

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Held at the Kahului Shopping Center, 65 West Ka'ahumanu Avenue,

Unit 29, Kahului, Maui, Hawaii, commencing at 9:00 a.m., on

August 22, 2002.

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

IWADO COURT REPORTERS, INC.

A T T E N D A N C E

CHAIRPERSON:

PETER RICE

VICE CHAIR:

MICHAEL NOBRIGA

BOARD MEMBERS:

CLARK HASHIMOTO

KENT HIRANAGA

HOWARD NAKAMURA

GINNY PARSONS

JONATHAN STARR

ORLANDO TAGORDA

MICHAEL VICTORINO

EXCUSED :

ADOLPH HELM

DIRECTOR :

DAVID CRADDICK

DEPUTY DIRECTOR :

GEORGE TENGAN

DEPUTY CORPORATION COUNSEL :

EDWARD KUSHI , JR .

BOARD SECRETARY :

CATHY HOWARD

FISCAL OFFICER :

HOLLY PERDIDO

ENGINEERING :

HERBERT KOGASAKA

HERB CHANG

IWADO COURT REPORTERS, INC.

TRANSCRIPT OF PROCEEDINGS

BOARD OF WATER SUPPLY

REGULAR MEETING

AUGUST 22, 2002, 9:00 A.M.

CHAIRMAN RICE: Good morning everyone. Call to

order the regular meeting of the Board of Water Supply of the

County of Maui. It's Thursday, August 22, 9:00 am, a little past. We are at the Kahului Shopping Center. Present from the Board of Water Supply on my right is vice-chair Mike Nobriga, on his right, Mike Victorino and Clark Hashimoto. On my left, Howard Nakamura, Ginny Parsons and Jonathan Starr. Present is Director David Craddick and Counsel Edward Kushi, Junior, and members of the public. Appreciate your time attending our meeting.

As we get into the agenda, I am going to ask for approval of the minutes next, but then the next item on the

agenda is testimony from the public, at which time you will be afforded the opportunity to testify on any item that's on the agenda. If you wish to testify on a specific item when the item comes up that's okay, you can wait until that point and we will give you an opportunity to testify at that time. So either way. Some people have schedules and they want to testify and leave, so we try to accommodate you whichever way.

Board Members, approval of the minutes. You have been distributed the meeting July 9th, meeting July 24th.

MR. NOBRIGA: Mr. Chair.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: I move that the minutes for July 9th and July 24th be received subject to 30 day review, at which time if there is no additions, deletions or corrections, the minutes shall be filed.

MR. VICTORINO: Second.

CHAIRMAN RICE: It has been moved and seconded.

Ginny?

MS. PARSONS: Can I make a comment on page 62, a correction?

CHAIRMAN RICE: There's a correction sheet that has

been distributed that is not executive session but executive session, got it. That's included in your motion as amended, right?

MS. PARSONS: Right.

CHAIRMAN RICE: Any other discussion of the minutes? All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried and approved to be filed subject to review.

Testimony from the public. There are some people who have submitted their names for testimony on items. Would you like to do that at the time the item comes up or now?

MR. HUGH STARR: When the item comes up if possible, thank you.

CHAIRMAN RICE: Thomas Muldoon. Do you want to do it now or when it comes up?

MR. MULDOON: When it comes up.

CHAIRMAN RICE: Anyone else who wants to give any testimony at this time? Thank you.

Okay, Director's Report 02-27, request additional

funds for the construction of Lower Kula Road waterline

replacement. Mr. Craddick?

MR. CRADDICK: This project is one we were trying to

get out in the latter part of last year and weren't able to,

but we should be able to go to bid here as long as the funds

are set aside for this, so that's what we are asking. So funds

for -- oh, I take that back. Both these jobs have been awarded

and both of them are short of funds, and the way to get it

awarded was we cut off some of the laterals at Skill Village

and Kelawea Mauka, and on the Lower Kula Road we just shortened

the project to get it within the budget that we had allotted,
and basically this is to complete the job.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Is there any paperwork on this, and if
so, what's the page number?

MR. CRADDICK: Page 89.

MR. STARR: Could I request that we have the Bates
numbers for the items.

CHAIRMAN RICE: Cathy, I need to talk to you about
that. Any other questions for Mr. Craddick on this?

MR. VICTORINO: I move to approve the project.

MR. NOBRIGA: Second.

CHAIRMAN RICE: It has been moved and seconded to approve the request. Discussion? Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, I have one request to the department. I think both of these are similar that in order to award the contract you reduced the scope, is that right, and now you are coming back for money to complete the project as it had been contemplated?

MR. CRADDICK: Right.

MR. NAKAMURA: I would request that you advise us

when you are doing that, rather than just having it come to us for funding after the fact. For instance, the project that ties into Naalae Road, without this 450 feet the project really is not going to make much sense. I guess, well, it would serve some people. Anyway, my request is when you do this you let us know, send a letter to the Board Members.

MR. CRADDICK: Okay.

CHAIRMAN RICE: So ordered. Any other discussion?

All in favor signify by saying "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried and approved. Director's Report
to 02-28. Mr. Craddick?

MR. CRADDICK: This is on page 93 and it is for a
job that has not been bid which we want to go out to bid on.
The job includes a 10 percent contingency in there for 826
linear feet of 8-inch pipeline, and one of the communications
today deals with this project or requires this project to go in
before it can go forward, as well as a few other people have
come to the Board in the past and this project was holding them

up. It's for fire improvements across the area where Kula Lodge is.

CHAIRMAN RICE: Questions of the Director? Let the record show Kent Hiranaga is present. Mr. Nakamura?

MR. NAKAMURA: David, this project is included in the budget for this year?

MR. CRADDICK: Yes.

MR. NAKAMURA: You are asking us for authorization, is that right?

MR. CRADDICK: That's correct, yes.

MR. NAKAMURA: I move to approve.

MR. VICTORINO: Second.

CHAIRMAN RICE: It has been moved and seconded to

approve the request. Discussion? All in favor signify by
saying "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried.

Director's Report 02-29, Mr. Craddick, request

approval to allow the Perreira Subdivision to be processed

under the waiver rule.

MR. CRADDICK: This is a provision in the rules 2-16
family subdivision deferral of improvements.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Usually when we have done this in the
past we have required an indemnification, also an agreement
that this would, by doing this we are not allowing developable
lots to be created without, you know, further developable
lots. I am trying to remember the exact wording we have used
in the past.

MR. CRADDICK: Those are all on page 101-D, all the restrictions.

CHAIRMAN RICE: There was a handout, I believe, that is numbered 101-A through I. Mr. Craddick, will you just briefly go through the rule that allows this for -- Mr. Craddick?

MR. CRADDICK: Okay.

CHAIRMAN RICE: Thank you. While he's looking that up, Mr. Kushi, the agreement that is handed out is a handout marked starting with 101-A. Is that our standard agreement for waivers? Well, go ahead, Mr. Craddick.

MR. CRADDICK: Okay, it's section 2-16 authorizing, it says, waiver of subdivision, but it's not a waiver, it's just a deferral of subdivision requirements. "The purpose of this rule is to authorize owners of property to transfer interest in their property to family members without immediate compliance with the rules pertaining to subdivisions."

And in section B it is authorizing waiver of subdivision requirements. "The Board may approve a request for subdivision approval and temporarily waive subdivision requirements under its rules for the sole and limited purpose

of authorizing a transfer of interest or title from the
subdivision applicant to the other persons(s) under the
following conditions:

The transfer shall be immediate and shall be limited
to the following persons who are related to the applicant by
blood, adoption or marriage: Spouse, parents, children,
grandparents, grandchildren, brothers, sisters.

The purpose of the transfer shall not be to provide
housing or other uses which would necessitate additional water
service. No residential building permit or additional water
service shall be requested by the applicant(s), transferee(s),

subsequent grantee(s), or vendee(s), assignee(s) lienor(s), or other person(s) claiming interest in the subject property without full compliance with all subdivision requirements then in effect and all rules of the Board; compliance with the subdivision requirements and the rules of the Board shall mean compliance relative to the parcel of land prior to subdivision and not to the parcels created pursuant to the waiver granted by this rule.

The Board shall not approve a waiver of subdivision requirements under this rule if the Board finds that the water service necessitated by the subdivision request cannot be met

by the existing water system and would require a private water system.

Agreement. The provisions of this rule shall be implemented through an agreement between the Board, the applicant(s), the transferee(s), and the conditions imposed by this rule shall run with the land and shall bind and constitute notice to all subsequent grantee(s), assignee(s), mortgagee(s), lienor(s) or other persons who claim an interest in the subject property."

CHAIRMAN RICE: Thank you, Mr. Craddick. Mr. Starr,

is that all right?

MR. STARR: With the additional documentation it appears to be what we have done before.

MR. VICTORINO: Move to approve.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded. Discussion?

Mr. Hiranaga.

MR. HIRANAGA: I am not sure if I'm looking at the current rule, but under section B4, I guess, should the Board not approve a waiver of the subdivision requirements, if the Board finds that the water service necessitated by subdivision

request could not be met by the existing water system, is that still a valid section of the rule?

MR. CRADDICK: Yes, because I am making the assumption. The lot right now has a meter on it and that lot will continue to be used. That one meter will be used, so there's no additional demand created by the other two lots, and they would presumably wait until their name came up on the list.

MR. HIRANAGA: I guess I need an interpretation from someone if that's the appropriate assumption by the Director,

just for my understanding.

CHAIRMAN RICE: Mr. Kushi, you would be the appropriate person.

MR. KUSHI: Mr. Chair, the agreement that's before you has been signed off by former Corporation Counsel Minatoya, so I assume that it's correct in accordance with the rules. Further, I am assuming that by the terms of the agreement itself the Applicant is just conveying a property. They're not asking for additional water service nor a building permit. So that being the case, I believe that it's in conformance with the rules.

MR. HIRANAGA: I guess my concern is that as I recall, the subdivision in Kula was done, I believe, to this rule. Subsequently the parties sold the lots to unrelated individuals, at which time they were constantly contacting the Board as to why they could not get a meter, why they didn't have proper service. So there's just a little concern that when we issue this waiver we do it with care.

CHAIRMAN RICE: Is this waiver recorded?

MR. CRADDICK: Yes.

CHAIRMAN RICE: It is. So in the event of a transfer this would come up in a title search?

MR. CRADDICK: Yes.

CHAIRMAN RICE: Okay, any other discussion? All in favor of the motion say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried and approved. D, request authorization to accept and use in-kind donations from a private party to aid the Maui Board of Water Supply's women's pipe tapping team. For the Board Members information, the

Director did call me on this and asked what he should do, and I told him it was my opinion that it was acceptable and that he should put it on the Board agenda for ratification. So I thought it was within the spirit of public assistance. And I'd just ask the Board to ratify the Chairman's verbal approval.

MR. VICTORINO: Move to accept this request.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: It's been moved and seconded.

Discussion? Mr. Starr.

MR. STARR: I'm just interested in knowing more, and that's in the light of trying to find more ways to help them.

What I think is happening is that there's a Maui women's team that wants to get into a competitive state for the competition for the division and then maybe the national as well, is that correct? And what's the entity that would contribute to help them?

MR. CRADDICK: Right here. They're donating the materials. They go on their off-hours; they work. They work during the normal workday.

MR. STARR: So in other words it's the members of the team themselves that would contribute to do that?

MR. CRADDICK: Well, yes. They're contributing

their time to practice, that's correct. We're supplying some of the tapping equipment and the usable materials.

MR. STARR: Do they need any other outside donations or help with funding?

MR. CRADDICK: I'm certain they could always use a little more.

MR. STARR: I'll make a donation myself.

MR. CRADDICK: Well, this is the process. When we take monies into accounting they all have to go through this process. This is by, I think, state law.

CHAIRMAN RICE: Mr. Kushi, do you want to make a

comment?

MR. KUSHI: Yes, Mr. Chair. I apologize for not

bringing this up prior to the meeting and discussing it with

the department, but just reviewing the County Code and this

item is brought forth under Chapter 3.56, I think that the

intent of that code is to have a body to accept donations.

However, the strict terms of Chapter 3.56, the body to accept

it is the Maui County Council. So what you do by this Board, I

am not sure what that means. However, there is a provision in

here that says that if a donation or personal property having a

fair market value of \$750 or less, which I believe this thing is, \$730, then the Mayor can accept that.

CHAIRMAN RICE: So why don't we have the motion state that the Board of Water Supply accepts the donation subject to the approval of the Mayor, and I'll transmit it to the Mayor with a letter.

MR. KUSHI: At that point in time the Mayor allocates the personal property to the department. But also that he has to make a report to the Council.

MR. VICTORINO: I'll amend my motion to say that,

Mr. Chairman.

CHAIRMAN RICE: Okay. Mr. Starr?

MR. STARR: I'm still unclear on one point. If

other members of the public wanted to make additional

donations, would that fall under this or do we have to go

through this process again?

MR. KUSHI: Mr. Chairman and Board Member Starr, it

depends on the amount. It depends on whether it's cash or

personal property.

MR. STARR: Say it's cash, \$200 bucks or something

like that?

MR. KUSHI: Cash, you have to go to Council.

CHAIRMAN RICE: We will proceed with the motion.

Let's just seek some clarification on this for our future needs. Maybe that could be brought up under our policies and procedures. Okay, if there's no further discussion, call for the question. All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried. Thank you. E, Mr. Craddick,

02-31, request to increase the funding for the Lahaina Water Treatment Facility Modifications.

MR. CRADDICK: This is on page 107 of your packet, and it's for additional funding of \$10,000 for repair work to the Lahaina Water Treatment Facility. What happened was when they lowered the water level at the basins to start working on them they found a number of areas where previous work, if not corrected, could end up causing a much larger problem in the future, and they started to do some of the repairs.

They expect the same thing to happen on the other side. I think we did have somebody in there to take care of

some of the repairs right now, but not sufficient to handle the whole thing. So we expect the same thing is going to happen on the other side. We don't know, but we don't want to stop the job and come back to the Board for something like this when we know it's highly likely that we're going to have the same thing on the other side of the sedimentation basin.

CHAIRMAN RICE: Questions for the Director? I have a question, Mr. Craddick. As I was reviewing the documents, and for Larry maybe also, the specs seem to have been drawn by is it Structural Concrete Bonding that is the intended

subcontractor on this repair, or did we, through engineering, determine the specifications for the repair?

MR. WINTER: Yes, we solicited a quotation for the repair and we combined that in the contract for the roof that the Board approved at a prior meeting.

CHAIRMAN RICE: I guess the actual work, the job description here is to saw cut, to caulk, to patch with a certain product. I didn't know if the choice of the product, the contractor decided that's how to repair it or you told him that's how you wanted it to be repaired, and this is the resulting bid. Do you know what I'm saying?

MR. WINTER: We contacted them as the experts and they proposed the method and stated the amount that it would take to do it.

CHAIRMAN RICE: Thank you, Larry.

MR. NOBRIGA: Move to approve.

MR. VICTORINO: Second.

CHAIRMAN RICE: It has been moved and seconded to approve the request. Any discussion? In all in favor signify by saying "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried and approved.

Director's Report 02-32, amend rules and regulations

to comply with the 2002 water systems standards. Mr. Starr,

you wanted to testify on this matter? The other Mr. Starr.

MR. HUGH STARR: Mr. Chairman, members of the Board,

thank you. My name is Hugh Starr and I'd like to, if I may,

just read the brief submittal that I made to the Board

yesterday and then make a few comments.

"Dear Chairman Rice and Board Members: I am writing

concerning the agenda item for the Board's August 22, 2002

meeting identified as follows: Director's Report 02-32,

Request to amend rules and regulations of the Department of

Water Supply to comply with the 2002 Water Systems Standards.

If I am correct, this proposed amendment would

substantially change, in part, the fire protection requirements

for subdivisions under the rules and regulations of the

department.

My family and I currently have a subdivision

application before the Department identified as -- and I have

to just insert here that I put the wrong SD number in my correspondence. The proper SD number should be 95-067. This proposed two lot subdivision of our family lands is currently serviced by a 4-inch County water distribution main and a two-and-a-half-inch standpipe. We have been working for years to complete this important component to our family's future planning. Under the current rules, this service is adequate to meet the fire protection and fire flow requirements for this subdivision. Our application is currently number 163 on the current Upcountry water service list.

Under the proposed 2002 water systems standards,

these existing water improvements will no longer meet the fire protection requirements. In fact, we will likely be required to duplicate this distribution line with the installation of nearly one thousand feet of a new 6-inch water main, together with on and off-site fire hydrants. The current best estimated cost of this is approximately \$100,000.

I respectfully request that the Board provide that adoption of these new standards be effective for subdivision applications made upon the adoption of the proposed rule change. This would seem the fairest method for providing

sufficient notice to those intending to subdivide that new, more stringent standards have been adopted while providing due consideration for those who have previously made application with the understanding that the current rules and standards are acceptable and applicable. Thank you for your consideration of this request."

Now, I have to confess that I hadn't really seen the Water System Standards until I walked in this morning and they're over there on Cathy's desk. And when I went through it I didn't see anything specific to fire protection, so I just quickly asked the Director. And if I understand his comments,

apparently this may even be a moot issue at this point, that these standards, these fire protection requirements have already been adopted. So I'm unclear about that, I need to make that clear myself.

Just a couple of quick other comments. I think it's been pretty well established that in this Upcountry water list the majority of the people who are on this list are small, you know, one, two, three lot or one, two, three meter requests. That there are very few big quote developments. And developments have typically been required to bring in

infrastructure. But I think the bulk of the request for water service Upcountry are not in that vein, it's more the individuals requesting individual water service.

In our case, our family, we have four kids. We have two lots in Olinda and we are desperately trying to get three lots so that at least we can deal with the issue of succession. So we are pretty typical. And there's some unique situations in our case as well. But when you run up against these rules in a subdivision, it's very black and white, and it's very onerous for a small person, you know, an individual doing one or two lots.

Public Works typically has some provisions in their subdivision ordinance that provide for deferrals and exemptions for small two, three unit subdivisions. And I would propose that the Board consider inserting some kind of a provision like that into your rules, because many of these requests are of that nature. What Public Works does is they say that if you are going to do a three lot or less subdivision and there are road improvements that need to be required, they will allow you to defer them, provided that you execute an agreement with the County stating that in the future when an improvement by the

County is made along your frontage, you will pay a pro rata share of the expense of that. That same concept could be applied to extending water distribution systems through a neighborhood.

It seems to me that this question of an individual having to extend the water main, a 6-inch or an 8-inch line a half a mile, a quarter of a mile, comes up over and over again, and there doesn't seem to be any mechanism in the rule to provide for the bulk of these requests, which are these small requests. So that's one possible way of upgrading the water standards but providing some equity for people who don't have

the resources or the assets to spread these huge costs over.

Another point I'd like to make is if in fact these standards haven't been adopted yet, if you would consider bringing them out to the public and making the public aware of what the implications of these are for all the people on the Upcountry waiting list, because you could have a hornets nest of individuals who now, realizing or hoping that they're going to get water service, come head on with these new fire protection standards, and then are in essence not going to be able to get the water meter that they were thinking they were going to get.

I'd be curious to have an opportunity, and I certainly would be willing to help the Board with this, to look at how other jurisdictions in Hawaii are handling this issue of small subdivisions, one, two, three lot type subdivisions. I know that these standards that are before you are basically an effort by all the counties to adopt the same standards. And so the obvious question comes well, how is Hawaii County, City and County of Honolulu, dealing with this issue of small subdivisions, because it's definitely a question that keeps coming up again and again. So without belaboring the point,

that's the gist of my comments, and I thank you very much for

your listening.

CHAIRMAN RICE: Mr. Starr, any questions for Mr.

Starr?

MS. PARSONS: What's your physical address here?

MR. HUGH STARR: It's 160 Hawea Place, Makawao.

That's off Olinda Road.

CHAIRMAN RICE: Any other questions? Mr. Starr.

MR. JONATHAN STARR: I'm a little bit confused about

the comments you made about when these new rules would take

effect, and I am not exactly clear the way it is under the

existing setup and the way that would change upon your suggestion.

MR. HUGH STARR: I am confused as well. As I understand it, and I could well be wrong, right now if you are going to do, like in our case a two lot subdivision, you go into the rules and regulations and you read them. And in there it does state, and I don't remember it verbatim, but in essence it says you will install a 4-inch water main and standpipes for fire protection. As I understand it now, under the new water system standards, all the counties have made the decision that

4-inch lines and standpipes are inadequate to provide fire protection in ag areas. Therefore, you will have to -- it is no longer acceptable. A standpipe, for example.

So in our case, we have a standpipe at our property, in fact, I personally installed that standpipe 30 years ago to County standards. Now I come in for approval on this one and the Water Department is going to tell me that I need to put in a fire hydrant and a 6-inch water line. I am not sure when that change actually takes effect. The Director has alluded prior to the meeting that it's already in effect and that the Council has adopted this provision, and I am not aware of

that. If that's the case, it may be moot. But nonetheless, as it stands right now, we are required to put in a 6-inch water line and a fire hydrant, which means we have to basically put in a whole new system just to comply with our two lot subdivision.

MR. STARR: I don't think that's right. I think you would only be forced to do that if you wanted additional water service or subdivide or something like that.

MR. STARR: Well, we are requesting subdivision of a four acre lot into two, two acre lots. We currently have one

five-eighths inch water meter and we are requesting a second
five-eighths inch water meter, and we are number 163 on the
waiting list for Upcountry.

CHAIRMAN RICE: Miss Parsons?

MS. PARSONS: Are you doing business out of your
home, Hugh, at all?

MR. STARR: I am a real estate broker and I do have
a home office. I do also have an office in Makawao.

MS. PARSONS: Is it a legal home office?

MR. STARR: I think currently under state law you
can have a home office as long as you don't have employees and

you don't have people coming to your home, and that is the case for me.

MS. PARSONS: The reason I'm asking is that I know planning has been looking at this too, the same issue, and one of the ideas has been the exemption for residents only, but businesses would not fall into that category. And the fire flow issue, I have -- I'll state for the record I have a problem when it hits an individual, I really do. If it's a subdivision in a larger subdivision, and let's say it's six or nine units being laid out above, then I think yes, the fire

flow needs to be an issue that's a burden on the developer.

However, I feel like the previous administrations are the ones that ignored this for so long, and so now we're finally addressing it and we have budgeted, thanks to Jonathan, Commissioner Starr, budgeted the money to start renovating the fire flow issue. And it's going to take several years even at \$8 million a year to get to the point where we're up to standard.

So I think it's something that we probably need to put on the agenda to discuss in the future and put maybe an exemption rule or resolution on this fire flow or look at the

possibility for residential purposes and maybe get with
planning.

MR. VICTORINO: Mr. Chair?

CHAIRMAN RICE: Just a second. Why don't we limit
our questions at this point to questions for the testifier so
we can get through other testifiers and we can get the
Director's report, and then we can talk about how to proceed.
Questions for Mr. Starr?

MR. VICTORINO: Mr. Starr, the question I have for
you is, your children one day will build their homes there,
whatever family, your grandchildren will live there?

MR. STARR: We have four children. Three of them have graduated from college, are back on Maui working, two of them with me in my business.

MR. VICTORINO: That's not my question, but that's fine. What I'm trying to say is this: From the perspective of the safety and well being of your children and your grandchildren and all future generations that live on that property, a standpipe definitely would not help stop a fire from destroying their homes. \$200,00, \$300,000, \$400,000 homes go up like that (indicating).

My business is insurance and we lobbied real hard

for this because of the fact that when the house is lost you

not only lose the financial part, you lose almost your entire

life. It's a real massive change, a catastrophic change.

These are the things that we really think is important for your

family's well being. It is not a pick and choose.

Now, Miss Parsons, Commissioner Parsons is saying

well, now, we can maybe make an exemption for yours and for the

next one. But when 10 or 12 small one, two and three lot

subdivisions like yours are built in the same area and only

have these little standpipes, and one day something erupts and

three or four homes are destroyed, including your family, would not this \$100,000 investment for your family's welfare and safety in the long-run be well worth the investment for you?

MR. HUGH STARR: Thank you, I appreciate those comments. And as I understand it, the fire department is struggling with the issue of these huge homes that are being built Upcountry. And you mentioned \$200,000, \$300,000 or \$400,000 homes. I would maintain that to some extent that's the exception. These people who choose, I don't have a house that's got that kind of value, and I don't see my kids building

that kind of a home.

So I understand the fact that a two-and-a-half inch standpipe may be insufficient to provide fire protection or fire service, adequate delivery to a huge starter castle, as they call them, but that's not the kind of house I live in and that's not the kind of house my kids live in, number one.

Number two, I have lived in Olinda for 32 years and I mean on a quiet Saturday morning you can hear that fire engine coming up the hill and you can watch your clock. And I tell you, there's no way that that fire engine is going to reach my house.

Whether I have a 6-inch fire hydrant or two-and-a-half inch

standpipe, it's moot. The house is going to burn, and we know that. That's a fact that we live with because of our distance and because there's so much elevation between where the fire station is and where our house is.

So those of us in the country who deal with this problem have fire extinguishers, build our houses in such a way that we can assume that if there's a fire and you are not able to put it out, it's going to burn. It's just that simple, it's going to burn. So I would suggest that there's lots of technology out there in the form of in-house fire suppression

systems, sprinkler systems.

In ag areas -- I have a water tank, I have a 20,000
gallon water tank, I have a two-and-a-half inch standpipe.

There are many ways to provide additional fire protection for
people like us, other than requiring us to go out and improve
the County's system at an exorbitant amount of money for, in
the end, no reason, because I can almost guarantee you that no
fire truck from Pukalani is going to save my house if it
burns. It's a difficult situation.

CHAIRMAN RICE: Any other questions? Mr. Nakamura,

then Mr. Starr.

MR. NAKAMURA: Do you have preliminary subdivision approval already?

MR. HUGH STARR: Yes, I do.

CHAIRMAN RICE: Mr. Starr?

MR. JONATHAN STARR: I'm unclear on exactly what it is you are asking us to do. Is there a specific wording that he would want us to add, and if so, could he tell us what that is?

MR. STARR: Specifically I would request that the Board consider applying these new standards to new subdivision

applications after the adoption of the changes so that any subdivision that's in the pipeline right now follows the old standards, the standards that have worked for as many years as they have.

CHAIRMAN RICE: Okay, any other questions for Mr. Starr? Thank you.

MR. HUGH STARR: Thank you.

CHAIRMAN RICE: Any other public testimony on the issue of the amendment to the rules? Yes, Kent?

MR. HIRANAGA: What would your position be for people who have been granted preliminary subdivision approval

but have allowed it to lapse because of the moratorium on water meters being issued?

MR. HUGH STARR: Well, I happen to be in that situation. Actually, this particular subdivision has lapsed twice. I have three SD numbers for this dating back to 1989. I have signed the Kula Rule agreement, I had approved construction plans, I pay a water storage assessment fee, I have been the whole route on this silly little subdivision, so I'm very frustrated. How I feel about it is when you are out in the real world and you apply for a subdivision -- and in my case I had a surveyor helping me who had personal problems, so

I was relying on him, I wasn't watching it. It expired, very easy to do. The thing expires, the next thing you know you get a letter from LUCA that your subdivision is expired.

So how do I think about it? I think that it's an administrative issue. The water department has been, in my view, in a state of -- I'll try to be polite about this -- ambiguity for years about these issues, water service Upcountry. To expect us to stay on top of our little application year after year after year is asking a lot. And the hardship that it creates on us is a lot.

So I would, in answering your question, Board Member

Hiranaga, I would say that it would be nice if the Board would cut some slack to subdivisions that have been allowed to lapse, just because it's taken so many years for this problem of water service to be resolved. It's a very difficult situation, and as you know from some of the previous testimony, there's a lot of frustration and exasperation over this issue.

CHAIRMAN RICE: Thank you, Mr. Starr.

MR. STARR: Thank you.

CHAIRMAN RICE: Any other public testimony on this issue? Hearing and seeing none, Director Craddick, could you

please address the Director's report?

MR. CRADDICK: Well, again, these are requested changes in the rule. They would be required to go up to public hearing prior to any adoption by the Board. And we are going to have to leave it up to Corporation Counsel to advise you on this Engineering Standards Committee, which actually adopts these. You don't actually adopt the standards, but we do want to clarify.

There's always been an issue that there's no mention of the standards really in the rules, and so we're trying to

resolve that and actually get it into the rules if the standards are there. But you don't have a function in adopting the standards other than going to that subdivision, whatever it is, Engineering Standards Committee and giving testimony there.

And the comment that he had about the fire thing, last year in October the fire department got the County Council to approve the 1998 National Fire Protection Association Standards, and that standard has fire flow requirements that are the equivalent to this or exceed this. So whether this comes in or doesn't come in is still required.

CHAIRMAN RICE: So if I understand correctly, the standards are set by an independent agency and your request --

MR. CRADDICK: Well, when you say independent agency, the staff prepares it in conjunction with the other three counties, and it's just in Maui they have the Subdivision Review Committee. And it actually includes the water department's subdivisions, and Corp Counsel has previously given an opinion that they are in the right place to review those standards.

CHAIRMAN RICE: But there's no action to be taken on

this rule amendment today. The action that Mr. Craddick is requesting is for the Board to send these to public hearing.

MR. CRADDICK: Eventually, once the Board, if they looked it over and felt that was proper.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, I am in no position to discuss these amendments at this time, and I would prefer, if there's no objections, that we defer this to the next meeting. However, I did have some questions of Mr. Craddick which I would take up should this matter be deferred.

CHAIRMAN RICE: Do you want to ask the questions

now?

MR. NOBRIGA: Okay. Mr. Craddick, when this review committee of engineering standards began its work, what year was it?

MR. CRADDICK: It's an ongoing board just like this in the County, established by County ordinance.

MR. NOBRIGA: So as they are reviewing the process, is there any consideration given to the standards five years from the date, as opposed to working with the standards five years back? In which case the standards that are being

proposed are already outdated by the time it's updated.

MR. CRADDICK: I'm not quite sure what you're asking.

MR. NOBRIGA: It's more a statement than a question.

CHAIRMAN RICE: Mr. Starr has a question.

MR. STARR: I will be supporting a motion to defer, but I did have one question. In looking at these minimum size of water mains, et cetera, isn't it true that what's being put down here is pretty much what we're demanding right now, but we're doing it based on flow rather than on specific pipes. But doesn't it pretty much boil down to the same thing?

MR. CRADDICK: That's pretty much correct, yes.

MR. VICTORINO: Mr. Chairman, I move to defer this
to our next meeting.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Motion and a second to defer. My
question, Board Members, is if you are in favor of deferring
it, you are deferring it for a reason. You want some
additional information or you want to consider changing the
proposed rule. So we need to give, I think, Mr. Craddick or
staff some direction as to what you want in order to be able to

approve it at a subsequent meeting.

MR. STARR: What I heard was that several Board Members wanted a chance to look at it or understand it before moving, which is proper.

CHAIRMAN RICE: Miss Parsons?

MS. PARSONS: I have a question. On the fire protection I just want to get clear, Mr. Craddick. That falls in our category on County roadways everywhere, fire protection situations. I'm unclear as to if we have a County road already dedicated and the system isn't up to standard, does it fall under our source?

MR. CRADDICK: No, that's probably the first communication today that you will have to deal with that question. I couldn't answer that question.

CHAIRMAN RICE: The question is whose responsibility then is it to subsequently --

MR. CRADDICK: It doesn't say anything in the Charter that we're responsible for the fire system.

MS. PARSONS: When the building permits get passed around the County department, it's the fire department that comes back and says, "Your fire flow is not up to standard and therefore you have this installation to do." I'm wondering,

it's not coming to us, it's not coming from our department,
correct, it's coming from the fire department making that
determination?

MR. CRADDICK: No. Our rules currently require that
certain fire flow standards are met under the current rules.

MS. PARSONS: My clarification is if it's already
there in a County road and there's pipes going to it and
they're insufficient, how is it the burden of the homeowner and
not our burden to correct it?

CHAIRMAN RICE: So then there's another good reason

to defer.

MR. CRADDICK: Why is it your burden at all to provide fire flow when it is not in the Charter that that's even a responsibility of yours?

MS. PARSONS: That's where I'd like to see where if it's not in the Charter but it's a prerequisite, right, it appears to be a conflict. I think we need to look at it seriously. I read that the water systems need to be up to standard if it's a private well system, et cetera, I think they need to come to us. I have a problem with the fire flow myself.

CHAIRMAN RICE: Okay, the motion is to defer until
the next meeting. Any other discussion? All in favor say
"aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is deferred. We will put it on the agenda
for the next meeting, Cathy, please.

MR. VICTORINO: Mr. Chairman, can I make a request?

All Board Members that have specific questions put it in

writing and make sure that it's forwarded to the Director so we can get answers, not coming in then and trying to get answers.

CHAIRMAN RICE: Good suggestion. One minute recess.

(Whereupon a brief recess was had).

CHAIRMAN RICE: Calling the meeting back to order.

We are on Old Business, Director's Report 02-17 requesting a definition of a private road. Mr. Craddick?

MR. CRADDICK: The only thing I can say in this matter here is after the meeting we sent a request up to Corp Counsel. We haven't gotten any response back yet.

CHAIRMAN RICE: Mr. Kushi, I believe there is a

document that was sent to Corp Counsel's office on this issue, an official written request, I believe. I don't know if you were in the position of the Board's advisor at the time.

MR. KUSHI: Mr. Chair, yes, there was a request of the department dated sometime in May, May 15th, about an opinion about this private road. Our office hasn't issued an opinion yet, but I can just say that this issue is not clear. The issue of private versus public roads has been litigated for years. Our department's overall official position is that a private road is anything that the County or the State has not

accepted, without going into details. But I will provide an opinion.

CHAIRMAN RICE: Board Member Parsons?

MS. PARSONS: Will this be a retroactive definition, and if so, how does it affect private roads with utilities already established along them?

MR. KUSHI: What type of utilities?

MS. PARSONS: Electric, water, sewage, if there is.

MR. KUSHI: They're usually through easements.

MS. PARSONS: But I'm saying how does that affect our private road definition, if you have an easement that is

already established on an existing private road?

MR. KUSHI: An easement in favor of the Department
of Water Supply?

MS. PARSONS: Maybe even.

MR. KUSHI: That's all you should be concerned
about. If that's the case, you have an easement for the water
line. However, if you have an easement, that means you own the
water line, and that's usually not the case in this situation.

MS. PARSONS: This specific situation it's not the
case?

MR. KUSHI: Not to my understanding.

MR. CRADDICK: There's no specific situation here.

CHAIRMAN RICE: It is a specific situation, it's on our agenda. Mr. Wagner, I believe, is here and -- I'm not sure if he's here.

MR. VICTORINO: Back there.

MS. PARSONS: Would it be retroactive or would it be as of today?

CHAIRMAN RICE: What retroactive?

MS. PARSONS: This private road description determination, if it was accepted.

CHAIRMAN RICE: I don't know that it has anything to do with retroactive. It's a request, it's a decision that the Director needs in order to answer a request by Mr. Wagner, I believe. That's the genesis of this request. We might as well talk about it, it relates to Mr. Wagner's situation. Would that be appropriate?

MS. PARSONS: Have we waived it before?

CHAIRMAN RICE: I don't know anything about any waivers. I don't know that this is a waiver. This is about a placement of a meter. I don't think it's about a waiver of a

private road or anything. Mr. Victorino?

MR. VICTORINO: Well, my only comment is that I wanted to ask Mr. Kushi specifically when can we count on this opinion or definition coming down? Because again, you have got another meeting in two weeks or three weeks and we keep going. I just kind of want to nail down a time frame on when we can expect this opinion so that we can get this moved on and not have to continue bringing it back on the agenda.

CHAIRMAN RICE: Mr. Kushi?

MR. KUSHI: Possibly by the end of September.

MR. VICTORINO: If that's acceptable, then fine.

MR. KUSHI: Mr. Chair?

CHAIRMAN RICE: Mr. Kushi.

MR. KUSHI: As I have said before, the opinion will not change how the Board has treated private roads, I can assure you of that. That as far as the County, and I am not speaking just for the Department of Water Supply, I'm speaking for the Department of Planning, for the Department of Public Works, for fire, for police. If you are deeming non-conveyed private roads to the County, and that's to be a public road, then we're liable for it, and that's the whole crux of the

issue.

CHAIRMAN RICE: So Mr. Kushi, if I understand you correctly, you are telling us that your verbal definition of a private road is anything that isn't a County road?

MR. KUSHI: It's anything that the County has not accepted by resolution through the Council.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Just to clarify, Mr. Kushi.

Actually, we have really, it seems to me, three different types of roads. One is the road as you have said that has been conveyed to either the State or the County for which there is a

deed and a conveyance. And then you have a private road which is clearly owned by a private individual. And then in the middle there's a whole bunch of so-called, I guess, quote-unquote public roads that are used by the public, are not clearly owned by either the State or the County, or by a private individual. Is that the grey area road that we are talking about now, David, or Junior?

MR. KUSHI: That's exactly the situation.

CHAIRMAN RICE: David is saying no.

MR. CRADDICK: It's not the situation.

CHAIRMAN RICE: Excuse me, Mr. Kushi. How could you

have a road that's not owned by somebody?

MS. PARSONS: Waiko Road is one of those issues going up the hill and Avery doesn't know whether Wailuku Ag owns it or whether it's private.

CHAIRMAN RICE: There's going to be a claim for ownership somewhere. Maybe there's a claim for non-ownership.

MS. PARSONS: They're saying right now they don't own that road, however we put speed bumps on it.

CHAIRMAN RICE: Wait a second. The dispute over ownership doesn't mean there isn't ownership, right? The fact

that it hasn't been surveyed and determined where the boundary lines are doesn't mean that it's not owned. If there were any property on Maui that's not owned by somebody, somebody would be claiming it. There's no such thing as property that's not owned.

MR. CRADDICK: There's plenty of times where nobody will claim those.

CHAIRMAN RICE: There may be disputes, for whatever reason. Mr. Starr?

MR. STARR: I think it's clear what roads are owned by the County and what roads are owned by the State, and if

they're not owned by the County and not owned by the State then they're private. I think that's consistent with the County's definition.

CHAIRMAN RICE: Mr. Craddick, one second, you will get your chance. Mr. Kushi, is that correct?

MR. KUSHI: Essentially, yes. We have situations that I have experienced and been through where the State disowns it or doesn't, we don't claim it because it has not been conveyed and we have not accepted it. We even to the extent have utility services, rubbish pickup, we pave it, we

have water lines with no easements on them. However, you know, it's been our office's position that unless it's up to standards we won't recommend accepting it, because when it hits the fan you know who gets sued.

CHAIRMAN RICE: So it's a liability, from the Corp Counsel's standpoint. Mr. Craddick, what is your rendition?

MR. CRADDICK: In this particular instance we are not asking the Board to take over the road. What they would do is take over the easement. Whether it's a private road or public road, it makes no difference, it's a road used by the public. And the example of this is the Ulumalu-Peahi project.

That entire project, five miles of line, there may be a half mile of it in County accepted public, you know, the definition that you are being given of a public road. The rest of it is all in private road. Some of it is a road that was first surveyed in the 1850's and some of it created by subdivision that the owner is no longer around, they have basically abandoned it.

The entire road work inside the Maui Ranch Estates is all private. The County will never accept that substandard road. But all of the easements were all obtained for all of this prior to the job starting.

CHAIRMAN RICE: So then it is not an issue of the road status, it's an issue of easements?

MR. CRADDICK: Yes. That easement has to be provided when the pipeline is put in.

CHAIRMAN RICE: Okay. So what I'm wondering, with the agreement of my fellow Board Members, this issue is being brought up because of a request by or an issue with Mr. Wagner, who is here and is on the agenda. It might be more expeditious for us to have Mr. Wagner come up and deal with that item now. As it is, it's the genesis for this request. Is that fair,

Board Members? No objection?

Mr. Wagner, front and center.

MR. HIRANAGA: Mr. Chair, are we still requesting a definition from the Corp Counsel regarding private roads versus public?

CHAIRMAN RICE: It has already been placed in writing, it has already been requested. They have to follow through with it.

MR. HIRANAGA: This issue regarding Mr. Wagner?

CHAIRMAN RICE: It may be solved without a definition of a private road. It may not be, in which case we

will make that decision and tell Mr. Wagner to wait. After we hear the story we may decide we can solve his question and we may still ask for the opinion from Counsel for future reference. That's why I asked if we wanted to hear it at this point, and I didn't hear any objections. Mr. Wagner?

MR. WAGNER: So my request is being reviewed now or

is this on?

CHAIRMAN RICE: Yes, you are on the agenda right

now.

MR. WAGNER: I don't have any objection to that, if

the two people before me don't.

CHAIRMAN RICE: The Board makes that decision.

MR. WAGNER: Okay. Well then I want to -- so I am going to backtrack here. I want to go to my request, and part of that issue is the private roadway lot. But what I'm coming to the Board for is I want a building permit for my second farm dwelling. It's just that simple. And through my research it has led to this private road. I would like to give a little history, I think. I told my wife yesterday that I was coming in front of the Board and I was going to explain it to her and she got totally confused, so I hope nobody gets confused here.

My subdivision is serviced by two five-eighths inch meters, and there's approximately 10 or 11 families or lots, houses that are serviced by these two five-eighths inch meters. I believe that it is in a loop system. I think five or six of us are on one meter, five or six are on the other meter. We have no problem with water pressure or drops in water pressure. Okay, so I got a building permit for my main dwelling in 1996. It was reviewed by the water department and it was passed.

CHAIRMAN RICE: A little louder, please.

MR. WAGNER: Then last year on April 27, 2001 I

applied for my second farm dwelling. I got a timely response from the water department saying I needed to do a unit fixture count. Not only a unit fixture count for my property, but for everyone that is on that five-eighths inch meter. Well, there's five families, and when I did the initial count it's over a hundred fixture units. For a five-eighths water meter you're only allowed like 31 fixture units. So right now that five-eighths water meter is over capacity at least four times. It's interesting that none of us have a problem with the water pressure, we've always had water.

So the unit fixture count for my particular piece of property, the existing house and the new farm dwelling is under 31. Basically you can have like four bathrooms and two kitchens and maybe a dishwasher, and maybe one washing machine, but there's four families, five families that have this.

So then I get a letter, actually, I had a meeting with Mr. Craddick, and they said, "Well, you need to put in your own water meter now." I didn't ask him why I didn't have to put it in when I did my first residence, but something changed from 1996 to 2001. And the good news was that the

department was going to give me that water meter. I like that. I'd like to have my own water meter. The bad news is that they haven't put it on my property.

My property is a little over a thousand square feet from Kauhikoa Road, and I believe there's an 8-inch line going down Kauhikoa Road. He says I have to put in a 6-inch ductile iron line and a standpipe. Well, that can cost me anywhere from \$80,000 to \$100,000, and that's not reasonable. That's more than the cottage is going to cost. And I was just kind of befuddled.

Well, after much research and many months that go

by, what am I going to do with this, I read the water rules and regulations, and I had to look at this for myself. The department didn't volunteer that there were rules and regulations. They didn't point out to me that in these rules and regulations, section three or whatever, that this issue with the private roadway -- it says right in there that the County water department cannot put their lines in a private road. Well, I thought that was interesting, so I go back to Mr. Craddick and say, "How about this? It says right here you can do it. It doesn't look like you would be chastised if you

gave me my water meter on the road next to Kauhikoa. It says you can do it right here in the book."

Well, he said that there are other people in the same boat and once and for all he would like to have the Board decide what a private road is and what a public road is. And to help me out, he would put it on the agenda for the Water Board. This was May 15th. I get a call that morning of the meeting by Mr. Craddick. He says, "Hey, it's on the agenda today. Why don't you show up?" I do. My particular issue was not on the agenda though, it was the private roadway lot. So I didn't get anywhere as far as getting my building permit for my

farm dwelling.

It was deferred at that May 15th meeting. The Board wanted, some members of the Board wanted to look into it. And now it's August and Corporation Counsel says it is owned. It is not owned by the County, it's not owned by the State. Everybody in the subdivision has an equal interest. It's a private roadway lot, it's got a separate TMK.

I'm wondering now why I even have to put in my own water meter. You know, maybe I should take a step backwards here. If my property with the addition of this new farm

dwelling is still under the 31 fixture units, then why at this time do I even have to bother? I have got water. And what I want to know is, if I were to come in for a building permit now for my main farm dwelling, and not having a water meter on my property, would I have been given a building permit? That's a question I'd like to have answered.

CHAIRMAN RICE: We don't issue building permits.

MR. WAGNER: I think maybe the Director.

MR. CRADDICK: Like he said, there's over a hundred fixture units on the meter, it's not allowed. As he said previously, there's over a hundred fixture units on the meter.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I had question for Director Craddick.

Is this situation with these two meters feeding ten houses on different TMK's, is that legal?

MR. CRADDICK: Well, it's a Maui Ranch Estates kind of a deal, an Easy Street deal.

MR. STARR: But is there a private water system agreement or is it just an ad hoc thing?

MR. CRADDICK: I am not sure, Jonathan, how those things ever got approved. They came in under the late sixties,

early seventies. I don't know how they got approved.

MR. STARR: My question is was it approved or was there simply one person with one house and one water meter and lines started snaking across several properties? And if that's the case, shouldn't the water meters be pulled?

MR. CRADDICK: I suspect that they were legitimate services at the time. Nobody is suggesting to pull Easy Street's meter or Maui Ranch Estates meters, so I don't know why we would suggest pulling these meters.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: A couple of questions to either the

Director or to Mr. Wagner. So is this a subdivision or is it one large lot with two meters that has a bunch of houses on it?

MR. CRADDICK: There's I don't know how many lots in the subdivision, but it's a good sized subdivision.

MR. NAKAMURA: And there's a private road that is clearly private, it's owned by all of the owners of the lots?

MR. CRADDICK: I presume so, yes.

MR. NAKAMURA: So the issue that Mr. Wagner is raising is that, until he said he rethought it, is that he

would like to have a water meter issued to him on Kauhikoa Road
and then to run his own private connection to his home, is that
correct?

MR. CRADDICK: That's right.

MR. NAKAMURA: And your position is that you want
him to put in a standard water line improvement, 6-inch line,
and a standpipe or a fire hydrant or whatever that is.

MR. CRADDICK: That's correct.

MR. NAKAMURA: But Mr. Wagner is saying that he
can't do that because it's a private road. It's clearly a
private road in this case, right?

MR. CRADDICK: No, I think he can do it just as easily as if he can run the line. They've got easements to run the lines to the property.

MR. NAKAMURA: It's not a question of whether he can physically do it. He wants to put the meter on the road, you want him to build a water line, is that right?

MR. CRADDICK: I want the meter on his property.

MR. NAKAMURA: So you want him to build a water line?

MR. CRADDICK: Yes.

MR. NAKAMURA: Thank you.

CHAIRMAN RICE: Okay. Any other question? Kent.

MR. HIRANAGA: I don't believe Jonathan Starr's

question has been answered. Why are these people being allowed service, multiple lots being serviced by two five-eighths inch meters? I mean we had a situation a few months ago with people down at the end of Kaupakalua Road where they were required to get off the meter or they would be -- the meter would be pulled. They were then going to look at putting in a County standard system. And I believe now they have all decided to go into catchment. So my question is, why is this situation being

allowed to continue if it's to the knowledge of the

department?

MR. CRADDICK: I am assuming that there is some

reason how this got approved this way, that Reed issue that

came to the Board prior. It was only a meter for a single lot

and then that person had allowed others to connect on to it.

MR. HIRANAGA: I don't think we should eliminate the

assumption. We should do some research to find out if there is

an agreement.

MR. CRADDICK: On this particular one I'm fairly

certain there is, because I notice this has come up many times before. I mean even before this Board that we had the guys trying to put in the swimming pool and the cabana and we said they had to make improvements. And I think the Board waived that for that particular person.

CHAIRMAN RICE: Mr. Hiranaga?

MR. HIRANAGA: I'd like the department to produce that agreement for our review prior to any decision being made on the Wagner issue. To say you don't know or you are assuming

--

CHAIRMAN RICE: Okay, what do you want to do, fellow

Board Members?

MR. VICTORINO: Mr. Chair, until the point has been resolved as far as the legalities and as well as the agreement that I think should be produced, I hate to put Mr. Wagner off, but I will tell you right now I couldn't in clear conscience say no to something. When you tell me the standards is 31 fixtures off of one line and now I hear there's approximately a hundred off of that same fixture, off of the same line, obviously we have got a real problem. Until we can get the answers on what agreements were made, I think I would have to wait and defer action to that. It's not a private road issue

any more.

CHAIRMAN RICE: We are going to go back to that.

Anything else, Mr. Wagner? Mr. Starr?

MR. STARR: Frankly, I feel that these issues are better not brought to our attention, because once they are then we're kind of forced to act. And I think we should go and see if there was an agreement or not. If not, then there's, you know, there's a clear violation happening. Once it has been aired out in public I don't think we have much choice in the matter.

CHAIRMAN RICE: Mr. Wagner?

MR. WAGNER: Yes, a couple of things. So my

question was, if I were to come in and apply for a building permit on my property today I wouldn't even get one, is that true?

CHAIRMAN RICE: That's what I heard.

MR. WAGNER: That's what I heard too.

CHAIRMAN RICE: We aren't the ones who issue building permits, so we are not the definitive authority here.

MR. WAGNER: Then I'm really curious, really, really curious why -- too many notes. I'll find it. On February 8th

of this year my neighbor applied for a building permit, my neighbor in my neighborhood, who is also sharing this five-eighths meter with three or four other neighbors. And he applies for a building permit, and in a very timely manner that building permit was issued on April 23rd and approved by the water department. I don't get it, I just don't get it.

CHAIRMAN RICE: Well, we don't issue building permits. If it was approved by the water department, it will come out in our research.

MR. WAGNER: Right. Okay, so that's kind of a good

example of what I'm dealing with here with the department.

It's very frustrating, as you can imagine. I would have had that second farm dwelling up, it would have been rented, I would have probably had close to \$10,000 in income to help me pay my mortgage payment. That's not your problem.

As far as Mr. Craddick saying about the swimming pool issue, that neighbor --

CHAIRMAN RICE: Let's not go into this.

MR. WAGNER: Exceptions. He has his own water meter. Guess where it's at? Kauhikoa. It's not on his property, it's on Kauhikoa. The water department gave him his

water meter, allowed him to put it on Kauhikoa, and allowed him to run it to his own property. Why do I have to do that?

CHAIRMAN RICE: Excuse me, Mr. Wagner. Complete your testimony because this is not --

MR. WAGNER: Right. I'll be done here in just a second. I'm just bringing some points up. So I guess I have to show some uniqueness in my application. One would be that I'm grandfathered in, exceptions that have been taken in the past, not only in my subdivision. I asked the water department, that was part of my request, when were exceptions made where people

didn't have to put their water meter on their property, and I have to look it up myself.

When was this rule, departmental rule made that the department is no longer going by the rules and regulations on a private roadway lot, but can force people to put meters on their own property? Well, that isn't a clear date. I asked for a memo or something when that was a department policy, and nobody can give me an answer. I can go on and on here. All I want is my building permit, and if my neighbor down the street doesn't even have to put in a meter for his dwelling, why do I have to put a meter on my property? Why can't we keep going

the way it is? A precedent has already been set. It's just really frustrating to me. I hope, I really wanted to get that point across.

CHAIRMAN RICE: Thank you, Mr. Wagner. Miss

Parsons?

MS. PARSONS: Is Kauikoa a County road now?

MR. CRADDICK: No.

MS. PARSONS: No? So there is a meter on Kauhikoa?

MR. CRADDICK: I think he's talking about Kokomo

Road.

MR. WAGNER: No, Kauhikoa. That's a public road.

Kane is not.

MS. PARSONS: Kane is not. When you put in a new line for your -- when a new line is put in for your meter, will it benefit anyone else in your neighborhood?

MR. WAGNER: Well, yes. See, I have to pay for the whole thing. I have to pay the \$80,000 to \$100,000 for it and then any neighbors can ask the County to tap into it. I don't get reimbursed for anything.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, I move that in the

absence of a formal agreement that has waived subdivision requirements, that this subdivision must be brought up to our standards within 120 days or the meters must be removed for cost.

MR. VICTORINO: Second.

CHAIRMAN RICE: It has been moved and seconded.

Does everyone understand the motion? Discussion?

Mr. Nakamura?

MR. NAKAMURA: Yes. I am not sure I fully understand the intent, but I would like to ask Corp Counsel, is that an action that this Board can appropriately take, to

remove meters without a hearing?

MR. KUSHI: That's a very good question in that I am not sure how long these meters were issued or have been in use. To all of a sudden within 120 days, or any specific period, to revoke them would be throwing gas on a fire. I would caution you. However, if the motion is, if any motion this Board makes is to address the instant case, which is an additional meter, I believe you have the authority to do it. What is existing now, whether or not the Board, this Board has agreed to it or not known about it, that's another question.

And before you revoke something, I would suggest you look at

how it occurred.

MS. PARSONS: How old is this subdivision?

MR. WAGNER: About '75, 1975.

MS. PARSONS: So we're almost into a 20 year issue,

30 years, statute of limitations.

CHAIRMAN RICE: We have a motion.

MR. NOBRIGA: Mr. Chairman, I withdraw my motion at

this time.

MR. KUSHI: Mr. Chair, under your current rules,

apparently the meters could be located off-site, and the

department and the Board have approved private lines from a public installation.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I move to deny the request.

I believe the request is to waive the rules to allow the meter to be located off the subject property.

CHAIRMAN RICE: There is a motion to deny

Mr. Wagner's request. Second? No second.

MR. VICTORINO: I have to withdraw my second on the first one, Mr. Chair. Thank you.

I guess we are getting into a lot of grey areas now and I think what I need, I think we need to defer this because we need additional information. This is just being -- so much has been brought up on this one subject matter that either you may say it's not pertinent, but it may be relevant and it may take us to another level with legalities and the courts, and I don't want to get to that point.

So Mr. Chair, I'd like to move this matter be deferred until our next meeting, providing all the necessary information, such as any prior agreements, any documentation that had been done for this subdivision be provided to the

Board prior to the meeting so that we may understand and be able to take some definite action.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: There is a motion and a second to defer to the next meeting for the appropriate information.

Yes, Ginny?

MS. PARSONS: How many years have you been working on this, Mr. Wagner?

MR. WAGNER: I applied for this permit in April of last year. Also --

CHAIRMAN RICE: You answered her question.

MR. WAGNER: Not just this subdivision.

MS. PARSONS: I'm sorry?

MR. WAGNER: Not just this subdivision.

MS. PARSONS: What do you mean?

MR. WAGNER: He prefaced it to this subdivision. I

think it should be exceptions made throughout the County.

CHAIRMAN RICE: Mr. Wagner, there is a motion on the table and a second. Discussion on the motion.

MS. PARSONS: Can I clarify how long he's been working on this, because if we are going to defer it I would

like to have some date as to when we're coming back.

CHAIRMAN RICE: He said that in the motion.

MS. PARSONS: But we need to be prepared to look at this. If we have granted these in the past and we don't grant them in the future, how does it assist someone who has been working on it for two years? I think that there's some consideration when we review these documents we look at.

CHAIRMAN RICE: I think that's exactly what the maker of the motion said was the reason for the deferral.

All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried. Okay, thank you, Mr. Wagner.

Back to definition of a private road. Board

Members, we have --

MR. NOBRIGA: Move to defer, Mr. Chairman.

MR. VICTORINO: Second.

CHAIRMAN RICE: Move to defer a private road pending

written opinion from Counsel. Discussion, Kent?

MR. HIRANAGA: I'd just like to comment that I have

read the Director's report numerous times and I would like to suggest that he make his report more concise, because the way it was written would have required me to ask numerous questions.

CHAIRMAN RICE: Thank you. Mr. Craddick, is that noted?

MR. CRADDICK: Numerous what?

MR. HIRANAGA: Questions. I had numerous questions regarding your correspondence.

MR. CRADDICK: The process was a little bit

circumvented on this particular communication, and these letters were basically prepared last night between 5:00 and midnight. Normally that would not be the process in a communication.

CHAIRMAN RICE: Motion to defer on the private road. All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried.

Let me make one comment on the issue of the

reports. I did say this at a previous meeting and I said it to staff in general, that when we talk about placing an item on the agenda and we create a time frame, it is incumbent on the staff to say, "Mr. Chairman, members of the Board, I need extra time" or we will assume that the proper reporting will be ready for that meeting.

MR. CRADDICK: And these are new communications.

This is the first time he has been on the Board agenda.

CHAIRMAN RICE: Well, if it's going to be on the agenda, we want a report. If you don't have enough time to

prepare it, basically tell us so that we don't sit here and ask a bunch of questions and waste peoples' time, and we will probably be able to deal with these things more quickly.

Cathy?

MS. HOWARD: I think I need to get a draft to the staff a lot quicker. So when I get a draft to you do you want me to give the draft to the staff? I am waiting for your opinion before I give the draft to the staff.

CHAIRMAN RICE: Well, the other thing that adds to the difficulties, we are now having two full Board meetings a month, whereas before we had basically 30 days between Board

meetings. So yes, you need to get it to the staff right away.

Okay, the Chair is going to call a quick recess.

(Whereupon a brief recess was had).

(Chairman Rice excused himself from the meeting and Vice-Chair Michael Nobriga became the presiding officer).

ACTING CHAIRMAN NOBRIGA: The meeting is called back to order after recess. Chairman Rice has to take care of some personal matters. Vice-Chair Nobriga is taking over.

The next item on our agenda is under Section 7 of Communications, item A, Communication 02-27, request from

Aileen M. Unemori.

MS. UNEMORI: Mr. Craddick has something to say.

ACTING CHAIRMAN NOBRIGA: Thank you, ma'am. Mr.

Craddick?

MR. CRADDICK: Giving them the chance to testify if they want to after I'm done, I'd just like to say if you read the last sentence --

ACTING CHAIRMAN NOBRIGA: Could you use the microphone, please, Mr. Craddick?

MR. CRADDICK: The paragraph, the last sentences I have an option there to try to get a flow test completed to see

if the system can provide the flow that's required. What's going on is they're before the Planning Commission to get a zoning change. The zoning change requires 2000 GPM. The structure that's there requires about 1500 GPM. We were able to finally complete the test this morning, and we find out we have 1700 GPM. And I believe I could recommend approval of this request before the Planning Commission without any further action by this Board.

ACTING CHAIRMAN NOBRIGA: Thank you, Mr. Craddick.

Unemoris, do you wish at this time to withdraw your

request from the Board?

MS. UNEMORI: If it's approved.

ACTING CHAIRMAN NOBRIGA: Mr. Craddick?

MR. KUSHI: I'll recommend deferral.

ACTING CHAIRMAN NOBRIGA: The Chair recommends

deferral. Any objections?

MS. UNEMORI: No, it's not deferral, it's approval.

ACTING CHAIRMAN NOBRIGA: Well, make sure he

approves 'em before you withdraw it.

MS. UNEMORI: Mr. Craddick, did you approve it?

MR. CRADDICK: Well, no, not yet. But with the flow

that we have I believe it could be approved, yes.

MS. UNEMORI: So we will get a letter saying that it's okay? He is approving it then, we understand that he's approving it then.

ACTING CHAIRMAN NOBRIGA: In case he don't, you come back.

MS. PARSONS: Excuse me. Rather than defer, if she withdraws the letter then she won't have to come back, and he can go ahead and approve it next week if he wants to. Better than waiting until two weeks later.

MS. UNEMORI: We don't want to defer it because it goes to the Planning Commission next. So we will defer hoping that we can trust Mr. Craddick's word. So we withdraw.

ACTING CHAIRMAN NOBRIGA: Thank you, Mrs. Unemori. Sorry for taking up your time. We appreciate your presence at our meeting and hope you had a great time.

Communication 02-24 was withdrawn.

On to agenda item B, communication 02-25, request from Mr. Joseph Kealoha. Mr. Kealoha is in presence. Do you have anything to say at this time? Nothing, huh? You're up. Thank you. Mr. Kealoha is known for his boisterous voice, so I

don't think he's going to need a microphone.

MR. KEALOHA: Mr. Chairman and members of the Board,

I have received for a three lot subdivision in Kula a

preliminary subdivision approval. There is one existing water meter on the property installed. And as we know, the situation

in Kula there's no existing -- there would be no meters

available for the other two lots.

I am requesting that I would be allowed to assign

the present meter to one of the lots, and have that subdivision

be approved for only that specific lot, and defer the other

remaining lots until such time that water meters would be available, if it is. That's my request.

ACTING CHAIRMAN NOBRIGA: Thank you, Mr. Kealoha.

Any questions, members? Mr. Victorino.

MR. VICTORINO: So am I correct in understanding,

Mr. Kealoha, that what you're saying is the meter right now is located on which lot?

MR. KEALOHA: It's not on a specific lot, it's in the vicinity of all three.

MR. VICTORINO: Of all three. So you're asking that that meter be relocated to lot 9-G?

MR. KEALOHA: C.

MR. VICTORINO: Oh, C. It looks like G to me, but
okay, C. Your letter said "which is relocated to 9-C." And
then A and B, you would defer any use of those lots or
requesting for water meters until we get this water situation
Upcountry resolved?

MR. KEALOHA: Correct.

MR. VICTORINO: Thank you, Mr. Chair.

ACTING CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I have a question for the Director. If

an additional two water meters were available, would that be all that is required for the subdivision or would there be other improvements or higher issues to be dealt with as well?

ACTING CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: Right now there are fire improvements that would be required, but previously in the Board meeting the Board approved the project that would take care of that issue.

ACTING CHAIRMAN NOBRIGA: Thank you. Any other questions for Mr. Kealoha? Mr. Hiranaga.

MR. HIRANAGA: Not for Mr. Kealoha, I guess for Mr. Craddick.

ACTING CHAIRMAN NOBRIGA: Any questions for

Mr. Kealoha? No more questions for Mr. Kealoha, now we have questions for Mr. Craddick. Mr. Craddick does have a letter to our attention in your file that just came up in the recess.

Mr. Hiranaga?

MR. HIRANAGA: I'd like him to make his presentation.

ACTING CHAIRMAN NOBRIGA: Thank you, Mr. Hiranaga.

Mr. Craddick?

MR. CRADDICK: We are recommending that the

subdivision approval, subject to them paying a pro rata share of improvement cost allocated to each lot in the subdivision, and then I won't go over the rest of it there, I'll leave it at that.

ACTING CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: Mr. Chair, I would be willing to accept the request, however I would want to see an agreement that states that we are not creating development rights until the other meters are available, and also that we would have indemnification wording in there as well, and whatever else the water department needs. So perhaps I leave it to the Chair to

recommend whether we need action or whether we should defer until we see such a deferment.

ACTING CHAIRMAN NOBRIGA: Is the department and Mr. Kealoha able to settle this matter without the Board's decision?

MR. CRADDICK: No, because it's approving a subdivision, final subdivision without full compliance with the rules. This is, if you remember Dominick Marino, he came a few months before and his situation, he just didn't own the land, he was just seeing if the Board would approve it. I think the

Board said yes, but we want to see an agreement. And I am not quite certain how Mr. Kealoha heard about that, but he heard about it and came and talked to me about it. I said well, theoretically it sounds like he could do it because the Board was willing to do it in that case.

But I am not positive if Dominick went through with it. If he never went through with it, we will never see that agreement and this will be the first case.

ACTING CHAIRMAN NOBRIGA: Mr. Nakamura?

MR. NAKAMURA: Mr. Craddick, what improvement costs are you talking about prorating?

MR. CRADDICK: The project that we are doing right

now.

MR. NAKAMURA: That the Board has indicated it would

fund?

MR. CRADDICK: Yes.

MR. NAKAMURA: So you are going to figure out how

many services are going to be benefitted by that line and

assess Mr. Kealoha accordingly?

MR. CRADDICK: That would be my suggestion, to come

up with something like that. I don't know as I have thought of

exactly how we would do it, other than saying some method of

pro rata share and work with him on it.

MR. NAKAMURA: Is that acceptable, Mr. Kealoha?

MR. KEALOHA: Yes.

ACTING CHAIRMAN NOBRIGA: Mr. Starr, followed by Mr.

Victorino.

MR. STARR: I'd like to suggest that the Director

and Mr. Kealoha get together and work out an agreement and

bring that back to the Board, and that will be the item we can

take action on.

MR. VICTORINO: That was going to be my motion, to

basically have an agreement brought back to us so that we can approve a written agreement, not something that everybody is saying yes to but we haven't seen it in writing. And all the indemnifications and everything else that Mr. Starr has referred to.

MR. STARR: Second.

ACTING CHAIRMAN NOBRIGA: Motion by Mr. Victorino, seconded by Mr. Starr to have the Board instruct the Director and Mr. Kealoha work out a formal agreement subsequent to the Board review and final approval. Mr. Hiranaga?

MR. HIRANAGA: I am trying to understand what the Director is proposing here. Is he saying that we should grant a waiver of the final subdivision requirements by the Department of Water in anticipation that the adequate system will be built in the near future? At this time those requirements have not been met. You are asking us to waive those requirements in anticipation of the project being completed in the near future?

MR. CRADDICK: My understanding is that he is not going to be building on the two lots.

MR. HIRANAGA: That wasn't the question. Do you

want me to repeat my question?

MR. CRADDICK: Yes.

MR. HIRANAGA: Are you requesting the Board waive the subdivision approval requirements in anticipation that the requirements will be met by the department project that is scheduled to be completed in the future for that area?

MR. CRADDICK: Yes.

MR. HIRANAGA: Does that mean that anyone who believes that a project will be built in the near future in their area can also come to us and request that the department

waive those requirements? Are you setting a precedent here?

MR. CRADDICK: Well, I think the Board did with Dominick Marino. This wouldn't even be before you if the Board hadn't said yes to Dominick Marino.

MR. HIRANAGA: I would like to have a fuller understanding of what we did for Mr. Marino before basing our decision on a statement that we have already set a precedent for Mr. Marino. Unless there is some -- I can't see the reason why we would be granting this request. I mean he can wait until the project is done then there's no reason for a waiver.

MS. PARSONS: Very good point.

ACTING CHAIRMAN NOBRIGA: Miss Parsons?

MS. PARSONS: Very good point. But if there are other projects -- the way that I think I'm seeing this is if you come forth and you are asking for a building permit and we have construction going on, the only way to recover some of our investment is to be able to do the pro rata share. So we would encourage people in those areas to come forward to make the agreement to pay for some of the pro rata share in order to get the building permits, rather than just wait for the development to be finished, which may be several -- may be a couple of

years, right, or one year. But at least it would encourage those folks and not discourage them from coming forward.

MR. VICTORINO: Mr. Chair?

ACTING CHAIRMAN NOBRIGA: Mr. Victorino.

MR. VICTORINO: I think to answer Mr. Hiranaga's question, I don't think it's a precedent in the sense that we are granting him a full development of the subdivision. All he's requesting basically, on top of what Mr. Craddick's pro rata share, is the fact that he wants to take the one meter that does exist and assign it to lot 9-C, and he is willing to wait until the rest of the services or whatever else is

developed.

So I mean so everybody who has one meter decides to come to us and says, I want to assign that meter to lot A and they have got one meter, then we have got nothing to say negative about that.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: I guess my concern is that for all the people that have been waiting for the past nine years, why would they not make this option available to go ahead and get the subdivision, have existing lots which have value, have them conveyed, let them wait for the system to become adequate.

MR. VICTORINO: Maybe they have one meter already.

MR. HIRANAGA: I am not addressing the question to you, I am addressing the question to the Board. So that's my concern, is why are all these people being put on this list and waiting eight or nine years? They could have gotten their subdivision with this waiver.

ACTING CHAIRMAN NOBRIGA: Mr. Nakamura?

MR. NAKAMURA: It seems to me that the request is -- I think it's pretty simple. Mr. Kealoha could presumably wait until the project is completed, at which time he would then be

able to get his final subdivision approval. Is that correct?

MR. CRADDICK: No, he'd have to wait until his name came up on the list to get the meters.

MR. NAKAMURA: But his trade-off then is in order to get the final subdivision approved, he is willing to make a pro rata contribution to the construction of the improvement?

MR. CRADDICK: That's my suggestion, and I think he seems to be willing to do it.

ACTING CHAIRMAN NOBRIGA: Mr. Kealoha?

MR. KEALOHA: The request for the pro rata is at the Director's request really, if you recognize that if you go for

three lots or less there's no improvements. However, I do recognize the need for any subdivider to absorb the share of the cost for improving nearby extensions. So that's my ready response for that. If I came in with a 20 lot subdivision and I just wanted to do this, clearly I mean I would feel that I'm way off in left field. But when you have a three lot subdivision with no improvement requirement tagged on to that, I feel that is within my realm to come before you folks.

That's all.

ACTING CHAIRMAN NOBRIGA: Miss Parsons?

MS. PARSONS: And also I kind of look at this as an individual issue, but we did approve the Ainakula project earlier today, so therefore we know that we do have construction going on in that area. It's not as if we are out in the rural area that may not be developed in the near future.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: I just wanted to again repeat what Mr. Craddick said. Even though that system is being projected to be completed in the near future, he would not have been able to get his final subdivision approval until he got the two

additional meters. We do not know when he would be receiving those two additional meters, even if the system is adequate fronting his property, because he's on the list.

Secondly, he can convey those lots once they have been subdivided without meters, because they have value. There is value that can be conveyed and discounted based on the fact that there are no meters. So I have grave concerns about granting something before the fact. To me, the proper route is for him to wait until the system is constructed and he receives his two additional meters and he's gone through the subdivision

process like everyone else does.

ACTING CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: Okay, thank you. I believe Board

Member Hiranaga is exactly correct in his analysis. But what

I'm hoping will happen out of this, we have been trying to get

-- I don't know when Nolan and Dolan (phonetic), those things

were decided by the US Supreme Court, but my belief is that our

rules are no longer in conformance with law. So how do you,

what do you do in the interim? You should be changing your

rules.

We have been trying to get the Board to change the

rules since about 1992, somewhere around there, on this matter. If this is the vehicle we finally come up with a pro rata share of deciding that, I would presume that once the Board decided this they would pass some rules to make it so that that would be the norm rather than the exception, with people having to come to the Board in order to make special determinations on these things. And obviously we are going to have to work together to come up with this pro rata share, something that is acceptable.

But we actually had a separate committee to come up

with this, nine people from the community, and nobody could

decide at what level this pro rata share kicked in and at what

point you had to do all the improvements necessary. It went

all the way from a single lot to nine or ten lots. There are

bigger issues, as he says. But somewhere along the line we

have got to deal with this issue that the first one to the

plate gets hit with everything, and everybody else jumps on for

free.

ACTING CHAIRMAN NOBRIGA: Miss Parsons?

MS. PARSONS: I just want to get a clarification

from Mr. Hiranaga. Are you saying that you are not in favor of

a pro rata share agreement, and if you are not, I can understand. But if you are in favor, how would you presume to accomplish the pro rata share if you just have everybody wait? He's stepping up to the plate and saying, "I'm willing to pay to get it" and we should make that available, I think, to everyone that's on the list because it's going to cost them more. It's a financial call that they need to balance as to whether they can afford to wait another few years until the development is done and their meters are issued, or whether it's financially feasible to pay the pro rata share and try to

move forward. That's an individual call, I think.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: My thoughts about pro rata share,

would that pro rata share then become due when the project is complete? Let me continue and you can answer. So if someone

says "I am willing to sign a pro rata share agreement although

this system will not be scheduled for improvement for the next

ten years. I will sign this agreement, please give me my

subdivision so I can start conveying these lots." So you are

going to create additional density in the area without an

adequate system.

MS. PARSONS: You can't build on them.

MR. HIRANAGA: You can if you go with a private
water system.

ACTING CHAIRMAN NOBRIGA: Mr. Nakamura?

MR. NAKAMURA: I just wanted to clarify one issue.

So if the Board approves this request as the Director has
recommended, the subdivision will be granted final approval but
there will only be the one existing meter until such time that
Mr. Kealoha's name comes up on the waiting list?

MR. CRADDICK: That's correct.

MR. NAKAMURA: If that's the case, I personally

think that's fair.

ACTING CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: The motion included that additional

developable lots not be created until the new meters are put in

place, so that would obviate the private water system issue. I

think we dealt with that with the motion.

ACTING CHAIRMAN NOBRIGA: Any further discussion?

MR. VICTORINO: Call for the question.

MR. HIRANAGA: Could you repeat the motion, please?

ACTING CHAIRMAN NOBRIGA: Oh, man. I am going have

to ask for help for repeating the motion. That was a long time ago.

MR. VICTORINO: If I'm correct, Mr. Chairman, the motion basically in a nutshell, and I can't go verbatim because I am not that great at verbatim, but it was basically that we would approve -- no, we were going to defer this until we had a written agreement drawn up and and brought to us by both parties. So we are not approving this, we never intended to approve it, it was actually being deferred until a written agreement was brought forward to us so that we could review and approve it at that time. So all the discussion that has been

going on really we were deferring it, we weren't approving anything.

MR. HIRANAGA: Thank you.

MR. STARR: Call the question.

ACTING CHAIRMAN NOBRIGA: The question has been called for. All those in favor of the motion signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

Motion is carried.

MR. KEALOHA: Thank you. As I understand it, for clarification, Mr. Chairman, the agreement is subsequent to the approval of the final subdivision, made part of.

ACTING CHAIRMAN NOBRIGA: Yes. You and the Director are supposed to work out something so that you can take the meter that you have, put 'em on the lot that you have, and the rest and the pro ratas.

MR. KEALOHA: Thank you.

MS. PARSONS: So could we have a timeline to have this back on the agenda, please? One month?

MR. CRADDICK: Corp Counsel is going to have to review it after we get it prepared. And if he helps in preparing it, it may go quick.

MS. PARSONS: Six weeks enough time? Let's put some dates to these and not leave them out in limbo. Is six weeks good for you?

ACTING CHAIRMAN NOBRIGA: Put six weeks and that's it. Moving on to item D, communication to 02-27, request from Thomas D. Muldoon to have the Board review a dispute that he has with the water department regarding a demand by the

Department of Water Supply to upgrade the size of his meter.

Mr. Muldoon, thanks so much for waiting so patiently
for us.

MR. MULDOON: Thank you. The reason I'm here is
based on a permit that was issued for the building of my home
in -- I believe it was issued in June of 1999. I just have a
question for the Board. Did you receive a letter that I sent
to Mr. Rice?

ACTING CHAIRMAN NOBRIGA: Yes.

MR. VICTORINO: It's right here.

MR. MULDOON: I just kind of want to go through it.

I'm here because I feel that the Department of Water Supply in my case -- I am probably the exception rather than the rule -- the service that has been provided to me I feel is way less than what I should have gotten, that's why I'm here.

I was issued that permit in June of 1999. I received a letter from the water department on July 21, 1999 referring to my application, my permit application. I am just going to read a brief part of it. It says, "Complete the enclosed water meter worksheet and return to our Department of Engineering Division at the above address by August 6, 1999,"

which I did. "Please be sure to include all existing proposed water-using fixtures on your property on the worksheet," which I did. It says, "We will contact you to discuss the details of the cost and installation of the new water meter, if applicable."

All right, so I go about building my house. My house is completed, I get a final inspection, I published it as I was supposed to in the Maui News. Approximately, my dates may be a little bit off in the time frames, approximately July of 2000 I receive a call from Myles in engineering giving me notice that I have to upgrade my water meter -- after I am in

my house already and I have been issued the final inspection --
and to fill out this application again. I think the water
fixture thing.

So I immediately that day when I received the letter
called Myles and said, "Myles, why am I receiving this three
months after I'm in my house?" He said, "We lost your file."
I said, "Okay, you lost my file. I would like a meeting with
Mr. David Craddick, since he's the one who signed this. How do
go about this? I don't understand what happened."

Myles tells me, "Okay, I'll set up an appointment."

I'll call you back with an appointment and you can meet with

Mr. Craddick." I don't hear from them. The next communication

I have from them is approximately one year later I receive

another request stating that I'm supposed to fill out this

application and that I need to upgrade my water meter, and the

fee was whatever it was. I again that day -- I'm kind of

shocked at this point. I get on the phone and I called Myles

and I said, "Myles, what's this about? I called you a year ago

for an appointment, you never called me back. What is this

about?" So he says, "Disregard the notice, you should not have

received it." That was his words. So obviously I take him at

his word, I disregard the notice.

July 24th of this year I receive a phone call now,
someone in an urgent vein, to come down and pay the fee for
this water upgrade because the fees were going up that Monday.
And if I didn't pay it by Friday, I'm going to have to pay the
new fee. I'm astounded at this point that I am being told that
I have to come in after three years, since 1999 when my permit
was issued, and I have to come in and in two days perform on
something. And so I said, "I want a meeting with Mr.
Craddick."

I believe it was the next day or somewhere there I met with Mr. Craddick, Herbert and Myles. I laid out exactly how I felt about it, what had happened, and how I felt like you guys dropped the ball here and you are trying get me to come along here and squeeze me with two day's notice to come and file something which you lost the file, you tell me to disregard something. And here I am. And I laid it out and I said, "Well, what can we do?" And Mr. Craddick, you know, probably couldn't -- he said "I can't do anything, you have to go." I said, "Where do I go with this?" And that's why I'm here today.

The way I feel about this is that, you know, there's a standard practice in industry, and I think the County of Maui at some level has to be held to a certain standard. If I was in private industry and somebody did that to me they'd make sure that they took care of me and that they did the right thing and restore my meter at no cost to me, and that's what I want right now, if I need it at all. I have lived in the house for over two years now, and now I am being asked to do this and I just don't get what happened here. That's all I've got.

ACTING CHAIRMAN NOBRIGA: There's questions for

Mr. Muldoon? Mr. Victorino.

MR. VICTORINO: Okay, back in 2000 when you first talked to Myles he said he lost your file.

MR. MULDOON: Correct.

MR. VICTORINO: Then there was no written communication, just a verbal, they lost your file.

MR. MULDOON: Yes, that's true. When I had this meeting on July 24th this came out, all right. That was not denied at that meeting.

MR. VICTORINO: And then you go down further a year later and you get another letter requesting you to come in and

you say he called you and said, "Disregard it, you should never have received it" and he didn't deny that at the meeting.

MR. MULDOON: He had an explanation for that which I'm trying to remember. His explanation was that he didn't mean to disregard the whole thing, but disregard the letter. Now, in my mind when somebody tells me to disregard it, it means disregard it. Especially when I don't hear from him for another year, I assumed he disregarded it as well.

MR. VICTORINO: The final question, and I guess this question, because they have had a meeting. Mr. Craddick and

you and Myles and Herb met. I guess, Mr. Chair, this question would be directed at Mr. Craddick. In that meeting what is the position of the Board other than sending it to us? Why couldn't this have been handled some other way instead of coming in front of us? I'd like to understand why.

MR. CRADDICK: I don't have the ability to waive anybody's fees.

MR. VICTORINO: Even though it clearly seems that we have dropped the ball, the department has dropped the ball all along the line?

MR. CRADDICK: When you say we dropped the ball, if

the idea is every time the ball gets dropped we give out \$3,000, you need to think that one through clearly, because there's a lot of times when things like this happen. The problem is they're not required to do this at the time they get the building permit. He is supposed to come into us when he gets the building permit, that's what's stamped on the building permit, and he didn't do that. That's where the ball was dropped right off the bat. We have to hunt them down, and when we finally do hunt them down it goes on from there. By the time we finally get the worksheets and stuff like that, it does

help with the building permit process, it speeds it up, but it does make problems in getting the correct meter size in for the structure that's being built.

ACTING CHAIRMAN NOBRIGA: Mr. Craddick, you have an uncanny ability to shove your foot down your throat a lot of times. Miss Parsons?

MS. PARSONS: Mr. Kushi, consistent invoicing. If we have an invoicing matter and invoices have not been issued for a consistent period of time -- and I don't know what the statute is -- but isn't there some legal statute as to billing procedures?

MR. KUSHI: Board Member Parsons, I don't know.

Your rules don't reference invoicing, your rules don't reference timely invoicing, timely payments, so I don't know of any state statute. I am not sure if this is a situation where a bill was issued and the customer or applicant didn't pay it. I believe this is just an application situation. I further believe that the Board has the authority under your own rules to waive or modify the requirements of meter fees, and that's 16-108-8F as in Frank.

ACTING CHAIRMAN NOBRIGA: Miss Parsons, are you

done?

MS. PARSONS: Yes.

ACTING CHAIRMAN NOBRIGA: Mr. Muldoon, followed by

Mr. Starr.

MR. MULDOON: All I'm saying is I did my part in a timely manner. The fact that the Department of Water Supply didn't is not my problem. They should have, and I think they should be held accountable. I have never done anything, this is just a principal thing for me right now. You are going to do what you are going to do, but it's not right. That's all.

ACTING CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: Yes. Mr. Muldoon, do you know, how many
fixture units do you have at your house?

MR. MULDOON: I honestly don't know. It probably is
in the -- I don't have the sheet that they gave me.

MR. STARR: It's a large house?

MR. MULDOON: It's a three bedroom, three bath.

MR. STARR: Can we assume that it's over the 31
fixture units?

MR. MULDOON: It probably does fit within that
guideline, yes.

MR. STARR: I'd like to try to separate this down, because I think there are two issues involved. The first is that it probably was not handled by the department as efficiently and graciously as it should have been, and for that I would like to apologize on behalf of the Director and staff, and make an apology to you that it probably should have been handled in a more elegant and cooperative fashion.

Now, the second issue, which I think is a more pertinent one is that you have a five-eighths inch meter and that's undersized for the fixture units. Under the rules it should be upgraded to, I believe, a three-quarter inch meter.

And I do feel that that should probably be done so that your house is in compliance. But I don't think you should be penalized by the fact that the fees have since increased, and there should not be any other penalties attached.

So my belief is that you should pay the difference, you know, the upgrade fee for the larger meter based on the old fees before they were increased, and with no other penalty attached. I don't think that's that huge an expense. I'm wondering if you would perhaps be willing to undertake that, then I think it can be laid to rest.

MR. MULDOON: I was always willing to talk, you

know. Now I feel like I budgeted a home based on that. I'm finished with the home. I mean there's a certain part that I feel like that there is leeway here and there's discretion when something like this happens to say, "You know what, we didn't do the right thing here, let's make it right. We will pay for it. If you need it, we will install it and waive your fee." I think I'm entitled to that at this point, I really do. It's just not right.

MR. STARR: That's something that as long as I have been involved with the Board we have never done, is waive a fee

like this. It's not a precedent that I would want to be a part of. Our rules do call for the meter to be upgraded and for the fee to be paid for that. You are getting a great value if you are paying the older fee.

MR. MULDOON: But the older fee was available three years ago and now I was at the last minute being told about this two days before this fee was going up. My question is why did it keep happening? Why was I told they lost my file? Why was I told to disregard it? Why was all this happening? What's going on in the Department of Water Supply that my file wasn't taken care of? Why was it put at the bottom of the

pile? I mean these are issues that maybe this isn't the place to talk about it, but what happened here?

ACTING CHAIRMAN NOBRIGA: Thank you, Mr. Muldoon.

We cannot answer those questions. We can try and find a solution to the problem and make it correct.

Mr. Nakamura, you had a comment.

MR. NAKAMURA: I was just going ask Mr. Muldoon to clarify or perhaps respond to the Director's Report in which he says that the Applicant did not contact the department, as you were required to do under the building permit application. Did

you contact the department? I might have missed that.

MR. MULDOON: Maybe I misunderstood. I'm a person building a house who receives a letter to respond with my water fixtures. I think I did contact the department. I mean I contacted the department with whatever the fixture thing was. The department sends in my letter, "Send it to us. We will notify you if applicable." Now, what does that mean? "We will notify you," not me notify them. They're supposed to notify me if I need to do it. They did not.

MR. NAKAMURA: Okay, thank you.

ACTING CHAIRMAN NOBRIGA: Miss Parsons?

MS. PARSONS: I have a question and I'm just trying to clarify the chronological order of events here. You knew in 2000, in July of 2000 that you needed an upgrade in the meter?

MR. MULDOON: I knew in 19 -- no, I didn't know, okay. I was first notified of the upgrade in July of 2000, three months after I moved into my house and had final inspection and all that. I was already in my house three months.

MS. PARSONS: You were therefore notified that you needed an upgrade in the meter?

MR. MULDOON: Well, yes, in that letter.

MS. PARSONS: The responsibility for you at that point is to respond.

MR. MULDOON: I did.

MS. PARSONS: And you called back and the file was lost.

MR. MULDOON: Correct.

MS. PARSONS: I'm just trying to clarify this. Then you were supposed to have an appointment with Mr. Craddick.

MR. MULDOON: I asked for an appointment with Mr. Craddick, and Myles told me he would make the arrangements and

contact me.

MS. PARSONS: But you knew you needed an
appointment?

MR. MULDOON: Well, I wanted to know why I'm being
notified three months after I moved into my house.

MS. PARSONS: You knew you needed an upgrade in the
meter. And then you never called back after that when you
didn't get an appointment, you just let it go?

MR. MULDOON: Correct.

MS. PARSONS: So the onus, the burden is still upon
you, pursuant to the building permit, to make contact with the

water department because the water department has notified you,
is that correct?

MR. MULDOON: Which I did.

MS. PARSONS: Well, a year later you called back and
said you got this letter again, and then Myles tells you to
disregard it. I am trying to figure out what that's about.

Can you address that, Mr. Craddick?

MR. CRADDICK: No, I can't.

MS. PARSONS: Is Myles here?

MR. CRADDICK: No, he's not.

MS. PARSONS: When you had your meeting with

Mr. Muldoon, was that issue brought forth?

MR. CRADDICK: Yes, it was, but this is not an uncommon occurrence. The issue that Mr. Nakamura brought up, it's stamped right on his building permit to contact us. They usually do not contact us, we have to -- I use the term hunt them down, but whatever better term there is that Mike likes I'll go with that term. That's probably not a good term to use. But we were clearly wrong in our dealing with him. It was not good conduct and I myself apologize for that conduct.

But the actual issue is the meter has to be upsized

and does he need to pay the fee. He's getting it after his mortgage is already done. He probably could have included the meter on his mortgage if he wanted to. Perhaps the new rule, the payment terms are a little simpler. I actually asked him if he qualified for the payment terms. He doesn't, but that could be offered to him also, the new rule payment terms, to ease the immediate impact of having to pay the fee so long after the fact. I think that would be adequate compensation.

It was out of the ordinary, and I can certainly visualize you doing that. But just outright waiving the fee

and your willingness to do that in every similarly situated case, you know, we do have a real problem with the permits not coming to us prior to them being issued.

ACTING CHAIRMAN NOBRIGA: Comment, Mr. Hiranaga, question?

MR. HIRANAGA: Mr. Muldoon, were you an owner/builder or did you have a licensed general contractor?

MR. MULDOON: I had a general contractor.

MR. HIRANAGA: Was your home designed by a licensed architect?

MR. MULDOON: Yes.

MR. HIRANAGA: It's my understanding that licensed architects are able to determine fixture counts when doing the design of the home. I believe most licensed architects know whether they are exceeding the 31 fixture count. So the building permit I am not sure what the answer is. Is that put in the contractor's name or in the owner's name?

MR. CRADDICK: It can be in either one.

MR. HIRANAGA: I feel personally that maybe the system is not correct in allowing the building permit to be issued prior to the fixture count being determined, but I

believe that when a licensed architect and a licensed general contractor are involved they know or should know whether they're exceeding the maximum number of fixtures before an upsize is required. Also, I wanted to know by how many fixtures does he exceed the 31 fixtures?

MR. MULDOON: I don't have it with me. It doesn't matter.

MR. HIRANAGA: If the remedy is to bring the fixture count to 31 or less, you wouldn't be required to upsize. I don't think that relief should be given. I believe the meter should be upsized if he exceeds the 31 fixture count. But

because of the lapse in time, I personally believe if he wants to keep his fixture count and he exceeds the maximum that he be allowed to pay the fee.

ACTING CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I'd like to basically put those thoughts into a motion. I move that we deny the waiving of the fee. However, if the meter is to be upsized within the next 30 days we will accept the old fee.

MR. HASHIMOTO: Second.

ACTING CHAIRMAN NOBRIGA: Moved by Mr. Starr,
seconded by Mr. Hashimoto.

MS. PARSONS: I have one more thing, the payment plan, even if he doesn't qualify for the payment plan, that he be able to utilize the payment plan that we have in policy.

ACTING CHAIRMAN NOBRIGA: An amendment is made by Miss Parsons to include a payment plan. Is there a second to the amendment?

MR. VICTORINO: Second.

ACTING CHAIRMAN NOBRIGA: There's a second to the amendment. Any discussion on its amendment? Yes, Mr. Hiranaga.

MR. HIRANAGA: What is the difference in cost between the five-eighths meter and the next meter on the schedule, the old schedule?

MR. CRADDICK: I believe it's about \$1,500.

MR. HIRANAGA: Thank you.

ACTING CHAIRMAN NOBRIGA: Question on the amendment. Any further discussion on the amendment? Are you ready to vote on the amendment? All those in favor of the amendment please signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

Motion carries.

Now back to the main motion as amended.

Discussion. Since we are ready to vote, all those in favor of the motion which is to deny a waiver of a fee. However, if an upgrade fee is started in 30 days then the applicant is able to get the three quarter inch meter at the previous fee, and that a payment plan be extended to the applicant. All those in favor signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

The motion carries.

MR. CRADDICK: Clarification.

ACTING CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: The payment plan is what is in the
current rule or a custom-made one?

MS. PARSONS: Current rule.

MR. CRADDICK: Okay, thank you.

MR. MULDOON: Thank you.

ACTING CHAIRMAN NOBRIGA: Item E, Communication

02-28, request from David Dantes. David Dantes is the bed and
breakfast man, right?

DR. DANTE: I'm the what man?

ACTING CHAIRMAN NOBRIGA: The bed and breakfast
man.

DR. DANTE: Oh, yes. Can I use the mike?

ACTING CHAIRMAN NOBRIGA: Sure.

DR. DANTE: Thanks. Mr. Chairman, good morning.

Has everyone had a chance to review the July 28th letter which
I submitted about my request? If not, should we allow time for

anyone to a view it before I speak?

ACTING CHAIRMAN NOBRIGA: It's okay, go ahead. Go
for it.

DR. DANTE: I am asking for an exception to the
maximum fixture units permitted for our existing five-eighths
inch meter. And if granted, this would be, first of all, a
temporary exception, because I have been on the wait list to
upgrade my meter to a three quarter, and I am not quite halfway
down the list right now. I'm number 308 out of 572 people that
are waiting for new or increased service.

And in the meantime, I could certify that there

would be no significant change in my water consumption, because the fixtures which I am contemplating adding would make the kind of difference like if you do two loads of laundry in one washing machine and it takes three hours, you could do one load in each of two washing machines and it would take half the time but it wouldn't use more water. So I don't see any resource or financial impact, and it would make life a lot easier for us because we have a vacation rental and have to do a lot of laundry in a short time window. And we also have had to disable a number of fixtures in our home before we could get

permission to build our second farm dwelling. I'd like to

re-enable those fixtures.

ACTING CHAIRMAN NOBRIGA: Thank you. Also included

is a letter from the Director in your packets. Any questions

for Mr. Dantes?

MR. STARR: I have a motion.

ACTING CHAIRMAN NOBRIGA: No questions, Mr. Starr?

MR. STARR: I move to deny.

ACTING CHAIRMAN NOBRIGA: Is there a second?

MR. HIRANAGA: I'll second.

ACTING CHAIRMAN NOBRIGA: Moved by Mr. Starr and

seconded by Mr. Hiranaga to deny the request. Discussion?

MR. HIRANAGA: Can we have the Director's report?

ACTING CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: Thank you. We were recommending

approval of the request to allow the use of the undersized

meter until such time as his name comes up on the priority

list. Now, here is the key: Subject to compliance with fire

requirements without waiver. I believe he has, subsequent to

this letter, sent another letter saying he wants to try and do

some sprinkler system or something like that, so still trying

to get around the fire requirements. I would have no problem doing this subject to him being in compliance with fire requirements without a waiver, and subject to the applicant paying any costs for damage to the meter because of allowing it to be used in a situation where it's undersized.

And then this is a bad situation where for 25 years we have been unable to provide adequate water, and the applicant is saying -- at least I thought they were saying in here they would comply with requirements when our system can supply what is required. But like I say, subsequent to that I guess another letter came up that he's still trying to get

around the fire requirements by putting in sprinklers or something.

ACTING CHAIRMAN NOBRIGA: Mr. Dantes?

DR. DANTE: As far as getting around the fire requirements, I was told by Mr. Scott English, who is the Fire Prevention Bureau chief, that an alternative to the \$73,000 version proposed by the engineering department would be to retrofit my structures with sprinklers. The letter that Mr. Craddick is referring to was a request for him to specify in detail everything I would need to do to comply with their

requirements so that I did not undertake a costly investment and construction project only to find that they needed to be red sprinklers instead of blue sprinklers. I never got a reply, and I'm still waiting for it. I am not trying to get around fire requirements, I am trying to find a way that I can comply without going bankrupt.

ACTING CHAIRMAN NOBRIGA: Thank you. Mr. Nakamura and then Mr. Starr.

MR. NAKAMURA: Question to the Director. The Director mentioned or recommends that approval subject to compliance with fire requirements without a waiver. Do you

have any idea what those requirements are going to be, what the magnitude of those requirements are going to be, because it could be significant. It's an area where the water system is not adequate, generally.

MR. CRADDICK: I would take his word, if he's done some cost estimates, that it's in the \$70,000 range. But right off the top of my head, I don't know.

ACTING CHAIRMAN NOBRIGA: Mr. Starr, followed by Ms. Parsons.

MR. STARR: I have another question from the Director. Does the Director believe that you could run a

sprinkler system on a five-eighths meter along with all these,
along with 40 some-odd fixture units of other use?

MR. CRADDICK: I don't know. The sprinkler unit
thing is something that is allowed in the National Fire
Protection, but the issue of how you deal with that, do you
issue a separate meter? Because keep in mind fire usage is not
consumption. But does it use storage and does it use
transmission? So should they pay the storage and transmission?
Those issues are not resolved.

That's why I am not suggesting that be an option

right now, because I think the Board -- this is going to come to the Board more and more, that people want to do sprinkling and how do you handle that with system safety. Is the same back flow preventer and everything required? There's a number of issues with the sprinkler matter. We are trying to go through those areas right now.

ACTING CHAIRMAN NOBRIGA: Ms. Parsons, followed by

Mr. Dantes.

MS. PARSONS: Was the reason that you have not responded to Mr. Dantes because you needed to discuss these issues with the Board before moving forward?

MR. CRADDICK: Well, I knew this matter was before the Board, so I probably would not respond to something like that as long as the matter was before the Board.

MS. PARSONS: May I ask that the next time someone makes a request that you at least send them a letter and note that it's before the Board and would you like to discuss it, not to leave them hanging out there.

ACTING CHAIRMAN NOBRIGA: Mr. Dantes, followed by Mr. Victorino, followed by Mr. Starr.

DR. DANTE: Thank you. With respect to meeting

fire flow requirements, that has nothing to do with my residence. The fire flow requirements are a recommendation which the Department of Water Supply has made to the Planning Commission with respect to whether or not and on what terms it should approve my special and conditional use permits, which applications are going to be reviewed at a public meeting next week. The Planning Commission may choose to accept, modify or deny the comments or recommendations of any agency in its report, which again, is only a recommendation to the County Council as to what they should do to grant the permits or condition them on my compliance with various things.

Whatever, it's going to end up one way or another.

Either they won't grant my permits and I will have to sell my

home and move, or they will grant my permits and I will or

won't be able to afford to meet the fire flow requirements, and

I will either stay in business or sell my home and move. Now

is not the moment to demand that I comply with fire flow. I

haven't even been given a permit. And if I were and I had to

invest thousands of dollars to satisfy the department, the

permit is good for one year and it is not necessarily renewed

beyond that point. I'm just saying can you have a heart in a

situation where some benefit could happen for someone without any liability or cost? Thanks.

ACTING CHAIRMAN NOBRIGA: Okay, Mr. Dantes. Mr.

Victorino, followed by Mr. Starr.

MR. VICTORINO: You know I sympathize with you, I really do, and I will say that sometimes rules and regulations don't always match the situation. However, you know, when we are talking fire codes and things of that nature where the utmost safety and protection of both the residence and those who use the residence can be compromised, then I am not so much in favor of that.

If you are just asking me, hey, because I haven't been able to do this, would I waive, give you an opportunity until the water system is upgraded and you can connect on, you do all that at that point and there wasn't a fire issue in that juncture, I have no problems with it. But there still is that fire issue, it still bothers me. Granted, you have said right now that you don't know if you are going to get an upgrade because you have still got a whole bunch of leaps to go at this point. You have still got to go to the Planning Commission and all these other places to get your approvals anyhow.

ACTING CHAIRMAN NOBRIGA: Mr. Dantes' response.

DR. DANTE: It would make an immediate difference in terms of the quality of our life and our ability to provide service for our guests. The Planning Department has told me in writing that I am exempt from any further zoning enforcement about operating my business until a final determination is made on my permit applications. When a final determination is made, I am either going to or not going to have to do whatever for whatever requirements. And I'm saying at that point it will be my choice either to comply or, if I can't afford to, give it up.

All I'm asking for right now is to be able to divide the same amount of water among two sinks instead of one, not more water. And right now nobody is telling me I have to install any kind of fire protection because I haven't been offered a permit.

ACTING CHAIRMAN NOBRIGA: Mr. Starr, followed by Ms. Parsons.

MR. STARR: I have some comments but I don't want to participate in a debate. Is the testimony over so the Board can --

ACTING CHAIRMAN NOBRIGA: Continue, Mr. Starr.

MR. STARR: Okay. I want to bring to my fellow Board Members' attention that when we do, if we give a waiver like this then we are to be consistent any time anyone else will come in and ask for a waiver of proper meter size, then we will have to grant that as well. For example, we just had Mr. Muldoon, who I sympathize with. But we basically said that he has to have proper meter sizing, and we aren't going to give him a waiver either. But if we do give that to Dr. Dantes, I think that we will be in a situation where anyone who wants to or has a five-eighths meter and wants to do anything larger can

just come to us for a waiver and we will be forced to grant

it. So I would like to suggest that we deny this, because it's

not a compelling issue of life or death, it is more a matter of

comfort and commercial use.

ACTING CHAIRMAN NOBRIGA: Thank you, Mr. Starr. The

motion is under discussion. Ms. Parsons?

MS. PARSONS: We cannot upgrade his meter, is that

correct, in that area, because of the service issue that we

have?

MR. CRADDICK: Well, the priority list.

MS. PARSONS: But the priority list may be taken

care of by Pauwela Well. Would that affect him at that point?

MR. CRADDICK: Sitting here, right off the top of my head, I couldn't tell you that.

MS. PARSONS: What's the next closest house to you, Mr. Dantes?

DR. DANTE: Well, we have two farm dwellings on our property, and they're only about 100 feet apart. So the next closest house would be our second farm dwelling.

MS. PARSONS: I mean neighbor to your property.

DR. DANTE: It's probably 300 feet.

MS. PARSONS: So it's a close neighborhood.

ACTING CHAIRMAN NOBRIGA: Mr. Victorino?

MR. VICTORINO: Go ahead.

DR. DANTE: One comment. Don't take this

personally, but I have heard Board Member Starr raise the objection to other requests from an exception that if we do it for one, we do it for all. I think he is misunderstanding the word "exception." There is a rule, and it's a good thing to have rules, but once in a while you can make an exception, and you are not obligated to do the same thing for everyone that asks. That is your judgment and your discretion and your

authority. And to say to follow that reasoning to the absurd conclusion, the governor should never grant clemency because everyone will just go out and commit murder and expect that he should grant them clemency. Could you keep focused that this is an isolated exception and not an established precedent?

ACTING CHAIRMAN NOBRIGA: Mr. Victorino?

MR. VICTORINO: Mr. Dantes, thank you. I was kind of going in that direction, because the prior situation has adequate water resources, that the upgrade can be done right there and then, okay. So we are not talking apples and apples, we are talking apples and oranges. Let's stay with the

oranges. That's you, you're an orange right now, just so that I can get you clarified. I understand where you're coming from. And again, I don't like to set precedence in any way either. However, there are circumstances sometimes that I agree with.

And in your case the only thing I will say is that it is not for your family welfare or something, it is for a commercial venture, and I take a back step to commercial ventures versus family. No offense to you, sir. That's my answer to you as far as your requesting something that has a

commercial value, not something for your family's needs.

DR. DANTE: It's both.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: Question to the Director. What type

of damages could occur to the water meter when you exceed the

31 fixture count?

MR. CRADDICK: I'm sorry, I didn't get that.

MR. HIRANAGA: What kind of damages could happen to

the water meter if you exceed the 31 fixture count?

MR. CRADDICK: The flow that goes through the meter

is set basically by the manufacturer, and all the manufacturers

basically follow the American Waterworks Association Standards on what flow they can handle. We take that flow, and how do you determine what flow is going through the meter at any instant? It is not arbitrarily decided. What we do is we go to the Uniform Plumbing Code, and the Uniform Plumbing Code has a correlation between gallons per minute and fixture units, and so we use -- that particular graph that they have is basically what we use, because it's been determined by an independent body. We do allow some reduction of the fixture units if they're using low flow devices. So in new construction we do

reduce it down somewhat for the low flow devices.

MR. HIRANAGA: My question was, what damage could occur to the meter?

MR. CRADDICK: Well, the displacement meter, if it's spinning over its rate of capacity you will wear it out. The more it rates out, the more water bypasses the meter without being registered. That's flow, not pressure.

MR. HIRANAGA: Assuming the higher usage count means higher usage, which would wear out the meter.

MR. CRADDICK: That's correct.

MR. HIRANAGA: Also, I have to agree that this is

not creating a hardship on the use of the property, this is a convenience request for a commercial operation that has not been approved yet. Also, I have concerns when we start considering granting exceptions or waivers based on the potential for additional water supply or a potential or possibility of a new system being developed. I think we have to wait until the bird is in the hand before we start dividing it up.

Temporary, if it doesn't meet, if Pookela Well comes on line but it doesn't get to his number, what is temporary? Do we drill another well? I think it's a dangerous proposal.

DR. DANTE: Mr. Chairman, may I have one last

word?

MR. STARR: Call the question, Mr. Chair.

ACTING CHAIRMAN NOBRIGA: Call the question. All

those in favor signify by saying "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Vote on the main motion, motion to deny the request

to have additional fixtures serviced by the five-eighths inch

meter, am I correct? All those in favor signify by saying

"aye."

(A chorus of ayes).

Opposed say "nay."

MR. VICTORINO: Nay.

ACTING CHAIRMAN NOBRIGA: One nay by Mr. Victorino.

MR. VICTORINO: Got it.

ACTING CHAIRMAN NOBRIGA: Mr. Dantes?

DR. DANTE: One more statement, sir. If the meter

were to be damaged, I would replace it. I could submit

invoices showing that there would be no increase in water

usage, so it couldn't damage anything.

MS. PARSONS: May I make one comment?

ACTING CHAIRMAN NOBRIGA: Okay, Mr. Dantes, try

again.

MS. PARSONS: Mr. Chair, I was going to suggest that

in November we're supposed to have Pookela Well on line.

MR. CRADDICK: No, it will just be drilled, it won't

be on line.

MS. PARSONS: Okay.

ACTING CHAIRMAN NOBRIGA: Call for a five minute

recess.

(Whereupon a brief recess was taken).

ACTING CHAIRMAN NOBRIGA: The meeting is called back to order. The Board Members are getting a little cranky. They want to have lunch.

MR. VICTORINO: Just hungry, Mr. Chair.

ACTING CHAIRMAN NOBRIGA: I have been informed by Corporation Counsel that we have a quick resolve to Communication 02-29. The resolve to Communication 02-29 would not allow for lengthy public testimony. I know everyone has been waiting patiently to offer up that testimony. I have to

ask the body, the request of the Kingdom of Hawaii, if you would allow us to go through Corporation Counsel for a determination so we can resolve the issue, or if you would like to go ahead and provide public testimony.

AKAHI WAHINE: Akahi Wahine, representative of the Kingdom of Hawaii.

ACTING CHAIRMAN NOBRIGA: Thank you.

AKAHI WAHINE: I believe the public would want to speak in regards to the item that we have before the Board this morning. And of course I'd like to hear also the Corporation Counsel's review in regards to this issue. So we would be

willing to sit back and listen to what Mr. Kushi has, and then we would like to be -- we would like it to be left open, the floor, where the public could speak as well.

ACTING CHAIRMAN NOBRIGA: Thank you very much. We are going to be taking a 45 minute lunch recess then at this time, and we will be called back to order at 12:45. Any objections? Hearing none, so moved.

(Whereupon the lunch recess was taken).

ACTING CHAIRMAN NOBRIGA: Call the meeting to order after the recess. Thank you very much for being so patient.

In attendance right now we have Commissioner Kent Hiranaga, Commissioner Clark Hashimoto, Commissioner Mike Victorino, Commissioner Ginny, Virginia Parsons, Commissioner Jonathan Starr, Director David Craddick, Commission Secretary Cathy, the stenographer, members of the public. Missing right now is Corporation Counsel. We should have him come in in a little while.

Open up the meeting for public testimony concerning communication 02-29, request from the Kingdom of Hawaii Nation Ministry Trust for a discussion before the Board regarding the water meter serving tax map key 2104:96. As you all come up

and provide us some valuable information, please state your name, ready to spell your name for the stenographer so we can record properly. So, first up.

AKAHI WAHINE: Akahi Wahine, representative for the Kingdom of Hawaii. Akahi is spelled A-K-A-H-I, W-A-H-I-N-E.

ACTING CHAIRMAN NOBRIGA: Thank you so much. Right on.

AKAHI WAHINE: I'd like to I guess first start with copies of the documents that were handed to all of the commissioners, and I would like to thank all of the Commissioners as well as the Chairperson. Number one, it

states the application of water service for parcel 96 made by Emil Tedeschi issued on 9/8/81 and processed on 1/24/1983, job order 7182. And you can refer to exhibit D as evidence.

MR. CRADDICK: Mike, I have the original of that here also, if anybody can't read anything.

ACTING CHAIRMAN NOBRIGA: Thank you. We have it, thank you.

AKAHI WAHINE: Okay, all the Commissioners and the Chairperson has opened up to exhibit D. My reason for this exhibit is to let all Commissioners be aware of the meter that

had been issued to and approved to Mr. George Purdy, but listed under ^ Emil Tedeschi for parcel 96, with a meter number as well located on I believe the service number located on your right. And I believe this is sufficient evidence that the Department of Water has no excuse at all whatsoever to have no knowledge of the parcel number and the occupancy of Mr. Tedeschi at that time, which the parcel 96 is a parcel Mr. Tedeschi was presently on.

Coming to number two, Department of Water Supply transferred service 978-61535 requested by Roger Crouse, 3130 Akala Drive, Kihei, Maui, Hawaii, 96753 on the 10th month on

the 15th day in 1997. The transfer date was done on October 28, 1997, exhibit G.

MR. VICTORINO: Would you tell me the exhibit first before you start ripping through everything? Okay, thank you, appreciate it.

AKAHI WAHINE: Okay. From the 15th to the 28th it was in such a short time of the transfer. It also indicates on exhibit G that no requirement was required by the Department of Water Department for the transfer pertaining to form 45, which is found on exhibit D. Now, that is sufficient evidence enough

to show that Mr. Crouse is not the tenant to parcel 96. He is obligated to be the tenant of parcel 95. So for those years that has passed, this is unexcusable for the department to continue to perpetuate this illegal transfer.

Number three, Roger Crouse has no interest in parcel 96. The exhibits we are going to is exhibit A, the map, and exhibit C, the letter that was addressed to Mr. Crouse. In the map 95 is in evidence to show Jack Crouse, which is the father of Roger Crouse, is the owner to parcel 95. Parcel 116, which is Melani Palmer, which is also submetering off of parcel 96, these two parcels, 95 and 96, are submetered right now off of

the meter that is assigned to parcel 96.

MR. HIRANAGA: Would you repeat that?

AKAHI WAHINE: 95, Jack Crouse, which has the

transfer. If you go back into your exhibit, the transfer on exhibit G is transferred to Roger Crouse, the meter that has been assigned to parcel 96.

MR. HIRANAGA: You are saying 95 and 116 are the same?

AKAHI WAHINE: Correct, yes, sir. 95 and 116, parcel 95 and parcel 116.

MR. HIRANAGA: They are receiving service from the meter located on parcel 96?

AKAHI WAHINE: Correct, from the main meter that's assigned to parcel 96.

ACTING CHAIRMAN NOBRIGA: I'd like to note the attendance of Corporation Counsel Kushi. Go ahead.

AKAHI WAHINE: The letter from the Department of Water Supply, which is exhibit C, does indicate that a notice was sent to Mr. Crouse pertaining to the interest of parcel 96, and the service should not be in parcel 95. So these are letters that was submitted or mailed on January 8th. So the

awareness of the water department was aware, without an excuse, that the water department itself was violating their own rules. If it's fair for the department to do that, the public should be able to do it. Enough of the hidden agendas committed by the County water department.

We are going now to number four. Wait, on number three we have two more exhibits, exhibit D again and exhibit E. That takes us back to the application, which is a valid evidence, and also exhibit E, which is a letter to Miss Palmer that also subs off of the meter that's to parcel 96. So there

were major awareness with evidence to prove the fact that the department perpetuates the violation. Now we may move on to number four, if there's no questions to that.

ACTING CHAIRMAN NOBRIGA: Go ahead, please.

AKAHI WAHINE: Roger Crouse does his transfer meter from parcel 96 into his name, and that is exhibit G. Okay, the water department, number five, the water department has no alleged reason for their department's mistake. Exhibit B, the agreement, exhibit D, the application, exhibit F, the amendment of an agreement that was done and recorded in the Bureau of Conveyances with the department. The awareness of parcel 95

and parcel 116. The transfer, again, we come back to on exhibit G and then we come back to the letter to Miss Palmer in exhibit H pertaining to number five. And if there is any question or there isn't, from the commission.

ACTING CHAIRMAN NOBRIGA: Ms. Parsons, do you have a question?

MS. PARSONS: Yes, transfer of service. A question to Mr. Craddick. When we make transfers do we not require the name of the owner of the parcel to which the water meter, the TMK owner, sign off on a transfer?

MR. CRADDICK: That should have happened.

MS. PARSONS: It should have.

MR. CRADDICK: It should have happened, yes. I

think in this particular case what had been happening was I

think Crouse had been paying the bill for a long time prior to

the meter being transferred, and they just I think made the

assumption that he was the owner of the property and didn't ask

any questions.

MS. PARSONS: Well, my husband makes deposits for me

at the bank all the time but they won't give him the balance.

The other question I have, we talked about this with the

Upcountry meter list and we have a TMK and a water meter being issued to the TMK and not necessarily to the applicant. And if within the period of time the applicant had moved or sold the property but still was on the list, would that still -- would he still remain on the list. And I think we came to the conclusion that the water meter went with the TMK, if I am not mistaken. Is that correct?

MR. CRADDICK: Off the top of my head, I am not positive in the Upcountry meter rule, if it said anything regarding that.

MS. PARSONS: I think we were discussing when the

applicant, when we were cleaning up the list did the water meter, was it going to the TMK or to the applicant?

MR. CRADDICK: We have always presumed it went with the premises that the request was made for, never the applicant.

MS. PARSONS: I'm sorry, I missed that.

MR. CRADDICK: We have always presumed that the request went with the property, not with the particular person.

MS. PARSONS: The TMK.

MR. CRADDICK: We didn't envision somebody getting a request for here, selling that, moving off over here, and saying, "Oh, no, I expected it." I mean people called us up and asked and we said no, it runs with this tax map key that you asked for it on.

MS. PARSONS: Thank you.

ACTING CHAIRMAN NOBRIGA: All right.

AKAHI WAHINE: We may be able to move on to number six. Number six is the sale of water, and you will find the evidence of it in exhibit L. And I believe in section 325 that should be the response. The responsible violation should fall

upon the Department of Water, and I don't believe it should be upon Mr. Crouse in regards to the resale of the water due to the fact of the violations that the department has continually perpetuated in this issue.

You will see also Miss Palmer's part in the water bill, of the resale of the water, as well as in here it states the Lanis, which is the caretakers of parcel 96, and Mr. Crouse is also listed as a breakdown in division dividing the bill.

And Mr. Abe of the engineering department as well as Mr. Chang,

Herbert Chang, also was given the fact of the notice when we

went up to the office to show them the sale of the water, and nothing was taken in regards to the violations. It was evident right before them. They went right ahead and made the copy and said, "Oh, well, actually you folks don't have to pay the bill because it's billed to Mr. Crouse." I mean that's a violation within their rules and regulations. That should have been taken care of immediately. It didn't have to come to this point to come to your board, you know. I think this is things that the water department should be responsible for. If they are public servants, do it the proper way as the water department should. Follow the rules and regulations.

If they expect this from the people I think, for one, they are the perfect example to the community is practice it themselves. And this is things that really I mean I'm pretty disturbed and pretty upset with the water department repeating it, perpetuating their violations. It's time that it has to be corrected. Enough of the wrong stuff, it's got to be righted.

Okay, as we move on to number seven, the water department has total knowledge of this, as the evidence showed in exhibit L, it states it as well. The number of the account

it does take you back to the time of the application by

Mr. Purdy, which then Mr. Emil Tedeschi took over that

application. But it shows it way back, it takes us back to

that point of date and year.

I mean even exhibit M, the letters, and exhibit A1,

B1 and C1, which takes you back to the front of the exhibits

that shows you the pictures of the illegal connections of the

submeter. And this also was submitted to the water

department. They notified Miss Palmer as well as Mr. Crouse in

regards to the pictures that the Kingdom had taken and had

turned over to the water department. And you would find that,

I believe, in exhibit M. It's the second page from exhibit M dated January 24, 2002 addressed to Mr. Crouse, signed by Mr. David Craddick, the Director of the water department.

If there's no questions, may we move on?

ACTING CHAIRMAN NOBRIGA: Yes, please.

AKAHI WAHINE: Number 8, we submitted a transfer of the water service on December 18, 2001. Until this day we have heard no status of the transfer or anything. We submitted everything that the water department asked us to submit to them. We did it in accordance to their requests. And then we

can go on to number nine. That would be what they asked for we submitted, exhibit N, which is the deed.

We move on to number 10, the illegal transfer to Mr. Crouse. You will find this in form 45, which is in exhibit D, also exhibit B, the agreement. The exhibit F, exhibit G, and exhibit H again, as we are coming back to those exhibits.

Okay, then it's a note I just stated on my document here, Mr. Abe prepared Mr. Craddick's letter on December 17th and it totally contradicts and discredits the Director, and that is found in exhibit I. I had a meeting with them in regards to the letter. Mr. Abe stated to me that he was the

one that prepared the letter for Mr. Craddick. I was very displeased with it, as I walked with him through that letter to show him how he's discrediting his own Director, which is a massive embarrassment for such a department as the water department to serve the public. And with all the credentials that they carry in the department, that was a massive embarrassment.

Mr. Abe states that after December 17th that we will be held accountable to the meter. If the transfer is complete we will be accountable to the meter in regards to reselling the

water if there was any connections with the Crouses and the Palmers. So that was brought upon our attention, and this is our purpose and our reason why we are here. We will not jeopardise the trust or the caretaker that is presently on the property on parcel 95, and it ends at that point.

ACTING CHAIRMAN NOBRIGA: Thank you very much. Mr.

Victorino?

MR. VICTORINO: I defer to Mr. Hiranaga first.

MR. HIRANAGA: You were just referring to exhibit I

and you had a problem with that letter?

AKAHI WAHINE: Yes, because it stated we were told

to meet right after that letter was sent out. We were told to meet with the department. We met with Mr. Abe and we told him we did, in accordance to what was stated, for us to disconnect the submeters, and that we would be held liable for any connections to the submeters, we would be held liable for it. This is why it has come this far where we had to bring it to the Board, because it would still keep on perpetuating. The submeters keep going on. We submitted it in the picture and that wasn't even sufficient enough to make them make a move either to remove the meter or to send another letter to Crouse and Palmer to let them know that this is an illegal connection,

stop it, you know.

MR. HIRANAGA: You are requesting the department physically remove the submeters?

AKAHI WAHINE: They told us they were going to remove the main meter because of the submeters that was connected to the main meter.

MR. HIRANAGA: But you want the department to remove the submeters versus you removing the submeters.

AKAHI WAHINE: No, they told us we had to disconnect the submeters because it was a violation. It's found in Section

325.

MR. HIRANAGA: You're saying your board doesn't want you to disconnect the submeters?

AKAHI WAHINE: We did do it in accordance to Mr. Abe's request to us. After this letter was sent out he told us that we had to disconnect those submeters because it was illegal for them to be, and we would be held accountable to it.

MR. HIRANAGA: You disconnected them?

AKAHI WAHINE: Yes, we did.

MR. HIRANAGA: Then what happened?

AKAHI WAHINE: It was reconnected back again. They went to reconnect it. We took pictures next time and that's when they wrote another letter to the Crouses stating that the Kingdom of Hawaii has submitted pictures of evidence that the submeters has been connected.

MR. HIRANAGA: Now I understand, thank you.

ACTING CHAIRMAN NOBRIGA: Mr. Victorino?

MR. VICTORINO: Who reconnected the meters?

AKAHI WAHINE: Miss Palmer, well, Miss Palmer's fiancée did, and Mr. Crouse.

MR. VICTORINO: So they went ahead, not the department or anybody else, right?

AKAHI WAHINE: No.

MR. VICTORINO: And, Mr. Chair, may I make a point of clarification? Before we continue and ask a lot of questions, I think something else is very relevant at this point, and that would be Corporate Counsel has something to add to this and I think we should hear that first before we start getting into a long dissertation, because some of that may be applicable to questions that we are wanting to ask.

ACTING CHAIRMAN NOBRIGA: Mr. Kushi?

MR. KUSHI: Yes, Mr. Vice-Chair, Board Members. I

was asked by the department to review the status of title to parcel number 96, if I'm correct, and to that extent I reviewed a title search or a title report dated -- I believe it was issued on February 12th of this year, '02. And just on the issue of what the status of ownership of this parcel 96 is. And just for my review of the title report, as well as there was also another title report back in 1992 prior to Mr. Tedeschi getting a deed to this.

However, my preliminary conclusions, just by

reviewing this, is that the status of title seems like -- not

seems like, the title report states that the state of this property is in fee simple, it's the heirs and/or devisees of Daniel William Kauwa aka Daniel William Kau-a. In reviewing the title reports, there are certain documents of record. The initial one is a land patent grant back in 1918, number 7111 -- 7110 issued to Daniel William Kauwa. Chronologically in 1936 the title searchers came up with a review of the field book which stated the assessed owner was Lily Hapakuka.

The next conveyance of record didn't happen until

1979, which was a deed from James Hapakuka to George Purdy

III. The next one was a deed in 1981 from Violet Purdy,

Alexander Santiago and Alfred Santiago to George Purdy III.

Moving on, in 1982 there was a deed from George Purdy III to

Mr. Tedeschi and his wife. However, the deed states only a

one-third undivided interest. Next there was a deed into trust

back in 1985 from George Purdy III to George Purdy III as a

trustee. And lastly, there was a deed in November 6, 2000 from

Florence Keala Lani to the Kingdom of Hawaii Trust as a trust.

So based on these documents, again, title seems to

be vested in various people. There's been no determination of

the heirs or devisees of William Kauwa. They usually do this

in a probate court. He passed away in 1921. However, there are records showing the genealogy. And it seems to me that Florence Keala Lani is one of the living -- was one of the living heirs of Mr. Kauwa. However, to be sure, in all cases of fee simple title, determination of heirs action should be filed in the appropriate court, and only a judgment by a Circuit Court judge can really say who actually owns title or who owned it prior to conveying interest.

But again, for purposes of the department, my

understanding is that we don't require title searches for every

applicant. In fact, the rules say that basically the privilege is granted to property owners. Even tenants can apply for a meter provided the property owner signs off or guarantees payment. However, for purposes of this discussion, my conclusions, my preliminary conclusions -- I am not a judge, I am not a court -- is that the property is currently owned overall by the heirs of William Kauwa. However, there are documents vesting title in Tedeschi one-third, and the latest one is the Kingdom Trust. That's for parcel 96.

ACTING CHAIRMAN NOBRIGA: Thank you. Ms. Parsons?

MS. PARSONS: Is it safe to say that Mr. Crouse is

not a property owner in TMK 96?

MR. KUSHI: The title search does not show any
interest by Crouse or Palmer for parcel number 96.

MR. STARR: Mr. Chair?

ACTING CHAIRMAN NOBRIGA: Mr. Starr.

MR. STARR: I see the attorney for -- I'm not sure
if Crouse and Palmer are here, and I don't know if he's going
to want to give his comments as well. But perhaps we should
hear them.

ACTING CHAIRMAN NOBRIGA: He will have an
opportunity right now. I still want to work with the Kingdom.

Mr. Hiranaga?

MR. HIRANAGA: Mr. Kushi, who prepared the title
report?

MR. KUSHI: This was prepared by First American
Title Insurance Company.

MR. HIRANAGA: And again, I'm sorry, who have they
determined to be the current fee owners?

MR. KUSHI: Well, their commitment basically states
the heirs and/or devisees of Daniel William Kauwa, aka Daniel
William Kau-a. What I have recited to you is based on their

title search, the documents of record. Again, the documents of record shows an absence of the probate of Daniel William Kauwa, so therefore you follow down the line what are the deeds that follow his death.

MR. HIRANAGA: There is a break in the chain of title?

MR. KUSHI: I wouldn't say break in the chain of title, that's something else. I would say that a determination of who his rightful heirs at that time should be determined, but that's a private matter for his heirs and devisees.

However, there are deeds of record recorded from alleged heirs

of Mr. Kauwa through the title search's examination of birth and death certificates.

MR. HIRANAGA: Why do you say there's not a break in the title? Because unless you have a determination of heirs, you really don't know legally and officially who the heirs are.

MR. KUSHI: Well, that may be true, you know, that may be true. But again --

MR. HIRANAGA: There could be a break in title.

MR. KUSHI: And there could be, like one of his sons or daughters had five children. Four of them had no issue, one

of them has, and it goes on and on and on. But apparently the chain does seem to follow, and I think the Kingdom has produced a chart of some sort.

MR. HIRANAGA: So the title company is prepared to provide title insurance for the current described owners?

MR. KUSHI: Well, so the title company is prepared to give a policy to the heirs and devisees of Mr. Kauwa, whoever they may be.

ACTING CHAIRMAN NOBRIGA: Mr. Victorino followed by Ms. Parsons.

MR. VICTORINO: With the overwhelming evidence in

front of us as to some mistakes, wrongdoings, whatever you want to use, I hesitate to get into more words than that, it is clear that you did what you were told to do and disconnected it, and then in turn someone went and reconnected that pipe or that line.

AKAHI WAHINE: Yes.

MR. VICTORINO: And really, you still have the right, and you actually have the duty to disconnect that line again. You need to do that again. And I think we have, and from what I can see, we don't have a lot of jurisdiction in this whole matter because this sounds like it's going to come

down to a legal matter on property rights, and that doesn't fall under our realm, okay.

AKAHI WAHINE: I understand that, sir.

MR. VICTORINO: So I want you to be clear that we can request for your water meter servicing. I don't think we can make sure that's taken care of. But if somebody reconnects or does whatever, then that's something you must do and take legal action on your part. It's not something we can get involved in from that point.

AKAHI WAHINE: I understand that, sir. Our request

was to have the meter transferred.

MR. VICTORINO: And has that been done?

AKAHI WAHINE: It hasn't.

ACTING CHAIRMAN NOBRIGA: Ms. Parsons?

MS. PARSONS: I'd just make a note, and Mr. Craddick

can speak to this, but it had been brought up in previous

meetings and the Board had asked Mr. Craddick not to remove any

meters until -- not to deal with this issue until the Board had

come to some conclusion. So in all fairness to the Director,

the Board has instructed him, so that's why we're here, okay.

AKAHI WAHINE: Yes, I understand that, ma'am.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: So your request is for the records of the department to transfer ownership of the meter to parcel 96, versus what the records show at this time, is that your request?

AKAHI WAHINE: Yes, it is, sir. Presently it's in the name of Mr. Crouse, Roger Crouse, and it's been a massive violation committed by the department with all the past evidence that they know Mr. Crouse has no interest in parcel 96. So it's unexcusable that the error should repeat itself.

MR. HIRANAGA: So Director Craddick, as part of the title search, do you have any doubt as to who the legal owner is of parcel 96?

MR. CRADDICK: To tell you the truth, I am not an attorney, and if Corp Counsel is satisfied they're legally in possession of it, I would have no reason to contest that.

MR. HIRANAGA: So you are waiting for a position from Corp Counsel before you transfer the meter?

MR. CRADDICK: Not after what Ed just said. It's pretty clear that they're in possession of some title. I mean I suppose if Emil came in here and started arguing with him, "I

want it in my name instead of him" there might be an issue, but he's not coming in here and saying that. As long as it's somebody who has some interest in the property, I'm satisfied.

MR. HIRANAGA: Are you going to initiate the transfer?

MR. CRADDICK: Not hearing anything else from the Board, yes.

MR. HIRANAGA: Thank you.

ACTING CHAIRMAN NOBRIGA: Any other questions for the Kingdom of Hawaii?

MR. STARR: Perhaps after hearing some of the
testimony.

ACTING CHAIRMAN NOBRIGA: Is there any other people
wishing to give public testimony at this time? Mr. Pierce.

MR. PIERCE: Mr. Chair, members of the water board,
my name is Tom Pierce, I'm here on behalf of Roger Crouse and
Melani Palmer and her husband, Jack Hamilton. The first thing
I'd just like to talk about is where this matter is
procedurally before the Board. I think that's very important
to what happens here today. And looking at the issue, the
communication that's before the Board today, this was a request

for a meeting. This is all that has been requested by the Kingdom. And you can look at page 131 of your documents that were prepared for this meeting today and that includes the communication, the letter which is undated, but it's to Mr. Craddick. And in fact, that meeting was to take place tomorrow with Mr. Craddick and with myself and my clients present.

By the way, both of my clients are working today and were unable to make it. But that meeting was to take place tomorrow and we were prepared to be part of that meeting, and I will get back to what that would have been about.

So the reason that that meeting did not take place is because the Kingdom demanded that the media be present, and the department was either reluctant or did not want to let the media be present. The Director offered to the Kingdom as an alternative that they appear here today. Nonetheless, the issue and the communication that was there was a demand for a meeting with the Director. I think that would have been a smart move to have that meeting to try to resolve this issue, because it's much different than the Kingdom has presented it.

But I want to step back while I'm still dealing with the procedures and talk just procedurally about where we are,

going back to February. And it's actually surprising the attack that the Kingdom has made on the Director because the Director's decisions up until now have been fairly favorable to the Kingdom's position. So I am not sure if the Kingdom fully understands what the Director's decision has been.

Nonetheless, the Director, after initially being approached by the Kingdom, issued a decision and our position is that decision was made before providing us an opportunity for a hearing on this matter, which is an issue, a due process issue. But nonetheless, what happened was the Director did

issue a decision that would have caused there to be a transfer of the paperwork back to parcel 96, whoever that would have been, which is another issue. And then at that point in time arguably my clients would no longer have been entitled to water from that.

Now, we filed an appeal, and that appeal was filed in February of this year. And at the initial hearing on that appeal we requested several things, and I don't want to get into it today because I am not sure we have to today. But there is before the Board, and one of the things I want to make this point to you is I know there are some new members of the

Board who were not privy possibly to that document. It is not part of the packet today and there was no reason for it to be since the communication here was just about whether a meeting should take place. Nevertheless, we did appeal the Director's decision and that issue is still pending.

What happened during that period of time was that we asked for some temporary relief. I think Board Member Parsons pointed out -- and I can actually point to the minutes, I do have the minutes here if the Board needs to take a look at those -- that there was a decision made at that point in time

that the status quo should be preserved. That included that all of the people who have been serviced off of that water meter for the last 15 or 20 years, which was my clients, would continue to be serviced until this matter was fully understood by the water department staff, and then the staff had had an opportunity to provide a report.

Now, what happened after that was that I stayed in contact with Fran Nago and there was some changes made. It initially was given to a committee, one of the committees I think Mr. Starr was the chair of one of those committees, and it stalled out as that there were some changes made in how the

committee process was going to go. In the meantime, the most important thing I want to point out is prior to this there was never any problems with the water sharing arrangement between my clients and Emil Tedeschi. And when the Kingdom started using the property my clients extended the same types of permission to use that water that had been extended to Emil Tedeschi. And that has continued on and it continues to this day. There has been no harm. The water system has been basically used in the same manner since the early 1980's, 1983.

And I guess from a procedural perspective where we are today is that our appeal has not been heard. That would be the initial thing to be heard. At that point in time that would be the opportune and appropriate time to get into the documents that the Kingdom is presenting here today. Any decision that was made today based upon the documents that have been presented I submit would be, number one, unfair to my clients because that issue is not properly before the Board. And what really needs to happen is there needs to be a method set up for the address, our appeal to be addressed, because that is our appeal that's before the Board.

In fact, there is nothing before the Board and there's no reason for the Kingdom to have anything before the Board at this stage because the Director's decisions have been favorable to the Kingdom to date. The only thing that the Director has done that has not been favorable was actually, as Ms. Parsons pointed out, was due to the Board's direction to the Director not to revoke the meter until such time -- and not to make any kind of changes until such time as this matter was properly heard by the Board. So the day for this hearing has not yet occurred, and it's clearly not today, and that's what I would like to just begin with.

I guess for the sake of the fact that the issue has been aired and there has been some talk about what has been going on, I just want you to understand what this is from my clients' perspective, and I am not going to get into it in detail. It is in quite specific detail in my appeal. You will have an opportunity to read that at a later date.

But what I do want to just point out is that Roger Crouse, his father, Jack Crouse in the early 1980's worked with Emil Tedeschi, who owns a part of parcel 116, which is the parcel that's at issue here, the one that the Kingdom is also

asserting ownership over. Emil Tedeschi and Jack Crouse entered into an agreement to create a private water line that would go from -- it basically stems one mile, and they spent a lot of money building that private water line. That water line is owned by my client, Roger Crouse, and by Emil Tedeschi. The Kingdom has absolutely no ownership interest.

And I want to make very clear to the Board that we have continued, despite the fact that the Kingdom has been quite -- has basically started an adversarial process that's going to impact my clients, or potentially has the possibility of impacting, without attempting to sit down with my clients,

although my clients have made it clear on many occasions that they're open to sitting down.

What the impact of this is is that my clients have continued to permit them to use this private water system.

That is something that we can also -- my clients have the

ability to deny. And if that happens, regardless of whether

the Kingdom ends up with a TMK at the end of the day, they are

going to have to go out and attempt to get easements across

three different property owners, Ulupalakua Ranch, the State of

Hawaii the Department of Land and Natural Resources, and my

client. That water line right now goes across Roger Crouse's property.

In addition, one of the other things that -- so one of the initial reasons that Jack Crouse and Emil Tedeschi worked this out, one of the agreements that they made between them was that Jack Crouse permitted the water line to go across his property to benefit Emil Tedeschi's property. The other benefit that Jack Crouse gave to Emil Tedeschi, solely to Emil Tedeschi, was a revocable license, and that's a legal term, but essentially it was just an oral permission to use, to gain access to parcel 116. Parcel 116 is a landlocked parcel. The

whole reason that Jack Crouse gave that was because he was deriving a benefit from this water agreement.

Now, when the Kingdom started to use the property

Roger Crouse now, who is the successor to Jack Crouse, gave the Kingdom the same revocable right to access their parcel across his property. The only way that they get across into their parcel or the parcel they purport to own is by going across the Crouse property. That's revocable. That means it can be taken away. At this stage it is not something my clients have done. They have continued to try to be good neighbors and they have

attempted to try to -- we're hoping to see the same.

The final thing is just with respect to the submeter. The submeter is located on my client's property, so the Board cannot direct the Kingdom to trespass on my client's property. And I would just, I guess, I would urge the Board not to do that because it would clearly put the Kingdom in hot water if they were to trespass upon the property without the permission of my client.

Now, just to summarize, without going into the evidence in great detail, we have shown in our appeal that the Board of Water Supply and the water department had specific

knowledge and had acquiesced. And if not expressly, had implicitly agreed to that water sharing arrangement. I spent the morning here, and we all know that there's a lot of things that were done in the past that weren't always done the way we'd like to see them, and sometimes they're messy. And I can tell clearly this is one of those situations where it is messy.

But the bottom line is that my clients are asserting their right to continue the use of the water that they have had since 1983. That they had it, and we can show the documents,

they have had it with the express or implicit knowledge. In fact, we can show you Board minutes where Jack Crouse went to the Board of Water Supply and said, "We are sharing water with our neighbor Emil Tedeschi." And the Board, different from today, did not take any action that would have altered that status quo.

What happened, we're saying, is that at this stage, from our client's perspective, there would be some major property rights problems if you were to take it away now. And we believe that there's a way to work this out, and we are willing to sit down with the Director and attempt to work it

out, or to sit down with the Kingdom. That's something my clients are still open to doing. Thank you.

ACTING CHAIRMAN NOBRIGA: Mr. Victorino?

MR. VICTORINO: You know, it's become fairly apparent at this point that all of the parties involved have finally met, that you guys haven't sat down and really discussed this with each other, have you? Have you sat down with them?

AKAHI WAHINE: I sat down with Melani, Miss Palmer, and Mr. Crouse. We did speak in one part of it. But when you

speak with the water department it's totally different. We are

not going to be held accountable for fighting the laws or the

rules of the County.

 MR. VICTORINO: Not to elaborate, I'm asking have

you sat down with all the parties, that was my question. Have

you sat down with all the parties together?

 AKAHI WAHINE: Not all together.

 MR. VICTORINO: Then I would suggest, and this is my

only comment on this thing, before we take any action, Mr.

Chair, that I suggest all these parties do sit down and try to

resolve the matter before we get into some legalities that

maybe can be avoided if better minds can sit down and work these problems out. I mean all parties. I'm not just talking you and them, them and them, everybody together. Whose fault, who is wrong, it's apparent a lot of mistakes have been made. Let's try to correct and make it right now. Is that possible?

AKAHI WAHINE: At this point right now I will not want to partake in the violations. I will not. And the bottom line of this whole issue is the violations. If we can violate the County rules and regs, well, so can the people. If we can do it, what's fair for us is fair for the people that's waiting on the waiting list. If they can do it, so can the people on

the waiting list. Join up, submeter out, that would be good for everyone. If it's good for us, it's good for everyone, Mr. Victorino.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: I'm just trying to understand this situation. Looking at this exhibit A, where is the water meter located?

ACTING CHAIRMAN NOBRIGA: Excuse me, would you identify yourself for the court reporter?

MR. AKAHINUI: Majesty Akahinui, Kingdom of Hawaii

Trustee.

ACTING CHAIRMAN NOBRIGA: Thank you.

MR. PIERCE: Mr. Chair, I have a copy of my map, and

I will pass it around if that will help. This shows where the
water line is.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. PIERCE: This green line shows the water line on
the property.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga, you still
have the floor.

MR. HIRANAGA: Thank you. So the green line is the

water line, and it crosses Ulupalakua Ranch and then State of Hawaii land, and then Jack Crouse's land to get to --

MR. PIERCE: It's now Roger Crouse's property, but that's correct.

MR. HIRANAGA: And you're saying that the Crouses have granted a water easement to parcel 96 in order to allow the water line to cross parcel 95?

MR. PIERCE: It was never done as an easement, it was done as an oral license. There's no recorded easement. So this is the most important thing is it does not run with the land. The only person that it has been given to to date in

terms of a license was Emil Tedeschi. My clients have continued to give the same rights, okay, which are revocable to the Kingdom as well.

MR. HIRANAGA: Because there are recorded easements for the Crouses and the Ulupalakua land and the State of Hawaii land?

MR. PIERCE: Yes. Emil Tedeschi in conjunction with Jack Crouse did that, but they are in the name of Emil Tedeschi. And I do have copies of those easements attached to my appeal.

MR. HIRANAGA: So the easements are not in favor of specific parcels, it's in favor of specific persons?

MR. PIERCE: That I have to go back and take a look at, it's been awhile since I have taken a look at it. If you want to know right now I can flip back and let you know.

MR. HIRANAGA: Typically easements are granted to specific parcels and not to specific individuals if it's recorded. I can see if it's a revocable license it could be in someone's name.

MR. PIERCE: For example, with the state, I can actually check this very quickly, but as I recall, the way the

state always does it is there are actually, although they call them easements they are revocable, and the Board of Land and Natural Resources always reserves the right to deny it to any new owner of a parcel. So those are always revocable.

And as I recall, the way that the ranch does it is easements -- once again I am using the word easement kind of loosely -- is that they are revocable after a certain period of time. That's how I recall it. And I believe that's the case here, but I would have to look back at the file to tell you for sure.

MR. HIRANAGA: So I'm trying to understand.

Basically the Kingdom just wants the records of the department to reflect that they are the owners of the parcel. You are not concerned about delivery of water?

AKAHI WAHINE: No. Right now the Department of Land and Natural Resources, I believe Mr. Pierce, would have to correct that issue because that is no longer a parcel that belongs to the DLNR. It has been rendered over to the Department of Hawaiian Homes presently right now, so I think you should check into that issue. So this revocable license in the easement is no longer valid.

MR. PIERCE: The most important thing here,

Mr. Chair and members of the committee, is regardless of

whether it's the state or the other, right now the line

continues to go across my client's property. There is no

easement there. And I guess the other question that maybe

needs to be clarified today is does the Kingdom -- it's been

our understanding up to this stage that the Kingdom wants

exclusive use of that water. They want to deny use to the

persons who actually were the persons who obtained that water

meter to begin with and who have been using it for the last

more than 20 years.

MR. HIRANAGA: Mr. Chair?

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: My understanding is if the department has determined that the meter belongs to parcel 96, what occurs beyond that? Once we have provided our position based upon the rules, what does the department do?

ACTING CHAIRMAN NOBRIGA: Ms. Parsons, followed by Mr. Hashimoto.

MS. PARSONS: Mr. Kushi, would you clarify the fact that there were some remarks made in Mr. Crouse's petition here

for reconsideration, the fact that the department does have the right -- does have the right to do the title research that we did to get clarification, but that was a legal and ethical move on our part to make a determination? Because there are some statements in this that I'd like to get clarified. It's "the department's payment of the title search shows patent favoritism toward the Kingdom and against Petitioners."

I think we were trying to get clarification of what actually was the title, who actually had title to that TMK 96.

ACTING CHAIRMAN NOBRIGA: There was one question in there. Could you repeat the question?

MS. PARSONS: Can you clarify the fact that that was a legal rule on our part to have title research and not a favoritism?

ACTING CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: In discussing this with Corp Counsel they said they couldn't answer our question to them without a title search. So we talked to the Kingdom whether they would be willing to provide it, because it was a substantial amount of money, and we would not normally do this in all cases. But in this case because of transferring title without checking to

see if somebody had title in the property, we obviously made a mistake there. I didn't want to make a second mistake, so I took it upon myself to get this title search done so Corp Counsel could complete their review.

MS. PARSONS: That was kind of for your clarification, Tom.

MR. PIERCE: It does not clarify it, and that will be an issue that I want the Board to understand is an issue that will remain present, if necessary, and that we preserve all rights to deal with that. Because what we are talking about is an expenditure of government funds for another

government who has asserted an interest. We are talking about the Kingdom of Hawaii. And what the Board has done has expended, excuse me, the Department of Water has expended over \$750, if I remember the number correctly, for a title report that was something that the owner in any other circumstance that I have ever heard of would be required to do in order to prove his or her or its ownership in a parcel.

So what we have here is a very curious fact, which is that the department has spent over \$750 to essentially help out an entity who is trying to claim ownership. That would

ordinarily be the burden of someone who is claiming ownership.

That's a burden that any citizen would share. And in this case it's further confused by the fact that we are dealing with a purported government, the Kingdom of Hawaii. So that is an issue that we will continue to preserve, and if necessary, it will be an issue at any further level if we have to. I am hoping that we never get to that stage. It should not have gotten to the stage that it is today.

ACTING CHAIRMAN NOBRIGA: Thank you.

AKAHI WAHINE: I'm sorry, Mr. Price.

MR. PIERCE: Pierce.

AKAHI WAHINE: Pierce. The Kingdom took care of the cost, it did not come out of your government's fund. We took care of the cost of the title, and we agreed with Mr. Abe that we were going to take care and be responsible for the cost of the title search. So no governmental, neither the state or the County was placed into payment for that title search.

ACTING CHAIRMAN NOBRIGA: Mr. Hashimoto?

MR. HASHIMOTO: I think isn't the issue here the ownership of the water meter? Mr. Pierce is saying that Mr. Crouse is claiming the right to the meter, but it is assigned to parcel 96, which is owned by the Kingdom of Hawaii,

but it was illegally, title was illegally transferred. So

right now the issue is the ownership of the water meter. So I

think we should stick with the issue and decide that, because

we are going on and on.

ACTING CHAIRMAN NOBRIGA: The discussions today have

no bearing on the meeting that is supposed to -- that is

scheduled to take place tomorrow on August 23rd at 9:00 am in

the Director's office.

MR. PIERCE: Mr. Chair, it's my understanding that

the meeting got cancelled as a result of this going on.

ACTING CHAIRMAN NOBRIGA: It got cancelled?

MR. PIERCE: We're open to having that meeting again. I don't know if I can do it tomorrow with my clients or my schedule, but we're open to still doing that. I guess once again, I would just state that we have put the issue before the Board through an appeal that was filed back in February, and when that appeal is on the agenda again that would be the opportunity for us to get into all of these issues. But it cannot be decided today, that would be basically -- first of all, this is a communication. It's not even properly before the Board today in terms of deciding the issue.

So I guess I'm urging the Board and we would object to any decision being made today because it is not properly before the Board.

ACTING CHAIRMAN NOBRIGA: Mr. Victorino?

MR. VICTORINO: I'll let Mr. Craddick go first.

MR. CRADDICK: Right now the decision on what property the meter serves and who has title to it is in my court. I haven't even made that decision. But as I told you, after listening to Corp Counsel today I think I'm prepared to make that decision. And at that point, once that decision was

made, then some appeal of the Director's decision might be properly before the Board. But in this matter under Section 3 of the Board of Water Supply's rules, the Board really doesn't have any jurisdiction.

On the 30th of this month they will have jurisdiction in those matters and appeals can be properly filed under that rule for review of the Director's decisions. But the decision has to be made somewhere, otherwise there is nothing for you to review.

ACTING CHAIRMAN NOBRIGA: Mr. Victorino?

MR. VICTORINO: That pretty much answers the

question. I move that we defer any further action until the decision is made by the Director. And thereafter, any appeals that will come forward -- and there will probably be appeals -- then those appeals can come to us at that point, because then determinations had been made and then you're working with something that is legal.

MS. PARSONS: Second.

ACTING CHAIRMAN NOBRIGA: Moved and seconded to defer. Any discussion? Yes, Mr. Hiranaga.

MR. HIRANAGA: Did the Director state he's prepared

to make a decision now?

MR. CRADDICK: Like right now, today?

MR. HIRANAGA: You said you were prepared to make
the decision.

MR. CRADDICK: I believe so, yes.

MR. HIRANAGA: Can you inform us of your decision?

MR. CRADDICK: Well, it appears that the Kingdom of
Hawaii has a lawful interest in parcel 96, so it would be okay
to have the meter in their name. And if they applied for a
transfer we would give it to them.

ACTING CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: I, first of all, don't think that we are in a position to take action other than a deferral today. However, I do want to reiterate some comments that I made when we did have the first go round at this back in January or February, or whenever it was. And that's the belief, that there is the possibility that when all is said and done and, you know, it has been through the courts and everyone has spent a lot of aggravation and time and money, you know, through that process several years from now, it may possibly end up that the only resource is that everyone down there loses the use of

water.

And right now, you know, the fact that everyone does actually have the use of water down there is a wonderful and wondrous thing, because it can get dry down there. I agree with what Mr. Victorino said a little while back, that I really feel that it might be the best course for all of the parties to find a way to work together, and there would be nothing stopping them having water that they can use. And I think that really that would be a lot better than taking the chance that perhaps no one may end up with water, which would be a very terrible thing to happen.

ACTING CHAIRMAN NOBRIGA: Akahi?

AKAHI WAHINE: So this Board and the Corp Counsel
and Mr. Craddick is saying to continue to perpetuate the
violations of the laws? This is the bottom line, this is what
I'm hearing. And if you folks would all participate in
violating the laws, well, if the Board can do it, the water
department can do it, so can the people. This is what the
bottom line has gotten to. Mr. Craddick had just stated that
he will agree in regards to transferring here. We have
submitted our application to transfer. It is in the course of

transfer, but we have not received the status on it.

If you are going to perpetuate it for more time of extension then this is perpetuating the violations. It will continue, it takes another day of violation. It has to stop.

If you folks are people of voices for the people of Maui, I believe you folks have to carry out the laws just as well as everyone else. As citizens have to, so do all of you on the Board.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: I believe you misunderstood what just occurred here. I think the Director has said that he's agreed

that parcel 96 owns the meter and he will effect the transfer.

AKAHI WAHINE: We want it to occur. We don't want you to defer it with the rest of the issues.

MR. HIRANAGA: We have agreed to do it in a practical fashion. He agreed to do it.

AKAHI WAHINE: We've heard extensions and it never comes to pass.

MR. HIRANAGA: He just said he agreed to do it.

AKAHI WAHINE: Yes, he has.

MR. HIRANAGA: We will do it in a reasonable,

practical fashion.

AKAHI WAHINE: We have heard from it Mr. Craddick

before and it has never come to pass.

ACTING CHAIRMAN NOBRIGA: Ms. Parsons, followed by

Mr. Victorino.

MS. PARSONS: You know, I was going to ask since

there is this sharing that's going on on this line, I

understand it's illegal?

ACTING CHAIRMAN NOBRIGA: Yes, ma'am.

AKAHI WAHINE: Also the billing of the water.

MS. PARSONS: But I mean this is kind of cut and

dry. It's an illegal share. I'm saying if it's an illegal

share --

ACTING CHAIRMAN NOBRIGA: I have a motion to defer

on the floor. You guys aren't even talking about deferring.

MS. PARSONS: All right, okay. Excuse me.

ACTING CHAIRMAN NOBRIGA: Mr. Victorino?

MR. VICTORINO: I was going to call for the

question.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: I don't believe the Board is taking

any action except to defer on this. The Director has made a determination that parcel 96 owns the meter and will transfer the ownership in a practical and reasonable fashion, and the motion is to defer. We are not making any decisions. There are no decisions to be made at this time as far as the Board is concerned.

ACTING CHAIRMAN NOBRIGA: Then all those in favor signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

Motion is deferred.

MR. PIERCE: Mr. Chair, we have an appeal that was filed in February, and I don't know where Mr. Craddick is coming from when the Board lacks jurisdiction to hear appeals. There haven't been any specific rules relating to appeals. Nevertheless, our appeal was timely and it's still ripe for consideration, and there should be no need to refile that, it's still something that's before the Board. So I'd ask for the Board today to clarify that and make it clear that my clients timely file their appeal and that it is still before the Board.

The second thing I would ask, and which is what we requested in there, and it has been what has been done today, is that no action be taken until the Board hears our appeal. And that would include ordering the Director to hold the status quo, including the fact that right now the meter is in the name of Roger Crouse, and keep it that way until the appeal is heard. Because I would just want to, once again, state to the Board and ask the Board to be wary with respect to stating that what is happening here today, the status quo, is illegal.

The Boards before you did not believe it to be

illegal, so the fact that you are making a change is a rule making change, and that's a violation of Chapter 91 if you make a change in the rules without going through a hearing process.

So I'm asking the Board to be very careful and to talk with Corporation Counsel about this before it does anything too swiftly.

My clients clearly have argued and will continue to argue that in fact what the Board did was legal and has caused a creation of rights that now exist with my clients and have existed for over 20 years with respect to Roger Crouse, and the denial of those rights is going to create some constitutional

problems if the Board decides to do that. So it does need to be dealt with very carefully. Thank you.

ACTING CHAIRMAN NOBRIGA: Under Other Business, item A, United States Department of the Interior.

MR. PIERCE: Mr. Chair, could I have a clarification that our appeal is still before the Board, because it wasn't clear from the motion and what went on before as to whether that is still before the Board. I'm sorry to push the point, but I do want to make that clear, that my clients are protected on that. Otherwise I have got to file a bunch of stuff that

you guys don't want to see tomorrow.

Could I just get clarification on that point, that the appeal is still before the Board and that the Director will not take any action until our appeal is heard and the Board has issued a final decision?

ACTING CHAIRMAN NOBRIGA: Under the rules that we follow, the Board of Water Supply, everything that has not been disposed of is still alive. You have an appeal before us; we have not made a decision, then it's still alive.

MR. PIERCE: I am a fairly smart guy most of the time, but I don't understand what you're saying. All I want is

an understanding from the Board that our appeal is still before the Board, was filed in a proper manner, and the Board continues to have jurisdiction over our appeal. The Director said something to the contrary. Corporation Counsel hasn't entered into this yet.

I mean I hate to ask the Board, but I'm sure the Corporation Counsel will agree with me that our appeal is timely and is still ripe and is before the Board, and I just want that to be clear before the hearing is concluded today. I think that's a fair thing for us to ask on behalf of my

clients.

ACTING CHAIRMAN NOBRIGA: I don't. Yes, Mr. Kushi?

MS. PARSONS: Mr. Kushi, they have generated an appeal before a decision, they have generated an appeal before a decision has been made. The decision has not been made, certified, as of this point. The appeal, even though they have submitted an appeal without a decision, does it still rest with us or does he have to resubmit it after a determination has been made?

MR. KUSHI: Okay, Board Members, my understanding is that he filed an appeal based on the Director's letters back in

January. At that time the issue as to ownership of the parcel as well as the meter was not resolved. Based on those letters, Mr. Pierce filed an appeal. The Board heard that appeal or was scheduled to hear that appeal back in February, and the issue was status quo. Leave it until further information, et cetera. Now that appeal is not on this agenda.

What you talked about today was a communication.

You made no decision on an appeal, you made no decision on anything because it wasn't asked of you. You had a full and fair discussion. The Director said he is going to go back and

make a decision. His appeal, Pierce's appeal is still, as far as I'm concerned, is still on the table. He may want to amend his appeal after David makes his decision, but it hasn't been dismissed, it hasn't been dismissed or granted, it hasn't been acted on. That's all I can say on that.

ACTING CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: We have other business to conclude. It is my recollection that there was an appeal and that that's still the property of the Board. I don't want to put any credence to us stating, as Mr. Pierce said, that we will attest that it was properly filed or that it has merit, but it is my

recollection that there was an appeal and that that is still
the property of the body.

MR. PIERCE: This is all I'm asking for Mr. Chair,
thank you.

ACTING CHAIRMAN NOBRIGA: You might as well come
up. I'd like to move on.

MS. KAHIAMOI: Lisa Kahiamoi. In response to what
Corporation Counsel has just said, I just want to say that
there was one thing that was established, and that was Director
David Craddick was going to effect a transfer in a timely
manner. That's what I got. Do we agree on that? Okay, fine,

thank you.

MR. PIERCE: Mr. Chair, excuse me. I just wanted to make the record clear that we would be objecting to the Director transferring until our appeal is heard, because we have that issue already. The Director in his prior letter made a final decision that he was going to require the transfer. And this is the very thing that we came to the Board and we asked the Board for relief and the Board granted it, that nothing would happen until this occurred, until we heard, until the appeal was heard.

So the very thing that we are asking is that the status quo and the decision that was made earlier continue to be the case. If the Director makes this transfer he is impacting my client's right before there has been due process of law. It's a very, very simple process, it's a simple concept. And we are asking for our day to have a proper hearing before that transfer occurs. So if the Director does what I think I'm hearing today, if the Director goes ahead and transfers, that's one of the things that we have previously said would be a violation of our due process rights.

Once it occurs, it has happened, and then the Board

and the department become liable for the action. We don't want that, and we are asking you and we are trying to speak reasonably with you to hold off on making that transfer and potentially violating my client's due process rights, and give us an opportunity for that hearing, which is what we're entitled to under due process of law.

ACTING CHAIRMAN NOBRIGA: Thank you. I am not an attorney. Your comments are duly noted in the minutes, Mr. Pierce.

MR. PIERCE: Unfortunately, Mr. Chair, the Board --

ACTING CHAIRMAN NOBRIGA: The matter was deferred.

We are talking about something that's in the future. I cannot act on something that's in the future, I can only act on the hearing now. The matter was deferred. We are on to other business, Mr. Pierce.

MS. PARSONS: Let's set it for agenda. If it's still sitting in our minutes let's bring it to agenda and get it taken care of.

MR. VICTORINO: Before we can take it to agenda we have got to have Mr. Craddick's decision.

MS. PARSONS: If you're amenable and your clients

are amenable we will put it on our agenda.

MR. PIERCE: If the Director makes his decision and transfers in the meantime, we have got a due process violation. If the Director makes a preliminary decision and brings it before the Board for a hearing then we will have an opportunity to have that hearing. That would be okay. It's an important point and it's one I just think needs to be made.

MR. STARR: We are operating without an agenda. We should move on.

MR. PIERCE: Thank you.

ACTING CHAIRMAN NOBRIGA: Other Business, United

States Department of Interior and USGS draft proposal. Mr.

Starr?

MR. STARR: Mr. Chair, this is an item that was

before us, we put it in our budget, and USGS came with a

proposal. I for one am willing to move forward with it today.

But if there is questions that Board Members have, or concerns,

then we should hold it until the USGS comes. If there is some

unanimity I'm happy to make a motion that we proceed with

entering into an agreement to get this numerical modeling and

the research necessary completed.

MR. VICTORINO: Second.

ACTING CHAIRMAN NOBRIGA: Moved and seconded. Moved

by Jonathan Starr, seconded by Commissioner Victorino that we accept the proposal by USGS group partnering for groundwater resource assessment in Central Maui. Any further discussion?

All those in favor signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

Motion carries. Information on Customer Service

Training.

MR. VICTORINO: Mr. Chair, I'd like to defer that
until the next meeting.

MR. STARR: Yes, I'm toast.

MR. VICTORINO: I'm toast and I am not in the mood
to listen to something else.

ACTING CHAIRMAN NOBRIGA: Move to defer. Is there a
second?

MR. STARR: Second.

ACTING CHAIRMAN NOBRIGA: Moved and seconded. Mr.
Hiranaga?

MR. HIRANAGA: Actually, before we move to adjourn I

had a question on the Division Reports.

ACTING CHAIRMAN NOBRIGA: All those in favor of

deferring on the information on Customer Service Training

signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

Motion carries. Mr. Hiranaga?

MS. PARSONS: Deferred to the next meeting, please.

ACTING CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: Under the permits for subdivisions, under the requirements pending applicant's completion 681 from previous and pending projects. Does that mean that you have 681 subdivision applications pending, but you are awaiting responses from the applicants?

MR. KOGASAKA: Applications which are not completed in terms of improvements or meeting the requirements of the subdivision. We don't have final subdivision approval based on not meeting the agreement requirements.

MR. HIRANAGA: So the ball is in the applicant's

court?

MR. KOGASAKA: We need to review them when they submit. We go through a plan review process as well, and it may be some of it might be on us. But we do turn them around and get it back to the applicant who would have to possibly make improvements, and it's all in that process right there, yes.

MR. HIRANAGA: Okay, thank you.

MR. CRADDICK: Mike?

ACTING CHAIRMAN NOBRIGA: Yes, Mr. Craddick?

MR. CRADDICK: On page 22 you see a groundwater use percentage, and I think we mailed this out to the Board members for Waihee. It had 73 percent. That was a mistake, it's 63 percent, and a correction was sent to Council and I believe a correction was sent out to the Board Members.

MR. STARR: Mr. Chair, I have some concern and comments on this, but I have to leave, so I'd like to move to adjourn and we will take this up at another time.

ACTING CHAIRMAN NOBRIGA: Is there a second?

MR. VICTORINO: Second.

ACTING CHAIRMAN NOBRIGA: Moved and seconded to

adjourn. All those in favor signify by saying "aye" .

(A chorus of ayes).

Opposed "nay."

(None).

Motion is carried, meeting is adjourned.

(The proceedings were concluded at 2:00 p.m.)

"By Water All Things Find Life"

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