

PUBLIC HEARING MEETING MINUTES
BOARD OF WATER SUPPLY
Tuesday, August 21, 2012

The Board of Water Supply, County of Kaua‘i, met in Public Hearing at the Board Conference Room in Līhu‘e on Tuesday, August 21, 2012. Chairperson Daryl Kaneshiro called the meeting to order at 6:14 p.m. On roll call, the following answered present:

BOARD: Mr. Daryl Kaneshiro, Chairperson
Mr. Randall Nishimura
Mr. Clyde Nakaya
Mr. Michael Dahilig
Mr. Roy Oyama (*entered meeting @ 6:20 p.m.*)

ABSENT/EXCUSED: Mr. Raymond McCormick
Mr. Larry Dill

Quorum was achieved with 4 members present at the time of roll call.

STAFF: Mr. David Craddick
Mr. William Eddy
Mr. Val Reyna
Ms. Marites Yano
Deputy County Attorney Andrea Suzuki

GUESTS: Mr. Lelan Nishek, Kauai Nursery & Landscaping
Mr. Michael Tresler, Grove Farm Company, Inc.
Ms. Shawn Shimabukuro, Grove Farm Company, Inc.
Mr. Dave Hinazumi, Grove Farm Company, Inc.

ACCEPTANCE OF AGENDA:

Chair Kaneshiro stated a public hearing will be held today, **Tuesday, August 21, 2012** regarding the corrections to the proposed amendments to the Rules and Regulations of **Part 2 Section IX Adjustment of Bills for undetected leaks and unforeseen damages** and **Part 3 Section XII Modification of Requirements** which will be more specifically, stated when the public hearing notice is read shortly.

Copies of the proposed rule amendment are available. Our legal counsel will now explain the procedures that will apply to this hearing.”

Deputy County Attorney, Andrea Suzuki read the following Public Hearing Procedures.

*“Board will follow the following procedure as laid out in **Part 2, subsection IX, Part 3 Subsection XII** of the Department of Water, County of Kaua‘i Rules and Regulations in holding this public hearing....”*

1. **Presentation by Department on its findings of the Proposed Rules**
(Presentation will first be made by the Department regarding proposed rules that are the subject of today's hearing.)
2. **Questions by Board to Department Regarding Presentation**
(Department will then answer any questions Board may have regarding Department's presentation)
3. **Take Public Testimony**
(Board will then take public testimony- *Refer to Request to Testify signature list.*)

If you wish to testify, please fill out the request to testify signature list. Anyone testifying is entitled to the floor only when recognized by the chair. Anyone with written testimony may be given priority at the discretion of the chair. The chair shall then grant to persons who have not registered time to speak following the registered speakers.

Regarding your testimony:

- Please state your name, address, and organization you're representing and if you are registered lobbyist.
- Please limit your comments to subject matter of today's public hearing
- Anyone testifying shall refrain from direct questioning of the Board and shall direct any remarks or questions to the chair.
- Anyone speaking may be subsequently subject to questioning by the Board. Questions by the Board shall be permitted only at the discretion of the chair.

4. **Regarding Public Testimony**

- a. **Three minute rule:** Three minute rule will be followed regarding all testimony. Please limit your initial testimony to three minutes. This will give everyone who wants to say something an opportunity to testify. If you don't complete your testimony within three minutes, you will be given another opportunity to complete what you want to say after everyone has had a chance to testify.

If you have not completed your testimony on the second go-around, you'll then be given another chance to finish your testimony after everyone in the second round of testimony has had a chance to testify. The chair may restrict or terminate the speakers' right to the floor for intemperate or abusive behavior or language.

- b. The Board shall not be bound by technical rules of evidence.
- c. Thank you! **Any questions?**

Chair Kaneshiro stated, “The public hearing is now open. The purpose of this hearing is for the Board of Water Supply to hear testimony and take action relating to the corrections to the proposed amendments to the Rules and Regulations of Part 3 Section XII.”

Chair Kaneshiro called for a roll call.

Board Member, Mr. Nishimura
Board Member, Mr. Dahilig
Board Member, Mr. Nakaya
Chair Mr. Kaneshiro

At this time, 4 board members answered present to roll call.

The Commission Support Clerk, Edie Ignacio Neumiller read the Public Hearing Notice as follows: The Board of Water Supply of the County of Kauai (“Board”) will hold a public hearing and receive public testimony and comments from all interested persons regarding the following item. Proposed Amendments to the Rules and Regulations of the Board of Water Supply, County of Kauai, State of Hawaii on Part 3, Establishing Standards for Subdivision Water Systems Section XII– Modification of Requirements.

BACKGROUND:

Manager Craddick stated in Part 3, Section XII - Modification of Requirements for Subdivisions use to say subdivisions could be modified. He read the following change: [such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations, may be made by the Department].

Manager Craddick stated the department consists of the Board, the Manager, and the staff. The clarification on the staff level the Manager and Engineer may do what was previous allowed in the previous modification.

Manager Craddick read the following changes:

The Manager and Chief Engineer may waive or modify requirements of this rule when not contrary to the purpose of the rule or the public interest, and when the Manager and Chief Engineer finds that:

- 1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and**
- 2. The applicant's circumstance or condition is unique or exceptional, and the Manager and Chief Engineer would grant the same request if made by every similarly situated applicant; and**
- 3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations.**

4. In cases of exemption from or reduction of the FRC fee, the request must be brought to the Board for approval.

Any waiver or modification made by the Manager and Chief Engineer will not be considered to have final approval until the Board is notified of the action through the Manager and Chief Engineer's monthly report to the Board, and the Board has not chosen to deny or modify the Manager and Chief Engineer's decision by a two-thirds vote.

Should the Manager and Chief Engineer decline to waive or modify the requirements, an applicant may ask the Board to waive or modify requirements of these rules when not contrary to the purpose of the rule or the public interest. The Board must find that:

1. Strict application of the rule would cause an absurd, unfair, or unreasonably harsh result; and

2. The applicant's circumstance or condition is unique or exceptional, and the Board would grant the same request if made by every similarly situated applicant; and

3. Such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulations; and

4. In cases of exemption from or reduction of the FRC fee, the resulting financial impact would not unduly impede or impair the financial health of the Department.

Any waiver or modification made by the Manager and Chief Engineer will not be considered to have final approval until the Board is notified of the action through the Manager and Chief Engineer's monthly report to the Board, and the Board has not chosen to deny or modify the Manager and Chief Engineer's decision by a two-thirds vote.

At 6:20 p.m. Roy Oyama enters meeting.

At this time, Chair Kaneshiro asked for any written or public testimony.

*Mr. Michael Tresler, Senior Vice President, Grove Farm Company, Inc.
provided his testimony*

Mr. Tresler thanked the board for allowing him to testify on the proposed subdivision. Grove Farm generally supports the changes that are proposed rules and regulations. On behalf of

Grove Farm, Mr. Tresler supports the changes that are proposed. With just one concern on the specific section that requires two-thirds of a board vote.

Mr. Tresler stated, "we are just simply not aware that for any other issues that any board action requires two-thirds of the board vote." "I am not sure, on matters such as there it should be consistent with other board's actions which is a simple majority."

A written testimony was also submitted by Grove Farm as stated:



August 21, 2012

Mr. Daryl Kaneshiro, Chair
Board of Water Supply
County of Kauai
4398 Pua Loke Street
Lihue, Hawaii 96766

**RE: Testimony for Proposed Changes to the Rules and Regulations Part 3
Establishing Standards for Subdivision Water Systems, Section XII
Modification of Requirements.**

Dear Chairman Kaneshiro and Members of the Board,

On behalf of Grove Farm Company, Incorporated ("Grove Farm") we would like to offer our testimony regarding the proposed changes to the Rules and Regulations, more specifically *Part 3 Establishing Standards for Subdivision Water Systems, Section XII – Modification of Requirements*.

We support the position that the Manager and Chief Engineer may be given latitude to waive or modify requirements of the rules under certain circumstances with the final approval resting with the Board of Water Supply ("Board"). What we oppose is that the Board must approve or deny the modifications with a two-thirds vote. We are not aware of the two-thirds vote applied to Board action and believe the simple majority vote should be the standard.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael H. Tresler".

Michael H. Tresler
Senior Vice President

At 6:25 p.m. Chair Kaneshiro adjourned the Public Hearing meeting on the proposed amendments to the Rules and Regulations of Part 3 Section XII Modification of Requirements.

Respectfully Submitted,

Eddie Ignacio Neumiller
Commission Support Clerk

Approved,

Randall Nishimura
Secretary – Board of Water Supply

PUBLIC HEARING MEETING MINUTES
BOARD OF WATER SUPPLY
Tuesday, August 21, 2012

Chairperson Daryl Kaneshiro called the meeting to order at 6:26 p.m. regarding the proposed amendments to the Rules and Regulations of **Part 2 Section IX Adjustment of Bills for undetected leaks and unforeseen damages.**

BACKGROUND:

Manager Craddick stated Section IX should be eliminated entirely. Section IX allows for adjustments on leaks based on a six-month average bill. If a bill is higher and if leaks that are underground and not seen, then adjustments are made with the current rules. The purpose of this rule change is because it has been deleted out of the DOW rate package. Nearly \$400,000 rebates has been given out per year which is less than 5% of the DOW's income. If rebates are given out, it would come out of the rest of the revenue. The department is not counting on losing revenue with the rate design package that the DOW approved.

Manager Craddick added the monthly read implementation has been delayed until December 2012. There a device the customer can use to see their water usage in their home. The device costs \$100 and is attached on a refrigerator. Customers can see how much water is being used in their homes especially when they are on vacation. Any business that has a radio read meter can use this device within a reasonable distance. Testing is being done with the department staff to get the bugs out. The device will be available to the general public later.

*Mr. Michael Tresler, Senior Vice President, Grove Farm Company, Inc.
provided his testimony*

Mr. Michael Tresler, Senior vice President, Grove Farm Company, Inc. stated he does not know how much this affects his company directly. There are general concerns through discussions with Manager Craddick. Billing periods are every two months and it is hard to detect leaks sometimes especially when people are not around.

Having an option of having something to monitor it but spending money to get it is also a problem, maybe more so for other people. It seems every day government starts regulating things more and more and has less of a heart or less compassion for people they serve. Mr. Tresler would like the board to keep this in mind. He understands the loss of revenues and situations where people should be held accountable. Through experience, he fixed a leak that has been going on for months and never went in for a rebate, but paid the plumber bill. The department makes additional revenue and there is some give and take on that side. Mr. Tresler thanked the board for giving him the opportunity to testify on this matter.

Mr. Nishimura commented at the budget numbers and calculated \$400,000 of \$23 million is 1.7% or 2% added there is a current unaccounted water loss of 15%. This may be a better place to put the money in.

Commission Support Clerk, Ms. Ignacio Neumiller read a personal written testimony dated August 21, 2012 from Jerry Nishek regarding Rule Changes for Section IX – Adjustment of Bills for Undetected Leaks and Unforeseen Damages.

The testimony stated as follows:

August 21, 2012

Written Testimony Regarding Rule Changes for Section IX- Adjustment of Bills for Undetected Leaks and Unforeseen Damages:

Dear Mr. Craddick, and Members of the County of Kauai Board of Water Supply,

I am providing testimony **against** the above rule change due to the undue hardship it will bring to home owners and businesses of Kauai by not allowing any possible chance of compensation to our water bill for water loss due to unforeseen circumstances beyond the control of the home owner or business.

We the homeowners and businesses are already burdened with water bills that have been sky rocketing in the past couple of years with no real end in sight.

You are in the process of also raising the fees for any new water meter application to a point where local people will no longer be able to afford to get a water meter to build a house on Kauai.

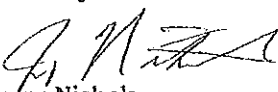
I understand that the Water Department needs to generate revenue to provide new water service and maintain the existing water system to provide water to the people of Kauai.

I don't think the Water Department is doing much in managing its daily operation costs to save money. I would guess that 75 % or more of the repair work that is being done by the Department of Water is during off hours when workers are making premium pay to do the work.

It seems there is no accountability by the Department of Water to control their overtime costs. I am sure that most of these repairs could be done during normal hours or some of the repairs could be subcontracted out to local contractors.

The 2% loss that you claim is incurred to the Department of Water due to Section XI rule, I am sure could easily be made up by proper management of the Water Department employees overtime.

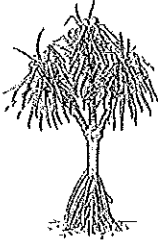
Sincerely



Jerry Nishek

Private Secretary, Ms. Garasi read a written testimony dated August 21, 2012 from Lelan Nishek on behalf of Kauai Nursery and Landscaping with copies to the Kauai County Farm Bureau and the Kauai Landscape Industry Council regarding Rule Changes for Section IX – Adjustment of Bills for Undetected Leaks and Unforeseen Damages.

The testimony stated as follows:



KAUAI NURSERY & LANDSCAPING, INC

3-1550 Kaunualii Highway, Lihue HI 96766

Phone: (808) 245-7747 / Fax: (808) 245-9289

License No. ABC-10825 E-mail: knl@kauainursery.com

Website: www.kauainursery.com

August 21, 2012

Written Testimony Regarding Rule Changes for Section IX- Adjustment of Bills for Undetected Leaks and Unforeseen Damages:

Dear Mr. Craddick, and Members of the County of Kauai Board of Water Supply,

I am providing testimony **against** the above rule changes due to the undue hardship it will bring to home owners and businesses of Kauai by not allowing any possible chance of compensation to our water bill for water loss due to unforeseen circumstances beyond the control of the home owner or business.

We the homeowners and businesses are already burdened with water bills that have been sky rocketing in the past couple of years with no real end in sight.

You are in the process of also raising the fees for any new water meter application to a point where local people will no longer be able to afford to get a water meter to build a house on Kauai.

I understand that the Water Department needs to generate revenue to provide new water service and maintain the existing water system to provide water to the people of Kauai.

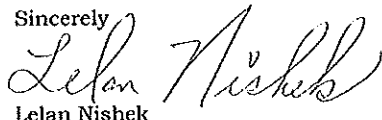
We understand that you only read the meters every two months and plan in the future to go to monthly meter readings which would help catch the leaks earlier and that alone will help save on the waste of water and loss of revenue.

This should be done first and then do a study to compare the results of the savings by implementing a monthly meter reading vs. bi-monthly readings.

Further under Section IX Adjustments of Bills for undetected leaks and unforeseen Damages Item 1, you need to determine the percentage of water loss vs. the percentage of income loss between the 1st sentence and 2nd sentence. They are shown to be handled possibly differently. What are the real numbers and percentages of each sentence?

You have the rules in place, but need to provide better justification for the changes to be made at this time. Please give the consumer the benefit, if it's beyond his control and knowledge.

Sincerely



Lelan Nishek

CC: Kauai County Farm Bureau, Kauai Landscape Industry Council

This written testimony was emailed and also received from Mr. Robert Kuzy on August 21, 2012. The testimony stated as follows:

Aloha Ma'am, My name is robert kuzy and i am a repairman who has dealt much w/water leaks underground. we desparately need the credit's you graciously give for underground leak. water costs have increased have increased 500% over the years and residents are strapped to keep up. Also, some resident plumbing leaks may be initiated by water dept. activities that involve breaks in your system trapping air and adversely affecting our lines and fixtures. Please retain current credit policy practices.

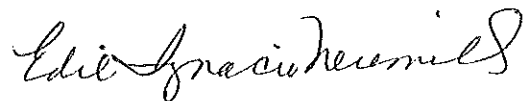
A Hui Hou, Bob

There being no further testimony, Chair Kaneshiro closed the public testimony portion of the public hearing. The results of this public hearing will be sent to the Small Business Regulatory Review Board (SBRRB) for their review. The Board then intends to make its decision regarding the adoption of this rule amendment at its September 20, 2012 Board Meeting, depending on the SBRRB's response and its timeliness.

Chair Kaneshiro stated the written testimonies will be received for the record.

At 6:39 p.m. Chair Kaneshiro adjourned the Public Hearing meeting on the proposed amendments to the Part 2 Section IX Adjustment of Bills for undetected leaks and unforeseen damages.

Respectfully Submitted,



Edie Ignacio Neumiller
Commission Support Clerk

Approved,



Randall Nishimura
Secretary – Board of Water Supply