

County of Maui Water  
Supply

**BOARD OF WATER SUPPLY**  
**COUNTY OF MAUI**  
**REGULAR BOARD MEETING**  
**THURSDAY, SEPTEMBER 22, 2005**

BOARD OF WATER SUPPLY, COUNTY OF MAUI

REGULAR MEETING

Thursday, September 22, 2005

9:05 a.m.

Planning Department Conference Room

Seventh Floor, Kalana O Maui Building, 200 South High Street,

Wailuku, Maui, Hawaii,

Reported by: Katherine Eismann, RDR, CRR, CSR #439

APPEARANCES

Chairperson: MICHAEL VICTORINO

Vice Chairman: KENNETH OKAMURA

Board Members: KENT M. HIRANAGA

STACY HELM CRIVELLO

SALLY RAISBECK

RALPH JOHANSEN

Corp Counsel:

EDWARD KUSHI

Director:

GEORGE TENGAN

Deputy Director:

ERIC H. YAMASHIGE

Board Secretary:

CATHY HOWARD

Staff:

HERB CHANG

ALVA NAKAMURA

LARRY WINTER

PUBLIC TESTIMONY

Doug Levin

David Dantes, M.D.

(Thursday, September 22, 2005, 9:05 a.m.)

CHAIRMAN VICTORINO: I'd like to call this meeting of the Board of Water Supply for September 22nd, 2005, to order. Members present, Sally Raisbeck, Ralph Johansen, Stacy Crivello Helm, and Kent Hirayama.

BOARDMEMBER HIRANAGA: Hiranaga.

CHAIRMAN VICTORINO: Hiranaga. Sorry, sorry, Kent, sorry. And myself, Mike Victorino. Also present is Corp Counsel, Ed Kushi, our Director, George Tengan. Our

secretary Cathy Howard is present, and we have a whole bunch

of Board Member -- I mean department heads available also.

So, thank you for being here.

Announcements, do we have announcements? I do

have one, if nobody has anything. I received a call yesterday

from Michelle Anderson asking us if we were in agreement with

the Council bill that is presently going through as far as the

Board being given the autonomy to adjudicate appeals.

And I responded by saying, absolutely, yes, and we

will put that as an agenda item on the next meeting. I

apologize. I completely forgot about it. So, I will make sure that goes on our agenda item, and I assured Michelle that we will take care of that. Yeah?

Any other announcements? If not, I will go on to approval of minutes from the August 25, 2005, regular minutes as provided.

BOARDMEMBER RAISBECK: Mr. Chair.

CHAIRMAN VICTORINO: Yes.

BOARDMEMBER RAISBECK: I have one small correction on page three, line 25. Where it says that Michele McLean has taken a new position with the Kahoolawe Land Reserve

Commission, and that should be Island. Kahoolawe Island  
Reserve Commission.

Other than that, there was not one mistyping or  
anything I could find.

CHAIRMAN VICTORINO: Well, that's fabulous.

BOARDMEMBER JOHANSEN: I have a couple.

CHAIRMAN VICTORINO: Oh, you have a couple? Okay.

Member Johansen.

BOARDMEMBER JOHANSEN: It should be Lowry,

L-O-W-R-Y.

CHAIRMAN VICTORINO: Can you tell me what line?

BOARDMEMBER JOHANSEN: Yes, I am going to.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER JOHANSEN: Instead of L-A-U-R-I-E,  
because it's a number of places. It's page 72, lines 15, 19,  
22 and 23.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER JOHANSEN: On page 73, line 17. And  
on page 75, line 10, instead of already, it should be all  
right.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER JOHANSEN: And on page 101, line 4,



instead of Cobb, it should be Kau, K-A-U, and that's all.

MS. HOWARD: Which page?

CHAIRMAN VICTORINO: What, Cathy?

MS. HOWARD: Could you have him repeat what the  
last one was?

BOARDMEMBER JOHANSEN: Page 101, line four.

CHAIRMAN VICTORINO: Kau instead of --

BOARDMEMBER JOHANSEN: Cobb.

CHAIRMAN VICTORINO: Cobb. Thank you, Member  
Johansen. Anybody else?

Okay. I call for approval of the minutes as corrected and amended. All those in favor?

(Chorus of ayes.)

Opposed?

(Silence.)

Okay. Thank you very much.

Okay. At this time, we will open the floor for testimony from the public. Now, you have a choice. If you want to make your presentation now, or you would like to wait until your item comes up on the agenda, you can do it at that time. So, it is a choice that you gentlemen can make.

We have two people. Do you want to do it now, or would you rather wait until your item comes up on the agenda, I guess, Mr. Levin?

MR. LEVIN: I would like to do mine now if I could.

CHAIRMAN VICTORINO: Okay. How about you, Mr. Dantes?

MR. DANTE: Later.

CHAIRMAN VICTORINO: Later. Okay. So, we will hold yours until your item comes up on the agenda. Okay?

We have Doug Levin. I guess he's with the Maui

Vacation Renters Association. He wants to talk about the requirements for vacation rentals, the bed and breakfast permits.

Mr. Levin, if you would, yes, sit there that way we can record.

MR. LEVIN: All right. Good morning.

CHAIRMAN VICTORINO: Good morning.

MR. LEVIN: I wanted to take a moment to thank you folks for your service. I always like it when testifiers before the commission that I serve on, which is the Salary Commission, come before us and thank us, because I know we all

work without really getting paid. So, and sometimes the hours are quite long if we are involved in big projects. So, thanks for your time.

Today, I'm speaking to you from my position as the treasurer of the Maui Vacation Renters Association. I would have liked to have been able to speak and stay for a while, but -- and watch your deliberations. Unfortunately, I have a busy schedule myself today, so I am just going to come and speak and say what I can in this regard.

The thing that I want to discuss is the

Department's requirements for commercial use or treating transient vacation rentals and bed and breakfasts as commercial use and requiring those properties to upgrade to that -- to those standards.

There is a presumption of commercial use here for these properties, I've noticed in this community, that was very new to me when I moved here five years ago. Although they are being rented short term, and the rental of these properties short term is very similar to long term rental, the community -- and not just this Department -- makes -- treats them as if they were commercial properties and more heavily

regulates taxes and traces them.

I'm not really sure that I -- well, I don't know whether or not I am sure. The best case, in my opinion, I think that is some ways, that thinking is flawed, even though it might be a community belief.

First, for the reasons that Dave is going to discuss in some detail, there's no real legal basis for treating these things any differently from others. There are some bases for treating it differently for tax purposes and other bases, but not necessarily for planning purposes and Water Department purposes.

And second, to some degree, the law that's quoted here in the Department of Water Supply's actual report, they specifically state that -- part E, that the foregoing shall not be applicable to the construction of first and second dwelling units of any premises in the district.

There's already restrictions within their own rules regarding small items. A little bit of reflection might be helpful. I come from a small town in Westover, Vermont. It's actually a ski town. There's a ski area there called Mount Snow. The year-round population of this town is about 1400 people.



The number of total homes and condos in this town is well over 3400. It's like 2200 condo units and well over a thousand individual homes. The population of this town, on a ski weekend in Vermont, goes to something like 20- to 30,000 people, and yet the year-round population is only 1400. Obviously, it's the polar opposite of the community here.

In that particular community, the transient vacation rentals, which is the vast majority of what's there, is about 800, based on the latest census that the Realtor Board put together, are basically just single family

residences that are being rented out for people that come and stay here. They are a important part of the community they contribute -- the Realtor Board said that they contribute something like 8 percent of the tourist employment -- tourist-related employment on the island, because of the people who stay in there. And they are an important part of the community.

And the Maui Vacation Rental Association works to sort of get the word out that we are not this danger and hazard to the community, and Dave does a very effective job of that. At times, I try and tag along.

I guess what I am sort of asking here, in trying to conclude this, is that what ends up happening, when you apply these commercial standards, is if someone's got an ag lot out there, there's two basic -- there's two basic parts. One is there's the upgrade of the water meter, which is basically just sort of an opportunity. At some point, if the thing got larger or expanded, the water meter wasn't sufficient, you need to upgrade it. And that piece is difficult to deal with, but it's workable.

The part that's very difficult is the upgrade to the fire standards, especially since many of these homes are

out on dirt roads or other places in Haiku, or, you know, upcountry or something like that. And it -- and oftentimes, the Department is asking that the fire hydrants in the community be upgraded to meet these things.

And that requirement is very difficult and almost impossible to comply with. And that part especially is difficult. And if you are going to consider this, that part in particular needs to be looked at with great -- with great scrutiny. Anyway, I am sorry. I -- I was asked to speak very quickly today, and I want to conclude. But thank you for your time today.

CHAIRMAN VICTORINO: Thank you. Board Members, do you have questions?

BOARDMEMBER RAISBECK: Yeah, I do, Mr. Chair.

CHAIRMAN VICTORINO: Ms. Raisbeck, go ahead.

BOARDMEMBER RAISBECK: Mr. Levin, I think what the Board would worry about would be an increase in use of water associated with each of these properties. Is there any reason for supposing that having the vacation rentals increases unduly the amount of water that each property would use?

(Vice-Chairperson Okamura entered the hearing

room.)

MR. LEVIN: I think it depends -- this is just a personal opinion, but I think it depends on whether they are bed and breakfasts or whether or not they are TVRs.

I think there's a -- you can make a very strong argument that TVRs, which would be single homes that are rented out, actually use water less. They are empty for -- you know, they have occupancy rates only about 60 to 70 percent typical for the industry as opposed to a hundred percent. People aren't washing their cars or doing as much laundry. They don't have families in them all day long.

They typically come in. They sleep there. They might spend less time there during the day. Bed and breakfasts, there's an argument they might be a little bit higher. My particular place that my wife and I run is the Wailuku Guest House that's around the corner here. And we have six bedrooms that we rent out individually. Each has a private bath. And those probably get used more than a typical house would.

Now, it is a strange house. It's a nine-bedroom house, but I can't imagine that you would have a typical nine-bedroom house that was as fully occupied as ours is. But

I think for the TVRs especially, which is 800 or 1100 or so units, those especially don't -- I don't think they have near the water use that a single-family residence would typically have. Does that answer your question?

BOARDMEMBER RAISBECK: Yes, it does. Thank you.

MR. LEVIN: You are very welcome.

CHAIRMAN VICTORINO: And let the record show that

Vice-Chair Kenneth Okamura is present. You have a question?

VICE-CHAIRMAN OKAMURA: Yes, yes. Thank you.

CHAIRMAN VICTORINO: Go ahead.

VICE-CHAIRMAN OKAMURA: Did you mention anything



about the National Fire Protection Agency Code today?

MR. LEVIN: No, I did not. I have not -- I am not familiar with that or in any way an expert in it.

VICE-CHAIRMAN OKAMURA: Okay.

MR. LEVIN: The only thing that I am sort of commenting on is -- and I will sort of share an inside joke from the Vacation Rental Association when we talk about this. We laugh that a tourist is more valuable than a local resident because of the cost that it takes to protect a tourist versus the cost that it takes to protect a -- whatever. I am a

little bit nervous, so I am not telling that joke nearly as well as we normally do.

VICE-CHAIRMAN OKAMURA: Yeah, because I guess

Mr. Dantes was here at the last meeting, and he mentioned that. And I was looking at the minutes, and I was wondering what the standards say. This item is an agenda item for today. I guess that's why you are here to talk about that and to testify.

But then what happens, though, like -- like I don't know how many units are there on Maui, or how many operations or businesses of this type are there?

MR. LEVIN: Just a week or so ago, the realtors group had paid for a study by the Kauai Foundation, and, in fact, I have a copy of it here, which just came out a week or so ago. It -- because prior to this study, we were dealing with sort of guesses as to how many.

The current count that we have is approximately 800 transient single family units on 706 properties concentrated in nine north and south Maui towns. And there's 295 B&B units on 110 properties.

Obviously, I think, in the transient single family units, I think you are talking -- on 706 properties, I think

you are talking -- they are not counting bedrooms. They are counting a house as a unit, and there might be an ohana or something on it. For the B&B units, there's 295 units. I think they are counting bedrooms or rental units -- probably bedrooms in the B&B community -- on 110 properties.

VICE-CHAIRMAN OKAMURA: Can you repeat that? How many units?

MR. LEVIN: There's 800 transient single family units on 706 properties concentrated on nine north and south Maui towns. And I am just reading from the market segment analysis.

VICE-CHAIRMAN OKAMURA: What about the bed and breakfast?

MR. LEVIN: And the bed and breakfasts, there's 295 B&B units on 110 properties found in 12 towns from all districts.

VICE-CHAIRMAN OKAMURA: Okay. Thank you.

CHAIRMAN VICTORINO: Is it possible to get a copy of that to our Board secretary?

MR. LEVIN: I think so. I can't really -- actually, I could probably give her this one, because I have

this in PDF version. I can print myself a new one. I don't know if I have mark ups in this one.

CHAIRMAN VICTORINO: That's okay. I mean, just so that -- if you don't mind, Cathy.

MR. LEVIN: And if for some reason, I can't give her this one, I can get one to her.

CHAIRMAN VICTORINO: Okay, please.

MR. LEVIN: It's actually a very interesting report, because it talks about other communities and gives people a description of how these -- these types of properties work well with other communities and possibly impact the

economy here in Maui which is considerable.

CHAIRMAN VICTORINO: Thank you.

VICE-CHAIRMAN OKAMURA: So, you said there were  
like 800 units on 700 properties -- 706 properties.

MR. LEVIN: Uh-huh.

VICE-CHAIRMAN OKAMURA: But you are saying that  
doesn't mean that it's like -- so, according to that, it's  
like maybe a little bit over one unit per property. But that  
doesn't mean, say, how many actual rooms are, or how many -- a  
unit is a room, is that what it is?

MR. LEVIN: Well, what -- if I understand, from

what the realtors say, is they differentiate it into two key groups. They looked at houses or places that were rented as an entire unit, and they put those in the -- in the transient single family unit category. And they looked at B&Bs, which is anyplace renting out a bedroom or one or more bedrooms in an existing residence.

VICE-CHAIRMAN OKAMURA: I see. So, for B&Bs, it's slightly less than three units -- three rooms per unit, per property.

MR. LEVIN: Yes, slightly less ours. Like ours is six. It's actually five units with six bedrooms, because one



is a two-bedroom unit. But they vary considerably. Some folks are just renting out one bedroom in their house, and other folks are running larger operations like ours.

VICE-CHAIRMAN OKAMURA: So, I don't know about like, you know, the licensing process. But you need to get a Water Department approval for the licensing process for your type of business?

MR. LEVIN: Well --

VICE-CHAIRMAN OKAMURA: Is that what it is?

MR. LEVIN: In fact, we are in the process of

having -- beginning this process with the County Council to reconsider some of these rules. But what Planning does, when they consider approving this process, is they send a letter out to 13 or 14 or something different agencies. I may get the exact count wrong.

And they ask for comments, which is what they do for any type of commercial project. So, Planning is treating us almost as a commercial project, even though what we are asking for is a permit to do this. We have had some difficulties with them on whether or not the law requires them to do that. They have insisted that it does, but we are

working to sort of -- again, we think it's more of an educational process.

VICE-CHAIRMAN OKAMURA: So, you need a -- like a Planning Department approval for -- to run this type of business?

MR. LEVIN: We don't need a construction permit. We need a -- for bed and breakfast, if they qualify, they need to get a B&B permit. If they are transient vacation rentals, they are supposed to get a conditional use permit. That's the current rules that are established.

VICE-CHAIRMAN OKAMURA: Oh, okay. Thank you.

CHAIRMAN VICTORINO: Mr. Johansen.

BOARDMEMBER JOHANSEN: I live in Maui Meadows, and we have cars all over the place, B&B. And what I would like to clear up, in my own mind, is your report there, how is that generated? Is it the Association?

MR. LEVIN: No, actually, the realtors of Maui, the Realtors Group Association of Maui paid for it and generated this report.

BOARDMEMBER JOHANSEN: And who conducted the research?

MR. LEVIN: The Kauai Institute, which is -- which

is a statistical group that's on the Island of Kauai. They are generally pretty well respected on the island, in the State.

BOARDMEMBER JOHANSEN: This is others in addition to the members of your association?

MR. LEVIN: Yeah, these are -- we were not involved in the preparation of this report.

BOARDMEMBER JOHANSEN: And they did an island-wide search that involved random or how -- my understanding is that people may conduct B&Bs, but they don't apply for licenses.

They don't make their presence officially known, even though they are advertising in the trade. I just wonder, are we getting an accurate count from that report?

MR. LEVIN: They did not use the permits that were filed with the County. They went out into the -- according to this, they went out into the marketing community. They went out on the internet and other places, and they looked for units that were advertised.

They found a lot of duplication, and they worked hard to reduce the duplication in the marketing. But they started from the advertising side and went through all the

sources they could to track it back down to the units that were available.

A short comment on that. The Maui Vacation Rental Association encourages all of our members to come forward and legally apply to do this. We do not think it's good for the community or good for our members or future members to skirt the laws, not have proper parking on their places, stuff like that.

If you have problems with a particular unit in your neighborhood, you know, that doesn't comply or doesn't have permits, we encourage you to say something to Planning.

It only hurts us as a -- as an industry.

BOARDMEMBER JOHANSEN: What are the sanctions for failing to apply for a permit? Do you know? Are there any?

MR. LEVIN: Under the current -- I am going to try and make sure I get this right. It's a little bit complex. The prior mayoral administration, the Apana administration, after trying to enforce the rules, there was a tremendous difficulty in doing so. And, so, they created a moratorium on enforcement.

The moratorium is based on the fact that you actually have a permit in place, okay, or in process. Because



the permit process -- like mine has been in process now for three-and-a-half years, and it might, in fact, continue for several more years.

And, A, we are working to get the process streamlined amongst other things. But the process is so long that it's almost impossible to -- you know, to comply with, and it's very difficult. And this Water Department is just one minor -- one of the 17 different departments who we have to deal with the comment not.

Anyway, if they do not have an application

pending, okay, the Planning Department can cite them for running an operation, and ask them -- and have them shut down. If they have an application pending, there is a moratorium on it, presuming that all of the aspects of their application are -- there's no clear and obvious things that would prevent the application from being approved.

Like, for instance, they do not have sufficient parking for the units that they are renting out. They have to correct that, or they have to shut down. Does that answer your question?

This is part of the permit process. So, even if

they have applied for the permit, okay, if they do not clearly have all the aspects, they need to get it.

BOARDMEMBER JOHANSEN: So, the sanction is if they are caught, they have to shut down or comply in some way.

MR. LEVIN: Well, most of the times what happens when they are caught is that they apply. And then because the Planning Department is so backed up on these processes, unless there's a lot of neighbor issues with it, what will happen is nothing will happen for a long time. If neighbors have issues, then they look at it more quickly and with scrutiny, and if they cannot comply with the requirements, then they get

shut down.

BOARDMEMBER JOHANSEN: At the present time,  
  
there's no fine or no monetary sanction if you are caught?

MR. LEVIN: I don't believe so. Actually, Dave  
  
would have a better answer to that. And actually, if you have  
  
lots of these questions, Dave is going to be a much better  
  
resource than me on some of these. But honestly, being shut  
  
down is a pretty heavy monetary sanction.

CHAIRMAN VICTORINO: Any other questions? Quick,  
  
before you go. Any other questions? Okay. Go ahead, Ken.

VICE-CHAIRMAN OKAMURA: Okay. Thank you. Where

is the Council now in terms of your -- you said earlier that you were working with the Council to develop some rules for the permitting process. Is that what it is or how far along are you? What are you doing with the Council in terms of trying to get a process in place, and how far along are you?

MR. LEVIN: Okay. A brief history might be helpful here. The Council is not comfortable with the moratorium, because they feel that a number of houses or rental properties that would be more appropriate to be in the long term rental market are in it, and yet there's nothing

they can do about it, because the current law has generally proven unworkable, which is why the moratorium is there. So, they are very aggressive about moving towards a new -- a new set of rules.

As part of that process, they have held their initial public testimony on August 9th. They are scheduled to hold more public testimony and consider actual drafts of the rules, I believe, in early October. Honestly, a time line for this process, if it went very smoothly -- because after that, it has to go out to all the different Planning Commissions for comments and then come back for final consideration.

If something is accomplished in the next six months, we would be very surprised. The current drafts greatly alleviate the burden to license, but also put new different requirements to eliminate the use of building units that would be more appropriate for long term rental than in transient vacation rental.

VICE-CHAIRMAN OKAMURA: So, the Water Department requirement is still in the new -- is reducing the Water Department requirement still in the --

MR. LEVIN: Well, drafts are just drafts. In the draft that -- the most talked about draft that's been

presented -- and we are not sure which one the County Council is actually going to submit to the Planning Commission. But the most talked about draft that's been considered, we are talking about not including the departments in these processes.

The Planning Commission would look at it, you would you have a set of criteria that they would give to them. If they fit the criteria, then the projects would be approved under a shortened timeframe, and it would not be expected that comments would come from each one of them.

VICE-CHAIRMAN OKAMURA: Thank you. Okay.



CHAIRMAN VICTORINO: Okay. Not that I want to close down discussion, because I know Mr. Dantes is going to be talking about a similar situation, and you did mention that Mr. Dantes would be probably more versed.

MR. LEVIN: Mr. Dantes is our president. He's much, much more versed in all the little subtleties that go on with this.

CHAIRMAN VICTORINO: So, could we hold any other questions for when Mr. Dantes speaks, then that way maybe we can -- I know you have to go, too. But before I -- you had a

specific question, counsel?

CORPORATION COUNSEL KUSHI: May I ask a question?

CHAIRMAN VICTORINO: Sure.

CORPORATION COUNSEL KUSHI: Just for information,

if you know, what is the Council process -- what is the Maui

Hotel Association's position on this?

MR. LEVIN: The Maui Hotel Association position

actually supports us. And the reason why they do that, is

because they mostly run at occupancy, if they can, and they

feel that they get revenue from people that come and use their

restaurants and stuff like that.

That's been their official position so far, and that's been the same for the last several years. The general thinking is that there are not enough units on the island for the people who want to come here. And, so, additional units add to the economic development of the island.

CHAIRMAN VICTORINO: Okay. Thank you, Mr. Levin.

MR. LEVIN: Thank you very much. I appreciate your time today.

CHAIRMAN VICTORINO: Appreciate you coming. So, if you would make sure that Cathy --

MR. LEVIN: I will look through this right now,

and see whether I have any notes I need to keep. If not, I will give her this copy and print up another one.

CHAIRMAN VICTORINO: I'd appreciate that, and then I will make sure that will be available with the packet that comes out for our next meeting. Okay?

MR. LEVIN: It is okay to distribute this or not?

MR. DANTES: Yes.

MR. LEVIN: Okay. Thank you very much.

CHAIRMAN VICTORINO: Okay? Anybody else? I know you are going to leave, but there is no other public testimony?

Okay. Then we move on to unfinished business. We

have the report on the Brown & Caldwell Vulnerability

Assessment Report. However, that, Board Members, we have to

convene in executive session under HRS 92-5A-6, in order to

consider sensitive matters related to public safety and

security.

So, at this time, Mr. Kushi, is it appropriate to

move to executive session? Have a motion to move to executive

session?

CORPORATION COUNSEL KUSHI: Yes.

CHAIRMAN VICTORINO: Okay. I beg your pardon?

BOARDMEMBER RAISBECK: I move that we move into  
executive session under HRS 92-5A-6.

BOARDMEMBER JOHANSEN: Second.

CHAIRMAN VICTORINO: It's been moved and seconded.

Any discussion? All those in favor say aye.

(Chorus of ayes.)

Opposed.

(Silence.)

Okay. So, executive session, we are going to have  
to ask you, Mr. Dantes, to leave, and anyone who is not -- I

guess the Department people can stay, I guess. They are a part of it, yeah?

Okay. So, I'm not sure how long that will take, but as soon as it's done, we will call you back in. Is that okay?

MR. DANTES: Okay. So, I should actually be right -- right in the area?

CHAIRMAN VICTORINO: Yeah, if you can stay in the area, yeah, yeah, please, because we are hoping it's not going to take us too long.

MR. DANTES: Okay.

CHAIRMAN VICTORINO: Okay? Thank you, Mr. Dantes.

MR. DANTE: Uh-huh.

CHAIRMAN VICTORINO: Is there a sign saying that we will be in executive session? I knew you were ready. I knew she had that ready. Thank you, Cathy.

MS. HOWARD: You are welcome.

(Regular session adjourned 9:30 a.m. Executive session held. Regular session resumed 10:31 a.m.)

CHAIRMAN VICTORINO: I call this meeting back to order. Going -- continuing on to unfinished business, B, verbal update on the status of the Pookela well.



MR. NAKAMURA: Yes, Mr. Chair. On the Pookela

well, the latest update is that the electrical switch gear has been ordered by the electrical contractor. We are anticipating that to be completed manufacturing by the middle of December, at which time they will ship it to Maui. And we are anticipating receiving that around the middle of January.

Talking to Maui Electric, they plan to, from what I understand, start the installation of the last pole at Pookela probably at the end of next week sometime. And they anticipate that they will be able to provide permanent power

by February.

So, at this point in time, things appear to be pretty much on track at this time. The only thing, that we had discussions last week when we had a meeting with all of the various parties, was that there may be some problems with the fact that Baylick plans to install the pump and motor sometime in February. And at the same time, the general contractor will be working out there at that time. So, there is this potential area that we are trying to work out right now, so that one organization does not impact the other, while both are trying to, you know, work at the same site at the

same time, and sometimes they can get in each other's way.

So, we are trying to sort that out and trying to see what we can do to alleviate that situation. But right now, at this point in time, we anticipate that we should be able to have permanent power, the pumps installed, and pump up and running by March, as we originally had indicated. That does not include the approval from the Department of Health, but just the fact that the well will be up and installed and hopefully running by that time.

CHAIRMAN VICTORINO: Do you have any idea what the process would be, Mr. Tengan, yourself, as far as the

Department of Health? How long they would take once -- let's say March you got it up and running, how long they would take before they would approve it, should there be no problems?

DIRECTOR TENGAN: Where's Larry?

MR. NAKAMURA: I think he went back down.

CHAIRMAN VICTORINO: Best estimate.

DIRECTOR TENGAN: We got approval as far as the quality of the water already, but it may be that we need to do another water quality test before we put it into the system. So, at the time when we test the pump out, you know, that would be a time when we could take the sample and have it

analyzed and sent to the DOH.

CHAIRMAN VICTORINO: Okay. So, hopefully, that's  
good news. Thank you.

MR. NAKAMURA: Okay.

CHAIRMAN VICTORINO: Any questions for  
Mr. Nakamura? Okay. Seeing none, thank you very much.

BOARDMEMBER RAISBECK: Mr. Chair.

CHAIRMAN VICTORINO: Yes.

BOARDMEMBER RAISBECK: I have a question about the  
agenda. We had said that Mr. Gilliland -- his application

would be on the agenda this time, but it's not on the agenda.

CHAIRMAN VICTORINO: Where Cathy went? Because I know she had a reason, and she called me, because they weren't --

DIRECTOR TENGAN: I believe there was a request to pull it off -- off the agenda.

CHAIRMAN VICTORINO: Yeah, it was requested by Mr. Gilliland and his people. And I can't give you the specific reason, because she called me on it, and I said, yeah, take it off. Because they weren't going to be able to -- maybe you can update it. Something was happening, I know.

MR. NAKAMURA: He had called me several times, and we had been -- he's very interested in trying to work it out with the staff, and we are in the process of doing that with him right now. In fact, I just got a call from him yesterday, which I haven't had a chance to give him a call back. But I think he's coming in to see us next week sometime, so he's trying to make a concerted effort to work with the staff and not get involved with the Board at this point in time.

BOARDMEMBER RAISBECK: Okay. So, does that mean the Department basically is going to change its mind?

MR. NAKAMURA: I'm not sure if we are going to

change our mind, but he still wants to work with us and see if he can somehow resolve the issue. There's some disagreements with him and his other relative that owns the other parcel, so we are working with him at this point in time. That's about all I can have to report.

BOARDMEMBER RAISBECK: Thank you.

CHAIRMAN VICTORINO: And, so, if something does change, then you will let us know?

MR. NAKAMURA: We will let you know.

CHAIRMAN VICTORINO: And if it needs to be brought to us --



MR. NAKAMURA: Yes.

CHAIRMAN VICTORINO: -- it will hopefully be on the agenda. Originally, if you had seen the first one, it was on there, and then I had gotten a call from Cathy saying they want to request to pull it for now.

BOARDMEMBER RAISBECK: Okay. Thank you.

CHAIRMAN VICTORINO: Okay. Moving right along, if it's okay -- where is -- okay.

VICE-CHAIRMAN OKAMURA: VII B.

CHAIRMAN VICTORINO: VII B. No, no, no. We need

to get Mr. --

VICE-CHAIRMAN OKAMURA: Director's report.

CHAIRMAN VICTORINO: Director's report, yes.

BOARDMEMBER JOHANSEN: Mr. Dantes.

CHAIRMAN VICTORINO: Yeah, I know. That's where I was looking, right here. On the Director's report, 05-19, Department requirements for vacation rental/bed and breakfast permits.

Mr. Dantes is here to speak on behalf of that, so if we will allow him to speak first. Okay. Mr. Dantes, would you please, and sorry we have kept you waiting so long. I do

apologize.

MR. DANTE: Well, good morning, Mr. Chairman and members. And thanks for allowing me to come here. I'm here as president of the Maui Vacation Rental Association.

Before I begin my testimony, I have a kind of procedural question I would like to ask if I may. There was a letter which our organization drafted with the intent that the members would have a chance to review it before making a decision on this agenda item.

CHAIRMAN VICTORINO: Uh-huh.

MR. DANTE: And I understood from the Director

that it could be sent to him for relay to the members. But, apparently, it was included in the staff report, which wasn't distributed until this morning.

CHAIRMAN VICTORINO: That's correct.

MR. DANTE: So, I guess my concern is that I was hoping that my testimony would occur on the background of the members having had a chance to review this letter, and how and when would they have a chance to review it is my procedural question.

CHAIRMAN VICTORINO: I do admit, yeah, we got this this morning, and none of us have had a real chance to look it

over.

MR. DANTE: Yeah.

CHAIRMAN VICTORINO: Again, I do apologize. I

guess it went to you first, right, and wasn't able to be

mailed out in the packet?

DIRECTOR TENGAN: It's in -- I am sorry,

Mr. Chair, but it's an oversight on my part.

CHAIRMAN VICTORINO: Okay.

MR. DANTE: It might take 10 minutes to read it,

and I wonder, is it possible for us to allow the members to

read it before I speak?

CHAIRMAN VICTORINO: Would the members -- and I know many of you would, but would you guys want to take a few minutes and -- five or 10 minutes and --

BOARDMEMBER RAISBECK: I would very much like to be able to read it --

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER RAISBECK: -- before we talk about --

CHAIRMAN VICTORINO: Okay. Yeah, behind George's -- yeah, right here, the letter behind. Okay. So, why don't I say we give 10 minutes to go ahead, and we will

review this, and then we can go ahead and get started. At least then, Mr. Dantes, we have some kind of background.

MR. DANTE: I really would appreciate that.

CHAIRMAN VICTORINO: Okay. That will be fine. Is that okay with all the Board Members? Okay.

CORPORATION COUNSEL KUSHI: Calling a recess?

CHAIRMAN VICTORINO: Yeah, we will call a recess. Okay.

(Recess, 10:39 a.m. Resumed, 10:48 a.m.)

CHAIRMAN VICTORINO: Okay. I will reconvene the meeting and ask Mr. Dantes, after the Board has had an

opportunity to review your letter, if you want to go make an opening statement, then I will open the floor to questions.

MR. DANTES: Well, first of all, thanks,

everybody, for the extra time and attention to review that. I know it's a lot to absorb on short notice.

I'm here today basically because our organization would like to plead with you to remedy what we feel is a defective policy. The policy applies commercial infrastructure upgrade requirements to single family dwellings that are rented short term to visitors.

And we believe the policy is defective for three



reasons. The first reason is technical, and that is we don't believe that that policy is authorized by any duly adopted administrative rule.

The second reason is we feel the policy is irrational. In other words, it isn't based on sound fact and judgment.

But the most important reason is the third reason. We feel that the policy results in unintended consequences which are contrary to the public interest and are, therefore, for lack of a better word, absurd.

So, to take these in order, the first one -- first concern of ours is that the policy is not authorized. And by that we mean there's a rule which is cited in the staff report in front of you. And in that rule, it specifically says that these infrastructure requirements, quote, "shall not be applicable to the construction of the first and second dwelling unit in any district," end quote.

Even assuming that this rule should apply to our businesses -- for the moment, assuming that this is the rule that applies, it exempts the first two dwellings from these requirements. When the policy goes beyond this rule and

essentially says, except if they are vacation rentals or  
except if they are bed and breakfasts, we question whether  
there is any authority to make an exception to the rule.

And the question is based on the state legislature  
and the court having made it clear that a duly adopted  
administrative rule is the only basis for an agency's  
authority to impose policies.

Now, that's the technical question. In other  
words, if the first and second dwelling are exempt, fine, but  
if they then want to say, but, not in your case, we don't find  
any authority for that.

Then the second concern we have is that we feel the policy is irrational. The reason for that is that fire flow requirements really are related to the construction of a structure and its surrounding environment. They are not related to whether a person, who is using that dwelling, is paying money to use it, or whether they are renting it for a year, or whether they are renting it for a week.

All these buildings have already been permitted.

They have been permitted by the Department. The Department had to sign off on them before there would be a certificate of occupancy or a building permit issued -- final inspection

issued in order for a family to live there. Nothing about the structure changes if a tenant stays less than 180 days. It doesn't make the building more flammable.

Now, we interviewed the water supply departments in every other county in the state, and they all said that they felt that residential codes and standards -- not that they felt, but that they did apply residential codes and standards to these permits. Why? We are not engineers, and we are not lawyers, so we may not fully understand all the ramifications.

But, basically, what they explained is, for example, fire flow is important once a fire starts. The question is, is there going to be enough water to extinguish that fire. And the way they answered it, in the other counties, is that that depends on what the building is made of, and how old it is, and whether there's brush around it or other dwellings around it. It doesn't depend upon whether someone in it is giving money to stay there or not.

So, while there may be a basis to call our operations commercial, for tax purposes, or possibly for some other purposes, to treat them as commercial for code and

standard of infrastructure, we believe, doesn't have a rational basis.

And finally, the most important issue is that we feel the outcome of the policy leads to absurdities. A retired couple has a child that grows up and leaves home to go to college. Now they are faced with the expenses of college during their retirement. They have a vacant bedroom. They have the time and interest to open their home to visitors and to entertain them and act as hosts. They apply for a permit, and they are asked to upgrade the entire water supply to the neighborhood.

Probably most contrary to public policy is the result that the vast majority of operators of vacation rentals will not identify themselves voluntarily and will not come forward to apply to be regulated, to be taxed, because they have no realistic hope of being able to meet this kind of requirement.

Now, our organization, from the start, has encouraged everyone to apply. But the people who have stood back and watched what's happened to the people who have applied have not been sorry that they stood back and watched. And it's hard to argue. It's hard to tell them that they



should jump into the meat grinder.

We need to be able to tell them that reasonable codes and standards will apply when their application is circulated to various agencies, so that they can conform with them if their home has already been inspected and found to be safe from a Fire Department point of view. The Fire Department agrees with our position on this.

And I'm here now as a resource to try to respond to any questions that may be of interest to you in evaluating our request. Thank you for your attention.

CHAIRMAN VICTORINO: Okay. I will start on this

side of the -- do you have a question, Ms. Raisbeck?

BOARDMEMBER RAISBECK: Yeah, yeah, I do.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER RAISBECK: And I'd like to say that I

think you have made a really very comprehensive and, to me,

compelling presentation on this subject.

The issues that concern me most are the Department

applying policies that have never been formalized in a rule.

And to me, that does lead to results that are sometimes unfair

and definitely unpredictable, so that -- and I was

particularly struck by your quoting the rule that -- or I guess it was the Department quoted Rule 5A, and you are pointing out that this says, "The foregoing shall not be applicable to construction of the first and second dwelling unit of any premises in any district."

To me, that does mean that the vast majority of B&Bs would be a first or second dwelling, and that, therefore, the rule says that this fire protection requirement the Department is applying does not apply when the change is made from a -- from a residential dwelling to a B&B, which is also a residential dwelling, in my thought at least.

So that I guess the point that concerns me most is that the Department is applying policies that are not backed up by a rule, and that is not the right way to behave. So that I don't really -- I think you have presented your case very fully. I agree with most of the items in your letter -- one, two, three, four, five, six, seven, eight, nine statements in your letter.

I am again disappointed in the Department that this letter, which was addressed to the Board of Water Supply and sent on September 7th, was not given to us until the beginning of this meeting on September 22nd. It would have

been far preferable had we been able to read it over  
  
previously.

So, that's -- that's not exactly a question for

Mr. Dantes, but I --

CHAIRMAN VICTORINO: More of a statement.

BOARDMEMBER RAISBECK: -- wanted to make my

position clear.

CHAIRMAN VICTORINO: Thank you.

BOARDMEMBER RAISBECK: I may have more questions

later.

CHAIRMAN VICTORINO: Ralph, do you have anything?

BOARDMEMBER JOHANSEN: I wonder if before we go on, we could get a response to from the Department to some of the issues she's raised. And then depending on the answer, we may be able to ask more questions in that regard, and it would be helpful to me, before I ask anything, because I -- at this point, I generally agree with what Sally said.

CHAIRMAN VICTORINO: Okay. I am trying to keep the questions for Mr. Dantes at this time, and I understand your position, and I will --

BOARDMEMBER JOHANSEN: Then I will pass.

CHAIRMAN VICTORINO: Yeah, yeah. Okay. And then we can go back to that. I just want to go to Mr. Dantes first, and then we can go to the Department, Mr. Tengan.

Kenneth.

VICE-CHAIRMAN OKAMURA: Okay. Thank you. So, we are talking about like vacation rental homes, which are homes that are rented as a whole, right?

MR. DANTE: Yes.

VICE-CHAIRMAN OKAMURA: And then we are talking about bed and breakfast, which usually could be as a whole or it could be rooms within a home, so it could be either way,

right?

MR. DANTES: As long as there's someone on the parcel supervising the guests, yes.

VICE-CHAIRMAN OKAMURA: Okay. So, a vacation rental home is like, you know, somebody rents out their home for a couple days. That's a vacation rental home, home rental. And a bed and breakfast is having like either one -- you know, one guest stay there or several guests stay there with supervision.

MR. DANTES: Yes. The difference being that there's a proprietor on the same parcel. Whether they are in



the same dwelling or not, they are at least on the same  
parcel.

VICE-CHAIRMAN OKAMURA: Okay. And sometimes you  
have one unit, sometimes two units in the home, generally  
about there, less than three we figured out.

MR. DANTE: No, there can be up to six.

VICE-CHAIRMAN OKAMURA: I know, but based on the  
County rule, is that what --

MR. DANTE: Up to six guest rooms on any  
particular parcel, and those guest rooms may be apportioned

between one or two dwellings.

VICE-CHAIRMAN OKAMURA: Okay. You quoted last time that -- oh, one or two dwellings. I see. Okay. Last time that the National Fire Protection has some standards. Do they have standards for bed and breakfast or for vacation home rentals?

MR. DANTE: Neither. They have standards for dwellings.

VICE-CHAIRMAN OKAMURA: Okay.

MR. DANTE: And they have standards for hotels.

VICE-CHAIRMAN OKAMURA: Okay.

MR. DANTES: Intermediate, they also have standards for rooming or boarding houses, but they do make a distinction. If the structure is a dwelling, it's one standard. If it's a hotel, it's another standard.

VICE-CHAIRMAN OKAMURA: Okay. And then you also said that some of the other counties deal with this differently. In other words, they don't -- like Kauai, for example, they don't treat a bed and breakfast as a commercial unit. Is that what you said?

MR. DANTES: Yes.

VICE-CHAIRMAN OKAMURA: And most of the other

counties treat it -- what do they treat it? Just as a regular dwelling?

MR. DANTES: They treat it as a regular dwelling, but some of them are adding the provision that there must be a backflow preventer.

CHAIRMAN VICTORINO: This page has all that.

VICE-CHAIRMAN OKAMURA: And then the other thing would be the County is presently working on an ordinance for this type of operation?

MR. DANTES: Yes, they are.

VICE-CHAIRMAN OKAMURA: According to the person

that spoke earlier. So, at this point in time, what would you want the Board of Water Supply to do?

MR. DANTES: I think the simplest thing would be if there could be a resolution on the record that this one -- that this two dwelling exemption, which is formalized in the rules, applies as long as the short term rental takes place within a dwelling. I think that would probably give us at least temporary relief, and then if the Council wants to adopt some umbrella policy about how these operations are treated, then I guess the various agencies could comply.

VICE-CHAIRMAN OKAMURA: I am sorry. Could you

repeat that again, please, one more time from the beginning?

MR. DANTES: I was thinking that the simplest

approach to respond to our request would be if the Board could

resolve -- pass just a resolution that the two dwelling

exemption that's codified in the rule will be honored.

VICE-CHAIRMAN OKAMURA: I see.

MR. DANTES: Then if the Council wants to adopt

some broad general strategy for how these permits should be

treated, then if and when that actually gets adopted, the

various departments and agencies may need to review their

rules.

VICE-CHAIRMAN OKAMURA: So, it's not that you want the Department to not view this type of business as a commercial -- commercial enterprise, but rather just as a dwelling, regular dwelling?

MR. DANTES: From the point of view of infrastructure codes and standards, we wish not to be viewed as commercial, because nothing commercial is being manufactured or serviced in the dwelling. But for purposes of simplicity about how to resolve the dilemma, I am thinking there already is a rule that says the first two dwellings are

exempt. If the rule were followed, I think that would take care of our concerns.

VICE-CHAIRMAN OKAMURA: Okay. Thank you very much.

CHAIRMAN VICTORINO: Okay. Let me keep moving down. Ken?

BOARDMEMBER HIRANAGA: Kent.

CHAIRMAN VICTORINO: Kent, I should say.

BOARDMEMBER HIRANAGA: Hiranaga.

CHAIRMAN VICTORINO: Never mind. I won't touch this one.



BOARDMEMBER HIRANAGA: A couple of things. You keep using the term single family dwelling. So, your position is that the first and second dwelling should be exempt. So, if there's substandard fire protection in an agricultural district where this B&B or TVR is located, you are saying no need to upgrade fire protection, because it's exempt. It's a first and second dwelling.

MR. DANTES: Well, that's putting it a little stronger than I would be comfortable with. I guess what I would say, if there's substandard fire protection, but the

County says it's okay for a family to live there, if there's substandard fire protection, and the County says it's okay for someone to rent it month-to-month, what's the difference if there's substandard fire protection and someone rents it week to week? I am saying there should be a level playing field. I'm not in favor of substandard fire protection.

BOARDMEMBER HIRANAGA: I think there's a distinction, when someone is the owner of the property and is aware that the fire protection is substandard, because the building permits were issued under this exemption of the first and second dwelling being exempt.

So, would it be the Maui Vacation Rental

Association's position that they will provide some type of a disclosure, to every potential renter, that you are entering a house that has substandard fire protection?

MR. DANTE: I would say that --

BOARDMEMBER HIRANAGA: Because I don't think they would be knowledgeable about that.

MR. DANTE: Fair enough. I would say if the County wants to adopt a policy that any tenant, renting from an owner in a dwelling that has substandard fire protection, should receive that disclosure, we would support that.

BOARDMEMBER HIRANAGA: Couldn't you take it upon yourself, as an Association, to apply that to your members? Impose that onto your members? I mean, if I owned a house, and I know that when I applied for the permit, it was substandard fire protection, I know that I am at risk -- greater risk of fire, not being protected from fire. But from a transient guest, who is coming from the mainland, I mean, what are the chances they are going to be aware that they are entering a substandard fire protected area?

MR. DANTES: Your question is a good one. I don't really have a ready answer to it except to say that the Fire

Prevention Bureau also has requirements for our structures.

And those requirements are beyond what would be expected just for a family renting.

In other words, there has to be a hardwired single-station smoke detector in every room, a posted evacuation plan and a fire extinguisher. And the guests, when they are renting, certainly are shown those items. So, we are pretty much relying on the Fire Prevention Bureau's statement that we are in compliance with national standards for fire protection.

But I don't have a good answer for your question about whether we should have a disclosure about the water supply as to whether it's adequate or not.

BOARDMEMBER HIRANAGA: One more comment. Again, you keep using the word single family dwelling. So, would the Association be in favor of at least a requirement that says agricultural homes located in agricultural districts or a rural district upgrade the system to urban standards for single family dwellings?

MR. DANTES: I'm not sure what those standards are, urban standards. I mean, we are in the ag district, and

those homes are actually farm dwellings.

Perhaps I should have included the phrase farm dwelling in addition to single family dwelling. But our position, at the moment, is that if the home has been permitted by the County for occupancy, we don't feel that we should be required to upgrade the infrastructure or retrofit upgraded infrastructure if we rent the home to guests.

BOARDMEMBER HIRANAGA: Are there different standards the Department applies for infrastructure improvements for agricultural subdivisions versus urban subdivision, single family dwellings?

DIRECTOR TENGAN: I believe the fire flow requirements are different.

BOARDMEMBER HIRANAGA: Right. And the reason being is because there is higher density of people living in single family dwellings in urban areas.

And you are creating high density in these homes, so I would think that, at a minimum, you should bring it up urban standards, because the agricultural standards were meant for farm dwellings.

MR. DANTES: Well, I would respectfully differ with creating higher density. I think if you sampled the long



term rentals in the agricultural district, you would find, on the average, many more occupants than you would in the short term rental homes.

BOARDMEMBER HIRANAGA: Okay.

CHAIRMAN VICTORINO: Thank you, Member Hiranaga.

Nothing? Can I go back to Ralph?

BOARDMEMBER JOHANSEN: You say that it would discourage someone from applying for a permit if they were required to upgrade to commercial standards. But I don't have a picture in my head of what the responsibilities are on that,

do you?

MR. DANTES: Not on the average, but I could cite my own -- my own situation as an example that probably is an extreme example. We are in the agricultural district. We have applied to rent one bedroom in our main house and then a two-bedroom cottage.

The Department of Water Supply feels that we need to replace 400 feet of six-inch cast iron pipe, that's underground, around three-quarters of a mile from where we live, with 8-inch ductile iron pipe, by excavating the road, removing the antiquate pipe, and installing a new pipe, and

backfilling and repaving, and then put a hydrant next to our driveway. And the cost of that is several hundred thousand dollars, and there's no new construction required.

Not everyone is subject to the same kind of extreme requirements in order to meet commercial standards. But in most agricultural areas, there aren't fire hydrants nearby to the structures. There are standpipes. And if the fire flow required by the Insurance Service Office is computed, it will often come up higher than that which can be supplied by a standpipe, and those applicants would have to install hydrants. And I think the average cost of installing

a hydrant is around \$14,000.

BOARDMEMBER JOHANSEN: I have one more question.

Is there any distinction made, by the insurance industry, that imposes requirements on TVRs that are not present for a single family dwelling?

MR. DANTE: No, not to my knowledge. They have a complex formula that's used by civil engineers. It doesn't have anything -- it doesn't say anything about whether they are short-term or long-term tenants. It has to do with the construction and the environment around the building.

CHAIRMAN VICTORINO: You are talking dwelling, and

just to answer that question, you mean basically based on the dwelling, and that is why they -- the only time insurance would be challenged, or questioned, or come with a question about short-term and long-term rentals, B&B, or TRVs, is for the liability purposes, and there you have a big difference.

But when you are talking the structures themselves, no, no. The dwellings themselves would have no bearing whether short-term or long-term. Absolutely none in our industry.

BOARDMEMBER JOHANSEN: I have one more question

that you may be able to answer. This probably is more appropriately answered by Mr. Tengan. Is what's the history of the requirement that TVRs comply with commercial standards? How did that get on the books?

MR. DANTE: Well, for the definitive answer, I would defer to Mr. Tengan and the Engineering Department. But my take on it is that they are doing the best they can, in the absence of guidance from the Board, to take a conservative posture that they feel offers the most protection.

CHAIRMAN VICTORINO: Okay. If that's everybody, I will turn it over now to the Director and his response to

this, if that's okay with everyone.

Okay. Director Tengan, your response.

DIRECTOR TENGAN: Could I have Herb Chang here?

He's the engineer -- District Engineer for where Dr. Dantes' premises are.

However, I'd like to offer some comments before we bring Herb up here. Dr. Dantes has been making references as to what is the difference between a single-family home, used as rental, and a bed and breakfast or vacation rental. And I think he noted one obvious difference, in that he made the statement that the owner or the proprietor must be on

premises. So, that's an additional requirement that's placed on single-family dwellings used for long-term rentals.

Another difference might be I heard earlier that Mr. Levin mentioned that there's a requirement for the number of parking stalls. Single-family units don't have a requirement for the number of parking stalls. And Mr. Levin even used the term -- in talking about vacation rentals and bed and breakfast operations, he used the term the industry.

The industry, in my mind, is a reference to some commercial activity. And Dr. Dantes also mentioned that the Fire Department has higher standards for vacation rentals as



far as the smoke detection devices are concerned. That's making a -- you know, distinguishing a single-family home versus a bed and breakfast or vacation rental.

And I think the thing that's being overlooked right now is that most of these homes originally started as residences, true residences. And as Dr. Dantes stated, that now people are retired, and they have this additional space that they can use to rent out.

Now, when you rent -- start renting out your premises, you really are having a change of use. Whether the

County Codes allows it or not, there is a change of use. But the original intent and the use of the property was much different from what it is now. And, so, you know, that, in my mind, should be at least considered.

And Dr. Dantes also mentioned that no -- no product is being generated or manufactured. But, in my mind, providing service is a product. We provide service. We don't produce water. We take the water. We treat it. We deliver it to the consumer. We provide that service, yeah. So, attorneys, doctors, they don't provide a product. They provide a service, and service is a product.

So, you know, that's my basic comments on this. I will defer to Herb Chang on -- you know, on the questions that the Board Members might have.

CHAIRMAN VICTORINO: Herb, maybe do you want to take this mike? Take this mike. Okay. Yeah. If you will introduce yourself for the purpose of the recorder.

MR. CHANG: I am Herb Chang with the Water Department, Engineering Division.

I will try to answer the questions Sally Raisbeck was referring to. As far as our rule and regs, that Section 31E, the Engineering Division, the way they are implementing

this particular rule is understanding that when this particular rule was -- that allowed exemption for construction of first and second dwellings from any type of fire protection improvements, we believed the original intent was for dwellings that would be actually occupied by families. No rentals, business-type of -- what do you call it -- ventures.

That was -- that's the understanding the staff has, and we believe that's the intent of why this particular rule was created. And because you can imagine -- if you didn't have this exemption, could you imagine the families wanting to build a first and second dwellings? Half -- I

won't say half, but a lot of areas on Maui, you just don't have the fire protection. And if you have a family who has property and wants to build a house, first house, to tell them they have to put in fire protection improvements, I mean, it would be very, very difficult. So, that was the intent. Some background.

And unless Engineering is proven that they are wrong in the understanding of this particular rule that was -- this was revised in 1985, I believe. Originally, we didn't have the exemptions. Something happened in 1985 which

triggered these exemptions. Other than that, I can answer any other questions.

CHAIRMAN VICTORINO: Okay. Open the floor to questions. I will start from this side. Stacy?

BOARDMEMBER CRIVELLO: I guess I would like to ask Mr. Kushi how -- what's your feel on this interpretation?

CORPORATION COUNSEL KUSHI: Mr. Chair.

CHAIRMAN VICTORINO: Yes.

CORPORATION COUNSEL KUSHI: Board Member Stacy, first, I preface my comments with the fact that I'm not that familiar with the bed and breakfasts and TVRs. And this is

really, I think, a Planning Department, zoning, code

enforcement situation. The way I understand it, the Water

Department does not issue these permits. It's the Planning

Commission, correct?

MR. DANTE: And/or the Council.

CORPORATION COUNSEL KUSHI: Or the Council. But

the Water Department gets involved in responding to requests

for comments. So, we don't -- the Department does not issue

or is the final discretionary body to say yes, yeah, or nay.

So, and from reading the staff report, their

recommendations or their position that these types of

operations are businesses is their interpretation of an existing rule.

That being the case, I think the arguments made by Mr. Dantes should be more addressed to the governing body, be it the Planning Commission or the Council. And if the Council or the Planning Commission says, as part of their decision to grant the permit, you comply with the business requirements of the Department of Water Supply, so be it. If they don't like it, they can appeal it, you know.

But from the Department's standpoint -- Herb, correct me if I'm wrong -- but in these types of operations,



unless the fire flow and the fixture counts have gone up, we don't issue meters. We don't approval building permits for these types of operations. So, from a jurisdictional standpoint, I think he's barking up the wrong tree.

However, in reading the documents, I must say that my understanding of a bed and breakfast is one thing. TVRs, transient vacation rentals, my understanding is anything less than 180 days.

MR. DANTE: Uh-huh.

CORPORATION COUNSEL KUSHI: Okay. So, you know,

what if you go 181 days? Then you are on a long-term rental, where you have no requirements. So, that's a little unfairness, if you want to say that.

If I choose to rent six months, six-and-a-half months to you, I do it carte blanche. Whereas, if I want to go 179 days, I got to go through this circus. And if I go six-and-a-half months, the Department will treat me -- they won't even look at me from a water, fire protection standpoint.

CHAIRMAN VICTORINO: Right.

CORPORATION COUNSEL KUSHI: So, again, you know,

that's the way I look at it. Now, from the Department, he mentioned something about the Department's policy. The rule is what it is, and it was implemented in 1984. None of us were here.

But, for whatever reason, they are just referencing the rule to a request for comments from the Planning Department or the Council. The rule also states, if you look at -- if you look at the rule, under Rule Section 3-1, it also says, "for all buildings, structures and other developments not provided under Section 2-2," which is the subdivision code, "the developer shall install and pay for

storage tanks, appurtenances, and pipelines from the tank to the development site," et cetera.

So, there is some references to subdivision requirements in Section 3 of the rule.

CHAIRMAN VICTORINO: Right.

CORPORATION COUNSEL KUSHI: You have to understand Section 2 of the rule covers subdivisions. Section 3 covers water service. These applications are neither. They are not subdivisions, and they are not asking for water service, because they have already. So, that's another complication when you attach these types of projects.

CHAIRMAN VICTORINO: Right.

MR. DANTES: May I respond to something on that  
question?

CHAIRMAN VICTORINO: Stacy, were you clear on  
that?

BOARDMEMBER CRIVELLO: Now I am, because it helps  
me to determine who makes the call.

CHAIRMAN VICTORINO: Right.

BOARDMEMBER CRIVELLO: If it's a business, you  
know, to me, it comes back to the Planning Department.

CHAIRMAN VICTORINO: Right.

BOARDMEMBER CRIVELLO: That's just my opinion.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER CRIVELLO: So, who determines if it's applicable as strictly business, you know.

CHAIRMAN VICTORINO: Right.

BOARDMEMBER CRIVELLO: Who makes that call, so, Mr. Kushi has kind of cleared that up.

CHAIRMAN VICTORINO: Okay. Good. Mr. Dantes, go ahead and respond.

MR. DANTE: Thank you. And I appreciate your

clarification of those points, Mr. Kushi. And it's true that the Planning Commission and/or the Council makes the final determination on permit approval.

In practice, what they do, what they have done, is to both ignore the Water Department's comments and threaten the applicant with permit revocation if the applicant doesn't comply with them. I feel like this is a breakdown in the integrity of the permit process that does need to be addressed at the level of the rule.

What will happen is that the planner -- the staff planner in charge of the project will come in, give a

presentation to the permit issuing authority, be it the Council or the Commission, and say you will see that the Walter Supply Department has made comments that there needs to be a hydrant. We feel that the time it would take for equipment to reach the fire hydrant is so long, so many minutes from the nearest fire station, that people would either have to evacuate or they would be dead. Therefore, we don't feel a fire hydrant is as appropriate as the recommendations of the Fire Prevention Bureau, which are smoke detector, evacuation plan, and fire extinguishers.

Generally speaking, the governing body will then



follow the Planning Department's recommendation to ignore the Water Supply Department's comments, but they will insert a standard condition, in the permit, that says if you do not comply with the Water Department's requirements, your permit is subject to revocation. I think that just results in dilemmas downstream. That's why I'm addressing it upstream.

CORPORATION COUNSEL KUSHI: Mr. Chair, that I don't -- I have never heard of that before, so that's the first time I've heard of that one. That sounds pretty disturbing.

CHAIRMAN VICTORINO: Okay.

DIRECTOR TENGAN: It is for me.

CHAIRMAN VICTORINO: All right. Okay. Thank you,  
gentlemen. Kent.

BOARDMEMBER HIRANAGA: I just wanted clarification  
from the Department. Commercial standards for fire protection  
are set because commercial properties are available for public  
use, and you have got higher density of people, typically, in  
these structures. And there's a certain level of assumption  
of safety that the County must regulate, so that people, when  
they enter commercial buildings, have a certain assumption of

safety. Is that why commercial standards are different from residential standards?

DIRECTOR TENGAN: I would think that you are correct on that, but maybe Herb can confirm that.

BOARDMEMBER HIRANAGA: What is the basis that commercial standards are different from residential standards for fire safety?

MR. CHANG: I'm not sure of the basis, but just the way the rules are set up. It's either Section 2, which is subdivision, and Section 3 is anything that would fall under Section 3, which would be commercial. Section 2, we have

simplified fire requirements based upon zoning, agricultural, 250 gallons a minute, residential a thousand, business, 2000.

But, for non-subdivision-type of projects, like building permits for hotels or office buildings, we go to the ISO, the Insurance Service Office recommendations on determining fire flow, which is more exact. It's based on the actual building constructed, size, materials, which sometimes exceeds the zoning requirements in the subdivision regs. It's more of a conservative approach.

BOARDMEMBER HIRANAGA: I see. I guess my

position, I feel that in these B&Bs and vacation rentals,

there should be some level of assumed level of safety that the public can rely on. It might not be commercial level of safety, but there should be some minimum level of safety that someone using an internet can book the room or house and assume that there's a certain level of safety within the County of Maui.

I don't agree that because of this first dwelling, second dwelling exemption, because that is being applied to someone who is building their residence, that they are more knowledgeable of the inherent deficiencies by using that

exemption. Because the Fire Department will state that you have -- you are in the substandard area of protection, so they will know that they are in a substandard area of protection.

But someone on the internet booking a room in Haiku wouldn't know if he's in a substandard area of protection. So, I think some minimum standard must be applied. And even if it's just single-family dwelling, urban requirements, there should be some minimum level.

And if that particular applicant can't meet that level, then he can't operate a B&B or a vacation rental. I mean, sure, there's a beautiful place out there in Kailua, but

if there's no fire protection, I don't think he should be allowed to operate a B&B, because it's being made available to the public.

You state that it's a private residence, but do you actually deny people who want to book a room with you off the internet? When you get a request for a reservation from New York City, how do you know? Isn't that public access to your property? Do you screen them and say, no, you can't stay here?

MR. DANTES: We certainly screen them. We don't -- we never have discussed the issue of fire safety with

them, as you are recommending, which is why I'm unprepared to give you an intelligent answer about your specific question.

But we certainly do screen them for the purpose of making sure that their expectations are going to be met by what we are offering and also, to the extent possible, to assure that they are going to be compatible with the neighborhood, so to speak.

Someone who sounds like they are charged up on a ton of caffeine and wants to know how much live entertainment is on the premises, and how many steps it is to the nearest bar, we would refer to the south or west part of Maui and



suggest that they use a hotel or a resort where they would have their needs met and be in an atmosphere that will meet their expectations.

Someone that says that they can't stand to see a gecko or a bug, we will send somewhere else, too, of course. So, there is screening, but it isn't -- we don't apply screening in the area of fire protection, because it's never occurred to us.

BOARDMEMBER HIRANAGA: So, you have denied someone's request? After you have so-called tried to steer

them elsewhere, they have said, well, I still want to stay here, you have denied them?

MR. DANTE: Oh, yes, definitely, definitely.

BOARDMEMBER HIRANAGA: You have denied them?

MR. DANTE: Yeah, if there are people that we feel are incompatible -- I don't know if this is an industry-wide practice, but I know from personal experience that there are people that we've -- and we give them other recommendations about places where we feel that they will be happier.

BOARDMEMBER HIRANAGA: So, all your reservations

are done by phone? You don't have a web site, that you get a credit card and book it for four nights?

MR. DANTE: You are talking about our particular web site? Our web site has an on-line booking system that doesn't confirm a reservation without phone confirmation or at least an e-mail conversation.

BOARDMEMBER HIRANAGA: E-mail conversation.

MR. DANTE: Yeah, the person can submit a reservation form and a credit card. Nothing is charged. We need to make sure that they personally review and acknowledge all the house rules and the conditionings at booking. We need

to get a hard copy of their signature. We discuss with them what the nature of their visit is, what their expectations are, are they familiar with this part of the island and so forth.

As a result, we have like a 99.9 percent satisfaction level. And I'm not promising that that's an industry standard, but you are asking me, and, yes. Yeah, we have direct personal contact with every prospective guest before sending them a confirmation.

BOARDMEMBER HIRANAGA: By e-mail or telephone.

MR. DANTES: Or both.

BOARDMEMBER HIRANAGA: Okay. Thank you.

CHAIRMAN VICTORINO: Member Hiranaga, you are  
finished? Okay.

VICE-CHAIRMAN OKAMURA: Yeah, okay. Thank you.

CHAIRMAN VICTORINO: Kenneth.

VICE-CHAIRMAN OKAMURA: Yeah, I agree with  
Corporation Counsel that we don't really have a -- seems like  
we don't have a rule that addresses this issue, and we are  
trying to make this particular 3-1E fit, and I think it  
doesn't fit well.

So, how are you going to determine whether to --

what to say, if we don't have a policy? Maybe we should stop commenting on these -- on these things, saying we don't have a rule that covers this area.

The other one is that, because, also, outside of this rule, if we make the leap from single family dwelling to commercial, that's a big leap. A lot of these places are located in areas that are not zoned commercial. They are located in ag areas. So, that's another consideration. The zoning is not commercial, so how can we treat them as commercial. Because by law, they wouldn't be allowed if they

were commercial.

So, we need to do something, either maybe not comment on them, say we don't have the ordinance or rules, or I guess the Board, what we could do is ask that the -- you know, formally ask the Department maybe not to treat these businesses as commercial, because it doesn't apply, because -- or apply any rule that we have, because none of the rules apply.

And, so, maybe it might be a mistake to try to fit it in and try to address it with a rule that we don't have that applies to this situation. But we need to do something.

I would be in favor of recommending something to create a change and maybe it would make it easier on everybody, you know, including the Department, so that we don't have to really try to force the issue.

CHAIRMAN VICTORINO: Thank you, Member Okamura.

DIRECTOR TENGAN: Mr. Chair.

CHAIRMAN VICTORINO: Yes. Your response, Director Tengan.

DIRECTOR TENGAN: May I respond to Mr. Okamura's concern here. Maybe it might be a matter of defining what is commercial enterprise or a business.



VICE-CHAIRMAN OKAMURA: Yeah, for us anyway,

because it's defined in the Planning.

DIRECTOR TENGAN: Yeah, because basically, our

application of this rule really hinges on our definition of

what is a commercial activity or what is a business.

CHAIRMAN VICTORINO: Uh-huh.

DIRECTOR TENGAN: And, so, if that can be defined

by the Board or by any authority, you know, it would help us

in the application of that rule then. And in my mind, all the

statements I have heard and everything I see in the

presentations here, we are talking about a commercial enterprise.

CHAIRMAN VICTORINO: Mr. Dantes.

MR. DANTE: Some of the other counties have adopted ordinances which permit a classification of home occupation. It doesn't require commercial zoning. It occurs in residential zoned areas. I'm not familiar with -- with this in detail, except those counties have told us they apply residential codes and standards with respect to the Water Supply Department.

But, for purposes of acknowledging that money is

changing hands, and that it's not just a family owner living there, they call it a home occupation which doesn't bump it into a commercial category.

CHAIRMAN VICTORINO: Thank you. Mr. Johansen.

Member Johansen.

BOARDMEMBER JOHANSEN: Well, I just think that this problem has probably been studied, addressed, and resolved in resort areas, coastal areas all over the United States, and there must be some -- if we are going to modify from commercial or if we are going to modify from single family dwelling and do it in some way that they can live with

and that will enable people to request permits, without onerous consequences, maybe we ought to look into some of that. I don't know just exactly how we would do that, but there must be some experience there we can benefit from.

CHAIRMAN VICTORINO: You are probably correct, and we should do some research in that area. Member Raisbeck.

BOARDMEMBER RAISBECK: Yeah, I think it's important to recognize what Mr. Dantes has brought us, that the other three counties all treat this situation under residential rules rather than commercial rulings.

I think it's also important to realize that it's

basically an unwritten policy of the Department, not a rule,  
but an unwritten policy that the Department is enforcing based  
on their opinion that this is a commercial operation.

Even when it's, say, one or two bedrooms in an ag  
area, it's a commercial operation, and they should apply  
commercial standards. I see two things going on that  
complicate the issue. The -- well, the Council has dealt with  
bed and breakfasts. I know they spent a couple years working  
out rules about bed and breakfast. And they certainly have  
the final say as to whether this is commercial or whether it's

residential. And we are told again by Mr. Dantes and

Mr. Levin that the Council is working on a revision of those rules.

They may make it very clear what they want to treat it as, and that will be definitive. You know, they have the power. We do not. But I think that meanwhile, I would like to see the Board say that it is not the Board's policy to treat the kind of operation we are talking about as a commercial operation.

I think that Kent's worries about disclosure are very valid, but they would apply equally to long term rentals.

Many people, you know, lease for a year or lease for more than six months, and they equally should be told that the place they are looking to rent is in an area that is considered to have substandard fire protection.

I think that kind of disclosure could be required of all these operations that advertise on the internet, just like we have disclosure if you go to a beach, and it says there are no lifeguards, you know, go in at your own risk. That's a sort of standard that is imposed where risk exists but the County doesn't really want to do anything about it.

The other thing I see as complicating this is that

I think the requirement for the -- to have individual homes put in infrastructure that is required now, but wasn't required when the homes were put in, we know, from the operations of this Board, how often that results in a totally inappropriate requirement to an individual family.

And in this case, it's an individual family wanting to rent out their extra bedroom or something. I don't see that that kind of operation should result in someone having to come up with \$100,000, or \$50,000, or even \$12,000, when it's allowed to exist if the owner lives there. It's allowed to exist if the owner rents long term to somebody, but



then it's not allowed to exist if it crosses over this  
  
six-months line and becomes a short term rental.

So, I don't see that the Department's  
  
interpretation of this situation is the right one, and I would  
  
like to see the Board recommend that until the Council comes  
  
up with something definitive, that these things be regarded as  
  
residential rather than commercial.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER RAISBECK: And I'm willing to make

a --

CHAIRMAN VICTORINO: Motion to that effect.

BOARDMEMBER RAISBECK: -- a motion to that effect,  
if other people feel that might be a good idea.

BOARDMEMBER JOHANSEN: I will second.

CHAIRMAN VICTORINO: Wait. Wait. She didn't make  
the motion yet.

BOARDMEMBER RAISBECK: I didn't make the motion.

CHAIRMAN VICTORINO: Yeah. Hang on. Yeah, I just  
wanted to make sure everybody had a chance to say something.  
I have come to the conclusion, in listening to all parties,  
that, yeah, basically, our rules either, A, are too stringent

or antiquated, whichever way you want to look at it, and I think we need to revise it.

And whether the powers to be, whether it's the Council or the Planning Department, whoever has the authority should do it. We can only make recommendations. And, you know, if you guys want to go ahead and put a motion in place to recommend the Department look at these properties as residential instead of commercial entities, that would be you guys' call.

However, Mr. Dantes, I will say this. The safety of people should be and must be paramount in all of these

situations, okay? When people come here, and I have seen --

and you are very aware of how many suits are out there for

people who go on to properties, who go out hiking, go out

swimming and are injured or killed in these areas of

activities, yeah, and many times they are unaware of the

dangers of the activities.

I am not trying to put your residence in the same

category as an activity. However, awareness is important.

When somebody rents something out, somebody is going to come

and live or stay in Haiku, which is far from ambulance

service, fire services, emergency services, then something has

to be put in there by your industry to say that. Because many of the hotel industries, they do have -- well, they are forced to do a lot of these things. They have to have ADA on property. They have to have oxygen on property. They have to have all these things. Okay? That's required, because it's a commercial entity.

You are talking, saying I want to stay as a business, but I don't want all the same requirements as a commercial entity has to do. Right? I mean, basically, that's what you are saying. So, if you do something like

that, I would hope whatever the powers or anything needs to be, make sure that you folks have some kind of methodology or something that is put in there, and make sure that you folks let the guests know, whoever are taking a room at your house, who is renting a room from your house, who is occupying your property, that safety is still an important issue, and that you follow certain requirements. And that those requirements be put in the ordinance.

Now, that would be my comments to you, is that's important, in my mind. Because again, when you are in Haiku and some of these remote areas, if something does happen, it's

going to taking an awful long time for somebody to get there.

I am not only talking fire flow now. I am talking other

things. I am going beyond what we have been talking about.

But sometimes we leave those little pieces of the puzzle out,

and they are just as important to me as fire flow.

I am sorry. I may have gone off beyond my

jurisdiction, but I just threw that out as a comment. Go

ahead.

CORPORATION COUNSEL KUSHI: Mr. Chair, may I ask

him a question?

CHAIRMAN VICTORINO: Yes. Sure, go ahead.

CORPORATION COUNSEL KUSHI: Mr. Dantes, again, I

am not familiar with the operations and the permitting

process. The permits that your group gets from the Planning

Commission, are those special use permits?

My question is, whatever permits or entitlements

you get from the Commission, are they conditioned on you guys

giving an insurance policy, insurance coverage to the County,

to the Planning Commission, to whoever?

MR. DANTE: The permit varies with the specifics

of the zoning where the proposed use is going to happen. It

may be a bed and breakfast permit. It may be a special --



State special permit, or it may be also a County conditional  
use permit.

But in all cases, there is a requirement for a  
liability policy that names the County as insured.

CORPORATION COUNSEL KUSHI: Based on your  
operations --

MR. DANTE: Yeah.

CORPORATION COUNSEL KUSHI: -- that the permit  
granted?

MR. DANTE: Yeah, and the evidence of the permit

in force has to be maintained current with the permit issuing authority. The evidence of the insurance, pardon me, being in force.

CORPORATION COUNSEL KUSHI: How much is the policy?

MR. DANTE: It's just for a million dollars.

CHAIRMAN VICTORINO: Okay. Director Tengan.

DIRECTOR TENGAN: Mr. Chair, that's just another point, you know, indicating that this is a commercial activity. These kinds of insurance policies aren't placed on single family residences used as residences.

CHAIRMAN VICTORINO: Mr. Okamura.

VICE-CHAIRMAN OKAMURA: Yeah, I would be in favor of recommending to the Department -- that we recommend to the Department that we treat -- we don't treat these types of businesses as commercial. Whatever they want to treat it as besides commercial, they don't treat it as commercial, unless they are located in a commercially zoned area, something like that.

DIRECTOR TENGAN: I would still like to see a definition of commercial.

VICE-CHAIRMAN OKAMURA: I think we have to go by

the Planning Department's definition, which is the -- whatever  
it may be.

DIRECTOR TENGAN: I wonder if they have one.

CHAIRMAN VICTORINO: Yes, they do. Yes,

Mr. Dantes.

MR. DANTES: There is a definition in the Maui  
County Code zoning that defines commercial purpose. I can't  
quote it exactly, but basically, what it says is if the use  
involves the manufacturing or sale of products or providing of  
services.

But I would have to differ as to whether rent is a service. Rent generally is compensated by a fee or a commission. I mean service is. Pardon me. I am getting tongue tied. Services are generally rendered by a person to another person and compensated by a commission or by a fee.

When you fill out your income tax return, there's a portion of it for business income, and there's a portion of it for rental income. Rental income is a unique type of income that's considered unearned income. It's not service income. Certainly is taxable, but it's not a service.

CHAIRMAN VICTORINO: Let me ask you this question.

Excuse me. You made a good point, and I would like to draw out that point. You stated that a rental -- I rent my house, for example, to Mr. Kushi. I go to your place for bed and breakfast or long term rental.

Let me ask you this question. If I go for bed and breakfast -- let's start with bed and breakfast, if that's okay. We'll say bed and breakfast. What do you provide for me? What services do you provide for me as a bed and breakfast, basically? I mean, you don't have to go in to details, but I mean basic services as bed and breakfast.

Okay. That's my first question.

MR. DANTES: The basic services for a bed and breakfast are not standardized.

CHAIRMAN VICTORINO: Okay. So, give me some examples of what would be -- I could expect at most bed and breakfasts.

MR. DANTES: At most bed and breakfasts, you could expect that there would be a proprietor on site who is familiar with things like local customs.

CHAIRMAN VICTORINO: Okay.

MR. DANTES: Hawaiian culture.

CHAIRMAN VICTORINO: Okay.

MR. DANTE: Standard activities that are of potential interest to the guests. And whether or not there's a proprietor on the parcel, you would certainly expect there is someone available 24-7 if there's an emergency or a problem.

CHAIRMAN VICTORINO: Okay.

MR. DANTE: So, you are not calling the County to come and fix something on the premises. You are calling a proprietor to come and fix something.

CHAIRMAN VICTORINO: Okay.



MR. DANTE: But these -- whether or not these types of services are available or whether they are rendered doesn't affect the price that the person pays. They are paying for the rent, and there may or may not be value added as a result of the services that the host is providing.

CHAIRMAN VICTORINO: I normally don't disagree with people, but I am going to disagree with you right now.

MR. DANTE: Okay.

CHAIRMAN VICTORINO: Because if I rent my house, and I have been a tenant and I have been a renter, right? I rent my house to Mr. Kushi. He pays me a thousand dollars a

month. I don't go to his house to check on things unless they have been so put in the contract. I don't render any other services except my house is available to him for his usage, unless I have specific rules in the rental agreement saying he can't do this, this, and this, which is very seldom. Let's say no dogs. No animals allowed. Okay. Maybe those are what I would consider specific requirements or policies that I put in for my house. Beyond that, I do not spend 24-7 at his beckoning. I am not there to provide any other services. I rent my house.

You have just said we provide these various

services. And I'm putting in this -- and correct me if I  
wrong, gang, that rental here is providing a dwelling for this  
family to live in. Rental here is not only somewhere to  
sleep, but also other service that are made available as you  
just stated.

Now, whether they are more or less in different  
bed and breakfasts, that's debatable. But you provide  
services at the bed and breakfast not just the rental. When I  
rent my house to Mr. Kushi, I just rent my house. I don't  
provide any other services.

VICE-CHAIRMAN OKAMURA: Unless --

MR. DANTE: I am saying --

CHAIRMAN VICTORINO: I am trying to differentiate.

MR. DANTE: I am saying it's not standardized,

because if you look for short term rental in Kapalua --

CHAIRMAN VICTORINO: Yes.

MR. DANTE: -- you are going to find dozens of

places where you basically show up, and there is a key waiting

for you, and you are never going to see another person there,

and there's nobody going to be there unless there's an

emergency. There is no service involved.

There are other places where a person chooses to give a lot of hands-on attention to the guest, if that's what they want. For instance, my wife may have some of our local friends prepare a special lei greeting for somebody, but we don't charge for that. If they didn't get the lei greeting, the rent would be the same if they did get the lei greeting.

All I am saying is that the service may add value and may make our place more attractive than the next place that doesn't have a hostess that cares about the guests. But what we are charging for is by the night, and there's a fixed amount by the night, and it doesn't matter whether that person

has someone to call or doesn't.

CHAIRMAN VICTORINO: Okay. Mr. Tengan.

DIRECTOR TENGAN: I have a question.

CHAIRMAN VICTORINO: Sure.

DIRECTOR TENGAN: So, who changes the linen?

MR. DANTE: Well, either my wife or a housekeeper  
that we hire.

DIRECTOR TENGAN: Isn't that a service?

CHAIRMAN VICTORINO: Again, I guess we are getting  
to a point where --

MR. DANTE: Okay.

CHAIRMAN VICTORINO: -- and I didn't want to get there, but I brought it in, so I apologize. I'm the one that started it.

Okay. Mr. Okamura, you had your hand up earlier.

Go ahead.

VICE-CHAIRMAN OKAMURA: Yeah, I think it's a service, but, you know, by law, commercial activities can only be done in commercially zoned areas. You cannot have a commercial activity in my backyard.

CHAIRMAN VICTORINO: No, that's not correct. But,

I know, I am not going to disagree with you, but that's not correct.

VICE-CHAIRMAN OKAMURA: Oh, based on zoning, you can only do it -- like a hotel has to be zoned hotel. It has to have the right zoning. You cannot build a hotel anyplace.

CORPORATION COUNSEL KUSHI: Unless you get a permit.

VICE-CHAIRMAN OKAMURA: Huh?

CHAIRMAN VICTORINO: Yeah, permit.

VICE-CHAIRMAN OKAMURA: And the same thing with this kind of business, you know. Yeah, you cannot build a



hotel anyplace. This kind -- and it has to be zoned hotel.

You are calling this a commercial enterprise, and it's being done outside a commercially zoned area. I don't think you should call it a commercial business in that sense.

CHAIRMAN VICTORINO: However, special use -- special condition use permits are issued, because when this was built originally, it was built as an ag or B residential, isn't that correct?

MR. DANTE: Correct.

CHAIRMAN VICTORINO: So, we do change it. We are changing. We are making conditional permits to change these

things. So, I have to disagree with your statement, but --

VICE-CHAIRMAN OKAMURA: You are allowing -- it becomes an allowed use. But I don't think we can offhand just call all of these things that -- what we generally see come into the Department commercial, because all of them aren't, you know. It's a broad brush, and it's a mistake. And we don't have -- the basic thing I will say is we don't have the rulings or the policy written that backs up this judgment.

And it could be wrong, but show me, in black and white, where it says that this type of -- or the rule that would apply to this situation, and we don't have one. And we

are making a judgment based on how it's -- something that is not closely -- you know, even closely -- comes close to this situation. We are making a judgment and we are making a stretch, and the stretch is too much. There should be something a little bit better to base our judgment on. That's what I think.

CHAIRMAN VICTORINO: Thank you. Mr. Johansen.

Oh, go ahead, Mr. Tengan.

DIRECTOR TENGAN: You know, these rules are -- were written and adopted by the Board. Staff is interpreting

the rules. Since the Board did not, at the time, provide a definition for commercial --

CHAIRMAN VICTORINO: Right.

DIRECTOR TENGAN: -- and all evidence we see presented before us indicate that this activity is a commercial venture or, you know, a profit-generating or profit-oriented activity. And whenever you talk about profit-oriented activities, basically, you are talking about a commercial activity, some kind of business activity, yeah?

So --

VICE-CHAIRMAN OKAMURA: Here is an example.

CHAIRMAN VICTORINO: Hang on, Ken. Okay? Please.

DIRECTOR TENGAN: -- if the Board wants the staff to administer the rule differently, then the Board should provide guidance to staff as to how the rule should be applied and should provide the necessary definitions before asking the staff to do something different.

CHAIRMAN VICTORINO: Thank you, Mr. Tengan.

Mr. Johansen.

BOARDMEMBER JOHANSEN: I just wonder if rather than making fine points about commercial and noncommercial, we shouldn't be mainly considering whether it's a burden on the

Department either from a fire flow standpoint or some other aspect of safety or expense, and that should be our consideration.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER JOHANSEN: In making a recommendation or in promulgating new rules.

CHAIRMAN VICTORINO: Okay. Thank you.

Mr. Hiranaga.

BOARDMEMBER HIRANAGA: I think the fact that a permit is required to operate a B&B -- legally is required, states that that particular use is contrary to the underlying

zoning or else you would not need a permit to operate that business.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER HIRANAGA: The service that you are providing is shelter, and that's what people are paying for is shelter. And the fee that you charge for the shelter is based upon the location of the shelter and the condition of the shelter.

So, if you have got ocean front shelter, unobstructed views, you can charge more than if you have

shelter in the bottom of a gulch that has no views. I

think -- I don't necessarily agree that the commercial

standards should be applied, but I think there should be some

minimum standards that are applied. And if it's single family

urban standards, so be it.

But there should be a minimum standard that is

applied, because public use is being allowed, and they should

have a certain level -- assumption of certain level of safety.

Because when you travel within the United States, and you go

to a hotel, you have a certain level of assumption that

certain City and County codes are being applied to protect



your well-being.

CHAIRMAN VICTORINO: Right.

BOARDMEMBER HIRANAGA: But if you travel to a third-world country, I don't think you can make that same level of assumption. So, you have to sort of look -- look out for your personal safety when you are trying to rent in a third-world country.

But I think, in the United States, you should have that certain minimum level expectation. I think there needs to be a certain minimum level of expectation for operators that have to have permits, but not necessarily at the

commercial. But there should be some minimum standard. And if that operator can't meet that standard, then he should not be issued a permit.

CHAIRMAN VICTORINO: Miss Raisbeck.

BOARDMEMBER RAISBECK: Mr. Chair, I would like to offer a motion that has two parts to it. And the motion first would recommend to the Department -- well, I will state --

CHAIRMAN VICTORINO: State the motion.

BOARDMEMBER RAISBECK: The motion is this. The Board of Water Supply recommends to the Department of Water Supply that bed and breakfasts and transient vacation rentals,

which are not in a business or hotel area, shall not be considered commercial for the purposes of fire protection requirements.

Second part, they also request that the Council require, for both short term and long term rentals, if a rental is in an area of inadequate fire protection, that this be disclosed to the potential tenant. So, two parts to it. One is a recommendation to the Department.

CHAIRMAN VICTORINO: Then you should really make two motions then, I think, is what I would say.

BOARDMEMBER RAISBECK: All right.

CHAIRMAN VICTORINO: You make your one motion, and  
the other one would be to the Council.

BOARDMEMBER RAISBECK: Okay.

CHAIRMAN VICTORINO: Let's make the first motion,  
and then we can go from there.

BOARDMEMBER RAISBECK: Okay. The first motion --  
I will repeat it -- is the Board of Water Supply recommends to  
the Department of Water Supply that bed and breakfast and  
transient vacation rentals, which are not in a business or  
hotel area, shall not be considered commercial for the

purposes of fire protection requirements.

CHAIRMAN VICTORINO: Do we have a second?

VICE-CHAIRMAN OKAMURA: Second.

CHAIRMAN VICTORINO: Okay. Any more discussion?

I think we have discussed it. Kent.

BOARDMEMBER HIRANAGA: Well, I guess the question is, so there are no level of standard required then is what you are saying, just the existing level standard is acceptable.

BOARDMEMBER RAISBECK: Only the level of standard required as stated in the Council's ordinance about bed and

breakfasts. I believe that they are -- is that in the ordinance or is that in the uniform fire standard that there shall be an evacuation plan -- what do you call it?

CHAIRMAN VICTORINO: Fire -- you are talking about the --

BOARDMEMBER RAISBECK: The fire extinguisher and something else.

CHAIRMAN VICTORINO: And the smoke detectors.

BOARDMEMBER RAISBECK: And smoke detectors, wired-in smoke detectors. Is that in the Fire Protection Standard or is that in the Council?

MR. DANTES: Some of each. The Council requires hardwired smoke detectors -- hardwired single station smoke detectors. It also requires compliance with the Fire Prevention Bureau's standards. The Fire Prevention Bureau requires smoke detectors, evacuation plans, and fire extinguishers.

BOARDMEMBER RAISBECK: Okay.

MR. DANTES: So, it gets kind of covered in two jumps.

BOARDMEMBER RAISBECK: And those are above what

would be required in simply residential.

MR. DANTE: Yes.

BOARDMEMBER RAISBECK: I don't have to, in my own home, have those things.

MR. DANTE: Correct.

CHAIRMAN VICTORINO: Mr. Okamura.

VICE-CHAIRMAN OKAMURA: I think maybe -- what if we considered Kent's point about setting some minimal standards in this motion or as another motion.

CHAIRMAN VICTORINO: Amendment to the motion.

VICE-CHAIRMAN OKAMURA: Amendment to the motion,



just so the Department has something to follow. I just thought about it as he mentioned.

CORPORATION COUNSEL KUSHI: Mr. Chairman, if I can ask Sally to clarify. For clarification purposes, are you saying that whatever the applicant's zoning district is, those standards would apply?

BOARDMEMBER RAISBECK: That if they are not in a hotel --

CORPORATION COUNSEL KUSHI: If they are residential, and they are coming up to bat for a bed and breakfast, apply residential.

BOARDMEMBER RAISBECK: Yeah, whether it's R1, R2, ag, rural, whatever, now they would need to comply with the requirements for that zoning, obviously.

CORPORATION COUNSEL KUSHI: Their underlying district zoning.

BOARDMEMBER RAISBECK: The underlying zoning, but that they not be considered commercial unless they are in a commercial area.

CORPORATION COUNSEL KUSHI: Correct, so whatever it is, it is.

BOARDMEMBER RAISBECK: If I could say,

Mr. Chairman, I don't think Stacy -- she was briefly out of the room and didn't hear the motion. Would you like me to read the motion, Stacy?

BOARDMEMBER CRIVELLO: Yes.

BOARDMEMBER RAISBECK: It's the Board of Water Supply recommends to the Department of Water Supply that bed and breakfast and transient vacation rentals, which are not in a business or hotel area, shall not be considered commercial for the purposes of fire protection requirements.

And now we are discussing whether we want to add

to that some minimum level of requirements over and above  
  
what's already required.

CHAIRMAN VICTORINO: Does anyone want to amend the  
  
motion?

CORPORATION COUNSEL KUSHI: Mr. Chair,  
  
clarification.

CHAIRMAN VICTORINO: Yes.

CORPORATION COUNSEL KUSHI: Operationally, I would  
  
think you need to -- I would suggest you clarify that motion,  
  
because it leaves open interpretation for the Department to  
  
deem this application not commercial but something else.

CHAIRMAN VICTORINO: Right.

CORPORATION COUNSEL KUSHI: And, you know, you should be just clear. Say whatever the zoning is, you treat them as that zoning.

CHAIRMAN VICTORINO: Whatever the existing zoning is.

CORPORATION COUNSEL KUSHI: You don't want to come back again.

CHAIRMAN VICTORINO: Okay. My question to you, Sally, is the existing zoning or the conditional permit zoning?

CORPORATION COUNSEL KUSHI: The conditional permit  
is not a zoning.

CHAIRMAN VICTORINO: Okay. Well, the conditional  
permit changes the zoning, right?

CORPORATION COUNSEL KUSHI: No.

CHAIRMAN VICTORINO: It doesn't. As long as it  
doesn't change it, that's fine.

BOARDMEMBER RAISBECK: Well, there's two  
definitions of residential.

CHAIRMAN VICTORINO: Yeah.

BOARDMEMBER RAISBECK: One is R1, R2, R3 in urban.

Another -- my layman's idea of residential is dwellings in ag  
or rural are also to me residential. But you can't really use  
the term residential, since R1, R2, R3. So, how would it be  
if I changed it --

CHAIRMAN VICTORINO: Why don't you make a friendly  
amendment using something of this nature. For whatever -- add  
to the end, to whatever existing --

CORPORATION COUNSEL KUSHI: Zoning district --

CHAIRMAN VICTORINO: -- zoning --

CORPORATION COUNSEL KUSHI: -- the project is --

CHAIRMAN VICTORINO: -- located in.

CORPORATION COUNSEL KUSHI: Right.

BOARDMEMBER RAISBECK: Well, would it be

considered dwellings? I think you would need to say something

about --

VICE-CHAIRMAN OKAMURA: Dwellings in the -- on

dwellings based -- dwellings in the existing zoning of that

area. Yeah, the standard would be for -- for a dwelling, a

residential, single family home.

CHAIRMAN VICTORINO: Whatever it might be for

that, yeah.



VICE-CHAIRMAN OKAMURA: In the particular zone.

CHAIRMAN VICTORINO: We don't want to get specific as to what it is, but to the existing zone for which that dwelling is located, right? Yeah.

BOARDMEMBER RAISBECK: Be considered that be it -- that they be considered residential dwellings, residential dwellings.

CHAIRMAN VICTORINO: What if it's in ag?

BOARDMEMBER RAISBECK: Subject to the -- well, you know, farm dwellings and farm workers' dwellings and all of that stuff.

CORPORATION COUNSEL KUSHI: Mr. Chair.

CHAIRMAN VICTORINO: Yeah, go ahead.

CORPORATION COUNSEL KUSHI: The reason for my

clarification --

BOARDMEMBER RAISBECK: Can you suggest something?

CORPORATION COUNSEL KUSHI: The rule that the

Department has cited you -- you know, and their position is

they are treating this as commercial. Commercial is only one

of several zoning districts.

The rule that the Department cited also includes

like residential, rural, business, industrial, apartment,

duplex, airport, hotel, you know. So, if you don't -- if you leave it up to the Department, they might, for whatever it is, you know, apply airport district, right? I mean, I am just taking a wild hair now, so I think you should be more definitive in your recommendation to the Department.

If the applicant comes in, he has an underlying zoning district of apartment, and he wants to apply for a special use permit, apply the apartment standards then.

CHAIRMAN VICTORINO: Mr. Chang.

MR. CHANG: You know, just a further on what Ed

and Kent are saying. On a staff level, if we were to implement this amendment, the first question is like, okay, it's not commercial, so what you guys want us to do? Do you want us to follow the subdivision zoning? Like the agricultural is 250. Residential is thousand gallons a minute. You guys want to be -- if you want to be more specific, maybe that is the problem.

And what about Section 3, exemption of first and second dwelling? Is that no longer -- is that still applicable? Do we still apply that exemption? That would be the two main stuff the staff level would be looking at.

BOARDMEMBER RAISBECK: Well, I would say since they quote 5.1E -- Rule 5.1E in their response, they are quoting it, and they are effectively saying that the first and second dwelling exemption doesn't apply to bed and breakfasts.

So, maybe we could just clarify it more easily by saying that the Board of Water Supply recommends that the bed and breakfast and TVRs are subject to the same exemption as first and second dwellings that are quoted in Rule 5.1E. Now, does that -- is that clear?

Essentially, you are saying they have an unwritten policy that 5.1E -- the exemptions that are specifically in

that rule, that those exemptions don't apply because it's commercial. Now, if we say those exemptions do apply to B&Bs and TVRs, which is what the rule would be read as by most people, but they have a policy saying those exemptions don't apply, so, I would -- I'm not sure how to say this in a way the Department will interpret correctly. I thought it was simpler to say that they shan't call them commercial, but --

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER RAISBECK: Whatever you guys think is right.

CHAIRMAN VICTORINO: I think we have a motion on

the floor, and I cannot just arbitrarily change the motion.

BOARDMEMBER RAISBECK: Okay.

CHAIRMAN VICTORINO: So, what I think I want to do, at this point, is vote on the motion, if you want to -- you know, and then we can make a motion that is more well thought out. I think that's --

BOARDMEMBER RAISBECK: May I make a friendly amendment before we vote on it?

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER RAISBECK: Let me just cross out shall

not be considered as commercial and say shall be considered as residential.

CHAIRMAN VICTORINO: Is that all right with the rest of the members?

BOARDMEMBER RAISBECK: May I make that amendment?

CHAIRMAN VICTORINO: As a friendly amendment?

Okay. On that motion, I will call for the question, just because I would like to move on and try to get this rectified.

All those in favor of Sally's --

BOARDMEMBER HIRANAGA: Can she repeat that, please?



CHAIRMAN VICTORINO: Repeat it.

BOARDMEMBER RAISBECK: The Board of Water Supply recommends to the Department of Water Supply that bed and breakfast and transient vacation rentals, which are not in a business or hotel area, shall be considered residential for the purposes of fire protection requirements.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER HIRANAGA: Clarification.

CHAIRMAN VICTORINO: Yes, go ahead.

BOARDMEMBER HIRANAGA: So, you are saying that the thousand gallon per minute fire flow requirement applies, even

if they are in an agricultural district. Because he's saying it's 250 is the minimum requirement for agricultural. So, you are going to put the higher standard on for agricultural district?

BOARDMEMBER RAISBECK: If that's what is applied to residential, newly constructed residences there, yes.

Okay.

CHAIRMAN VICTORINO: Are we clear with that ladies and gentlemen? I will call for the question.

All those in favor of the motion, raise your right hand. Raise your right hand.

Four. Okay. Four.

All those opposed. One. I don't think -- I don't  
have a quorum.

BOARDMEMBER HIRANAGA: Abstention is counted as an  
aye.

BOARDMEMBER RAISBECK: Abstention is counted as an  
aye.

CHAIRMAN VICTORINO: Then we past then. Okay.

BOARDMEMBER RAISBECK: May I make another motion?

CHAIRMAN VICTORINO: Okay. Go ahead.

BOARDMEMBER RAISBECK: I would like to move that the Board of Water Supply requests the County Council to institute a disclosure requirement on all rentals, both short and long term, that are in an area of inadequate fire protection, that this be disclosed to potential tenants.

CHAIRMAN VICTORINO: May I hear a second?

BOARDMEMBER HIRANAGA: Second for discussion purposes.

CHAIRMAN VICTORINO: Okay. Hear from the maker of the motion.

BOARDMEMBER RAISBECK: Okay. We can't pass a rule

to this effect, but we can recommend to the Council who are currently considering revisions to the bed and breakfast rule.

We can recommend to the Council that they consider this as part of their requirements on rentals.

And I would like to see it done for long term rentals as well, because what Kent said about tenants deserve to know that they are -- they are coming into an area with inadequate fire protection, I think long term tenants as well as short term tenants.

CHAIRMAN VICTORINO: Member Hiranaga.

BOARDMEMBER HIRANAGA: Well, I think you need to

define what substandard is. You can say for residential purposes, because it would be -- it would meet agricultural purposes in an ag district, 250 gallons per minute. And, so, does that make it substandard or not substandard? But for residential purposes, it might be substandard. So, it might be clearer if you state what the standard is that has to be met.

BOARDMEMBER RAISBECK: Okay.

BOARDMEMBER HIRANAGA: You can say residential purposes.

BOARDMEMBER RAISBECK: If I could change the

last -- the part about an area of inadequate fire protection.

In an area that does not meet residential fire protection requirements.

BOARDMEMBER HIRANAGA: Right.

CHAIRMAN VICTORINO: So, do you want to make that as a friendly amendment?

BOARDMEMBER RAISBECK: Yes, that's an amendment.

CHAIRMAN VICTORINO: Everybody okay with that?

Okay. Any other discussion on the motion?

Sally, will you repeat the motion, and we will

call for the question.

BOARDMEMBER RAISBECK: The Board of Water Supply recommends to the County Council that they require, for both short and long-term rentals that are in areas where fire protection is inadequate for residential purposes, that the -- that there be disclosure to -- of that fact to a prospective tenant. Maybe we could have the secretary read that back or --

CHAIRMAN VICTORINO: No, that's fine.

BOARDMEMBER HIRANAGA: That's fine.

BOARDMEMBER RAISBECK: Is that okay?



CHAIRMAN VICTORINO: That's fine. Okay. Seeing

no other discussion, all those in favor of the amendment raise  
your right hand.

BOARDMEMBER RAISBECK: I believe it's a motion not

a --

CHAIRMAN VICTORINO: Of the motion. I apologize.

In favor of the motion, raise your right hand.

Okay. Those against.

Two abstentions, so it also passes.

DIRECTOR TENGAN: Mr. Chair.

CHAIRMAN VICTORINO: Yes.

DIRECTOR TENGAN: So, if this goes before the Council Water Resources Committee, or whatever committee it goes before --

CHAIRMAN VICTORINO: Yes.

DIRECTOR TENGAN: -- Boardmember Raisbeck can be expected to represent the Board to testify on behalf of the Board rather than the Department?

BOARDMEMBER RAISBECK: I would be happy to.

CHAIRMAN VICTORINO: Okay.

VICE-CHAIRMAN OKAMURA: That would be our recommendation.

CHAIRMAN VICTORINO: It's the Board's  
recommendation.

BOARDMEMBER JOHANSEN: As I understand, this  
applies to B&Bs as well as SFDs, right?

CHAIRMAN VICTORINO: Uh-huh.

BOARDMEMBER RAISBECK: As well as what, Ralph?

BOARDMEMBER JOHANSEN: Because I don't think that  
is what was requested. That's all. Single family dwellings.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER HIRANAGA: She said all tenants.

CHAIRMAN VICTORINO: She used the words tenants.

DIRECTOR TENGAN: Prospective.

BOARDMEMBER JOHANSEN: The first word I used was

B&B and then single family dwellings, it applies to both?

CHAIRMAN VICTORINO: Long term, short term

rentals, and all prospective tenants.

BOARDMEMBER JOHANSEN: And all prospective

tenants, so I think that would pretty much cover everybody.

All righty. Mr. Dantes, I hope this kind of gives

you a direction that we are moving in as far as the bed and

breakfast and the TRVs are concerned.

MR. DANTES: Well, it's not a perfect world, but I think a huge step in the direction of a better world just happened.

CHAIRMAN VICTORINO: I was going say, it's not perfect, but we are moving in that direction. Thank you, Mr. Dantes, for your patience in being here today.

MR. DANTES: Thank you all.

CHAIRMAN VICTORINO: Okay. Other business, Director's report. Do you have any other business?

DIRECTOR TENGAN: No.

CHAIRMAN VICTORINO: Okay. And then I guess

before I went to other business, I wanted to make sure if you had anything else to discuss. Mr. Tengan.

DIRECTOR TENGAN: Not at this point.

CHAIRMAN VICTORINO: Receipt from Board Members requesting future agenda items to be placed on the future agendas. I am sorry. Anything?

Okay. We will take a five-minute break.

(Recess, 12:18 p.m. Resumed 12:23 p.m.)

DIRECTOR TENGAN: We don't need Corp Counsel to adjourn.

BOARDMEMBER RAISBECK: Do we have items for the

agenda.

CHAIRMAN VICTORINO: Yeah, yeah. That's where we are now. So, I am going to repeat what I had said earlier.

Now we are looking for Board Members' requests for agenda items for future agendas.

BOARDMEMBER RAISBECK: I would like to next time have a brief -- a brief comment about the resolution of Mr. Gilliland's problem.

CHAIRMAN VICTORINO: Okay. Some kind of follow-up on that, okay? Mr. Okamura.

VICE-CHAIRMAN OKAMURA: I wanted to find out

what's happening with, you know, the upcountry, the water  
committee, the one about water quality? I don't know the name  
of it. The committee that --

DIRECTOR TENGAN: The public review committee?

VICE-CHAIRMAN OKAMURA: Yeah. What's happening  
with that thing?

DIRECTOR TENGAN: We had the meeting last night.

VICE-CHAIRMAN OKAMURA: With the consultant?

DIRECTOR TENGAN: No.

VICE-CHAIRMAN OKAMURA: No? What's going on



there?

DIRECTOR TENGAN: They are waiting for the report  
from the consultant.

VICE-CHAIRMAN OKAMURA: Oh, okay.

CHAIRMAN VICTORINO: Until we get the report,  
nothing much can happen, right? We are waiting for that,  
right?

DIRECTOR TENGAN: They are doing work as far as  
educating the parents in the upcountry area with regard to  
the -- you know, the lead issue. How -- how it can be  
ingested into the body and all that. It's more an educational

program now.

CHAIRMAN VICTORINO: Okay. Any other items?

BOARDMEMBER JOHANSEN: I don't know if this is appropriate as an agenda item, but last meeting I raised with Mike the fact that when we were down in the shopping center right next to a bakery, we had coffee. We had pastry. We had juice. I sit here for three-and-a-half hours with nothing like that. And an awful lot of other committees regularly provide, as a courtesy to volunteers, some kind of refreshments during a long session. And I wonder if we couldn't do the same.

CHAIRMAN VICTORINO: I will make a point. I will get together with Cathy and George and see if we can make sure that's available for us.

The problem, the niceties when we were down at the shopping center, we had water and sometimes soda. Mike Nobriga, at that time, used to provide us with soda. But we had the little cooler with water, right, and most of us would run next door to Ah Fook's and get coffee and pastries and all that, but we don't have that accessibility here. I agree.

CORPORATION COUNSEL KUSHI: Actually, there's a

snack shop on the second floor.

CHAIRMAN VICTORINO: Okay. Snack shop on second floor, but if we could maybe have some water.

BOARDMEMBER HIRANAGA: There's a fountain right there.

BOARDMEMBER JOHANSEN: Couldn't a fund be scared up somewhere that would provide more than just water for a long morning?

MS. HOWARD: Mr. Chair.

CHAIRMAN VICTORINO: Yes.

MS. HOWARD: Member Johansen. The reason that I

don't provide the water anymore, is because I provided that from home, and I would fill the cooler and bring it directly to the meeting room.

The reason I didn't do coffee there was because of the bug situation. I would have to go in and kill bugs before I got there, and I really didn't feel like it was safe to make you coffee in that atmosphere.

BOARDMEMBER JOHANSEN: There must be a way.

MS. HOWARD: We are using somebody else's boardroom. I do have a coffee urn. I will have to get a cart and prepare that ahead of time, if coffee is something you

desire. I will do what I can. And I can provide beverages and coffee and sodas and then charge it to the Board's budget.

CHAIRMAN VICTORINO: If that's all right, yeah.

MS. HOWARD: Drinks are -- coffee, I think I'm allowed coffee and coffee-like beverages under our Board's budget.

CHAIRMAN VICTORINO: Okay.

MS. HOWARD: The reason we didn't do it is because we don't have a set room. I don't know where I am going to be going and didn't really --

CHAIRMAN VICTORINO: Yeah. And again, Ralph's

request, I think, is a valid request. But again, we have been gypsies, so that makes it really difficult. But if that could be somehow worked out, and it's not too much of a challenge for you to do. If it is, let me know, please. Okay?

MS. HOWARD: Will do.

BOARDMEMBER RAISBECK: Mr. Chair, one more item.

CHAIRMAN VICTORINO: Not about beverages, are we?

BOARDMEMBER RAISBECK: No, champagne, champagne.

I wanted to request the Department that if a letter arrives addressed to the Board of Water Supply, it be immediately

copied and sent out to all members of the Board.

CHAIRMAN VICTORINO: Okay. I will make sure

that --

DIRECTOR TENGAN: Mr. Chair.

CHAIRMAN VICTORINO: Yes.

DIRECTOR TENGAN: We always, you know, give it to you immediately, or at least it's sent over to Mike, Cathy, anything addressed to Mike or the Board Chair?

MS. HOWARD: Right.

DIRECTOR TENGAN: And from there, it's up to the Board Chair what the Board Chair wants to do with it.



CHAIRMAN VICTORINO: Did I get this one?

MS. HOWARD: The testimonies for the items on the agenda I have not been giving you automatically, no.

CHAIRMAN VICTORINO: No, no, no. But this last one from Mr. Dantes, did you --

MS. HOWARD: No, I think that was an oversight on my part. I think I put it into the folder expecting to add it to the agenda item, but when the agenda staff report wasn't ready, I didn't attach it, and that was my error.

The testimonies were sent as written testimonies, and I saved those for the meeting, but I can send those out as

soon as I get them if that's your preference. That was --

CHAIRMAN VICTORINO: I think -- I think what we want to do is anything -- any kind of communication like this, that comes to -- for the Board, should be immediately put together and sent out.

MS. HOWARD: Okay.

CHAIRMAN VICTORINO: Because again, I agree with Miss Raisbeck. There was no time to review it except sitting here and trying to do it, and that make it real difficult.

Okay.

MS. HOWARD: That was my error.

CHAIRMAN VICTORINO: Okay. We will look at that.

BOARDMEMBER RAISBECK: Okay.

DIRECTOR TENGAN: Maybe once a week. The report, in this case here, we had only one agenda item. There may be instances where we have a number of agenda items and, you know, communications could be coming in, you know, on different days.

CHAIRMAN VICTORINO: Right.

DIRECTOR TENGAN: Having to do separate mailings would involve additional time on Cathy.

BOARDMEMBER CRIVELLO: Maybe it could be included

with our minutes when we get our agenda and our minutes.

BOARDMEMBER HIRANAGA: I think, you know,

anything --

MS. HOWARD: I will try.

BOARDMEMBER HIRANAGA: -- that's received prior to

the mailing of the agenda can be accumulated.

CHAIRMAN VICTORINO: Right, right.

BOARDMEMBER HIRANAGA: But between the mailing of

the addenda and the meeting date, there should be a cutoff,

like noon prior to the meeting. If it's received before then,

then some attempt be made to either e-mail it or --

MS. HOWARD: Will do.

CHAIRMAN VICTORINO: Okay?

MS. HOWARD: Yes.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER HIRANAGA: I prefer e-mail myself.

CHAIRMAN VICTORINO: Okay. Anything else?

DIRECTOR TENGAN: One more thing, Mr. Chair.

CHAIRMAN VICTORINO: Yes.

DIRECTOR TENGAN: I think we are going to be

prepared to do the budget workshop prior to the next meeting,

and maybe the budget will be on the next month's meeting. So, you know, I would reserve a lot of time for --

CHAIRMAN VICTORINO: For that.

DIRECTOR TENGAN: -- for presentation of the budget.

CHAIRMAN VICTORINO: Do you folks feel that we -- if we dedicate -- I hate to just dedicate a meeting to the budget, because, you know, there are other items that will come up. But shall we have a workshop prior to that? And if we did, would I have attendance, because the last time we had that, attendance was very poor.

BOARDMEMBER RAISBECK: I would be in favor of essentially an extra meeting to have a budget workshop, but it would probably have to be on a Thursday, right?

DIRECTOR TENGAN: That's the intent to have something separate from the meeting.

CHAIRMAN VICTORINO: That's what you said.

DIRECTOR TENGAN: But consideration might be given at the meeting itself on the budget.

BOARDMEMBER JOHANSEN: Can we get some indication of who would participate, so that those of us who come are not

just left waiting as we were last time?

BOARDMEMBER CRIVELLO: I think last time we didn't schedule it early enough. There were changes being made, because some members couldn't be accommodated. So, I am just speaking for me personally, because by the time you guys made the changes, I had other commitments.

BOARDMEMBER HIRANAGA: I indicated I was not going to attend --

CHAIRMAN VICTORINO: Right.

BOARDMEMBER HIRANAGA: -- the workshop, but was called at home to attend in order to meet the quorum. And



personally, I don't think, at this time, I need a workshop.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER HIRANAGA: I would rather review the material first and then determine if a workshop is necessary.

CHAIRMAN VICTORINO: Is that possible to get the material --

DIRECTOR TENGAN: Might throw the timetable off, you know, because we have a certain date by which we need to get the budget out to the Mayor's office.

CHAIRMAN VICTORINO: So, what you are trying to say is in October, you want to have the budget reviewed at

the -- at our October meeting?

DIRECTOR TENGAN: At least presented and discussed by the Board at the October meeting, so that action would be possibly taken in November, and any amendments to the budget could be done by staff in December and given to the Mayor in early January. That's the basic timetable.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER RAISBECK: Mr. Chair, would it be possible, George, to send out materials to the Board like two weeks in advance of the Board meeting, not with the regular agenda, you know, which usually arrives less than a week.

DIRECTOR TENGAN: The budget materials.

BOARDMEMBER RAISBECK: Well, budget materials that would be discussed in a workshop, to send those out to the Board like two weeks before the next meeting? Like that would be two weeks from today, basically, whatever would be presented.

DIRECTOR TENGAN: We will see, you know, how final our draft figures are.

CHAIRMAN VICTORINO: Yes, Mr. Hiranaga.

BOARDMEMBER HIRANAGA: As you review the budget

material, if you have specific questions, I would communicate those to the Department prior to meeting, so that they would be prepared to answer it rather than saying I will have to get back to you.

BOARDMEMBER RAISBECK: Uh-huh.

CHAIRMAN VICTORINO: That's why I think the two weeks. That's why she's asking the two weeks.

BOARDMEMBER HIRANAGA: Don't wait to the meeting. You don't have to wait to the meeting.

BOARDMEMBER RAISBECK: Correct, correct. You could respond -- in that two-week interim, you could respond

to the Department that you have questions about X, Y and Z.

CHAIRMAN VICTORINO: And then they come in better prepared to answer those questions.

BOARDMEMBER JOHANSEN: With that kind of format, could it be included in the regular meeting?

CHAIRMAN VICTORINO: Yeah, it can be.

BOARDMEMBER HIRANAGA: Yes.

CHAIRMAN VICTORINO: That can be done. Okay. So, if at all possible, then I guess the request would be basically if we could get it done two weeks prior to our meeting, we would get the material to review, and then all

questions or -- all questions or inquiry can be then forwarded to the Department, so come the meeting, they are better prepared, ready to go.

BOARDMEMBER JOHANSEN: Maybe we should have some kind of a deadline on our responses to the Department as well.

CHAIRMAN VICTORINO: Maybe by -- by the Monday prior to the meeting. By Monday prior to the meeting to give them at least four days to come back.

DIRECTOR TENGAN: I might add that --

CHAIRMAN VICTORINO: I mean try.

DIRECTOR TENGAN: I might add the accounting staff

is still working with the auditors in the annual audit, and so they cannot fully devote their time to preparation of the budget. So, you know, as to the condition of the budget, I don't know at what stage it will be two weeks from now, but we will try our best.

CHAIRMAN VICTORINO: Let's, okay, worst case scenario. Let's say in two weeks, it's not ready, and we don't have it ready by the October meeting. Then maybe we do something -- then, at that point, I would call for a special meeting the first or second week of November, before our next

November. Because November we are supposed to -- at least what you are asking is try to get it approved by November, so we can have whatever revisions done by December to send up to the Mayor in January, right?

BOARDMEMBER CRIVELLO: Right.

CHAIRMAN VICTORINO: (Off-the-record discussion.)

No, they are not. We will discuss that, but they are not, yeah.

Okay. So, let's try to see if we can shoot for two weeks, and then you let me know. And if we need to, I can e-mail everybody saying it's not going to be available. We



are going to plan B. Okay?

We will try for plan A two weeks from now. Plan B would be the worst case scenario. We get the budget before the meeting, and we have to have a special meeting October just to discuss the budget.

BOARDMEMBER RAISBECK: In --

CHAIRMAN VICTORINO: November. The first week of November. Okay? I hope we don't have to do that, but we will see.

DIRECTOR TENGAN: There is going to be an important item included in the budget. When the rates were

reviewed last time, certain figures were used as projected figures for 2005. And in closing of the books for 2005, we find that a lot of expenditures were underestimated severely.

And, so, right now what we are doing is we are in the process of analyzing where these big differences are, and we probably will be coming back to the Board with a recommended rate increase to cover these --

CHAIRMAN VICTORINO: Shortfalls.

DIRECTOR TENGAN: -- shortfalls. So, you know, the Board should be prepared to discuss any proposed rate increase.

CHAIRMAN VICTORINO: But we -- make sure that at least the Board has the information.

DIRECTOR TENGAN: Yeah.

CHAIRMAN VICTORINO: Why the shortfalls and why --

DIRECTOR TENGAN: We are working on the schedule.

CHAIRMAN VICTORINO: Okay, please.

DIRECTOR TENGAN: And we will try to make it, you know, in a simple format, where, you know, the Board wouldn't have to reference through too many pages of supporting documents and supporting schedules.

CHAIRMAN VICTORINO: Okay.

DIRECTOR TENGAN: But I just wanted to caution the Board that this will be an item coming up.

CHAIRMAN VICTORINO: Okay.

BOARDMEMBER JOHANSEN: Another possible agenda item.

CHAIRMAN VICTORINO: Yes.

BOARDMEMBER JOHANSEN: Almost a year ago, we had a meeting with the Planning Commission, a joint meeting. A subsequent meeting was scheduled by their Chair in January. I haven't heard a word since then.

And it seems to me that if the object of this is to coordinate source development with other aspects of the overall County planning, that kind of meeting is badly needed. And can somebody speak to what's happening, and why that didn't happen, and whether it should?

MS. HOWARD: Mr. Chair, I believe Planning communicated to us that their schedule was too busy to have a meeting with us, and that they were going to put it off until after March. And then we talked about that at a previous meeting, and you said that you would talk to Clayton.

CHAIRMAN VICTORINO: Clayton, yeah. And he's not

gotten back to me on that.

BOARDMEMBER JOHANSEN: Mr. Chair, with respect to that, it seems to me this is a function of the Mayor's office.

You have got two independent --

CHAIRMAN VICTORINO: Committees.

BOARDMEMBER JOHANSEN: -- committees of government, and the initiative, to me, should be taken by the Mayor's office to coordinate some kind of meeting or some kind of discussion. And I think it should be brought up to the Mayor's office. Ask them why not.

CHAIRMAN VICTORINO: Okay. Cathy, can we put a

letter together to the Mayor's office, and I will CC to Keith  
Regan, too, about trying to put a meeting together in as  
expedient and as soon as possible.

DIRECTOR TENGAN: And CC the Planning Commission.

CHAIRMAN VICTORINO: Yeah, CC Planning Commission,  
yeah. I am not going to leave them out of the loop.

DIRECTOR TENGAN: Planning Department.

CHAIRMAN VICTORINO: Yeah, Planning Department,  
Clayton and their Chair. Okay?

Okay. Divisional reports, you all have them. I

mean, unless you have specific questions. Everybody put them away, now they pull them out.

DIRECTOR TENGAN: I would say this. If Board Members have specific questions concerning the reports, that they contact the division heads directly.

CHAIRMAN VICTORINO: Okay. Do you want to do that, Mr. Okamura?

VICE-CHAIRMAN OKAMURA: Yeah, yeah, that's fine.

CHAIRMAN VICTORINO: Okay.

VICE-CHAIRMAN OKAMURA: It's good. You know, maybe I was thinking in the future we should think about maybe



having one division head come maybe to one meeting and explain their report, then we can know what's going on in their particular department a little bit better, just as a possible agenda item. They don't have to come every time, but just maybe once.

DIRECTOR TENGAN: Shouldn't be a problem.

VICE-CHAIRMAN OKAMURA: Possible agenda item for the future, then have a better understanding, but they do a lot. Some of them do a lot.

CHAIRMAN VICTORINO: Yeah. Okay? No other discussion on division reports, then I will call this meeting

adjourned.

(Adjourned, 12:41 p.m.)

*"By Water All Things Find Life"*

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