

County of Maui Water  
Supply

BOARD OF WATER SUPPLY  
COUNTY OF MAUI  
RULES COMMITTEE MEETING

Held at HGEA Conference Room, David K. Trask, Jr.  
Office Building, 2145 Kaohu Street, Wailuku, Maui,  
Hawaii, commencing at 9:00 a.m. on May 14, 2001.

REPORTED BY: LYNANN NICELY, RPR/RMR/CSR #354  
IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

COMMITTEE MEMBERS:

Elmer Cravalho, Chairman  
Howard Nakamura

STAFF PRESENT:

David Craddick, Director  
George Tengan, Deputy Director  
Howard Fukushima, Corporation Counsel  
Fran Nago, Board Secretary  
IWADO COURT REPORTERS, INC.

CHAIRMAN CRAVALHO: The meeting will come to  
order of the Committee of Rules of the Department of  
Water Supply. Ms. Nago, note the presence of the  
various people who are here.

MS. NAGO: We have Chair Elmer Cravalho and  
Member Howard Nakamura. We have David Craddick, the  
director; Deputy Corporation Counsel Howard Fukushima,  
Deputy Director George Tengan.

From the audience we have Hugh Starr, Elliott  
Krash, Craig and Deborah Smith, Charles and Andrea  
Smith, John Siele.

CHAIRMAN CRAVALHO: Shall we proceed then to

consideration of the agenda? Are there any parties here who have applications or requests for action that wish to testify at this time? Or shall we reserve the right to testify if and when the subject matter comes up?

Any oral testimony? None.

Written testimony? None. Shall we then proceed --

MS. NAGO: Excuse me, Mr. Cravalho, the written testimony from Mr. Mayer, Dick Mayer.

CHAIRMAN CRAVALHO: We'll take that up when the matter comes up, the subject, but he isn't here.

Request from John and Maria Siele. Is that correct, the pronunciation? Will you please come forward with your request and presentation to the members of the committee.

MR. SIELE: We were requesting to exchange our inch-and-a-half meter for multiple meters for a subdivision up in Kula. This has been ongoing since 1991. We have run out of means, money, and time, and we're hoping that you can see to it that this can be taken care of.

CHAIRMAN CRAVALHO: Are there any questions? Mr. Craddick, what's the department's suggestion?

MR. CRADDICK: Well, the suggestion is to deny the request because it potentially could have more demand -- you know, you see on Exhibit C, page 59, the property. They have done I guess one family subdivision, right. And they have put that line in, that 8" line coming into the property, 8", 6", I guess.

MR. SIELE: It's a 6" line.

MR. CRADDICK: In order to serve the other two lots in there. And I'm not quite sure how this differs from -- what was that other one that was in here that John Rapacz was representing? I can't

remember their names. Hoekstra. That's the only other issue.

CHAIRMAN CRAVALHO: Reference is made by the department's recommendation about the violation -- potential violation of the rules of the water system, specific requirements for water improvements being made after the -- et cetera, et cetera, and will be required to construct any improvements to the department's water system in order to provide fire protection and domestic service.

The Chair raises the same question. Are these violations or are these conditions of permanent rules and regulations that have been adopted in accordance with law or are these just internal rules and regs of the department? Mr. Craddick.

MR. CRADDICK: I'm not exactly positive what you're referring to there.

CHAIRMAN CRAVALHO: Reference is made to improvements that are necessary in order to comply with the board's position, adequacy of source as well as adequacy of fire protection. Now, are these positions and these conclusions reached by the board -- or not the board, but by the department based on rules and regs that have been adopted in accordance with the law, to wit, or through the process having an amendment, going to the county mayor, going to the council, signed back by the mayor, or are these just internal rules and regs similar to those internal rules and regs dealing with meters and the issuance of meters that were ruled by the court to be unconstitutional? Smith versus Craddick. What rule are you talking about?

MR. CRADDICK: First of all, it's Rule 2-1 and I'll leave it to corp counsel whether that has been properly promulgated.

CHAIRMAN CRAVALHO: Was it, Mr. Fukushima?

MR. FUKUSHIMA: Yes, it was.

CHAIRMAN CRAVALHO: Fine. Yes, Mr. Siele.

MR. SIELE: I'm surprised that Mr. Craddick has changed his mind in just a few months. I have talked to Mr. Craddick in the hallway and I explained the situation and he said that if I could prove reliance on the water department, that it would probably be granted to me at this time.

Speaking to Mr. Chang the other day, I had asked him if he would include some of these conversations that we have had going back to 1992 and he said that he did not have the time to take to be able to write anything in my benefit, that anything that would be written in my benefit would be cold and short.

These meetings date all the way back to 1992, sitting down with Mr. Craddick and explaining what we were looking to do with the property at the time. Me and my wife had a dream to create eight to eleven farm lots, trying to create horse farms up and down a parcel of land that we owned.

We proceeded to continue the option money on the property, received an inch-and-a-half meter. We decided at that time to go with a -- we were told it was cheaper instead of to go with a large lot subdivision -- a large amount of lots at that time, to go with a three-lot subdivision. We proceeded at that time to go with a three-lot subdivision and were told we would receive three inch-and-a-half meters.

We sat down with Mr. Craddick during the process of this and told to him -- explained to him that our situation and that our final payment of the property would depend on the ability to receive water in the future. At that time Mr. Craddick had said I cannot tell you what to do financially, but I know as of this time there is a Haiku well coming on board and a reservoir, I think it's Kahapupoa reservoir, and I believe there will be plenty of water in the near future. Mr. Craddick even offered to take me and my wife out to visit the site to assure us of this.

Since that time, we have proceeded, we have brought in over 3,300 lineal feet of pipe at a cost of

\$250,000 in road, water, and electric improvements. Since that time, we have not received any further water. It has put us in extreme financial difficulties.

Since '94, when we realized that -- we were then told that the latest that anything would happen would be 1996 in case the Haiku well would have to be treated. We still believed in our hearts everything that going to come through and I hoped to believe that Mr. Craddick believed it was going to be true at that time.

During many meetings after 1994 all the way up until this time, I would see Mr. Craddick and meet him at many water meetings and he continually told me at these meetings that I would proceed with your future developments, that the water would be on line.

To this day, nothing is happening. We are still in dire needs. And that's about as far as it goes and I'm really surprised that Mr. Craddick has changed his mind completely on the matter.

CHAIRMAN CRAVALHO: Mr. Nakamura.

MR. NAKAMURA: Let me ask a couple of questions, Mr. Chairman. Reference was made to a three-lot subdivision that was done earlier. Is that correct?

MR. CRADDICK: Yes.

MR. NAKAMURA: And this is one of the lots that was created by the three-lot subdivision?

MR. CRADDICK: I think this map here involves all the lots, doesn't it?

MR. SIELE: Yes, this is the way it's configured at this time. What had happened is last year we ran out of funds, so we had to sell the house off to save the land to hope that sooner or later something would happen. I even -- for the last few years, I was talking to Mr. Craddick, hoping that, you know, should we dig a well, and he says no, I wouldn't

waste my time or money on digging a well, that it looks like any day now something is going to happen. And from year to year to year we just kept getting deeper and deeper.

But getting back to that, it was created from the last lot.

MR. NAKAMURA: This is the third -- one of the three lots in that three-lot subdivision.

MR. SIELE: Yes.

MR. NAKAMURA: For which you receive three one-and-a-half inch meters.

MR. SIELE: No, we received one one-and-a-half inch meter, which we already had. We received two 5/8ths meters. We were told that we would get two extra inch-and-a-half meters, but we only -- at the time of the subdivision, we were told that take the 5/8ths and when the water came on line we would receive the upgrade.

MR. NAKAMURA: So in the context of that family subdivision, then, the creation of this lot, was there not a family subdivision agreement entered into or --

MR. SIELE: It was a large lot subdivision.

MR. NAKAMURA: A large lot subdivision. And the large lot subdivision has provisions that further resubdivision or further development is subject to compliance with the rules and regulations; is that correct?

MR. CRADDICK: Yes.

CHAIRMAN CRAVALHO: Any further questions, Mr. Craddick?

MR. CRADDICK: First of all, I would like to say one thing. Most of the things Mr. Siele says are

correct. One thing I've always told him, I said I cannot make any judgment about his financial condition. And I told him this is what we're planning on doing, this is what we're doing, the final outcome of these things should result in water. I cannot guarantee you anything. I think I've maintained that all along. Kahakupala is on line, Haiku is on line. The board was debating whether to let that additional water go out and we're in this situation today.

Now, as far as substantial reliance, Lower Kula line which serves this was under the Kula Rule and the shortage situation which was called in March 16, 1993 preceded the Kula Rule and I believe the Jim Smith court case deals with the guidelines that were attached to the findings of shortage, not that we were short of water. And I'll leave that up to corp counsel to --

CHAIRMAN CRAVALHO: The Chair would just like to interject that the Chair disagrees with you because I believe the Smith -- the judge in the Smith case went one step further. Not only did he make reference to the Kula Rule, he also said that the practice of the department that you were involved in in granting meters, were illegal. That's what the court said. That's what the judge said. That the internal rules and regs that you have put together and used to grant meters did not have the force and effect of law.

MR. CRADDICK: And I'll agree with that. That's what I'm talking about, the guidelines.

CHAIRMAN CRAVALHO: Excuse me, sir. With respect to the guidelines, those guidelines were internal. They were not part of any existing rule and regulation that had the force and effect of law. And the judge declared that any practice, to wit in this particular case the granting of meters by internal rule, was null and void.

So whether you were depending on some previous internal rule and regulation, it falls in the same [inaudible] as far as this Chair is concerned. And it's not to try to go behind technicalities.

Were assurances given to the gentleman as to the potential availability by a period of time, by a certain date in time. That's all.

MR. CRADDICK: Well, I did tell him when I thought water would be on line and it is on line.

CHAIRMAN CRAVALHO: If we talk long enough, Mr. Craddick, you come around and agree with my positions, basically. And my position has been, with all due respect to all parties, there is an adequate supply of water for the upcountry area. The rights of withdrawal make that very plain. It's a matter of implementation of our agreements that we have. Costly, true. Very true. Much more costly, not. But that's beside the point.

Now, as you have indicated, Mr. Craddick, it appears that perhaps we're not quite certain that an adequate supply is there. And if there is any way possible that we can uphold the veracity of the department, we should I think take a look at it.

I'm not familiar with the details and I agree with you, Mr. Craddick, that it's not the function of the board to be financially responsible or concerned with the finances of individuals. However, it depends on the circumstances and the facts. I think we need to look at that.

Now, Mr. Siele, if you can repeat for the Chair's benefit precisely and exactly in a very narrow manner what is your request.

MR. SIELE: We were hoping to -- we are -- right now we are on the future list for five potential lots, not knowing if that list means anything. We are trying at this time to trade in the inch-and-a-half meter for five 5/8ths meters. Or whatever is allowable.

CHAIRMAN CRAVALHO: You may have rescued yourself. You want to trade off an inch-and-a-half for five 5/8ths.

MR. SIELE: Yes, sir.

CHAIRMAN CRAVALHO: That's a 3-inch-plus total.

MR. SIELE: Yes.

CHAIRMAN CRAVALHO: That's a horse of a different color. Okay.

Mr. Nakamura, would it be against your feeling to defer action on this until we have a full committee?

MR. NAKAMURA: I have no objection. I would like to see the -- circulate a copy of the prior agreements that had to do with the large lot subdivision. That would save time.

CHAIRMAN CRAVALHO: Sure. Mr. Siele, the Chair would just like to mention this parenthetically. If a person or an entity comes in and agrees upon a certain list of requirements and/or considerations and upon those considerations and those agreements they effectuate what they originally asked for, and if subsequently it didn't come out precisely the way that individual hoped that it would, the board should not be held accountable for that judgment. If the opposite had been true and instead of an individual making \$200,000 net profit, and he makes a killing and makes a million, he doesn't bring the extra \$800,000 to the board and says here it is, I did much better than what I came in for. So it's a matter of equity and fairness. And if you had negotiated an agreement, that should have some credence. It should have some bearing. There may be mitigating circumstances in between. I'm not prepared. So Mr. Nakamura's request suggests that we look at the original agreement will be very, very pertinent.

Facetiously let me say the water department is not running -- it's not the Department of Human Concerns and it is not running the welfare department for the State of Hawaii. Because we need to be fair to all parties. You have some considerable factors beyond your control that came in as a direct result of the suggestions or opinions or advice that was given

to you by the department. We'll take a look at it. We really will. Fair enough? Thank you.

MR. SIELE: Thank you very much.

CHAIRMAN CRAVALHO: Shall we proceed to the next one.

MR. CRADDICK: This item here I think has been taken care of.

CHAIRMAN CRAVALHO: How?

MR. CRADDICK: Their service is not potable service and they're proposing to put in their own private service for their house and fire protection.

CHAIRMAN CRAVALHO: Is there a letter of recall? Or removal from the agenda?

MR. CRADDICK: Not from me.

CHAIRMAN CRAVALHO: Are the parties here to indicate that they wish to recall their request and they can handle it accordingly? I have no problem with that.

MR. FUKUSHIMA: If I may, Mr. Chairman. There were discussions with the applicant and the department with respect to the requirements the department was placing on the applicant for this particular subdivision. We discussed the matter with both the director and the engineer doing this project. We -- our opinion with respect to the applicability of a past opinion from our office was discussed. We had indicated to the department that that opinion, while it dealt with the facts correctly in the issue that it was trying to answer, should not be construed as an across-the-board opinion which would affect all subdivisions of that nature.

In this case, there was a clear distinction that the water meter held by the applicant was for nonpotable uses and that the previous opinion issued

by our office dealt with domestic service and we believe that there were very great distinctions between the two and that the department should not again construe our previous opinion as dealing with nonpotable water in the same light as it would potable water.

CHAIRMAN CRAVALHO: Therefore --

MR. CRADDICK: Well, we feel that no action is necessary by the board, but I'll leave it up to --

CHAIRMAN CRAVALHO: The Chair is going to be expressing again the matter of procedure. Whenever any matter is placed on the agenda and there is a wish to remove it from the agenda, that communication, once it's placed on the agenda, is the property of the board and the property of the respective committee to which it was referred to. And the department cannot withdraw because it's no longer its property; it's the property of the board.

The Chair would entertain a request that we consider this as moot already, the problem has been solved. But then the record would so reflect it. Would that be satisfactory?

MR. SMITH: Yes, Mr. Chair.

CHAIRMAN CRAVALHO: Came off easy.

MRS. SMITH: We do have one question. When can we expect to hear from the water department that this -- we don't know where we go from here. Does this go to LUCA, does -- how do we proceed?

CHAIRMAN CRAVALHO: You work with Mr. Craddick. It's not before our committee anymore. You agree of the withdrawal of your request.

MRS. SMITH: Yes.

CHAIRMAN CRAVALHO: Shall we proceed to the next one. Next item, Moses and Virginia Timbal. Are

they here?

MS. NAGO: Yes, he is here.

CHAIRMAN CRAVALHO: Are you Mr. Timbal?

MR. TIMBAL: Yes.

CHAIRMAN CRAVALHO: Proceed with what your request is before the board.

MR. TIMBAL: Mr. Chairman, I brought additional written --

CHAIRMAN CRAVALHO: Could we have that made available to the members of this committee, please?

MS. NAGO: There is only the one copy.

MR. TIMBAL: I'm sorry, I just made it this morning. In fact, if I might mention, some of it is still incomplete because I was down at the tax office trying to get it together and time ran out so I didn't get all the information I wanted. But I did the best I could.

I would like to start off by saying that the past 15 years, my wife and I have been the caretakers of Huiki church, which is the property that I live on. We are the caretakers. We take care of the church and the church property.

And two years ago, my wife and I personally asked Bishop Francis DeLorenzo if we could purchase a portion which was four acres of the church's property. Bishop DeLorenzo gave us his content and we've stayed in touch with him since. He's given us his full support and this past month in April came to Hana again and we saw him again, we spoke to him, and he knows that we've been trying hard to subdivide the property. And you have to excuse me, I'm real nervous.

Anyway, Bishop DeLorenzo says he knows that we've been trying hard to complete the task of subdividing for the past two years and sympathizes

that it's taking so long and he's surprised at the difficulties we're having to try and get it done.

CHAIRMAN CRAVALHO: He should be -- in the position he holds, he should be invoking the good Lord to help him.

MR. TIMBAL: Well, jokingly, jokingly, off the record, he said, "You tell the county that I own the property and I said to sell it to" -- and that's what he said.

CHAIRMAN CRAVALHO: Well, inasmuch as you're using your appropriate representations in speaking on behalf of the Bishop, tell him the Chair said that doesn't mean a damn thing whether he owns it or not.

MR. TIMBAL: I understand. So we told him we needed to go through the procedures anyway.

CHAIRMAN CRAVALHO: You better believe it.

MR. TIMBAL: So we told him that. But he just jokingly said that.

Our neighbor, Helen Fagan Bidwell, who lives a short distance away, built a house that is larger than ours. And I'm happy for her, you know, she deserves to have it. But by her building the house, created an increase of water usage. And was she given a waiver not to build an 8" waterline? That part I couldn't understand.

Another neighbor, Ms. Jenny H. Peachen, owns another property across Puiki church and she had a dwelling on it. She just recently sold a portion of the property with the ohana dwelling to Thomas and Lorraine Broddick and they listed their address as 23 Puiki Hill, but I know that because they did some Fed Ex delivery through us.

Mrs. Peachen and the Broddicks live just a short distance in the Hana direction of town and all of this appears in Exhibit A of the County's exhibit.

After the Broddicks bought the property with the ohana dwelling, they converted the dwelling to a

two-story house, then added an ohana dwelling next to it. The situation between Mrs. Peachen and the Broddicks would be somewhat identical to mine because Ms. Peachen I believe has subdivided the property and sold it to Broddick. Were the Broddicks given a waiver also?

But looking at this situation of Mrs. Peachen, Thomas and Lorraine Broddick, and Mrs. Helen Bidwell, I feel as though I'm kind of being discriminated against because the staff has recommended that the waive be denied to us.

My applying for a continuance -- a continuance of the waiver and subdividing -- won't cause an increase of water because it's already existing. But the construction of the other homes did. And why should I have to bear the burden of running an 8" waterline when my neighbors didn't?

Also, in the water department modification of requirement Section 2-12 of the rules and regulations of the Board of Water Supply, I would like to emphasize the very last sentence where it says, "The board retains the right to modify any requirements provided the modification in no way jeopardize those already served in the area." Again, I would like to say that when a comparison is made between me and my neighbors' new homes and my application of subdividing, I'm not the one that's jeopardizing those already served in the area.

And the last request is if the board approves our request, I would like a modification of Condition Number 2 that permits be allowed for additional storage and warehouse space to allow growth of our flower business. I do, however, agree that no building permit be issued for construction of another house or dwelling and for additional water services. I humbly ask you for your continuance of a waiver. Thank you.

CHAIRMAN CRAVALHO: Are there any questions?  
Mr. Craddick, are you familiar with some of the allegations, the statements concerning prior practices?

MR. CRADDICK: I'm going to have to say I don't know, but I don't believe any of these other ones that he cited are subdivisions. And I don't believe any of the other ones have an agreement signed with the -- I guess it's not necessarily with the board. It was the mayor that signed the agreement the last time. And the director of the water department and --

CHAIRMAN CRAVALHO: What year was that, Mr. Craddick?

MR. CRADDICK: 1986. And interestingly enough, signed by Mr. Timbal and his wife.

MR. TIMBAL: Can I say something, please?

CHAIRMAN CRAVALHO: Yes, sir.

MR. TIMBAL: This morning when I was coming over, I noticed -- that's why I gave this one here. I gave -- I saw three more new homes built within the last five years. And I didn't circle that one, but I've circled mine. Lots number 18, 19, and 21, all of those are within what the county called the inadequate zone which is in the same zone as me. So three more -- actually a total of five homes were put in after mine and none of them I guess were -- I mean, all of them were given waivers because I guess I don't see any 8" waterline. And I don't see why I have to bear the burden.

CHAIRMAN CRAVALHO: Mr. Craddick.

MR. CRADDICK: The rules don't require fire improvements for the first dwelling, so that's why they're exempt.

MR. TIMBAL: Okay. What about the Broddicks' addition? The Broddicks bought the house, it was a single dwelling, they put two stories on there. Then they put an ohana dwelling. Wait, wait. And on this one, it says on mine that I be -- if granted, be

denied. I be denied an additional dwelling. But yet my neighbor is given an additional dwelling.

CHAIRMAN CRAVALHO: Mr. Craddick.

MR. CRADDICK: The rule that I've said exempts the first dwelling actually exempts the first two dwellings. So again, those are all in compliance with the rules.

MR. TIMBAL: Why does my one say on this one here if approved, no building permit or additional water services will be applied. If approved.

MR. CRADDICK: First of all, you've already signed an agreement to that effect. You've already signed an agreement in 1986 to that effect. So --

MR. TIMBAL: I just feel like -- wait. But each though I was the first one, I mean, like you said, the first dwelling didn't require -- I was still given a notice that I needed to put an 8" waterline. Then I was given a waiver. But nonetheless, it says here that the water is inadequate. Nonetheless, you folks let me build my house.

MR. CRADDICK: That's a good question.

CHAIRMAN CRAVALHO: The Chair has a couple of questions, Mr. Timbal. Initially, way back when, the Catholic church and you entered into an agreement between the two of you and subsequently or maybe simultaneously entered into an agreement with the County of Maui as evidenced by negotiations or in agreement with the mayor which allowed you to move into the area. This did not in any way effectuate a subdivision of the land. It was an agreement that allowed you to move in and utilize the area without a subdivision being a requirement.

Under that agreement -- and correct me if I am wrong -- any subsequent action which would result in a subdivision would require the installation of an 8" line. Am I correct thus far?

MR. TIMBAL: I'm not an attorney, but I assume --

CHAIRMAN CRAVALHO: No, I'm just repeating the facts contained in -- neither am I an attorney. And those conditions were part of the agreement. As I recall, the matter before this committee at this time is not nearly the continued utilization of the area by you with an additional structure for your business, but it also does involve the subdivision of the entire area.

MR. TIMBAL: Yes, I understand.

CHAIRMAN CRAVALHO: And that's a very, very different proposal and a very, very different requirement. You talk about nine possible lots versus a single person utilizing the entire area and wanting to have an additional building put on.

The Catholic church appears to be using you as a very fine agent to effectuate a nine-lot subdivision.

MR. TIMBAL: Who, me?

CHAIRMAN CRAVALHO: What else are you asking for? Aren't you going to divide the entire area?

MR. TIMBAL: Into two lots.

CHAIRMAN CRAVALHO: Only two lots?

MR. TIMBAL: Yeah. Yes, only two lots. Mine and the church. I mean, that's how I see it.

CHAIRMAN CRAVALHO: Would it be a restriction that would ride with the remainder of the land?

MR. TIMBAL: That I couldn't subdivide it?

CHAIRMAN CRAVALHO: Wait. Let me finish. Would you be agreeable to a restriction that would ride and be part of the land because you're looking

for one-lot subdivision which would rent it to you or sold to you or what?

MR. TIMBAL: Sold to me.

CHAIRMAN CRAVALHO: The Catholic church going to sell it to you.

MR. TIMBAL: Yes.

CHAIRMAN CRAVALHO: Okay. Then as far as the remainder of the area, if and when the church decides it wishes by divine providence or otherwise to further subdivide the remaining lands, that ipso facto the church shall install an 8" line.

MR. TIMBAL: Are you done?

CHAIRMAN CRAVALHO: What do you think?

MR. TIMBAL: I can't speak for the church. But for my part, my four acres, I will agree that I will not subdivide. If that's what you're asking me. Yes.

CHAIRMAN CRAVALHO: No, that's not what I'm asking you.

MR. TIMBAL: I don't understand what you're asking me then.

CHAIRMAN CRAVALHO: Then it's going to be a hard fast no. Okay. Listen to me if you can. If you can. Listen. Not just let the words go over. Okay.

If there is any justification in your case to subdivide the land, keep that house, have an addition, yeah, for your business, okay, to preserve the integrity of the Department of Water Supply and the Board of Water Supply, where we're supposed to be having an 8" line, so the remaining owner, the Catholic church, if and when you come in to subdivide, you put in that 8" line, that's what I'm saying.

MR. TIMBAL: Okay.

CHAIRMAN CRAVALHO: And that will go with the land. And they give up their right of appeal at a subsequent board when I'm long dead and gone.

MR. TIMBAL: I think I understand, but -- yes, yes, I agree, if I may --

CHAIRMAN CRAVALHO: I'm not saying you're going to get it.

MR. TIMBAL: I know. But I want to clarify what you said to make sure that I know what you're saying. My intention really is just subdivide it into two lots, the church and mine. And I think what you're saying is that I can no longer or the church can no longer subdivide. But if there is a subdivision, that I will pay for the 8" water line. I agree to that, yes.

But sometime in the future -- I mean, who knows, my neighbor might subdivide theirs and they might have the same requirement as I might have.

MR. CRADDICK: Right.

CHAIRMAN CRAVALHO: That is a hypothetical case that isn't before us at the present time. What is before us at the present time is your request to subdivide the portion of the church property. And therefore, if the church also desires that, that it does make itself accountable and responsible to install that 8" line.

MR. TIMBAL: Yes, okay.

CHAIRMAN CRAVALHO: I think that's very reasonable. And I'm not saying it's going to be granted, okay. Don't misunderstand me.

MR. TIMBAL: It's just that if I had the money now, I would do it. I don't have the money. My kids just graduated from college.

CHAIRMAN CRAVALHO: Mr. Timbal, I think you're missing the point again. I'm trying to take it away from your back and put it on the back of the Catholic church where I think it rightfully belongs.

MR. TIMBAL: I'm sorry.

CHAIRMAN CRAVALHO: Because it is the owner of the property.

MR. TIMBAL: Yes.

CHAIRMAN CRAVALHO: And it over a period of years will be the primary beneficiary because it would have the opportunity to further divide -- subdivide its additional lands without any obligation to put in an 8" line.

MR. TIMBAL: I understand.

CHAIRMAN CRAVALHO: The Catholic church is working with you to get your request approved; therefore, it is a party. And being a party, that it also has an obligation not only as it relates to you but it has an obligation as it relates to its continued interest because it still maintains the ownership of the remainder of that lot. And it cannot be there scot-free with absolutely no obligations to the general public and to others as well.

Now, what took place with respect to others in prior years, I have nothing to say because I don't know, the department can justify whatever it did do. But as it relates to you, assuming there is some merit, assuming, then you're not the only beneficiary, okay, the church is the beneficiary. Unless the church wishes to take the remainder of the land and dedicate it forever and a day to public use and [inaudible] its preservation and what have you. Make sense?

MR. TIMBAL: I'm not a smart person, but yes.

CHAIRMAN CRAVALHO: No, I'm not asking whether

you're smart or not. All I'm asking you --

MR. TIMBAL: Okay. So far as I understand, yes.

CHAIRMAN CRAVALHO: -- does it make sense.

MR. TIMBAL: Yes.

CHAIRMAN CRAVALHO: That's all I want to know.

And sometimes us guys who are not very smart, we use just a common approach that makes sense. My uncle used to tell us many years ago the best thing to keep a good neighbor is a strong fence. Very right. Any other matter, Mr. Craddick?

MR. CRADDICK: On page 4 B, there is five items of which he objected to one and then I guess you added two more. So if the board -- if the committee's recommendation was to approve this, we would ask that all of these --

CHAIRMAN CRAVALHO: Take a look at it.

MR. CRADDICK: And then I don't know, you know, again, to just outright say we're going to approve warehouse storage not knowing what the fire requirements are --

CHAIRMAN CRAVALHO: Mr. Craddick, always keep in mind you're not a member of the doggone board. When it comes to policy, rightfully or wrongfully, it's for the board to decide, not just this committee. This committee will recommend or make a suggestion, whatever it may be, to the board, okay, and your input and your insistence is greatly appreciated at the proper time and at the proper place. Right now we're listening to Mr. Timbal and what he has to say. Quit when you're ahead. Sometimes I wonder.

Any other matter coming before the board? We're going to take everything under advisement because we don't have the entire committee here. We don't know what we're going to do.

MR. FUKUSHIMA: If I may, Mr. Chairman, is the pleasure of the chair to defer this matter?

CHAIRMAN CRAVALHO: All deferred. That is correct. We've received the benefit of your presentation and we'll sit on it until next board meeting when we will report back to the board.

The Chair would appreciate, Mr. Timbal, you made reference to five dwellings that were put up in there. Could you get that information to the Chair?

MR. TIMBAL: Yes.

CHAIRMAN CRAVALHO: Not now; later on. What five dwellings were erected there, were they in conformity with the law. More than likely they may have been. But in fairness to all parties concerned. I don't want to see the department unduly criticized for something which was legal. Neither do I want to see them treat you or us treat you in an uneven manner and unfair manner. Fair enough?

MR. TIMBAL: I just ran out of time this morning because I was at the tax office and they asked me if I wanted the names of the people which exactly you asked for, but I ran out of time, I had to come to the meeting.

CHAIRMAN CRAVALHO: Recent history, yeah, a man lost a U.S. presidency because he ran out of time.

MR. TIMBAL: I did the best I could.

CHAIRMAN CRAVALHO: That's right. Otherwise you would be having a President Gore instead of a President Bush. Time waits for nobody.

Anything else? No? Shall we go on to the next item, which is consideration of the rules and regs for granting of meters, et cetera, written testimony from Mr. Mayer.

Has everyone had the opportunity to read the matter presented to us by Mr. Mayer concerning the rules and regs for upcountry meters? Are there any

members here who wish to testify on that particular question right now? Will you identify yourself by name and position, what have you, and what your recommendations are.

MR. FEREA: Yes, thank you, chairman and committee. Good morning. My name Eric Ferea. I'm an attorney. I'm not here in that capacity, however; I'm here in my capacity as an owner of a parcel of land, a parcel of land in a family subdivision in Haiku. And I wanted to comment on the rule. I've had an opportunity to review the proposed rule and I perceive certain inequities in the rule and I wanted to address the committee and the board with respect to that.

In particular, my concern, as I believe probably a number of individuals on the priority list who are asking for meters through subdivisions would be concerned about what I perceive as an inequity and that is that as I understand and read the rule, Section 16-106-04(d) states that water service shall be limited to a single 5/8" meter. And so that seems to indicate that with every applicant or every line on that priority list, only one meter is going to be awarded to each of those entries.

And I think probably the inequities can be illustrated by an example and that is this. You have a family subdivision. You have a father who has a daughter and a son and he wants to give these two parcels of land, it's three parcels of land in the family subdivision, and he wants to give two parcels, one parcel to each of his children. And he's on this list and he's going to get one meter and he has to apparently exercise the wisdom of Solomon to decide who amongst his children is going to get that one meter.

It's going to be a problem for families. It's going to be a problem for individuals who are neighbors who are in subdivisions wanting to build a home.

I think I understand what the intent was and if I may be so bold to express this, I think that the concern was that there probably are subdivisions on the list who are asking for a large number of meters

and the concern would be that capacity would be used up rather quickly if all of these subdivisions got everything they asked for. But I think there is a distinction between these large subdivisions and family subdivisions, individuals who actually own the property, are ready and willing and able and want to build and they're only waiting for a water meter.

I'm in that position. And I think there are a number of other people who are on the list that are in that position. And I think it is inequitable to those individuals to simply allow one meter, creating this animosity that will necessarily occur between family members and individual's neighbors. And there is really no logical way to decide.

And there is one more thing in this rule that's even more extreme and that is if you can't decide who gets that water meter, according to this rule you get kicked off the list and so you lose your priority. So it would seem to me that the rule can be redrafted to address that issue and to be more equitable to all people on the list so that priority actually means what most people understand it to mean, that people in order of priority will get meters. And if there is a distinction to be made, maybe there should be a distinction between large subdivisions where the motive is primarily profit-making as opposed to small subdivisions where people actually own land and want to build and raise a family on their land. And that's essentially it.

CHAIRMAN CRAVALHO: Are there any questions?

The Chair has a couple of questions. In prior history of the county, some mechanism was provided not dealing with water but dealing with land and the disposal of land, house lots, that entailed a buy-back provision or a modification of that buy-back provision that if there is a bonafide family type of a subdivision, in this particular case for a meter, and if the board in its wisdom made provisions to granting these meters but also throws in a caveat that if you proceed to sell that land or dispose of that land for the next five or ten or fifteen years, whatever the number may be decided upon by the board, that you become liable for

an additional amount of cost of that meter which would be similar to that which is programmed which -- subdividers program when they put in subdivisions. And I've heard the figure of twenty and thirty and forty thousand dollars being used as the value of a meter to a lot. Would that appear to be within reason?

MR. FEREA: I'm not sure I'm understanding the Chair.

CHAIRMAN CRAVALHO: You want to subdivide your land. You want to give it to your kids.

MR. FEREA: Right.

CHAIRMAN CRAVALHO: Okay. You keep your lot and your kids get this A and B and you pay the normal meter charge of three thousand, four thousand, whatever that might be. But if you or your kids or your beneficiaries or whoever sell that or dispose of it other than within the narrow confines of a family subdivision, immediately your water meter is costing not three thousand you paid, but \$20,000, so that you don't speculate.

MR. FEREA: Right, right. And I understand that position. In fact, there is -- as I understand family subdivisions, there is an agreement that --

CHAIRMAN CRAVALHO: Let me finish. Let me finish. And that provision or that requirement becomes a lien on the property to be released by the county after a number of years have passed or you put up the money. Fair? It handles the problem you're making reference to. The guy who really has a bonafide interest.

I have heard, again off the record, whatever, that some water meters upcountry, Kula, in the Haiku area, that people have been asked \$20,000 per meter. And I think Mr. Craddick has heard of some meters maybe higher than that. The lot going for twenty, thirty, forty thousand dollars more because it has a

water meter. Okay. So if we meet the bonafide need and request for family subdivision as kids or whatever, and not exploit the resources of the county for speculation, it appears as a lien that goes with the land until such time as that land is sold or the years have passed and dollars have been brought to the department.

MR. FEREA: Well, if I might comment, I think one of the concerns with family subdivisions was that essentially the way they were established is that the owner who wanted to subdivide in that fashion had to sign an agreement saying that if in fact another building permit on the land was requested, that they have to put the water system in at their own expense. And so that if in fact there were going to be multiple subdivisions of the property, that they would have to bear that expense. And in fact, that's what's being done with my subdivision. It's not like somebody is asking for a waiver, trying to get around the rules, trying to get around the agreements, and that's why I'm concerned about this because if --

CHAIRMAN CRAVALHO: We've come to a definition of a water system. Is it going to be strictly a private water system you're talking about with yours?

MR. FEREA: Yes, absolutely.

CHAIRMAN CRAVALHO: And forever and a day? Neither you nor your children nor their assigns, that restriction runs with the land.

MR. FEREA: Oh, I understand that.

CHAIRMAN CRAVALHO: It will stay private system forever.

MR. FEREA: Yes.

CHAIRMAN CRAVALHO: The Catholic church notwithstanding.

MR. FEREA: That's my intent. I mean, my intent is to --

CHAIRMAN CRAVALHO: That's you.

MR. FEREA: Yes.

CHAIRMAN CRAVALHO: Now, however, with respect to the general public, which may not have the wherewithal financially to put a completely private water system, and yet there is a bonafide request and a bonafide need to dispose of the properties to their children, a lien with a limited number of years of 10 years or 15 years or buy-back provision or whatever, so that the county is protected and priority is given to family subdivisions. And it isn't a case where an entity, a Mainland interest comes in and buys up a whole chunk of land and subdivides it and says hey, we got the dough to put in that system, therefore we're going to pay over \$3,500 and you're going to -- and I'm going to use up a hundred meters and I'm going to sell these hundred lots to people outside of Maui or outside the State of Hawaii -- I'll sell them for \$20,000 or \$30,000, but all I'm giving you is \$3,500. And in this process, we have eliminated, for all intents and purposes, the guy who's been waiting for a long time to give some land and water to his children. You have to put protection in there.

MR. FEREA: I agree. I agree. But I think the rule as it is written now --

CHAIRMAN CRAVALHO: Never mind that. Conceptually. Agreed?

MR. FEREA: Yes.

CHAIRMAN CRAVALHO: Okay. So people find the language.

MR. FUKUSHIMA: Mr. Chair, if I may. This particular provision that is contained in the proposed rule will not in any way affect the family type

subdivisions. The family type subdivisions are already under the requirement that if they request additional water service or if they request building permits, they will have to put in all the improvements.

I cannot see a family type subdivision being on the priority list and just by the mere fact of being on the priority list they would be entitled to water. It would still be required to put in the requirements necessary for that family type subdivision.

CHAIRMAN CRAVALHO: See, here is where I have a difference with corp counsel's office. If that is allowed to proceed, that's my own thinking, if that is allowed to proceed as stated, in effect you're going to be just where you're at now to a substantial degree. A small guy with one- or with two-lot subdivisions requirement is not in a position to be able to put in a 6" line or 8" line or whatever the case may be. But if we have said we have X number of gallons available, what was it, Mr. Craddick, 200,000 or thereabout?

MR. CRADDICK: Yes.

CHAIRMAN CRAVALHO: Okay. And if we give this priority to this particular level of people, bonafide family type of a subdivision, and they connect, without being required, it's just strictly a family type of subdivision -- well, corp counsel is shaking your head, you don't set policy.

MR. FUKUSHIMA: I don't set policy. But --

CHAIRMAN CRAVALHO: Wait, wait, wait, wait. There may be a thousand reasons. Okay? That is to be discussed in the committee at the appropriate time. And this is not the appropriate time. There may be bonafide reasons, I grant you that. Okay. That's why if we take a lot of these things under consideration. But conceptually what do we need to do if there is a problem? And I think we need to explore all of these

things. I would be very disturbed if we end up with another situation like we have Upcountry in Haiku and Pukalani where to the highest bidder goes the meter while others stay on the side. Bonafide family type of subdivisions that we can handle.

And if we as a matter of public policy set some kind of a priority, I think it behooves us. Parenthetically, and it's going to come and haunt this body -- not this committee, but this water board, what's going to be happening upcountry.

The players on this island are no longer the same players. You have the Dowlings, you have the Maui Pine -- or you have the Time Warner/AOL represented by Maui Pine, to name two. And they're not in there for their health. Neither are their assets going to be there tied up forever. And maybe, maybe some of the things I've said before going to come home to roost soon and I'm talking about [inaudible]. Okay? And you know, Mr. Craddick, I'm right. Hamalau and Pookela. They form a basis of which I'm sure you're well aware of. Okay.

Concern has been expressed who's going to pay the bill. My thinking at the moment, private develop Pookela, they can exchange and give it to us for what they're using [inaudible]. Catch? At no cost to the company to have us meet our needs. Okay. But we need to keep our eyes on the site and the target forever as to what we're supposed to be [inaudible] and I think we do all right. Do all right.

Just as an aside, again, Mr. Nakamura, beg your indulgence a little bit, historically we have -- those of us who have been here a long time have paid tribute and respected the people like the Von Temskys and others who have put their life work and their lives into maintaining open space, keeping the cattle industry which today is just about zero in terms of financial return. But that asset is there and we're telling them give it up forever and a day if we aren't careful. I think that is wrong. Okay. We need to balance these things off.

And Mr. Craddick and other members of the committee and others when we entered into what you worked on, Memorandum of Understanding is a basic

document that can take care of these needs along the line including Central Maui as we work. I think we need to -- this is far afield, but it's very pertinent to what we're trying to get accomplished. Make sense? I think so.

MR. FEREA: So Mr. Chairman, there may be other people here that want to speak on the issue. I would just ask this committee and the board to be sensitive to the issue that I've raised here because I really do believe that it is going to create not order but chaos between these individuals and small subdivisions.

And I reiterate, I'm not talking about a situation where people are trying to get out of the agreements that they have signed to put in a water system to connect to the county line. I'm talking about a situation where these subdivisions are on the priority list, they have done the work, they have put in the infrastructure, and they simply want to have their positions preserved.

CHAIRMAN CRAVALHO: Any other people who wish to testify on the matter come before? Ms. Krash.

MS. KRASH: Good morning, Chairman Cravalho.

CHAIRMAN CRAVALHO: Anything you say and committee. My name is Elliott Krash. I'm president of the Kula Community Association and an upcountry resident. And I would like to refer, first of all, to the testimony that Dick Mayer has submitted in writing. And Dick I believe referred to the upcountry plan which states that the highest priorities for water should be agriculture and Hawaiian homelands. And if I was understanding what you were just saying correctly, you were referring to how we need to keep in mind the goals for the island, for upcountry, for the region, and agriculture and open space are one of those.

And I think what Dick is saying and what our association has said on the record is how do we do this and how can we enact into the rules in a way that

will allocate the available water so that we recognize the priorities that the community has stated and asked for.

I brought with me a copy of the testimony that we presented when Mr. Starr's committee had the Operations Review Committee upcountry and this reiterates what I've just said.

And a couple of points I wanted to make. With regard to the meter issuance rule that was on the agenda at that meeting that night, we talked about the importance of having limits clearly specified in the rules. And it seems to me that you're proposed rule is doing that. In Section 06, you're limiting meter issuance to -- you're tying it to the quantity of water available and I've heard that discussed and mentioned here this morning.

We also talked about the importance of having clear rules for administering the waiting list and that's what you're doing here. But what I don't see is priorities. We talk about a priority list, but to me this rule is really talking about administering a waiting list. And I guess maybe I'm missing it here, but what are the priorities? And I come back again to Dick's testimony and the community association's testimony and other upcountry people, the priorities for agriculture, open space, and Hawaiian homelands. Thank you.

CHAIRMAN CRAVALHO: Thank you. The Chair appreciates very much Mr. Mayer's reminding us of our responsibility to carry out the provisions of the upcountry plan, the general plan with the county, and the responsibility and the charge that's given to the Board of Water Supply with respect to what its job is supposed to be which is to administer and execute the general plan of the County of Maui together with the community development plans.

I intend to ask the finance committee when it comes time for review of the budget, particularly with respect to capital improvements, to enumerate and explain how each item is carrying out the charge of the charter. That's going to be a very, very interesting kind of a situation. Very interesting.

Very pertinent.

Are there any other people who wish to --  
Ms. Raisbeck.

MS. RAISBECK: My name is Sally Raisbeck and I live in Wailuku. I have only had the opportunity since I arrived -- and I apologize for being late to the meeting -- to read the rule in detail. And I wondered if in Section 06 why -- it says, "During the period of this rule, additional source for the water system may become available that is not restricted to an applicant providing for additional source development." Does this then imply that any not just previous people who have made arrangements with the board regarding water for their subdivisions, but in future, too, there will be applicants from say subdividers who do a similar thing that Mr. Dowling did where they dig a well themselves and then exchange with the county and they would again still come before the waiting list? Is that the meaning of that?

MR. CRADDICK: Corp counsel.

MR. CRADDICK: Sally, that's what Hawaiian Homes is doing right now.

MR. FUKUSHIMA: This particular section is to provide for if there is additional water source that becomes available for distribution by the department.

MS. RAISBECK: Well, that's what I'm asking. If a developer comes to the board and says I will dig a well and then the water from that I will trade to the county or give to the county and then I get water meters in exchange for that, this exempts them from all the provisions of this rule; is that correct?

MR. FUKUSHIMA: It doesn't exempt them from all the provisions. It's not the -- the intent is not to exempt them from all provisions of this rule.

MS. RAISBECK: But doesn't it?

MR. FUKUSHIMA: No, I don't believe I read it in that fashion.

MS. RAISBECK: Well, maybe it should be made more explicit, then, because I think it can be read that way. And it also might be well in the language of that section, section 06, it says, "After the 60-day period set forth," et cetera, "the director shall process applications for water meters based on the priority list up to the average day capacity of any additional source." It doesn't in this -- it does in a previous section say it's one 5/8" meter per application, but it doesn't say that here and it might be more ironclad if it said it both places. Rather than "shall process applications for water meters," should say "shall process applications for one 5/8" meter per application." If it said it in this section as well as previously, it would be more ironclad.

And in section 07, "The regulations within the scope of this rule shall not apply to (a) applicants using source credits developed in the upcountry water system by agreement with the board." Again, is Section 16-8-11 referred to there, is that the case of say Mr. Dowling and similar developers?

MR. FUKUSHIMA: Uh-huh.

MS. RAISBECK: So that specifically exempts them.

MR. FUKUSHIMA: That's correct.

MS. RAISBECK: Yeah. And it also exempts people retrofitting with water saving --

MR. FUKUSHIMA: Prevents? Or permits?

MS. RAISBECK: It says the regulations do not apply to applicants retrofitting with low flow units. What does that mean, it doesn't apply to them? What part of it doesn't apply to them? All of it? Are they independent? Do they get water source credits and water meters?

MR. FUKUSHIMA: The intent behind that particular section is if the board allows that there is an agreement for a retrofit program, then that person making the retrofit retrofits that decreased water use will receive -- that these rules will not apply to them insofar as they will be able to get water service and it may be by way of a water meter, depending on their ability to retrofit and reduce consumption.

MS. RAISBECK: So if somebody has a hundred toilets, they reduce the water they use by retrofitting, how does that -- or maybe David could tell me, how does that -- or pardon me, Mr. Chair, perhaps Mr. Craddick could tell us how many water meters sort of add up -- how many low-flow toilets equal one water meter. Or is that how it works?

MR. CRADDICK: It shows right here.

MS. RAISBECK: Sorry, I don't have my reading glasses on.

MR. CRADDICK: On page 18b it gives the difference between the regular fixture unit and the ultralow flow fixture unit. And you have to refer to the uniform plumbing code to go from these fixture units to what a meter can handle. Or what flow --

MS. RAISBECK: If I had enough low-flow toilets, I could get another water meter?

MR. CRADDICK: That's basically what it's saying, yes.

MR. FUKUSHIMA: And the size would depend on how many low flow toilets --

MR. CRADDICK: Providing you and all of the people who do that agree to not increase their fixture units after this is done without getting on the list.

MS. RAISBECK: Well, I'm a little concerned

about these exceptions because I don't know how they would work out in practice.

CHAIRMAN CRAVALHO: We're not through with giving attention to these proposed rules. The Chair is going to recommend that we defer because we're not ready today. I would defer it to make sure that the basic intent and instruction of the board, which was to grant additional 5/8" meters and at the same time one per applicant.

Now, the section you just made reference to could conceivably be used to circumvent that one meter per lot and allow two, depending on what has been put together. But these kinds of refinements we have to work on. The basic intent is to proceed with additional meters.

Along that line, Mr. Craddick, perhaps you have provided Mr. Starr and his committee with the following information I requested of you which is a list of all pending applications for meters, all 800 of them. Secondly, all meters that have been granted and installed since 1 January 2000 in the upcountry system, in the affected areas, and the justification for each. Would you have any difficulty with that, Mr. Craddick?

MR. CRADDICK: I think it's possible.

CHAIRMAN CRAVALHO: They're supposed to have the list. Just pull it out and xerox it and you have it. So we should be able to have it for the members of the committee and the entire board so we have an idea what's -- only upcountry.

MR. NAKAMURA: Question. David, on the existing list, are those all -- each one of them is an application, an individual application for a meter? Or are some of those a single application for multiple meters in a subdivision?

MR. CRADDICK: Yes to the second part of your question. The first part of your question, the people are on the list to get a first meter, to up size

meters, and to get meters for a subdivision.

CHAIRMAN CRAVALHO: Inasmuch as we're making reference to the upcountry area, has there been any exchange or transfer from one area to the upcountry area of meters to which people may be -- or corporate bodies may be entitled? To wit, has A&B come in and said we believe that we're supposed to be getting another 500 meters in the central area, but we want to transfer the credit, transfer to the upcountry area. Haiku, Camp Maui, and other related areas in that jurisdiction. In other words, they have been able to transfer credits from here to what is ostensibly a shortage area and were able to get lots sold and meters given.

You don't have to answer me now. I think they were. And don't go squirreling around one subdivision versus another. I think they were. And maybe there have been some rationale to it.

Along that line, Mr. Craddick, this CIP primarily, if we're looking at the treatment plant's capabilities, 7.5, what would be necessary to increase that to 8 -- well, Board of Health says okay to 8 or 8.5.

MR. CRADDICK: During a drought.

CHAIRMAN CRAVALHO: During a drought. And to increase the capacity to 9, 10, what have you. Begin looking at it. Because that will have a very direct bearing on the amount of water that is available. Also, when we look at the dual water system upcountry, this first section is going in that is supposed to be providing water for the farming industry. How much water will be freed up -- treated water will be freed up? Where are they going to get their water from, Mr. Craddick? Ms. Raisbeck.

MS. RAISBECK: Yes, if I could add one little point. As I heard the testimony from the gentleman who spoke previously about family subdivisions, I know that it's possible with one 5/8" meter to run two households off it because we have an ohana cottage on

our lot with a single water meter for the two. And so long as it's family, I don't think there would be an absolute necessity for a second water meter even if you're dividing property between your children. But certainly for purposes of sale of the property and nonfamily arguments, you always would like to have two separate water meters. But if the property is an agricultural property and gets ag rates on water, it wouldn't even -- they wouldn't even get into the expensive range of the water rates. So I think it wouldn't be necessary -- I mean, the Chairman's suggestion about a lien on the property makes a lot of sense to me to ensure --

CHAIRMAN CRAVALHO: You know, sometimes if we're not take careful, we allow the milk of human kindness to overflow and drown. And if you aren't careful, this is where we're going to end up. Okay. You're all looking for a particular exception that may fit my particular situation somewhere along the line and that departs from what we're trying to do which is make it possible for guys to go and get meters primarily upcountry. It is not the massive subdivisions and this is the time to do it. Otherwise the pressure is going to become so great that everybody will be jumping and yelling how high do you want me to jump.

MS. RAISBECK: Thank you, Mr. Chairman.

CHAIRMAN CRAVALHO: Any other speakers? Mr. Starr?

HUGH STARR: Chairman Cravalho, Mr. Nakamura, my name is Hugh Starr and I've had a chance to review the proposed rules quickly and I'm generally in support of your efforts. I know it's a very difficult balancing act.

There is one area that I've had some exposure to that I think has somewhat fallen between the cracks and it may be a semantics issue, it may be an issue of how we've dealt with this in the past, and this is where you have a situation of an existing lot that may be part of another tax map key. And what's happened

in land patterns in Hawaii, as you probably know, is that the Hawaiian government was in the practice of selling land from about the 1850s to the present time but mostly in the late 1800s and early 1900s, they sold government lands and these were called grants oftentimes or land commission awards was another form of ownership.

And today when we look at the tax maps, one owner may own two or three or four of these grants within a single parcel. When the state tax office, when they created a tax assessment mechanism and assigned parcel numbers to lands in the 1930s, it was generally the practice over a period of time where I believe administratively and unilaterally the tax office would if two or three or four or more of these grants were owned by the same landowner, they would not assign additional parcel numbers to these other grants because they were the same owner and why have four tax bills instead of one, it was all going to the same place.

But in reality, when you look at the deeds of these properties, they are separate parcels, they are separate lots, and I would be very careful about that distinction between a lot and a parcel. They are separate lots. And therefore they are actually subdivided. They are not in -- when we talk about subdivisions today, we talk about taking a parcel or a lot and dividing it. But the reverse almost is true where you have one parcel that may already have four grants in it.

And what's happened is the collective memory of our Maui society is forgetting this fact and is attaching a great deal of credence to the parcel number. But in reality and, you know, the Department of Finance would be the first to acknowledge it, the purpose of that tax map parcel number is simply for taxation assessment purposes. It's not -- it does not in and of itself create lots.

So there is a dilemma here and I don't know that this is actually the right place to bring it up because I'm very sensitive to what the Chair is saying about the milk of human kindness overflowing and there are limits as to what we can do here.

But this is an issue that I've brought up with the department and I think the department's position is that -- the water department's position is that, well, you know, a lot of these grants existed before there was a water system in place. And that's an interesting argument because it's true, these grants predate the water systems. But on the other hand, one has to ask the practical question do we then go back and look at the justification when we got funding to create systems, were they referring generically to all lands within a certain area that would sort of grandfather these lots in? I don't know.

And is there a moral issue? I mean, in the sense that just because the tax office decided to lump three or four lots into one parcel, do we now say that it's actually just one piece of land or one lot for purposes of administering our laws?

With respect to the ag density that was just adopted a couple of years ago, they have used the parcel as the -- they picked a time -- a date in 1998 and said any parcel as of this date we compute our ag density on that. And they turned a blind eye to this fact of these grants. So what's happening is over time, the grants are losing their distinction, they're losing their autonomy, and I think it's primarily because people aren't aware of it.

So I just pose the question and I don't have a solution as far as how this might interface with the rules of this particular rule that you're struggling with now. But it does beg the question what is an applicant, what is a lot, and how does it bear in the situation of a lot that's been existing for literally 130 years and may not be entitled to a water meter.

So I look forward to helping you with this question if you need some help, I would be happy to do anything I can and I appreciate your deliberation on that issue. Thank you.

CHAIRMAN CRAVALHO: Mr. Starr, question, nothing to do with what you said. But you've been in real estate and you represent a variety of clients currently as well as in the past. I believe that in the upcountry plan, community development plan, there

was a proviso that water brought into the district I believe the district was making reference to the planning district. It may not be utilized in another district. Do you follow me so far?

HUGH STARR: I'm not sure I know what the planning districts are.

CHAIRMAN CRAVALHO: Well, whatever it may be. Whether it is strictly from [inaudible] or all the way Ulupalakua, but whatever that district is, that restriction was put in.

The vast amount of water that's available upcountry comes about as a result of our withdrawal rights from the Wailua ditch. In that Memorandum of Understanding, there are, as I recall, some restrictions as to what that water could be used for, primarily agriculture and in the area.

If both of these are basically correct, how then, if at all, water that's taken into the Kula/Upcountry area, that particular planning district, be utilized through the water system to go beyond the boundaries of that district, would not or would the same restrictions prevail. Or couldn't the water then be used for -- first of all, could it go to that district, second district. And if it could, could it be used for a purpose other than those purposes set up in the priority system?

The reason why I mention this because I think indirectly sooner or later it may hit you or some of your clients, particularly over in the Ulupalakua, Kanaio, Kaupo areas. Discussions have taken place with respect to increasing the size of the transmission line. And I'm saying this not just for your benefit, but staff and the director, that this going to rear its head. When a proposal is for a 6" or 8" or 12" transmission line, is that or is that not a subdivision transmittal line? Okay. You don't have the population in that area today to warrant an 8" or 12" line. And if such is the case, wouldn't or would an EIS be required? You get the drift? You get the drift? That's what's going to happen. Just as sure as your name is your name, that is going to happen.

If we haven't learned a single thing yet from the tie-up of East Maui for six to -- four, five, going to six years, and perhaps longer, if you aren't careful, all of us who deal with water, water meters, utilization of land, going to face the identical problem there all over again. And if in any of your discussions -- I don't ask you to answer this -- if any of your discussions with any of your clients maybe may have hinged on this potential, be aware. Be aware. It is coming. If we go that route, it is coming.

HUGH STARR: Excuse me. So for clarification, what you're suggesting is that if an EIS is required then that will work its way backwards to the MOU at Kamole weir?

CHAIRMAN CRAVALHO: You better believe it.

HUGH STARR: I wasn't aware that the withdrawal -- are you suggesting that the water that the water department is entitled to should only used for ag purposes?

CHAIRMAN CRAVALHO: I believe there are some restrictions in there. And the area for which it's supposed to be used.

HUGH STARR: I see.

CHAIRMAN CRAVALHO: Am I right, Mr. Craddick?

MR. CRADDICK: Yes.

CHAIRMAN CRAVALHO: That agreement was very wisely put together so that it doesn't become a bonanza to anybody and everybody. Water is a resource or an asset, I think. It belongs to the public. It needs to be kept as such. Makes sense. Maybe not financially. Makes sense. Think about it. Any other comments. If not, we'll take all matters under deferment. Any other business to come before this body? Meeting is adjourned.

(WHEREUPON, the meeting was adjourned at 10:40 a.m.)

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