

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
OVERSIGHT COMMITTEE MEETING

Taken at the County Building, 200 South High Street,
7th Floor, Wailuku, Maui, Hawaii, commencing at 9:00
a.m. on March 6th, 2001.

Reported By: Rachelle Primeaux, CSR #370

ATTENDANCE:

Members Present:

Mike Nobriga, Chair
Orlando Tagorda
Clark Hashimoto
Jonathan Starr

Staff Present:

Herbert Chang, Engineering
Herbert Kogasaka, Engineering
David Craddick, Director
Howard Fukushima, Corporation Counsel
Fran Nago, Secretary
George Tengan, Deputy Director
Mike Quinn, Fiscal Officer

Others Present:

Ron Richmond
William Worcester
Sally Worcester
Peter Stolle
Elliott Krash
John Rapacz
Peggy Ann Hoekstra
Ursula Hoekstra

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CHAIR NOBRIGA: Call the meeting of the Oversight Committee to order. In attendance we have Clark Hashimoto, Orlando Tagorda, Mike Nobriga, myself. We have Corporation Counsel, Howard Fukushima. We have Fran Nago, our Board Secretary. We have Director David Craddick, Assistant Director/Assistant Chief, George Tengan. We have Fiscal Officer Mike Quinn; engineering Department, Herb Kogasaka. We've got also Miles -- oh, Herb Chang. Same thing. Thanks. Members of the public.

Is there any public -- we have a quorum. There is no minutes to approve. I don't even remember when the last time we met, but it was sometime in February. Is there any testimony from the public that's not connected with agenda items? Okay, good. we'll move to Item 5. Committee discussion, possible action, Item A. Request from William Worcester for waiver of fire protection. Mr. Worcester, do you have --

MR. WORCESTER: I'm here.

CHAIR NOBRIGA: Do you want to talk to us?

MR. WORCESTER: Sure. I wrote up a small statement this morning, which I'll read to you. It shouldn't take too long. This is my wife Sally.

CHAIR NOBRIGA: Hey Sally.

MR. WORCESTER: We sort of -- I really want to get on with my project, and here is what I have to say. I'm sorry I missed the last meeting, but my wife Sally and I were at a craft workshop in New Zealand that had been scheduled long before that. I'm appealing to the Committee because I believe we're entitled to a waiver of the Water Department's requirements for the following reasons: We've lived on our property for more than 15 years; we've paid all

our property taxes, all our water fees. There's been inadequate fire protection in our neighborhood for decades, and I don't believe it should be my responsibility to finance it.

Since there is a capital improvement project complete with engineering plans for a 12-inch line from Naalae Road to Kaimana Place with a new fire hydrant replacing the existing 2-and-a-quarter-inch standpipe at the northeast corner of our property. The CIP is likely to be completed in the next two or three years. And, in fact, on the 27th of February, the Water Department requested an easement to place the hydrant on our property.

The Water Department's requirement is the only step that I need to get signed off before we can get our building permit. It would mean a lot to us to get this project going immediately. Obviously, we could wait until the CIP is finished since this would satisfy the Water Department's requirements, but it complicates our lives. The Water Department sort of has me over a barrel if I want to start building soon.

I'm hoping the Committee will waive the Department's requirements, and I wish to propose a simple solution to this dilemma. Simply, I would like to sign a hold harmless agreement that would be in effect until the CIP is completed. Now, I don't know if you've read or are familiar with the other letter that I wrote to Mr. Cravalho a couple of months ago, but it outlined some of the other points I had. But I didn't want to reread that. I presume there will be some questions from the Committee you might want to ask Sally or I.

CHAIR NOBRIGA: Thank you.

MR. TAGORDA: Mr. Worcester, I'm glad you're here. My last question when we met the last time and you were not here was the size of the structure that you're building, and I learned that they said that there will be no flammable materials that will be stored there.

MR. WORCESTER: There will be no flammable materials stored inside.

MR. TAGORDA: And I really cannot agree to that concept since the structure is so huge that there will be no flammable material. Well, I take your word for that.

MR. WORCESTER: The structure itself is nonflammable. Concrete slab, steel studs, steel rafters, steel trusses and steel siding.

MR. TAGORDA: And the only thing, your property is in a business district zone.

MR. WORCESTER: Yes.

MR. TAGORDA: And if we do apply or grant a waiver to your request, and we do this very slightly, the interpretations of the Section 2-12, I think we're doing some harm to the community, especially to that neighborhood. You have a good thing coming because we have, like you said, we have a CIP coming to your neighborhood, to your area.

And I believe what happened in the past that there was a fire there, although we cannot credit -- I would like to credit you for being so close or that your property is so close to the fire department, but that's not how our rules work.

MR. WORCESTER: No, I understand that. I understand that the rules of the Water Department have to be followed, but my other understanding is that you have the power to grant these waivers, and I'm saying, "Look, I think I'm entitled to one." There was a fire further away from the fire hydrant, a big fire in an old wooden building that they were able to contain, the fire department was. My building should be pretty much nonflammable. I mean there might be a quart of oil that gets in there or something, but for the most part, it's a nonflammable building.

My wife and I are designers and inventors and craftsmen. We've made our living at it for 30 years.

I don't intend to run an open-to-the-public business for any reason. I've done that for a long time. I'm going into the retirement phase of my life. I turn 60 years old this year. I want to have a big open space where I can have equipment, move it around, build, build things, and this is where I'm coming from. I've lived there for 15 years. I've had a business zone for 15 years. I've never used it for a business purpose, so this is who I am and where I'm coming from.

MR. TAGORDA: And again, if this Committee is going to recommend approval of your request, I know it's going to open a lot of -- it's going to open a door to more waivers. And that's going to put our Department in a lot of chaotic and inconsistent application of our rules.

MR. WORCESTER: I see your point there. My point is that it is -- it appears that this CIP improvement is going to happen. I think that's going to open up development in all the commercial areas in this part of Kula is my guess once that line goes in and there's water and there's hydrants every 250 feet. I could wait for that. It would cost me more than I make in three years just to bring this line in. If that's the -- if it's the case that I have to wait for that, maybe I will just wait because I can't afford it.

I'm saying I would like to get this building done. I would like to get this done right away. I will be willing to sign off waiver responsibility if there's a term for that.

And if there's some way that I can get this going right away, I want to do it. If not, I might have to just bide my time, which I prefer not to do.

MR. TAGORDA: Mr. Chair, I think that's where I'm trying to ask for -- to advise Mr. Worcester since we have a CIP going on into his area, I think he should just plug in and wait for that improvements to come through. Because, like I said, I'm scared that if we don't use the Section 2-12 of our rules and

regulation --

MR. CRADDICK: Orlando, this is not a subdivision. You can't use 2-12 because this isn't a subdivision, so I'm not even certain the Board has the authority to waive the requirements in this situation.

MR. HASHIMOTO: Mr. Chair, what was the staff recommendation on this?

MR. CRADDICK: Well, it was to deny. But as I told the Committee last time, you know, we had offered to him if he was willing to put in a hydrant, I would sign off on the building permit.

MR. HASHIMOTO: How much would a hydrant cost?

MR. CRADDICK: I don't know. During the construction, I think the estimate was somewhere around \$8,000.

MR. CHANG: Around there.

MR. CRADDICK: Something like that, and I've offered that to him.

MR. WORCESTER: We've never talked until this morning. You did offer that. But that was offered through the engineer, and he would not -- he did not have the authority to say that there would be an upper limit to what I would have to pay for this, or if the CIP didn't go through, I would still be responsible for putting this line in.

If there's an upper limit, I'm willing to go for this. I mean when they go to put the hydrant in, if they run into an asteroid or a Hawaiian burial ground and it costs several-hundred-thousand dollars, I don't want to be responsible. If there's some limits to this that I know of ahead of time, I can schedule it in. That's something I'm willing to do.

MR. TAGORDA: Mr. Chairman.

CHAIR NOBRIGA: Yes, sir, Mr. Tagorda.

MR. TAGORDA: Would you tell us again about this new information again, David.

MR. CRADDICK: I was just, you know, I recognize it because we're doing the CIP there. All things being equal, like he said, the line is going to go in. If he would just put the hydrant in where his hydrant is needed, we're doing the line, and I would accept that as being his portion or whatever to supply the fire requirements there. Now, whether I even have the authority to do that is even debatable. My requirements are strict applications of the rules. He wanted to try and negotiate that further.

I says, "Look, you know, I shouldn't even be offering the one hydrant in the first place." So should I be bringing that up? Now, if he wants to come to you, again, I'm not sure what the Board can even do in this case because it's not a subdivision. He gets his building permit signed if he puts that hydrant in when the line comes in. If the line never comes in, I guess he's never got to put the hydrant in.

CHAIR NOBRIGA: The matter before us is a waiver of fire protection. So it is our responsibility to look at the case and decide if there is ground rules for this waiver. Having a fire hydrant -- having Mr. Worcester participate in the fire hydrant when CIP does put in a line would be just an additional agreement between Mr. Worcester and the Department. And at that time then, we would not need to make a decision on waiver of fire protection, but Mr. Worcester would then meet all the objectives.

MR. HASHIMOTO: Can I ask Corp Counsel if that can be done, I mean that agreement like that?

MR. FUKUSHIMA: You mean with the Department?

MR. HASHIMOTO: Yeah, put in a fire hydrant.

MR. FUKUSHIMA: It is a little unusual. As a matter of fact, I've never heard of it being done.

MR. HASHIMOTO: So we're looking at the legality of it?

MR. FUKUSHIMA: Yeah. As far as the application of the Department rules, if I was advising the Department, I would recommend against it. And as an advisory to the Board, I would recommend against entering into any agreement such as what is being set forth, the waiver of fire protection requirements by contributing to a future CIP project.

MR. TAGORDA: That's a good point.

MR. FUKUSHIMA: Now, I'm a little curious, and I can't recall from the staff report, but what is the zoning of your property?

MR. WORCESTER: B-1 in the front. It's an acre of property that's dual zoned and I did this almost 15 years ago when I bought the property, and I have not used it for business purposes. I had hoped someday to do it, but it's not -- when I bought the property, it was on the plans for that to be a business zone. So what you're saying, there still would be no reason that the Committee couldn't recommend just to waive it?

MR. FUKUSHIMA: Well, again, I want to repeat our office's position with respect to what is, in effect, an appeal of the Director's decision when there aren't any rules or standards for granting an appeal. We are troubled by the Board considering appeals from the Director's decisions when there are no standards, when there are no rules, when there aren't any -- where there is nothing to guide the Board in making their decision.

CHAIR NOBRIGA: Thank you.

MR. TAGORDA: Mr. Chairman, again, just to make things short, and Mr. Worcester, we don't want to take so much of your time, so I would like to move that we deny the request of Mr. Worcester for waiver of fire protection.

MR. HASHIMOTO: Second.

CHAIR NOBRIGA: Moved and seconded. Any further questions or discussion?

(No response.)

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

VOICES: Aye.

CHAIR NOBRIGA: Opposed, nay.

(No response.)

CHAIR NOBRIGA: We will be submitting to the Board a request to deny that request for waiver of fire protection.

MR. WORCESTER: Okay.

CHAIR NOBRIGA: Okay. Next item, 102, request from Ron and Dawna Richmond for waiver of subdivision requirements, Manawai Homesteads. Mr. Richmond, you have an opening statement?

MR. RICHMOND: No.

CHAIR NOBRIGA: Okay, good. At our last Committee Meeting, we had taken action at the meeting to recommend to the Board that we approve, if I'm

correct; however, the approval and the motion was contingent upon receiving a response of legal opinion from Corporation Counsel. The legal opinion request was basically, Item 1, whether all of the lots or just the additional lots are part of a subdivision.

The second part of that request was whether a private water system includes all of the lots or just the additional lots in the subdivision. The request was made on behalf of Member Orlando Tagorda and the Chairman. We received on February 21st a written response from the Department of the Corporation Counsel, Mr. James Takayesu.

His brief answer is that it is our Department's opinion that, one, the subdivision includes all of the lots; and, two, the service area of a private water system is dependent upon the agreement made concerning it. Okay.

MR. CRADDICK: Mike.

CHAIR NOBRIGA: Yes.

MR. CRADDICK: Can I say something here. This opinion that we asked for, we thought this is what the Board wanted. I'm not sure if it was what the Board wanted. Howard was out at the time and you can talk to Howard more, but Howard seemed to think the question was a little bit different in that we have a hybrid system and does the Board have rules to deal with these hybrid systems. And the answer to that is obviously, no, we don't have the rules to deal with these hybrid systems.

And I think his opinion is you cannot get to that hybrid system without applying our rules and that -- I don't know. Now, can the Board waive those requirements? Obviously, they can in this situation because it is a subdivision. And beyond that, I'll leave that to you to get what Howard's point was there. But we don't have rules for hybrid systems. There's no doubt about that.

CHAIR NOBRIGA: Thank you. I'm going to ask

Howard to explain to me what the Director is trying to say.

MR. FUKUSHIMA: Okay. By understanding, a hybrid system is a system which contains both a private -- a portion of which is private and a portion of which is public. In this case, Mr. Richmond is asking for a waiver of subdivision requirements -- strike that -- that he's asking if this type of system be approved.

We had indicated to the Director that the issue should be framed as to whether a subdivision may contain both a private and a public system at the same time. We requested the Director to submit another request for an opinion. I believe we had that meeting with the Director last week. And our Department is prepared to respond to that question.

We believe that question would be better or that question would enable the Board to reach a reasoned decision within their rules. And so, you know, I'm not sure if the Director has submitted the request yet. If he has, the Department's attorney is going to respond to that particular request. So this committee and the Board will have a written opinion from our Department regarding this issue.

MR. HASHIMOTO: So we need to defer again.

CHAIR NOBRIGA: I would suggest we defer until we get that clarified.

MR. RICHMOND: Could I make a request.

CHAIR NOBRIGA: Yeah, please.

MR. RICHMOND: This has been going on for two years, and at this point, I think I need some protection from what's happening. This is going to go on forever. And I think there's a few things that are really important for everybody to remember.

My letter -- this started with Mr. Craddick, the engineers, LUCA, everybody back in February of '99. I told them exactly what I was doing. I have 12 acres.

I was pulling 10 acres out to a private system. The existing meter was going to stay on the 2-acre parcel. I reduced my use to the system. I told Mr. Craddick. I told everybody. I lied to nobody. Mr. Craddick chose not to answer. He said that I couldn't have any meters, and there was some thoughts coming up on private systems. I was honest from the beginning.

This goes on and on and on, and I would like you to consider this choice. We can always defer it. I mean if you decide after what I ask you to do, defer it, but it's been deferred now for over two years. And I believe Mr. Craddick would like this to be deferred forever. And what my suggestion, and this is, you know, you'll have to work with Mr. Fukushima if you will take this, is this last legal brief that Mr. Craddick asked from the Department that was really not the issue that we dealt with that was given to Mr. Nobriga minutes before the meeting, okay.

He asked the County attorneys on the 20th of February for this. It was given to him on the 21st. On the morning of the 22nd, it was given to Mr. Nobriga two minutes or four minutes before the meeting before he could even look at it. That's the kind of thing that's happening continually. This thing can go on forever. There's games being played. I just want him to be honest.

What I'm asking you to do is if the County attorney can get this brief before the next meeting of the Water Department, Mr. Fukushima could make a comment on it, whether he agreed to what we've talked. If the County attorney agrees with what Mr. Fukushima believes, that he would get that to all you gentlemen, to Mr. Craddick, to me and my lawyer. That we can go to the next meeting on March 22nd, okay, and we can come before the full Board. If it is as you have stated, as Mr. Fukushima has stated, waiver, okay.

If there's something different, if you're least April. Okay. This has been going on well over two years. You know, I've been deceived. I've been ten rules. I'm asking you now for help to get this closure. And nobody is hurt if we do this, if Mr.

Fukushima is willing to do this.

And if, like I said, you don't -- you're not sure what the legal thing is from the County, then it's no different than the last meeting on the 22nd, you go, "Okay, let's waive it." And we go back.

But I mean this really started two years ago.

And I've dealt diligently with this Department. You know, and it's just I've been deceived. Things were convoluted. I've been lied to straight-faced. I would like to get out from under this, and this would give us a chance.

CHAIR NOBRIGA: Thank you, Mr. Richmond.

MR. FUKUSHIMA: If I could comment, Mr. Chairman.

CHAIR NOBRIGA: Yes, Mr. Fukushima.

MR. FUKUSHIMA: If the request from the Director is made immediately, our office, I can assure you, will respond by the March meeting.

CHAIR NOBRIGA: Thank you.

MR. FUKUSHIMA: We'll make sure that opinion gets out.

CHAIR NOBRIGA: It would be nice to get it maybe a day before.

MR. FUKUSHIMA: Well, if we can get it, I'm sure we can get it out in the package that's sent to you.

CHAIR NOBRIGA: Okay. Members, is that agreeable to you all?

MR. TAGORDA: I move to defer then.

CHAIR NOBRIGA: With the provision. You want to include the provision.

MR. TAGORDA: They just have to work on it. We don't know what's the provision really.

MR. FUKUSHIMA: Well, you're actually not deferring it in the sense that the Committee has given its tentative approval subject to our Department's opinion.

MR. TAGORDA: And this is the interpretation of hybrid water system?

MR. FUKUSHIMA: Whether a subdivision can contain both a private system as well as a public system at the same time.

MR. HASHIMOTO: So you're going to sell off the land, that 2 acres, right?

MR. RICHMOND: I'm selling 2 acres.

MR. HASHIMOTO: But it's still part of the subdivision, that's the problem.

MR. FUKUSHIMA: That's correct.

MR. RICHMOND: And if you agree with what Mr. Fukushima said, if the County's thing comes back with what Mr. Fukushima said, then I would -- you know, and you still agree that I should be waived my subdivision improvements, then go before the Board on the 22nd of this month, if you can get the legal stuff, you know, two minutes -- more than two minutes before the meeting, and then maybe we can move on, you know.

And if you have a problem with whatever the County attorney comes up with at that point, that morning, if you decide, Mr. Nobriga, to defer it until later, I'm okay with that, but it gives me a chance, gives us all a chance to get closure on this.

CHAIR NOBRIGA: Thank you.

MR. RICHMOND: Thanks.

MR. HASHIMOTO: He said defer, but --

CHAIR NOBRIGA: It's not really a deferral. I don't think we really need to take up any action on this.

MR. RICHMOND: Thank you.

CHAIR NOBRIGA: Thank you. Okay. Next item is Communication -- I lost them now. The Hoekstras. Mr. Rapacz.

MR. RAPACZ: Good morning, Mr. Chairman and Committee Members.

CHAIR NOBRIGA: Any opening comments?

MR. RAPACZ: Yes, briefly since I've heard a new term being used today, hybrid system. But it's not a new idea, and you have many of them operating already. The Hoekstras have a hybrid system that was approved in 1995 with the appropriate agreement. Sometimes that agreement is called the Modification of Subdivision Requirements Agreement referring to your Rule 2-12. Sometimes it's referred to as a Private Water System Agreement. Sometimes it's referred to as Waiver of Fire Protection. I've heard the same exact agreement referred to as three different things.

In any case, we do have a three-lot subdivision. It has two five-eighths water meters serving two of the lots and has a one-and-a-half-inch meter serving the larger lot. That's why it's hybrid. It has public meters, but once we get past the meter, then it becomes a private system to serve those lots. We've been around on this for about a year and a half.

About a year ago, we were here in Committee. You folks approved the private water system request by

the Hoekstras. That request is to take the larger lot that's served by the one-and-a-half-inch meter and subdivide it into three lots. We're not asking for additional meters. We're just asking that this large meter be allowed to serve three lots. The large meter has the capacity to serve five lots. We're asking for three. It's already serving the one large lot and your May 31, 2000, committee report approved the private water system request by the Hoekstras.

Now, somehow between then and now, it's been referred to as waiver of fire protection instead of approval of the private water system request. That's what happened at the meeting last November. I was ill and not able to be here. Mr. Hoekstra did his best to correct that or clarify it as the Chairman had requested.

In any case, the Director states that the Corporation Counsel has now ruled that the Board did approve the private -- I'm sorry, the fire protection aspect of the request and we're told that we now need a separate approval on the domestic aspect. The domestic aspect of the request for the subdivision is to serve three lots with a one-and-a-half-inch meter.

Those lots are already consuming the same amount of water as three meters, already being used from that meter. That meter is capable of providing for five. We're requesting that it be allowed to provide service to three lots. That would involve taking our original agreement and amending it to say five lots instead of three. So we do have an already approved hybrid water system.

MR. TAGORDA: Mr. Chairman, going back to your concept of hybrid water system, I just want to point out something there. I knew I open up by rule book, and nothing in our rules talk about hybrid system. And I don't know why.

MR. RAPACZ: Not by that name.

MR. TAGORDA: It's called private water system.

MR. RAPACZ: The private water system as it's

defined in the rules, it's unclear. It does not state that the source of the water must be a private source. Okay. It could be a public source of water serving a private system. I think that's what the Director is referring to as a hybrid, where you have a public meter of the Water Department meter serving a private system that serves generally a subdivision. There are many of them existing.

MR. TAGORDA: Yeah, I know. Ulumalu is one of them.

MR. RAPACZ: Right, exactly.

MR. TAGORDA: But I didn't know that's a hybrid system. That's a private water system. Kaanapali is all private system, Mr. John Rapacz. They have their own source of water.

MR. RAPACZ: That's a different case of a private water system, and we're getting into semantics because the Department has never used the word hybrid. They've referred to both types as private water systems.

CHAIR NOBRIGA: I would like to ask the Corporation Counsel.

MR. FUKUSHIMA: Just to distinguish the two cases, what the Department I believe is referring to as a hybrid system in the previous case was where you have one subdivision that's served with both a public and a private system rather than the case of the Hoekstras where you have the private water system being served by a public source, but they're very close relatives, very close.

MR. RAPACZ: So there's two kinds of hybrids, it sounds like, at least two, maybe more.

MR. TAGORDA: We have no guidelines. We have no rules in front of us, Mr. Rapacz, to really give you a

very genuine decision on that.

MR. RAPACZ: What we're asking for is different from what you just heard. We already have an existing system. We already have an agreement. It operates by water system meters serving private water tanks, fire protection and lines. The Board already said that the fire protection aspect of that system is okay. It's already been approved for the fire protection part.

In order to get the subdivision approval, we need fire protection, and we need the Board's approval to use that large meter to serve the three lots. So I don't believe it falls under the same problem or the same interpretation as the last request. It already exists. We're just asking you to make it apply to five lots instead of three.

MR. FUKUSHIMA: And if I can comment. In light of the fact that the Board has given a fire protection agreement based upon the private water system being in place, and I'm sure the Committee knows that fire protection requirements are much more strict than domestic water requirements, so it would seem reasonable that if the Committee and Board are willing to waive the fire protection requirements, that it has good cause to approve the system that's being proposed by the Applicant.

MR. HASHIMOTO: Can I ask. I remember Mr. Craddick saying that each lot has to have their own meter. So I don't know --

MR. RAPACZ: Sorry for laughing. I can't help it at this point. Mr. Craddick has opposed this from the beginning for whatever reasons he has. What he does is he attempts to confuse you folks so that you'll ask questions like that. And I believe he does it intentionally because he doesn't want you to approve this, so he throws in what people call a red herring, right. It's not the issue. It just isn't the issue here. Yes, it's correct, if you don't have a private water system agreement, then one meter

serves one lot.

If you want one meter to serve more than one lot, then you need the private water system agreement. We already have the private water system agreement. We're just asking that you amend it. We're not asking from our meters, we're not saying that we should be able to do this without an agreement or without your approval.

CHAIR NOBRIGA: I'm not sure what is the repercussions of us -- let me see, how do we get the one --

MR. FUKUSHIMA: You know, I believe Mr. Chairman, that this Committee has already recommended approval of this request. The problem arose when the Board took action on this matter that the motion, as restated by the Chair before the final vote, the motion neglected to include this component, the private water system component. It only spoke to waiver of fire protection.

And based upon the motion that was made and what was restated by the Chair, our Department's position was that's the action that the Board took. I believe that the -- it's my understanding that in the past, this Committee has already recommended to the Board that the system be allowed, that the one-and-a-half-inch meter can be used to satisfy both fire protection as well as domestic needs for the other three lots that are being created.

MR. TAGORDA: Mr. Chairman.

CHAIR NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: If I may. If I do recall, and this was from the Chairman of the Oversight Committee, there was an approval of that waiver of fire protection using the inch-and-a-half meter, but nothing was said about the inch-and-a-half meter to be used in a three-lot subdivision because that violates our water system development rule, one lot per meter.

MR. RAPACZ: If I may. I have a copy of your Committee report that says, "This Committee will recommend approval of the private water system request."

MR. TAGORDA: Private water system request on --

MR. RAPACZ: As you read the request --

MR. TAGORDA: -- waiver of fire protection.

MR. RAPACZ: No, we have never requested waiver of fire protection, never. If you look at the request, it is for approval of a three-lot subdivision and to amend the private water system agreement to service the three lots with a one-and-a-half-inch meter. We've never separated out a request for fire protection. We've requested approval of the subdivision, specifically for the one-and-a-half-inch meter to serve three lots. That's how it still reads. The Committee report says, "The Committee recommends approval of the private water system request." I think what happened was because you folks are given these different terms that mean sometimes the same thing and sometimes different things, the Chairman said, instead of saying private water system request, when he made the motion, the Chairman said waiver of fire protection. You folks did approve the request, and the request was approval of the subdivision and the three lots. That should be on today's agenda.

CHAIR NOBRIGA: When I made the motion, it was specifically to waive the fire protection item of the rules because I know part of the hybrid system that was being proposed was taking water from the one-and-a-half-inch meter to get to the tank to supply the fire protection.

MR. RAPACZ: Correct, the one-and-a-half-inch meter does supply fire protection, and that was approved. As you see from the diagram -- I don't know

if you folks have the March 1 letter in front of you.

MR. TAGORDA: Mr. Chairman.

CHAIR NOBRIGA: Domestic requirements or somehow a modification of subdivision requirements, is that a good term?

MR. RAPACZ: Yes, we're asking you just to amend the existing agreement. We already have the agreement. It already serves for domestic and fire protection.

MR. TAGORDA: Excuse me, may I submit this, Mr. Chairman.

CHAIR NOBRIGA: Yeah, that's what I'm saying.

MR. TAGORDA: As the Chairman of the Oversight Committee, I only took action on fire protection and not on the proposed private water system because the system proposed was not private.

CHAIR NOBRIGA: Yeah, because he used a one-and-a-half-inch meter. Now, Mr. Rapacz on behalf of the Hoekstras is asking us to review his request for amendment of his existing agreement for domestic purposes.

MR. RAPACZ: And that's what you did approve last year. Somehow between when you approved it last year and when it got to the Board, it changed. The Committee's position changed. It wasn't -- what was told to the Board was not the same thing approved. We're just trying to complete it. Half of what we requested and you approved was granted. We're going for the other half, which you did approve as a Committee last year.

CHAIR NOBRIGA: Okay.

MR. TAGORDA: Okay. Mr. Rapacz.

CHAIR NOBRIGA: I think I got to fall back on the one lot, one meter rule.

MR. TAGORDA: I would really go along to grant your request on amending the private water system agreement, but I have a problem accepting that you will use an inch and a half -- that one-inch-and-a-half meter to service three lots because of the reason that it does not conform with our water system development rule. It's a violation of the water system development rule. Unless we have to amend that rule, then I go along with your request.

MR. RAPACZ: All I can say at that point is it sounds as though Mr. Craddick has succeeded in confusing the Committee Members. Your Rule 2-12 allows you to modify subdivision requirements. You did that in 1995 for this subdivision, and we drafted and you signed an agreement. We're just asking that you change that agreement to add these two lots. This issue of one meter, one lot applies only if no one asks you to modify the requirements.

That's why we came forward and asked in 1995, and you granted it. That's why we're asking again. If we simply came in and said, "You know, we want to use this meter for three lots," and asked the Director to do it, he would have to say, "No, one meter can't serve three lots."

And then what he should say is, "If you wish to do that, the Board can allow you to do that under Rule 2-12. Go ask the Board." But instead of him saying that, he just stops and says, "No, one meter, one lot, that's the end of the story." We're only here because of Rule 2-12.

MR. CHANG: Mr. Chairman.

CHAIR NOBRIGA: Yes, sir.

MR. CHANG: From my recollection in 1995, the three-lot subdivision, it was originally served by

that one meter. But what the Board did do in 1995 was allow two additional meters, so there was no violation for 1995.

MR. RAPACZ: We have three meters to serve the existing three lots.

MR. CHANG: That's the difference between this application.

MR. RAPACZ: We're just asking that you amend that agreement to allow that one big meter, that one-and-a-half-inch meter to serve three lots.

MR. FUKUSHIMA: And if I can comment, if there is an approval, there will be no violation of the rule that concerns Board Member Tagorda. There will be no violation.

MR. HASHIMOTO: One meter, one lot.

MR. FUKUSHIMA: There will be no violation of that rule because there will be a private water system serving those three lots.

MR. RAPACZ: That rule only applies if you don't have a private water system.

MR. TAGORDA: But are you taking -- this is my point. You are taking water from the public system and by modifying or waiving that request of Mr. Rapacz, you are trying to jeopardize the people who are really using the system, you know, in that area. And Kula is -- we have a shortage.

MR. FUKUSHIMA: Let me remind you they have a one-and-a-half-inch meter. They're entitled to use all the water in a one-and-a-half-inch meter.

MR. TAGORDA: On one lot, but not on three lots.

MR. FUKUSHIMA: As I understand, they've

demonstrated water use from that one-and-a-half-inch meter which is in excess of three lots at the present time. And I believe they did that because the Department wanted them to. They wanted them to demonstrate the use of water out of that one-and-a-half-inch meter.

MR. HASHIMOTO: Is there any agriculture?

MR. RAPACZ: Yeah, that's primarily what's happening here.

MR. HASHIMOTO: Because domestic use is less than agriculture use definitely.

MR. RAPACZ: We should also point out that that meter can serve the equivalent of five lots, a one-and-a-half-inch meter.

CHAIR NOBRIGA: Can I ask Herb Chang to come forward. Come up front, cuz, join us, bruddah.

MR. CHANG: Our records shows as the past five years, the average use of the meter was only 875 gallons per day as opposed to an average 600,000.

CHAIR NOBRIGA: What if they traded the one-and-a-half-inch for three-and-five-eighths?

MR. CHANG: Mr. Craddick was allowing the trading if the consumption was either equal or less, but in this case, it's going to be more.

MR. RAPACZ: Mr. Chairman, if I could respond. I'm starting to feel like I'm in the twilight zone. We've had exactly this discussion before. They made exactly this argument before. They admit they have no rules which requires a five-year record. The only five-year record they're talking about deals with exchanging meters, not approving additional lots for subdivisions.

And as you can see, I'm getting a little upset at the Department, because they don't want to approve this, keeps trying to confuse you. It's not a rule that it's a five-year test period. And even if it were a rule, it would only apply to exchanging meters, not to approving additional lots. We did establish within the last year-and-a-half to two years that we are using the equivalent or greater of three meters from this one-and-a-half-inch meter.

And, once again, I apologize for getting upset. It's just the third or fourth time that I've had to clarify something that I believe your Director and staff should be trying to help you understand rather than convince you to go one way or the other.

MR. RAPACZ: This is Ursula Hoekstra.

MS. HOEKSTRA: I'm Ursula Hoekstra, and what I want to say is that if I do not get the meter, I could use more water because I'm entitled to it. I can expand my crops. I've planted a lot of oranges, and I can expand my crop because I'm thinking about what my alternative is. If I do not get the meter, I have to have an alternative.

And I have already talked to people about planting proteas that will grow beautiful in Kula, so if I do that, I'm doing my -- I'm using my meter to its fullest extent. And I can plant hundreds of proteas on the acreage that I have, so that's the only thing I wanted to say. Thank you.

MR. HASHIMOTO: So the issue I guess now is one meter serving three lots, but according to Mr. Fukushima, it's not an issue.

MR. FUKUSHIMA: It's not an issue if this or if the Board, this Committee recommends that the Board approves the use of the one meter for the three lots through a private water system, and that's the key.

MR. HASHIMOTO: Private water system.

MR. FUKUSHIMA: They're not transferring water across lot lines without proper agreement.

MR. RAPACZ: Right. We already have the agreement. We just need to amend it to include the three lots.

MR. FUKUSHIMA: And I also recall that the Committee and the Board have approved waiver of fire protection.

CHAIR NOBRIGA: Okay. Let's take this to -- yes, Mr. Starr.

MR. STARR: I just would like to thank the Chair for letting me comment. I'm not a member of the Committee, but I do have some feelings about it. I have been a minority vote against the fire protection decision previously. And just to make it clear, this is -- a vote yes on this would create two additional developable lots in Kula where we're still limiting people who have been waiting for a very long time to be able to develop their lots.

MR. RAPACZ: Mr. Chair, if I could.

CHAIR NOBRIGA: Yes, Mr. Rapacz.

MR. RAPACZ: People waiting to develop their lots are asking for water meters. We're not. We have a way oversized water meter. We're just asking to be able to use it.

CHAIR NOBRIGA: Okay, thanks. Let's take this back to the Board at the next Board meeting.

MR. FUKUSHIMA: Is this Committee going to offer a recommendation other than what you have already?

CHAIR NOBRIGA: We will be recommending the original Committee, what you call.

MR. FUKUSHIMA: Which is approval of this --

CHAIR NOBRIGA: Approval of the private system from the existing one-and-a-half and see where it goes from there.

MR. RAPACZ: Thank you very much.

MR. HASHIMOTO: So this is approval?

CHAIR NOBRIGA: We're going to recommend approval, which is our original recommendation to the Board. Plus you're going to have Corp Counsel's opinion on Mr. Richmond's case, which is again similar, talks about a private water system. In his case, he drew his own well, so it's even more private of a private system.

MR. FUKUSHIMA: So is the action the Committee is taking today --

CHAIR NOBRIGA: Let's have a motion.

MR. FUKUSHIMA: -- reaffirming its previous action?

MR. RAPACZ: From May last year.

MR. FUKUSHIMA: And it's previous action being to approve the private water system agreement as proposed.

MR. RAPACZ: Thank you.

MR. HASHIMOTO: So move.

CHAIR NOBRIGA: No second, Mr. Tagorda? You rather recommend to deny?

MR. TAGORDA: I really recommend to deny it.

Because of that area you are indicated is Kula, and you are creating two more developable lots. Whatever your plan, intention in the future, I don't know. And we cannot issue you two new meters on those added two-lot subdivisions.

MR. HASHIMOTO: He's not asking for another meter.

MR. TAGORDA: I know that, but eventually, he's going to ask you for another meter.

MR. HASHIMOTO: Then we deny him.

MR. RAPACZ: Right. We have no plans to ask for additional meters.

MR. TAGORDA: This is for your subdivision to get approved?

MR. RAPACZ: That's correct.

MR. HASHIMOTO: But I believe what Ms. Rapacz says --

MS. NAGO: Ms. Hoekstra.

MR. HASHIMOTO: Ms. Hoekstra. Agriculture will use way more water than domestic, and if they're going to go protea, it's going to use more than citrus because it's going to be closer density and everything else.

CHAIR NOBRIGA: I'll second the motion made by Clark just to have it registered. All those in favor, signify by saying aye.

VOICES: Aye.

CHAIR NOBRIGA: Opposed, nay.

MR. TAGORDA: Nay.

MS. NAGO: Mike, I'm sorry, could you repeat the motion.

CHAIR NOBRIGA: The motion is to recommend to the Board approval of the private water system modification of subdivision requirements provided by the Hoekstras for use of the one-and-a-half-inch meter for all lots of the subdivision.

MR. FUKUSHIMA: Three lots.

CHAIR NOBRIGA: For three lots.

MS. NAGO: Thank you.

CHAIR NOBRIGA: Thank you.

MR. TAGORDA: Roll call.

MR. NOBRIGA: Clark Hashimoto, aye; Mike Nobriga, aye; Orlando Tagorda, no.

MR. RAPACZ: Thank you very much, Mr. Chairman.

CHAIR NOBRIGA: Is there any other business to be brought before this Committee? None was noticed. If not, the meeting is adjourned at 9:55.

MS. HOEKSTRA: Thank you very much.

(The meeting concluded at 9:55 a.m.)

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