

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

RULES COMMITTEE

Taken at the HGEA Conference Room, David K. Trask, Jr. Office Building, 2145 Kaohu Street, Room 207, Wailuku, Maui, Hawaii, commencing at 8:00 a.m., on December 18, 2001.

REPORTED BY: JEANNETTE W. IWADO, RPR/CSR #135

IWADO COURT REPORTERS, INC.

A T T E N D A N C E

RULES COMMITTEE MEMBERSHIP

CHAIRPERSON: MICHAEL NOBRIGA

BOARD MEMBERS: CLARK HASHIMOTO

KENT HIRANAGA

JONATHAN STARR

ORLANDO TAGORDA

DIRECTOR DAVID CRADDICK

DEPUTY DIRECTOR GEORGE TENGAN

DEPUTY CORPORATION COUNSEL: ED KUSHI

BOARD SECRETARY: FRAN NAGO

FISCAL OFFICER: MICHAEL QUINN

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HERB CHANG

IWADO COURT REPORTERS, INC.

TRANSCRIPT OF PROCEEDINGS

BOARD OF WATER SUPPLY

RULES COMMITTEE MEETING

DECEMBER 18, 2001, 8:00 A.M.

CHAIRMAN NOBRIGA: Good morning. I'd like to call

the meeting of the Rules Committee of the Board of Water Supply

to order. It's a little after 8:00 at the David Trask office

building, Room 207 up here in Wailuku town. In attendance we have committee member/board member Clark Hashimoto, board member/committee member Kent Hiranaga, board member/committee member Orlando Tagorda, board member Jonathan Starr, and myself, Chair, Michael Nobriga.

First order of business is approval of the minutes of September 20th, October 9th, and October 25th. A motion is in order to receive the minutes subject to 30 day review. If there's no corrections, the minutes shall be filed. Can I have a motion?

MR. HIRANAGA: Motion.

MR. STARR: Second.

CHAIRMAN NOBRIGA: Seconded by Mr. Starr. Any discussion? All those in favor signify by saying "aye."

(A chorus of ayes)

Opposed "nay."

(None).

Motion does carry. We are now open to our testimony by the public on items that are not on the agenda. We will

allow public testimony during agenda items as we proceed. First order of business, item five, committee report communication 01-31, a communication from Mr. Starr, Hugh Starr, regarding definition of subdivision as stated in the department's rules and regulations.

It is my recommendation that we receive the communication and file for later discussion when we have properly noticed that part of the rules. But because we have people here, we are going to open it up to public testimony. We will begin with Mr. Starr.

MR. STARR: Good morning, Chairman Nobriga, members of the Rules Committee, thank you. My name is Hugh Starr and I will just, if I may, read my letter into the record. I am writing to respectfully request that your Rules Committee consider a proposed amendment to the definition of subdivision as currently written in the department's rules and regulations relating to condominium property regimes.

As you may recall, this issue was discussed at some length last year by the Oversight Committee in conjunction with the Charles Freitas request for approval of a building permit

application on a condominium, which request was approved by that committee and ultimately approved unanimously by the Board.

Current Department of Water Supply rules and regulations number three, Section 3-1 mandates that the normal fire protection requirements imposed on subdivisions must be met upon the construction of the third structure on a lot, even if the land is not subdivided. Construction of the first and second dwelling units are exempt.

Also, Maui County Code Chapter 18.04.470, Subdivisions, defines a subdivision in part as follows: The construction of four or more dwelling units on a lot, parcel, or site shall be subject to the provisions of this title.

These two provisions together protect and ensure that at the time a fourth dwelling unit is constructed on any lot, full subdivision review and requirements are triggered. To amend the subdivision definition in the Department of Water Supply rules accordingly would provide consistency.

May I respectfully propose that the definition of subdivision under Section 1-2 of the department's rules and regulations be amended as follows: And then rather than reading the whole definition, I might just skip down to the end

of the definition where it says, "The term includes a building or group of buildings, other than a hotel, containing or divided into three or more dwelling units, planned unit developments and condominiums," and I would insert "of three or more units for purposes of this rule" shall be included in this definition. Thank you for your important consideration of this request.

And then I wanted to just make a couple of just brief comments, if I may. The condominium is a confusing issue. We covered it in the Oversight Committee previously. It is one way of holding ownership of a single lot and its permitted improvements. There are other ways of holding ownership, joint tenancy, partnerships, corporations, limited liability companies. There's a common misperception that the condo form of ownership will increase the number of houses permitted on the property. It does not and it cannot. Maui's zoning laws alone determine building density.

The condo form of tenancy can help our local families who struggle with high housing cost. In my own personal case my wife and I have four children, three of whom have now returned to Maui after completing college. We own two

adjoining lots and need to ultimately pass those two lots to all four of them. Condo type of ownership will afford each of them the security of owning their own home. This thing does touch me personally and I'm interested in it professionally as well. Thank you very much.

CHAIRMAN NOBRIGA: Thank you, Mr. Starr. Next, Mr. Bodden.

MR. BODDEN: Good morning Mr. Chairman and Board members. Thank you for allowing me to share with you a few thoughts. My name is Tom Bodden, I am an attorney, but I am not wearing a tie today. I am not representing anybody. I am also a real estate educator, having taught courses on estate planning and real estate law at the University of Hawaii, Maui Community College, and elsewhere in the community for over 20 years.

It's really wearing that hat as well as speaking from a personal point of view that I'd like to share with you some of my observations and concerns about this existing rule that does in my opinion discriminate against and penalize people who choose to own their property under our state's condominium method of ownership.

What I'd like to do is share with you some examples, first of all. Let's assume that you and I inherited from our parents a piece of property that has a house and a cottage on it. The house and the cottage were both fully permitted structures and built in full compliance with County requirements. You and I inherited as joint tenants. Well, what is the consequence of that? If you die I end up owning the whole thing. If I die, you own the whole thing. So we say well, that's nuts because my kids want my share and your kids want your share. So why don't we instead be tenants in common.

Well, what happens with tenants in common? I go down to the bank to try to get a mortgage to remodel my house. No can do unless you sign the mortgage with me because we each own undivided interest in the property. And by the way, if I get into problems and somebody puts a lien against the property, we're all in trouble because we are tenants in common, we own undivided interest in the same property.

Well then, we say well, gee, why don't we put it in an entity. We don't need anybody's permission to put it into a corporation or an LLC, or something like that. Nobody minds if

we do that, so we do. But we still have a problem because if the corporation wants to go ahead and get a mortgage we all have to sign. It affects the entire property.

And that's the problem which Hawaii property owners encountered 50 years ago with what was called cooperative corporations. Hawaii was the first state in the nation to enact the condominium law. It was strictly and still is strictly a method of ownership. It's a solution to the problem that you and I have with this property we inherited.

When most people hear the word "condominium" they think of a huge concrete structure in Waikiki or here on Maui or whatever. Most of those are condominiums. But in fact, a condominium could be the method of ownership that you and I select for that property that we inherited from our family or we bought together, or whatever.

So what do we do? Well, first of all, what we do is take the property and submit it to the Condominium Property Regime, which is strictly a method of ownership. That means if I don't pay my bills and they put a lien on my cottage, because you have got the house, okay, and they put it on my undivided interest in the land but they don't affect you at all because the Condominium Property Regime method of ownership protects

each separate owner as to his or her interest. And by the way, we each get a separate tax bill from the property tax department as well, because the tax department sees them as a separate ownership arrangement.

Now, the dilemma that is presented by your rule is even though this property that we have was totally permitted, fully approved, in full compliance with the zoning for the County of Maui, if we submit it to that method of ownership, the condominium property regime, then we jeopardize risking your rule, which as I understand it says simply changing the method of ownership even for existing structures then requires additional compliance. All we've done is change the method of ownership in my situation.

Ironically, maybe we said, well, gee, we don't want to take that chance, we will subdivide the property. Well, if the purpose of this rule was to minimize or limit the consumption of water. In fact, if we subdivide then I get to build a house along with my cottage and you get to build a cottage along with your house, and now we have got four structures instead of two on the same piece of land.

Now, one other thing I want to mention. This area

of condominiumization has been a concern with counties statewide. One of the things that the state legislature did, because this is a state law that creates a method of ownership, is they changed the law a few years ago to state specifically, "You cannot submit your property to the Condominium Property Regime, you cannot go to the Real Estate Commission for their issuance of an effective date for a public report unless your property is in full compliance with County building codes, zoning codes and other requirements."

So submitting the property to condominiumization as a method of ownership does not prevent or figure out some way to get around all of your other requirements, it's strictly a method of ownership. And I respectfully suggest that you change your rules in a manner that relies upon what I do on the property, not how I and you or I and somebody else choose to own the property. We have to comply with the zoning requirements. We have to comply with all of the other things in order to submit the property to the Condominium Property Regime.

But your rule as presently written really punishes us or prevents us from owning a property in a manner that is not only efficient, it's beneficial to the people here in

Hawaii. And I have in my estate planning practice seen many clients who -- and Hugh gave the example already that I have two kids and I want them each to own a piece of property but we can't afford to buy two properties, but I have two dwellings on the property already.

Condominiumization is a way by which I can accomplish that estate planning objective, or whatever. And I therefore urge you whenever it is appropriate to review that rule and rely on your other very effective rules that comply to still required rules, but do not discriminate against a method of ownership, because otherwise we're stuck being joint tenants or tenants in common, and one of us gets in trouble because of the other's problems. I thank you for your patience. If you have any questions of me, I'd be happy to answer.

CHAIRMAN NOBRIGA: Thank you, Mr. Bodden.

MR. STARR: I have a question. Tom, have you reviewed the proposed language in relation to our, the current wording in our rules?

MR. BODDEN: I just heard Mr. Starr read something.

MR. CRADDICK: He's talking about Hugh Starr's letter.

MR. BODDEN: I just heard that for the first time just a minute ago, and I don't have a specific recommendation to you because I know that's an important process. What I wanted to do was just express my concern. What I did hear there was to raise kind of the bar from two to three. Quite frankly, I would rather have it be something that simply says I have to comply with County building and zoning requirements. I have to comply with your other rules. And I would rather view condominiumization as a method of ownership, whether it's two or three or whatever.

Quite candidly, I own a piece of property where there are three dwellings, and when I bought it there were three. I and my wife own one, my daughter and her family own another, and actually my neighbor and his kids own the one next to us. So there were three permitted dwellings on it and it was in full compliance with County requirements, and therefore it was condominiumized. I'd prefer to have us rely on other rules than a specific number. That's my personal opinion. But

I presume that's a process that you will go through later.

CHAIRMAN NOBRIGA: Thank you, Mr. Bodden. Anyone else wishing to testify on the letter? Mr. Tom Welch.

MR. WELCH: Good morning, Mr. Chairman. Thank you members of the Board. I would like to testify on the subject in great detail, but I don't think I can improve on Hugh Starr's technical presentation of the issue. I would like to add a couple of things to what they said.

First of all, there's a lot of people in Maui who are interested in this. I must get three or four calls a week from people who are asking me about this rule, about what they can do and what they can't do with their property. Whether the rule might be changed, how they can avoid the rule. Any advice I can give them about how they can meet their needs with respect to a particular property.

The kinds of people that call are all kinds. There are a lot of people like Tom Bodden's clients who have estate planning issues. There are a lot of people who own properties Upcountry. This is only really in the Haiku-Upcountry area and

also Kula where additional water meters aren't available. And there's a lot of properties up there where there are multiple owners that have had multiple owners since 25 years ago when there was a surge in population where people wanted upcountry property and they were combining their resources and so forth.

Those kinds of people are interested in doing separate financing, separating their ownership and ordering their ownership in a way that is better than the partnership or co-tenancy or other arrangement they had to date which didn't allow them to get their financing.

Also, there are people who want to build another house and sell it and pay down their mortgage. Also, there are people who want to speculate. People who want to buy a piece of property, build in an ag zone, build a house and ohana cottage, sell off the ohana or big house and make a profit and live in the other house. But there are a lot of people interested in this.

I feel that this rule has a big impact, a big negative impact on people. Again, only Upcountry. If you have a house in Kuau or property in Kuau where there are additional meters available, I always tell people to go get the extra meter. This is not an issue of whether people can afford or

want to pay the water system development fee for another meter, that's not part of this. It's only whether or not they can do what they want to do with their property with respect to the form of ownership.

I've always felt that if the Board is concerned about development and if the Board looks at this rule as it presently stands as a means of curtailing or controlling development, I've always felt that the rule kind of misses the mark for several reasons. One is that people can build on their property that which the zoning lets them build. And if they're going to do a co-ownership arrangement they can do so within the Water Board's current rules by using one of these other forms of ownership. They can do it. It's not as convenient, but they can do it.

The Board is protected by other rules that you have against development. You have the limitation on fixture units for how many dwellings or fixture units a meter can serve, you have the rule that says if you have more than two structures you have to have -- more than two dwellings you have to have a subdivision. That is, you have to deal with the infrastructure requirements related to subdivision, and those are good, clear

rules that are directly related to water use and restriction on water use. Whereas, the rule on the condominium is more a regulation of a form of ownership, which I always felt misses the mark somehow.

Now, the rule that Hugh Starr proposed said that he suggests that we exclude from the operation of the rule a condominium with three or more units. I would like for you to consider or request that you consider having more than three as that exemption. And the reason I say that is there are a lot of people that have three houses in these Upcountry properties under co-ownership that exist, that are served by a meter, that are grandfathered, that have been in existence for many years. I have several of those clients.

And under the circumstances, they would like to be able to divide their ownership. And by upping it to three, it would meet the needs of a lot of people who are also concerned about this, without doing too much injustice or doing too much upsetting of the basic regulatory scheme. Thank you very much. I'd be happy to answer any questions.

CHAIRMAN NOBRIGA: Thank you, Mr. Welch. Anyone else wishing to testify on this subject? Motion is in order to

file communication -- yes, Mr. Hiranaga?

MR. HIRANAGA: Mr. Chair, I was wondering if I could ask what the Director's opinion is of this.

CHAIRMAN NOBRIGA: I'll let you ask the Director, it's just that the meeting was never on notice for us to take up the matter of the definition within our rules. This is merely a transmittal from the Board to the committee of Hugh Starr's recommendations for us to take up at a later date. But please, continue.

MR. HIRANAGA: Do you have any comments regarding this?

MR. CRADDICK: That would be my same suggestion. We could probably answer all of these things, but basically we view them as separate owners and you have fights between owners. And I know they try and settle those fights in their condo rules, but they still come to us when there's a problem, when one of them has low pressure because of something the other one is doing. So that's an issue that needs to be

resolved that isn't resolved with any of these suggestions here. But other than that, it's probably better to wait until the rule actually comes up for review and then we can respond to all of them.

MR. HIRANAGA: Move to receive the communication from Mr. Hugh Starr and file for later discussion.

CHAIRMAN NOBRIGA: Thank you. Is there a second?

MR. STARR: I'll second.

CHAIRMAN NOBRIGA: Moved and seconded. Any further discussion?

MR. STARR: Yes, I have a question for Corp Counsel.

CHAIRMAN NOBRIGA: Yes, Mr. Starr, continue.

MR. STARR: According to the automatic approval language that I believe passed through the Council last week, if we receive a petition for a rule change like this and we

don't act on it in a certain amount of time I assume that doesn't automatically approve it by the Board, is that correct?

MR. KUSHI: Mr. Chair?

CHAIRMAN NOBRIGA: Mr. Kushi.

MR. KUSHI: Mr. Starr, I am not aware of whatever happened with the Council, and I am not too sure that this communication is a petition for a rule change. If it is, I have to look at it in terms of your rules, in terms of rule making procedures, and I am not too sure that this is a petition. It is a mere communication at this point. That doesn't stop the Applicant or Mr. Starr from actually petitioning or the Board on its own, at least from testimony, to initiate a rule change.

CHAIRMAN NOBRIGA: Thank you.

MR. HIRANAGA: Mr. Chair, I'd just like to comment.

I want to urge the Chair that we -- I think I'd like to urge

the Chair to bring this up to the agenda as soon as possible, because I think there are some inequities.

CHAIRMAN NOBRIGA: Thank you, Mr. Hiranaga. Any further discussion? All those in favor signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

Motion carries. Item B, Mr. Mamiya was here earlier. I have a letter from Mr. Arakaki requesting the matter be withdrawn from this meeting and taken up at another time. Is there any objection?

(No response).

No objection, so ruled, ordered, whatever. Okay, thanks.

Item C is a request from Wayne Arakaki for subdivision approval in the shortage area and a modification of the subdivision requirements, Von Tempsky Subdivision.

Yes, Mr. Craddick?

MR. CRADDICK: I don't know if anybody is here, but

we wrote a letter to them asking for more information before we can answer anything. But I think they're here.

CHAIRMAN NOBRIGA: Is there anyone here wishing to talk to us about this?

MS. NAGO: This is Debbie Von Tempsky.

CHAIRMAN NOBRIGA: Thank you. Miss Debbie Von Tempsky.

MS. VON TEMPSKY: I'm Debbie Von Tempsky and I think Wayne isn't here, and he has all the information. But I think he did send a letter off to the department. But maybe we should defer it until Wayne comes so they can have their information.

CHAIRMAN NOBRIGA: Sure.

MS. VON TEMPSKY: He's not here today so -- is that okay?

CHAIRMAN NOBRIGA: Yeah, that's okay.

MS. VON TEMPSKY: Thanks.

CHAIRMAN NOBRIGA: Members, any objection?

(None).

So ordered.

Item D is a request for utilization -- let me read this. Request from James R. Judge for permission to utilize an existing easement to obtain water service and for a waiver from the requirement of the installation of a fire hydrant, Judge Family Limited Partnership Property, Omaopio, Maui. Is there anyone here wishing to give testimony?

MR. JUDGE: Yes, please. Jim Judge appearing for the Judge family, and with me is my wife Lisa. And my mother would be here today --

CHAIRMAN NOBRIGA: Congratulations.

MR. JUDGE: I came out ahead in that deal. My mother would be here too, but it's her 81st birthday, and as part of my gift to her I am not making her come here today.

What I'd like to do is just give a short summary of how we got to where we are. By and large the predecessor in interest to us acquired 49 acres in Omaopio in 1963. In 1965 it was subdivided into four lots, three additional together with the one original that existed. Of those three additional, one of them has been further subdivided down into two more.

The parcel that we are talking about today by number is parcel number 88. And basically, between 1965 and 1973, my family slowly acquired 46 of the 49 original acres. And parcel 88 is the only one without a water meter on it, all the rest of them have. It seems clear that we are entitled to a meter, and if one had been requested in 1965 or 1975 or 1985 or 1995 I think it would have been located in the same place as two of the current meters, which service parcels 3 and 87.

After my father's death, my mother and I placed the property into a family partnership. And I have two adult children ages 25 and 22, and you have kind of heard the Hugh Starr situation. I have that same situation, I have adult kids that I'd like to get back to Maui. Obviously a way to get kids back is to say, "Hey, we have got a place for you to stay."

And that's why I'm here today, is to try to clean up this inherited mess that I have got. Simply put, I want to have the same treatment for parcel 88 as the other parcels received, based upon traditional notions of justice and fair play.

Now, background, I grew up here on Maui, I went to St. Anthony, I went to UH Manoa. I live on the property, as does my mother. My parents first bought Omaopio in 1965. And I guess I am upset about the fact that in the almost 37 years now the Water Department has done really little to bring water service to us. I think Omaopio, Kula in general, has kind of been the poor sister of the deal. We acquired parcel 88 in 1973, as I said, and that's 29 years.

And going back to how it happened, in 1961 our predecessors in interest negotiated a water line easement from the neighbors, James and Nancy Shishido. That easement was used for two meters that serviced the property, parcels 87 and 3. In 1999, I negotiated a bigger easement, same place, and I'd like to show you on the map where that is.

In your report, if everybody would take a look here, this is the property and this is where the water line easement is. Page number 10. I'm sorry, page 10. So as you are looking at it, I have highlighted it here in yellow. It's this

area up here (indicating). This was a one foot wide water line easement originally in 1961. In 1999 I made it a five foot wide one. I had to negotiate with the new owners because I believed that in asking for a new meter for 88 it would be located in the same spot.

Now the water department's staff is recommending that I extend a new six inch water line approximately 2200 linear feet, which I believe will cost about \$125,000. I think this is really inappropriate for the following three common sense reasons: There's no economic reality to it. \$125,000 is way too expensive for the benefit of a two acre parcel. More importantly, why hasn't the Department of Water Supply extended that very same line in 37 years? Well, the same reason, it's too expensive. It might be different if I was doing a multi-lot Fancy Dan subdivision, but I am not, I'm only asking for a meter that's been due us for the parcel since 1965.

Secondly, as I mentioned, I have already got a five foot wide easement that takes me to the water line where two meters already are located, and that doesn't cost me anything. And lastly, a new line along the front of the property is approximately 100 feet lower than the parcel itself, and from

just a common sense point of view, I'd much rather gravity flow the water down than pump the water back up.

So in conclusion, I respectfully request that the issuance of the water meter, that the water meter be issued at the end of the existing water line water meter easement that I indicated, that we not be required to extend a six inch line 2200 feet, nor install a fire hydrant which would also have to be pumped uphill.

Thank you for your time and consideration. If you have any questions, I'd be more than pleased to respond.

CHAIRMAN NOBRIGA: Thank you. Any questions, members? Mr. Judge, do you currently have water service on your property?

MR. JUDGE: Yes, we have water service to the property. There's a meter that was granted in 1961 that services my Mom's house. I get water through another line. It's all very confusing, but there are meters that are on the property. There are basically three meters, I think. One, two, three, yes, there are three existing, well, four meters actually. But I'm entitled to another for that parcel 88.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: This particular thing then isn't a subdivision, is it?

MR. JUDGE: No, it was subdivided in 1965. And another thing that fries me too, David, is in the report here it says oh, well, maybe you didn't fulfill the requirements. Maybe you didn't do that. This is point of discussion, page 8. Point of discussion number one. The reason that it fries me is that I got from your office a copy of something labeled Subdivision Data. First of all, you dispute whether it was three or four lots. I have got something called subdivision data that says number of lots four. It says that the assessment was paid in 1965, and that final approval was obtained on June 15, 1965. And besides that, tax map key numbers were issued.

So obviously I got final subdivision approval. All of the conditions, payment of the storage assessment fee and exemptions of improvement from the Board of Supervisors must

have been granted. But I don't know, I wasn't there then, and this is my predecessor and these are your files.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: My point is it's not a subdivision, and the Board has no authority to grant any waiver from the water service requirements.

CHAIRMAN NOBRIGA: Mr. Hashimoto?

MR. HASHIMOTO: If he has an easement, why would he want to extend the line instead of bringing it down from where he has the easement from Shishido?

MR. CRADDICK: Because of the Board's requirement for strict application of the rules. Strict application of the rules says that the meter is to be adjacent to the property and the road. And I realize that we let meters go all over kingdom come before, and created a large problem, as we recall with the Stolle issue. And this is an effort, well, this is an outgrowth of the Board saying we want strict application of the

rule. This is a strict application of the rule.

MR. HASHIMOTO: So you already have, you said, three meters?

MR. JUDGE: The meters go to different property. On the property there's Omaopio green houses. Years ago Bill Monahan built things on the property, and there's an inch and a half meter that goes to that, and that stake is down on the road.

MR. CRADDICK: What happened is the Board's rule to allow people to appeal decisions of the Director didn't pass the Council because of the \$300 thing that was added in after the Board saw it. And quite frankly, I didn't see it either before it went to the Mayor and the Council, but a \$300 fee was added in. And I guess previous Corp Counsel thought it wasn't a substantial change, but current Corp Counsel thought it was a substantial enough change that hadn't gone to public hearing that, I guess, the recommendation to the Council was to deny it. So it was denied by a two-thirds majority to override the Mayor's approval of it. And I guess we would just have to go

back out to public hearing again and get it redone, but it will take awhile to do that.

CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: Who made the change in the fee amount?

MR. CRADDICK: I guess Howard did, I'm not really sure. But when it came down from Corp Counsel it was in there. And myself, I can't recall whether we questioned it or not, but I remember Howard saying that a fee amount was appropriate and it didn't need to go to public hearing.

But I mean \$300 is one-tenth of the development fee, and one quarter of the cost of putting in a service line, so it's a fairly hefty fee. And I will leave it up to Ed to explain. He was the one who had to deal with this with the Council and make the resolution up.

MR. HIRANAGA: Did we not recommend a specific amount for that application fee? It was \$150 or something.

CHAIRMAN NOBRIGA: Yes.

MR. HIRANAGA: So what empowered the Corporation Counsel to change that?

MR. CRADDICK: I don't know.

CHAIRMAN NOBRIGA: Our specific request was not that it has any bearing on the Judges' problem, but it was \$150 or whatever the Board of Variances charges for an appeal. And apparently the Board of Variances charges \$300-something for the appeal, is that correct?

MR. HIRANAGA: I think they recently revised their fee schedule. It used to be that.

MR. KUSHI: Mr. Chair, if you want me to comment on that, I agree with you, it's not applicable to the Judges. But the reason why we recommended that the Council not even look at that and get back to you is that the fee is up to the Board to decide. The problem was that at the public hearing that you had about a year ago, it wasn't noticed. There was no notice,

so the public did not have an opportunity to comment on the fee. That was the crucial issue. So you will have to do it again.

CHAIRMAN NOBRIGA: I agree with you. Yes, Mr. Tagorda.

MR. TAGORDA: Mr. Chairman, thank you. Let's go back to Mr. Judge's case. I want to go to page nine. And let me emphasize some paragraphs, wordings there that it says the department did not strictly adhere to the provisions of the rules. The procedural change was implemented during 1999 to bring department practices in line with section 3-1 and 3-5 of the department's rules. This is for the Director to comment.

If the Department of Water Supply did not strictly adhere to the provisions of the rules, what past procedures, practices and standards were applied to this case?

MR. CRADDICK: They basically went to the point of adequacy which, as you recall, is what we told Stolle, which was 12 miles from his house.

MR. TAGORDA: Go back to exhibit D, page 14, that

letter dated May 5, 1965. It looks like the final approval. I presume it was granted and the payment of \$300 towards the assessment was made, and acceptance of improvements by the Board of Supervisors. The Board of Water Supply regulations was complied with by the developer at that time, Mr. Craddick, do you recall?

MR. CRADDICK: I don't recall anything back in 1965.

MR. TAGORDA: If these were all complied with by the developer, I believe Mr. Judge is entitled to that water service without imposing him new requirements to extend the water line.

MR. CRADDICK: This only covers storage, Orlando, and it's only for three lots, not four lots.

MR. TAGORDA: It's way back in 1965, Mr. Craddick.

To impose the new requirements by you and the department with this old request, I think it's wrong.

MR. CRADDICK: The only thing, Orlando, we are not denying him a meter, and he appears to have paid the storage assessment. That doesn't make the system adequate, because he paid the storage assessment, you have to have the distribution system there. All I can say is this is an outgrowth of the Board's own ruling for a strict application of the rules, and the Board has no authority to waive the rules right now. So there's nothing the Board can do right now.

CHAIRMAN NOBRIGA: Excuse me, excuse me, but --

MR. TAGORDA: Mr. Craddick, we told him before or the Board of Water Supply or the supervisors before told him to get an easement, and he complied with those requirements. And then now you come in as a new Director of the department and tell him new requirements are needed to extend the water line.

MR. CRADDICK: No, Orlando.

MR. TAGORDA: That's what you are requiring him to do.

MR. CRADDICK: No, as an outgrowth of the Board's

own decision for a strict application of the rules. You have to keep in mind this putting meters all over kingdom come occurred way back in the 1960's sometime, not under my watch at all. I brought this up to the Board many, many times, that allowing meters to go all over kingdom come was not an application of the rules. And when Stolle came out finally the Board was aware of what was going on with the staff, that they were allowing meters all over kingdom come.

The Board said, "We want a strict application of the rule." That's why it happened in 1999. If you recall, that's when the six new members came in and said, "We want a strict application of the rules" and that's what the staff did. So this is an outgrowth of the Board's own ruling for a strict application of the rules.

MR. TAGORDA: I was a member of that board too, Mr. Craddick, in 1999.

MR. CRADDICK: I know, so you know what happened.

CHAIRMAN NOBRIGA: Hang on. Any further discussion,

Mr. Tagorda?

MR. TAGORDA: That's all. Thank you, Mr. Chair.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I believe our Director is fantasizing again. I have a question for him, however. Is there adequacy at this point marked 478?

MR. CRADDICK: The hydrant there? There's an 8-inch line there, so I would presume so. Herb?

MR. CHANG: There is an 8-inch line.

MR. STARR: So, in other words, it is adequate, where the meter location is being requested, is that correct?

MR. CHANG: Yes.

MR. STARR: I know I for one would feel that that would be a fair thing to allow them to get a meter at that

point, since they have an easement there, you know. To say it's maybe five feet closer to the road at the other point or whatever, they have an easement to the public road at that point and there is adequacy there. I think you're really stretching things to say that it has to be on the other side and not there.

As far as, you know, what our powers are, it seems to disagree with the Director. That's something that Corp Counsel has not helped us clarify. So I'd like to know from Corp Counsel whether the Board can take action if the Board were to feel that that would be -- that that were a suitable location for a meter to be issued at.

MR. KUSHI: Mr. Chair, I don't know.

CHAIRMAN NOBRIGA: Thank you.

MR. KUSHI: But if you want to say this, I think it's worthy of the Board's discussion and recommendation either way to the full Board.

CHAIRMAN NOBRIGA: Mr. Judge?

MR. JUDGE: Yes, sir. I guess from a legal standpoint I'd like to suggest that as of 1965, as of the assessment being paid, and as of the exemption apparently obtained from the Board of Supervisors because we did get a subdivision, and all of the lots were deeded out, I believe that we have fulfilled all of the requirements. And as a matter of law, I think I have got a vested right to that meter. I just haven't asked for it because all of these years we have had a damn moratorium on it, and I didn't have a need for it for my kids then. I do now, and I want to take up where my rights ended in 1965. And I don't know about the rules and regulations and procedures and strict adherence now, but I think I'm getting screwed if I don't get a meter right at that spot, simply put.

MR. TAGORDA: I agree with you, Mr. Judge.

MR. JUDGE: Thank you very much.

CHAIRMAN NOBRIGA: At this point the Chair would

like to recommend that we recommend basically to the Board to waive the rules to allow a specific request for a meter -- a request for a meter at the point of adequacy based on reliance from 1965.

MR. HIRANAGA: So moved.

CHAIRMAN NOBRIGA: Thank you. Second?

MR. STARR: I'll second it.

CHAIRMAN NOBRIGA: Moved and seconded. Is there any further discussion?

MS. NAGO: Mike, I'm sorry, who seconded?

CHAIRMAN NOBRIGA: Mr. Starr.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Mr. Chair, I don't feel that I am prepared to make a decision in favor of the request because I feel there's -- I need more information and background so-called Stolle case, rules 3.1 and 3.5. There's past precedence, but then the Director is saying we're starting over and we should not be considering past precedence. There's always difficulty when you start drawing the line. The information presented here is just too brief for me to make a decision at this time. My suggestion would be to defer this matter.

MR. STARR: Mr. Chair.

CHAIRMAN NOBRIGA: Thank you, Mr. Hiranaga. Mr. Starr?

MR. STARR: I stand behind the motion that has been seconded. However, I would like when it comes before the Board to have Corp Counsel ready to tell us whether it's in his opinion that we're acting within our rights, which I believe we are.

MR. KUSHI: Mr. Chair, I'd like to request that that request be submitted to my office in advance.

CHAIRMAN NOBRIGA: Thank you, Mr. Kushi.
Orlando, anything?

MR. TAGORDA: That's it.

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

(A chorus of ayes).

Opposed "nay."

MR. HIRANAGA: Nay.

CHAIRMAN NOBRIGA: The motion is carried four to one. .

MR. JUDGE: Thank you.

CHAIRMAN NOBRIGA: We will call a five minute recess at this time.

(Whereupon a brief recess was taken).

CHAIRMAN NOBRIGA: Call the meeting back to order, please. Thank you ladies and gentlemen.

The next item is item communication 01-37, request for a waiver of the Department's requirements for a transient vacation rental unit. Applicant is Gregg Blue. Mr. Blue, that's you?

MR. BLUE: Yes. Board members, I just want to briefly tell you why I'm in front of you today. Basically, it's through frustration. I was called by the County quite a few months ago by Mr. Ron Sandante, he said, "You need to come in and apply for a B&B license because you are renting out your ohana short-term." I said fine, so I came in and complied. It must have been seven or eight months ago, and I have been dealing with the process of these 29 different departments that I have to comply with.

Instead of spending \$5,000 and paying a lawyer to do it, I have been doing it myself. And it's going along, it's okay. And when it came to the Water Department I started complying, and I just got really frustrated with what I had to

do. And I got a call from Mr. Arnold Abe, and after talking with him and voicing my frustrations, he suggested I write a letter to the Board, which is you folks, which I did, and if you turn to page 19 you will see my letter.

I don't know if any of you have read this letter, but no where in this letter am I asking for a waiver, okay. Somehow it got interpreted that I am asking for a waiver. I'm not. So I decided to take the time out of my day to come down here and testify as to why I suggest that you folks need to take another look at your protocol, because I understand there's going to be a lot of people applying for these permits because the County has been shutting people down and calling them up and so on and so forth.

So I am going to try to make a long story short. There's something that I don't know that you folks are aware of. We have to apply for a B&B. In no way, shape or form do I want a bed and breakfast. Bed and breakfast, to my understanding, is when you have rooms in your home that you convert to bedrooms for tourists and serve them breakfast. I don't want to do that. I have family from Australia and the mainland who come over quite a few times a year and they stay

in my cottage. I can't rent my cottage out long-term, okay, I can only rent it out short-term.

So I applied to do transient accommodations, which is what short-term rental is called, out of my cottage. Well, when you folks get the application you see a B&B application, all right, so this is where the trouble started. So I just want to let you know that there is a difference between the B&B and someone wanting to do short-term rental out of their ohana.

So my point is, the ohana has been there since 1976, it's legal, it complies, it meets all specifications. The only change in use is if I had rented it long-term there would be more water use, there would be more infrastructure use. If I rent it short-term it's not full all the time and there's actually less impact on infrastructure. So why is the Water Department taking their time? I mean it takes them a lot of time just dealing with me. I can't imagine the time it took them, why are they making me go over all this stuff and to comply with the same regulations as if I was a hotel with backflow preventers, recalculating water flow for the fire. It's just all these compliances. I'm doing them, I am not asking for a waiver.

One thing I do have a problem with. To this date, if one has got a permit to rent short-term out of an ohana, okay, some people within the last month applied for both, they got granted the B&B permit for the home and got refused for the ohana. What I don't want to do at this point, a friend of mine did the water flow calculation with the numbers provided by your department. I turned it in. The Water Department told me I had to get it stamped by an engineer, which is going to cost me \$500. I don't want to do that right now. I will do it if they give me a permit, but at this point in time the calculation is fine, and I believe the Water Department can calculate it themselves.

So I am going to suggest that in these applications that the engineering stamp of the fire flow calculations be required if you get the permit. In other words, maybe you folks can take a look at it and do a basic calculation, and then if you want us to go to an engineer at the end and spend the hundreds of dollars plus put in the back flow preventor, I'm fine with that. But at this point I am not willing to spend that money.

Basically, I think that's all I want to say. This

is just in the hopes of saving all the people in the County and the applicants time, energy and money.

CHAIRMAN NOBRIGA: Thank you. Any questions? Mr. Starr?

MR. STARR: Yes. I am a little bit confused as to what the issue really is here. What were you asked to provide that you are having difficult providing?

MR. BLUE: This issue is providing a water flow calculation for the property done by a civil engineer. That's one of the requirements.

MR. STARR: Is that internal to the property or external to the property?

MR. BLUE: That's a calculation on how much water flows into the property permitted, I believe, in conjunction with the fire department to make sure you have adequate fire protection. Which of course I have, because I wouldn't have had the cottage approved if I didn't already have it. So that's one of the points I'm making, that I have got to go

through this fire flow thing, and I'm already protected, and I'm already up to code and specs.

If I was turning my house into a B&B and I was going to have a whole bunch more people in my house, maybe that would be justified, along with my septic system. So that's what they're requiring me to do. They required lots of things, but this has been -- the \$500 fee I feel is premature that I do that at this point, because I don't even know if I am going to get this.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: First of all, he doesn't need to have a registered engineer do it. If he's done it and he's satisfied with it and the calculations show that the fire flow required is available, that's good enough for us.

MR. BLUE: Okay.

MR. CRADDICK: As far as the back flow preventor, that's required in any case by federal law as well as our own

rules.

MR. BLUE: I am not contesting that.

MR. CRADDICK: So if that's all right, then is there anything for the Board to take any action on?

MR. BLUE: No.

CHAIRMAN NOBRIGA: Okay, there being no requirement for action, the matter will be disposed of.

Yes, Mr. Hiranaga?

MR. HIRANAGA: Why did the Applicant feel that he needed to come to the Board? Why was this not resolved within the department? Was the staff giving you a different answer than the Director?

MR. BLUE: They told me I needed to get it stamped, and they misinterpreted my letter. And they read this letter, which is merely a suggestion, okay, on how to be more efficient or maybe not waste your time, and called me up and told me I

had to come testify before you because I was asking for a waiver, which I wasn't. Up to this point the Board hasn't contacted me and told me that I didn't need to get it stamped by an engineer when it specifically states that it does. Now they're saying I don't, that's fine. I think I'm down here because they misinterpreted my letter to the Board.

MR. HIRANAGA: Do you agree with that, Mr. Craddick?

MR. CRADDICK: Well, it's written to Mr. Rice, not to me, so I don't know what the reason was to write to the Board, but he did write to the Board.

MR. BLUE: I wrote to the Board on the advice of Mr. Abe because of the stamp, the engineering stamp.

MR. CRADDICK: There's nothing in the rules that says that a registered engineer is supposed to stamp it. We ask for that because normally people don't understand how to do it and they want us to do it for them. And there's a liability issue there with us doing it for them, so we don't do that.

But if they feel that they're capable of doing it themselves, we give them the book and let them do the calculations.

MR. HIRANAGA: How do you confirm that their calculation is appropriate?

MR. CRADDICK: Well, we do rely on the information that they give, that's for certain. And the only thing I can say is perhaps the rule should be changed so that it does require a registered engineer to provide the calculations. It's just something that we have been doing, but usually if people come to me, especially individuals -- commercial developments usually we won't allow it -- but if one single individual comes we just give them the book and say, "If you can figure it out we will accept that."

Then usually what they will do is go to an engineer, architect or something and get it done, but then the architect isn't liable for any mistakes in it.

CHAIRMAN NOBRIGA: Mr. Hashimoto?

MR. HASHIMOTO: So the thing is because you are

renting short-term you applied for the application, that's the only reason?

MR. BLUE: I am not allowed by law to rent short-term from an ohana on a piece of agricultural zone property, so the County called me up and told me to please come in and comply.

MR. HASHIMOTO: So you wanted to do it legally, but you got stonewalled?

MR. BLUE: No, I haven't been stonewalled, but it's a long and frustrating process. I don't know if I will get it.

MR. HASHIMOTO: Okay.

CHAIRMAN NOBRIGA: There being no further discussion, the matter will be filed. Any objections? So ordered. Thank you, Mr. Blue.

We will move on to item F, request from J.P. Schmidt for an appeal of the Director's decision or in the alternative,

request for modification of subdivision requirements regarding Donald O'Connor. Mr. Schmidt and Mr. O'Connor. The Chair would like to recommend that we take up the two matters separately, the first matter being the request for appeal of the Director's decision. The second matter being a modification of subdivision. Are there any objections to that? Very good.

So we will start with the appeal of Director's decision first.

MR. SCHMIDT: Thank you, Mr. Chair. I'm J.P.

Schmidt, and I represent Donald O'Connor and Valerie O'Connor in this matter. I did send some written testimony that I trust the Board got that basically summarizes the situation. The O'Connors had an approximately eight acre parcel out in Haiku, and it has had an existing five-eighths inch water meter. The O'Connors decided to subdivide off five acres from that and put that five acres on a private water system, leaving the three acres still on the existing five-eighths.

So there's no request for any additional water meters or any additional demand on the system. Arguably, you could say a three acre parcel would use less than an eight acre

parcel. Not necessarily, but it certainly could.

The Director has stated that he's going to oppose any building permits for the five acre parcel or for an ohana on the three acre parcel, which would normally be allowed, until or unless the O'Connors improve the water system putting in about 6500 feet of pipe and some other improvements. Our basic position on the appeal is that it's really a misinterpretation of the rules, that the rules do not apply in this particular instance. In reading the rules, I think it's clear that the Water Department and Water Board have the right to require improvements when there is an impact on the system, when there's additional demand on the system. Then the Water Board can require an individual to improve the system to take care of that impact. And normally when there is a subdivision it's anticipated that additional water meters will be requested, and therefore there's going to be additional demand and impact on the system so improvements can be required.

In this particular instance, though, that is not the case. Because the five acres is on a private water system there is no impact on the public system. The five-eighths inch

meter was already there and there is no request for additional meters. Therefore, the requirement of improvements doesn't apply.

As I stated in my testimony, I believe that that interpretation is appropriate given the wording of the rule, if you read the rules, and also I think it needs to be interpreted in that way based on United States Supreme Court rulings regarding constitutionality, that's basically when a governmental agency makes requirements of people in order to give them permits.

And the United States Supreme Court has said that you have to have a rough proportionality between the requirements and the impact that they're designed to alleviate, and that you have to have what's known as a substantial nexus. In other words, if the impact is going to be an increased demand on a water system, then the nexus is to have improvements in the water system. But where there is no impact, well then there's no connection between the two.

So based on that, our position is, as we have stated, that the rules do not apply in this instance and they should be read in that manner.

CHAIRMAN NOBRIGA: Thank you, Mr. Schmidt. Any questions? Mr. Starr.

MR. STARR: I'd like to know the nature of the private water system that's going to be employed on the separated out parcel.

MR. SCHMIDT: There's a well.

MR. STARR: Does the well exist?

MR. SCHMIDT: Yes.

MR. STARR: Is it on that parcel?

MR. SCHMIDT: I am not sure. No, it is not.

MR. STARR: Where is it?

MS. NAGO: This is Donald O'Connor.

MR. SCHMIDT: Do you want to come up here, Donald?

MR. O'CONNOR: The well is located up a private road two lots above our lot, and there have been easements signed for the water lines going from the well, traversing a two acre parcel into the five acre parcel.

MR. STARR: So in other words, you will be buying water from another person who drilled a well somewhere else?

MR. O'CONNOR: There's an association with three members that own this well, and I'm one of the three members.

MR. STARR: So the well and tank and all of that stuff require equipment to disinfect water is in place?

MR. O'CONNOR: The well is in place and we just installed our 15,000 gallon holding tank and filled it. We don't have any structure on this five acre parcel, nothing else has been installed.

CHAIRMAN NOBRIGA: Okay, ladies and gentlemen,

concerning the appeal of the Director's decision, I would like to recommend that we pass to the Board granting the appeal of the Director's decision.

MR. TAGORDA: Overturn the decision of the Director,
Mr. Chair?

CHAIRMAN NOBRIGA: No, that we accept the appeal of the Director's decision. We want to accept this appeal of the Director's decision or not, basically.

MR. HIRANAGA: Appeal application for consideration?

CHAIRMAN NOBRIGA: Yeah. Thanks, huh.

MR. HIRANAGA: Before the Board?

CHAIRMAN NOBRIGA: Yes.

MR. STARR: Mr. Chair.

CHAIRMAN NOBRIGA: Yes, Mr. Starr.

MR. STARR: Do we have any rule in place that allows us to appeal the decision of a Director?

CHAIRMAN NOBRIGA: No. Well, I should actually ask Corporation Counsel to answer that, I am not really qualified.

MR. KUSHI: Okay, Mr. Chair. Mr. Schmidt, please tell me if you think I am way off base. I'm sure you know the rules better than I do. My understanding is that there is no existing appeal rule from a Director's decision until you do your rule making on it. However, as in any administrative agency, if the Applicant is not satisfied with the agency decision, that applicant can always appeal whatever decision directly to the Circuit Court, as in any agency.

On the other hand, I believe the Applicant is asking this Board to interpret the Director's -- to review the Director's interpretation of an existing rule. If that's the case, I feel that the Board has been doing that before. And it's not so much an appeal from the Director's decision, it's an interpretation of the Director's -- review of the Director's

interpretation of the existing rule.

MR. STARR: I know it had always been my belief that that's what we were here for, was to do just that. However, I found myself in conflict with our previous Corporation Counsel, who insisted that we were not empowered to appeal anything or basically do anything without specific rule making. And I didn't agree with that, but that was what we were hearing meeting after meeting. Frankly, I feel it's a little bit of fresh air that we are starting to learn that we can actually function without specific rule making. Maybe we can start doing our job again. However, I am still, well, let me leave it back to the Chair so we can understand his recommendation.

CHAIRMAN NOBRIGA: The item was noticed, basically it says here it is noticed, it's a request for an appeal of the Director's decision, or in the alternative, request for modification of requirements. That's the way it's noticed. So I'm asking this body if you would like to allow the appeal of the Director's decision, or if the body feels it's not really worth our effort to even ask if we are going to

accept it or not but move onto the next matter, which is the request for modification of subdivision requirements, which in this case I don't think it has any bearing on the request. I'm hearing something totally different, that's why.

MR. SCHMIDT: If I may, Mr. Chair.

CHAIRMAN NOBRIGA: Mr. Schmidt?

MR. SCHMIDT: Under HRS 91 Administrative Procedure Act the Director's decision may be appealed by the Board for the Board to decide if what action he's taking is correct or not. And that is what we have done with the appeal because we think that the Director's action is not correct, his interpretation is not correct. These rules are rules that were promulgated by this Board, and you are the ultimate authority as to what they say. We are requesting you to offer a ruling that in fact what they say is they wouldn't apply in this situation.

I formed it as an alternative because if you agree with that and you approve that and say yes, the rules do not apply in this case, well then there's no need for

modification. However, if you decide well, we interpret the rules and we think they do apply, then we would need a modification in order to not require all of the improvements that the department is requiring because, as I stated, there is no impact on the system, no other users are impacted by it, and therefore there should be a modification.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: As far as modifying the subdivision requirements, 212 allows you to do that. You have the opinion from the Corp Counsel there on page 45 that says what the requirements are. My suggestion was that you just do what you did with that guy up on Kokomo Road, tell him if he can get a waiver from the fire department then you will consider it.

MR. TAGORDA: Mr. Chairman?

CHAIRMAN NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: What was the decision of the Director

that you want to appeal, Mr. Schmidt?

MR. SCHMIDT: The decision by the Director is that the rules apply to Mr. O'Connor's situation and therefore the department can impose all of these improvements to the water system.

MR. TAGORDA: Because of Mr. O'Connor's subdividing his property, that's the reason why the Director is imposing all these water improvements?

MR. SCHMIDT: Right. And on close reading of the rule that states that the Department can impose these improvements for a subdivision, on close reading of that, it is clear from that rule, as well as the other rules of the Department, that what is anticipated is that when you have a subdivision you are going to have additional meters requested, so you are going to have an impact on the system. That then justifies requiring all of these improvements.

But when you have a subdivision such as this which does not require any additional water meters, there is no impact on the system and therefore there is no basis to require

improvements. Therefore, the rules don't apply in this particular instance. For most subdivisions they do.

MR. TAGORDA: I do get your statement very clearly, Mr. Schmidt. I think, Mr. Chairman, this case there's a similarity with someone we approved in the past. That the subdivision that this person is requesting is that the system out there in Haiku is not being impacted. So at least, like Mr. Schmidt said, Section 2-12 we can use that. It's the power of the Board members, of the Board to use that and make the necessary action to the request.

But three things we need to review and take seriously on that modification, waiver of modification of Section 2-12 that the public may be properly served with water and with fire protection. That's where I am coming in, Mr. O'Connor. The area where you live, where the property is, do you have adequate fire protection?

MR. O'CONNOR: I have better fire protection now with the well and holding tank than I did prior to.

MR. TAGORDA: In this case there's no impact to present users or to people out there in that area. So Mr. Chairman, since we already have taken in the past a position very similar to this case, I am really strongly wanting your indulgence to side along with me to give a waiver to Mr. O'Connor based on those facts.

But again, I am in a position to have the rules and regulations of the Department in strict compliance, that's why I asked you about the fire protection. And you said there is adequate fire protection. So would you as a condition be willing to sign with the Board of Water Supply a hold harmless?

MR. O'CONNOR: Yes.

MR. TAGORDA: In case. And another point I'd like to bring to you is can you get some letters from the fire department stating that to your area there is adequate protection?

MR. O'CONNOR: When I did the original subdivision two years ago the fire department gave me the requirement which

we did satisfy.

MR. TAGORDA: That's all the conditions I want to put in that, Mr. Chairman. Then I will strongly support such a request.

CHAIRMAN NOBRIGA: I will take that to be a motion. Is there a second?

MR. TAGORDA: It's just a matter of discussion.

MR. STARR: I'll second.

CHAIRMAN NOBRIGA: It has been moved and seconded. Back to discussion. Mr. Starr?

MR. STARR: I'd also like to see that we get a letter from the fire department saying that they're satisfied with the fire protection along with the indemnification. I would also like to see a letter stating that water use on that parcel will be provided from a private water system with some

description of the system. And I'd like to just have something that would run with the property that promises not to be looking to the County system for water, if they bring it over from another TMK or whatever. Just a statement that all water will be provided by the private system.

CHAIRMAN NOBRIGA: Okay, any further discussion?

Yes, Mr. Hiranaga.

MR. HIRANAGA: I'm a little confused. So the request was for an appeal of the Director's decision for a request to modify the Rule 2-12. So the motion is for the committee to recommend to the Board that we modify the requirements of Rule 2-12, is that what's happening?

CHAIRMAN NOBRIGA: The motion is to modify the subdivision requirements.

MR. TAGORDA: To waive.

CHAIRMAN NOBRIGA: To waive the subdivision requirements for this application, which is in conjunction with

our authorities under Rule 2-12 to allow for the subdivision to proceed, the five acres under private water system and the three acres.

MR. HIRANAGA: Subject to the fire department's approval.

CHAIRMAN NOBRIGA: Subject to all that other stuff.

MR. HIRANAGA: I guess I'd like some type of indemnification from the subdivider that there will be no request or reliance for water service from the County in the future if the well should go bad.

CHAIRMAN NOBRIGA: That was included in Mr. Starr's statements.

MR. HIRANAGA: I feel that there is some potential exposure in the future after homes have been built and the well goes bad, that people will start approaching the Department to provide them water. So I think it should be something like within their deed to hold the Department harmless.

CHAIRMAN NOBRIGA: I think the Applicant is okay with that. Any further discussion? All those in favor signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

The motion does carry. We will recommend it to the full Board. Thank you. We will take another five minute recess and we will go into discussion and into the rules.

(Whereupon a brief recess was had).

CHAIRMAN NOBRIGA: Call the meeting back to order.

If there is no objection we want to take up item H prior to item G. We will be taking up discussion regarding proposed water meter issuance rule for the Upcountry water system. Is there any public response that would like to be entered at this time? Mr. Mayer?

MR. MAYER: Hello, my name is Dick Mayer. I have a very brief statement regarding the Upcountry water meter rule. That is that there is no reference in the rule to the

Upcountry, the Kula/Makawao/Pukalani Community Plan provision which says that the highest priority for water is to Hawaiians and Hawaiian Homelands and agriculture, and I think that has to be part of the rule.

And I would like to mention also, your rule is stating Upcountry water system. For the Water Board there is one upcountry water system, but it covers two development areas. As far as the County goes we have the various development districts and there's one district, Paia-Haiku and the second one is Kula/Makawao/Pukalani. The development plans differ in a number of ways, but one significant way is that the Kula/Makawao/Pukalani Upcountry plan makes a specific provision for Hawaiian Homelands and agriculture. I do not believe Haiku and Paia have anything parallel to that.

So the rule probably will have to differentiate, if you wish, between those two areas as to how water meters would be given out. Even though you have one water system in those areas, there would have to be some differentiation. How you might do that I have some ideas, maybe the staff and the Director can come up with some verbiage on how to implement the community plan, which I think has to be implemented.

One thing I am going to start and give you some suggestions. One that doesn't deal with agriculture and Hawaiian Homelands, but the issuance of meters, and that is the need to protect existing users. We all know of difficulties in the past if new meters are issued what will be the impact on existing users. I know we can't be assured that they will always have adequate water, and if a number of meters are given out this can place some real stress at some future date on existing users.

Perhaps there should be a statement made that in the future if moratoriums or restrictions have to be applied during drought conditions, that new meter users, those after the date that you set here, whatever date that will be for the implementation of this, recognize that they perhaps may have more severe restrictions than existing users. I am not saying this is the only way to do it, but this might be a way of doing it, because existing users should have the ability to use water, be issued new meters, and you're placing perhaps their vested rights in some kind of jeopardy.

I also would urge you to, in the development of new water sources, that there be some reservation made for agriculture and Hawaiian Homelands, perhaps 20 percent, 40

percent, some adequate percentage to indicate compliance with the community plan provisions in the rule. And I say this particularly let's say now first with regard to Hawaiian Homelands and then with regard to agriculture.

With regard to Hawaiian Homelands, they have a plan to put six thousand units on their land. The first phase is 300, and over the years and decades to come there will be six thousand units that will be using the Upcountry water system.

MR. CRADDICK: Not necessarily. They might be connected to the --

CHAIRMAN NOBRIGA: Mr. Craddick, please, I would like to hear Mr. Mayer's full testimony.

MR. MAYER: They may have their own system at some future date, in which case they wouldn't need the requirement. It's the ability for the Water Department to provide water for that usage. So I would hope that there will be a provision there that would recognize that that need will be existing and ongoing for decades to come. That will be providing for the

long term, I hope.

With regard to agriculture, I would urge you to take a look in the packet here. There is a statement from the Water Board. They have asked for the insertion of a phrase in the water rule, and I will just read the underlined sentence there where they would like the words, "in accordance with the Makawao/Pukalani/Kula Community Plan," they would like those words inserted into the rule that you are proposing where it talks about priority lists. Their argument, of course, would be that farmers be allowed to continue getting the necessary water that they have been getting. And I will let them speak for themselves. They are not here today, but they have some communication. I will just call that to your attention.

That's all I have to say.

CHAIRMAN NOBRIGA: Thank you, Mr. Mayer. Mr. Craddick?

MR. CRADDICK: The HHL is already getting 170 percent of the available water, so to say they're not being given priority right now is a misnomer. And for the long haul I know they plan to get water from the central Maui system, so again, you would not be planning for them in the Upcountry

system that is marginal at best, when they can get it out of the central Maui system much simpler and cheaper.

MR. MAYER: Can you clarify, you said they are getting 170 percent of what?

MR. CRADDICK: They're currently allotted 500,000 gallons a day, and they only have 300,000 to give out in addition to their 500,000.

MR. MAYER: That's only for the 300 lots?

MR. CRADDICK: Well, 400 lots.

MR. MAYER: 350 I thought, okay. And what about the future? This is only the very first phase. They've built six miles of highways, they have the whole thing scaled out. The central Maui system, as you say, would be supplying them is way below. Will the Water Department be paying the electricity cost to pump all that water up to 2000 feet?

MR. CRADDICK: They do anyway.

MR. MAYER: It is not being done now. The Water Department is willing?

MR. CRADDICK: If Hawaiian Homes gets water from the Upcountry system, that's how the water will get to them anyways. But in Central Maui you have got an adequate transmission system, Upcountry you don't. So it's much easier to pump it up that route than it is to pump it up through the existing system. In either case it has to be pumped up there.

MR. MAYER: You're saying that the 500,000 gallons that is now allocated to them is coming from down below?

MR. CRADDICK: No, it's coming from the Upcountry system. You were talking about future demand.

MR. MAYER: Right, but that 500,000 is coming from Upcountry. We are not talking about Central.

MR. CRADDICK: You were talking about future demands.

MR. MAYER: When you say Central --

MR. CRADDICK: It could depending upon where they are. I know they were planning on doing that.

MR. MAYER: What I'm saying is that water being developed for the Upcountry system they should, and I would think you would want to be able to supply them from downward with gravity, rather than pumping it up from Central Maui.

MR. CRADDICK: If you don't have water up there, you don't have water up there.

MR. MAYER: If you don't have water up there, how are you going to be issuing new meters? What I'm saying is that the new meters which you are considering for Upcountry --

MR. CRADDICK: You are talking about future demand, we are talking about existing demand. This is to take care of existing people on the list, of which Hawaiian Homes is on

there for these 400 lots. We have allotted water for them.

MR. MAYER: That's not what a community plan does.

A community plan does not look at today, people on a list. A community plan is looking at the long term. And what I'm saying is that your provision would not follow the community plan by not looking at the long term. You are required to look at the community plan, that's what the general plans are for. And if you are only looking at the people on a list today then you have made no provision for that long term, as you have said.

CHAIRMAN NOBRIGA: Okay, very good. Thank you, gentlemen. Very good discussion. Anybody else? Yes, Miss Black.

MS. ANTONE BLACK: I'll just add something to what has been said in the last five minutes.

CHAIRMAN NOBRIGA: This is Audrey Antone Black.

MS. ANTONE BLACK: I went to school with Michael.

Just along the same lines, I guess what I'm thinking is, and I have brought this up before, but now it probably seems very appropriate. Mr. Craddick has said over and over that the only time there is a lack of water Upcountry is during a window period where we have an extreme drought. That the rest of the year there's more than enough water, especially now, to supply anybody and everybody who would need water.

So my thinking keeps going back to that period where we go into extreme drought, and that's the reason why all these people are on a waiting list, because the Water Board and the Water Department cannot provide water for that particular period, which is sometimes only two or three weeks out of the year. Am I not correct, Mr. Craddick?

MR. CRADDICK: It varies.

MS. ANTONE BLACK: It can maybe go up to a month, but not much longer than that. And I have said time and time again, if the Water Department or the County of Maui would support water catchment systems, private catchment systems, and this is done in many states, it's subsidized. People actually

get tax credits.

MR. CRADDICK: Actually, you are suggested to have storage in the rules right now. Everybody Upcountry is suggested to have a minimum thousand gallon storage.

MS. ANTONE BLACK: Wonderful. I'd like to go one step further and make it subsidized. The Mayor has been stating publically over and over how he wants to help the situation, he wants to ease the situation. A water catchment system could be a backup so that, as Mr. Mayer is saying, that you know we have got to take care of the people who are already on the water supply system. We don't want them to have to lose their plants or have problems.

I'm saying again the idea of getting a subsidized catchment system in the Upcountry area that can be used as a backup and thereby maybe eliminate some of the worries for people who are concerned about their water shortages. So I'd like to just throw that in. Thank you.

CHAIRMAN NOBRIGA: Thank you. Question, Mr. Hiranaga?

MR. HIRANAGA: Do you mean a storage system, not a catchment system?

MS. ANTONE BLACK: Isn't that what it's called, catchment tank, catchment system?

MR. HIRANAGA: It's to catch water. What you want is storage.

MS. ANTONE BLACK: Very often you can store that water for a period of time when it rains and you are not going to use it until you go into a drought, so you can have a backup.

MR. HIRANAGA: Or you can store water off of your meter when there is no shortage of water.

MS. ANTONE BLACK: Same story, yes.

MR. HIRANAGA: So it's a storage system.

MS. ANTONE BLACK: Okay, it's a private storage system, sure.

CHAIRMAN NOBRIGA: Any other questions? Anybody else want to give testimony? Okay, let's go back to Water System Development Fee rule.

MR. MAYER: Will you be discussing the Upcountry rule today?

CHAIRMAN NOBRIGA: Yes, later on. I was just sensitive to your schedules, and I wanted you all to have an opportunity to give us our due.

MR. CRADDICK: Mr. Chairman, on this one here if you recall at the last meeting --

CHAIRMAN NOBRIGA: What is this?

MR. CRADDICK: This is the fee schedule that we went to public hearing with. This portion right here was the thing that was added in by Corp Counsel kind of between the time of

the public hearing and the full board meeting. And there is some language in there about the Department of Finance and we have changed that to the Department of Water Supply. But when we looked at this more and more, we realized this whole section, return of fees, is not really applicable because we do a recoupment of existing system when they pay the fee. And I will leave that up to Corp Counsel to explain the recoupment of existing fees. The law actually says when you are recouping fees this whole portion doesn't even apply.

Another way to handle this, if you did want to put something in from HRS Chapter 46 about impact fees, you can probably do it much simpler with just a reference to the HRS, rather than putting in this whole paragraph. I'll leave that up to Corp Counsel if anybody has any questions. I don't think this whole section needs to even be in there.

MR. TAGORDA: So we will delete it then.

MR. CRADDICK: You might want to talk with Corp Counsel.

CHAIRMAN NOBRIGA: In the first place, what I

received in my packet is just not anywhere near what we requested two months ago from the staff to give us a better written document that we can follow along with. I am really very disappointed. We did not meet last month because there was no quorum, and here we are two months later and we receive this hodge-podge of junk that I have a very difficult time even following. I didn't even want to take this up today because of what I got in my packet. I was really perturbed, to say the least.

We do have the ability to see the rule on the screen. I don't know if the members wish to proceed with discussion. I know Mr. Tagorda was prepared to enter some ideas, and right now I would like to follow up with the suggestion of the Director to have Corp Counsel provide us with a better way of saying the same thing. But I would like to see the Corporation Counsel's suggestion in writing.

MR. KUSHI: Well, Mr. Chair, if I may, let me summarize. And I can issue a statement, if that's your request. I did speak to the Director and his staff before this meeting about this particular rule, and please excuse me, I wasn't around when you went through your hearings. But my

understanding of Section 16-8-14, return of fees, which is up on the screen, is redundant in terms of what it states here in that section.

What it states in that section is already covered by HRS 46-141, I believe, which is the state impact fees. The state impact fees, to my understanding, is that if the fees are deemed to be collected for recoupment purposes, then they're not refundable. But my main concern with this whole thing, again, like in the case of the Director's appeal, is my understanding is that this was not brought up at the public hearing. So we might get another situation where the public was not notified of the intended rule.

So I concur with the Director that maybe if you want to proceed on with the balance of your proposed rules, omit this. For one reason, it's already covered by the state impact fee statute. Or two, if you want to do your own rule and repeat what the state says, do another rule making procedure.

CHAIRMAN NOBRIGA: Thank you. Mr. Starr?

MR. STARR: I'm a little confused over what we have

here. It says the one signed by Larry Jefts. This has nothing to do with what we are trying to deal with.

MR. CRADDICK: It starts at page 71. Actually, I guess page 70. Because we added in -- what Jonathan is looking at right now is just the title page of the development fee. Because we added in this Section 14, we had to change the title page to add in 14. But if that's deleted, this whole front section would be deleted along with that, because there wouldn't be any need to revise the general layout of the table of contents.

MR. STARR: This page 70 to 73, how does this differ from what went to public hearing?

MR. CRADDICK: Only this section here was added in.

MR. STARR: 14?

MR. CRADDICK: Yes.

MR. STARR: And why was that added in?

MR. CRADDICK: Ed?

MR. KUSHI: As I understand it, the previous Deputy Corporation Counsel wanted it in. He's not here to respond and defend himself, so I'd rather not respond.

MR. STARR: Does anyone in this room have any desire to see this here?

MR. TAGORDA: I'd really like to omit that, Mr. Starr. That would be my suggestion.

CHAIRMAN NOBRIGA: All in favor signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

We are omitting that. That's out. Okay, next.

MR. STARR: What we have here, is this consistent

with what went to public hearing?

MR. CRADDICK: Yes, it is. It's exactly the same, everything else.

MR. STARR: Well, wait a second. I know that one thing that was raised at the public hearing, which I felt that there was a consensus that we would try to do, was to deal with the list people. Didn't I see something in here that deals with the list people?

MR. CRADDICK: No.

CHAIRMAN NOBRIGA: The list people is being dealt with in the other rule for discussion today.

MR. STARR: So we don't need to deal with it in here, that will be taken care of in there?

CHAIRMAN NOBRIGA: Yes. Mr. Craddick?

MR. CRADDICK: As you recall, when we first had the

meeting about this, it was held by Kent, and Kent said he wanted to deal with the schedule as one item and all the rest of the rules as another item. Now, can I just bring that up, what Jonathan is talking about here?

This is now the Upcountry water fee rule, which hasn't gone to public hearing. This was an item that was brought up in the scheduled public hearing. So I would expect this paragraph could be put into the development fee, but the issue becomes when the list is no longer needed you have got something in there waiving the fee for something that is not needed. This would lapse with the rule when the priority list is no longer needed.

So basically I will leave it up to you guys whether you want to put it in here or put it in the other, because as Jonathan said, it was brought up at public hearing and I believe it's okay, it was just a matter of the Board, whether they wanted to continue dealing with the rate portion of it separate from the rest of the rules.

CHAIRMAN NOBRIGA: There are two rules that are up for discussion today. They're interconnected because of this.

Mr. Starr?

MR. STARR: I think we are in one of those kind of Catch 22 deals. To my understanding, the Council will probably be reluctant to pass this unless there's something about the list people. The only problem is we're several months ahead on this compared to the other rule. So that means that either we have got to hold this back until the other one goes through public hearing, or add wording consistent with the testimony at the public hearing to the list, in which case we could put this through right away.

For expediency, it's not as clean, but we might be better off to put something in here regarding the list people and then we can send it off on its merry way after our next board meeting. Meanwhile let the other one work its way through the public hearing process. I leave that to the Chair's preference. But I would love to see this rate increase go into effect, and the earlier the better.

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga?

MR. HIRANAGA: Just for my clarification of

understanding, the so-called Council's reluctance to pass this rule without the other rule is because they want the people on the so-called list to be grandfathered in through the current fee schedule?

MR. STARR: That's what we heard from Councilmember Tavares and quite a few testifiers at the public hearing. So my guess is that we would get knocked down if we went to the Council with this without anything giving the list people the old rates, since they have been waiting.

CHAIRMAN NOBRIGA: Mr. Tagorda??

MR. TAGORDA: Mr. Chair, let's separate these two rules. I think Miss Tavares' concern has been met in the issuance meter rule that we are going to take up next, after the water development fee rule. So if we go on and try to concentrate on changing, modifying and adding some of the provisions that we needed on this water system development fee rule, I think we're better off.

I think we should just go on and try to smooth out

these rules and resubmit it for approval to the Council and the Mayor. And the issuance meter rule is, like what you said, the rates are being taken care of in the issuance meter rule, especially the current rate. I think we are not touching that rate. They knew that they had to pay the old rate. But in the new rate on this water system development fee rule they have the new rate. On that list that you're concerned with, Mr. Starr, I think they are going to pay the old rate. It's in that rule, there's a provision for it.

CHAIRMAN NOBRIGA: That's it right there.

MR. TAGORDA: That's it right there. That's for the issuance meter rule.

MR. STARR: I understand, it's just a matter of timing. How long will it take us to put this to a public hearing?

MR. CRADDICK: If you can decide on this today, I would say you could probably have the public hearing sometime the first or second week of February.

MR. STARR: It just means that we are going to have to hold, we would have to hold up the water system development fee waiting for the other rule. They won't pass it, Orlando. I have heard that from three Councilmembers, they will not pass it unless there's specific language regarding the list people.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: The Council themselves, let's say the Board passed the fee schedule in its December meeting. The Mayor would get it sometime around the first of January or a little later. The Council probably wouldn't even have it in a meeting by the time we came to public hearing on this. So only if they have thought that the Board was going to do a bait and switch would they have some concern.

I think if the Board gave a good, safe concurrence that they were going to do this and it was in this rule for public hearing, the Upcountry meter issuances, what it does is it at least let's you start issuing the meters. And if people want to go on the list they can make a reservation, they

wouldn't have to pay the fee right away. And when this came out they could pay the fee.

Because most of them are going to have to fix up lines anyway first, which is going to go far, far beyond the fee schedule. There may be a few that are up front, and those can just take the reservation, they don't have to pay the fee right away.

CHAIRMAN NOBRIGA: Okay, I think we can work with our legislative committee to prepare the County Council appropriately, we just need I guess to maybe better -- you need a better synergy between the Mayor the department and the County Council so the committee can do its work.

MR. CRADDICK: Let's put it this way. I am not worried about having to explain that the Board is doing this in another rule, you know, and myself feeling that at the last minute the Board is going to yank this out after the other gets passed. I don't think anybody on this Board is going to do that.

CHAIRMAN NOBRIGA: Let's move on to Mr. Tagorda's

amendment discussion on Section 6 --

MR. CRADDICK: If you could, that is for the rest of the water development fee rules. And if you want to put this one to bed and say this is what we are going to recommend to the Board to send to the Mayor, this is ready to do that now.

CHAIRMAN NOBRIGA: Mr. Tagorda had an amendment to the water system development fees 16-8-10, payment plan.

MR. CRADDICK: That is in here. This is the full water development fee, and I suspect there's many, many changes in here. I am hoping there's many changes in here. This is a different item on the agenda here. The agenda has the rate schedule.

CHAIRMAN NOBRIGA: So we stay on that development fee right now. We went switch off of the other one after the testimony back to this one, then we go back. That's where we stay. Sorry, huh? Okay, Mr. Tagorda.

MR. TAGORDA: Mr. Chairman, thank you very much. I

made up some amendment to really omit the old provision on the payment plan, which is 16-8-10, and let me read to you very carefully the wordings I want to propose.

"The payment may be made over a period of five years. Anyone who elects to pay over a period of five years will make an initial payment of not less than 20 percent prior to installation of the meter, and the remaining 80 percent will be in five equal annual installments, plus a current charge per annum computed on the unpaid balance. The consumer shall have the option of paying the balance owing plus accrued interest at any time or any part thereof with no prepayment penalties. Water service may be disconnected for non-payment of any annual installment."

The reason why I tried to make this kind of wording is because when I read the plea of the Molokai resident and for people Upcountry, I think this is in comparison to the old provision of the payment plan. Mine I believe is very layman, not complicated, and it's affordable and reasonable. We give people a chance to at least have an option to pay installments or one time.

And I changed a lot of these wordings because I

myself, the old provision under 16-8-10 only recently I understood. And by having this new amendment that I propose, I think everybody would really understand how they are going to meet their responsibilities with the department. But I am open for discussion.

CHAIRMAN NOBRIGA: So you are proposing to totally replace the current section as it appears with amendments on the screen that we don't have at our desk, with your proposal, or do you --

MR. TAGORDA: Yes, Mr. Chair. So I need to just take off the full provision of that old 16-8-10 and --

MR. CRADDICK: No, no, you can't do that, because then everybody would get it, commercial properties, everybody. This is restricted to owner-occupant residential premises only.

MR. TAGORDA: I'm open for discussion. You insert anything that will make your department -- that this rule will be applicable.

MR. CRADDICK: This particular section in the original rule, I'll call it the Goro amendment, we had in the original rule the payment plan for everybody. And he said, "Why should everybody get it, because it would make an administrative nightmare for us to have all these payment plans for every single meter, because everybody is going to say, hey, I want the payment plan."

And this specifically limits it to owner-occupied residential premises, which exceeds one-half of one percent of the premises tax assessed value. Since we're doubling the fee, that would jump to \$600,000, so we're saying one-half. We are still allowing it for people who have a \$300,000 home and lot to be able to get the payment plan.

MR. TAGORDA: So my proposed amendment is 20 percent of that total \$6,000 you have to pay up front, and then the 80 percent balance you can have the option of paying it all in full or in five equal annual installments.

CHAIRMAN NOBRIGA: The proposed amendment on the screen is one sixth.

MR. CRADDICK: It would be \$1,000.

CHAIRMAN NOBRIGA: And then instead of over two years, you would like to go to five years?

MR. TAGORDA: Annual installments or they can pay in full.

CHAIRMAN NOBRIGA: I understand. Mr. Starr?

MR. STARR: Is the intent to charge interest on this, Orlando?

MR. TAGORDA: Yes, charge per annum.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: That's why we limited it to two years. We didn't think that the-- see, what's going to happen is if you go over a longer period the actual rate is going to

change, because every year we are adding the cost of living increase to the meter charge. So the longer you go, you have that factor, and you have the fact that if we have borrowed money on the development fee, that we are going to be paying interest on that borrowing.

So I think it would be proper to charge some kind of interest, and you may want to add in there also if they select this that they have got to pay those increases in the fee too. But that's why -- this was a staff recommendation, these things that you see in bold. We felt doing this gets it down to payments that are -- let's see, you would have \$5,000 over two years, so that would be \$2,500, \$200 about a month, right, Mike?

MR. QUINN: \$208.

MR. CRADDICK: \$208 a month. We felt that that was something that people could handle. But there could be, you know, I mean in addition to this you could give people the ability to select, have a choice of payment plans, one without interest and one with interest for a longer time.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: My feeling is five years is a long time. Maybe if we left it like this on a monthly and gave it to them without interest and then extended it to three years. I mean we are giving them a pretty good break because they are not paying interest, so they have the use of the money, and three years is reasonable. It's costing us a few percent. Would that be workable?

MR. TAGORDA: But again, one person on the premises, tax assessed value, your property tax goes up too.

MR. CRADDICK: Once you're on the payment plan if the property value goes up we are not going to go back and pull you off the payment plan because your property value went up. Once you are on the plan, you are on the plan.

CHAIRMAN NOBRIGA: Yes, Mr. Quinn?

MR. QUINN: The reason we have, Mr. Chair, the

monthly payment plan in there is we have gotten requests from many customers for the plan. There seems to be a level of comfort, and they're typically used to paying off their bills in a monthly fashion and that's why that's in there, rather than the annual installments.

CHAIRMAN NOBRIGA: Thank you. Mr. Hiranaga?

MR. HIRANAGA: So the highlighted language, is that proposed language or existing language?

CHAIRMAN NOBRIGA: Proposed.

MR. CRADDICK: The highlighted portion is proposed language, like you are talking about right here.

MR. HIRANAGA: So the current language --

MR. CRADDICK: The underlined bold is stuff that the staff, in discussion with the staff this is what we are recommending to the Board, basically.

MR. HIRANAGA: Isn't the calculation one-half of one percent of the assessed value over the fee, isn't that 1.2 million dollars of assessed value if the fee is \$6,030?

MR. CRADDICK: One percent would be --

MR. HIRANAGA: \$600,000.

MR. CRADDICK: That's a million 2. Two percent is what it should be.

MR. STARR: Two percent is what you meant to put there, David.

MR. CRADDICK: Well, one-half of two percent is one percent.

MR. STARR: It should be two percent. That would be \$300,000.

MR. CRADDICK: One percent is \$6,000 of the new fee.

MR. HIRANAGA: A \$600,000 house, one percent is \$6,000.

MR. STARR: You want two percent, just say two percent.

CHAIRMAN NOBRIGA: Somebody get one calculator.

MR. HIRANAGA: 1.2 million. Half a percent is --

MR. CRADDICK: It says when the fee -- okay, I see what you mean.

CHAIRMAN NOBRIGA: What is one percent of \$600,000?

MR. QUINN: \$6,000.

MR. STARR: Two percent is what it should be. That would be a \$300,000 house.

CHAIRMAN NOBRIGA: Right on, Kent. All those in favor of that move signify by saying "aye."

MR. HIRANAGA: What move?

CHAIRMAN NOBRIGA: From one-half of one percent to two percent?

MR. CRADDICK: There doesn't need to be any motion on this because there's no Board action on anything yet.

CHAIRMAN NOBRIGA: It's just discussion then. Mr. Starr?

MR. STARR: I also suggest we pull it out to three years.

CHAIRMAN NOBRIGA: Mr. Kushi?

MR. KUSHI: Mr. Chair, if I may, has this been out to public hearing?

CHAIRMAN NOBRIGA: No.

MR. CRADDICK: No, it has not.

CHAIRMAN NOBRIGA: It's got to go to public hearing anyway.

MR. KUSHI: So this is just discussion.

MR. CRADDICK: The existing rule is already a rule.

The stuff that's in bold are suggested changes.

CHAIRMAN NOBRIGA: If it's three years, what would

be the monthly payment plan, Mr. Quinn?

MR. QUINN: \$167.

MR. TAGORDA: How much?

CHAIRMAN NOBRIGA: \$167. Mr. Hiranaga?

MR. HIRANAGA: Why do you say pay one sixth of the fee?

MR. CRADDICK: Just trying get it down to \$1,000.

MR. HIRANAGA: If you are going to do it in two

years I would make it one third. If you are going to make it

three years I would make it one quarter.

MR. CRADDICK: It's that initial crush for like \$2,000. Right now it's \$1,500, and even that is kind of onerous on people. Basically the people that get stuck with this are the ones that haven't planned ahead to include this in their mortgage, or something like that. When they get a borrowing from the bank they go to the bank and borrow money to build the whole house, and when everything is all built, "Oh, geez, I need a meter for my house." They can get temporary meters, there's all kinds of ways to build without a meter.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: What we're doing I really believe is consistent with public testimony. We had several people on Molokai and they all spoke with one voice, that they wanted a payment plan that would keep the initial amount low and spread it out. They were suggesting three years or more. So I don't think we need to take it out to hearing again for this because I think this is based on what we heard on Molokai.

CHAIRMAN NOBRIGA: Okay. Would that satisfy your

concerns, Mr. Tagorda?

MR. TAGORDA: Yes, thank you.

CHAIRMAN NOBRIGA: But I do want to thank Board Member Tagorda for his insight in providing us with some very valuable discussion today. Thank you very much.

MR. HIRANAGA: So what's the final decision, three years?

CHAIRMAN NOBRIGA: Three years.

MR. CRADDICK: You want to change this to three years, is that it?

CHAIRMAN NOBRIGA: Yes.

MR. TAGORDA: May I continue, Mr. Chairman?

CHAIRMAN NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: On page 82 I kind of have some

different wordings again, page 82.

MR. CRADDICK: There's actually a lot of things. We need to go through this orderly because there are a lot of staff suggested changes in here.

CHAIRMAN NOBRIGA: Go ahead, Mr. Tagorda, page 82.

MR. TAGORDA: Page 82, the second paragraph, I believe, "Applicant not ready for water service," and in the middle of that paragraph there is a sentence that says that, "The duration of any such reservation shall not exceed one year plus two six-month extensions."

I want to propose or recommend that we make that two years plus a one-time, one year extension. Since in the past you know what's been happening is that they come in for a six month extension and they come in for another six month extension, and the Board is reluctantly giving those requests. I think if we just do a two year and a one-time, one year extension and if they fail to -- what you call that now?

CHAIRMAN NOBRIGA: Fulfill obligations.

MR. TAGORDA: Fulfill their obligations, I think there's money coming to the Board by doing that.

MR. CRADDICK: I think, Orlando, hopefully the purpose of this is not to enrich the Board. And that two six-month thing, the Board has already turned that over to me to approve those, and I think it jogs them to make them aware that, "Hey, geez, my time has run out." And it lets them know six months ahead of time they're actually going to run out. So I think just having the two year extension there is good enough. Hopefully that will cover 90 percent of them, and hopefully the other five percent catch this. And the only one that has exceeded all of this is the one that the Board approved last month because of SMA and some staff delays and approval of the drawings. So to me, I think this is good to help jog them to let them know that hey, time is running out. We will send them a letter when that six months or, actually, at the end of the two years we send them a letter and then they get another letter. So they have no excuse of not knowing when the time finally comes up. And that's what jogged

the other people to write a letter. So it wasn't after the fact that they're coming to the Board for action, they can come to the Board before the final time is up. So to me, I think even though it's a little bit more work for us, the staff, it's better.

MR. TAGORDA: That's fine, Mr. Craddick. At the bottom of that then you need to change the words or phrase, "if within one year," to make it "if within two years."

CHAIRMAN NOBRIGA: Good shot, Mr. Tagorda. You're just on it, huh, today.

MR. TAGORDA: And I had another suggestion to the Board members here. You see that sentence right there that says, "the application and the reservation of the allocation shall expire and the fee paid shall be deemed a penalty, and forfeited, to be applied to the Board's operating fund." I'd think I'd like to change the forfeited back to the account for the proposed -- what do you call that?

MR. CRADDICK: Development fee?

MR. TAGORDA: Yes. Instead of the Board's operating fund, I'd like to have that back to the fund where the source came from.

CHAIRMAN NOBRIGA: Development fees.

MR. CRADDICK: The only reason we did that, Orlando, it's like the County charging for parking tickets and then putting the money in their fund. All the parking tickets, even though they're on the County, the money goes to the State. What we're trying to say here is if we put that in the development fee fund, is the Board purposely going to be denying them to build up that fund, and that is not the purpose of it. It's just a penalty, you know, should it go there. But again, that was the reasoning behind it in the first place. If you want to put it there, I know the staff has suggested that.

MR. TAGORDA: That's what I'd like to suggest, is that wherever this fund came from, it should go back to that account, to the fund, the purpose of which it was collected.

So if you got it from source, you put it back to the source, something like that.

CHAIRMAN NOBRIGA: But if we say the Board is operating the fund, in general, then we can designate wherever we want, transmission, distribution, source.

MR. TAGORDA: But there is no way of collecting these fees, Mr. Chairman, for those three, source, transmission or storage.

MR. CRADDICK: But Orlando, this is a penalty for people trying to get a reservation and camp on the water.

MR. TAGORDA: The accounts collected from these fees or forfeitures should go back to this special account, not to the Board's operating fund.

MR. CRADDICK: I am not going to argue, because I know staff has suggested the change, and I will leave it up to the Board members.

CHAIRMAN NOBRIGA: Anybody else?

MR. CRADDICK: Orlando, all I can tell you is the original logic behind putting it into the operating fund. It was to make it look like we weren't unjustly enriching ourselves, that's all.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: What was this before when it went to public -- my concern is after public hearing all of a sudden the Director takes this to staff and makes all kinds of changes.

MR. CRADDICK: No, no.

MR. STARR: And now we are going to end up having to go with something that's changed in many ways from the way it was at public hearing.

MR. CRADDICK: This is not going to go to public

hearing until the Board agrees with all the changes that are in here. That's why I said we have to go through it orderly from the top down.

MR. STARR: Has this been to public hearing?

MR. CRADDICK: No public hearing, nothing on this.

This is back in June or July, if you recall, a conscious decision was made by the committee to separate the schedule from the rest of the rule. We did that, we came to the Board with the rest of the rule, everybody said oh, there's nothing that needs changing in here, so it kind of died there. Then I guess it came up again that actually we really do need to deal with some issues in here, so here it is again for the Board to deal with. It hasn't going to public hearing.

MR. STARR: Let me get it clear then. The rate fees, are we sending those to Council without the verbiage or are we going to keep it all together and take the rate fees back to public hearing along with the verbiage?

CHAIRMAN NOBRIGA: I don't know what was transmitted to the Council.

MR. CRADDICK: Nothing has been transmitted yet. All we did was we went to public hearing with the fee schedule, that's all, because of Kent and his committee saying that to try and deal with the whole rule was going to take a long time. And as you can see, it is taking a long time.

MR. STARR: My feeling is I really don't think we ought to bring it back to the Council until we have the whole thing and it's all been through public hearing. And also if we do go through public hearing, then again, the list guys' stuff and the other rule has a chance to catch up with it. I'd much rather have a sure thing than have it get turned down by the Council and have to go through it again. So I have no problem if we are going to take it back through public hearing again.

CHAIRMAN NOBRIGA: Very good. Going back to Mr.

Tagorda's suggestion, is anybody else in favor of or want to support the substitutions of instead of the Board's operating

fund that the money be applied to source development funds of the Board? Mr. Hiranaga?

MR. HIRANAGA: Is there any limit on the frequencies that we can submit rule changes to the Council?

MR. CRADDICK: What's that?

MR. HIRANAGA: Is there a limit as to the frequency that we can submit rule changes to the Council?

MR. CRADDICK: There's no limit. It's just historically they can't deal with money issues during an election year, that's all. That was the reason why we were separating this, because we knew this was going to take a long time.

MR. HIRANAGA: What would preclude us from submitting the fee schedule as one recommended change, and whenever this rule is finally approved, that it be submitted at that time? It seems like you are holding the fee schedule back

as we start plodding through this. If we have no limit as to how often we can submit rules --

CHAIRMAN NOBRIGA: I think the point being that Councilmember Tavares had expressed at one of our meetings that she would be dead set against helping us get any of this through if we don't have a provision to handle the applicants on the waiting list in the Upcountry area.

MR. CRADDICK: But are you concerned about that? Is everybody here concerned about that? Because it was at the public hearing, so like I said, you can chop it out of that one, the meter rule, and put it in the fee schedule. It's just that then you start talking about other things other than the fee schedule.

And I think the Board is credible enough to go to the Council. I don't feel the least bit uncomfortable going to the Council and saying, "Hey, we have separated these out. We have gone to public hearing or we are going to public hearing. Here is the rule we are going to public hearing with for the meter issuances. It's got your concern covered in there."

I don't think they're going to worry about the Board

getting the fee schedule passed and then suddenly deleting the other out of the rule. All of you say you are not going to do it, and I believe you.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: The Director may think that he has credibility with the Council; I am not so sure. I really think that we should get it together, all the verbiage and the list stuff and take it there and make sure it gets through. We did have a rule get kicked back to us just last week after I understand the Director lobbied against it.

MR. CRADDICK: Jonathan, why do you say that kind of stuff? I did not say one single thing about it. Corp Counsel found it out and brought it up, that's all.

MR. STARR: Anyway, I don't feel that we want to have divisiveness I'd just like to get it done clearly at this time.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Mr. Hiranaga.

MR. HIRANAGA: Mr. Chair, I guess when we first started looking at this fee schedule we were told how this was way overdue and we needed to address this, which we did in a timely fashion, and now it has been brought back into this whole process of reviewing Chapter 8. I would prefer to submit the fee proposal to the Council, have them voice any concerns they may have upon review, at which time we can address and hopefully alleviate any of those concerns.

But to guess as to what their concerns may be or what one Councilmember's concerns may have been at that point in time, I feel we should work with that. If they have concerns, let them officially voice it to us and we will try to address them. But to hold back this fee schedule because we think there may be concerns, it seems like this fee schedule is going to get bogged down.

CHAIRMAN NOBRIGA: Okay, thank you. I will make a recommendation from the Rules Committee to the Board at the

next board meeting that that proceed.

Do the members wish to start at the beginning of this water system development fee slide show or would you prefer to have this slide show provided in writing to us so we can actually see what's going on?

MR. HIRANAGA: Well, personally I think if we are going to address each section we should have some prior notice to what the proposed or suggested changes are going to be made by the department so we can understand them, versus looking at something like this.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I think this presentation is kind of designed to give us headaches. I would not like to see something slip through under that.

MR. HIRANAGA: I thought we were only going to address the fee schedule, 16-8-9, 11 and 15, and now we are addressing these things.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: What I was hoping is that the Board members would do exactly like what Orlando did. They would have specific sections they have a problem with, we throw them down on here, we print the whole thing out for the Board to look at everything. Board member suggested changes as well as staff suggested changes. If you want to change or delete something, yes, it's a proper process.

I know it's a little flashy up there, so I have to agree with Board Member Starr there on that. But, you know, it's an efficient process where everybody can see it, and if the Board members have any suggested changes we can do them in this meeting or individual Board members can send them in and we can put this in and print it out. But nobody is talking about this, so we need to do something.

CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: I would prefer the staff provide us suggested changes that we review, and upon that review if we

determine other areas need to be addressed the Board members can do that. To ask me to review this rule and try to revamp it, personally put my time into this, each member to do the same, and then see what the staff says, I think is not an efficient use of my time.

Staff is working with this on a daily basis. If they run into problems they should make suggestions for our review. If we want to expand on that, then the members will have that opportunity to do so. To ask us to make the suggested changes first --

MR. CRADDICK: That's all right, that's valid.

CHAIRMAN NOBRIGA: Mr. Hashimoto?

MR. HASHIMOTO: I agree with Board Member Hiranaga.

I think it's easier for me to see it down on paper first and then see what kind of suggestions they have and then review it. Because to see it up on the screen is okay, but I'd rather see the whole document before, instead of piecemeal.

CHAIRMAN NOBRIGA: This document is not ready to be referred back to the Board for conclusion, so the matter is deferred to our next meeting.

Let's go look at the Upcountry Meter Issuance Rule.

I believe with the exception of inserting something, some kind of language giving light to that Makawao/Kula community plan language of priority for ag and Hawaiian Homelands, possibly within the purpose section of the rule, this rule looks ready to be submitted to the Board for first reading.

MR. HIRANAGA: Just a question, Mr. Chair.

CHAIRMAN NOBRIGA: Yes.

MR. HIRANAGA: So as far as the staff is concerned, they have no additional proposed changes to Rule 16-106-01? They are not going to review this and then at the next meeting have more changes, which is what seemed to be happening in the previous rule.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: There are some definitions that were deleted out of there that Orlando had asked for before, the source development, because it had things in there for retrofitting. And fixture units was deleted out of there because that was referenced in the source portion of the rule, and that was deleted out. But that was talked about at the last meeting when we reviewed this thing. So there may be some differences between what you have in front of you and what is up here on the screen.

MR. STARR: Which is the one we're looking to pass?

MR. CRADDICK: It's up to you.

MR. STARR: Thanks, Dave. I mean I am ready to make a motion on the one I have in front of me on paper, but I am not ready to make a motion on something else.

CHAIRMAN NOBRIGA: Let us look at the one that we have on paper, gentlemen, because that's what we have before us.

MR. CRADDICK: Then do you want that thing in there about the fixture units when it is not referenced anywhere in the rule?

MR. STARR: What thing?

MR. CRADDICK: You have a definition there for fixture units that's not referenced anywhere in the rule. Do you want it in this rule?

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Again, what I would like is a draft of the rule with changes as suggested by the department for our review. So if they wanted certain things deleted they should have put delete, suggest delete or suggest to add or amend so we know we're looking at the whole rule that the department is happy with, and then we can review it and comment from our part. It's like we are going back and forth.

CHAIRMAN NOBRIGA: Yes, I concur. Mr. Tagorda?

MR. TAGORDA: I kind of sometimes do not concur with the members on how to approach the rule making process. What we have here, especially this issuance meter rule, is a new rule that's been submitted to us by the staff and it's really up to us to delete, make some suggestions, recommendations as to the provisions and the contents of this rule. And if we are just going to pass this again, isn't this you guys recommendation, David, the issuance meter rule? None of this came from any of the Board members?

MR. CRADDICK: It did not come from the Board members, nor did it come from the staff. It basically came from the Corp Counsel, because the Board said they wanted a rule on meter issuance for Upcountry.

MR. TAGORDA: So we are really ready to take on this issuance meter rule.

MR. CRADDICK: What I'm getting at is the staff really has not reviewed that either. So Kent is right, this, what you see up here in front of you, is our recommended changes, but you don't have them sitting in front of you.

MR. TAGORDA: Okay.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: Mr. Chair, is there any way we can get another meeting before the Board meeting so we can get them -- would you be willing to recess and come back and then we can have final staff suggested copies? Because I feel like we're close on both of these now. I would love to get them out and to the Board at this meeting. I assume it won't take staff long to print them out.

CHAIRMAN NOBRIGA: We could, the committee could move both rules out to the Board meeting on the 27th without any recommendations. That's one possibility. The second possibility would be for us to recess and reconvene say tomorrow afternoon, because we are already scheduled to have a

Committee of the Whole and Finance meetings tomorrow.

MR. STARR: That would be my desire, and I think in a half hour or 40 minutes we could do it. This one, I was ready to make a motion on this one until I heard that there were going to be staff suggestions.

CHAIRMAN NOBRIGA: I don't know if we are going to allow staff sufficient time by just recessing for a day.

MR. STARR: Well, he's got them.

MR. CRADDICK: All we have to do is print this out then. You see this one here, people with many lots. Let's say you have a 30 lot subdivision. Are you going to give all 30 lots the break on the development fee or are you going to let maybe two lots get the break on the development fee and the rest of them have to pay the fee?

This came up with staff yesterday, and I said, well, let's just throw it down here for the Board because it is a legitimate issue. Because we have a number of subdivisions

with many, many lots. And here may be the place where you may want to give this in quotes preference to Hawaiian Homes, if you will. And farmers it probably doesn't matter anyway, because if they're real farmers they get exemptions from the state on the fee anyway. So it may not matter for the farmers. But it was a concern to staff if you are going to give this waiver to people with 30, you know, an umpteen number of lots because they are on the list there.

MR. HASHIMOTO: So 30 on the list or just one person?

MR. CRADDICK: It's just one item on the list.

MR. HASHIMOTO: But 30 meters?

MR. CRADDICK: Right. And I don't know if I should be bringing the name out here, but I can bring out a few of them.

CHAIRMAN NOBRIGA: I would prefer you not to disclose that information.

MR. CRADDICK: Okay.

CHAIRMAN NOBRIGA: It is the Chairman's position that this rule is not necessary. I feel and I still feel that the ability for the department to issue meters to the people waiting on the list is already addressed in our current rules as they stand. It was the Director's suggestion that the Board bring up a rule for him to issue meters to the people on the waiting list. I don't know who the hell it was, but I still embrace that the current rule we have on meter issuance still applies. Mr. Hiranaga?

MR. HIRANAGA: Going back to this question, I don't feel comfortable when questions like these are posed to us without prior notice. What I would suggest, if you wish to make this part of the agenda for the next Board meeting is maybe you recess to Friday and give staff time to make copies and deliver, and for us to have time to read it. She's got to find a meeting room. Fran, if we met on Friday would you --

MS. NAGO: First of all, I have got to find a room.

It's got to be announced, room and time. So if you guys are recessing, we have to recess and announce the time and the place. I don't know if this is available on Friday.

MR. HIRANAGA: If we did it on Friday would you have sufficient time, because Tuesday is Christmas, to deliver whatever is decided to the full Board?

MS. NAGO: Are you folks talking about this Friday?
You folks are talking about this Friday?

MR. HIRANAGA: The meeting is Thursday, right, we've got to have the documents.

MS. NAGO: What I was hoping is, I don't think it's going to get to some of you folks in the mail by Friday.

MR. CRADDICK: I will hand deliver it, if we have to.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I think we should come back tomorrow

with the suggested wording from the staff and see if we can knock it out.

CHAIRMAN NOBRIGA: I don't think it's possible.

MR. HASHIMOTO: I don't think it's enough time for us to review it because we will probably get it tomorrow or at the meeting.

MR. CRADDICK: You will get it about 2:00 today.

MS. NAGO: No, David, they won't get it at 2:00 today.

CHAIRMAN NOBRIGA: Mr. Tagorda -- sorry, Mr. Hiranaga.

MR. HIRANAGA: If Friday works for Fran, I don't know if you are taking Monday off --

MS. NAGO: Yes, Monday and Wednesday I'm not going to be here, but Friday if he's going to deliver it to everybody, that's fine. Or if you folks want to pick it up.

But that gives them time to go over it, get everything down, make the copies, and be a little more organized.

MR. HIRANAGA: So if we met Friday, whatever revisions or changes to be made will be delivered to the other Board members for the Thursday meeting?

MS. NAGO: Right. Everything you guys get in your committee, it goes to everybody. I don't just give it to committee members, it goes to everybody. It would go to all eight of the Board members and the staff.

MR. HIRANAGA: Suggested changes that occur on Friday need to be transferred to the Board members.

MS. NAGO: You folks are going to have a meeting on Friday.

MR. HASHIMOTO: He's talking about the changes that are made on Friday to be faxed out to the Board members.

MR. CRADDICK: We can fax them out to everybody on the same day.

MR. HIRANAGA: The changes that are made on Friday will be transmitted to the Board members.

MR. CRADDICK: The same day.

MS. NAGO: Well, it depends, David. You have got a Committee of the Whole meeting and you have got a Finance meeting.

MR. CRADDICK: That's on Wednesday.

MS. NAGO: Friday I can get the stuff to you if he's going to deliver it. Are you going to deliver it to all the Board members?

MR. CRADDICK: Yes.

CHAIRMAN NOBRIGA: It is the Chairman's recommendation that this meeting be recessed until Friday, December 21st at 9:00 am in the Director's office. Is that

good?

MR. HASHIMOTO: I won't be here.

MS. NAGO: You are not going to be here on Friday?

MR. HASHIMOTO: No.

MS. ANTONE BLACK: Is that open to the public?

MS. NAGO: It's a public meeting, Audrey.

MR. HASHIMOTO: If you want to meet in my conference room you are welcome. I won't be there, but it can hold about comfortably.

MR. CRADDICK: Down at the college there, the ag room.

MR. HASHIMOTO: I will reserve it if you folks want that. There's a screen.

MS. NAGO: Do you want to hold it in the Director's

office? It's up to you, it doesn't matter to me. We need to name a place.

MR. HASHIMOTO: I don't think the public will fit in his office.

CHAIRMAN NOBRIGA: It will be okay in the Director's office. I really don't want to go too far from there because you need to fax everything. Mr. Starr?

MR. STARR: Just before we do that, could we take just two or three minutes and ask the Director if he's got any other big surprises for us in there?

CHAIRMAN NOBRIGA: Yes, lets.

MR. CRADDICK: The word "applicants" was changed to "premises" because on the list the people were not accepted by names and tax map keys were accepted. So we have made some changes in there to recognize that. That if people died or if somebody sold the property, the request for the water service

remain with the property, not the person who passed away or something like that.

MR. HASHIMOTO: Is there a revised list?

MR. CRADDICK: I believe so, yes.

MR. HASHIMOTO: Can we see the revised list?

MR. STARR: That should go to hearing with this.

Not to hearing, but it should be available to the public.

MR. HASHIMOTO: Well, not by name.

MS. NAGO: It's listed by TMK.

MR. CRADDICK: I think that is basic.

CHAIRMAN NOBRIGA: Get it off the website.

MR. CRADDICK: But without the names on it.

CHAIRMAN NOBRIGA: Okay. This meeting is recessed to Friday, 12/21/01 at 9:00 am in the Director's office next door. Thank you.

(The proceedings were concluded at 11:00 a.m.)

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