

CHARTER COMMISSION
MEETING MINUTES
JUNE 4, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Sherrilee Dodson (Vice Chairman)
Dolores Fabrao
Annette Mondoy
Robert Nakasone (Chairman)
Victor Reyes
Allan Sparks
Anne Takabuki
Lloyd Yonenaka
Paul Mancini (Charter Commission Counsel)
Susan Nakano-Ruidas (Staff)

EXCUSED

Jamie Woodburn
Deborah Wright

GUESTS

Richard Haake	David Craddick
Dave DeLeon	Kazu Hayashida
Brian Perry	Raymond Sato
Gary Kubota	George Tengan
Jim Smith	
Melville Jones	
Ralph Masuda	
James Takeyesu	

I. CALL TO ORDER

Vice Chair Dodson noted a quorum present and called the meeting to order at 3:12 p.m.

II. PUBLIC TESTIMONY

A. Jim Smith, individual, Haiku, offered the following testimony:

Smith: In my testimony at this last meeting (May 14, 1992), I presented a request to amend Article 10 as it relates to the participation of government in private corporations, and how that created an impression of unfairness in public meetings. I made reference to the appearance of our mayor at a C. Brewer public hearing regarding affordable housing; I brought with me today a copy of the testimony that was provided by the mayor, to include in the record that related to my testimony because one member requested information like that [Maui Planning Commission Regular Meeting Minutes dated May 5, 1992 have been added as an addendum to Communication 92-40]. And this really demonstrates the need to address this issue at the Charter level; the participation of our mayor on behalf of a private corporation, as it relates to other citizens who may take an opposite position, it can't help but create a diminishing of trust and confidence. I feel government must represent us equally, and that I feel crosses the line as it relates to equal representation.

The reason I bring this up is because I'm going to ask that you delete from Article 7, paragraph 15, Office of the Mayor; paragraph 15 under Section 7-5 Powers and Duties states that the mayor shall have a voice, but no vote in the proceedings of all boards and commissions. I feel if you delete that you will address in another way the issues I brought to you regarding the ethics section. I think it's, in essence, redundant in the sense that the mayor has the supervisory role over her departments, and the departments present approvals or recommendations of approvals or disapprovals; so really, there's a double position presented if the mayor is acting as the mayor and she has a department head acting as a department head -- I think that's a redundancy.

My argument, as it relates to this partnership...on page 5 of the testimony, second paragraph, the mayor is asking the commission to do something and she's selling this project. And, in selling this project, she's telling them how wonderful...what a wonderful chance they have. "I want to begin by telling you that I think you have a chance, an opportunity here, to be a part of something, something very special. That something is the government being creative." That scares me; government needs to be

Smith: (Continued) government and the rules have to apply equally; and we're not talking about creative expression, we're talking about consistency, equality and adherence to the law and tradition. A conservative position, you might think, but I think it's a necessary position to maintain the integrity of government. And so, with this idea of creativity, the idea of rules fall by the wayside; and that's why we need to take our mayor out of that position of creating this duplicity. Incidentally, at this commission there was a letter in opposition -- exhibit 14 -- and it was written by Mrs. D. Sinclair, and she said she was against it; she said there's already crowded roads in the area, and until traffic solutions are found this alteration of zoning should not take place.

If you follow the history of this application, it also creates a sense of questioning and suspicion. A letter was received by the council in February, and it's Communication 92-2, in which Mr. Blane states that the current administration does not feel that the benefits of the project justify the level of expenditure; in other words, he had set forth conditions that the projects not take place until the roads are constructed to mitigate impacts of the project. The money was appropriated by the council for a small portion of that, and the mayor decided that she wasn't going to spend that money...and this was in February. Now, in our mayor's testimony, she states that she was working on this project for five months which, this public hearing was held in May, so she was in negotiations for this project before C. Brewer applied for the application. to eliminate these conditions from that zoning. So this creates the impression that as a part of these negotiations, the mayor therefore did not spend the money and therefore subverted these conditions and made it much more easier for C. Brewer to get the conditions removed. So this is the impression it left me, and the reason why I'm saying we need to address this partnership of government as it relates to trust and integrity. And, since the Article 10 would be a difficult one, as I've found in (the) past to amend, I suggest that if you withdraw from the Charter this paragraph 15, then that cannot be argued that I was there simply voicing an opinion. And, I would ask you to do that.

It's interesting to note that corp counsel, Mr. Haywood, when he addressed my testimony, stated that the mayor represented the people; and, that's, I believe, a fundamental misconception. Because, the mayor in being elected, is elected to administer the law, implement law; representatives from the districts are elected to represent the needs of the districts...so I think that's another issue that's caused some lack of confidence in the integrity of government. But, I think that might be too complex, so I would ask you to look at this Article 7 and take paragraph 15 out of it.

The second thing I want to discuss is this department of water supply in the Charter. I'm a member of the citizen's advisory committee for Paia and Haiku, and Tuesday night we had a meeting. One of the members expressed the idea that the department of water supply was completely autonomous and had no control, other than in a very casual way, and the Charter specifically states, and I quote 8-11.2., paragraph 3, that "the Charter shall implement the county's general plan and the community plans, and the administration of its affairs." It specifically states that. Last week there was a public hearing -- I was the only one in attendance -- on the water source and development plan, 1992 version up for adoption. That will be adopted before we've even had a chance to put and set down the policies that we think we need to have in place to restrain growth and keep our community in a controlled and healthy circumstance. So, it makes a good case that we need to clarify where it is that the board of water supply is, in fact, regulated or under the control of the legislative branch. And, I would hope that you wouldn't consider autonomy and perhaps not making it totally under the administration, but that you would consider clarifying the board of water supply must comply with a community plan. And those community plans must be in place prior to their development plans, so that there at least will be that continuity.

It's interesting to note that in the testimony referred to by Guy Haywood as he related to me testifying concerning his confirmation, he made reference to the board of water supply, and how, in fact, and I brought a copy of that testimony to include on the

Smith: (Continued) record as it relates to that [a portion of council minutes are hereby added as an addendum to the May 15, 1992 Charter Commission Meeting Minutes] so there won't be any confusion. Concerning the board of water supply, I made the point that in January of 1990...and this is after they became semi-autonomous...the board of water supply entered into an agreement with Maui Land and Pine, and I think I advised you of that. And, part of the agreement included the requirement that the county institute water conservation measures, and that was what Maui Land and Pine put into place. I don't know if you worked that agreement out or not, Mr. Mancini. But in any event, my question to them was 'would the board have the authority to abandon its responsibility.' And, that's what I wanted Mr...an opinion from the soon to be appointed corp counsel to discuss before the council; but, it didn't do that. But this then relates to this idea of autonomy and semi-autonomy, and clarifying how that board of water supply meets the definition of semi-autonomy; and, I think that needs to be clarified.

Once again, I would like to state my opposition to the autonomy of the board of water supply because water is power; it's political. You cannot have an autonomous board that is not political, because they determine what happens where. And, it must remain at least under the political process, where a legislature and an executive branch oversee. That's my opinion. Thank you very much for your time. I'll submit these items for your consideration.

I also want to read for the record my comment. He seemed to indicate that I bushwhacked him; that I hit-and-run. I made a testimony at the council that somehow left him in the lurch and then ran from the building; and, he in fact asked how I could possibly know... I'd asked the questions and left; but the process is that before a council meeting is held, there is public testimony...and there can be a lot of public testimony...and after all the testimony, then the council begins its work. And, that usually takes a long time. And, the questions that I had addressed to the council, which are described in this testimony, weren't personal in nature; it related to the process of selecting a corp counsel. And I'd just like to read for the record my last comment, so that no one will feel that I somehow slighted him. "And, I would hope that these serious questions be asked of the candidate," which was Guy Haywood. "And also, I'd like to extend to Mr. Chan my gratitude for his perseverance to allow these issues to come forward and be addressed, in a complete manner, as well as to Mr. Haywood for his willingness to serve. Thank you very much." So, I wasn't abrasive, I don't feel in that approach. So, that's all.

Vice Chair Dodson: Any questions for Mr. Smith? Thank you. Mr. Jones?

B. Mel Jones, individual, offered the following testimony:

Jones: My name is Mel Jones; I'm just a citizen of Maui. And, this is unfamiliar territory for me to come to a commission meeting like this; I've never done that in my life. But, I'm kind of frustrated at the way the situation is going with regards to the water department. And, I think this is a start for me to start voicing my opinion; I'm just one of many, many people who are out there getting hurt by the autonomy of the board of water supply.

To give you a little background on the reason that I'm here, my family has a property which was given to us by my grandfather, who passed away back in 1970. And, we have been trying to get this subdivided, and because of many, many regulations imposed upon the citizens by both the county and the water department, it has taken us quite awhile. The problem that is happening to us now is we can go ahead and get our lots subdivided, but we're having problems with the water.

For the past ten years at least, we have seen the water restrictions placed upon the citizens by the board of water supply limiting the amount of water meters and limiting the way a property can be subdivided. We have gone through Mr. Haines; we have gone through Mr. Badoya [sic -- Bagoyo]; and now we're with Mr. Craddick...we're just not

Jones: (Continued) getting anywhere. As seven heirs to this particular property, we want to divide it so we each of us can have an affordable home. That's all that we want; we're not planning on building enmass on our property. The problem is once we get through to sitting down and talking with these people, all the other departments will tell us what we have to do...with the exception of the water department, who will never give us a straight answer. It's always maybe. And in our situation, just a month and a half ago we sat down with the planning department and the water department, all of our family members who were there, they stated what we needed; and, we asked for seven water meters and we were told "it's possible." We started through the process of getting all of the proper survey work that was done -- we're not a rich family -- money is very tight; and starting all of this process we planned for seven divisions of the property. Just about a week ago we get a call back...they call us in on a special meeting and they tell us "no, you can't have your seven -- you can have three -- you can't have seven lots, you can have three."

Well, that just blows everything out the door. I realize that that is really not your problem, but what I'm trying to offer you is my frustration...I am just one of several who are out there. And, there is no recourse for us as citizens. The ninth floor has many, many complaints from other people like myself -- the ninth floor can't do anything, okay? The only thing that I can do is go to the water board itself and plead again my case, but it makes me feel like I have to go to God, in order to get what I want and what I need. Maybe if I had the big bucks I could get things done.

I feel to offer them more autonomy is a grave mistake; in fact, I think that it should be reduced and there should be some kind of accountability for the citizens. Basically, I guess that's all I have to say.

Vice Chair Dodson: Are there any questions for Mr. Jones? Al.

Sparks: I just want a little more detail so I can get the picture clearer here. Was it the water department that said you could only have three divisions?

Jones: Yes.

Sparks: Do you remember the rationale?

Jones: It's the water moratorium.

Sparks: Then your location is Kula. Have you talked to the water board or have you talked to the water department?

Jones: We have been... It's been an ongoing thing for...a long time ago. We have... we went, as I said, about a month and a half ago we talked to the engineers, and then they gave us the preliminary okay. Of course, nobody ever commits in that department; and that is a problem in itself. They came back to us and told us no, we could not have the seven, we could have three. So, instead of just laying down dead, we asked to have a meeting with the board, and that is scheduled; but however it turns out, I can't say.

I have a very close friend who went through the process of buying a piece of property in Pukalani, where it's a planned subdivision. He got his loan approved, ready to build -- he can't get a water meter. I mean, I don't see the rationale between the limiting of the water meter and... The problem is, if they give us three water meters, okay, what's to stop me from building or using as much water as if I had one water meter for seven homes? You cannot control water; that's my problem. If I could build little tanks, I could have one meter to each tank; that tank I can siphon off for three houses. I'm still using the same amount of water. It's just that I don't understand the rationale of restricting the meters.

Sparks: Have you talked to council people and the mayor?

Jones: I have not talked to this mayor. We have talked to the previous mayor.

Sparks: And?

Jones: We got nowhere.

Sparks: How about council?

Jones: No, we have not talked to council, although the previous director is on the council, whom we talked to also at one point in time.

Vice Chair Dodson: Any other questions? Thank you, Mr. Jones. Mr. Masuda.

C. Ralph Masuda, Lanai Company, offered the following testimony:

Masuda: Commission members, my name is Ralph Masuda. I'm with the Lanai Company. I'm not here to give a formal testimony today, but I will at a later hearing date. I'd just like to try to get some clarification on...maybe from a member of the commission, as to the proposal for amendment to the Charter to create a Lanai Planning Commission. The Company, at the present time, has over a thousand employees on that island. And, one of the questions is whether an employee of the Company can...or employees of the Company can be members of the planning commission on Lanai if it is formed there. And how the Charter Commission sees the...how a cross-section of the community can be represented on that commission. It's a very unusual position that's happening on Lanai itself, where you have one land owner who owns over 95% of all the land, and probably buildings on that island; and, how it would be fair or... I really don't know how to put this across as to how these people can be selected and how...whether members of the Company can be actual members of this planning commission.

I see where, on an advisory basis to the council, it can be done; but when the planning commission has the final authority say on the management area permits, special use permits, on phase two project district approvals...how the makeup of this commission would be objective and fair to the applicant or applicants, whoever they may be.

Vice Chair Dodson: Is that it? Any questions? Victor?

Reyes: I'm not quite clear what you are trying to say. Are you saying that you're concerned because Lanai Company employs ninety-plus percent of the people on the island, that if there is a Lanai Planning Commission...the members, most likely, of that commission won't be able to...

Masuda: Maybe; maybe.

Reyes: Is that what your concern is? I'd like just to have a clear statement from you...what you're really trying to say, instead of, you know, doing something implicit.

Masuda: Well, what I'm trying to say is you'll probably have nine members on the planning commission; now, are there going to be employees of the Company on that planning commission? Can there be, and can they vote on Company issues, or Company applications? Now, if let's say there're four members or five members from the Company that are appointed to this commission, do they excuse themselves from any matters dealing with the company? Then that means you won't have a quorum to act on it. So, we'd like to find out

Masuda: (Continued) how this... I think it's a problem how this problem can be worked out; or, can it ever be worked out? How do you select a cross-section of the community, which you have here on the Maui Planning Commission, or the Molokai Planning Commission? It's a little different because you don't have such a huge land owner or employer on that island...on Molokai or Maui.

Reyes: Just for your information, we... The commission has received a petition to establish the Lanai Planning Commission, but we have not made any decision, if that's what you're trying to ask at the beginning of your testimony. But on the other hand, how would you feel...or how do you feel about the Maui Planning Commission, the members of which deciding what happens in Lanai, when there's nobody from Lanai...

Masuda: You have a member from Lanai on the Maui Planning Commission.

Reyes: Oh yes, I'm sorry; but, it's not what a Lanai Planning Commission might be if that becomes a...if the Charter is amended to create the Lanai Planning Commission. And I believe the rationale for requesting a Lanai Planning Commission is that the citizens of Lanai wanted to have a planning commission that can decide issues that relate to the island of Lanai, in light of the changes going on on the island.

Masuda: I admit that there are changes going on on that island that, you know, is something that a lot of people on Lanai is happening a lot faster than it should; but when you look at the overall plan of that type of development, you're not looking at something that's going to happen in two years -- where you're going to have everything built in two years. We're looking at a period of twenty to twenty-five years before it's full build out on both projects; and we've got to go through the entire process that is required by state and county laws. To give you an idea of...just for our golf course maintenance facility, the advisory committee deferred action on that matter twice before the planning commission could ever act on it. It was something that was submitted in March of 1990, and then the planning commission took action in October...no, it was in August that they finally took action on it, because the Lanai Advisory Committee was not satisfied with the way that the Company had laid out the plans. So it's not a matter that the planning commission here on Maui is not listening to the advisory committee; I think there is a lot of discussion that takes place and I think it's a worthwhile process that...what you have right now. I mean, although you have only one member from Lanai on the planning commission, maybe this Charter Commission should look at the possibility of increasing the amount of Lanai members that are on the Maui Planning Commission.

Vice Chair Dodson: Paul, did you have a question?

Mancini: I was going to ask Ralph a few questions to possibly put his issue in perspective. I recall there was a board of ethics decision...opinion written some years ago, where an issue came before a certain board and the applicant to the issue was the employer of a board member. My recollection was that the reasoning of the board of ethics was that that board member was then subject to two masters, which created a conflict of interest. He had a loyalty obligation to his employer, and he had an obligation of impartiality to the issue before him; and the board of ethics attempted to resolve those two conflicts. I may be wrong...this is some years ago...but the board indicated that board member should not participate in that, and I think that's part of Ralph's issue here. That if a Lanai Planning Commission were comprised of...and 95% of the population are employees, it would then be set with that conflict.

Added to that scenario, I think you have to look at the scenario that came about with councilman Hokama this year; a similar issue arose, and through the judicial process, I believe it came back the other way.

Masuda: I believe it's because councilman Hokama was elected by the entire county... the voters of this County of Maui.

Mancini: I don't know how it's distinguished, but it's a fact that he's a member of a legislative body, where they are not subject to these types of situations; if you take that aside and say that would not have an impact if this decision of the board of ethics, as I recall it, if it still is as I recall it to be. But those are a couple of issues that put a frame of reference on those specific problems you're talking about.

Sparks: The decision on Hokama was made by who again? I thought it was in the courts, too, wasn't it?

Vice Chair Dodson: It was in the courts but...

Takabuki: It was a technicality...

Sparks: It wasn't on the issue of...

Vice Chair Dodson: Actually whether there was a conflict and whether...

Yonenaka: I thought there was a...

Takabuki: We should get that...

Vice Chair Dodson: I thought we were going to get it.

Sparks: I thought we got it. I remember reading something though that the logic was because he wasn't in a decision making capacity with the Company, that there wasn't assumed to be a substantial conflict.

Vice Chair Dodson: Was that the decision of the ethics committee and that's why it got bumped up to the courts?

Sparks: Yes, that might have been what I was reading...

Vice Chair Dodson: I think that's what happened, and I think that's why it got bumped up to the courts; and it came back just the opposite...actually it confirmed what the ethics committee said, but it was not for that reason...it was because it was a technicality, is my understanding. We'll try to get ahold of that.

Mancini: My only point is that in order to address Ralph's issues, you've got to address those too.

Vice Chair Dodson: Any other questions? Jim.

Cockett: I'm just curious about the...you're questioning the makeup of the supposedly planning commission; is there fear that it might be loaded with employees or not employees?

Masuda: If employees cannot serve on it, then how would you have a clear cross-section of the community? Who else...besides the Company employees, I guess there are state and county workers and private business, but they're still lessees...they still lease business property...business properties.

Cockett: The other question...on your advisory committee, who serves on that? What

Cockett: (Continued) are the backgrounds of the advisory committee?

Masuda: Well, the advisory committee contains both; you have employees of the Company in the advisory committee also, plus non-employees of the Company.

Cockett: I may also be naive in this area, but can you relate to any recommendations that the advisory committee has made that was not carried through because of reasons... say pro or con? And, have they come up with recommendations that were acted on favorably, shall I say?

Masuda: You mean where the advisory committee had recommended denial, and the Maui Planning Commission approved the... Well, since I've been with the Company, I'm not too sure; maybe Ms. Fabrao...

Fabrao: The golf course issue up at Koele.

Masuda: Golf course... The community plan amendment?

Fabrao: Whether the facet...just in generalities... The Lanai Advisory didn't feel that they were listened to by the Maui Planning Commission, and some of its members also are asking for a planning commission. I can understand your concern about representation, and I know ethically if you are a member of the commission, and you're also an employee of the company... And, I would think, we need to know the decision of the court as to Mr. Hokama's situation regarding decision making. But, it still does not just...just the fact of that it would be in conflict, should not be a reason why Lanai cannot have its own planning commission; because obviously there are a lot of things going on there that people are not happy with.

Masuda: There are; there is.

Fabrao: I mean, if you're not living on Lanai, and I'm sure you are not living on Lanai, then you would not know the full impact of what's happening on Lanai. And, there are many things that the Company on the corporate level have not heard from its people. And, Lanai's people, with the silent majority, it's the people of the community -- not the corporate shareholders or stockholders -- I think that's the silent majority that Mr. Murdock refers to. But, I've lived there for twenty-some years plus...I hope to live there another twenty-plus; the changes that are going on on our island are good in a lot of ways, and not so good in some ways. And I think, basically, the people are more afraid of the social kinds of things that are going on...and will go on, and will be more accentuated as time goes on, then will affect each one of our lives. And, you will not see that because you don't live there. And, that is not a personal thing against you, or anything like that; but it's just the way it is. But, I would think just because there's only one major employer on the island, with a thousand and some employees, and I feel some of those employees are not going to be employees any longer if things don't go the right way.

Masuda: That's right.

Fabrao: And, it's not because you don't get your permits or anything, it's because the economy is pretty bad regarding tourism and all of that. We need to be concerned about what's happening to us there, and personally, I am not against any of the projects; but there has to be some reason...some consideration as to where the things are put. Right now the Company wants to put luxury homes over the aquifer; and they're going to cut down our watershed trees, that are important to getting the water back into the aquifer. Those are the kinds of issues that I think a lot of people don't know about, and I think they need

Fabrao: (Continued) to be addressed. But, in so far as the planning commission is concerned, I feel very strongly as I speak for a lot of our people on the island, that there should be some voice from the community, even if they are employees of the Company...because some of them are not able to speak for themselves because they are afraid to; I'll be honest with you on that. That's all I have.

Vice Chair Dodson: Any other questions?

Cockett: Yes, I think I'd refer this question to you; are there any other...

Vice Chair Dodson: Jim, if this is going to be discussion on the proposal itself, we'll wait until we get into full commission; these are just questions for Mr. Masuda.

Cockett: Okay, fine.

Sparks: I think I understand the concern here from...you said you're representing the Company; and so, from the Company's point of view, obviously you don't want the commission that has no employees since all those people that are employees of the Company...views aren't heard on the commission; but from the non-Company employee's point of view, they are not too excited, I would guess, by having a commission made up of all employees; it's the two masters routine. Have you thought about...and I really hadn't recognized how difficult this dilemma might be until now... Have you thought about any possible solution to that dilemma?

Masuda: I think the biggest problem...the biggest problem on that island, as an outsider and as an employer of the Company, myself, is that there's not enough communication happening on that island; and that's the biggest problem, you know. There's not enough clear communication between the Company and the people. And, you know, this has come up many times...

Vice Chair Dodson: We need to stick to the issue here...

Sparks: But in terms of... Let's assume for the moment that the commission here gets seriously interested in a planning commission for Lanai. Is there a way to structure such a planning commission that doesn't run afoul of ethics considerations, or imbalance considerations for the whole community?

Masuda: I don't know how you would do that because there's...the Company's involved in everyone's life over there, whether they are direct employees of the company or just a family member who has a father who's an employee, or a mother who's an employee... Even the hotel workers there are under Lanai Resort Partners, which is a subsidiary of Castle & Cooke Properties. And, it's a very difficult situation there as far as...to be able to come up with the planning commission that would be a so-called cross-section of the community like you have here on Maui.

Vice Chair Dodson: Paul, you have a question?

Mancini: Yes; an interesting inquiry is whether this conflict situation, whether I can call it that, has created a problem for the advisory committee so that they have had problems with functioning. And if not, why not?

Masuda: Okay, now...the advisory committee, I guess, is really an advisory committee to the planning commission...the way it's set up right now. And, the planning commission, especially the one I think Ms. Fabrao is talking about, where they...on the golf course

Masuda: (Continued) at Koele, the expansion and maybe for the luxury homes and that sixty-eight acres, by ordinance had to go over to Lanai to hold a hearing because it's in a project district, and the project district ordinance mandates that they go to the community plan area for the hearing. Now, from what I understand, it was a joint hearing... the Lanai Advisory/Planning Commission joint hearing. Now, what happened the first time around, I guess, is that the Lanai Advisory Committee was not satisfied with the way the Company presented the project. So, they came out with a recommendation of deferral; and, I believe the first time it was deferred. And then, they had to go back again and get it approved...or recommendation for approval...to the county council; I think that's what happened. So, it was a joint public hearing. There are other matters that the Maui Planning Commission does not have to go to Lanai for the hearing; the hearing...the Lanai Advisory Committee is appointed like the hearing officer, or hearing body by the planning commission, and they hold a hearing on Lanai...and they make a recommendation to the planning commission. And, the planning commission can either go with their recommendation, make amendments to that recommendation, or completely overlook the advisory's recommendation and make a decision on their own.

Vice Chair Dodson: I think what Mr. Mancini was asking, though, is that having Company members on the advisory committee now...has that created, in your mind anyway, any conflicts...having come up to a situation where an employee of the Company has caused you to feel uncomfortable...

Masuda: I think what has happened is that the Lanai Advisory Committee...I don't think has ever had a full quorum; they've always had a...

Sparks: There are employees that you feel are on the advisory committee that don't want to go to the meetings because they feel a cross pressure?

Masuda: I don't think it's pressure, but it's a matter of whether or not their actions at the advisory committee does any good.

Vice Chair Dodson: Okay, thank you.

Masuda: Will there be any more discussions on this matter today?

Vice Chair Dodson: On the Lanai Planning...definitely, yeah. Is there any more public testimony? Jim, did you want to talk about prosecuting attorney?

Takeyesu: I believe I talked to Anne briefly; I think she had some concerns about the wording as the amendment was submitted.

Takabuki: Maybe I can explain because I voiced the concern about how broad that language was regarding the investigator's authority. I checked into the background a little bit, and found out that the state law was probably amended or repealed because of a problem they had with a former prosecutor in Honolulu actually abusing the investigative power. So, what I did after that was I talked to our police chief here, and he indicated that he's very comfortable with the arrangement; he has no reason to believe there would be any problem here. And, I knowing those people too, in the prosecutor's office, don't think think there would be any problem either. So, I feel comfortable with it from my end now, but it was pointed out that there was, in another county at least, a problem with that. So, I withdraw any concerns about that that I had at this point.

Vice Chair Dodson: We're going to get into that discussion when...

Sparks: Wait a minute; let me be clear on, I guess, what the problem was...because we haven't had a problem here, or we don't expect our people that we know here to have a problem...

Vice Chair Dodson: Let's ask Jim questions if we have them, and then we'll get into the discussion when we get back into that. Are there any questions for Jim on this issue?

Yonenaka: On just the police powers?

Vice Chair Dodson: Yes, the investigators...

Sparks: The investigators have the full power...

Reyes: Full powers of the police.

Vice Chair Dodson: If there's no questions, then we'll move on...

Mancini: Is there a statute currently that gives them that power?

Takabuki: There was a statute; it was repealed about two or three years ago. But, it was a very old provision that dated back to maybe the fifties, and it was repealed about maybe three or four years ago...something like that. And, that's why Larry [Butrick] came in and asked for it to be put in the Charter.

Mancini: Is it appropriate for the Charter...independent of the statute?

Takabuki: Now they're just silent on the whole issue, and the other counties are moving to put it in their Charters because they feel it's an important power to have in their investigative branch.

Takeyesu: Inside the Charter you can go ahead and move around functions...that's why it would be proper under the case law -- the HGEA versus the County of Maui...

Mancini: That stems from whether its a situation that's statewide...

Takeyesu: Statewide concern...

Mancini: Because if the issue is statewide application, then you're maybe restricted powers...the Charter may not have the powers to emanate it...that issue; and I would just hope that this is...

Vice Chair Dodson: Guess who's going to look at it? [LAUGHTER]

Fabrao: May I ask a question? Will there be, in the course of your investigations, will you at any time need to, or have reason to call in the regular police force? Or, would you be able to...

Takeyesu: The police are the main investigative agency; our investigators are used basically to...we call it 'fine tune' the case. Because of the volume of cases that come into our office, and in any type of litigation, it seems that attorneys are going to want to have additional information...that's where we use our own investigators. Say fifteen years ago when there were no investigators, we would have to call in the detectives to do the follow ups; now under our current arrangement, we have our own investigators do that. And, once the case is accepted, they're basically charged with continuing the investigation. It's still on a case by case basis; sometimes because the detective is familiar with the witnesses, we'll ask them to continue the investigation -- that's not always possible.

Takeyesu: (Continued) Since Larry has been the prosecutor, we've gone ahead and actually transferred...or had one of our deputies assigned to the criminal investigation division, so he has an office and desk there, so that we can work more closely with the detectives so that by the time the case comes up, most of what we want will already be in the police report. But again, it's still at the preliminary stage...so, we still need investigators. We also use investigators to bring back fugitives who have fled the jurisdiction after they are under indictment, or even before; and, sometimes the police are available...sometimes they are not, so we have to use our people to get them.

In terms of some of the abuses that were going on on Oahu, I think, under Marsland they had developed a fairly large investigative unit...there was a lot of distrust between the two agencies, and they were going ahead and doing their own investigations from scratch. In terms of prosecutor immunity, when we...our immunity does not extend to all of these investigative areas, so it's in our best interests to limit investigative functions in our office. They are there just to basically fine tune the case -- if we go overboard, then we're beyond our immunity...and then there is more exposure.

Sparks: This is a question for my own education...you don't have full police powers now...your investigators don't. Can you be specific about how that handicaps your investigators?

Takeyesu: In terms of the extraditions and things like that, where we have to go ahead and take people into custody...I think that would be the main area. Where it's ambiguous.

Sparks: What have you been doing now?

Takeyesu: Sometimes we've had to go ahead and send our investigator along with the police officer; so, we've had to actually ask the police to dedicate people to us. And, that can be an imposition on them.

Sparks: Are they screaming about it?

Takeyesu: Well, sometimes it causes delays. In the old days, it was considered that it could be a perk...where it's kind of nice to be able to go for a trip; but because they've really tightened it up, there's hardly any turn around time...it's more like a pain when you're assigned to go ahead and do that.

Reyes: I recall at the earlier testimony that the real intent...the reason they want this put in the Charter, is the prosecutor's office wants specifically their investigators to be able to carry firearms or guns on certain assignments. And, without these specific police powers, they feel that they can't carry firearms and therefore may endanger the lives of...or the life of the investigator. Is this still the intent why you want...

Takeyesu: That would be part of it; we can get permits to acquire...where we can go to the chief and get these temporary permits. But then, administratively, it's just like having to do it all the time...

Reyes: Because, this might answer part of Al's question; where you don't have the police power and you have to get somebody from the police department, because that person is, by law, allowed to carry a gun. And, when your guy doesn't have one...for his protection he's got to have somebody who can. That is my recollection why the prosecutor's office wanted that thing inserted into the Charter...so that they can carry out their duties...protect their own lives as necessary.

Takeyesu: As I pointed out, there is another mechanism to get temporary permits to carry

Takeyesu: (Continued) the guns, and I do think they carry guns...they do all have guns.

Cockett: I just wondered if we can defer that; it did come up in my committee, and he's explained what we asked him to explain last Thursday. Can we discuss it further later?

Vice Chair Dodson: Certainly. Thank you, Jim.

III. APPROVAL OF MINUTES

The minutes of the May 28, 1992 Charter Commission meeting were approved as circulated.

[RECESS/RECONVENE]

Vice Chair Dodson: At this time I'll turn the meeting over to our Chair, Bob Nakasone.

IV. COMMUNICATIONS

A. Amendment of Rules of the Charter Commission (Communication 92-30)

Chair Nakasone: The next item on the agenda is the proposed amendments to our Charter Commission Rules. You folks all have copies of it. As you know, we have a provision for eight affirmative votes and it seems that there's a problem of having eight people around all the time. By statute, I think 92-15, has a provision there which requires a majority of the entire membership; there's eleven, so the majority would be six. That's why there's an amendment to be introduced...reducing that eight to six. There's another provision there still being retained, that the full commission report will require eight affirmative votes.

Dodson: I'd like to make a motion that we accept the rules as amended.

Mondoy: I second that.

Chair Nakasone: Second by Annette. The motion is to amend the rules as stated.

Dodson: Call for the question.

Sparks: Am I clear, though, on what you're saying? The final Commission report requires eight signatures?

Chair Nakasone: Well, you have an added amendment...eight affirmative votes...

Sparks: The affirmative votes of eight members shall be required to act on amendments for the final commission report...on amendments of the final commission report.

Dodson: So when we come down to the final things that we present to the county clerk...

Sparks: The amendments to the Charter in the final commission report is what you mean. So, we're still in the tentative final stage, and those are going to be six...is that what you are saying? Assuming we can get people there more easily when we get to the final, final stage.

Chair Nakasone: We should; we'd better.

Dodson: Everyone will be back from vacation.

Reyes: For the record, Mr. Chairman, has it been seconded?

Chair Nakasone: Yes.

Reyes: For the record, I'd like to insert what Al has said about the clarification on 4.A. -- the affirmative vote of eight members shall be required to act on the amendments to the Charter for the final Commission report.

Chair Nakasone: Okay; any questions? Discussion?

Dodson: Call for the question.

Chair Nakasone: All in favor of the motion say aye. Opposed? MOTION CARRIED.

IV. COMMUNICATIONS

- B. Article 8, Section 11 - The Department of Water Supply
Continuation of discussion of further autonomy for the Board of Water Supply with regard to rule making (Communications 92-38 and 92-41)
1. David Craddick, Director, Maui County Department of Water Supply
 2. Kazu Hayashida, Manager and Chief Engineer, City & County of Honolulu
 3. Raymond Sato, Manager and Chief Engineer, Kauai County
 4. George Tengan, Deputy Manager, Hawaii County

Chair Nakasone: Okay, we're on B...under Communications...with regards to the department of water supply, and more so, with the board of water supply. I think we have some people to testify with regards to the present Charter proposed amendment. David? Can you identify what section of the Charter you're...

Craddick: In our letter that we sent in last time, it was addressed in there -- 8-11.7.

Cockett: Was that April 15th?

Craddick: Right; right.

Dodson: 92-38. Communication 92-38.

Craddick: And also 8-11.7. [sic -- 8-11.8] Adoption and amendment and repeal of water rules, including the setting of water rates and charges, where it's subject to the approval of the mayor. And, basically what I've done, is ask the other water department managers or directors to come here and kind of speak on our behalf, if that's alright. And, you can ask them some questions.

Chair Nakasone: Okay; you have Hayashida and Sato...

Craddick: Yes, and George Tengan, who has replaced Bill Sewaki, from the Big Island. And, Ray will go first here.

Sato: Chairman Nakasone, members of the Charter Commission; my name is Raymond Sato, manager of the Kauai Water Department. Today, our contingent is here mainly to answer any questions you may have on the department of water - Kauai, the department of water - Big Island, and the Honolulu Board of Water Supply. However, before we go into questions, I do have two testimonies presented to the Kauai Charter Commission in 1980; and, it regards a changing...abolishing the board of water supply. And, the reason I want to read these testimonies is that our sentiments follow the sentiments of these two testimonies. The

Sato: (Continued) first that I'll read was prepared by the water board, County of Kauai, in 1980. And, with your permission, may I read this testimony?

[The entire letter dated March 3, 1980 was read verbatim, and is hereby attached and made a permanent part of these minutes.]

In a shorter testimony...this is by then Representative Tony Kunimura to the Charter Review Committee. It reads...

[The entire Testimony of Tony Kimura, dated March 24, 1980, was read verbatim, and is hereby attached and made a permanent part of these minutes.]

Before I answer any questions, we'll get Mr. Hayashida and Mr. Tengan to say a few words.

Chair Nakasone: Thank you, Ray...

Sato: I've got copies of this testimony if you want copies.

Chair Nakasone: It'll be easier for our secretary to just attached it to our minutes. I guess my question is...Kazu and George, are you both going to be testifying on the same question of autonomy, in regards to that particular section...8-11.8.? Okay. So, we'll hold off for questions until after the presentations.

Tengan: Thank you, Mr. Chairman. My name is George Tengan; I'm the deputy water manager on the island of Hawaii. Mr. Sewaki sends his regrets that he can't be here today. What I want to do is just share some of the provisions within our county Charter as it relates to the department of water supply in Hawaii County.

[The entire testimony was read verbatim, and is hereby attached and made a permanent part of these minutes.]

Chair Nakasone: Thank you, George.

Hayashida: Chairman Nakasone, and members of the Charter Commission; I am Kazu Hayashida, Chief Engineer of the Honolulu Board of Water Supply. I think all the boards of water supply were probably established because of some political infighting that was was occurring on all the islands. If you look at some of legislative committee reports, you'll find some of these things have been discussed. In 1929, we were established and one of the main provisions was that the terms of the members would be five years...one longer than any of the elected officials of the county; and, that they would be on staggered terms to provide continuity; and to try to take it out of the political arena as much as possible. I am only the fifth manager of the board of water supply in over sixty years, so there has been, again, this continuity of the operation of the board.

We probably enjoy the strongest Charter of all the boards of water supply. The board of water supply is set up so that the board concerns itself with policy questions; they set the budget, they set the rates, and the income to carry out the provisions of the budget. They set all the rules and regulations, of course following all the administration's procedures acts of holding public hearings and whatever is required to adopt rules.

The board appoints the manager; the manager runs the departments. They don't get into the operational part of the department, so there is a distinct line between what the board does and what the manager does. Of course, the manager is always responsible to the board, and the board can freely hire and fire him, so the manager has to carry out the provisions efficiently and economically.

One of the things that was happening way back in the...in 1929 was, although there was an abundance of water on Oahu, because there were many wells drilled and there were the artesian types that were flowing and wasting water, there was an apparent feeling in the public that we were running out of water. And, they wanted control of that precious resource, so that was one of the reasons why the board was created also. One of the first

Hayashida: (Continued) things the board did was to go and seal off these wells that were not being used but was wasting water; we set up watersheds, so that we would protect the watersheds so there would be ample recharge into the basins; we made sure that there was no cesspools and sanitary landfills over fresh water supplies, to keep it from pollution. And, when those things were established by the board, I think those were things that had to be done to protect the water resource. The other thing about water resource is that it would be ideal if every community that you wanted to build, there was enough of a water source in that area; but, that's not the case. You'll find that you have to take water and transport it, sometimes long distances, to take care of developments. And so, as Ray had alluded to, when you have these councilmen who represent different districts, and if they pork barrel their water projects, then you'll find that you might not meet the needs of transmitting water sources to places that need the water at that time. And, over the years, I think the board has demonstrated that it can meet the needs of the community; and those community needs are established by the city council and the administration through the general planning. And in our case, unless a land is properly zoned, they don't get water. So the planning commission and the city council adopt all the land use through the general plan; and once that's established, if the applicant...they come to us whether they are building a residence, a commercial establishment or a subdivision...if they meet the requirements of the general plan, then we furnish that water.

And, I think this is something...I work in the state water code...and I think this was a philosophy that we tried to instill in that code; that the proper venue for land use planning is the council, because they're the elected representatives of the people. It's not the board that should develop the water and the water board determines where the development should take place. So, I think it does work if, you know, the relationship between the board and the city administration and the council is clearly established in that way. Because I don't think the water board should run away by itself; if it does, then I wholly support having the board go back to the control of the mayor; because, it doesn't work; the people elect the mayor to get the job done. No matter how well you organize, if you don't put proper people in the proper place, nothing's going to work. We're very fortunate on Oahu, that since the inception of the board, we've had -- meaning the council -- have put in board members that have been very business minded to make sure that our organization functions as well as business -- very efficiently; and also that they have public mindedness, rather than self-serving... Over the years, we've had good success. But, one of the big things about being a semi-autonomous body is we can move quickly because we don't have to go through all the different procedures that the council goes through. I've been the director of public works for the city, and I've been the transportation director for the city, so I know what kind of procedures we go through to get monies for the departments through the council process. And often times when we get word that the transportation department is ready to do a project, we can immediately act -- the board can immediately act to coordinate the project, so that we can get our pipelines in and maybe shift other projects. So, the board can do this very quickly, and I think that this ability has served the board well in serving the public.

With that, I think we'd open it up to questions that you may want to ask.

Chair Nakasone: Okay; questions from the members? I guess my question is...if you pick the right people to do the job, the department can operate; and, it seems that even if the department of water supply was under the administration, it still requires picking the right people as your water board. Questions? Dolores.

Fabrao: Just a comment. I like what you said...that the water board is going to run by itself and be made up of people...that are public minded. I think that's one concern that I have, that if the water board did get full autonomy -- or the water department did get full autonomy -- that I would be concerned that there was no manner or no method, or no way of interfacing with the administration and the legislative body...the council. That

Fabrao: (Continued) would be where my concern would lie -- if that water board just went ahead and did its own, without this other question being addressed.

Hayashida: I think that we've been over sixty years, and you know, I think without bragging, that we're one of the best run organizations of government. I think if you go to Honolulu you can probably verify that. It has run efficiently; we've coordinated with the city planning department...in fact, all of our planning is directly tied to the city planning...our six year CIPs are approved...are examined by the general planning officer. So, there is a good tie between the board and the administration.

Fabrao: So, you do a six year CIP program?

Hayashida: Yes.

Sparks: I have a couple of concerns; one has to do with that semi and the semi-autonomy. In checking over your Charters here, on the Big Island for example, Mr. Tengan, that section that says the "department of water supply shall come under the general supervision and control of the mayor." How's that operationalized? The control of the mayor, particularly?

Tengan: Well, there's not too much control by the mayor...the mayor would be acting as a supervisor of the manager of the department. It's more for like accountability purposes, like for instance, when the manager leaves the island, he informs the mayor. The manager also serves on the mayor's cabinet, in order to have a coordinated efforts of government services. Basically, that's it...it's more for coordination purposes.

Sparks: Okay, that's interesting; in theory, one would think that if it says...if the Charter says it has to come under the control of the mayor...that there could be cases where the department and the water supply board wanted to do something -- say in the area of raising rates -- that the mayor didn't want to have happen, and, they got into a conflict over that; given this provision in your Charter, who would win?

Tengan: I would say the water commission would win, because the water commission approves the...water rates.

[LAUGHTER]

Craddick: Can I say something? When we discussed this particular thing, also in Kauai's Charter -- even though it was not listed under the board of water supply -- under the mayor's responsibilities and things, I think it gives this same type of wording in Kauai's Charter. But functionally, even our department...even though it doesn't say so in the Charter, we are in fact under the mayor, because of the director of finance, corp counsel, the personnel services...we all follow the same civil service procedures. So, whether the Charter says it or not, we're all, in fact, under the mayor for this general supervision and administrative support.

Sparks: I can see the administrative support; I guess I need more education on what general supervision means, and especially control...

Tengan: It's not really defined anywhere in our Charter.

Sparks: Along the same lines, I've got a question for Mr. Hayashida. Your Charter says that the board has the power and duty...has the authority to recommend to the council the "sale, exchange or transfer of real property, or any interest therein," is under the

Sparks: (Continued) control of the department. And then the council takes action, but has to wait for the recommendation of the water board. Is that...how does that work? Does that restrain your water board in any case?

Hayashida: Only if they disapprove it. [LAUGHTER]

Sparks: That's where the semi-autonomy part comes in, right?

Hayashida: But, I think the relationship is that we do float general obligation bonds, and that general obligation bond is, you know, through the county. And, I guess what is collateral for that kind of loan is the property; so in that way, all lands of the city... and we're part of the city...is controlled by the city. So, although the board says we approve purchase of that for a tank sight, it still has to go through the mayor, through the council for formal adoption by them as a city property. I don't know of any occasion where they've turned it down, but they could, theoretically I guess, but so far they haven't.

Sparks: So, you haven't had any concern; you haven't gone to any Charter Commissions to try to get it removed.

Hayashida: No; because we want to get them to float general obligation bonds, because that's probably the best, best interest...

Sparks: Another interesting question for me is this general obligation versus revenue bonds, and I understand that the water departments can only do revenue bonds because they have less collateral to borrow against; generally, that's my understanding. As a matter of practice then, do you most of the time go for general obligation bonds? Or, is it revenue bonds?

Hayashida: Mostly GEO bonds, because of interest rates.

Sparks: That brings you...from our concern, that brings you into real close working with the council and the mayor.

Hayashida: Yes. But at the same time, we have floated revenue bonds in the past; so, it's not that we cannot do it. And, since we can set the rate, we have full authority to float revenue bonds.

Sparks: One other line of questioning. This is for Mr. Hayashida, and I guess for any of the others, do you have any situations in which you can't supply all the water to all the areas that want water for development at the same time, and you have to choose a list of priorities and who goes first, and so forth? And, do those kinds of policies get made at the water board level? Does that happen?

Hayashida: Well, when I first got there, we had some problems in Waianae and it was because maybe the planning wasn't up to snuff. Today, we don't get into those situations. We had a very short time where we had a moratorium in development in the Waianae area, but by developing some of the sources, we were able to lift the moratorium. And since then, we've been putting these exploratory wells and things in prior to those...I mean, in sufficient time so the development can take place.

Sparks: So, you're saying that whenever the zoning and all that is in place, and the developer's ready to go, the water is always there.

Hayashida: Generally.

Sparks: Nobody gets slowed down by water...

Hayashida: Let me explain this way... Like Campbell Estates right now has a lot of developers like Horita; when they come in to us, because they can't wait for us to proceed...generally, they proceed on their own. At the time, they tell us "we intend to develop these and dedicate to you." When they do that, they have to meet all our standards and so generally they finance it themselves, and then turn it over to us.

Sparks: And that's worked out with your water department and negotiating with them...

Hayashida: But, we would assist in the source developments as necessary.

Sparks: Does that happen in the other counties?

Sato: Yeah, we had a similar situation in the Poipu area, which had tremendous growth, and we couldn't keep up with the growth as far as the availability of water. Now when it got down to the point where we had just about enough water for about 300 more... additional more homes, the water board set a moratorium in that area; we had a public hearing and went through all the legal procedures, they set a moratorium. And, within the moratorium they stated that they would allow subdivisions of up to four lots, if I recall, and multi-family units of up to eight multi-family units -- apartment house, or something like that. And, the intent of this was because you have families who do want to subdivide their land to give to their children, or to provide housing...apartment house, but it took away water from the big developments. And finally, we said until we can develop additional water sources; and, we didn't have the money to develop that additional source, so finally the same thing happened, like what Kazu mentioned with Campbell, in a sense that there was this one development that came in that said they would be willing to develop the water source, develop the storage, the water lines...everything, and turn it over to the water department of the County of Kauai. So, we signed all the agreements; the agreements stated that they would have to come up with a well that develops at least a million gallons a day. And, if that first well that they drilled will not develop...was not sufficient, they would drill another one until they do reach that capacity. And, they did; they were successful and they built the whole system and turned it over to us. And then, they could have their development approved.

Tengan: On the Big Island, a good example would be the Mauna Lani/Mauna Kea development. The water systems to support those activities...those resorts...were financed solely by the developers, and turned over to us for operation and maintenance. And in that case there, the developers worked with the county and the state in developing the water resources; and more with the county in the financing of it. The developers agreed with the county whereby the county would float the bond, and the developers would meet the bond payments.

Hayashida: And, I would add one more thing; that developer could be a private developer, it could be the state, and it could be the city...in the city housing like Westlock Developments, they develop the water and turn it over to us; the same as the state in their ...in a couple of their developments, they develop the water and turn it over to us.

Sparks: You see, my concern is that when you tell me that this keeps you unentangled from politics, it doesn't seem like it does, to me. It seems willy-nilly, because the water's not that plentiful or that cheap to develop; there has to be some level decisions made about who gets water, when, and how much, or what kind of an arrangement they get if

Sparks: (Continued) they finance it themselves. Those are important decisions for the community at large, and it really is a little disengenuous, I think, to say that "we just supply the water. Planners decide what's going to happen where." You get very heavily involved in when it happens, when you are dealing with the water; that itself is an important policy decision for the whole community. So, I'm not at all convinced that we should 'unhook' the water department from what you're calling politics...the mayor and the council...completely. I understand the arguments for continuity, and the fact that politician's are so timid that they frequently don't want to make those long range expensive decisions. And, right now, I'm kind of convinced that the way ours is set up handles both of those concerns fairly well.

Hayashida: I'm not saying that... Every county has it's own needs and everything, and to say that we're not...we're completely apolitical, I think, is a misnomer also; like you say, because everything has to be coordinated. We're a public agency, and in the future as we look at our water resources, reclamation of waste water and those things, we cannot do it alone; we have to work with the county...public works department, and all those...

Sparks: And that's what interests me about this semi-autonomous stuff.

Hayashida: So, but it's more in the upper level politics that...say if we were controlled by the city budget and all nine councilmen put in...pork barrel all over the place...I don't think we can keep up with a lot of the servicing of different areas; like Kailua doesn't have a source, Hawaii Kai doesn't have a source, right now they're developing... Ewa doesn't have a source; we have to bring water around and integrate the whole system. And, by being able to do this as a single-minded agency to get the water system sufficient, and to develop sufficient sources, I think we were able to move in expeditious...to get the water there all the time: but, in conformance with the plans that were set by the city council. It has to be in conformance with that; otherwise, it doesn't work. You're right.

Craddick: One thing on that complete separation... We're only asking for the right to set our own rules and rates; keep in mind that the council and mayor still have the ability to kill any plan that we make, because any plan that we make still has to go to the mayor for approval and to the council for approval. We are a nonprofit agency, so the fear of somehow the rates getting out of hand is, I don't think, a valid one there. So right now, we're in...I don't know if I'd use the word double jeopardy...but, that's a good one there...on the rules, rates, and the planning. And, as far as the planning area goes, there's no argument with that there because of that relationship there as far as planning goes, and maybe that is a fine one to have in there.

Fabrao: I'd like to direct to all of you, I guess... These developers who help to develop the water resources for those areas that they want to have water in...for to have approval; when they make these agreements, is there stipulated numbers or amounts of water that they would like for the development? How does that work in the supply of water to the rest of the community?

Hayashida: On Oahu, anyway, we're on a first come, first served kind of situation; and the only way we will commit water to any developer is when they come in with a subdivision plan and a building plan. Once they get those permits, if they cause those permits to lapse, our commitment to them lapses also. So, if they come in for increment one, that's all they get; they may have ten increments to get to the end, but if they come in with subdivision plans for increment one, that's all they get committed to. And, at first, we had all kind of furor in the community, saying "hey, they're not going to finance my project if you don't give me all the water for that." But because, especially on Oahu where the supply is limited, you know, we didn't want a guy to have the power to reserve

Hayashida: (Continued) water, because he has all the money to drill all the wells and save all the water for himself. That's not the way a community develops. Now, let's say if there's a project that is put in for low income housing by the government, generally the county government decides there'll be some kind of subsidy...they'll subsidize it so that thing can move. So, like you said, it's not apolitical, it's got to have some politics involved.

On the County of Maui, you have so much you have to do to meet the safe drinking water act...they themselves cannot raise that kind of money; otherwise, if you say "hey, board, you have to do everything and you have to raise all the money," I can see the rates going like this. But, they have the ability to go to the state government and to the county government and come up with a reasonable plan so that, you know, the rates to the customers will not go sky high. Otherwise, there's no way that you're going to keep rates at the reasonable level.

Fabrao: Second question, sir. My second question is when the developers turn over the systems to you, what is the cost factor to the city or the county? It's just turned over for maintenance? No cost?

Hayashida: That's right; but once we get it, we have to operate and maintain it.

Sato: I'd like to make a point on that, too. The situation in Poipu, when they developed the source, storage, all the water line, their needs were for a 220 unit condo building; and the capacity of the source was equivalent to supply 1400 homes with water. So, when they turned that over to us, they used 200 of that and we still had 1200 more units we can supply with water with that source; so, it was an asset, really, to the water department and it provided a storage tank to be used. Because we don't want to take over a small water tank that's only for that development, so we require a much, much larger one...this one was a million gallon water tank; their needs would have been maybe about a hundred thousand gallons, but we said then it would be a liability if we accepted maintenance over just what they can use. This way they help the whole community area by providing additional storage and source.

Fabrao: Another question; Mr. Craddick, if Maui County were...has there been any situation where we've had any agreement with any developers or they've turned the system over to the county?

Craddick: Yes.

Fabrao: And that's been at no cost to the county, other than the maintenance?

Craddick: No; I'd like to say that that was the case, but no, the agreements haven't been so good over here.

Fabrao: They haven't been...

Craddick: No, the agreement hasn't been good.

Sparks: What was the question? I'm sorry...

Fabrao: My question was the same as you directed to the other gentlemen; if there's been a situation in Maui County where a developer has turned a system over to the county, and at what cost. And, he said the agreements were not as good as the other counties.

Craddick: Probably, had there been the water there to develop that was originally

Craddick: (Continued) envisioned; when they made out the original agreement they thought there was a lot more water to be had than there was, so over the life of the agreement, the ground floor rules all changed. Then it became... This is still a subject ongoing in the water department right now...unresolved.

Cockett: This is a different question for Kazu. I understand that there's a desalination plant down in the Campbell area...I read where the EPA got after them for doing some dumping or something; they're being fined. What's the purpose of that desalination plant? Who's going to be using that? Is it cost effective?

Hayashida: Well, we see down the road that the natural water to serve...to develop into the future, might be limited; and, at that time we'll have to go and solve those things. And, rather than come up at that time with the research, you know, we talked to the state and they felt they would like to conduct the demonstration project; which would demonstrate not only to Oahu, but to all counties that may have to get into that source. Different technologies have been used throughout the world, but they have to see what our water... can they treat our water as efficiently, because we have different minerals in the water. And, so that's the purpose of the demonstration; and it will also give us a chance to operate it and see what the costs of operation would be. It's going to be high; we've already told the council "hey, when we come to that, it's going to be expensive."

Cockett: Is it still experimental?

Hayashida: It's still experimental; five years is the experiment, period. At that time, we'll have to decide whether we'll accept that into our system or not.

Chair Nakasone: Any other questions?

Dodson: Mr. Craddick, we had testimony earlier today by a citizen who has, apparently for the past ten years, been going through the system trying to get some property up in Kula subdivided. And, unfortunately, I've heard this story over and over by members of the community up in Kula, where they've attempted and gone through all the appropriate channels in the county...meaning the department of planning, public works, and so forth...getting all their permits; only to come to your department and be turned away because of the water moratorium, or to not even be that specific -- not even be turned around, but given a maybe, given a might, given a possibility -- and then to be turned down later. I'm thinking, and my thinking is that if the board of water supply came back into the county, and perhaps the procedures for the ordinary citizen to come to the county building to get his permits might be much simpler, and he might know at the beginning that he cannot get a water meter, so therefore there is no need to spend ten years to get all his permits from the other appropriate agencies. What are your feelings on that?

Craddick: I don't think that it takes ten years to know that you're not going to get water, so in that specific example, I don't know. I know there are a lot of people on the upper and lower Kula line that are subject to the Kula Rule, that are not able to subdivide unless they make improvements on the line. And, that is one thing that...going back to this rate thing here, without going way into it and getting off the subject that we're here for...is a problem that could be resolved by us being able to make our own rules and rates.

Dodson: And how will that assist you making your own rules and rates...how will that assist that farmer in Kula to get a water meter quicker?

Craddick: Because then we'd be able to treat everybody equal, and a person wouldn't have to put in \$50,000 in improvements in order to get their one inch water meter.

Dodson: And, that's what's happening now, is that people are being...

Craddick: Only the ones that have big money and can make the fire improvements in order to subdivide can get water up there, essentially.

Dodson: And, where do we put the blame on that to?

Craddick: The Kula Rule was passed back in 1977, when the board was put back under the mayor.

Hayashida: I don't know; maybe it's an economic kind of decision, because if people wanted to build out in remote areas...and they say "county, I pay taxes so you build a road to my house, or you build all this water line to my house." And then the county says "hey, that's not our obligation." If they put it in, there will not be enough money in the counties to get that done. So, sometimes you have to tell this guy "hey, I can't provide you that service."

Dodson: Unfortunately, Kula is not a remote area.

Hayashida: No, no; but then there are...even in Kalihi, for instance, they want to subdivide, they have to put in hydrants if fire protection is inadequate...and usually for two lot subdivisions...when they have to stretch it like 300 feet, they have to make an economic decision. So, it's in the vicinity, but still it's a very expensive project they have to undertake. So sometimes it gets into that...unfortunately, that's the situation. If there is an adequate system in that area, there should be no reason why they cannot get water meters.

Dodson: My question is really though that if you have the opportunity to make your own rules, and to make your own rates, how is that going to assure the moratorium in Kula will be gone; that residents up there will be able to get water at the same rates that people in Kihei, and the people in Makena or the people in Wailuku get?

Craddick: Because we would treat them all equal; so even though up there would be being subsidized, they are at least paying something. Right now, they don't pay anything...and they want to have water. So, you know, as long as we're kept from ever charging them anything, then nothing is going to be done up there and there's no ability to add new source up there. As soon as we're able to treat them equally with everybody else, then even though they are maybe not paying as much towards getting it, we can at least use money from other areas to help fix that situation up.

Dodson: So the rest of the island will subsidize the pipes and the drilling, and so forth, up in Kula.

Craddick: It's pretty much always going to subsidize that, until finally the public rises up and says "no, we're not going to subsidize anymore," and in which case then, there may be a problem for farming, but so far that hasn't happened.

Yonenaka: I have a couple of questions. As far as the Kula Rule, who made the Kula Rule? Was that council who...

Craddick: It was in 1977...that was when it first started.

Yonenaka: The county council passed that?

Craddick: The...right there I'm not positive if the board was semi-autonomous, or under the mayor right then. I know it was changed right about that time.

Sparks: January 1, 1977. [LAUGHTER]

Craddick: It was under the...that's what I have in here; it was 1977, but I don't have the exact day. And then the rule was signed mid to late 1977. Paul should know; he was right there.

Mancini: The board was semi-autonomous at that time; Mr. Nobriga was the board chairman, as I recall. At that time the rules and regulations were subject to public hearings, with signature by the mayor, Elmer Cravalho.

Craddick: You were right there...your signature is right down on it too.

Dodson: So that means the board imposed the moratorium with the approval of the mayor?

Craddick: That's right.

Yonenaka: So the board can take away the moratorium then, right now, correct?

Sparks: With the approval of the mayor.

Craddick: But, there's no way we could do that without having rates up there to add new source. It would be nice...

Yonenaka: Well, yes, but I'm trying to figure out where this rule came from. Do you have any kind of schedule as far as when the moratorium would be over? Or a plan to... I mean, is there any kind of... Is it like, well, we have no idea? Is that basically what it is?

Craddick: I would say as soon as we're able to add new source up there, that rule would go by the wayside.

Chair Nakasone: I seem to recall that the moratorium has an expiration date; I recall them coming to the council and saying that thing has to be renewed again.

Mondoy: Somebody did go in to extend it?

Takabuki: Many times.

Chair Nakasone: Every so many years it's extended, as far as the moratorium is concerned.

Craddick: It currently ends on March 21, 1993.

Yonenaka: One more question. On your communication you sent to us, basically what you said on the last line is that you want...you "urge that" we "give the board of water supply the same degree of independence with respect to" et cetera, et cetera, "that other boards of water supply throughout the state have." And then you sent a comparison chart. There's three areas that you don't have what they have; and actually, there's only one... adopt rules for conducting business, including rates. Is that all you're looking at?

Craddick: That's really...we would be happy with that; as far as the plans being subject

Craddick: (Continued) to the approval of the mayor and the council, that I don't believe is a burden. I mean, if they really want to stop something, and there's a valid reason for it, you know, I don't feel bad if they stop something.

But, to be able to control the rates and thereby prevent people from getting water is...and then it shows up as us not doing our job, I don't think is right.

Yonenaka: One of the things that you don't have right now is that you don't review the state and county general plan, and submit the review and water plan to the mayor and the council. You do not do that now?

Craddick: We have to follow the county plan, and there is a provision in there for that. Kauai's is just a little bit different than all the others, and that's why I put that in there. They make a review of this, and even though the mayor and council don't have the right to approve or disapprove of it, they submit it to them for review. And, I'm not quite sure how that function works there; Ray would have to fill you in...

Sato: We're following it...we're trying to provide water for the county general plan to begin with, so any time we get an update about what our general plan is, we submit it to the mayor's office and to the council.

Craddick: And, I would presume that if something came up that didn't match, they would let you know.

Sato: Yeah, they can...and it's happened before where the previous mayor would come before the water board and testify, like any other citizen, and testify against a certain project, and provide his justification of why they're disapproving. And then, in most cases, if the board feels that they agree with his testimony, they'll go along with it... just like any other citizen.

Yonenaka: One more...if you look at the general plan, or the county general plan, do you make a determination at some point, by looking at the plan and saying "we cannot accomplish this currently under the system we have now?" for whatever reason; and is that communicated to the community, the council and the mayor?

Craddick: Given the amount of water that is here on Maui, it's not a matter right now at this point of not having water to meet the plans that they have; it's a matter of having the infrastructure -- of getting the water from where it is, to where the...to where it's required.

Yonenaka: So do you have a situation where you cannot possibly do it, let's say in five years or ten years? If Kahului is looking at expansion of Maui Lani, there's an increase in water; and Maui Lani right now is predicted to be on board in five years...

Craddick: Right now without the ability to set the rates, there are many places that won't be able to have water. I mean, right now we... I don't know...I don't want to get into that rate stuff there...it's really not what we're here to discuss.

Yonenaka: Does the council know about this? And the mayor knows about this?

Craddick: I think they know, but this is an election year... [LAUGHTER]

Chair Nakasone: Victor, you have a question?

Reyes: Mr. Chairman, I don't know if giving more autonomy is really the answer;

Reyes: (Continued) because the testimonies we have received so far range from the water supply...board of water supply is under the mayor on the Big Island -- under direct supervision -- although it's not being exercised the way it's being abused; to two counties who are semi-autonomous and they are pretty successful. And, I think the problem with it... what we have now in Maui, is because the board of water supply has been directly under the mayor's control, and then semi-autonomous; I mean, there was a seesaw regime. And, I think if it's given time to work, given the success of the three counties...the three that we've just heard... They are under the control of the mayor, but they set their own rules. I think what struck me is that the kind of people you have in the board...seems like community minded...the right kind of people; the relationship that they have with the administration and the council, the legislative body...

Chair Nakasone: Victor, can I interrupt you? Do you have any questions for the members that are testifying today? We can discuss this...

Reyes: Okay; I don't have any questions, let's go on. Let me finish one more observation I made... Because they're looped with the planning process, then it's better and that's how they're able to accomplish and keep up with the developments in their own communities. So, Mr. Chairman, let's move on; I've no more questions. I mean, I don't have any problem with that; let's move on.

Chair Nakasone: Someone else might have questions. Anne, you have a question?

Takabuki: I want to ask David Craddick, has the mayor ever refused to approve a set of rules? Either the current or the former mayor?

Craddick: Not directly; no, I can't say that, not directly.

Takabuki: Not...

Sparks: You remember, you're not political. [LAUGHTER]

Craddick: Well, let's say it was made known to us that if we did submit it, that it would be rejected. Let's put it that way; so, there was no sense in submitting it.

Cockett: We're talking about rules or rates?

Takabuki: Rules. Rules, which includes...

Craddick: Oh, excuse me; I'm talking about rates.

Cockett: What about rules?

Craddick: No; no rule yet, no.

Dodson: I just have one more question for clarification. We're going to go out to public hearing in a couple weeks, and I know this question is going to be asked if this amendment does go through. Are you telling us that, for the past fifteen years, since you guys have been semi-autonomous...

Craddick: The past year and a half.

Dodson: I mean, year and a half; that your ability to...or your inability to lift that moratorium in Kula is directly related to your inability to set your own rates? No other

Dodson: (Continued) reason? Rates and rules?

Craddick: In my estimation.

Dodson: In your opinion; so, if we go out to the public, and they say what do you mean the board of water supply wants more autonomy...they want to be able to set their own rates, we can turn around and tell them "well, this means you might get water, or you will get water up in Kula"?

Craddick: Yes. There are a lot of people that don't want that.

Chair Nakasone: I guess I'm just following up on what Anne asked about this present Charter amendment...8-11.8. about the rules and rates. Has the mayor or the council ever used this section of the Charter? I mean, it has to be approved by the mayor before any action by council...

Craddick: To refuse?

Chair Nakasone: Yes.

Craddick: In the last...since it became semi-autonomous, early '89...before I got here, I don't know. But, I know since I've been here, no.

Sparks: One really quick one. This is interesting, and this is for all three of you. Can you think of any situations where your water department, with approval of your water board, did something significant for your counties that you and your water boards were pretty sure wouldn't be sellable to your elected politicians? In other words, if you had not had your semi-autonomous status and your ability to set your own rates and rules, and go out for your own revenue bonds without the approval of...or at least some kind of disapproval abilities of the mayor and the council, it wouldn't have been done; but you were able to do it because you have that much autonomy. Can you think of situations like that?

Sato: I have a good example. We've had facilities charges for several years now, and the facilities charges we assess developers when they develop based on their water demand. The county has been looking at the...some kind of infrastructure fees, they called it -- impact fees; the county has been looking at this for at least eight years that I know of, and it still isn't off the ground. If we had to go to the county council for our facilities charges and source development fees, they'd probably still be waiting. Maybe.

Hayashida: The thing is, you as a water agency... Let's say the development passes, and currently the developers wanted to develop this...people wanted to develop in this area... So, you'd figure all the things that you need to do; and then, you don't have the right to set the rates to bring in the income to get the job done. I don't know how you do it. If the rates are set less than that then, then you're going to get something less than that. I don't know how you run a business if you say this is what your expenditures are, and yet you cannot set the rate...your income.

Sparks: But, you see, I would imagine that if you had to get the mayor's approval, and maybe you were facing a veto by a council in a situation like you just described, especially under the leadership of someone like yourself, it would be such a reasonable thing and so well defended that it would sail right through. Even with the mayor's...

Hayashida: I think you can, you know, we can talk like this rationally... I'm talking about what's rational and what's practical...that's two different things; unfortunately, that's our experience. You know, we find that we... I think you would find that we have not been

Hayashida: (Continued) in conflict with the council or the mayor, and we've been able to work together. All I'm saying is theoretically we can make everything perfect, but practically sometimes it doesn't work.

Mancini: I have just a few quick questions. Looking at the Charters of the other counties...accordance with the administrative procedures act, it requires that all rules and regs of administrative bodies be approved by the mayor; but is it correct then, that none of the other counties the water boards' rules are approved by your mayors?

Sato: We just file ours with the clerk, I think...

Mancini: The mayor doesn't sign them?

Sato: No. I think those go to the lieutenant governor's office...

Mancini: Earlier on the City and County, you indicated that your Charter seems to be strongest of all; and I was wondering what sections in your Charter are not included in other Charters, and which ones you feel are important.

Hayashida: It's real defined...the duties and powers...

Mancini: It's more elaborate...

Hayashida: It's very, very clear and they don't get into the operations phase.

Mancini: It seems that it's more elaborate than the other counties; less by implications. But basically the general powers are about the same...

Hayashida: Yes, so generally the board members don't go down to the plant operators and tell them how to run the plant. They tend to stay with policy matters.

Chair Nakasone: Okay; any more comments? If not, gentlemen, thank you very much.

[RECESS/RECONVENE]

Chair Nakasone: Okay, we'll reconvene. The last time we adjourned we were at Jim's committee's recommendations; this I believe was Chapter 6 on parks and recreation...

Cockett: Mr. Chairman, from the minutes...going through them, before we accept them, there were some things hanging from the last meeting we held; one in particular, was the proposed wording of the "appoints such deputy prosecuting attorneys and necessary staff"...because we kind of deferred that Thursday. But the wording was to include investigators...

Chair Nakasone: Oh, okay.

Cockett: Who shall have all the powers and privileges of a police officer of the county. The recommendation was to accept the proposed wording, and we need to...

Chair Nakasone: And, your concern was the all powers...

Cockett: Yes; and I think you had an explanation for us, Anne.

Takabuki: I checked into it a little bit, and learned that the reason that that might have been repealed in the first place was because of a problem with the former prosecutor

Takabuki: (Continued) in Honolulu, and his delving into areas on his own against, I guess, the interest of the police department. So, that might have been the reasoning in the first place that they repealed it. And, I called the chief of police here to ask him if he had a particular concern if we put the language back into the Charter; and he indicated that he did not. He felt that he was very comfortable with the prosecuting attorney's office, and never had a problem with it. It doesn't mean, I think that someone brought up, that it may not cause a problem in the future, but right now it seems to do more good having the provision in, than harm. So, for myself, I guess I'm satisfied.

Cockett: Okay, then the recommendation is to accept whether to implement this wording in the Charter.

Chair Nakasone: 8-3.3.a.

Dodson: Is that a motion? Do you want to make that into a motion?

Cockett: Yes, well, this is what my committee has proposed so, is there a motion to accept?

Fabrao: I so move.

Chair Nakasone: Is there a second?

Yonenaka: Second.

Chair Nakasone: Okay, the motion is as identified in the Committee B report, to add to the current Charter provisions to include investigators who shall have all the powers and privileges of a police officer of the county. Discussion? Al.

Sparks: The question arises in my mind...what are these investigators? Is there any... Who are they? What kind of training do they have?

Takabuki: Here in Maui County, they're both former police officers.

Sparks: Is there a requirement that they be former police officers?

Takabuki: I don't believe so; I just think they have to have investigatory background experience. But I don't think...

Sparks: So, Sam Spade could come into the county, and because he is an investigator... a private eye or something...

Takabuki: With enough experience, yes...

Chair Nakasone: I believe that's under a classification of civil service.

Sparks: So there's a job description, that they have to have a certain amount of certain kinds of experience and training?

Chair Nakasone: I stand corrected; I'm not sure whether they're appointed...

Takabuki: I think they're civil service.

Cockett: Excuse me; who's the fellow from the prosecutor's office that gave us a

Cockett: (Continued) statement earlier?

Takabuki: Jim Takeyesu.

Cockett: He explained when he was here for questioning, and I think everybody accepted his explanation. I did.

Chair Nakasone: His position as deputy would have a classification, though, whether appointed or...

Sparks: Is the police department in favor of this too?

Chair Nakasone: According to Anne...

Takabuki: Well, they're comfortable; they didn't propose it but they don't have a problem with it.

Mancini: Because what you're doing, it seems to me, you get these powers that are in a police officer...the police train these people, and invest them with the powers after training...that they can arrest people, et cetera. And then all of those powers are jumping over to another department, and I guess...

Chair Nakasone: That was our original concern.

Cockett: He also did mention, Mr. Chairman, the fact that now if they had to go pick somebody up in the mainland, that a police officer had to go along with the investigator; whereas he could go alone, by himself.

Dodson: My own personal experience with the investigators at the prosecutors office is that the ones that they currently have are very well qualified.

Chair Nakasone: They are former police officers.

Dodson: They are former police officers; they know the boundaries, they know their limits, and they would not just go out into the street without some sort of authorization or some sort of reason to arrest a person, or carry an arm, or anything like that. But, that's not to say that two years from now when they resign, or when a new prosecuting attorney gets in there and appoints someone new, that they may not just get somebody that will have that kind of power that goes to the head; you know, I don't know but...

Mancini: Don't you somewhat accommodate those problems if you one, talk to personnel services and ask them in the recruitment process, or the civil service process, to make sure it's the criteria that they have the requisite training, to have these powers. And second, in the police department to have them comment on it in writing, that actually they are supportive and that they have no problems with it. And somewhat, if you get both of that in writing, I think you're pretty much protected...that you've covered the qualification problem, the recruiting classification problem by personnel services; and the police power problems that you don't want to be left dangling with...Howard out there not wanting these people to have police powers...

Dodson: Well looking at the language as it stands right now, it says "appoints such deputy attorneys, necessary staff and investigators," if you take out all the rest of the verbage; and that would mean that they appoint these investigators. That they do not go through civil service; whether the procedure is that now, the language now looks to me like these investigators would be appointed.

Takabuki: You can be appointed but civil service. I think they are, but we can check...

Mancini: Even if they're exempt, they would have to meet the qualifications.

Takabuki: Right; sure.

Mancini: Even though an attorney is exempt from civil service, he needs to have a license to practice law.

Sparks: What are the qualifications; who sets the qualifications? I wish I had thought of these questions earlier, but...

Takabuki: It's the various personnel directors...would have to review it; it's generally a statewide type of classification.

Cockett: Mr. Chairman, this is by recommendation of the prosecuting attorney and wanting this for his operation...

Chair Nakasone: I know but... Victor?

Reyes: Just a thought; would...maybe Anne can answer the question, too...would it dilute the intent of this request to remove the word all? In other words,"to include investigators who shall have the powers and privileges of a police officer..." instead of the all? Would it create more problems?

Dodson: It seems to me it wouldn't make that much of a difference; having power and having all power... Maybe we could add something into that...and...

Takabuki: Powers necessary to...

Dodson: Or putting it within the job description, as outlined by personnel services; or, you know, let them have these powers as long as they comply with whatever rules are out there regarding the job. And that would emphasize the fact that there needs to be rules.

Takabuki: How about "to include investigators qualified to exercise the powers and privileges of a police officer"?

Dodson: That I like even better.

Mancini: The problem is that if they're qualified, that means they preexist with those powers. And then, it not only qualifies them, you'd have the criteria; because then you go to Howard and he says the criteria to be a police officer is you have to go through recruitment training, et cetera...there may be two qualification systems. The question is what is the criteria?

Chair Nakasone: Paul, how would you propose an amendment that would limit...have some provisional limitations on powers?

Mancini: I'm not sure that the way it's worded is not okay; I'd just make sure that one, personnel services -- when they recruit, or when they set the job description specs -- makes sure that the specs include all of those qualifications so that they're trained. Is somebody comes in and they could apply for something, and they maybe don't qualify, but they could be trained; and that's how the police get people -- they train them, and then after training they're qualified to have these powers.

Chair Nakasone: Are you saying this would be alright, providing they have some written support from the police and personnel?

Mancini: What I'd do is...maybe I could do it for you, or someone could...I'm not sure it should take a lot of your time, is somebody should just talk to Howard about it, and ask Howard to write a letter supporting it...to deal with the issues of qualifications, and who's the personnel services director now?

Takabuki: Ray Kokubun.

Mancini: Ray, right. And, Ray doing the same thing, and then get it documented. Then you can feel fairly secure that it's not going to create a problem. And, it may not; it's just being a bit cautious at this time.

Sparks: From the personnel department's side, we want...what I want anyway, is some assurance that there are some qualifications, and that it makes sense, right? If I had that assurance, I'd have no problem just going with it. I'll vote with it now, if somebody can assure me that we'll get something like that.

Mancini: I think it's good caution, only because you give someone the power...the police powers like that, and you don't know where a loose cannon may come out.

Fabrao: Would it help if you put a clause in there stipulating that kind of training?

Dodson: I think that gets too much.

Mancini: Well, I think that's an implementation function, so, and it's probably okay the way it is.

Fabrao: Is there something in the Charter that includes all of the job descriptions... that says for all appointed officials, they have to have the proper kinds of... Isn't it a coverall...isn't there a coverall...

Sparks: Civil service...

Mancini: I would assume that when one is recruiting for an investigator, job specs for the recruiter would include all of those job specs necessary to be a police officer; because you're giving that person, once he walks into the job, all the powers of a police officer. And, as long as Howard doesn't feel that he's going to have a conflict between his police officers exercising them, and an independent department -- over which he has no control -- exercising them, as long as he sees no structural or organizational problems, it's probably okay. My only other question, which seems to have been answered by the other counties or Jimmy, is can the Charter on its own create this power, without it emanating from state statute.

Cockett: The committee did discuss that, and I believe it did show up in the Charter of the City & County of Honolulu.

Chair Nakasone: It would seem logical that the police department and the prosecutors office would be working very close together, and it's a...things like this would be fairly accurate. In fact, it's a provision that they're always working together.

Mancini: I don't disagree with that; I guess I'm just being overly cautious.

Yonenaka: Could you have wording that says subject to the agreement of the police chief or...I mean, get everybody into it, you know...

Mancini: I think it's okay; it's just that what you don't want to happen to you is you go out in the public and then all of a sudden the police department says "hey, nobody contacted me. This really doesn't make sense...you've got two police departments here." It's probably not going to happen, and you don't want that to happen, that's all.

Dodson: I have no problem with going ahead and voting on this...in favor of this, because like I said, this is all preliminary; and, if we find out that personnel services doesn't have a job description that the chief of police can live with and that we can live with, then we can always come back and say...

Sparks: I agree; I agree with that.

Chair Nakasone: If there's no objections, that motion would include the proviso where we have some written statements from the police department and personnel in regards to supporting this proposed amendment. Okay? Any objections to that?

Dodson: Well, that's fine; like I said, I would just go ahead and just do it the way it is; and then if we have a problem once we get that information, which we will get...

Chair Nakasone: Yeah, that would be just supporting documents for this proposal; it's not part of the amendment itself.

Sparks: With the proviso that what we get from the personnel tells us something about the qualifications that these folks are supposed to have.

Dodson: It will have the job description and qualifications.

Sparks: On that basis, I'll vote for this tentative final decision. [LAUGHTER]

Chair Nakasone: Any objections to the motion? No objections to the motion; so moved.
MOTION CARRIED.

Dodson: Don't we have to do a roll call? I thought we did.

Cockett: Well, there's no objections, so it's unanimous. Let me continue; on Chapter 4 on the same page. We got hung up on the department of finance; and if you'll refer to your minutes on pages 14 through 17...we had a long discussion last Thursday, and the hang up was the qualifications of the finance director. The hang up was the qualifications and we did say we would look into it, and I'd like to refer back to that again because we left that hang. We need to come up with some kind of recommendation as to the qualifications of department heads, whether it be the finance director or...although we had voted for the no change in the Charter, as far as appointment is concerned. But here again, Bob, you brought up the question of qualifications.

Mondoy: Where is the page?

Cockett: It's page...well, it's the Article 8 that we're working on; we stopped down here on department of finance, but you have to refer back to the minutes of last Thursday, and it's from 14 through 17...that we kind of left hanging what we're going to do about qualifications.

Chair Nakasone: The Chair wants to suggest a possible option which would be under Chapter 9, department of personnel service, that that 8-9.3. Powers, Duties and Functions -- add probably another [sub]section 4, that would more or less describe that that personnel department would identify some form of classification for department heads and deputies.

Cockett: Of course, Mr. Chairman, if they come up with qualifications like that, will we act upon it or accept it, or modify it, or...

Chair Nakasone: All it is, is they will classify it just like any other position which is exempt from civil service, and that would be a good planning for...

Cockett: In case there's some more appointments down the line.

Chair Nakasone: That won't require confirmation by the council; just some guidelines for having a little better description of what are the qualifications of department heads.

Dodson: So what happens if the mayor appoints someone and they don't meet those minimum qualifications?

Chair Nakasone: Well, this provision can somehow identify with the personnel department saying that, you know... To me, I would say if they have identified qualifications for specific department heads, for example finance, in some terms of minimum requirements in finance, or in accounting, or in fire...the guy would have to have a certain rank, at least, to be the fire chief; then, the mayor would have this kind of guidelines to look at as far as appointing positions. But, they would be the ones analyzing what would be the best type of person to be appointed; but, it's not mandated for the mayor to appoint...it's just certain guidelines...at least there's reference to what kind of qualifications the person should have. It won't mandate it.

Dodson: If the mayor is short one qualification on a person, that person would not automatically not...

Chair Nakasone: No.

Reyes: Mr. Chairman, wouldn't it still...a civil service department or position, try to control the appointment of...of the mayor, or it would limit the choice...

Chair Nakasone: No. This is not a mandate, it's just...it's like any other person who now works for the county; they are all classified by the personnel department. I don't think we have department heads now classified, in terms of what they do, what kind of qualifications they need...

Dodson: But he's saying it would not be mandated; we'd just say these are some qualifications that we would like to see a director of finance have.

Reyes: My point is, by extension, the department or the civil service department does not prescribe the qualification of an elected candidate, and since the appointment of the department head is by extension emanating from the mayor, you would be kind of proscribing what the person would be in a way that would limit the flexibility of the mayor.

Chair Nakasone: No, it's not a mandate; it's just that we have some degree of classification, you know, based on qualifications. These are certain guidelines that administration can look at to see what kind of qualifications a person needs.

Dodson: I mean, it's like telling whoever the mayor is, "hey, it would be really nice if we had a finance director who had a degree in accounting; but, you do what you want." That's basically what it...it would not mandate and say "well, you have to appoint someone with an accounting degree." It would be saying "hey, it would be nice if you had an accounting degree, but if he doesn't, then that is okay. You appoint whoever you want." This is still the ultimate control over who is appointed to these positions, no matter what their qualifications are...would be by the mayor; but sometimes, it may even be helpful to the mayor to know exactly what somebody in the department of human concerns... what kind of a background they might need for that job.

Sparks: Is that what you had in mind, Bob?

Chair Nakasone: To begin with... [LAUGHTER]

Sparks: Exactly the way she put it?

Dodson: I just talked him out of it. [LAUGHTER]

Reyes: Because, see, a department head is...preferably you want an effective administrator; you'd like to have the background and the training, but you want to have an effective, efficient and good administrator.

Chair Nakasone: Well, that's why you need classification; that kind of dilutes this patronage...responsibilities for error.

Dodson: But, you're saying that ultimately she can appoint whoever she wants anyway.

Chair Nakasone: Yeah, but if there's specifications...

Dodson: If there's some guidelines, it's harder...I see what you're saying. If there's some guidelines, it's harder for her to justify this person who has absolutely no experience...

Chair Nakasone: Right.

Dodson: With anything else, but that this is a political favor.

Chair Nakasone: Right. I like your attitude. [LAUGHTER]

Dodson: I'm glad we're in agreement here, Bob. I like your attitude.

Sparks: I'm just concerned that we're putting in some more stuff that doesn't really have much teeth, or that isn't already, to a substantial degree, in the provisions behind all these department heads. I mean, there are some minimum sort of suggestions in the wording right now...

Chair Nakasone: It's so broad; that's what I'm saying, it should be a little more defined in terms of qualifications.

Sparks: What's to keep the civil service commission from coming up with something pretty broad?

Chair Nakasone: They can.

Sparks: So now, we've got it in two places. Or, now if they come up with something very specific, you're saying they don't have to live up to those specifics, anyway, so... That's one of my concerns; the other concern is...is this doable? Do other places do something like this? I just don't know enough about the civil service commission, and civil service laws, and exempt positions, and so forth...

Chair Nakasone: Actually, it's just...it's not the civil service commission, it's the department of personnel services that would be taking a look at this, and classifies...

Takabuki: It looks like the County of Kauai has something like that with their salary commission. I was leafing through their amendments to the '88...in the '88 election, and I can't tell specifically what offices are identified, because they refer to a section in the Kauai County Code; but it says under the salary commission that "the commission shall review and recommend salaries and minimum qualifications of all officers and employees included in section" dadadada. I'm maybe assuming it, but I would think that it includes department heads; but they have it with the salary commission.

Sparks: Interesting.

Takabuki: Which kind of makes sense, too, because they deal in-depth with the department heads when they try to make recommendations for salaries, and they know, supposedly, what they do.

Dodson: Except, wouldn't that be too late? Because the mayor comes in and she appoints her people; the salary commission comes...I mean, isn't that the way it happened this time? They came in and then the salary commission came on board after the mayor appointed the salary commission, and then they came back and said...

Takabuki: Well, let's see... But, they would just recommend minimum qualifications in general, it doesn't have to be...

Dodson: But what's the point if they're already in?

Takabuki: No, but you're not dealing with any particular individual, right? So you're just saying the minimum requirements for the director of finance shall be this; so even if it's a new mayor...

Cockett: Going back to the present Charter, it says "the director of finance shall be appointed and be removed by the mayor. The director of finance shall have had a minimum of five years of experience in public or private financial position..." That's something that you brought up...bookkeeper...last Thursday. "...at least three years of which shall..." It's in the minutes. [LAUGHTER]

Sparks: I'd better be more careful about what I say.

Cockett: "...have been in an administrative capacity." So, those are your minimum qualifications.

Sparks: I'm not uncomfortable with the way it is now; I'm not sure what we're adding.

Yonenaka: I agree. I mean, I agree with Al. I think I'm worried more about performance than qualifications; and, I don't think the Charter was intended to be...

Cockett: And, just a reminder from the minutes, also, that we did have a long discussion on this and the fact that we also said, in the minutes, that "with the modern communications -- TV and newspaper, and everything else -- there's no hiding place for anybody

Cockett: (Continued) that's not properly qualified."

Sparks: Bob has a different experience. [LAUGHTER]

Chair Nakasone: I do have one comment on that. When you have a lame duck situation, and you limit terms...especially when the mayor has a four year term...

Cockett: The press will take care of that.

Chair Nakasone: The only way you can get them out is by impeachment, you know; because you have four years linked up with the mayor, a lot of things can happen in four years, you know.

Cockett: Well, there's something else in the Charter for impeachment.

Chair Nakasone: There's impeachment provisions, but...

Dodson: Well, why don't we go ahead and vote on this one?

Chair Nakasone: Where are we at now? [LAUGHTER]

Cockett: We discussed the qualification, however we already voted on is position, so we can move on to...

Chair Nakasone: Maybe one more comment, Al, on where else do they do it; I think in some of the documents you distributed to us -- Boston has that provision, where they have to be reviewed by the civil service commission.

Sparks: Appointees... Department head appointees?

Chair Nakasone: Yes; it has to be approved by the commission before...

Sparks: Do you remember... Can you cite that reference? [LAUGHTER]

Mancini: The one who makes the appointment is the civil service commission?

Chair Nakasone: No; let's say the mayor appoints a department head -- that would have to be screened through the civil service commission as well -- if a person's qualified.

Sparks: In Boston?

Mancini: Whether the person meets the criteria stated in the Charter for the appointment?

Chair Nakasone: Well, they establish the criteria...the qualifications.

Mancini: They establish the qualifications, so if you're not friendly with the civil service commission... [LAUGHTER]

Chair Nakasone: You know, that's a screening process to insure that the appointed people have the qualifications.

Mancini: Well, if your qualifications are...let's say if your corporation counsel has to be licensed to practice law for five years; he goes to the civil service commission

Mancini: (Continued) and says "here's my license; look at the date on it." And, all they would do is look at the date on it, and that's it.

Chair Nakasone: I really don't know what their makeup is in terms of review, and so forth, but Al's...all that info that he got, it's in one of them; and I thought it was a good idea.

Dodson: He's just showing off that he read it. [LAUGHTER]

Sparks: He did his homework; I'm impressed.

Chair Nakasone: Okay, Jim, next.

Cockett: Okay, we moved through page 2, and we stopped at the discussion we were having on the last paragraph, proposed wording:

8-5.4.1. Hear and determine applications for variances from the strict application of [any general plan,] the provisions contained within any zoning, subdivision or [building ordinances] sign ordinances.

This was the mayor's recommendation to limit the powers of the board of variances; that was the reason for that recommendation. And, we stopped there.

Chair Nakasone: Paul, could you expand on this...the provisions contained within any zoning?

Mancini: This is interesting; let me see if I understand what the issue is. Currently now, the board of adjustment and appeals has the ability to grant variances to any zoning ordinance, correct? "Hear and determine applications for variances from the strict application of any general plan, zoning, subdivision or building ordinances." So, you've got the building code, you've got the subdivision code, you've got the zoning code -- so you've got chapter 18, 19, 20 and 22, I think is the building code. General plan... that's a strange one; I didn't even notice that that was there before.

Sparks: The recommendation is to take that out.

Mancini: I think that's why. [LAUGHTER]

Fabrao: That and building ordinances.

Mancini: Well, the building ordinances...the idea would be...I guess I don't see the logic for that. The general plan...it would be a little different, even if it said the community plan, and I've had problems with the community plans; but I'm trying to think of a scenario where either the general plan or the community plan would be subject to a variance. The only thing I can think of...and I haven't thought about this very much... is that in the general plan or the community plan you've got a roadway which is designated through someone's property. And consequently, a person goes up and he wants to build on it and the roadway's been stuck in the community plan or general plan, and he can't build because for whatever reason the government has proposed a roadway there. Should he have the ability to go to the board of variance and appeals and say "I should be allowed to build there." Not withstanding that the general plan and community plan states this, but should he be required to petition the council to amend the general plan or community plan. That's two alternatives; there's always a third one -- the question of whether it's always been appropriate to just stick roads on somebody's property in the general plan.

Dave DeLeon: Another possibility would be if somebody wants to...has zoning in the SMA, but he has to get the community plan to match up; and the community plan doesn't match up so he appeals it saying he needs it to match up.

Mancini: But the problem I would have is if they did it once, they would have to do it forever; what criteria would they use, in order to do that? It just seems like it's mis-cast in that issue. Like the City & County, what they do is say "Look, if you've got preexisting zoning, we're going to give you your SMA, whether there's some conflict with the general plan or not." Preexisting zoning...

Dave DeLeon: Honolulu has different requirements...

Mancini: Yeah, Maui County takes a different position; Maui County says, even on the slightest things, "go change the community plan," If you've got zoning which is residential and open space, which is general community plan, they'll say change your zoning to open space; even though there's no open space on the ordinance. The City & County takes a different position. But offhand, I'd say, if that's an issue, it should be dealt with with legislation, not with variance. So, I'd agree to take that out.

The building code...there's often applications of the building code which are subject to variances. What's the logic in taking the building code out?

Dave DeLeon: I think the logic was that it was supposed to be handled by the board of code appeals.

Sparks: What's that? What's he talking about?

Takabuki: The board of code appeals; but I would think that's currently within their jurisdiction now. My impression was that that board establishes changes to the building code, and so forth; they're a technical group.

Mancini: The code of appeals board...that's not set up in the Charter, though.

Takabuki: It's ordinance, I think.

Sparks: That's why I don't know about it.

Mancini: If it's set up by ordinance, then there is certainly an argument that the ordinance and the Charter are violated by dual jurisdictions on it. And right now, you'd have to say the Charter would prevail over the ordinance. It's the organic document, so you couldn't have an ordinance; but then you're bringing up another issue -- should you change the Charter to add the board of code appeals -- adopt whatever is in the ordinance now. Do you understand what I'm saying?

Chair Nakasone: Well, 8-5.4., I think, item 2, identifies the council by ordinance, in terms of your subdivisions...

Mancini: Where is it? Hear and determines appeals alleging error from any person aggrieved by a decision or order of any department charged with the enforcement of zoning, subdivision and building ordinances; provided, that the council may by ordinance confer to another county agency the authority to hear and determine appeals from the decisions of the building official in the administration of the county of Maui building code, plumbing code, electrical code, and housing code, and from any order made by the county fire chief...

Dodson: That's exactly what they did, didn't they?

Mancini: And, the director of the water supply... What is the director of water supply doing in here?

Sparks: I've lost the thought here...provided that the council may by ordinance confer to...

Mancini: This even conflicts with the whole issue of the water board, because you can take from the water director -- jurisdiction away from him -- and put it into another administrative agency...you can take it away from the water department.

Dave DeLeon: I don't think they did it...

Mancini: No, but it sounds like they have the authority to do it; which would be inconsistent with the whole nature of the water department.

Takabuki: Both amendments were passed at the same time.

Mancini: It might be good to get that ordinance to see... But, if you take it out and for some reason they want to change the ordinance, then you've got a void. Right now, the ordinance provides the authority of the council to take away from the building official... I guess the logic of this maybe "Look, we've got a plumbing code, we've got a building code, a plumbing code, electrical code and housing code; and consequently, should we throw all of that technical information to the board of adjustment and appeals...because those are very complicated codes, and you should have maybe more refined professionals looking at the codes." There seems to be some logic in that.

Chair Nakasone: Paul, this proposed amendment is to delete building ordinances, which is all your plumbing, electrical codes, building codes...

Mancini: It seems that if you're going to delete it, you'd probably want to adopt the ordinance, because then you wouldn't have generally a void.

Takabuki: Right.

Dodson: Nobody would be hearing anything on anything, on the building codes and...

Takabuki: There'd be no relief...

Mancini: Well, you wouldn't have the Charter dealing with a structural issue...organizational issue. Here it's addressed by allowing the delegation by ordinance. If you take out the building code from it then the rest of the section and the delegation would be out. And then you'd have an ordinance dangled by itself, without the Charter relating to it at all, which doesn't make too much sense. Is this an administration suggestion?

Sparks: The general plan deleting was, but I don't remember where the building ordinance one came from. Administration?

Mancini: I've never heard of a variance in the general plan.

Sparks: Nobody's arguing on that one...we're past that one. We don't like that...

Dodson: I think we're in agreement on that one. [LAUGHTER]

Sparks: We'd better get it out quick, guys, this is an A&B lawyer, you know. [LAUGHTER]

Dodson: Remember that old conflict of interest question, though...

Cockett: Well, what's the recommendation of the Commission?

Dodson: I don't mind voting on the taking out of the general plan, but I would really like to talk to somebody, or to read this and understand it better before I do the building ordinance part.

Mancini: Wouldn't you want whoever was advocating it to come down and talk about it?

Cockett: Yes; why don't we defer just this portion and move on...

Chair Nakasone: Okay, the motion is to defer...

Mancini: You could vote on the general plan... [LAUGHTER]

Sparks: Before you defer though, there was something else that we were talking about last time, and it had to do with the provisions contained within any zoning... Do they have the right to do spot zoning, or does that limit them to just particular provisions within a zoning regulation?

Yonenaka: Restate the question again?

Sparks: You see, the wording is that the provisions contained within any zoning... that's what you can hear variances...from the strict application of the provisions contained within any zoning. We had this discussion about...well, does that leave room for really changing the zoning, from like R-3 to R-2, or whatever...

Mancini: It shouldn't be, I mean, that's not what... The whole game that's played here is someone is in the zoning code, the zoning code says that your setback has to be twenty feet...that's in the zoning code. And, you go back twenty feet and you're in a gultch, therefore you say my topography is such that the twenty feet doesn't work for me, I need eighteen feet. So, the board of adjustment and appeals would look at it, it's reasonable, that application of the zoning code can be varied because you've met the criteria.

Sparks: Does that wording hold them to that sort of thing, and keep them from doing spot zoning?

Chair Nakasone: Paul, could that be applied, for example, in a certain zone classification of permitted uses?

Mancini: Well, yes; that's a great question. Use variances are, by their nature, should be very rare; and, it's a complicated question. In fact, this was back in the mid-70's when I was corporation counsel, I saw some use variances I couldn't understand...how you can grant use variances because you ought to be changing zoning, not varying the use. So, I didn't spend a lot of time in use variances; and to my knowledge, since then...I think I wrote a few opinions...I don't believe there's ever been a use variance. You've got something called a conditional zoning ordinance, and that says if the use that you want is not in your zone, and you can't find it in any other zone, then you can go up and petition for a conditional use; but, you can't find it anywhere else, because if you could, you should change your zoning...you shouldn't get a conditional. The criteria to get a change

Mancini: (Continued) in zoning relative to use, as I remember the case law, this was fifteen years ago...maybe longer, is that the zoning ordinance has to be almost like a taking. That if you take the ordinance and apply it to the property, you can make no practical use to your property at all; and therefore, the administrative body that looks at it, can't give you spot zoning, but has to take a look at where you are in the community as a whole, and can try to give you some reasonable use of the property. So, use variances are permissible...very rare...very strict criteria.

Chair Nakasone: But this would give the provisions for a variance.

Mancini: Yes; there's two types of variances, there's an area variance...like I said, the twelve to eighteen feet, and there are the use type variances. And, very seldom do you see a use variance. In fact, I haven't seen one... I could be wrong...

Chair Nakasone: What's to prevent a person from going to the board of variance and appeals for a permitted use variance?

Mancini: Nothing's to prohibit him from doing that...

Chair Nakasone: But, that's not the proper channel to do it, right?

Mancini: Well, in most cases he should be changing his zoning, not asking for a variance, unless there's some reason. I don't think, administratively, you can deny somebody filing an application, but the county attorney, in giving you advice, should set the criteria; and, all hell ought to break loose if somebody's granted a use variance.

Sparks: It's starting to break loose, and we're on the tail end of that. [LAUGHTER]

Mancini: Why? Did someone get a use variance?

Sparks: Well, there's a bunch of people concerned about this board doing things that seemed way beyond its proper jurisdiction.

Mancini: Well, the controversy...and I can explain that to you...that arose with the board of variance and appeals, and I think that dealt with the interim zone; and, I would take that...that's a separate animal...let me explain what happened there. In many areas you've got an interim zoning ordinance; that interim zoning ordinance is not a permanent zoning ordinance. For whatever historic reason, you've got many properties and areas in the county that doesn't have zoning; Molokai is almost all interim zoning; Hana...a good part of Hana is interim zoning; parts of Paia and Makawao is a lot of interim zoning; and, it's historic in the sense that when the general plan was developed, zoning was never implemented there. For years, people would take their interim zoning, which I think allows 6500 square foot single family residential lots, and they would subdivide it. At a certain point in time...and this went on as long as I've been around -- for twenty years -- at a certain point in time there was a policy decision by the county that you could not subdivide. And, if somebody had filed for their subdivision...interim zoned...they would get a condition and preliminary approval, and that condition would say "change your zoning." And, say you had interim zoning, and say your zoning under your community plan was one-residential, two-open space, three-park...whatever it might be; that condition would be put on there, and just say "change your zoning." What people started to do was say "this is not fair, that I have to go through a change in my zoning, or even changing my community plan"...especially when there was a conflict. And, what they did was they started to go to the board of variance and appeals; and, they'd do two things -- they would file for an appeal, and they would say "we think the director of public works has made a mistake, because there is no prohibi-

Mancini: (Continued) tion under law for me to subdivide my interim zoned land; there's no moratorium in subdivisions on it; and consequently, we don't think the public works director has the right to put this condition on there. Second, if you think he had the right, we ask you for a variance for it, because we will adhere to every single condition that there is in a residential zone. If you want to put it on, we'll adhere to all of that criteria; just don't cost us another two years to go through the process."

And, that started to be fairly persuasive; and then finally, the council changed the ordinance that says that you cannot subdivide interim zoned land. There's a prohibition -- they created the moratorium -- that didn't exist. Now, I don't think, the board of adjustment and appeals grants those variances any longer; because the council made the policy statement that you have to go through it. Now, that's the history of it and the controversy that I'm familiar with; and, that's where it is today. Now to say that the board of variances was usurping its power...you could argue that there was no moratorium until the council passed the ordinance; you could argue that obviously they've got a right to grant a variance; you could argue that they didn't meet the criteria for the variance... I mean, there's many arguments to be made, but I don't think... Technically, the other question is the interim zoning ordinance isn't defined specifically here -- the intent seems to be the permanent zoning ordinance for the County of Maui. But, is that helpful in looking at how the controversy...

Sparks: The moratorium that you're talking about is the same as the water board thing?

Mancini: No.

Sparks: Or, is it just a council thing...

Mancini: At one point in time, the council passed an ordinance which said that you cannot subdivide interim zoned land.

Sparks: I thought that's what you were talking about...okay.

Mancini: The same issue came up in another context...in ag land, and a policy decision was made that you couldn't subdivide agricultural land until you changed the zoning to agricultural land; and, that may seem to be a rather curious statement, but there was a position that said that even though the property is land use commissioned ag, the county has never zoned it. And people were saying "hey, I don't want to go through zoning property to have it exactly where it is now...it's probably going to take me two...three years time." So, they would ask for variances from that, or appeals.

Cockett: Mr. Chairman, we had deferred that portion to break for...

Chair Nakasone: Let's recess.

Cockett: And may I ask that we get a better clarification of this?

Chair Nakasone: Yes.

Sparks: Can you make any sense of this?

[RECESS/RECONVENE]

Chair Nakasone: Okay.

Dodson: What department do you represent, Dave?

Sparks: We don't need to be executives; we've got the executive spy here with us all the time. [LAUGHTER]

Dodson: Oh, that's what he is.

DeLeon: You guys should be grateful.

Chair Nakasone: Jim, we're still on your report.

Cockett: Okay; we're on page three now and up at the top of the page we have new -- department of waste management; however, we had a long discussion last Thursday, and we decided to change the name to the department of public works and waste management.

Chair Nakasone: I think there was a motion made on that.

Cockett: Yes there was; I seconded it. It's on page twenty-five of your minutes.

Fabrao: But what about the supporting documents, asking for an increase in staff, or that kind of thing; that it's not only the title changed.

Chair Nakasone: I'm sorry, but I think being that it's just a title change, the amendment would emphasize why we are recommending an amendment to the title, which would...

Fabrao: Yes, that's what I meant.

Cockett: Okay, Chapter 6 - department of parks and recreation. Committee B recommended that there be no change. I recommend that we accept that recommendation. If there are no objections, we'll move on to Chapter 7...

Chair Nakasone: Any objections to Committee B's recommendation of no change on Chapter 6? No objections?

Dodson: We don't really need a motion.

Cockett: Chapter 7 - department of fire control. 8-7.1. currently reads as follows: There shall be a department of fire control consisting of a fire chief, public safety commission, and the necessary staff. (Amended 1986)

The proposed wording: There shall be a department of fire control consisting of a fire chief, fire commission, [instead of public safety] and the necessary staff.

The recommendation: referral to the full commission for discussion. Justification: public safety does not reflect what the commission actually handles; their thought was to either expand the commission's duties to include public safety, or change the title to reflect what the commission actually does.

Dodson: I would like to see just the change of title; I would not like to see their duties expand to public safety.

Chair Nakasone: What was that, Sherri?

Dodson: The public safety committee right now, it's not real clearly defined; public safety right now supposedly includes police, toxic waste, environmental protection...all kinds of wide range, you know, anything could go into public safety. I don't think that it was designed originally for that purpose; I think it was designed to...because of the way it fits into this whole scheme...it was designed to be a commission for the department

Dodson: (Continued) of fire. And so, I think the commission should reflect that, and it should be the fire commission, rather than the public safety commission.

Cockett: Mr. Chairman, I'd like to add to that. We did have representation from the commission, and they recommended the change.

Dodson: I'd like to move then that we change the title...change the wording in the section to read fire commission rather than public safety commission.

Yonenaka: Second.

Chair Nakasone: Second by Lloyd. Discussion?

Takabuki: I understand what you're saying, Sherri; I think you're right saying it should be contained. But, fire control deals with much more than fire itself, with marine rescue, and they respond to accidents, hazardous materials; so, is it really correct to just call it fire commission?

Dodson: Well, I think you've got your police department and they have the police commission; you have your fire department, and it should be a fire commission. Whatever the fire department handles, the fire commission will address in that capacity. I think maybe it's just a clarification on my part; it's just that I think the commission itself -- the public safety commission -- is quite confused about what public safety encompasses... Does it go beyond the department of fire?

Cockett: Mr. Chairman, under Chapter 7 - department of fire control, it covers all of that including coordinating and providing rescue protection; it covers the whole thing here. They've asked for some insertions, and I'll allude to that as soon as we get through this first paragraph.

Sparks: Do they do any other kind of public safety besides rescue and fire?

Dodson: Yes, I mean the fire department also handles any kind of toxic spills, and they're supposed to be equipped for that; don't they also handle some environmental protection problems...

DeLeon: But I think the other side of what Al's asking, these guys also handle a lot of civil defense.

Sparks: Civil defense?

Dodson: I thought we had a civil defense commission? Didn't we?

DeLeon: They oversee civil defense at the local level.

Sparks: The public safety commission?

DeLeon: Yeah, the public safety commission.

Sparks: Is that in the Charter? I'm looking for it...

Chair Nakasone: If this amendment goes, then we're going to have to make adjustments to that civil defense agency.

Sparks: That's not in the Charter, though. Is it?

Cockett: No, that's another one.

Sparks: Under civil defense?

Cockett/Nakasone: Yes. [Simultaneously]

Sparks: And so that refers back to the public safety commission?

Chair Nakasone: Right; page 23, Chapter 15.

Cockett: Well, this whole page refers to Chapter 7, and there are some inclusions that the fire chief wanted; and I think maybe we should go through the whole thing, and if we see any questions, we'll debate...or rather...

Chair Nakasone: There's a motion on the floor...

Fabrao: Call for the question.

Chair Nakasone: The changing of the title...

Sparks: So, the basic argument then is that it's just consistent with the term fire department...to have fire commission.

Cockett: Instead of public safety commission.

Sparks: But then what we've got to do... The civil defense people -- do they need a commission?

Chair Nakasone: I think we can delete that provision.

Sparks: We don't need a provision for them?

Cockett: It's an agency, not a commission.

Reyes: I recall also during that meeting, that as an alternative, if they could be given a more specific function under the name public safety commission rather than dealing with fire matters...they would have no objection to it; in fact, giving them more teeth as to their function, but to me if you change the wording from public safety to just pure fire... I know what we're trying to do, it may have some minimizing effects on the actual scope of their...what their doing right now under public safety title.

Dodson: But isn't it pretty specific in 1, 2, 3 and 4...what their specific duties are? They have to review the operations of the department of fire; they have to investigate any complaints against the department of fire; and adopt any rules regarding the fire department.

Sparks: But it doesn't say that they have any authority in the civil defense.

Cockett: No, it doesn't; adding to what he mentioned, I recall in our discussions they're the ones who recommended this because as a public safety commission they were not really in the...acting in that role.

Reyes: They would love to, but they are restricted.

Cockett: And, I think I asked that question of you, Bob, way back...you were in that meeting; and you mentioned that at one time the thought was to move in that direction of public safety, but it never did gel.

Chair Nakasone: Yeah; again, that was to...rather than have separate commissions for fire, police, and so forth...anything that would be directly related to fire or police would be under...

Cockett: Under one umbrella, and I guess the police commission wouldn't want to...

Sparks: Nope; we're not going to change that one. [LAUGHTER]

Cockett: That's the reason why we came back to deleting the wording public safety.

Chair Nakasone: This was a Charter amendment, you know.

Sparks: And yes, it was in '86. Is that one proposed by the council?

Chair Nakasone: Right.

Sparks: Suppose we added a sentence or two here and talked about their other duties... their public safety duties -- rescue, if they had some oversight over rescue...

Cockett: They do; it's number five.

Sparks: That's under the fire chief. Under the commission's duties, if we made it explicit that they had...maybe it's just adding a word or a phrase in there...that they had some duties about rescue and toxic waste, and whatever else they might have; and then go ahead and change it to fire, if it seems more tidy. Change it to a fire commission but make it clear underneath there that it includes the other things.

Dodson: Well, you don't think it does? Because when they talk about the department of fire, that they have to receive and investigate complaints about the department of fire... Obviously, the department of fire handles rescue and all the other things as described above. I mean, if there's a rescue issue that comes up, that's not out of their jurisdiction...because it's all part of the department of fire.

Sparks: That makes sense, too; maybe it's covered.

Dodson: I hate adding stuff, and being redundant, and making it more complicated -- then there's more room to interpret it -- and then, we're in BIG trouble.

Fabrao: Mr. Chairman, I have an observation to make. Under civil defense on page 23, that you alluded to earlier, it says there specifically...the public safety commission, as established in Section 8-7.4. Where does that come in? Then you're going to have to change that section too.

Chair Nakasone: Yes, you're going to have to delete that under civil defense.

Fabrao: Oh, that's what you meant when you said delete? Oh, okay.

Takabuki: I just have one question. Did they say what they do relative to the civil

Takabuki: (Continued) defense agency right now...when they came in? They're doing nothing now?

Cockett: That they supervise the fire department.

Takabuki: But they do nothing with civil defense?

Cockett: No.

DeLeon: Civil defense submits reports to them monthly.

Takabuki: They give them reports on incidents and calls...

Sparks: They give those to the commission?

DeLeon: Right.

Cockett: I don't recall.

DeLeon: They didn't bring it up, they only talked about fire. I sat through a couple of those meetings...Manabu would show up and give a short presentation...

Dodson: And, as I recall, that's all it was was a short presentation.

Takabuki: What's the harm in leaving it, as far as that goes, as an informational thing and maybe something will come up -- a civil defense plan, or...

Sparks: This is a citizen's body that can review complaints...that comes from the citizen's themselves...or anyone else.

Dodson: But calling it a fire commission or a public safety commission, isn't going to change what complaints come in through the civil defense. I mean, that's all we're doing is just changing one word, basically.

Sparks: You're going to keep the civil defense tied into this commission?

Dodson: I don't see any problem with it; I mean, it sounds like is more just kind of a...you know...something that doesn't have a lot of meat in it anyway.

Reyes: Mr. Chairman, if civil defense is tied up to this...you can have tsunami's, you can have hurricanes...and that's not fire...

Dodson: When we have a tsunami, everybody is involved...the police, the fire, everybody. It definitely is part of the fire department, a tsunami...any civil defense; believe me, everybody's going to be involved.

Reyes: Yes, but wouldn't it be more appropriate to just call it public safety?

[LAUGHTER]

Cockett: Mr. Chairman, I think the...we're leaning towards...being chairman of the Committee B, we're leaning towards "it ain't broke." And maybe then, the recommendation is that we do not change the title, either.

Sparks: We've labored mightily and come forth with a mouse before. [LAUGHTER]
Suppose after all this labor, we come forth with another mouse and just add something to the title -- a fire and public safety commission.

Dodson: Wonderful.

Takabuki: That's okay with me.

Fabrao: That's okay with me, too.

Dodson: Let's vote on it.

Takabuki: I don't know why we don't just leave it then, if that's the case. [LAUGHTER]

Sparks: Yes.

Chair Nakasone: Jim, you want to withdraw your motion?

Cockett: Yes, I'll withdraw that, and recommend that we not change Chapter 7 at all.

Dodson: Except that he didn't put the motion on the floor...I did. So, ask me.

Chair Nakasone: Do you want to withdraw?

Dodson: I guess so; I guess I have no choice.

Chair Nakasone: Okay, any objections to leaving it as is, in terms of the public safety commission? No objections? So ordered.

Cockett: 8-7.2. currently reads in part as follows: The fire chief shall have had a minimum of five years of experience in fire control, at least three years of which shall have been in an administrative capacity.

The fire chief proposed wording: The fire chief shall have had a minimum of five years of experience in fire control with the Maui fire department...

Chair Nakasone: I think that might be a problem.

Dodson: I think that really limits your pool! [LAUGHTER]

Cockett: ...at least three of which shall have been in an administrative capacity.

Dodson: That means guaranteeing about two people a job, and that may be it. Yeah, I have a problem with that one, Jim.

Cockett: Okay, well this is a recommendation for the committee here as a whole. What's your pleasure?

Sparks: It doesn't make any sense to me.

Dodson: I mean, what's the difference between a fire here and a fire in Kauai?

Fabrao: I think what the...excuse me...if I may speak...the fire chief said something to the effect that he would like to see somebody from his department have an opportunity to be appointed.

Sparks: They do now.

Dodson: I'm sure they have the opportunity.

Chair Nakasone: But see, the problem that you're dealing with as far as the...the new chief comes with the new administration, in general, so I was going to suggest -- I talked to Al earlier -- another option. [LAUGHTER]

Sparks: We're going to get another lecture on every part of this, so just sit back and relax, and listen to it...maybe it makes sense.

Reyes: Was this a result of...

Chair Nakasone: Well you know, the commission wanted the authority to appoint and remove the fire chief, if you recall. But, our state judiciary system...they have a commission that appoints or recommends to the governor...on the appointment of the judges. They submit three names to the governor; the governor chooses one, and submits that name for approval by the senate...as far as judgeship. So, maybe that's the kind of responsibility we should give to the commission. Tell them to decide, reviewing the selections for the fire chief -- they go through the selection process, and submit three names to the mayor.

Cockett: Well, the committee's discussion was not to take that privilege away from the mayor; that she would continue to appoint the fire chief. The only change was regarding what the fire chief wanted...that the chief be appointed from someone with experience with the Maui fire department. I have no qualms as far as not going along with it; of course our committee had decided to recommend this to the full commission. And, it's the privilege of the full commission to weigh it, and decide, or delete it, or refuse it.

Dodson: I have a real problem with limiting it to someone within the department; I think that could be...a lot more politics could be played, you know.

Cockett: You suggest no change then?

Dodson: No change, yeah.

Cockett: Okay.

Sparks: Another problem with that is you really make it impossible to get new blood, with a department that may need some. But, back to Bob's suggestion...

Chair Nakasone: Yes, I'm listening... [LAUGHTER]

Dodson: Yes, so are we...honestly...we're just...

Sparks: I want to listen to some more now...

Reyes: Where did you hatch this?

Sparks: Clearly, if Bob can sell us this logic, then he'll sell it to us for all of the departments if he possibly can. But, it's a mechanism for the commission here to appoint...or to select a narrow body of people, and make the mayor appoint out of that body of people. And, you started off saying there was something about when the mayor changes...that the chief changes, usually. How would this connect... How would that fix anything there?

Chair Nakasone: Well, with the current Charter provisions, generally when a new administration comes in, you have a new fire chief. But, in this case where you have a selection committee -- like the public safety commission -- they would submit names, you know. I mean they'll screen those applications...applicants who applied for the fire chief. Right now, I don't believe that there's any review process, or application to be a fire chief...they just deal directly with the mayor.

Dodson: Well, there's a five year minimum experience in fire control, and at least three in an administrative capacity.

Sparks: It's the same kind of situation with all the departments; I don't see what's broken badly. Although, as I've told you, I know what your concern is...I just don't know if this is a kind of fix for it.

Chair Nakasone: Well, this is for where we have a commission that concentrates on a given area...to me, especially in public safety...whether it's police or fire. I'm very concerned with so-called minimum qualifications.

Sparks: Yes, I know you are.

Chair Nakasone: And, I believe there's some cases where a person has been upgraded to...let's say a lieutenant...with no fire experience at all, but he has the years. But, that would be considered administrative...and he can be chief.

Dodson: If he got up to that position of lieutenant, you're saying it was just out of seniority; he has obviously gained some sort of experience in the years...the tenure he's been there. It may not actually have been in going out and holding the hose, but he has some degree of experience, and then he has to have three years of administrative experience ...because obviously the fire chief does basically administrative stuff. I mean, the fire chief rarely goes out on a scene of a fire...

Chair Nakasone: He does.

Yonenaka: He does.

Chair Nakasone: He DOES.

Dodson: He does? Really?

Fabrao: They've got to supervise.

DeLeon: Oh, yeah. When you've got a big roaring fire...they're out there.

Dodson: Yeah, but are they in an administrative capacity out there, or are they... Yes, but I just envisioned it if he's there, he's sort of coordinating the whole effort.

DeLeon: Well, he's not holding the hose...

Dodson: That's what I mean; he's not getting his hands dirty per se, he's just coordinating the whole efforts...making sure that, you know, there's enough trucks here, there's enough trucks there... That not necessarily requires a lot of fire experience, but it requires a lot of administrative experience.

Chair Nakasone: I'd be very cautious of that; a guy with no experience in fire, to

Chair Nakasone: (Continued) be the fire chief.

Dodson: He has experience with fire, if he's been at the fire department.

Chair Nakasone: I think there's one situation right now...or I believe there's a situation, where he came in under this federal program; where he came in like a trainee and then went into plan reviews with no experience in fire, and from there...just because of seniority or whatever...the person's a lieutenant -- with no fire experience. And, let's say this person would be supposedly qualified under the minimum qualifications to be a fire chief.

Dodson: You say this is an actual case? This is actually happening? Where somebody has gotten to a lieutenant position with absolutely no field experience at all?

Chair Nakasone: Yes; so...my concern is when you deal with public safety, I think there should be a better qualification requirements...and I don't see it any greater than...

Sparks: That's the other question at hand; how would you distinguish this department then, from say planning? Would you want a similar kind of scheme for planning? And, liquor?

Chair Nakasone: Well, liquor has their own, right?

Sparks: That's right; they hire their director.

Chair Nakasone: You notice with the police department, the process of hiring a chief? The commission receives applications from whoever wants to be chief, and they'll go through this screening process, but they make the final decision...on who that chief will be. Where in this case, it would be just a recommendation to the mayor of people who are so-called qualified.

Sparks: Basically what you're concerned about is the mayor, who also goes through an open application and a screening process, and then picks someone, will pick someone who isn't qualified just because of a patronage kind of concern.

Dodson: I see your rationale for the fire department; you've almost convinced me on that, but now your...

Chair Nakasone: Well, let's stop right there then. [LAUGHTER]

Dodson: Before you go off and running; when you start talking about these other directors, I'm a little hesitant because you're talking about the way I see the mayor and her directors as a team, and she's got to work with these people; she's got to be able to trust them and vice versa, and so forth. And, when you're talking about something so important like public safety, then yeah, maybe they should have some extra qualifications, and the way to do that is to make sure that a commission...like the police commission does. But, as long as you're not going to do this in a group little thing here, and everything at once... Take it one at a time, is what I'm telling you. [LAUGHTER]

Chair Nakasone: Well, it's something to consider.

Sparks: Suppose we wanted to move towards that general direction...would this be a better way to do it than your earlier proposal about this civil service commission's

Sparks: (Continued) setting up some guidelines, or something?

Chair Nakasone: Yeah, this would be actually closer to going through an actual screening process...they're just making a recommendation.

Sparks: With the commission involved, yes.

Dodson: But, just for the fire department, right?

Chair Nakasone: Yeah. We're still on the fire department right now. [LAUGHTER]

Sparks: Right now.

Reyes: Mr. Chairman, may I add something? After hearing your two sides, I think this would go along the line with the public safety commission, since we retained the title of public safety commission...some additional responsibility that they were yearning to have...to be called...you know, public safety commission is a big title, and what they are not happy about is those little things that, you know, they're charged with. I think this would be along the line of giving them greater responsibility and, you know, a little bit...that wouldn't be a bad idea to add to their responsibilities...give a little bit more weight to their title public safety commissioners.

Sparks: Before there's a motion though, if we did something like this, would we also give them similar responsibility for narrowing down the search for civil defense administrator?

Chair Nakasone: I think there is a statutory provision for civil defense...

Takabuki: That's civil service.

Sparks: Is there any precedence for something like this?

Dodson: The police department.

Sparks: Well I mean, with fire departments in other counties, and stuff like that.

Chair Nakasone: Well, the County of Hawaii has to be confirmed by the council.

[LAUGHTER]

Dodson: Oh, you're inching your way, aren't you?

Cockett: I'm a little confused, getting back to the civil defense agency; you say there is an agency, but is there an administrator there? Is it a civil service position?

Chair Nakasone: Yeah, I think it's civil service.

Cockett: Solid; not like the City & County of Honolulu.

DeLeon: I think it's the same structure exactly.

Cockett: Really?

DeLeon: Yes.

Chair Nakasone: Okay, will the Commission take that under consideration?

Dodson: Of course we'll think about it.

Chair Nakasone: Being no objections, we'll take it under consideration. [LAUGHTER]

Dodson: You feel like you've made a major accomplishment, don't you?

Sparks: Don't lack guts, Bob; let's go for a vote.

Chair Nakasone: There were no objections, so it's already been moved out.

Sparks: What?

Dodson: Excuse me?

Cockett: If there's no objections, we'll take it under consideration.

Fabrao: What are we taking under consideration, Sir?

Chair Nakasone: Looking at the possibility of giving the public safety commission the responsibility of so many recommendations for the fire chief to the mayor.

Dodson: I would prefer not voting on it tonight; I would like to think about it, to tell you the truth.

Cockett: Shall we defer that then?

Takabuki: From which she shall actually pick, though, yeah?

Dodson: Yes; she would have ultimate control, but like three names would be submitted by the commission...just like how judges are.

Sparks: It doesn't have to be three, either.

Dodson: It could be three, or five, ten...whatever.

Reyes: As long as they don't submit one, right?

Dodson: Good point.

Chair Nakasone: Okay, let's draft something.

Cockett: Mr. Chairman, there's one more recommendation; a new subsection to read as follows: 8-7.3.7. Provide mitigation and stabilization of hazardous materials incidents. That's how he addressed; it's to handle hazardous material. He wanted to include that. I recommend that we go ahead and insert that.

Reyes: Is that a motion, Jim?

Chair Nakasone: Any objections?

Dodson: Don't they already do this?

Cockett: They do it, but it's not here [in the Charter].

Takabuki: Do they have any enforcement powers over regulations and compliance?

Dodson: They did.

Takabuki: But the fire control doesn't actually...

Cockett: They do by...they can write up violations, I guess.

Dodson: Yes; a violation of the fire code could be toxic waste sitting in your...

Takabuki: So they can actually cite...

Cockett: I can assure you...we all got whacked because of candles on the tables -- which is a stupid one, I think. [LAUGHTER]

Sparks: What's stupid? The candles or the people who put them there?

Cockett: If you have a tablecloth, you can't have candles...that's one of the regulations.

Chair Nakasone: Okay, no objections to the recommendation. If no objections, the
MOTION CARRIES.

Cockett: Then I guess we can just overlook the rest of the items there with the fire department.

Department of Planning 8-8.1. Organization, currently reads as follows:
There shall be a department of planning consisting of a Maui planning commission and a Molokai planning commission, a planning director and the necessary staff.

Proposed wording: 8-8.1. Organization. There shall be a department of planning consisting of a Maui planning commission, a Lanai planning commission and a Molokai planning commission, a planning director and the necessary staff.

That, ladies and gentlemen... [LAUGHTER]

Dodson: We're here, Dolores; take it away, Dolores. You're not going to say anything?

Fabrao: Is that a motion? [LAUGHTER]

Cockett: That's the recommendation that you had come up with some signatures, that you wanted to put on the agenda, and it's for the full commission to analyze, listen and decide.

Dodson: Would you like to make a motion?

Fabrao: Yes. I move that we accept the proposed wording here, for organization... That there shall be a department of planning consisting of a Maui planning commission, a Lanai planning commission and a Molokai planning commission, a planning director and the necessary staff.

Dodson: Second it.

Chair Nakasone: Discussion? Three minutes... [LAUGHTER]

Cockett: I think everyone's concern is the organization of the commission, and that's

Cockett: (Continued) going to be a real hot potato...how and what...I really have no idea, no remedy, shall I say; I don't have the wisdom for that kind of a situation, especially when the island is owned 95% by a private individual...or shall we say a company.

Dodson: Yes, but I think if you say that because the island is 95% owned by one company, therefore they should not have a planning commission because we could not effectively find a way to create one, to me, that just a complete discrimination to the people of Lanai.

Cockett: I'm not saying that per se, but I'm concerned about that...I'm trying to voice that, and maybe somebody can instill in me some good reasons why we should.

Dodson: But, do we have to come up with a way that they find nine members that don't have a conflict? I mean, this is something the people of Lanai want; I think if the people of Lanai want it bad enough, they'll find a way to do it.

Cockett: Are there any other comments?

Sparks: The implication is that we just simply...like in Molokai's say there's a planning commission...appointed by the mayor, approved by the council; and all these concerns that were raised earlier today about employees of the Company being on the commission -- we let the ethics boards and the courts worry those things out?

Dodson: To me, that's the only way we... Either we don't do it at all, or we do it; I don't think that we can set forth in this Charter a solution to it, because I think it's something that's still very much up in the air, as far as the courts go and as far as the ethics commission. And, quite possibly, there may be a way...there may be somebody out there who can come up with a solution that doesn't need to go to the board of ethics, nor the courts. I mean, just because we can't think about it in these four walls, doesn't mean that it doesn't exist. I think to cut them off before they even get started, is not fair.

Cockett: I agree with you; I'm not thinking of cutting it off, I'm just concerned about getting words of wisdom -- how can we promote this?

Chair Nakasone: Well, we can look at the section on the makeup -- you don't need nine members -- knock them down to three. You don't need nine members...

Dodson: That's true.

Reyes: Mr. Chairman, I don't know; I looked at the Charter and there's no provision that the member of the island planning commissions of Molokai or Lanai doesn't have to be a resident. So, the mayor appoints the member of the planning commission...the mayor's not obligated to appoint a resident of that island; the mayor could be appointing a member who would concentrate on the issues relating to the island. It just so happens, probably, that the members that are appointed now are residents of the islands.

Cockett: Question...

Chair Nakasone: Same token as the Maui planning commission.

Cockett: Question...what is the makeup of the Molokai planning commission?

Fabrao: All Molokai members.

Takabuki: I just want to put something on the table; would anyone consider a Molokai/Lanai commission?

Dodson: No.

Takabuki: Why? When they came out and testified, they said "we recognize that some things are common, and we can live with each other," when they were talking about the district presentation. So, everyone thinks that that won't work? There's no chance for...

Dodson: No, it's not everyone...I'm the only one who said no.

Sparks: I haven't even thought about it, but it doesn't seem...

Takabuki: Well, that's just a thought because you would have people from Molokai who wouldn't have the problem with the Company...

Sparks: As much.

Takabuki: Arguably they have certain interests that are somewhat similar; I don't know, it's just a thought.

Dodson: I truly believe that what will happen will be that the Molokai/Lanai planning commission will be, once again, all Molokai residents.

Takabuki: No, no...you would specify that there would have to be so many from...

Sparks: There's already a specification about geographic distribution, right here under general provisions.

Dodson: I think you're still going to run into this problem that we started off with, of finding people from Lanai to serve on it. To me, there are distinct differences in every one of these islands...Lanai has its own problems because they are 95% owned by one land owner, and Molokai doesn't have that kind of problem. Molokai is gearing towards keeping a very rural, agricultural type economy, whereas Lanai is heading towards tourism. We're talking about ten years before this Charter is reconsidered, and in ten years I think Lanai's going to go a lot farther in going towards tourism, whereas I don't think Molokai is. And so there is a big difference...just geographically...

Cockett: I have other thoughts on that as far as Molokai [sic -- Lanai] is concerned; I think the makeup for Murdock will not be tourism per se, it will be those estates that he's hoping to sell like Maui Pine is trying to do with the Plantation.

Dodson: That's still very different than what's going on on Molokai.

Cockett: Well I tell you, the organism is such that nobody, in that industry, can think how they can ever make it.

Dodson: And that may be true, but I think that the people of Lanai should get into...on some of this planning, anyway...of what's going to happen there -- whether it be tourism, or whether it's going to be, you know, large estates, or...

Cockett: But, I don't object to that; I'm just sad that...my thinking was that the advisory committee was not strong enough. That's sad.

Fabrao: Advisories are that...they're just advisories, and like the gentleman said, you know, one is represented by the advisory council and not even be listened to by the planning commission; which is what has happened.

Cockett: Could the advisory committee have teeth?

Dodson: Not and still call it an advisory committee.

Cockett: What do you call it then?

Dodson/Fabrao: A Lanai Planning Commission.

Takabuki: We did talk about the possibility that in order for the planning commission maybe to overrule something the advisory committee had decided, perhaps requiring a super majority; I mean, that would give them at least a little more standing as to the decision making on the advisory level. But, other than that, I don't think there's a way to give them much more...

Cockett: I'm not trying to take anything away from Lanai; the voice of Lanai should be heard, I agree with that. But, the process is what kind of baffles me.

Dodson: I don't think there is a real solution, at least we won't be able to come up with one...on how this nine, five, three member planning commission will be established; but quite frankly, I think if they want it badly enough, they'll find a way to establish it. Let's give them a chance; let's see if it can work. We didn't know before we started the Molokai planning commission whether that was going to have...you know, whether it was going to do any good...whether we'd get people interested...whether it would be a hard, steady...fast commission, and it has turned out that way. And so, maybe it's time to move on to Lanai and see what they can do.

Fabrao: If I may interject, Mr. Chairman, a lot of the people on those lists...those petition lists...are some of the...most of the silent majority; they have taken courage to put their names on this petition list.

Sparks: Did you get a count of that?

Fabrao: There're about 300 now.

Sparks: 300?

Cockett: That's everybody on island.

Sparks: Are they all eligible to vote?

Fabrao: Yes.

Cockett: We need your wisdom here, Allan.

Sparks: You're in deep trouble then! [LAUGHTER]

Reyes: I have a question; when we were in Lanai, we heard some comments that in effect they said that they had a chance to have their own Lanai planning commission at the same time that the Molokai planning commission was being spearheaded. What was the rationale...why did Lanai not go for a Lanai planning commission at that time, when Molokai was being

Reyes: (Continued) considered? And, only now that Lanai is trying to get their own planning commission, and they have all those signatures, why... Could you give us a little background on that?

Fabrao: I wasn't privy to that, because I was busy nursing, like I said, and I wasn't involved in the political arena, so to speak, about planning commissions or anything -- I just was living. And, I don't know if Lanaians didn't want or wanted a planning commission at the same time as Molokai wanted. But, all I know is now, with the way things are going on Lanai, people would like to have a chance to say what's happening to them; because, those things are being decided for them every single step of the way. And, there certainly probably would be a lot of conflicts if the planning commission is formed, regarding employees serving on the commission. And, even the advisory council...they would be in conflict, too; and, I think that if they didn't vote for anything, they may have been afraid to vote against the Company...rather than not wanting to speak because they were embarrassed by being employees of the Company, or something like that.

But, as to why people want it now, I think it's because they feel it's time. And, I think it's time.

Chair Nakasone: Victor, I believe that the creation of the Molokai planning commission was through the resolution of the council, that put that on the ballot.

Reyes: That's true, but the process...it could have been initiated through some...

Chair Nakasone: Well, the council could have added Lanai as another planning commission.

Reyes: I'm not arguing that, Mr. Chairman. I was just wondering about the timing... because at the time they had the same opportunity to lobby the council to go through the same motion.

Sparks: Let's see...where are we? We have the motion and the second?

Fabrao: Victor, at the time that Molokai was planning its own planning commission, pineapple was still in...it was a guarantee, pretty much "the industry." And, when there was talk about the tourist industry coming in, that would have been a secondary source of employment for the people, you know, and that was okay. But then when pineapple was closed down, and the water issue became a very significant...and everything was turned around for tourism, the people began to think. They did a 720-degree, if there is such a thing, turn-around to become effective tourist caretakers versus pineapple workers; so, you have to give the people on Lanai credit. But, also at the same time, I think they need to have a voice in the direction that their lives are taking, because everything is being controlled for them. And, I don't think that's the American democratic way; they have a choice, and I think that they should be allowed the chance to make a choice as to how they want their lives... Whether they get it or they don't get it, they should have a voice; they're afraid to speak out.

Yonenaka: Will the planning commission give them that, and make them not afraid?

Fabrao: They have asked for the planning commission by virtue of the petition; a lot of them are not vocal like I am, but they have put their names on the line because they feel that they should be. And, I think that's giving a message...a clear message.

Sparks: And, are they as aware as that one woman who's been on the advisory commission,

Sparks: (Continued) that the planning commission could well be dominated by employees of the company?

Fabrao: It's kind of like a given understanding, you know, because the greater majority of the people there are Company employees; but, that does not mean that they cannot exercise their voices as an American, because they're American citizens.

Sparks: Agreed.

Fabrao: And I think there...even though we are not sure as to how it's going to work, I think we should give them a chance to make it work. We're not a country or a nation of sitting-backers and not letting things go, I mean, you have to give it a try. Let's give it a push.

Yonenaka: I'm not opposed to giving it a try; I'm not even close to trying to figure out how it would work. And, either way, I think that if we just threw it out there...the problems that people will face are going to be unbelievable at times. It may not be a solvable problem under the current law...

Cockett: Can you be called again on your wisdom? [Directed to Sparks]

Sparks: Well, I kind of like Sherri's approach; I thought it was an impossible situation, too, but if we just throw it out like they did the Molokai Commission, then what follows? Well, the mayor has to find some people that are willing to serve and appoint them, and get them to pass through the council; depending upon who the mayor is and what their philosophy is, they could appoint all non-Company people that they could find, or they could try to balance it with Company people...they might be in the pocket of the Company and it might be all Company people -- any of those scenarios is possible. But, it does depend on the elected mayor and the council; and then, if there's conflict of interest things that come up for Company employees that are on this commission, we have the board of ethics and we have the courts...and then, one way or another it will get defined... what is a conflict of interest. So, maybe we shouldn't try to solve all the world's problems.

Dodson: That's what I'm saying; do we really need to sit here and try to find a solution to this?

Sparks: Is that enough wisdom for you?

Cockett: That's pretty good, pretty good. [LAUGHTER]

Chair Nakasone: Can I... Go ahead, Anne.

Takabuki: I think we need, really, to think about it a little bit; I mean, maybe we can't find the whole solutions, but I don't think it's that simple. And, maybe they will work it out, but it might take a year or it might take longer; and then, what is the purpose of getting this commission started, only to be entangled in legal battles? What if an applicant sues over every decision that's made because it's a Company member who votes on it? But, every single thing can be challenged...

Dodson: That's true, but at that point we will know that a planning commission on Lanai isn't possible. But, do we know that now?

Takabuki: No, and I'm not saying that it isn't possible; but, I do think we need to try and reason some of this out. I would agree with Lloyd, at least start to look at the possibilities.

Fabrao: Mr. Chairman, I think what we're...and, you all know my stand on this...but, when you're trying to put the cart in front of the horse, as what we're doing right now, it's like saying whatever problems... Like we told Mr. Smith, who has come and testified in front of us many times, there are avenues for recourse for him to go and these people to go and check these things out. And, if at the end of five, six months, a year, two years...if we find that there's...we're entangled in a lot of legal battles, maybe it's not the time for the planning commission to be on Lanai. But, if we do not do that for the people of Lanai when they are asking for it, you're selling them down the line just like the Company is. I'm sorry, but that's the bottom line.

Cockett: Question, Mr. Chairman. The commissioners now that serve for the County of Maui on Lanai, are they by districts?

Dodson: I'm sorry; I don't understand your question.

Cockett: Are they appointed by districts?

Sparks: There is a geographic distribution, and there is customarily, always one from Lanai.

Cockett: I mean, are they throughout... We talked about that.

Sparks: It's not rigid, but they try to have a geographic distribution. For example, if you wanted to get on that commission, and there's already somebody from your region of the county you probably wouldn't have a good chance, cause they kind of spread it out.

Cockett: That was my question, because then I think it's a fair distribution of commissioners.

Chair Nakasone: I think Victor brought up a good point, that they don't necessarily have to come from Lanai.

Sparks: That is an interesting point.

Chair Nakasone: I'd like to make a comment on that myself. You know, this Molokai planning commission was put on the ballot because it came to a council resolution. And, personally, I like to look at the total picture; if we're going to identify Lanai as a separate planning commission, I think we'd better look at Hana as a separate commission too. South Maui...West Maui...Central Maui... To me, this is what we have to do; we cannot just be saying "oh, Lanai needs a planning commission." So does Hana, and those general areas; there is a land use question over there too. And, the people are screaming over there that they don't want it, but they don't have a choice...someone else is making decision for them. So, as far as...I'm not against identifying this Lanai planning commission; but I think this commission should look at the total picture. If there's really merits to identifying individual planning commissions, we should look at the whole picture.

Dodson: I tend to agree with you, Bob, that I think that somewhere down the line it's going to come to a point where West Maui's going to come, and South Maui's going to come... and they're all going to want their own planning commissions. And, we always have...as we know through the Molokai commission...the avenue of them lobbying the council members, and

Dodson: (Continued) going about it just like Molokai did. I think what we have to look at right now is that Lanai are the people who have come to us at this point; we have the ability to do it through the Charter, which is quite frankly a lot easier for the Lanai people, than going through the council. And so, if we take it one step at a time, if we deal with the Lanai commission right now...planning commission, because they have approached us and because they say they want it, then let's deal with it. And then, when South Maui...if there is a commission at that time...comes before a Charter Commission or comes before a council, let them deal with it. You know, the Molokai people did it because the Molokai people lobbied hard; and I think that these petitions are the way that Lanai people lobby...they want it...they want it now, and they want it from us. And, I agree with you that down the line everybody's going to be standing in line for these planning commissions.

Chair Nakasone: Have them use stepping stones... [LAUGHTER]

Sparks: No, we've got a different avenue. I agree basically with Sherri, but I'm not at all sure that down the line we're going to have sixteen different planning commissions as every area comes in. In my own mind, and I've thought about this issue a little bit; I'm not uncomfortable with saying each island...each populated island is entitled to a commission; but, that's it. We're not going to subdivide into any more commissions than that. And, just hang our hats on that geographical fact -- that doesn't seem totally irrational to me.

Dodson: But, that doesn't mean that South Maui isn't going to ask the council.

Sparks: I agree. But, I do agree that all these 300 petitioners and all the stuff that's going on Lanai; and the force with which they've come to us with this impresses me, plus...the only argument I can remember coming from the planning department against it, was that it costs more staff and more time. But then, when you ask them about it...they're staffing the advisory commission anyway. And, it didn't look like they were talking about that much more...maybe one or two more staff people, once a month for a meeting on Lanai; and if they have to hire another staff person, and it makes a substantial improvement in the sense of local government and participation for Lanai...I'm not going to buy the hesitancy of the planning department for that reason, so... I don't see any good reason not to do it.

I agree that if we could think of some ways to do it that would smooth out the future, as they move into it, that makes sense to put in the Charter...I'd probably go for it; right now, I can't think of what that would be, but it doesn't bother me. I'm ready to vote for it.

Cockett: Mr. Chairman, that kind of reminds me of that hearing we had in Molokai, where that woman spoke up about having a separate...this came under your area...

Sparks: Township.

Cockett: Township plan for Molokai; in other words, they handle their own destiny. We kind of listened to her and I guess nothing has come off of it, but you know, that's something down the road that can bug us in the future...just like your planning commission. What's wrong with they having their own township? Why can't Molokai have their own township? They wanted it because they could get federal grants, so that's what she said. But, we didn't lift a hand to help them on that...but down the road that might come up again.

Dodson: I also didn't see 300 signatures on a petition, behind her testimony, either.

Sparks: But, I think it's more complex than that...there's layers of government arguments, and things like that that have to be dealt with.

Dodson: It's kind of like comparing apples and oranges, I think, you know.

Sparks: There may be major inefficiencies, and confusions of the public, and so forth.

Cockett: And there may be not; maybe they can move in that direction.

Sparks: Maybe it makes sense; personally, I just saw an awful swamp of details that I wasn't comfortable with...that's why I didn't give it too much thought.

Cockett: That's something else that we should be looking at, besides planning commission. That might change the whole complex of our county.

Reyes: There is one reason that I have not heard tonight, and that is when the Lanai people opted for that advisory rather than a Lanai planning commission...and now they want a Lanai planning commission...is it they said they made a mistake at that time. If you are going to go for a Lanai planning commission, and given what Lloyd just said a while ago, you know, the island being controlled 95% by one company...what if this...let's say we go for the Lanai planning commission, and through this situation where there could be lawsuits to resolve questions that will never be resolved -- people again realize, oh, we made a mistake...we'll never get things done because of this unresolvable conflicts as a result of having a Lanai planning commission -- and then they'll come again -- oh, we made a mistake. We cannot use the Charter to fix mistakes everytime; so I think that's the one thing that...well, one more concern that I have.

Chair Nakasone: Well, we should be concerned about the question of conflicts...legal suits, or whatever; but, I guess this commission has got to remember that we are making recommendations to the voters, what kind of recommendations as far as Charter amendments. And, I think this kind of legal question is really secondary to the policy question of amending the Charter by adding, deleting, or whatever. So, if this commission's not ready to vote on this...we can defer this...

Sparks: I think we're ready to vote.

Dodson: I think we are, too.

Sparks: I would like to respond to something that you said though; maybe it will be true -- maybe they will get into legal tangles and things won't get done, but think of who you're talking about -- who is it that wants to get things done? Is that going to work against the interests of the community that is nervous about all the things that people are trying to do? I don't think so.

Reyes: What I'm trying to do, Mr. Chairman, is not... Because we have an overwhelming number of people from Lanai, with the signatures, is just go ahead with it; I think it is a major decision, and we have to look at all the issues that we can think of because it's a major decision that we are making. That's all I'm trying to say; let's try to turn the thing out and see what we can find, and to make sure that, you know, down the road we will not be accused...saying we didn't even discuss this thoroughly. I'm trying to raise the commission to think -- rather than to just go one way -- I'm trying to raise arguments. And, I think it's a healthy way to discuss this matter.

Fabrao: It is a healthy way, Victor, and as you always say -- let the people have its

Fabrao: (Continued) vote. How can the people vote if you don't put it on the ballot.

Reyes: Mr. Chairman, I didn't say I'm against... [LAUGHTER] I didn't say I'm against; I'm just trying to facilitate the discussion so I can listen to all the things that we have to discuss.

Chair Nakasone: Ready for the question? Roll call.

Yonenaka: Wait...I've got just one more thing, okay? It says here on the planning commission that you act as an authority in all matters relating to coastal zone management; adopt rules pursuant to land use ordinances or law...is the planning department or the planning commission a process that someone could get stuck in, and not have an alternative? In other words, if they need something about coastal zone management law -- they cannot get it through anyone else.

Chair Nakasone: That's true too, because they're a commission.

Yonenaka: I mean, that's the basic power in terms of the commission; so, theoretically someone could go into the Lanai planning commission for a change or whatever, and not ever come out of it...or not come out of it.

Dodson: It was tunnelified...

Sparks: There's a lot of people who say "that's government." That's the way our government works, right?

Dodson: That could happen on the Maui planning commission or the Molokai planning commission...I don't think it would just happen on Lanai. I see what you're saying, that if this whole legal battle starts up, there's going to be one poor victim who's going to be out there trying to get his project through, and he's going to be...

Yonenaka: Well, it may not be one...it may be more; and there may be a situation where everybody on the island likes it and one guy says you guys can't do that, and it's stuck, you know.

Dodson: That's true; and you're saying that these people are going to be the ones who are the victims, but think about who those people are -- these are the people on Lanai, who are trying to propose something on Lanai -- and these are people on Lanai, who are trying to hold them up. At least it is Lanai taking care of their own business, you know; somebody is going to get held up, that's true, but if the people of Lanai want that person to get held up...then I say, give them the chance to.

Yonenaka: Suppose it's neighbors who want that thing held up...

Dodson: Well, it's not going to be just one person.

Yonenaka: Well, if there's a question in terms of a violation of ethics, it maybe one.

Sparks: That's a strategy that they can use now.

Dodson: Yeah, what's to stop them from doing it here with the Maui planning commission?

Sparks: But, I see your point...in that case, there's so many more opportunities.

Chair Nakasone: The question has been called for. [LAUGHTER]

Dodson: Roll call.

Chair Nakasone: Roll call.

Fabrao: A point of clarification, Sir. Would it be unethical to vote on this? [LAUGHTER]

Chair Nakasone: You can't; you're in conflict. [LAUGHTER]

Dodson: Of course you can.

Sparks: Balogney! Anne, remember that this is tentative final; we still have time to come up with a good idea.

Dodson: Okay, question has been called.

Yonenaka: Okay, this is being moved out of this committee into the kind, right?

Dodson: No; there's a motion on the floor to change -- as a tentative final amendment -- there's a motion on the floor to add a Lanai planning commission. That's the motion.

Yonenaka: Right.

Chair Nakasone: The Chair doesn't believe that Dolores, although from Lanai, is in conflict.

Fabrao: Thank you, Sir. [LAUGHTER]

Chair Nakasone: Roll call.

<u>Takabuki</u> :	Yes.
<u>Fabrao</u> :	Yes.
<u>Reyes</u> :	Yes.
<u>Sparks</u> :	Yes.
<u>Cockett</u> :	Kanaloa, but no.
<u>Dodson</u> :	Yes.
<u>Yonenaka</u> :	No.
<u>Nakasone</u> :	Yes.

Cockett: I had to vote no, because I think we need more time on this.

Chair Nakasone: Results? Okay, we have six affirmative votes. THE MOTION CARRIED.
Okay, Jim.

Dodson: Do you want to keep going or...

Chair Nakasone: There's one more important one...

Dodson: One more.

Chair Nakasone: Confirmation by the council of the planning director. [LAUGHTER]

Cockett: 8-8.2. Currently reads in part as follows: The planning director shall be appointed and may be removed by the mayor.

Cockett: (Continued) Proposed wording: 8-8.2. Planning Director. The planning director shall be appointed by the mayor with the approval of the council, and may be removed by the mayor with the approval of the council.

The recommendation of Committee B was no change.

[LAUGHTER]

Dodson: That look, Bob.

Sparks: Let's see...we got the civil service model, and we've got the judiciary model...what does Bob have in his pocket now?

Chair Nakasone: The last resort is confirmation and approval of the council.

Dodson: Well, that's what you've got...you've got approval by the council. So, no change.

Cockett: Okay, 8-8...yes? I'm sorry; I propose that we go ahead and... There's no objections.

Chair Nakasone: Any objections? I have. [LAUGHTER] I vote no.

Cockett: Shall we have a roll call?

Dodson: You're pretty much outnumbered here.

Chair Nakasone: Okay, THE MOTION CARRIES. Note one negative vote.

Cockett: 8-8.4. Planning Commissions. Each planning commission shall consist of nine members appointed by the mayor with the approval of the council.

Proposal (not exact wording)...I don't know how we got that in brackets...

8-8.4. Planning Commissions. Each planning commission shall consist of nine members elected at large by the districts they represent.

Well, this is something else...elected commissioners.

Sparks: Bad idea.

Dodson: I don't like that either.

Yonenaka: Great; next...

Chair Nakasone: Could you explain why, Al, it's bad?

Cockett: It was a recommendation...

Sparks: It's a step back about seventy or eighty years, when we were infatuated with this notion democracy is elections...so we elected finance officers, we elected dog catchers...and we elected everybody, and we just overwhelmed the voters. And, accountability just got lost.

Cockett: You will note that the committee did not act on this; we just wanted to bring it up to the full commission for discussion.

Chair Nakasone: Okay; discussion?

Dodson: I tend to agree; I think once you throw that political wrench in there, and start making this something you have to run for...something you have to pay back your votes for...and all that kind of stuff, it just defeats the whole purpose of having this nice little commission out there that doesn't have to get, you know, wrapped up in the politics.

Cockett: What's the pleasure of the commission?

Chair Nakasone: Well, I'd like to make one comment with regards to my argument with commissions; if they are advisory it's fine, you know, for being appointed because there's no accountability. But as long as they can exercise powers that have the force and effect of law, I think there should be some accountability. And I think this is what we are talking about elected -- because elected officials make laws; appointed officials don't make laws.

Sparks: That's a very big discussion about what is law, you know.

Chair Nakasone: That has the force and effect of law; this is my concern. That's why when you look for administrative authority as far as commissions are concerned, then I have some reservations because they are not lawmakers. That's one comment I wanted to make.

Sparks: But they are lawmakers; you just don't like the fact that they are lawmakers.

Chair Nakasone: No, I don't want... [LAUGHTER] I think it's getting late, that's why.

Dodson: You don't like anything.

Chair Nakasone: Okay, so the recommendation is we leave it as is -- all appointed. Any objections? Okay, unanimous vote.

DeLeon: On this nine members thing...if you have a Lanai planning commission, are you going to have a nine member Lanai planning commission? Are you going to have a five member...three member?

Chair Nakasone: No, but we have to amend the Charter here too.

Dodson: Yeah, it's coming up next.

Cockett: Proposed wording: 8-8.4.1. The Maui Planning commission shall be concerned with the area encompassing the islands of Maui[, Lanai,] and Kahoolawe and all... Why can't Kahoolawe have their own commission? [LAUGHTER]

Dodson: Because the goats can't vote.

Fabrao: There's no people there.

Chair Nakasone: Any three may be elected...

Cockett: ...other islands lying within three nautical miles of the shores thereof; and the waters adjacent thereto.

8-8.4.3. [NEW SUBSECTION ADDED] The Lanai planning commission shall be concerned with the area encompassing the island of Lanai and all other islands lying

Cockett: (Continued) within three nautical miles of the shores thereof, and the waters adjacent thereto.

Chair Nakasone: I think Jamie had a concern on this. I think it was the nautical...

Cockett: I have his... He says "I support the proposed wording with this section."

Dodson: When he gets down to 8-8.4.3. -- 8-8.4.1. is the one we're going over right now; he supported that one. But when we get down to the next one on Lanai, then he says "Do we need to check how many nautical miles Maui, Lanai and Molokai are from Lanai?"

Fabrao: It's more than three...the nearest is Lanai to Lahaina...nine miles.

Sparks: How about to Molokai?

Dodson: Molokai's longer than that, I think.

Cockett: No, no, no...it's less than that. It might be just about three.

Fabrao: About four miles.

Cockett: We're going to have to check it out.

Chair Nakasone: So the idea of a Molokai and Lanai planning commission wasn't too bad then.

Cockett: If it's within the three miles...

Sparks: They have to be at least six, otherwise they're going to be fighting over that part that they overlap in...[LAUGHTER] If there's an island there... We are getting pretty late, aren't we?

Dodson: Yeah, I think it's time to wrap this up, Bob.

Cockett: Wait, wait...come on, let's move on; we've only got a few more to go. And, we will check that nautical miles between Molokai and Lanai, okay?

8-8.5. [NEW PARAGRAPH OR SUBSECTION ADDED -- NOT EXACT WORDING] A county wide open space and diversified farmland preservation plan shall be developed which recognizes and protects natural preserves; recreational assets; wetlands; endangered species of animals, birds and plants; ocean access; and ecologically vulnerable areas from urban development. The plan shall also devise means of protection of Maui county's diversified farms employing environmental regulatory action along with incentives for action by private conservation agencies.

This was recommended by...

Dodson: Fred Rohlfing...Open Space Land Trust.

Cockett: Well, what's the pleasure of the commission?

Dodson: I don't see anything wrong with it.

Sparks: We really should check this out with the planning department; I think there's some implications there...

Dodson: Actually, what I'd like to do is defer this; there's a couple people that we can bring in to talk to us about this, so...

Cockett: Okay, why don't we defer that then.

Dodson: Do you want me to go ahead and see if I can find...

Cockett: Please. Chapter 9 - Department of Personnel Services. The recommendation: no change.

Chair Nakasone: Any objections? If none, MOTION CARRIED.

Cockett: Chapter 10 - Department of Human Concerns.

Chair Nakasone: Recess.

Cockett: Okay, recess.

Dodson: No; if we're going to recess, let's just...

Fabrao: We're almost done...only one more page.

Takabuki: No, the next one is going to take a long time.

Dodson: I think this is a good spot to leave it...the rest of it...water's going to take a while... Quite frankly, I'm just getting too tired.

Reyes: We've already discussed this next one in great detail; why don't we just go over that...

V. NEXT MEETING DATE

The next meeting date will be Wednesday, June 10, 1992 at 3:00 p.m.

VI. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:16 p.m.

ACCEPTED:

Robert Nakasone, Chairman

Date

HOUSE OF REPRESENTATIVES
THE TENTH LEGISLATURE

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

*Addendum to
Minutes of
6/4/92 Charter
Commission*



TESTIMONY OF TONY KUNIMURA

State Representative, 27th District (Kauai-Niihau)

Charter Review Committee
Kauai County Council
March 24, 1980

RE: PROPOSED CHARTER AMENDMENT ABOLISHING KAUAI BOARD OF
WATER SUPPLY

Councilman Tsuchiya and committee members:

Once again I find myself testifying against a proposed amendment to the Kauai County Charter which would abolish the semi-independent Board of Water Supply and transfer this activity to the Mayor's Office by creating a new water department.

On March 24, 1976, I addressed the Kauai County Council to oppose a proposed county charter amendment which would have accomplished the same disservice to the public that this proposal seeks to do. I oppose this proposal as strongly now as I did then. I believe I have the unique distinction of being able to say, from first hand experience, that the history of the Board of Water Supply is rich with efforts of people trying to play "God" in deciding who can do a better job of providing good quality water for the residents of Kauai at the lowest possible rates.

In 1951, the Territorial Legislature in its wisdom recognized the virtues of an independent water board and therefore, created the Board of Water Supply which would be generally free from political influence. After all, the objective is to supply clean water without polluting it with politics.

However, in 1955, a few of us showed our inexperience when we decided to abolish this same water board and place control over the water system with the Board of Supervisors, of which I was a freshman member. You see, some of us thought we could do a better job than the water board, but what a mess we made of it instead! Each of us on the Board of Supervisors believed himself to be an expert on water and its management, but we learned how wrong we were. And because of our naivete the administration of the water system became a political football, resulting in dissatisfied consumers.

The public soon began to rise up and demand better water service. Finally, in 1959, the Board of Supervisors conceded its error and went to seek the necessary changes at the State legislature. In 1960, the Legislature made the necessary statutory changes. However, the legislature's action was faulty and the reinstitution of the water board

was delayed another year until 1961 when it was properly enacted.

The Board of Water Supply that has been in existence since 1961 continues to be a viable and functioning body which has successfully met the challenge of Kauai's period of greatest growth. It has effectively expanded the water system of Kauai without increasing Kauai's water rates in the last five years--a remarkable feat in view of the effect inflation has had on the rates of other essential services, such as electricity. I believe that this must be credited to the efficiency and cost-consciousness of the Board's program operations.

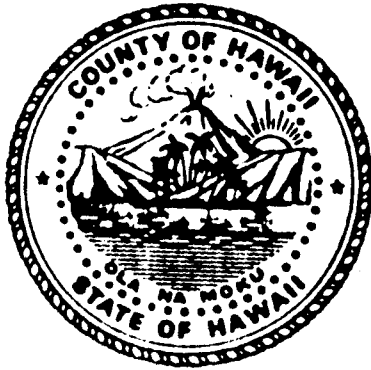
It seems to me that the County of Maui has decided not to learn from our early mistakes. As you know, the Maui County Charter has been amended so that the Maui Board of Water Supply is now incorporated as a county department. I see Maui's water problems and the public's dissatisfaction with their water services as stemming in great part from this administrative change. What is happening in Maui only reinforces my belief that Kauai's Board of Water Supply should remain as it is--a semi-independent body.

If you, again, abolish the water board and turn its function over to yourselves, as we did in 1955, you leave

yourselves open to the same repercussions that we felt earlier. I was a party to this proposed mistake once, but thank God, it was not an irreparable one. Don't retreat backwards by making the same mistake that we once made; it's too costly to repeat the same error twice. Experience has been found to be the best teacher.

I know that you are concerned about our water and only want to do what is best for our island and our residents. Therefore, rather than abolish the water board, strengthen it instead so it can do an even better job of providing clean, unpolluted water to our people. As in 1976, I strongly urge you to reject the proposed amendment before you.

Thank you very much for this opportunity to present my views.



COUNTY CHARTER

ARTICLE VIII DEPARTMENT OF WATER SUPPLY

Section 8-1. Organization. There shall be a semi-autonomous department of water supply consisting of a water commission, a manager and the necessary staff.

Section 8-2. Water Commission. The water commission shall consist of nine members who shall be appointed by the mayor with the approval of the council in the manner prescribed in Section 13-4. Commission membership shall be representative of the community and of the county geographical areas of Puna, Ka'u, Kona, Kohala, Hamakua, and Hilo. The manager of the department of water supply, the planning director and the chief engineer of the county or their designated representatives shall serve as ex-officio members of the water commission without power to vote. The water commission shall:

- (a) Manage, control and operate the waterworks of the county and all property thereof.
- (b) Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the waterworks of the county.
- (c) Adopt an annual operating and capital budget for the department, subject to the hearing and advertising provisions of Section 10-4.
- (d) Have the power to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the water commission.
- (e) Have the authority to issue revenue bonds under the name of the water commission.
- (f) Have such other powers and duties as may be provided by law.

Section 8-3. Manager and Deputy. The manager of the department of water supply shall be appointed by the water commission and may be removed by the water commission. The deputy shall be appointed by the manager with the confirmation of the water commission and may be removed by the manager with the approval of the water commission. The manager shall be a registered engineer.

Section 8-4. Water Fund. There shall be established a separate water fund which shall be utilized solely for water purposes. State and federal water grants or appropriations and revenues from operation of the water system shall be included in the water fund.

Section 8-5. Administrative Supervision. The department of water supply shall come under the general supervision and control of the mayor.

DEPARTMENT OF WATER

COUNTY OF KAUAI

P. O. BOX 1706

LIHUE, HAWAII 96766

*Addendum to
minutes of 6/4/92*

March 3, 1980

Honorable Chairman and Members
Select Committee on Charter Review
County of Kauai
Lihue, Hawaii 96766

RE: PROPOSED CHARTER AMENDMENT ABOLISHING THE BOARD OF WATER
SUPPLY - Your letter of February 28, 1980

This Board believes that the proposal to place the Department of Water under the County administration would be a step backward. We recognize that our testimony to that effect may sound self-serving; but we feel strongly that operation under a semi-independent board of water supply is the most efficient, economical and responsible method of control of the waterworks. Plainly, retention of the Board of Water Supply is in the best interest of the people of the County.

The operation of Kauai County's water system has been controversial and has see-sawed back and forth from operation under direct control of the elected officials to the control by the Board of Water Supply a number of times in the past 25 years. Up until 1951, operation of Kauai's water systems was under the County Engineer. In 1951, the Territorial Legislature created the Kauai County Water Works Board and, in Committee Report No. 453, noted that creation of Board of Water Supply would relieve the County Engineer from one of his many assigned duties and permit him to devote his time and attention to other pertinent matters. The Committee Report further stated that a Board of Water Supply, on the other hand, can devote its undivided attention to the development of the water systems and increase efficiency in water operation and service.

We have been made to understand that, for political reasons, the water board was disbanded by the Territorial Legislature in 1955 and a water department under control of the Board of Supervisors was created in its place. By 1959, the Board of Supervisors recognized that the poor quality of water service, inadequate supply, and the inability to meet the needs of the blossoming tourist industry would be better corrected by a semi-independent board of water supply. The Board of Supervisors in 1959 attempted to have the Territorial Legislature create a board of water supply. They were unsuccessful and, later that year, hired a consulting engineer, Joel B. Cox, to determine Kauai's water requirements, construction and financial needs. In his report, Mr. Cox strongly recommended

the creation of an independent Board of Water Supply. He pointed out that the short term of office of Supervisors, the fact that all members and the chairman are subject to election at the same time, the very proper preoccupation of the supervisors with many interests other than those of water supply, all serve to render such a method of control feeble and ineffective. He further stated that the universal failure of this type of control on each of the islands to meet the demands of growing water systems and the spectacular and sharply contrasting success of the Board of Water Supply of Honolulu is strong evidence for this conclusion.

In 1960, the Board of Supervisors again went on record supporting the creation of a Board of Water Supply and were successful in their lobbying to have the Board of Water Supply created by the State Legislature. Unfortunately, a technical flaw in the law creating the board rendered it unconstitutionally void so, in 1961, the State Legislature properly created a new board of water supply, again after support by the Board of Supervisors. Chairman and Executive Officer Raymond X. Aki testified at the Legislature that an independent water board is necessary in order to meet the existing and future water needs of the County.

Mr. Cox, in his report which was published in 1960, outlined the very great deficiencies of Kauai's water systems noting they could not meet existing demands for service much less provide for any growth in the areas served. He pointed out at that time that as a result of long neglect, approximately \$3,000,000.00 of new investment was required to meet current and immediately foreseeable needs. He noted that the water systems had been almost completely stagnant for the previous quarter of a century and that no substantial improvement had been made except during the short period during which improvements were planned and few made under the Waterworks Board from 1951 to 1954.

The present Board of Water Supply has been in continuous existence for 19 years and has successfully met the urgent and proper water demands of the populace of Kauai.

Much of this success is attributed to the creation of the waterworks board whose members have long and overlapping terms of office. Our present Board has member tenures that extend from 1975 through 1983. This form of management is non-political, thereby, assuring continuity of its membership and policies. The Board of Water Supply has a single-minded goal in, and devotes its undivided attention to, the development of the water system. The members are not burdened with a variety of problems that deal with other facets of county government and this is extremely fortunate for the task of overseeing the development of the water system is diverse in itself and requires an enormous effort.

Water rates (50¢ per thousand gallons being the lowest in the State) have not increased since 1974. At that time, the Water Board felt that there should be no further increases within the next five years.

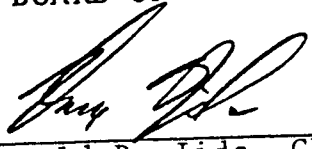
Since 1974, the cost of major materials used by the Department rose an average 160%; employee wages averaged 36%; power costs increased 88%. Faced with this tremendous inflationary trend, the Board restricted new hires to where only three new positions were added since 1974. There are presently 49 permanent employees within the Department. The Board and the Department's staff made outstanding efforts in meeting the water needs on Kauai, despite the fact that the number of meters and water sales more than doubled in the past 10 years.

In the 1979-80 budget, the Department's salaries account for 26% of the total operations and capital expenditures budget. It is our understanding that no other department State or County has a lower ratio. The total increase in plant assets averaging two million dollars over the past two years is a notable achievement for such a small department. Last year the Department equaled its water sales and serviced 5.9% more customers over the previous years. This maintains the past five years' average rate of growth of 6%. We supplied over 2.4 billion gallons of water to nine thousand eight hundred thirty-six (9,836) services during fiscal year 78-79. All of these accomplishments reflect on the unselfish devotion and sound, efficient management of the present and past Boards.

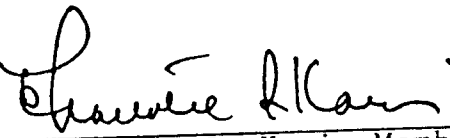
By working closely with the State Legislature and the State Administration, as well as the County Council and County Administration, the Board of Water Supply has applied for and received Federal Grants in excess of four million dollars within the past 10 years. These grants were used to construct water sources, storage tanks and miles of transmission mains. Unfortunately, water development has not kept up with the rate of growth in a few areas. These areas have grown at a phenomenal rate and have simply exceeded our Fiscal capability to keep pace with water development. Nevertheless, the Board of Water Supply has overseen and notes with pride the steady growth and progressive improvements to Kauai's water systems.

This Board, therefore, feels that there is much validity in its retention and respectfully requests that the Select Committee on Charter Review reconsider the proposal to abolish the Board of Water Supply.

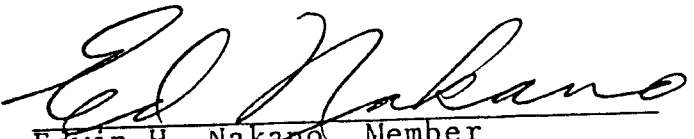
BOARD OF WATER SUPPLY




Ronald B. Iida, Chairman




Charlotte S. Kauai, Member



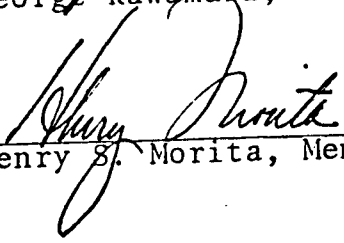
Edwin H. Nakano, Member



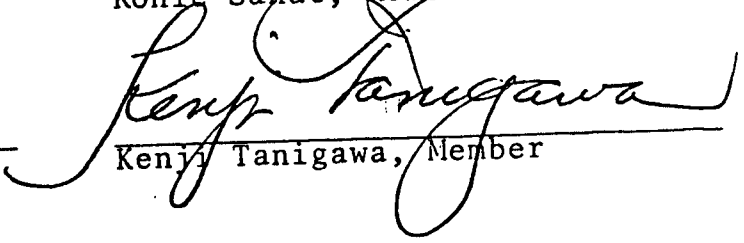
George Kawamura, Vice Chairman



Ronie Sahut, Member



Henry S. Morita, Member



Kenji Tanigawa, Member