

Maui County Charter Commission Public Meeting  
County Council Committee Room, Maui  
Wednesday, June 5, 2002  
8:00 a.m.

**Present**

Terryl Vencl, Chair  
R. Sean McLaughlin, Vice-Chair  
Vince Bagoyo  
Ray DeMello  
Bill Fuhrmann  
Gwen Hiraga  
Stephen Holaday  
Karolyn Mossman  
Stephen Petro  
Erlinda Rosario  
Donn Takahashi

**Staff**

Brian Moto, First Deputy Corporation Counsel  
Ke'ala Pasco, Charter Commission Assistant  
Jon Van Dyke, Charter Commission Analyst

**CALL TO ORDER**

Chair Vencl called the meeting to order at 8:00 a.m. She thanked Mr. Moto and Mr. Van Dyke for answering the council members' concerns at their meeting.

Chair Vencl wanted to begin with testimony then move into the agenda. Testifiers would have three minutes with one to conclude, or come back once everyone has testified for an additional three minutes.

**TESTIMONY****Mr. Don Couch**

Mr. Couch testified about Proposal 13 concerning the Board of Ethics (he's a former Chair). He asked the Commission to consider what the Council recommended and to not move forward with its recommendations.

- 1) After a long discussion and a lot of deliberation, the Board decided that the Code of Ethics should remain the same.
- 2) The Board wants to protect everyone. It wants the public to be confident that their government is fair, just, and ethical. The overall good of the Code of Ethics needs to be upheld.

Vice-Chair McLaughlin stated that the Code of Ethics is operated on a case by case basis and asked how many times the Lana'i Company issue came up during Mr. Couch's time on the Board. Mr. Couch replied that in four years, the issue came up six or seven times (recusing from the vote but not discussions).

Vice-Chair McLaughlin continued that Proposal 13 also reduces the criteria for ownership. Mr. Couch responded that they decided to leave the financial interest the same because it depends on the overall scope (they have to look at the whole situation). As Chair, he always wished they had a strict rule to follow, but after looking at the facts, he realized that it's better that they didn't.

Commissioner Mossman asked if she heard his previous testimony correctly: employees asked him to make them ineligible to vote because it'd put them in an untenable situation. Mr. Couch believed it happened once in his first year.

**Mr. Jim Smith**

Mr. Smith thanked the Commission for the opportunity to participate. He also expressed his gratitude for the Commission's participation, time, and effort.

- 1) Mr. Smith said the Code of Ethics became a part of our constitution in 1968. The Commission would be trying to make a general law, but the individual counties and their legislatures should define their own terms.
- 2) Mr. Smith supports the Council's recommendation that this proposal be deleted, but consider changing the Code by adding a Chapter 10.5 that would make it a misdemeanor. Then people would think twice whether they have a financial interest or not.
- 3) Consider amending the provision in which financial interest occurs. The County Council would have the authority and shall prescribe the definition. That would answer everyone's problem.
- 4) First Article, Section One. We need to distinguish our Charter from other business. Having a legal definition as a person of equal worth and dignity is terribly significant. It connects people to the State Constitution and the United States Constitution as an entity.

**Mr. Anders Lyons, Director of Maui Programs for the Nature Conservancy**

Mr. Lyons thanked the Commission and said he hopes it continues to support the open space fund. He suggested the following wording change to further clarify the purpose of the fund and how it'd be used:

*"Should an Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund be created for the purpose of protecting land around rivers, streams and coast to preserve water quality, protect native forests and wildlife habitat, preserve native Hawaiian historical and cultural sites, improve recreational opportunities, and protect agricultural lands that might otherwise be developed, to be funded by a minimum of 1% of existing property tax revenues and should the unspent yearly revenues not lapse and thereby accumulate in the fund from year to year?"*

Mr. Lyons concluded that this language further clarifies the intent of this amendment, and fits in with other Charter amendments that were created. He also clarified that they'd like to see this language on the ballot with further clarification in the Charter if needed.

**Mr. Dale Bonar, Maui Coastal Land Trust Executive Director**

Mr. Bonar suggested the following minor clarifications for one pro and one con of the amendment regarding open space acquisition.

- 1) PRO: "Having an established fund would allow the funds to be leveraged to increase the amount of land that can be purchased.
- 2) CON: This proposal could encourage the County to protect additional land for open space only by direct acquisition rather than also utilizing other strategies, such as zoning of

privately-owned land, to maintain open space.

The above suggestions were developed through consultation and analysis with the Nature Conservancy and the Trust for Public Land. Theresa McHugh allowed him to sign in her absence.

When questioned about the Maui Coastal Land Trust's available funding, Mr. Bonar replied that they currently have two very large grants in the works and anticipate several million dollars. They also have County money.

The criteria for procurement of land is numerous. They look at a variety of things that may be important for the land, or for recreational purposes that are important to the public. They consider threats from development or invasive species; potential environmental effects degrading an area; the willingness of the land owner to work with them; availability of funding, etc. They prioritize land with a numerical ranking system then make their judgment.

Mr. Bonar offered to provide more information on this. At present, they don't have a priority list for the whole county, but they are working on it. He concluded that they appreciate and are in awe of all the Commission has had to do to get to this point.

**Mr. John Min, Planning Director**

Mr. Min submitted his testimony in writing before commenting on the Council's alternative proposal to establish permanent CACs. He questioned their proposal for the following reasons:

- 1) The Commission's proposal requires an annual report that would ensure closer monitoring of the implementation provisions of the general plan and community plans with opportunity for review and comment by the public and the County Council.
- 2) The Planning Department is preparing proposed revisions to MCC Chapter 2.80A to address issues in the current planning process. A draft bill for an ordinance will be transmitted to the County Council's Planning Committee within a few weeks.
- 3) The establishment of permanent CACs would double the number of boards and commissions currently supported by the Planning Department and substantially increase the workload of current staff. It is questionable whether adequate additional staffing and resources will be made available to undertake this increased work. There is also a real possibility that the scope and duties of CACs will expand over time and result in a greater workload for the department.
- 4) There are current challenges in filling vacancies for existing boards and commissions that will be compounded by the addition of eight permanent CACs.

Mr. Min concluded that the Commission's proposal for a "limited duration" CAC to guide the formulation and adoption of a community plan update is a practical approach for public participation in the planning process that won't unduly burden the Planning Department's staff and operations. He verified that this is the administration's feeling as well.

When asked about the difference of cost and staff burden between a "limited duration" CAC and a permanently existing CAC, Mr. Min said changes need to be made in the next generation of updates of community and general plans; the fundamental change is that it can't take ten years to adopt a community plan, so they've set up a Long Range Planning division. The second fundamental issue is that CACs are very necessary. The question is how they should function. The Commission's proposal is a very practical, common sense approach.

Mr. Min said one of the reasons they're proposing a regional general plan is to integrate

community plans if taken one by one. The islands of Lana'i and Moloka'i are looked at as a whole while Maui is looked at in six different districts. It could take ten years to adopt, so it needs to have integration, so they're looking for a framework for subsequent community plans. They have to look at a big picture; look at the island as a whole.

The Committee of the Whole report suggests deleting deadlines and timetables. Mr. Min said they're subject to time limits as a department. They're a good way to keep them on track, and the way it's proposed provides for internal guidelines. It's very reasonable for the Council to act on that in one year.

Commissioner Mossman stated for the record that while the Commission wrestled with putting more or less language, they decided on less (making sure key ingredients were there) with the understanding that it would be followed by an ordinance.

#### **Mr. DeGray Vanderbilt**

Mr. Vanderbilt, a resident of Moloka'i, distributed a handout. He made several points about public involvement in the government process.

He stated that when the public adopted the Charter in 1982, we had 81% voting participation. In our last election, Maui County had 54%, the lowest in the state. One of the major issues that came up was the four year term; it was defeated 2 to 1.

Initiative got no help from this Commission. The last Commission proposed the same thing as all other counties; that was approved for ballot. It was a close vote; it failed 15,000 to 14,000. He claims it was mainly due to Mr. Mancini's wording, which he thought was very deceptive.

Mr. Vanderbilt's three minute allotment was up. Chair Vencl permitted him to conclude with three additional minutes, as there was no one else waiting to testify. Mr. Vanderbilt continued:

- 1) Initiative would give the public a chance to put things on the ballot such as district voting. In the 1992 minutes, which were verbatim, Moloka'i and Lana'i all voted as long as they were lumped in with Hana.
- 2) Proposal 13 (Amend the Ethical Standards Governing Decisionmaking on Boards and Commissions) was not taken out to the public, and was proposed by the attorney for the Lana'i Company affiliate. Only one person not connected with the Lana'i Company testified in support of this. There is no groundswell, yet the Commission would subject the whole county and Moloka'i to this. They've said the unions would protect the employees, but what if they don't have a union? You don't have to fire someone to make their lives miserable.
- 3) Mr. Vanderbilt supports deleting Proposal 13, and as many as possible.
- 4) He referred to a list of all amendments since 1982 as an example of how to word things. Some are very well worded, and others aren't.

Discussion turned to initiative. Chair Vencl said she'd allow the discussion to continue although testimony was not being taken on anything not in the Commission's report.

Mr. Moto confirmed that advance notice had not been given on the posted agenda for any new proposals. Secondly, adding a new proposal at this stage is problematic because the Council wouldn't have the opportunity to address it; they confined their work to the Final Report.

Mr. Van Dyke clarified what the Commission was focusing on today. They decided as a body to

operate under the Hawaii Revised Statutes Chapter 50. The Council has made suggestions of things the Commission should consider, and it's been listed properly on the agenda. The time for new proposals has passed.

Mr. Vanderbilt reiterated that he believes Proposal 13 should be deleted. He asked if the Commission was going to work on the wording of the pros and cons today because he hopes the public would get to testify on the ballot language and see the draft. Mr. Van Dyke informed him that the draft ballot language had been posted on the website for at least the past couple of days.

Chair Vencel clarified that the ballot language is a different issue than pros and cons. When he was reminded that the Commission had been discussing the pros and cons throughout this whole process, Mr. Vanderbilt said it's critical and very important that the ballot language is clear. Mr. Van Dyke replied that the Commission would be happy to receive such comments.

Chair Vencel called a ten minute recess.

#### **RECESS**

Chair Vencel called the meeting back to order, and said that Mr. Vanderbilt had found the ballot language and reviewed it during the break. He asked if he could testify again, and by motion (Petro), second (Hiraga), and unanimous approval, Mr. Vanderbilt resumed his testimony.

#### **Mr. DeGray Vanderbilt**

Mr. Van Dyke's proposed language regarding Ethics still isn't clear; it's very misleading. The public will think that sounds good. It needs to say "*should the ethical guidelines be modified to allow employees to vote on matters involving the companies they're employed by?*"

This major change in the Charter would strengthen the lock government has on the public's legitimate participation. Put that language in there for the people who haven't read the paper or heard various sales pitches.

If Proposal 13 isn't deleted, Mr. Vanderbilt asked that the Commission consider the following alternative ballot language (additions underlined, deletions bracketed):

"Should the ethical guidelines governing decision making on boards and commissions be modified to permit members who are employees of companies to vote or take action on applications that have been submitted to the board or commission by the respective employers of the members, unless they the members (A) are employed in a management or representative capacity by the company, or (B) have a controlling interest in the company? [, or (C) believe that their vote or action would tend to create a conflict with the public interest?]

The last sentence should be deleted. Individual members already recuse themselves if they feel they have a conflict, and they ask the Board of Ethics if they're not sure.

Mr. Vanderbilt concluded with his acknowledgement that this is the Commission's first run at this. He said he appreciated the opportunity to testify, and thanked the Commission for allowing him to testify again.

Chair Vencel asked for an approval of the numerous testimonies that had been sent to the Commission. Motion was made (Mossman), seconded (Petro), and unanimously approved to

accept all correspondence. Motion was also made (Petro), seconded (Holaday), and unanimously approved to accept the minutes from April 17.

Chair VencI said she'd like the commissioners to work off the Committee of the Whole's report (No. 02-58), and Mr. Van Dyke's report.

➤ Assistant's Note: The Council's Committee of the Whole Report and Mr. Van Dyke's report can both be found on the official County of Maui Charter Commission website at <http://www.co.maui.hi.us/boards/bDetail.php?BoardID=37>. Please click on the Issues link.

The Department of Public Works sent in testimony, but Milton Arakawa wouldn't arrive until after lunch. It was decided that the corresponding section would be addressed once Mr. Arakawa arrived.

Chair VencI said that because he was a little more involved with the Council, Mr. Van Dyke would explain what they've suggested. Mr. Van Dyke said that he and Mr. Moto were in front of the Council for two days. The Council had many of their own ideas.

**PROPOSAL ONE: AMEND THE PREAMBLE TO RECOGNIZE THE EQUAL WORTH AND DIGNITY OF EVERY INDIVIDUAL (Section 1-1)**

Commissioner Mossman moved to delete Proposal 1. Vice-Chair McLaughlin seconded the motion, saying he's not sure it's possible to anticipate all the consequences of this action. He doesn't believe it's needed to act in the best interest of the citizens. It's also hard to define exactly what "equal treatment" would be.

**Discussion**

- Commissioner Bagoyo said he'd be voting no on the motion to delete Proposal 1. Every individual, every race, should be treated equally.
- This change in language is unnecessary. Only one person requested this philosophical change, and we should be respectful of the voters' time. This proposal is obscuring the really important questions on the ballot, so remove this from the ballot.
- Commissioner Petro spoke against the motion. He thinks it's good for government to state in the preamble that we recognize the equal worth of each and every individual. Don't be afraid of a lawsuit; if it's going to come, it's going to come.

Chair VencI called for the question. In favor of the motion to delete: McLaughlin and Mossman. Commissioners not in favor of the motion: Bagoyo; DeMello; Fuhrmann; Hiraga; Holaday; Petro; Rosario; and Takahashi.

Chair VencI asked for ballot language. Mr. Van Dyke explained that the Commission instructed him to provide neutral language that was as clear as possible, and to provide as much information about what the proposal would do to the voter.

Proposals 7 and 9 are quite long due to the number of subparts in Water and Planning. The issue may come up about whether or not they should be broken up or made more voter friendly; his guideline was to be forthright and honest. Proposal 1 was the easiest one.

Commissioner Holaday commented that using the word "recognize" bothers him because it implies we don't already do so. He asked to change it to "confirm."

It was clarified that the section in question is really Article 1, not the preamble. This would be an amendment to Article 1-1.

When asked if the Ramseyer version would be available to the public, Mr. Van Dyke said that the Final Report is presently on the website, and the revised Final Report would be on the website as well. It would also be published in the newspaper (it may not be available at each precinct for voting booths). The public has the responsibility to come prepared with information that will be made available during the educational campaign.

Chair Vencel reread the language for Article 1: "Should Article 1 be amended to confirm ... " Motion was made (McLaughlin), seconded (Petro), and unanimously approved to accept it.

**PROPOSAL TWO: LENGTHEN TERMS OF COUNCILMEMBERS FROM TWO (2) TO FOUR (4) YEARS (Section 3-2(5))**

Mr. Van Dyke said that regarding Proposal 2, the Council discussion concerned only the transition material. In his analysis (letter), he suggests first that the transition material be taken out of Proposal 16, which would then be eliminated altogether. The transitional material could be moved into Proposal 2 itself.

Regarding the Commission's approach for determining two or four year terms, the Council referred to Honolulu's way of determining this (if the total number of mayoral votes was odd, then the odd districts would get the four year terms, if the number was even, then vice versa). In our proposal, the top five votes get four years. When campaigning, candidates won't know which term length they're running for. Lana'i and Moloka'i don't have numbers, but it's not a huge difficulty to overcome; they're referenced on Maui in Section 3-1. Each residency district has a number, but it's not commonly used.

Regarding Councilmember Nishiki's issue, he felt awkward that a whole sentence was put in just for him. It also seemed to make others uncomfortable.

Resuming the previous conversation, Commissioner DeMello suggested eliminating Proposal 16 and leaving Proposal 2 as is, saying that the Council should decide. Chair Vencel reminded the Commission that the first suggestion was to delete Proposal 16 and incorporate it into Proposal 2. Mr. Van Dyke cautioned that if commissioners couldn't agree that Proposal 16 should be eliminated after transitional material is incorporated into Proposal 2, the voters would be presented with some problems.

Motion was made (Petro), seconded (McLaughlin), and unanimously approved to delete Proposal 16 and incorporate transitional material into Proposal 2.

Chair Vencel asked which idea should be used to select four year terms, the Commission's, the Council's, or Commissioner DeMello's. Motion was made (Bagoyo) and seconded (McLaughlin) to retain the Commission's plan (leaving in the final sentence).

**Discussion**

- Could the Council's solution be structured to meet the five/five requirement as well?
- Voters should have foreknowledge of whether they're voting for two or four year terms.

Mr. Van Dyke said it could be structured however the Commission wants. Commissioner Mossman was against Commissioner Bagoyo's motion to leave the language as is. All except

commissioners Hiraga, Mossman, and Takahashi voted in favor of retaining the Commission's plan (leaving in the final sentence).

Mr. Moto asked for clarification regarding term limits, saying that the Charter doesn't specifically say that people would be limited to twelve consecutive years. Mr. Van Dyke referred to 3-2(5), which says that no member of the Council shall serve more than three consecutive terms or twelve years, whichever shall be longer (page 7 of Commission's report, second paragraph). This would be put into the report for clarity.

Mr. Van Dyke will provide ballot language to reflect that terms are to be staggered, with three consecutive terms or not more than twelve consecutive years. Motion was made (Mossman), seconded (Petro), and unanimously approved to allow Mr. Van Dyke to come up with ballot language that would clearly define term limits.

Mr. Moto then asked for another clarification. If a councilmember changes residency, would he or she still be subject to ordinary terms?

#### **Discussion**

- The Councilmember would have to be elected in the new district, and then it'd start again.
- The voters would have to decide.
- If we try to do our best to cover all our bases, everyone will understand our intent.
- For the record of legislative history, it should be stated that the intent of this Commission is for twelve years to be the maximum length of service (this will be added to the report).
- This raises the issue of twelve consecutive, full years vs. three full terms; Mr. Moto should research this.

It was decided that the Commission would finalize the pros and cons of each proposal once ballot language is determined. The importance of capturing all arguments in the pros and cons was emphasized.

#### **PROPOSAL THREE: CLARIFY THE RESPONSIBILITIES OF THE CORPORATION COUNSEL (Section 8-2.3)**

The Council didn't offer any recommendations, so discussion turned to its language. Motion was made (Petro) and seconded (Mossman) to accept it as is.

#### **Discussion**

- The proposed language is too long. Is it possible to condense it?
- The goal was to put what the proposal would do on the ballot. It's a lot of language for a modest, symbolic change, so frustration is understood; however, if we're forthright and open with the voters, we'd be more likely to get a response from them (if they're confused or uncertain, they'll vote no).
- Chair Vencel had a ballot from the Big Island that had 16 proposals. Some of their language is certainly as long as the Commission's Proposal 3, and several are at least as long. She didn't know how to take something out but still get the point across.

Chair Vencel called for the question; it was unanimously approved.

#### **PROPOSAL FOUR: GRANT INVESTIGATORS WORKING FOR THE PROSECUTING ATTORNEY THE POWERS AND PRIVILEGES OF POLICE OFFICERS WHILE ACTING WITHIN THE SCOPE OF THEIR**



**OFFICIAL DUTIES (Subsection 8-3(3))**

Mr. Van Dyke reported that it was discovered that the Big Island dealt with this by ordinance rather than as a Charter amendment. The Council seemed supportive of what Mr. Bissen was trying to accomplish, and suggested implementing this by ordinance and taking it off the ballot. Chair Vencel said Mr. Bissen was agreeable to this. Motion was made (McLaughlin) and seconded (DeMello) to delete Proposal 4.

**Discussion**

- Concern was expressed about the decision people made ten years ago.
- We should keep this proposal because we don't know how long the County Council will take to make this change. We can't afford to wait because it could save lives; it was presented as a liability issue.
- We should delete Proposal 4. Handling this by ordinance would be the most appropriate procedure. We'd be clouding the ballot with additional questions.
- Mr. Bissen wanted to withdraw his proposal a few days after the Council meeting. He was told to submit it in writing, but nothing has been received yet.
- The ordinance should be in the framework of the Charter, which would allow people, rather than nine Council members, to vote.
- The Commission shouldn't withdraw the proposal based on one person's decision to go about it another way. Once it got to this point, this is the Commission's, not Mr. Bissen's.
- Mr. Bissen believed that others took care of this through their Charter; he didn't know it could be done by ordinance. He's willing to go whichever way is easiest. It'd be up to him to push it through the Council. On the other hand, it should be put out to the public. If it fails, he could still try an ordinance (this doesn't necessarily mean it's not approved by the people).
- If we delete this provision, we'd be simplifying the ballot and emphasizing that this is not the correct route.
- What's the best, most sure way this will pass? Should this be a people's decision?
- This would be confusing to voters.
- We didn't take this out to the public.
- Giving limited police power to the Prosecuting Attorney's staff is a drastic change. It should be placed on the ballot for the public to decide.
- We didn't ask the Chief of Police what his opinions were. This could be ascertained through the ordinance process.

Chair Vencel called for the question; the motion is to delete this proposal. Ayes: Vencel; McLaughlin; DeMello; Hiraga; Holaday; Petro; Rosario; and Takahashi. Nays: Bagoyo and Fuhrmann. Commissioner Mossman abstained; the motion passed. Commissioner Bagoyo suggested that the Commission make a strong recommendation in its report that the Council acts on this as quickly as possible.

Chair Vencel said Proposal 5 would be dealt with after lunch in order to allow Mr. Arakawa to be present.

**PROPOSAL SIX: RENAME THE DEPARTMENT OF FIRE CONTROL TO BE THE "DEPARTMENT OF FIRE AND PUBLIC SAFETY," RENAME THE PUBLIC SAFETY COMMISSION TO BE THE "FIRE AND PUBLIC SAFETY COMMISSION," GIVE THIS COMMISSION THE RESPONSIBILITY TO HIRE AND FIRE THE FIRE CHIEF (WITH DUE PROCESS PROTECTIONS GIVEN TO THE CHIEF) AND TO REVIEW THE BUDGET OF THE DEPARTMENT OF FIRE AND PUBLIC SAFETY, AND CLARIFY THE DUTIES OF THE FIRE CHIEF (Article 8, Chapter 7)**

Mr. Van Dyke said the Commission labored long and hard on this proposal. Chief Ishikawa came to the Council meeting and testified at length on two different days regarding his views, many of which were quite different from those of the fire fighters that testified before this Commission.

There are quite a few separate issues that need to be addressed, the easiest being a mechanical change. In his report, paragraph 4 of Proposal Six says, "powers and duties as may be assigned by the Mayor or as may be provided by law." It should read "by the commission or as may be provided by law." Motion was made (Mossman), seconded (McLaughlin), and unanimously approved to allow Mr. Van Dyke to make this minor word change.

Mr. Van Dyke then moved on to the third paragraph. The original proposal reads, "The fire chief shall monitor the construction and occupancy standards..."; it should be changed to "the fire chief shall monitor the standards for construction and occupancy..." Motion was made (Mossman), seconded (Petro), and unanimously approved to accept this change as well.

The paragraph right above that refers to the type of emergency services that the Fire Department provides. Chief Ishikawa said they don't provide all the emergency services, they provide "first responder" emergency services. He wanted to make it clear that that's all they're doing. Motion was made (Petro), seconded (Mossman), and unanimously approved to add the appropriate wording as Chief Ishikawa requested.

The paragraph above that is for the title of the department. We went back and forth on this; ultimately the Commission's recommendation was the Department of Fire and Public Safety. Public Safety was included because it's tied to the Public Safety Commission. The chief said it's misleading because people will think Public Safety includes law enforcement (police, medical emergency) so he didn't want Public Safety there. He and Elvin Kamoku want it to be just the Fire Department. They use MFD on their shirts; they're known as the Maui Fire Department.

### **Discussion**

- For Charter references, it's the Department of Fire Control.
- What if we left it as it is and add (Maui Fire Department) at the end? There's a fraternal value and honor of being the "Maui Fire Department," but this is our Charter, our legal document. We need to try to clean up the language and provide the best document.
- They'll call themselves the Maui Fire Department regardless of what the Charter says.
- The Fire and Public Safety Commission would remain as such; they're just concerned with the Fire Department.
- Vice-Chair McLaughlin said that when we say Public Safety, we're referring to the existing Public Safety Commission that's in the Charter already. It was configured to have responsibility for the Civil Defense agency and to have some oversight over the Department of Fire Control. The meaning of public safety isn't clarified to citizens that this commission or department is responsible for fire and civil defense, which is how the name evolved. He moved that instead of public safety, we should change it to the Department of Fire and Civil Defense; he then withdrew the motion due to lack of support.
- Commissioner Bagoyo suggested maintaining our proposal; the Fire Department is free to use MFD. He has no objections.
- They made it clear that they'd use MFD no matter what.
- Let's not confuse people. The chief should refer to the Charter as just a formal document

under which he operates.

Motion was made (Mossman), seconded (Bagoyo), and unanimously approved to leave the language as it is.

#### **BREAK**

Chair VencI called a ten minute break. The meeting was called back to order at 10:55 a.m.

Mr. Van Dyke continued that the fire chief didn't like Section 8-7(4), section B, which lists various standards. The chief candidly said it's too detailed; they don't have the training to meet or exceed the national standards. Recruitment and promotion are the responsibility of the Department of Personnel Services, so he wanted to delete it.

The Committee of the Whole recommended that the Commission delete the proposed Subsection B (page 5 of their report). The motion to delete this was made (McLaughlin) and seconded (Petro).

#### **Discussion**

- We had a very intense discussion regarding this proposal. At no time did we get anything from the fire chief regarding this during our discussion. Mr. Kamoku had the opportunity to come to this Commission before, and to come today.
- Chair VencI said that under B, numbers 1, 2, and 3 were actually handled by Personnel Services.
- The most important aspect of this provision is to give that commission the authority to hire and fire the chief. The Public Safety Commission was never engaged as an oversight body. This section would detail the methodology of how that department is going to function. We've taken this important policy step; we should leave all these details to them. It's inappropriate for the Commission to handle this in the Charter. Give the new commission the authority to address the specific issues of this department.
- Commissioner Mossman was concerned that the chief didn't discuss his reservations with the Commission even though he was invited to do so.

Chair VencI called for the question. All were in favor with the exception of commissioners Bagoyo and Hiraga.

Mr. Van Dyke said the final matter is somewhat mechanical; the transitional provision (Section 15-2) should be included directly within this proposal to avoid any confusion that would occur if Proposal 6 were ratified, but Proposal 16 were rejected, or vice versa. Motion was made (Mossman), seconded (Holaday), and unanimously approved.

Mr. Van Dyke didn't think anything the Commission did changes the ballot proposal. He put in a, b, c, and d to help voters understand the various proposals being done. This is the longest one so far, but it clearly lists exactly what's being covered.

Vice Chair McLaughlin moved to approve the language as proposed with the exception of the parenthetical phrase in C "with due process protections provided in the event of a firing." Commissioner Petro seconded the motion.

Commissioner Mossman said that in the last sentence, "standards" should be moved to the end to be consistent with other changes that had just been made ("and monitoring the standards for

construction and occupancy of buildings"). The Commission unanimously approved.

**PROPOSAL SEVEN: CLARIFY THE RESPONSIBILITIES OF THE DEPARTMENT OF PLANNING WITH REGARD TO LONG-RANGE PLANNING, CULTURAL RESOURCES, ENFORCEMENT, TIMELY DECISION-MAKING, AND THE COMMUNITY PLANS (Section 8-8)**

Mr. Van Dyke said there is an alternative to Proposal 7. The proper thing to do would be to consider the Council's alternative because the HRS is very specific: we have to either accept or reject the alternative proposal.

Motion was made (Mossman) and seconded (Bagoyo) to keep the Commission's proposal. Chair Vencl said that if the Commission chose to push its proposal forward, both the proposal and the alternative would go on the ballot. Mr. Moto clarified that under HRS 50, the Commission is required to submit its own proposals and any others that weren't accepted. The version set forth is a modified version of the Planning Committee proposal.

Chair Vencl commended Councilmember Charmaine Tavares for the work she did, she did a lot of work on this, and it helped the Commission. She's heard that the Commission is moving in the direction that people want. It would be fair to let them decide if they want the additional cost of a permanent CAC versus what the Commission tried to do, which was to make a compromise of both parties' suggestions. Councilmember Tavares had a lot of people at her meetings that supported the alternative ballot suggestion; a movement in that direction is evolving.

Commissioner Mossman clarified that the motion is to adopt what we currently have. CACs are a very important element, but she's not sure citizens would join on for a ten year obligation (being part of a non-ending body for a ten year cycle). She's not sure they considered all the unintended consequences of having a body existing for that long a period. Their whole idea of continuity means they'd have to be there that long. Those citizens would be able to provide feedback as the process goes along, but what we need is for them to be involved in the planning process and then sunset at its completion.

Commissioner Bagoyo wanted to include one of their recommendations, Section 8-8(5), which would then be 7. He moved to include a new item that states the Planning Director shall prepare an annual report for the Mayor and the County Council. Commissioner Rosario seconded the motion.

Mr. Van Dyke said that the Committee of the Whole's language needed to be compared to the Commission's. He said it'd be more orderly and elegant to combine them, so he'd just add "to the Mayor and the Council" at the end of the Commission's Proposal 6.

More discussion followed. Chair Vencl said she'd like recognize David Raatz because he was there as the legal representative for the Council. She asked him to help clarify things for the Commission.

Mr. Raatz, a staff member for the County Council, said the main difference in language proposed by the Council is that the implementation report would go to the Mayor and the Council. That language wasn't specified in the Charter Commission's language.

Vice-Chair McLaughlin thanked Mr. Raatz for supporting this Commission from the beginning. He asked if Commissioner Bagoyo's proposal was to be taken as a friendly amendment (yes), and expressed support of the main motion as amended. This proposal would significantly change the long range responsibilities of the Planning Department and would affirm the existence of the

CACs in the Charter for the first time. He asked Corporation Counsel what the process was for resolving differences if both the Commission's proposal and the alternative were adopted. Mr. Moto said that if both receive a majority of yes votes, then the one with the most votes wins.

Commissioner Takahashi asked Mr. Moto about the language regarding sending to the registrar the ones we didn't accept from the Committee of the Whole in this report. Mr. Moto responded that the Council itself didn't propose a ballot question; it's up to the Commission to draft ballot questions. He continued that Mr. Raatz wrote the Committee of the Whole report. On page 13, in the first partial paragraph, the very last sentence, "at a minimum, residents of Maui County deserve the opportunity to vote on the following question: "Shall there be a permanent citizen advisory committee for each community plan district?" Mr. Raatz confirmed that it was the Council's suggestion. The County Clerk would formally prepare any ballot language.

Further discussion ensued to assist commissioners with clarification. Mr. Van Dyke said to look at the proposed ballot language in #7 of his report. Mr. Moto suggested pulling out E to make it a separate ballot question; the Council's proposal would be juxtaposed with that one. All the others would remain as they are.

Chair VencI said the motion is to keep the Commission's proposal for CACs with the change on #6. She called for the question; it was unanimous.

Commissioner Mossman said she'd like to leave the language in E up until the first comma, and delete everything up until the second comma. Only that part should be removed for a separate ballot question (leave in all of E except for the section between the first and second commas).

Chair VencI clarified the ballot language. Motion was made (Mossman) and seconded (Petro).

Discussion continued until Mr. Van Dyke asked for comments on the general proposition. He asked if the Commission was comfortable with the ballot proposal and its subparts. It's the longest ballot proposal yet, but he thinks it's forthright and honest in what it proposes. He thinks they're all understandable concepts, and they're all an integral part of the whole.

### Discussion

- Does the Commission have to separate E? Keep the Commission's proposal intact; we're taking a position. It's up to the Council to recall or retract. Why do we try to figure out how we word our question?
- One tactic would be to leave everything together so people would understand the continuity vs. splitting it out. We know what the Committee of the Whole likes or doesn't like. We could put those on nine, then split out and reword the others. If you put 7 with its points up against their language, there's a good risk people will want it without understanding its complexity. Let's look at grouping these things so that most of what we have here will pass.
- Mr. Van Dyke said that's assuming our proposal is broken up (our long convoluted proposal may be rejected).
- There's no other way to get this across; we need to have the whole thing there. Keep everything together except for the one piece that's the same as the Council's.
- We want CACs to have permanency until the Council adopts the plan. We want timelines in there. Mr. Van Dyke interjected that although Mr. Min testified that these deadlines weren't binding, they are.
- The motion is to pull out only the section between those two commas. That would leave the

Commission's Proposal 7 intact except for the part that would be a separate section to be dealt with in a comparison amendment.

- If the Council decides to push an alternative, one section would be permanent; another section would say that the CAC would remain in existence until the plan is adopted.
- Mr. Moto said one question would have everything you see (one yes/no question). This would be followed by two shorter questions regarding permanent CACs vs. CACs with a limited duration (yes/no question).

Mr. Raatz said that the Council wasn't making a formal proposal that this should be the ballot question; it's the committee's statement on what the consensus of the councilmembers seems to be. The statement "at a minimum, the residents of Maui County deserve the opportunity to vote on the following question" presupposes that they might need to get into more detail depending on exactly what the Council's alternative is going to be up against with the Charter's proposals for CACs. The County Clerk would have to flesh it out later.

More discussion ensued regarding Council actions, their ballot questions, whether the Commission would have input on them, and the possible repercussions of various actions. The Commission submits its proposals to the Council, which has ten days to act on it. The Council could decide not to present an alternative, so the Commission should stop anticipating and presuming, and just focus and act on its own proposal.

Vice-Chair McLaughlin said the motion now is to take out part of 7E and to rephrase it as a new proposed question. Mr. Van Dyke said the motion must also explain what part of the new proposed language in the Charter should be taken out. Vice-Chair McLaughlin then offered a friendly amendment to the motion, that the last sentence that was specific to the duration of the CAC go with the piece of 7E in the Charter language. Mr. Van Dyke said that if the Council's proposal receives more votes, then the Council's language plus the Commission's Proposal 7 would all become part of the Charter. Mr. Moto or Mr. Raatz would then need to decide upon new language for the Charter.

There was extensive discussion in which commissioners tried to clarify this further. Chair Vencel called a five minute recess to allow the commissioners to read what the requirements and provisions are after the Charter Commission receives the Council's alternatives. She then decided that the Commission would recess for lunch so commissioners could have some time to think and get their thoughts together.

#### **BREAK**

The meeting was called back to order at 1:15 p.m. She stated that the Commission had been discussing its Proposal 7 and what the Council recommended. She asked if anyone had come up with any ideas. Commissioner Mossman asked if we'd still have an alternative measure on the ballot if we agreed with the Council's concept but not their format and language. Mr. Van Dyke responded that it depends on how strongly the Commission feels about the disagreement. An option would be to combine the two and incorporate the best of both. They'd have ten days and if they agree that we captured the essence of theirs, they'd withdraw theirs and go with ours. But if they disagree, they'd keep theirs.

Much discussion followed until Chair Vencel said to clarify the motion and then move on. Commissioner Mossman said her motion on the floor was to keep all of Proposal 7 with the modification of E. Mr. Van Dyke said that as part of her motion, she also needs to make clear what part of the language she's moving out. If the Commission adopts Commissioner Mossman's motion, we will have a Proposal 7A that would be juxtaposed against the Council's

proposal.

Looking at Section 8-8(5) in the Final Report, Mr. Van Dyke explained that there were two language options:

1. Take out the last sentence of section 3 in Section 8-8(5).
2. Take out paragraphs 3, 4, and 5.

The advantage of the first is that you're focusing in on exactly what the issue is. The disadvantage is that there could be an awkward situation if the Council's proposal (Resolution 02-63) is adopted with Commission's because they'd be inconsistent. Some of 3, 4, and 5 is identical. The difference is that in the Council's version, CACs would continue to monitor the implementation and enforcement of the general plan and the community plan, and they'd have a specific duty to do a comprehensive revision every ten years. It was his understanding that our version wouldn't want them to do that; we'd have a new CAC. He concluded that his recommendation is to put 3, 4, and 5 in 7A because it's the cleanest, most straightforward way of dealing with this.

Chair Vencl said that at this point, the Commission is adopting Proposal 7 and taking out the piece of E that begins with the word "that" and ends with the word "plan." There was further discussion as commissioners tried to get more clarification on Commissioner Mossman's motion and the Council's proposal.

Chair Vencl said she wasn't comfortable with changing the Council's alternative, and thought their wording simply meant for CACs to be permanent. However, the Council's resolution doesn't say that. Mr. Van Dyke explained it's because when they are formed, it's understood that all boards and commissions are permanent. According to HRS 50-10, the Commission has a role in structuring the ballot proposal even for the Council's alternative. Perhaps the way to move forward is to come up with a ballot proposal for the Council and see if they're okay with it.

Mr. Moto agreed with Mr. Van Dyke's interpretation of HRS Chapter 50. It gives the authority to the Commission to prepare the form of ballot question. If the Commission chooses to do so, it could write the question for the Council. They have a suggested version already in their committee report, but it's just a shorthand way of expressing what they're trying to achieve. It was always anticipated that, as a result of the Commission's work today, a revised report would be developed and given to the Council. Chair Vencl added that the report would be given to them as a courtesy, and there'd be a cover letter specifically stating what we did with their two alternatives.

Mr. Raatz said the language talks about reviewing comprehensive revisions in the usual community plan updating process. He doesn't think there's an intention to create a duplication of the process. It's to recognize in the Charter the CACs' role in community plan updates.

After much discussion, Chair Vencl reminded the Commission that they still have a motion with regard to the section of E in question. It either has to be dealt with, or if appropriate, changed to deal with Mr. Van Dyke's summary.

Commissioner Mossman restated that either all of E would be removed and in its place in sub A would be all of 3, 4, and 5 in 8-8(5). The council's part would be all of theirs for 7B. Or as she previously stated, leave E except for that part, and on the ballot substitute language that says the role of the CAC is to review and recommend and they'd remain in existence for... and the two sentences for the Council's revision ... knowing that those ballot measures mean substituting

3, 4, and 5 or all of this language in the body. Rather than having the whole thing on the ballot, we'd have a couple sentences that explain the difference of those two proposals. Commissioner Mossman said her motion was to do it the second way.

Mr. Van Dyke said it's clear that it should be done the second way. However, the Commission still needs to have in backup material what Charter language is connected to what ballot proposal.

More questions came up about the voting process (the highest number of votes would prevail). There was also more discussion about the strategy of the ballot language (don't want to lose many provisions that aren't in dispute or have only part get accepted, creating a mismatch). Mr. Van Dyke pointed out that our language in 5 says the community plan, once accepted, becomes part of the general plan, so put that back in if we think it's important. They don't have it specifically in their language.

Commissioner Mossman modified her motion to take out all of E; Vice-Chair McLaughlin seconded it. Chair Vencel called for the question.

Mr. Van Dyke said our language would say: "Should the role of the CACs be to review and recommend revisions in the community plan, and to stay in existence until its recommendations are approved, modified ... and should the community plans, once approved, become part of the general plan?"

Their language would be: "Should the role of the CACs be to review and recommend revisions to community plans, monitor the implementation and enforcement of the general and community plans, and to review comprehensive revisions to the general and community plans at least every ten years, and shall CACs be permanent for each community plan?"

Chair Vencel asked the Commission to vote on the CAC part of Proposal 7. All were in favor except Commissioner Takahashi.

Mr. Moto said that Planning already has the force to administer ... Chair Vencel said it should be "require to enforce zoning ordinances."

**PROPOSAL FIVE: BROADEN THE RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT TO INCLUDE ENVIRONMENTAL MANAGEMENT AND CHANGE ITS TITLE TO THE "DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT" (Section 8-5(3))**

Chair Vencel thanked the Commission for leaving this until Public Works could be here. She said Mr. Van Dyke would explain. There was an omission initially, but in addition to that, the Commission has received testimony from Public Works since the Council meeting that further clarifies what they really want in this language. That testimony originally came to the Commission in January. Did the Commission just overlook it, or was there a conscious decision to not address it?

Mr. Van Dyke said there were some mechanical aspects to this and a couple of substitute issues. Starting with the mechanical ones, in the previous Final Report, he forgot to put brackets around the words "and maintain county buildings." Then more substantively, there was language in the purpose material but not in the operative material about what exactly the department was supposed to do with this extended role of management. In his letter, he's given a sentence that that he thought reflected the Commission's wishes, but he asked for suggestions. The language is "supervise environmental management in control of pollution including recycling, litter control,



and protection of the beauty of Maui County." Motion was made (Mossman), seconded (Petro), and unanimously passed to adopt Mr. Van Dyke's suggested language.

Chair VencI mentioned 8-5(1) to 8-5(3), referring to the correspondence commissioners received in the mail. She pointed out that what's new about the communication received on June 3 is that they'd like us to consider taking the environmental management part off their name; they're suggesting they simply be called the Department of Public Works.

When asked if the Commission was only supposed to be dealing with Council recommendations, Chair VencI said that this information was at the Council meeting, but it wasn't talked about. She asked Milton Arakawa if he had anything to add for clarification.

Mr. Arakawa said that the language before the Commission (regarding powers, duties, and functions) was submitted back in January, but the Council didn't have this proposed language. They're just proposing this for consideration.

Mr. Van Dyke said that as long as the Commission is trying make sure that the actual proposal reflects what it wanted to have happened, there should be no problem. He had changes in his proposal, so it was fine if the Commission wanted to make adjustments.

Vice-Chair McLaughlin said if the Council didn't support Mr. Arakawa's proposal, it makes it a little difficult for the Commission to support it now. Mr. Arakawa replied that the language in front of the Council was for the existing Charter. He believes the Council saw their proposed language. Mr. Van Dyke said there hadn't been a lot of discussion on this.

Commissioner Hiraga didn't have a problem with this because he's making it more orderly and clearer. She moved to accept the revised wording.

Mr. Van Dyke added that another reason this was appropriate was because, to some extent, their language overlapped his, so some choices need to be made. He asked the Commission if they wanted a little bit of both, or if they wanted to forget about one.

#### **Discussion**

- They're deleting environmental management and keeping the existing waste management. Emphasize the environmental aspect; the fundamental difference is that we replaced "waste" with "environmental" (no objections to items 1 – 6).
- The new language just added in would also be included in that.

Commissioner Hiraga proposed taking items 1 – 6. Commissioner Holaday seconded the motion, which was then unanimously approved.

Mr. Van Dyke clarified that the Commission just adopted their language and our proposed language, and we left environmental management in their title. He suggested that solid waste collection be referred to as well. Motion was made (Petro), seconded (Bagoyo), and unanimously approved.

**PROPOSAL EIGHT: PROVIDE DUE PROCESS PROTECTION IN THE EVENT OF THE TERMINATION OF THE DIRECTOR OF PERSONNEL SERVICES (Section 8-9(2))**

Mr. Van Dyke said the Council thought this was insignificant and recommended deletion; it's not a problem needing a solution. No director of Personnel had ever been terminated without such, and there's no doubt that the director would have due process protection.

Commissioner Mossman stated that the current language doesn't allow them to be terminated at all; it may be a housekeeping issue. Mr. Van Dyke said the consensus was that anyone hired could be unhired.

Commissioner DeMello moved to delete Proposal 8. Vice Chair McLaughlin seconded the motion.

**Discussion**

- Commissioner Hiraga and Vice Chair McLaughlin recalled that the Commission hadn't seen any authority to terminate the director of Personnel Services. The Civil Service Commission appoints the director, and there were no provisions for the removal of the person they hired. This would not be supported unless there is solid proof that this provision isn't needed. The real issue is that this hasn't been completely resolved.
- We need to come up with as clean a document as possible. Either leave it in or put it in housekeeping.
- It should be consistent with fire, police ... This would replace Proposal 8. Allow the Civil Service Commission within the Charter to appoint and remove the director (speaking against the motion).

Chair VencI said the motion is to delete Proposal 8. Ayes: DeMello; Holaday. Nays: VencI; McLaughlin; Bagoyo; Furhmann; Hiraga; Mossman; Petro; Rosario; and Takahashi. The motion failed.

Commissioner Takahashi moved to relocate the language that would allow the Civil Service Commission to fire the director down to 8-9(4), the same place it is with Liquor, Fire, and Police. It shouldn't be up with the director. Vice-Chair McLaughlin seconded the motion.

When Chair VencI asked if all were in favor, Commissioner Mossman said what we have now is more consistent, so she voted no to put it under the description of the person being hired.

Commissioner Takahashi moved to reconsider his motion, restoring the original motion to leave it where it was. The motion was unanimously approved.

Chair VencI called a ten minute recess to allow Akaku to change its tape. As soon as the meeting was called back to order, motion was made (Mossman), seconded (Holaday), and unanimously approved to adopt the ballot language for Proposal 8.

**PROPOSAL NINE: RESTRUCTURE THE DEPARTMENT AND BOARD OF WATER SUPPLY TO GIVE IT MORE AUTONOMY (Section 8-11(1))**

Mr. Van Dyke said this is the second situation with an alternative. The Commission could choose to reject or accept it. This would bring water under the Mayor with legislative oversight. The Council said they'd appreciate more guidance as to what the intent of the language to coordinate private water systems was and how it should be interpreted. They also pointed out a

potential inconsistency: although the Commission's proposal gives more autonomy, it also gives the Council power to enact legislation that may be appropriate in light of an audit. They wanted to have some guidance as to whether there were any limitations on what the Council could do (does it include the power to regulate rates?); the Council wondered if we wanted to be more detailed and specific about power and authority.

Motion was made (McLaughlin) and seconded (Petro) to reject the Council's alternative proposal. Vice-Chair McLaughlin said it's ironic he made the proposal since he supports the Council's alternative, but by rejecting their alternative, we create the opportunity for the public to choose between the two. We've done our best; it's important for voters to make this call.

Chair Venci called for the question. All were in favor of rejecting the alternative with the exception of Commissioner Mossman.

Mr. Van Dyke invited discussion on the following two matters so he could put wording in our document to provide guidance for the future if our proposal were to be adopted: first, to clarify the first authority to coordinate private water systems, and second, if there are any limits on the Council's power to enact legislation in light of an audit.

### **Discussion**

- Commissioner Mossman said that we'd initially put language that said something about water being a public trust issue. The concept is that water is a public resource; private development still needs to be under public domain with coordination of other services so people have access to water. The intent is to make sure water is a public resource to be reserved for public use.
- Mr. Van Dyke clarified that it'd be appropriate to refer to the constitutional provisions in the Water Code language. He continued that our language gives the Board the authority to coordinate private water systems in order to promote the policy stated in the Hawai'i State Constitution and other applicable state laws while also respecting private property rights.
- Stating all of that in this document is rather wordy, but it's our reference.
- Mr. Van Dyke said that our proposal gives the Department of Water Supply some role, which may be different from the State Water Code or the Constitution. Those documents don't say much about how the County should structure the water system.
- The State Water Commission has roles particularly in areas that are designated water management areas, but that's not the case for the rest of Maui. The state can preempt some of these duties, but except for Moloka'i, they haven't.
- The Charter is like a constitution. It's a living document, so the language that's adopted has to be interpreted at that time.
- This was relative to development. There should be one body controlling water for development; it's a precious limited resource.
- We need more publicly developed water systems.
- This allows the Department to work with private developers to develop wells knowing that they share the public resource.
- The language is clear enough; we don't need to change the operative language, we just need more explanation.
- The second issue was the power of the Council following an audit. Our language gives the Board power to set rates without review, but it also calls for an audit followed by Council review. The Council asked if this really gives them the power to reverse a rate or to substitute its own view.

- The language gives them the right to enact legislation.

Commissioner Mossman moved to delete "and if necessary..." The motion was seconded by Commissioner Bagoyo and unanimously approved.

Mr. Moto had a question regarding the drafting of the ballot question. His question is about the word "once." He doesn't see that explicitly in the technical language on page 24 of the Charter Commission report. In the underlined portion of Section 8-11(3), the technical language says, "The appointed members shall serve for three year terms and can be reappointed." Insert the word "once."

Everyone agreed, so the Commission moved on to the ballot language. Mr. Van Dyke said that again, this is a long series of things that are part of a composite set of recommendations.

Motion was made (Bagoyo) and seconded (Petro) to approve the ballot language with the exception of "have more autonomy" on the first line.

### Discussion

- It'd be a disservice to the voters to remove "more autonomy" because it'll help them, so opposing motion on this basis.
- The Council didn't say "less autonomy" in their proposal. Some people may think it's physical; they don't understand autonomy. The important thing is trying to list their responsibilities.
- If you remove those words, you'd be obscuring the difference between the two proposals. What's the distinguishing part of the language?
- The difference is the underscored section in the Council's alternative. Section 8-11(5) says the Mayor appoints the director, which is in clear contrast to being hired by the Board. The rates in our proposal come from the Board; in theirs, it's by the Mayor and the Council. A lot of people may not understand the concept of more or less autonomy.
- We should err on making it as clear as possible; stay with "more autonomy."
- Consider changing the motion: "Should the Board of Water Supply have more control to operate?" Autonomy is to the Board, not the Department.

Chair Venci restated Commissioner Bagoyo's amended motion: "Should the Department and the Board of Water Supply have more control to operate..." The motion was seconded by Commissioner Petro and unanimously approved.

Commissioner Mossman moved to separate this into two ballot items. One would take A and B and compare it to the Council's issue, then compare C - G. The second one has to do with the autonomy issue. There was no second; the motion died.

Mr. Van Dyke offered the following wording for the Council's alternative: "Should the Department and Board of Water Supply be restructured to make the department a regular County agency subject to the Mayor's executive management and the Council's legislative oversight, and eliminate the Board of Water Supply's autonomy and final decision making authority by making it an advisory body, and by assigning the Mayor the power to appoint the director?" This language is taken primarily from Committee of the Whole report.

Motion was made (McLaughlin) to support the proposed language. Commissioner Hiraga seconded it.

**Discussion**

- The Council has added language unrelated to the management. Is any of that significant?
- Have the Commission's proposals parallel the Council's.
- Mr. Van Dyke said there should be something that makes it clear that the Mayor and the Council would have final say under the Council's proposal.
- Everything the Council wants is in Report 02-64. It parallels what the Commission has in Proposal 9.
- We'll have two on the ballot. Would the existing Board of Water Supply automatically go away?
- In order to survive at all, the ballot proposal must receive the majority of the yes votes. If both the Council's and the Charter's proposals are voted down then the Charter would remain unamended.
- There was prolonged discussion for clarification purposes. Chair Vencel promised that the Commission would get the education out there to inform the public.
- Proposal 7 has a lot of "shoulds"; take them out.

Motion was made (McLaughlin) and seconded (Hiraga) to include Mr. Van Dyke's language.

**Discussion**

- Commissioner Bagoyo was concerned about the director being appointed by the Mayor and confirmed by the Council because the rest don't have that.
- For consistency, should the Commission take out "autonomy" and insert "control"?
- Mr. Van Dyke said he took this from the Council's own language.
- Vice-Chair McLaughlin said that although these are long and complex questions, they meet the criteria of providing a clear distinction between Council and Charter proposals.
- There are too many "shoulds" in this Proposal. Mr. Van Dyke said he could easily take out "shoulds" and substitute them with wherebys.

The motion was unanimously approved.

**PROPOSAL TEN: CREATE A NEW DEPARTMENT OF TRANSPORTATION (Section 8-14)**

Mr. Van Dyke said the Council recommended deleting Proposal 10 and that the administration is against this. They explain in their report that it's premature.

Motion was made (Holaday) and seconded (Bagoyo) to push Proposal 10 forward.

**Discussion**

- Vice-Chair McLaughlin said that this was one the Commission took out to the public and reviewed a lot. He didn't hear anything new at the Council meeting, so he supports the motion. The Commission thought it was being progressive instead of reacting.
- According to Mr. Van Dyke, the Council suggested that having any jurisdiction over air and water was unrealistic. The County's role is limited (even over highways), creating more bureaucracy.
- Chair Vencel explained that the reason for adding air, sea, and even highways was to continue partnerships. She assured everyone that they all realize they don't make those decisions. She felt that the conversation on the floor from the Council dealt with the cost

- as well; voters should know about the cost as well.
- Commissioner Mossman said the proposal is nowhere else in the Charter so leave it in. Transportation needs to be recognized

All were in favor of leaving the Department of Transportation as a new department except Commission Hiraga.

Motion was made (Mossman) and seconded (Bagoyo) to adopt Mr. Van Dyke's language for Proposal 10. Chair VencI called for the question; the motion was unanimously approved.

**PROPOSAL ELEVEN: STAGGER THE TERMS OF MEMBERS OF THE SALARY COMMISSION (Section 8-16(1))**

Mr. Van Dyke said he tried to adapt this to the state law, which was just changed this very session. He recommended in his report that we go back to the language the Commission was working on earlier (for staggered terms). The Commission has the responsibility over elected officials, so it's logical unless anyone has new thoughts.

Motion was made to amend Proposal 11 as suggested (leaving the word "establishing"). The motion was seconded by Commissioner Petro and unanimously approved.

Mr. Van Dyke also asked about the ballot language. Motion was made (DeMello), seconded (Holaday), and unanimously approved to accept Mr. Van Dyke's wording.

**PROPOSAL TWELVE: COMMIT THE COUNTY TO A PLAN OF OPEN-SPACE ACQUISITION (Article 9 & Section 8-6)**

Mr. Van Dyke said the Council was quite happy with this proposal. They did not submit a recommendation.

Motion was made (McLaughlin) and seconded (Rosario) to amend the ballot language to reflect the wording offered by the Trust for Public Land. Commissioner Bagoyo said the language is important; we need to let voters know that a minimum of 1% of property tax revenues would be for open space.

Regarding the motion to accept Diane Zachary's language, Mr. Moto said it should say "certified real property tax revenues." Another point about this version and Mr. Van Dyke's: neither of them makes it clear to voters that this is to be done on an annual basis ("each fiscal year").

Vice-Chair McLaughlin offered an amendment to his motion to change "existing" to "annual" (near the last part of MCLT's testimony). Mr. Van Dyke said it shouldn't be funded annually by a minimum of 1% of real property tax revenues.

Commissioner Bagoyo asked if a friendly amendment should be developed because he thinks in the body of our proposal, it says the fund can accumulate from year to year without lapsing. Vice-Chair McLaughlin said to stick with the amended motion and not accept the friendly amendment.

Chair VencI clarified that the motion on the table is to use MCLT wording with two minor amendments ("annually by a minimum of 1%") for the ballot question.

Commissioner Holaday thinks the language says you can only acquire lands around streams, rivers, and coasts. He would oppose this intent if his interpretation were correct. Commissioner Takahashi supports Commissioner Bagoyo to put 1% up front.

Chair VencI asked for those in favor or putting in 1%. Only Vice-Chair McLaughlin, so the motion failed.

Commissioner Mossman moved to adopt Proposal 12 with the addition of "real" in front of property and after revenues "for each fiscal year." Chair VencI said "certified" is language that came from the Department of Finance. Commissioner Petro seconded the motion; it was unanimously approved.

**PROPOSAL THIRTEEN: AMEND THE ETHICAL STANDARDS GOVERNING DECISIONMAKING ON BOARDS AND COMMISSIONS (Subsection 10-4(1)(f))**

Chair VencI said that possible language had been forwarded to the Commission. Mr. Van Dyke said the Council wanted to delete this proposal entirely because they were opposed to the substance of it. The backup alternative was to ask the Commission to add provisions (public officials, and the public). Chair VencI said she'd received testimony from Councilmember Nishiki late last night.

Vice-Chair McLaughlin moved to delete this proposal. Commissioner Petro seconded it for discussion purposes.

Vice-Chair McLaughlin strongly encouraged his colleagues to reject this proposal. The basic salient points, his primary considerations are: this proposal wasn't taken out as a group to the public, and we didn't have the benefit of hearing from all the communities. Secondly, at a time when some colleagues are being faced with indictments and the trust level is low, changing the definition of conflict will seriously erode and do significant damage ... as our people lose faith in our government. Third, while most of the discussion has been very well intended, perhaps electing ... Lana'i then give latitude for them. It's very disingenuous to pretend that's the only proposal ... to lower the standard of when a board or commission member must recuse himself.

Commissioner Mossman is still against doing this because it passed by a bare majority. The Council and Board of Ethics are opposed to this. She agrees with Vice-Chair McLaughlin, saying we set ourselves up. She feels for Lana'i and Hana, but this doesn't solve that problem; it creates a bigger problem for the rest of the community. She restated that she supports deletion.

Commissioner Petro said that he supported this proposal simply because he felt for them, but he needs to reconsider this relative to the situation on Moloka'i. It would be best for them not to be allowed to vote on issues because it's a question of being employed or unemployed. He'll vote in favor of the motion to delete.

Chair VencI said she struggled with this issue. She initially voted no, then changed it to yes, with the understanding that we were offering the Ethics Board some help. She could see how being an employee would be difficult, but there is a place for these people to contribute to discussion. Thus, she is in favor of the motion.

Chair VencI called for the question. With the exception of Commissioner Fuhrmann, all were in favor of deleting Proposal 13.

**PROPOSAL FOURTEEN: PROVIDE GREATER NOTICE OF MEETINGS (Subsection 13-2(11))**

Mr. Van Dyke said the Council had a couple wordsmithing suggestions. They're back to the old concern of being sued if we set the standard too high. Looking at the proposal we adopted before (Final Report), we use the language "most accessible technology." The Council warned that it might get us in trouble and suggested that we change the language. The drafted language in 13-2(11) refers to public meetings. It's a suggestion to provide greater notice for meetings and public hearings.

Mr. Moto said that with rare exception, in general, regular meetings are never published in newspaper. Some are, especially when required by law. In the proposed Charter amendment language, he reads that it'd begin to require providing notice. It's a very significant change in the daily practice of boards and commissions.

Commissioner Mossman moved to adopt the amendment, deleting "of their meetings and hearings" on the top of page 4 in Mr. Van Dyke's report. Commissioner Hiraga seconded the motion.

Commissioner Takahashi said this is important so we don't want it taken away. Because this could have future liability issues, perhaps the Commission should take a stance to delete this one but send letters to various commissions to recommend that they provide as much notice as possible with the means available to them. Chair VencI said the Commission could add a strong recommendation in its report.

Vice-Chair McLaughlin supported Commissioner Takahashi's comments, saying that it wouldn't be logistically practical to have to provide newspaper notification. This terrible problem undermines what we're trying to do to engage the public. He concluded with regret that the Commission needed to go back to the drawing board to draft serious recommendations.

Commissioner Mossman agrees that it's not an end all solution, but she supports the motion because it draws attention to this dilemma.

Mr. Van Dyke asked if we could just say that all meetings should be published on the County website. Commissioner Mossman responded that the only concern is some people don't have internet access, so we're going to put it in the language that while we want more done in this area, we're not setting ourselves up.

Chair VencI called for the question. The motion is to pass Proposal 14, amending its title and taking out "of their meetings and hearings."

Vice-Chair McLaughlin proposed a further amendment that basically reinserted the words after, and also "of their meetings and hearings through other means." There was no second; this motion failed.

We're back to the main motion as amended. Only Commissioner Mossman supports it. The motion fails.

Commissioner Takahashi moved to delete Proposal 14 and to have Mr. Van Dyke draft a letter to the Mayor and the Council to place greater emphasis on notification through various means of communication. Commissioner Bagoyo seconded the motion. All were in favor except for Vice-Chair McLaughlin, who abstained.



**PROPOSAL FIFTEEN: ALLOW BOARDS AND COMMISSIONS TO MEET IN ACCESSIBLE, PRIVATELY OWNED LOCATIONS (Section 13-9(2))**

Mr. Van Dyke said both he and the Council had comments. Motion was made (Petro) and seconded (Holaday) to approve the language in Proposal 15.

Mr. Moto said a comment had been made to him that the technical language could be revised: delete the hyphen in privately owned.

Chair VencI restated the motion as a motion to approve the language in Proposal 15 without the hyphen. It was unanimous except for Commissioner Bagoyo, who'd stepped out of the room.

**PROPOSAL SIXTEEN: TRANSITIONAL CHANGES**

Mr. Van Dyke said he'd omitted the previous Proposal 16. In the final housekeeping one, he lists seven or eight things we're doing.

Commissioner Bagoyo requested to recess. Chair VencI said we still had to cover pros and cons and the educational campaign, but that the Commission would recess very soon.

Commissioner Mossman moved to adopt; Commissioner Petro seconded the motion. All were in favor, so the motion was unanimously approved.

Chair VencI asked who could be here tomorrow ... Mr. Van Dyke said she could have ten commissioners now or six tomorrow.

Commissioners Mossman and Petro had to leave. Mr. Van Dyke asked if it'd be possible to have the staff do this and not reconvene.

Chair VencI asked if it'd be possible for anyone with concerns regarding the pros and cons to submit them to her or Mr. Van Dyke. She said she could email the educational campaign information to commissioners for further approval.

Commissioner Takahashi said it'd take two minutes for her to walk through it, so Chair VencI explained what was written on the board. There'd be a one time run of one full page. The Maui News is one Sunday full page and two Sundays of the Election Tabloid. The direct mail piece (twelve panels) would be \$13,000. Chair VencI mentioned the possibility of an additional Sunday page, saying that the Commission has \$40,000 in the budget. The idea is to encumber the money before the end of the fiscal year.

Chair VencI also asked if anyone else was interested in helping. She said it's not going to look like anything we've had; the information will have to be very much condensed. She expressed concern with this, saying that she really wanted these pieces to look like a real ballot so people could make notations and have something to look at in the booth.

Commissioner Takahashi moved to approve the budget with one suggestion. He said it might be more practical to ask for an insertion that people could read and take out, something the size of a pamphlet, but folded only once. The insertion cost won't be that much. Commissioner Holaday seconded the motion.

Vice-Chair McLaughlin said this phase is very important. He and the commissioners have a lot of

confidence in the Chair. We all have a responsibility to get the word out. This could wreak havoc on polling places if people aren't educated. If that means having inserts available at polling places, we could leverage what little resources we have.

Chair VencI called for the question. In favor: Commissioners Fuhrmann, Takahashi, Hiraga, Holaday, Rosario, and DeMello; and Chair VencI and Vice-Chair McLaughlin.

Mr. Raatz added that the commissioners would have the authority to make corrections. He thanked the commissioners for this assignment and congratulated them, saying that he really enjoyed it.

Mr. Moto clarified that the Commission's authority would also extend to revisions. Mr. Van Dyke asked that any suggestions for pros and cons be sent to him; Chair VencI stated that Mr. Vanderbilt had comments that he'd send to the Commission

Commissioner Takahashi publicly recognized Mr. Van Dyke's ability, saying he did an outstanding job. He also thanked Mr. Moto for steering the Commission through uncharted waters. Commissioner Hiraga echoed his comments, thanking Chair VencI and Ms. Pasco for their hard work in meeting quick turn around times.

#### CONCLUSION

Chair VencI's final comment aside from thanking everyone was that the Council meeting would be on June 21. Her aim is to get this report to the Committee of the Whole Chair by the June 13 so it could be included in their agenda for the June 14. Her only concern is that it won't give much time to get it to the Commission and for the Commission to respond. It will be put on the website for the public.

Chair VencI concluded by thanking everyone, saying it had been a pleasure to work with such independent thinkers and she appreciates everyone's efforts. She believes this was probably the most well attended Commission; everyone's commitment showed in their attendance. The meeting was adjourned at 4:40 p.m.

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Ke'ala Pasco, Charter Commission Assistant