

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Taken at the David K. Trask, Jr., Office Building,
2145 Kaohu Street, Room 207, Wailuku, Maui, Hawaii,
commencing at 9:05 a.m. on December 27, 2001.

Reported By: Rachelle Primeaux, CSR #370

IWADO COURT REPORTERS, INC.

ATTENDANCE:

Members Present:

Peter Rice, Chair

Jonathan Starr

Mike Nobriga

Clark Hashimoto

Howard Nakamura

Kent Hiranaga

Orlando Tagorda

Staff Present:

David Craddick, Director

Ed Kushi, Corporation Counsel

Fran Nago, Secretary

Herb Kogasaka, Engineering

Mike Quinn, Finance

George Tengan, Deputy Director

IWADO COURT REPORTERS, INC.

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CHAIR RICE: Call to order the regular meeting
of the Board of Water Supply, Thursday December 27th.
We're in the David Trask Office Building, Room 207.
Present, Director, David Craddick; members Clark
Hashimoto, Mike Nobriga, Jonathan Starr, Kent
Hiranaga, Orlando Tagorda, Howard Nakamura, Corp

Counsel Ed Kushi and members of the public as the secretary will record.

I would like to wish everyone a happy holiday and a happy new year. We're making small progress this year, and we intend to make large progress next year, so we're looking forward to good things on our Board. Approval of the minutes have been distributed, Board Members, October 25th and November the 20th.

Any comments?

MR. NOBRIGA: Chairman, move the minutes be accepted subject to 30-day review. If there's no corrections, these minutes should be filed.

MR. HASHIMOTO: Second.

CHAIR RICE: Moved and seconded. Any discussion, questions, comments? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Testimony from the public at this time. If there are any members of the public that would like to give testimony on issues listed on the agenda, you may do so, or if you're here for a specific issue, we'll provide time at the beginning of that issue for testimony.

Yes, sir.

MR. MAYER: Are you taking testimony on the rules as well at this time?

CHAIR RICE: If you have testimony on something that's on this agenda, you may do it now or at the time the issue comes up.

MR. MAYER: Hello, my name is Richard Mayer, and I would like to comment on one of the items that's on

your agenda; namely, the meter prioritization list for the upcountry region. And I want to reiterate the comments I made to the Rules Committee, and that is that I believe that the rule you seem to be setting up now will be in conflict with the Upcountry-Pukalani Makawao-Kula community plan, which states as its highest priority, the highest priority is for water and that is the agricultural and Hawaiian Homelands.

I see nothing in the rule that would give prioritization to these areas, and I think that what we may be setting up is a conflict that may have legal implications. You may eventually get the County involved in legal matters defending when various groups contest this, and I think the rules should be very explicit as to how the priority list that has been established will interact with the community plan, which is County law at this point.

That's my comment. I don't have any specific language per se, but I think the rule at this stage is incomplete in the sense that it creates a potential conflict for those people on the staff who will then be having to issue permits not knowing which rule to

follow. The community plan, which seems to I would think have control for this priority list.

I also understand this is going to be going out to public hearing at some point, and I would like to request when that hearing take place that it take place in the upcountry region. Those are my comments.

CHAIR RICE: Thank you, Mr. Mayer. Any questions of Mr. Mayer? Mr. Starr.

MR. STARR: Yeah, am I correct in believing that your feeling is that only meters should be given to a certain kind of users based on priority in the community plan, is that what you're saying?

MR. MAYER: Not only that. That's the priority, and what I'm saying is when I use the word priority, that means that comes first on the list, agricultural and Hawaiian Homelands area. And the Hawaiian Homelands -- and we're talking about long-term, not

just this first unit of the Hawaiian Homelands area, but the long-term development of the Hawaiian Homelands areas, which is 6,000 acres eventually.

And I suspect that they not only want the credits for this first initial phase, but for the long-term as well. Now, that doesn't mean the people on the priority list should not get any, but certainly they should be second to the agricultural and Hawaiian Homelands needs.

MR. STARR: What you're saying is we would not give anyone any meters until 6,000 acres of Hawaiian Homelands is served?

MR. MAYER: Well, at least until we know that water is going to be available for Hawaiian Homelands developments. And a comment was made at an earlier meeting that potentially it would be coming from the central Maui system, and I don't think there's any clarity at this point that the central Maui system has the available water to be pumped uphill, which would be not only expensive, but it may not be available for

their use, so we have to make sure the Hawaiian Homelands will get the water they need.

As far as agriculture, as we all know, drought conditions existed in the past. And we want to make sure farmers are not again impacted. I know that Ulupalakua Ranch, they've had problems getting water, strawberry farms. Other farms probably have had restrictions put on themselves, self-imposed sometimes to go along with the community, but we should make sure that they have enough water as well.

That's the law. I'm not saying that's what I believe. This is what the law says.

CHAIR RICE: Any other questions of Mr. Mayer?

MR. NAKAMURA: One comment, Mr. Mayer. I believe you're familiar with the fact that the Board has been working with the Department of Hawaiian Homelands and has, in effect, has also set aside half a million gallons of water for the Hawaiian Homes, so this is not something we're ignoring.

Secondly, perhaps not now, but when we have a hearing, one of the issues we have wrestled with is the definition of agricultural use. I think you're familiar with that issue. And if you have any suggestions as to how that can be best defined, perhaps you could provide that to the Board.

MR. MAYER: I'll do that at the appropriate time.

MR. NAKAMURA: Thank you.

CHAIR RICE: Any other questions or comments for Mr. Mayer? Thank you, Mr. Mayer.

MR. MAYER: Thank you very much. Happy new year to all of you.

CHAIR RICE: Any other public testimony at this time before we move into the agenda?

Hearing and seeing no hands or voices, then we'll move along. Director's Report 01-55, Mr. Craddick. Keokea lateral.

MR. CRADDICK: This project is along the highway out Keokea, and it's a project, I guess part of a project that started in 1975 or so, and we -- the amount that we expected it would cost would be about \$25,000 more than that. And in addition to the \$25,000, we're asking for 5 percent contingency of \$21,000 for a total of \$47,000 additional for the project.

And it is already bid, ready to go to work on it, so if you can see your way clear to let this one go without going to committee, I'm sure it would be helpful.

CHAIR RICE: Board Members have any questions of Mr. Craddick? Mr. Starr.

MR. STARR: Yes, is this -- this construction money, will this complete the project?

MR. CRADDICK: There is more on Middle Road and

Cross Road that still has to be done.

CHAIR RICE: Is that another phase?

MR. CRADDICK: Yes.

CHAIR RICE: So then the question I think in this phase, will this amount of money get the job done?

MR. STARR: Yeah.

MR. CRADDICK: This phase, that is enough money to get the job done.

MR. STARR: What are we doing? Since the Board hasn't seen this, I'm kind of surprised to see it kind of pop up like this. What exactly are we doing here?

MR. CRADDICK: Putting a water line out along the main highway out in Keokea. Currently, you've got commercial properties served with a 2-inch water line,

the school.

CHAIR RICE: Is it a budgeted project?

MR. CRADDICK: Yes.

MR. STARR: What I'm confused about here is we're putting in a new 8-inch water line, but it's being fed by a one-and-a-half-inch water line.

MR. CRADDICK: And 2-inch.

MR. STARR: So, in other words, we have a one-and-a-half-inch coming in and then we're going to put new 8-inch for a while. Then it's going to go back down to one-inch, one-and-a-half-inch. So how is this --

MR. CRADDICK: Where are you looking at the one-and-a-half-inch?

MR. STARR: I'm looking --

MR. CRADDICK: On the far left-hand side?

MR. STARR: Yeah.

MR. CRADDICK: No, the line is not served from there. The inch-and-a-half is served from the 8-inch.

MR. STARR: Where is the new 8-inch being served by?

MR. CRADDICK: Down on Cross Road and Middle Road.

MR. STARR: Well, you have 2-inch at Cross Road.

MR. CRADDICK: Actually, there is no connection on Cross Road right now. The pipeline comes through peoples' back yards and things like that down to the highway.

MR. STARR: I have a problem with doing it like

this, Mr. Chair. I'm sorry, we're being shown a piece of 8-inch line out in the middle of nowhere. The map we're given doesn't show where it's fed from.

MR. CRADDICK: It does show where it's being fed from.

MR. STARR: Where? Can you come over and show me?

MR. CRADDICK: You see the Evangelical Church where it says 2-inch there?

MR. STARR: Yeah.

MR. CRADDICK: If you look right above it, there's a 2-and-a-half-inch C.I. line, and then above that, there's a 3-inch line.

MR. STARR: So you are feeding a new 8-inch line with an existing 2-and-a-half-inch line?

MR. CRADDICK: That's right.

MR. STARR: Maybe my knowledge of plumbing leaves something to be desired, but something around that doesn't make sense.

MR. CRADDICK: The design for Middle Road and Cross Road is already going -- we would expect that that project will be coming along shortly.

MR. STARR: I know we've discussed some way of trying to put these, you know, CIP projects in some kind of priority basis, but I mean having them just kind of dumped in front of the Board without having anything to connect to and without having, you know, any basis for it and being told we should move it ahead because it's already all bid out, I just don't think that's the way we should be doing business. And I think at least it should go to, you know, go to committee and we should get an understanding of what it is.

CHAIR RICE: Gentlemen.

MR. TAGORDA: Is that a motion, Mr. Starr?

MR. STARR: Yeah, move to send it to the Capital Improvements Committee.

MR. TAGORDA: I second.

CHAIR RICE: Comments? Okay with you guys?

MR. KOGASAKA: Maybe I could try to explain what is happening here. The previous design was to come down that 3-inch and 2-and-a-half-inch line and connect to the line along the Kula Highway. Since that time back in the '70s, well, we've redirected our interest in putting the line in the road.

Since this portion was completed, that section along that 3-inch and 2-and-a-half-inch line was to be abandoned and a new design following Middle Road and Cross Road was to be the connecting line. Being that the section along Kula Highway, we broke it down to

phases and put the section along Kula Highway in.

The design on Middle Street and Cross Road is in progress right now, and we would like to get that out immediately. The priority is to complete the section of the road system. The project has been in the works for such a long time. So with the intent of going ahead with the second phase, although it's a little backwards, the work is progressing in that manner.

CHAIR RICE: Anybody else have anything to say?

We've got a motion, motion referring to CIP.

Actually, we don't need a motion if everyone agrees.

Nodding of heads. Okay, refer to CIP.

MR. TAGORDA: Are we going to vote, Mr. Chair?

CHAIR RICE: We have a motion. Let's have a vote. All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say no.

(No response.)

CHAIR RICE: Next, Director's Report 01-56.

MR. CRADDICK: This project here is to complete the Paukukalo pipeline where we had problems with the service lines and things like that. In order to complete that job, we eliminated this street of the project, and our crews basically will finish it. But we wanted to actually fund the line and possibly be able to do that while we are doing archeological work. So again, it's a small amount. If you want to do it, go ahead. If you want to refer it to committee, it's all right.

CHAIR RICE: Yeah, that's one of my old pet projects. I think we'll refer this to CIP.

Mr. Nakamura.

MR. NAKAMURA: I think that's a good idea,

Mr. Chairman.

CHAIR RICE: Thank you. So ordered, unless there's some objection. Director's Report 01-57.

Mr. Craddick, this is to finish off the item that was left hanging there at the last Board meeting. And this -- well, Hawaiian Homelands expects this matter would be covered in committee. They're not here today.

CHAIR RICE: Board Members will remember that we moved along on the Hawaiian Homelands issue with the exception of the source credit request. And I'm going to refer that to Finance unless there's some objection. So ordered.

The Director's 01-58, Mr. Craddick, watershed protection project.

MR. CRADDICK: This item is another pass-through of funds and doesn't impact any of our projects. And it may be helpful on the Lower Kula line project identifying native plants that could be affected by

the project, so it's a good one to participate in.

CHAIR RICE: We have an existing watershed partnership agreement that relates to this?

MR. CRADDICK: Not really, no. This is just -- well, there is the East Maui Watershed Group, but it's not really related to that. This is just funding to identify endangered plants in a specific area, and it is near the area where we would be looking at doing our large reservoir, so any information that we can get out of this would be helpful in moving that project ahead.

CHAIR RICE: Mr. Starr.

MR. STARR: Mr. Chair, I like this project. I would be happy to make a motion. But if any of the members want to see it in committee, I would defer to that.

CHAIR RICE: What's your pleasure, gentlemen?

MR. NOBRIGA: Defer.

CHAIR RICE: Defer, okay. I'll refer that to Finance then.

MR. NAKAMURA: Mr. Chairman, perhaps operations would be more appropriate since there's no funding required.

CHAIR RICE: Operations?

MR. STARR: Okay.

CHAIR RICE: Okay, so ordered. Communication 01-40, Mr. Craddick.

MR. CRADDICK: This is a letter from the Kawela Plantation Homeowners Association I guess basically wanting us to take over that system. So there would have to be a lot of information to gather before we

could make a recommendation to the Board. I mean it's not something that will be gathered in 30 days if you want to refer it to the committee.

CHAIR RICE: What, Mr. Nobriga?

MR. NOBRIGA: I think the committee issues used to be received and filed if I stand corrected.

There's no -- I don't believe there's any action to take on this subject right now just asking that we enter into negotiations.

CHAIR RICE: Any other feelings from the members of the Board?

MR. NOBRIGA: Being an open-ended request, we should have it referred to the Committee of Operations perhaps, Mr. Chair.

CHAIR RICE: Mr. Starr, sounds good?

MR. STARR: Yeah, that's fine.

CHAIR RICE: Okay, I'll refer that to Operations Committee. No objection, so ordered. Okay.

Communication 01-41, Hoekstras to allow one meter to serve two lots. Mr. Craddick. Are the Hoekstras here? Yes, ma'am, would you like to say anything?

MS. HOEKSTRA: Good morning, Mr. Chair, Committee, everyone.

CHAIR RICE: Come on up and have a seat there. Let her record your wonderful testimony.

MS. HOEKSTRA: As you know, we've been twice recommended by the committee for approval of our -- for approval of our sharing of our one-and-a-half-inch water meter for two lots. And we've been approved for the waiver of fire protection, and inadvertently, when that motion was carried, I believe the part about our one-and-a-half-inch meter being able to serve the two lots between my parents and myself was overlooked in

the motion I believe, and we were hoping we could correct that.

We have the one-and-a-half-inch water meter, a private water system in place, and we have a waiver of fire protection, so we were hoping that you would allow us to do that. I believe there are previous other subdivisions that have been able to do that. And we have a really large water meter and really we're just restricted to the two lots, so we were hoping that you would see fit to do that for us, so we could all go our different ways.

CHAIR RICE: Any comments, Mr. Craddick? You don't look like you want to make a comment.

MR. CRADDICK: Well, I just, you know, I think this just goes to the issue that's in the upcountry meter rule, you know, to establish some criteria for this sort of thing. In light of having denied Mr. Siele with a similar request, I don't know if you want to refer it to the committee or what, but I

wouldn't be prepared to say one way or the other on this right now. I don't know what the consumption is.

CHAIR RICE: Okay. I will refer that to Rules Committee. We've had your issue before.

MS. HOEKSTRA: Thank you. Good morning.

CHAIR RICE: Thank you. So ordered. We're on to committee reports. Mr. Nobriga.

MR. NOBRIGA: Thank you, Mr. Chairman.

Communication 01-31, communication from Hugh Starr regarding definition of subdivision, et cetera. We would like to thank very much Mr. Starr and other members of the public which have come forward to assist us in the update of our Department rules.

We were not prepared to address the section covered in Mr. Starr's letter, and we have recommended to file a letter subject to later review and discussion at a duly noticed meeting on Section 1-2 entitled Definitions. They are extremely helpful in

trying to explain to us the use of condominiumization and how that pertains to these rules. So move to file.

MR. TAGORDA: Second.

CHAIR RICE: Motion moved and seconded to file.

Comments? Mr. Starr.

MR. STARR: Just that I look forward to dealing with it in the future. I know we're not burying it. We're just going to do it at the right time and the right place, and hopefully that will be soon.

MR. NOBRIGA: Yeah.

CHAIR RICE: Any other comments? All in favor?

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried to file.

MR. NOBRIGA: Communication 01-32, request from Wayne Arakaki for -- anyway, the matter requested -- Mr. Arakaki's representative requested the matter be deferred, and we do not have any report on that item at this time.

CHAIR RICE: Okay.

MR. NOBRIGA: Communication 01-33, again, the matter was requested to be deferred by the requester Ms. Von Tempsky, and there's no report at this time. Communication 01-36, request from J.R. Judge.

Our recommendation is that we waive the Department rules and allow the specific request and based on the reliance and investments prior to 1965. I see that the Judges are here, and would like to have them come up and provide comments.

MR. JUDGE: Good morning, everyone. I'm Jim

Judge and we're handing out some written testimony.

I'm here on behalf of the Judge Family Limited Partnership, and more specifically, the Judge family.

This is my wife Lisa, my mom Peggy, my son Rob and his fiance Rebecca. And we're here hat in hand to make a request that we be able to utilize an existing easement and also request a waiver as to the installation of a fire hydrant. In the testimony that's being handed out, it's got some historical background in it, and I would like just like to go from top to bottom in it.

Our predecessor in interest Carl Duhrsen acquired this Omaopio Parcel Number 3 in 1963, and it was 49 acres in size at that time. In June of 1965, Mr. Duhrsen received final subdivision approval to divide the property into four lots. Exhibit A is an attachment that we received out of Water's files. And basically it's the fourth page down, and it shows that \$300 assessment was paid and received by Water at that time, and that time was June the 15th, 1965.

Of the four lots that were created, the original lot is lot Number 3. My parents bought that from Mr. Duhrsen in 1965. Parcel 87 was sold also to my parents in '65. Parcel 88 was sold to some other people, Mr. and Mrs. McDowell. And my parents acquired it from them in 1973. The fourth lot was a roadway lot which no tax map was issued for. So essentially, between 1965 and 1973, we acquired all four lots.

Now, for several years we hadn't applied for a water meter for parcel 88, which is the one we're talking about today, and the simple reason is that it was perceived there was a moratorium on the issuance of upcountry meters. However, in September of this year, we found out that, well, meters were actually being granted for existing parcels. And so we came in and submitted our request to the Chair on October 2001. We were provided with a staff report, and I think from the staff report, it's clear that parcel 88 is entitled to a water meter.

The only issue before the Board is where the meter for parcel 88 should be located and the same

5-foot wide water line easement that currently serves two of the parcels, parcels 3 and 87, or that we be required to extend the County water line approximately 2,200 linear feet down Omaopio Road, which we estimate as an expense of about \$125,000.

I think without question had we requested the meter in 1965, '75, '85, '95 and even prior to this rule interpretation that has occurred since '99, we would have been allowed or even required to put the pipe in the easement that we had. Historically, the meter, the water line easement goes back to when we obtained it in 1961 from Nancy and James Shishido.

As we say, two lines were already in there. In 1998, I came down and I was talking with some of the staff of the Water Department regarding our water needs, and it was pointed out to me that, oh, Jim, we don't think your 1961 easement is good enough because it says water line, but it doesn't say water meters.

So I went back and in '99 went through the time and expense of negotiating a wider easement, which is in the same location as the '61 easement, which

specifically permitted water meters as well as water lines, so I thought I had it done.

That new easement is Exhibit B, which is attached, and it's a long document. The first page though shows that -- the recordation information of Exhibit B shows that it was intended to benefit parcel 88. Now, the Water Department's staff is suggesting that we construct the new 6-inch water line down Omaopio Road. As I say, I think it's going to be an expensive procedure. We feel that the staff's suggestion is inappropriate for really three common sense reasons.

First of all, there's no economic reality to such a request, and it's too expensive to undertake that for a 2-acre parcel, which doesn't touch Omaopio Road itself. You have to understand that it is an internal -- and I think we provided a map -- it's an internal lot to the subdivision. So it itself does not touch Omaopio Road.

And simply put, the reason that there is no water line down at the bottom of our property in Omaopio for 37 years is that it's too expensive. The

Water Department didn't put it there. Now, it might be a different case if we were doing a multi-lot subdivision. Then you could kind of spread the cost out between all of the people, but we're not. We're basically just asking for a meter that was due to parcel 88 since 1965.

And we're asking that the meter be located where the other water lines are in that same easement. We already have the 5-foot wide easement. It reaches the same point of adequacy on the County water line that the other two water lines are located. And gravity flow brings it down. Item Number 3 here is it said, well, any new line along Omaopio Road. The other problem is that Omaopio Road gets kind of steep. It goes down.

We're about 100 feet -- the parcel itself is about 100 feet above where the roadway would be, and simply put, we would rather gravity flow water down than push it up the hill. In conclusion, we respectfully request that the Board exercise it's powers granted by Section 2-12 of the Rules and

Regulations of the Department of Water Supply and issue a water meter for parcel 88 and allow it to be located in our existing water line easement and that we not be required to construct a 6-inch line approximately 2,200 linear feet along Omaopio Road nor install a fire hydrant whose water would also have to be pushed uphill.

Thank you for your time and consideration. What this little yellow guy shows -- and this is Exhibit B from the staff report -- holding it this way, the property itself, parcel 88 is the crosshatched one here. The easement that we're talking about is off Omaopio Road and coming down. It used to be Shishido property. Now it's owned by others. The Shishidos sold to the Estes. And that's why I had to negotiate the new 5-foot wide water line easement. Thank you for your time and consideration. Any questions I can answer, I would be pleased to do so.

CHAIR RICE: Questions of Mr. Judge?

Mr. Craddick.

MR. CRADDICK: It's interesting to note here in this historical background that he provides on the subdivision data, it's Exhibit A. It says that the subdivision is granted provided the developer comply with Board of Water Supply regulations. So the subdivision would have never been granted if they had not complied with the Board of Water Supply regulations and regulations for fire requirements. So I don't believe they have changed since this date in 1965 when the original subdivision was approved.

MR. JUDGE: Can I respond to that?

CHAIR RICE: Yes, you could.

MR. JUDGE: Show me what the requirements were in '65 for this.

MR. CRADDICK: Well, it will have to go back to committee.

MR. JUDGE: This is the point. This is the

point. Had they requested the water meter in 1965, they would have gotten the water meter. It wasn't requested in '65. And now I'm being penalized because I don't want to extend the water line down. If the Board of Water Supply doesn't want to extend the water line down, why should I? I've already got two pipes and an easement. I just want to put my third one in the same place, simply put.

MR. NOBRIGA: Mr. Chairman, move for committee's recommendation.

MR. TAGORDA: Second.

CHAIR RICE: Okay. It's been moved and seconded that the committee recommends waiving Department rules along the specific request based on the reliance and investments prior to '65. All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried.

MR. JUDGE: Thank you very much, gentlemen.

CHAIR RICE: Next item, Mr. Nobriga.

MR. NOBRIGA: Thank you. Communication 01-37,
committee recommends the communication be filed. It
was apparent that during testimony for Mr. Blue that
somehow the reason for the request was nullified by
the Director, and the request was not necessary. We
move to file Communication 01-37.

CHAIR RICE: Moved. Is there a second?

MR. HASHIMOTO: Second.

CHAIR RICE: Moved and seconded to file.

Comments? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Okay, Mr. Nobriga.

MR. NOBRIGA: Thank you. Communication 01-38,
request from J.P. Schmidt on behalf of the O'Connors.

The committee recommends waiver of subdivision
requirements per Section 2-12 to allow for subdivision
approval providing Applicant prepare and produce
documentation of, A, indemnification of Department; B,
fire flow certification from the fire Department; C,
service does not impact others served; and D, private
system, 5 acres will run with the property in
perpetuity. Thank you.

I know Mr. O'Connor is here, although Mr.
Schmidt does send his regrets that he is not able to

attend due to turkey and stuffing I guess. Okay.

MR. TAGORDA: May I, Mr. Chair.

CHAIR RICE: Yes.

MR. TAGORDA: If I may. May I ask Mr. O'Connor about the words, are you in concurrence that your private water system should run with the property in perpetuity? I didn't hear that word when we were on the committee. Do you agree with that word, or should you request to extract that?

MR. NOBRIGA: We didn't use the exact word, but we basically discussed the matter.

MR. O'CONNOR: The private water system is intended for the 5-acre parcel.

MR. TAGORDA: Okay.

CHAIR RICE: Okay.

MR. NOBRIGA: Move, Mr. Chairman, for the recommendation of the committee.

MR. TAGORDA: I second.

MR. HIRANAGA: Question.

CHAIR RICE: Yes, Kent.

MR. HIRANAGA: My recollection this well is being shared by other lot owners.

MR. O'CONNOR: Right, there's a total of three users from this well.

MR. HIRANAGA: So is there any concern that since this lot does not have sole ownership over the well, that sometime in the future, there could be some type of a conflict. It's not like the well is on the property and the owner will have total control over

the well. It's a shared well that's off site
actually.

CHAIR RICE: A private well.

MR. HIRANAGA: It's a private well, but it's shared.

MR. O'CONNOR: It's set up through Manawai Water
Association, which each person, members of the
association has a voting right. And it is a shared
well, but there are rules and regs set up with the
well association for any conflicts.

CHAIR RICE: Okay. Any other comments? We've
got a motion to approve the recommendation of the
committee and a second. All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion carries.

MR. O'CONNOR: Thank you very much.

CHAIR RICE: Mr. Nobriga, we have a long agenda. Thank you very much for all your work.

MR. NOBRIGA: I ask for a five-minute recess at this time, Mr. Chairman, before we get into these next two items.

CHAIR RICE: A couple minutes.

(Recess taken.)

MR. NOBRIGA: Thanks for your indulgence, Mr. Chairman. May I proceed?

CHAIR RICE: Yes, you may, Mr. Nobriga.

MR. NOBRIGA: Thank you, Mr. Chairman. Item 7, water system development fee rule, Part A, the rate schedule. The committee humbly requests that this be transferred to the Mayor and the County Council. So move.

MR. TAGORDA: Second.

CHAIR RICE: Discussion? Mr. Starr.

MR. STARR: Yeah, I'm completely in favor of what we're doing. My only concern is that, you know, we have broken this into two parts, and some of the stuff, the second part, which we will be following, does impact the rates, especially for the people on the waiting list. But I do feel that the majority in the committee want to move it along, so I'll support that.

But you all keep in mind that there's more to the rates than is in the rate portion because the rules portion does contain a mechanism for allowing people who might get meters and have been on the

upcountry waiting list to get a break, which we all felt was a fair thing to do.

CHAIR RICE: Mr. Nobriga, we have some testimony here from Councilmember Jo Anne Johnson.

COUNCILMEMBER JOHNSON: Yes, I'm sorry. I didn't realize this was the next item on the agenda.

CHAIR RICE: Okay, no problem.

COUNCILMEMBER JOHNSON: And I realize you're in the discussion phase. One of the things that I'm here to really look at today, when I'm looking at the financial aspects of this and sending this onto the Mayor, I'm looking at the financial realities of what these meters and what, you know, costs are being incurred both currently for the installation of the actual equipment and then long-term for the maintenance and ultimate replacement.

And I've discussed this before and just had a brief discussion about the true costs that we're

looking at and that you're looking at. One of the things that I've experienced is that the rates that we pay being on Kaanapali Water Company, and that's myself personally, we have -- I think it's almost tripled, the rate, in terms of our monthly water expenses, because we're on that water system, which is Kaanapali Water Company private water system.

That system I think more closely reflects what the true costs are that are included in our monthly fees paying for water. What I'm looking at here is both your installation fee and then also some of your long-term debt with regard to replacing those. I'm concerned that what we're getting in terms of I guess feedback or in terms of real figures is very hard to pin down. I really don't want to get us into a situation where the fees that you're charging here are not going to be sufficient somewhere down the line so that huge costs will be incurred both -- either by your Board or eventually by you having to come to the County and ask us for more money.

I look at it in a -- in a business sense that

nobody goes into business to lose money. And while the problem may not occur right now, the problem somewhere down the line is going to occur that somebody is going to have to pay for these costs. And if we're cost shifting on future generations, I really question the wisdom in doing that, so when I'm looking at these fees just as a layperson, I would really find it helpful to know what the real cost is, what the actual cost is and then measure what the disparity is between the real cost and what the actual end user is getting charged.

American Farmland Trust has done a number of studies, and I don't think it's horribly expensive for them to do the same type of thing, but they look at the cost of infrastructure versus tax revenues. It's one of the things that they do, and for me, it was really helpful to know for every tax dollar taken in let's say on -- I would have to say urbanized property, for every tax dollar taken in, and this was a study done on the mainland, so I don't know if it's applicable here. But every dollar you take in, \$1.63 was what the actual cost of services, infrastructure,

police, fire, everything would be in a particular area.

If you looked at that same set of costs and you applied that to farmland, for example, or just vacant land, open space, you were looking at 53 cents taken in of costs for every tax dollar taken in. So what's happening is there's this subsidy on the part of agricultural lands subsidizing urbanization.

But even at that, there's insufficient income even when you combine the two to continue to operate without having to raise taxes. And what I would find helpful in my capacity both as a citizen and as a councilperson is to have some type of sense of where the real dollars are and the long-term costs over let's say a 10-year period, 20-year period, almost like a reserve study, if you will. It would be helpful for me to know where those true costs are in relationship to what your proposed fees actually are so that I will be able to know where we're going to have to budget somewhere down the line and what shifts we're going to have to cause and where.

And if there are any current subsidies going on, like if West Maui is subsidizing upcountry, I would like to be able at to least let people know in real dollars and cents what those costs are that they are subsidizing for people that live in rural areas but want urban services. So that's my charge, if you will, to you to try to help us in some way to assess those costs and assess the long-term impacts of what we're doing. I understand it's not easy for you, but it's not easy for any of us. And I don't want to get stuck somewhere down the line with having a shortfall or having to unduly burden people at a future time.

CHAIR RICE: Yeah, you understand that these numbers are based on actual costs, and Mike can provide that information to you so you can see, it's based on actual costs in the past, not projected costs in the future, which we think is a fair way to do it.

Now, obviously, if the costs go up in the near future, these numbers are already going to be low. And the general feeling I believe of the public is that these numbers are high, but they are, in fact, based on

actual costs.

One of the problems with the system, well, there's two ways to look at it. This unfortunately hasn't been changed in ten years, and that's something that the Board of Water Supply should not let happen because that's why you get sticker shock on these kind of new numbers.

And our attempt to prevent that from happening is this adjustment on Honolulu consumer price index, but there's another school of thought that says, well, you may be avoiding the opportunity of the Council to review the rates. So, you know, you're saying you want to make sure we're not caught short, and we try and provide a mechanism for that. It's not going to be totally foolproof, but it's certainly going to help. But then again, you have to give up something on the other side. And if you need numbers that justify these, Mike, you certainly can provide those to Jo Anne, can't you?

MR. QUINN: Right.

CHAIR RICE: Mr. Starr.

MR. STARR: I had a couple of comments because what you said is very well taken, and I certainly agree with the intent, but you have to remember that our financing is broken into two completely separate portions. And we are required to keep them separate, and one is the water system development fee, which would be a fee we charge for a new water service or a water meter, and the other is the operational fee, which is basically what you pay when you get a bill for water usage. And, you know, it's important that we don't commingle the two, and we know we haven't gotten -- this Board has not gotten to the second portion of it yet, and we realize we are running at a deficit. If you look at our budget, you'll see there's a footnote that says we're about \$4 million short a year. And that's money that we're not able to spend for reserve for replacing pipelines and we should be putting in there.

And there's an actual note in our budget this

year where we recognize that fact for the first time, and we will have to get to a place to deal with it. But to stick on the item at hand, which is the water system development fee, there are -- basically, in this type of infrastructure model, there are two ways of calculating what a fair rate should be, and one of them is the buy-in method. And that's the more conservative of the two.

It actually yields the lowest fees, and that's what we have used here, which is we had all of our infrastructure evaluated by a gentleman named Mullins I believe who does that sort of thing. And then we figured what the cost is in today's dollars to buy into it. In other words, if you have a five-eighths meter, how much equity do you have in the system in today's dollars? And we came out with these numbers. For five-eighths, it would be \$6,030. And part of it is in source and part is in transmission and part is in storage.

The problem with that is that the inexpensive water has already been developed. And now when we do

it, it actually tends to cost more, because, you know, we end up having to go further distances or we have to, you know, open up roads to do transmission lines. So I know we did some quick calculations and it turned out that a five-eighths meter really costs between nine and \$11,000, not the \$6,000 we're charging. But in actuality, because of state and federal and other subsidies, we do get help when we do large source development or storage or transmission projects. So it ends up -- we feel that with these kind of numbers it will end up a wash. And, you know, this is basically the fair -- the fair amount. You know, if we were to -- the other way of looking at it would be to do an actual cost of service. And there it would be a higher number, but we do get subsidized there by state and federal, so we feel on that basis, it's fair, too.

So just to provide you with some of the background for this, we will have to deal with the rate, you know, our water rate portion, which we know is not covering -- covering our costs. And, you know, hopefully, this Board will be able to deal with that

so we are not, as you say, creating any future liabilities. Because currently we are not putting aside enough reserves out of our operations fund, but this is not the time to fix it. This is the time to deal with the development fee.

COUNCILMEMBER JOHNSON: I really appreciate your addressing my concerns, and I think what you're doing is a very good move. Even though it may be unpopular and people may feel, as Peter said, it's a little bit high, I think it's because of years and years of not having those gradual increases to really help pay for these things that this has arisen, so I do appreciate your attempt to deal with it. And even though it's not covering the full cost, I think it's a step in the right direction. Thank you.

CHAIR RICE: Thank you, Jo Anne.

MR. STARR: Thanks for your support.

COUNCILMEMBER JOHNSON: Thank you very much.

CHAIR RICE: Motion on the table. Any other comments, questions? All in favor, signify by saying aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Mr. Nobriga, you're still on.

MR. NOBRIGA: Mr. Chairman, water system development rule, B, Title 16 committee recommends this go to public hearing. So move.

MR. TAGORDA: Second.

CHAIR RICE: Okay. Committee, this is the second part of the water system development process.

MR. NOBRIGA: Yes.

CHAIR RICE: Motion to send this to public hearing. Any comments, questions? Ready for the question? All in favor signify by saying aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried.

MR. NOBRIGA: Thank you, Mr. Chairman. Proposed upcountry meter issuance rule. The committee does appreciate the comments from public, especially Mr. Mayer's focus. The committee felt by Chapter 11 of the County Code, the County Charter Section 8-11.2 Item 3, party describes the overall direction of the

Department as it pertains to community plans, and we feel we do not in any way jeopardize the community plan to prioritize agriculture and Hawaiian Homelands in the upcountry area.

This rule is specific to handling in an orderly fashion those many, many families and people who have been subjected to inadequacies and discrimination by having to wait on this priority list for over 11-some years. The committee does recommend that Chapter 106 Title 16 -- same thing, go to public hearing. So move.

MR. HASHIMOTO: Second.

CHAIR RICE: Moved and seconded. Mr. Starr.

MR. STARR: Yeah, I just want to say I really hope this moves along quickly because I feel that this will end certain inequities and unfairness which has been taking place upcountry where lots with preexisting rights on the empty lot rule and all of that, that this will end that, so that we will no longer have the case where people have been waiting

patiently on the list while other people who have not been waiting get meters.

So I hope this moves along fast, and I would like to compliment the Committee Chair for getting it done, and I can't wait until it's passed out.

CHAIR RICE: Thank you, Mr. Starr. Tony, I'm sorry.

MR. DURSO: No problem.

CHAIR RICE: We went along to the Rules Committee agenda, and I missed you, I'm sorry.

MR. DURSO: It's okay.

CHAIR RICE: Go ahead.

MR. DURSO: Good morning, Members of the Board, the Department, Mr. Chair. Tony Durso from Ulupalakua Ranch just here to express sort of a continued concern about the current situation and stress the need for

resolution. Most of you know that we have meters that flow at a reduced capacity and others that don't flow at all.

In the past week, we had another one that went off line in our Kanaio reservoir, which feeds one of our major herds. It was emptied, and the meter that feeds it couldn't fill it. It turns out that the line had become incredibly air locked, and it took almost two days, I believe two days, to bleed the line so that it began to flow again.

So the Department did solve the problem, but it speaks to the unreliability of that system. And the stress that was put on that cattle herd, it's again difficult to translate that into specific economic figures, but they're there. The frustration that we have at that point is that we're in sort of an untenable situation.

We understand the desire of the Board and the Department to issue meters to those folks on that list who have been waiting for so long. We ourselves experience firsthand the frustration of not having the service desired, but at the same time, it's very

difficult for us to come out and support the issuance of new meters given our current situation.

There's a lot of debate about source adequacy and the impact of it on the system, but what we know is that the system itself that feeds the ranch is inadequate. We've been fielding repeated calls from Kanaio residents this week in relationship to this issue. So I don't know if we need to take quite as extreme a position as Mr. Mayer indicated really as essentially coming up with an entire block, but certainly given the situation of our meters which flow only sporadically, we're very concerned about moving into a situation where new meters could be issued.

And the way the ranch is looking at it, we're running out of options as to what we can do to make due with what we have.

And it's really just again just to express continued concern and to ask that you folks to move as proficiently and efficiently as possible towards resolving this situation. That's it.

CHAIR RICE: Thank you, Tony. Anybody have any questions of Tony, Board Members?

MR. NOBRIGA: I don't have a question for Tony, but I do want to provide the whole committee's gratitude to Corporation Counsel, Mr. Kushi. He has done an exceptional job in assisting us and getting these two specific rules ready for public hearing.

CHAIR RICE: Thank you, Mr. Nobriga. Thank you, Tony, again.

MR. DURSO: Thank you.

MR. HIRANAGA: Mr. Chair.

CHAIR RICE: Yes.

MR. HIRANAGA: My understanding regarding the situation at Ulupalakua Ranch is not a matter of capacity. It's a matter of transmission and distribution. And that again brings up a quandary I

have about ag use and providing -- what level of service do you provide for ag use.

The Judges came forward wanting an off-site water meter for an existing ag lot, which there's pluses or minuses requiring any water line improvements as suggested or recommended by the Department. And then you have an existing ag user such as Ulupalakua Ranch. What are their expectations of the service levels? I don't have the answer, but these are questions about levels of service expectations. Just a comment.

CHAIR RICE: Jo Anne. Thank you, Kent.

Jo Anne, I see you're sitting in the hot seat.

COUNCILMEMBER JOHNSON: I want to thank you again for bringing this up. I could have testified on it last time, but I guess not having an agenda in front of me has left me at a disadvantage. But having heard what Tony did say about the ranch, I want to let you know we're wrestling with the same issue of the

whole situation with regard to ag and the definition of agriculture and what is now some people are calling it true agriculture, and other people are calling it, I don't know, I guess pretend agriculture.

When I see the list, I'm sure there are many people on there that are really doing agriculture, and they do need the meters. I think that you have to put a set of priorities in place though, and I hope that the Council can help to firm up the definition of agriculture. And perhaps through organizations like American Farmland Trust, we can assist you in developing some of the language that we really need and thereby trying to do some prioritization. I really believe we have to subsidize or at least protect agriculture at whatever expense because that is the one thing I believe that is really keeping Maui in a strong position financially.

I think that it's what sets us apart from other islands as opposed to tourist destinations. I look at it in an economic sense that the beauty of the agricultural lands, the open space, the actual diversification that it provides for our economic

base. All of those things come into play when we're looking at ag. So for me, when it comes to the public hearing, absolutely, you are doing the right thing in taking this to the public.

In looking at the actual number of people that are on the waiting list, many of them I'm sure are very upset that they've been waiting so many years. But on that list, there should be some means of supporting agriculture and putting it ahead of all other things and not putting the ranch or other agricultural interests in a position where they're having to compete with residential development in agricultural or rural areas.

So it's very important to me, coming from farm country in Wisconsin, I really support because I think it subsidizes the way of life we have here on Maui. And when it comes to cattle, the stress that they go under when they go without water, you know, it really is incalculable, and I think that the Ulupalakua Ranch situation, they need to be supported. They need our help. Other small ranchers, flower farmers, they need

to know that we're supportive of them and in knowing should the submission of the list jeopardize or compromise their well being.

CHAIR RICE: Yeah, Jo Anne, thank you for your comments. I see how this is going, and the intention of this Board is to correct an inaccuracy that exists today. It is not our intention to make any statement about priority of farmers over someone else or someone else over farmers or agriculture. And to portray it that way is wrong, and it is simply subversive to the act that we're trying to create. We're just trying to create some equity, and there has not been a single word uttered at this Board meeting or a committee meeting where we have established priorities or changed priorities I should say.

And Tony has been with us before and the issue -- the main issue for them is a transmission issue. We have a project to correct that, and unfortunately, it's not one that we could move along tomorrow. He understands that he's -- and we understand the urgency. And staff is working to get

that project designed as quickly as possible.

So the public and community should know that, you know, we're outraged at our own creation of this inequity, and we're correcting it. I think that's a statement that needs to be made to the public about this particular Board, and we would urge support of it.

COUNCILMEMBER JOHNSON: I think that one of the things that is helpful, because obviously, when I'm looking at the same set of issues reading the same type of documentation, that every other person is going to be perceiving, when you go out to public testimony, perception is everything, and perhaps what it would be -- what would be helpful is for the Board to just come out with maybe a Viewpoint article in the paper in the Maui News just explaining what you're trying to achieve because I think the perception among the general public is that there is some type of prioritization.

And if that is not the purpose, and obviously

that's not what the purpose is, then I think it's helpful for us as lay people to be able to understand what inequities it is that you're trying to address. And also I think Councilmember Tavares had brought up the issue with regard to waiving, you know, how many waivers are going to go into effect, and is this going to exacerbate the previous situation that we just spoke about. I don't know.

But I think those are two areas that you're going to get public testimony in and you're also going to get questions in, so I think forewarned is forearmed. And my advice would be educate the public and help to educate all of us as to what the issues are.

CHAIR RICE: I think one other comment I would like to make relates to what Kent says, and that is the ever present quandary we're in when we have ag zoned land and urban, they want urban services. They want urban services, but they don't necessarily want to be held to the urban rules and regulations. And I think we need to really define urban areas,

agricultural areas and what is expected of us for those areas. I think it's important, especially upcountry.

COUNCILMEMBER JOHNSON: We are wrestling with the same problem even to a certain extent in West Maui, the abandoned agricultural lands that are now being urbanized. One of the things that we're doing in budget committee is we're looking at an Ag 1 and an Ag 2 rate in terms of tax status, people that are actually genuinely doing agriculture versus people that are saying they're doing agriculture and not really doing it, and it's a very fine line.

Because, you know, it's very subjective as to who is doing maybe a little herb garden and somebody else who is doing really intensive farming or maybe long-term tree, you know, let's say farming, that type of thing. So that's some of the same issues we're dealing with, but I appreciate what you're doing and taking it to the public. And I look forward to your educational basis so we can all be better informed.

CHAIR RICE: Thank you, Jo Anne.

COUNCILMEMBER JOHNSON: Thank you.

MR. STARR: Mr. Starr.

MR. STARR: You know, I just want to reiterate there is a transmission line project that will help Ulupalakua Ranch. You know, since this strawberry farm came on line, there have been a lot of problems because most of -- a lot of water is going to that, which is good. But what we're doing here relates to something that's really been a concern to a number of us since we've been on the Board, which is there's a waiting list of people. Some of them have been waiting 10, 15, almost 20 years for water meters, and these are the people who did the right thing and applied and sat on a waiting list. Unfortunately, there were loopholes in our rules and that allowed a constant stream of other people to come and apply for meters in the same place and get them. If they had an

empty lot, they were given a water meter.

If they had any kind -- if they had expended any funds, you know, no matter how minor, in reliance on getting a meter, they got a meter, and they were able to jump the queue, and this is something that we could not legally stop. So on one hand, we had a moratorium, and the people who acted in good faith have been waiting, and at the same time, there's been, you know, constantly 10, 20, 30, 50 meters being issued because of what's basically a loophole in our rules. And we're trying to correct that situation. So that as water becomes available, it goes to the people who have been waiting rather than people who are able to hire the right lawyer and find the loophole and jump the queue, and that's really what this is about.

This is not about, you know, creating a priority based on use or anything else. It's just -- or it's not even saying that -- we're not even saying there's water available, we're going to give meters. We're just saying as water becomes available, we want to

give water first to people who have been waiting rather than people who have better lawyers.

CHAIR RICE: Clark.

MR. HASHIMOTO: On the issue of defining agriculture, may I offer the services of the College of Tropical Ag and Human Resources and the Maui County Farm Bureau to the Council and to the Water Board. I think it's been a problem all along, and if we can narrow down the definition of agriculture because there's a lot of urban or gentlemen farmers, I would say, that would not qualify as agriculture, in my opinion.

But I think if we can sit down with the College of Ag and the Farm Bureau or with the Council and the Water Board, I think we can narrow it down, so I'm offering the services.

CHAIR RICE: Thank you.

COUNCILMEMBER JOHNSON: I really -- I do

appreciate that because I think that's where we can really make a difference in clarifying and really pinning down what agriculture, you know, in the true sense of the word really is, and if we can do that, I think that will go a long way also to helping our Agriculture Bill and maybe tightening up some of the language in our Ag Bill, because it's my opinion that under HRS sometimes it's even more strict and more stringent than our Ag Bill is. And yet our Ag Bill is supposed to really coincide with that, so I appreciate what you're doing. I appreciate Jonathan's comments. And I look forward to, you know, having some of the clarifications with regard to people who have been waiting a long time. I don't really think Mr. Mayer means that he doesn't recognize that there's importance in these people getting their meters, and I don't either. I think that it is important, but by the same token, if there are giant subdivisions on the waiting list, too, you have to also look at what direction are we moving. Are we going to gentrify our agriculture lands and make it more difficult for ag to

survive? And it's really a very tough call, and I know you can't really discriminate on that particular list. But what you have to do, in my opinion, is look at the list. And if there is some kind of waiver that is going to occur, you have to look at it in proportion to the impacts that are really going to be borne by the larger community. So I just ask that when that comes out for public, at least give us some guidance as to what it is that you're asking for in terms of support or what you're trying to achieve in an equitable way for everyone, but not burdening the overall system and certainly not compromising the situation that agriculture is in, which is not always good. Thank you very much for your help, and good luck.

CHAIR RICE: Thank you, Jo Anne. Mr. Starr.

MR. STARR: Just one more comment. The priority that we are giving is for a single five-eighths meter or one five-eighths upgrade for agriculture. You know, so it's rather than, you know, moving subdivisions ahead of people, large scale

subdivisions, we're trying to help the, you know, the small, the individual farmer first. And that's what is clearly stated in the rule.

COUNCILMEMBER JOHNSON: Thank you very much. I appreciate it.

CHAIR RICE: Okay. There's a motion that the proposed upcountry meter issuance rule be taken to public hearing. Is it seconded? More comments, Kent?

MR. HIRANAGA: Since this updated rule was just placed in front of us this morning, a cursory review, it's my recollection that on Page 106-4 at the top regarding funds extended, I think there was discussion about having Board review and approval to authorize someone to be given a meter based on funds expended that we were not going to allow the Director to have discretion and move to have funds expended if they're qualified for the exemption.

MR. NOBRIGA: That is correct, and I will accept the amendment.

CHAIR RICE: Ed.

MR. KUSHI: Mr. Chair, you know, I reviewed the draft that the Director sent and I reviewed it yesterday, and there was a statement I believe it's something to the effect of Board approval. But in my review, it doesn't really apply because what we're talking about is something that happened before November of '94. It's not something to be prospective in nature, if that's the intent of this paragraph.

CHAIR RICE: So what you're saying is that unless there was some documentation that shows that there was reliance and it was dated prior to November of '94, then it shouldn't be allowed?

MR. KUSHI: No, my understanding of this rule is that if somebody had expended funds upon the reliance of either the Board or the Director or any official,

something official before November of '94, then he has the opportunity to apply now. But to put it in writing, Board approval now --

CHAIR RICE: You mean subject to Board approval?

MR. KUSHI: Right, I mean it doesn't make sense because what we're talking about is something that had happened back in '94. That's the way I look at it, and based on that, I sent an amendment down to take that off.

MR. HIRANAGA: Mr. Chair, I guess the concern was at what level does the funds expended become significant. Who determines where that level is? If you paid a surveyor \$1,000 in 1993, is that funds expended, does that qualify you for a meter, \$5,000, \$10,000, \$200? That was the thing. There was no criteria to determine funds expended, and so if someone brought you a receipt that was stamped in 1993 a photocopy of some maps, is that funds expended?

CHAIR RICE: That's a good point. Mr. Starr.

MR. STARR: My own feeling is it's sort of a moot point because what we're doing here is we're ending this practice. This is something that has been going on and people have been able to do for years and years and what we're saying here is they have 60 days to do it, and after that, they have no more -- no more vested rights.

So I mean if it were something that we were going to institutionalize, I would have a concern about it being abused, but right now, what we're doing is we're ending it once and for all. So, you know, I think that anyone who is going to do it has already done it. You know, maybe there will be one or two other people to sneak in after the last 60 days, but then it's over. It's done. It's ended. So I really don't think it should be a point of concern. It's something we're trying to end because, you know, it's not -- it's not really a fair thing, so my feeling is we ought to go with it as it's written as corp counsel

suggests and get past -- get it done and get this practice terminated.

MR. TAGORDA: Mr. Chair, I have a few comments.

CHAIR RICE: Yes, Orlando.

MR. TAGORDA: Yes, Mr. Chairman. This Section B and C, I have a concern why these provisions is in issuance with the rule. I think to me this is a total deviation on the problem and the issue of the priority list that we are trying to correct, because these people here that are not on the priority list but who have expended funds on lots that have no tax map keys, I think to me this is a provision on the priority list that we are trying to correct.

So if we try to put this provision, these people here might go ahead of those people on the priority list. So my -- if the Board would like to have these provisions in this meter issuance rule, I think we should really think that we put it on if there's

additional water available after the priority list is taken care of. Like Mr. Kent is saying, there's no level of how much that person expended. How can we correct that?

CHAIR RICE: I think we can deal with that by directing the Director to provide us with those Applicants. But I think in terms of Section B, I think it's important that it's in there because it is a practice right now and it is ending, so I think it's important it be part of the rule. I think excluding it from the rule would be the wrong thing because it's an existing practice, and I think what Jonathan is saying is we're ending that, so making it part of the rule is making it very clear to the public that that practice is ending, otherwise we get in trouble with that part.

MR. TAGORDA: I agree with the Chairman, because we can probably switch this provision, you know, and put it on that, maybe 106-16 when there's additional water available, additional source available. Then

these provisions kicks in. We should take care of those people on the priority list who adhere to that legal notices of November 4, 1994.

MR. NOBRIGA: The current request is to take this to public hearing. After public hearing, we will have to review the public's input, and if so deemed by this body, we will make the appropriate amendments before we're forwarding it on, so this rule is not in its final form. We feel comfortable with this rule currently. We pass it on. I'm not an attorney. So there are provisions that you need to have legally, so I respectfully ask --

CHAIR RICE: Okay. Mr. Craddick.

MR. CRADDICK: I just wanted to say that I expect most of the people are going to come in with a deed to their property and the fact that they bought the property as proof that they should be getting a meter. I don't expect to see them coming in with a

\$1,000 bill. I expect to see them coming in with a deed to their property, because if you don't understand it, we're talking about somebody in Pukalani who has a lot in Pukalani. The tank was put in for them, pipeline improvements were put in for them. We're terminating those rights in 60 days after this rule gets passed if they don't get a meter on their property.

Those are the kind of empty lot things that we're talking about. We're talking about the existing approved subdivisions where they may not have been the one to spend the money. It may have been somebody else. It may have been the developer of the subdivision that spent the money for them. In any case, as Mr. Starr said, this is ending a practice, not beginning a practice. It's ending a practice.

MR. STARR: Call for the question.

CHAIR RICE: Okay. Everybody remember this is going to public hearing? The motion is to send this to public hearing. All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried. Thank you. Is that it, Rules?

MR. NOBRIGA: Yes, Mr. Chairman.

CHAIR RICE: Nice job, Rules Committee. We got a lot of things done. Mr. Nakamura.

MR. NAKAMURA: Yes, Mr. Chairman, I have a fairly high standard to follow after Mr. Nobriga's efforts here. Finance Committee met on December 19th. There were a number of issues that were taken up. Number one, Communication 01-39 from Walter Weber. Mr. Weber requested that the Board accelerate

improvements to the existing one-and-a-half-inch substandard water line fronting his property on Piiholo Road or alternatively that he be permitted to relocate his existing remote meter to his property. The total project cost is estimated to be nearly \$700,000. And although it is in the long range capital improvements program, it's not scheduled for the near future. The committee did suggest that Mr. Weber continue dialogue with the staff to identify alternatives and potential sources of funding, which would include participation from the parties who may benefit from the improvement, however, the committee does recommend that Mr. Weber's request be denied, and I so move.

MR. NOBRIGA: Second.

CHAIR RICE: Comments, questions? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion carries.

MR. NAKAMURA: The second item is Director's 01-53 which requests approval for authorization of funding for various pipeline projects. I think it would be appropriate to take these individually, Mr. Chairman.

CHAIR RICE: Go ahead.

MR. NAKAMURA: First is the authorization of \$895,000 for construction of 12-inch pipeline Lower Kula Road. The committee recommends approval of authorization. This project is budgeted, and I would so move.

MR. NOBRIGA: Second.

CHAIR RICE: Any comments? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response.)

CHAIR RICE: Motion is carried.

MR. NAKAMURA: Second is the request for authorization of \$50,000 for design 1,000 feet of 12-inch pipeline along Vineyard Street between Market Street and High Street in Wailuku. This project is also budgeted. The committee recommends approval, and I so move.

MR. NOBRIGA: Second.

CHAIR RICE: Moved and seconded. Discussion, questions? Mr. Starr.

MR. STARR: Yes, just again to make sure this --

I would like this to cover both sides of Market Street because Market Street is going to be repaved and under a project with federal aid, and I want to be sure that we don't have to go back and tear up the other side of Market Street after the project that the County is planning to do takes place as a design project.

CHAIR RICE: Okay. Any other comments? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried.

MR. NAKAMURA: The next item is authorization

for the amount of \$65,000 for design of 8-inch pipeline Lower Honoapiilani Road. Committee recommends approval, and I would so move.

MR. NOBRIGA: Second.

CHAIR RICE: Approved and seconded. Any comments? You guys all know where West Maui is still? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

MR. NAKAMURA: Next item is the request for authorization of funding for design of 8-inch pipeline at the southerly end of the system of Makena Road. The Committee felt that additional information and justification needed to be provided by the staff and recommends that this item be deferred pending such

additional information and justification, and I so
move.

MR. NOBRIGA: Second.

CHAIR RICE: Comments? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried.

MR. NAKAMURA: Next item is again request for
authorization of funding for construction of 8-inch
pipeline along Kanaio Road in Hana. Again, the
Committee felt that additional information and
justification needed to be provided by the staff.

Subsequently, we have received a letter from

Councilman Carroll requesting support of the project and providing justification.

It is the recommendation of the Committee that this matter be deferred and Mr. Carroll's concerns can be taken up in further deliberations by the Committee, and I would so move that we defer this matter.

MR. NOBRIGA: Second.

CHAIR RICE: Comments? All in favor?

Mr. Starr.

MR. STARR: I just said that I wish, you know, we could afford to spend 50 or \$100,000 to supply a better water system to beachfront-million-dollar lots, but I think that, you know, we can't afford to do that. We need to put our money toward projects where there are many, many users and, you know, the cost per unit is low.

And it shouldn't be a matter of those who are able to speak -- able to afford to speak with loud voices can sway the system and get us to spend a

fortune per lot to increase the size of the water system or put in a system for a new subdivision kind of out of place, so I thank you.

CHAIR RICE: Thank you, Mr. Starr. Any other comments?

MR. HIRANAGA: Mr. Chair.

CHAIR RICE: Mr. Hiranaga.

MR. HIRANAGA: I'm just wondering if situations like this it's appropriate for the staff to provide us some visual aids of the area describing their justification. Just looking at maps and letters, we're not supposed do personal site visits, so if the Department feels strongly about a certain project, it might be informative.

CHAIR RICE: Good suggestion. Mr. Craddick will take that note. Add that to your presentation next time. Any other comments? All in favor of the motion

to defer, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried.

MR. NAKAMURA: Mr. Chairman, there is a request to transfer \$80,000 from the pipeline replacement appropriation to the appropriation for replacement of service laterals to include new laterals to Skill Village in Paia and Kilauea Mauka in Lahaina, another West Maui project I may note. And the Committee recommends approval of the request to transfer \$80,000, and I would so move.

MR. NOBRIGA: I will second the motion.

CHAIR RICE: Comments? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried.

MR. NAKAMURA: Committee further recommends, and I don't think that a motion is required, however, there was concern that it would be necessary or helpful to have a clear system which would permit the Board to prioritize system improvements. And the staff was directed to identify and evaluate systems which would permit the Board to get a better handle on prioritizing improvements, so I think that, as I said, I don't think a motion is necessary on this.

If Members of the Board feel otherwise, but the Director should probably be asked to follow up on this for consideration in perhaps next year's budget or

even as an amendment to this year's budget if appropriate.

CHAIR RICE: Good. I think we communicated that pretty well at the time. Mr. Craddick, Mike, okay.

MR. NAKAMURA: Item 3, Director's 01-54, this is the Ulumalu-Peahi water system improvements \$500,000 which is budgeted. This is the project which has been ongoing for a number of years which involves participation by the property owners as well as Federal Government.

The staff explained that the project was nearly ready to go out to bid, however, in anticipation that sufficient funding may not be available, the project will be bid out with several different alternatives. Concern was expressed in the committee as to whether or not all of the alternatives would meet the commitments to the property owners as well as to the funding sources. And, therefore, the recommendation of the Committee is that the staff be authorized to proceed with calling for bids with the understanding

that consultation with all parties including the affected property owners and funding sources will be undertaken before the contract is awarded, and I would so move.

MR. NOBRIGA: Second.

CHAIR RICE: Comments, questions? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried. Thank you, Mr. Nakamura.

MR. NOBRIGA: Well done.

CHAIR RICE: One more time, Mr. Nakamura,

Committee of the Whole.

MR. NAKAMURA: Okay. Mr. Chairman, Committee of the Whole met on December 19th to consider the communication from the Director dated September 26th, 2001, regarding the adequacy of source for the upcountry water system. The matter had been previously discussed and deferred on a number of occasions. The Committee further reviewed additional information which was provided by the Director at the request of the Chairman and other Members of the Committee. And as a result, the Committee voted unanimously to recommend approval of the Director's finding that available sources in upcountry exceed current and prior committed and previously committed demand.

In so doing, the Committee also accepted its finding, two attached tables, including the Upcountry Water System Demand including Fire Commitments and the exhibit Upcountry Water System Normally Available Source. Committee noted the need to address several related issues including the existing drought

declaration, update of the waiting list, expediting the rule amendment, dealing with the issuance of meters, development of additional upcountry water sources and noted that there were additional sources that were potentially available, which would further increase the amount of source available.

And the recommendation, as I said, was to approve the Director's findings basically that adequate source exists upcountry, and I would so move.

MR. TAGORDA: I second.

MR. NOBRIGA: I second. I defer to Mr. Tagorda.

CHAIR RICE: Second, Mr. Tagorda.

Mr. Starr.

MR. STARR: Mr. Chair, I have one minor problem, and I -- we are in a state of drought emergency

upcountry. And I come to this meeting again prepared to make a motion to go out of this state of drought emergency. And I really feel that it's wrong to declare a finding of system adequacy when we are in a state of drought emergency. You know, I don't feel we should be in a state of drought emergency, and I would prefer to first take action on the drought emergency before accepting a finding that there's, you know, excess capacity. And so I look to -- I look to I guess the maker of the motion if it would be possible to deal with the drought emergency side first. That was part of the discussion on this item.

MR. NAKAMURA: Mr. Chairman, I have no objection to that procedure, and I would be happy to withdraw my motion.

MR. TAGORDA: I withdraw my second, Mr. Chair.

CHAIR RICE: Very good.

MR. NAKAMURA: And I would agree with

Mr. Starr's comments. And based on the discussions that we have had in Committee regarding this matter, I would move that we rescind our drought declaration or go out of drought or however you want to put it.

MR. STARR: I second that.

CHAIR RICE: Okay. Discussion? Motion on the table. All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried.

MR. NAKAMURA: Okay. Mr. Chairman, I would then move to adopt the Committee's recommendation to approve the Director's finding that adequate source

does exist upcountry and to adopt the attachments.

MR. TAGORDA: Second.

CHAIR RICE: Comments?

MR. STARR: Just that I'm hoping that we have some rule making that we're working on and that will be going to public hearing regarding the way to kind of entangle the meter mess upcountry, and I'm hoping that no precipitous action on the part of the Director occurs until the rule making is finalized and then it's done in accordance with the wishes, not only of the Board, but it will have the stamp of approval of the public and the County Council as well, so I look to the Chair to --

CHAIR RICE: Crack the whip?

MR. STARR: Yeah, well, not only that, but to extract a promise from the Director that he'll hold his fire here, hold his water or whatever he's got to

do.

CHAIR RICE: He's smiling, but he's not saying anything.

MR. CRADDICK: Are you wanting me to say something?

CHAIR RICE: Say "I do, I will."

MR. CRADDICK: I would have to defer to corp
counsel on what our rules will allow on something like
that.

MR. KUSHI: What's the question, Mr. Chair?

CHAIR RICE: We're finding for source adequacy
upcountry and Mr. Starr is worried that there will be
a flood of people wanting meters and we need to deal
with the people on the so-called list first, and we
have to go through the process of public hearing on
the rule, of Council approval and Mayor's approval.

MR. KUSHI: So is the question, Mr. Chair, whether or not the Director can go up and keep on doing the status quo operations, or are you saying that the Director should cease issuing meters until the rule is passed, is that the question?

MR. STARR: That's my desire, sir.

MR. KUSHI: Well, this Board is in charge of the Department, so if this Board feels that meters shouldn't be issued, it's within your control.

MR. NAKAMURA: Mr. Chairman, my recollection of the finding that was supported by the Board back in 1994, whenever it was, was to support the Director's finding that an inadequate source existed and that meters should not be issued. I think we're dealing with the first portion of that finding and not necessarily the second portion until such time that the rule is -- the necessary rule is amended or enacted.

MR. STARR: Can we continue that wording onto the -- on the current finding, Mr. Counsel?

MR. KUSHI: I got lost.

CHAIR RICE: You want to continue the --

MR. STARR: Can we have a short recess?

CHAIR RICE: We have a motion on the table.

Yeah, I guess we can have a recess, two minutes.

(Recess taken.)

CHAIR RICE: I'm going to call the meeting back to order. We're in the Committee of the whole report, and we have a motion on the table. Mr. Starr.

MR. STARR: Yeah, I would like to offer an amendment to the motion that no changes -- no changes in meter issuance take place due to this finding until

rule -- our rule making process is completed.

MR. NAKAMURA: Mr. Chair, I believe that was the intent of the Committee, and I would second that motion.

CHAIR RICE: Okay. So we have an amended motion on the table, an amendment to the motion on the table. I believe -- Mr. Hiranaga.

MR. HIRANAGA: Question. No changes to current practices, or no changes?

MR. STARR: Yeah.

MR. HIRANAGA: No changes to current practices?

MR. STARR: No changes to current practices.

CHAIR RICE: Okay. We take the amendment first. Any other comments?

All in favor, say aye.

Mr. Craddick.

MR. CRADDICK: Current practice is when you have an adequate supply of water, you issue meters. That's current practice.

CHAIR RICE: I don't believe that was the intent. Current practice is current practice, what took place up until now.

MR. CRADDICK: But that's current practice. That has been taking place up until now. If you're talking about continuing the inadequate situation until such time as the rule is taken care of, that's a different matter. But if you say continue with current practice, the current practice is to issue meters when you have an adequate supply of water.

CHAIR RICE: That isn't the practice you followed last week.

MR. CRADDICK: No, because last week we didn't have an adequate supply.

CHAIR RICE: The intent of the motion is to continue with the practice that you have been following.

MR. STARR: Yes.

MR. TAGORDA: Mr. Chairman, point of clarification, please.

CHAIR RICE: Pardon?

MR. TAGORDA: Point of clarification. Is this Board making a clear statement to the Director that although we have water available, until such time as the meter issuance rule has passed and been approved by the Mayor and the Council, he cannot issue a meter up front?

CHAIR RICE: I don't think that's exactly what

it says. It just says he will issue meters only under the terms and conditions that he has been issuing them up until now.

MR. STARR: But the intent is that he not begin issuing meters to all applicants immediately but wait until the rule making takes place, and then the meters be issued based on the rule making. That's certainly the intent the rule we passed through here today to go the public hearing will be the basis upon which meters will be issued and not anything else. So perhaps, Mr. Counsel, do I need to clarify my amendment further, or do you feel that what we have is clear?

MR. KUSHI: Mr. Chair, I believe it's clear. I understand. It's just that -- I mean not in legal terms, don't issue meters until the rule is passed.

CHAIR RICE: Okay. Ready for the question.

Amendment, all in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Okay. The motion, any comments?

All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Very good.

MR. NAKAMURA: Thank you, Mr. Chair.

CHAIR RICE: Thank you, Mr. Nakamura, for those two committee reports. Members of the Board, the -- wait, let me talk about one more thing with regard to

this list, and I believe it can be discussed, it's only my feeling under this line item. I think -- I think it's important as we move forward on this rule that we verify the names on the list, and I would like to suggest that we have our auditor who we have currently engaged Russell Yamane be asked to do an audit of the list.

I think there's two points to be made here. One is that he's an independent third party, and number two, at the point where we do have the rule approved, then we will have a list that we can feel comfortable with. And I would ask the Board that the duties of the auditor will be drafted by myself for your review and then we'll tell him exactly what his scope of work is, what I mean in regards to this specific issue. I think that's probably good for us to move forward.

MR. STARR: Mr. Chair, do you want a motion to that effect?

CHAIR RICE: Yeah, I think that's probably good.

MR. STARR: Okay. I move that our auditor look over the list as per the recommendation by the Chair.

MR. NAKAMURA: Second.

CHAIR RICE: Second. Okay. Mr. Craddick, did you want to say something?

MR. CRADDICK: Well, I'm not sure what knowledge a finance person would have of determining somebody's placement on the priority list.

CHAIR RICE: That's why we are going to tell him. He's going to have to be provided with the documentation to verify why they're that number on the list. And the reason we're using our auditor is because he's an independent third party. And auditors, yes, they count numbers, but they also are charged with procedures. And procedure is really what we're looking at here so that we don't get into an argument with the public once we've completed the rule

making.

MR. CRADDICK: Anyways, my point is just he may not have the expertise to do it. You know, if you had an engineer or somebody like that, they might have the expertise. Well, I would expect they would have the expertise, but I'm not certain a finance person would have the expertise, but you're right about the procedure.

CHAIR RICE: It's a procedure. I don't know that there's an engineering issue here. It's an issue of verifying the documentation and the date of the documentation. Mike.

MR. QUINN: Mr. Chair, the Director as Chief Procurement Officer, he would have to determine whether this was a procurement issue also; in other words, do we have to make this available to other bidders?

MR. STARR: Mr. Chair.

CHAIR RICE: Go ahead, Mr. Starr.

MR. STARR: I see that as part of -- as an audit function, which he's already contracted to do. We're just looking for him to audit another part of the Board's documentation.

CHAIR RICE: I kind of look at it that way myself. I don't know. Mr. Quinn.

MR. QUINN: Just the Board should be aware that we don't contract with this auditor. This is the Council that contracts with this auditor. So technically, this auditor is for the audit that was just conducted was hired by the Council through the procurement process.

CHAIR RICE: Okay. So why don't we -- why don't you amend your motion to proceed with it along those lines subject to determination of the need to procure,

the procurement on that.

MR. STARR: I amend it subject to adding the words subject to determination whether it's procurement procedures. It may be possible Mr. Yamane would be willing to do it as part of the audit that was just done also.

CHAIR RICE: Okay.

MR. STARR: That's not part of the motion.

CHAIR RICE: Okay. Gentlemen, any comments, any thoughts on that thought that I just gave you?

MR. NOBRIGA: Second the motion.

CHAIR RICE: Okay. Vote on the amendment. All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: On the motion, all in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Thank you. On the issue of personnel matters, the corp counsel just informed me that she was a little bit concerned about the notice and did not want a problem with due process, so we've withdrawn the issue from this meeting. Under Other Business B, Review of Rules of Practice and Procedure for Maui County Board of Water Supply appeals, Mr. Craddick.

MR. CRADDICK: On this item here, I guess the issue came up that in Section Subchapter 2 or --

MR. NOBRIGA: 1602.76 Subsection C.

MR. CRADDICK: There's actually even the Subchapter A above is wrong, too. I just now noticed that. It says, "All appeals shall include a processing fee in the amount of \$300," and I believe the concern had been that that wasn't noticed and the Board didn't have a chance to look at that. And when they asked me, I confirmed that it wasn't noticed and the Board, although they had a chance to say that they wanted some fee in there, I don't think any of the Board members thought that the fee would be that high. There's a couple of things you can do about this. One, go back to public hearing, or two, just delete that section and send it back to the Mayor in which case you wouldn't have to go back to the public hearing again, I don't believe. But I will leave that up to the corp counsel to advise you on whether you

would have to do that, then you would go back to public hearing.

CHAIR RICE: I'm a little bit confused. This rule was passed by the Board. We had public hearing. It went to the Mayor already. You're telling me that when we went to public hearing, we didn't have this section in there?

MR. CRADDICK: No, it was something that came up during discussion with the Board to add a fee.

CHAIR RICE: So during the public hearing, this came up?

MR. CRADDICK: No, no, it just came up with the Board after the public hearing, and I believe corp counsel said that or somebody said it would be proper to have a fee in there. Corp counsel -- they were talking about an amount. Corp counsel said they could see what it was for the Board of Variance and Appeals, and I believe that's the amount they put in there, but --

CHAIR RICE: So is it a question then is it a substantive change, is that the issue?

MR. KUSHI: Yes, Mr. Chair. It's not a change. It's a new item.

CHAIR RICE: So it would be substantive in that it's a new item?

MR. KUSHI: We never did have public input.

CHAIR RICE: Mike.

MR. NOBRIGA: Thank you, Mr. Chair. I think it was the Committee's intention because the Department does not operate under any stipend from the County that we are entrusted with operating the Department and this Board generating our own income. It was felt that because of the necessary documentation that would need to be retrieved by our staff, that some fee

should be in place for the appeal.

\$300 was not exactly the figure that the

Committee was looking at, and I would suggest that

this go back to committee and come back out to public

hearing again.

CHAIR RICE: You can do it right now. If you

want to make the number, we can approve it and send it

to public hearing. Mr. Starr.

MR. STARR: Yeah, to counsel, if there was -- if

it was a smaller fee, would that change things? I do

feel there should be a filing fee of \$20 or \$30, you

know, so that it would have much less impact. Would

it still need to go out to public hearing, or would

that be considered unsubstantive?

MR. KUSHI: Yes, if you're going to attach a

fee, no matter what it is, it should go to public

hearing. You could, as the Director, say we don't

have them and send it back to the Mayor because that's

the proposal without the fee was the exact proposal at

the public hearing. If we do have a fee, I would suggest you think about what it would cost to hold that hearing in terms of like court reporters. I would think if you have an appeal and it's a full-on contested case hearing, they will be need transcripts. Who is going to pay for that?

MR. STARR: My own feeling is we can't really charge what it would cost because that would be thousands of dollars.

MR. KUSHI: Correct.

MR. STARR: And we had actually done this at the suggestion of a previous representative of corporation counsel who had said that we're going to get inundated with appeals unless we put in a fee and we should -- you know, it was decided to base it on the Board of Variance and Appeals a fee. And then since that was already in place, that would -- we were told that shouldn't be -- that shouldn't be a problem.

But I see the -- I see that we should mend our ways here. I would be willing to take the fee out, or would you rather have it back in? Would someone rather have it back in committee?

MR. NOBRIGA: I would like to see a fee placed -- I move that we amend this to \$125.

MR. TAGORDA: Mr. Chair, may I ask the Director.

CHAIR RICE: We have a motion.

MR. STARR: I second it for discussion.

CHAIR RICE: Okay. Go ahead.

MR. TAGORDA: Just a question to the Director.

Has that \$300 been a big issue in the Council meeting, Mr. Craddick, or just sending out to public hearing no matter what number you put in there?

MR. CRADDICK: I am not certain it was discussed

in the Council meeting. It passed the committee and then somebody or I don't know -- I know Jim Smith brought it up I think. And I don't know whether he brought it up in committee or somewhere between committee and the Council meeting, but he brought it up. And the Committee Chair, Mike Molina talked to me, and said did this go to public hearing. I said no. And then I talked to Mr. Kushi. And he said, well, if it didn't, they shouldn't be approving it. But I guess they had one resolution noticed on the Council agenda, so they were able to -- they separated the two rules that were in the Council so that one could pass and this one didn't pass.

And I think I heard Ed saying that if you wanted to delete C for now, you could just send it back to the Mayor and then go to committee with C and get an amount in there and just amend the rule if it passes. I don't know if that's what you were saying there, Ed, deleting C all together, so it's not an issue.

MR. KUSHI: Mr. Chair, what I said was we delete

C, and then, in my mind, you can send it back to the process. You can't add in something else later on.

CHAIR RICE: Right, I understand.

MR. KUSHI: If you add something on, if you do the C and no matter what the dollar amount is, you would have to go to public hearing.

CHAIR RICE: Mr. Starr.

MR. STARR: Yeah, Mr. Chair. We have some other things going out to public hearing that we passed out today. My feeling is let's send it to that same public hearing, and then hopefully --

CHAIR RICE: Yeah, I say we're going to go out to public hearing because it seems like the Board wants to have a fee in there. So we just streamlined the process by coming to some agreement about what the fee ought to be. If it's \$300, that's fine. We just send it to public hearing. I mean you don't have to

change it. It still has to go to public hearing, so what is your pleasure? The motion is for \$125.

MR. KUSHI: Mr. Chair, if I may. You could put whatever amount you want in here, take it to public hearing, get the public input, come back to a meeting and then decide. And based on the public input, you may have a different opinion as to the amount. At this point in time, it doesn't really matter what the amount is.

MR. NOBRIGA: Thank you. I withdraw my motion to amend it and leave it.

MR. STARR: I withdraw my second.

CHAIR RICE: So then we need a motion to go back to public hearing. Kent.

MR. HIRANAGA: Discussion.

CHAIR RICE: Yeah.

MR. HIRANAGA: This is a different section, Standards of Appeals. In the previous rules that we've approved before the public hearing, I've noticed that we've been instituting a two-thirds majority from the Board for the decision. And I'm wondering if it's appropriate to continue that consistency of this section. I'm not sure if this is the appropriate time to bring that up or not.

CHAIR RICE: What's your pleasure, gentlemen?

MR. NOBRIGA: Second.

CHAIR RICE: He's just asking you a question.

Do you want to add, if that's some consistency, does everyone want to add this into the rule before we put it out for public hearing?

MR. STARR: Could I get some clarification on what that means. Is that two-thirds of the entire

membership of the Board?

MR. KUSHI: Yes.

CHAIR RICE: Mr. Craddick.

MR. CRADDICK: I think Ed means that voting members should be because there's nonvoting ex-officio members that are membership of the Board.

CHAIR RICE: Yeah, I think Mr. Starr's question related to the number of people present versus the total number of the Board, voting members of the Board. Wasn't that the intent of your question?

MR. STARR: Yes, it was.

CHAIR RICE: Okay. What do you guys want to do?

MR. NOBRIGA: Put them in.

CHAIR RICE: Put them in?

MR. NOBRIGA: Yeah.

MR. HIRANAGA: For discussion purposes.

CHAIR RICE: For discussion purposes, you're right. So the document that will go to the public hearing will include the \$300 fee and it will include the section under standards of appeal that provides for approval by two-thirds of the voting members of the Board.

MR. STARR: Okay.

CHAIR RICE: Can I have a motion to that effect?

MR. NOBRIGA: So move.

MR. HIRANAGA: Second.

CHAIR RICE: Moved and seconded that the new

rules of practice and procedure appeals to the Board
be sent to public hearing. Any other comments? All
in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

MR. CRADDICK: I just have a question. I'm not
sure if you're saying two-thirds of the entire
membership.

CHAIR RICE: Two-thirds of the voting
membership. That's what I believe I said.

MR. TAGORDA: Not the ex-officio members.

CHAIR RICE: Not two-thirds of those present at
the meeting. That was the clarification Mr. Starr

asked for I believe.

Okay. Update on water issues discussed at public meetings. I think we've done a lot of our update on our meetings. Any division reports were sent I believe in advance. Thank you very much, and there was an update on this monthly source.

MR. CRADDICK: And you have the final --

CHAIR RICE: Yeah, the final audit report, I'm sorry, was distributed.

MR. CRADDICK: Not the draft. We have gone over this. It's more for your information.

CHAIR RICE: Right. Is there any other business? Mr. Starr.

MR. STARR: Yeah, just that we've not had our Director's review for almost three years. I'm very much looking forward to having one in the near future.

CHAIR RICE: Yeah, thank you. I'm glad you reminded me. We have a committee meeting set for January the 8th. And I would like to have the Director's review on that day as we're all planning to be together then anyway. So that's my suggestion. Okay. Any other issues? Meeting is adjourned.

(The meeting adjourned at 11:15 a.m.)

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