

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
OVERSIGHT COMMITTEE MEETING

Taken at the David Trask Building, Room 205, Wailuku,
Maui, Hawaii, commencing at 9:00 a.m. on February 6, 2001.

Reported By: Rachelle Primeaux, CSR #370

ATTENDANCE:

Mike Nobriga, Chair
Clark Hashimoto
Orlando Tagorda
Jonathan Starr

Staff Present:

Herb Kogasaka, Engineering
David Craddick, Director
Howard Fukushima, Corporation Counsel
Fran Nago, Secretary
Herb Chang
Mike Quinn
Arnold Abe

Others Present:

Kathy Platt
Mary Blaine Johnston
Ron and Dawna Richmond
Jack Naiditch
Peter Yacooshin
Peter Stolle

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CHAIR NOBRIGA: Good morning. I would like to call the Oversight Committee Meeting of the Board of Water Supply to order at this time. We're meeting in HGEA Conference Room 205 at the David Trask Building. In attendance are Committee Members Clark Hashimoto, Orlando Tagorda, myself, Mike Nobriga.

Also in attendance we have Board Member Jonathan Starr as an observer. We have the Department Representative, David Craddick, Mike Quinn, Fiscal Officer, a bunch of engineers, Corporation Counsel Howard Fukushima and members of the public. I would like whoever is known to please be read into the minutes at this time.

MS. NAGO: We have Kathy Platt, Dawna and Ron Richmond, Mary Blaine Johnston, Peter Yacooshin, Peter Stolle, Jack Naiditch.

CHAIR NOBRIGA: Anybody else in this room, please state your name. Okay then, thank you. Also in attendance is Fran Nago, our Board Secretary. We do have minutes of October 11. Committee Members, I request your acceptance of these minutes.

MR. TAGORDA: Mr. Chairman, I would like to move that we accept the minutes of October 11, 2000, and be filed subject to a 30-day review. Thank you.

CHAIR NOBRIGA: Second?

MR. HASHIMOTO: Second.

CHAIR NOBRIGA: Moved and seconded. Any further discussion?

(No response.)

CHAIR NOBRIGA: All those in favor, signify by saying "aye."

VOICES: Aye.

CHAIR NOBRIGA: Opposed, "nay."

(No response.)

CHAIR NOBRIGA: Motion is carried. I think we have a lot of people here from the public that will be testifying on their particular communication. Is there any member of the public that wishes to provide testimony at this time that is not part of our current agenda?

Okay, dokay, moving right along. Item Number 5, Committee Discussion Recommendation. The first item that we have before us is Communication 00-52, request for a waiver of fire protection for building permit at Tax Map Key 2-2-14:015 on behalf of William S. Worcester. In attendance today is Kathy Platt. Hi Kathy.

MS. PLATT: Hi Mike.

CHAIR NOBRIGA: Representing the applicant.

MS. PLATT: My neighbors are Bill and Sally Worcester and they're in New Zealand, and they asked me if I would come and represent them today.

They want to put a fourth building on their property. It's an unusual property in Waiakoa in that half of it's zoned commercial and half of it is zoned residential. On the commercial part of their property where they want to add this new building, it will be entirely constructed of metal, concrete and steel and glass windows.

The problem according to the Board or the County Water Department is the fire protection. They've received several letters and gone back and forth with water flow calculations. There's a standpipe right on the corner of their property, and one of the big concerns is it's located right next door to the Kula gymnasium, which caught on fire a couple of years

ago. And Sally and I were out there with our water hose trying to put the fire out, too, but the fire went out.

Now, this property is, you could throw a rock at the fire station from this property, and I'm not kidding. There's another fire hydrant right up the road on Puakea Street, which is within 500 feet. Now, the Water Department has requested the Worcesters to put in another fire hydrant on their property and to upgrade the service from Puakea Street to their property and make a 12-inch water line, and we have some -- we have a letter from Mr. Craddick stating that.

Mr. Worcester has obtained a copy of this map, which shows some engineering that the Water Department is proposing to provide this very same 12-inch water line themselves next year. And Mr. and Mrs. Worcester would like to have this requirement waived for them due to the fact that the County has already obtained the engineering to provide the said water line ahead of time.

They've offered to sign a waiver with the Fire Department, and since this new building is going to be completely fireproof, they would like to have this requirement waived.

CHAIR NOBRIGA: Thank you.

MS. PLATT: Thank you. Any questions from anyone? This is a workshop structure. It's not going to even have any electrical in it, no more standpipes, no plumbing going to it whatsoever.

MR. HASHIMOTO: Is it going to contain any flammables?

MS. PLATT: No.

MR. TAGORDA: Mr. Chairman?

CHAIR NOBRIGA: Yes.

MR. TAGORDA: Ms. Kathy, this structure that this family Worcester is planning to build, it looks like it's a workshop with a, what you call it now, size of 26 by 50-something square feet -- 36 wide and 50-something, which is too big for a workshop, so what was really the intent if only two of them is going to use utilize this structure?

MS. PLATT: Well, they're artists, and they have a lot of stuff.

MR. TAGORDA: So what would be the things that would be stored in that workshop, in that structure, do you know offhand?

MS. PLATT: I'm not exactly sure what they're planning on storing in there. They're in New Zealand, and I can have them answer that question for you when they come back.

MR. TAGORDA: Okay. And it seems to me -- tell me something about, there's a zoned district in that where the building or the structure is going to be constructed, and it's zoned residential down below or some place?

MS. PLATT: Right, the property is kind of weird.

MR. TAGORDA: How many structures are there in that business district zone?

MS. PLATT: There's an existing garage, which is pretty small, and there's an existing very small residence, a probably 800-square-foot residence would be my guess.

MR. TAGORDA: So this hydrant you mentioned is it the corner of Puakea and Lower Kula Road. How many feet is it approximate away from --

MS. PLATT: Less than 500, and there's also a standpipe.

MR. TAGORDA: And there's also a standpipe --

MS. PLATT: On the corner of their property.

MR. TAGORDA: -- that is fed by 2 and a quarter-inch water line, which is not adequate enough to give you a required fire flow.

My question is for the Department. Mr. Craddick, is either of the two requirements that you are trying to impose with the Worcesters is the 12-inch and the 6-inch, so what is the consideration given on these two options on costs and time line when the project is going to be made?

MR. CRADDICK: Actually, we gave them the option of putting in one fire hydrant and we would do the rest because, as they said, the project is coming in. They refused that. So I'm not going to dicker around with them. I just told them what the requirements are, and they came to the Board. But I already gave them the option of doing one hydrant when we put the water line in.

MR. HASHIMOTO: How much would that cost, that water?

MR. CRADDICK: I don't know, probably \$10,000, or what would it cost for one fire hydrant? I mean if they tied it in when the construction was going on and made a deal with the contractor to put it in, I'm sure it would be less than that.

MS. PLATT: That would be the top you're thinking?

MR. CRADDICK: Yeah.

MS. PLATT: Has that line been determined exactly when that -- is the money available to put that line in?

MR. CRADDICK: It's in the current budget, and I think there's just a few last details in the design going on.

MS. PLATT: So what's the estimated date of completion on that?

MR. KOGASAKA: It's in design right now.

MS. PLATT: So I guess what the Worcesters would like to know is -- I had understood something about this fire hydrant thing, and evidently my understanding, which could be wrong, is that offer had been withdrawn. And I don't think there's anything ever in writing proposed to the Worcesters as regards to this proposed fire hydrant, so that's a little sketchy with them.

MR. CRADDICK: Yeah, and we wouldn't put it in writing unless they're willing to accept it. Unless they're willing to accept it, we wouldn't put it in writing because it's bypassing the rules. And if they don't want to do it, this is the next course of action.

MS. PLATT: Well, if they were willing to say consider that offer --

MR. CRADDICK: Right now, I wouldn't even bring that up because that is -- if you want to withdraw this from the Board and go back to that, we can do it. I'll leave that up to corp counsel whether we can even do that, but it's not a place to negotiate that here in front of the Board, because it's not in strict compliance with the rules.

We're just, you know, cognizant of the fact that we're doing a water line project out there and it needs a hydrant there. And we figured that was certainly fair for the project. And, you know, if they didn't want to do that, that's their option, but to sit here and negotiate that, I don't --

MS. PLATT: So my understanding then of what you're saying, I could be wrong, is that they're planning on putting a hydrant there, the County at this point is already planning a hydrant there?

MR. CRADDICK: No, I don't think so. There's a 12-inch line they're putting in there.

MS. PLATT: So that will increase the water flow to the standpipe that's existing?

MR. CRADDICK: The standpipe won't be there either.

MS. PLATT: They're going to be moving the existing standpipe?

MR. CRADDICK: Yeah, there won't be any standpipe there. As Board Member Tagorda said, it's only a 2 and quarter-inch line. The water evaporates before it hits the fire coming out of the standpipe.

MS. PLATT: So then the existing fire hydrant at Puakea will be servicing that whole area including the existing gymnasium?

MR. CRADDICK: That I don't know exactly what all the particulars are in the design.

MS. PLATT: Because I live across the street from there and I'm kind of worried about fire, too, now that you're telling me the hydrant is coming out.

CHAIR NOBRIGA: Thank you. Is there any other questions for Ms. Platt?

MR. TAGORDA: You understand our Department rules and regulations that on a business district zone, there is that minimum requirement flow required, and this is 2,000 gpm for two hours. Although you

mentioned the proximity of that Fire Department to this parcel, subject parcel, I'm sorry, that I cannot personally give credit to that because it really didn't mention in our rules and regulations about when there is this parcel is close to the Fire Department, you should be given some consideration as to your safe.

However, the reason I guess is I believe I'm in the position to deny your request to waive fire protection is because being a business district zone, you have a lot of things that need to be protected, not only the structure that the Worcesters are going to build, but the surrounding neighborhood.

And I'm going to doubt the reason behind building a big workshop, what will be stored inside. Because you just mentioned that it's going to be utilized by the couple who are designers and things like that. And with that big workshop, 26 by 52, correct me if I'm wrong, it's bigger than my house, bigger than my garage.

MS. PLATT: It's pretty big.

MR. TAGORDA: Yeah, it's pretty big.

MS. PLATT: So what you would like to hear from them is what they're planning on storing inside?

MR. TAGORDA: Yes.

MS. PLATT: Okay. Any other questions I can answer for you?

CHAIR NOBRIGA: If there's no other questions, I recommend we defer this until the applicants return from New Zealand, and we can talk to them again about working with the Department to have a fire hydrant put in during -- because we were going to do the work. It shouldn't be very expensive, as expensive as trying to do the work themselves. And if they would be open to that, this can be solved without action by the Board.

MR. TAGORDA: So moved, Mr. Chair.

CHAIR NOBRIGA: Thank you.

MS. PLATT: May I ask that they put on the agenda at the next Board meeting, the full Board is the 20-something?

CHAIR NOBRIGA: Our committee report will be forwarded to the Chairman, and the Chairman will include it in the agenda.

MS. PLATT: On February 22nd?

CHAIR NOBRIGA: Yeah. Motion is to defer action on this.

MR. TAGORDA: Mr. Chair, I guess we cannot really commit whether we can put that on the agenda this coming regular meeting. Would you commit that, that we can put it on the agenda?

CHAIR NOBRIGA: The motion is to defer. That means it is deferred, and it will be taken up at a different committee meeting date.

MS. PLATT: Could I ask when you think that may be so I could let them know.

CHAIR NOBRIGA: First week of March.

MS. PLATT: First week of March?

CHAIR NOBRIGA: Yes.

MS. PLATT: Are you going to be contacting them, or how should I ask them to proceed?

CHAIR NOBRIGA: We will be contacting them.

MS. PLATT: Thank you for your time. I appreciate that. What I will be asking them to do is let you folks know what they're planning on storing inside, yeah?

CHAIR NOBRIGA: Thank you.

MS. PLATT: Okay, thank you very much.

CHAIR NOBRIGA: All those in favor, signify by saying "aye."

VOICES: Aye.

CHAIR NOBRIGA: Opposed, "nay."

(No response.)

CHAIR NOBRIGA: Motion carries. Next item is Communication 01-01, request of waiver of subdivision requirements, I believe I might be corrected, but Tax Map Key 2-2-02:004 Ulupalakua on behalf of -- Mary Blaine Johnston on behalf of Peter Yacooshin. And we have with us --

MS. JOHNSTON: I'm Mary Blaine Johnston.

CHAIR NOBRIGA: Hidy-ho.

MS. JOHNSTON: And I represent Peter Yacooshin. Thank you. I haven't had the opportunity to appear before in committees or the Board until we were at the Board meeting a couple of weeks ago. I think most of you gentlemen were there. I made a brief statement about this request for waiver, and I guess this is the opportunity for me to go into a little more detail.

Usually attorneys talk too much, so I'll try to keep my comments as brief as possible. I received a copy of the report that was done by the Department, and I would like to address myself to a couple of them, especially of the recommendation and discussion

phase in just a minute. But first I want to give you a little bit of background on the project. I had asked Peter over the weekend to take some pictures of the property, and I'm just going to circulate those and he can just give you an idea of what we're talking about and what he's requesting and then he can answer any questions about that.

He has come and asked the Board to waive the requirement that the Department said he would have to meet in order to get a building permit, which would be for fire protection, and install a newer, larger water meter and then was told that there was no way to get a newer, larger water meter, so that's kind of an impossibility. The fire protection would be prohibitively expensive for him, so that's not really a possibility either. Just as background, this is about 25 acres of property at Ulupalakua. It's right below Sun Yat Sin Park. Most of you are probably familiar with it. It's owned by five hui members. It's owned by a general partnership, Noel Johnson Hui. Mr. Yacooshin's interest equals about 2 and a half acres of the land that's designated for his use.

At some point, it's my understanding hui members do want to do a subdivision when it's possible to meet the requirements, not the least of which are the water requirements.

There are two -- several structures on the property. In addition to the shed that Peter is living in now, there are two other homes that are occupied, one by John Pollock, who was the first one to have a permitted structure and to come to the Board and receive a waiver of the very same requirements we're asking for a waiver of today. And the second is Neil Coshever, he did the same, went through the same process.

Mr. Pollock, the Department of Water Supply had the same recommendation they have on our application here, and that was to deny request for a waiver. Apparently, the Board overruled that, and on May '97, an agreement modifying the subdivision requirements so that he did not have to comply was recorded. Mr. Coshever's similar modification agreement was recorded in January of '98. I would like to point out at the

time that both of those agreements were recorded that Peter's shed was already there. It was built in '94. That all the calculations that were done, and I couldn't find those in the file when I went and looked at the Department's file, thus included at the time the very same use that's being made now by Peter of the water.

If you see -- I asked him to particularly take a picture of the toilet. That was one of the first things he put on the property. It's outside. It's been there since '94. His plans to get a permit involve moving that toilet inside where most people's toilets are and installing a sink in the kitchen and installing a shower. It's a very minor modification. Without those, his living in the building shed there is illegal, and he wants to comply with all the rules so he can legitimately live there.

Again, let me point out that even when Easy Street is taken care of, and there's mention made in the report that the agreement that was entered into in '99 with them will take some of the stress off this meter. Those 7 lots will be taken off this particular meter.

But I noted for the first time in the report, and I want to stand corrected, in the letter that I wrote to the Board, that apparently even when that occurs, that the flow rate is still going to be insufficient to meet the Department's requirements so that we would end up having to come back here anyway.

According to the recommendations, the fire protection will be taken care of, but that can be taken care of in the same way it was taken care of when Mr. Pollock and Mr. Coshever came before the Board and asked for a waiver. So basically, what we're asking is the same kind of treatment of this that was given to both Mr. Pollock and Mr. Coshever who, although they are -- I guess Mr. Pollock's building was actually up before Peter's shed was built, before Mr. Coshever's. I would like to focus just a few comments on the page on the report that was done, which lays out pretty well the chronology on this piece of property. There are a lot of things that just as background that aren't here that have

gone on with the Land Use and Codes just to give you an idea of what Peter has gone through so far because there's a comment made here that he's not willing to comply with the rules.

He applied for his permit in 1998, that's September, and I won't go through all the difficulties that he ran into, but they were numerous, not the least of which was the notice that was sent out in May of '99 to him saying he only had until the end of December to finish up his building permit application.

That notice, although his name was on it, went to Mr. Pollock, his Post Office Box. And Mr. Pollock has been a constant critic of Peter, so he never saw it. I sort of serendipitously was talking to Mr. Enomoto and he mentioned something, "Have you seen the letter your extension is running out?" And I had not. So that was November of '99, so we've had -- since then, I requested an extension. We worked out an extension of the deadline because Peter is working under the '98 permit, and if he loses this permit application, he'll be kicked into the new ag bill and probably will not be able to meet those subdivision requirements.

So in between my correspondence with the Water Department, there's been correspondence, meetings with the County people. Kealakapu Road, they weren't even sure whether that was a County road. It's taken them about a year to work that out. They're going to take it now as a County road, which affects the requirements for dedication of road width and so forth.

It's been a very time-consuming process and very tedious. You can see my file here, and this isn't even all of it. I couldn't put it all in the folder. On the recommendations that were made just briefly, I would like to go through and address those. Under 6A, the mention that a shed is entitled to the same kind of fire protection, realistically, for those of you that have actually been down to this property, if there's a fire, by the time the fire truck got there, there probably would not be much left.

In recognition of that, Peter has no problem

with signing a modification agreement holding the Water Department free of any liabilities. In January of last year, he executed a similar agreement with the County on their fire control requirements. In the year that's elapsed since then, the County is no longer requiring that, so that's -- you know, we went through that whole drill. And in the process, we found out that the partnership that owned the land, the registration had lapsed. We had to reregister the partnership, pay penalties, have title reports done, and now we don't need that, so I guess that's a good thing.

The Paragraph B addresses itself to the problems of the -- there is a 3-quarter-inch meter. The hui is paying -- not paying ag rates, that's pointed out in here. They are paying residential rates and have been for a while. And even with Easy Street improvements, whenever they're able to finish them, the improvements are going to be over \$200,000. Apparently, there's still going to be a problem with the flow rate, but again, Peter has been using the same water since 1994, so any of the previous calculations that are done or any strains on the system, he's already on it. It's functioning, no problem. So he's even at the bottom of the -- at the end of the line, so if anybody is going to have problems, he would be having problems and he hasn't been.

Paragraph C talks about the Easy Street, what they're going to be doing will help with the fire protection, but, as I say, if the Board grants our waiver, that won't be necessary. And D I found very troubling, because, one, I don't know where this information came from, and I'm kind of troubled by the observation, it says, "It is our Department's understanding that the applicant is not participating with his neighbors to bring the water system up to standard and should not be allowed to bypass the rules while others are working to comply with the rules." Well, A, that's simply not correct. There's never been any indication that the hui members were not going to comply.

The last most recent mailing was a letter that Peter received about a three days ago requesting each

hui member to sign a retainer agreement with an attorney that the Easy Street people have retained. There are questions there, but I think, as far as I'm aware, the hui has agreed to pony up some money to help with this, and Peter certainly is in there, too.

I think the comment that he hasn't worked to comply with the rules, simply by what I've described as the process we've gone through is just not correct. Since I've taken over to try to help him, he got very frustrated in trying to deal with this whole issue. And this is the first time I've worked through one of these permits also, so I've learned a lot in this. We've tried to comply with all the requirements that have been laid out. We've gotten approval from the State Historic Preservation that there are no problems there. The tax clearance expired at the end of this year. We got an extension from Mr. Goode. We have the new tax clearance.

The fire protection with the County has been taken care of. Before the end of '99, Peter paid \$2,040, the park assessment fee, which the County has had in its possession since that point in time. He's done everything he can to comply. He's paying very much attention to the rules. Most people I think would just simply live there until something happened, but he really is intent on trying to get this legally permitted.

The recommendation is, as it was for the request for waiver by both Mr. Pollock and Mr. Coshever, that it be denied because of the inadequacies in the system, and there was a way -- the Board found a way to work around those problems.

Let me go back up to B. The comment, "By allowing a waiver of this requirement, the Board may receive more waiver requests for developments that exceed their existing meter capacities," I find that kind of a non sequitur because there are going to be people coming and asking for waivers.

When we came to the Board meeting, full Board meeting two weeks ago, Peter told me he parked down below in the building in the parking structure. And the security guard came up to him and said, "Where are you going?"

He said, "Well, I'm going to the Water Board."

He says, "Oh, you must live upcountry."

So it's kind of funny, but it's a reality.

Until the system gets improved, which we hope will be one of these days, people are going to come in with needs. And this is a need and this is why the Department has to apply the rules and their recommendations in their letter to me about the requirements, that's what they have to do.

The Board can step back and say, well, here's a situation -- I think if you've looked at the pictures, Peter has a nursery. The picture shows some of the vegetation there. It's a small nursery. The tractor is one he recently bought so he can do some work. These are chickens in the chicken coop. This was a bread truck that the County cited him for having and an unpermitted shed and fined him \$500, which he paid.

And you have a picture of the existing structure of the shed, and next to it you have a little barn. These are photos 3 and 4. And I have a copy of the plans that have been done, and I can just explain briefly what the project is. The existing structure is basically 28 feet by 16 feet. It's just two rooms. The concept is just to add on another space of 17 feet by 13 and a half feet. This would be a kitchen area with a sink, and this would be the bathroom area with the toilet and a shower in it. And very simple, it's under \$6,000 worth of improvements just so he can stay there legally and take care of his nursery, which is the source of his income. He does nursery and landscape consulting. I just would request the committee, this is a circumstance where somebody is trying to go by all the rules and do the right thing. We have a time limit now where we have an extension until March 31st to finish the application process. We have come to some kind of agreements with the -- on the roadway and dedication of a segment of the roadway that Land Use and Codes is going to help us accommodate here so that there's not a major expense.

So we just ask this committee to recommend to the Board that they grant a request for waiver. I

will be happy to answer any questions. And, Peter, if you have any questions for Peter, he's here.

CHAIR NOBRIGA: Thank you.

MR. HASHIMOTO: Chairman.

CHAIR NOBRIGA: Yes.

MR. HASHIMOTO: On D, it says, "It is our Department's understanding that the applicant is not participating with neighbors." But according to -- what's the --

MR. CRADDICK: Well, does everybody remember Ted Isaacson when he came into the Board for this exact same thing, and the Board said he had to fix the pipeline going up to Kamaole tank? He's currently in the process of doing that. Everybody in the subdivision, including Neil Coshever and John Pollock, have agreed to participate in that. The only one who hasn't agreed to participate in that is Mr. Yacooshin. And this is according to Ted Isaacson as of what, three weeks ago? So if that's changed, we don't know. What we do know, Dorvin Leis had to put in Mr. Coshever's share into the agreement to make it go because the other people couldn't afford to kick in his share.

MR. FUKUSHIMA: Yacooshin.

MR. CRADDICK: So if that's wrong, we would like to hear from the other people in the group that that is wrong. And you know, again, the last two times the Board did this, the Board took trips down there. And I would recommend the same to this Board, if you want to go see what the heck is going on down there, they've got multi-million-dollar properties down there. This one particularly may not be, but it's one of the eight, and one of the eight has been -- I don't even know how they subdivided. I guess it's just kind of catch-as-catch-can kind of a deal where they do

further subdividing without really subdividing just saying, "Oh, let us live here and we'll divide this section off."

And Pollock has a few houses. Neil Coshever has one or two dwellings. Now we've got more from this side, but it's all one lot.

CHAIR NOBRIGA: Orlando.

MR. TAGORDA: Can I ask Mr. Yacooshin, where do you reside right now, Mr. Yacooshin?

MR. YACOOSHIN: I spend a great deal of time up in the shed up in Ulupalakua, and I have a place in Kihei where I stay. I've spent over 20 years in Kihei when I grew up, and I prefer upcountry.

MR. TAGORDA: Reading all this information in front of me, I'm kind of inclined to believe that there is something really going on in that property that I believe that the hui is avoiding a subdivision. They have imaginary lines drawn to get their own interest in that property just to avoid subdivision requirements imposed by the Department of Water Supply, and that's how I see this thing.

All the building going on in that property, all what the Department of Water Supply have done since 1976 is either they were not told about those building structures, building permit and all their actions are pending, so I don't know why up to now we have numbers of structures there, eight of them going on and there seems to be no improvement on those water system.

MR. CRADDICK: It's still got one 3-quarter-inch meter.

MR. TAGORDA: And 3-quarter-inch water meter is being used by eight parcels, eight subject property of 30 gpm, and I think that's not to our standards. So I don't know why the previous hui owners were able to pass those building permit applications, although actions of the Board and Department are all pending. I had a question about that.

Now, I'm going back to our corporation counsel. What are the legal remedies we can do to stop this from going on, Mr. Corp Counsel, there's nothing we can do?

MR. FUKUSHIMA: To stop this from going on, well, the arrangements that the hui partners may have in how they use their property, you know, that's up to them. It appears that, you know, your suspicions may have some basis, may have some merit. I don't know. You know, I really couldn't comment on that.

However, if, as has been represented, the houses and structures that are currently there have received building permits and approvals, you know, it appears that they've gone through at least the letter of the law to comply.

MR. TAGORDA: Maui County Code states clearly that you're entitled only one dwelling, a second dwelling unit per property.

MR. FUKUSHIMA: Well, if it's ag property, you can put on ag dwellings, agricultural dwellings that are related to our ag usages, employee housing for your farm workers, et cetera. There are exceptions to the rule of having, you know, one house and one guest cottage and particularly in agricultural lands.

MR. TAGORDA: And like what's been stated by Ms. Johnston, this property is not using ag rates. They are paying residential rate; is that right?

MS. JOHNSTON: Yeah, that's right, more than ag rates. Let me address myself to your observation and to Mr. Craddick's. The Land Use and Codes required proof that Peter was involved in agricultural activity, and they have given that approval. So as far as they're concerned, what he's doing there is agricultural, and the dwelling he has is in conjunction with agricultural use.

As far as what the hui is doing, I tell my clients, I say, "The last thing you want to do is own

property with somebody else." Even a wife, you get around it, or a husband, you just don't do it because there always are problems in hui ownership. And this parcel has certainly not been the exception to the rule, and I've tried to mercifully spare all the details about what's gone on in this property.

Please be assured, Mr. Tagorda, it's my understanding that the current hui members, and there's been a change in the membership since the original partnership agreement, their intent has been to subdivide. To do that, if you have a bunch of members, you've got to all agree on the subdivision and go forward and come up with the money, which I mean just the water requirements will be very considerable. Nobody there -- there's only Mr. Coshever and Mr. Pollock and Mr. Yacooshin actually live on the property. The money hasn't been there, and the ability to work towards that hasn't been there. There's been a lot of divisiveness there.

I haven't been able to put my hand on the file that's gone on, complaints by Mr. Pollock to all the hui members, but I understand it's about that thick. When Peter bought into that, he bought half of Noel Johnson's ownership in the property, and remember, this is an ownership in a partnership that owns the property.

So what each of the hui members has is a percentage interest in the partnership, not in the property itself. When Peter bought in and acquired the partnership interest, it gave him the right to utilize half of 2.5 acres, and I've got the percentages of the partnership in the partnership registration document that are part of the packet that I submitted. His understanding is that he would put his shed up to do his nursery and that eventually he would live there so he could tend to it because the roundtrip from Kihei to Ulupalakua absent the famous upcountry road is a pretty long one.

What happened was that Mr. Pollock went in and built two structures, both of which were permitted. One was for a kitchen in conjunction with his ag product, which was to dry bananas. That has been converted and basically is not being used for that

anymore. That's a whole separate issue how that permit was gotten.

Mr. Coshever went in and got his, okay. So by the time Peter came along, he turns out to be the fourth structure on the property, although probably he was the second structure on the property, maybe the third, fourth structure kicks you into all the subdivision requirements. The basic line is his dwelling or building is exactly what was there in '94 ahead of everybody else's. He just didn't race in and get a permit back then. If he had, we wouldn't be here today and we would have not problems.

And he was confident and the hui members told him this is the way it would be, they would be able to share. They have I guess delineated areas they can use on the property. It's not an attempt to avoid subdivision. It's just a way to try as best they can to live peacefully together. That doesn't always work, but this is not an uncommon arrangement. I've represented a couple of hui's out in Hana that have had the same kind of arrangement. It's turned out just about as -- much worse than this particular arrangement. This is a pretty good one.

So please be assured that they're not trying to avoid subdivision. They want to do that and make life a lot easier for everybody. As far as the Easy Street people, the Bailey partition occurred back in '70s. And I don't really know very much about that. I probably learned more from reading this report.

My understanding is the 7 parcels there, the owners all were hooked -- Bailey, the property in the Bailey subdivision property resolved was all off of one water meter. When they subdivided, whatever process that was, appeared to be before some of the regulations were in place. They just stayed hooked up. And they now, they are multi-million-dollar homes, not multi-million, but very nice homes. Some of them have two homes on them. When I got all the information from the real property office to do the flow rates, there's swimming pools and ohana units and big structures. And it's obvious they each want their own meter because that's really going to increase the value of the property. They can pool together with

the money to do that. They can come up with the 200 or \$300,000 it's going to cost because they're going to have a significant improvement in their property value, not so much so with the Noel Johnson hui.

As far as Peter's participating, he's gotten mailings. I'm unaware anyone has contacted him. I talked to Ted Isaacson a few months ago. He's never called me, never contacted me. As far as I know, he's never contacted Peter. Peter has had a couple of letters that have passed through John Pollock, the person who has filed numerous complaints against him. But there's never been anything clearly put in front of Peter like, "Here is the day you've got to pay up."

We've talked about it. We've agreed there will be some at least benefit, although at this point, if he's not even going to get a flow rate he can use, I'm not quite sure what that is, but he's never declined to participate.

No one has ever come and knocked on his door and said, "Now is the time for the check." So I don't know where the information came from. It seems like hearsay information. It would be nice if somebody had called either me or Peter directly to verify that. But he is willing to do what needs to be done. That's going to help him.

And we understand that when Easy Street people go off the meter, it will help. As far as the reason why they're not on agricultural rates right now, which should actually make the County happy because they're paying a lot more in residential, somehow has something to do with Mr. Pollock's complaining about Easy Street. And the County came in and decided, well, these are not ag lots, so we're going to have them go to residential rates, so that's a plus for the County. They're getting more money.

Peter is doing an agricultural enterprise. He's not trying to avoid subdivision. I know the property owners would like to someday do that. I'm sure they would like to get out of each other's faces. In the meantime, the problem is still here. How long is he going to have to wait?

He's living there basically, and he makes no bones about that. The County knows that. He just

wants to be able to live there legally and not be subject to being cited. I hope that answers your questions about that.

It's an uneasy situation. It's hopefully an interim situation, and all Peter can do at this point is take care of his kuleana that he has there and try to make the best of it. And whatever happens down the line, it happens. And someday we will have a good system up there, and it won't be a problem. People will be able to get bigger and larger water meters.

CHAIR NOBRIGA: Thank you. Any other questions? Clark.

MR. HASHIMOTO: So would Peter be willing to participate with his neighbors?

MS. JOHNSTON: Yeah, he's never said he wouldn't.

MR. HASHIMOTO: Why doesn't he approach the parties?

MS. JOHNSTON: Well, as I said, I had a very specific conversation with Mr. Isaacson, and to date, you know, I have a file folder here on Easy Street with the communications. And mostly what's come out from Mr. Isaacson is just general information. There has been one request that was made. You know, what they described, they changed engineers. They now have an attorney.

The last they said about two days ago was a retainer agreement from Martin Luna, which I've just had a chance to look at, but they want everybody on all of the eight lots, all of the individuals to sign on. Well, I've just seen this. What I want to know is if Peter signs that, he's liable for all of that if nobody else pays? I mean it's not like, "You do whatever we say." I haven't really had a chance to deal with this.

He got a letter dated 11/5 November from Mr. Pollock just saying, "This is what we should each pay," but there was never -- there was never any request for when the payment was to be made, where it

was to go. It's just like a notice. So this has been the situation that all the communications have been more of an informative. Nobody has ever said until this one two days ago, "Sign on the dotted line." Yes, I can say that Peter is willing to contribute his fair share, but that's never really been a problem.

MR. CRADDICK: I would just like to know if there's a hui within a hui, why isn't the hui in here instead of one person, you know, so that we know what the group wants or doesn't want.

MS. JOHNSTON: The way it's gone, they're each a general partner in the partnership, and each general partner has the right to speak on behalf of the whole partnership. And that's the way it was done by Mr. Pollock and that's the way it was done by Mr. Coshever. They each came in with an individual application for their particular structure.

At this point, they've already done what they've done, which is put Peter in a position where he's having to incur a great deal of time, attorney's fees to get in probably the smallest structure on the property. Their requirement under the partnership registration is for any dedication of an interest in the property, which will be the roadway section. There has to be a certain percentage, so in that way, they are involved. But pretty much they are able to go each on their own because it is a partnership. If it was held in common, it would be a little different situation.

CHAIR NOBRIGA: Orlando. That's what you was going to ask, yeah?

MR. TAGORDA: Something like that. Like I said, I have made up my mind based on the information that you have here with the subject parcel, I am really going to deny, Mr. Chairman, that building permit.

MS. JOHNSTON: Mr. Tagorda, is there anything else I could provide you that would maybe help change

your mind?

MR. TAGORDA: I believe this hui should really do their share in the community and not keep on building things, not following the rules, County Codes, regulations set up by the Department, went into public hearing, all that.

You have already so many structures there, and if I'm not mistaken, Maui County Codes allow in any district one or two dwellings only. You can go on with another dwelling, third or fourth, but that subdivision requirement is going to kick in. You are developing. You are subdividing. Whether you like it or not, that's what you are doing.

MS. JOHNSTON: Let me put it this way. The original structure that Peter built was permitted, okay. Had no water, didn't have to come to the Water Department. So he went out, he got the permit, he put his structure in. His mistake was not flying in ahead of Mr. Pollock or Mr. Coshever, however you want to look at it.

As far as the subdivision requirements under Land Use and Codes, we are in that. We are dealing with the subdivision requirements the County is imposing. We are working with them to do that. We've got an agreement that's in the process of being documented as what they need to require for a roadway. So we are following exactly what the Code requires us to do. The Water Department is different. They have a different requirement, so we come to you and say, "Water Department, Water Board, for your requirement to get your signature on the building permit along with the other signatures we have to have, this is what we're asking."

And it's my understanding, and I haven't been here before and I'm not all that familiar, is that we're doing exactly what we're supposed to do. When I spoke to Mr. Abe after he wrote his letter denying saying we had to meet these requirements and I met with him and I went through the file on this property and he said, "You need to go to the Board."

So I went to the Board and it was referred to

your committee. So the answer is I think we're doing exactly -- we've complied with what the Land Use and Codes want on subdivision and all the other requirements including the 2000 fee. And now we're just asking from the Board to do what has to be done on the water side. And I just, I don't know what else we could do.

This isn't a subdivision. My guy is still stuck with four other people, and they can either go forward to subdivide it or go through the process. And I think someday they will do that process. That's a different process than what we're trying to do. I hope I could persuade you a little bit.

MR. TAGORDA: I really, because, like I said, we need to fully comply with any rules and regulations being set by any departmental agency. And our Department of Water Supply has a fire protection requirement that we need to comply.

MS. JOHNSTON: I understand, but I also understand it has been waived not only for this land twice before, but for a lot of other people who have the same kind of situation. That is part of your procedure that you can waive that. You're the committee.

MR. TAGORDA: I know that, and to look at the notification of requirement that the Board has the authority to do anything, I don't think so. Because we need to take the full context of that provision, provided it says that the users in that vicinity will not be affected adversely.

MS. JOHNSTON: Well, I understand from reading the notifications that were done is basically what you're asking the applicant to do, in this case, Mr. Yacooshin, is just to recognize what's there is not adequate, kind of like what the County has already done as far as fire control. They say no County water, so it's no liability anyway. And Mr. Yacooshin is willing to do that in writing, waive all

liability. If it burns down, it's not your fault.

MR. TAGORDA: Ms. Johnston, it's so easy to say that, and what's going to happen with the community? Everybody will be coming here asking the Board, you waived this for that person, you got to waive mine, too. So, Mr. Chairman, I move that we deny the building application permit of Mr. Yacooshin.

MR. HASHIMOTO: Second.

CHAIR NOBRIGA: Moved and seconded. I would like to interject that there may be a way for them to meet with the rest of the hui on Easy Street. Will you be open to that alternative, Mr. Tagorda?

MR. TAGORDA: They can do anything they want to do, Mr. Chairman, provided that they need to comply with some of our rules and regulations. Whatever the hui, whatever the Easy Street residents think would be for their best interest, and if it's going to be in conformity with the Department and the Board, then I go along with it. I'm not a very insensitive person, Ms. Johnston. I just need for everybody to really, fairly apply rules and regulations that we have strictly.

CHAIR NOBRIGA: Okay. Any further discussion by the members?

(No response.)

CHAIR NOBRIGA: All those in favor signify by saying "aye."

VOICES: Aye.

CHAIR NOBRIGA: Opposed, "no."

(No response.)

CHAIR NOBRIGA: Motion is carried. Thank you.
Take a ten-minute recess, and we will be returning to deal with Communication 01-02. Thank you.

(Recess taken.)

CHAIR NOBRIGA: Call the meeting back to order.
Taking up Communication 01-02, request for the waiver of the subdivision requirement Manawai Homesteads Tax Map Key 2-8-003:020 on behalf of Ron and Dawna Richmond. Hi guys.

MR. RICHMOND: I'm Ron, and this is my wife Dawna. We're married, and we own the property together. We're okay with that. And this is Jack Naiditch and he's my lawyer. And I've been -- I'm a retired firefighter with over 20 years in civil service, and I want to appropriate this kind of from my moral and ethical side of what I know from civil service. And if there's legal things, Mr. Naiditch will cover it. And I can probably do my whole thing in six minutes. I'm just going to read the letter again real quick and then I'll go through a couple of points and I'll be pau.

"Dear Mr. Chairman, the following is a chronological breakdown of my attempts to gain written official policy from the Department of Water Supply.

Late January 1999, I contacted Engineer Herb Chang to get clarification on a hybrid subdivision in which I would keep the existing water meter on a 2-acre parcel and the remaining 10 acres would be on a private system. He directed me to contact Mr. Craddick, which I did on February 9, 1999. On February 22, 1999, Mr. Craddick replied. In his letter, he answered none of my questions; he simply stated some of the criteria under consideration, ending with a final reminder that those criteria had not been adopted as policy.

I again contacted Engineer Herb Chang. In this meeting, I was told that hybrid systems did exist and that "officially" I would have to give up my meter.

At this meeting, I also attempted to gain

answers to some of the following questions:

1: Who sets fire protection requirements for the County of Maui -- Department of Water or Maui Fire Department?

2: Why are fire protection requirements (flow rates) twice what Maui Fire Department require?

3: Why are the fire protection systems required by the Department of Water not inspected for serviceability? (These questions have significance for me, as I am a Retired Firefighter).

4: Have the rules as they apply to hybrid water systems been equally enforced, and if not, why?

5: Have those above rules been changed, and if so, have they gone through a public hearing process with final ratification by the County Council and Mayor?

To all these questions, Mr. Chang would not officially respond.

At this point, I contacted LUCA and told them I would agree to Department of Water's official policies, one of which I believed after my meeting with Mr. Chang was to relinquish my existing water meter.

I continued to contact the Department of Water attempting to get answers to the above questions and attempting to get official written rules. Through this process I was informed hybrid systems have existed for years and there was no consistent treatment of them as this was a "gray area." I could attain no "official written policy" from anyone.

On April 10 and 11, 2000, I received two more letters in which Mr. Craddick attempted to, one, have LUCA pull my building permits, and, two, impose \$400,000 of improvements.

I contacted LUCA, and they told me to keep going, as they would not pull my permits. I received legal counsel regarding the improvements issue and was told, one, they were unenforceable as the Department of Water didn't have the authority; and, two, that there must be an equitable balance between cost of the improvements and benefit gained. In view of the request for reduction of service (two acres served by a water meter versus 12 acres and no additional new meters requested) a \$400,000 improvement would be viewed as inequitable.

On April 17, 2000, I again attempted to contact Mr. Craddick for official written policy.

On April 28, 2000, Mr. Craddick responded. Again, no official written policy. At this point, he also stated he did not have the authority to tell me to disconnect my meter.

On January 4th, 2001, I met with Mr. Craddick along with my legal counsel, Mr. Jack Naiditch. In this meeting, the two sides did not agree, and I left the meeting very angry at two responses Mr. Craddick had made. One, he called the area where I live a "rat's nest"; and, two, when told that the improvements he wants would cost more than my land and all the improvements on it, he said that was too bad.

This process has gone on now for more than two years. I have only asked for official written policy of the Department of Water. I have never received it. Subdivision water system improvements. Therefore, I am asking the Board to waive subdivision water system improvements. This, I view, as a win/win situation for the Board of Water Supply and my family. Ten acres of agricultural land planted in fruit and hardwood trees is permanently removed from the County System. Also I can move forward with plans to take care of my family with no further interaction with the Department of Water Supply. Thank you for your time and consideration."

Do any of you need copies of these? All right. In my first letter to Mr. Craddick, I followed chain of command as you would in normal civil service. I went from the junior engineer to the senior engineer and from the senior engineer to the Director of the Department. Everybody knew exactly what I wanted to do. I told them unequivocally I want no more meters. I want to take 10 acres out. There's an existing meter. I want to leave it on a 2-acre parcel. All right. There's no sneakiness, okay.

My response from Mr. Craddick was that a new meter cannot be approved for your additional lot, okay. I never asked for meters. I didn't want any meters. Straightforward, no more meters. Okay. He goes on and he says, "The following are some of the criteria under consideration." He lists a bunch of

criteria. These are considerations. These are under consideration.

He finishes the letter, "As a reminder, the criteria described above are being considered and have not been adopted as policy." So in his official response to me, he said I can't have a meter. I didn't ask for one. And he told me stuff that might come under consideration and has not been adopted as policy. That's his official response to me.

Ethically, morally, in civil service, that's not how it's done. I asked for guidance. I told him what I wanted, and this is what I got. Okay. Go on to the hybrid system, okay. Hybrid systems do exist in the County. By hybrid system, I mean there's a subdivision that has been done. There may be a water meter, there may be private systems all intermixed. These hybrid systems have existed for years, okay. The big problem I have, they have not been treated equally. Under civil service, equal, even playing field, we're all treated the same.

Okay. And my final response here, okay. This letter that Mr. Craddick sent to you guys to the Oversight Committee. Okay, it's a recapsulation of all my letters, but also there's more in here. Okay. In this letter to you guys, he provides the rules and regulations and the requirements, okay. He shows you maps. He tells you exactly what he wants. He sent it to you.

In two years of me dealing with the Department of Water Supply, I have never received this. I have never been given this. And, you know, that's really the end of my story here. Some of the cornerstones of civil service, in 20 years that I was in civil service, you treat everybody honestly. If there's a problem, you nip it in the bud. If you don't know an answer, you pass it on, take it to somebody that's going to give an answer.

When you're asked for official policy, you give it. It's in black and white. And in all things, we're all treated equally. And I do not think the Department's met those standards in my case in this situation. Thanks.

CHAIR NOBRIGA: Thank you.

MR. TAGORDA: Mr. Chairman.

CHAIR NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: I would like to thank you for these things you just read. Mr. Richmond, I myself am not aware or familiar with hybrid system. I would like to hear from you, what do you mean by hybrid systems?

MR. CRADDICK: Your own words.

MR. TAGORDA: Your own words.

MR. RICHMOND: Talking to the engineers in the Department, there are systems that have occurred in the past where there were subdivisions done.

MR. TAGORDA: We're talking about the County of Maui?

MR. RICHMOND: Right, County of Maui where there may have been a meter and people subdivided. They went to catchment. They didn't ask for new meters. They went to wells. They did other things, but they kept the meter. They didn't have to give up the meter, okay. And there's been -- the engineers told me there's all kind of weird things where one meter will serve four or five lots or serve four or five different houses, okay.

There's been really no hard and fast rules. Things haven't been treated equally. Some developers might subdivide say four or five parcels agricultural land. There might have been two meters on the parcel. They kept the two meters, you know, at the existing. They kept the meters, and then they provided a separate water supply for the other lots. They didn't get more meters. Okay. But they were always forced to give up the existing meter.

MR. TAGORDA: Thank you so much. Mr. Craddick, can I, Mr. Chairman.

CHAIR NOBRIGA: Yes, please.

MR. TAGORDA: Would you explain to me in details what you know about the hybrid systems.

MR. CRADDICK: The only ones that I know about where there is a private system and our system coexisting is when somebody has a meter or lot and they have a private fire system like South Point in Kihei or maybe the Palms at Wailea. They've got a private fire system in there, but they've got a separate meter for the buildings. And we know of those kinds, those are approved. As far as these condominiumized lots where we don't know what's going on, we have no knowledge of that going on, and if they go on, you know, some of them rise to the surface. Some of them don't, but the one that came to the Board before also in Manawai -- this whole Manawai subdivision, you have to understand, was a consolidation and resubdivision.

MR. TAGORDA: I just like to go on with the hybrid system.

MR. CRADDICK: That's all I can say about it.

MR. TAGORDA: So the hybrid system does exist in the County of the Maui?

MR. CRADDICK: Other than the one that the Board didn't take action on, the other Manawai subdivision, the one where, what's his name, Schmidt came in.

MR. HASHIMOTO: Mr. Chairman.

MR. CRADDICK: And you might, I don't know if the engineers, if they know of some. I mean I don't know of any, so if they know of some.

MR. CHANG: I think in my discussion with Ron when I mentioned other hybrids, the only one I could think of was two others in Manawai.

MR. CRADDICK: In Manawai, yeah. So they're not all over the place.

MR. HASHIMOTO: So you're asking for retaining your meter for your two acres, and your 10 acres would be in the private water system?

MR. RICHMOND: Yes, sir.

MR. HASHIMOTO: So you're saying that they have to remove the meter?

MR. CRADDICK: I think all you need to do is read the definition of a private water system in the rules, and the private water system says a system that is completely built by the developer. If we're supplying water, it's not completely built by the developer, so it's not a private water system.

MR. HASHIMOTO: So if it's a separate 10 acres, he has to subdivide?

MR. CRADDICK: No, no, the whole 12 acres is the subdivision. We're supplying him with water to the lot right now. He wants to subdivide, okay. We're already supplying water to one of the lots. Just because the other ten aren't supplied by us doesn't make it a private system. If the whole thing is private, it's private. Then we have nothing to say.

But we don't have the choice of telling them to give up the meter. If they say, "I want to give up my meter and make a private system," we say, "Okay, have at it," and we're out of it. But as long as they're continuing to use our water for some of the lots, we say they have to comply with our requirement. And I think we made that very plain to them. I pulled out

the rule book. We went over the definition of a private water system, and it's very clear a private water system is not a hybrid water system.

CHAIR NOBRIGA: Yes.

MR. NAIDITCH: Sir, can I say something, please. I'm Jack Naiditch.

CHAIR NOBRIGA: Hi Jack.

MR. NAIDITCH: The property has already been subdivided. The final subdivision approval has already been approved for this subdivision. It's already subdivided.

MR. CRADDICK: On the basis that you said it was a private system, which it's not.

MR. NAIDITCH: Excuse me, Mr. Craddick. His understanding was that he would be throughout this process this was developed -- when did you guys get the final subdivision approval?

MR. RICHMOND: October '99.

MR. NAIDITCH: He got final in October of '99. Prior to that, he been in contact with the Water Department on what his plans were that he was going to reduce the usage to 2-acre parcel and have the other 10 acres served by a private water system and that was set up by the overall developer of this whole project, which is Kajo and Peter Martin, so this property has already been subdivided. Here is the map of the subject subdivision that he's already accomplished, and this is the parcel that is served right now by the water meter where we want to keep the water meter existing. This is the other property here which we're taking out of the water system. We're reducing water usage by five-sixths, 10 acres out of 12. So I just want to make that point clear that. And there also is

going to be fire protection for these lots. They're going to have fire protection. When they get their building permits, they're going to be getting fire protection requirements with the Fire Department.

So we don't see -- first of all, we don't see any negative impact here on the water usage. In fact, it's a positive. We're taking 10 acres out of the private -- out of the County of Maui water meter.

MR. HASHIMOTO: Mr. Chairman. Herb, you said there's hybrid systems at Manawai subdivisions?

MR. CHANG: There's two others, three total.

MR. HASHIMOTO: How do the others run?

MR. CHANG: I think they have all retained the original meter, so I think one is a 3-lot subdivision, another one is a 2-lot subdivision. And they kept the original five-eighths meter, so each of these hybrids have one serving them. I don't know about all the of the property. At least one of the lots I'm not sure.

MR. HASHIMOTO: So they have the County water meter plus their own private water system?

MR. CHANG: I'm not sure whether they actually dug their own wells or are sharing with someone else.

MR. NAIDITCH: They have wells.

CHAIR NOBRIGA: Mr. Tagorda.

MR. TAGORDA: Yeah, Mr. Chairman. I would like to follow-up one thing, Herb. You said there's a hybrid system in Manawai. Are you saying the Department system and a private system mixed together?

MR. CHANG: Yeah. Originally, I think there was nine or 12 lots. Each of them have their own separate

private meters all along the highway, and this is like a mile down this whole subdivision stretches, so now these 3 of the 12 owners have each subdivided their lots.

MR. TAGORDA: Let's focus on this parcel right here that Mr. Richmond is here for. This is already subdivided into three lots as I understand.

MR. RICHMOND: Yes, sir.

MR. TAGORDA: And you have one meter, and that meter is going to be utilized in the one lot, the side that you are going to subdivide again into another lot?

MR. RICHMOND: No, that's it. The County, everybody -- they have a three-lot or less agreement, subdivision agreement with the County. If you do three lots or less, they waive improvements. If you go over three lots, you've got to do all the improvements, and it would be financially impossible to split more than three ways for anybody.

MR. NAIDITCH: This lot is not being resubdivided. This is a flag lot, the 2-acre. It's not being resubdivided. It can't. It's a 2-acre lot on ag land.

MR. RICHMOND: What I'm attempting to do, I'm building a cottage here. I'm giving it to my dad. I'm going to build a house here for my wife and myself. That's it. We want to sell that with a garage on it.

MR. TAGORDA: But excuse me, I'm sorry. I just want to make sure I'm clear here. You have one meter for this whole lot?

MR. RICHMOND: That's correct, and I want to take the 10 acres out and subdivide it. I want to take this 3-acre parcel and this 8-acre parcel and provide everything from them off my well and

catchment.

MR. TAGORDA: I think we have a problem with that, Mr. Richmond, based on our standards and rules and regulations that we have a policy, I don't know if it's a policy or a rule, that one lot per meter. And you cannot utilize one meter to cross lot lines.

MRS. RICHMOND: We're not doing that. It's all separated.

CHAIR NOBRIGA: One at a time, please.

MR. NAIDITCH: Lot B3 -- lot B3, B1 and B2 are the subdivision that's already been approved. Lot B3 is going to be served by a well, private well.

CHAIR NOBRIGA: Private system.

MR. NAIDITCH: Private system. Lot B1 is going to be served by a private system. No County water. The only thing that gets County water is the one in pink is lot B2, and it's already being served by this meter. This particular parcel actually is already being served by the meter.

MR. CRADDICK: The whole parcel?

MR. NAIDITCH: Yeah, but this one, this is where the meter is going, and we've already carved out this particular TMK for that meter's use.

MR. TAGORDA: Do we have any problem?

CHAIR NOBRIGA: Mr. Tagorda.

MR. TAGORDA: Do we have any problem, Mr. Craddick, with that proposition?

MR. CRADDICK: Again, going back to the beginning of this thing, there's nine lots created by

this consolidated of this subdivision, undevelopable lots that were taken, put together, reconfigured so they could develop them. Every one of those nine lots can do what they're doing, so you can end up with 27 of these things in the end and probably even more.

I mean they say this is going to be like this now, but you know somebody is going to subdivide this later on in the future. Anything that's over 2 acres will eventually get subdivided.

MR. TAGORDA: So what you're saying is that you doubt that because there is a Department of Water system there, that it's usage will be going to the --

MR. CRADDICK: You know, Orlando, I don't want to say that.

MR. TAGORDA: I just like to get something here.

MR. CRADDICK: All I'm doing is looking at the rule book of what a private subdivision is, and a private subdivision is one that says the developer does it all and the subdivision is the subdivision. You don't come in after the fact and say, oh, hey, we whittled all this away and our meter that was serving this whole thing is now only serving this.

You know, that again is just sneaking around because it's the rules.

MR. TAGORDA: The reason I ask this, Mr. Chairman, is since there is one meter that is already installed there servicing the whole lot, 12 acres, and there is no empowerment from the Department or Board to get that water meter disconnected unless the owner is going to relinquish that voluntarily.

CHAIR NOBRIGA: The developer is not requesting anymore meters though. Yes, Mr. Corporation Counsel, please assist us in our endeavor.

MR. FUKUSHIMA: I may be wrong, and the Department or the engineers can correct me, but it was

my understanding that the reason the Department has adopted a policy of not mixing private water systems and public water systems in the same subdivision is an operational consideration, and that consideration is that the Department has no way to control, to monitor whether the private system is going to be somehow surreptitiously hooked up to the public system, and that was my understanding of the reason of the policy.

You know, I just wanted to bring that out so the Board is aware that the Department has a reason for not allowing these types of hybrid systems.

MR. CRADDICK: I think it's more than that, Howard. It's the definition of the rule. Why did the Board put that in the rules, the definition of a private system, that it's a system completely built by the private developer, and this is clearly not completely built by the private developer.

MR. FUKUSHIMA: The thing is the rules also do not prohibit the system that's being proposed, and it doesn't say. The assumption is it's only private or public.

MR. CRADDICK: Actually, it does. It says the service is supposed to be on the line adjacent to the property. These are, as I don't know who said it, a mile away from where the meter is.

MR. FUKUSHIMA: No, but those are the lots that are part of the private system. The lot that's served with the meter, it has a meter already. And if that is your problem, maybe the Department shouldn't have issued a meter in the first place.

MR. CRADDICK: We only issued it because corp counsel said we had to do when that original consolidation and resubdivision came out. Otherwise, they wouldn't have meters.

CHAIR NOBRIGA: Any other questions from the members? Chair would recommend approval for this

meter.

MR. TAGORDA: Mr. Chairman, I have some other questions for me to get enlightened. In your statement, Mr. Richmond, you are willing to relinquish your meter, but you ask questions like do you get a credit, how are you going to get some meters when there will be meters available in this system, in this area, right? Because that seems to be the problem there with your holding of your water meter.

MR. RICHMOND: What I was led to believe, what I was told, it was official policy that I had to give up my water meter, okay. I said, okay, from my background in civil service, something is being taken from me. I bought the property. It's got a certain amount of value with the meter. Now, this meter is being taken away, okay. I want to know how I'm going to get it back. I don't want anymore meters. I want to know how I'm going to get it back. It's been taken. And, in fact, it's borderline kind of theft. We're taking this thing away. We're not going to give you any money. Some of the stories I got back was, "Okay, when the meters are available, you can buy it back at the new price, okay. We're not to give you the old price when it cost 700 bucks, whatever. Now, you can buy it back at the new price at \$2,000 when it comes back. Then we're going to add a little benefit. You want to buy the meter back? Good deal. You got to bring in a six-inch main from the Hana Highway. Okay. So you can have the meter back, but it's only going to really cost you the 2,000, whatever the cost is now for the meter, plus your \$400,000 to bring your main in. That seems pretty fair."

MR. NAIDITCH: Can I just interject. This conclusion that he had to give up the meter, he made that a couple of years ago when he was told by the Department he had to. He subsequently talked to a number of people including Howard on the phone. You may not remember.

MR. FUKUSHIMA: I remember.

MR. NAIDITCH: And Howard said, "You don't have to give up your meter." So he made that concession, that thought, because he thought he had to give up the meter. Now he realizes he doesn't have to give up the meter, but that was what went into his thinking process back then.

MR. RICHMOND: I was told straight out, "Is it official policy that I have to give up the meter?" The answer was unequivocally yes.

CHAIR NOBRIGA: Orlando.

MR. TAGORDA: Just a follow-up. Will you have a problem there, Mr. Richmond, if that water meter will be completely out of service and you're depending entirely on your existing well and catchment basin like you propose?

MR. RICHMOND: No. For the 10 acres, no. If the 2 acres gets the meter pulled, there's no water service to it. Nothing is interconnected.

MR. HASHIMOTO: So you already put in your lines in the other 8 acres?

MR. RICHMOND: Everything is broken off. Everything is separate. There's no interconnection. The private system is feeding this lot, this lot. The County meter feeds this lot. There's no interconnection whatsoever. In terms of what's happening here, we're in 50 to 60 inches of rainfall. With a combination of catchment, there's plenty, and the well puts out almost 2,500 gallons an hour. There's plenty.

MR. NAIDITCH: Can I say something.

CHAIR NOBRIGA: Yes, please.

MR. NAIDITCH: Would you want him to agree that these lots will never try to access the water meter?

MR. TAGORDA: Yes.

MR. NAIDITCH: Okay. That's totally fine.

CHAIR NOBRIGA: That's what he wants. Yes, Mr. Craddick.

MR. CRADDICK: Could I maybe make a discussion. We seem to have Howard saying that the rules don't really mean what they say.

MR. FUKUSHIMA: Wait a minute, wait a minute, David, I'm not saying that. Don't put words in my mouth.

MR. CRADDICK: Howard, let me finish.

MR. FUKUSHIMA: Well, I object to that characterization.

CHAIR NOBRIGA: It shall be noted in the log.

MR. CRADDICK: If the Board can deal with that what the definition of a private water system is, then none of these are going to come back to the Board. As long as that Board doesn't deal with that definition of a private water system, these are going to keep coming back to the Board because we have no guidelines. We just have the Board waiving, "Oh, this guy looks like a good guy. He was a fireman, and we're going to let him go."

MR. TAGORDA: David, I don't see it that way. I see it he had a meter. He doesn't want to relinquish it. He has the right to use it.

MR. CRADDICK: Look at your definition of a private water system.

MR. TAGORDA: A private water system is not connected to the Department's system, so this is not going to be connected to the private system.

MR. CRADDICK: All I can say is read your definition of a private water system. Have your attorney tell you that a private water system is not really a private water system. It doesn't have to be totally built by the private developer, and then we're out of here. We will then have firm policy direction to not tell any of these people to come into the Board anymore. We will be able to say, Oh, yeah, this really meets the Board's definition of a private water system, and if you do that, these will be resolved once and for all instead of piecemeal one by one, one guy comes in and another guy comes in and we really don't want to be before the Board.

MR. FUKUSHIMA: Quite frankly, even taking into account the definition of a private water system, I'm not aware of any prohibition that you can't have a private water system and a parcel that's served by the public water system in the same subdivision. And I'm not aware of any prohibition. And if the Department can point me out to any particular provision in its rules that prohibits this sort of -- Dave, let me finish -- that prohibits this sort of proposal, you know, it's going to be news to me. As Member Tagorda has pointed out, that the private system is going to be private and it's going to be serving the two lots. And that fits the definition of a private water system, a water system constructed, owned and operated and maintained by private individuals, corporations or organizations for those two lots.

And again, I'm not aware of any prohibition in the Board's rules that say that a subdivision must be served by either a private water system or a public water system but not both.

MR. NAIDITCH: Could you just repeat that. I don't think she got that on tape.

MS. NAGO: The court reporter got it.

MR. FUKUSHIMA: I don't know if it was worth it though.

CHAIR NOBRIGA: Any further questions, Mr. Tagorda, Mr. Hashimoto?

MR. HASHIMOTO: So could the assurances -- have the engineers gone and checked the system to see it's totally not connected?

MR. RICHMOND: Anytime they want.

MR. CRADDICK: Can I -- you know, look at it from the bigger picture.

CHAIR NOBRIGA: You're out of order. Mr. Tagorda, what you have?

MR. TAGORDA: I'm reading this Section 211 on ownership installed water system, Mr. Chairman.

MR. CRADDICK: Keep in mind, Orlando, on 211, the private water system portion was deleted out of there a few years ago.

MR. HASHIMOTO: But according to counsel, it doesn't say -- it doesn't say that you cannot have a private and a County water system in the same subdivision. What is your objection? Let's put it that way.

MR. CRADDICK: Let's say every other house in Kahului says, "Hey, I'm not going to hook up to the water system."

MR. TAGORDA: And?

MR. CRADDICK: What do you got there?

MR. TAGORDA: You've got a source, an existing well.

MR. CRADDICK: Meanwhile -- well, anyways, I'll leave that up to the Board. If that's the way the Board wants to have this system, have at it.

MR. FUKUSHIMA: It sounds like, if I may, Mr. Chairman, the Department and the Director are concerned with enforcement policy or enforcing matters. They're afraid that people are going to hook up, if it's every other house in Kahului that's hooked up to the system, that every other -- all the other houses are going to somehow tap into the public system. And, you know, I don't know if that's a realistic fear or not, I really don't.

MR. CRADDICK: We can tell you it is realistic. We have no way to administer something like that, and if the Board wants to do that, you're the policy-making group. Just make it very clear is all we can ask.

CHAIR NOBRIGA: Yes, Mr. Richmond.

MR. RICHMOND: In your rules, it talks about the loss of a water meter. You don't pay your bill, you cross property lines, you sell water, you share water. If I do any of that, you come and pull that meter out one second later. I'm squared away. You know, it's not crossing. The rules are in place for that. If somebody cheats, you yank the meter. It's in there.

CHAIR NOBRIGA: The Chairman seems that this request is within the rules of the Department, and I would recommend that we take to the Board an approval of this waiver. Is there a motion?

MR. CRADDICK: Mike, can't you, rather than approve the waiver, deal with the big issue and what Howard is talking about there, deal with the big issue

so these don't have to come back to the Board at all again?

MR. FUKUSHIMA: And if I may, Mr. Chair, I would agree that if the Department -- strike that -- if the Board believes that there is no prohibition against these types of systems, then there's nothing to waive.

MR. CRADDICK: Right, right.

MR. FUKUSHIMA: That if the Board believes that that's, you know, upon advice of counsel, that that is a reasonable interpretation of the rules, essentially there's no waiver required and you're not waiving anything in the rules that the rules don't so provide.

MR. HASHIMOTO: So shall we discuss the rules then instead?

CHAIR NOBRIGA: Rules are within the Rules Committee.

MR. NAIDITCH: Mr. Chair, the reason why we came here was because we're in the process of -- there's a buyer for this. But the Department has told us, "Well, you're going to have to -- you might lose your meter or you might -- you know, you're going to have to spend \$400,000 to bring a six-inch line down. You have to move the meter down to here." We need some declaratory relief from you folks this is not going to happen.

MR. FUKUSHIMA: And I was going to suggest that. From what I understand, there may be a time crunch here. The other alternative that I could see the Board doing is saying that, "Yes, we will" -- what was I going to say? Well, you can say, if this is the way the rules read as the Department believes they do, then we'll give them a meter. Then at least it won't jeopardize the sale that may be, you know,

that's happening now, and it will still serve the same purpose. And it will send a message to the Department that that's how the Board feels. And the Department henceforth would not --

MR. CRADDICK: Have these come to the Board.

MR. FUKUSHIMA: -- require waivers of subdivision requirements in these types of situations where a subdivision will be served by both a private and a public system at the same time.

MR. TAGORDA: Mr. Chairman.

CHAIR NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: May I request for corp counsel to study and make a legal opinion on what you just have said so we can have some future guidelines --

MR. FUKUSHIMA: Certainly.

MR. TAGORDA: -- when these things come up again.

MR. FUKUSHIMA: We would request that staff send a request to our department for an opinion.

MR. TAGORDA: Can you do that, Mr. Craddick.

MR. CRADDICK: Yeah.

CHAIR NOBRIGA: In the meantime, you don't want to delay Mr. Richmond's --

MR. TAGORDA: No, he said it plain and simple.

CHAIR NOBRIGA: My fear is that if we refer this back to the Department, they're still going to bicker with each other until one of them dies. The situation should be handled according to the written rules and

procedures.

MR. TAGORDA: Mr. Chairman, can I add one more thing for your own awareness and information. That once you have your private water system and it's not to the Department's standard and the Department refuses that system, you've got to do all the desired things.

CHAIR NOBRIGA: No, if they're a private system, the Department has no jurisdiction of private water system.

MR. TAGORDA: But, like I said, there are so many private water systems that fails in the past and they come to the Department for rescue, and we cannot rescue them because of the costs involved.

MR. FUKUSHIMA: And the other thing that there be a further agreement that they not hook up to the County system, quite frankly, I don't think that's necessary. I mean that's the law. You can't hook up to the County system unless you have approval of the Department. And so I think it's a little superfluous to require that they not hook up to the public system when that's already the law.

MR. NAIDITCH: I didn't mean the create excess work, but we're happy to do it.

CHAIR NOBRIGA: To help me now, how do we --

MR. TAGORDA: Mr. Chairman, with the time constraint given by the applicant and to follow corp counsel's suggestion, I think we've got to approve such a request by the applicant. There's nothing to waive.

MR. FUKUSHIMA: Well, because there may be a little -- there may be a little gray area for the Board Members and because Mr. Tagorda has requested, Member Tagorda has requested an opinion from our

office, that, in this case, waive the requirement, although we don't believe there really is a requirement, but waive it, and take it to the Board, recommend that approval be given and then we'll issue our opinion for the Board's review and let the Board take it from there.

CHAIR NOBRIGA: Thank you. Second?

MR. HASHIMOTO: Second.

CHAIR NOBRIGA: All those in favor, say "aye."

VOICES: Aye.

CHAIR NOBRIGA: Okay, passed. Thank you.

MR. NAIDITCH: Thank you very much.

MR. HASHIMOTO: It's going to go to the full Board.

CHAIR NOBRIGA: There being no further business for this committee meeting, the meeting is adjourned.

(The deposition concluded at 10:45 a.m.)

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