participation in our areas and providing information, unsubstantiated hearsay or whatever, that I think can become quite dangerous and quite unfair.

MR. CRADDICK: I think -- I think the Board can decide what they want to have on. Our billing system is already going to be on because we go through the state network, and the state is participating in this. The County finance -- the County finance system, I do not know whether they are participating or not. The main reason we would participate is to protect our SCADA system.

MR. CRAVALHO: Mr. Chairman, the same argument I made before, I make again. At what price, and what does it do potentially? Now, we have a classic example today, Mr. Chairman. When the Department brought in a list of all accounts to be charged off with people named, you tell me that's not a violation of their Constitutional Rights. I say it is, and it's an invasion of their privacy. Your Department participated in this. My understanding is if we get into this agreement, this potential, yeah, would also be present and available.

Now, the fact if the Department of Finance or any other department of government participates in this program, to me, it doesn't mean squat. If they don't want to protect the rights of their members and their constituents here, that's their business. I should not be placed in the position of automatically going along with that. I think it's very, very dangerous. Mr. Chairman, I don't know if the Director receives the kind of information we get.

Finally, the Federal Government now is beginning to wake up in some areas and they're warning, yeah, about the absolute necessity to protect the confidentiality of our members. With particular reference to Internet and computer systems and how they can be invaded and how information can be gotten

and people can be hurt, and if we're going to make this kind of an agreement, I think it's our responsibility to exercise all possible effort.

Now, if an organization, Mr. Chairman, wants to hold us harmless, and will take necessary bondings for us, I have no problem, or I have a reduced problem, okay. The question, Mr. Chairman, of security is a very serious one one the entire community. We all get warned about utilization of Social Security numbers, credit card numbers, be careful how you dispose information that can be picked up and utilized. We get warned about that all the time. Anything that can identify a person I think can be very, very dangerous.

Now, if we provide all the safeguards and all the protections and all the indemnifications for the Board, well, that's different. Maybe, Mr. Chairman, the same arguments when I sat on the grand jury and fought against indictments because in the eyes of the public, there is a presumption of guilt once an indictment is published, and that will come out in a list, okay. And when it's dismissed, well, you find it will be gone. But the impact of the person and if there are children involved, the sons and daughters of kids who go to school get told by their friends, "What's up with your old man?" I would say it like this, caution. That's my position only.

MR. TAGORDA: Go ahead, David.

MR. CRADDICK: I share that same caution, but on our SCADA system, there's no listing of any names. It's a system that operates our water system, and what this service provides is watching.

MR. CRAVALHO: Excuse me, Mr. Chairman, what that system provides --

MR. TAGORDA: Let him finish.

MR. CRAVALHO: That's not what the system

provides.

MR. CRADDICK: Well, that's -- if it doesn't provide that, then I'm under a mistaken concept of what it is that they are providing. But the infrastructure protection program that is being offered to us is something to monitor our system, and that monitoring is monitoring hacking attempts to get into our system.

We don't have the expertise to do that kind of stuff. If somebody gets into our stuff, they could shut our entire SCADA system down. We wouldn't even know what happened. All that would be done is it is a severe handicap, and what is going on with this group is they are watching this on many, many utilities across the country. And if they see wide areas of hacking going into systems, they obviously know something is up.

MR. CRAVALHO: A similar question, Mr. Chairman. Is that a narrow, yeah, authority limited to that only?

MR. CRADDICK: You can limit it.

MR. CRAVALHO: The proposal that came in, answer my question, Mr. Craddick. The proposal that came in, is it limited to that only, or does it provide the opportunity for the dispensing of any kind of information real or otherwise? And I'm right.

MR. CRADDICK: I have to say I don't know whether that's correct or not.

MR. CRAVALHO: Fair enough. Let's go look at it, okay.

MR. TAGORDA: So it's going to be deferred until the next meeting of the Committee of the Whole then, David.

MR. CRADDICK: I don't know. I think I have

information here that addresses that if anybody wants to look at it. I don't think it's appropriate to pass it out and not in executive session.

MR. CRAVALHO: Well, it's up to the committee to -- if that's the decision, then, fine, go ahead. I'll walk out. I won't be part of that decision, okay, and I'll participate on the other side to resist it because, as I understand that, Mr. Craddick and Mr. Chairman, it is not limited to only what you said. It does contain these other elements that I'm concerned about.

And if it is limited only to what you said, I do not have a problem. But if it goes beyond which I'm reasonably sure it does, I do have a problem, and I'm only one. The majority does whatever it feels like it. And we're going to see what comes up.

MR. CRADDICK: We only have one system, and that's our SCADA system. Everything else we participate in other people's systems.

MR. CRAVALHO: Mr. Craddick, we're playing with words, and you know that. Because when you talk about the system, you are a participant in that system. You are referred to as a participant of whatever it may be. Now, being a participant in that particular operation, is it limited to one person only in the Department, only one set of records in the Department that only within person has access to, or is it available to many, whether it's two or three or five? And I believe I'm dead right on this one.

MR. CRADDICK: The operations people have access to the SCADA system.

MR. CRAVALHO: Correct. And what authorities do they then have?

MR. CRADDICK: They can adjust our pump levels, water tank. They can do anything in that system.

MR. CRAVALHO: The participant has authority, and if you wish to pass out the draft, do so, and if it isn't what I'm saying, I stand corrected. But I do believe it does give them authority to say anything to anybody basically at any time and not solely limited only to the contents of your computer system. I think there is the elements of a quasi blind check in there.

MR. TAGORDA: Anymore discussion on the computer security?

MR. CRAVALHO: I say defer it.

MR. TAGORDA: Any second?

MR. NOBRIGA: Second.

MR. TAGORDA: It's been moved to defer and seconded this item on computer security.

MR. CRAVALHO: Mr. Chairman, I have no problem if Mr. Craddick will answer the question to the committee that I have raised, and if my concerns are without merit, I stand corrected. But if they are valid or the possibility of its being valid, I say, hey, let's take a look and see what can be done to limit our involvement.

MR. HASHIMOTO: To make a decision, I don't know what this is all about.

MR. TAGORDA: I have no idea, too.

MR. HASHIMOTO: I know it's some kind of computer security and computer system.

MR. TAGORDA: So if we can get some more information without going into executive session.

MR. CRADDICK: The part of the agreement is not to be open to the public, so if I'm going to honor that, then I cannot openly discuss it in open

session.

MR. CRAVALHO: Mr. Chairman, this is not a star chamber type of operation. I do not believe that we should grant blanket authority to anyone without being completely understood as to what is involved. We are not sitting in a high clearance type of a situation where we, in effect, try to function as such.

I don't believe there should be with anybody in the Department this type of authority. Our function is to represent the public, and so I think a deferral is in order. The Chairperson, not the Chair, but the Director feels like there should be possibly no public discussion. I shudder at the idea of any Governmental agency getting involved in any activity which does affect the public where the public does not have the right to be aware and informed.

And, if I may, Mr. Chairman, part of our problems that we have been trying to wrestle with has been the tendency of the Department, intentionally or otherwise immaterial, but it has been the practice of the Department of doing things without the knowledge of the public without the knowledge of the Board. And we've run into massive problems because of that. And we're being asked to put our stamp of approval on it. I cannot. And I will not.

I think our job again is to protect the public and to serve the public. I don't see how this is going to be done. Now, with respect to the necessity of this of protecting your computer system, well, we have a computer system where we operate and we're part of an international computer system. Electronic Data System is worldwide, and we're never asked to do that.

We provide the necessary protection and we have the necessary sanctions against any of us if we provide information we're not supposed to about anybody. The fact that the general public and the average person does not know what his rights may be

does not excuse us if we attempt to ignore those rights intentionally or otherwise. And I say this is full of danger. If Mr. Craddick, again, comes up with an agreement that limits my concerns and at the same time protects the system without jeopardy to the public, I say let's go. But until such time as that is done, no.

We've run into those problems, and we've run into them with respect to water. We've run into them with respect to meters. We've run into them with the Director's overt action in ignoring stuff and mandates and instructions that came from corp counsel's office. There was the selectivity of enforcement, which I want to see us avoid. This is not personal, but this is reality, an even playing field.

Simple, Mr. Craddick, the Director, Mr. Chairman, provide us with the assurance, and I will be your strong supporter. And I'm not talking about -- I've told you this before. Stay by the law. Do what we need to. I am not an opponent. I have said this. But when we attempt to depart from it, okay, you've sent communications out that undermined in my judgment, you've undermined the activities of the Department and of the committees.

And I called one of these to your attention, and shortly thereafter, you sent another one out that undermines, that undermines the Finance Committee. You called the affected party and you sent the communications, informed them of what the Finance Committee did or didn't do, and you told them to call me.

MR. TAGORDA: Okay, there's a motion on the floor to defer this item.

MR. TAKITANI: Mr. Chair.

MR. TAGORDA: Go ahead.

MR. TAKITANI: I share Board Chair Cravalho's

concerns about the security and public input, however, in order to make sure that we get a meaningful report, is it possible to get possibly Fiscal Officer Quinn or somebody to generate the kind of report Mr. Cravalho is asking for?

MR. CRAVALHO: I have no problem.

MR. TAKITANI: I share the -- you know, we want this security to be in place as far as the confidential data, et cetera.

MR. CRAVALHO: Mr. Chairman, my suggestion I think is a reasonable one, defer while we get these things and the assurances made. I think Mr. Quinn will be very willing to say that never once have I ever called him or questioned any activity or any matter. And I've complained about the Board, but I think this is an area that we do need to protect ourselves if necessary.

MR. TAGORDA: Go ahead.

MR. CRADDICK: There is our SCADA system. It has nothing to do with our financial system. It's our SCADA system that I'm talking about. Is that clear to everybody? Whether the County -- if the County and State participate on their own on the financial system or a billing system, there is nothing we can do about that.

They participate in that on their own. We are participating for our SCADA system, and I will find out from them if we can limit, you know, if we participate in our SCADA system -- I mean our SCADA system is not tied to the financial system, so I don't know how anybody could get into the other systems via our SCADA system. But be that as it may, I will find out because I don't know. I will have to find out whether that can happen. This is about the SCADA system, and that is all.

MR. CRAVALHO: I want to express my concern

again. It is this Board's prerogative to decide and to request and to utilize personnel as resources for whatever the case may be. I believe we need to have an objective report, one that will address the questions that I have raised. It would be improper, Mr. Chairman, for me to write such a report because I'm on one side of the question.

It would be equally improper for the person on the other side of the question to write the report. Third party, yeah, who we all have confidence in I think would function to the satisfaction of all parties concerned. If you, Mr. Craddick, if the Director writes a report, then I want to have the privilege of getting a copy of that in writing my report and citing it, and I think, Mr. Craddick, I'll stand corrected if I'm wrong, but I think I'm right.

MR. TAGORDA: Ready for the question?

MR. CRAVALHO: Yes.

MR. TAGORDA: Those in favor to defer this item say "Aye."

VOICES: Aye.

MR. TAGORDA: Opposed?

(No response.)

CHAIR TAGORDA: This meeting is adjourned.

(The deposition concluded at 11:40 a.m.)

"By Water All Things Find Life"

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[\[Back\]](#)