

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
OVERSIGHT COMMITTEE MEETING

Taken at the David Trask Building, Conference Room 207,
Wailuku, Maui, Hawaii, commencing at 9:00 a.m. on
August 10, 2001 pursuant to Notice.

REPORTED BY: GLORIA T. TAVARES, RPR/CSR #262

ATTENDANCE - Board of Water Supply Meeting, August 10, 2001

Members present:

Michael Nobriga, Chair

Kent Hiranaga

Clark Hashimoto

Jonathan Starr

Orlando Tagorda

Howard Nakamura

Staff present:

David Craddick, Director

George Tengan, Deputy Director

Mike Quinn, Finance

Howard Fukushima, Corporation Counsel

IWADO COURT REPORTERS, INC.

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CHAIRMAN NOBRIGA: This is Mike Nobriga. I'm going
to call to order the oversight committee of the Board of Water
Supply. It's 9 a.m. We're in the HGEA conference room, David
K. Trask Building, we're in room 207, which was made
available.

In attendance we have board member Kent Hiranaga;

Clark Hashimoto; Orlando Tagorda; myself, Michael Nobriga; Corporation Counsel Howard Fukushima; Director David Craddick; Deputy Director George Tengan; head of finance, grand Pooh-Bah of buckaroo, Mike Quinn; and the court reporter. And in the audience we have Will Garvin representing the whole Island of Maui.

We have, for your pleasure, minutes, which is quite surprising, but nevertheless like to have for our meeting, our oversight committee meetings on May 16th and June 6th of this year. Members, may I have a motion to accept the minutes as presented subject to a 30-day review at which time those minutes should be filed.

MR. TAGORDA: So moved.

MR. HASHIMOTO: Second.

CHAIRMAN NOBRIGA: Moved and seconded. Any discussion? Hearing none, all those in favor signify by saying "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

The motion is carried.

We have testimony from the public listed on our agenda. Is there any persons wishing to testify on any subject matter before the oversight committee? Okay. We're moving on to item 5, Committee Discussion and Recommendation. First item, Communication 01-22, a request from Thomas Welch on behalf of John Elder for a waiver of the fire protection requirements. We have representing Mr. Elder, Mr. Will Garvin.

Mr. Garvin, you have the floor. Any questions?

Okay.

WILL GARVIN: I'm not supposed to talk today. I'm supposed to be here at the request of Mr. Welch, because he is supposed to talk and I'm supposed to be there in case there's a question that I can answer. That being the case, if there's a way we could put this off until Mr. Welch finds his way here, I would appreciate it.

CHAIRMAN NOBRIGA: That would be no problem.

WILL GARVIN: He did tell me to go to room 205 of the big building. I'm expecting him to figure it out.

MR. CRADDICK: What building?

WILL GARVIN: The county building. So I got there and I thought maybe one of us was dyslexic, so I tried to find 502, and I was told it was over here. I expect Tom to be here. If we get to the end and I have to speak and he is not here, I can say things. But I don't know exactly what he is going to say; so therefore I know what I can say, but I don't know how well that matches with him.

CHAIRMAN NOBRIGA: No problem. If there's no objection, we shall move item A to item B and move item B to item A. Is there any objections? So ordered.

Item B, we also just have in attendance our new person. Can you identify yourself, ma'am?

MICHELE REED: Michele Reed.

CHAIRMAN NOBRIGA: Michele Reed?

MICHELE REED: Correct.

CHAIRMAN NOBRIGA: All right. Yeah, perfect timing.

MICHELE REED: I could not find a place to park, it's all reserved.

CHAIRMAN NOBRIGA: Yes. Okay. Communication 01-23. This is a communication from Michele, who is present, and Chris Reed regarding the ownership of a water meter, tax map key 2-8-002:082. We did receive via facsimile late, late, late breaking, a 61-paged document; but in order to try and summarize and move forward with the request, I would like to ask Michele Reed to provide us with an opening statement.

MICHELE REED: Basically, I'm just here hopefully to get assistance from the county, because we have owned this property for nine years. We have been corresponding in writing through attorneys verbally for over eight years, trying to get

these people off of our water meter and to get their own water, and to date they have not done so.

And it doesn't appear to me that they are going to unless there's some sense of urgency, and we have given them innumerable deadlines in writing, but that doesn't mean anything. If we cut the line, they told us they will sue us. We're in a Catch-22. We can't market our property; we can't sell it. Even though it's on a legal easement, they are refusing to get off of our water meter.

I lived in (inaudible) for several years and we had a catchment and we had a well. So I guess their options are a catchment, a well, or try to get their situation together to come together and do this water meter.

They have gotten -- Mr. Craddick has been helpful, he has given them more help than going down the county trail for a certain distance. But it seems like every year there's another problem and the reality of it is that they have not tried to do anything until probably in the last year.

And now they are saying one of the parties refuses to contribute financially, so it's kind of like we're back to ground zero. I feel we're always going to be back there.

CHAIRMAN NOBRIGA: Gloria, is she okay back there?

THE COURT REPORTER: Yes, I can hear her.

MR. HASHIMOTO: What's the situation? Do they have to be on the list, these people that is using the water meter? Can they get a water meter if they improve the lines and have the easements? Or can they get a meter? Do they have to be on the list? What's the situation?

MR. CRADDICK: We'll go over this a little bit since it was sent out late. I think Orlando did not have a fax where we could fax it.

MR. TAGORDA: Thank you, Mr. Craddick.

MR. CRADDICK: Basically this situation here is the same as the previous one, that's a court ordered partition. That's how it came about. And I believe it's 1994 or '92, I forget what time we met with the group, but --

CHAIRMAN NOBRIGA: There's a reference of 1990 meeting in the --

MR. CRADDICK: Not 1990. 1992 and 1995.

CHAIRMAN NOBRIGA: -- in the department's recommendation.

MR. CRADDICK: Well, I'll just say the early '90s. I can't really remember when it was. But basically we told them then that the service cannot be serving these other lots. Our records show it was for the one lot that Reed is on. They cannot be serving the other lines. They said they were going to get the line fixed up.

And these are all existing lots; they existed prior to the Kula rule -- well, this is not in the Kula rule regulated area. It's in Haiku. They are all existing lots and we told them if there's a line adjacent to the property, an adequate line, we would give them meters. And they have gone about designing that.

My understanding, if you look in bold on the bottom of the second page, the construction plans are nearly complete. The property owners, I guess they are still getting easements from EMI. Because the drawing, if you look at the drawing on --

CHAIRMAN NOBRIGA: Do you have these, Orlando?

MR. TAGORDA: I'm trying to --

CHAIRMAN NOBRIGA: Do you have these documents?

MR. TAGORDA: Now, I guess.

CHAIRMAN NOBRIGA: Now, you guess?

MR. TAGORDA: Yes.

CHAIRMAN NOBRIGA: Thank you.

MICHELE REED: May I say something?

CHAIRMAN NOBRIGA: I'll allow you a time to speak again, but I'll prefer if we could let Mr. Craddick finish his

statement. Thank you.

MR. CRADDICK: This picture here is where the line is, it's off of Kaupakalua Road. And the county road, I guess, goes down to that junction between Kawelo and Kupuna Road. That's what the county had set some kind of responsibilities for.

The rest of the road is what they called a paper road. It's on EMI property and EMI is saying they will give them an easement for it. The issue about whether some people will participate in this line extension, you know, I can't really tell you much about. You would have to talk to the Reeds about that.

MR. HASHIMOTO: They will have to pay for the improvements?

MR. CRADDICK: Yes. It was a subdivision that did not meet the requirements back when it was subdivided. I'm not quite familiar with the rules of how they did it, but apparently the court ordered it and did not necessarily waive them from our subdivision requirements.

CHAIRMAN NOBRIGA: Mrs. Reed?

MICHELE REED: What I want to say is, ironically enough, back in 1987, the other parties that were part of the subdivision all got together and they made an offer to these three property owners to participate in getting their own meters. And in 1987, it would cost each family \$2,000 and they refused to do so.

Now, because it's escalated, of course, their contention is now it's too expensive, they can't afford to do it. But that's not really our problem. And part of the problem is one of the parties is refusing to participate whatsoever. And the most recent correspondence I got from Mr. Vitarelli (phonetic), he said that yes, Mr. Craddick gave him the easement through the county road.

EMI is now saying they don't think they own that other property. They think it might be owned by the subdivision that we're all on. So now they are pursuing that. It's just that I don't know where I see an end in sight here, is what I'm saying. This already has been eight years. It seems like every year it's something. I just want to solve it.

CHAIRMAN NOBRIGA: I have a few questions. One question is for Mr. Fukushima. Do the Reeds have a legal recourse in this matter that they could pursue?

MR. FUKUSHIMA: I suppose there is under a theory of -- no agreement, some kind of trespass. I'm not sure. But I would imagine that there is some theory by which they could attempt to get these other people off their water.

Let me also remind the committee, however, that this particular installation is contrary to the department's own rules. That you have one meter serving a number of properties which essentially is not a private system. They are just hooked up to this, to the Reed's meter contrary to the board's rules.

CHAIRMAN NOBRIGA: I understand that. The second question that I have is, what is the reason for this being before this committee for recommendation to the board?

MR. CRADDICK: They wrote a letter to the board, that's all.

CHAIRMAN NOBRIGA: That's the only reason?

MR. CRADDICK: That's the only reason, as far as I can tell.

MR. FUKUSHIMA: If I may, Mr. Chair. This appears to be more of an operational problem; something to do with the enforcement of the rules, which is part of the day-to-day operations of the department. The rules are in place for the department to enforce.

Now, I understand that in the enforcement of this particular rule, it's going to put a hardship on persons that are hooked up to the line improperly or illegally. And I believe the department has tried to resolve their predicament if they are removed from the line. I can't comment as to whether they would be entitled to water meters as existing lots. I don't have sufficient facts to make that determination.

However, I remain of the belief that the department would be enforcing its rules if it required those other services to get off.

CHAIRMAN NOBRIGA: Thank you, Mr. Fukushima. Orlando?

MR. TAGORDA: I just got a lot of these facts today, Mr. Chairman, but I read Mrs. Michelle Reed's letter, June 15th to the Board of Water Supply chairman and members. While there is in that letter a threat made by I don't know who, can you recall when that threat that the department might take away that meter from you? Was that recently or was it nine or ten years ago?

MICHELE REED: My husband -- I think Mr. Craddick will recall, my husband had a meeting with Mr. Craddick and his associates, which was two or three years ago, for the purpose of trying to resolve this issue. He was asking the county to support us in issuing a cease and desist order to get these people off of our line.

Pursuant to the correspondence we got from the department, they seemed to agree what they were doing was illegal. We were trying to bring the property up to code, make it legal, make it right so that, number one, we could live there; and number two, make it marketable.

During that meeting, I was not present at the meeting and I apologize my husband is not here today, he had to fly. But we were basically told that the county was not willing to get involved in that respect, that they would help the Vitarellis, Bronsons, and Brunos (phonetic) try to solve the problems the best they could.

But they advised my husband that (a) we should not cut the line; that we would be opening ourselves up for a lawsuit; and that (b) the county did not want to pay for the position to get involved in doing a cease and desist order. That's kind of where we stopped and we were trying to work with them to be nice and neighborly and give them another three or four years, but we're getting nowhere.

MR. TAGORDA: There was a mention of submeters being used by 30 or more consumers below your property. How are these people paying the water usage?

MICHELE REED: They are paying the whole bill right now. Because when we first bought the property, every month there was a huge argument over who was going to pay what part of the bill. If you look at our bills back then, they were \$3- or \$400. It was insane for one water meter.

There were four people living on our property, there's 30 to 35 living below us on submeters. So every month there was a discrepancy as to who would pay what amount. We were always asked to pay a third, which made no sense, because there were four residents on our property versus 35 down below.

At some point, three or four years ago, the Vitarellis, knowing how frustrated we were and how it caused dissents every month, said that, We'll collectively pay the bill for now, we are inconveniencing you. Every time we have a break in the waterline you guys are without water. And that happens because it's an old line. So they have been paying the bill because they asked to, because they weren't in a position to move forward and get their own water.

MR. TAGORDA: Mr. Chairman, and I would like to address this question to our director. It's been three to four years ago that you were made aware of this problem, Mr. Craddick, why is it, then, that there was no immediate action from the department to resolve this issue? And you know that there was a clear violation of our rules and regulations.

MR. CRADDICK: As I said in the report, we have tried to let them fix it up. They said they were going to fix the line up. We tried to work with them to get them to do that. The drawings are pretty much done. There is this easement problem, but even on our jobs it takes time.

To me, as long as they were working towards getting the system fixed up, I didn't feel it would be proper to go in and pull the meter or have some people without service while they were working towards getting that line fixed up.

MR. TAGORDA: What would be your reaction, Mrs. Michelle Reed?

MICHELE REED: What is the --

MR. TAGORDA: What would be your reaction if the committee recommends immediate action to removal of your meter?

MICHELE REED: Removal of my meter? Why would my meter be removed?

MR. TAGORDA: It's a recommendation because you are using it, you know, and supplying water to lots that are not supposed to be supplied with water. It's a violation. And the only thing you can do is to take the meter away from you, and then we can resolve the problem.

CHAIRMAN NOBRIGA: Mr. Quinn?

MR. QUINN: I guess Mr. Tagorda is referring to our rule which does state that that is the penalty, removal of the meter.

MICHELE REED: That's why I received that correspondence in '93; that's why we wrote to those people; that's why we got an attorney; that's why we met with Mr. Craddick, because we were asking the county to enforce this, because we didn't want these people on our line. We did not want them on the line since day one. So how could my meter be removed? That doesn't make sense.

MR. HASHIMOTO: You said there was a verbal agreement between the owner --

MICHELE REED: Gordon Daniels, are you familiar with the name? He was a county -- he was permits division or something -- people on the property. Mr. Daniels had been deceased, his wife sold the property to us. There was no written anything about water.

What happened was, back in '87 when these people refused to spend the \$2,000 like everybody else spent to get their own meters, Gordon, being the nice guy that he was, because they were all friends from Palau, said, Fine, you can use my line until you get your act together to get the money to put your own lines in. That didn't happen, Mr. Daniels died, his wife then turned and sold the property to us.

Immediately she and a Realtor told these people, The property has been sold; you have to get off the line. We got the water meter put in our name in '93, we immediately started this whole process of writing letters, visiting with these people, going to the county. We just can't get them off of our line. I'm afraid to cut the line, I'm afraid they will sue me. I don't have the resources to fight that.

MR. TAGORDA: May I read, Mr. Chairman, what I'm trying to say to this. In our rules and regulations, 103-04, Section F, water service rates. Providing water service to lots other than the lot to which the service is assigned is removal of the meter. That's very clear in our rules and regs.

MICHELE REED: That's why we asked for help.

MR. CRADDICK: The rule Orlando is referring to was not enforced back when this situation occurred. What was enforced then was you cannot sell water. And we have by her own admission that all the other people are paying for not only their water but the Reed's water. That's what's illegal in this situation under the rules that were enforced at the time this occurred, is the selling of the water. you transpose that back to when the subdivision formed or when the meter was put in or when these other people connected up, I would have to leave it up to Howard to decide how you jump to that new rule. But certainly, it said you couldn't sell water and we have information that water was being sold.

CHAIRMAN NOBRIGA: Yes, Clark.

MR. HASHIMOTO: Mr. Fukushima, can they sue the Reeds for cutting off their lines when it's kind of cut and clear? Can they get sued?

MR. FUKUSHIMA: The easy answer is, sure they can get sued. But whether they would prevail -- I wouldn't even want to hazard a guess. On the surface it looks like they don't have a case. But again, I don't want to guess. It would be speculation on my part.

MR. HIRANAGA: Mr. Fukushima, when did the rule that Orlando just cited become adopted?

MR. FUKUSHIMA: I believe it was 1997.

MR. QUINN: That's correct.

MR. CRADDICK: That's right. It was put in place to

replace the one that said you can't sell water. So it was trying to do the same thing, basically stop water from going across lot lines. But it was much harder to prove that somebody was selling water. But we now have it on the record that water is being sold and was being sold.

MR. TAGORDA: It's based on her testimony that there was submeters below her property line. That means they are paying for that water usage.

MR. CRADDICK: Just because there's a submeter doesn't mean they are paying for it.

MR. HIRANAGA: Mr. Chair, my feeling is, since the department was aware that there were multiple users on this meter when the new rule was adopted, they should have provided them notice that within a specified time period they need to remedy the situation or they will be in danger of -- and one or two years should have been sufficient and we're now four years later.

CHAIRMAN NOBRIGA: Even more perhaps. I think some type of a specific period where the owner of the meter needs to remedy the situation should be an order. If they fail to do that, then they are in danger of forfeiting their meter.

I would like to at this time recognize the attendance of Kogasaka and Chang from the department, and also board member Starr, Mr. Welch, and Captain Bal, from the Maui fire department.

Getting back to the communication. The Reeds -- the Reeds, yeah? I get confused sometimes. The Reeds are asking for assistance in somehow clearing up the problem that they know exists, they are working with the department and they have written a letter to the board asking for us to assist them.

I have another question for Mr. Fukushima. What action or actions would be within this board's jurisdiction relative to this matter?

MR. FUKUSHIMA: Quite frankly, I don't think the board has to take any action. It is the department's responsibility to make sure their rules are enforced.

Now, of course this places the burden on the Reeds to get these other people off of their line. I'm a little

surprised by some testimony by Mrs. Reed regarding the 32 submeters.

MICHELE REED: There are three families down below us. Oh, no, 32.

CHAIRMAN NOBRIGA: I heard 30-something.

MICHELE REED: There are three parcels down below us that are on our --

MR. FUKUSHIMA: On these parcels, there's a total of eight dwellings including yours?

MICHELE REED: There's two dwellings on my property, there's one bi-level dwelling on the Brunos and they are absentee owners; they rent out both of those units. Then there's a house, an apartment on the other property, Bronson's, and she rents out the whole thing, she doesn't live there. And then the Vitarellis I think have six houses on their property. There's about 25 to 30 people living on that property and they do bed and breakfast too and rentals.

CHAIRMAN NOBRIGA: There are ten structures?

MICHELE REED: About ten.

CHAIRMAN NOBRIGA: And this is with --

MR. HASHIMOTO: One water meter.

MICHELE REED: Correct.

MR. CRADDICK: Five-eighths meter. There's a lot of court ordered partitions that are out there --

MR. FUKUSHIMA: If I could comment on that. Since I believe the law took effect in 1974, these court ordered partitions, where a subdivision was the result that it would have to get county approval. But before that, none of these partitions came before the county departments for review or approval.

This partition took place in 1973, so hopefully

we're not going to have the problem in the future, but there are these past problems that still have to be resolved.

MR. TAGORDA: Mr. Chairman, just like what the corporation counsel said. We don't need board action here. I think what the department should really do is to work with the corp counsel and with due diligence enforce our rules and make sure these issues are resolved legally.

CHAIRMAN NOBRIGA: Yes, Mr. Craddick.

MR. CRADDICK: It might help us to have the force of the board behind us saying to enforce the rules in an expeditious manner. If you feel you need to do something, that would certainly help us. If you can, you could make that recommendation.

MR. FUKUSHIMA: The committee could make the recommendation, Mr. Chair, if it wanted to.

MR. TAGORDA: What's our recommendation?

MR. FUKUSHIMA: Urge the department to enforce and uphold the rule in question.

MR. HASHIMOTO: Make a motion.

CHAIRMAN NOBRIGA: State your motion again in the form of a motion for me, please. Yes, Mr. Kent.

MR. HIRANAGA: In order to possibly avoid similar instances from coming before the board, would just a communication to the director suffice versus having a -- would a communication from the board to the director requesting him to enforce the rules as stated suffice versus having the board having to make a recommendation -- the committee having to make a recommendation to the board?

CHAIRMAN NOBRIGA: Who are you asking? Howard?

MR. HIRANAGA: The chair.

CHAIRMAN NOBRIGA: Okay.

MR. HIRANAGA: Or Howard.

CHAIRMAN NOBRIGA: It's the chair's feeling that the director always has that --

MR. HIRANAGA: Why do we need to vote on it?

CHAIRMAN NOBRIGA: It's a redundant kind of issue almost. Well, to me.

MR. HIRANAGA: Taking up the board's time.

MR. CRADDICK: The risk of extending this further on, I think what it is, once we send the letter to the Reeds that their meter will be removed, they are affected, along with everybody else, and then they will come to the board, Oh, my meter was removed.

And I think it helps when they get a letter from me saying that the board wants the rules enforced, they then in turn can show that to the rest of the people in their unit that, Hey, this meter is going to go, we're all going to be affected if you don't get going and do something. So it just helps to know that all of us are together, I think.

And it certainly has a lot of force and effect going out and knowing that they are not going to be able to come back to the board, saying, Hey, my meter was removed and I'm hurt in this thing.

CHAIRMAN NOBRIGA: Yes, Clark.

MR. HASHIMOTO: That's why we have the rules to enforce. I think we should reinforce the rule.

MR. CRADDICK: Okay, we'll do that.

CHAIRMAN NOBRIGA: What's the committee's pleasure?

MR. TAGORDA: Just like I said before, Mr. Chairman, the committee would like to just recommend that the director and the department staff enforce our rules with due diligence. With this complication now, I think they need to get corporation counsel's advice on this matter. With the help of

corporation counsel, you got to enforce the rules of this department.

CHAIRMAN NOBRIGA: Is that a motion, Mr. Orlando?

MR. TAGORDA: I'll make it as a motion, Mr. Chair.

CHAIRMAN NOBRIGA: Thank you. Is there a second?

MR. HASHIMOTO: Second.

CHAIRMAN NOBRIGA: The motion is to recommend that the director and department staff enforce the rules in due diligence in cooperation with the corporation counsel with the County of Maui; is that correct?

MR. TAGORDA: That's correct.

CHAIRMAN NOBRIGA: Any further discussion?

MR. HIRANAGA: Point of clarification.

CHAIRMAN NOBRIGA: Yes.

MR. HIRANAGA: Have you identified -- is this under the oversight committee or rules committee?

CHAIRMAN NOBRIGA: These matters were, what you call, were sent to the oversight committee. This is the first oversight committee scheduled since that thing, the transfer. So this is currently an oversight committee and we're trying to finish up the last two items on our docket.

MR. HIRANAGA: Could you identify who is on the oversight committee?

CHAIRMAN NOBRIGA: That would be Orlando Tagorda, Clark Hashimoto, and myself.

MR. HIRANAGA: Okay.

MR. HASHIMOTO: That's the original.

MR. HIRANAGA: So we're not --

CHAIRMAN NOBRIGA: Yeah.

MR. HIRANAGA: Just wanted to clarify so --

CHAIRMAN NOBRIGA: Okay, thanks, huh. Ready to vote? All in favor say "aye."

(A chorus of ayes.)

Opposed "no."

(No response.)

Motion is carried. Hopefully the director will help you get rid of those guys.

MICHELE REED: So my future correspondence should be with Mr. Craddick?

CHAIRMAN NOBRIGA: You got it.

MR. CRADDICK: You'll get a letter from us.

MICHELE REED: Where does that leave me?

MR. CRADDICK: It leaves you without a meter if -- well, anyways, we can work on that.

MR. FUKUSHIMA: If I may, Mr. Chairman. Mrs. Reed, what, in essence, the board is saying or this committee is saying is that you have remedies to get these people off the line.

MICHELE REED: I have remedies?

MR. FUKUSHIMA: Yes. And that the board enforcement of its rules means it's going to take your meter. So it would behoove you to go back to your attorney and have him start some actions to get these people off the line.

MR. CRADDICK: Or participate with them to get it in.

MICHELE REED: Why should I have to pay for a meter that I already own? I don't understand that.

MR. CRADDICK: I don't know how the people got on there originally. That's the owner -- previous owner and them.

MICHELE REED: But it's not legal.

MR. FUKUSHIMA: No, but the remedy for the department, if there is a breach of the rules, is to remove your meter. And so it's in your best interest to get these people off of your line.

MICHELE REED: That's what I've been trying to do. But if I cut the line, they will sue me and I can't afford to hire an attorney to fight them anymore. How can I lose a meter that I own? I'm confused.

CHAIRMAN NOBRIGA: I'll call for a five-minute recess at this time.
(A recess was taken.)

CHAIRMAN NOBRIGA: We'll call this meeting back to order. We'll go to item B, which was item A, on Communication 01-22, which is the request from Thomas Welch on behalf of Mr. John Elder for a waiver of fire protection. And Mr. Welch is consulting outside. This matter is requesting a waiver of requirements set in Section 3-1 E of the department's rules. Mr. Welch, could you please start us up?

THOMAS WELCH: Good morning, Mr. Chairman, members of the board. Thank you for deferring us to the second item, and I apologize for not having been here on time.

This is a request for modification from the strict application of the fire flow requirements for John Elder. This is a lot in Haiku in a subdivision called Kokomo Vistas. And the lot is about 4 acres, 3.92 acres.

Mr. Elder on the property has a full-sized residence, he has a swimming pool with a second structure on the site, which consists of an open gazebo or cabana-type structure which is upright and open, and it has a roof on it to get out of the sun, by the pool deck.

And what he wants to do is to put up a storage or a barn on the property in connection with his agricultural activities on the property. He has kind of a small working farm. He does tropical flowering, plants, palm trees, fruit

trees, and fruit, and he supplies several vendors and stores and so forth, primarily in the Paia area. So he does have a bona fide agricultural business on the property.

And the purpose of this third structure is to serve as a shed to store his farm equipment and also to do some potting operations in connection with his plant sales. And the structure that he proposes is 1680 square feet.

Excuse me, I should introduce Will Garvin, who is John's engineer here with me today.

It is not a residence; never will be. It's not requested to be a residence; it's not intended to be requested to be a residence. But the problem arises because it's technically a third structure on the land and it triggers the fire flow requirements. So that's why we are here before you.

The fire flow requirements to be able to put up the storage building requires the installation of 2600 feet, 2600 lineal feet in this subdivision of fire flow line at a cost of approximately \$450,000. How this subdivision was approved in the beginning without adequate fire flow, I have no idea. I don't know how old the subdivision is, but it's apparently inadequate for this area.

However, to solve the fire issue, because certainly Mr. Elder does not want to be subject to any undue risk of fire or to jeopardize his insurance, he has installed a standing hydrant at his swimming pool to be available as a hydrant for fire flow on-site storage purposes and he has 40,000 gallons in the swimming pool.

Will Garvin talked to the fire department late last year, reviewed the plans and so forth, and Leonard Nemchek (phonetic), the captain of the Fire Prevention Bureau, said that it was okay, that the on-site fire protection was adequate for the needs of the department. And I submitted with my letter of June 7th a copy of his letter dated December 1, 1999 and a further letter dated February 10, 2000, concerning the hydrant.

We're simply requesting that the board approve a modification based on the representations and the assurance that the fire flow is adequate.

Now, I did have an opportunity to talk to Captain Bal before we started, and he can certainly testify. But we discussed the fact that he was here on this matter and another matter and that it would be his inclination, perhaps, to argue against this.

I discussed with him Captain Nemchek's letter and so forth, and Captain Bal said maybe from his standpoint he would like to have further opportunity to talk to Captain Nemchek and look at the site and so forth. And we have no objections if the board wanted to defer it for that purpose.

CHAIRMAN NOBRIGA: Captain Bal?

CAPTAIN BAL: I do have another concern and the reason I was going to ask to defer this matter at this time is to actually have a site view of this thing. And from what I have gathered so far is that this is a bona fide subdivision and there are houses built in this subdivision.

Now, generally speaking, when you do have a subdivision, as soon as you pick up a third structure, you are required in the water and in the fire to provide fire protection throughout this area. And now I'm informed that there are already houses throughout this subdivision with no fire protection at all. And this, of course, sheds a different light on this whole problem at this time.

I believe Mr. Elders' parcel alone is not the question. It's the entire subdivision that does not have any protection whatsoever and that's where we have a problem. Thank you.

CHAIRMAN NOBRIGA: Thank you, Captain. Members, any questions? Orlando?

MR. TAGORDA: Mr. Welch, you mentioned about a pool that contains 40,000 gallons of water.

THOMAS WELCH: Yes.

MR. TAGORDA: Would you explain to us how will that pool serve as a fire protection?

THOMAS WELCH: Will can probably answer this in more detail, but I believe the fire department is able to use on-site stored water if there's an appropriate hydrant to hook up to. And we have installed a hydrant in a location that's connected to the pool, that can draw all of that water from the pool through the on-truck pumping equipment from the department. That's how I understand it, but I would defer to

the experts, of course.

MR. TAGORDA: My question is, then again, on the fire flow demand, using that swimming pool with 40,000 gallons, did you folks hook up some pump appurtenances to make sure that the fire flow requirement is being met?

THOMAS WELCH: Yes. We didn't hook up a pump, but we hooked up -- we created the hydrant so the pumper on the fire truck can hook up to it, and then -- I think that's the procedure fairly routine for using on-site stored water for fire fighting.

CHAIRMAN NOBRIGA: Mr. Fukushima, please.

MR. FUKUSHIMA: Mr. Chairman and committee members, this request is a request for a waiver of Department Rule 3-1 E, I believe.

CHAIRMAN NOBRIGA: Yes.

MR. FUKUSHIMA: It's our position, and we have expressed the position before to the board, that waivers or variances from department rules without proper procedure or a rule regarding appeals or variances in place is improper. That this is a request for a waiver of the rule that the department's rules do not allow at this time.

There is an opposed rule before the rules committee dealing with appeals. Mr. Welch apparently is basing his request on rule 2-12, which is waivers from subdivision requirements. We do not believe that 2-12 applies in this particular case.

Again, we do not believe that an appeal process, a proper appeal process is in place to appeal the director's decision regarding rules that do not involve subdivisions.

CHAIRMAN NOBRIGA: Mr. Welch?

THOMAS WELCH: Mr. Chairman, I won't debate that. I have always felt that that rule applies and I think it has been applied, but rather than argue the technicality, may I suggest this.

Coming back, if Captain Bal is okay with this

particular circumstance, and if the board feels that it's a fair disposition of the matter, could I at least ask the board to pass a resolution that would say that while the board is not authorized to grant it directly, the board would -- a matter of policy, the board or the committee would not object or take a position against it in a request for a variance before the Board of Variances and Appeals?

CHAIRMAN NOBRIGA: Is there a Board of Variance and Appeals that's not with us?

MR. FUKUSHIMA: Are you talking about a variance before the BVA or an appeal before the BVA?

THOMAS WELCH: I think it asks for variance.

MR. FUKUSHIMA: I'm not particularly sure and I don't have my code with me that if the BVA has the authority to grant variances from department's rules. It can grant variances from zoning, general plan, building codes, and subdivision codes, but I don't believe it includes department's rules.

THOMAS WELCH: There are three variance areas that I am aware of. Number one is that. And I thought that was broad enough but we can check it. It just occurred to me it may be the avenue. Number two, the rule you cited with respect to subdivisions for the board.

And number three, there's the provision that the building code that allows the director of public works to waive requirements preconditioned for building permits if the public interest is met based on the public interest being protected in unusual cases. You and I have talked about this before.

MR. FUKUSHIMA: But not in regards to water.

THOMAS WELCH: I know that. But I find it hard to believe that there is no basis for modification of a building code type requirement in this kind of a situation. I think you've granted relief from this kind of thing before. I think, for example, Neihaus (phonetic) was an example that's been before this board for years.

MR. FUKUSHIMA: It has not been granted, though.

THOMAS WELCH: Oh, it had not been granted. I thought it had been. It's certainly not an unreasonable -- not an unreasonable request. But I don't know if there's any solution. I have to go back and think about it and you and I can talk about it.

But let me suggest this. This is a lot in a subdivision. We're talking about, as Captain Bal has mentioned, that this is a subdivision matter. There are houses in this subdivision. We're talking about a fire flow that relates to this subdivision and will serve this subdivision and should have been put into this subdivision if the rules required at the time the subdivision was being processed.

Therefore, this is enough of a subdivision for this board to be able to grant it, because it is in connection with a subdivision. It's a subdivision matter. Sure, this is not the subdivider, but it is a subdivision. Now, I think maybe we do come under that rule, Howard.

MR. CRADDICK: We tried that argument before.

CHAIRMAN NOBRIGA: Gentlemen, in light of the testimony before us, the chair recommends that this matter be referred to the rules committee, at which time Captain Bal will have appropriate time to review the situation and give us a report back and then we can handle this in the rules -- yes?

MR. FUKUSHIMA: If I may, Mr. Chairman. On the rules committee agenda today, is a rule, a proposed rule regarding an appeal process. If that rule is adopted, then that would be the vehicle that Mr. Welch and Mr. Welch's client can appeal to the board on decisions made by the director. The problem is that rule is not in place.

CHAIRMAN NOBRIGA: Right.

MR. FUKUSHIMA: Our understanding of the law is if there's no rule regarding an appeal, any relief to an applicant must be in circuit court. We believe -- we expressed this time and time again, we believe having that rule in place so the board and the board's committees can consider matters such as this. That's why we believe that rule is very important to be

in place.

CHAIRMAN NOBRIGA: I was going to recommend that the board transfer this item to the rules committee because it dealt with a request for modification and waiver of a rule. Not because of the appeal process, but because of that part of the request. And also to allow the fire department to do an on site. But should we pass the appeal, then yeah, we could do that too.

CAPTAIN BAL: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Captain.

CAPTAIN BAL: I believe one of the questions to this board should be, as far as the subdivision is concerned and I'm going to ask the question, why is it -- why wasn't the rules observed as far as having the fire fighting equipment when this was developed at the time?

MR. CRADDICK: I can answer that one.

CHAIRMAN NOBRIGA: No, but thanks.

MR. HIRANAGA: I have a question for the director. If Mr. Elder were to remove the gazebo, would he then be allowed to build the storage building?

MR. CRADDICK: I think Howard brought this point up before. The rule says the first and second dwelling are exempted. Now, by resolution, and I'm not even positive it was an actual resolution, it was just the board said that we're going to count two structures as long as the fire requirements are not greater than two dwellings to handle a structure as a dwelling, which is already an aberration of the actual rule.

He should have been required to put the fire stuff in when he built the first thing. I'll tell you, had he come to the board before with the gazebo, the board would have laughed at that. People have come in with dog houses, garages and stuff like that. Basically the board said, look, as far as the fire demand is not greater than two structures or two dwellings, which are exempted, they are going to handle it as that.

Now he is coming in with a third one and I believe all the other lots there have one or two dwellings on them or one or two structures on them, so they are not in violation of anything of the rules. He just happens to be the first one coming in that is a rule violation.

And I sympathize with Mr. Welch on the subdivision aspect of it; but in fact, he is just coming in with a building permit, and somehow the whole subdivision needs a pipeline in there to provide fire service for the entire subdivision and it's unfair to have one person do it. But nevertheless that's the way the rules are written right now.

MR. HIRANAGA: If he removed the gazebo, would he be able to build a storage building?

MR. CRADDICK: I would leave that up to corp counsel, because I know Howard has serious concerns over the board waiving a rule by just some decree, or even if it was a resolution, resolutions cannot waive the rules. And if the board again said to strictly enforce the rules, then he could not have gotten past the -- even the first structure. So even if he removed the gazebo, he could not build this.

MR. HIRANAGA: Because there was inadequate fire protection to begin with, he should not have gotten the building permit for the first dwelling?

MR. CRADDICK: You could make that argument, but there is a specific rule that waives the first and second dwelling. That was passed in '84.

MR. HIRANAGA: I'm sorry, what's the answer? Is there an answer?

CHAIRMAN NOBRIGA: Not at this time.

MR. HIRANAGA: There's no answer?

CHAIRMAN NOBRIGA: No.

MR. HASHIMOTO: He is asking you.

MR. FUKUSHIMA: Are you asking me?

MR. HIRANAGA: The director is deferring to you, I guess. If he removes the gazebo, would he be able to build his storage building?

MR. FUKUSHIMA: Again, as the director indicated, rule 3-1 E refers to two dwellings. It doesn't refer to two structures. Even if the board had in the past passed a resolution saying okay, we're going to consider structures dwellings, we don't believe that a resolution, which is inferior to a rule, can modify a rule. The plain language of the rule is dwelling.

CHAIRMAN NOBRIGA: My recommendation is to refer this to the rules committee. Is there a motion to that effect?

MR. HASHIMOTO: So moved.

CHAIRMAN NOBRIGA: Thank you. Second?

MR. TAGORDA: Second.

CHAIRMAN NOBRIGA: Any further discussion? Ready to vote?

MR. TAGORDA: Mr. Chairman, question. Can I suggest that the staff have a site inspection on this property?

CHAIRMAN NOBRIGA: Sure.

MR. TAGORDA: Would that be too much to ask Mr. Craddick about distances of those dwellings, proposed construction, the gazebo, and the hydrant? I would like all the information to the rules committee meeting.

MR. CRADDICK: Well, it's in this packet right here.

MR. TAGORDA: You just gave me the packet; I did not have time to look at it.

CHAIRMAN NOBRIGA: Okay. Anyway, all those in favor say "aye."
(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion is carried.

No further business for the oversight committee.

The oversight committee is adjourned.

(The proceedings were concluded at 10:05 a.m.)

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