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- [Home](#)
- [Customer Service](#)
- [News & Events](#)
- [Contact Us](#)
- [About](#)

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Board / Divisions

- [Board of Water Supply](#)
- [Engineering](#)
- [Fiscal](#)
- [Resources & Planning](#)

Information

- [Lead](#)
- [Rules & Regulations](#)
- [Rate Study](#)
- [Water Quality](#)
- [Forms](#)
- [Notices for Services](#)

DWS

- [Mission Statement](#)
- [Who We Are](#)
- [Maui's Water](#)
- [Water Conservation](#)
- [FAQ's](#)
- [Gallery](#)
- [Links](#)

[Site Map](#)

**BOARD OF WATER SUPPLY**

**COUNTY OF MAUI**

**REGULAR MEETING**

Held at Kalana O Maui Building, 200 South High Street,

Council Committee Room, 7th floor, Wailuku, Maui, Hawaii,

commencing at 9:00 a.m. on January 27, 2006.

REPORTED BY: LYNANN NICELY, RPR/RMR/CSR #354

A T T E N D A N C E

CHAIRPERSON: MICHAEL P. VICTORINO

VICE CHAIR: KENNETH M. OKAMURA

MEMBERS: STACY HELM CRIVELLO

KENT M. HIRANAGA

CARL M. HOLMBERG

RALPH JOHANSEN

GINNY PARSONS

DIRECTOR: GEORGE TENGAN

CORPORATION COUNSEL: EDWARD KUSHI, JR.

BOARD SECRETARY: MICHELE SAKUMA

CHAIRPERSON VICTORINO: Call this meeting to order. Members present, starting from my left, new member Carl Holmberg, member Vice Chair Kenneth Okumura, to my right member Ginnie Parsons and member Ralph Johansson, and myself, Michael Victorino, Chair.

Also present, Water Director George Tengan, Corp Counsel Edward Kushi. Do we have guests today? Our chief of the fire department, Carl Kaupalolo, and Assistant Chief Neal Bal. Deputy.

And we have staff out there, Mr. Nakamura and

Holly Perdido. I forget your name every time, young lady. Helene. Okay.

Announcements. A couple of things. Number one, I talked to Sally and she is definitely going to step aside from the board. This was to be her last meeting, but unfortunately her son is in town and today is his last day. So she asked me if her attendance was necessary, and I thought we had seven members showing up so I said no, I didn't think so. So it with great regret that we lose what I call a very quality member. She's contributed an awful lot

and I wish her nothing but success in the future.

And I know Sally will be a part of this community

and water issues for a long time to come. On behalf

of the board and myself, I would like to say thank

you very much for all the time she's given over the

last two or three years and what she's done and

contributed to this board and to the County of Maui.

Also, we all know Greg Smith has resigned, and

so we are hopefully in the process with the mayor's

office in replacements of these two people. Also,

next month -- yeah, March is the last meeting for

Kent Hiranaga and Stacy Helm Crivello, will be their

last meeting because their terms expire. So in the very near future we will be going into what I call a tremendous change amongst our members. And Carl, you're still fairly new, so we'll actually have five what I call brand new members on this board. So that's a lot of change all of a sudden.

Let the record reflect that Mr. Kent Hiranaga is here.

The other thing we want to announce, I thought the joint workshop that we held on Tuesday was very enlightening. I think both sides got a lot of out of it. I think the planning side got more than we

did, but I think both sides shared a lot of commonalities. And I want to thank George and the staff that were there to assist us in information, especially Ellen. Also want to thank the planning department for their people because they gave us a lot of insight on what process and where they're heading for. So I think it was a good all around workshop, you know.

And at this point I'll open up the floor if anybody has any other comments or announcements as far as the workshop or anything, for that matter.

MR. HOLMBERG: I would like to make one comment



that I was a bit shocked at the delta between what our theoretical capacity is and the additional demand that the planning commission is in the midst of putting through. I'll just be interested in seeing how we meet that shortfall.

CHAIRPERSON VICTORINO: Thank you. Yes,

Ms. Parsons.

MS. PARSONS: I was also impressed with Michelle Anderson's presentation and I'm kind of excited about Dr. Thomas, the research that he may be doing and if we can get more information on that

and how feasible that might be, especially for

Upcountry. Very supportive.

MR. TENGAN: I've already met with Dr. Thomas last -- I already met with Dr. Thomas more than a year ago and we went over his project and we had discussed the possibilities of doing a project here on Maui. But right now, you know, we have other financial obligations that we got to meet. As a matter of fact, our '07 CIP budget will be very short funded. In order for us to accomplish what the Stakeholders Committee is looking for as far as doing \$25 million in projects, we probably would

need to float over \$15 million in bonds or SRF

loans.

CHAIRPERSON VICTORINO: Thank you.

MS. PARSONS: Can I ask Rich a question on

that? Can we have this on the agenda --

CHAIRPERSON VICTORINO: This is not a question

and answer period. I was just opening up for

comments. Mr. Okamura.

MR. OKAMURA: I think I was sort of surprised

that there is a communication with the water

department wasn't really good in terms of, you know,

what -- not wasn't good, but, you know, they talked

about trying to improve the communication as far as  
what the requirements would be for new developments  
and what the remaining resources are. And I guess  
they proposed some changes for the reporting  
requirements from the water department and I think  
we need to discuss that maybe in the future a little  
bit more.

CHAIRPERSON VICTORINO: Okay. Thank you. And

let the record show that member Stacy Helm Crivello  
is here.

Any other comments about the joint meeting or

any other announcements?

MR. JOHANSEN: Yeah, one other thing. I hope when we do it again, we get a recorded memo of the meeting.

CHAIRPERSON VICTORINO: Wasn't minutes -- wasn't a record taken of the meeting itself? It was? Planning.

MS. SAKUMA: We have the tapes in the office and they are going to transcribe it and send us a copy of the transcribed tapes.

CHAIRPERSON VICTORINO: They are being transcribed and we will get copies, Ralph. All

right. Any other announcements?

Also, let the record show that the deputy water director has just come in the room. Good morning.

We have no minutes to approve. We will now move into public testimony. Is there anyone -- I know Mr. Dantes you're here to testify and I have you on the communication. But is there anyone who would like to give public testimony? Do we have any -- no requests for public testimony. Okay. Then at this time I'll close public testimony.

Moving on to item number VI, Communications,

Communication 06-01, letter dated November 18, 2005

from Mr. David Dantes, M.D., requesting the board recommend the Department of Water Supply accept automatic sprinkler system installation as adequate for fire flow requirements imposed by DWS for conditional and special use permit for vacation rental use of two existing dwelling units on property TMK 2-8-2158, Haiku, Maui, and those would be on pages 1 through 46.

Mr. Dantes, would you like to come up at this point?

DR. DANTE: Yes. Can I bring reinforcements?

My wife.

CHAIRPERSON VICTORINO: She's more than  
welcome, please. And maybe introduce both yourself  
for the record, please.

DR. DANTE: Okay. Dr. David Dantes.

MS. LIVINGSTON: And Beverly Livingston.

CHAIRPERSON VICTORINO: Should we start with  
questions? I think all the members have all the  
communication and some of this we've seen before.  
Do you want to make a statement before we start  
asking questions?

DR. DANTE: That may be helpful.

CHAIRPERSON VICTORINO: Why don't we go ahead.



DR. DANTE: We live on a two-acre parcel in an ag subdivision off of Ulumalu Road and there are a number of ag subdivisions that front Ulumalu. One thing that they all have in common is that the standpipes are serviced by an eight-inch delivery pipe, but at Five Corners -- which is at Ulumalu Road and Kaupakalua -- there is around a 400 foot length of outdated six-inch cast iron pipe that creates a bottleneck for the entire delivery of water to the whole neighborhood, all the subdivisions fronting Ulumalu Road.

I believe, according to Alva, if I'm not mistaken, that there is something in the county budget now to upgrade that 400 feet to an eight-inch ductile iron, which would improve the flow capacity of those standpipes from -- I'm making an educated guess -- from 750 gallons a minute now to upwards of 1200 gallons a minute.

But in the meantime and for the past few decades, there has been a problem with the water flow delivery because of that bottleneck. And so virtually everybody -- it's kind of a standing joke among old timers in this area, anybody wants

anything from the county, look out because the water department going to try to make you fix their broke down 400 feet of cast iron pipe.

Now, for some reason the developers who put in these subdivisions never had to fix that 400 feet, but they have asked numerous individuals -- including myself -- to fix it and I believe that that is unreasonable because it really is something that would benefit a huge area of the population.

And we as individuals are not asking to develop anything or to construct anything.

But how can we meet fire flow requirements? We

had an engineer during our permit process calculate what the fire flow would be for our two structures and it came out to 1500 gallons a minute. Since we can't afford to do the infrastructure upgrade, we had a meeting with the previous water director and engineers and it was attended by our engineer and also an attorney. And two options were discussed.

This was in June of 2002. Two alternatives were discussed instead of performing the infrastructure upgrade. One was an insurance policy. The other was fire sprinklers.

The insurance policy question actually came

before this board in June and July of 2002. And

after a very thorough evaluation, the board decided

that it was not appropriate to allow ourselves or

anyone else to substitute insurance for fire flow.

The question of fire sprinklers, although the

staff report says it was also discussed and

declined, that's not accurate. The fire sprinkler

question was never brought before the board until

now.

But as you see from the correspondence in the

file, both our engineer and our attorney recorded in

their notes that the previous water director said if we put in sprinklers and if revised engineering fire flow could be met by the existing infrastructure, that would be satisfactory.

Well, the engineer calculated that it would reduce our fire flow to 750 or 760 gallons a minute if we put in the sprinklers. The standpipe that fronts our property is capable of delivering that. I tried to get something in writing from the previous director, verifying that he would accept it, but I never could. However, there is a gentleman in the room here today who did give me

something in writing and that's the present deputy  
director of the fire department.

Mr. Bal was kind enough to evaluate the  
situation and to inform me that he had an  
understanding with the water department that fire  
sprinklers installed to National Fire Protection  
Association code would allow a person to take  
advantage of the benefit that the engineering  
calculations show. And relying on that and on  
Mr. Craddick's verbal approval, we did go ahead and  
install the fire sprinkler system that was inspected  
by Mr. Bal and found to be up to code.

Now we're approaching the point where the council is going to evaluate our permit application for final approval. And all our T's are crossed and our I's are dotted except for the water department. And I really would like to have kind of a perfect score going into that hearing if possible. So I'm asking this board to give some guidance to the water department as to whether or not we are now in compliance with fire flow requirements.

Thank you for the leeway in giving a lengthy statement.

CHAIRPERSON VICTORINO: Okay. Thank you. At



this time before I ask for questions to Mr. Dantes,  
because I think many of us in this room have covered  
this, except for maybe you, Carl, but have covered  
this in the past. I'm going to turn to the  
department and Mr. Tengan, who will respond to where  
we're at as far as Mr. Dantes' situation as of today  
or as of the present time. Who is going to respond?

MR. TENGAN: I would hope that Alva could --

CHAIRPERSON VICTORINO: Alva, would you like to  
come up and give us the department standpoint at  
this point. Could you introduce yourself for the

record?

MS. NAKAMURA: Alva Nakamura, engineering program manager for the department.

As far as the department is concerned, I think the staff report had indicated issues that we're dealing with here. As a matter of policy, we have not substitute or allowed fire sprinkler systems to be installed in lieu of upgrading the infrastructure. It's just a policy that we've been following. And the issue here in order for us to approve it basically is having to upgrade the infrastructure as he indicated from a six-inch to

eight-inch main. And this is just a consistent policy that we applied to everybody that has come to us.

So unless we get overturned in terms of our interpretation of how we are dealing with the permits, you know, we're taking our standard that says that the infrastructure has to be upgraded in order for us to sign off on the permit. And that's kind of where it stands right now.

CHAIRPERSON VICTORINO: One question I have is

Mr. Dantes mentioned a moment ago that the possibility that the county will upgrade that

400 feet.

MR. NAKAMURA: There is something in the budget, but I believe that we have a problem with financing right now and it's kind of like in a holding pattern right now, depending if they would get the financing for that portion of the project.

CHAIRPERSON VICTORINO: But it is a possibility --

MR. NAKAMURA: It is a possibility, yes.

CHAIRPERSON VICTORINO: Which would then make all the rest of this situation move on, right?

MR. NAKAMURA: That's right.

CHAIRPERSON VICTORINO: Questions from the

board for either party, for Mr. Dantes or for our  
engineer, Nakamura.

Ms. Parsons.

MS. PARSONS: I need to go through

Dr. Duranceau's report again, but do we have any

issues with the cast iron pipes and with regard to

the lead corrosion study? Is that --

MR. NAKAMURA: You mean up in Upcountry?

MS. PARSONS: Uh-huh.

MR. NAKAMURA: I'm not aware of any right now.

It's just a matter of just replacement.

MS. PARSONS: What, the replacement cuts are just old.

MR. NAKAMURA: Well, in this particular case it's to meet the fire flow requirements, to upgrade from a six-inch to an eight-inch line.

MS. PARSONS: Because I need to check into that. Because in the back of my mind, whether it's Dr. Edwards or Dr. Duranso, it seems to be some correlation with certain piping. And I'm not sure -- I know ductile was okay, but I'm not sure about cast iron. So I need to look at that, too. That

may be an issue from a health standpoint that it needs to be on the CIP. I just thought maybe you might know.

CHAIRPERSON VICTORINO: Any other questions or comments? Yes, member.

MR. HOLMBERG: Mr. Nakamura, so there have been no exceptions to this policy in the past?

MS. PARSONS: As far as I'm aware, no, there have been no exceptions. We have to be consistent. We can't -- unless we're directed otherwise, that's basically been the policy.

CHAIRPERSON VICTORINO: Member Okamura.

MR. OKAMURA: I think for this case how it's presented, background material with the minutes on the previous meetings and a couple years' meetings a couple years ago, and also you guys wrote down what section of the rules that you guys applied to the situation, so that's good and give me a better understanding of the situation.

I guess the previous board was concerned about setting a precedent that if we approve this, then other commercial or other residential or other different types of projects would come in and ask for the same type of variance. And so they declined



to make an exception. So I appreciate all the information that was presented to us. Sometimes we don't get enough information, so it's hard to determine how to --

UNIDENTIFIED VOICE: There is a lot of history on this, too.

CHAIRPERSON VICTORINO: Member Johansen.

MR. JOHANSEN: How much would it cost you -- you said you have to put in a fire hydrant and three quarters -- at this time. It was something like \$73,000 to replace, right? How much would it be

now, three or four years later?

DR. DANTE: I haven't gotten an updated estimate on it.

CHAIRPERSON VICTORINO: It's probably going to be higher, based upon a lot of the bids that we have been getting back on some of our projects.

MR. JOHANSEN: What concerns me is having rules that you can't enforce. The last time you were here, you and Mr. Levin presented a report from some independent firm that estimated the number of B&Bs and TVRs on this island. And after that meeting, I thought if I were faced with this kind of

expenditure, the first thing I'd want to know is what are the penalties for not registering as a B&B or TVR. And then I'd want to know what the cost is if I'm found out. Because otherwise if you're faced with what may be ninety, a hundred thousand dollars now to upgrade in agricultural areas, I'm going to bypass the whole thing.

So to me, in view of the fact that the fire department has signed off on sprinklers and that calling this commercial is kind of to me a technicality since if you are renting for over 180 days, you're home free. So I just don't -- I

don't understand why they're imposing this on B&Bs  
and TVRs and I wonder if we are in a position to  
recommend that an exception be made for B&Bs which  
doesn't apply to anybody else. That's my question.

CHAIRPERSON VICTORINO: Well, that's a question

--

MR. JOHANSEN: It's a long question.

CHAIRPERSON VICTORINO: It's a long question

and I guess you've come to a point where maybe this  
is what we're here today to decide is are we going  
to recommend that exception. Is that our function?  
And if it is, do we recommend it to the director and

go from there?

MR. JOHANSEN: There is two considerations.

The fire department has signed off, and you want to have laws in place that can be enforced and that are practical.

CHAIRPERSON VICTORINO: Anybody else have anything before I go back to Member Parsons?

MS. CRIVELLO: Mr. Chair.

CHAIRPERSON VICTORINO: Yes.

MS. CRIVELLO: You know, just glancing over these notes, but at our September meeting, we were

requested to adopt a resolution that residential codes and standards be applied for single dwellings for short term rental.

I don't know who makes that -- accepts that resolution and who defines if it's commercial. I don't believe it's our role to define if it's residential or commercial. It's got to come from some policy makers, we're just an advisory.

I also have concerns about, and I think we've talked about this before, that the fire department at one hand may approve something and our water department we were not in sync as to if we have the

proper flow. If this is defined -- I think, first of all, and I don't know if corp counsel can identify for us, is this a commercial or is this residential? If it is commercial, then the rules and regulations states as such. And is it for us to make exceptions? And I just need that clarification.

CHAIRPERSON VICTORINO: Corp Counsel Kushi, would you be able to respond to Member Helm's request?

MR. KUSHI: Let me try. My understanding is that Mr. Dantes, whoever is similarly situated,

they're applying to the council to get a conditional use permit and a special use permit. Just the fact that they're doing that is that they're

nonconforming. It's in an ag zone. And ag zones

usually allow residential uses as well as

agricultural. But this is a TVR, vacation rental.

So that in itself is the determination. Otherwise

they will be cited for zoning violation.

How that applies to our rules is that, again,

Section 3-1(e) about fire hydrants and pipelines,

there is this thing about you get the first two

exceptions. And it says shall not be applicable to



the construction but first and second dwelling units  
of any -- of a premises in any district. Doesn't  
matter if it's residential or business. But yet,  
and let me clarify what Alva said. The department  
is not a policy. Stay away from policies. The  
department just -- they don't have rules on fire  
sprinkler systems. It's not in their rules. So if  
it's not in their rules, they enforce the regular  
rules, just extend the pipeline and put a fire  
hydrant there. It's not a policy.

Anyway, getting back to this, that's the

dilemma we're in. The department has rules requiring extend the pipeline, put a hydrant. The fire department says hey, fire sprinkler system is fine with them. Now, when it hits the fan, somebody dies or, you know, we get sued, you know, who is going to defend us? We went through that with Mr. Dantes' insurance policy. That didn't fly. But the fact is, you know, what would a judge say?

Fire department said okay; the Department of Water Supply said no. Who do you think they are going to listen to? It's the same deep pocket.

That's where we're at right now.

Now, my further understanding is that no matter what you do to recommend to the department or what the department recommends, the council can still pick and choose. So they can say well, I don't care what the department says, I don't care what the board says, we're going to put these conditions. And they may very well waive this requirement.

CHAIRPERSON VICTORINO: But that would be on a legislative body.

MR. KUSHI: That's their call.

CHAIRPERSON VICTORINO: That's their call.

Exactly.

MR. KUSHI: But they need comments from all the departments. That's where we are.

CHAIRPERSON VICTORINO: Does that answer your question?

MS. CRIVELLO: Yeah, I guess it goes back to where Member Johansen says. And we're not the enforcers; we're to support that the policies are implemented, the rules and regulations are implemented. Whether or not we fail to be able to enforce it, I don't think that's our role. And, yeah, basically.

CHAIRPERSON VICTORINO: Member Hiranaga, do you

have something you would like to say?

MR. HIRANAGA: I was thinking about it. I

guess so. So does the current fire protection meet

residential standards? Because I think we made a

resolution that B&Bs in ag districts comply with

residential standards versus commercial standards.

DR. DANTE: No, because the residential

standards would require 1000 gallons per minute.

And with that bottleneck with the six-inch area, I

think the most that standpoint pipe could be

expected to deliver is 750 gallons a minute.

But the water department doesn't require applicants to meet the exact insurance standard of 1000 gallons per minute, they say have an engineer calculate what the fire flow is and they accept the calculation even if it's less than 1000.

Well, the calculation without sprinklers was 1500, and with sprinklers was 763.

MR. HIRANAGA: I think the board made a decision which was basically a concession allowing residential standards to apply versus commercial standards. Now, if the applicant in an agricultural district is unable to meet those residential

standards and there is no rules for water

sprinklers, the applicant is applying for a special

use permit to operate a moneymaking operation in an

agricultural district. So he's asking for an

exception and to receive council approval. And the

reason it requires council approval is because these

special use permits are not issued very often,

they're difficult to obtain.

So I believe that if he wants to engage in a

money making operation in an agricultural district,

he should comply with all the rules that are in

place with no exceptions to it. I think the

concession that he meet residential standards was to  
me fair enough, versus applying commercial  
standards. But it's not like he's in a commercial  
area and there is substandard infrastructure which  
is preventing him from applying or utilizing his  
property for commercial purposes because he's in a  
commercially zoned area. He's in an agricultural  
district and he's trying to receive approval to do  
an activity that is not common in an agricultural  
district.

So I don't see us -- personally, I don't see  
myself wanting to provide exceptions to this. If



you don't like the rules, then we need to change the rules or come up with new rules. But to make exception, I just don't agree with it. Because then why have rules.

CHAIRPERSON VICTORINO: Ms. Parsons?

MS. PARSONS: Let me go back to Mr. Kushi. We don't have rules and policies on this; is this correct?

MR. KUSHI: Regarding fire sprinkler systems that would then substitute for the enlargement or extension of infrastructure.

MS. PARSONS: So that would be something that would be like an addendum to what we've been discussing.

Does the fire department have pumps -- I mean, you apparently think it's sufficient because they signed off on it, but this is one of the things I think we need to discuss in our fire discussion here. But the trucks come with pumps. Is 750 gallons per minute enough for you in a fire --

CHAIRPERSON VICTORINO: Hang on. No, they're not on the floor at this time, so you're asking a question of someone who has not been presented.

Okay. So with that in mind, would Chief Kapalolo, would you like to come up and that way I do have you as part of the discussion. I just want to make sure everybody -- okay. Now you may address the question to -- for the record, introduce yourself, please.

FIRE CHIEF KAPALOLO: Thank you, Chair. Good morning. My name is Fire Chief Carl Kapalolo.

CHAIRPERSON VICTORINO: Now go ahead.

MS. PARSONS: Chief, can you kind of give us an overview of the truck systems -- my understanding is the trucks have pumps -- and what it takes to put out a fire when you get there, what do you need.

And take Mr. Dantes' case, for example, where he's  
on -- what is it -- Ulumalu Road.

FIRE CHIEF KAPALOLO: Well, I can give you a  
general overview of our fire operations and the  
kinds of vehicles that we have. I certainly don't  
want to dwell into Mr. Dantes's case at this point.

But just give you a general overview of how the  
department operates.

Each of our stations here have a fire truck and  
it normally is capable of providing the pump system  
that's on there, it has also a water tank system on  
there, it also has equipment that we would need such

as for laddering purposes, for hooking up hoses to man the fire lines that we have there, and we have some other specialized equipment that we use for medical emergencies and for our rescue purposes. So that would give you have a general idea of the kind of equipment we carry there.

The operation is mainly simple. We just take water from the tank that we have and we can apply that through an incipient or small kinds of fire.

The truck varies in the size or the capacity of the water that they carry. We normally carry about a

thousand. That's the bigger, what we call the city trucks. They carry a little bit more because we're in an area where a little bit more fire flow or fire protection is needed on the -- probably on the lesser trucks, the smaller trucks, we have like 750 gallons. So we have the capability to address incipient or small type fires when we first get there.

Longer duration type fires would require our normal kinds of infrastructure system which is that we all know the fire hydrants with the proper fire lines. So that kind of is the general picture of

how we would utilize our equipment and the system

that we would hook up to should it be necessary for

us to use that.

MS. PARSONS: My question is, all right, we've

got 750 gallons per minute coming out of a fire

stand and you've got a moderate fire coming on.

Would that be sufficient for you to be able to use

--

FIRE CHIEF KAPALOLO: The way we look at it, we

have our rules also and we apply that and we try to

make sure that that -- so if it's required for us to

have a thousand to sustain fire protection for that,

then that would be what we would be capable of  
delivering -- the pumps on the truck would be  
capable of delivering that fire flow there.

So if you had 750, an existing main, that's the  
most we could take out of that main because that's  
the delivery service area. Does that make sense?

MS. PARSONS: I just want to get some  
clarification. Does the main fill up the truck, the  
pump?

FIRE CHIEF KAPALOLO: The main supports the  
truck.

MS. PARSONS: Okay. So if it's filling up the



truck and you're pumping it out, are you pumping it out at a thousand?

FIRE CHIEF KAPALOLO: Depending on the fire flow -- the capability or the demand that we need. The truck is capable of pumping more. I believe our pumps are up to 1250 GPM a minute. But if your existing system is limited to that, then the capacity flow would be limited to that system.

CHAIRPERSON VICTORINO: So if it's 750, that's the max you're going to be able to make, no matter what the truck can do.

FIRE CHIEF KAPALOLO: Yeah.

CHAIRPERSON VICTORINO: Member Johansen.

MR. JOHANSEN: Mr. Chair, I would just like to

-- we were just given a letter with the letterhead

of Dr. Dantes', addressed to Captain Neal Bal,

August 23, '02. And in the second enumerated

paragraph, it says, The Fire Prevention and Water

Supply agencies on Maui have mutually agree that

installation of a sprinkler system conforming to

standards is an acceptable method of compliance with

fire flow requirements." And then it says in paren,

The applicable standard is probably NFPA 13D --

Standard for the Installation to Sprinkler Systems

in One- and Two-Family Dwellings." Is that a

correct representation of your understanding?

FIRE CHIEF KAPALOLO: Chair, can I call -- at  
that time he was captain. Today he's Deputy Fire

Chief Neal Bal. Chief Bal is in the audience. If I  
can have him come up and --

CHAIRPERSON VICTORINO: Sure. Just pull up  
another chair. If you'd introduce yourself, please.

DEPUTY FIRE CHIEF BAL: Deputy Fire Chief Neal  
Bal, Fire Department. Thank you. And may I have  
that question again, please?

MR. JOHANSEN: My question is do you have a copy of this letter in front of you? It's dated August 23, '02, addressed to you from David Dantes, having to do with sprinkler system requirements.

And my question was if you look at paragraph 2, without repeating the wording, is that a correct representation of the department's policy with respect to sprinklers in a one- and two-family dwelling?

DEPUTY FIRE CHIEF BAL: If I understand your question correctly, this is a standard of installation, yes.

MR. JOHANSEN: For a one- and two-family dwelling.

DEPUTY FIRE CHIEF BAL: Yes.

MR. JOHANSEN: When you say a standard, does that mean that it's acceptable to the fire department in lieu of whatever other standards there are for meeting department requirements?

DEPUTY FIRE CHIEF BAL: Basically, yes.

MR. JOHANSEN: Here we come up again against the fact that the standards for fire departments are in conflict with the standards which the water

department applies for the same function.

And I'm just wondering, first of all, how that can be reconciled so that people aren't always standing between stools when they make these applications. And second of all, if this standard is adequate to protect the fire department from liability, why is it not adequate to protect the county from liability, rather than going through the onerous procedure that they're requiring of this applicant in upgrading three-quarters of a mile of pipe and installing a fire hydrant in place of a standpipe. A long question, again, but it really

has --

CHAIRPERSON VICTORINO: One moment, please. I will address the questions one at a time. Thank you.

Mr. Kushi, in response to Member Johansen's question, the difference in the conflict that we have between the two departments. As you explained earlier, maybe you can clarify that again.

MR. KUSHI: Mr. Chair, I'm not really sure if I can clarify. The fire department has this fire code. That's their fire code. And they are going through updates. So it may be stricter.

We have our own rules. So sometimes they don't meet at the past, totally lined up. But from what I understand Captain Bal or Chief Bal's letter said at that time was that the sprinkler system is adequate from their side.

CHAIRPERSON VICTORINO: Right.

MR. KUSHI: Now, the pipes and the infrastructure to supply that sprinkler system I still think it's left unanswered. You need some source for that sprinkler system.

CHAIRPERSON VICTORINO: Okay. Ms. Parsons?

MR. JOHANSEN: Let me follow up if I can. Our



function is advisory only. I think that it would be appropriate for this board to recommend that there be an attempt to reconcile the standards of these two county departments so that we don't have this kind of confusion forever.

CHAIRPERSON VICTORINO: Ms. Parsons.

MS. PARSONS: With a sprinkler system, does it change the amount of gallons per minute needed in the whole scheme of things? Does it -- is there a formula?

CHAIRPERSON VICTORINO: Who are you directing

it to?

MS. PARSONS: The captain. I'm sorry. Chief.

FIRE CHIEF KAPALOLO: The code that we use is the Uniform Fire Code. And it's a standard of the National Fire Protection Association. The code does allow us to make those kinds of exceptions, exceptions within our code. And I think that's where we look at it from our standpoint that we need to follow our fire code. We don't go outside of the code because that would not be part of our policies. So we try to apply our code as the code allows us to identify each case appropriately. Besides the

standard protection, sprinkler systems are used throughout the nation, are used within the different fire jurisdictions within the fire code. So there is that flexibility in our code to allow us to do that. And that allows us to make these kinds of applications or respond back to them.

MS. PARSONS: But my question is with a sprinkler system, do you need the same gallons per minute?

FIRE CHIEF KAPALOLO: Okay. Part B to that would be yes, it would, it allows us to. If you need a thousand gallons for residential, with the

proper calculations, with the proper supply there,  
it meets the standards, then we would allow that and  
we would release it. I believe almost to whatever  
it may be -- 25 percent or 50 percent what the fire  
flow formula calls for.

MS. PARSONS: Oh, that's good, that's what I  
was asking for.

FIRE CHIEF KAPALOLO: So it would be based on  
our code. And that's -- the point I'm stressing is  
that basically what Mr. Kushi has said, we both have  
our codes and it's the application of the code that  
we simply are following. That's how we review

permits.

CHAIRPERSON VICTORINO: Member Okamura.

MR. OKAMURA: I would like to ask, is there a way to resolve this issue of consistent fire flow standards through the water department and the fire department at some level in our county? Mr. Kushi.

MR. KUSHI: Well, I think you have something on the agenda later on. That's why you called us.

CHAIRPERSON VICTORINO: On the fire flow discussion. Member Hiranaga.

MR. HIRANAGA: Just clarification, is it the

planning department that approves SUPs and CUPs or

is it the council?

DR. DANTES: SUPs are approved by the county

commission and CUPs are approved by the council.

MR. HIRANAGA: Now, in the staff report it

says, on page nine, the planning department has the

sole authority to determine if the permit applicant

needs to satisfy the Department of Water Supply's

requirements.

Is it the planning department or the planning

commission or the council? Under discussion on page

nine, the last sentence. It says the planning

department has sole authority to determine.

MR. JOHANSEN: Clarification, Mr. Chair. What are SUPs and PUPs?

CHAIRPERSON VICTORINO: We'll have to do this one at a time because she has a difficult time following. So if you have a question, please raise your hand so I can address you. Ralph, what was your question again?

MR. JOHANSEN: What are SUPs and PUPs?

CHAIRPERSON VICTORINO: And Mr. Hiranaga, you had the answer to that.

MR. HIRANAGA: An SUP is a special use permit

and a CUP is a conditional use permit. That's what he's applying for.

CHAIRPERSON VICTORINO: Okay.

MR. HIRANAGA: So I just wanted clarification who approves what. I'm asking corp counsel.

MR. KUSHI: Mr. Dantes, please help me.

DR. DANTE: The planning department prepares a detailed report that is presented to the body that is the decision-maker on the permit, be it the planning commission or the council.

The planning department doesn't have the authority that's stated in the staff report, if



you'll excuse me for differing. What they can do is  
say we recommend that the applicant be required to  
adhere to recommendations of the water department  
because. And then it's up to the permit issuing  
authority to accept or reject or consider the  
planning department's recommendation.

MR. HIRANAGA: Special use permits are approved  
by the council?

DR. DANTES: The commission.

MR. HIRANAGA: Conditional use permits are  
approved by the council.

DR. DANTE: Yes.

MR. HIRANAGA: So the planning department gathers comments from various agencies, prepares its department report and recommendation.

DR. DANTE: Yeah.

MR. HIRANAGA: But it is the sole determination of the either the council or the planning commission to agree to that recommendation or not.

DR. DANTE: Correct.

MR. HIRANAGA: So they gather the comments and the fire department says sprinkler systems are acceptable. The Department of Water Supply says

inadequate fire flow, recommend denial. It's up to the planning department to determine what they are going to recommend. And it's up to the planning commission or the council to determine what they are going to decide, yes or no.

So just because the Department of Water says recommend denial does not stop the permit from being approved. It goes to two more levels. So I think until we can accept and adopt rules for water sprinklers, to me the current -- unfortunately, the current response is the current response. The Department of Water Supply recommends denial. But

that doesn't mean that his permit application will be denied. It's up to the planning department and the planning commission or the council to determine whether to grant the permit or not.

So I would recommend that the Department of Water Supply start formulating rules regarding water sprinklers because I believe we should have rules regarding water sprinklers because I believe it's being applied in other states within the nation and we're behind. But until that time, I don't see us making exceptions.

CHAIRPERSON VICTORINO: Okay. Mr. Dantes.

DR. DANTE: Just a general comment on the issue of departure from rules. From my perspective, I'm not asking this board to make an exception to a rule. I would like to be clear that there is only one rule and that is that the first two dwellings are exempt. That's the only written rule. If you want to stick to the rules, don't recommend anything, don't require anything because I only have two dwellings and they're both exempt.

Now, we're not sticking to the rules; we're making interpretations here. That's important.

We're making an interpretation that because I'm

applying for a permit, those two first and second

dwelling exemptions should not apply. That's not a

rule; that's an interpretation. All right, I'll go

along with that.

Then we're making an interpretation that I

should have to meet fire flow requirements. That's

not a rule. I'll go along with that.

What I'm saying is I have met fire flow

requirements. I'm asking for you to make that

interpretation also.

So when it comes time for you to wrap this up

and make your decision, please don't look at it as a request to depart from a rule that's going to put you out on a limb as far as liability. I'm asking you to make an interpretation that's consistent with National Fire Protection Association standards.

If you carefully read, word for word, what this board said when it denied my request for an insurance waiver four years ago, a board member and a planning department staff member both said perhaps fire sprinklers could be a reasonable compromise. That's in those minutes. A compromise between unrealistic infrastructure upgrades and a waiver of

fire flow, something in the middle. Thank you.

CHAIRPERSON VICTORINO: Member Okamura.

MR. OKAMURA: Isn't the problem that we don't have a rule to fit the situation, so we're trying to interpret some other rules. And that's why it's hard for us, I think. And so we cannot make any decision based on the fact that there is no rules to cover the situation.

So what we need to try to do, I think, as a board is to try to find some way to -- or have a rule in place or have somebody decide what to do in the situation, but probably it's not us. But I



think wouldn't the problem be that we don't have a rule to fit the situation.

DR. DANTE: I think that's very basic. But you also don't have a rule to fit most of the situations that you're asked to resolve and they are matters of interpretation.

MR. OKAMURA: Well, this case more especially because I think even the county doesn't have ordinances to fit this situation. From what you told me in the last meeting. That they're trying to decide.

DR. DANTE: But in this situation, the question is have I or have I not met fire flow requirements. And I have had an engineer calculate those fire flow requirements based on the fact that the premises has automatic sprinklers. And that calculation has been submitted to the water department and is within the capacity of the standpipe.

MR. OKAMURA: I think that might be so, but I think what we're here to do is the board is here to interpret the rules that we have, not to say, okay, those are, you know, you meet fire flow

requirements. I don't think we're qualified to determine whether you meet fire flow requirements or, you know, based on the different standards, you know. You meet one standard but you don't meet the other standard.

So I don't think we're qualified to determine, you know, what standard to use. I'm sorry, that's all I'm thinking now and I think the vacuum is creating a problem for us. And I don't think we can say okay, let's just waive the rules because there is no rules that actually fit your situation that we can waive.

DR. DANTE: I understand what you're saying.

CHAIRPERSON VICTORINO: Member Okamura. I mean

Member Hiranaga.

MR. HIRANAGA: Dr. Dantes, would a comment from the Department of Water Supply stating that we are unable to comment on the adequacy of the automatic sprinkler system installation because we do not have sprinkler system rules so we're unable to comment as to the adequacy -- you're saying that the Department of Water Supply accept the automatic sprinkler system. Would a comment saying we're unable to comment as to the adequacy of an automatic sprinkler

system be acceptable?

DR. DANTE: Oh, okay, thank you for exploring that. Well, if it were a perfect world and I were designing it, I might say that perhaps the comment could defer to the department of fire safety as far as the interpretation of fire flow sprinklers.

MR. HIRANAGA: They provide their own comments.

So, you know, the department is providing their comments. Their comment would be we're unable to comment as to the adequacy of the fire -- the automatic sprinkler system installation because we

have no rules in place to determine its adequacy.

So it's not a no; it's not a yes. We're unable to

comment. And then the planning department will

prepare their recommendation based upon that

comment.

DR. DANTE: Well, if it's the board's feeling

that that's the strongest -- the strongest support

that you can offer under the circumstances, then

I'll be grateful for it.

MR. HIRANAGA: It's just something -- because

we have no rules to make a determination, we can't

accept or reject it.

DR. DANTE: Well, a number of weeks ago my discussions with the Department of Water Supply were a lot further toward resolution than they are today. I don't understand why. I had the impression that the sprinkler system was okay with them and that the only thing that they were worried about was whether it should be attached to their meter or whether it should have an independent water source. We were all the way down to discussing schematics and configurations of hookups and the rule that the water department has that entitles a person to free water powering a sprinkler system, there is a rule

like that.

And then for some reason it seemed to collapse and back up to we want you to upgrade those 400 feet of cast iron pipe. I just thought I would mention that because I'm feeling kind of desperate at this point in the discussion.

CHAIRPERSON VICTORINO: Ms. Parsons.

MS. PARSONS: I would just like to go on the record because I know that this does get read by certain members of the council and I have stated this for the four years I've been on the board: I'm opposed to the extortion that we apply to residents,



whether they be in a commercial situation such as  
the B&B, which I'm not so sure that I call that  
commercial.

But I don't think that we need to keep putting  
the burden of our infrastructure flaws on the  
public, on the residents, on the homeowners. I  
think it needs to go -- we need to improve our  
infrastructure, we need to look at our developers  
that want to develop and start looking at funds,  
whether they go into a significant CIP fund to help  
take care of that infrastructure. And I just want

to put that on the record that this is the time that we need to make this decision whether the water department defers to the fire department codes for fire flow, whether we accept hold harmless clauses, or whatever we do, it's time to take the burden off of the residents. Thank you.

MR. TENGAN: Mr. Chair.

CHAIRPERSON VICTORINO: Yes, Mr. Tengan.

MR. TENGAN: For the record, we were not extorting the public. We are just applying the rules. And I would like that entered into the record also.

CHAIRPERSON VICTORINO: Thank you, Mr. Tengan.

Okay. Let that be entered into the record.

Ladies and gentlemen, we have discussed this matter. Mr. Johansen? Member Johansen?

MR. JOHANSEN: I don't think we should pass on this. I think we should make a recommendation. If that recommendation is that the county council, which is in the process of formulating rules in its present meetings, make a rule which defines this situation so that people know where they are, then I think that should be our recommendation.

Other than that, when I get back to what I was

saying at the outset about the practicability of rules and their enforcement, do we have an enforcement mechanism, do we have adequate sanctions for someone who flouts the rule, who flouts the requirement that they register as a B&B or a TVR.

Thinking as a scofflaw, I would say that it would be possible to make arrangements with a travel agent so that you could rent out a bed and breakfast through the travel agent, you'd never have to advertise. It would be very difficult to monitor, to discover a bed and breakfast.

And as a practical matter, if you're going to

make rules that are going to be enforced, I think

we're going in the wrong direction. I think we

should recommend approval. I think we should

recommend approval and we should recommend that

since there are no rules for sprinkler system but

the fire department has approved rules for sprinkler

system in a situation like this, we should defer to

the rules of the fire department, in addition to

recommending that the County Council make a rule

which is -- which covers this situation.

CHAIRPERSON VICTORINO: I think that that's

what the process is in place right now. Go ahead,

Mr. Dantes.

DR. DANTE: Thank you. Thanks for the leeway

to speak. Since you brought that up, I should

mention that this is a visible test case this

morning. I'm doing this to set an example for other

people in the industry, the example being that it is

possible to comply because the county will

ultimately be reasonable if reasonable information

is presented.

There are hundreds of people waiting in the

wings that have not been willing to apply for

permits. They want to see what happens to me. And

I've encouraged them to step forward and apply and  
our whole organization has for years. But when  
people do and they see what happens to them and what  
happens to them is they get into an impossible bind,  
it tends to make them want to stay underground.

We're working for effective enforcement. We  
feel it's essential. But there has to be the  
ability to comply with the law as well. It's a  
balance.

CHAIRPERSON VICTORINO: Thank you for that  
insight.

MR. TENGAN: Mr. Chair, may I offer a comment?

CHAIRPERSON VICTORINO: Yes, Director Tengan.

MR. TENGAN: You know, I've been looking at

these situations where we have a difference between

the fire department and the water department. And

in my mind, I seem to have come to the conclusion

that as far as the sprinkler systems are concerned,

the fire department is basically concerned about

suppressing a fire within the structure.

The water system standards goes beyond that.

If there is an external fire on property, the fire

sprinkler system will do nothing to suppress the



fire. And that's where I think our standard is.

CHAIRPERSON VICTORINO: Mr. Okumura, you had something.

MR. OKAMURA: This is the last question. Well, comment maybe. Might not be a good thing to say because we don't have rules, we can approve this. But nothing personal. But the logic being that mentioned earlier that because we don't have a rule to fit this situation, we should approve it. I can't see that. Thank you.

CHAIRPERSON VICTORINO: Ms. Parsons.

MS. PARSONS: Just to address the director's comment, aren't we being a little hypocritical with saying that something that happens on the property past the meter is something we should concern ourselves with when Upcountry has bacterial problems that we may have created that goes -- and from the meter to the household, we're saying we don't have anything to do with the property.

CHAIRPERSON VICTORINO: Ms. Parsons, can we stick on the subject at hand, please?

MS. PARSONS: It is. It's the issue of going beyond the meter. We say we don't go beyond the

meter. The meter is where we stop our obligation.

You can't have it both ways. You can't say that I'm

responsible for the household inside the household

and I'm not responsible -- because there is a fire,

but I'm not responsible for anything else, quality

of water aside. You either stop at the meter with

responsibility or you go beyond it.

MR. TENGAN: Mr. Chair, I would like to respond

to that.

CHAIRPERSON VICTORINO: Mr. Tengan

MR. TENGAN: Our fire protection requirements

are along the public's roadway. It's not inside of

the house. And that's the standard that we're applying. You need fire protection along the property, not on the property.

MS. PARSONS: That's residents. You stop at the meter. You have to make your mind up. You stop at the meter or you don't. Now, if you want to take on putting the fire flow in there, you're opening up the door.

CHAIRPERSON VICTORINO: Mr. Johansen.

MR. JOHANSEN: Aside from that, maybe the fire chief could tell us if their requirements don't also cover more than just the structure on the property.

Aren't you responsible for fire protection for all aspects of the county?

CHAIRPERSON VICTORINO: Chief Kapalolo.

FIRE CHIEF KAPALOLO: On commercial projects, normally we work well with the water department because it's pretty cut and dried, as the director mentioned, and we'll work with inside a property if they're getting a structure out, water pretty much insures that we have that infrastructure capability and sustainability in the system.

Sometimes our rules are silent when we go into

residential because mainly the code applies to commercial structure. But these kinds of special use kinds of requests come in, we need to look at the code a little closer. And the code allows us some flexibility or -- that's not the right word. Some exceptions. And these exceptions allow us to meet [inaudible]. Understand the water has the rules or policies that they follow. And currently, you know, this is their application. And for us, we normally look at the entire fire protection to be as what would be the end users of that, whether it be on the property or out on the roadway.

If a fire does occur, we being the end users certainly would like to have that capability to mitigate any kinds of fires, whether they're on property or offsite.

CHAIRPERSON VICTORINO: Okay. I think we've discussed this matter in many aspects. And just to -- and I'd open up for a motion in a moment, but just to add my comment and my take on all of this, I agree with our members, both Parsons and Johansen, that we need to somehow get the departments together so they get more correlated. But again, the departments' responsibilities are really different

in their respects. The Department of Water gets the water to that area, to that fire hydrant, to that standpipe, to whatever. The fire department is insured in how to fight the fire. I mean, two different entities. Water there doesn't mean you fight the fire. I'm correct in saying that, Chief Kapalolo. Fighting the fire needs the water, but if the water doesn't come in proper pressure or does not come into the area or does not -- they can't do their job. Okay.

So the water department gets the water there, okay, to that location. Whether it's on the street,



to the house, whatever. In fact, most of it would be on the street because no standpipe is generally on somebody's property. I know a few exceptions to that rule.

The challenge we face is the two rules don't interface. Sprinklers are now becoming a bigger part of our everyday life especially in areas throughout the United States and more here on Maui.

So again, those rules now somehow have to be incorporated. And we don't have that ability to incorporate rules; we just make recommendations.

And so whatever the recommendation the board makes,

I want you to understand, Mr. Dantes, that I

sympathize with what you're saying, I understand

both positions, I understand what my board is

saying, and I agree that no matter how you look at

it, one day we've got to come to some definite,

whether it's the council or somebody make a

definitive rule so that we won't have this and we

can bring all these underground people out of the

system and put them on what we call a taxable,

usable system. I agree. You know. Because all

these underground stuff, we don't get any tax

revenue from and that's a big loss in our economy.

You know.

I also say from an insurance end standpoint,

Ms. Parsons and Mr. Johansen, there is a definite

difference between B&Bs and residential. It is

considered a commercial entity. It is not

considered residential. From an insurance

standpoint. That's my world I live in. So whenever

somebody comes in and wants to do a B&B, it goes

under a commercial policy. It does not go under

residential. So that industry has a definite

distinction. Okay? Just so everybody is clear on

that part. As far as an industry now. I'm not talking governmental agencies, just an industry.

Mr. Johansen.

MR. JOHANSEN: How do you treat an ohana? A rental of 180 days or more.

CHAIRPERSON VICTORINO: An ohana is considered residential for the purpose of ohana. Okay. Ohana now. Now, if you're talking B&Bs, because of its consistent change-over, short-term rental, rental of just specific spaces, not the entire entity, that insurance industry defines that as commercial versus --

MR. JOHANSEN: What if you rent a room for more than 180 days?

CHAIRPERSON VICTORINO: Now you're getting into semantics. But I'm just saying --

MR. JOHANSEN: It isn't just semantics.

CHAIRPERSON VICTORINO: I'm just saying what our industry looks at is that. Now, again, people do it underground, like you say, if somebody rents a room out for more than 180 days. I know there are residents out there that I insure right now that they have family members living downstairs and

renting out. Which is illegal. And I tell my clients that, it's illegal. But can I go there and -- I don't have that authority. I do not. I'm just trying to distinguish what the industry, the industry I work in, how they define it. That's all I'm trying to say. I'm not saying what is right and wrong out there. I'm not saying what is going on out there, because we all know. Okay.

Just so that everybody is clear before we decide that we are sympathetic with you, I understand where you're coming from, the department has presented their case. Now I leave it up to the

board to make a motion to decide what they want to do, to recommend, to deny, whatever. I leave it to the board now to make that recommendation. Enough for my speech. Thank you.

MR. HIRANAGA: Just a comment based upon your bringing in the insurance world. The penalty for not properly disclosing the use of the property is that if it's determined by the insurance company that in fact it was not a residential use but in fact a commercial use, that they would not satisfy the claim.

CHAIRPERSON VICTORINO: They can deny the

claim, that is correct

MR. HIRANAGA: That's the penalty. You can operate a B&B under a residential policy, but if something happens and they determine that it was due to a commercial use, they deny the claim. So.

CHAIRPERSON VICTORINO: There is a definitive penalty in that area, yes.

MR. KUSHI: You refund the premium?

CHAIRPERSON VICTORINO: Yes. Let's not go into the insurance issue. Come on, you guys. That's putting me on the spot. But I really want a distinction. That's was just for distinction for



everybody's use, Mr. Dantes, just to be clear on our industry and how we determine the two. Okay.

All right. I'm open to a motion. Yes,

Ms. Parsons.

MS. PARSONS: I would like to make a motion that the board recommend that since we have no rules or policies in place, that the water department defer comment to the fire -- for the fire department codes for fire flow in this issue.

CHAIRPERSON VICTORINO: Is there a second? No second?

MR. JOHANSEN: I'll second it for purposes of discussion.

CHAIRPERSON VICTORINO: All right. It's been moved and seconded. Okay. I think we've discussed to a thing. But I open it up. Go ahead, go back to the maker of the motion first.

MS. PARSONS: I'm making this motion for the purposes of Mr. Dantes' specifics. I think we're going to get into the fire flow issue and we can be more specific on our recommendation there and make a more specific recommendation for council purposes to make rules. That was the reason why I think right

now we have no rules, we have no policies, we have  
no business even being here with Mr. Dantes as far  
as I can see in this issue because I don't think --  
I don't think the water department has a right to  
overstep the boundaries of the fire department  
codes. But that's what we're going to go discuss  
next. And so for now I'm just saying let's defer --  
recommend that the water department defer to the  
fire department for the codes for fire flow in this  
case.

CHAIRPERSON VICTORINO: Member Hiranaga.

MR. HIRANAGA: I guess I object to the word

defer because we're transferring responsibility and authority to the fire department. I would prefer that my previous suggestion that we're unable to comment on the adequacy of sprinkler systems because we have no rules addressing --

MS. PARSONS: That's what I'm saying --

MR. HIRANAGA: No, you're not saying that.

You're saying defer. I'm saying no comment.

MS. PARSONS: Okay, no comment. I like that.

I'll modify it that.

CHAIRPERSON VICTORINO: No, it has to be an

amendment purpose now because you've already made

the motion. Okay. So we need an amendment to the motion if you want to change the wording from defer to what you just said.

MS. PARSONS: I'll make a motion to -- amendment to make no comment.

CHAIRPERSON VICTORINO: Do I have a second?

MR. HOLMBERG: I'll second.

CHAIRPERSON VICTORINO: All right. So the amendment on the table is to make no comment in regards to this, right? .

MR. HIRANAGA: Well, I mean, are you saying the

exact words "no comment?" Or no comment because we  
have no rules addressing the adequacy of fire  
sprinklers systems? There's a big difference  
between --

MS. PARSONS: We have no rules and policies for  
fires, yes, that's the amendment, for fire sprinkler  
systems. Therefore we're unable to make any  
qualified --

MR. HIRANAGA: Interpretation.

MS. PARSONS: -- interpretation.

MR. JOHANSEN: Mr. Chair?

CHAIRPERSON VICTORINO: Yes, Mr. Johansen.

MR. JOHANSEN: Could we have the full motion stated? Is this a recommendation to the water department saying -- are we saying that we recommend that the water department return to the planning commission with no recommendation?

MS. PARSONS: No comment.

MR. JOHANSEN: No comment. Okay.

MR. HIRANAGA: Well, there should be a specific state --

MS. PARSONS: Right. No comment due to the fact that the water department has no rules or policies in place for sprinkler systems and fire

flow -- regarding fire flow.

MR. HIRANAGA: To determine the adequacy of  
fire sprinkler systems.

MS. PARSONS: Yes. Much better. More  
eloquent.

CHAIRPERSON VICTORINO: So let's put it all  
together in one sentence. Okay. For record  
purposes, Mr. Hiranaga, would you state the  
amendment?

MR. HIRANAGA: As I would suggest?

CHAIRPERSON VICTORINO: Yes.

MR. HIRANAGA: The Department of Water Supply



is unable to comment on the adequacy of fire

sprinkler systems because the department has no

rules addressing fire sprinkler systems.

CHAIRPERSON VICTORINO: You got that? Okay.

George.

MR. TENGAN: Mr. Chair, I would have a problem

with that motion. I can go along with the board

having no comment, but we do have a comment, the

department has a comment. So we could communicate

to the planning commission and the planning

department that this is the board's -- under your

signature and the department will offer its comments  
under my signature.

MS. PARSONS: No, this is not our comments;

this is our recommendation to the department.

MR. TENGAN: This is your recommendation.

Whatever it is.

MR. JOHANSEN: Mr. Chair, could we have

Mr. Tengan restate what their comment would be to  
the planning commission?

MR. TENGAN: Basically we would stick on our  
comments that we offered in this issue here.

CHAIRPERSON VICTORINO: Any more discussion on

the amendment? Seeing none, we're going to vote on  
the amendment and we'll do a roll call vote.

MS. CRIVELLO: I just want clarification.

CHAIRPERSON VICTORINO: Yes.

MS. CRIVELLO: Are we -- this motion --

CHAIRPERSON VICTORINO: No, we're on the  
amendment right now, not on the motion. We're on  
the amendment only.

MS. CRIVELLO: But is this amendment to the  
main motion to recommend to the department or to the  
regulatory process?

CHAIRPERSON VICTORINO: To the department.

MS. CRIVELLO: I just needed to have that clarified.

CHAIRPERSON VICTORINO: Any other questions?

We'll start with you, Member Helm. On the amendment.

MS. CRIVELLO: On the amendment.

CHAIRPERSON VICTORINO: On the amendment.

MS. CRIVELLO: Can you say the motion to the amendment?

CHAIRPERSON VICTORINO: Okay. I hate to trouble you, but can you -- you want the whole motion or you want the amendment to the motion?

MS. CRIVELLO: I want the whole motion.

MS. PARSONS: Start with the amendment.

CHAIRPERSON VICTORINO: Well, she's asking about the motion, because she's clear on the amendment, right? Can you read your motion as you first stated it? The motion, not the amendment.

MS. PARSONS: Right. It was a recommendation to the water department to defer to the fire department codes for fire flow. And then we modified it so that it was to say that the recommendation to the water department to make no

comment with regard to --

CHAIRPERSON VICTORINO: Stop. I just don't want to confuse her. The main motion -- you got the main motion. The other part was the amendment.

MS. CRIVELLO: Then we're going to vote on the main --

CHAIRPERSON VICTORINO: Yeah. So now we are only on the amendment. I didn't mean to cut you off. Just so that we understand, we are talking about the amendment, we are voting on the amendment. Sorry. Okay. Are you clear with that, Ms. Helm?

MS. CRIVELLO: I said yes to the amendment.

CHAIRPERSON VICTORINO: Yes to the amendment.

Mr. Johansen?

[Voices saying aye.]

CHAIRPERSON VICTORINO: I make it unanimous.

Now we go back to the main motion with the amendment in place, which would mean that we were not -- we are recommending.

MS. PARSONS: Right. To the water department.

CHAIRPERSON VICTORINO: Right. Are we clear with that? Okay. Starting from the other side, Carl, I'll start with you this time.

MR. HOLMBERG: Yes.

MR. HIRANAGA: Can we have it stated for

clarification what we're voting on?

MS. PARSONS: It's the amendment.

CHAIRPERSON VICTORINO: No.

MS. PARSONS: The motion is now the way that we just worded it as the amendment. So could you read the amendment for us? It's basically as you stated it before, that we are recommending to the water department to make no comment due to the fact that we are unable to make -- recommend -- make decisions, make recommendations, since we have no rules for fire sprinkler, fire flow, fire sprinkler,



fire flow rules, regulations. We don't have the  
rules to deal with. And so we're asking them to  
make no comment. It's the same thing you just said.

MR. HIRANAGA: Well, I mean, don't think the  
words "fire flow" should be involved. We're talking  
about fire sprinklers.

MS. PARSONS: It was amended exactly how you  
said it. I may not be -- it all falls in the same  
category.

MS. CRIVELLO: Mr. Chair, we need to have it  
exact.

MR. HIRANAGA: Yeah, so we know what we're

voting on.

CHAIRPERSON VICTORINO: You know what? I'm

going to -- can I have a ten-minute recess and this

way I can then go back in the minutes and find the

exact motion. Call for a ten-minute recess.

(Brief recess.)

CHAIRPERSON VICTORINO: I would like to

reconvene the meeting. Member Parsons, would you

read the motion and the amendment that was attached?

MS. PARSONS: Okay. The motion originally was

the recommendation for the water department to defer

to the fire department codes for fire flow. And

then it was amended to the water department take a

no comment position due to the department's lack of

rules and policies concerning fire sprinklers.

CHAIRPERSON VICTORINO: Oka. Are we clear now?

MR. JOHANSEN: Point of order. The amendment

contradicts the main motion. I think we need some

clarification here. If we vote for the main motion,

we're voting to defer to the fire department or

recommend deference to the fire department.

CHAIRPERSON VICTORINO: Corp Counsel Kushi?

Mr. Okamura?

MR. OKAMURA: So it is to recommend -- does the motion say that the board recommends to the department?

MS. PARSONS: Yes, I amended the motion to say that the water department -- instead of the first portion, I amended to say the water department take a no comment position due to the department's lack of rules and policies concerning fire sprinklers. I amended the motion totally.

MR. JOHANSEN: If we vote for the main motion

--

CHAIRPERSON VICTORINO: With the amendment

approved already.

MR. KUSHI: Main motion is amended.

MS. PARSONS: It's not longer there.

CHAIRPERSON VICTORINO: Okay. Any more questions? Okay. Starting with you, Carl, Member Holmberg.

MR. HOLMBERG: Main motion as amended, yes.

MR. HIRANAGA: Yes.

MR. JOHANSEN: Yes.

MR. OKAMURA: Yes.

MS. PARSONS: Yes.

MS. CRIVELLO: No.

CHAIRPERSON VICTORINO: And I'm yes. So six to  
one. Okay.

Mr. Dantes, I think we have done what the best  
job we can do for you and hopefully much success and  
hopefully the governmental agencies and the county  
council resolve your matters for you and for the  
public. Thank you for all your efforts and time.

DR. DANTE: Thank you all, too.

CHAIRPERSON VICTORINO: At this point I would  
like to ask the board their indulgence. I would  
like to skip for now and move up under Other

Business, discussion with the Department of Fire and Public Safety Chief or his representative on fire flow and fire protection requirements. The reason for that is they are busy people and they have other things they need to get to and I think since they're here and present, it will be a good opportunity. So I ask the board their indulgence. Is this okay with you? All in favor, say aye.

[Chorus of ayes.]

CHAIRPERSON VICTORINO: Okay. Thank you very much.

Neal, Carl, maybe come over here, it would be

easier for you guys to speak to us. I think you see the main reason why we asked you to come. We gave you a live example. And I think we've run across this situation all the time. So I'll open, start off with you folks, give your comments, and then I'll turn to the director for his comments and open for questions from the board. Go ahead, however you want to start, chief.

FIRE CHIEF KAPALOLO: I'll start us off. Just trying to look at what section we're on here on your agenda here.

CHAIRPERSON VICTORINO: Other Business, number



IX.

FIRE CHIEF KAPALOLO: Chair, first of all, thank you and good morning to you and members of the board. Appreciate the opportunity to come here and be able to share some of the things that we do with the department in terms of how we apply the -- or how we look at the fire protection and the fire flow that's necessary for some of these projects here.

Ironically, Captain Martin, who heads off our Fire Prevention Bureau, could not be here. He's actually in charge of the bureau that administers

our plans review and our code enforcement section.

Our apologies again also for our plans review

officer, Lt. Scott English, who is away on vacation,

a much needed vacation and he could not be here.

So instead myself and Chief Bal will be here to try

to answer any questions that you may have.

I think I want to open that to get a sense of

direction of what it is that you folks would like to

know. I think you already have a set of questions

in your own mind and so I would like to leave it

with that, Chair.

CHAIRPERSON VICTORINO: Comments from you,

Neal, before we start?

DEPUTY FIRE CHIEF BAL: I'd like to point out that some of your board members did make some interesting acknowledgements and that's the fact that fire sprinklers are -- have been with us a hundred years, they're all over the nation.

There are rules in commercial -- on the commercial side of this county that require sprinklers throughout a lot of the commercial buildings here as long as they meet a certain requirement. So there is water sprinklers, buildings through the hotels. And of course, there

was a 75-foot rule some years back that was approved  
and came in. Anything other than in a living --  
dwellings and so forth. Hotels, all they had to  
retrofit.

One of the condos wanted to come up and say  
that, well, we have the most advanced fire alarm  
system available to us and we want to use that in  
lieu of fire sprinklers. And we told them that  
wasn't a very good idea because not save any lives  
and that was our stand on it. And when we were  
attending their appeals hearing, it just so happens  
that -- and I was at the hearing so I was near their

condo, it caught fire. And it lapped up, which they said lapping is going from out one window up into the next building and so forth and so forth. And it trapped this guy that can barely move around on his own. And the people went in there and pulled him out and of course all of the alarm system did kind of get most of the people out, but it didn't save much of their buildings and so forth. And I always like to refer back to that one because, you know, Murphy's law says our job over there is to try to save lives and property, and then of course now the

environment.

So as far as sprinklers go, I'm a strong proponent of sprinkler systems in everybody's home.

And I tell you what, today when I used to go out and speak about it, I'd ask -- I'd ask everybody in the room to please give me an idea of what they think it would cost you to sprinkle your home, your very own home today. And I've got, you know, estimates from one end -- but it's always very high, oh, cost me a hundred -- thousands of dollars. And many of them are surprised today at just what a sprinkled home costs. Very cheap now, with all the technology.

Anyway, I could go on and on and on, but I've  
been out of that job for two and a half years and  
I'll stop right here.

CHAIRPERSON VICTORINO: Thank you for your  
comments, Chief and Deputy, thank you very much for  
being here. I'll open the floor up for questions.  
Member Hiranaga?

MR. HIRANAGA: I guess initially if you could  
maybe explain to us the purpose of fire  
extinguishers. Is it to retard fire, to such  
repress fire? Because it doesn't replace the need  
for a fire department. So what is the purpose of

fire sprinklers?

DEPUTY FIRE CHIEF BAL: Funny you should ask that. I guess I should have arranged for our new fire education trailer to be out here and give you all, you know, a real nice demonstration. This is covered by one of the federal grants and it teaches -- it will be going around to the schools and teaching young kids how to get out of a burning building. And this trailer actually generates smoke -- without fire, of course. And it heats up the doors, it teaches kids how to touch the doors and feel and come out and crawl out of the house and so



forth.

Well, at the very front of this trailer is an actual glassed in area that has a fire sprinkler.

And they throw in some paper and some cardboard and they light it up and they show you the time it takes for the sprinkler to come on and put that fire out.

Or at least, you know, knock it down to where it's manageable by anybody else coming along and not letting it spread. And that's the main idea of a sprinkler.

There is many different variations for

different types of installations. In here it says  
to the standard of NFPA 13D. Well, there is many,  
as you can tell, many different types of  
installation standards covering most of the  
different installations. But to answer your  
question, you know, sprinklers is there to save  
property and lives.

MR. HIRANAGA: Is it to provide time for the  
fire department or -- is it there to help control  
damage in order to provide time for the fire  
department to arrive, or is it there as a means to  
eliminate the need for the fire department to

arrive? That's my --

FIRE CHIEF KAPALOLO: There is kind of two schools of thought on that. One is that it -- mainly the thought behind that is to be able to save lives. It's a real active system versus a passive fire protection. Building codes are normally of a passive type where they build one-hour construction, they build to maybe minimize the spread of fire.

With the application of the fire sprinkler, it's more of an active. It's like a firefighter sitting there with a hose at night, anything goes off, he puts it out. It does a number of things.

It actually reduces and creates what we call the level of where it threatens life safety. The sprinklers can actually reduce the heat in that room, they can somewhat dissipate the smoke in there. So it allows you that ability to leave the room while it's actively putting out the fire. So it gives you that kind of opportunity there.

Without that in there, you just have a roaring fire that will flash over in three to five minutes.

Sprinkler will pretty much mitigate that flashover end of it, which again is a concern of the fire department because it tethers on the threshold of a

five-minute time frame that we look at before  
flashover occurs. If we can reduce that kind of a  
flashover in there, that allows the life within that  
building to be able to at least have the opportunity  
to leave.

The second thing it does, it reduces property  
damage. Before the flashover occurs, you just have  
maybe aesthetic damage to walls and stuff like that.  
If we don't get in there time, the sprinklers don't  
go off or they're not there, the fire starts to  
increase, then it impacts structural members,

structural members cause failing roof collapse,  
endangers firefighters.

So that gamut of us trying to save lives out  
there that this sprinkler system offers that to the  
people themselves. But it also offers the fire  
department that time that we need to get there. As  
we all aware, our stations are far and few out  
there. So looking at sprinklers out there on the  
benefit that Chief Bal mentioned, that's extremely  
important that we do try to meet our mission  
statement which is to save lives, protect property  
and environment. I hope that answers the question.

DEPUTY FIRE CHIEF BAL: My question to your question would have been do you mean an accidental fire or an intentionally set fire? There is a difference.

MR. HIRANAGA: No, just fire.

DEPUTY FIRE CHIEF BAL: In general. Because we've got to deal with all these different --

CHAIRPERSON VICTORINO: Ralph, you've got take a question? Member Johansen.

MR. JOHANSEN: First question, as a practical matter, is the previous applicant is on -- what is it called, what is the name of that road? Ulumalu

Road. How far is the fire station from where he is, just as an example, and how long approximately do you think it would take to get there?

FIRE CHIEF KAPALOLO: I believe that your question is really something that we in the department really looked at and took a look at real hard and fast on it. We've got two stations out there. One of them is the Makawao Fire Station. That's up on the hill. The other unit will probably be Paia. As you can see just by mentioning those areas, you're kind of saying well boy, those guys are really out there. And yes, it is a response



time that we're concerned with.

I'm going to just take a rough estimate, but I think from the last response time that we looked at, depending on traffic, it took anywhere between 15 and 18 minutes to get there. And then maybe we need a couple of minutes for the guys to get out of the station, we'll add that on, and then traffic which we don't have any control on, just to get there, that increases the time response. I would say by the time we drop the lines, it will be a good 20 minutes, and that's for us to hook up.

So having adequacy on the system, yes, very important.

MR. JOHANSEN: And then I have a second question which is Mr. Tengan said that not only is there responsibility to provide adequate fire flow, but also to protect the perimeters of the property. And a sprinkler system only addresses the main structure. Supposing you have out buildings, are you requiring sprinkler systems in say a tool shed or a garage or something like that or what are your requirements?

FIRE CHIEF KAPALOLO: The first part, I prefer

not to comment on Mr. Tengan. I would have him  
comment and make his response to that.

MR. JOHANSEN: I'm asking more what the fire --  
go ahead.

FIRE CHIEF KAPALOLO: What I perceive you're  
asking us is would we require other buildings there  
to be sprinkled. Again, we apply the code across  
the board and if it comes true that that particular  
structure or structures, for the use that they  
determined to be, that our code requires that fire  
protection, we would require it. So it's across the  
board, yeah, we would apply that for any building

permit requests.

MR. JOHANSEN: And what about flammable trash accumulations on property which are a fire hazard, how does the fire department make provision for that?

FIRE CHIEF KAPALOLO: Most of the times we get complaints about them and that's normally how we would be aware of some of these conditions. Hopefully the homeowners take a more responsible position on those kinds of issues there because it could be a detriment not only to fire but to health there. But --

MR. JOHANSEN: You don't foresee any liability problems there because you're not equipped to monitor that, right?

FIRE CHIEF KAPALOLO: We do from time to time if we make a call and make us aware, we will go out and investigate them. But certainly, you're correct, we don't have the manpower to do that, we're get out there in every home and ensure it. But certainly that would be a good incentive for the homeowners.

MR. JOHANSEN: On the other hand, it seems to

me that the water department, in requiring adequate  
fire flow, is taking into account the possibility of  
flammable material and out buildings, other  
flammable structures --

CHAIRPERSON VICTORINO: I'll stop you at this  
point, Mr. Johansen, excuse me. I think we're  
getting off of what we need to stay on.

Stacy, please.

MS. CRIVELLO: First of all, I can appreciate  
and I can value the sprinkler system for fire  
protection. And I think more important, I can  
appreciate how you more than once have said you

apply your fire codes.

But I go back to the water department. In your opinion, and I don't know how -- would you see a water sprinkler system be a substitute for standpipes or fire hydrants? Because it's the department's requirement to provide from the water system to the hydrants or the standpipes, if I understand it correctly. So would that be a substitute in place of fire hydrant and standpipe?

FIRE CHIEF KAPALOLO: Stacy, that's a very good question because I think you have a good understanding about how the fire protection works.

When the flow requirements are necessary for the project, we need to have a supply system that brings it on through, and then if there is any type of system that like a standpipe or hydrant, we need to make sure that that's there. So that's pretty much the first phase of that or first part of that system.

When we come in, we're pretty much -- by "we" I mean our fire personnel come in and utilize the system, the adequacy part, the duration, has already been met by the Department of Water. So we're using a system that's met that particular requirement.



By applying any type of what we call fire appliances, in the world of the commercial entities we have out there, there is a number of I would say options that they can apply, which obviously the one that we know and we're talking about today which is the fire sprinkler. It's an automatic fire sprinkler. Those flow counts are also calculated into the demand for that particular building and not just an exception to. So if we're adding anything into those buildings, they also are part of the calculation, what is the demand for this system

based on that we have a sprinkler system, based do  
we need -- the required fire flow.

In these kind of cases here now when we're  
looking at them, we have exceptions in our fire code  
that allow us to apply those exceptions that if we  
do have a sprinkler system, there is a number of  
credits that we can give them for that. But the  
adequacy and the demand for that system, that  
integrity still needs to be maintained. In other  
words, we cannot have a demand that's greater than  
the supply. But our code allows us to make some  
adjustments. But the adequacy of that supply needs

to be there because originally, especially if this is a building that was there and it met that, we cannot lower those standards. Does that answer that?

MS. CRIVELLO: Yeah. I'm just thinking from the perspective of the water department, too, you know, I mean, it's easy to pound their heads and of course, you know, we always going to say the fire protection. But I think of just basic telephone service. You know, you got to look where the dial tone comes from. You don't have your dial tone, you cannot function, right? You have to have your

infrastructure in place.

So I'm trying to say how can these two entities get, you know, get in sync that, water department, you have enough of the flow for us, you know, whether you have this infrastructure replaced or put in or not. I think that's what we're trying to resolve over here is how can the two departments, without one contradicting the other, I guess flow, if that makes sense.

FIRE CHIEF KAPALOLO: You know what, maybe just a little clarification. I don't think the departments are contradicting each other. But I

think there is a need and I think I heard your  
commissioner, your board members here, Chair,  
mention that, that there is maybe rules or things  
that are not in place for us to be more efficient  
and more effective.

MS. CRIVELLO: Okay, I take that back, not to  
say to contradict. But our department -- say, for  
instance, just the most recent discussion that we  
had, they came up with the rules and regulations  
that what they identify as the needs for them to put  
in place for that. And there seems to be -- at

least to the applicants, and even to me as a  
simpleminded lay person, you know, you cannot help  
but get confused as to --

FIRE CHIEF KAPALOLO: The process seems to be  
maybe at some time maybe a little confusing. And I  
think we're happy to be here to share some of the I  
guess -- and explain, you know, how we look at  
things so you have a better perspective. The water  
department obviously explained their -- how they  
apply their fire protection rules. And I think this  
is real good because it allows all of us here to  
understand that each department has a set of rules

that we need to follow. It's there, that's our guidelines and we operate.

At some point in time, though, maybe there are issues out there that probably would like to revisit and look at and say well, yeah, what is it that -- or how we could make it better. There is an opportunity to always improve on things. And as these things arise, I think that maybe is the flag that helps us to identify that, yeah, we have some concerns that maybe we would like to address as departments on that because these things do tend to meet and come to a head. You're obviously tasked

with that decision-making here and --

CHAIRPERSON VICTORINO: Ms. Parsons?

MS. PARSONS: One of the things that when we went to AWWA a couple years ago, went to one of the fire flow -- and fire department sprinklers was one of the topics that they discussed. And I was amazed at the difference in the water usage, for instance, with sprinklers versus just regular fire flow. It's like 200 gallons to 1900 gallons. So there is a major difference, that's why he's allowed the credits or the formula because of the volume of water that's needed to put out a fire with fire



sprinklers versus just using standpipe.

What I've been seeing and I do a lot of these with my homes and things and I work with the folks when they have to do infrastructure, and they will be putting tanks on their property to house more water in the case of fire because the trucks might not be able to get there for 15 or 18 minutes and the fire flow might not be up to par or whatever. But in my mind's eye, sprinklers are probably one of the -- I mean, if we can't get to somebody -- and maybe this is something planning needs to look at.

If we can't get to somebody in 15 or 18 minutes,

maybe we need to require from that point forward

that sprinklers go into every household that's

built, you know, every dwelling. I mean, beyond

that point.

FIRE CHIEF KAPALOLO: As a fire department, we would advocate these kinds of things that would help reduce, mitigate fire and save lives. I think that would be our obligation to do that, anything that would help us to save lives. I think we would be remiss --

MS. CRIVELLO: Because the cost isn't that much

more to put in a sprinkler system. It's a lot less than seventy or a hundred thousand dollars. I mean, it's probable less than \$5,000 these days to put in a whole sprinkler system in a household. And it sure makes a whole lot of sense to me. And I'm really proponent for deferring to them because I come across this on a daily basis with my customers. And I mean, it's a hardship for families that just want to put a cottage on the house to have to do a half a million dollars worth of infrastructure improvement or \$70,000 or \$100,000, it's a hardship, they can't do it. So we need to have some mechanism

where we can defer to the fire department when it

comes in to this gray area of do we make the

homeowner do the improvements that we really need to

be doing, or do we allow them to use alternative

mechanisms, whether it's put a tank on or sprinklers

or something else to help out.

CHAIRPERSON VICTORINO: Mr. Tengan.

MR. TENGAN: I don't think the department is

saying that sprinkler systems are ineffective and,

you know, it's not going to protect the dwelling

itself.

Where we're coming from is we're applying water

system standards as far as how much water needs to flow through our pipes so that can support firefighting activities of the fire department.

And, you know, that's where we're at. We're not disputing the value of sprinkler systems.

CHAIRPERSON VICTORINO: Thank you. And I think that's very apparent. And I think -- and Stacy, you mentioned one thing and you used the word substitute. I don't think you can ever substitute sprinklers for fire hydrants or standpipes. You always have to have that in the area. Because fire

on dwellings is one fire. And Ralph, you mentioned  
it. What about people that throw rubbish and all of  
a sudden you've got an exterior fire or smaller  
units that you have an exterior fire. And the  
firefighters would not be able to draw any water off  
of any sprinkler system in any home or any other  
structure. If you look at all commercial entities,  
they not only have sprinkler system, they also must  
have fire extinguishers or stand pipes within the  
system. Fire hydrants or standpipes within the  
system. Okay. In fact, now most of them is off of  
hydrants. They don't allow standpipes.

So, you know, this whole issue about  
sprinklers, yes, I think it's a good alternative and  
I'm a hundred percent behind that. But as far as a  
substitute, it can never substitute the fact that  
the fire flow, which is the fire department -- I  
mean the water department must make sure the water  
gets to that area to fight the fires, whichever  
means, whether it's by the fire department or by the  
sprinkler system that adequate pressure gets to that  
area to fight, whether you have to put tanks in or  
alternatives, that is all part of the whole  
equation.

So to just focus on sprinklers is not I think what we want to be here doing. We want to maybe discuss also the fire flow issue and how that is pertinent to your vehicles in the various areas, especially the rural areas. I think we all agree the city areas are not bad off. But you go beyond that, you go out to Haiku or Ulumalu where we're talking about, I think it's more like 20 or 25 minutes before you're going to drop one line out there. I'm telling you, that road is not the easiest side, especially coming from Makawao side. Maybe Paia be faster. My job is to understand it



because I drive those roads for my clients just to understand how long it would take a fire truck to get there. And my car move faster than any fire truck and I know how long it takes for me to get from Paia Town to Ulumalu. And I'm saying that the issue is really what I want to focus in is how can we work better to make the fire flow circumstances more applicable to all parties concerned, you know, how can -- maybe the two departments need to work on this really more closely.

You know, sprinklers is an alternative, but I'm

talking fire flow issues now. Fire flow issues.

Because the water department is really charged with making sure water gets to the area with the proper pressure so that the fire department can do the fire fighting, whatever the situation may be, whether it's structure or otherwise.

FIRE CHIEF KAPALOLO: And I think that's a real good explanation of what both departments' primary responsibilities is. We're the end product users. And the department of water does provide that for us. So it's a challenge. And I know the water department is very aware of that issue there, to

able to bring or provide adequate fire protection --  
especially in the rural areas. Some of these rural  
areas out there probably don't -- people have built  
structures out there, they're probably not even a  
minimum standard because there is nothing around  
them. So I think as you mentioned we are aware of  
some of these things. Sometimes we get called to it  
and that's how we find out about these structures up  
there.

But I think we're on the right -- you know, the  
right direction. Obviously this is one applicant  
out of numerous that we've gone through both the

department of water and fire. And this is may be  
one that requires us to pay more attention or to  
take a look at some alternatives or some different  
measures that they may be a combination of, you  
know, what we perceive to be the best fire  
protection for the community that we can apply. And  
maybe not just one standard or one -- but one  
application or maybe a combination because of the  
times that we living in now. More people.

CHAIRPERSON VICTORINO: Corp counsel.

MR. KUSHI: Maybe it's a good time for the

department to clarify. My understanding is that

it's the opposite way around. Residential fire requirements, the Department of Water Supply looks at, whereas commercial is in their jurisdiction.

So, you know, they don't go back and forth.

CHAIRPERSON VICTORINO: I agree, I understand that.

FIRE CHIEF KAPALOLO: That is correct. By our fire code, it is applied mainly for commercial purposes. Residentials are not with the code. The fire department pretty much applies that.

CHAIRPERSON VICTORINO: Member Okamura.

MR. OKAMURA: I had a couple questions. So when the fire department goes to the like I say to Mr. Dantes' place, would you guys check like the fire code in the standpipes or the fire hydrant or the water system, you guys check the GPM or you guys just go by the size of the pipe outside or --

FIRE CHIEF KAPALOLO: Well, if it's an existing system, I think it's already been designed, fire flow counts, for that [inaudible], it's already been. Because it's approved for that system to be there for that use. So it's almost implied. But we do go up and we do get our trucks to hook up and

we'll get a static, we'll do a flow, we'll get a  
resistance, so we'll have some idea what's going on.

But I think -- not going to want to speak for

[inaudible], but I understand that they also have

their people do a frequency check if they can on

[inaudible].

MR. OKAMURA: Much of us just assume that you

have -- the flow rate is sufficient, you're assuming

-- unless you think it's really low or something

like that --

FIRE CHIEF KAPALOLO: Well, we don't really

assume. We do send our people out there to plug

into the hydrant and do some flow and then of course  
  
the water department sends, when they do their work  
  
on the line, sends us some new information on this.  
  
But most of the time, yeah, we [inaudible] assist  
  
them on commercial system like here. Unless there  
  
is some reason why it's really a reduced flow, we're  
  
going to flag somebody, say we were trying to flow  
  
out of here and we didn't get any water. But  
  
majority of the time it's perceived to be that way  
  
that the system is intact and the integrity of the  
  
system is there.

MR. OKAMURA: Okay. So you actually the way



you guys do it is if there is like sprinkler, you  
guys can give credit so that if the fire flow is  
less than what the department requires, you can sort  
of in your evaluation reduce the standards for fire  
flow.

FIRE CHIEF KAPALOLO: No, we don't reduce the  
standard. We actually apply the code. The code  
allows us the exception to give them that credit.

And that's based on because what it's done is reduce  
the demand for fire flow in that structure because  
we have a sprinkler system. Without it, there is no

exceptions. You need to meet that whatever thousand  
GPM. But our code allows us to make that known to  
the applicant, the requests for being -- that we are  
unable -- we don't apply it all the time, of course,  
it is a request that we're unable to meet the fire  
flow at present, is there any flexibility, is any --  
they probably research the code, that's why they're  
asking us, any kind of conditional use that we would  
be able to apply. But it's not across the board.  
Our standard is that you apply and [inaudible]. But  
there are exceptions that come in.

MR. OKAMURA: Can you explain like the county

has a code, too, because I'm under the assumption

that we talked about the county is presently trying

to redo some of the fire regulations or code, I

don't know what we're talking about, but --

FIRE CHIEF KAPALOLO: You may be talking about

the code that was the present code that we just

passed through council which is the 1997 Uniform

Fire Code as amended. That code was just passed

recently, in fact. However, it won't be in effect

until July 1st, 2006.

MR. OKAMURA: And it addresses these issues of

fire flow and everything like that?

FIRE CHIEF KAPALOLO: The code pretty much mirrors the 1980 code that we're presently on, with a few changes. We did make some local changes that would allow us to be a little more flexible. But in general, yes, it has the same language that would allow --

MR. OKAMURA: The standards are different -- the code is the code, but the standards are based on like national standards.

FIRE CHIEF KAPALOLO: It's a reference -- it's just like this is your fire code and this is the standard that allows us to install fire sprinklers,

fire alarms, fire extinguishers. The code doesn't really tell you how to do it, so we use a recognized standard to allow us to install these things in a recognized way and it's an approved method of installation to install or to have a standard for us to install equipment.

MR. OKAMURA: But this Uniform Fire Code doesn't address the issue of standpipes and fire flow --

FIRE CHIEF KAPALOLO: It does address it, it does tell us in a section that covers hydrants and

standpipes and fire codes, it does.

CHAIRPERSON VICTORINO: I'm going to call a  
ten-minute recess.

(Brief recess.)

CHAIRPERSON VICTORINO: Reconvene the meeting,  
please. Member Johansen, you had your hand up.

MR. JOHANSEN: I would just going to say for  
the first time I recognize the difference between  
the requirements of the fire department and the  
requirements for the water department. On the one  
hand you have a requirement that if you have  
adequate fire flow, this is what we are required to

do and our liability is limited by the amount of  
fire flow available to us.

Whereas the county, the Department of Water  
Supply, has a requirement to provide that adequate  
fire flow. And failing that, that's where their  
liability extends to. And I don't know to what  
extent, since we're sitting here trying to talk  
about reconciling the rules of the two departments  
and procedures, to what extent that is reconcilable.  
And I just stopped there. I don't -- I don't see  
much further discussion about that. Maybe someone  
else does.

CHAIRPERSON VICTORINO: No, I think you hit the nail right on the head. Carl?

MR. HOLMBERG: I would like to agree or add that I don't think that as far as our previous testifier's case was going, that we're not in the sprinkler business. We just need to get the water to the spot -- to the local hydrant. And he's stuck in a situation where he couldn't get enough to provide his sprinklers. I don't think we care. I think we made the correct decision before. I don't think we need to make any rules about sprinklers.

Because that's their job, they have got that taken



care of. We just need to get the water to them.

Once we get to the water to the front of the

property, then these guys are perfectly capable of

deciding what to do at that point.

We just had an issue here because this is kind

of first time dealing with that kind of situation.

And I think now we know. We don't need to do

anything. We tell them it's not our kuleana, next

case.

MR. JOHANSEN: Mr. Chair, if I may, that brings

up an interesting question, though. If the water

department is required to provide adequate fire flow to the premises, is it fair to impose on the individual homeowner the cost of bringing adequate fire flow to their premises when they change their designation to something that you see as commercial. Because you are going to have scofflaws, you're not going to be able to enforce what otherwise would be reasonable requirements that a person register, that a person become known to the county, their function become known to the county. If everybody says this is just too expensive for me, \$100,000, \$90,000, whatever it's going to be, in the case of

Dr. Dantes, we're at loggerheads here and it seems to me that the county is going to have to deal with that.

CHAIRPERSON VICTORINO: And I think that falls into the purview of under the council with ordinance that would be mandating or somehow making more of a cohesive planning system, you know, maybe the different entities can meet.

And people have to understand one thing and I think this is so important. People come and move into these areas and make changes and want to do different things and then find themselves into

quandaries. And in the four and a half years or  
four years I've been on this board, I've seen so  
many people come in and saying that oh, when they  
bought this, they were told it was okay, and then  
they find out it's not. And I'm not blaming  
anybody, but I just think buyer beware, and that's a  
statement I want to be saying. When you come into  
these spaces and want to do certain things, you've  
got to understand all the demographics. And is it  
always our responsibility to upgrade all these  
private systems or systems that were put in years  
ago and some of them inadequately and now we're

burdened with the replacement of all of these systems. Is that fair? The question has not been answered yet. Yes, Ms. Parsons.

MS. PARSONS: I just wanted to also, Ralph, go a little bit further that it's not just when you're going for a commercial license that you're hitting this. This happens to residents when they're just putting on an ohana or they're putting an addition on their home, they're faced with the same burden. So it's not necessarily going from an ag usage to a special use permit. It happens on a daily basis

everywhere that we have inadequate fire protection.

Now, does that mitigate the fact that it's inadequate anyway, it's already inadequate? And are we liable at this point with the homeowner because it's inadequate to begin with? That's, you know, that's a question right there that, you know, we need to -- we need to address.

I think that it makes sense to me that the fire code -- National Fire Code is there for a purpose and the responsibility of the fire department and their ability in their reviews, and they are substantial and they're not -- these guys -- these

guys rule. And if they feel that they can make --

take their formula and they can give enough credits

in an area where there is insufficient fire flow,

like for instance Mr. Dantes where he's 750 versus

the 1,000 gallons per minute that the standard says

should be there, but because he's putting in fire

sprinklers that brings him down to meet the 750

flow, then I think it's their call because they

study the fire code, they keep up with the fire

code, and that's their whole -- that's their

business, that's their life, that's what they do.

And we do -- bringing the water up to code to the

places that as we build, to meet the -- to meet the regulations as they are today. And infrastructure improvements, if they can be mitigated by the use of tanks or sprinkler systems, should alleviate the burden from the homeowner to have to put in county infrastructure. And that's my opinion.

CHAIRPERSON VICTORINO: Okay. Mr. Tengan.

MR. TENGAN: Mr. Chair, I just wanted to make a correction that Member Parsons mentioned that if somebody wanted to do an ohana, they would have to do all these improvements. That's not so because the first and second dwelling on any property is



exempt on the fire protection requirements.

CHAIRPERSON VICTORINO: Thank you for that clarification. All right. If there is nothing else, I would like to thank the chief and the deputy for being here today and I'm sorry we took so long to get to you, but I hope by moving up, you don't have to spend your whole day and listen to all our exciting items of business.

FIRE CHIEF KAPALOLO: Thank you again for the opportunity, chair and board members again, appreciate this opportunity to come here and share a

little bit more about the work that we do and we

thank you for that.

CHAIRPERSON VICTORINO: And I hope, in closing,

that we can continue between yourself and the

department work closely to make as many improvements

and coordinate the regulations wherever and whenever

possible so that the public benefits from it.

FIRE CHIEF KAPALOLO: That is a recommendation

well taken. I think George, the director, and

myself, Mr. Tengan, work close. We will try to work

closely as we can and need to and continue to

provide the fire protection.

CHAIRPERSON VICTORINO: Thank you, Chief.

Okay. Moving back to our regular Communications under number VI, we will go to Communication 06-02, letter dated October 24, 2005 from Glenn Kosaka regarding Hale Mua Housing Subdivision, opposition to use of East Maui/Upcountry Water for projects outside of East Maui/Upcountry. That is going to be on pages 47 through 49. Is there anyone -- I don't think Glenn is here, I don't see him around. Is there anyone to speak on that?

Members, do you have any questions on this

communication? Go ahead, Mr. Okumura. And this is

to the department?

MR. OKAMURA: I just wanted them to explain the situation, why this letter -- what they mean by this letter. Like we're saying that water is coming from East Maui and it's going to West Maui? Or am I wrong? What's going on here with this letter?

MR. TENGAN: Basically I think there was some statement that water for this project will be provided for by the Hamakuapoko wells.

MR. OKAMURA: Where is this project?

MR. TENGAN: Oh, this project is in the Wailuku district on the way to Waihee from here. As you

pass Happy Valley and you come up on to the rise and heading towards Waihee, it's on the left-hand side, mauka side.

MR. OKAMURA: Sorry, I cut you off.

MR. TENGAN: Yeah. The Hamakuapoko wells are located in the Haiku-Paia Community Plan District and I guess basically that letter is saying that water from that district shouldn't be coming into the Central Maui area.

MR. OKAMURA: Okay. Could they mean that the approval for this subdivision was given on the basis

of credit in terms of saying that because we have  
more water in Hamakuapoko, we can allow this  
subdivision? Something like that, some kind of  
exchange or --

MR. TENGAN: I don't know that decision was  
made in that manner. When we get inquiries as to  
the availability of water, we will state that water  
is available now, but it may not be available when  
they're ready to hook up.

CHAIRPERSON VICTORINO: Excuse me. Ellen,  
would you come, please? And Member Parsons, you  
have a question.

MS. PARSONS: Yes, for either the director or  
for Ellen. Whose subdivision is this Hale Mua  
Subdivision?

MR. TENGAN: That's the Sterling Kim project.

MR. JOHANSEN: Where is it located?

MR. OKAMURA: Out here towards Waihee, as you  
go out towards Waihee.

MS. PARSONS: Ellen, would we have authorized  
Mr. Kim to be able to use the Hamakuapoko wells for  
a Wailuku project?

MS. KRAFTSOW: If that authorization was made,  
I would suggest that those questions be directed to

my boss.

MS. PARSONS: So they didn't go through you for water resource allocation? Isn't that your position?

MS. KRAFTSOW: When we do reservations, we review the reservations of meters. We review water meter reservations and we review discretionary permits. But as far as what you're talking about, any kind of specific agreements like that, you will use this well or that well, those are negotiated at levels above me. And again, I would defer to George.



MS. PARSONS: I want a clarification.

CHAIRPERSON VICTORINO: Okay, one moment, one  
at a time. She's deferring it to Mr. Tengan.

Mr. Tengan, do you have comments in this regard as  
far as some sort of agreement that has been made?

MR. TENGAN: There has been no agreement made.

And as I stated earlier when we commented on the  
project, I believe we commented that water may be  
available now, but it may not be available when  
they're ready to hook up.

MS. PARSONS: Is that the same standard line

that we use --

MR. TENGAN: That's the standard response we provide on all new projects coming in.

MS. PARSONS: And why wouldn't this go before the Water Resource Division? Why wouldn't it go before Ellen? Why did Mr. Kim's project skip Ellen altogether?

MS. KRAFTSOW: No, no, I'm not saying -- I honestly don't recall if they came in for a discretionary permit or if they already had their entitlements. But what we review are discretionary permits that are going to the planning commission

and we review water reservation requests. If it's just a subdivision, it does not come to us. Or a building permit, it does not come to us.

MS. PARSONS: When do you see it?

MS. KRAFTSOW: If it's going for a state land use boundary amendment, a community plan amendment, a change in zoning, a special management area permit, a special use permit, a conditional use permit, or I think that's like 28 of those that they review at the planning department. SMA minors don't come to the planning department. But anything that planning department sends out for review, we review.

And the other things that we review are requests for  
  
water meter reservations.

So if their water commitment is handled in any  
  
way other than that, it would not come through us.

MS. PARSONS: That makes it difficult for you  
  
to correlate the numbers, doesn't it?

MS. KRAFTSOW: At times.

CHAIRPERSON VICTORINO: Mr. Johansen.

MR. JOHANSEN: This brings up the whole  
  
question about community plan. One thing we didn't  
  
discuss at that meeting the other day is how do you  
  
make assignment of available water between water

districts? This is a case in point where you have a shortage of water Upcountry, you have people waiting for meters, and from the looks of this, water is being assigned to a development in Wailuku. Correct me if I am wrong, but that's what I see here.

CHAIRPERSON VICTORINO: Hang on. Go ahead, Ellen.

MS. KRAFTSOW: George can correct me, but my impression is that we would look at what the available -- whatever the availability standard is that we're using at the time, which this is maybe a

segue into division reports because I have to report to you all that I did make an error on the sheet that I handed out at the planning commission the other day, which I'll explain to you later. But it wouldn't really change the picture -- well, it would change the picture, but by the historically used standard that we discussed, we still have water to give out in Central Maui.

But by the standards that we're trying to move to, which are correct, you know, the official standards, we don't have water to give out. So if such decision were made to give water to certain

subdivisions, you know, within the last few years,  
  
we would have been operating under that modified  
  
standard, there would have been no error. And also,  
  
at the community plan level we do track and you'll  
  
find it in the Water Use and Development Plan, what  
  
the build-out would represent of the community plan.  
  
And so if they already have their entitlements,  
  
they're within that build-out, which is usually  
  
scary, but.

CHAIRPERSON VICTORINO: Member Hiranaga.

MR. HIRANAGA: Just a couple comments to

Mr. Kosaka's letter. The first -- he refers to this

as a West Maui project. It's not a West Maui project; it's a Central Maui project.

CHAIRPERSON VICTORINO: That's correct, thank you for the correction.

MR. HIRANAGA: Also, there is reference made to the Hamakuapoko wells and I think here the director can clarify for us the East Maui Water Plan, which was to develop the ten wells in East Maui, which the Hamakuapoko wells were part of, was designed to provide water to Central Maui, not to Upcountry. So the water from Hamakuapoko was never designated for Upcountry use; it was designated for Central Maui



water system.

CHAIRPERSON VICTORINO: Is that correct?

MR. TENGAN: That's correct.

MR. HIRANAGA: Just because the wells were in Haiku, some people in Haiku, I guess, they think that the water is for Haiku, but it's not, it was designed to provide water to Central Maui.

CHAIRPERSON VICTORINO: Mr. Okamura.

MR. OKAMURA: Thank you. Ellen, just since we're on the topic, I just wanted to ask, you mentioned you're moving to this different standard

for --

CHAIRPERSON VICTORINO: Let's not go into that.

That will be covered at a later point. I would like to stay on the issues that we are because we are running really late and I want to make sure everybody gets in there. Ms. Parsons.

MS. PARSONS: Wasn't there some kind of agreement with regard to the Hamakuapoko wells and the dwellings of other wells Upcountry when we settled the Maui Tomorrow lawsuit?

MS. KRAFTSOW: [Inaudible.]

MS. PARSONS: And that was settled when?

MR. KUSHI: Mr. Chair, it was settled in --  
when the new administration came in.

CHAIRPERSON VICTORINO: 2003, I think. 2002 or  
2003, something like that.

MS. PARSONS: And I think it mitigated -- I  
don't know the whole thing, but it mitigated the use  
of wells over there. How could we allow Hamakuapoko  
to be designated at that point when everything was  
still in limbo?

MR. KUSHI: My understanding of the settlement  
was Hamakuapoko was two wells out of ten and the  
plaintiff's person, the people who sued us, allowed

us in the consent decree to use those two wells for  
Upcountry.

MS. PARSONS: Upcountry. Specifically.

MR. KUSHI: Right. But there was an agreement  
that we could bring it down to Paia through a new  
EA, environmental assessment process.

But right now these wells are not brought down  
to Paia, which is part of the Central Maui system  
and they're used for [inaudible] purposes for  
Upcountry. And they're doing an environmental  
assessment to bring that water down.

MR. TENGAN: No, correction. We already have

the environmental assessment and the EIS issues

resolved to bring the water down to Central Maui.

That was part of the agreement between the mayor's

office and litigating party.

What we are doing is we are going through the process of doing an EA to take the water Upcountry also. Because up until now, we could take the water Upcountry only under emergency situations.

CHAIRPERSON VICTORINO: Right. So in other words, the water would become available not only under emergency purposes, but under the normal --

MR. TENGAN: Yes, then we would be able to use it to back up the upcountry System also.

MS. PARSONS: Didn't we have a meeting at Paia Community Center where they were opposed to putting the Hamakuapoko in?

MR. TENGAN: That's correct.

MS. PARSONS: So where do we stand with that? We're just going to overlook that.

MR. TENGAN: The Water Resources Committee under Michelle Anderson has scheduled a meeting -- I believe it's February 2nd or 6th, I forget the exact date. But a meeting is being scheduled up in Paia

in the evening and that's one of the topics on the agenda.

CHAIRPERSON VICTORINO: Mr. Hiranaga.

MR. HIRANAGA: Just clarification. You're saying that the Hamakuapoko wells, the water will be used ultimately for both the Upcountry system and Central Maui system, or just the Upcountry system?

MR. TENGAN: Under normal operations, we would expect to use that in the Central Maui system and for emergency purposes, you know, we would be able to use those wells to back up the Upcountry system.

MR. HIRANAGA: That's the final goal.

MR. TENGAN: That's correct.

CHAIRPERSON VICTORINO: Okay. So in closing with this, and because I really don't think there is any action that is needed, the other thing I wanted to point out that -- and no offense to my colleague, strongly opposed the rumored -- you know, again, there is no fact. I have looked into this matter myself, I have talked to the department and other entities, and there has been no commitment made in that respect. So it is exactly as it says, rumored, and it is unfounded at this time.

Could it change in the future? I have no idea.



The future is something I cannot determine. But at this time all the conditional approvals for Sterling Kim's project was done based on Central Maui, not Hamakuapoko wells.

Ralph.

MR. JOHANSEN: Simply making a record that they're opposed to that allocation.

CHAIRPERSON VICTORINO: Rumored allocation.

Okay. All right? Again, I don't think there is any other discussion necessary. Let us move on to our next item agenda and that's Communication 06-03,

pages 50 to 53, copy of letter dated December 23, 2005, from Avery Chumbley, president, Wailuku Water Company, successor to the Wailuku Agribusiness, Incorporated, to Mayor Alan Arakawa, regarding the Wailuku Water Company stream diversions. And this was one of our requests to get this letter so that we would have a better understanding what was being said.

I open the floor to discussion. Maybe I start off with the department. Do you have any comments, Director Tengan, as far as this letter?

MR. TENGAN: No, Mr. Chair, the letter was

written by Avery Chumbley to the Mayor. I believe it's -- as stated, it's in response to a letter that the Mayor wrote to Wailuku Water Company, requesting that the water be restored to the stream. And this is Wailuku's response to it.

CHAIRPERSON VICTORINO: Any comments?

Ms. Parsons.

MS. PARSONS: Were you able to get any of the questions that we e-mailed to you?

CHAIRPERSON VICTORINO: Yes, I'm working on that format.

MS. PARSONS: But Mr. Kushi hasn't seen that --

CHAIRPERSON VICTORINO: No, no, not yet.

MS. PARSONS: When do you expect for him to be  
able to see --

CHAIRPERSON VICTORINO: Probably next week I  
will get it to him.

MS. PARSONS: Because I think some of the  
questions we need to have answered before we can  
discuss this. I mean --

CHAIRPERSON VICTORINO: As far as the  
agreements and some of those questions?

MS. PARSONS: Right. Whether agreements can be  
made without our review, whether or not withholding

water is illegal, you know, and selling water from withheld spots. I mean, we need a lot of these questions answered before we can move forward on this kind of information.

CHAIRPERSON VICTORINO: Okay. Yes.

MR. TENGAN: I don't believe there is a formal agreement between the county, Earth Justice, and OHA. It was just a letter to OHA and Earth Justice in response to their concerns about the issues in the streams on this side of the mountain. And apparently the response was sufficient to satisfy

both parties to withdraw their challenges, I guess,  
on our use permits because of the state water  
commission. So there was no formal agreement.

MS. PARSONS: But there was an agreement  
between the Mayor and Mr. Chumbley, and that's the  
one we're talking about. There was some kind of --

MR. TENGAN: There is no agreement that I know  
of.

MS. PARSONS: That's what they were referring  
to. They said there was some kind of letter or  
agreement. When they were in here testifying last  
-- at the last meeting. Or that we have made an

agreement to buy water from Wailuku Ag. So that's  
the one that we're discussing, that's what we asked  
for this.

MR. TENGAN: We made an agreement with Wailuku  
Ag a number of years ago for use of the water up in  
the Iao ditch.

Wailuku Water Company recently sent us a letter  
communicating to us how they would calculate the  
amount of water we take from the Iao tunnel because  
that agreement had expired December 31st of 2005.  
And we're advising us now that they would be  
charging us for the amount that we are chargeable

for from the Iao tunnel at 60 cents per thousand gallons, which is something that we don't agree with, but we're still trying to find a way where we can either negotiate with Wailuku Water Company or have them reduce that amount.

CHAIRPERSON VICTORINO: Mr. Okumura?

MR. OKAMURA: Iao tunnel is the one that the water treatment plant is on? Is that the Iao tunnel water?

MR. TENGAN: No, it's not. The Iao tunnel is located in close proximity to the Iao stream intake. However, it's a separate source. It's a tunnel that



was bored into the mountain and there is a line that services the upper side of Iao Valley and then the remainder goes to the Iao tanks.

MR. OKAMURA: So the one that we have the treatment plant on is A&B water, actually.

MR. TENGAN: Rather than saying whether it's A&B or Wailuku Water Company, the treatment plant water we're being billed for it by Wailuku Water Company.

MR. OKAMURA: Okay. Thank you.

CHAIRPERSON VICTORINO: Any more questions?

Mr. Johansen.

MR. JOHANSEN: Mr. Chair, I might as well ask this question for the record. I've never had an answer. I don't know the answer. Since county water is a public trust, since the water department is only responsible for the water owned by the county, that's their charge to manage, I was under the impression that you didn't own the water underneath your land. If you owned a piece of land, as Wailuku Ag does, and that water is a public trust, I'm still curious, how is that water managed? Supposing they drain it to salinity? Who's in

charge?

I know that the water [inaudible] state can designate county-owned property. Do they also have the same authority and the same ability to monitor privately owned wells?

MR. TENGAN: Yes, the state water commission has jurisdiction to manage the aquifers and that's why in the case of Iao the water commission stated that when our pumping or the pumping from the Iao aquifer exceeds 18 million gallons per day, the Iao aquifer would be designated, and that happened about three years ago. All pumping hit -- I think it was

like 18,050,000 gallons. And that became an automatic trigger at the time to designate the aquifer. And so the state has control over the aquifer. The problem is getting people to report their pumping from the aquifer.

MR. JOHANSEN: But if you're pumping from a well, that's a question I have, aside from an aquifer like Iao. What if you're pumping from a well in South Maui or something like that. Not only the jurisdiction, but what are the available mechanisms to monitor that well?

MR. TENGAN: They're supposed to report to the

state water commission the pumping.

MR. JOHANSEN: They also report capacity, right? The private well driller. If they report at all, they report the capacity of that well.

MR. TENGAN: That would be done initially when they apply for a pumping permit.

MR. JOHANSEN: Yes. So the state relies on their report as to the capacity of that well -- the private developer?

MR. TENGAN: Well, the capacity would be based upon the size of the pump they put into the well.

And then they would also apply for how much water

they would hope to pump from that well. And the

state would take action on that. And if it's

approved, then that would be the capacity, you know.

MR. JOHANSEN: And then subsequently they have

a pump which can drain so much from that well.

Supposing -- supposing they drained -- they draw --

they pump 24 hours and that well reaches salinity.

Does the state know about that?

MR. TENGAN: That's where the reporting comes

in.

CHAIRPERSON VICTORINO: Okay.

MR. HIRANAGA: Wailuku Ag is surface water.

CHAIRPERSON VICTORINO: Yeah. I was going to point that out that the majority of the discussion when it comes to Wailuku Water Company is basically surface water, which is another issue in itself.

Okay. That's why the diversions of streams becomes very pivotable in that area, versus the aquifer.

But anyhow, the questions you're asking are legitimate, but we're kind of -- Ms. Parsons?

MS. PARSONS: Reading over this letter from Mr. Chumbley, Mr. Kushi on the first paragraph it says, "All of the water that is currently being

diverted under Wailuku's diversion registrations is being fully utilized for a beneficial purpose." Now is my understanding that Wailuku Agribusiness is no longer in the agricultural business; is that correct?

MR. KUSHI: That's what I hear also. I don't know.

MS. PARSONS: What beneficial purpose could they use -- and he does call himself a water company in here, but he's not being maintained under a water company review by the health department or the state, as far as I know.



So are we looking at this and questioning this at all? What beneficial purposes he -- what is his beneficial purpose?

MR. KUSHI: Well, you know, this is what Avery Chumbley states. It speaks for itself as far as I know. His beneficial purpose may mean several things. The land that they sold to the owners of the land that they sold, that's their purpose, beneficial purpose. They also sold water rights.

MS. PARSONS: See, now that was one of my questions I had on my list.

MR. KUSHI: [Inaudible] Wailuku Water Company,

we're looking whether the PUC takes over. But there

seems to have been an amendment to the Hawaii

Revised Statutes that exempts this type of water

companies. But yet they're still looking at it.

Now, this would all come to a head, like Kent said,

this is stream water, this is surface water. The

state water commission designated groundwater. If

the state water commission ever designates surface

water, then these issues would come to the

forefront. Then you have a pecking order in terms

of who gets to use what. Right now there is no

state jurisdiction. It's only the common law.

MS. PARSONS: So is it -- let me go back to that one point, that one question. The water that was withheld from the sale of the properties for the purpose of reselling it back to the buyer, Wailuku Ag sold property, withheld water rights, sold them back to the buyer -- is that legal?

MR. KUSHI: From my understanding they're charging a delivery charge. They're charging these owners delivery charges, not the water itself.

MS. PARSONS: Well --

MR. KUSHI: Call it what you want. But it

looks like a duck, smells like a duck.

MS. PARSONS: Because it basically says in the agreement that the water -- there is no water rights going with this land. Water rights, not water delivery service. It says "water rights" in these agreements. Would that then make it questionable as to whether it was legal or not?

MR. KUSHI: Well, we weren't parties to the agreement, so we can't comment. All we do is buy -- pay a delivery charge for the water for the Iao treatment --

MS. PARSONS: For us. Okay.

MR. KUSHI: We are not parties to any other agreements that the Wailuku Ag did.

MS. PARSONS: Okay.

CHAIRPERSON VICTORINO: Called the Wailuku Water Company today.

MR. JOHANSEN: Mr. Chair? It seems to me there is a fiction here, this business of delivery without being accountable for actual cost. That's one question.

The other question is that means that they're managing that water in a sense. They not only have

to deliver potable water, which is an aspect of management, they have to -- they have to have the conduits to get it there, which is another aspect of management. So a private company is managing the public trust. And my question is, is that in accord with the Waiahole Ditch decision?

CHAIRPERSON VICTORINO: You have to go back and go back and really -- it has all the bounds on legal aspects and challenges that are going to be forthcoming. A lot of this stuff is going to be forthcoming. I'm telling you, it's down the pike, not very long down the road. It's legal challenges

to these questions are coming up. Because we not only have the Waiahole Ditch, we have a lot of private citizens throughout the state are now finally being challenged and there are Earth Justice and many others are going after these guys. Not only the county, but these other entities. And I think it's about time.

But until then, right now the answer to the question is we have no jurisdiction, to be perfectly honest. Because they're using the guise of delivery. They're not selling you the water; they're delivering the water.

MR. KUSHI: One correction to Member Johansen.

To my knowledge, they're not delivering potable water; they're delivering stream water.

MS. PARSONS: And they're allowed to do that by statute?

MR. KUSHI: What statute governs that?

MS. PARSONS: You said there was some kind of statute that they were exempt under.

MR. KUSHI: That's the PUC statute. Public utilities statute. And there was an amendment within the last two years to exempt this type of agricultural water systems.



MS. PARSONS: So are our agreements with them  
using the word "delivery"?

MR. KUSHI: That's what the agreement states.  
We weren't going to agree to pay for water.

CHAIRPERSON VICTORINO: Okay. Any more  
questions? I think this point has been worked on.

Moving along, moving down to item VII, Unfinished  
Business, the Dowling Well agreement, which many of  
you asked for, pages 54 through 99. That's  
Director's Report 05-16. I don't think there is any  
need to go into executive session because this is

all pretty much public knowledge. But you wanted the report. Alva -- or who would like to comment on this? George?

MR. TENGAN: Well, the board requested these documents. I don't know what kind of concerns the board has. So, you know, I'll leave it up to the board if they have any questions, I'll try my best to answer them.

CHAIRPERSON VICTORINO: Go ahead.

MS. PARSONS: I think this was Sally's request and I'm not sure exactly what she was asking for.

But do they have any credits left and how do we

finally divide up --

MR. TENGAN: As I recall, they still have some credits left. I'm not sure how much. They used a lot of credits for the Kamehameha schools.

MS. PARSONS: Okay.

CHAIRPERSON VICTORINO: Okay. Any other questions or discussion on that matter?

Moving along to item B, Communication 05-07, that's pages 100-101. There is a copy of the letter from Mayor Allen Arakawa to Avery Chumbley, president, Wailuku Ag Company, Incorporated, dated November 1, 2005, requesting the voluntary

restoration in the Iao and Waihee Streams. And the  
copies are there.

Again, this is another surface water issue.

And I think a lot of this, like I stated earlier,  
that we will see litigation forthcoming from some of  
these groups in regards to this area, but I'm not  
privileged to know the information or what  
specifically they are going to go after, but many of  
these groups like Earth Justice and all that,  
they're looking for restoration of the streams. So.

MR. TENGAN: Mr. Chair, I believe item three,

that letter from Avery Chumbley, is in response to

this letter, to this number one from the Mayor to  
Avery Chumbley.

CHAIRPERSON VICTORINO: Okay. All right.

Moving on to C, report by Board Chair on Council's  
Water Resources Committee meeting of November 2nd.

I think you all remember that's when we gave

testimony in support of giving the board the power

back to adjudicate the director's decisions. And

Michelle Anderson and the committee has been working

on that on a number of other things. And as you saw

at our planning meeting what has been passed and

been signed by the mayor.

I'm confident, although the director has told me, and I understand his point, that this really should be a charter amendment change, I also think that you have a group of people that are willing to help adjudicate some of these challenges and so if an ordinance is given and we have the power to do that -- Mr. Kushi, I guess the other question I came in, would that be legal? Because I was told that corp counsel had not okayed that. I'm not sure how that corp counsel gets into this, but maybe I can ask you. If that power was given to us by ordinance

to the board, would that be legal since we have been  
  
put under an advisory capacity?

MR. KUSHI: Yes, Mr. Chair, reserving our  
  
rights to do a formal opinion to the council as well  
  
as to this body requested, we would feel -- we don't  
  
feel very confident right now that the appellate  
  
powers be given back to this board in light of the  
  
charter change. Because the charter specifically  
  
took it away. Now you're going to put it back  
  
through another vehicle. If anything, you should  
  
change the charter.

But again, this is something that is a very

concern to everybody and it needs to be addressed.

Well, I mean, again, when you make that kind of

comments, I have to come back and say, you know,

notwithstanding what has happened based on the

charter change, you know, the world -- the sky has

not fallen, the department has operated. So, you

know, when you make that kind of comment, I've got

to come back and tell you something.

MR. OKAMURA: Excuse me, I'm sorry, it wasn't

meant to be directed at the corporation counsel.

MR. KUSHI: You're talking about the

department --



MR. OKAMURA: Not the department either. I

think as a whole, meaning the council and everybody

who this is important to, you know, we had to really

move -- I think the key movers would be the council.

I don't think the department or the corporation

counsel is a key mover.

CHAIRPERSON VICTORINO: Just so that everybody

is on the same page and basically that is where the

discussion has fallen, whether, you know, and who

has that ultimate power. Yeah. Okay.

Moving on to Director's Report, says "none."

Other Business. A, report from Benjamin A.

Kudo, Attorney At Law.

MR. KUSHI: Mr. Chair, I understood that members had requested to see the report or get clarification of the report from this attorney named Benjamin Kudo. Let me give you some background.

Per our resolution adopted by the Maui County Council September of '03, Resolution 03-146, they hired or gave himself the authority to hire special counsel to review and research various questions and issues about the charter change, authority, et cetera. I can get a copy of that reso for you.

About a year later, in September 20th, the report is dated September 20th, '04, Mr. Kudo did submit a report to the council. The council has not yet made that report public.

You have to understand, attorney, special counsel, the client is the counsel, not the Board of Water Supply, not my office, not his office. It's the council.

The council has had several meetings, two as I recall, in executive session and they were advised by attorneys from our office that they should not release that document. So if it's not released or

being released by the council, we cannot release it to you. So that's where it stands right now.

There may have been some statements by attorney Kudo in that document that may expose the county to liability. That's what my understanding of that executive session was. I was not there. I've looked at the report, but of course I can't tell you what it --

MS. PARSONS: How does the public feel about this? Public funds used to pay for an attorney and they can't get the report?

MR. KUSHI: Yes. But again, maybe the report

can be -- I'm just speaking off the top of my head.

Maybe the report can be issued or made public with

certain parts redacted. But again, that's not my

call. And we didn't do the report. They didn't

listen to us, they hired special counsel, and now

they're in that bind. I shouldn't say they didn't

listen to us. They didn't want --

CHAIRPERSON VICTORINO: They wanted

independent --

MR. KUSHI: Correct.

CHAIRPERSON VICTORINO: All right. Okay.

MR. KUSHI: So it's not a public document to be made available.

MR. JOHANSEN: Mr. Chair, this is -- this agenda item is pursuant to a letter that you wrote, requesting information about this, right?

CHAIRPERSON VICTORINO: Uh-huh.

MR. JOHANSEN: Is it responsive, since it can be redacted and since we are widely affected as a board and since it's three years on since the charter amendment, can't we get some information about what the recommendations of their counsel have been so that we have some idea where we stand? I

don't -- I know that they're giving us the best

answer you can, but it's not really responsive to

the question. Why can't we get this information?

CHAIRPERSON VICTORINO: Is it possible we get

together and see if we can formally draft up a

letter from the board to Riki Hokama, council chair,

requesting whatever information will be made

available to us without whatever redacting has to be

done, then fine, but at least something. Is that

possible?

MR. KUSHI: Well, it's possible. But it's up

to the council to --

CHAIRPERSON VICTORINO: If we request and they still say no, then I mean obviously we're still up a creek with no paddle, but --

MR. KUSHI: I put it to you this way. If the client for this report, which is the council, has been advised and has agreed not to release it to themselves, to the public via public session, I doubt if they will release it to you. They may do it with the proviso that you go into executive session.

CHAIRPERSON VICTORINO: That's another aspect.

MR. KUSHI: But again, you're not the client.



That's the relationships.

CHAIRPERSON VICTORINO: But we are the most  
affected by this.

MR. KUSHI: I would hope so.

CHAIRPERSON VICTORINO: To be perfectly honest.

MR. JOHANSEN: Mr. Chair, if I may --

CHAIRPERSON VICTORINO: Go ahead, Ralph.

MR. JOHANSEN: Aren't we entitled to at least  
that answer from the council? What is the reason

that we're -- if the entire thing is confidential,  
that's one thing. Or if only parts of it are but  
they're inter-related, that's another. We just  
don't know why we're not getting this information.

CHAIRPERSON VICTORINO: Ms. Parsons?

MS. PARSONS: Is our only -- if they won't  
respond to us, do we have to sue them and get  
production of documents in order to see what's going  
on?

MR. KUSHI: I don't know about suing, but you

could request through the OIP or office of --

whatever that government record statute is, they

will respond saying this is confidential and it's

beyond the scope of public records.

MS. PARSONS: Wow.

MR. KUSHI: But you can try.

MS. PARSONS: Maybe we should do that.

MR. HOLMBERG: Mr. Chair, I'd support at least  
asking.

CHAIRPERSON VICTORINO: I think I've come to  
that conclusion. I'm going to ask again and go  
directly with his assistance to Riki and I'll say

either you can redact whatever or if we have to go  
in executive session, if they allow us that much.

Now, if I do that and they still say no, then  
we -- then OIP next. But before I go to OIP, I  
would rather do it that way. I'll give you a call  
and get together on that, we can formally draft up a  
letter. Moving right along --

MR. HIRANAGA: Under Director's Report, I  
thought we had a standing request for an update on  
Po'okela well. I don't see that on the agenda.

CHAIRPERSON VICTORINO: Today we don't have  
Po'okela. It says none, so I just followed this.

Po'okela. Alva is gone. Because we have a standing

-- and it's not on the agenda today and I apologize.

Pickup date.

MR. TENGAN: We included it as part of the  
division report.

CHAIRPERSON VICTORINO: Oh, division report?

Okay. I'm sorry. It will be under division report.

MR. TENGAN: I don't know if it's Alva has  
included it on his report.

CHAIRPERSON VICTORINO: When we get there --

put down Po'okela so we'll ask that question. Okay.

C, discussion of educational programs for the general public in the areas of water quality standards and conservation. This was brought up by different board members. Board Member Parsons, you had some concerns in this area.

MS. PARSONS: Oh, yes. But I'll tell you what, because of the time, if you want to, we can put it on the next agenda and Dr. Edwards will be coming shortly thereafter and --

MR. HIRANAGA: I agree.

CHAIRPERSON VICTORINO: Okay. We can defer this for our next meeting under Other Business.

And then we move into receipts from board

members requesting agenda items. Okay. We got one

you just gave us that one, Ginnie. Any other items,

agenda items to be placed on future agendas?

MR. OKAMURA: Yes.

CHAIRPERSON VICTORINO: Go ahead.

MR. OKAMURA: I would like to ask that we maybe  
as a group decide to ask the corporation counsel for  
a ruling on our role as advisory in terms that the  
charter says that we should apprise the mayor and  
council and department. And I can write this up --  
I have written up.

CHAIRPERSON VICTORINO: Okay. Then you will provide me that in writing and we will put that on the next agenda.

MR. OKAMURA: Okay. But I think we should present this to the -- okay, we discuss it as a group first.

CHAIRPERSON VICTORINO: Yes.

MR. OKAMURA: I have actually two things related to the requesting -- actually three things requesting for clarification from corporation counsel.

CHAIRPERSON VICTORINO: Okay. And then there



is a question from a board member requesting that Council Chair Riki Hokama be invited to our next meeting, so I will formally draft up a letter requesting his presence.

MS. PARSONS: And Michelle Anderson, she's in charge of the water committee. Bring them together.

CHAIRPERSON VICTORINO: What's the purpose?

MS. PARSONS: For the purpose of the discussion, to hear from them specifically how they feel and if they would be willing to go into executive session in order to discuss this issue

before we have to go to OIP or anything else.

MR. KUSHI: On the item IX A?

MS. PARSONS: Executive session would be fine,  
too.

MR. HIRANAGA: Is it more appropriate to wait  
for a written response before requesting their  
presence?

CHAIRPERSON VICTORINO: That's exactly what I  
was going to say. Let me at least write a letter  
and see what they come back to us and then go from  
there. Yes, Mr. Okamura.

MR. OKAMURA: One other item, the last meeting

we had with the planning commission, a couple questions came up to mind regarding let's say the new standard for withdrawal. That was one thing.

Maybe we could discuss that at the next meeting,

that one and also what will be done in terms of

trying to improve the information that we give to

the planning commission on the various development

projects that come up to us --

MR. JOHANSEN: Mr. Chair --

MR. OKAMURA: I wasn't finished, but -- can you

get that or should I write this down.

MR. JOHANSEN: I was just going to request that

we have a discussion of that meeting of what we feel was accomplished and what is yet unresolved so that we know how to proceed from there.

MR. OKAMURA: Okay, sounds good.

CHAIRPERSON VICTORINO: Put that down as a discussion item.

And then Ellen, I know you have some corrections and all that, but again in the guise of being that it's so late in the day and I know we got to be out of here by one o'clock, what I would ask you to do is put that together and I'll put you as an agenda item on our next meeting.

MS. KRAFTSOW: I was just concerned that board members not quote these numbers since there was an error.

MS. PARSONS: Can you give us the new sheets?

CHAIRPERSON VICTORINO: The new sheets can be passed around. And I would also venture to say that I ask board members in this kind of information, because again we are in a I guess the word modern of change, if that's the word we want to use or the statement I want to use, that these not be passed out to everybody. Because again, we are still

making changes as we go and just to be fair to the public. I don't want to get people alarmed on top of that. I don't want to give people the impression that we're good to go.

MS. PARSONS: The other thing is public meetings, those documents are public.

CHAIRPERSON VICTORINO: Yes, Ms. Parsons.

MS. PARSONS: Just letting you know, once they're passed out at the meeting, they're public, Mr. Victorino.

CHAIRPERSON VICTORINO: Ms. Parsons, I understand that. I am saying that you don't put

your interpretation or spin on it, Ms. Parsons.

MS. PARSONS: No. Right.

CHAIRPERSON VICTORINO: That is what I was

trying to get to, Ms. Parsons. Do not ever question

our [inaudible]. Thank you.

MR. OKAMURA: That's not always --

CHAIRPERSON VICTORINO: Go ahead, Mr. Okamura.

MR. OKAMURA: Is that always the case that what

information we get in this meeting, is it public --

is that correct?

MS. PARSONS: It's public. Yes.

MR. KUSHI: Whatever you give out is public

records.

CHAIRPERSON VICTORINO: What I don't want

[inaudible]. Let the information speak for itself.

Okay. Thank you very much.

Moving along to Division Reports. I guess Alva  
is not here, but can you give us an update on

Po'okela and then any questions on the division  
reports itself.

MR. TENGAN: Mr. Chair, Alva informed me  
earlier this week that I believe the pump is either  
in Honolulu or should be there shortly and that  
we're on schedule. The electrical lines have been



installed by MECO. The power is available on-site.

So the project is proceeding based upon its latest

schedule to be online in June of this year.

CHAIRPERSON VICTORINO: That's terrific.

That's good news. Okay. Division Reports. Anyone

have specific questions on any of the divisional

reports? I don't have too many people left in the

room, but between Director Tengan --

MR. OKAMURA: Just a question.

CHAIRPERSON VICTORINO: Go ahead, Mr. Okamura.

MR. OKAMURA: Under expenditures, it says total

operating budget extended -- page 15, board summary, expenditures, total operating budget expenses were like 21 percent below budget. I just was wondering what accounted for that lower amount of spending.

MR. TENGAN: Probably in the area of personnel costs. We have a lot of vacant positions and in some cases I'm sure that we expended less than what was budgeted. Let's see if there is a breakdown.

Helene, can you respond to that without reference to these reports here?

MS. KAU: I could have to agree with you, George. Assistant fiscal officer. I would agree

with George. Generally speaking, it's probably attributable to vacant positions as well as the fact that I believe when this report was prepared, we may not have had final payroll information. There were some problems with the county payroll systems. So I do believe that within the next quarter, you would see some changes.

MR. OKAMURA: One last question. On page 19, income, utility operating. Do you usually list depreciation on income? You don't have to answer it today. But I was just wondering. I don't know much about this kind of stuff, so I was wondering how

come it was put over there.

MR. TENGAN: Mr. Chair, I can respond to that.

CHAIRPERSON VICTORINO: Go ahead.

MR. TENGAN: The depreciation is actually being added to the operating expenses. So if you take the first column there, the \$1.9 million for operating expenses, you add another .9 to those operating expenses, you come out to a total operating revenue deductions of \$2.8 million.

MR. OKAMURA: Oh, I thought that is income.

It's not.

MR. TENGAN: No, it's not.

CHAIRPERSON VICTORINO: Any other questions on  
the reports? Okay. All right. Just to make sure I  
covered everything. Okay. If nothing further,  
ladies and gentlemen, meeting adjourned.

(Concluded at 12:24 p.m.)