

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR MEETING

Taken at the HGEA Conference Room, David K. Trask, Jr. Office Building, 2145 Kaohu Street, Room 207, Wailuku, Maui, Hawaii, commencing at 9:00 a.m., on October 31, 2000.

REPORTED BY: JEANNETTE W. IWADO, RPR/CSR #135
IWADO COURT REPORTERS, INC.

A T T E N D A N C E

CHAIRPERSON:

ELMER CRAVALHO

BOARD MEMBERS:

ADOLPH HELM

HOWARD NAKAMURA

MICHAEL NOBRIGA

PETER RICE

JONATHAN STARR

ORLANDO TAGORDA

ROBERT TAKITANI

DIRECTOR DAVID CRADDICK

DEPUTY DIRECTOR GEORGE TENGAN

DEPUTY CORPORATION COUNSEL HOWARD FUKUSHIMA

BOARD SECRETARY FRAN NAGO

FISCAL OFFICER MICHAEL QUINN

ENGINEERING HERB KOGASAKA

ENGINEERING HERB CHANG

ADMINISTRATIVE ASSISTANT JACKY TAKAKURA

PLANNING ELLEN KRAFTSOW

PERSONNEL CYNDI GRASSA

IWADO COURT REPORTERS, INC.

TRANSCRIPT OF PROCEEDINGS
BOARD OF WATER SUPPLY, REGULAR MEETING
OCTOBER 26 2000, 9:00 A.M.

CHAIRMAN CRAVALHO: The meeting of the Board of Water Supply will come to order. It is 9:02 and, Miss Nago, will you call the roll as to who is present, as well as others from the community?

MS. NAGO: We have Chairman Elmer Cravalho, Board Member Jonathan Starr, Board Member Orlando Tagorda, Board Member Adolph Helm, Board Member Robert Takitani, Board Member Howard Nakamura. We also have Deputy Corporation Counsel Howard Fukushima, Director David Craddick. We have Fiscal Officer Mike Quinn, Engineer Herb Kogasaka, Deputy Director George Tengan, Engineer Herb Chang. We have Mr. Hokoana, we have Mr. Hupp, Mr. Kafsack, Council Chair Pat Kawano, Danny Mateo, Gary Zakian, Bob Yonohara. We have Darryl Sakuma, Jeff Ng, David Niehaus, Marty Oates, Sue Marks. We have Mr and Mrs. Hoekstra, Peter Stolle and John Rapacz. And we have from the Planning Department Clayton Yoshida.

CHAIRMAN CRAVALHO: May the record reflect the enumeration of names of those who are present. Approve the minutes of September 28, year 2000. What is the pleasure of the Board?

MR. TAGORDA: Mr. Chair?

CHAIRMAN CRAVALHO: Mr. Tagorda? State your motion, please.

MR. TAGORDA: I'd like to move that we file the minutes of September 28, 2000, and after a 30-day period without corrections it should be deemed filed.

CHAIRMAN CRAVALHO: Is there a second to the motion?

MR. NAKAMURA: Second.

CHAIRMAN CRAVALHO: Seconded by Mr. Nakamura. You

have heard the motion duly made and seconded for approval of the minutes, subject to a 30-day period for any corrections or additions to be added. If none are added at that time, the minutes stand approved as presented this morning.

Ready for the question. All in favor say "aye."

(Ayes).

Contrary?

(No response).

Carried.

Item four of the agenda, testimony from the public. Any members of the public who may wish to testify at this time without precluding your right to testify at a later time on any particular subject matter.

Hearing none, shall we then proceed to the agenda, the Director's Reports. Director's Report 00-38. Mr. Craddick, please.

MR. CRADDICK: If this one here could be referred to the Finance Committee for the reasons stated in the report there. The person who did this will be available to give a presentation to the Board at that time on the 14th. We have talked, I believe Mike has talked with Peter Rice, and he's agreeable to that.

CHAIRMAN CRAVALHO: Unless there are any emergency situations, it is the position of the Chair that we follow the procedures of the Chair in making referrals of all matters to the appropriate committee. Are there any objections to that procedure? Hearing none, so ordered. First, communication 00-38 goes to Finance.

00-39, Mr. Starr's committee. Request for a determination of the Board whether to continue with the fee waiver of the Kilohana Kai Subdivision on Molokai. If there

are no objections, the Chair would normally defer this. However, it is the understanding of the Chair that there have been several discussions and requests that we give our attention to this matter at this time. And we could defer it. If it's in the opinion of the Board to defer, then we will defer. But requests have been made for us to take action on this matter. Mr. Craddick?

MR. CRADDICK: Okay, on this matter here, in 1995, the developer for this subdivision came to the Board asking for a waiver of the fees, and I believe at that time it was the opinion of the Corporation Counsel that the Board didn't need to give any waiver because the Council had already waived it. And it was my position at the time that Corporation Counsel was not following the law.

Subsequently, the State Attorney General's office gave a clarification of that, and said yes, that was correct, they didn't have the authority to waive the fees. What's happened now is I guess the project is no longer even affordable housing. They have been given clearance from the Housing and Human Services group to charge for the development fee. I told them I would not continue the waiver without Board action, even though the Board had previously said it was okay. And the reason being because of this misunderstanding, or whatever it was with Corporation Counsel on whether the Council could waive the Board's fees or not.

CHAIRMAN CRAVALHO: Are there any questions from the members of the Board? The Chair has a couple of questions. To recall the sequence of events, the Council did make a waiver which the Director disagreed with, and with a subsequent interpretation by the AG's office said that the Council did not have the authority to make that necessary waiver at that time.

It is the understanding of the Chair that simultaneously the Board did recognize the activity of the Council, and did in effect agree with the decision of the Council. It is the opinion of the Chair, therefore, that the decision of the Council was one made in good faith at that time. The decision of the Board in agreeing and supporting that decision was also -- did not depend solely on the legality

which came about subsequently from the Attorney General's office.

It is therefore the opinion of the Chair, unless overruled by this Board, that the waiver that had been agreed to in the past by this Board, taken in good faith, entered upon the record, continues. Is there any objection to that?

Mr. Tagorda?

MR. TAGORDA: Mr. Chair, since we got those informations taken up, I believe there are still some development fees that are coming to the Board. If we are going to follow the Department of the Attorney General's opinion, saying that although it was in good faith, although there was really a Board action waiving that fee, I believe it's about time that we don't go back to waiving that fee, but let's collect what is due for this Board of Water Supply on those fees that are still not collected from this project. That's my opinion, Mr. Chair.

CHAIRMAN CRAVALHO: The Chair would recognize the motion one way or the other. A motion to deny and to collect would be in order, or the opposite motion would be in order. What is the pleasure of the Board? Mr. Craddick?

MR. CRADDICK: I am not a Board member, but another option would be also to right now at this point I believe they've paid for four meters, right now today they have paid it under protest. As of this date, we could say the fees prior to today are waived. From the future, not waived.

CHAIRMAN CRAVALHO: Mr. Craddick, with all due consideration to your position, that does not have very much direct merit at this time. Mr. Starr?

MR. STARR: Mr. Chair, forgive my ignorance of the matter here, but I know very little about this subject, and I am trying to understand what is being waived and exactly where the project is, and what the basis for waiving the fees was. Can I get a real basic explanation of these questions before we act on it? I do not know where this project is and what the

basis for it is.

CHAIRMAN CRAVALHO: Technically, the Chair would then indicate a motion would be in order then to deny the waiver.

MR. TAGORDA: So you want me to make a motion, Mr. Chair?

CHAIRMAN CRAVALHO: Yes, in order to keep things proper.

MR. STARR: I will second it for discussion.

CHAIRMAN CRAVALHO: Seconded. The motion is --

MR. TAGORDA: To deny.

CHAIRMAN CRAVALHO: To deny the waiver. Seconded by Mr. Starr for the purposes of discussion. Discussion on the motion for the denial. Mr. Tagorda?

MR. TAGORDA: Mr. Chairman, let me repeat again. We cannot undo what has been done in the past. The Board of Water Supply in good faith had waived the fee for this Kilohana Kai subdivision, I believe it's in Molokai, for the very simple reason that this was an affordable housing project in Molokai. So the developer, promising that it was going to be affordable housing, the Council then in fact made a resolution to waive the fee.

But however, after Mr. Craddick, our Director, consulted the AG for an opinion, it was opined by the Department of the Attorney General's office that the Council at that time, although they acted in good faith, had no authority to give the waiver of the fee. Because it says in that opinion that Hawaii Revised Statutes Section 201-E-210 did not encompass water development fees. This is the word here. It did not exempt this housing development from the rules of the various county water boards. What it does exempt are relating to planning, zoning, construction, and the development and improvement of plans for the development of housing projects.

And as we go on, I think, as I understand this, this developer approached the Director of Housing and Human Concerns and asked for increased price of \$3,350 per unit. Now, this is per unit of that housing project. So it is no longer a project to be sold at affordable means. And that's the reason why I'd like to go back. If there are some more ways for us not to go back and get what was given to this developer, I'd like to waive the fee.

CHAIRMAN CRAVALHO: The pending motion is for the denial of the waiver. So let's keep our discussions pertinent to the subject matter before the Board. Mr. Starr?

MR. STARR: Mr. Chair, as I understand it, we are being asked to possibly waive the meter fees for a subdivision that is not a -- what are we being asked to waive?

CHAIRMAN CRAVALHO: Mr. Fukushima?

MR. FUKUSHIMA: If I may, Mr. Chair. 201-E projects or projects which were formerly 201-E were allowed to be exempt from certain requirements.

MR. STARR: Yes, I understand that.

MR. FUKUSHIMA: At that time the statute was ambiguous as to whether it applied to the water department and water department fees. Subsequently, the Legislature recognized this ambiguity and amended the statute to make it clear that water fees were not to be waived by the Council. At the same time, the Council waived other requirements for this subdivision.

MR. STARR: Water fees?

MR. FUKUSHIMA: No, they were other requirements, such as sidewalks, gutters, and other subdivision requirements. The Council waived them. At the same time, they also waived the water development fees. Subsequently, the Board approved the waiver of water development fees for this subdivision. The primary purpose and primary reason being that

the subdivision was an affordable subdivision.

I believe in the succeeding years the developer has been trying to sell these units as affordable, he has been unable to, and now he's asking that the project no longer be an affordable housing project and not subject to the affordable housing restrictions, such as sales price. Primarily sales price.

Because there's been a change in circumstances, because there's been a change in the purpose of the project from affordable to market, the department believes that the waiver of the water development fees should no longer be in place. That because it is a market housing project that it should, that the project should pay water development fees as set forth in the rules of the water department. So essentially, that's what it is.

MR. STARR: A very simple question; very long answer. We are being asked to waive the meter fees. In other words, the source, transmission and storage.

MR. FUKUSHIMA: The fees as they stand now are waived. The Board, a previous Board waived those requirements because of the affordability of this project. It is no longer affordable, so the department is coming back to the Board saying, "Does the Board want to continue the exemptions of the water development fees." So that's the issue before the Board today.

MR. STARR: So the motion to deny, if it passes, would continue the waiver of the fees or it would end the waiver of the fees?

MR. FUKUSHIMA: It would end the waiver of the fees. The motion was to deny the continued waiver of the fees.

MR. STARR: My feeling on this is very clear. All of the people that come to us for meters have to pay a fee. Unless there's --

CHAIRMAN CRAVALHO: The Chair is going to request, all due politeness, that we stick to the gist and the provisions of the motion before the body. The motion before the body is to deny, so let us proceed accordingly, speaking of for or against the motion. Mr. Nakamura?

MR. NAKAMURA: May I also ask a quick question, Mr. Chairman? I notice in the letter from the Corporation Counsel that the Director of Housing and Human Concerns by letter dated March 22, 2000, authorized the developer to increase the selling price, which leads me to believe that somehow this project is still being regulated by the Department of Housing and Human Concerns. And it would seem as though if it were to become a market project rather than an affordable project, that that jurisdiction would no longer be in the department. But I'm curious about that need for the department to approve the pricing.

CHAIRMAN CRAVALHO: Any further discussion?
Mr. Starr?

MR. STARR: I speak for the motion, since all of the rest of our users have to pay these fees, we would need to have, in my belief, compelling needs, we would have to be shown that there's compelling needs to waive these fees that everyone else out in the public has to pay. And I have not today been presented with any argument showing a compelling need why these fees should be waived. So I, for one, speak in favor of the motion. I don't think we should waive these fees.

CHAIRMAN CRAVALHO: Any further discussion in
Mr. Rice?

MR. RICE: Mr. Chairman, I apologize for being late. Was there any presentation by the Kilohana Kai people?

CHAIRMAN CRAVALHO: None. Mr. Helm?

MR. HELM: Mr. Chair, we have the two developers that just walked in right now. They're the representatives of the Kilohana Kai. Maybe we can ask them if they would like to speak.

CHAIRMAN CRAVALHO: No problem. Will you identify yourself, please?

MR. PATTERSON: David Patterson, Molokai. The reason we're trying to, we are still -- I only got in on a few of the questions, and we still are being told what we can do by Human Concerns. And the reason that we are here is because we feel that even though it's, as you say, not affordable, still the people on Molokai cannot afford the fees that we're doing. That's the main reason why we're here, to try to save the people on Molokai and the first-time house builders the money, so they can qualify for the loans to get into the project. That's the whole reason why we're here.

CHAIRMAN CRAVALHO: Are there any questions from the members of the Board? If not, shall we then proceed to a vote? Those in favor of the denial of the continued referral will vote aye, and those opposed to the motion will vote no.

Miss Nago, will you call the roll alphabetically please, if possible, or take it from that side.

MR. HELM: Would you please repeat that, Mr. Chairman?

CHAIRMAN CRAVALHO: The motion is, if you vote aye, the continued waiver is denied. If you vote no, it means status quo status. Starting with Mr. Nakamura.

MS. NAGO: Howard Nakamura.

MR. NAKAMURA: No.

MS. NAGO: Robert Takitani.

MR. TAKITANI: No.

MS. NAGO: Adolph Helm.

MR. HELM: No.

MS. NAGO: Orlando Tagorda?

MR. TAGORDA: No.

MS. NAGO: Jonathan Starr.

MR. STARR: Aye.

MS. NAGO: And Peter Rice.

MR. RICE: No.

CHAIRMAN CRAVALHO: Mr. Craddick? I want to vote first, go ahead. Call me.

MS. NAGO: Elmer Cravalho.

MR. CRAVALHO: No.

MS. NAGO: There are six no's and one aye.

CHAIRMAN CRAVALHO: The motion to deny fails.

I think, Mr. Craddick, rightfully or wrongfully, with or without merit, each member of the Board is free to exercise his wisdom or the lack thereof, without any editorial comments from the side. I would appreciate it.

Shall we proceed to the next item, Director's Report 00-41, request approval of Haiku Well emergency repairs. Mr. Craddick?

MR. CRADDICK: The Haiku Well, the shaft ceased up in the pump and we have had to pull it out, and we have gotten the job going but we need approval of the funds. It wasn't in our budget to do this particular job.

CHAIRMAN CRAVALHO: If there's no objection on the part of the Board, the Chair would like to refer it to the

Finance Committee. No objection? So ordered.

The request approval of electronic bill presentment services, communication 00-42. Mr. Craddick?

MR. CRADDICK: This particular item here, again, we would probably ask that it be referred to the Finance Committee. It's for using the internet to pay the water bill.

CHAIRMAN CRAVALHO: Referred to the Finance Committee.

Committee reports from the Operations Review and Evaluation Committee. Mr. Starr?

MR. STARR: Yes, sir. The committee met on this item, and it was the consensus of the committee to recommend approval of the request for partial release. And this release is only to include parcel 90-67 of the subdivision 89-160. And the staff should also provide the Board with a certification that all requirements have been met as far as the parcel 90-67.

CHAIRMAN CRAVALHO: The Chair would consider a motion for the adoption of the committee report.

MR. STARR: I would like to move that the committee report be approved.

CHAIRMAN CRAVALHO: Is there a second to the motion?

MR. RICE: Second.

CHAIRMAN CRAVALHO: The motion has been made and seconded. Moved by Mr. Starr, seconded by Mr. Rice for the approval of the committee report. Any discussion? If not, are you ready for the question? All in favor say "aye."

(Ayes).

Contrary?

(No response).

Carried.

From the Rules Committee, what's the pleasure of the Board? Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, I move that the report from the Rules Committee dated October 26, 2000, be accepted by the Board, and that the recommendations contained therein be approved.

CHAIRMAN CRAVALHO: Is there a second?

MR. NOBRIGA: Second.

CHAIRMAN CRAVALHO: You have heard the motion duly made and seconded, moved by Mr. Nakamura and seconded by Mr. Nobriga. Any discussion? Mr. Starr?

MR. STARR: Are we being asked to approve all of these issues as one?

CHAIRMAN CRAVALHO: That was the motion.

MR. STARR: Procedurally I have a problem packaging things like this, because I think it makes it very difficult to look at the individual items. I would really prefer if we could look at them one by one, and have a chance to vote on each one upon its merits.

CHAIRMAN CRAVALHO: The Chair recognizes and sympathizes with the request. However, it's not the position of the Board to amend in effect committee reports. And if a person has any objection to any one particular item, so noted. And that we shall religiously follow in the future that every single separate item on the committee report be accompanied by a committee report on that item alone in the future.

But for today, the Chair would like to suggest that we proceed. Are there any objections to that, any concerns? So indicate. The Chair respects the position of Mr. Starr. Yes?

MR. RAPACZ: Thank you, Mr. Chair, John Rapacz. In lumping them all together there may be some difficulty in allowing individuals to testify on each item before the Board would make a decision on it.

CHAIRMAN CRAVALHO: The Chair is well aware of that. The Chair is also well aware that all contents in the committee reports are the results of committee meetings for which all individuals had the opportunity to be present, to express their concerns, and make their points known.

However, the Chair has no objection to deferring this in its entirety to the next Board meeting. I have no objection to that. What's the pleasure of the Board? I'd be happy to have it deferred.

MR. RAPACZ: Mr. Chair, we are not asking for a deferral. I would need to clarify the committee report as to our item, because it treats all of the items the same, and ours is different from the others in some respects.

CHAIRMAN CRAVALHO: Referred to the end of the calendar. So ordered.

MR. TAGORDA: Mr. Chairman, there was a motion and it was seconded.

CHAIRMAN CRAVALHO: The point is well taken. However, the Chair has only moved to place this at the end of the agenda, that's all. Just the timing. Not the contents, not the subject, not anything, just the timing. So ordered.

Old business. Communication from Mr. Yonahara. What's the pleasure of the Board?

Hearing none, proceed to the next item.

Communication 99-33, request from Mr. David Niehaus for waiver of the fire protection requirements. What's the pleasure of the Board?

MR. NOBRIGA: Mr. Chairman, I move to accept, permit the waiver.

CHAIRMAN CRAVALHO: Is there a second to the motion? Hearing none, the motion dies. So the matter remains on the agenda for next meeting.

Communication from Charles Freitas III for approval of a building permit application on a condominium property regime. What's the pleasure of the Board?

MR. NOBRIGA: Mr. Chairman, I move to approve the permit application.

CHAIRMAN CRAVALHO: Is there a second?

MR. TAGORDA: Seconded for discussion, Mr. Chairman.

CHAIRMAN CRAVALHO: You have heard the motion duly made and seconded for the approval of the request, building permit application for a condominium property regime. Seconded for discussion purposes only?

MR. TAGORDA: Yes.

CHAIRMAN CRAVALHO: The meeting is now open for discussion.

MR. NOBRIGA: Mr. Chairman, the committee report had extensively reviewed and dissected the rules governing all parties in relation to this issue, and the committee chairman does recommend its approval.

CHAIRMAN CRAVALHO: Any further discussion? If not, are you ready for the question? All in favor of the motion say "aye."

(Ayes).

Contrary?

(No response).

May the record reflect there were no dissenting votes. Carried by the Board.

Shall we proceed to a request from attorney John Rapacz?

MR. NOBRIGA: Mr. Chairman?

CHAIRMAN CRAVALHO: Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, move that we accept the arrangement between the Hoekstra family and the Department.

CHAIRMAN CRAVALHO: Is there a second to the motion? Hearing none, there's nothing before the Board.

MR. FUKUSHIMA: Is there a motion? Excuse me, for clarification.

CHAIRMAN CRAVALHO: There was no second.

MR. FUKUSHIMA: Was the motion to approve the action of the committee? I don't understand what the motion is.

MR. NOBRIGA: Sorry.

CHAIRMAN CRAVALHO: Do you want to rephrase it?

MR. NOBRIGA: The intent of the motion was to approve the recommendation of the committee.

MR. FUKUSHIMA: And the action recommended by the committee?

MR. NOBRIGA: Yes.

CHAIRMAN CRAVALHO: Is there a second? Hearing none, the proposal for the resolution regarding the Kamole Weir filters. What is the pleasure of the Board? Do you want to speak about this?

MR. RAPACZ: Yes, I was standing to speak, sir. I didn't get an opportunity to testify in any way, Mr. Chairman.

CHAIRMAN CRAVALHO: There was no motion.

MR. RAPACZ: The item is on the agenda.

CHAIRMAN CRAVALHO: No.

MR. RAPACZ: You are going to come back to it?

CHAIRMAN CRAVALHO: We will come back to it. Let's get procedures properly followed. As the distinguished attorney knows, before a matter becomes property of a body, it gets presented to a body for consideration. A motion and a second is required. We don't want to be placed in a position, as we have been several times along the line, where an individual has said no motion was made, even though there was general consensus. We have to have a motion, a second and discussion. And it will come back.

MR. RAPACZ: Thank you, Mr. Chair.

CHAIRMAN CRAVALHO: Shall we proceed then to the Kamole Weir filters. Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, move that we recommend mediation, and this recommendation in no way condones or accepts actions of the Director and the arguments being provided in finding resolution to damage of filters, and that the mediated report be submitted to the Board for final disposition.

CHAIRMAN CRAVALHO: Is there a second to the

motion?

MR. TAKITANI: Second.

CHAIRMAN CRAVALHO: Seconded by Mr. Takitani. The motion, without all of the editorial comments, is to proceed with the mediation to report back to this Board. Any discussion? Mr. Takitani?

MR. TAKITANI: My understanding is that the other party is willing to pay the \$10,000 for the mediation, is that correct?

MR. FUKUSHIMA: That's correct.

CHAIRMAN CRAVALHO: Mr. Craddick?

MR. CRADDICK: I just want to give this to you here regarding your comment about the editorial comment in that report. Just for the record, but no discussion is needed on it.

CHAIRMAN CRAVALHO: Mr. Craddick, the Chair is going to refuse, and the Chair does refuse to accept your editorial comments. It has no place in the present time. That's the ruling of the Chair, Mr. Craddick.

MR. CRADDICK: You can refuse, but that's submitted as part of the record.

CHAIRMAN CRAVALHO: Mr. Craddick, whatever is submitted as part of the record is subject to the proper submittal by the presiding officer at the appropriate time. And as the presiding officer has told you numerous times, not just once, but numerous times, the Board is made up of nine members. The idea of submitting matters to this Board for consideration, whatever it may be, needs to be done in the appropriate manner, not the last minute stuff.

I am not making any comment with respect to the merits or the demerits, but procedurally.

MR. CRADDICK: There's nothing in there for the Board's consideration.

CHAIRMAN CRAVALHO: Then why the devil are you submitting it to us?

MR. CRADDICK: Because this committee report is not factual, that's why.

CHAIRMAN CRAVALHO: Mr. Craddick, the Chair will again, if it hasn't been clear in the past, I will try to make it as clear as possible. Whatever comments should be properly made and transmitted to this Board in the appropriate manner, to wit, as the Chair has advised you in the past, have a letter of transmittal. The Chair also wishes to point out that it isn't the very best practice, it isn't the best practice to come in with an opinion just momentarily or during the course of a meeting. It should be properly submitted to the Board in the proper manner.

If the Chair were to attempt to do what you are attempting to do, the Chair should be chastised, in the same manner that you should be chastised for doing what you are not supposed to.

Shall we proceed? Communication from Tom Pierce on behalf of Donald and Mica McCann.

MR. STARR: Excuse me, there is a motion on the floor.

CHAIRMAN CRAVALHO: The motion on the floor was for the Kamole Weir communication. See what Mr. Craddick does? It's a good thing I have low blood pressure.

You have heard the motion duly made and seconded. All in favor say "aye."

(Ayes).

Contrary?

(No response).

Carried.

Now, Mr. Pierce. Mr. Nobriga?

MR. NOBRIGA: I move that we grant the waiver of fire protection to the McCanns.

CHAIRMAN CRAVALHO: Is there a second? No second? Unless there is any objection, deferred to the end of the calendar. You will have a chance to be heard on this matter. I have no problem in timing.

MR. PIERCE: From a procedural standpoint, can we get the recommendation from the committee report as to what the committee report's recommendation is?

CHAIRMAN CRAVALHO: The committee report, in the opinion of the Chair, has been coming for a long time. We should try to get it as fast as possible. Thank you.

Item G, amended committee report, request from Thomas Kafsack for waiver.

MR. NOBRIGA: Mr. Chairman, move we grant approval of fire protection for Mr. Kafsack.

MR. STARR: Second.

CHAIRMAN CRAVALHO: You have heard the motion duly made and seconded, moved by Mr. Nobriga, seconded by Mr. Starr. Discussion? Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, I feel that the issues contained in this particular request seem to be common to other items on the agenda which have been placed at the end of the agenda for discussion. I think on an overall basis, because of that, I would not be in a position to vote to approve this

request personally at this time.

CHAIRMAN CRAVALHO: Is there a request then that we defer this matter to the end of the calendar and consider it with all of the others?

MR. NOBRIGA: So moved.

MR. STARR: Mr. Chairman, I have no problem deferring it, I just don't want to see them lumped together.

CHAIRMAN CRAVALHO: We will take them one by one, although I think the principle may be the same. Deferred. Shall we proceed to a request from Shawn Kajiyama for extension of a meter reservation. What's the pleasure of the Board. Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, I move that we approve the request from Mr. Kajiyama.

CHAIRMAN CRAVALHO: Is there a second?

MR. TAGORDA: Second.

CHAIRMAN CRAVALHO: You have heard the motion duly made and seconded, moved by Mr. Nobriga, seconded by Mr. Tagorda for the approval. Discussion? Hearing none, all in favor say "aye."

(Ayes).

Opposed?

(No response).

Carried.

Fax from Mr. Sheehan regarding public notice and verbatim transcripts of all Water Board meetings. This matter has gone before the Operations Committee.

MR. STARR: Yes, sir. The committee Chair had an opportunity to meet with staff and come out with further recommendations on how we may be able to get a record of all of our meetings that are up-to-date. Right now there are no records for any of our committee meetings. And at the last meeting there was a motion to the effect that we will get the record brought up to speed as quickly as possible.

So I have a recommendation here on how to do this, and I would like to phrase it as a motion. And that is, I move that a verbatim record of all Board of Water Supply meetings, committee meetings and public meetings, shall be kept, and will be provided to all Board members and made available to any interested members of the public or other bodies that --

CHAIRMAN CRAVALHO: The Chair is going to have to rule you out of order.

MR. STARR: I am making a motion, sir.

CHAIRMAN CRAVALHO: One moment. A motion is supposed to be clear, specific, to the point. It is the understanding of the Chair that what you are reading from has been printed and was due for circulation to the body. Therefore, the Chair would like to suggest that inasmuch as these items will call for the appropriations and the provisions of funding, that this be deferred to the committee on finance to report back to our next meeting. If there's no objection, so ordered.

MR. STARR: Mr. Chair, I would like to comment that this makes all of our meetings illegal, all of our committee meetings, since there is no record as called for under the Sunshine Law. So the sooner the better.

CHAIRMAN CRAVALHO: The Chair is well aware of your concerns, and I think the Chair has expressed to you in private, in response to your requests, the concern of the Chair as well in suggesting procedures to have them correctly done. The recommendation of the Chair at this time in referring to the committee of finance is in keeping with these discussions, and is in keeping with the orderly process that we wish to

follow.

The Chair facetiously said, very facetiously, the Chair thought that it was involved in an ego trip with the Director as to who had the largest ego, the Chair or the Director, and the Chair found that he was winning this one. But I think you are trying to encroach in my area.

MR. STARR: No, sir, never.

CHAIRMAN CRAVALHO: Just saying it jokingly. But let us try to keep things as much as possible as cool and as calm and as collected as we can, so we can make orderly progress. I'm sure that Mr. Rice and the members of his committee will give due attention to your suggestions and recommendations. I have no fear of that. Okay?

Shall we then proceed. Request from Mayor Apana for a contribution of \$5,000. There is nothing in the budget. Finance Committee.

Next communication, 00-49, request from George and Nancy Nervius for a waiver of the fire protection. Here we are back to fire again.

MR. CRADDICK: This item has been withdrawn.

CHAIRMAN CRAVALHO: Has that withdrawal been circulated to the members?

MS. NAGO: In your information packet.

CHAIRMAN CRAVALHO: As a matter of information, this request has been withdrawn, okay.

Shall we then get back to the deferred items. It's the understanding of the Chair that the first item that was deferred was the report from the Rules Committee. So the pending motion is for the adoption. Any discussion? Mr. Starr?

MR. STARR: This report from the Rules Committee, does this include accepting this entire packet of rules that we were given?

CHAIRMAN CRAVALHO: No. The report of the rules committee covered only those items that had been referred to the Rules Committee. The packet of rules that you have received is a compilation of all ordinances and/or rules and/or practices of the Department for the review of the Board in case it wishes to make any changes or ratifications or whatever. They're two separate and distinct items.

MR. STARR: What items are we talking about?

CHAIRMAN CRAVALHO: Those contained in the committee report.

MR. STARR: I have to say that I feel that the way our packet is set up and the way these are being bundled is very, very difficult to figure out what we are being asked to approve. It's all out of order, the numbers are scribbled and crossed out, there are several different reference numbers, and then some items are lumped together, some items are separated out. I have a very difficult time trying to figure out what we're being asked to consider.

CHAIRMAN CRAVALHO: The Chair really appreciates the tumultuous times that you are having at the present time, that should be overcome in the next 10 days or thereabouts. Therefore, the Chair would have absolutely no objection to deferring action on this committee report until the next regular meeting of the Board. None at all. That would affect all items on that committee report.

For those who have been dancing the waltz over a period of time it's going to mean continuous dancing for the next month or more. What's the pleasure?

MR. NOBRIGA: Mr. Chairman, I think it's in our best interest to resolve these matters at this meeting. Your Board has had ample time to review the packets. I have to applaud the efforts of our staff, Miss Nago, and our new addition in

getting the packets to us in much more timelier fashion so that we can review them. It is much better than we had before.

MR. STARR: Mr. Chair, I am willing to take this up.

CHAIRMAN CRAVALHO: You are?

MR. STARR: Yes. It's good, it's just confusing.

CHAIRMAN CRAVALHO: The Chair really understands your confusion.

MR. STARR: Thank you.

CHAIRMAN CRAVALHO: Hopefully it will all be resolved on November 7th.

MR. STARR: I doubt it.

CHAIRMAN CRAVALHO: I said hopefully, and hope springs eternal. So the motion then is for the adoption of the committee report, and for the implementation of all of those items contained therein.

MR. NAKAMURA: Move for the question, Mr. Chairman.

CHAIRMAN CRAVALHO: The question has been called for. All those in favor of the committee report and its implementation shall vote aye. Those opposed vote no. All those in favor vote aye.

(Ayes).

Opposed?

(No response).

Carried. Shall we then move to those deferrals on fire protection. What was the first one, Fran?

MR. NOBRIGA: Niehaus.

MS. NAGO: Well, Niehaus was referred to committee. Yonohara is for actually, I think, an easement. Hoekstra is fire protection. McCann is fire protection.

CHAIRMAN CRAVALHO: Shall we, Mr. Rapacz? All yours now.

MR. RAPACZ: Thank you, Mr. Chair.

CHAIRMAN CRAVALHO: Just be advised that you have the use of this room only until 11:00. And if you wish to start a filibuster, the Chair will be very happy to be with you on that.

MR. RAPACZ: This should be very quick, Mr. Chair. John Rapacz, attorney from Wailuku, here on behalf of the Hoekstra family, item number 99-31. And also in the audience are Peggy, Ursula and David Hoekstra.

I just wanted to clarify how the committee report would apply to this particular item. The oversight committee report treats all four items together as though they are all the same, and in particular, it states on page 2 that in the above-referenced communications the request for waiver of fire protection is also accompanied by requests for service.

In the Hoekstra's application there is not a request for service. They already have their water meter in place. They have a one-and-a-half inch meter serving one fairly large lot. They simply want to subdivide that lot and allow that large meter to serve the two additionals.

So the portion of the report following that statement about requests for service we believe is not applicable. We don't believe that particularly the aspects pertaining to run and size of water mains would apply in this case. Everything that the Hoekstras are doing is on the customer side of the meter. And we would ask that if the Board is willing to approve the request that it be approved to allow the waiver of fire protection as stated in the report, and to

allow the service of three lots rather than one, with the one-and-a-half inch meter.

I do have a very simple diagram that I think might help the Board members in making their decision. Thank you, Mr. Chair.

CHAIRMAN CRAVALHO: Are there any questions or comments? If not, thank you very much.

MR. RAPACZ: Should I distribute this?

CHAIRMAN CRAVALHO: Give it to staff to do it, to disburse it.

MR. RAPACZ: Thank you.

CHAIRMAN CRAVALHO: Mr. Craddick?

MR. CRADDICK: Previously the issue had come up whether they were going to apply for separate meters for those extra subdivided lots later on, or if we were going to allow one meter to serve across lot lines, which our rules prohibit. And it seemed like they were saying they were going to get the extra meters for those extra lots later on, but I don't know what happened to that.

CHAIRMAN CRAVALHO: We will take that under advisement. Any other requests to come before the Board?

Mr. Pierce, did you have anything to cover on behalf of a client?

MR. PIERCE: Yes, Mr. Chair. I'm Tom Pierce, and I am here on behalf of Don and Mica McCann. Don McCann is here, and we also have our engineer here today, Wayne Arakaki. The only thing I'm asking for is a clarification of what I understand the committee report to read. And as I understand it, the committee, the Oversight Committee is recommending that our proposed fire system be approved, number one. And our request was a two-part request. We asked for approval of our

fire protection system and also approval of a water meter, which according to the staff report, we would have under the grandfather, under a grandfather clause.

As I understand the committee report, they are recommending approval of our water meter once the moratorium is lifted. With that clarification, we would ask the Board to approve the committee's recommendation. And if I have misunderstood the committee report, then we would like an opportunity to respond upon further clarification.

CHAIRMAN CRAVALHO: The Chair would like to suggest these matters on fire protection be deferred, and your understanding of the committee report be reduced to writing so that we do have it in hand, and there can be no misunderstanding of the action taken by this Board. That would also refer to Mr. Rapacz.

Along with this, if there are no additional comments, the Chair would like to indicate and to direct the attention of the Board to the items dealing with the rules that are being submitted to this Board. We are skipping to Other Business, item B. This is merely for discussion only. That we are presenting the rules, the compilation of the rules for action by the Board.

MR. STARR: Mr. Chair? Before we do that, I was hoping that we could deal with the Kafsack matter, because there was a motion. Can we get back to that?

CHAIRMAN CRAVALHO: Yes, we will. Thank God for seven days.

The Chair wants to point out that we are submitting a compilation of all rules, regulations which are in effect now. The Chair has indicated in the past that it has very serious concerns and very serious doubts as to the applicability of all of the practices of the department. And there are certain practices that may be traditional in nature, but do not have the force and effect of law.

One of the areas the Chair is concerned about does

deal with fire protection, and does deal with the authority of the Board as it relates to whether it can supersede the Fire Department and the Planning Department, and the rules are being submitted so that we can give our attention to these questions and have them properly clarified so we don't go around and round and round each time as to what the law does provide.

So it is in that spirit that this is being offered.

And I want to thank the Corporation Counsel's office for putting this all together for us. It's a long, lengthy job, but it has to be done. We'd like to ask for the help of the private sector, Mr. Rapacz and others, for their insights and their knowledge of what the items are that we should be looking at, so that there will be fairness and an even playing field for all parties involved. I think that's reasonable.

Now, anything you want today? And you cannot ask me for my vote, because I voted already.

MR. STARR: Well, too late on that one.

CHAIRMAN CRAVALHO: Too late on that one.

MR. STARR: This package of rules, and I think the intent of this is excellent, and it's about time, so thank you for bringing this to us. What I would like to know is, this packet that we are being supplied, is this from our own rule book or has this been amended?

CHAIRMAN CRAVALHO: It's as is. Whatever is, no amendments.

MR. STARR: I had heard that there were some changes that had been made prior to this being handed out, but they're not red-lined.

MR. FUKUSHIMA: The only change contained in every one of the rules is you would note the first would be a sunset provision. That was the only change.

MR. CRADDICK: Howard, are you talking about for all the rules or just the Kaupo rule?

MR. FUKUSHIMA: For all the rules. That was a change that was requested, and it's only noted in these rules. The rules have not been amended, but there is an insertion of the sunset provision in all the rules.

MR. STARR: Can you show me an example?

MR. NOBRIGA: The last page.

MR. FUKUSHIMA: Okay, if you look at the rules of practice and procedure on page 102-31, effective date, it calls for an automatic appeal.

CHAIRMAN CRAVALHO: Mr. Corp Counsel, I think we need to review the sequence. The Chair has been educating on this matter for a long time, very long time, and at the time these items were under discussion we said we should put a cut-off date, and the cut-off date was set arbitrarily as December 31, the year 2000. That is arbitrary.

The Chair has discussed this matter with Mr. Starr in the past, and it was indicated to Mr. Starr that there was this cut-off date. And it was also indicated to Mr. Starr that this was an arbitrary date, and that this work would take perhaps six months to a year. That's the only modification.

Now, if the department did offer anything or did amend anything, the Chair is without knowledge. I hope not, not at this stage. It's being presented Simon Pure as they are at the present time.

MR. STARR: My only concern is procedurally when we are given a copy of something, if there's something that has been changed, even if it's to create a sunset date, it should be red-lined or there should be a note so that we know in reading through it that this is something that's just been added or changed.

MR. FUKUSHIMA: If I may, Mr. Chairman, the purpose of this was to put all the department rules into the appropriate format. As you know, the rules, the present rules are a mish-mash as to format with different numbers, different sections. This is an attempt to place all the department rules under the format that's been adopted by the County across the Board.

MR. STARR: So these have been changed from the way our rules were in some way.

MR. FUKUSHIMA: If I may, the only change has been in the numbering system.

CHAIRMAN CRAVALHO: Style.

MR. STARR: First you said the only change was in the sunset and now you say it's in the numbers.

MR. FUKUSHIMA: I want to correct my earlier statement that we did put it in the appropriate format, but no content change other than what I mentioned.

MR. STARR: No words were changed?

MR. FUKUSHIMA: No words were changed.

MR. TAGORDA: With respect to this, there's one insertion that I think is so important for us to discuss, Mr. Chair.

CHAIRMAN CRAVALHO: The Chair is going to request again that we follow the normal procedures. What is involved is merely something that is being presented to this Board. It will be referred to committee for appropriate discussion at that time. This is neither the time nor the place nor the opportunity to discuss the subject matter or the contents. Anything subsequent can be worked on forthwith. And as Mr. Starr has agreed in the past with the Chair, this is a lengthy job, and it's going to take the best of all of us. So let's look at it from that perspective, which is the appropriate

perspective.

Now, did you have something else, Mr. Starr?

MR. STARR: Again, I'd like to say that when anything is presented to the Board that was our rule, if it's been changed in any way the copy should reflect the fact that there has been a change made, even if it's numbering, even if it's a sunset date, it should be red-lined or it should be pointed out. That is my only criticism.

CHAIRMAN CRAVALHO: The Chair recognizes your concern. Inasmuch as this particular item is coming before the entire Board and the committee, as it relates to this particular item and this particular subject matter, your comments are without merit. Shall we proceed? Let's keep things in perspective.

MR. TAGORDA: Mr. Chair?

CHAIRMAN CRAVALHO: Yes.

MR. TAGORDA: I just pointed out something to our Corp Counsel about the insertion of a paragraph there that I believe it was just a mistake or a typo.

CHAIRMAN CRAVALHO: Handle it when it goes to committee. No problem. Anything else to come before the Board? Hokoana? Yes, Mr. Craddick.

MR. CRADDICK: On this item here, Gerald Hokoana is here. But if it's Board's pleasure to defer this to committee, we have no objection. It's a relatively complicated matter.

CHAIRMAN CRAVALHO: Referred to the Rules Committee. It may require additional work on the part of the department. But Rules Committee. East Maui Stream Flow Restoration meetings. Mr. Craddick?

MR. CRADDICK: In your packet are the minutes of those meetings. The meeting was held in Keanae and one in

Haiku regarding stream flow restoration. And on page 49 of your packet there's a short synopsis of what happened in the meetings, and we submit this to the Board for further action.

CHAIRMAN CRAVALHO: May the record reflect the receipt of the transmittal. May it also be referred to our Budget and Capital Improvements Committee, because these are items, stream restorations are items under consideration and contained in the budget. No objection? So ordered.

Update on the water issues discussed at public meetings. My good friend, Mr. Craddick?

MR. CRADDICK: I don't believe there were any of those, at least not with me. We did have one Lahaina Water Use and Development Plan meeting yesterday. That's all.

CHAIRMAN CRAVALHO: Mr. Starr?

MR. STARR: There was a lot of discussion about water at a Planning Commission meeting last night, which no one participated from our end, but it was mostly other people discussing their views of water, some of which were quite interesting. But it was about a new gated community of 1400 houses called Wailea 670. And I think that we will be hearing the repercussions from that meeting come back to us over time. The Planning Commission just put it aside, but they said that before they rule on it they are going to want to know if water is going to be available for it or not. When, how and whatnot.

MS. KRAFTSOW: I just wanted to let the Board know that we did return from Kapalua and have the minutes ready. And we were prepared to go, but we had received an e-mail from planning saying that our presence was not requested, so that's why we weren't there.

MR. STARR: You were quoted quite a bit.

MS. KRAFTSOW: Me, personally?

MR. STARR: No, the staff.

MS. KRAFTSOW: That's why we weren't there, is we were told we weren't requested any longer.

CHAIRMAN CRAVALHO: Any other business to come before this Board?

MS. NAGO: Mr. Cravalho, are we going to take care of Mr. Kafsack or was he referred to committee?

CHAIRMAN CRAVALHO: Fire protection is all -- that's your motion.

MR. STARR: Yes, we had a motion. I would prefer we take care of it. There is an agricultural issue that someone is being prevented from being able to do a project. He's been waiting six months. Can we deal with this one, please?

CHAIRMAN CRAVALHO: The milk of human kindness on the part of the Chair does not extend ad infinitum. The question of the gentleman's six months waiting, the Chair is very sympathetic to. The Chair is very sympathetic with respect to all items for fire protection. The Chair has indicated a methodology to follow. So the Chair would like to suggest that we do not take action on this at the present time.

MR. STARR: Excuse me. We had a motion and second.

CHAIRMAN CRAVALHO: That's the Chair's suggestion. We can proceed to the motion. The pending motion is to proceed with the granting of the request. Those who vote in favor will be granting the request. Those who vote no will be opposing the request at this time. Miss Nago, call the roll.

MS. NAGO: Howard Nakamura.

MR. NAKAMURA: No.

MS. NAGO: Robert Takitani.

MR. TAKITANI: No.

MS. NAGO: Adolph Helm.

MR. HELM: No.

MS. NAGO: Orlando Tagorda.

MR. TAGORDA: No.

MS. NAGO: Jonathan Starr?

MR. STARR: Aye.

MS. NAGO: Peter Rice.

MR. RICE: No.

MS. NAGO: Michael Nobriga.

MR. NOBRIGA: No.

MS. NAGO: Mr. Cravalho.

CHAIRMAN: CRAVALHO: No.

It's still the property of the Board. The vote has been against granting the request, so ordered. Gentlemen, you have the floor.

MR. KAFSACK: With this vote you are killing our whole project. The only thing we are asking for is we develop the fire protection system for the Fire Department. We spent a quarter of a million dollars to build a fire fund to build private fire hydrants to the house and to our cheese production there, and I didn't know at that time that the water department can stop this project. I believed that we have done it properly. We had an engineering company which developed this fire protection system for that here.

CHAIRMAN CRAVALHO: The Chair would just like to briefly interrupt you. The voting of the Chair, and we

shouldn't be explaining, has nothing to do with the merit or the demerit, it has to do with the processes and the activities of the department which I would like to have spelled out properly as it relates to all fire protection. You may be caught in a Catch 22, but we can't help it at this stage.

And I want this particular question looked at very rapidly, and this has been addressed by other committees in the past. And let's move on this and get answers right away. I happen to think personally that there are instances when the department exceeds what it is supposed to be doing in certain vital areas, and fire protection is one of them. So in sympathy, maybe I am in the same church with you and maybe in the same pew. But at this stage I am not singing from the same hymnal.

MR. KAFSACK: What should I do now?

CHAIRMAN CRAVALHO: Trust in the Lord.

MR. KAFSACK: I do that.

CHAIRMAN CRAVALHO: Anything else to come before this Board? Mr. Craddick?

MR. CRADDICK: Just if anybody didn't catch the Iao Aquifer, it's now at 17.35, and it should be dropping to 17.2 for the month of October.

CHAIRMAN CRAVALHO: That is with respect to your pumping in the central area?

MR. CRADDICK: Yes.

CHAIRMAN CRAVALHO: And that comes up to what percentage of your availability? 80 percent?

MR. CRADDICK: It's a little over 85 percent.

CHAIRMAN CRAVALHO: It hasn't changed. Okay.

Mr. Pierce?

MR. PIERCE: Mr. Chair, we are in the process of writing this letter back to the Board. I'm wondering if we could CC the committee, the Oversight Committee, and ask the Oversight Committee if they could also clarify before the next meeting so we could potentially take action.

CHAIRMAN CRAVALHO: Absolutely. Personally, I want to expedite it, clear everything up, so that the department or us cannot say, "Hey, this is not what we did" and then we go round and round again.

MR. PIERCE: So we will direct a letter very quickly to the Oversight Committee.

CHAIRMAN CRAVALHO: Thank you very much.

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