

MEETING MINUTES
BOARD OF WATER SUPPLY
Friday, October 27, 2017

The Board of Water Supply, County of Kaua'i, met in regular meeting at the Board Conference Room in Līhu'e on Friday, October 27, 2017. Chair Sherman Shiraishi called the meeting to order at 10:04 a.m. The following Board members were present:

BOARD: Mr. Sherman Shiraishi, *Chair*
Ms. Laurie Ho
Mr. Lyle Tabata
Mr. Thomas Canute
Mr. Michael Dahilig
Ms. Beth Tokioka
Mr. Lawrence Dill

Quorum was achieved with 7 members present as acknowledged by Chair Shiraishi.

STAFF: Mr. Kirk Saiki Ms. Marites Yano
Mr. Valentino Reyna Ms. Sandi Nadatani-Mendez
Mr. Eddie Doi Mr. Keith Aoki
Mr. Michael Hinazumi Ms. Jonell Kaohelaulii
Mr. Dustin Moises Ms. Christine Erorita
Deputy County Attorney Mahealani Krafft

GUEST(s) County Attorney Mauna Kea Trask
Mr. Hall Parrott, Private Citizen
Mr. Dennis Esaki, Esaki Surveying & Mapping
Mrs. Margaret Phillips, Phillips Living Trust
Ms. Ida Gatsova, Private Citizen
Mr. Milan Kocak, Private Citizen
Ms. Petra Grussensos, Private Citizen
Mr. Fred Atkins, Private Citizen

C. ACCEPTANCE OF AGENDA

Mr. Dill moved to rearrange the Agenda to move up New Business Item I, No. 1 Resolution No. 18-02; New Business Item I, No. 2 Manager's Report 18-74 and Old Business, Item G, No. 2 Manager's Report No. 18-72; seconded by Ms. Ho; with no objections, motion carried with 7 ayes.

I. NEW BUSINESS

1. Resolution No. 18-02 – Discussion and Adoption of Resolution No. 18-02, Mahalo Department of Water Participants 2017 Make a Splash Water Festival

Mr. Canute moved to approve and adopt Resolution No. 18-02 – Discussion and Adoption of Resolution No. 18-02, Mahalo Department of Water Participants 2017 Make a Splash Water Festival; seconded by Ms. Ho; with no objections, motion carried with 7 ayes.

2. Manager's Report No. 18-74 - Discussion and Possible Action on the Manager's Response to Mrs. Irene Morgan, dated September 21, 2017 regarding Facilities Reserve Charge for a Proposed Additional Dwelling Unit on TMK: 2-3-14:021, Alelo Road, Kalāheo, Kaua'i, Hawai'i

Chair Shiraishi disclosed he had done work for Mrs. Irene Morgan in the past.

BACKGROUND:

Manager Saiki recommended that the Board deny Mrs. Irene Morgan's request regarding Facilities Reserve Charge (FRC) for a Proposed Additional Dwelling Unit.

DISCUSSION:

Ms. Tokioka questioned the timing of Mrs. Morgan's FRC refund dated August 22, 2016. The year of the refund was done in 2013 (not 2016).

Mr. Canute asked if Mrs. Morgan's property was an affordable home or warehouse garage?

Mrs. Irene Morgan, Private Citizen provided her testimony.

Mrs. Morgan explained why she wrote her letter and left the money in for a long time for her project. She started the project in 2006 but in 2013, (not mentioned in the letter), two County employees came to her home and told her son that her permit was no longer valid. Since her permit was no longer valid, she decided to use the money and also received her money back. Currently Mrs. Morgan is doing a warehouse garage project but realized the FRC was raised. Mrs. Morgan requested the Board to grandfather the FRC on the project she started. She takes full responsibility and if the Board denies her request, she accepts what the Board decides. The warehouse garage was going to be turned into an Additional Dwelling Unit rental.

The Board took action by way of the Manager's denial then there was an appeal to the Manager's denial. This request failed for lack of a motion.

G. OLD BUSINESS

2. *Manager's Report No. 18-72 (Update)* – Discussion and Possible Action on the Denial of Mr. Dennis Esaki's request to Waive the Department of Water's requirements for Subdivision S-2017-12, Jack Phillips, TMK: 2-3-7: 01, 02 & 03, Kalāheo, Kaua'i, Hawai'i

BACKGROUND:

Manager Saiki and the Department re-evaluated Mr. Esaki's request to waive the requirements for Subdivision S-2017-12 and came to the same conclusion and recommended the denied of the waiver.

DISCUSSION:

The Manager did consider conditions but the Department consistently follows the rules of determining subdivisions and water requests. The Department is waiting for the Certificate of Completion (COC) from the previous work done on the subdivision. If the COC was done, it would not affect the Manager's recommendation. The additional pipeline was required due to the change in design standards for fire flow.

Ms. Tokioka mentioned to Manager Saiki that there were items missing in the Pro and Cons regarding litigation which was not considered in Option 1 and Option 2. She stated that potential liability should be considered when making this decision.

Chair Shiraishi asked the Department if a boundary adjustment considered a subdivision? If there is no change in density or no additional development, and if the fire flow was inadequate, would the Department impose the new standard fire flow for a mere boundary adjustment?

Chief of Water Resources and Planning Mr. Doi answered if a boundary adjustment came through the process, it would have to be consolidated and subdivided to be considered a subdivision. The Department follows the rules but based on the Standards of Procedure (SOP) or policy on a boundary adjustment, if you don't increase the density or if you do not add square footage, the requirements could be waived with language on the plan. Example: if an owner needed to move the line 2 feet because of a fence, there is some leeway. If it is an established subdivision and a request is for a boundary adjustment, then the Department would check to see if it was applicable to the SOP or policy. Chair Shiraishi asked if one was not adding to it at that time, but they could do a boundary adjustment and approval without fire flow requirements, then come in for a renovation then the Department would be out of the picture. Mr. Doi mentioned if there was one lot divided into three lots that is one situation. If there were three lots and the boundary is moved two feet this would be a different situation.

Mr. Dahilig requested for any public testimony and then to immediately go into Executive Session.

Mrs. Margaret Phillips, Phillips Living Trust provided her testimony.

Mr. and Mrs. Phillips are co-trustees of two different owned trusts of lots 2 & 3 subdivision. Mr. Fred Atkins is the owner of lot 1. Extensive testimony presentations were summarized from County Attorney Mauna Kea Trask, Mr. Atkins, Mr. Dennis Esaki and Mrs. Phillips in the September 22nd minutes, as well as the record of her testimony and the binder of supporting documents that was distributed to the Board.

Mrs. Phillips pointed out the Manager's Report on Pros and Cons for waiving the requirement for the additional 1,300 feet of 8 inch pipe. There were no arguments in favor of the waiver. She provided three Pros for granting Mr. Esaki's request: 1) Consistency and reliance – is important for the Department of Water (DOW) to honor its previous decision which the owners relied on and installed the required 1,000 feet of 8 inch pipe. The DOW's rules changed several years later after the owners installed the infrastructure improvements required at great expense 15 years ago, 2) Fairness – This was not a conventional application for a new virgin subdivision. Legal recognition is given to three parcels of land that were treated as a true subdivision by all County agencies since 2000 (17 years). The owners did all that was required and the Department never questioned the fact that this was a three lot subdivision, and 3) Peacemaking & risk avoidance – Owners are in agreement 100% of the testimony County Attorney Trask gave at the September Board meeting. Mrs. Phillips said it is better to resolve this issue between the owners within the Board than escalating this matter to the court. This would result in the County and owner's expense; the risk consequence would be unfavorable. If the outcome was unfavorable for the County, it could create precedence. A settlement was entered with the County which required that the Ihu Road properties be ratified as a legal subdivision.

The key language from the settlement agreement could guide the Board on this matter: *"This subdivision application is for the express purpose of settling a dispute between the parties by formalizing an existing de facto subdivision that was already approved by the Department. The County will, to the extent allowable by law, exercise its appropriate discretion and waive the need to comply with any of said requirements that are not already completed or in place, or that are not possible to complete within an expedited timeframe of this subdivision application."*

Mrs. Phillips addressed issues that were mentioned in this meeting. Manager Saiki mentioned the Department never received the COC from the previous work done. She did not know the COC was missing and was willing to sign it. The owners entered into a conveyance of the water supply on the 1,000 feet, 8 inch pipe, conveyed it to the DOW, granted easements, meters were installed for 15 years and are paying the bills.

In reference to the boundary adjustment by Chair Shiraishi, Mrs. Phillips mentioned the settlement agreement recognized the de facto subdivision does not change any boundaries. It reclassifies two ditches owned by A&B Properties and easements granted to A&B Properties. Land configurations are the same with the same density requirements and the land has not shifted with no actual boundary adjustment involved. On behalf of the owners, Mrs. Phillips asked the Board to grant the waiver by Mr. Esaki.

Chair Shiraishi inquired if the three lots are fully developed? How many dwellings can be built on the three lots? Mrs. Phillips said the infrastructure is in and is waiting for the results of this process to build the common entry way. The building plans are almost ready (Lots 2 & 3), the water and KIUC utility easements are, access easements and CPR.

Number of Lots:

Lot 1 – supports 2 dwellings (owned by Mr. Atkins & Mr. McCready)

Lot 2 – supports 4 dwellings (approx. 10 ½ acres)

Lot 3 – supports 2 dwellings (approx. 5.6 acres)

Total dwellings & water meters = 8

Number of dwellings:

Lot 1 – 1 dwelling exists since 2009 (occupied by Mr. Atkins)

Lot 2 – No dwellings to date; in 2001 4 shade sheds were constructed; prerequisite for a CPR and built with Building Permits.

Lot 3 – No dwellings to date

***County Attorney Mauna Kea Trask on behalf of the
Kaua'i County Planning Department provided his testimony.***

County Attorney Trask provided the Board the Planning Department's position. The Planning Department maintains its request for the Board to go against the Manager's determination to not require any further requirements under the permit. Consistency was mentioned earlier and the Department should be acknowledged for trying to reach consistency which the Planning Department is trying to do. The rules changed on Kaua'i many times. The Planning Department's concern are issues between what is land, what are parcels, what are lots, and what are units.

The Momohara's owned land that had two ditch right of ways which divided the land into three sections. In 1991, the Planning Department determined the three sections were separate lots. The Momohara's relied on this and then the lots entered the market then went to three different parties, two different trusts with the same principles and two individuals, Mr. Atkins and Mr. McCready. Those lots were CPR'd into units which exist and approved by the Department Public Works (DPW), Planning Department and DOW with appropriate access, utility, easements and water were required and provided. Because the County no longer acknowledging the existing de facto subdivisions, the lots no longer existed according to a certain part of the law, however the units still exist under the law, the easements exists, and the water lines are in. The Planning Department's position is not to be adversarial with the DOW and is trying to be consistent and how to determine and deal with all the de facto subdivisions that were granted and acknowledged by the County's agencies from the mid 1980's to 2011.

In a recent civil suit resolution in the Supreme Court Intermediate Court of Appeals ordered this dispute to go to mediation. The mediation resulted in a submittal of a subdivision application. If all the units have been built, it would have been fine. At the time of the permits, the rules of the DOW in 2004 only asked for conveyance.

Because of this, change was by the County and not to the property and dealing with the group of de facto subdivision properties going forward. The Planning Department does not know of an alternative. County

Attorney Trask said aside from acknowledging pro forma applications and what already exists, the DOW, Planning Department and DPW will have to deal with hundreds of lots that no longer are recognized as subdivisions. He asked how does this affect the Juris prudence and the lay of the land on Kaua'i? The best way to resolve this is a meticulous procedure that is currently being done now before the Board in a consistent manner that affects people.

The Planning Department agrees that public safety is very important which is the DOW's position. As of January 2016, the DOW, Planning Department and DPW all thought this was a subdivision in existence. The DOW thought the water lines were okay. Because a past problem is trying to be rectified, and the rules changes in 2007/2008. The DOW is now requiring another \$1.5M of improvements, which is difficult for his client to proceed on this matter.

Mr. Dill understood that a subdivision got preliminary approval and certain conditions, including the DOW applying these conditions that are required for increased water improvements. County Attorney Trask explained that a Subdivision Committee voted unanimously approved as submitted. The applicants, the Phillips, Mr. Atkins and Mr. McCready submitted their approved CPR that showed the parcels as lots and have been taxed as separate lots since the 1990's. There were no more requirements which was a function of the subdivision ordinance that required the 360 that went to DPW. DPW requested drainage setting and other issues. County Attorney Trask explained the history on DPW who agreed to waive those requirements which is what the applicants are trying to explain to the DOW pertaining to those requirements. The application recognized what everyone already thought existed and what Planning Department determined (separate TMKs, separate taxes, and separate units).

Mr. Dill asked what would the density be? Mr. Dahilig said no more than 5 acres. County Attorney Trask asked if there are no subdivisions, how is there a CPR? Mr. Canute added the CPR has to follow the address. Civil Engineer Mr. Aoki commented the CPR can cross multiple lot boundaries and does not have to be confined to one lot; units can be two different lots. Mr. Canute said if there are two CPR's on one subdivided lot, there is common interest between the properties within the CPR. Each CPR could have its own TMK and the boundaries are defined by the CPR. CPR units no longer have TMK's but they have the same TMK with a number at the end to identify units. Mr. Dahilig commented that CPR's can cross boundaries but this is unique and does not apply on this matter. County Attorney Trask said this is the direct opposite because there are CPR's within lots that do not exist. He sees how the lateral lines take effect; three lots are vertically next to each other and the lateral is divided up. What happens when you get rid of the vertical, it did not make sense..

Mr. Canute said legally these are defined as site condominiums. The legal definition of finance of the project, the financial institution, Bureau of Conveyance records, and mortgages defines them by the TMK and meets and bounds within the confines of the bigger property which County Attorney Trask agreed.

The Planning Department is concerned about the fact pattern which affects marketability. If this goes to litigation, there is the concern of going against the title company. County Attorney Trask said the best way to deal with this is they exist and it is a safe case. This same situation may come before the Planning Department, DPW and the DOW and may require more when doing the right thing in the future. If this goes to court, because \$3.9M to \$5M was invested, the development, title insurance rendered will involve Title Guaranty and Old Republic. If the court said, under the fact pattern and recognized, it would change the face of everything on Kaua'i and possibly the State. The Planning Department will lose its ability to better handle this as a case-by-case basis regarding the reliability.

Ms. Tokioka asked about the settlement that was reached between the Planning Department and R3BST, how would that apply here? County Attorney Trask explained the plaintiff, R3BST, LLC in the settlement filed February 2010 a circuit court case in the Fifth Circuit regarding the development rights associated with real property, conveyed under a land patent grant. The law suit centered around the interpretation and construction of the grant on the fee ownership of three right of ways (15 foot ditch right of way, a stream right of way, and a railroad right of way). This was bisected and created six sections. In August 2011, the Intermediate Court of Appeals and the Fifth Circuit determined there was no de facto subdivisions on Kaua'i which went against the previous rule in the Fifth Circuit. On August 2011, the Intermediate Court of Appeals committed the appeal to the Appellate Conference Program on Judge Nakatani and Joseph Keiffer, Esq., an appointed immediate mediator. The parties went to Honolulu on four different times and reached an agreement to settle a law suit and all of the claims which included plaintiff S. Smith, proposed subdivision application map pursuant to the Planning Commission and to run it through the process.

At 10:48 a.m., Mr. Tabata exited the meeting.

At 10:50 a.m., Mr. Tabata re-entered the meeting.

The court said it was owned by one person and had not been conveyed yet. The difference in this case was it had been conveyed. These facts that concerns the Department. In that case, the Circuit Court said there was no real money, but now it is owned by three different people. (Choose your plaintiff with a good fact pattern; bad facts make bad law.)

Ms. Tokioka asked if there was an immediate settlement between the Department the R3BST? County Attorney Trask said there was no settlement because there was no case. When the agreement was reached, it was in contemplation of avoiding litigation but was looking for a claim of \$3.9M to \$5M.

Mr. Fred Atkins, Private Citizen provided his testimony.

Mr. Atkins clarified that his property purchase was a lot (6 acres) and not a CPR. After he and his partner purchased the lot, they were going to split it and get it CPR'd. They thought it was separate from Lots 2 & 3. Prior to purchasing the lot, Mr. Atkins knew the Momohara's and was part owner of 27 acres that abutted the Momohara's property and at that time, it was one large parcel.

After many years, a realtor showed Mr. Atkins a piece of property that he purchased it. This went back after research when the parcel was divided. Correspondence from the Planning Director showed that it became a separate lot. The Planning Director said it was an unintended subdivision because of the old ditch rise. Mr. Esaki did the CPR work which was approved and went through the State and approved by the County. In the document, if the owner was going to build a farm shed or dwelling he needed to get the permission of the other party. After the property was CPR'd and went to the Building Division, his partner signed off and got the plans approved, built the home and lived in his home for seven years. His partner went in to submit plans that he designed for the property and to put it up for sale to give the new owner an option. At that time, he was told to get signatures from six entities from Lot 2 and 3, but said he had his own parcel. This is how he got involved with this situation that started about 15 months ago. Mr. Atkins learned a lot from the Planning Department's views and that there is a hard line on the ditch. A lot of money has been put in to clearing the land and has gotten the underground utility. His partner has been in escrow 15 months ago and reduced the price of the property for the buyers. Mr. Atkins thought this process would be done before last Christmas.

Many meetings were spent with County Attorney Trask to prevent this from being a law suit and also went before the Planning Commission Board which came up with an agreement that needed to go to the departments. He thought the agreement could not impose any new things because this happen many years

ago, plus the water is in. An upgrade was supposed to put in and to pay the FRC depending on the number of meters the County gives that there would be water. If someone wants to put a line in, they pay more and it helps to upgrade the system from the water fees. When Mr. Atkins came to the DOW, he was told to double what they already did, it was not what he agreed upon. Every other department has signed off and he thought the signatures were all done.

Mr. Atkins does not know where he stands as an individual lot. In the agreement with the Planning Department, the plans would be recognized to be able to sell the lot but Mr. Atkins was not sure if DOW decides to impose this. There was a previous question to sue Title Guaranty but they represent him. Title Guaranty studied the ditch which goes back to the 1800's. He does not want to go into litigation and it would be a difficult for him as he sits on the Hawai'i Tourism Board and could not be in a law suit against the County representing Kaua'i and Hawai'i at the same time.

Based the fact if six other people have to sign off after he built his home would be grounds for litigation. His former partner owns the no. 2 unit on Mr. Atkins lot and if he loses his sale and it drags on, his former partner would feel damaged.

Mr. Dennis Esaki, Esaki Surveying & Mapping, provided his testimony.

Mr. Esaki provided corrections on the September 29th Regular Board minutes: 1) Spelling of Ellen vs. Fujimoto and 2) Spelling of R3BST (not R3 Best), 3) County Attorney Trask clarified what was in the minutes that the second lot was CPR'd into 4 units (not 4 lots), 4) and the language: "It behooves the County to not unsubdivide them," 5) last sentence: They paid proportional share refund to Kakela Makai. Chair Shiraishi will point out the corrections to the Commission Support Clerk on the minutes.

Mr. Esaki clarified Chair Shiraishi's comment on the boundary adjustment. There are provisions in the Kaneshiro Ordinance that allowed for certain improvements that may not be imposed but may not pertain to this case if they don't increase density.

Regarding the case where the right of way do not create lots, Mr. Esaki said when the County or State creates a right of way, lots are created (i.e., lots were created on both sides on the Kōloa By-Pass Road). Those lots should be entitled to all the rights like regular lots.

Mr. Esaki added the CPR process includes the County's review, input and checked on the approved density. The CPR was approved which goes through the State. He stands by his request in opposition to the staff's recommendation.

Mr. Dahilig moved to go into Executive Session at 11:02 a.m. and to only include the Deputy County Attorney Krafft in the meeting to be present for resources; seconded by Mr. Tabata; with no objections, motion was unanimous.

K. EXECUTIVE SESSION

Pursuant to H.R.S. §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a) relating to Item G No. 2.

Manager's Report No. 18-72 (Update) – Discussion and Possible Action on the Denial of Mr. Dennis Esaki's request to Waive the Department of Water's requirement's for Subdivision S-2017-12, Jack Phillips, TMK: 2-3-7: 01, 02 & 03, Kalāheo, Kaua'i, Hawai'i

Mr. Dahilig moved to reconvene the Regular Board Meeting at 11:57 a.m.; seconded by Mr. Tabata; with no objections; motion was Unanimous.

J. STAFF REPORTS
MONTHLY

1. Discussion and Receipt of the Kaua'i County Water Department's Statement of Revenues and Expenditures
 - a. September Monthly Summary Budget

BACKGROUND:

Waterworks Controller Ms. Yano mentioned the Water Rate Study was prematurely scheduled for November 7th but would be rescheduled with Finance Chair Dill's approval.

DISCUSSION:

Mr. Dill referred to page 85 and asked for an update on the Capital Budget \$9.2M and Actuals of \$10,080,000. Ms. Yano said Actuals paid was \$346,960. Page 95 - Appropriations; encumbered \$4.65M in capital projects. Page 94 is in addition to payments made in Year-to-Date which is 50% of the Budget. Mr. Dill asked if the Department would catch up by the end of the year to get projects out? Ms. Yano said she would have to check with the engineers. Construction Manager Mr. Moises said the \$4.65M from for Kōloa Well 16A broke ground last week. There will be expenses the next couple of months. The Hanapēpē pipeline will go out for construction early 2018, next is Kapa'a Haul Cane Road pipeline. Kapa'a Drill and Test will be encumbered by June 30th.

Mr. Dill asked if the Budget numbers are encumbered or expenses on the Actual side? Mr. Moises said \$4.65M are encumbrances and \$247,000 are expenses to the contract. Ms. Yano commented that the Budget is \$9.2M in encumbrances and expenses (encumbered first, then payments made). Mr. Moises agreed the projects are encumbered 100% up front then it gets expended as the projects goes along (i.e., if projects are \$4M, the budget should reflect \$4M as well). Mr. Dill would like to see what the budget expenses are and not the budget encumbrances (compare budget expenses to actual expenses and budget payouts to actual payouts and never put the \$9.2M in actual checks cut to contracts). He indicated this is not a correct comparison. Ms. Yano said the actual expenses are the actual pay outs (on the actual side, not budget side). Mr. Moises added the fiscal program doesn't calculate based on the Notice To Proceed (NTP) that is put on his budget. If there was \$10M of NTP in March 2018, nine months after July 1st, the budget calculates each month for the nine months in the program. Mr. Dill said this is misleading.

Ms. Yano commented that the way the budget is presented is what the Department expects to spend in the fiscal year which shows as the budget and actual comparison. The encumbrance does not indicate what the Department is going to spend but that is the amount that will be spent. This will eventually be on the fiscal program. Mr. Dill asked Ms. Yano and Mr. Moises to meet to discuss where Mr. Dill wants to go with this. Information Tech Specialist Ms. Nadatani added when the budget was done, it was separated into two different periods and changes can be made manually. Mr. Tabata commented when the budget is put together, estimate the burn rate, how much will be spent every month in actual disbursements and payments to be compared with the budget encumbrance but report actual expenses. Ms. Yano said this is similar when doing the debt service. Mr. Dill tied this into the next section which is correct as reported "Revenues: Variance = "Actual" less "Budget"; Positive indicates Higher Performance than Expected.

Board received – 7 members

Chair Shiraishi noted that all of the Staff's Monthly Reports will be received which was reminded by Mr. Dahilig; no motion is needed.

1. Discussion and Receipt of the Report by the Public Relations Specialist on Public Relations Activities

BACKGROUND:

Information Specialist Ms. Kaohelaulii highlighted the following:

Public Relations has been working with schools on their robotics program theme of "Hydro Dynamics" with a focus on water conservation. Each school has their other robotics team and goals. Public Relations has been working with Kapa'a Elementary School and Hanalei Elementary School. Construction Management, Water Quality, Water Resources & Planning Divisions and Manager Saiki have assisted Kapa'a Elementary School in their research. Ms. Kaohelaulii thanked them for giving their time for their presentations. In discussions with Hanalei Elementary School, students learn about water conservation plan for the Department. She entertained this positive campaign project from start to finish. This would be student lead project and Ms. Kaohelaulii would consult with the students on their design, the student message and advertising opportunity. Public Relations will continue to focus on strategic positive public relations in the community.

Board received – 7 members

1. Discussion and Receipt of the Chief of Operation's Summary Report on Operational Activities

DISCUSSION:

Chief of Operations Mr. Reyna informed the Board on Operations for September. Chair Shiraishi referred to Distribution (3rd bullet point). Mr. Reyna said for the month of September, the field crew replaced 0 feet of 3" PVC distribution line on Lokokai Road. Extra time was not available for the crew on this project.

Board received – 7 members

4. Discussion and Receipt of the Manager and Chief Engineer's Monthly Update Regarding Activities of Note of the DOW

BACKGROUND:

Manager Saiki highlighted the following:

1. Personnel Matters – Hired:
 - Computer Systems Support Technician I
 - Waterworks Inspector I
2. Detection of polychlorinated biphenyl (PCB) was in the power tank during a consultant sampling. DOW is working with Department of Health (DOH) on the sampling protocol to resolve this matter. Currently the tank is off line. Previous testing did not show PCB going into the distribution system. Since there was repair on the tank, when the consultants went to check the line and sample, PCB was detected. Water sampling was done at the top and at the distribution side. Two tests were done (screening test and confirmation test). PCB was not found at the top only on the distribution side. In the screening test, PCB showed up but not on the confirmation test. Further testing is being done on this isolated tank and the public is not affected.

Board received – 7 members

- a. Report of the BAB pay down as of September 2017

Board received – 7 members

QUARTERLY *(July – September 2017)*

1. Discussion and Receipt of the DOW's Quarterly Project Status Update
 - a. Construction Management Division Status

BACKGROUND:

Highlights are as follows:

1. Construction Management Officer Mr. Moises continues to work with Civil Engineer Mr. Aoki on design reviews for construction.
2. Hanapēpē pipeline is next for construction.
3. Construction contracts were closed out which included the new DOW building and Kōloa Well D.
4. Kōloa Well 16A & 16B site improvements started this month.
5. Project Management software is currently being designed; implementation mid-2018.

Board received – 7 members

- b. Engineering Division Design Status

BACKGROUND:

Highlights are as follows:

1. Civil Engineer Mr. Aoki is expecting to approval on the Hanapēpē water line projects this quarter.
2. HE-10 Hanapēpē Road project on the county side - ready to approve the tracings; specs are being reviewed.
3. HE-1 (State) - completing design; working on the right of entries.
4. Hanalei water line improvements – completing design soon; waiting for approval of submitted plans and response is expected the end of this year.
5. Initiated a contract with consultant for the Kapa'a Homesteads tank project to design a drainage plan. The design will take care of the drainage from the tank and for the proposed Kapa'a Homesteads Well No. 4. Received initial plans for the drainage; design will be done on time.

Board received – 7 members

- c. Water Resources & Planning Division Status

DISCUSSION:

Chair Shiraishi referred to page 318 on the Water Restriction Policy and asked what does it mean Administration Approved under Comments? Chief of Water Resources & Planning Mr. Doi replied it was on how the restriction got approved or implemented.

Mr. Doi thanked the Planning Department's personnel for working with the Department to implement the new rules. It was hard to determine the conversion of single family and multifamily dwellings. Chair Shiraishi asked why did Poipu get 300 restrictions per lot? Mr. Doi indicated the Department was in a catch up mode with Po'ipū and built a million gallon tank that was brought up to capacity. At that time, one developer should not come in and take 600 units for all of the capacity (Hyatt Resort was not affected).

Board received – 7 members

Mr. Dahilig moved to reconvene the Executive Session at 12:20 p.m.; seconded by Mr. Tabata; with no objections, motion was unanimous.

K. EXECUTIVE SESSION (Reconvened)

Pursuant to H.R.S. §92-7(a), the Board may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).

Item G, No. 2 - Manager's Report No. 18-72 (Update) – Discussion and Possible Action on the Denial of Mr. Dennis Esaki's request to Waive the Department of Water's requirements for Subdivision S- 2017-12, Jack Phillips, TMK: 2-3-7: 01, 02 & 03, Kalāheo, Kaua'i, Hawai'i

At 12:23 p.m., Chair Shiraishi reconvened the Regular Board Meeting.

DISCUSSION:

Chair Shiraishi entertained a motion to defer Manager's Report No. 18-72 to the November meeting to enable the Board to draft a non-development agreement and an indemnification waiver and duty to defend agreement and to take action on this matter.

Mrs. Margaret Phillips, Phillips Living Trust provided her testimony.

Mrs. Phillips requested the Board to grant a subject approval on two conditions that were discussed with DCA Krafft during recess. The owners would feel better than waiting for the final vote until the draft agreement is completed and to move forward. The owners have been 15 months into this process and would like to end it in a positive way.

Mr. Dahilig commented that discussions in Executive Session that lead the Board to this conclusion. The pending draft agreement(s) are the basis to that analysis and discussion. He wanted to defer this item to let the matter take its course and to get to a potential meeting of the minds once all have seen the draft agreement(s).

Mr. Dahilig moved to *defer Manager's Report No. 18-72* to the November meeting to draft a non-development agreement and an indemnification waiver and duty to defend agreement; seconded by Mr. Tabata.

Mr. Fred Atkins, Private Citizen provided his testimony.

Mr. Atkins concern is that the November or December meeting will not have a quorum, then the matter is deferred another month or two. Chair Shiraishi said it is expected there would be a super majority to vote.

Chair Shiraishi asked the Board if they wanted to amend the motion to do a "conditional approval" in favor of the deferral or to vote "no" if not in favor of a deferral.

Mr. Dahilig moved to go back into Executive Session at 12:29 p.m.; seconded by Mr. Canute; with no objections, motion was unanimous.

At 12:30 p.m., Chair Shiraishi reconvened the Regular Board meeting.

Mr. Dahilig moved to *defer Manager's Report No. 18-72* to the November meeting to draft a non-development agreement and an indemnification waiver and duty to defend agreement; seconded by Mr. Tabata; with no objections, motion was unanimous.

Chair Shiraishi said the Board hopes to have an agreement ready for approval by the November Board meeting. It is expected that there will be a super majority present for quorum.

Mr. Tabata moved to amend the November 22nd meeting time to **8:00 a.m.** for quorum; seconded by Ms. Ho; with no objections; motion carried with 7 ayes.

D. MEETING MINUTES

Review and approval of:

Regular Board Meeting – September 29, 2017

Mr. Dahilig approved as amended the Regular Board Meeting minutes – September 29, 2017; seconded by Mr. Dill; with no objections; motion carried with 7 ayes.

Audit Committee Meeting – October 2, 2017

Mr. Dahilig approved the Audit Committee minutes – October 2, 2017; seconded by Mr. Dill; with no objections; motion carried with 7 ayes.

Review and approval of:

Executive Session – September 29, 2017

Mr. Dahilig approved the Executive Session minutes – October 2, 2017; seconded by Mr. Dill; with no objections; motion carried with 7 ayes.

E. CORRESPONDENCE/ANNOUNCEMENTS

None.

F. BOARD COMMITTEE REPORTS

None.

G. OLD BUSINESS (cont'd)

1. Manager's Report No. 18-65 (Update) - Discussion and Possible Action on Part 2 Rules and Regulation for Water Service Connection to address Landlord and/or Property Managers and Tenant issues

- a. Section I – Definitions
- b. Section III – Conservation Measures and Interruption of Water Supply
- c. Section IV – Elevation Agreement, Pressure Controls
- d. Section V – Application for Water Service and Service Connection

DISCUSSION:

Mr. Dill was ready to vote in favor on Manager's Report No. 18-65 unless there was an issue to go into the Rules Committee. Mr. Dahilig indicated there needs to be more discussion with the Rules Committee regarding the increase of the tenant's deposit from \$90.00 to \$170.00.

Mr. Dahilig moved to *refer* Manager's Report No. 18-65 to Rules Committee; seconded by Ms. Ho; with no objections, motion carried with 7 ayes.

L. TOPICS FOR NEXT WATER BOARD MEETING (November 2017)

1. Discussion and Receipt of the Department of Water's Draft Audit by Accuity, Inc. for FY 2016-2017
2. Executive Session: Annual Evaluation of the Department of Water's Manager and Chief Engineer from December 18, 2016 to December 17, 2017
3. Executive Session: *Manager's Report No. 18-72 (Update)* – Discussion and Possible Action on the Denial of Mr. Dennis Esaki's request to Waive the Department of Water's requirement's for Subdivision S-2017-12, Jack Phillips, TMK: 2-3-7: 01, 02 & 03, Kalāheo, Kaua'i, Hawai'i
4. Executive Session: *Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a)(4), the purpose of this Executive Session is for the Board to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as they may relate to contractual agreements concerning the Waiahi Surface Water Treatment Plant, the potential construction of the Kapaia Cane Haul Road 18' Main project, and required disclosures, including but not limited those required under Chapters 6E, 171, and 343, Hawaii Revised Statutes and Ka Paakai o Ka Aina v. Land Use Commission, 94 Haw. 31 (2000) as relates to those projects.*
5. Formalize the Procurement Specialist Position (Suggested by MD)

M. TOPICS FOR FUTURE WATER BOARD MEETINGS

1. Discussion and Possible Action on Proposed Board Policy for Delegating Routine Actions from the Water Board to the Department of Water's Manager and Chief Engineer regarding Right of Entry
2. Workshop presentation regarding the Long Range Plan of the Department of Water's former Administration Building
3. Discussion and Possible Action on Utility Agreement No. 2257 between the State of Hawai'i Department of Transportation and the Board of Water Supply, County of Kaua'i for the upcoming Hanapēpē River Bridge, Kaunuali'i Highway, Route 50, HI STP SR50 (1) Project, Hanapēpē, Kaua'i Hawai'i Water System Improvements
4. Discussion and Possible Action on the Department of Water's Standard Operations Procedures as it relates to the Board of Water's Rules and Regulation
5. Department of Water Employees of the Year
6. Discussion and Possible Action on Water Plan 2020 Priority Accomplishments and Goals as it correlates to the General Plan

N. UPCOMING EVENTS

1. Lights on Rice Street Parade (Friday, December 1, 2017)
2. Annual Meeting (Friday, December 8, 2017)
3. AWWA Conference (Las Vegas, Nevada, June 11 – 14, 2018)
4. Make a Splash, Project Wet (September 20, 2018)

O. NEXT WATER BOARD MEETING

1. Wednesday, November 22, 2017, **8:00 a.m.** (Note: Time Change)
2. Friday, December 22, 2017, 10:00 a.m.

I. NEW BUSINESS (cont'd)

3. Board Meeting Dates for 2018

The Board unanimously approved the 2018 Meeting Dates.

4. Election of Officers for 2018

Mr. Tabata moved to *defer* the Election of Officers for 2018 to the November Board meeting; seconded by Mr. Canute; with no objections; motion carried with 7 ayes.

Mr. Dahilig moved to go into Executive Session at 12:41 p.m. and to Adjourn after Executive Session; seconded by Ms. Tokioka; with no objections; motion was unanimous.

K. EXECUTIVE SESSION (cont'd)

2. *Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a) (2) and (4), the purpose of this Executive Session is for the Board to evaluate the performance of the Manager and Chief Engineer, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held, and to consult with its attorney on issues pertaining to the Board's powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item*

- a. Annual Evaluation of the Department of Water's Manager and Chief Engineer from December 18, 2016 to December 17, 2017

Chair Shiraishi requested to continue Executive Session Item K2 on the November agenda.

At 1:28 p.m., the Executive Session reconvened for Executive Session Item K.3.

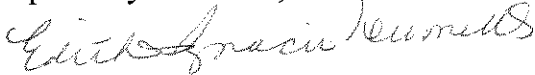
3. *Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a)(4), the purpose of this Executive Session is for the Board to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as they may relate to contractual agreements concerning the Waiahi Surface Water Treatment Plant, the potential construction of the Kapaia Cane Haul Road 18' Main project, and required disclosures, including but not limited those required under Chapters 6E, 171, and 343, Hawaii Revised Statutes and Ka Paakai o Ka Aina v. Land Use Commission, 94 Haw. 31 (2000) as relates to those projects.*

Mr. Dahilig moved to defer Executive Session Item No. 3 to the November Board meeting; seconded by Ms. Ho; with no objections, motion carried with 7 ayes.

P. ADJOURNMENT

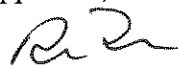
Mr. Dahilig adjourned the meeting after Executive Session at 2:28 p.m.; seconded by Ms. Ho; with no objections, motion was unanimous.

Respectfully submitted,



Edith Ignacio Neumiller
Commission Support Clerk

Approved,



Beth Tokioka
Secretary – Board of Water Supply