

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
RULES COMMITTEE MEETING

Taken at the David Trask Building, Conference Room 207,
Wailuku, Maui, Hawaii, commencing at 10:05 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

Herb Kogasaka, Engineering

Herb Chang, Engineering

IWADO COURT REPORTERS, INC.

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CHAIRMAN NOBRIGA: I now call to order the rules
committee. The rules committee shall now come to order. Rules
committee is set at 10 a.m. in the HGEA conference room, room
No. 207.

In attendance we have committee member and board

member Jonathan Starr; committee member and board member Kent Hiranaga; committee member, board member Clark Hashimoto; committee member, board member Orlando Tagorda; committee chair, I guess, board member Michael Nobriga, Corporation Counsel Howard Fukushima. Oh, committee member and board member Howard Nakamura.

Members of the public and staff, there will be a five-minute recess.

(A recess was taken.)

CHAIRMAN NOBRIGA: The rules committee will come back to order at this time. We have approval of minutes of May 14, 01. A motion is in order to accept the minutes pursuant to 30-days' review, at which time if there are no corrections, the minutes shall be filed. Do I hear a motion?

MR. HASHIMOTO: So moved.

CHAIRMAN NOBRIGA: Moved. Is there a second?

MR. TAGORDA: Second.

CHAIRMAN NOBRIGA: Moved and seconded. All those in favor signify by saying "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Carried.

Item 4, Testimony from the Public. Is there any person wishing to testify on any matter before the rules committee? We'll move to item 5, Committee Discussion and Possible Recommendation. Item A, Communication 01-04. Request from Michael Conway for a waiver of the fire flow requirements for Kula Lodge Marketplace.

Do we have Mr. Conway or a representative? Please come to one of the yellow seats up here. Please identify yourself for the court reporter.

MICHAEL CONWAY: My name is Michael Conway and with me is the owner, Fred Romanchak.

CHAIRMAN NOBRIGA: Mr. Conway, you have the floor.

MICHAEL CONWAY: Thank you. What we're requesting is just to be allowed to get a building permit for an existing structure that has legitimately -- was built legitimately with a building permit.

What is happening is, the existing building was used -- the owner will correct me if I make a mistake here -- but the existing building was used in part for the protea -- selling of protea on the Kula Lodge site. This building currently and was used to house a packing material and for the shipping and selling of these different flower arrangements.

What the owner proposes or would like to do is clean out -- the protea idea sort of went by the wayside; it was not economically feasible. So he would like to use that existing building just as a Kula marketplace, a Kula farmers marketplace. The fire flow characteristics of the building does not change. There is no increase in fire flow because the building remains the same size, the usage is basically the same size.

The building department will require that he put in additional parking. As shown on this drawing here, the pink area, you can attribute that to my office manager, is existing parking area. The blue area is going to be additional paved parking over right now what is existing hard packed gravel.

So what the owner proposes on doing is actually upgrading, I guess, the site to allow heavier vehicles to come down, closer access. Not only for parking but obviously will be able to get fire trucks down there. I'm not saying fire trucks couldn't go down there now, because it does have hard packed gravel. It's just to make it a little easier and a little more convenient.

The department, as I understand it, does not want to sign the building permit because they feel that this is somehow a change in use and they acknowledge, as far as I understand, the fact that the fire flow does not change. But they did not want to sign the building permit.

So we're here to try and request from the board that the building permit for this improvement, the interior improvements on this project be allowed to proceed.

CHAIRMAN NOBRIGA: Who would be the engineer assigned to the project?

MR. CHANG: It's under me.

CHAIRMAN NOBRIGA: Mr. Hashimoto?

MR. HASHIMOTO: You said the existing protea co-op, that building is going to be the farmers market. You are going to renovate it?

FRED ROMANCHAK: Yes.

MR. HASHIMOTO: That's going to be renovated, that's why you need the building permit?

FRED ROMANCHAK: Correct.

CHAIRMAN NOBRIGA: Yes, Mr. Craddick.

MR. CRADDICK: The statement was made that this building permit was legitimately gotten somehow, and I would again bring the board to the rules, in 1984 was the rule that exempted the first and second dwelling. It did not exempt structures.

So however that was approved, it didn't conform with Board of Water Supply rules then, if the building permit was approved, as he says, in '85. So I suspect the water department probably did sign off on it and that's probably what he means by legitimately approved. It was somehow approved. But I'm not insinuating that he got the permit illegally, but it didn't conform to Board of Water Supply rules then.

CHAIRMAN NOBRIGA: Mr. Fukushima, I have a question.

MR. FUKUSHIMA: Yes.

CHAIRMAN NOBRIGA: What action is available to this committee for board recommendation on this matter?

MR. FUKUSHIMA: Again, Mr. Chairman, we would like to express the same thoughts that we expressed at the oversight committee meeting. That is, for this particular request, this is a request, essentially an appeal from the director's decision that fire protection be provided; that the department has no rules, this board has no rules to go by in considering appeals; that the standards for granting an appeal, any appeal

procedure, is not in place.

Again, we have opposed the rule related to appeals which is before this committee today. We do not believe that the board has the authority to consider an appeal without an appeal process by rule in place.

CHAIRMAN NOBRIGA: Thank you.
Mr. Howard Nakamura?

MR. NAKAMURA: Quick question to the director.
What's the status of the CIP project? I believe it's in our operating plan.

MR. CRADDICK: I would have to refer to our engineers.

MR. NAKAMURA: The CIP program.

MR. KOGASAKA: The project is that we're still trying to get approvals from the various agencies.

MR. NAKAMURA: The design is basically complete?

MR. KOGASAKA: Yes.

MR. NAKAMURA: When those approvals are obtained, then you are prepared to go out to bid with the project?

MR. KOGASAKA: Yes, we are.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: As I understand, when the project is complete, then the fire flow required that would make this issue a moot point will be in place; is that correct?

MR. CRADDICK: It will be a 12-inch line and we have the Nagamatsu tank, half million gallon storage.

MR. STARR: Is there some feeling for what kind of time frame it's going to be?

MR. CRADDICK: I would estimate no more than a year.

MR. STARR: Really what we'd be talking about would sort of be interim in terms of allowing them to operate over the next year until it's in place.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Just for clarification, based on the current status of the CIP project, you estimate completion of construction by early summer of 2000?

CHAIRMAN NOBRIGA: 2001.

MR. HIRANAGA: 2002.

MR. CRADDICK: 2002, yes.

CHAIRMAN NOBRIGA: Yes, Mr. Starr.

MR. STARR: How far is it from existing fire flow right now?

MR. CRADDICK: Existing fire flow is 700 gallons a minute and they require 1700 gallons a minute.

MR. STARR: Not on quantity but in distance.

MR. CRADDICK: There's a standpipe within a hundred feet or so.

MICHAEL CONWAY: There's a fire hydrant here that's about 80 feet away.

MR. STARR: That's insufficient. How far is it from sufficient fire flow?

MR. CHANG: I would say close to a thousand -- close to 1200.

CHAIRMAN NOBRIGA: Captain Bal, would you have anything to add?

CAPTAIN BAL: That distance, we would have a problem

with that. But there is some other issues of existing violations that haven't been corrected, and I think this is probably about two years old. And when I talked to the owner at that time, he was going to renovate the building and at that time he was going to take care of those problems.

I have never been contacted about these problems yet. I was willing to give them the time. He was going to do it within a certain amount of time, but as far as I know, it's still existing.

CHAIRMAN NOBRIGA: I value corporation counsel's opinion on this matter. This committee is entrusted with reviewing and approving amendments to our current rules. I would like to set a very, what you call -- I want to go through it real quickly. I expect, in view of our rules, the rules would be fast paced and we should be able to get through a lot of these items within three to four months.

At this time I would recommend that we defer action on this matter until we can take action on the appeals and other rules pertaining to this situation.

MR. TAGORDA: So moved, Mr. Chair.

MR. HASHIMOTO: Second.

CHAIRMAN NOBRIGA: Moved and seconded. Is there any further discussion? All those in favor signify by saying "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion is carried.

Hopefully the CIP project will be sped up and we can take care of everything for everybody, and I appreciate your time.

MICHAEL CONWAY: Thank you.

CHAIRMAN NOBRIGA: Item on the agenda, item B, Communication 01-13. Request from John and Maria Siele to exchange their 1 1/2 inch meter for multiple meters, the Good Earth Farms Subdivision, Kula, Maui. Hello, this must be the Sieles.

JOHN SIELE: Hi, good morning.

CHAIRMAN NOBRIGA: Good morning, sir. Mr. Siele, you have the floor.

JOHN SIELE: At the last meeting, I think it's been deferred a few times since the last meeting. I had originally asked for an even trade of a five-eighths meter for one -- five five-eighths meter for one 1 1/2 inch meter since the water flow from the five-eighths meter gives 20 gallons per minute and the water flow from an inch and a half meter gives 100 gallons per minute.

I would now like to change it for three five-eighths meters for one 1 1/2 inch meter. That's a savings of 10,000 gallons a day, 280,000 gallons a month and 3 million 360 gallons a year. It also frees up two more meters for someone else's use. As a business decision, it would make sense for the county and the people of Maui.

CHAIRMAN NOBRIGA: Thank you, Mr. Siele.
Response from the department?

MR. CRADDICK: The only thing I can say is we have done this in previous cases where the meters showed that the consumption would be greater than the meters that they are asking for and I don't know as we have that information in this particular case at this time.

CHAIRMAN NOBRIGA: Yes, Mr. Hashimoto.

MR. HASHIMOTO: I guess this property is now in horse and cattle grazing which means you use hardly any water.

JOHN SIELE: Right now we're using barely anything. But we have had opportunities from many of the surrounding farmers to lease it, where we would use millions of gallons a year. And we had discussed doing that. But we didn't. I had discussed that with Mr. Craddick.

I had told him for us it would only destroy the land, since the land contains some of the most beautiful buffer grass Upcountry and we're trying to keep it in that use. If we cannot keep it in that use, we have to make the land profitable

and reasonable for us and we would have to go to other means. I am trying now to avoid having to go to those other means to make my land potentially profitable. This matter has been ongoing for about maybe ten years.

MR. HASHIMOTO: It is in Mr. Craddick's report, he said that past meters exchange have been approved; but because water usage would increase, I guess the recommendation is to deny, but if he leases it to another farmer or to -- they would be using a lot of water. Now you are saying the request is from six to three meters?

JOHN SIELE: We originally asked for an even water flow which would have equaled five five-eighths meters. But now trying to help myself and the county, if I went with three five-eighths meters, it's a savings of 3 million plus gallons a year for the county of potential use, in comparison to my original request.

CHAIRMAN NOBRIGA: Mr. Tagorda?

MR. TAGORDA: Mr. Craddick, do we have records of water usage of the Sieles for the past five years in their inch and a half meter?

MR. CRADDICK: I'm not sure. I don't have it here with me.

MR. TAGORDA: His suggestion of getting three five-eighths meters, would that satisfy your equation of not greater than the inch and a half meter that he uses, would that suffice? How do you calculate these things?

MR. CRADDICK: What we do is we look at five years of consumption. If five years of consumption divided by how many meters they want to get is greater than what we think the consumption would be getting the smaller meters, we have allowed it. And there's probably about, I don't know how many cases heard like that, five or six since 1983.

MR. TAGORDA: If that request to have three five-eighths meters of his inch and a half, would that be more than the water usage that he uses, that inch and a half, that

would be no problem then? Can we give Mr. Siele that three five-eighths meters?

MR. CRADDICK: I suggest the board getting involved in it.

MR. TAGORDA: That's my question. That's the question you use. To approve the exchange, because based on usage for five years.

CHAIRMAN NOBRIGA: Mr. Hashimoto?

MR. HASHIMOTO: The usage, like I said, if it's in pasture for horse and cattle grazing, they hardly would be using any water. The water would only be for --

CHAIRMAN NOBRIGA: Irrigation.

MR. HASHIMOTO: Not even irrigation. Do you irrigate your pastures?

JOHN SIELE: Not yet.

MR. HASHIMOTO: So actually the usage will be higher.

MR. TAGORDA: We don't know --

CHAIRMAN NOBRIGA: Mrs. Siele?

MARIA SIELE: Most of the time we try to conserve, because being Upcountry all the time we realize the shortage of water and we wouldn't irrigate, only to conserve, thinking we were doing a good thing. Later on we find we were always doing the bad thing by not using up the water.

CHAIRMAN NOBRIGA: Mr. Siele?

JOHN SIELE: I would like to ask Mr. Craddick, when a water meter is allocated, is it allocated for potential use? I know me as a businessman, if I'm going to allocate an inch and a half meter to somebody, I am going to allocate it on the full potential of what I'm giving out and to make my business decision on how much water I'll have for myself, that's how it's figured out.

I know now that the county is trying to figure out how to issue the new water meters that might be issued to the county. I am positive that it would be issued on a potential use of the size of the meters, whether it's an inch and a half, 2 inch, 3 inch. Why is it that when we're coming to save water on a potential use, which it will be used on full potential if I'm not granted my use right now, I'll have to go to farming, why does the issue change?

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: The only thing I can say is we don't give out the extra meters to try to prevent people from farming. Because the community plan objective Upcountry is to do farming. So if they are going to do farming, they do farming. But we don't give out meters to try to sway people away from farming. That's not the reason why we're making the exchange.

And if the usage is already going, if there's already high usage, then by previous opinion of corp counsel, you know, saying that it's not affecting the water system, we have done that meter exchange, but it's not to avoid or try to persuade people to not do farming.

So the fact that they might use more water for farming does not enter into the equation. Because if that was the criteria, I don't know if we would be following the community plan.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: My feeling is, by issuing three meters for one meter, we're issuing new meters, which is something we would not do for the neighbor. So I would feel it very difficult to justify doing it in this case. Frankly, I would rather see crops being grown there than more houses while we're short of additional water. I don't really see a reason to do this myself.

CHAIRMAN NOBRIGA: Okay. I had either a question or a point. The point being that if -- I'm not sure, but if there is anything in our rules that limit water use from a meter, it has not been enforced.

So being that the Sieles have a 1 1/2 inch meter,

the department already calculated that the usage on that meter would maximize to a 1 1/2 inch meter. And I don't feel personally that it's fair to use their current usage of the 1 1/2 inch meter because the department already factored in that that meter was going to be utilized for its maximum potential.

MR. CRADDICK: No.

CHAIRMAN NOBRIGA: Such as the case with the meter in Ulupalakua that keeps drawing and drawing and drawing. So if you are not going to limit one, how can you set limits on others?

Mr. Corp Counsel, is there a requirement for the board to take -- is the board required to take action on this matter for the department on the department's request? Craddick said he can do it, but he wants the board again to give the approval.

MR. CRADDICK: No, I'm just saying I would not do it in a case where the existing consumption does not equal or exceed what he is asking for.

CHAIRMAN NOBRIGA: What he is asking for is below.

MR. CRADDICK: No, it's not.

CHAIRMAN NOBRIGA: You said you would --

MR. CRADDICK: No, it's not. I'm basing it on actual consumption, not on some theory. Because meters are not given out -- we charge the development based on the size of the meter. But usage of a meter is subject to other factors and we expect that they are reasonably close to the standard of usage based on the acres that a person might have. Or size of house that a person might have.

We don't go in and size the -- take the square footage of the house to size meters. We go and fixture units. For an agricultural operation that's hard to do.

Basically this meter obviously was issued before the Kula rule prior to 1977. Why the person got it and then didn't do farming, or maybe at one time more extensive farming was done on the property, I don't know, but the usage that goes on in a meter is all by average. It's not by some maximum.

If we took the maximum, every single meter used to its maximum, we would be so inadequate everywhere that we would be in serious, serious trouble.

CHAIRMAN NOBRIGA: Back to Mr. Fukushima for any response or any type of response.

MR. FUKUSHIMA: Okay. We feel a little uncomfortable with the exchange of meters without -- again, I'm going to echo my sentiments in my statements earlier that without any rules in place, standards for the department to apply, it's like -- we find it a bit arbitrary. Or it could be arbitrary in the application. We're not stating that it is arbitrary but it could be arbitrary.

And we believe that a rule setting forth the standards and the conditions under which the department can and would exchange meters would be appropriate. I don't want to, at this time, comment on what the department has done in the past. But we believe better course of action would be for this committee to consider and recommend a rule to the board relating to the exchange of meters.

CHAIRMAN NOBRIGA: Thank you, Howard.
Mr. Siele?

JOHN SIELE: Mr. Craddick mentioned something that it's not based on house size and I did not bring that into the issue. He said that's based on the average of what is used per acreage for that type of use. Average use in my area per acreage would be well over 4 million gallons a year. I'm asking for nowhere near that. That would be the savings the county would have.

I could tomorrow go into full ag use, it's 100 plus acres, and use a minimum 4 million gallons a year. It doesn't make common sense to me as a businessman how it would happen. Excuse me, corp counsel -- I forget your name, I apologize -- said that it would be asking for it to be put into another rule. These rules keep getting put off from meeting to meeting to meeting.

And me as a person in the public that has to conduct business, my livelihood depends on my business. It's not fair to the public; it's not fair to the taxpayers. It's something that's just confusing, frustrating, and it is actually taking

us to the poor house.

When I first came to this island, I was a productive citizen, I made a lot of good moves. Because of my meetings with Mr. Craddick and my reliances on my conversations with Mr. Craddick, I have lost my entire family income. At the last meeting it was mentioned to me that you are not in the welfare department. I took that as quite personal, as anyone else should.

I am not asking anyone to put me on the welfare list. He says it was -- you are not the welfare department. Welfare, I work hard. Mr. -- Clark, I can't remember your last name -- Mr. Hashimoto who knows me since the day I came to this island, everything I've done on this island has been done in productive.

I'm asking for a basic business decision that makes common sense to the board. This sounds more like a growth decision instead of a basic water decision. I am sorry for my frustration, but I don't know what else to say. This is 11 years.

At the last meeting -- and I apologize again, Mr. Nakamura? Mr. Nakamura was going to look up some of the things in my records concerning back conversations and all our back issues here. Which I think will have shown that we have -- Mr. Craddick has given us a reliance on the water department. And I just hope this decision can be made soon because we are in financial hurting right now.

Mr. Siele. I would like to finalize that matter as best we can and move forward.

MR. TAGORDA: Mr. Chair, quick question.

CHAIRMAN NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: If the water usage is not going to be increased for any exchange for this inch and a half meter, Mr. Craddick, we don't have any problem with giving him three or four five-eighths inch meters; right?

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MR. CRADDICK: Well, again --

MR. TAGORDA: Because you base your exchange on the water usage, the increase in water use. So if you calculate in

your office when you come back to us and there's an equivalent four or three meters for that inch and a half based on this five years' consumption, then there will be no problem.

MR. CRADDICK: The only thing I can say, Orlando --

MR. TAGORDA: This is not denying his request for exchange.

MR. CRADDICK: The only thing I can say is, based on a previous corporation counsel opinion which may not be the same anymore written back in 1993 or '94, I forget what it was, that said if it wasn't having any affect on the system, we could do what we felt was reasonable.

Okay, now, what is reasonable in the absence of a rule, I think Howard's point is that we can be arbitrary. Why do we pick five years? Why don't we take the last two months? Then he runs its consumption for two months, then we give whatever number of meters. I think that's Howard's point.

We have taken five years, there's no rhyme or reason to it. The only way I think the rules allow us to restrict usage right now is if the meter is being damaged. We have gone in and put resistors in, choke the flow down to people that have been damaging the meter.

But in this case he has a meter there, he is just -- with grazing, it doesn't use much water. But whether he uses it for what he can use it for, that's not an issue for us. If the consumption goes up to 4 million gallons a year, that's what it goes up to. That's not a concern of ours.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Mr. Siele, what's the purpose of the subdivision?

JOHN SIELE: It will be three ag homes. Three new ag homes.

MR. HIRANAGA: You have already identified the occupants? Or who is going to be living there?

JOHN SIELE: When I originally bought the property, which was going back 11 years ago, we could have sold it out,

when Mr. Craddick had told us the potential, we would have the potential for -- as far as having someone right now, no. As far as right now, we can't even live on the property, because we had to sell our home to be able to keep the land. So that's why there's no water use on the land right now.

CHAIRMAN NOBRIGA: Yes, Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, the reference that Mr. Siele had was that -- at the last meeting of the rules committee, it had been mentioned that the lot he is proposing to subdivide is actually part of a large lot subdivision, and the request I had made was the large lot subdivision agreement be circulated so that the members could determine what the limitations of that were. And to date I don't believe we have seen that. It is a large lot subdivision.

MR. CRADDICK: I believe so.

JOHN SIELE: I'm not sure what the subdivision is. The exact name of it I'm not 100 percent sure. I thought that's what it was called, but I'm not 100 percent sure as the actual county terminology.

CHAIRMAN NOBRIGA: Mrs. Siele?

MARIA SIELE: In order to answer the other question, we were hoping or our intention was to sell the acreage, and the people who were interested were also interested in putting horses and grazing horses, so that we were hoping to keep it as basically a horse area. That was the full intention at the beginning. Because most of the people who are interested are interested to graze their horses there due to the type of grass and the area that it's in.

CHAIRMAN NOBRIGA: Going back to the question from the engineering staff.

MR. CHANG: I believe it was the 1992 subdivision when you first put it in. It's a three lot subdivision. They were entitled to meters. They kept an inch and a half for one lot; two other lots were five-eighths.

JOHN SIELE: At the time we were promised three, inch and a half meters and never received it.

MR. CHANG: In normal subdivisions, the new lots get the small meters. That was the standard procedure.

CHAIRMAN NOBRIGA: Mr. Siele?

JOHN SIELE: Getting back to Mr. Orlando, as far as being able to trade off on what I have used, again, I can say I have not used anywhere near three, only because the fact that we have not been able to live there. So the comparison would not justify that. I'm justifying it on what the potential use of the lots will be if I'm not able to subdivide it.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: I was just talking to Howard there. Howard is shaking his head no.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: Mr. Chair, my feeling is that no action by the committee is really required at this time, but I would like to hear the recommendation.

CHAIRMAN NOBRIGA: Back to Mr. Craddick.

MR. CRADDICK: I don't know, it's a matter of board liability, so I don't know. I would say that if you want to talk about it, you need to schedule an executive session.

CHAIRMAN NOBRIGA: The chair feels that the board will not be able to make any decision in this matter; that the request is an operational question that lies within the department, and as long as the department can figure it out, I would wish to help these people, because I don't see any distraction or any problems arising from other people served on the system within their area.

MR. HASHIMOTO: I think we all like to see land kept in agriculture. If you go intensive agriculture, you'll be using a lot, lot -- much more water. We like to see the

vegetables. But if they are keeping it to grazing and/or corrals or horsemanship, they won't be using much water, and if that's their intent, my opinion is that giving them three water meters would be reasonable, instead of the six they are asking or they were asking for.

CHAIRMAN NOBRIGA: Yes, Mr. Starr.

MR. STARR: I would feel that way if the neighbors who would be able to go get meters as well; but I'm just really and very reluctant to put anyone ahead of the people who -- anyone getting new meters ahead of all the people in that area and that community who has been waiting and who we're not in a position to be able to serve. I'm very reluctant issuing meters in any way.

CHAIRMAN NOBRIGA: Mr. Siele?

JOHN SIELE: This is not -- and again, Mr. Starr, it's sounds like a growth issue, to me, with you. It has nothing to do with meters; it's potential water use. In this potential water use on 100 acres, I'm looking to save you millions of gallons of water so you can give other meters to people in the neighborhood.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: I'm trying to carry on from your comment there that you think it's a matter for the department, and I think I also shared that opinion, but the board was informed in January of 2000 that the water system was adequate to give out additional meters. The board has refused to allow that to happen.

There is a good argument that I should be doing it anyways and regardless of what the board said. But I think I said my reasons before why I wanted the board to have some say in that matter. I think that's all I better say.

CHAIRMAN NOBRIGA: Thank you. At this time the chair would entertain a motion to recommend that the board support the department's decision on this matter.

MR. STARR: I so move.

CHAIRMAN NOBRIGA: Thank you. Is there a second?

MR. TAGORDA: Mr. Chair, a point of clarification. I really don't like to deny the request, because I think their request is very clear. It's exchange of a meter. So it's not about the use or they're going to leap frog from people in the lists of getting a five-eighths meter.

This is a water usage, they have their own meter, they want to exchange it. And if their water increases, if their water usage is proven to be a decrease, I think the board or this committee should help out these people.

CHAIRMAN NOBRIGA: Yes.

MR. TAGORDA: That's my contention. If the department has a record of the water usage and they can prove that the three meters they were asking is below that and it's not going to increase, then my position would be to give them the three meters.

MR. CRADDICK: Yeah, but I don't think --

CHAIRMAN NOBRIGA: That's the intent of our current motion.

MR. TAGORDA: They have to show it.

MR. CRADDICK: I don't think corp counsel is sharing the same opinion that we had previously given them, that we should do that without rules.

CHAIRMAN NOBRIGA: There's a motion on the floor that the committee recommend that the board support the action of the department in this matter. That's all.

MR. HIRANAGA: The action has not been specified, it has to be determined.

MR. HASHIMOTO: They recommended denial, is what you are saying.

CHAIRMAN NOBRIGA: No.

MR. HASHIMOTO: That's what Mr. Craddick --

CHAIRMAN NOBRIGA: I see.

MR. HASHIMOTO: Craddick recommends denial. To go along with him means --

CHAIRMAN NOBRIGA: I did not look at that. I was referring to Craddick's position that he would be willing to do the three, but he wanted the board to give him blessing.

MR. CRADDICK: No. The blessing is for -- that we have an adequate water system now and we should be going through the list.

CHAIRMAN NOBRIGA: Plus the request that was before has been amended down to three, yeah?

MR. TAGORDA: Yes. From six to three.

MR. STARR: Did the motion fail for lack of a second?

CHAIRMAN NOBRIGA: The motion failed for a lack of a second.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: If the subdivision were to be allowed and meters were to be distributed, unless you put some type of deed restrictions which would prohibit dwellings to be built upon the new lots, I would anticipate actual water usage to increase over the current water usage.

CHAIRMAN NOBRIGA: Yeah.

MR. HIRANAGA: So there would really be no identification of actual net savings to the county. It would be a possible mathematical savings but not actual savings.

CHAIRMAN NOBRIGA: That's true. One case, one time, and this is a specific case we're trying to focus on and trying to come up with a solution that would best fit within the rules

that we have and still trying to serve the public.

MR. HASHIMOTO: On the other hand, if Mr. Siele decides to lease the property to a farmer and he goes into the intensive farming, he would be using way in excess of water. Which would be legal.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: But that's what the community plan calls for over there anyway. I don't think we could have any objection to say more farming there. I, for one, would like to see that.

CHAIRMAN NOBRIGA: So what you guys like do? Help me out.

MR. TAGORDA: I want to see the equivalence of that inch and a half meter, Mr. Chairman, to how many five-eighths they can have. And if it's two or one, so be it. If they want that exchange, then they can get it. If not, they want more -- that's my position, Mr. Chair. I'm very strong to that. Because we cannot force these people to go on farming if they are not into that concept anymore. They have to --

JOHN SIELE: We are in concept of farming.

CHAIRMAN NOBRIGA: Mr. Siele?

JOHN SIELE: I apologize for my frustration. We have been in a concept of farming; but right now, like I said, I can't live there to do anything with the land. And if possible, I would like to hear corporate counsel's opinion on this.

CHAIRMAN NOBRIGA: On?

JOHN SIELE: On this matter.

CHAIRMAN NOBRIGA: What part of the matter?

JOHN SIELE: The entire matter. Is it legal? Is it not legal?

CHAIRMAN NOBRIGA: Well, Mr. Fukushima. And I know

you are going to repeat what you said.

MR. FUKUSHIMA: I will repeat what I said. I believe a rule is more appropriate to deal with these types of situations. It's not a very good situation where the director or the department has what, in essence, is unfettered discretion in how these exchanges are going to take place.

And standards set out in the rule that says okay, if you got a 1 1/2 inch meter, you can exchange it for five five-eighths inch meters. At least the department will have a standard; will have something to go by when it's considering these types of requests.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I don't like not being able to act. I don't fully agree with it; but I would defer to that opinion and feel that after hearing that, we can't really go and overrule the recommendation of the action of the director until and unless we create some rule. So as far as I'm concerned, I don't think there's anything we could or should do.

CHAIRMAN NOBRIGA: Mr. Nakamura?

MR. NAKAMURA: I was going to mention that I think the present process, as I understand it, for making a determination as to whether or not you can do the meter exchange is, I think, somewhat inconsistent. Because on one hand they are looking at the large meter based on actual use and they are looking at the small meter based on some theoretical or future use.

And I think that's somewhat unfair and it penalizes the holder of the large meter that has not been using water, so to speak. So it penalizes conservation, and I agree with what the Sieles said.

On the other hand, I think there needs to be a clear standard, whatever that is. And if we can come up with a clear standard that the board can use, perhaps even absent the actual rule, if there's an understandable and clear process, perhaps we can at least proceed with some of these. I'm sure the attorney doesn't like that, but at least I think there should be some consistency to it.

CHAIRMAN NOBRIGA: Exactly. Shall we recommend --

MR. FUKUSHIMA: Just a small comment.

CHAIRMAN NOBRIGA: Sure, Mr. Fukushima.

MR. FUKUSHIMA: In comment to what member Nakamura has stated about setting forth a policy, that's exactly what happened in the Smith case. The court found that this policy was in effect moving and did not go through the procedures in Chapter 91 for rule making and declared it invalid.

I just want to caution you about taking that course of action because of the possible problems that we're going to have and the experience that we have had in the past.

MR. NAKAMURA: Well taken point, Mr. Attorney, thank you.

CHAIRMAN NOBRIGA: I'll call for a five-minute recess so I can figure out something.

(A recess was taken.)

CHAIRMAN NOBRIGA: We'll call the rules committee back to order. Members, I really do not want to defer this matter, but I don't know, does any of the members have a solution or suggestion?

Right now I need to have from the department an average use of one and a half inch meter, the current use of the Sieles one and a half meter and an average use of three five-eighths inch meters that take into account the proposed use of the three five-eighths inch meters. Those variables are missing.

Being this information is missing, I do not want to defer, but I'm going to have to ask that we defer this matter. Yes, Mr. Siele.

JOHN SIELE: I kind of have a -- as a matter of fact, this information I got from the engineers of the Board of Water Supply. A five-eighths meters uses 20 gallons per minute, an inch and a half meter uses 100 gallons per minute. If that's incorrect --

MR. CRADDICK: That's incorrect.

JOHN SIELE: -- then what I am told from the engineers is misinformation.

CHAIRMAN NOBRIGA: Yes, Mr. Starr.

MR. STARR: Mr. Chair, I'd move to defer.

CHAIRMAN NOBRIGA: Is there a second?

MR. TAGORDA: I second it.

CHAIRMAN NOBRIGA: Moved and seconded. Any further discussion?

MR. NAKAMURA: I think, Mr. Chairman, with the understanding that perhaps the staff present the information you requested.

CHAIRMAN NOBRIGA: Yes, definitely.

MR. FUKUSHIMA: If I can make one point, Mr. Chairman.

CHAIRMAN NOBRIGA: Yes, Mr. Fukushima.

MR. FUKUSHIMA: Perhaps the department should be given the location or the area or district which they do differ throughout the island and by district.

CHAIRMAN NOBRIGA: I would think that the area should be looked at is the area of the area where the Sieles are.

MR. TAGORDA: Yeah.

CHAIRMAN NOBRIGA: Not taking into account Lahaina or Kihei.

MR. HIRANAGA: Mr. Chair, may I make a suggestion? Would it be based on whatever area is serviced by that particular system that he is going to be drawing off of? Upper Kula water system, that would define the area.

CHAIRMAN NOBRIGA: Yes, thank you. Any other discussion? Ready to vote? All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion is carried.

Mr. Siele, final comments?

JOHN SIELE: I was just -- I'm confused as to the whole water issue. Especially since at the last meeting Mr. Craddick says there is an abundance of water to be put out to the -- why this whole matter is even happening is just totally confusing to me. According to Mr. Craddick, the director, he says there's an abundant source.

CHAIRMAN NOBRIGA: I heard that comment, but let's hope that it's noticed on our full board agenda. Thank you, Mr. and Mrs. Siele.

JOHN SIELE: Thank you for your time.

MR. TAGORDA: Thank you very much.

CHAIRMAN NOBRIGA: Next item is item C, Communication 01-18. Request from Moses and Virginia Timbal for waiver of the subdivision requirements, Roman Catholic Church Subdivision. Do we have somebody? How's it? That's Moses. Hey, Moses, thanks for coming. Please identify yourself for our reporter.

MOSES TIMBAL: My name is Moses Timbal. I live in Hana, Maui.

CHAIRMAN NOBRIGA: Thank you. You may be seated and you have the floor.

MOSES TIMBAL: Just before this meeting it seems that it wasn't really clear to some people on what's happening, so if I may take a couple of minutes out on this whole situation. May I?

CHAIRMAN NOBRIGA: Yes.

MOSES TIMBAL: 15 years ago I moved from Lahaina to Hana and at the invitation of Father Matthew Allencastre. So we moved to Hana on that parcel of land with 14.33 acres and the church allowed me to start a business, a farm, which I did in 1987. There were already two meters. The church also -- as I said, there were already two meters on the property.

The church allowed me to build a house, which I applied for a permit, and I was given a permit, and also I asked for a waiver from the county; I was given a waiver. And then about three, four years ago, I mean, you know, just my wife said -- well, actually it was when Father Matthew died. He kind of said he wanted us to stay in Hana, because he was the one that brought us to Hana.

He passed away, and so my wife said since Father Matthew wants us to stay in Hana, why don't we ask Bishop Francis DeLorenzo (phonetic) if he would sell us the property we're living on. We asked the bishop, the bishop said okay. So we started the whole process of subdividing and went through the Realtors and everything. And that's when I found how difficult this task was going to be from the very start.

I thought it was just a matter of buying a piece of property, but I found that -- it's been two years now. It's been over two years that I have been trying to buy the place. What I want, really, is a waiver, a continuance of the waiver from the county so that I can pursue to buy the place.

Now, one of the things I was told in the last meeting, which the department of water sent me -- by the way, this is one of the rules, I forget which one, but from the board it says, the board retains the right to modify any requirements, provided the modification will in no way jeopardize those already served in the area.

By me subdividing, I am actually not causing any increase. And it seems that the main objective was to make sure that when I subdivide, it was to not cause an increase in water consumption.

Actually, in 1999, what happened is, I sold my business and I dug up about several acres of land. So my water consumption should have gone down. So if the goal of the water department was not to cause any increase in consumption, then I'm not by subdividing.

I understand that there was a rule that if I subdivide I was supposed to put an 8-inch waterline, but I

can't afford that. So that's why I'm using, so be it an excuse, that I'm not causing any increase in water consumption.

After I moved in, there were five new houses built. In the map that the county gave me, there were five new houses built and they caused increase in water consumption. Every time you folks allow someone to live -- I'm not telling you that's wrong, because they are allowed, but I feel that if the target of the county is not for me to cause an increase in water consumption, I'm not. Because the water meter has always been there; my house has been there for 15 years.

And my business, like I said, I moved in '99, I dug up three-fourths of the parcel that I was using so the water consumption has -- should have, I'm almost sure has gone down than what it used to be. And I hope that the county will recommend a favorable decision.

CHAIRMAN NOBRIGA: Thank you, Mr. Timbal.

MR. STARR: Mr. Timbal, by doing this, will this create any additional ability for you to build a new house or an additional house?

MOSES TIMBAL: I think that would have to be answered by the county. Because right now if I subdivide out, then I will be subdividing out of the -- right now there are two water meters on the county. One of the county meters that's been subdivided is where I'm at, and the other one is on the church property.

So if the question that you asked, if there's the possibility of me adding on to the property, I think that's got to be decided by the county, yeah? Because I don't know if two houses can be put on one meter or things like that, yeah?

MR. STARR: I know I'm thinking back to about two years, and we had a very similar case also in Hana. In fact, quite close to this location. That was the Gray family. And they were doing the same sort of thing. They were subdividing but it was not going to -- they were saying they were not looking to build a new house; they were just changing the boundaries of their lot.

And at that time we had given a waiver; but we also had made a condition, I believe, whereby if they were going to

apply to build any additional houses or to do any further subdivision, then at that time they would have to comply.

And to my mind, that would make sense to act in a similar way here. As long as it doesn't create any new ability to build a house, it should be allowed; but that if a new house were added to that lot, which theoretically it could be, then that would trigger compliance.

CHAIRMAN NOBRIGA: Mr. Timbal?

MOSES TIMBAL: I would be more than glad to comply with that. Because it was never our intention in the beginning to buy the place, I mean -- but now there's an opportunity, so why not.

CHAIRMAN NOBRIGA: Mr. Fukushima -- I'm sorry, were you done?

MOSES TIMBAL: Yes, go ahead.

MR. FUKUSHIMA: Mr. Timbal can correct me if I'm mistaken, but this property is owned by the Roman Catholic Church?

MOSES TIMBAL: That's correct.

MR. FUKUSHIMA: Mr. Timbal is acting as the Roman Catholic's Church service agent in this subdivision. Now, the Roman Catholic Church would have to agree to the condition that this committee wishes to recommend to the board. If that's so, then we can go forward. I just want to make sure that the committee understood that the Roman Catholic Church would also have to agree to the condition, otherwise there's no deal.

MR. STARR: Mr. Chair?

CHAIRMAN NOBRIGA: Mr. Timbal?

MOSES TIMBAL: In the last two years, my lawyer, Lawrence Ing, has been in touch with the Catholic church on every matter. Water is not just one of the things, it's subdividing, electrical or whatever. I'm not smart enough to handle all of this. So including water, road widening,

electrical or dedication to the poles and all that, I'm not smart enough to handle that, so my lawyer, Ing, is always doing those things for me.

So yes, the church is in contact with me and what's happening with the county.

MR. FUKUSHIMA: And you believe they would not have a problem with the encumbrance on their property?

MOSES TIMBAL: No.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: Mr. Chair, I would like to offer a motion that the committee recommend a waiver of the requirements subject to the parties involved agreeing that any further development on this property will trigger an upgrade into compliance.

CHAIRMAN NOBRIGA: Is there a second?

MR. NAKAMURA: Second.

CHAIRMAN NOBRIGA: It's been moved and seconded.

MOSES TIMBAL: Before we go to that, I failed to tell you that I started another business. Now I need warehouse space. And you folks can send your inspectors to come down to look at my place, but it's just a small business. But I don't have one garage yet, a permanent garage for my house yet. Because my house is only about under a thousand square feet.

But, you know, I mean, if you folks going to put restrictions like that, that's fine. But if you folks can say your maximum you can build is 2,000 square feet on the living space, fine. But I am going to require some additional space for my business to grow.

Anyway, before I came to the meeting the last time, I called Ing and I told Ing that I was going to attend the meeting. And one of the things that he said was that he recommended that I shouldn't be given a restriction on -- not an additional building, but just that I be allowed for my business to grow.

After all, I'm a farmer, and even though I sold my

business, I still farm and I still need some warehouse space and so I just ask you. But if you put that restriction on me, okay, so be it. I don't know how I going do it but.

CHAIRMAN NOBRIGA: Thank you.
Yes, Mr. Hiranaga.

MR. HIRANAGA: Currently on the 14 acres, how many dwellings are there?

MOSES TIMBAL: There's the church, and then the church has an original house that used to be call the sacristy, and then my house, which was built in 1987. That's all.

MR. HIRANAGA: According to the report from the department, there's a dwelling built in 1938, dwelling built in 1978 and the third dwelling built in 1987. So there were three dwellings or --

MOSES TIMBAL: No -- yeah, yeah, there's -- okay, there's a church, the one built in 1938 is the original church house where the priest used to live, and then my house was built in 1987. So if you say three dwellings, if you consider the church three dwellings, the church itself now, then there's three dwellings. But nobody lives in the church, yeah.

MR. HIRANAGA: Was there a dwelling that was demolished? Because it says there was a dwelling built in 1978.

MOSES TIMBAL: I moved there in 1987. Not to my knowledge. I was never in Hana. But you folks can come inspect the place, there's no house.

MR. HIRANAGA: Is the church considered a dwelling or is it exempt because of its use?

CHAIRMAN NOBRIGA: Are you asking Mr. Fukushima?

MR. FUKUSHIMA: It's not a dwelling.

MR. HIRANAGA: So it doesn't count?

MR. FUKUSHIMA: It doesn't count as a dwelling.

MR. HIRANAGA: It counts as a structure?

MR. FUKUSHIMA: Yes.

MR. HIRANAGA: Because under the current ordinance, you are allowed two dwellings for the 14 acres. If you allow the subdivision, you are limiting the 4 acres to one dwelling and 10 acres to one dwelling; is that correct? Is that the intent of the motion?

CHAIRMAN NOBRIGA: Of the motion? I defer to the maker of the motion.

MR. STARR: Just that if any new structures get built, then the fire protection standards be brought into compliance.

MR. HIRANAGA: For both lot 1 and lot 2?

MR. STARR: Yeah. I'm willing to do this so they are able to continue the existing use; but if they are going to increase the use, then, to my mind, they should be in fire compliance. Fire is here, maybe they might -- they may have a comment.

CAPTAIN BAL: I don't have enough information right now to make that judgment. But as I understand it, there is two lots and we have a dwelling on one lot and two dwellings on another; is that correct?

MR. CRADDICK: It's split up so there's one church, one dwelling, then the other lot, another dwelling. The other lots I think are road widening and things like that.

MR. STARR: There's just one lot.

CHAIRMAN NOBRIGA: Hang on. One person at a time, please. Mr. Hiranaga?

MR. HIRANAGA: Mr. Chair, for clarification, there's one lot which they are proposing to subdivide into two lots.

That's the request.

MR. CRADDICK: There's actually five lots.

MR. HIRANAGA: They need fire protection in order to subdivide.

CAPTAIN BAL: As it stands right now, they have three structures, so the subdivision would then cut that down.

MR. FUKUSHIMA: Per lot.

CAPTAIN BAL: Per lot.

CHAIRMAN NOBRIGA: The motion on the floor -- yes, Mr. Hiranaga.

MR. HIRANAGA: I feel that it's important that the church realize that they are going to be committing themselves that they will not be able to add another structure to their 10 acres unless someone, whoever it is, the church or Mr. Timbal will put in the fire protection.

They may find 20, 15 years from now they want to expand something or add a building because of the growth of the congregation, that they are going to find this thing sitting out there. It's a major commitment by the church.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: But that's how it is now. If they were to add another structure, then they are going to have to come into compliance with fire anyway. All I want to be sure is that we don't change that.

In other words, right now if they add another structure, then they have to put in all of these improvements, and I want to make sure that if we allow the subdivision, then they're in the same position where if they add another structure they have to upgrade.

CHAIRMAN NOBRIGA: Mr. Fukushima?

MR. FUKUSHIMA: Just for clarification. Is the request for a building permit going to trigger this condition?

What is going to trigger this condition? And I'm looking to possible expansion, possible destruction and rebuilding, possible repair work.

MR. STARR: Perhaps we might suggest some wording that would satisfy your concern.

MR. FUKUSHIMA: Again, I'm not sure how far the committee wants to go with this. Whether a building permit will trigger it. Of course, a building permit can be triggered by simple repair work.

MR. STARR: My motion was for any new structure, additional structure.

MR. FUKUSHIMA: Would that allow an expansion of a present structure to twice the size?

MR. STARR: If it's not an additional structure, yes.

MR. FUKUSHIMA: I just wanted to clarify that. That the only trigger will be additional structures from the structures that are already existing.

CHAIRMAN NOBRIGA: May I make an observance or add to the thing some discussion. Within your agenda on page 30, the chair would entertain an amendment to the motion to include this.

MR. NAKAMURA: I so move that we amend the motion to add the --

CHAIRMAN NOBRIGA: Moved by Mr. Nakamura --

MR. NAKAMURA: -- add the condition on page 30.

MR. TAGORDA: Second.

CHAIRMAN NOBRIGA: -- seconded by Mr. Tagorda that the requirements listed for approval on page 30 of our document be included. Any discussion on the amendment?

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Looking at those requirements, it says no building permit.

MR. TAGORDA: That's correct.

MR. HIRANAGA: So electrical, plumbing will trigger. Not additional structure, but no building permit. It becomes more finite in scope.

CHAIRMAN NOBRIGA: Yes. Any further discussion on the amendment? Hearing none, I sense you are ready to vote. All those in favor of the amendment signify by saying "aye."
(A chorus of ayes.)

Opposed "nay."

(No response.)

Amendment carries.

Back to the motion as amended. Any further discussion? Hearing none --

MR. TAGORDA: Couple of questions.

CHAIRMAN NOBRIGA: -- are you ready to vote? All those in favor of the amended motion, please signify by saying "aye."

(A chorus of ayes.)

Opposed "nay."

MR. HIRANAGA: Nay.

CHAIRMAN NOBRIGA: Let it be noted that Mr. Hiranaga entered a nay vote. Motion is carried for recommendation to the board. Thank you, Mr. Timbal.

MOSES TIMBAL: Thank you.

CHAIRMAN NOBRIGA: This is harsh, yeah? This is kind of harsh.

Let us move on to agenda item D. Discussion and possible action regarding Amendment to the Board of Water Supply's Rule of Practice and Procedure relating to appeals of

the director's decision to the board. Which is page 40 of your packets.

With the committee's indulgence, I would prefer to notice the rules one item at a time from here on in and possibly step up the committee meetings to two times a month if that's amenable. If the committee wishes to delve into this matter at this time, I'm very much open to it. But if you are ready to discuss, we can proceed.

MR. STARR: Go for it.

CHAIRMAN NOBRIGA: Yes, Mr. Craddick.

MR. CRADDICK: I don't know if you are aware, but both of these have gone to public hearing. Both are ready to go to the mayor if there's no substantial changes in them.

CHAIRMAN NOBRIGA: Okay, Mr. Nakamura. Thank you.
(At which time Mr. Nakamura leaves the room.)

MR. CRADDICK: Although the time is a little stale from the time they originally had the public hearings. I don't know if there's some legal limit on the time you can have your public hearing before they go to the mayor.

CHAIRMAN NOBRIGA: Thank you for bringing that up. I do remember these items. Are the members comfortable enough in passing this back to the board?

MR. TAGORDA: Mr. Chair, let me point out something about on page 2-3, 16-02-68, issuance of decisions and orders. That sentence there that's been underlined, "Any party that has interest may also file a brief or provide a presentation of such oral argument as may be allowed."

I think when I try to understand this sentence it has no legal standards and the connotation is that anyone who has an interest may come up and file a brief and not the person that's -- is that how it is, Mr. Fukushima?

MR. FUKUSHIMA: No, it says any party.

MR. TAGORDA: Any party.

MR. FUKUSHIMA: And a party is someone that's participating in the case. It's not any person in the world.

MR. TAGORDA: So that's my point. I really would like to question this statement here because "any party that has an interest may also file a brief...."

MR. FUKUSHIMA: I'm not sure any party has any interest.

MR. TAGORDA: Like anyone, any party.

MR. FUKUSHIMA: No, a party is someone that participates in the case and is a party to that case. It does not apply to any person in the world. It applies to someone that has been admitted to participate in the contested case.

MR. TAGORDA: One more thing I want to get clarification, Mr. Chairman, is on page 2-2.

CHAIRMAN NOBRIGA: Backward?

MR. TAGORDA: Yes. Section 16-02-05.5. The time may be extended by a majority vote of the Board of Water Supply by motion to waive the rules. I think the majority vote is kind of easy to get. So I am proposing or recommending a two-thirds vote when you waive a rule. Just like you are changing your rule and you need two-thirds of the members, not just majority, simple majority.

CHAIRMAN NOBRIGA: For the intents and purposes, we operate that five votes in the affirmative are necessary.

MR. TAGORDA: I'd like more than that, Mr. Chairman.

MR. FUKUSHIMA: Some matters require simple majority.

CHAIRMAN NOBRIGA: You would like to recommend two-thirds in this matter?

MR. TAGORDA: So it would be really hard to change the rules every time you like to waive it.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I disagree with this. I think that it's going to be very, very difficult for us to be able to meet these time frames, and there are many cases that come before us that we're not able to deal with within 60 days.

I can think of many, many matters that have been before us for months and months. We just not have been able to do it. And I think, unfortunately, that's going to continue to be the case. We're going to have two recourses: one is just an automatic approval whether it's good or bad and --

CHAIRMAN NOBRIGA: Or denial.

MR. STARR: Well, if we don't act, it's an automatic approval. And the other is, would be to waive the rules. Which is something I don't think any of us would like doing. The only other recourse would be to deny something that may have merit, but we have not been able to gather all the information.

My feeling is that we should leave it as a majority. It has been through public hearing; it has been through a lot of back and forth. And unless, you know, if we're going to start again, you know, we're starting at the beginning and going through the whole process. My feeling is that unless members feel a real, real strong need, we should get this through.

CHAIRMAN NOBRIGA: Mr. Hiranaga, you had a comment?

MR. HIRANAGA: No, sir.

CHAIRMAN NOBRIGA: Mr. Tagorda, do you want to recommend we change the majority vote to two-thirds?

MR. TAGORDA: I would like to have that for the composition of the full board not to really add their own whims with just a majority can change our rules and waive the rules. I want everybody to get -- it's not really easy for someone to have five votes to change the rules of the department. That's my point of view.

When you go to more votes to waive the rules, I think there are more minds that participated in that waiving of

the rule.

CHAIRMAN NOBRIGA: Yes, Mr. Starr.

MR. STARR: That means that if we have a board meeting where there's only five members present, then we'll be incompetent to waive the rules, and anything that we're not able to deal with will be automatically approved. I would have a problem with that.

I mean, even if we all agree, just because of quorum we may not be able to defer an item. I feel deferring stuff, while not often pleasant, is sometimes the only thing you can do if you don't have enough information.

CHAIRMAN NOBRIGA: Anybody else have comments on that? Mr. Craddick?

MR. CRADDICK: I would be very interested to know from corp counsel whether the existing charter the way it is for rule changes to be approved by the mayor and council, whether the board would summarily be able to change the rules without mayor and council approval.

MR. FUKUSHIMA: If it's provided for in the rules, they are approving the rule to be waived, they're approving the rule.

MR. CRADDICK: If they approve it?

MR. FUKUSHIMA: That's correct.

MR. CRADDICK: Okay.

MR. HIRANAGA: Yes.

CHAIRMAN NOBRIGA: Yes.

MR. HIRANAGA: What happens if a decision or order is not rendered within 60 days?

MR. STARR: It's automatically approved.

CHAIRMAN NOBRIGA: It's unclear.

MR. HIRANAGA: It should --

CHAIRMAN NOBRIGA: The place we can put that in --

MR. HIRANAGA: There's no consequence for failure to act.

CHAIRMAN NOBRIGA: Where can we insert that?

MR. CRADDICK: Right after the 60 days.

CHAIRMAN NOBRIGA: What page?

MR. CRADDICK: 2-3, 16-02-68(b) down at the very bottom, 60 days. Decisions and orders will be rendered within 60 days from the acceptance of the presentation to the board or it will be -- something.

MR. STARR: I have a question for counsel. I know the rule was originally promulgated to meet a requirement of the HRS statute that was passed by the legislature, that automatic approval bill. Does this current wording meet the requirements of that statute?

MR. FUKUSHIMA: I believe so. I believe the statute provides that any decision making body make decisions within a reasonable period of time, and under the rule, this reasonable period of time indicated is 60 days.

MR. STARR: Doesn't that state also that if no decision is made, then it's automatically approved?

MR. FUKUSHIMA: It does.

MR. STARR: Does it state it?

MR. FUKUSHIMA: By operation of law. By statute, HRS, it provides for that.

MR. STARR: It's automatically provided for?

MR. FUKUSHIMA: That's correct. But if you want to include it in the rule, we could.

MR. HIRANAGA: Mr. Chair, if corporation counsel is satisfied with the clarity of the language, then I would defer to his professional judgment.

CHAIRMAN NOBRIGA: So it's not necessary for this to be included?

MR. HIRANAGA: Not to me.

CHAIRMAN NOBRIGA: Okay.

MR. TAGORDA: That's okay with me. It's just a point of clarification.

CHAIRMAN NOBRIGA: We get question on the majority to two-thirds, consensus is that one is in favor and three is against.

MR. HIRANAGA: I concur with Mr. Starr's concerns.

CHAIRMAN NOBRIGA: Let's put it up for a vote. Motion to amend 15-02-05.5(b) from majority to two-thirds vote. Is there a motion?

MR. TAGORDA: Mr. Chair, I would move that we --

CHAIRMAN NOBRIGA: So moved by Mr. Tagorda. Seconded by -- any second? Motion fails for lack of a second. Thanks, Mr. Tagorda.

MR. CRADDICK: That is only an item dealing with the time, it has nothing to do with the rule itself. That's only dealing with the time element if you want to extend the time.

CHAIRMAN NOBRIGA: And then item 16-02-68, issuance of decisions and orders. I think it's the second sentence. Any party that has interest may also file a brief, etc. We want to insert the word "an" between "has" and "interest." So the sentence shall read: Any party that has an interest may also file a brief and provide a presentation of such oral argument as may be allowed.

MR. STARR: Mr. Chair.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I think that while your wording would be better, I think the existing wording is grammatically, marginally and legally correct.

CHAIRMAN NOBRIGA: This was a proposal from the corp counsel.

MR. STARR: In other words, we have to go back to public hearing to add --

MR. FUKUSHIMA: No.

CHAIRMAN NOBRIGA: It's not a substantive change. It's merely a housekeeping.

MR. STARR: Then I concur.

CHAIRMAN NOBRIGA: Okay. Moved, seconded -- by anybody. All in favor say "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Okay, we have the kind then.

So the committee -- let's go back to Chapter 2, Subtitle 02, Rules of Practices and Procedures for County of Maui -- what is this? Yeah, okay. Recommendation is to pass this out to the full board for approval.

MR. STARR: I so move.

CHAIRMAN NOBRIGA: Second.

MR. HASHIMOTO: Second.

CHAIRMAN NOBRIGA: Moved and seconded. All those in favor say "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Okay, good. That's all.

MR. CRADDICK: Under a separate agenda item.

CHAIRMAN NOBRIGA: What?

MR. CRADDICK: This one. Under a separate agenda item, not lumped together.

CHAIRMAN NOBRIGA: Huh?

MR. CRADDICK: You were saying you did not want these two things lumped together.

CHAIRMAN NOBRIGA: Right.

MR. CRADDICK: So I'm assuming you want this as a separate item.

CHAIRMAN NOBRIGA: Thanks, huh. Subchapter 8, this is the appeals to the board. This was excellent work done by Howard Fukushima. Applaud him for his proactiveness.

MR. STARR: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Starr.

MR. STARR: Was this previously passed out to public hearing or is this new wording?

CHAIRMAN NOBRIGA: This was, I know, approved by the board. I don't know if this was -- do you remember?

MR. FUKUSHIMA: This was approved to go to public hearing by the board. It went to public hearing and it's back for possible approval to be sent to the mayor and council. There were a number of comments made to this by both oral as well as written testimony. I hope the members have had an opportunity to read it.

If I may, in this draft, I have limited the areas of which people can appeal to applications for water service, building permits, or customers who are requesting an adjustment to their repayment plan. The way it's drafted now, appeals or grounds for appeals are fairly limited. If the board wishes to

expand them for any decision made by the director, that's a possibility too.

But we caution against opening it up that broad, that you would be inundated with requests. But if that's the pleasure of the board, you can redraft the language to make it broader.

MR. TAGORDA: What are your suggestions, Mr. Corp Counsel, to make it more broader in this prospective?

MR. FUKUSHIMA: It could be decision by the director. Any one agreed by the decision by the director can appeal. If you want to make it broad.

MR. TAGORDA: You are suggesting that we put the wording "decision by the director."

MR. FUKUSHIMA: I'm not suggesting that at all. I just want to inform the board that this draft limits appeals coming before the board.

MR. TAGORDA: I agree with you.

MR. STARR: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Starr.

MR. STARR: I have been thinking about today's meeting, I mean, fire flow requirements that's not included in here or subdivision is not included in here or quite a few other things that we have on a very normal basis. So perhaps, you know, priority list would be -- wouldn't be included in here. Perhaps that was a good comment from the public, perhaps we should broaden this language.

MR. FUKUSHIMA: If I may respond to that, Mr. Chair.

CHAIRMAN NOBRIGA: Yes.

MR. FUKUSHIMA: Subdivision -- waivers from subdivisions are already covered under the rule. That's why subdivision was purposefully left out. You have a point if you want to hear all matters relating to waivers of fire protection

outside the subdivision, I can put it in, we can include a waiver of fire protection.

MR. STARR: What would be the problem with just putting a general wording that any item can be appealed to us -- I mean, we don't have to act on it if it's frivolous.

MR. FUKUSHIMA: You would have to deny it.

MR. STARR: What?

MR. FUKUSHIMA: You would have to deny it if it comes to you. If you don't act on it, it's automatically approved.

MR. STARR: That's true. Can we still file something?

MR. FUKUSHIMA: No.

MR. STARR: We cannot? And deal with the --

MR. FUKUSHIMA: I believe you would have to consider requests on their merit.

CHAIRMAN NOBRIGA: Yes, Mr. Craddick.

MR. CRADDICK: The thing talks about a repayment plan, but there's no repayment plan in the rules.

CHAIRMAN NOBRIGA: Mr. Tagorda?

MR. TAGORDA: May I ask the director based on his experience with the department, what are those appeals that you have encountered over the years, what are those things? Like appeals to waive modification, requirement of the subdivision, exchange of meters. So we can incorporate in here, so it won't be just a very narrow scope. We can broaden it.

MR. CRADDICK: Orlando, I told you my opinion on this before. My opinion is just like Howard's, you make rules. If you have something where anybody can willy-nilly unfettered change the rules anytime they please, you might as well just repeal all the rules. Not have any rules. That's

what it means.

So to me, the problem areas we have are the first guy who comes in for a building permit or a subdivision that requires fire improvements has to go to Timbuktu to improve the system. I don't even know if that's legal under that in Doland v. Doland (phonetic), but it's part of our rules. I suspect it's not legal to do that.

That's probably one of the biggest things that we have problems with where there's no reasonable nexus to the improvements required versus what the person is asking for. I think for us that's one of the biggest problem areas that we have. The rest of them are relatively minor and they should be done by changing the rules.

I mean, you -- I don't know if you guys have a realistic idea of the workload that you are taking on when you pass something like this. I don't believe you do. Because you are going to have, probably a reasonable estimate would be 20 to 30 of these a month and you will have no time to do anything except listen to appeals.

MR. FUKUSHIMA: And if I may, that's one of the reasons --

CHAIRMAN NOBRIGA: Limiting the scope.

MR. FUKUSHIMA: -- I purposefully narrowed the scope of appeals that come before this board. But again, if it's the board's wish and desire, it can be broadened.

MR. STARR: I have a question for counsel. A higher court will -- when someone applies to bring a matter before them on appeal, they first decide whether they are going to hear it before they go through the process of hearing it. Is there any way that a board can do something like that?

MR. FUKUSHIMA: What do you mean, they --

MR. CRADDICK: Whether they have jurisdiction?

MR. STARR: If you are going to appeal something to the Supreme Court, before they hear it they are going to decide whether they are going to hear it or not.

MR. FUKUSHIMA: Everything --

MR. STARR: There are a lot of things that are gone to the appeals court that the court never hears; right?

MR. FUKUSHIMA: Not necessarily. If there's an appeal and if the appeal is properly taken, the court will hear anything. It can dismiss it with a memorandum opinion, which has no force and effect of law, or they can examine the case more closely and come out with a written opinion that does have the force and effect of law.

They hear everything that comes before them unless the parties coming before them have not followed proper procedure and it's generally procedural issues that kick a case out. But it could be the most frivolous appeal, but the court will hear it, assuming that standing and all procedural matters have been taken care of.

CHAIRMAN NOBRIGA: I'm sorry, the chairman is a little bit, da kine -- already. If it pleases the committee, can we defer this action on this and item F to the next meeting, please?

MR. TAGORDA: I think so.

MR. FUKUSHIMA: If I may comment.

CHAIRMAN NOBRIGA: We can look at the appeals and, one, decide if we want to delete the second sentence or not. That will broaden the whole thing up.

MR. TAGORDA: Yeah.

CHAIRMAN NOBRIGA: We can discuss the pluses and minus of that, then we can discuss the plus and minus of limiting. For now, I think we all had enough, I think.

MR. FUKUSHIMA: Again, we want to urge the committee to dispose of this as soon as it can.

MR. HIRANAGA: Question. If you defer the matter, it would not come before the full board?

CHAIRMAN NOBRIGA: Not on the appeals. I have to

get that report in by next Wednesday.

MR. HIRANAGA: What if you do a one-hour recess?

MR. TAGORDA: Why don't we go to lunch and then come back and do this and make some recommendation. Since those people are --

MR. HIRANAGA: I suggest we recess until one and if we come back and there's no court reporter --

MR. STARR: Let's take a recess.

CHAIRMAN NOBRIGA: We'll take a half an hour recess, then we'll spend another hour on this and let Gloria go. (A recess was taken.)

CHAIRMAN NOBRIGA: We'll call the rules committee back to order. Appeals, what if we delete the second sentence under appeals -- hey, Kent, I got to find the place now. I lost my place.

MR. HASHIMOTO: Page 44.

CHAIRMAN NOBRIGA: I have too much packets, I'm sorry.

MR. CRADDICK: Are you talking about under that standing to appeal?

CHAIRMAN NOBRIGA: Yes. On the 16-02-75, standing to appeal. If we delete the second sentence so the statute would read: Any applicant aggrieved by a decision or order of the director may file an appeal with the board. Period. If we leave that sentence in.

MR. TAGORDA: I'm for that.

CHAIRMAN NOBRIGA: What is the merits? The merits said -- yeah? Mr. Starr, how is it?

MR. STARR: I've been meditating on this over my break, and I think that we should widen it up to the fullest extent. We should not be afraid of dealing with problems

because they may take up a lot of our time. I think that's what we're here for. That's why we get paid the big salaries.

CHAIRMAN NOBRIGA: I propose that we delete sentence 2 on Section 16-02-75 on standing to appeal.

MR. CRADDICK: May I ask one more question?

CHAIRMAN NOBRIGA: Yes.

MR. CRADDICK: Supposing our rules deal with the implementation of federal laws, where you are trying to waive a federal law such as the backflow prevention, it's federal law that that's required. And I'm not certain, would we be in violation of a federal law if we waive the backflow prevention of our rules?

MR. STARR: I'm sure the board would not do that.

MR. CRADDICK: You never know. When you leave it wide open, you never know what will happen.

CHAIRMAN NOBRIGA: Yes, Kent.

MR. HIRANAGA: Is there a fee to file an appeal that might reduce the number of frivolous appeals? I know for the Board of Variance and Appeals there's a fee. It's nominal like a hundred bucks or --

CHAIRMAN NOBRIGA: Let's look at that as we go through this section. First matter to discuss I think is to decide if we want to limit the scope of appeal or to provide, as Mr. Starr has pointed out, an open process. Shall we look at that first?

MR. TAGORDA: Your suggestion, Mr. Chairman, about deleting the second sentence --

CHAIRMAN NOBRIGA: Yes.

MR. TAGORDA: -- I think I would go for that. The reason why is actually it will broaden the scope of the matters that would be appealed to the board, especially you don't know

what are these things that impacted the lives of the citizens. So that will broaden the scope. It might create a lot of jobs for the board. But again, Kent brings up a good point of fee when they file an appeal.

CHAIRMAN NOBRIGA: Shall we take a vote on that to repeal sentence two on standing to appeal? All those in favor signify by saying "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion carries.

Let's take up the fact of attaching a fee. Variance and appeals, how much they charge?

MR. HIRANAGA: I'm not quite sure, it's \$100 or \$150. There's processing expenses for the department so you try to discourage appeals as much as possible. Unless someone feels very strongly about it and willing to pay some money, because the staff has to review and prepare a report.

MR. TAGORDA: Would you like to make that a motion, add on to 16-02-76, filing an appeal?

MR. HIRANAGA: I'm just trying to think of what the appropriate amount should be.

CHAIRMAN NOBRIGA: We don't have to think of that. We can direct staff to come out with the appropriate language.

MR. HIRANAGA: I move that we request staff prepare recommendation as to appropriate filing fee amount.

CHAIRMAN NOBRIGA: Yes. Second?

MR. TAGORDA: Second.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: My feeling is that we should just set it and if we can pass it on to the full board, my feeling is \$50 is a fair number. It costs a lot more than that to prepare the paperwork, we know that, but at least it's something so that it

will prevent frivolous appeals.

CHAIRMAN NOBRIGA: The Board of Variance and Appeals is usually \$150?

MR. TAGORDA: Could we make it standard?

CHAIRMAN NOBRIGA: Let's make it standard of \$150.

MR. HIRANAGA: I'm not certain that it's 150.

MR. HASHIMOTO: Find out what the amount is.

MR. HIRANAGA: If Howard was here --

MR. STARR: How about we set it the same as the BVA?

MR. HIRANAGA: There's two fees: one for variance application and one is for appeal. Appeal is more expensive.

MR. STARR: Let's set it with whatever the BVA appeal amount is. By the time it goes to the board, we'll know what the number is.

MR. HIRANAGA: I make my motion.

CHAIRMAN NOBRIGA: Sure.

MR. TAGORDA: Second.

CHAIRMAN NOBRIGA: Moved and seconded. All those in favor of the amended motion say "aye." Back to motion as amended.

MR. CRADDICK: Yes.

CHAIRMAN NOBRIGA: Yes.

MR. CRADDICK: This may kick it back out to public hearing. I would guess that's a substantial change in there.

CHAIRMAN NOBRIGA: That's fine.

MR. CRADDICK: I think it's a good idea.

CHAIRMAN NOBRIGA: It's good. All in favor say "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion carries.

Contents of reading --

MR. TAGORDA: Can we go back to filing of appeal?

CHAIRMAN NOBRIGA: Sure.

MR. TAGORDA: On A, Section A, any applicant who has standing to appeal shall appeal to the board within twenty calendar days. I think that 20 calendars, to me, my opinion is that it's very short. I think we need to give them longer cutoff days, cutoff period, to appeal. How would --

MR. STARR: However much you like is okay.

MR. HIRANAGA: They have to prepare documents.

MR. STARR: 45 days?

MR. CRADDICK: You give them more time to appeal than you can deal with the action.

MR. TAGORDA: If you can deal with the action before appeal, that's great. Give them ample time.

MR. CRADDICK: Do you understand what I'm saying? We have 30 days to deal with the action fully. I'll tell you, if they can't file an appeal in 20 days, something is seriously wrong.

CHAIRMAN NOBRIGA: 20 calendar days would be the equivalent.

MR. CRADDICK: That's more than enough time. Because then you should extend the time the staff has to deal with it. You should make that at least longer than what the time they have to appeal. That goes back to the previous rule.

MR. HIRANAGA: The staff has 30 days.

MR. TAGORDA: Make it 30 days instead of 20.

CHAIRMAN NOBRIGA: Let's put that up for a vote.
All those in favor of amending 16-02-76(a) from 20 calendar days to 30 calendar days. Motion was made by Mr. Hiranaga and seconded by Mr. Tagorda. All those in favor say "aye."
(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion carries.

Good. We still have anything to add to filing of appeal? Everything else looks good.

MR. HIRANAGA: I have a question for corp counsel. I guess he is not here. What's the consequence if an appeal is deemed untimely?

CHAIRMAN NOBRIGA: Any appeals submitted after the time limits.

MR. CRADDICK: He is asking, what are the consequences the appeal will not be heard, I guess is the consequence --

MR. HIRANAGA: Is Mr. Fukushima returning?

CHAIRMAN NOBRIGA: Yes.

MR. HASHIMOTO: He has his things here.

CHAIRMAN NOBRIGA: Let's come back to that. Instead of the word "untimely," we can have another group of words, just specify that --

MR. STARR: Will not be considered.

MR. CRADDICK: Will be untimely and not considered.

CHAIRMAN NOBRIGA: You want to do that? You want to delete the word "untimely" and add the word "not" between the

words "will" and "be"?

MR. STARR: Or will not be acted upon.

MR. HASHIMOTO: What is it?

CHAIRMAN NOBRIGA: I don't know.

MR. STARR: How about "will not be acted upon."

CHAIRMAN NOBRIGA: Striking "considered" and "untimely" -- strike "be considered untimely" and adding "not be acted upon." Motion is made by Kent Hiranaga, seconded by Jonathan Starr. All those in favor signify by saying "aye." (A chorus of ayes.)
Opposed "nay."
(No response.)
Motion carries.
You guys like this?

MR. STARR: We're making progress.

CHAIRMAN NOBRIGA: Okay, good. Otherwise the thing reads pretty good. Let's give it some more time. To look at this thing.
Hello, Howard. Almost pau.

MR. FUKUSHIMA: You want me to leave; is that the hint?

CHAIRMAN NOBRIGA: Let's bring Howard up to speed.
We decided that we're going to recommend to the board that we strike the second sentence -- standing to appeal, 16-02-75, which will broaden the scope to everything. In Section 16-02-76, filing of appeal, Section A, we decided that we'll remove the word "twenty" and insert the word "thirty." Having the applicant and the department with the same amount of time.
We're also recommending that in the second sentence of appeals submitted after the time limits prescribed in this section, we'll strike "be considered untimely" and insert "not be acted upon."
We would like to add a Section C in 16-02-76 allowing for a fee to be paid for appeal that would be equal to

and not exceeding the fees currently collected by the Board of Variances and Appeal. We believe it was \$150 but we were not certain.

MR. FUKUSHIMA: Part of that cost for this is the cost for a variance.

CHAIRMAN NOBRIGA: For an appeal.

MR. FUKUSHIMA: For an appeal.

MR. TAGORDA: Do you know how much it is?

MR. FUKUSHIMA: I'm not sure how much it is.

MR. STARR: It will change with it.

CHAIRMAN NOBRIGA: Yeah.

MR. FUKUSHIMA: I think it's set forth in the regular fees and assessments.

CHAIRMAN NOBRIGA: I don't think we want written in here that -- supposed to be equal to Board of Variance. But should be a set dollar amount which would be the same as filing an appeal to the Board of Variances and Appeals.

MR. FUKUSHIMA: Let me check that and insert that.

CHAIRMAN NOBRIGA: That's where we are right now. Still reviewing the rest of the docket. We are aware that these changes would require us to again notice a public hearing.

MR. FUKUSHIMA: I don't believe so. The changes that you've made, just the changes you've made, I don't believe would require --

MR. CRADDICK: The fee.

MR. FUKUSHIMA: I don't believe so.

CHAIRMAN NOBRIGA: Should the board accept the

recommendation?

MR. FUKUSHIMA: May I make one more suggestion? If you are going to be expanding the appeal process as you have, strike "applicant," put in "any person."

CHAIRMAN NOBRIGA: Is there a consensus on that, members?

MR. TAGORDA: Person is fine.

CHAIRMAN NOBRIGA: No objection.

MR. TAGORDA: So moved.

MR. FUKUSHIMA: That would change in the next --

CHAIRMAN NOBRIGA: Substitute "any person" instead of "applicant" wherever there's the word "applicant."

MR. FUKUSHIMA: Yes.

CHAIRMAN NOBRIGA: You need the file search, replace function. Are members satisfied with the current document before us as amended?

MR. STARR: Yes, sir.

CHAIRMAN NOBRIGA: Shall I have a motion to recommend the board approve B, Chapter 8 as amended?

MR. FUKUSHIMA: One more. I had a section relating to a Section B, 16-02-79 on page 2. Do you want to copy that in there? It's for leaky meters, leaky lines.

MR. TAGORDA: What's that?

MR. FUKUSHIMA: When someone has a leaky line and their water bill is high because of that leak.

CHAIRMAN NOBRIGA: We could delete that and handle that within some other rule.

MR. FUKUSHIMA: This sets forth a standard, but I

was wondering whether you want to keep the standard. This was something I stuck in here. 500 percent came from, I believe, board member Starr. But I just wanted to point out that this is still in there and whether you wish to keep it, I'm not sure. There was some portion raised.

MR. CRADDICK: A rule for a payment plan.

CHAIRMAN NOBRIGA: We'll be adding that into the rules. Payment plan. We need an exchange. All of this stuff we're dealing with we wanted as part of the rules.

MR. FUKUSHIMA: If someone comes in, Dave, isn't it true you reenter into a repayment plan? Someone who -- or that is one of the options that you do?

MR. CRADDICK: We have, but it's no rule.

MR. FUKUSHIMA: That's why we're trying to make it a rule.

CHAIRMAN NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: May I add something on 16-02-79, standards of appeal?

CHAIRMAN NOBRIGA: Yes.

MR. TAGORDA: First you have "A," then you got 1, 2, 3. Can I add No. 4 in there, based on improper procedure?

CHAIRMAN NOBRIGA: Okay.

MR. TAGORDA: I would like to add one more.

MR. STARR: It would be No. 4.

MR. TAGORDA: You get 1, 2, 3, based on a clearly erroneous finding --

CHAIRMAN NOBRIGA: I'm with you.

MR. TAGORDA: -- arbitrary or capricious in its

application. No. 3 is clearly unwarranted abuse of discretion, and then add No. 4, based on improper procedure. What do you think, Howard?

MR. FUKUSHIMA: I think that's fairly synonymous with what's contained in 1, erroneous allegation of the law.

MR. TAGORDA: I withdraw, Mr. Chair.

MR. STARR: How about we add it to No. 1, based on a clearly improper procedure or erroneous application of the law.

MR. FUKUSHIMA: Improper.

CHAIRMAN NOBRIGA: Say that again.

MR. STARR: After fact in No. 1, we have comma, erroneous procedure -- improper procedure, or erroneous application.

MR. FUKUSHIMA: What do you mean by "erroneous procedure"?

MR. TAGORDA: Well, it's something like a -- you set some rules and standards and you did not follow through when there are set guidelines. You probably -- what would be the wording -- that's why I make it so laymen, based on improper procedure. You set procedure.

MR. FUKUSHIMA: If that's what you mean, in that case, in my mind, it would be an erroneous application of the law.

MR. TAGORDA: But it's not the law --

MR. FUKUSHIMA: If it's --

MR. TAGORDA: Make a set of guidelines and that was not followed. That's what I meant. It's not a law.

MR. FUKUSHIMA: We run into guidelines versus rules --

MR. STARR: I think it probably is included.

CHAIRMAN NOBRIGA: So the amendment before us right now is moved by Mr. Tagorda and seconded by Mr. Starr, is that in Section 16-02-79, Section A, Subsection 1, based on a clearly erroneous finding of material fact, at that point we'll insert comma, improper procedure, or erroneous application of the law. Is that correct?

MR. TAGORDA: Yes.

CHAIRMAN NOBRIGA: Any further discussion?

MR. CRADDICK: Mike?

CHAIRMAN NOBRIGA: Yes.

MR. CRADDICK: Never mind.

CHAIRMAN NOBRIGA: All those in favor say "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion is carried. One abstention. One nay, da kine, by Kent. Yes, Mr. Craddick.

MR. CRADDICK: On the B item there.

CHAIRMAN NOBRIGA: B item. Because we removed specifics from the front, B doesn't fit in here. B is like one sore -- one thumb right now.

MR. STARR: Do we need B? Could we --

MR. FUKUSHIMA: Yes.

MR. STARR: Let's delete B.

CHAIRMAN NOBRIGA: And take it up at a different time. Motion made by Clark Hashimoto -- made by Jonathan Starr, seconded by Clark Hashimoto. All those in favor in deleting B signify by saying "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion carries.

Now can we have a motion to recommend to the board acceptance of the amended Subchapter 8, entitled "Appeals to the Board."

MR. STARR: Mr. Chair, I move that we recommend that the board proceed with passing -- approving and passing this on to the proper procedure for --

CHAIRMAN NOBRIGA: Thank you.

MR. TAGORDA: Second.

CHAIRMAN NOBRIGA: Seconded by Orlando Tagorda. All those in favor say "aye."

(A chorus of ayes.)

Opposed "nay."

(No response.)

Motion carried.

MR. CRADDICK: Mike, in corp counsel's opinion, this does need to go to public hearing, making the change of having three items, you can waive to just wild unfettered action.

MR. FUKUSHIMA: I don't believe changes in the proposed make this an entirely new proposal under the standards in Carlsmith v. City Bank.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: One further comment, what we have done today is based on the testimony we received at the public hearing. I think it's in line with what the public wanted us to do.

MR. TAGORDA: Except for one thing, the filing fee.

CHAIRMAN NOBRIGA: If there's no objection, we're going to defer item F to our next meeting. Maybe not. So ordered.

MR. STARR: Mike?

CHAIRMAN NOBRIGA: Yes, Mr. Starr.

MR. STARR: There's a question, how are we going to dig into it and also what happens to 3-1?

CHAIRMAN NOBRIGA: Who?

MR. STARR: 3-1.

CHAIRMAN NOBRIGA: Yeah, I remember that one. First we need to get all the members equipped with the draft submitted by Mr. Fukushima, which he was gracious to go through. And we want to work off of these documents which are numbered in accordance to Hawaii Revised Statutes.

MR. FUKUSHIMA: No, it's numbered in accordance with the county's administrative numbering system. What I was going to say, this set is merely the rules that are presently in effect numbered properly with the inclusion of a drop-dead date which is already passed. That's the only difference between your existing rules and this set right here. It just put it in proper format.

CHAIRMAN NOBRIGA: We'll be taking up Chapter 101 first. Chapter 101 is entitled "Rules and Regulations of the Board of Water Supply." It covers water service, general conditions, responsibilities of water penalties, resale, control of water usage during periods of drought, and a bunch of other things. But I would prefer if all the members have the same document so we're all on the same page.

MR. STARR: Do we have this now currently?

CHAIRMAN NOBRIGA: This was given to the whole members, but Kent would not have a copy of this. So I need to bring Kent up to speed.

MR. STARR: Two or three months ago --

CHAIRMAN NOBRIGA: More than that.

MR. FUKUSHIMA: Even longer than that.

MR. STARR: I suggest we all get him a --

CHAIRMAN NOBRIGA: Everybody start on the same. We'll start at the top first, then we'll schedule two more meetings a month, then we'll go through as much as we can. The same as we did today, which I felt is the best. If we stay specific, I think we can take care of it a lot --

MR. HIRANAGA: May I see that?

MR. STARR: Would it be helpful for counsel to -- when we take one section, for counsel to give us, like, a little workshop and run through that one section and then we can go and deliberate?

MR. FUKUSHIMA: Sure. With the assistance of staff, I'm sure I can. I don't work with the rules all that much and I think comments from staff, who work with the rules every day, is going to be very important.

CHAIRMAN NOBRIGA: Much, much more.

MR. HIRANAGA: I don't think I have this.

MR. FUKUSHIMA: If you don't talk with David --

MR. STARR: We're going --

CHAIRMAN NOBRIGA: There was a hot rod copy machine that was brought in, that we're paying a lot of money for and the thing went jam on the first section.

MR. HASHIMOTO: You mean at your office?

CHAIRMAN NOBRIGA: Yeah. This meeting is adjourned.
(The proceedings were concluded at 1:00 p.m.)

"By Water All Things Find Life"

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