

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
OPERATIONS REVIEW AND EVALUATION COMMITTEE
OCTOBER 12, 2000

The Board of Water Supply's Operations Review & Evaluation Committee held a meeting on Thursday, October 12, 2000 in Room #513 of the County Building, 200 South High Street, Wailuku, Maui, Hawaii. The meeting convened at 9:02 a.m. In attendance were Committee Chair Jonathan Starr and Committee Members Michael Nobriga and Orlando Tagorda. Also in attendance were Director David Craddick, Herbert Chang from Engineering Division, Deputy Corporation Counsel Howard Fukushima, and Gary Zakian - a member of the public.

The following is a transcript of the taped proceedings:

Chair Starr: Okay, it's 9:02 on September 18th...

Mr. Nobriga: October, Cous, October.. We're done with September

Chair Starr: Oh. September went fly by, Mike. Okay, October 12th. I stand corrected. October 12, 9 o'clock or so. Operations Review and Evaluation Committee of the Board of Water Supply is hereby called to order, and we have with us - Fran, call the roll.

Ms. Nago: The Committee Members, we have Jonathan Starr the Committee Chair, Michael Nobriga, Orlando Tagorda. We have Herbert Chang from our Engineering Division, our Director David Craddick, and we have from the public, Gary Zakian.

Mr. Craddick: Representing Kulamanu.

Mr. Zakian: No. -----INAUDIBLE, SEVERAL PEOPLE SPEAKING AT ONCE?

Chair Starr: Okay, thank you all for coming. Is there any public testimony on this matter before we proceed? Okay, the matter under discussion is Director's Report 00-37, request approval of partial release of agreement deferral of subdivision water system improvements for Kulamanu Sub, and then a whole bunch of numbers, Kula, Hawaii. And can we get the Director to give us a little background on this?

Mr. Craddick: I'll try. Herb, come in here if I a little bit - because you've got more history on this than me. Basically, this is part of a subdivision that

started back in the 70's. And finally in the mid 80's, I guess deferral of improvements -
or actually, I take that back here, what is it - April 18th, 1986, the County of Maui
and the subdividers entered into the Kulamanu Project Water System Agreement which set conditions for water system improvements, subdivision, building permits, and water service for the project. The project since then has been developed in segments with the first 42 residential lots completed in '94, and I guess 11 lots completed in 1998. To date, 53 single family lots have been developed. Five subdivision applications are pending for the remainder. There's a map, I guess on page 7 there. No. Page 11, 12.

Mr. Nobriga: Twelve.

Mr. Craddick: And basically, I guess the portion of this agreement that they entered into with the Board in 1993 creating two large lots, they've done all the improvements for one large lot and would like to get that approved, and I guess continue the agreement on for the other large lot. Right, Herb?

Mr. Chang: Right.

Mr. Craddick: So this agreement that you'd be signing here would continue the improvements for that other large lot while allowing the one that has all the improvements completed to go forward.

Chair Starr: Could you show which lot we're talking about?

Mr. Nobriga: It's the 89-160. Hey, howzit Howard?

Mr. Fukushima: Good morning.

Chair Starr: I see both lots labeled as 160...

Mr. Nobriga: 89-160, that's the whole lot and that was subsequently split into 90-67 and 90-88?

Mr. Chang: No, the original one was this whole chunk on the bottom.

Mr. Nobriga: The whole chunk, yeah?

Mr. Chang: And it continues ----- INAUDIBLE -----

Chair Starr: So in other words, 67 is pau? 67 is pau, right?

Mr. Chang: Right.

Chair Starr: And then we're looking for a start on 88?

Mr. Chang: Right.

Mr. Craddick: 88 and 106.

Mr. Nobriga: But the matter before us is 89-160. It is the whole thing. I think the request needs to be rewritten to only include 90-88 as opposed to including 90-67 and 90-88 under the umbrella of 89-160.

Mr. Tagorda: It's not rewritten. It's us requesting us to release a portion of part of the agreement. It's not to rewrite it.

Mr. Nobriga: Say again?

Mr. Tagorda: It's not to rewrite the agreement. It's a partial release under his request.

Mr. Craddick: On the 90-88, there's already - that's part of the Master Agreement. This one here was one that was taken out of that Master Agreement in 1993 by an agreement with the Board. There's two large lots pulled out of that. They completed the improvements on one. This continues the requirements for the improvements on the other. There's already another agreement for the 88 portion, I believe. Isn't that correct, Herb?

Mr. Chang: Well the original agreement -----INAUDIBLE----- covers the entire two...

Mr. Nobriga: Parcel.

Mr. Chang: But what he did, he did it in two phases, so 67 is completed. He wants to release 67 from the original agreement. He still wants 88 to be covered -----INAUDIBLE----- by the original agreement that was originally done for the whole 160.

Mr. Nobriga: If that agreement is in place, then what are we actually asking for?

Mr. Fukushima: You're asking for a partial release. As Herb explained, that's how I understood this to be also.

Mr. Tagorda: And this is, excuse me Mr. Chair, may I?

Chair Starr: Yes.

Mr. Tagorda: And this is on the agreement signed on the letter date, not 88 but the 90's, 93 - is that right?

Mr. Chang: The date of the agreement says here...

Mr. Tagorda: June 2, '93.

Mr. Craddick: Is there still a bond in place on the other one? There's still a

bond in place for the improvements on that part.

Mr. Chang: Yes, '93.

Mr. Tagorda: Okay, that's correct. Okay. Now to follow up my question, Mr. Chair, would this request be made by the director on this partial release of the agreement?

Who does determine that such request needs to be made? Is it the Director, the staff,
or the subdivider?

Mr. Craddick: The subdivider is the one who made the request. And the problem was that it was on an agreement that was signed by the Mayor - when the Board was under the Mayor, and to revise that agreement now, who needs to sign it? Corp Counsel felt the proper authority is the Board.

Mr. Starr: In a normal situation, this would have just been...

Mr. Craddick: Signed - signed by the staff.

Mr. Tagorda: Since this is a request from the subdivider, would there be any possible request from the subdivider to modify, waive the conditions set in this agreement since it's been over a number of years now? Is it going to remain the same? I would like for you to tell me that you totally read and review the agreement before you come to the Board and request for the partial release agreement.

Mr. Fukushima: Well if I may, Mr. Chairman, the request is for partial release, and the only thing they're asking for is to release that portion where the requirements have been satisfied. All of the requirements relating to the balance of the lots encumbered have to comply with the earlier '93 agreement.

Mr. Tagorda: Okay. My point here is since this agreement has been made many years ago and the conditions set in there might have a chance that before we come into deciding releasing partial of that agreement, we can probably totally review that agreement for the advantage and benefits of the Department and the subdivider themselves so that we don't need to come into a lot of requests in the future about this partial release of agreement -----INAUDIBLE----- for modification, subdivision. Things change there. We all know that. So are your standards still meeting that requirements set in 1993?

Mr. Craddick: They are.

Mr. Tagorda: Okay.

Mr. Craddick: They haven't changed any. I will tell you one thing, our water system has not remained static since 1975. So requirements that we required back then for them to do a fully private system and stuff like that may not be necessary at this point, but whether they're going to ask to now pay the pro-rata share of the system or something like that, I mean.

Chair Starr: Well that's not on the table.

Mr. Craddick: Yeah, that's not on the table.

Chair Starr: What I want to be sure of, though, is that in the 67 part that we're releasing, that you certify that they met all the requirements.

Mr. Craddick: Yeah.

Chair Starr: And whatever we do today, that's not going to affect the fact that 88 is still going to have to meet those requirements before.

Mr. Craddick: That's right.

Mr. Tagorda: Mr. Chair, again, over the past years, Mr. Director, have your Department released partial agreement that have been in the past, and what are the benefits and the important things that we need to discuss in releasing partial agreement.

Mr. Craddick: Really nothing, because in order to get the agreement in the first place, they have to bond all the improvements for the whole thing. So if they do part of them, as long as they're done, we don't care, and if they phase it in, I mean, our own projects sometimes have to get phased in because of money issues, and the same thing on the private side. Sometimes they have to phase projects in because of money concerns. And this particular one was part of a bankruptcy, so obviously, there were money concerns involved in this one.

Mr. Tagorda: And it's stated some place in this packet about change of ownership, too.

Mr. Craddick: I believe, yeah, once the bankruptcy, the creditors came in and took this and did the improvements. That's what happened to the other part that's already done, too.

Mr. Tagorda: Okay, then what should the Board members like me, and Jonathan, and Mike should be looking into - the essential elements of this agreement before we can come to a sound decision. Nothing?

Mr. Craddick: I don't know what the legal things are. Obviously, the subdivision's

been hanging out there for many, many years, and how long you can keep hanging out of there, I don't know. We routinely will allow requests for extensions of subdivisions provided that all of the requirements that we required are still being met. We fairly routinely do that, and I don't believe there's...

Mr. Tagorda: There will be no legal entanglements?

Mr. Fukushima: Well see, you have to also recognize that what's before you is a request for a partial release of an earlier agreement that was entered into. What the Department is saying is they complied with all the requirements of the Water Department, and so they want a release of that portion of the project that has satisfied all the Department's requirements. And that's it. If there are other impacts on perhaps the subdivision process, Public Works, or something else...

Mr. Tagorda: They've got to go over again and do those processes.

Mr. Fukushima: That's not really your concern. That would be the developer's or subdivider's concern or other departments of the County, not the Water Board's concern. Your concern is, hey, have they completed all the requirements and are they entitled to or should we release this portion of the project from an earlier agreement. And the benefit, of course, to the developer is it can reduce the bond that's present and that's a real concern. It's a money concern. There's also the removal of an encumbrance from the parcels that are involved here which may be a concern to a buyer. But as far as the Board is concerned, hey, they met the conditions, let them go.

Mr. Tagorda: Yeah, that sounds very simple.

Chair Starr: The Chair would welcome a motion to recommend approval, but I'd like to have that based on written certification by the Director that all the requirements have been met for Parcel 67.

Mr. Tagorda: I move that Director's Report 00-37, requesting the approval of the partial release of agreement for deferral of subdivision water system improvements for Kulamanu Subdivision, SD 89-160 be approved.

Ms. Nago: Were you going to add the certification?

Mr. Craddick: You know, to tell you the truth, I'd prefer not certifying it because the engineer who designed it is the one who we would get that certification from,

and I don't think it would be a good idea...

Mr. Starr: How about this, with the staff providing us with a certification.

Mr. Craddick: Okay.

Mr. Tagorda: Okay. With the staff providing us with a certification. We don't have to mention nobody, like your name.

Mr. Nobriga: Second for discussion purposes.

Chair Starr: Okay, the item is open for further discussion has been moved and seconded.

Mr. Nobriga: If the subdivision is proceeding as planned in the different phases, why would it be in the Board's best interests to partially release the agreement of deferral. Why don't we just separate - just cancel the whole agreement of deferral since the subdivision is going forward. They're going to be having to meet...

Mr. Craddick: No, no, no.

Chair Starr: I would guess that then they wouldn't have to do the improvements on the other part, right?

Mr. Craddick: Yeah, yeah, right.

Chair Starr: And it's two separate parties now.

Mr. Nobriga: We're asking for release of agreement for deferral. If we don't defer, that means that we have to abide by subdivision request.

Mr. Craddick: This already abided. They've already done it.

Mr. Tagorda: It's completed.

Mr. Craddick: They've done the improvements. They're all constructed - in place.

Mr. Nobriga: But not for the whole 89-160.

Mr. Craddick: No, just this portion here.

Mr. Nobriga: See, right now the motion says you're going to release the agreement for the entire 89-160.

Chair Starr: No.

Mr. Tagorda: Partial release. Okay, can I rephrase the one then, if you don't mind?

I move that we approve the request, the director's request that partial release of agreement on Subdivision 89-160 only on Subdivision 90-67 since those water improvements

have been completed, the SD 90-088 is not yet constructed, so we leave it like is with staff providing the Board with a certification that all the requirements have been met for Parcel 67.

Mr. Nobriga: Yeah, yeah. That's better.

Chair Starr: So the second agrees, so that's fine. So read the new motion now.

Ms. Nago: To approve the request for the partial release on Subdivision 89-160 only on 90-67 since the water improvements have been completed, and then you're going to - the certification.

Mr. Tagorda: From the staff.

Ms. Nago: Yeah, with the staff providing us with a certification that the requirements have been met.

Mr. Starr: Yeah. The only other portion, SD 90-67.

Mr. Fukushima: Presumably, if I may, Lot 67, and perhaps Gary could chime in if this is incorrect, but Lot 67 includes and is limited to those lots that are contained on Exhibit A of the partial release.

Mr. Craddick: Gary is just here as an interested person. He does not represent anybody.

Mr. Fukushima: You're not representing anybody?

Chorus of voices: No.

Mr. Zakian: I'm not the one who is directly involved.

Mr. Fukushima: Oh, I thought you were representing Kulamanu.

Mr. Zakian: No. I can't appear before the Board for a year anyway. I'm a member of the public.

Mr. Fukushima: But is that correct, Dave? That Lot 67 is comprised of 219 B-1 to 219 C-6?

Mr. Craddick: One, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen. And out of those fourteen, how many of those have roads, Herb?

Mr. Chang: There's eleven.

Mr. Craddick: There's eleven lots that will get meters.

Mr. Tagorda: Eleven lots, right. Eleven lots for 90-67.

Mr. Nobriga: So actually, in effect, giving these guys meters then? You're releasing meters to these guys?

Mr. Craddick: Yeah.

Mr. Fukushima: Because they put in all the improvements.

Mr. Tagorda: They put in all the improvements. There's nothing we can do.

Mr. Nobriga: Why nothing we can do?

Mr. Craddick: Because the subdivision predated the Kula Rule.

Mr. Tagorda: The Kula Rule, '93.

Mr. Nobriga: The Kula Rule is not even in effect anymore. Why can't we give meters to everybody else on the list.

Mr. Craddick: We can.

Mr. Nobriga: Huh?

Mr. Craddick: We can if you guys want to take up my thing I gave you back in March.

Mr. Tagorda: Okay, going back to this portion of this thing...

Mr. Fukushima: So is that a correct statement?

Mr. Craddick: Yes, that's correct.

Mr. Tagorda: Page, let me see - I'm going to give you one small question here - page 5, David, that bottom paragraph. It says right here that there are five subdivision applications and then the numbers preceding them. And that's for the remainder 72 lots?

Mr. Craddick: That's right.

Mr. Tagorda: Does this subdivision have different water system requirements from the Department or...

Mr. Craddick: No, they're all the same requirements. I mean this - if you notice on the map that last section, we'll have to be taking off of the Upper Kula system. And I believe that's why it's taken so long to get it approved because they have substantial improvements. These other ones could take off the Lower Kula system, and that's what they're doing. But this upper one has to come off the Upper Kula system so there's fairly substantial improvements that they have to make for that before that can move forward. And I suspect that that's why that particular portion has kind of moved slower than the rest of them. But we're not waiving any requirements. We're not asking for any waivers of any requirements.

Mr. Tagorda: And a - you probably can not answer this, but they'll probably

walk into the Board one of these meetings and request a waiver again, you know?

Mr. Starr: I heard that there was a meter installed in Kulamanu yesterday. Was that in one of these lots or was that somewhere else?

Mr. Chang: That might be the eleven.

Mr. Craddick: Might be?

Mr. Chang: Applications. Probably, yeah.

Mr. Starr: What? It was in one of these?

Mr. Chang: I think they applied for the meters, all eleven in one crack. Those might be the ones that were installed yesterday.

Mr. Starr: Even before this came before...

Mr. Fukushima: They can install meters. Let me try and be a little more precise. All the requirements and the conditions of the earlier agreement remain. What they're asking for is a release of a portion of those parcels or lots that are subject to that agreement. They can get their water meters, but what they're asking for is to have these parcels removed from that earlier encumbrance, the deferral of water improvements or deferral of subdivision water system improvements. Now they entered into this original agreement to get their subdivision approval without putting in the water improvements. Before they could get any water meters or request for building permits, they would have to make the improvements to the subdivision.

Mr. Starr: Okay.

Mr. Fukushima: Which they have.

Mr. Craddick: Howard, could I ask you a question here? Basically, what potentially could happen is owners of these lots down here - let's say the upper lot, somehow the owner of that again filed for bankruptcy or something like that, and by not having this partial release, these lot owners could then be held liable for that upper system, theoretically, if this release is not done prior to them taking ownership of the lot? I mean, I suspect that's why they're doing this is because they don't want to make these owners liable for these improvements after they've already made their improvements.

Mr. Fukushima: I guess that's a possibility.

Mr. Craddick: But the bond is still in place for this other one. We're not relaxing any of our requirements. As far as I know, they're not making any request to the Board for relaxing those requirements.

Mr. Starr: Okay, there's a motion on the floor. Is there any more discussion?

Mr. Tagorda: Maybe not related, but about this partial release of agreement, or totally a release of an agreement, you said it comes from the subdivider. Are there any more agreements that are in your hands, Mr. Craddick, that needs to be released from this contractors?

Mr. Chang: There's like five remaining subdivisions left. -----INAUDIBLE----- I think there's two others that were deferred.

Mr. Tagorda: Because I get some conversations with outside people that sometimes they're getting hard time requesting that their permit should be released from this Department, so I'm just kind of throwing this question to you.

Mr. Craddick: I think I would need to know the specific case. I mean if there's something where there is no division or any way to make partial improvements, then yeah, we wouldn't ask the Board to release them. But in this case where they're already done, system operates, pressure is adequate, I mean...

Mr. Tagorda: Because like I said, I've been here almost three years, and this is my first time to act on this request, this kind of request.

Mr. Starr: That's because they just normally go to staff, and staff approves. This one...

Mr. Craddick: Because the Mayor signed off on it.

Mr. Tagorda: Oh, okay.

Mr. Starr: Just because it's so old, it happened under different rules.

Mr. Tagorda: I don't know the details, see.

Mr. Fukushima: I don't see that particularly as being the distinguishing factor.

Mr. Chang: Actually, Byron Walters signed it.

Mr. Craddick: Well the 1993 agreement, right.

Mr. Tagorda: So can your staff review some of those agreements that the Department have entered into and see if some of those can be released already accordingly?

Mr. Craddick: Well if people made a request, we wouldn't necessarily take our time to go dig and find them. If people made a request to us, we would deal with it as required by the rule.

Mr. Tagorda: So do they have to sign forms or do they call you on the phone or

what?

What's the process here?

Mr. Craddick: No, no, no. No releases on these kind of things that are registered in court are done over the phone.

Mr. Tagorda: Okay.

Mr. Craddick: These things are all registered in court.

Mr. Fukushima: -----INAUDIBLE, SEVERAL PEOPLE SPEAKING AT ONCE----- I would presume the Department has no real interest in keeping an agreement where all the conditions in the agreement have satisfied.

Mr. Tagorda: The bonding release is probably one of the things.

Mr. Fukushima: And there's no purpose or advantage to the Department to keep an agreement where all conditions have been satisfied without canceling it. It doesn't cancel on its own accord.

Mr. Tagorda: That was my question earlier - what's the benefit of keeping this agreement?
What's the advantages?

Chair Starr: Are we ready to act then? Okay, I call the question. All in favor of the motion? Okay, unanimous. Motion carries. No further business, this meeting is adjourned at 9:30.

There being no other business to discuss, the meeting was adjourned.

Submitted by:

Frances L.
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Secretary for the Board of Water Supply

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