

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
RULES COMMITTEE MEETING
MARCH 12, 2002

Taken at the Kahului Shopping Center Conference Room,
Kaahumanu Avenue, Kahului, Maui, Hawaii, commencing
at 1:30 p.m. on March 12th, 2002.

Reported By: Rachelle Primeaux, CSR #370

IWADO COURT REPORTERS, INC.

ATTENDANCE:

Members Present:

Mike Nobriga, Chair

Orlando Tagorda

Jonathan Starr

Kent Hiranaga

Staff Present:

Herb Kogasaka, Engineering

David Craddick, Director

Ed Kushi, Corporation Counsel

Fran Nago, Secretary

Mike Quinn, Fiscal

George Tengan, Deputy Director

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CHAIR NOBRIGA: Call the Rules Committee of the Board of Water Supply to order. In attendance, we have Kent Hiranaga, Orlando Tagorda, esteemed Corporation Counsel Ed Kushi, Fran Nago, David Craddick, Deputy Director George Tengan, a bunch of other folks, Jonathan Starr. There's no minutes. Is there any testimony from the public? Okay. Any written testimony? Okay. First item of business Committee Discussion/Possible Action Communication

02-02 request from David Goode, Director of Public Works to amend the rules and regulations of the Department of Water Supply to include special considerations for indigenous grass huts.

I would like to call on Ralph Nagamine to give us an overview of all these handouts.

MR. NAGAMINE: I think that all of you have the handouts that were passed out prior to the meeting. I'll go through them from the top down, so I hope you still have them in order.

CHAIR NOBRIGA: A lot of paperwork.

MR. NAGAMINE: You're not going to get quizzed on it today, but you could probably read it sometime during the basketball games. But anyway, the very first packet is the actual bill that Kalani English had submitted about two years ago and this was when Kalani was still a Councilperson from Hana and he attached this bill to our building code. And what

this bill basically does is it mandates the Department of Public Works and Waste Management to develop rules or a method in which indigenous Hawaiian architecture structures could be permitted under the building code.

Since that time we have developed a task force, and I've got two members of the task force here with me, Mr. Hans Reicke, who is an architect, and Doug Gomes, who is a mechanical engineer. So you have before you the bill. And toward the end of that first packet, you will find the Public Works and Water Committee Report, okay. It's toward the latter part of the packet. It's in that same packet. You've just got to keep flipping until you find it. In there it kind of tells you the genesis of the bill, how it got started, talks about some of the things that were considered and the steps that were taken until it was finally adopted. This is all kind of like history.

And then the next packet I have a collection of newspaper articles I have been collecting over the past several years having to do with this initiative, and if you could read this, it gives you more

information on what we're trying to do, okay. The very third packet has to do with our correspondence with the Department of Water Supply relative to this initiative, okay, so you can read that.

CHAIR NOBRIGA: Which one?

MR. NAGAMINE: At your leisure. The fourth item is a one-page, just one page, and at the top, you'll see some sketches of the type of structures that were anticipated. And down at the bottom, you'll see some of the uses that we anticipate these structures to be used for, okay. The next packet has to do with the fire protection for these structures, okay. And I guess it's important to note at this point that the structures are going to be limited in size to 1,800 square feet, okay, and the structures will also be categorized into two classes.

One class will be those that won't require any fire protection at all in terms of fire sprinklers, okay, and the other class will require fire

sprinklers, so there's two classes of structures. For those that require a fire sprinkler system, we have this type of design guidelines for the sprinkler system, okay, so that's attached. And by the way, Hans and Doug were very instrumental in developing this, and that's why they're here today in case you have questions regarding that.

And the very last packet, I'm sure you're very familiar with, but these are your rules. And I got this off the Internet this morning, okay. What I'm hoping that we'll do today is kind of talk about the Department's initiative, and we're going to ask that this item be deferred to your next Rules Committee meeting at which time we'll come back with specific rule amendments that we'll be asking you to consider, but this would be our first -- give you a first impression of what we're trying to do.

MR. STARR: Question.

CHAIR NOBRIGA: Mr. Starr.

MR. STARR: What triggers a need for sprinklers, and was there a consideration given to just allowing them to be to all kinds, be built-out sprinklers?

MR. NAGAMINE: My understanding is that the Fire Department has concern regarding these structures and they pretty much have taken a position that these structures wouldn't be allowed unless they have a fire sprinkler system, so that's kind of like what -- that's why we're going in that direction.

MR. STARR: Could I ask counsel what differentiates the two classes?

MR. RIECKE: The two classes, columns A and B, one is when the building is a hundred feet away from another building or the property line and under or up to 1,800 square feet, then you don't need fire sprinklers. If it is near, closer, then you do.

MR. STARR: So this is basically designed to protect other structures?

MR. REICKE: Exactly.

MR. STARR: That makes sense then. But if you're just out in the countryside somewhere and there's nothing else there, you can build and it's small, you don't need sprinklers?

MR. REICKE: Right.

CHAIR NOBRIGA: Any other questions, Members?

MR. TAGORDA: Mr. Chair, let me just --

CHAIR NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: I'm pretty sure my questions would be answered with all these things in this packet, however, I just got this packet now. So in case they

are not here, my question would be I'm concerned about the zoning where these hales is going to be built.

MR. NAGAMINE: Yeah, there's no restriction.

The waiver proceeding on this thing is that there is no restrictions on the zoning, however, these structures would have to comply with the zoning standards of the lot that they're built on. For example, if they're built in the ag district, they would have to comply with the ag district standards. If they're built in the residential districts, they would have to comply with the residential district standards.

MR. TAGORDA: And I'm pretty sure this came out, what was that, 90-something? Do you have any numbers as to the demand of this kind of structure in the County, what kind of demand we have?

MR. NAGAMINE: Well, our previous experience with these things has been the most popular request

would be the canoe hales and a lot of the canoe clubs like to build this type of structure to protect their canoes, to store the canoes and protect them. And they have gotten I would say within the past five years maybe five, six applications.

MR. TAGORDA: I think this must be silly, but you don't want to see this kind of structure in a residential area, so you are talking about close to the beaches and farming areas?

MR. NAGAMINE: No, we're not restricting these. They could be built in the residential districts. And a good example of that might be poolside, you might have a pool cabana that's built with these type of structures.

CHAIR NOBRIGA: Not at my house. Yes, Mr. Starr.

MR. STARR: There's quite a few of them have been cropping up, especially in Hana, Molokai. It's

become kind of a cultural thing. I think it's good. And on my property there's an old house site there where the rock part is still there. If it becomes legal, I would love to be able to, you know, put the hale back. It's nice to see them driving around. I encourage it. I think it's good.

CHAIR NOBRIGA: I appreciate your work that you guys have been doing. I think it's a great project, and if there's no objections from the committee, we shall defer this to the next meeting. Yes, Mr. Ralph.

MR. NAGAMINE: Before you defer it, do you want to briefly know what we're going to be requesting of the Board? We're going to come back with specific language for your rules, but would you like an oral explanation of what we're going to be proposing?

CHAIR NOBRIGA: No. You like one?

MR. TAGORDA: Might as well, Mr. Chairman.

MR. STARR: Why don't we wait until they come back with the actual stuff.

MR. KUSHI: Mr. Chair, if I can kind of advise Public Works, if you're changing water rules, that's one thing. If you're changing the standards based on this new design, subdivision standards, could you also check if you need to go before the subdivision engineering committee, subdivision engineering committee that's supposed to review all changes to subdivisions, specifications of your department as well as Water Supply, just to check, Ralph?

MR. NAGAMINE: Okay.

MR. CRADDICK: You're not talking about subdivisions of these things, you're just talking about accessory structure to the main dwelling or maybe the only structure on the property?

MR. NAGAMINE: This will apply more to the building process as opposed to the subdivision process.

CHAIR NOBRIGA: Okay, thanks. So ordered.

Committee 02-06, request from Terry McBarnet to be grandfathered in at the old water use development fee rate, TMK 2-3-14:72. Mr. McBarnet, how are you?

MR. McBARNET: Nice to see you, Mr. Nobriga.

CHAIR NOBRIGA: Talk to us. Let us know what's going on. It's kind of confusing reading all this material.

MR. McBARNET: Maybe I'm a little bit before my time on this one. I heard from Charmaine Tavares that there was a movement where the folks on the waiting list were going to be possibly grandfathered in at the old meter rate, and I've got to admit I'm

100 percent Scottish, so I started thinking immediately about money. And I am not on the waiting list. My situation in a nutshell is I have two lots on Kimo Drive, and I've been trying to get a water meter since January of 1998. And rightly so, I haven't been able to get one because there's no adequate supply.

We have an old 4-inch line, and I think if I was permitted onto that line, it would adversely affect the neighbors, so rightly so, I haven't been able to get onto the line. But technically, my position is I have permission or I have tentative approval to get a water meter, but I can't get one because of inadequate supply, therefore, I don't need to be on the waiting list. Does that make sense to everybody?

A lot of people don't understand that, and I've come to understand that, so I tried a lot of different angles. I tried to test the lines and do all sorts of things, but everything I tried to do represents a lot more money than I was willing to put out and with no guarantee if the numbers came up in a certain way that I would be approved of a water meter. Because, and

again, understandably, everything takes a bit of time. And if at the time I'm completed with the task that was given me, only at that time could I be given permission for a water meter, right?

Like, for example, not to make this too complicated, but the closest adequate supply is just over 900 feet away. If I was to bring down a 6 or an 8-inch pipe to where I am, it would cost somewhere around \$100,000. And I can do that, but before I do that, I cannot be assured that I would have a water meter. I can only be assured at the time the job is complete that I could or could not have a water meter. And so it did not seem like -- one, I didn't have the money; and, two, it seemed like far too much of a risk to put my family at because we already have a family home, and we're comfortable. And to put out \$100,000 without knowing that I can have a water meter is a problem. To be honest with you, even if I did know I could have a water meter, that would probably still be way too much money. I just couldn't afford it.

And so what I'm trying to say is that I was not put on the waiting list because I could have a water meter, but I couldn't have the water meter because it was inadequate supply, but I could change that if I had \$100,000, I could make the supply adequate, okay, so, therefore, I'm not on the list.

But what I guess I'm proposing is that if those folks on the list are grandfathered in at a rate, the present rate, it seems to me that it's at least worth considering that folks in my position who have been trying, but they have a dollar amount in their way, that for most of us it's just impossible, that my problem is just as great as the guys on the waiting list really.

And so I'm just saying maybe it might be worth considering folks like me, if the others on the waiting list get grandfathered in, maybe people like myself, you know, maybe could be grandfathered in also. That's simply all I'm asking is just to consider that.

CHAIR NOBRIGA: Thank you. Any questions,

Members, for Mr. McBarnet?

MR. TAGORDA: Can I ask --

CHAIR NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: Mr. McBarnet.

MR. McBARNET: Yes, sir.

MR. TAGORDA: Did you find out from the Department staff why is it that they said you'll get a meter and you don't have to go to the waiting list?

MR. McBARNET: Yes.

MR. TAGORDA: And what was the answer you got?

MR. McBARNET: Okay, the answer, as I understand it, and I believe this is correct, David, please correct me if I'm wrong, but is that I have the right

to have a meter if there was adequate supply available adjacent to my lot, but the supply is not adequate. It's an old 4-inch pipe.

MR. TAGORDA: Okay. The next question I have is it seems to me --

MR. CRADDICK: Orlando.

MR. TAGORDA: Let me finish my question. Now you mentioned about kind of willing to make the improvement and spend \$100,000. When you go back to staff, they said maybe you'll get your meter?

MR. McBARNET: Yeah.

MR. TAGORDA: Did you find out why?

MR. McBARNET: Yeah, it's because the rules could change. Like, for example, if I put the investment in and then there was say a drought, for

example, and the Water Board did a blanket no meter clause, say no meters because we have a drought, at that point when I complete the project, you know, obviously, I couldn't get a meter because nobody is getting a meter, so I think that's it. In my mind, I feel like I would eventually get a meter if I put it in. And to be honest with you, if I had the money, I would probably take the -- because the risk I think is small. Because everybody has treated me very fairly, but I can understand they cannot commit themselves beforehand. But it is an uncertainty. You know, it's a gamble. It's a small gamble.

MR. TAGORDA: Thank you, Mr. McBarnet.

Mr. Chairman, can I follow-up with one question?

CHAIR NOBRIGA: Yeah, I want to hear from

Mr. Craddick and staff also. You may start it off.

Because things have changed in Kula as we've gone on with pipe replacement projects. I don't know if

Mr. McBarnet's situation still remains as costly. Go

ahead, Mr. Tagorda.

MR. TAGORDA: Mr. Craddick, because of Mr. McBarnet's circumstance, you said that he doesn't have to be on a waiting list, he could have a meter. What are those circumstances you're trying to explain to him?

MR. CRADDICK: It's just an existing lot, that's all.

MR. TAGORDA: What was that?

MR. CRADDICK: It's an existing lot.

MR. TAGORDA: Because it was subdivided in 1956, they're supposed to have a meter; is that right?

MR. CRADDICK: Yeah, if there's an adequate distribution line adjacent to the property. That's why I raised my hand when he was saying supply, but Orlando wouldn't let me cut in there. It's not a

supply. It's a distribution line.

CHAIR NOBRIGA: Yes, Mr. Starr.

MR. STARR: How far is the distribution line point of adequacy from Mr. McBarnet's lot?

MR. CRADDICK: He said 900, but the best we can get is maybe 700 to the hydrant 220, which has an 8-inch line down to it there. Duponte has brought it down from up above to the intersection of --

CHAIR NOBRIGA: 220?

MR. CRADDICK: Yeah.

CHAIR NOBRIGA: Okay, 220.

MR. CRADDICK: So from there down to that little crosshatch place right where the "D R I" is on Kimo Drive, that's McBarnet's property.

MR. STARR: It's not in our capital improvement project for the next few years, is it?

MR. CRADDICK: No. There's many people trying to subdivide in there, so that's basically why we haven't done anything because there's too many people wanting to subdivide there.

MR. HIRANAGA: What do you mean by that?

MR. CRADDICK: Well, if there's a lot of people wanting to subdivide, they have to fix the line up.

MR. HIRANAGA: You mean the Department is going to wait on potential developers?

MR. CRADDICK: Basically, yeah.

MR. TAGORDA: Mr. Chair.

CHAIR NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: Some more questions. David,
what's that new policy that we have now on easement?

MR. CRADDICK: Just the Board themselves was
saying, and I don't know whether the Board ever agreed
with the previous Board member that was on the Board
that said we were a stickler for the rules. That's
all I can say. It's up to you guys, if you say you're
not a stickler for the rule, and you want to go back
to the past practice.

MR. TAGORDA: That's why I'm asking what is the
new policy on getting an easement now?

MR. CRADDICK: The new policy is following the
rules, if you will. This, you know, however, this
thing came from issuing meters, you know, all over
Timbuktu, I don't know, but that's been going on for
many, many, many years even though the rules don't

really allow it.

I don't know if it was somebody's creative scheme to keep things going or what it was, but it's created a mess for us out in the water system, you know, where you've got meters on one place, and, you know, the property it serves may be two gulches away.

CHAIR NOBRIGA: Any other questions? Basically, we're looking at -- you're talking to us about two proposed rules that are still within the works. Both of these rules are going to be going back out for public hearing, I don't know when, but in the Kula area. The rules that you're referring to, Water System Development Fee Rules Title 16, which talks about the new fees they want to charge, so we can hopefully fix up more places. The second being the proposed upcountry meter issuance rule, which talks about grandfathering people on the waiting list.

With both of these rules, even those people that are waiting on the list, if they need to make improvements to the distribution system, they're still

required to get that done before they get their meters. In the upcountry meter issuance rule, there's a sunset provision of January 1st, 2005, if it passes.

At this time, until these two rules actually pass for everybody, I don't think it would be prudent for us to make any decision because you're asking us to do something that is not legal here. I would like to keep your request alive and see if the Department and us can maybe and you maybe can find a way to make it more feasible.

MR. McBARNET: Okay.

CHAIR NOBRIGA: Okay.

MR. McBARNET: Yeah, thank you.

MR. STARR: I agree with what the Chair has said. I would like to say it probably would be hard for us to find a way to loophole a single property out

of the new rates, and my advice is that you want to get a meter at the old rates, one sure way to do it is to just go ahead and reserve the meter and go and build the line and do it. And my guess is you won't regret it.

MR. McBARNET: But I don't think it's possible for me to do that. I tried to do that just recently, and I simply cannot. I think what Jonathan, if I understand you correctly, what you're saying is I should go ahead and reserve the meter and start working towards getting a line adequate, and there is a period of time that I have to do that I believe of two years or something?

MR. STARR: Well, right now, we're still under the old rates, and we probably will be for a little while. And if you went and did it, that would be a moot point. You would have the meter at the old rates.

MR. McBARNET: But is it possible in my circumstance to go and apply for a water meter right now with the assumption that I'll only get it when I finish the construction?

MR. STARR: No, I believe that it's going to be the rates that are in effect when you get the meter. Am I correct?

CHAIR NOBRIGA: I defer to David to answer that.

MR. CRADDICK: We don't take any reservations upcountry because of the water situation, so we haven't taken any reservations at all since the water development fee passed. I know one group Kulamanu, not to be confused with Kulamalu, tried to force the Board to take reservations. Corp Counsel advised me I had to take a reservation or had to give them a reservation. I wouldn't do it. It went to the Board and the Board also decided not to give any reservations simply because of the shortage of water

upcountry. And until that is listed, you know, my feeling is it's not proper to take reservations. It says in the water development fee the system must be adequate before you take reservations.

MR. STARR: I'm confused because I thought that he wasn't affected by that because he's under the --

MR. KUSHI: It should have been a priority.

MR. CRADDICK: Jonathan, all I can say is I know probably every legal thing that people could bring up, they can probably -- if they've wanted to force us, they can probably force us to take the reservation for the meter. I'm just saying, and if you want us to do that, have at it, you know, we'll do it. But I don't feel it's appropriate for me to be taking a reservation when the water development fee says only if the system is adequate. And until we decide that it's adequate for everybody, why are we taking reservations from anyone?

MR. STARR: I think I've heard all I want to hear on this.

CHAIR NOBRIGA: Yeah.

MR. CRADDICK: So you can if you want. You want to start taking reservations on an inadequate system, it's up to you. You have the ability to waive the rule.

CHAIR NOBRIGA: If there's no objection, we'll defer this matter until which time either the new rules are either acted upon or thrown out, and the Rules Committee will rehear the same application. If the rule passes, there is a provision for people like you that can show reliance to get on the list.

MR. McBARNET: What is reliance?

MR. NOBRIGA: I don't know.

MR. CRADDICK: You have the empty lot there
now. So if you put the line in, I don't think anybody
would be able --

CHAIR NOBRIGA: No objections, so ordered.

Anything else? That's it. We're adjourned.

(The meeting adjourned at 2:00 p.m.)

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