

CHARTER COMMISSION
MEETING MINUTES
JUNE 10, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Sherrilee Dodson (Vice Chairman)
Dolores Fabrao
Annette Mondoy
Victor Reyes
Allan Sparks
Anne Takabuki
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)

EXCUSED

Robert Nakasone (Chairman)
Jamie Woodburn
Deborah Wright

GUESTS

Dave DeLeon
Brian Perry
Guy Haywood

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

None.

III. APPROVAL OF MINUTES

The minutes of the June 4, 1992 Commission meeting were approved as circulated.

IV. COMMUNICATIONS

Communication 92-42 Memorandum dated 6/8/92 RE: Goro Hokama v. Maui County Board of Ethics (and supporting documents) was received by the Commission.

V. COMMUNICATIONS

A. Committee A - Allan Sparks, Chairman
Continuation of Discussion of Proposed Amendments to Articles 1 through 7

Vice Chair Dodson: We're going to go back to Committee A right now so Al can continue his discussion on the map...new map.

Sparks: Recall the last time I showed you this map, this line wasn't in here because we hadn't defined yet where that line might be. Just to set the stage, this is a map made up of census tracts; the residency here is defined by census tracts. So for example, West Maui is census tract 314 and 315 marked here; what we can call Wailuku is census tract 308, 309 and 310; South Maui - Kihei, Makena is census tract 307 and 303.02; Kahului is census tract 311.1, 311.2, 311.3, 312 and 313; this one, which would be Makawao-Haiku-Paia is census tracts 306, 305, 304.1 and a part of census tract 302... that includes Haiku and Ulumalu -- actually this dividing line, if you are familiar with the area, is Kakipi Gulch; the one we'll call East Maui is Hana, Keanae, Kailua -- and that's the other part of census tract 302 -- which comprises about 375 people -- and census tract 301 which is the rest of this... The Upcountry one, or Pukalani and Ulupalakua is census tract is 303.1 and 304.2. Now, what wasn't defined before is this one which actually is a line through census tract 302. I think it's an appropriate location for that line for what we wanted to do...to make this East Maui...I wonder if

Sparks: (Continued) we could call it Far East Maui...residency area of...very similar in all of its makeup; in other words, it's very rural, very sparsely populated actually all the way around. On the other side of this line, that I just added in here...the other part of census tract 302, has over 5000 citizens in it so it's fairly densely populated. Then right about this point, we start the very sparsely populated part of the coast; so anybody who resides anywhere in here is likely to have those very rural regions in their bones almost from residing there.

Vice Chair Dodson: What are the numbers in each of them, Al?

Sparks: Okay, starting here...this would be a population number; and let me remind you, you don't have to have equal population...in fact, the advantage of this system is that we don't have to have equal population, but we do have some concern that the population in any one area doesn't get super small or super large. However, when we set one up like we did for Lanai years ago and like we're doing here for Hana...they are going to get small.

The East Maui one would be 2270 in population; Lanai, if I recall, is 2426...so, it's comparable...very small population. This one...the Kula, Ulupalakua, Pukalani one is 11,652; this one...Makawao, Haiku, Paia is 14,897; Kahului, the smallest one geographically, is the largest one population-wise...16,889; Wailuku, Waihee, Waiehu and all the way out to Kahakuloa is 15,705; the South Maui one...Maalaea through Kihei to Makena is 15,365; West Maui is 14,574; and then, as I said, Lanai...2426; Molokai...6587.

Vice Chair Dodson: Very nice.

Sparks: Can you anticipate the questions we might be getting when we present this? Are you ready to answer them?

Reyes: How shall we designate those areas that we have just outlined...that might be one of the questions.

Sparks: How to designate? Good point.

Vice Chair Dodson: I think we could do like East Maui and then just, you know, West Maui... West Maui, East Maui and South Maui, Upcountry...I think we can go farther with Upcountry and just call it Kula/Pukalani; and then the other one is Paia/Haiku/Makawao; and then Kahului and Wailuku.

Sparks: Probably that would be the best way.

Vice Chair Dodson: I think that's pretty accurate. Does that sound okay? Any questions? Next we're going to...

Takabuki: You don't need to vote on that?

Vice Chair Dodson: No, we've already voted. Do you want to go ahead and take a vote on accepting this particular plan?

Sparks: I think this is about what we decided last time, and I'm just coming back to tell you...what the population figures were, and if everybody understood that this is what we're going with now -- the tentative final.

Vice Chair Dodson: Does anybody need a vote on this? I think everybody's in agreement

Vice Chair Dodson: that this is what we'll take to the public. It looks good; thanks, Al. Okay, next we're going to go back to Committee B report.

V. COMMUNICATIONS (Continued)
B. Committee B - James Cockett, Chairman
Continuation of Discussion of Proposed
Amendments to Article 8

Cockett: Yes, if we'll continue where we left off last Thursday; we ended with Chapter 8, Department of Planning...the Lanai Planning Commission, et cetera. And, Chapter 9, Department of Personnel Services...let me check the minutes and see if we did finish with that.

Vice Chair Dodson: We did go through Chapter 8...

Cockett: Chapter 9? We did not; I guess we finished with Chapter 8.

Vice Chair Dodson: I think we got through Chapter 9.

Cockett: Oh yes, I think we did because we ended with the Department of Human Concerns...we took a recess. So, Chapter 10, Department of Human Concerns. Recommendation received was to establish a new Department of Housing. Director of Human Concerns does not advocate the establishment of a new department. Committee discussion recommends retitling this department to reflect emphasis on housing. Should this recommendation be accepted, the following changes will be needed:

Chapter 10 - Department of Housing and Human Concerns

Section 8-10.1. Organization. There shall be a department of housing and human concerns which shall consist of a director of housing and human concerns and the necessary staff.

Section 8-10.2. Director of Housing and Human Concerns. The director of housing and human concerns shall be appointed and may be removed by the mayor.

Section 8-10.3. Powers, Duties and Functions. The director of housing and human concerns shall:

And, of course, those are the changes made where we insert housing.

Vice Chair Dodson: Is there any questions regarding this section?

Cockett: Miss Chair, I'd like to propose this as a motion...to accept the changes.

Vice Chair Dodson: Is there a second?

Reyes: Second.

Vice Chair Dodson: Okay, discussion? Jim, why are we doing this?

Cockett: The discussion was a one stage a resolution...when Mayor Tavares was in office, wanting a separate department. And, in our discussions it was felt that, yes, housing is important, but instead of creating another separate department, the opinion of the committee was to include that with the human concerns; because in the overall umbrella...housing is part of that office.

Vice Chair Dodson: But, I mean, it's already under that umbrella; it's just not emphasized, you mean in the title?

Cockett: No it's not...not in the Charter.

Reyes: The section on housing...or division within the human concerns is not totally looking at the overall housing picture on Maui. There was a recommendation also...support from the council that we establish a separate department of housing. Again, during the discussions it was felt that it would be acceptable because there would be an emphasis on housing, and the accountability question...all of those things would go with the title of housing and human concerns...would emphasize the housing needs in the county.

Vice Chair Dodson: I guess I'm just concerned whether this is going to have the impact that you're looking for, I mean, if the housing is already part of...human concerns means housing, and the elderly, and anything having to do with human concerns. So, I think just adding it to the title...like Al always says...there's no teeth to it, then it's just a change of stationery type change, to me.

Cockett: Well, maybe we should include a staff to implement, or a staff to...

Vice Chair Dodson: But they already have a housing staff.

Cockett: But do they have sufficient staff?

Sparks: It says necessary staff.

DeLeon: They have a housing division.

Vice Chair Dodson: Yes; I don't think that's something to put in the Charter; I think that, you know, I think we should be lobbying the mayor to say 'hey, get your housing department more staffed...'

Cockett: Okay, well the idea was to change it in the Charter so that it would reflect the fact that it's housing and human concerns, instead of just human concerns. What's the pleasure of this Commission?

Vice Chair Dodson: I don't see that it's going to make much difference, but...

Reyes: I believe it's going to make a difference if you emphasize, or by this Charter amendment it will put the emphasis on housing -- that message is clear that we are thinking of the housing situation that we have right now, and by putting the necessary emphasis in the title the administration should take note of that. And by letting the voters in the county know that we are aware of the housing needs in the county, it will be a message to the administration...and not to take notice of that, I think, would be foolish for them... Because the alternative is to establish another department; but I understand Bob's concern to create another bureaucracy...that's why this was a compromise arrived at, and during the education process we'll let the public know that we have taken notice of that.

Vice Chair Dodson: I'm afraid that we're just going to have the office, in effect though, we're going to say, 'yeah, we know there's a problem.' That's all we're doing about it.

Reyes: It's a matter of attitude, I guess.

Vice Chair Dodson: I guess, yes, but I mean, we all know there's a problem in housing in this county and, you know, if we're going to do something, we ought to do something that's

Vice Chair Dodson: (Continued) going to really make a difference...rather than just changing a name of a department to housing and human concerns, when we already know there's a housing division in human concerns. To me, it's kind of like highlighting the problem without proposing any solution to it.

Cockett: I don't think the Commission can come up with solutions for that...it's a long range plan; I think the office itself must work out some remedies, though, some action...some long range plan to correct that.

Fabrao: It's just like that other department...with the fire department we talked about safety, and safety was a coverall, general kind of concept which applied to all manner of life here in Maui County. And so, we felt to create a different department or different commission would be redundant; so that the emphasis in the title put emphasis on safety in the fire department, which is there for safety things anyway. The housing added to the title of the department would put better emphasis on it, so therefore it must be addressed. I mean, that's the way we looked at it, I think, in our committee meetings.

Vice Chair Dodson: I just think, you know, like the ultimate result of this is going to be on a ballot, and we're going to have a lot of this kind of stuff that doesn't really mean anything...I mean it doesn't change anything, and we're going to have it on the ballot. People are going to be going through this stuff trying to figure out, 'well, what does this mean now that it's housing and human concerns -- I thought it always was housing...' And, there's more confusion and I think we've got to put an emphasis on the stuff that's really important...that really has meat; and this kind of stuff, I mean to me anyway, it's just a name change...it doesn't do much.

Sparks: I guess the issue is does it do more harm or more good; if you put a change in the title, the argument for it is that it gives it higher profile and more attention -- maybe even clearer communication to people...what the department's all about. The argument against it, that Sherri's just eloquently stated, is maybe it will just disabuse the public or make them more cynical because we haven't changed anything but the title. I'm really not sure myself...whether it does more harm or more good.

Vice Chair Dodson: You've also got the problem of the ballot itself; I mean, we're getting a lengthy ballot now, and if we start adding in all these types of name changes for every department, we're talking, you know...we're going on to six or seven ballots here, you know. I mean we have to...I don't know how we're going to approach this issue when we get to it...

Sparks: Correct my memory...did we change the name of fire?

Vice Chair Dodson: We deferred it.

Takabuki: But public works and waste management we did.

Sparks: Public works and waste management...if we do fire and this...we could be known as the Commission that changes names! [LAUGHTER]

Vice Chair Dodson: Yes, I know, and cost the county a fortune in stationery! [LAUGHTER]

Takabuki: I would suggest that when we get to the point of when we finalize all of this, that we take a look at some of the ones that maybe aren't that critical, and decide whether we really want to keep them in; but, for now, we can keep them alive.

Cockett: Maybe all three could be tied together...waste management and the fire commission...

Vice Chair Dodson: And then emphasize on the ballot that this is just a name change...

Mondoy: We won't even have space...

Vice Chair Dodson: I don't really think we will either, that's why my point is to let's... if we come through it at the end, then we can always change our minds and say...

Cockett: Okay, why don't we...

Takabuki: We can prioritize right at the very end...

Vice Chair Dodson: Let's go ahead and take a vote.

Cockett: And leave it here in the minutes, but review it again when it's necessary...

Mondoy: It's good to go over all of them, but like she said, we can prioritize later.

Reyes: I was just going to suggest that if we adopt these, we'll have a chance to go to the public and get their reaction. If we're getting a negative vibration, well maybe we ought not to do something; but if we have a good reception, and they say they understand what we're trying to do...at the same time we're trying to keep the cost of running the county government...maybe it does make sense and that's a good vibration... positive reaction, then at least we can have the chance, rather than turning it down right now.

Fabrao: I agree with that; I was just going to say that...he took the words right out of my mouth. But I think we should keep it on the table for the community, and have them give us the input that they want, and then if it's negative -- then don't do anything with it -- leave it as is.

Reyes: And also may I add that Bob's comment last time...that this will not be just a plain name change, that's not how we're going to present it to the public; we'll have the rationale why we're trying to do that... We will emphasize...because he agrees that those are all major concerns, but instead of creating a new department...which is very, very costly...this is a compromise that would address a serious problem.

Vice Chair Dodson: Why don't we go ahead and take a vote on it then? All those in favor? All those opposed? Nay. [LAUGHTER]

Yonenaka: It goes with the job, right? [LAUGHTER]

Takabuki: Yes, I guess so. [LAUGHTER]

Vice Chair Dodson: That was a nay. [MOTION PASSED: 7 Yes; 1 No]

Cockett: Okay, the next one for discussion is Chapter 11; and, I think this is an important one...it's the department of water supply. Proposal received from Department of Water Supply reads in part: "Accordingly, the Board of Water Supply strongly urges..."

Vice Chair Dodson: Jim, can I interrupt you for a second? Let's just go straight to discussion. [LAUGHTER]

Cockett: Well, I would like to preface this with some comments first.

Vice Chair Dodson: Yes, I know, but I don't think you have to read the whole...

Sparks: Does everybody have it in front of them?

Vice Chair Dodson: Yes, we've all got it in front of...

Cockett: Okay, I'm sorry... The committee at first recommended no change, however, with the discussions that we've had, with what has been submitted...testimony in (Communication) 92-38 especially...a report from Peat Marwick & Mitchell, plus a letter of April 15th from...Larry Jefts, and the testimony that was given last Thursday. I personally have given some thoughts to this...that's very different from my initial thinking...and I'd just like for discussion to lay this out that they do have autonomy like they do on the other islands. That's my... [LAUGHTER]

Vice Chair Dodson: I like your opinion...brief and to the point! [LAUGHTER] Okay, you want to make some sort of a motion?

Cockett: There is a sheet here that has been supplied by them...last page of the April 15th Communication number 92-38, that more or less tells us how this autonomy would operate with different areas of expertise and responsibility; I think that should be part of my motion...that we do accord the board of water supply the autonomy operation that they're looking for -- with just one exception -- that the director's salary is taken care of...or discussed...

Vice Chair Dodson: It already has been taken care of...we moved it back into the salary commission.

Cockett: Have we? All right, then just let me rescind that portion. I propose that we go ahead and...

Vice Chair Dodson: So, your motion is that they...the board of water supply now have control over their rule making and rate setting?

Cockett: Yes. Complete autonomy as operated on the other counties.

Vice Chair Dodson: Complete autonomy... Is there a second? Anybody else have a motion?

Yonenaka: Well, you have to deal with...

Vice Chair Dodson: There's no second to it.

Yonenaka: The motion dies.

Vice Chair Dodson: Yes; the motion dies. Is there another motion on the floor?

Yonenaka: I'm thinking about my motion...

Sparks: I move that we make no change in the current Charter provisions for the water department.

Vice Chair Dodson: Is there a second?

Fabiao: Second.

Vice Chair Dodson: Okay, now it's open for discussion.

Cockett: What made me think otherwise, was the fact that Jones' testimony that was given last Thursday, and the operation...what happens up in Kula; that if you want to bring water in you pay for it. I personally feel that the whole island...every citizen who lives on Maui...the County of Maui...should have a part in being assessed in whatever development they have on the whole island. How they do it...should be done with expertise by a water board or experts in the water department; that's my reason for it.

Vice Chair Dodson: I agree with you too, Jim, I just think that his statement was pretty bold...that if we allow him to set his own rates, the entire problem of the water moratorium up in Kula is going to be solved. Quite frankly, I am very skeptical about that. He has money right now and I haven't seen him, since he's been director, make any steps to correct the problem up in Kula. Personally I think I'd like to let him go for a little while as they've been operating, and prove to us that the money that he's got now...he's been going towards that -- give us a five year plan...tell us exactly, if he sets his own rates, how that's going to make a difference for the Kula people. You know, just to come in here and say 'I need to set my own rates,' without giving us any type of plan on where that would take us, and how long it would take... Sure, it may solve the Kula problem, but when? Ten, fifteen years from now, next year? I just don't see the problem going away that easily, unless they show us right now...even without the rate increase...that they are heading towards that.

Reyes: I was just going to say it's not going to prohibit them from setting up rates, in other words, they don't need more autonomy or full autonomy to be able to set their own rates; they can discuss at the board meetings what's the best way to attack our current problem with the water in the county, and they're not limited to what they have their minds set on things right now...it's not limited to that. It's up to them to convince the public, the council, the administration...so to me, the problem is the matter of trying to come up with the right concept...the right solution that would be acceptable to the public, to the legislative body and to the administration -- and go for it. It's not whether I'm autonomous or not; to me that's the direction that you go...it's not being hampered by them being semi-autonomous.

Vice Chair Dodson: I think if the board of water supply went to the mayor and the council and said 'give us this money and this is what we will do with it, and we will have no more problem up in Kula' -- I can't see the council or the mayor saying 'okay, no.' You know, everybody knows he's got a problem, but I think part of the problem is that they haven't come to the mayor and come to the council and said this is our solution; but our solution needs a rate increase of so many percent.

Reyes: To be borne equally by the entire county...

Yonenaka: I think we're caught in a trap here that says...when we read the water department's function...they must be self-sustaining, and I don't think that law is written never to be changed. I think the water department, and water itself, has a problem and I don't think they can raise the money no matter what they try. I don't think the individuals in this county can bare the burden by themselves just for water. If we take that attitude, we're going to have to take that attitude with every department, and we say trash now has to be self-sustaining, et cetera, et cetera, et cetera. And, government doesn't function as individual departments trying to be self-sufficient; we do borrow from each other. I think the problem with the water department right now is

Yonenaka: (Continued) that they're going to need a lot of money...and I think they need to have some access to funds outside just the rates or just the fees...at least to get them caught up. To maintain a system is one thing, but we've got a lot of catching up to do in our system.

I have a problem with the department...if the attitude from government...and it does come from government...which says this is what you've got to pay period. This is what it costs us to give you this service, therefore you have to pay it; and, it doesn't work...it's going to end up...it could end up breaking up into it costs more for Hana, therefore if you're in Hana you've got to pay more. I mean, I agree with you, we should all bare the burden; but the money that is needed to fix this system cannot just come from water. I think they have to go into general funds somewhere -- property tax -- whatever it is.

Vice Chair Dodson: Are you proposing they come back into the county, then? Completely?

Yonenaka: I think it's something we have to look at.

Fabrao: I think so.

Reyes: These are the kinds of solutions that we're looking for to come from them. And, I don't think the Charter will fix their problem. [LAUGHTER]

Sparks: To follow up on what he's saying here...they are already getting a lot of money from bonds, right? It sounds like they like to go for general obligation bonds, and that that is generally the plan...is to borrow a lot of money to do what they need to do; and, that puts them right into the hands of the elected politicians. The general obligation bonds are based on the county's assets, not just the department's assets -- that's one thing. The other thing that I think we haven't been real clear on in a lot of our conversations is that we talk about getting the approval of the mayor and the council; well yeah, you have to get the approval of the mayor...that's clear in the existing wording. But, you don't have to get the approval of the council...all you have to do is make sure that four people on the council aren't going to vote against you within forty-five days of the rule that you make. Now that's kind of significant, because that means that all these nervous Nellie politicians that might be on the council don't have to do anything -- and they like that a lot better than having to go public and do something about it... a difficult long term expensive problem. So, I don't think they're going to get hung up that much by the council...unless it's really outrageous...

Yonenaka: Right.

Vice Chair Dodson: In which case, we hope they get hung up by the council.

Sparks: And then we hope that they get hung up by the council.

Yonenaka: But see, that's the point of the system as it's set up now; if they've got a problem trying to pass a rate increase...and they don't think they can get it past the mayor or the council...how do they expect to sell it to the public -- because they will have to somehow sell it to the public.

Sparks: It sounds to me like they don't want to sell anything to the public, they just want to do it.

Yonenaka: They just want to do it; and is that a function...

Sparks: There's some hazards in that.

Yonenaka: Right...are we saying 'here guys, you've got carte blanche -- go for it"... I mean, if we take that attitude, we might as well wipe out all the politicians...hire one person as a corporation and run this thing; and it just goes right down the line.

Cockett: Is that a motion? [LAUGHTER]

Yonenaka: And then we can go home...we just throw this out the door and say 'hey, you're in charge -- see ya later man."

Vice Chair Dodson: What I'm hearing is that I don't think we have to discuss this too much more; I mean, I think I'm hearing that everybody is pretty much in agreement on this. I'd like to just go ahead and...

Cockett: The reason why I lean the other way is the fact that I think the politicians are involved with the present set up; that if they were taken away from this set up, then they don't have any axes to grind...then they can't be blamed for that. And, I think that's what they're worried about...if they went and raised the rates...the people who have lots of water, who don't have to have their water rationed, will start complaining. I was talking about this to some people...asking some questions, and they said there's a moratorium up in Kula; yet at Pukalani Community Center they let the water run overnight. Just a statement. [LAUGHTER]

Vice Chair Dodson: They don't like us washing our cars in Kihei, either...we have water down in Kihei.

Cockett: Where are we now?

Vice Chair Dodson: I think we should vote on it.

Takabuki: Call for the question.

Vice Chair Dodson: Call for the question is called; any objection. All those in favor say aye. All those opposed?

Cockett: No.

Vice Chair Dodson: MOTION CARRIES. [7 Yes; 1 No]

Yonenaka: That was to...

Vice Chair Dodson: To keep everything status quo.

Yonenaka: Can I make another motion?

Vice Chair Dodson: Yes, you may.

Yonenaka: I'd like to move that we take the department of water and move them back under the county...as a department.

Vice Chair Dodson: Is there a second? Is there a second?

Fabrao: Yes, second.

Vice Chair Dodson: Okay, open for discussion. Start off, Lloyd.

Cockett: I just want to comment on that because they are semi-autonomous now, and I obviously feel that they need more time...that I think it's too...that we're not giving them ample time to really try to do the right thing...try to correct our shortcomings, or try to improve the water department; that's why I would like them to have more time.

Vice Chair Dodson: The only argument I have against that, Jim, is that the time they've had...I don't see any long term planning, I don't see any future goals, I don't see any...you know, and they don't seem to be moving in that direction either.

Cockett: Let me ask who rides herd on that commission, if anybody?

Vice Chair Dodson: The water commission?

Cockett: Yes.

Vice Chair Dodson: Nobody rides herd except the water commission. They're autonomous...they answer to themselves.

Cockett: I thought they were semi, and that's why I asked the question.

Vice Chair Dodson: Well, they're semi-autonomous only because they do not have the ability to change the rules or raise their rates...or lower their rates...that's the only thing that makes them not completely autonomous. But, they hire their own director, they determine their own director's salary, they come up with all their planning...their long range planning, et cetera. Al?

Sparks: On the point that you just made, I've read a lot about a long term plan to develop water in East Maui, and develop the infrastructure to bring it around to Central Maui. Isn't that something that they're doing?

Vice Chair Dodson: It seems to me they're thinking about it, yeah.

Sparks: You were just saying that you haven't seen anything in terms of long term plans.

Vice Chair Dodson: I guess I haven't seen anything new...I haven't seen any affirmative action to get this stuff going.

Sparks: The papers tell me that they've drilled their first wells and found water -- that's action of some kind.

Vice Chair Dodson: I just think it's been awhile for them to have drilled, you know... Maybe I'm expecting more from them, than what I've seen from them thus far; I think we still have a lot of problems and I don't see any of them getting solved right away in the near future. It's a little bit of a concern of mine; I mean, they had such great hopes and they had such great momentum when they started off this thing..."Now that we're semi-autonomous, we're really going to go like crazy." I just haven't seen them go like crazy at all.

Sparks: I'm kind of in the same view that Jim is here, that it's been a very short time -- although what Craddick said...it's a year and a half...it's more like, since '89 so that's three years or something like that.

Vice Chair Dodson: I think he's referring to how long he's been around.

Sparks: Yes, okay; but let me give you a little of my history on the thinking of this. And everybody yawns...here we go back fifteen years... [LAUGHTER]

Vice Chair Dodson: Everybody, let's get comfortable... [LAUGHTER]

Yonenaka: I want to hear it because, you know, if it goes back twenty years...that's even better yet. [LAUGHTER]

Sparks: Well, it was a semi-autonomous...roughly like it is now...when I was doing this fifteen years ago, and we changed it to within the county...just like Lloyd's motion -- under the mayor. We changed that and the voters accepted that recommendation, and put it under the mayor. And, there were a lot of people not too happy with that. Then they had the commission...special commission that met in '87 about; Paul was their legal advisor too. And I was quite impressed with the report; if you look in their records, I actually wrote a letter arguing that they leave it alone, right? Arguing all the arguments for accountability under the elected officials for this important department that needs to be integrated with all the other departments, and so on and so forth. So, I argued for that position, but after they finished their work...which I know was very thorough research into what's happening in the state, and in the country at large...they came to the conclusion that it would be better to put it the way it is now for a couple of good reasons. One was continuity, being able to attract good people to the director; and the one that sort of impressed me was politicians typically, they say, are a little timid about large scale, long term investments. And, that does help explain some of the data we heard last meeting, about how little of that has been done in the last fifteen years almost...twelve years, and that's why our infrastructure may be so far behind. Whereas a board that's appointed, and not directly under the thumb of the elected officials, can go ahead and do that under the guidance of a good director; and, that may have been what we were hearing from the directors of the other counties. In addition to that, they were worried about accountability and they kept this tie-in into the mayor and some little tie-in into the council...when things were outrageous enough; so, I thought it was a pretty good compromise and an impressive report; if you are dubious about this, I recommend that you go back and read that report -- which, incidentally, Paul wrote. And, now I'm convinced that this is a good way to leave it for awhile longer, atleast.

Vice Chair Dodson: Anybody else?

Cockett: If we don't do anything about it...I read this report by KPMG addressed to Rae Shikuma from...dated '91; it was a management consultant review here. And, I think this had a lot of merit here in the operation of the office; I don't know how they could be... Let me put it this way...I can't see how they just put this aside -- I hope they're not putting this aside -- because this kind of spells out how the office should operate; and reading through that, it makes good common sense. I just hope that they read it. [LAUGHTER]

Fabrao: Al, when you were on the commission fifteen years ago, and you changed it back into the department under the mayor...what was the rationale then?

Sparks: Basically it was one of better accountability to the public, and better integration of the key county departments that deal with long range planning and development of the infrastructure, and so forth. So that you'd have one boss over the public works that has to deal with highways, for example, and sewer systems; and then water

Sparks: (Continued) systems and planning, right? Our notion was that if all those folks doing all those different things are working for one boss that's elected by the public, then you have a nice direct accountability to the public -- then tend to hold the mayor accountable anyway -- and in this case, you've given the mayor the authority, and things should be better integrated. That was the logic there.

Fabrao: Okay, so when they changed it to semi-autonomy, has that situation improved any? Or, has it gone the other way, in your estimation?

Sparks: Well, I think it's a little too early to say; but, we do indeed, have a lot of history with other counties...in this state and other states...almost all of the large ones, again if you read that report...almost all of the reasonably large population areas have autonomous water boards -- they seem to be working fairly well.

Fabrao: Do these autonomous water boards...they're autonomous from their own counties or their own state systems...

Sparks: From their own elected officials...that's what we're talking about.

Fabrao: Where would they get their major bulk of the...just from the rate setting? I don't see how that would...

Sparks: From rates and going to the state legislature, like ours has for grants, and from bonds, right?

Fabrao: Wouldn't it make sense, since we're working towards trying to get everyone to work together under one umbrella, to have the water board be a little bit more in line with what we're working with the rest of the county? Because right now, you know that there's a bad water problem...there's going to be a worse one on Lanai...that the department of water -- the board -- they feel that they need to have their own way to make rules and raise the rates, and stuff. Where would that end? How would you cap that? If they were autonomous, how would you cap that?

Sparks: Right now they're semi-autonomous; the mayor or the council could stop them if they wanted to do something too outrageous.

Fabrao: If we left it the way it is now...

Sparks: They have to persuade the mayor and at least some of the council that their plan for raising the rates makes sense for the long term development of the county; which seems reasonable to me. And, it may be true that if you put them completely under the day-to-day operations/supervision of the mayor and the council, and they had to get their budget passed each year by the council that -- maybe it's true, as they have argued, that ...the last Charter Commission on this argued...that things don't get done. Politicians, by their very nature, are too timid to spend large amounts of money in long term, slow payoff types of investments.

Fabrao: But I just wondered...if the thinking is towards leaving the department the way it is now, would be giving them a chance to work out these kinds of things...rather than bringing them back directly under the mayor. I'm just wondering...

Sparks: That's what I'm recommending.

Fabrao: I'm just wondering if the three years that they've had to...because three

Fabrao: (Continued) years is not that long -- but, it's pretty long, when you have monies put aside and not doing anything with it -- I feel... And, they talk about the mayor not spending the money; how about the departments that are not spending the money that they have, and at least make some effort towards improving the system up in Kula. I don't think it's right that any individual citizen who pays taxes like everybody else, should have to pay a greater amount of money to get water into their land.

Yonenaka: A couple of things...on continuity, in the last ten years, how many water directors have we had?

Sparks: Well, you see, that didn't work out in this case. [LAUGHTER] In the last three years they've had two; that didn't work out, but maybe it will. We'll take a long view of these things.

Yonenaka: As far as accountability, I think everyone would have to agree that if you want somebody to be accountable, you put them in elected office; if you don't like them, you vote against them. Whether that works in practice, as well as in theory, it's anybody's guess; but that is nobody's fault but the voters. If we don't think that they're accountable, and they're elected officials, then we have no one to blame but the public; I mean, that's the way the system works. As far as being politicians and not wanting to make long term decisions, I think that's fine; I mean, that is the nature of politicians at times, and that's just the way it is. I want to just give it to them and say 'hey, here guys, you do it, or you get out.' And, I want to push the issue and maybe I'm wrong, but I think somewhere down the line, we have to develop...as a county...in terms of our politicians...if we don't like who's there, we can't vote for them; we've got to change them. And, we won't do it unless we give them hard decisions to make; I mean, that's a hard core view at times, but I think politicians are elected to make tough decisions. And, when we take water away...and by the department's own words... 'By water, all things find life'...I mean, that's the bottom of their little sheet here... [LAUGHTER] I have a hard time giving the department no accountability; I have a hard time taking it out of politician's hands when it's something as valuable as this, that I have no access to in terms of if I don't like the way things are done -- what is my recourse? I want my politicians to make hard decisions, because I want them to decide what's best for all of us; and, they're going to have to somewhere down the line. We have gotten this far with this many problems, because they haven't made them; and we haven't given them the option -- either/or -- either make it or don't.

Cockett: The politicians have a good excuse -- in fact, the excuse now is going to encompass the mayor also, with a two year term -- they don't have enough time to make decisions; that's their excuse.

Yonenaka: Well yes, that's an excuse for not making a decision; well, you can't make a decision because it's two years...then hey, get another job and let somebody else who can, get in there.

Vice Chair Dodson: And then too, it's not necessarily the mayor or the council, or any of the elected officials coming up with long term planning; the board of water supply and the department of water will be the ones to create this long term plan, as long as somebody tells them 'you have to do it.' And, that's where I think the accountability comes in; the mayor says 'you are my director, you are my department; if I say come up with a five year plan or a ten year plan, and stick to it'...then they have to. Whereas, in the current system, they can decide themselves internally whether this is something they would like or whether they wouldn't, and I think that's where Lloyd's going with this accountability thing...is if we...if the mayor doesn't do it, then we get on the mayor's back. And, right

Vice Chair Dodson: (Continued) now we can't get on anybody's back.

Cockett: Repeat the motion.

Vice Chair Dodson: The motion is to bring the water department back under the county. Al?

Sparks: I think a better excuse for politicians... [LAUGHTER]

Vice Chair Dodson: We don't need to think of excuses for politicians...they do very well on their own there...

Sparks: Is that they are facing a population that basically doesn't want to pay any more taxes, but wants more services.

Yonenaka: Yes, I agree.

Sparks: And if they do the sort of things...the sort of tough decisions that Lloyd's talking about, they're probably generally pretty accurate in assuming that that's political suicide; so, they don't last very long...so we end up with these other kind of politicians that are always nervous...I mean, that's just kind of the nature of the political game, I think.

The other thing I wanted to say...I believe there is requirements for planning now, and for water planning...a water plan...that is done not just by the department; they initiate it and it gets revised...it may be a state requirement...I've forgotten. And so, that kind of puts them on the line to plan something and get it approved by other officials, and then follow through; I don't think, under our current system, that they're out there all by themselves without any accountability.

Fabrao: That, I think, is what general plans are; when you have a three year, four year, five year plan or a ten year plan, that the plan is in place...that it moves along and it accomplishes what it wants to accomplish, and it gets changed as it goes along. But, the primary intent is not changed actually, and that is for the common good...whatever the plan is for. So, if the water commission or the board puts up a plan that's for five years or ten years, or whatever, no matter which politician goes in...those intentions are still addressed; and, I don't think that that's an excuse...that because they are two years in and then they're going to be out, that they have no time for long range planning. That's the reason why there is a general plan, for the state even; and I believe...I don't know which section that is, but I think that it's covered somewhere...that there is because they cover health issues and stuff, so why not water...because that's the most valuable resource. And, every island is suffering some kind of shortage; so it's not an excuse...or viable excuse for me, personally, to say that because they don't have enough time in two years or four years to do what they want to do -- they can, but the general plan is still there -- that's the reason why we have it.

Vice Chair Dodson: And to take it one step farther, not only do we need a general plan but it shouldn't just say 'oh, we'd like to lift the moratorium up in Kula...' How? What are you going to do? How are you going to bring in lines; how much is it going to cost? Get some real details down about what steps are you taking to accomplish this general plan; it may be, Al, that they do have this wonderful plan up there, but if it's just something on paper and there hasn't been any affirmative steps towards that goal, what good does it do us? And, if they are under the mayor's thumb, then the mayor can say 'okay, you guys said we're going to have water up in Kula; and you've said that you'd have dug four wells by now, and have pipes laid in these areas -- where are they?' And, that's why I like this idea of some accountability. Any more discussion?

Yonenaka: Yes, one more thing before I take the case... I talked to a guy today, and he has a lot in Pukalani, and it's a subdivision lot; he's going to build his house... he has all his permits done...he has the loan, it's issued -- he's ready to build. He has houses on both sides of him, and the county says you can't get a meter because there's a moratorium. Now, in my opinion, if the county acts as a body and permits you to go through this process to the very end, and then it says 'by the way, you're not going to get a meter, so you can't build' -- I think we have a problem with the continuity. And, I see that long run if the board, or if the department is totally autonomous; I do see a problem with continuity.

Sparks: You mean integration, don't you?

Yonenaka: Yes, integration of services and integration of just the whole general process.

Vice Chair Dodson: The convenience...just having the whole process being one process, instead of let's go out and spend, you know, a year and a half getting all my permits, then only to come to the water supply...which is completely out there...and tell them no, you can't get a permit. Whereas if it were sort of all one process, then once you started out, you could say 'oh, you're never going to get the water meter'...so don't even bother with the permits to build, and don't even bother with whatever else you might need.

Yonenaka: Yes.

Reyes: I made some observations during that...at the last meeting, and I believe that with just what we had last time...one representing a system where it was under the mayor's control...one under the system of semi-autonomous...and both of them are working; I came to the conclusion that it's not whether you're under the county or whether you're autonomous, or whether you're fully autonomous...I mean semi-autonomous -- but, it's a matter of the personnel -- the people running the department; the brains running it. It's a matter of how they relate to the public; it's a matter of how they relate to the mayor; it's a matter of how they relate to the council -- relationships. I think we can do whatever we want to do with the Charter -- nothing's going to happen; it's the people...it's the whole concept of how the department is run. The idea is emanating from the department; I don't think a department under the mayor would make any difference if the idea coming out of the board...or the group of the people...is sound and solid. Whether it's under the mayor, or it's semi-autonomous -- if it's good ideas...good concept...good plans -- that's what's the key; it's not whether it's fully under or...

Vice Chair Dodson: Well, don't you think the relationship between, let's say the director of water and the mayor would be a heck of a lot tighter if the mayor appointed him?

Reyes: Well, we just heard from the Big Island...and, they're successful; we just heard from Honolulu...and, they're successful -- so, that's what I'm trying to say...

Vice Chair Dodson: I think Maui has a real unique situation, and I had a real problem with these outer islands coming over here and telling us 'we're running great; how come you guys aren't.' I think we've got...

Reyes: Did they say we were running great? I didn't...

Cockett: Well, they've got more water! [LAUGHTER]

Vice Chair Dodson: They've got more water, I mean, Honolulu's running great because... they're low on water, there's no doubt, but their infrastructure is wonderful -- they've got a lot more money coming in from rates... I mean, each island has its own unique problem...

Yonenaka: I just tend to agree with Victor; and you're right, if you've got good people it'll work -- whatever system they're in. The problem is...if you don't have good people, what do you do? And right now, if you don't have good people in the water department, what do you do? And, there's nothing you can do.

Sparks: The argument for the semi-autonomous thing where the mayor doesn't appoint the director, is that in the long run you'll have better people because you'll be able to attract them to a job that isn't going to be jerked out from under them as soon as the mayor is unelected. Now, that may not happen in the short run, as we've seen -- but for the long run, that's the argument.

Vice Chair Dodson: And it would be great if it were to work that way, but unfortunately, it hasn't worked that way in the last couple of years.

Sparks: It hasn't here, but the evidence we've gotten from other places is that it has worked that way; not just here, but lots of places, and that the professionals in this business recommend that for that reason...you've got that experience...long, lots of experience in lots of places with sizable populations. If I remember the report right, small populations usually do have it just as a department under the elected officials; but once you get to a certain population level, almost all of them go to this autonomous or semi-autonomous approach.

Yonenaka: Well, I think we should look at it in terms of...we've got some problems; if anything, if the voters have a shot at it, it will bring a lot of publicity to it.

Cockett: We are going to take this out to the public, aren't we?

Vice Chair Dodson: Oh, yes.

Fabrao: If we don't move this out of this committee, it's not going to get on the ballot.

Cockett: Well the reason I thought that...this could last until 4 a.m. in the morning -- with testimony.

Yonenaka: That's true.

Vice Chair Dodson: Call for the question, somebody?

Fabrao: Question.

Vice Chair Dodson: Okay, any objections? We'll go ahead and take a vote; I think we'll do roll call on this one...

Takabuki: Excuse me; so this won't nullify what we did on the last vote...depending how we do on this...

Cockett: Will you repeat the...

Vice Chair Dodson: The motion is to bring the board of water supply back under; and, we also have a motion that we already passed to keep it the same, so after we take this motion -- if it passes -- then we need to decide...

Sparks: Which motion we really believe, right? [LAUGHTER]

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

Mancini: A couple of background issues...Allan mentioned the previous commission... and there are a couple of points that I think you may have overlooked. One was the commission's focus as a utility; I think if you looked at the question, you've got a department here that's different than other departments, and that is utility management like you have in an electric company. And, looking around the country, utility management is tended to be managed on a different basis...it's separate from the governmental structure -- that was one thing that they focused in upon. The other is somewhat tied to that...was the attention to detail; the ability to give a water department a hundred percent attention as a part of the regular county government; that was another issue. A third thing which is of interest...historically, and you may not have focused on it, is that after the water board going from under the county administration to semi-autonomous -- you had a hundred percent new water board, which people don't remember and which was not envisioned by the past Charter Commission. What, I believe, the Charter Commission was envisioning is that you had an existing water board, and you were giving that water board new powers. What happened, through a series of events, was that water board disappeared, and you had a hundred percent turnover. Historically, you might just want to focus in upon that because that is something, obviously, that most of the time you want to avoid -- having a hundred percent turnover in any agency. And it happened then, through a series of events; and I think any time you have a hundred percent turnover you have a degree of chaos and commitment. I don't think that's an issue for any other board or commission, but certainly, that was not contemplated; I don't think it was contemplated by that commission.

Sparks: I just wanted to ask a follow up question on what he said; can we assume that was because the ones that were on the board...as a semi-autonomous...when it went to under the mayor, and then they lost a lot of power, decided 'what the hell, I don't want to do this anymore'? Is that what happened?

Mancini: No, there was a corporation counsel opinion that basically said that this was a new water board, and not the old water board, and so they were subject to new appointments; so, there was a new appointment process that took place.

Sparks: Oh, I see.

Yonenaka: So the person who did the appointment did not appoint the people who were already on that board.

Mancini: I don't know if there were any carryovers. Anne might know...

Takabuki: I don't think...there may have been one or two, but there really weren't very many. And so it did take a while to get going, as far as that goes, so I can see the argument that they haven't had a lot of opportunity to gel and to get things moving along as much as they'd like to.

Sparks: On top of that, the director that was there for most of Hannibal's tenure, was not somebody with long experience in water or as an engineer; so maybe that is not

Sparks: (Continued) too surprising that we didn't have the kind of department that the other directors were talking about. I don't really know that that's part of the reason, but...speculation...

Vice Chair Dodson: Okay, shall we go back to a roll call vote?

Takabuki: I have mixed feelings about this...

Sparks: There's something in the rules about not explaining your vote at this point.

Vice Chair Dodson: No, you cannot.

Takabuki: Okay, okay, okay.

Vice Chair Dodson: Yes or no?

| | |
|-------------------|------------|
| <u>Takabuki</u> : | Yes. |
| <u>Mondoy</u> : | I vote no. |
| <u>Fabrao</u> : | Yes. |
| <u>Reyes</u> : | No. |
| <u>Sparks</u> : | No. |
| <u>Cockett</u> : | No. |
| <u>Yonenaka</u> : | Yes. |
| <u>Dodson</u> : | Yes. |

[MOTION LOST/4 Yes and 4 No]

Yonenaka: It needs six... Next...

Vice Chair Dodson: Valiant try, Lloyd. Okay.

Cockett: Okay, the next would be Chapter 12 - Department of Police. In our conversation with the Chief, he had mentioned a change in the rules of appointments, and he had proposed that the Chief be appointed from Captain and above...Captain and above in law enforcement, at least three years of which should have been in an administrative capacity. The recommendation: referral to the full commission for discussion. Emphasis was placed on ten years, but that's how he left it. What's the pleasure of this Commission?

Vice Chair Dodson: Emphasis on ten years...for what?

Cockett: I believe that's ten years on the police department...

Vice Chair Dodson: You're sure it's not ten years of police administrative experience?

Cockett: No, no.

Vice Chair Dodson: Just ten years experience in the police department, or ten years experience in law enforcement?

Cockett: In the police department; that's where the ten years came from.

Vice Chair Dodson: Anybody have any discussion on this...or a motion?

Fabrao: This ten years of experience...if you say in the department...sometimes you

Fabrao: (Continued) might have good people who come from away and who have had ten years of law enforcement experience elsewhere, not in the department. That would preclude them from participating, you know, to qualify for this position; so I would say that ten years total experience in law enforcement.

Vice Chair Dodson: That's what it says...it says shall have a minimum of ten years experience in law...

Cockett: Excuse me, can I interrupt? Do you have the minutes there?

Vice Chair Dodson: No, what you have here...the exact wording is that the chief of police shall have had a minimum of five or ten years of experience in law enforcement...it doesn't say that they have to have it in the Maui County Police Department, or any police department, for that matter...they can be a private detective for ten years, and still be chief of police. Al?

Sparks: Point of information. Who recommended this again?

Cockett: The present chief when we interviewed him.

Vice Chair Dodson: And, he recommended ten years?

Cockett: Out of the discussion, that's where it came from...I don't recall exact words...but these were recommendations...I'm sorry I didn't bring my minutes with me.

[Staff: His wording was from Captain and above; he just said it took about ten years to get to that rank.]

Vice Chair Dodson: Okay, so he just wants it to be appointed from Captain and above.

Cockett: I don't think we need to include that ten years portion.

Vice Chair Dodson: No, I agree with you. Al?

Sparks: Let me explore what this might mean... Does captain mean the same thing in all police departments everywhere?

Vice Chair Dodson: I don't know anything about ranks. Private means the same thing as captain to me. What are the ranks? Does anybody know?

Sparks: Well, it goes lieutenant, captain, major, chief...I think.

DeLeon: And assistant chiefs.

Cockett: You have an assistant chief and a deputy chief.

Mondoy: So how does it differ now?

Sparks: It just says a minimum of five years experience in law enforcement; he's suggesting shall be appointed from captain and above in law enforcement.

Vice Chair Dodson: Once again we're limiting the pool here, you know, the chief of police now cannot come from anywhere in the department with five years experience, but he has to be a captain and above. And, captain you said is right below the chief?

Sparks: Assistant chiefs, majors...then captains; the only reason I know this is because I just was at a party last weekend and there was a policeman, and I was confused so I asked him. [LAUGHTER]

Vice Chair Dodson: So, the only people we'd be able to get a police chief out of would be a captain or a major, or an assistant chief.

Sparks: And I think it's true, that we've had periods of time without majors...but we do have a few now that are coming up.

Reyes: I have a problem with this...this would be discrimination. [LAUGHTER]
Why would you say only a captain is qualified? What if the captain became a captain because ...not of merits, but because...not because of length of service, but because of politics or... I mean, this is discrimination.

Yonenaka: Yes, but at the same time, I don't think it would be fair to say that the chief of police used to be a sergeant last year, or a patrol duty officer...

Reyes: But, the nomination process and the selection process would take care of that.

Yonenaka: Yes, that's what we're doing...we're defining it a little bit more so... sergeants may not apply.

Cockett: May I just add from the present Charter...the chief of police shall have had a minimum of five years of experience in law enforcement, at least three of which shall have been in an administrative capacity. The selection to chose from Captain and above... where it's not in the Charter now...

Fabrao: I believe the rationale...what the chief said to the effect that when a person has progressed, normally they come into the department...they don't automatically get assigned a captainship from another jurisdiction; they have to start from the bottom up, unless they have some kind of reciprocal kind of agreement. So, I would assume that a brand new person coming in would have to start from scratch; so therefor, since they have to work up towards captainship or captaincy, that they would be better qualified at that point in time to then work for the chief of police position. It would be the same thing like in nursing, or any administrative position like that, that you wouldn't take an LPN and put him or her as director of nursing; that would be unheard of...I mean, you would have to go through the process; and with the rationale being that you would have grown to the capacity of that position that is the minimum that they require.

Cockett: This request is not unfair.

Fabrao: No, it's not.

Takabuki: I see the point in calling for more experience, but I would rather see the police commission set this criteria; because they'd be appointing. And, I don't think it's for us...even though the chief of police may have come to us and asked for this...I think he should convince his police commission, that they should put it in their rules...and not us. So, I would rather leave it.

Reyes: Thanks, Anne. But I think what I was...another point is if a person feels, and really believes he's qualified...because he may have been there for fifteen years and for some reason he's not a captain, or for some reason he may have moved from someplace else and he accepted a position... 'okay, I'll start and I'll not be a captain.' But, if

Reyes: (Continued) the person believes that he's really qualified, and he applies for that position, I think the Charter should not prohibit him from applying for that position. I agree with Anne; I think the commission...the nomination process...the selection process should take care of it. But, to put a limit, I think it's too...I don't know how to describe it.

Vice Chair Dodson: Too limiting.

Sparks: I'd just like to support that position by reminding you that the advice from the municipal league, in the guide to charter commissioners, says keep it simple -- don't put in a lot of specific restrictions.

Vice Chair Dodson: Then make a motion. We have no motion on the floor...

Sparks: How did the Chair allow us to do all this discussing then? [LAUGHTER]

Vice Chair Dodson: He's running this part of the show [indicating Cockett]. Is there a motion to... Well, we've got to decide...we need to make a motion whether it's going to stay the same, or whether we're going to include this language, or what we're going to do here.

Takabuki: I'll move for a no change to the current language.

Vice Chair Dodson: Is there a second?

Mondoy: Second.

Vice Chair Dodson: Okay, let's move on with discussion then. Victor?

Reyes: I've put in my piece already. [LAUGHTER]

Mancini: My only concern was the structural problem if someone could have obtained the rank of captain, and subsequent to that could have retired and could have become mayor, could be in another position, but he could have had that experience...and under the wording, he would not be able to be qualified for appointment. He could have been the head of the Bureau of Investigation...who obviously has quite a bit of police experience...but he wouldn't be qualified under the way it's proposed.

Sparks: I think that's another reason why the Charter Commission advice is don't specify too much -- keep it simple and leave it up to other agencies to...

Vice Chair Dodson: Okay, shall we have a vote on this? All those in favor of no change say aye. All those opposed? [MOTION CARRIED/Unanimous]

Sparks: We all agreed on one. [LAUGHTER]

Vice Chair Dodson: Do you guys want to take a break now? Okay, Anne says yes. Recess.

Takabuki: I think we're missing something on the police one. Didn't Howard come and ask for some change regarding budget submission? Isn't that what he came to you guys for?

Cockett: Oh, yeah; we didn't pick it up in the minutes...

[RECESS/RECONVENE]

Cockett: One of the things that the chief had asked that's not here on this agenda, was that they prepare the budget for the police department to be submitted to the police commission, and they in turn submit it to the mayor. The way the Charter is written, the police commission will prepare and submit...and the reasons for that discussion that we had there is because they don't have input...or maybe they were not fully involved in the budgeting process. And I believe this is what they wanted to do... to be able to work it from the ground floor up to make their case to the commission; and then the commission in turn would submit it to the mayor.

Vice Chair Dodson: So right now the police commission prepares and submits, and they want the...and the police department wants it to originate in the police department, and then go to the police commission, and then, you know, to the mayor. So, add one more step to this...

Cockett: Yes; in other words, they want to be able to prepare it for the commission's approval, I would say... And, as it reads now in the Charter, 8-12.2. -- it says here the police commission prepares and submits to the mayor a request for an annual appropriation for the operation of the department. So, it's just a matter of words...maybe you could come up with some change there that would be acceptable.

Vice Chair Dodson: Well, does the police commission now confer with the police department?

Cockett: I would presume so.

Vice Chair Dodson: In theory...I mean in reality, do they...does the police commission at all confer with the...

Cockett: I would think so, but for him to bring it up from his side was an indication that...

Vice Chair Dodson: He just wants to assure that they have to confer with him, right?

Cockett: Yes.

Mancini: I sat on the police commission for six years, and I recall we would get the budget and we would be asked to pass on the budget before it went to the county. It would be a difficult task as I recall, because we'd never have a lot of time to deal with it; nor did we feel terribly adept at it. Is it Howard's suggestion that that be deleted?

Cockett: Well no, that they prepare it instead of the commission prepare it.

Vice Chair Dodson: So the commission would submit to the mayor the request, and then we'd have to add into the chief of police...one of his duties would be to assist in preparing for the commission a budget.

Cockett: Something along those lines; how you would word it, I'm not...

Mancini: So the problem is the word prepare...

Sparks: Exactly.

Mancini: Because the commission actually doesn't prepare it, the chief does.

Sparks: Subject to their review.

Vice Chair Dodson: So maybe we should just take out [prepare and], and just leave it submit to the mayor a request for an annual appropriation for the operation of the department.

Cockett: If that's appropriate, I'd go ahead and propose that.

Vice Chair Dodson: Is that a motion, Jim?

Sparks: Can't we substitute review for prepare? Does that make...

Vice Chair Dodson: Review and submit...

Fabrao: Yes; review and submit...I think that would be good.

Mancini: I'm just looking at the chief; to be totally consistent, somebody's got to be responsible to prepare it...and that would be under the chief.

Vice Chair Dodson: So, I think we would have to add in something in there that...says that the chief of police would now be responsible for...

Fabrao: No...

Sparks: Prepare and submit to the police commission an annual budget.

Yonenaka: Right.

Vice Chair Dodson: And then take out prepare under number 2...

Cockett: Leave number 2 out.

Vice Chair Dodson: No, it would be to review and submit... So, the motion would be review and submit, under 8-12.2....subsection 2. to change that; and then add in a new 8-12.4., section 6...or we can do whatever numbering...that the duties and fuctions of the chief of police would include preparation of the budget for submission to the commission for review.

Sparks: I so move.

Vice Chair Dodson: Any second?

Mondoy: Second.

Reyes: My only concern is if you do that, look at the department of liquor control... which is also under commission; you would have to change that because the liquor director didn't ask for that, there would be some inconsistency if we do that. And, what I'm trying to say here...isn't that part of the administrative duty of a department head? Even though you don't specify, especially when it's up to the commission to ask the police chief if... how do you want to prepare the budget; and, it also says as other duties assigned by the mayor -- so the mayor may direct the police chief to assist the commission in preparing the budget. Because if you do that, I believe you would have to do something with the department of liquor control...I haven't checked...

Vice Chair Dodson: I don't think necessarily because we do it with the police commission that the liquor...

Cockett: I was just going to say that it's not the same, because the liquor commission has income from licenses; so, I think this is strictly for the police department...what we're trying to change...it does not include the liquor commission.

Vice Chair Dodson: That, and I think we need to specify...and I think this is one of those where I don't think it's appropriate to leave it out; we need to specify where this thing comes from.

Cockett: And, I wouldn't put it as six...I'd move it up one or two...

Vice Chair Dodson: That was my thought too; that last one should remain as a catch-all.

Sparks: My understanding is that if we don't do it, they're still going to do their operation the way they are doing it now...which is the way we're writing it up...which is the way we're changing the wording; but my guess is that would also be true for the liquor control. And, if we just wanted to clean up the language to make it more consistent with actual practice, we should probably do the same thing for the liquor control.

Fabrao: But, we're going to get to that in a short while, aren't we?

Sparks: If we don't clean up the language, they're still going to function in a rational way...which is the way we're writing the language; so, it's not a big deal, it's just a cleaning it up.

Vice Chair Dodson: So, would you like to...well, we have a motion on the floor just to do the police department; shall we consider that when we get under the liquor commission, too? To also make that change, it this one passes? Okay, is there any more discussion on this? Okay, all those in favor of making those changes, say aye. All those opposed?
[MOTION CARRIED/Unanimous]

Okay, moving on to the Department of Liquor...

Cockett: Chapter 13. First of all, the recommendation was that there was no change; and the concern we had there was on the compensation, and the recommendation is that the concern will be addressed by Committee A prior to moving salary commission to Committee C's section. Is that clear? [LAUGHTER]

Vice Chair Dodson: No.

Sparks: What did you say?

Cockett: Here, I'm just reading off of...

Sparks: Something about a C-Section? [LAUGHTER]

Cockett: Yeah.

Vice Chair Dodson: Does this mean that you want the director of liquor to also fall under the salary commission?

Cockett: No, just the salary...the compensation portion.

Vice Chair Dodson: Well, I don't understand.

Sparks: Oh; this would be inconsistent with what we did with what we did for water.

Vice Chair Dodson: He wanted to come out of the salary commission?

Reyes: If the water stays out, right.

Vice Chair Dodson: Oh, I see.

Sparks: So, we shouldn't change it.

Vice Chair Dodson: Is there a motion to either leave him the same or take him out of the salary commission?

Cockett: I move for no change.

Yonenaka: Second.

Reyes: The recommendation is no change...

Vice Chair Dodson: Okay, shall we go to vote then? All those in favor of no change, say aye. All those opposed? Okay, no change. [MOTION CARRIED/Unanimous]

Now, we can address that other change if somebody would like to move... to make it consistent with the police commission's.

Sparks: Okay.

Vice Chair Dodson: So moved?

Yonenaka: So moved.

Sparks: So moved, right.

Reyes: For the record, we'd like to have it stated please.

Vice Chair Dodson: Okay, so the motion would read that the Department of Liquor, Chapter 11, 8-13.2. The liquor control commission shall...number one, review and submit a request for an annual appropriation; and that we add in under 8-13.5. that the director of liquor control shall prepare the budget...for submission to the liquor commission. Is there a second? Did we get a second?

Reyes: Second the motion.

Yonenaka: This is Chapter 13, right?

Vice Chair Dodson: We're on 13, liquor...any discussion on this? All those in favor? Those opposed? [MOTION CARRIED/Unanimous]

Mancini: There is one issue...

Sparks: After we've already made the decision?

Mancini: This is a drafting issue; I mean when somebody reviews, the question is does the power to amend or adopt come with review?

Sparks: That's a good point.

Vice Chair Dodson: You come up with your language; if we don't like it, we'll tell you.
[LAUGHTER]

Mancini: Well, I assume when you're saying review, you're saying that they're putting their stamp of approval on it, and therefore they can change it. So, maybe I can come up with a better verb than review...

Vice Chair Dodson: Please do.

Cockett: Right; good.

Vice Chair Dodson: Okay, Chapter 14.

Cockett: Cost of Government Commission...there was only one comment made by them... that they felt that their term may not be long enough. And, if you review Chapter 8-... I mean Section 8-14.3. Term of Commission, it's an unusual layout. The commission shall be appointed biennially to serve a term commencing on March 1st of each odd numbered year and concluding on the last day of February of the following year. No member of a commission shall have served as a member of the preceding commission. However, we recommended no change. [LAUGHTER]

Vice Chair Dodson: Is there a motion to that effect?

Cockett: I so move.

Vice Chair Dodson: Is there a second?

Fabrao: Second.

Vice Chair Dodson: Is there any discussion, Al?

Sparks: I guess since we have a motion on the floor, I can discuss it. My real concern with the cost of government commission is whether it has worked out to be of any use. It came out of, again, the one...the commission I was on fifteen years ago...we thought it was a really creative idea; but I wonder...I've heard some indications that they work up a nice report and maybe a couple of people look at it, and that's it...nothing ever comes of it. If indeed that's a fact, maybe we ought to...

Vice Chair Dodson: Get rid of the whole thing?

Sparks: Delete it. I'm sure there's one positive thing though, and that is those who serve on the commission learn a lot about county government...so, there's the educational function. But, they might also be turned off, it all their effort comes to nothing.

Vice Chair Dodson: I don't think we're here for an educational lesson; they can go to your class and learn much more about...

Sparks: No, no, no... [LAUGHTER]

Fabrao: Al, when you were on the last commission fifteen years ago, how did you feel about this section at that time?

Sparks: Well, it wasn't there; we created it and thought it was a great idea.

Fabrao: Oh, okay.

Vice Chair Dodson: He's reneging now.

Sparks: And now is a good time to look and see if it was a great idea or not; if it's just people putting in a lot of energy to come to nothing, maybe we don't need it anymore.

Cockett: I was just thinking...if we don't change it, it will be one item less on the ballot. [LAUGHTER]

Sparks: Anne might have some experience with this thing...if what I'm suggesting is true or not; I wonder what she'd...

Takabuki: My recollection is...of course their report does go to the mayor and to the council, and there have been a few occasions where the council will actually adopt one of the proposals. I can't specify any offhand...I can't remember...but, I know they have been in the agendas, and they have been at least discussed; so maybe that's serving some purpose in that it brings to the legislative body and to the mayor some attention to some things they think might be improved.

Sparks: Okay, I won't push it; I really don't know, I just heard a few comments along the line.

Cockett: Question.

Vice Chair Dodson: The question's been called; any objections? Okay, all those in favor of no change to this section, say aye. All those opposed? [MOTION CARRIED/Unanimous] Is there any other motion regarding this section? Okay, we're going to move along here.

Cockett: Number 15, Civil Defense Agency; recommendation: no change.

Vice Chair Dodson: Okay; do we have a motion?

Cockett: I so move.

Fabrao: Second.

Vice Chair Dodson: Any discussion?

Sparks: What are we not changing now? [LAUGHTER]

Cockett: Civil defense.

Fabrao: There was an issue regarding safety...that the safety issues would be in reference to the civil defense...

Vice Chair Dodson: Yes, but aren't we going to address that under public safety? Or, are we going to address it under civil defense? Maybe we should go ahead and finish up with

Vice Chair Dodson: (Continued) this motion; and, we are going to go back and tie up those that we deferred earlier, so... And, at that time if we made a change there, then we can come back to this one.

Sparks: Do you remember what we were thinking of?

Vice Chair Dodson: Yes. Okay, any more discussion? All those in favor of no change for Chapter 15, say aye. All those opposed? [MOTION CARRIED/Unanimous] Okay, now everybody go back to the beginning. I think there was still...we got through all these, right? Prosecuting attorney we're okay with; I know we deferred Chapter 5...hear and determine applications for variances...

Sparks: Did we get through the investigators?

Takabuki: We were supposed to get a letter...

Vice Chair Dodson: We said we'd go ahead with it, but we want these letters and stuff, too. So, I think we're okay on that; we can always come back once we get the letters and a... but, I think we did take action on that.

Sue, did we actually write a letter requesting that letter from the chief of police and personnel services? Okay, Anne will. [LAUGHTER] I love this chair!

Sparks: Picking on Anne's okay, but next time it might be...

Vice Chair Dodson: See what happens when you don't sit in this chair? Okay, so let's go back to the Section 8-5.4.1. on the variances, and the proposed change by the administration. Let's get a motion on the floor before we start the discussion on this; has anybody got a recommendation as far as how this should be changed?

Cockett: I believe the discussion was the proposal by the mayor to delete any general plan, and to insert the provision contained within any zoning, and also to delete building ordinances, and insert instead sign ordinances.

Vice Chair Dodson: Is that a motion?

Cockett: Yes.

Fabrao: Second.

Vice Chair Dodson: Okay, now let's go on to discussion. Anybody have any discussion about this section? Paul.

Mancini: Let's see if we can get the clear intent for the change; I understand the intent with the general plan...I think that's obvious...

Vice Chair Dodson: Dave, do you have some clear intent as to why the administration would like to...especially the building ordinances versus the sign ordinances...that was part of my concern.

DeLeon: The best I can do is go up and see if the corporation counsel's in his office and drag him down here.

Vice Chair Dodson: Was it corp counsel or was it the mayor?

DeLeon: Well, he wrote the language.

Vice Chair Dodson: I mean, who came up with this idea that it needed to be changed and so forth?

DeLeon: Oh, that it needed to be changed is fairly clear; if you read today's Maui News you'd see it's all over the front page.

Vice Chair Dodson: I haven't read today's Maui News.

Sparks: Get that too. [LAUGHTER]

DeLeon: The discussion is the implication in a couple zoning actions...the developers appealed to the board to overturn the decisions of the planning director and the public works director...and those cases dealt with interim zoning, and they've been relatively messy in terms of clarity of their position. Paul argued that it was clear...

Mancini: That provision, Dave, wasn't it dealt with by the council by ordinance saying you can no longer subdivide interim zoned land...

DeLeon: Right.

Mancini: And that that policy decision hadn't been made in the past.

Vice Chair Dodson: It says here...hear and determine applications for variances on the provisions contained in any zoning, so that they could still come to the board of variances and ask for a change in zoning; if they are concerned about this, why would they put this language in? I'm a little confused.

DeLeon: I think the attorney was thinking in terms of it being the...under a particular type of zoning; I think he was thinking about everything else but the use itself. There are certain terms and types of conditions under the zoning that you could appeal or ask for variances on. And, that's where he was reaching...was inside the various provisions of each element, say it was in a commercial district or a residential district, they will have certain kinds of provisions that you have to follow...and that was what you could ask for variances on...as opposed to from one use to the next.

Vice Chair Dodson: Okay, so I think we need to be a little bit more specific in this wording then, because it seems to me...I don't know about you, Paul...

DeLeon: If you're confused and can't grab it really clearly, then I think maybe...

Mancini: To read it literally...it's to provide that there cannot be a variance to the general plan -- which I think everybody will agree with. But then, it adds the language...the provisions contained within any...any zoning ordinance -- and that creates some ambiguity as to what the intent is there. And then it deletes the building ordinances, so they would not be able to grant a variance from any building ordinance; and then it adds sign ordinance, so that you could grant a variance to a sign ordinance. Now maybe a sign ordinance is not subject to any variances...appeal right now, that could be the logic for that, I just don't know it...I haven't looked at the sign ordinance in a long time.

DeLeon: I don't think so...not in the existing language.

Mancini: Well, it's underlined so I assume it's added...the way I read this.

Vice Chair Dodson: I mean, from what it looks like...it looks like they were trying to, you know, get rid of building and add sign...thinking that they were somehow related. To me, I don't see any relation between a building and a sign ordinance; they're two different...

DeLeon: No, that's not the point at all; the point is that the building actually comes under the board of code appeals...it doesn't come under BVA anymore.

Vice Chair Dodson: Oh, okay; but they wanted something to address the sign ordinance...

DeLeon: But Paul has a concern that the next section down in your Charter...the next section talks about using the board of variances point in the Charter to justify the existence of the code appeals... Take out that reference to building codes, and you get rid of the legal anchor for code appeals. I think you should ask your attorney to discuss that. But, I'd like to suggest that I run upstairs and see if I can get Guy and get him down here; see if we can get...because I'm speaking for somebody else, and I can't really tell you...

Vice Chair Dodson: Okay, can we table that motion then?

Cockett: Sure.

Vice Chair Dodson: The next one was, I think, the public safety commission...on whether the public safety commission shall consist of nine members, and whether we should change that to the fire commission...

Cockett: That was the recommendation; the proposed wording that there shall be a department of fire control consisting of a fire chief, and fire commission...instead of public safety commission.

Vice Chair Dodson: Is there a motion?

Cockett: I so move that we make this change.

Vice Chair Dodson: Is there a second?

Takabuki: I thought we voted on this.

Yonenaka: Yes, I've got it written down to leave it as is.

[Staff: It was the other one, 8-7.2.]

Vice Chair Dodson: Oh, that's right...it was whether the commission should be able to chose three members and send it up to the mayor, and so forth. I'm sorry; I put my defer on the wrong spot. We're back up to 8-7.2. on the minimum requirements of a fire chief, and the recommendation was that we add in that the fire chief be with the Maui fire department... for at least five years...or have experience of five years.

Cockett: That was the recommendation, but I thought we turned that one down. I think then that the discussion we left hanging was whether the commission would submit three names...

Vice Chair Dodson: That wasn't a part of this...of your recommendation; so if there is a motion, then somebody needs to make it.

Cockett: Okay, I'll move that the change would be that the fire commission would submit three nominees to the mayor for selection as fire chief. Is that the right wording?

Vice Chair Dodson: Yes. Is there a second?

Reyes: Second the motion.

Vice Chair Dodson: Okay, it's open for discussion.

Yonenaka: What was the reasoning behind that?

Cockett: That wasn't my recommendation, but that was where we left it hanging...so, I thought I'd move it on. [LAUGHTER]

Reyes: So we could discuss it.

Vice Chair Dodson: I think Bob's rationale for that was that he was quite concerned because this was an issue of public safety...that we get a fire chief that has a great deal of experience, rather than it just be a political favor granted by the present...or whatever mayor. So therefore, if the commission had to come up with three names...and those three people would supposedly have experience...three or five or whatever...then those three turned over to the mayor, the mayor wouldn't...must chose from those people. That was his rationale.

Cockett: Well, suppose he doesn't; do you add three more names from the...

Vice Chair Dodson: You know, we're going to get into the same problem with corp counsel and prosecutor...

Cockett: But then the only difference there is that she appoints and she can dismiss without the council's...

Vice Chair Dodson: Not council's, but commissions?

Cockett: No.

Vice Chair Dodson: Not the commissions...to me, I think personally, that we lose a little bit of accountability...if the fire chief is not qualified, then the burden falls on the mayor. I always...when we start getting these commissions having a little bit more power over choosing their directors and so forth, it scares me...because the mayor needs a team that she can work with, and that she can exert some control over, and that she can...not exert control but she can...she is the one who is ultimately accountable. And, if they chose somebody...give her three names, all three of which she has no rapport with...

Cockett: I rescind my motion. [LAUGHTER]

Vice Chair Dodson: I didn't mean to convince you that easily, Jim. No, if you don't want to... I mean, we can carry this on in discussion, and then vote it down; that's not a problem. If you rescind the motion, that ends the discussion, too, then, Jim.

Cockett: Let's move on.

Yonenaka: Yes, that sounds good...let's go.

Fabrao: Did we address that 8-7.1., regarding that change from public safety to fire commission?

Vice Chair Dodson: Yes, we did; it stays the same.

Fabrao: So if there's no change...so what...we don't change that public safety? We just leave it as is?

Cockett: No, no; that has been changed...oh, wait...

Fabrao: Because I see here that it's crossed out through fire, but then I see no change in my notes.

Vice Chair Dodson: No, it's no change.

Yonenaka: It stays public safety commission.

Vice Chair Dodson: And all the duties would stay the same; the only thing is...we were going to add some duties in that we were going to have them submit these three names -- but it looks like that is dead as well. Al?

Sparks: Didn't we want to do something then about civil defense?

Vice Chair Dodson: No, because if there's no change...remember? Only if we made a change to fire commission was there going to be a problem with the civil defense.

Sparks: What does civil defense say again? Where is that?

Vice Chair Dodson: It's just that they have to submit a report to the public safety commission...

Cockett: Chapter 15, page 23.

Vice Chair Dodson: Victor, do you have...

Reyes: No, I'll bring it up later; it's not germane to the discussion.

Vice Chair Dodson: Okay, can we move along, Al? Are you satisfied with that?

Sparks: One less thing for rebuttal.

Takabuki: So the motion was rescinded?

Vice Chair Dodson: The motion was rescinded. Going back now to the proposed wording in Section 8-5.4.1. -- we have the author of this language, and can shed some insight into why and what was the ultimate goal of changing this. We understand the general plan portion; that we need to take that out. The problem that we are concerned about is the provisions contained in any zoning...whether that's going to open it up further to people coming in and actually changing zoning, rather than just the requirements of zoning.

Guy Haywood: Okay; not having the benefit of the changes that I did before me, it's been awhile, but...

DeLeon: Do you want me to go back upstairs and get the language?

Haywood: I can remember...my recollection...the main concern that we had...or that was...the main concern was the fact that people could, at least as far as the Charter was concerned, get a variance from the general plan.

Vice Chair Dodson: Yes, we have no problem with that part.

Haywood: Okay.

Vice Chair Dodson: But, we're afraid that having taken that out, and then added in this next section, that we're going to have the same problem...the next section being the provisions contained within any zoning. Are you reading down at the bottom?

Haywood: Okay, well we didn't add that in...that was already there; that was already existing in the language...in other words, the word zoning existed in the previous version of the ordinance. For your understanding, there in the law of variances...the law recognizes two types of variances -- one is what is called an area variance, and one is called a use variance. Another way to say that is if you look at zoning as you can only have x...whether it's single family homes, or restaurants, or whatever...and it also has some provisions about setbacks, and those types of things. A use variance is a variance from the actual types of activities that are allowed, and under the exist...under the law, a use variance should only be granted after a very strict evaluation. An area variance is not quite so bad, theoretically at least, that if you have 7½ feet and it should be eight, or...I don't want to get into it particularly, because we could spend a lot of time on the factors. But when you say zoning, generally that's...those concepts are already encompassed; and yes, you are absolutely correct -- there is the potential for someone to come in and get a variance from zoning to get a quote/unquote... It's not really to change the zoning, and it's usually to allow a use that is not normally permitted in the zoning scheme.

I was talking to someone about this the other day...it's a tough one. After the conversation, I thought of it...it's a tough one because everything that you're concerned about could happen. The law is such that it shouldn't; if you're asking me to guarantee you it won't, I can't. One the other hand, I'm not here... You know, on the other hand, I'm not so sure that taking that phrase out of the Charter is a good idea; I'm really not in a position to come and speak for or against it. But, you're absolutely correct in that there could be a problem in this area. The only other thing I could say, and it is only a very subjective thing...it's nothing that would guarantee anything...is that our department has no problems with -- I don't want to use the word taking on or confronting -- but perhaps appealing a decision by the board of variance and appeals if someone tried to change zoning through this process.

Vice Chair Dodson: Is there any way that we can change the language so that we can allow for area changes, and not use changes? In other words, hear and determine applications for variances on area zoning but not use zoning?

Haywood: I think it's possible; I would have to think about it a little bit, and I'm sure there's other people who would have views, but...if you wanted to say that you could only get variances...or you could not get variances from the specific uses outlined in an ordinance...it's possible...

Vice Chair Dodson: Not that you couldn't get a variance, but that you couldn't go before a zoning...I mean, the board of variances and have an application heard and determined there. I mean, there's always still an option of going before the council and getting a use...

Haywood: Yeah, that's basically what I was...I was trying...well, I don't know; that's interesting because normally what you come before the council for is the broad classification. Normally, let's say x zoning allows ten different activities; often times people are coming in before the BVA...not to change it -- they're not going to come in and say "I want Y group of activities" -- they're going to say "I want number eleven; I want to add one more," or "I'm in Y classification -- I want to have one of those things from Z classification allowed." So, it's really a sub...it's a small, so to speak, change; it's not the wholesale change that normally would occur before the county council, where you just say "I want the whole new classification."

If you wanted to preclude any type of variances...if you wanted to preclude...you see, the problem is at this point in time, there are provisions in the law that may allow special permits on some circumstances...under some circumstances, but there is no general mechanism to allow an individual use deviation before the council -- it's either a group wholesale change, or none. The concept of special permits could encompass this type of thing, but I don't see a mechanism currently existing before the council to have a single use change within a scheme. And, Paul is very knowledgeable in this area as well; I would be interested in his comments.

Mancini: First of all, looking at the introduction under 8-5.4. it says in accordance with such principles, conditions and procedures prescribed by the council, the board of variances and appeals shall do this. It seems that the word principles sticks out to me; to me, the word principles relates to the criteria that you wanted utilized and set forth. So, it seems to me, unless the intent of that language is something that I cannot see...Right now it seems that the council could set the criteria for any of the variances it wants by ordinance; the last Charter Commission didn't do that. I think the Charter used to have a provision in it that said for a variance you had to show unusual hardship, and things like that; and that has been taken out, and I think it's been dealt with by ordinance for that criteria. Consequently, if the council looked to prohibit a use variance, it seems like this Charter gives them that ability; unless I'm missing something in the language.

Vice Chair Dodson: As it currently reads?

Mancini: Well, it says in accordance with such principles, conditions and procedures; and council passes that by ordinance. Now I know that the council has passed certain ordinances dealing with the standards under which you get a variance; and it seems to me that that still exists there. Unless, as I said, there's a different intent under this Charter; and I haven't read this Charter's report, but it seems like that power is there. Now if we go down to section two...section two deals with appeals and not variances. So, when we take a look at the delegation by the council on the building code, the plumbing code, the electrical code, the housing code...that all deals with appeals -- that means someone has made a mistake -- not that you're trying to vary the application of the code, it means there's been an error; and, the council by ordinance can decide to give someone else the power to decide whether there's an error or not. But, if we take out the building code for variances...as it appears that this is intended to do...then we don't have a variance procedure for the building code.

Vice Chair Dodson: But, we have an appeal process.

Mancini: You have an appeal, and that assumes that a mistake has been made...you appeal a mistake.

Vice Chair Dodson: So that means you would have to go forward with...up until that point...and get a denial, let's say; and then appeal that, rather than go for a variance

Vice Chair Dodson: (Continued) in the first place. You'd have to go through the whole process first and be denied, and then...no?

Mancini: No; the variance is different from the appeal. The variance...there's a standard in the code, and you want to vary that standard; you're saying that standard creates a hardship to me -- it's there, I agree it's applicable to me -- but if it's applied to me, this is my result...it's hardship and it's unreasonable. And, you ask the board to vary that...to allow you to do what you want to do. The public works director makes a decision...saying the code says x, and you disagree with him...then you would file an appeal of that decision -- you're not varying it, you're saying his interpretation is wrong. Two different systems at play, and the delegation...as I read the Charter now...is only in appeals; if you want to vary the building code, you still go to the board for variances and appeals...and of course, that's a delegation there.

The sign ordinance, interestingly enough, isn't included anywhere; and the recommendation here is that there be allowed to have a variance in the sign ordinance. And I think it would probably be also here...the appeals section doesn't include...well, I suppose you could under two...the zoning, subdivision, zoning... Guy, is the sign ordinance under the building code?

Haywood: You know, for some reason I think it is; and the reason why we added sign ordinance to the first section is that when they adopted the sign ordinance, they said you could get a variance from it by going to the BVA -- but there was no mention of it in the Charter, either. It was a question of whether the Charter...because it was fairly specific...should have been more specific as to the sign ordinance. At this point in time, I don't know why.

Vice Chair Dodson: But the Charter was ten years ago; did we have a sign ordinance then?

Haywood: No, no; the sign ordinance was only enacted four years ago.

Vice Chair Dodson: So, if it's silent on it, that's because it didn't exist at the time, so now that it exists, should we include it in here, is what...

Haywood: Well, that's a decision for you; I don't think...

Vice Chair Dodson: I'm just trying to get the rationale for the language being in there.

Haywood: Yeah, I think the rationale was that there were other specific references to... I mean, we did have the general plan...we didn't know what people were going to do with that; we did have specific zoning, and other specific statements... I think...well, first of all...by the way, backtracking, I agree with Paul with that general language as far as the council is concerned. And, I don't know that we're compelled, for example, to put the language of the sign ordinance in there. And, it may be extra in the sense that it may not be absolutely necessary, because the council has in fact passed an ordinance. But the thought was generally sort of an offering...saying if you want to be consistent at this level, here's something else to be added in. So, I've sort of answered that, but I think generally I made my point.

Vice Chair Dodson: I'm still...maybe this isn't a question for you. Al, do you have a question for him?

Sparks: I have questions stacking up in my mind actually. [LAUGHTER] I need to take

Sparks: (Continued) them one at a time. The new wording that you proposed...instead of saying that the board of variance and appeals shall hear and determine applications for variances from the strict application of any zoning ordinance...it says from strict applications of the provisions contained within any zoning ordinance. Does that wording gain you something in preventing spot zoning?

Haywood: Well, if I could just take out the phrase spot zoning in the question... because that opens up a whole area...

Sparks: Alright; rephrase it however you want...

Haywood: I know; again, I'm going back to a period of time...it seems it was almost about a year ago, but the idea was...it was felt as if...rather than having the right to get a variance from a specific ordinance itself, or perhaps it's just a matter of form, I think...we were talking about the provisions contained within a specific ordinance as opposed to the ordinance itself.

Sparks: So, are you anticipating that that will narrow most things down to area variances instead of use variances?

Haywood: No, not necessarily; it could have been read that...the Charter could have been read to say that you... I don't know; perhaps maybe I'm being a little bit too specific. But, the concept, as I recall it, was...you have a general zoning ordinance -- do I have to vary from that? And, we said no, you get a variance from the provisions contained within it -- not the general application of the ordinance. That was the concept.

Sparks: Okay, okay...I follow you.

Haywood: So, it further bolstered the fact that you weren't coming in for a change in zoning or a change in a general plan, which are specifically within the council; you were coming in from the strict application of the provisions within it...or some of the provisions or a provision in it. Now, there are people who will argue...and I won't disagree with them...as far as they are concerned, it means the exact same thing; but, it's my recollection that it was to provide a degree of specificity to avoid confusion on generically avoiding a whole ordinance -- as opposed to the provisions in it.

Sparks: Okay, I followed that answer; now my next question has to do with why delete building ordinances? Is there some good reason why we don't want to allow building ordinances?

Haywood: Well, it was felt that the board of code...that basically, the board of code appeals...building ordinances...well, what is a building ordinance, I think, is the first question?

Sparks: I guess it's all the building functions, right?

Haywood: It doesn't say that, you know...we have the uniform building code, which normally deals...which is a provision...a law that is...a structure setback...construction standards for a building; and by eliminating that, there was a question of what a building ordinance was... I don't know what a building ordinance is -- does that mean an ordinance relative to a building -- does that mean sprinkler systems and things like that... And, that was part of the discussion, as I recall it; and then the next thing is if you mean the building code, then the building code is already covered by the board of code appeals, anyway; so, it just avoided that confusion.

Sparks: Okay, let me follow that up...Paul made the distinction for me between variances and appeals. The board of code of appeals -- can they do variances?

Haywood: I think...you know, I have to look at the language...it's a...I don't know what...I'm thinking to myself, what is the standard; I don't...well, perhaps I'm being too technical...

Sparks: But, the board of code of appeals...if we stick with the language of the idea of appeals is some authority makes a decision that may be in error; that's different than there's a building code or a plumbing code, or whatever, that hampers somebody unreasonably...and that needs to be set aside or adjusted, or not followed in that particular case, because of the unreasonable hardship, right? That's my understanding of the difference between variances and appeals; one's a human decision that might have been in error, and the other is a piece of law that is in the building ordinances, building codes, or whatever you want to call them, that is causing undue hardship to somebody. Does the board of code of appeals then cover that variances situation, if we take it out of this paragraph that deals with variances?

Haywood: My understanding is yes, it does; that's what the board of appeals is...that's the board that you go to when you have concerns about when you want to deviate from the building code.

Reyes: Okay, in that case, what if there's no decision; no decision has been made -- how can you appeal if there's no decision?

Haywood: First of all, I think you have to look at...first of all, we have two different...well, item one and item two in Section 8-5.4. deal with two distinct acts, I think. And, let me take item number two first; item number two simply says the BVA gets... is the body that hears the conclusions... Well, the BVA is the body that listens to your complaints about the decisions of the director of a department in interpreting the law. Okay, in other words, if the director of public works said something, and you don't think he did it right, you can appeal his decision. There's two options that would occur from that. -- someone would say the director's wrong and you're...well, the director's wrong, and you are right, and therefore you can do what you've been asking for; or, they could say the director's right. Obviously, they could say you're both wrong, but let's just assume that's not the case. Let's assume that the decision is that you're correct; well, then you do what you think is the correct interpretation, and there shouldn't be a problem. If they say, no, the director is correct; then what you would do is get a variance -- ask for a variance from that provision. So, there's a two step process; why there is or not, I really don't know...at least that's my understanding of it, that it's...that once... And, many people will simply go for the variance, without contesting the director's decision directly, although there's some fine points in there that, you know, have been worked.

Reyes: But, in following up Al's question, if you take the building ordinances because you feel it can be taken care of by the code...

Haywood: Board of code appeals.

Reyes: Al's point is that if there's no decision that's been made, how can you go to the board...

Haywood: Well normally...well, I don't think it's necessary for you to have to exercise your appeal rights in order for the director to say this is what I think; in other words, if you wanted to go to board of code appeals...you said I want to use a so many inch stud in

Haywood: (Continued) this particular position in a building, and the director says no, then you either have the choice of appealing the director's decision pursuant to subparagraph two, or you could just go to the board of code appeals and ask for a change.

Now, the board of code appeals really...there's really actually some...you're basically late in the day and I really didn't anticipate this, so I apologize. There's something else I wanted to add too; the board of code appeals...there is also an inferred policy decision, I think, in this situation in that people really ought not to be getting variances from the building code itself, which is a much more specific...in terms of materials, and so on and so forth. The board of code appeals, if I understand it correctly -- I've never participated in any of their meetings -- is more a substitution of materials; I don't know that you can actually get around the building code that much in the board of code appeals...so, I'm going to defer to Paul and whatever he might say. But, there is an inherent policy decision in this, in that you're not going to allow variances from a building code -- you may allow substitution of materials before the board of code appeals; so that the concept of a variance also doesn't apply as neatly, let's say, to setbacks, perhaps minor uses that are inevitable, or uncontrol...what's the word...where there's no other reasonable use of the property. So, there's an additional... I realize that I'm confusing everybody, but I know that when I started talking I knew I was going to lose them...I'm losing them...but, what can I say? [LAUGHTER] Sorry, folks! [LAUGHTER]

DeLeon: I think the board of code appeals has met once or twice in the last two years.

Haywood: It is more to do with changes in materials, and like I said, there's an inherent policy statement in the way that this was planned -- that your building code is something that you don't want to give a whole bunch of deviations and variances from the building standards.

DeLeon: Actually if you read the code though, it looks like you can go in for anything.

Takabuki: I think they attempted to, in passing this ordinance though, to deal with variances; I think you're right. But, it wasn't done in such a way as to distinguish, as Paul has said, that there is that difference. They call them all appeals, but then they do say that they can grant exceptions relating to any matter in any code, as long as the strict application, operation or enforcement results in practical difficulty or unnecessary hardship. So, they've got the standard there, right. So, it seems like they attempted to do it, but it probably wasn't quite done the right way.

DeLeon: I hope they change the name of the thing, because generally, nobody can say it right; everybody says the board of code of appeals; but it's board of code appeals.

Haywood: Board of appeals would be a little easier... Although, I'm sorry if I've confused you...perhaps...

Sparks: I think with that information, there must be a...there is kind of a rationale for eliminating building ordinances. Number one...what are building ordinances seems to be a little fuzzy, although I it wasn't fuzzy to me -- it's all these building codes, plumbing codes, electrical codes and housing codes are passed by ordinances; and that must be what they are talking about. But if you say, on one hand, maybe there's a bit of a policy decision not to make it easy to have variances in these codes -- which are, afterall, for everybody's safety and so forth -- that makes some sense; on the other hand, if there are undue hardships that we might call variances that could be covered under the board of code appeals -- I see the rationale for dropping building ordinances. Right? I don't think I was totally confused. Does that make sense to anybody else?

Fabiao: May I ask a question? I know that for the building codes, the specifications for materials and things like that has to be stricter than the land use kinds of issues for

Fabrao: (Continued) variances, because they grant variances for use...a use variance. And, I think the application is stricter in the building ordinances.

Haywood: It's much more technical...it's a much more technical document, certainly, than ...well, I'm not sure that's...but, it is a much more specific document than the zoning law. I would reiterate that the major concern...or a major concern of this provision is that language -- any general plan -- because that would include the community plans. And, that is definitely a specific process for...

Reyes: I have a little note here too...does this in-zoning means...it refers to interim zoning? You'll have to educate me on that. Does interim zoning mean it's a classification of zoning, or it's an extra zoning, or...what is that?

Haywood: How about if we...one way to dodge it would be if you say any of these ordinances...whatever they might be, but that still dodges the question. You know, you raise a good question -- there have never...I'd have to double check, but there have been lots of discussions on whether interim zoning...the interim zoning classification -- if it's a zoning classification per se, or it is a repository, general holding pattern. Now, we're getting very technical here, and there've been people who...given the intricacies and interactions...have said, well it's zoning and you can get a variance from it; and there are other people who have said, well you don't really get a variance from it because it's not really zoning per se, it's just a group of permitted uses, and so on and so forth. You know, it's not meant to be a zoning classification; it's meant to be sort of a transitional area.

Mancini: The interim zoning ordinance provides for variances...

Haywood: In and of itself, yeah.

Mancini: And, the criteria for a variance under the interim zoning ordinance is different than the criteria under the regular zoning ordinance...

Haywood: Which is interesting, too.

Sparks: So, if you put the word any in here, would that supersede what you were just saying about the interim...

Haywood: Not really, because that's an ordinance that council's adopted pursuant to the Charter. Let's put it another way...I don't think the any was put in there to try to get an extra advantage, or to include a group that heretofore had not been included.

Yonenaka: So the interim zoning doesn't come under the board of variances and appeals?

Haywood: Oh, it does.

Yonenaka: It does?

Haywood: It does; I'm confusing everybody, is should have probably said yes, it's subject to both zonings -- regular zoning and interim zoning are subject to the board of variance and appeals as outlined in the code.

Yonenaka: What's allowed in interim zoning?

Haywood: Well, there's a whole bunch of uses that are allotted, so I don't think...

Yonenaka: Has the board made a lot of decisions in that area?

Haywood: I...don't know; I don't.

DeLeon: They've gotten a lot of questions...because if you have one use in a commercial district...Kaunakakai...Paia, particularly those two towns; a lot of them are small towns...Lanai City, for instance, all of them are on interim zoning. All of the commercial districts are under interim zoning; under interim zoning you have a fixed use -- you have a barber shop, and you wanted...somebody else buys that shop and wants to turn it into a real estate office, they'd have to get a variance for that.

Mancini: Interim zoning...the general use is one, a single family dwelling unit and their lot size is not less than, I think, 6000 square feet; and that's a smaller lot size than you'll find in any of the residential districts within the comprehensive zoning ordinance. So, some property owners who find themselves in an interim zone, used to feel that they had a better asset because they could provide for a smaller lot. This is less of an issue now, in the last couple of years or last year, because you can... with the zero lot line you can even go smaller with the residential lots. But there is a variance procedure, and the variance procedure for interim zoned goes to the council for final decision; it doesn't reside just with the board. The board makes a decision, but that decision...and you can tell it's an old ordinance because it still talks in terms of the board of adjustment and appeals...which the last Charter in '88 had changed to the board of variance and appeals. In the comprehensive zoning ordinance, it doesn't go to the council; also, the nonconforming uses are a bit different from the interim zoning ordinance than they are the continuation of the...under the permanent ordinances.

Sparks: I need one more clarification on these items here, and that's this sign ordinances bit. Now you...is there any problem with leaving that there, the way you've suggested it...including sign ordinances in this wording under...about variances?

Haywood: You're asking me if there is a problem with it?

Vice Chair Dodson: Yes, can you address it?

Sparks: Yes; in your discussion you sounded a little ambivalent.

Haywood: Well, we put it in there because I think...it's very specific as to what you can get a variance from here, and it is a specific ordinance that deals with the BVA. I don't think leaving it out is fatal...

Sparks: I see, but it might help to have it in.

Haywood: It clarifies, but it's not fatal.

Sparks: I'm ready to make a motion.

Vice Chair Dodson: Okay, is there any more questions for Mr. Haywood? Thank you very much. You're welcome to stick around if you want the outcome...

Sparks: But we haven't finished discussing it yet.

Takabuki: Stay; I think you should stay.

Haywood: Either stay or leave? Is that relative to either stop or run?

Vice Chair Dodson: I just don't want... Okay, Al, would you like to make a motion?

Sparks: My motion is that we accept, as part of our tentative final...

Vice Chair Dodson: Wait a minute; we already have a motion on the floor.

Sparks: We do?

Vice Chair Dodson: Yes; Jim made it, didn't you?

Cockett: Yes, it was...

Vice Chair Dodson: It was to just...exactly the way it is here.

Cockett: That's right.

Sparks: The way it's been suggested, in other words.

Cockett: Yes.

Vice Chair Dodson: In this proposed wording on our papers here, so...

Sparks: Which deletes general plan...

Vice Chair Dodson: Hear and determine applications for variances from the strict application of the provisions contained within any zoning, subdivision or sign ordinance. That's the motion on the floor right now.

Sparks: That's the motion that I wanted to make, so I guess...

Cockett: You can second.

Vice Chair Dodson: No, it's already been seconded...we're in discussion.

Cockett: Oh, okay.

Vice Chair Dodson: It was tabled, and now we'll bring it on the table again.

Yonenaka: Oh, we're going to get to discuss it now...

Vice Chair Dodson: We get to discuss it now, right. [LAUGHTER] I don't know what we've been doing, for the last hour and a half, but...

Yonenaka: I'd rather...I want to vote.

Sparks: I'm ready.

Takabuki: So, are we clear then...to take the building ordinances does no harm here? Paul's clear on that?

Sparks: I'm thinking it is, because what you saw in there...

Takabuki: I know, but it's really not clear in there...it's...

Sparks: No, but it seems to cover it...even though they call it code appeals, it seems to cover variance appeals that might be a hardship.

Takabuki: Are we comfortable with that?

Mancini: I'm not sure where you are; you're talking about deleting the building ordinance?

Cockett: Yes, changing it and then inserting...

Sparks: As they suggested.

Mancini: Okay, now let's just think it through...we're taking out... Right now we're taking out the ability to get a variance from the building code...

Sparks: From this board, not from the code appeals board...that's what the substance if what you've been telling me...

Mancini: But right now, you can make an argument that under number two here, all you can delegate to this building code group is appeals and not variances. If you read literally the language of that ordinance, although they start to put in a criteria for variances, it still talks about an appeal...not a variance. Although it talks about substitution of materials, I think they would have to find it a decision in error...before they get to that. So, I guess I've got a bit of fear that there may be scenarios where true variances to the building code are appropriate; now, I have not personally been involved with any variances to the building code...the closest thing I've had is where public works has indicated certain structures have to be tied together; and the architects and engineers disagreed with that. And then the question is...is that an appeal, or is it in a variance to it? If the public works officials are correct, then you would have to get a variance. And if we take out the ability to give variances...out of the Charter...then you have to ask yourself where they are; unless you wanted to change all of number two...the delegation provision under number two -- saying the council, by ordinance, may confer to another county agency the authority to hear and determine variances and appeals from the decision of the building code.

Vice Chair Dodson: Paul, what is your understanding of the last part of this language down here...relating to matters involving any denial of the use of new or alternative materials, types of construction, equipment, devices or appliances?

Mancini: First of all, you've got the director of water supply -- remember we talked about that last time, and it seemed to be a strange scenario where if the water board... department was semi-autonomous, and they do have their own appeals system, we're taking that away from them here...at least we have a conflict if we keep that...

Vice Chair Dodson: So, this last sentence here applies only to the director of water supply and the administration of his rules and regs? It doesn't apply to the whole section?

Mancini: Well, I'm trying to find the verb that modifies it. [LAUGHTER] It's not that easy to find it here.

Sparks: It's one hell of a sentence, is what it is.

Reyes: It's a beauty.

Mancini: The council can confer the authority to another agency to hear and determine appeals from whom? From the decisions of the building officials of the county, concerning all of those codes; and, from any order of the fire chief, and the director of the department of water supply...relating to matters involving...

Now, it seems to me that you've got three things...you've got the building official, you've got the fire official, and you've got the water department; and then it sounds like the appeals relate to matters involving the denial of the use of new or alternative materials, type of construction, equipment, devices or appliances -- and that limits your appeal rights. Your appeal rights have to relate to those things.

Vice Chair Dodson: But when you get a variance on a building code, didn't we just say that it would relate to materials, types of construction...

Mancini: Well for example, you know, there's this very controversial provision in the building code where if you want to build a building adjacent to a county street, you have to put the utilities underground...and that's under the building code. It has nothing to do with materials, but the ordinance basically says -- with a few exceptions -- that if you want a building permit and you're adjacent to the county streets, you're going to have to basically do curbs, gutters, roadway improvements including putting all the utilities underground. Lots of times you have this mom and pop operation...they come in for a building permit, and they say they want to do a little renovation; and the response is...fine, put all of the utilities underground. And, utilities cost a half million dollars to go underground...and the renovation is \$10,000. There have been instances where I think appeals, or variances are sought for that because it's a hardship; there have been instances where it's been modified, but what I'm trying to think of is areas where we're not talking about the building code that has provisions in it...other than the materials.

Vice Chair Dodson: So, your suggestion is that we...in giving it to this other county agency, not only hear and determine appeals, but also variances.

Mancini: I think my suggestion would be to bring Aaron Shinmoto down here and talk to him about the experiences that they've had in the various fields; and bring one of the building officials down, because although I've got, you know, a little gutter experience... [LAUGHTER] you're making an awful important decision one way or the other. And, I get a feeling that we might need a little more information, before we start pulling these pieces apart.

Vice Chair Dodson: Yeah; what do you guys think about that?

Yonenaka: Good idea.

Sparks: But before we defer...

Vice Chair Dodson: We have a motion.

Sparks: Yes, we're discussing it. I've got my head in here swimming around trying to figure this out... It sounds like, from what Paul's saying, that this board of code appeals now really doesn't have the authority to do variances on building ordinances -- but they are.

Mancini: Well, it's a strange ordinance.

Vice Chair Dodson: They may not realistically, but they're able to...

Sparks: But they don't have the authority under the Charter for an ordinance that gives them variances, according to what you're telling me.

Mancini: No, I think you have to read the Charter completely; in this it clearly grants variances from what I would call the building codes...the building code to the board of variance and appeals.

Sparks: But it grants that to the board of variance and appeals, not to the code of appeals.

Mancini: It grants to the council the authority to provide for appeals...in the building code, from the fire code, and from the water department...to an alternative body...

Sparks: Which has become the board of code appeals.

Mancini: Now, I don't think they've done it...they may not... Is there a provision, Guy, maybe you would know, with regard to a fire code? Is there a variance board for the fire code?

DeLeon: No, the code appeals handles the fire code.

Mancini: So I suppose it's covered in that ordinance.

Vice Chair Dodson: That's why they named it board of code appeals, because it refers to all these codes -- the fire code, am I assuming right? -- the building code. What does the ordinance say? Does it say...

DeLeon: I only know in reference that I was told that it was supposed to be overseeing it...that's what we have to find out.

Haywood: Can you find code appeals? I couldn't find it...

Sparks: There's actually then... Am I correct...then, Guy, maybe you can help me... then under the existing Charter provisions, there's no way you can go for a variance to a fire code or to a rule or regulation of the water department...unless it's under the water department rules, maybe. Because this doesn't authorize it, it only talks about appeals.

Haywood: I would say that...because at this point in time, I...yes, at this point in time, yes. I'm not familiar with all of the language in the fire code; there are provisions in there for the chief to get involved at certain times, but I don't think it's a variance.

Takabuki: So, which board in fact is really hearing these variances? It is the board of code appeals? Or, it's still the board of variance and appeals?

Vice Chair Dodson: In reality, who's hearing them?

Haywood: As I understand it, anybody seeking anything from the building code...they're going to the board of code appeals.

Takabuki: So okay then, they've all been shifted over...because that ordinance tried to do that.

Haywood: That's my understanding, yes.

Reyes: By understanding you mean that's the practice today, but it could be changed somewhere down the road...could it?

Haywood: Um, yes; it could.

Vice Chair Dodson: Perhaps we should just go ahead and table this motion then, and try to get a clearer picture from Aaron Shinmoto, and maybe even ourselves...take a look at this code of...I mean, this board of code appeals.

Mancini: The guru is actually Francis Cerizo, because Francis is the person who services the board of variance...I assume he probably services the code board also...and he could tell us the actual practice...what is happening.

Sparks: It does sound to me like they don't have...this board of appeals doesn't have Charter authority for doing variances.

Cockett: What's the makeup of the board of code appeals?

Sparks: It's not here, it's in the ordinance.

Cockett: Oh, okay.

Vice Chair Dodson: Okay, why don't we go ahead for a recess.

[RECESS/RECONVENE]

Vice Chair Dodson: Okay, we're going to go ahead and reconvene, please. We're back on this Section 8-5.4.1. -- there's a motion on the floor to change it as worded here...in Committee B's report. There's been a second, and we're in discussion.

Sparks: And I would like to suggest that we defer it...for more information.

Vice Chair Dodson: Defer the entire thing? Okay, you realize...let me clarify something here. This is our last meeting...we are going to public hearing and we will not meet again until July 2nd...so if we defer it, it is until that point; and, it will not come up on our proposed list of amendments, and may not even come up in public hearing. If we take some sort of action...whatever it may be...then it will come up at public hearing, as part of the proposals, and we can find out at that point...and we can have more discussion on that point.

Sparks: If it came up in a public hearing, I'm not sure I could explain what we're doing...or why we're doing it. I was persuaded by Paul, during the recess, that we need some more information from the people that are actually working, say, with the board of code appeals.

Vice Chair Dodson: I agree, too; but I...it might be that we could get that input at a public hearing by the board of code appeals.

Fabrao: We could invite them.

Vice Chair Dodson: With that, do you still want to defer it?

Sparks: I was thinking in our hearings we might mention that we're really looking hard at this, and some of the reasons why we're looking hard at it, and that we're trying to get more information.

Vice Chair Dodson: Well, what I would suggest is that we not defer this...go ahead and

Vice Chair Dodson: (Continued) vote on this and strike it down, or whatever we're going to do...because it seems there is confusion; and then, make another motion changing the general plan portion of it...because I think that's the only thing that we're all in agreement on, and then it will, for sure, come up at public hearings...and we also, like we said this is tentative...we can bring this up once we get more information on it, and the rest of it.

Sparks: Why don't we just amend the motion...and delete the part about the building ordinances?

Vice Chair Dodson: Jim, would you like to amend your motion?

Cockett: Okay, amend it by...

Sparks: Leaving building ordinances in...

Takabuki: Just deleting any general plan...

Cockett: Okay, leaving building ordinances in...

Vice Chair Dodson: Yeah, leaving it just the way it is, except take out general plan.

Cockett: Okay.

Sparks: No; and the provisions contained within is new words too, I think.

Vice Chair Dodson: You want to leave that in as well?

Sparks: Yeah, yeah.

Vice Chair Dodson: Okay; is there a second on that amendment?

Yonenaka: Second.

Vice Chair Dodson: Is there any discussion, or can we go ahead and vote on that? And, I'll make it clear...if you need clarification...

Reyes: Before you take any vote...I have a note here that the subdivision and zoning ordinances...the administration of that...be moved to the planning department, and also matters of concerns with the hearing process on zoning. I have to bring it up now, because I don't know what's going to happen. If we vote and...you know, I don't want it to be left out. I think it's a very important issue, and...

Vice Chair Dodson: Then you can make another motion, Victor, as soon as we're finished with this one...addressing that.

Reyes: I just didn't want to jeopardize that; okay.

Vice Chair Dodson: This one just pertains to the general plan and the provisions contained within any... Okay, taking out general plan...and just putting in the provisions contained within any. Paul?

Mancini: Question; Al seems to understand this thing... Adding the provisions contained within any zoning -- those words modify both zoning, subdivision and building?

Sparks: Ordinance...

Mancini: Ordinance...all...

Sparks: And sign ordinances, we're not putting in?

Vice Chair Dodson: No; that wasn't the way the...

Sparks: Yes, that's my understanding.

Mancini: Okay, and the change that that makes from the existing Charter...which says the strict application of any zoning, subdivision and building ordinance... When you're asked the question -- what does that add? -- your response will be what?

Sparks: I don't know.

Mancini: Okay, that was my question.

Sparks: But a county attorney thinks it might help...in some areas sometimes...some how. [LAUGHTER]

Vice Chair Dodson: And he will be at all the public hearings to address this, I am sure.

Haywood: My answer would be the same; the idea behind it was to perhaps focus on the provisions of the ordinance, as opposed to just the application of the ordinance itself, generally, but I think I ended my comments...sitting back, I'm sure different people may agree that they both say the same thing; so, I think it's a matter of preference...

Sparks: In the meantime, if we...if before we get to final, final decision, we may have a much cleaner draft for that paragraph and the next one.

Vice Chair Dodson: It may be that somewhere in public hearing we get better language proposed, and which we can take a look at.

Sparks: Can you imagine going through all this stuff in a public hearing?

Vice Chair Dodson: I can't imagine these public hearings period, but... [LAUGHTER]

Mancini: I just wanted to make sure that everybody can point to Allan when the question came out. [LAUGHTER]

Haywood: And then I won't come...I won't come, I'll guarantee that...

Sparks: I have no problem saying I don't know, but somebody else thinks they know, right?

Haywood: I know where Allan's going to be looking for me...

Vice Chair Dodson: He's going to be looking for somebody... Okay, shall we go ahead and vote on the motion...as deleting any general plan, and then providing for the provisions contained within any zoning, subdivision or building ordinances...period. Okay, all those in favor, say aye. All those opposed? [MOTION CARRIED/Unanimous] And we know, though, that we have to clarify this before...

Sparks: More work to be done...

Vice Chair Dodson: More work to be done, definitely.

Sparks: And really, this is in Jim's area; so if anybody in the public asks questions about it, he gets to say I don't know.

Cockett: I'll take it under advisement. [LAUGHTER]

Mancini: I was going to suggest, if someone would remind me, is that they could do it with the Chair's signature...write a letter to Aaron and Francis, and more or less summarize our quandary in it and some of the proposals, and ask them if they could get back in writing...and try to respond to the quandary we're in as to what exactly happens now -- is there a need for variances from the building ordinances, what ones have come up in the past, how do we relate the ordinance dealing with the codes with the Charter provisions...which seems not to delegate variances but only appeals; and throw these questions out there. One problem I have though...if we don't write the letter, you might forget about it.

Vice Chair Dodson: Did you want to do that, or did you want Jim to do that?

Cockett: Well, if he can draft that explicitly like you just mentioned it, it would be easy for us to sit with...or send that letter to Aaron.

Mancini: I don't have any problems drafting it, if someone would just call me...

Cockett: Could you?

Mancini: Tomorrow...and say please draft this.

Vice Chair Dodson: Jim, will you go ahead and do that, as chair of your committee? Call Paul and remind him to write that letter.

Cockett: Paul, where can I call you tomorrow...tomorrow's King Kamehameha Day.

Sparks: Give him a sticker to put on his Charter, maybe.

Mancini: Remind me when I leave here, because I'll dictate it on the way home. If I do it then, I'll get it over with.

Cockett: And, it'll be addressed to Shinmoto...

Mancini: Well, I think we have to do it to George, in care of Aaron and Francis, cause they administer these functions.

Cockett: Okay, very good.

Vice Chair Dodson: Okay, we can go on then. Let's see...I think next we have on page 4, 8-8.5. And, I did speak to Fred Rohlfig and Jeff Stark, who are both working on the Open Space Trust, and both of them could not come today but I don't think they have any problems with us holding off for public hearing, and addressing this at that point. What I found out from them is that they are working on legislation, aside from the Charter, to accomplish this same goal; and that perhaps it should be through ordinance, because it is going to be creating some additional duties for the department of planning, and so forth. I did talk

Vice Chair Dodson: (Continued) to Brian Miskae -- he does not feel that the Charter is the proper place to put it; so, with that in mind, I would recommend that after talking to Brian Miskae and Mr. Stark, that we go ahead and take no action on this. And, if it does come up in public hearing, which Jeff and Fred will definitely do, then we'll deal with it at that point.

Mancini: What was the intent of it? I just don't understand.

Vice Chair Dodson: Well what it is, is they've got this whole group together that would like to preserve open space through things like creating incentives to keep property open space, rather than subdividing it, putting houses and this kind of stuff, farmland and that type of thing in certain designated areas; also preserving certain types of wildlife in types of areas like that.

Mancini: The City & County has a conservation district within their zoning ordinances; it sounds like that.

Vice Chair Dodson: I'm not quite clear what they are...

Mancini: What did they want you to do?

Vice Chair Dodson: They suggested this wording, okay? And my problem with the wording was...does this create more responsibilities or duties for the department of planning; so, I called the department of planning and I talked to Brian Miskae. He said it definitely does, and that's why he's concerned about it, and that it should be through ordinance... and not through Charter. And, my suggestion to Jeff at that point was...then let's go ahead if you want...propose a general philosophy for Maui County, rather than a direction like the word shall...and, a general philosophy that we'd like to keep with open space as much as possible, we would like to preserve our wildlife, we would, you know, we would like to preserve all that environmental stuff -- and make it a philosophy, but don't make it a mandatory -- and let that be done by ordinance...which Jeff and Fred are already working on, so that's not going to be a problem.

Cockett: Excuse me; why don't we just drop this then?

Vice Chair Dodson: That's what my suggestion is.

Sparks: ..Good idea.

Vice Chair Dodson: Quite frankly, is to just drop it and, like I said, they will bring it up in public hearing and that's fine, but after talking to Brian Miskae...I'm a little leery about us doing anything; especially if Fred and...I like their idea, personally, but if Fred and Jeff are already working towards ordinance and legislation to that effect, then I think we should stay out of it.

Cockett: I move that we drop this portion of the...8-8.4.3. -- oh, no; I'm sorry, that's wrong -- 8-8.5. Sorry about...I almost through Lanai out. [LAUGHTER]

Fabrao: I was reading that and I thought...where are you; and I said oh, my!

Vice Chair Dodson: Is there a second?

Takabuki: Second.

Vice Chair Dodson: Is there any further discussion? Is anybody unclear? Alright, all those in favor, say aye. All those opposed? Okay. [MOTION CARRIED/Unanimous] So. are we finished with Committee B?

Takabuki: What about that other recommendation about the Citizens' Advisory Committee?

Vice Chair Dodson: Where is that? What was that on?

Takabuki: Below that; page 5 -- Chapter 8, there was that other part too...did we deal with that already on Citizens' Advisory Committee?

Yonenaka: I've got no...

Sparks: What are you talking about?

Takabuki: Have we voted on that already?

Yonenaka: I don't know.

Vice Chair Dodson: I thought we did too. This is under Chapter 8, page 5; proposed wording: 2. [Second sentence only] And it adds the citizens' advisory committee -- it's either a planning commission or citizens' advisory committee -- I thought that maybe the planning commission...the Lanai Planning Commission was the whole purpose of that, but since we have planning commissions now for Maui, Molokai and Lanai...do we need to add in that citizens' advisory committee? But, I don't know...

Reyes: Correction...we don't have a Lanai Planning Commission yet -- it's only a proposal.

Vice Chair Dodson: Thank you; I stand corrected. [LAUGHTER] Well, since we DEALT with the Lanai Planning Commission...to a certain degree...is it your recollection that we voted on this?

Takabuki: I don't recall.

Vice Chair Dodson: Well then, I guess we should take some sort of action. Is there a motion on the floor?

Cockett: I move that we not include advisory...

Vice Chair Dodson: So, we'd just leave it the same...no change.

Cockett: Yes.

Vice Chair Dodson: Is there a second?

DeLeon: You folks know that there's a Hana Citizens' Advisory...don't you?

Vice Chair Dodson: But they are already in existence...let's get the second first; do we have a second?

Takabuki: Second.

Vice Chair Dodson: Okay; there is an advisory committee, right? It's already provided

Vice Chair Dodson: (Continued) for...this would just be sort of...I don't know what the purpose of this is...

Cockett: How did we get this?

Takabuki: I don't know.

Vice Chair Dodson: I thought the advisory committees were just supposed to be advisory, and this sounds like any revision shall be referred to...if they don't have a planning commission, then to an advisory committee. I think you're giving more power to the advisory commissions than...committees than was planned.

Yonenaka: Well, I think you're going beyond the bounds of the advisory committee.

Vice Chair Dodson: Yeah, that's what I mean; you're giving more... Is there any more discussion? Victor?

Reyes: I think the intent of this was...it's like a chicken with the egg here now... the intent of this was to somehow also address the situation of Lanai, if I recall it correctly; because until that time...or until now, they have a citizens' advisory committee. So, if we granted that...that there would be a Lanai Planning Commission, then I would say that this is unnecessary; but, since we don't have it yet... Paul, how do you resolve that?

Vice Chair Dodson: I think that what has to happen is that we have to go to public hearing, and when we finally make our final recommendation on the Lanai Planning Commission, whether it gets on the ballot -- if for some reason we change our mind, then we need to look back at this advisory committee.

[Staff: What this was referring to...if you look at 8-8.6.2. it's before any changes were done, it should go back to the community associations involved, or something like that. I think Bob brought this up.]

Takabuki: I think it came up in one of the meetings.

Vice Chair Dodson: This is talking about any revisions to the general plan, zoning ordinance, or other land use ordinances...and it says that any such revision to those things shall be referred to the planning commission...and it says or the citizens' advisory committee.

DeLeon: I think what they're trying to say is that they don't want the citizens' advisory committees, where they exist, to be bypassed. They want to make sure it goes back to them first. All that committee does is advise the planning commission -- they can't make an action separate from the planning commission -- it only advises the planning commission.

Yonenaka: But in this case, we are giving the authority to the advisory commission...

Vice Chair Dodson: No, it just says the revision shall be referred to the citizens' advisory commission -- not that they can take any action on it, but that they have to be ...I guess...notified of something, right?

Yonenaka: Okay, so in the following sentence then it says if the planning commission

Yonenaka: (Continued) disapproves...dadadadadada...we're not going to put in the planning commission or advisories...

Vice Chair Dodson: No.

DeLeon: The advisory committee's only going to advise the planning commission.

Yonenaka: Okay.

DeLeon: And if your action takes...all you're really talking about is the Hana advisory.

Fabrao: I'm just looking at the case of Lanai...if Lanai doesn't get the planning commission, the citizens' advisory should be informed of any changes. We would hope that that wouldn't happen...that we didn't have a planning commission, but the advisory should be advised or informed of the changes.

Takabuki: I thought the CAC's were different from the Lanai...whatever commission...I don't know what they are called; but these are the special committees set up to deal with community plans revisions, right? These CAC's -- so you're going to have two bodies? There's going to be two bodies -- the Lanai Advisory Commission and the CAC's?

Fabrao: That's maybe the wrong term, because...

Mancini: Maybe if we put it in perspective, because the CAC's are created by ordinance to deal with an overall review by the planning department of all the community plans. This Charter provision deals only with any general plan amendment proposed by the council. The ones that are going right now are not proposed by the council technically, they are generated by a separate ordinance. It sounds like what somebody is suggesting is before the general plan changes that are proposed by the council, that not only should they be reviewed by the planning commission, but if you've got an advisory body to that commission, they should look at it also. The advisory body to that commission is created by ordinance -- not the Charter, so they may exist or they may not exist. Usually the ordinance sets what they should review and what they shouldn't review; I would guess that all of the ordinances now say that any action by the planning commission, shall first be reviewed by the advisory committee. By putting it in the Charter, you're only probably stating what already exists by ordinance; and by putting it in the Charter...if you could remove the ordinance and do away with these advisory committees at any time, the council could, because they're not Charter emanated.

Takabuki: I thought this amendment was to make sure that the nine...or whatever, how many CAC's that were formulated for the community plan review...continue in existence, and continue to... That was my thinking of what was being proposed, and that they were continually being able to review changes thereafter, after they've done their community plan review.

Sparks: I think that was the idea.

Vice Chair Dodson: This was the Lahaina one, right? Ah, now it's coming back to me. I remember now, the public hearing where that came up...remember it was Lahaina.

Takabuki: It was Lahaina.

Vice Chair Dodson: And, they said we want to go farther with this...these things are working, these CAC's...they're good bodies and we don't want to be just around for this original review; we want any reviews...

Takabuki: And any changes thereafter to come back to us, is what they were saying.

DeLeon: I don't think it belongs in 8-8.5. then.

Sparks: My question is, yes, don't we need to deal with the fact that these Citizens' Advisory Committees are currently under existing practice an ordinance...rather temporary? And, if we want to make them more permanent, do we have to do something along those lines in the Charter...before we give them a duty?

Vice Chair Dodson: To me, I'd just leave it up to the ordinance; I mean, if the ordinance wants to come up with giving them more...or a longer longevity and stuff, then go ahead and do it, but...our motion is not to change it, bear that in mind, Al.

Sparks: But if we give a duty to something that then doesn't exist...at a certain time that a proposals being made...

Yonenaka: Right.

Vice Chair Dodson: The motion is not to put in this citizens' advisory.

Cockett: To delete that...

Sparks: I see.

Vice Chair Dodson: Not to delete it, just to leave it the same...to leave the language as it stands.

Sparks: Well, the larger policy question is...is that a good idea? To make them more permanent and give them these kinds of duties?

Vice Chair Dodson: Well, that I think needs to be a separate motion, and we need to discuss that. And, I think that you're right; it doesn't belong in this particular section. If we do that, Al, I think what we have to do is we have to set up the advisory committees -- the CAC's -- in the Charter; set out their function, give them a term, how they're appointed, how they're created...I mean, the whole works.

Fabrao: Excuse me; isn't that already done? There are those citizens' advisory committees for all...

Vice Chair Dodson: By ordinance.

Fabrao: By ordinance; so why would we need to...

Takabuki: To be temporary; they are temporary.

Vice Chair Dodson: Yes, they are temporary.

Yonenaka: They have a certain life span.

Takabuki: Yes, to deal with the community plan revisions.

Fabrao: Like all commissions and boards, yeah?

Yonenaka: Right, but what we're saying is...

Fabrao: But when you said they finished their job...then they'll be not in existence.

Yonenaka: Right, but then it has to go back...according to this...to...any changes has to go back to this committee, but the committee doesn't exist anymore.

Fabrao: Oh, I see; I follow you.

Vice Chair Dodson: Okay, shall we take a vote? All those in favor of no change to the second sentence in Section 2 of 8-8.6., say aye. All those opposed? Okay. [MOTION CARRIED]

Fabrao: So then with the matter of the citizens' advisory committee not being permanent, so to speak...can you not address it under the general plan then?

Vice Chair Dodson: What I was saying before, though, was that because it's created by ordinance...because the whole thing is set up by ordinance, we would have to literally take that ordinance and bring it all into the Charter -- every provision of it -- how they are appointed, for how long they're appointed, what their duties are; we would basically have to set up another commission like we have now...if you want to do it.

Yonenaka: No, we're going to have a planning commission for every town in a while...

Takabuki: That's what it's going to be like; that's what it's going to amount to.

Sparks: I'm not sure we want to do that.

Mancini: I had a question about 8-8.6. adoption of the general plan and other land use ordinances, which has come up a few times. If you read it literally, any revision of the general plan, zoning ordinance or other land use ordinance may be proposed by the council; question -- only the council can propose it? Is the intent of this provision to merely address proposals by the council and how they're processed, and not to allow proposals by citizens?

Sparks: Or developers. [LAUGHTER] You might as well put it out there, Paul...what you're talking about.

Mancini: You've had many...you've had consistent processing of community plan amendments and zoning ordinances every week; and, of course, this is broad...any language in this ordinance. Let's take a sample person who's got a property that's zoned x and the general plan says y, and he moves it from x to y. Where is...there's no Charter provision to deal with that. Now, let's take a scenario...Mr. Citizen X moves to change zoning from x to y; the planning commission approves that x to y; is the council's action limited? If the planning commission disapproves it...let's take that, or recommends a modification not accepted by the council -- is the council's vote a two-thirds vote? Or, is the council's vote a two-thirds vote only when the council proposes it, and not when the planning director proposes it, and not when the citizen proposes it?

Sparks: That's really a hard question.

Takabuki: Yes.

Vice Chair Dodson: Oh, Paul...

Mancini: This has come up a few times, and I've gotten various responses to answer my question; but, it would be interesting to know what happens now. I assume that if a

Mancini: (Continued) citizen proposes it, it's a majority vote. If the planning director proposes it, it's a majority vote. If the council proposes it, it's a two-thirds vote.

Sparks: If the planning commission disapproved.

Mancini: Or if they tried modification...to it.

Sparks: Or if they do a modification of it that is not acceptable to the council.

Vice Chair Dodson: Is that a problem?

Mancini: Well, the problem is you don't have answers to the questions. That's more of the problem...the game that's played...is not subject to an answer. I was just surprised that no one had brought it up to you. When I was reading the other provision, it dawned on me that at one time the planning director indicated to me that there's no provision for a citizen to make a change to a community plan.

Vice Chair Dodson: Well he can by lobbying the council to make the change.

Mancini: No, but I mean he submits an application to make a change to the community plan; you've got to first do an environmental assessment, process the environmental assessment, get a negative declaration, and then process it. But, if you read this literally, in the Charter the only two ways to propose it is by the council or by the planning director...which is not run that way, I don't think; these applications have always been processed.

Sparks: I thought it was clear; you go through the planning director and the planning commission has to approve it before it gets to the council.

Mancini: But where in here does it say a citizen can process; you have a provision for a general plan change, zoning ordinance change by the director, and then you've got it by the council.

DeLeon: You can bypass the director and go directly to the council.

Sparks: Right; isn't that the way it works?

Mancini: Well, you apply to the department and the department processes your application -- it's not the director's application, it is the applicant's application. The director is very seldom...move for a change in an ordinance, other than a structural change. You've got a zoning ordinance...let's delete something from a zoning ordinance; and maybe it's not a problem for you, but as I said, those questions have never been answered...but I've asked them.

DeLeon: Is it not found in the CVO? The answers aren't found in the CVO?

Mancini: The CVO provides for applications for zoning ordinances, but I don't think there's a provision for an application for a general plan. They have rules...someone took the code...

Vice Chair Dodson: I'm just a little confused about everything right now.

Reyes: There is a provision called...by initiative. [LAUGHTER]

Vice Chair Dodson: Thank you for clearing that up, Victor; now we can move on.

Reyes: Well it says here adoption of general plan, and the county shall adopt revisions to the general plan by ordinances; so, I guess that's the reason why they reserve it to the council.

Mancini: If you read 8-8.6. literally, any revision may be proposed by the council. Well obviously, it could be proposed by the council and then it just sets up the procedure by which the council does it. But, we assumed that procedure is not applicable to any other entity...individual...other than the council.

Sparks: Well, I'm still a little puzzled. It says the county generally shall adopt revisions by ordinance; and then the director, and I assume that means the department, recommends revisions to the general plan...at least every ten years, you can do it more than that. So, if a citizen wants to go, they have to go to the department...get the department to review it, decide whether they want to recommend it to the commission, and then the commission decides whether they want to recommend it to the council. That's a process that you've probably been through many, many times, isn't it?

Mancini: The general plan is something that gets reviewed very seldom...it's the motherhood document, and therefore, there's not great desire to have a change.

Sparks: But developers do all the time.

Mancini: No, they change the community plan and they change zoning ordinances, but not the general plan.

Sparks: Oh, okay. I think of those community plans as general plan...that's my confusion; I'm sorry.

DeLeon: But aren't they assumed under the general plan?

Sparks: I thought they were chapters of the general plan, really.

Mancini: I thought the general plan was implemented by the community plans and by... because Chris Hart moved to change the general plan, if you recall, just before he left office...not the community plans, but he sought to create these planning areas. And I think something was passed, wasn't it? But they didn't modify the general plan; and, it had nothing to do with the community plans.

DeLeon: No, but it's sort of like an umbrella arrangement, under which the language assumes...

Sparks: I've always assumed that when they say general plan in here, they are talking about those community plans, too...as sort of chapters of the general plan. You may be right, I'm not sure.

Mancini: Well, let's look at the generic ordinance for community plans, or the general plan because it has to be by ordinance. Well, maybe I should...maybe I'm bringing trouble to your life, rather than making it simpler...

Vice Chair Dodson: Yes, Paul, if you could kind of sort this out for us and come back with something specific that might help us understand it, as well as propose a specific

Vice Chair Dodson: (Continued) amendment, that would be great; and then we can discuss it at that time. Because I think there's more confusion now, than there is anything. With that we'll go to...finishing up with Committee B...Jim, is there anything else?

Cockett: No, I have nothing else on my agenda.

Vice Chair Dodson: Thank you very much.

Reyes: I have one more item.

Vice Chair Dodson: On Committee B's stuff?

Reyes: Yes. I'd like the commission to consider moving the zoning functions away from administration and...let me get my things straight here. I'd like for the commission to consider moving the zoning functions from beneath the administration, from the public works to the department of planning.

Vice Chair Dodson: Is this a specific motion? I'm not quite sure what you want, Victor.

Reyes: Okay, I'd like to make a motion so that the full commission can discuss it. I do have a note here, and I believe there is a support from the director of public works, that there's no objection to it. One reason I remember is that...

Vice Chair Dodson: Is this the motion? Are you making a motion?

Reyes: Yes.

Vice Chair Dodson: Okay, what's the motion?

Reyes: To move the subdivision in zoning ordinances...or the administration of subdivision ordinances from the public...

Vice Chair Dodson: What section?

Reyes: Section 8-5.3.1. -- to delete that portion that applies to subdivision and zoning ordinances -- to become a function or one of the functions of the department of planning, under its powers and duties and function.

Vice Chair Dodson: Okay then, so 8-5.3., subsection 1. Administer the building and housing codes, subdivision and zoning ordinances and rules adopted thereunder.

Reyes: Right; I'd like to move that subdivision and zoning ordinances.

Vice Chair Dodson: Just...so just subdivisions and zoning -- not the whole sentence.

Reyes: Not the whole sentence.

Vice Chair Dodson: Subdivision and zoning to where?

Reyes: To department of planning...so that would be under...

Vice Chair Dodson: 8-8.3. Powers, Duties and Functions?

Reyes: Yes, right. And include it under the powers, duties and functions of the

Reyes: (Continued) department of planning. And...

Vice Chair Dodson: Is there a second? Is that it? The motion? That's the motion?

Reyes: Yes.

Vice Chair Dodson: Okay, we need a second.

Takabuki: I'll second. Okay, let's discuss it.

Vice Chair Dodson: Now tell me what you mean.

Takabuki: No, I do remember now what Victor is talking about. We asked George Kaya how he felt about moving certain LUCA functions over to planning...I think we were talking about enforcement functions, right?

Reyes: That's right.

Takabuki: And he did say that they wouldn't have any problem with that, so...

Vice Chair Dodson: With the subdivision and zoning moving over to here, and putting it in so that they would administer the subdivision and zoning ordinances?

Takabuki: I don't know about the exact language, but the intent was...

Reyes: Yes, because it more relates to the scope or pervue of the department of planning, rather than codes and things like that...

Vice Chair Dodson: But what specific aspect of subdivision and zoning -- administering it, creating it, enforcing it -- I don't know.

Reyes: Well, would the administration...the enforcing...wouldn't that be included under administration?

Vice Chair Dodson: Oh, so you're saying take that first word too -- administer -- and add that into the new section...administer subdivision and zoning ordinances and rules adopted thereunder.

Reyes: Right.

Vice Chair Dodson: And put it over here in a new subsection under powers, duties and functions.

Reyes: Yes.

Sparks: But if we did something like that, wouldn't it also make sense then to move the board of variance and appeals -- our famous board of variance and appeals -- along with it? Because that's what they deal with...zoning, subdivision ordinances...and still under what we've got now...building ordinances...which would be...

Vice Chair Dodson: So just move that whole section over as well?

Sparks: It seems like if we're going to do that, and I'm not at all sure that I want to do that, that maybe we should do that too.

Vice Chair Dodson: Okay, well let's decide first then whether we're going to move... Or actually, what we're going to do is we're going to take out subdivision and zoning out of this...we're not going to move anything...and we're going to create a new section under department of planning -- under powers, duties and functions -- that reads administers subdivisions, zoning ordinances and rules adopted thereunder. Anne?

Takabuki: This is another subject though, I think it would be helpful to hear from Aaron, since we are going to talk to him about the other matters relating to variances... to discuss with him how all that would work...

Cockett: We won't have time...excuse me...we won't have time to discuss it; he's going to draft a letter to him on this other portion...maybe this should be included in that memo, because we're going to meet Tuesday and we need to have that in before Tuesday, huh?

Vice Chair Dodson: What do you think, Victor?

Reyes: I would have no objections.

Vice Chair Dodson: So, shall we take action on your motion?

Sparks: I don't feel ready too, myself.

Reyes: I would like to then defer action on it until we have had some input from the recipient of the function.

Vice Chair Dodson: You're going to defer or table?

Reyes: Whatever is necessary to get that response...so it would be along the same lines where we're getting the input from the department of planning.

Vice Chair Dodson: So then you want to defer it; you don't want to table it. Is there any objection to deferring it? And, realizing that it will not come up again until July 2?

Reyes: That's okay.

Sparks: This person that we're getting information from is planning?

Cockett: Yes.

Reyes: Yes, it's from the department of planning.

Takabuki: Well, Aaron is public works.

Sparks: I'm concerned that we get a response from the planning side, too.

DeLeon: Planning responded in their original discussion.

Sparks: I thought they did.

DeLeon: Brian said he would take the responsibility if you gave it to him.

Vice Chair Dodson: And public works says they welcome it out of their department, so...

DeLeon: I remember George saying something along the lines that he thought it might

DeLeon: (Continued) be putting too much power in one department.

Vice Chair Dodson: Well, then maybe we do need to check with department of public works and clarify that.

Yonenaka: What did planning say?

Vice Chair Dodson: Planning said he'd take on the responsibility if you gave it to him.

Cockett: Then, for clarification purposes...the portion that we're going to refer to the public works is Section 8-5.4. Board of Variance and Appeals. That discussion that we had that he's going to draft a letter to them, okay? And now, this new one that he has brought to the table here -- about subdivision and zoning ordinances -- do we go to the department of public works, too? Or do we go to the department of planning?

Vice Chair Dodson: Yes, I think we need to; I think we need to both...it affects them both. I think we need to go to both public works and planning.

Mancini: My question is about what we're looking to do...is to take the subdivision function -- that is the processing of subdivisions -- and transfer that from the department of public works to the department of planning.

Cockett: That's what the proposal is.

Mancini: And the reason to do that, is planning has suggested it?

Vice Chair Dodson: I thought you said public works did.

Reyes: No; well, the public works has no objection to transferring that function from their department to the department of planning.

Mondoy: What was the reasoning for movement?

Vice Chair Dodson: Who wanted it?

DeLeon: I have it in here as Anne asking a question.

Takabuki: I asked George that question, I remember.

DeLeon: You asked George the question...and the question was should LUCA be...that's land use and codes -- the whole provision -- not just these two elements of it. "A separate...as a separate entity by itself, like building department...or as part of planning?" And, you replied that putting LUCA under planning would be putting too much power under one department. Anne asked if it should be separate, and he said he hadn't considered a separate building department.

Vice Chair Dodson: So, he's not necessarily in agreement...

DeLeon: At least not here; I mean, if you have a written statement someplace...

Reyes: There is a written statement by George; I remember reading that in one of his...

Vice Chair Dodson: Okay, well when this comes up again, I think we need...so you can sway us, I think you need to bring whatever information to our attention, and we will also...

Reyes: The whole idea is to take the functions that involve zoning from department of public works to the department of planning, where it is more appropriate. I'm not exactly sure of the exact wording...but those zoning functions should be moved away from the department of public works to the department of planning. Another reason that George mentioned was...

Vice Chair Dodson: Victor, why don't we just wait on the discussion, and when this comes back up we'll bring up... I mean, you're trying to sway us again, and it's deferred already, so we'll just go ahead and wait until we get all the answers and then you can come back and we'll go into discussion again. Okay?

Reyes: Alright.

Mancini: May I ask a question since I'm going to write the letter? The idea was to take zoning functions, but we're talking about subdivision which is generally not a zoning function...so, but we're still looking to take the provision under public works which says approve proposed subdivision which are in conformity with the subdivision ordinance...and pass that over to planning. Is that what we're looking to do?

Reyes: If I did include subdivision, that is under the impression that the subdivision ordinances does involve planning or zoning type of...if it's not, then I stand corrected. I only meant the zoning functions.

Mancini: But what zoning functions does public works maintain?

DeLeon: Enforcement of the zoning.

Mancini: Oh, enforcement.

Takabuki: Yes, enforcement.

Yonenaka: So we're talking only zoning?

Mancini: Oh, it's number one then that would be moved...but only the zoning portion of number one.

Sparks: And subdivision was his initial motion.

Reyes: But I thought the subdivision ordinances were involved with the zoning.

Mancini: Well only to a degree; actually that's an interesting question...as to when you make an application for a subdivision...under what provisions should it be administered? Normally you would look to the zoning code to see if it's in conformity. There's a controversy now that you look to the community plan...does it have to be in conformity with the community plan, or zoning, or both? And that's a current controversy; but that's the only part of processing of the subdivision ordinance that deals with zoning...to see if it conforms to whatever land use ordinance is applicable. And usually an engineer will submit it, and they will submit the plat and the plat will be processed...and it assumes a certain zoning or a certain conformity to community plan.

Reyes: So if it falls under zoning...so the zoning would take precedence over the land use ordinance.

Mancini: Well, you're asking a question that is controversial now, because currently

Mancini: (Continued) the public works department is saying that when you are processing an application for a subdivision, it has to conform to your community plan. And, there's... some that say that you ought to be able to rely on your zoning for your subdivision. Do you understand what I'm saying?

Reyes: Yes.

Mancini: I mean whatever the ordinance it is, that department makes a determination whether the proposed subdivision is in conformance with the applicable land use law. That's all they do is say yes, it does comply; usually they give it over to planning, and let planning make that decision. Because when you file a subdivision application, planning has to sign off on it.

Vice Chair Dodson: Okay, so this will come up again, Victor, and we'll take it up when we have more information.

Reyes: Okay.

DeLeon: I found Miskae's comment...it was on January 23. He was asked whether he'd take on full responsibility for land use and codes...which is much more than just building functions...and he said that he didn't need any more work, but that he'd do it if it helped perform the public function better...

Vice Chair Dodson: We'll go ahead and take a short recess so we can get our dinner now; we're going to work through dinner then...it's going to be a short recess.

[RECESS/RECONVENE]

Vice Chair Dodson: Are we complete with Committee B, then?

Cockett: Yes, we are.

Vice Chair Dodson: Thank you, Jim. Then we'll go on to Anne's committee, and I think there were some items that we had left off on in that. So, Anne, you want to go ahead?

Takabuki: We have to do the whole thing.

Vice Chair Dodson: Oh, the whole thing; that's right.

Sparks: We didn't have enough people one time, right?

Takabuki: We had, but I don't think we had the [amended] rule yet.

Sparks: That's true.

Fabrao: The rule for what? The six...

Takabuki: The six people; we would have probably had enough...if we had changed the rule.

Fabrao: So, you've got to go from the beginning...

Takabuki: Yes, from the beginning.

Mancini: This is Committee C?

Takabuki: Committee C...Article 9 - Financial Procedures; the first one dealing with fiscal year. The proposal to change to a biennium budget; and, recommend no change. Leave it as an annual budget.

Vice Chair Dodson: Is that in the form of a motion?

Takabuki: Yes.

Yonenaka: Second.

Vice Chair Dodson: Any discussion? All those in favor of leaving it to annual budget, say aye. All those opposed? Okay. [MOTION CARRIED/Unanimous] We're moving right along.

Sparks: Can we...point of procedure here...can we, when she says not referred to the commission, just sort of look at that, maybe think about it a little bit, not even have to have a vote, and go on?

Vice Chair Dodson: Sounds good to me.

Takabuki: Oh, okay; not even have to have a vote?

Sparks: I don't know; I just thought...

Vice Chair Dodson: Yes, that's fine.

Takabuki: So anything that says not referred, I'm not going to even touch it. Okay, number two. Notice and Hearing. The proposal would allow for council to call for a hearing prior to April 1st. So, the language would just say...public hearings shall be held no later than the thirtieth day of April. That's the only change on that one.

Vice Chair Dodson: Okay, that you need to make a motion.

Takabuki: Can I have a motion to approve that?

Vice Chair Dodson: Second?

Sparks: Second.

Vice Chair Dodson: Any discussion?

Mancini: What's the purpose, Anne? I'm sorry...

Takabuki: Well, just to allow the council to call for a hearing prior to April 1st. Right now the mayor submits the budget on the 15th [March] but because the Charter reads that it has to be between April first and April thirtieth, they can't call for a hearing sometime earlier. I don't know if they...if it's really an issue, or if it means that much to call for a hearing a week prior to April 1st, but...

Mancini: There was no logic to the original scenario.

Takabuki: To have that, right; so they're saying can't we just leave it open and they can call for it anytime prior to April 30th.

Vice Chair Dodson: Any other discussion?

Sparks: Could they call for it before they receive it?

Takabuki: They wouldn't have a proposal to discuss; I guess they could notice a hearing but not have any proposal before the public before they got it. I don't think they will...

Sparks: Their own proposals, maybe?

Takabuki: I don't think so; I don't think that would really come up.

Vice Chair Dodson: Anything else? Okay, all those in favor of changing the language as proposed, say aye. All those opposed? Okay. [MOTION CARRIED/Unanimous]

Takabuki: Number three...the proposal is to add some language or a new section to require that the administration expend funds appropriated for council initiated CIP projects. This was referred without recommendation by the committee for discussion. The last discussion that we had was really to the effect that it was difficult to come up with any kind of mechanism that would properly address it, without creating additional problems. I think that was the gist of it the last time we met; and although we have seen a list that we got from the council, which indicates that there have been some problems in getting some of their projects initiated...in what they consider a timely fashion... Again, I don't know if there's any mechanism or solution that doesn't end up creating a lot more problems down the road.

Sparks: Did you, or anybody, really scrutinize this and...can you sort of summarize... how many really important projects got nailed this way?

Yonenaka: Not a whole lot, probably.

Takabuki: Well, you know...

Vice Chair Dodson: It's hard for us to look at this, too, because some of them are pending and some of them are... I still don't know after reading that if there has been any that have been let go to the point where it's dead.

Cockett: I frankly feel that I can't comment on them, because I don't know the importance of it, or the reason behind it, or just...

Takabuki: So I think while we can acknowledge the concern, I don't know that we can really come up with a solution. And, perhaps with some of the other proposals, we can help try to address some of the problems, but...

Sparks: Let me ask...I remember that there's a provision there under my section... that I'm supposed to be covering in my committee...on this same issue, that says in effect, if I remember right...and I should look it up... On the council powers and duties, I believe...

Takabuki: That was under ordinances and resolutions, Section 4-3. Subsection 2 or 3? Relating to the mayor's veto powers?

Sparks: Right, and Section 4-3.2. -- if any bill is presented to the mayor appropriating money he may veto any items or portions thereof... In the case of such a veto, the mayor shall append to the bill, at the time of signing it, a statement of the items and

Sparks: (Continued) portions thereof to which the mayor objects and the reasons therefore. The items or portions so vetoed shall not take effect UNLESS passed, notwithstanding the mayor's veto. Each item so vetoed may be reconsidered by the council in the same manner as bills which have been disapproved by the mayor.

That tells me, in plain language, that if the mayor is overturned...the mayor's veto is overturned, then that appropriation for money should be in force. Now, here's the question for the lawyer -- if a mayor then doesn't follow through -- is the only...currently the way things are worded...only avenue for the council to follow is to go to court, accusing the mayor of not abiding by the Charter. Is that your understanding, Anne?

Takabuki: I would guess so.

Sparks: Is that your understanding, Paul?

Mancini: Let's see...there's an appropriation...that has to do with a CIP project; the appropriation means that the money's available to do it. Does the appropriation in itself create an affirmative obligation to the executive branch of government to implement that project? Or, does it create a discretion within the executive branch of government to do the project? I would...my recollection of general law is that it creates a discretion, and it doesn't create an obligation to do it because the executive branch of government is there to administer a budget at the same time, try to match its revenues with its expenses. Say for an example, let's take an appropriation for an economic development specialist III -- although you may appropriate the funds for that position, I don't believe that there's any obligation on the executive branch of government to go ahead and affirmatively hire that person. Now, the second question is...then can you create legislation which requires you spend it? I don't know the answer to that question; you might be able to. I can't see you doing it in the budget though, because the budget process is basically a process by which you estimate your revenues and authorize expenditures that relate to those expected revenues.

The recent cases that have come up, that have been in the newspaper, where the council of the City & County of Honolulu appropriated funds for a contract to do investigations into a certain agency...those funds were appropriated, but the mayor failed to spend those funds...would not issue a check. The scenario is a little different there because apparently the contract was signed...I don't know who signed the contract...the contract was signed and the people did the services, and the mayor refused to pay that bill. Once you've got a contract, and the contract is signed, and the finance director certifies the availability of funds...then you're under a contractual obligation to do it. But, until there's a contract for a CIP project...there's no obligation to do it. And, often times these projects don't come in...you appropriate x funds, but the bidding, et cetera shows you don't have enough funds...

Sparks: Okay, here's the issue as I see it. Both the mayor and the council have broad policy making responsibilities; the council as the legislative body has the...is considered policy makers, and they usually respond to policy initiatives of the mayor. Let's take an important CIP project -- a swimming pool, a sewer system, or whatever it is -- and they have differences and it shows up in the CIP appropriation, where the council puts something in...and does it responsibly with a balanced budget, and the mayor vetoes it...saying basically it's not my policy preference to have this swimming pool or sewer system built...that you put in the budget. And, the council comes back and overrides that veto by two-thirds majority...saying we disagree with you, mayor, we want to use our legislative policy making authority to override your veto and get that sewer system put in. Fine, the mayor says...using this discretionary authority that you talked about...I don't have to spend it anyway. Isn't that a frustration of the legislative...the major purpose of the legislative side of government?

Mancini: Here's a scenario that I recall came closest to the pump...all these cases usually come out of the City & County of Honolulu...the city council provided funds to do certain planning for certain sections of Honolulu; they appropriated the funds, the funds were available to the mayor, the mayor did not spend them. The council then went on its own and basically, by amendment to the budget, changed the budget to reallocate the funds to itself...it hired the planner and the planner then did the planning. The mayor then sued the council, indicating to the council -- look, this is an executive function, the council doesn't have any authority to involve itself in planning these executive functions. The supreme court took the case and said that planning has a residual legislative function attached to it, and after the administration failed to do the planning, the council has enough of a residual planning function to go ahead and do it itself. A very interesting case.

Vice Chair Dodson: That was really specific though, wasn't it?

Mancini: It was specific to the planning function. So, if you take that analogy...saying the council has a residual function in capital improvements, and I'm just trying to respond as best as I can to Allan's questions...I mean, I can't say this is the law...but, if you take that by way of analogy...when they appropriate the funds and the administration fails to do it, and it's identified as an appropriate legislative function, the logic of that case might be relevant. I'll get that case...it was quite a few years back...I'll check and see if anything's come up since then.

Vice Chair Dodson: Well, the only problem I have with your scenario, Al, is like...let's say there's... Obviously, the mayor sends down a balanced budget; she expects this amount of income and she expects to expend this amount, okay? Then it goes down to council, and if they want something more they've got to come up with revenue somewhere. So let's say they say you expected to get, you know, \$15 million from this particular tax...we think you're going to get \$18 million, so we're going to add on another \$3 million project. And then it goes back up to the mayor...and we never see that \$18 million; in fact, we even go below the \$15 million in expected revenues...do you see what I'm saying?

Sparks: Yes, but I think it's a little different issue. You're talking about all this difficulty in estimating revenues and deficits that come out of them. I'd like to drop that whole issue and say there is no problem there...that they found the additional money by deleting something else in the mayor's budget -- and so, it's a clear difference of policy preference that comes to a head. One of the interesting thoughts, listening to Paul, is that apparently they might have an avenue...like in Oahu, where they by ordinance go ahead and start doing some administrative things that they wanted to have done. I mean, could they let a contract or a CIP project if they gave themselves that authority by legislative action somehow?

Mancini: Normally, common sense...

Sparks: Forget this common sense...we're talking legally... [LAUGHTER]

Mancini: Traditionally, the implementation of a CIP project is an executive function... it's not a legislative. The legislature sets the policy and the executive branch of government then carries out that policy...that's the tradition. Traditionally, planning is an executive function except when you come to issues such as zoning, which is obviously a legislative function. I know of no situation...and that's not to say it doesn't exist... where there's been a dictate...a compulsory dictate on the executive branch of government to implement a project. Usually, it's left to the political process; the political process

Mancini: (Continued) being the money's appropriated, it's available, the executive branch doesn't do it, and then you basically go to the people, and the people react to that process...it's that interchange that deals with it. That's not to say that there might not be some gymnastics around where it's been done elsewhere, but I'm not aware of that...other than that planning case, which was an unusual case...a surprising case...for the supreme court to find that the council had that function.

Vice Chair Dodson: At this point, we have no motion on the floor to make this change.

Sparks: I think that was deliberate. [LAUGHTER]

Vice Chair Dodson: Okay, is there any further discussion on this, or would somebody like to make a motion? If not, then Anne, can you continue on?

Takabuki: Okay, Notice and Hearing, Section 9-4...require mayor to make budget summaries available and to publish budget summaries in newspaper by March 15th. The recommendation was to go along with that, except that we would want to allow for the mayor to have at least five...and I would think it would be working days...after submittal, to be able to publish that. And, my understanding is it's no problem with the administration; I talked to the budget director and she didn't think that would be any difficulty there...it is ready, it's just a matter of getting it to the press.

Sparks: We're clear on what we mean by budget summary...it's something that they already do, I understand.

Takabuki: Right; in my mind, it's just sort of a...not a lengthy document, it would just identify the categories of revenues, different departments for expenditure, and CIP projects...to the extent that, I guess, they can lump it together. It wouldn't be a full page ad. I don't know in reality what they publish right now...

Vice Chair Dodson: They publish it now anyway, don't they?

Takabuki: Something is published...I think it's the council that publishes it right now.

Vice Chair Dodson: I thought that was a budget summary.

Takabuki: Dave, do you know what it looks like?

DeLeon: There is something published; when it's published, I'm not certain, but I don't think it's in five days.

Takabuki: Well, right now apparently it's published by the council prior to their hearings.

Yonenaka: Who's request is this? Do you remember?

Takabuki: I think from the budget committee chair...council's budget committee chair.

Yonenaka: And, we're going to give the mayor five days after she...

Takabuki: Five working days after submittal...so five days from March 15th...whenever that is...whenever that falls on.

Yonenaka: Does council get the budget summaries at the same time?

Takabuki: They do, but what they get...they get this summary that's not that thick... maybe twenty-five, thirty pages.

Yonenaka: Do they have...they have a...do they publish anything?

Takabuki: Right now it seems that they publish something prior to their hearing. Under 9-4 it says at least two weeks before the hearing, the council shall publish in a newspaper of general circulation in the county, general summaries of the budget and capital program, and a notice setting out the date and time, et cetera, for hearing.

Yonenaka: So, it's going to get published twice.

Takabuki: No; I think the proposal would have the mayor publish them immediately after she submits it, and thereafter, I guess, the council would just need to publish a notice of hearing. We could have it...leave it that the council do a publication also, but I think... my understanding is they wanted to get the summaries published earlier...and by the mayor.

Yonenaka: Well, let them put it in their budget.

Takabuki: I don't think it's a huge issue, really.

Yonenaka: Yes, I mean, if they want it published, they're going to have it the same time as everybody else, they can...I mean...in looking at it now, it's... I've never read it in the paper anyway.

Sparks: My hunch at the moment is why not have it done twice? By both the mayor and the council? For two reasons...you can easily miss one publication; all of us are busy and we can miss one newspaper. The other is an early warning...this one we're asking the mayor to do can be quite awhile before the council gets around to having hearings, and so it gets to be old news. So, another one closer to the council hearing would give people another chance. But then, it gives The Maui News more revenue, too. [LAUGHTER]

Vice Chair Dodson: Yes, Brian does have a baby coming.

Yonenaka: How big is the budget summary?

Vice Chair Dodson: If it's the same as the council one, it's not very big.

Yonenaka: How much would it cost to publish that in the paper?

Mancini: Anne, is this a change to 9-4? Because 9-4, and maybe you can correct this, seems to deal with the council's budget and not the mayor's budget. Well, no, but the practice is they hold the hearing and the general summary is of the mayor's budget... because at that point when they go to hearing, I don't think they have their budget really.

Vice Chair Dodson: They don't make a whole separate budget, they just sort of take the mayor's, don't they, and just...

Takabuki: I don't know; now, that's an interesting point. I know when they go to hearing, they really are taking the mayor's budget out for hearing; but, what they publish in the paper...I don't know.

Mancini: So maybe they do publish the mayor's budget and not their own. They go to

Mancini: (Continued) public hearing with the mayor's budget and then they can pass their own. There's no obligation to publish their's. If I'm reading this correctly, it doesn't seem like there's an obligation to publish their own budget.

Vice Chair Dodson: It says the budget...whatever budget is in existence...if they have their own budget, then they have to publish that. If they only budget that is in existence is the mayor's budget, then they have to publish that. It doesn't say it has to be their budget or the mayor's budget...it says the budget.

Mancini: Well, the mayor's budget has to be to the council by what date?

Takabuki: March 15th.

Mancini: A public hearing shall be held by the council on the proposed budget no sooner than the first day of April and no later than the thirtieth day of April of the year of submission. Is the proposed budget the mayor's proposed budget, or is it theirs after they look at it?

Takabuki: They've been treating it as the mayor's proposed budget.

DeLeon: I just talked to Ken [Fukuoka, Council Services] and he says it's the mayor's budget they print. What they do is they give it over to the clerk and the clerk puts it in the paper. He doesn't have a copy that he can put his hands on, but it's basically a list of appropriations for each department, which wouldn't really be very meaningful unless it's broken out...

Takabuki: But, it would have a list of all the revenues and the sources, and all of that...

DeLeon: Yeah, yeah, yeah.

Sparks: You know, Paul...the next part down there says after a public hearing the council may pass the budget, with or without amendment, so...

Fabrao: It's the mayor's budget.

Sparks: It's the mayor's budget by implication.

Mancini: The only time that they have to publish their budget is when they publish it as an ordinance...

Sparks: After they've passed it.

Takabuki: In practice, I think that they do publish it at sometime prior to first reading...I believe they do, but you're right; I don't think there's a clear requirement that they have to.

Mancini: The idea here is just to do it sooner.

Takabuki: Yes.

Vice Chair Dodson: What was that old philosophy, Al? If it's not broken, don't fix it?
[LAUGHTER]

Sparks: Right. I'm afraid to use that any more, or we'll become known as that kind of a commission.

Fabrao: But that's true; why should we fix it if it's not really a problem...if there's no problem with it?

Takabuki: There's no motion to it.

Vice Chair Dodson: There's no motion, so if anybody feels strongly about this, they should speak now.

Cockett: I move that we accept it with no change.

Fabrao: No need to.

Vice Chair Dodson: No need to.

Sparks: Wait a second; I'm lost here...where are we?

Cockett: No motion?

Takabuki: No need to.

Vice Chair Dodson: You said with no change.

Cockett: I said I was going to make a motion...

Takabuki: To accept the change? No?

Cockett: Well, forgive me...are we talking about 9-4.?

Vice Chair Dodson: Yes; either you want the change or you don't. If you don't, then we don't need to vote on it...we don't need to make a motion. But, if you do want the change, then you need to make a motion.

Cockett: Okay, no motion.

Takabuki: Okay, so you're saying no change.

Sparks: I'll move to accept the committee's recommendation that we approve it.

Vice Chair Dodson: Is there a second?

Takabuki: I'll second.

Vice Chair Dodson: Discussion? All those in favor of the change...adding the budget be published by the mayor...within five days of submittal, say aye. All those opposed? Roll call:

Takabuki: Yes.
Mondoy: Yes.
Fabrao: No.
Reyes: Yes.
Sparks: Yes.
Cockett: No.

Yonenaka: No.
Dodson: No.

[MOTION LOST/4 Yes and 4 No]

Takabuki: It's just because you're getting to the last committee, and now you folks want to be... [LAUGHTER] Okay, number 5...clarify council authority to initiate changes to the capital program at any time during the fiscal year. We discussed this before, but is there any question about the intent?

Mancini: It says changes in priorities...how does one identify how you make changes in priorities? I don't understand.

Takabuki: How you identify making changes in priorities?

Mancini: It says the council should not be restricted from initiating changes in priorities...

Takabuki: If they don't want to do something on Mokokai, and want to do it on Lanai instead... I think that's the kind of thing they had in mind; I don't know that they're going to change...they're not huge priorities, you know, just...

Fabrao: But with this they could change anything under...

Takabuki: Actually they could change anything in capital improvement, yes.

Mancini: They could just change their minds and decide they've made a bad decision.

Takabuki: Sure. [LAUGHTER]

Yonenaka: Boy, you're gracious! [LAUGHTER]

Vice Chair Dodson: Would this give them authority to change one of the mayor's capital improvement projects?

Takabuki: Anything in the capital program; this is a capital program that they've passed on already, too.

Vice Chair Dodson: And, the mayor's passed on...supposedly. What if they didn't take action, so that it became okay...because the mayor figures that they're approving it... and then later they come in and change their minds, so to speak; that would be one way for them to get around...

Mancini: Why couldn't they do this in the current Charter, Anne?

Takabuki: Well actually, the language seems like they could; but they've had an opinion from corp counsel that said they could not initiate changes to the CIP program.

Mancini: Do you recall what the logic of the opinion was?

Takabuki: Frankly, I don't. All I know is they did get such an opinion.

Mancini: The budget is an ordinance; an ordinance can always be amended.

Takabuki: I can see the logic in not being able to initiate changes to the operating portion, but to me, I don't understand why they can't change the capital program, myself. Because, the mayor can still veto it, and it's still subject to review.

Sparks: Can you review for us the... I think there were some pretty adamant arguments

Sparks: (Continued) against this from the mayor's people.

Fabrao: Yes.

Yonenaka: Yes.

Sparks: What were they?

Yonenaka: I think one of the arguments was on the capital program...as soon as it's appropriated, there is a mechanism that starts; and a lot of these programs, possibly even though not any money is expended, there is a lot of effort. And, they feel, after a certain amount of time it has really gone too far to have a change at that time...and have it taken away, it would be detrimental to them.

Takabuki: And, I definitely think the mayor should come in and make that argument, if the council tries to fool around with something; I mean, there's going to be that review process...there's that balance where she can even veto.

Yonenaka: At the same time though, we have a situation where if it is a capital improvement program, normally it does come under a lot of scrutiny in the budget process.

Takabuki: Yes. Myself, I don't think changes will be done frequently; I just can't imagine that they'd be done very often at all, unless something pretty important to the council...but something could come up...

Sparks: Yes, and something could come up...like the EPA or somebody could be really knocking them on the head about something...

Yonenaka: Yes, at which point, I think both council and mayor would agree that the change needs to be made and they would work...

Fabrao: Yes, and they would try to work together.

Sparks: So...but right now, only the mayor initiates changes in priorities? Basically, by deciding what they're going to spend the money on, right?

Mancini: The problem I would have is...I don't know how you would change... Paragraph 5, under 9-6. says if at any time during a fiscal year the capital program may be amended by ordinance. So, if we change the Charter to say they can initiate changes to the capital program during the fiscal year, how much different could we change paragraph 5?

Yonenaka: I've got written down here...and it says only ordinance introduced by administration. It's a legal position, and I don't know where I got that from...but that might be corp counsel's deal where only the administration can introduce an ordinance to change. I don't know.

Sparks: So, you could add to that sentence -- initiated by either the mayor or the council.

DeLeon: That's not going to solve your problem.

Mancini: Perhaps it's in reference to something else. There's something on the budget that is normally restricted to the executive branch...they can come down with a...

Takabuki: Right, right.

Mancini: The reason on the supplemental budget, as I recall it, is that once the budget's passed the mayor assumes the responsibility to juggle the funds. And therefore, you've got expected revenues and you've got expected expenses...and your revenues may not come up to what you expect, and therefore you are obligated to come back and decrease your expenses and vice versa.

Sparks: Well, do we have the motion?

Vice Chair Dodson: There is no motion on the floor.

Sparks: I'll move to accept the committee's recommendation, under the understanding that Paul can come up with some simple language to guarantee the council's right to initiate these changes.

Reyes: I second the motion.

Vice Chair Dodson: Any discussion?

Reyes: I can understand the position of the council, and frankly, I've been very concerned about the battle that comes between the council and the administration...whoever's in power...and it frustrates me as a citizen, because it seems to me nothing gets done in these continuous bickerings between the council and the administration. On certain things, a situation that comes to mind, is the widening of Lower Main Street -- I'm citing that as just an example -- it's not because there's a shortage of funds, but it's just the administration has a different view of its priorities. And to me, all the debate is healthy and it's important, but I think the council should have some right to initiate changes -- especially if the funds are available. I can understand the administration should not be forced to spend if the money is not there; I think it's well taken. But, if there is an anticipated revenue...I mean there's really no shortage of funds...the continuing tug between the council and the administration, is frustrating because of these differences in opinion. And, if the council, and the council being the representative of the people, the council has been empowered by the people to initiate some projects...

Vice Chair Dodson: Victor, can I ask you something real quick before you start again? Are you advocating at the moment what we just discussed? Or, are you advocating the council's right to change their...

Reyes: Right, it's part of that.

Vice Chair Dodson: Maybe I'm just not following you, because I don't see how it's related. One, you're talking about the administrative's ability to not spend or spend, on the other hand, I thought we were talking about the council's authority to initiate changes to the capital program.

Reyes: No; correct, because they came to us...the council came to us; they want that extra power...that power being more implicit...I mean more explicit, because they have this continuing frustration that they have appropriated something, and the funds there, but the administration sits on it.

Vice Chair Dodson: But, how is this going to help that?

Reyes: It will help out because they can initiate changes by forcing the mayor...

Reyes: (Continued) because the mayor says well, there's no money; or, they can initiate ...for example they can extend...what do they call that? Instead of lapsing, they can extend the...life of the project to make sure that it's completed, or that it's encumbered.

Vice Chair Dodson: Is that what this would do?

Takabuki: Well, I think Victor's right in the sense that if the council sees an appropriation not moving after twelve months or so, they can go ahead and try to propose changes to something else; if it seems that the mayor is not going to spend it for that purpose. And, that's what he's getting at.

Vice Chair Dodson: Okay, so this is assuming that the mayor has done absolutely nothing.

Takabuki: Right; well, even if she's done a little in house work, I mean, I don't think it's just going to be in a situation where she's done absolutely nothing. But, of course, what will happen once the council proposes it, then the mayor would come down and say, but I've done x, y and z...and you really shouldn't change this. And, that would be the argument, and if he or she's convinced them, they won't change it.

Yonenaka: Well...are you done? I was just wondering on the actual wording is... unencumbered, unexpended...I mean, I...

Takabuki: Well, it's obviously unexpended, but...

Yonenaka: Yes, if they haven't spent it. Victor, I think there will always be frustrations on the council's part, and there will always be frustrations on the mayor's part... especially if there is a request for a position or added revenues and it's not funded. If we say the council has a right to do this, then we go back and say the mayor, if she submits this position twice and it's not funded -- the third time it automatically is? You know, we have checks and balances, and I understand that, but it can't...if we... somehow it's got to move, it's got to go; and, I don't see a time or a position that where this thing will come into play -- where it is important enough to come into play. The Lower Main Street deal is...I mean, I don't know the whole story on Lower Main Street, but they were talking about \$5 million to realign the road or something. Lower Main Street doesn't need a quarter mile, it needs the whole thing done, in my opinion...I drive on that sometimes and...

Vice Chair Dodson: Let's not get into politics! [LAUGHTER]

Yonenaka: Yeah, okay. I just don't see the...

Sparks: We're in it up to our eyeballs -- we can't get out of it! [LAUGHTER]

Vice Chair Dodson: I mean let's not get into the whole specific issue about whether we need the whole road widened or we need six-tenths of a mile widened. Dolores.

Fabrao: I have two thoughts; number one is relating to the people choosing the council to do what we would like for them to do...

Reyes: No, they have empowered the council to do it, and the council feels that for the benefit of the people, that for example... Okay, maybe my example is not appropriate, but let's say it's a swimming pool or let's say it's a road extension; and if the council feels it's for the benefit of the community -- for whatever reason the council feels it's a good project -- the funds are there. But, for some reason the administration says, well

Reyes: (Continued) you know, we can't spend money... See, I'm against forcing the mayor to spend the money...if it's not there; but what I'm saying...if the money is there, let the council, through its legislative...because it's legislative, and by extension...the power comes from the people. And therefore, because we have elected them to represent us, to represent our interests, they should have the authority or the right to say that we have appropriated money for this...there's no shortage of funds...this project should go on.

Fabrao: I understand that. What I am...my thought was that because the council has been empowered by the people to do that which we expect them to do, for the good of the people, that also the mayor is elected by the people, and so she has her responsibilities to see that the monies are expended, and that they are available to be expended. And, I think that administration should be given some control over that decision making -- not to say that the council shouldn't have that kind of power, too -- but, it's already covered here in the Charter. And to quote it..."any time during the fiscal year the capital program may be amended by ordinance." Which is the legislative body's responsibility -- so why would we have to change any more language than that? I don't see that it's necessary.

Reyes: That's the thought that Paul raised already, and I guess Anne maybe can...

Takabuki: As far as I know, the standing interpretation is, again, that the council cannot do that right now. I don't agree with the interpretation, personally, but that's the interpretation.

Vice Chair Dodson: That's what corporation counsel said?

Takabuki: Yes. But, as long as that's the interpretation, the council cannot initiate... and that's been the frustration.

Reyes: And that's why the council came to the Charter Commission to specifically request that, that they atleast be...

Takabuki: Right, right.

Reyes: You see, we're not taking that function from the administration, the mayor. On certain cases they would be able to initiate those things. I agree with you it's here, but we just had a question -- is it the mayor's ordinance or is it the council's ordinance?

Mancini: Apparently, corporation counsel has indicated that there's probably a conflict between 9-6. and 9-9. and 9-10. which gives the mayor the ability to determine whether revenues are available and which changes should be made to the capital program. So, the corporation counsel's interpreting that 9-6.5. to be restricted by 9-9. and 9-10. saying that 9-6.5. has to be emanated through either 9-9. or 9-10. That's the interpretation; I can't see where else it would come from. And, council's saying that's not reasonable and that if we want to change it since we establish policy, and as long as the funds haven't been encumbered for the capital program, they should be able to initiate it. I'm trying to analyze how this has come about, and that's the best that I can do.

DeLeon: Under the supplemental though, I think they can't change a supplemental proposal, but they can create other proposals.

Mancini: But the mayor has to certify in those situations -- the mayor has to say we have more funds than we thought we had, or we had less funds -- and then she makes the suggestion. And the theory...I guess corp counsel's theory, is unless she does it, everything is fixed...the capital program is fixed...you can't change it once you establish it.

Mancini: (Continued) And, I suppose this body of voters could decide what they want in policy...

Sparks: But, we're not only talking about more funds in effect or less funds in effect -- we're talking about changing priorities with existing funds.

Fabrao: That's right.

Mancini: This is the scenario: project x is funded in the capital program, and all of a sudden...let's say it's a swimming pool for Molokai...all of a sudden the council says they'd rather pave a road in Haliimaile, than the swimming pool. So, they pass an ordinance scratching out the swimming pool and putting in the Haliimaile road. Can they do that? Corp counsel says no...because once it's fixed, it's fixed for the year.

Sparks: If we change some wording under 9-6.5. could we come up with wording that gives the council that authority? I mean, or are these other things going to get in our way...these other provisions.

Mancini: The problem is how much you have to describe it. Do you have to say consistent with a balanced budget you can do it; consistent with funds not being encumbered you can do it...

Vice Chair Dodson: You would basically have to write up a whole new budget, just for this particular...

Mancini: Well, it's easy enough to draft saying at any time during the fiscal year through ordinance initiated by the administration or the council, the capital program may be amended by ordinance. It's pretty simple, if that's what you want to do. There's a little bit of stuff written in there and assumed that it says what you want to say, but let's assume that they can change it if the funds aren't encumbered...if it's encumbered, it's history. They can change it if they are not appropriating more money that's already been appropriated; they can change it if the mayor or somebody says the funds are there and you're not in a shortfall situation that's in 9-9. All that's assumed in that.

Sparks: That makes sense to me; that's what I expect to have happen if my motion passes.

Vice Chair Dodson: Dolores, did you have something to say?

Fabrao: Yes...what the rationale is that the council should not be restricted from initiating changes in priorities -- why would anyone want to change priorities in mid-stream, unless that priority or that thing that they thought was priority before, is not as important as the new priority one. Where would the new priority come from?

Vice Chair Dodson: Now it's coming from the council.

Fabrao: What kind of example?

Takabuki: Maybe that's not the right word, I don't know, but...

Fabrao: But that bothers me, because that means that if the mayor sets or the mayor and the council have approved the budget, and had a set of priorities -- why would anytime a priority for number one or number two -- be changed to have number five put up to

Fabrao: (Continued) number one or whatever -- if it's been approved by both sides? Why would...anybody could come in and say I want to initiate this change, and if we do it in the Charter, it's going to give them that power to do it any time. Why? Why would they want to do that?

Sparks: Remember, to do it, they have to get the majority of the council and the mayor's approval, and maybe override a mayor's veto; so, just doing it, isn't going to be that easy.

Fabrao: That's true, but you know about mass hysteria... [LAUGHTER]

Vice Chair Dodson: I know what you're saying...everybody gets excited about a pool in Lahaina...

Fabrao: Sure, and if anybody has anything against "the mayor"...whether it's our present mayor or the next mayor...or man or woman mayor...if anybody gets excited and they want to have some... But, it's human nature, right? Same like you can't anticipate stuff like the planning commission...it's the same thing...

Takabuki: You can't anticipate all the things that could happen...like we said in those other things, right. But, look at the general policy -- is this fair to give the council this particular authority in this case...

Mancini: The issue is should it be a legislative function or an executive function... that's really the issue; because right now, the way it is, it becomes an executive function. For example, the waste water system in Lanai basically totally breaks down and we need \$1 million to fix it; it's not in the capital improvements budget...there's not \$1 million. Right now the administration comes and says let's change the CIP program, and let's do this program instead of x program. The way it stands now, the council can't do that. I'm just trying to lay out for you...I'm not taking any position. Your position is...look, if it's important enough, that's an executive decision...the mayor runs the budget, she's in control...if she sees an emergency, she should bring it down. Another position here is to say why is it the executive's? It should also be legislative to do it. If the executive branch doesn't like it, they can veto it. So, there's two arguments and neither are irrational, I don't think.

Vice Chair Dodson: Can we go ahead and take a vote on this?

Yonenaka: Yes; good idea.

Vice Chair Dodson: Okay, the motion is to accept this proposal to clarify council's authority to initiate changes to the capital program. I think we ought to do roll call.

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| Takabuki: | Yes. |
| Mondoy: | Yes. |
| Fabrao: | No. |
| Reyes: | Yes. |
| Sparks: | Yes. |
| Cockett: | Yes. |
| Yonenaka: | No. |
| Dodson: | No. |

[MOTION LOST/5 Yes and 3 No]

[RECESS/RECONVENE]

Vice Chair Dodson: We are now reconvened. Moving on, Anne.

Takabuki: Okay, number 6...is to clarify that the capital program is a separate ordinance.

Vice Chair Dodson: So, you're recommending a change here?

Takabuki: Clarification, really; it seems to be provided for under 9-1. which states all fiscal affairs of the county during any fiscal year shall be controlled by a budget ordinance and a capital program ordinance for that fiscal year.

Vice Chair Dodson: Has there been a problem with this?

Takabuki: By combining...well, not necessarily...by practice, it's been combined...but, I guess the tricky part is because they have different terms or expiration dates that there's been some problem in going back and amending the ordinance after the June 30th date has passed...which should have died.

Vice Chair Dodson: Which ordinance?

Takabuki: The combined ordinance. Right now it's combined, but the capital program has a life in excess of that June 30th date.

Vice Chair Dodson: Oh, I see.

Takabuki: I don't know if it's been a huge problem, but it does seem to be that perhaps it would be easier to deal with by separate ordinances.

Sparks: But it already says separate ordinances.

Takabuki: It does, but it's not done; and corp counsel has said that it doesn't need to be done.

Sparks: You know, it's a little frustrating to try to write a document that's supposed to guide the government's operations, and then find out that they don't pay any attention to the guidance that's in there already.

Vice Chair Dodson: And so what can we do to clarify that? Can we underline it and bold it?

Mancini: It's called creative flexibility.

Sparks: Yeah, sure.

Vice Chair Dodson: I mean, I don't understand how it can be more clear that there should be two ordinances -- a capital program ordinance and a budget ordinance.

Sparks: So, should we try to make it more clear and more redundant, and hope that finally they'll read it? Is that the idea? Whose idea was this?

DeLeon: Council's, wasn't it?

Takabuki: This one came up in our discussions I think, and we talked about the two...

Mancini: Isn't it accurate that they could do two ordinances, if they wanted to do two

Mancini: (Continued) ordinances? Nobody is going to stop them.

Fabrao: It says it already here in the Charter.

Sparks: Right here it implies that they do...a budget ordinance and a capital improvement ordinance -- that implies two very clearly.

Mancini: So obviously, they could do two if they wanted to, but they are preferring to do one.

Takabuki: I think this year they did two, as my understanding is, they did two...I think.

DeLeon: Well, you just need to amend the Charter and they'll do it.

Vice Chair Dodson: It's already in the Charter.

Fabrao: It's already in the Charter for two separate ones, Anne. What more clarification did you want?

Takabuki: No.

Yonenaka: Hey, hey, hey...you've got to remember that there was a problem.

Vice Chair Dodson: What was a problem?

Yonenaka: I remember there was a reason...a pretty specific...

Vice Chair Dodson: What was it?

Yonenaka: I don't know; I'm thinking.

Sparks: Oh, you're very helpful. [LAUGHTER]

Takabuki: Why they wanted it separated?

Yonenaka: Yes, and you were right about that...they end at different times...

Takabuki: Right, and that was, I thought, the primary reason for wanting to separate it.

Vice Chair Dodson: But they can separate it themselves. Is there any motion to separate it -- even though it's already separated?

Sparks: It's your committee, are you going to make a motion?

Takabuki: I'm not particularly that...well, I don't feel that strongly, but I think it does say that; although it concerned me that there was an opinion that said that it didn't have to be...it just didn't seem to be correct.

Vice Chair Dodson: Was that by corp counsel then?

Takabuki: Yes. We've got a copy of that somewhere, but I don't have a strong...I don't think it's a huge problem.

Sparks: But your committee recommended for approval.

Takabuki: Yes.

Vice Chair Dodson: So do you want to make a motion or would you...

Sparks: Or do you want to undermine your committee and not move...

Takabuki: I'll move for it, sure.

Vice Chair Dodson: Okay, is there a second?

Yonenaka: Second.

Vice Chair Dodson: Okay, now discussion on it. Not that we haven't already discussed...

Fabrao: Is the question...because it is covered already in the Charter with the and there, but maybe the effective dates or...like the operating budget terminates on June 30th and the capital program on December 31st -- maybe we could get those dates in line -- is that the question? Would that be the question?

Takabuki/Yonenaka: No.

Vice Chair Dodson: Because the capital improvement has an eighteen month lapse period, and the regular budget does not, so...

Sparks: So, what kind of language...just to get a feel for how this might work out...would make it more clear? Have you got any ideas, Paul?

Mancini: Well, we could figure out something. You could say the capital program shall be in ordinance separate and distinct from the operating budget, and shall contain at least the following.

Sparks: Why don't you just put the word separate in the sentence somewhere? Controlled by a budget ordinance and a separate capital program ordinance.

Takabuki: Paul, let me just mention another issue that came up. Although, I think it was acknowledged by corp counsel, that you do this in two ordinances...the feeling was the appropriations all have to be in the one budget ordinance...because of some language in the Charter that says...under 9-5.3. By virtue of adoption of the budget, the several amounts listed in the budget column entitled "Appropriations" shall be appropriated to the specified departments and programs. And, the word budget was read as meaning the operating budget.

Mancini: There's no problem in doing that after the division in doing it separately this year. In order to have the appropriations for the capital program, you're going to have to have revenues; and you usually forecast your revenues in the first part of your ordinance -- budget ordinance -- the following amounts shall be appropriated. And then you've got your tail -- which is the capital improvements -- which is usually at the end of the ordinance. And, you subtract your revenues from your operating budget and you've got what you've got left over for your capital...so structurally it may be difficult, but it's easy enough. In your operating budget, you've got your revenues and your appropriations, and then at the bottom you've got your revenues remaining for capital programs. And then when you start your capital program budget, you start with those revenues, and tie the two together. You know, it could be done. The real question is how important is this? How important is it to either require it separate...right now they certainly can do it separate if they want to.

Vice Chair Dodson: Okay, shall we go ahead and take a vote on it?

Takabuki: I don't know if there was a second even.

Vice Chair Dodson: Yes, there was. All those in favor of clarifying that capital programs be set forth in a separate ordinance, say aye. All those opposed? You want to take a roll call?

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| Takabuki: | Aye. |
| Mondoy: | Nay. |
| Fabrao: | No. |
| Sparks: | Yes. |
| Cockett: | No. |
| Yonenaka: | Yes. |
| Dodson: | No. |

[MOTION LOST/3 Yes and 4 No]

Takabuki: Okay, number 7...this one was just again a clarification to recognize that there would be certain procedures for setting rates and fees and assessments in state law that might not be currently recognized under the Charter.

Vice Chair Dodson: Recognize procedures established by state law relating to the setting of fees, rates, taxes and assessments. 9-7. Okay, you guys referred it for approval by commission, so do you want to make a motion to that effect, or...

We're referring to the May 13, 1992 report of Committee C, number 7, Section 9-7. Proposal: Recognize procedures established by state law relating to the setting of fees, rates, taxes and assessments. Okay, is there a motion to approve?

Yonenaka: Move to approve.

Vice Chair Dodson: Was there a second?

Sparks: Yeah, second.

Vice Chair Dodson: Okay, it's open for discussion.

Mancini: What procedures?

Takabuki: Okay, the explanation that I have gotten is that because for certain fees, like fuel tax and vehicle weight tax, state law still has certain procedures by which you must follow to set them. Some of the council staff wanted to see that clarified...to recognize them, so you wouldn't go through two processes in setting the same rate. Again, it's kind of a technical type amendment.

Mancini: If you had to do it, in any case, and it's controlled by state law...

Takabuki: You still have to follow state law.

Mancini: Let's assume you have to follow state law...when you put it in the Charter, which you're going to do if you adopt this procedure, and subsequently state law changes, but you still have it in the Charter...what do you do?

Sparks: You still have to do it by state law, right?

Mancini: You know, you have to follow whatever the law is...whether you write it in

Mancini: (Continued) the Charter or not. I'm just wondering if...

Sparks: But if you just put in words about state law procedures, then whatever they become they're still there.

Mancini: But in some state laws, the Charter would supersede; in other state laws, the Charter wouldn't supersede. And my problem is, do we specifically say identify those state laws which we would have to follow?

Takabuki: I wouldn't think we'd want to go that far.

Mancini: Or we say as required by law?

Sparks: Right.

Takabuki: Or by Charter or state law.

Mancini: Which to me seems to be what it's saying...whether we put it in there or not put it in there. I'm just wondering if you're really doing anything significant other than confusing the voter.

Takabuki: I have no problem with that. I guess the practice does work; I suppose there's sometimes when they have to duplicate hearings, or duplicate some procedure...so it might be a little bit more troublesome actually going through the process, but I don't think it's a huge flaw or problem that can't be overcome.

Sparks: Can they fix that by changing the county procedures then, so they can do it only once?

Takabuki: Well, the county procedure right now is to put it all in that rate schedule that they attach to the budget, and they do follow a certain procedure to do that. So, that would still apply, but they would also have to do the state procedures.

Mancini: This is a department of finance recommendation?

Takabuki: No, this is also from council.

Vice Chair Dodson: Any further discussion?

Mondoy: It couldn't be too often though that that would happen.

Takabuki: All that I know of is possibly those two different kinds of fees -- the fuel tax and the motor vehicle weight tax. So, to answer your question, I don't think it's a huge problem.

Mancini: The thing that they have to do is set the rate for those individually by ordinance, and then they go ahead and do that. And then they estimate the revenues from that rate in the budget. Correct?

Takabuki: It's all incorp...right.

Mancini: It's the same thing if the water department was under our jurisdiction and these water rates are set separately; but the forecast of those rates are in the budget. Liquor taxes are assessed by rule and we forecast them. Not much different than the liquor;

Mancini: (Continued) that's the closest analogy; because you kind of establish the liquor tax rate by the budget. The budget only adopts that rate that already exists. The fuel tax the budget doesn't establish it...it only adopts that fuel tax which is established separately. I'm just trying to think it through...

Vice Chair Dodson: Okay, is there any other discussion? Okay, all in favor of the recommendation to recognize procedures established by state law relating to the setting of fees, rates, taxes and assessments, say aye. All those opposed?

Sparks: So, three ayes, three nays and Sherri.

[Staff: So what is that?]

Vice Chair Dodson: It doesn't go.

Takabuki: Okay, number 8...Appropriations and Changes. The proposal is to allow for certification of additional estimated revenues and have a requirement that the mayor certify actual revenues. The situation on estimated revenues, as I understand it, is limited to bond revenues...so there would be that reasonable certainty that those revenues would actually come in by the floating or issuance or sale of bonds. And, certification would be of actual revenues.

Mancini: What's the logic of this, Anne?

Takabuki: Right now, certification is purely discretionary...so during the course of the year, although there may be additional funds or revenues coming in and actually received in excess of whatever's necessary to operate government, those monies are not actually made available for appropriation unless the mayor decides to make them available, when she does some kind of amendment to the budget during the course of the year.

Mancini: Revenues are mostly real property taxes...

Takabuki: Transient accommodation taxes or state taxes...

Mancini: State taxes and miscellaneous...

Takabuki: What happens in practice is, usually, the fiscal year ends on June 30th; about three or four months thereafter the auditors come and close the books for us, and then they'll find that there's this surplus amount. And usually because the county's been quite conservative in estimating that, there's usually quite a large surplus; and I think when Georgina was here, she mentioned a carryover usually reaches about \$20 million. So, we're talking at any given time a fairly substantial amount of money, that may actually be available but cannot be appropriated unless certified.

Mancini: But isn't it...if that's the only fund we're talking about, that is one forecasted revenue source -- the carryover savings -- and that is always forecasted in the budgets.

Takabuki: Correct, correct.

Mancini: If you forecast carryover savings...\$10 million, other revenues come in... say you carryover is \$20 million.

Takabuki: Right.

Mancini: Is that the only thing they want certified? Because at least that's clear. I'm just looking...here it's very broad...

Takabuki: I would think you'd have to look at every category...to see whether or not there's actually revenues that were received in excess of that.

Mancini: Your real property taxes come in all year long. I suppose at some point in time...if you estimate \$50 million in real property taxes...you get to \$51 you say... today there's \$51, tomorrow there's \$52 -- each day it's going to change.

Takabuki: But for real property tax, to answer your question, there probably wouldn't be such a certification until very late in the year...if at all, for that category.

Mancini: You can certify you've reached it...as soon as you reach it, and every day that gets more money, you'd have to certify it...

Takabuki: No, no, no...

Sparks: This says every quarter.

Takabuki: No, it wouldn't be every day; like they do on Big Island for instance, the mayor has to certify there at any time -- and that is unworkable, I would agree...that's very unworkable.

Mancini: I'm just looking at plans to draft it... [LAUGHTER]

Yonenaka: After you get the wording, let us know.

Mancini: I have to understand what I'm doing first.

Vice Chair Dodson: What if we say that...allow the mayor to certify additional estimated revenues, if there is any, each quarter...or something like that?

Mancini: Well, you could say something like this...that any time during the fiscal year when the county has received funds in excess of that which has been budgeted, the mayor shall at that point certify the funds have been received in excess of that which was identified and identify the excess amount. That becomes, you know, a one day affair -- as soon as you receive it and it's in excess -- it becomes easy for the category of carryover, because the auditor will do it...you either did carryover or you didn't carryover. You may even have a shortfall...you may have less than you had estimated; but, in all of the others coming dribbling in during the year.

Vice Chair Dodson: Well, I wouldn't want to have to be certified every day, but maybe...

Takabuki: No...

Vice Chair Dodson: But maybe every quarter or...

Sparks: That's what it says down here...example...every quarterly.

Takabuki: Apparently there is a quarterly report that's done, I think Georgina mentioned, right now, every quarter; and, at that point in time it would make sense to have them do that. But, you know, I'm not tied into that...it doesn't have to be quarterly.

Vice Chair Dodson: I like the...I don't mind the quarter, at all; I think making it...if she does it already now, the budget director, and making it mandatory...I don't see any problem with that. I don't like the daily thing.

Takabuki: No, I don't think that would work.

Mondoy: Quarter would seem more reasonable.

Vice Chair Dodson: It can't be too much, but it can't be not enough, you know, accumulated within a quarter's time; and if there isn't anything, she writes a big zero and that's fine.

Mancini: The problem you have is of course, once you certify that you've got more funds than you expected, everyone wants to appropriate those funds. And, you may have a shortfall in another category and it's always... You know, you can have different philosophies of management of funds...some of us don't say anything, and at the end of the year we've got this great savings, and we'll carry it over... And, there's always the other problem...everyone sees the money coming in, and it can hurt you on collective bargaining. [LAUGHTER] Normally, it should be a finance director's obligation to submit to the council, basically, the status of the county periodically...and how he's doing in the budget. You could do that...you could pass an ordinance doing that...the finance director shall... It's clear to pass a disclosure ordinance on the finance director, as opposed to putting it in the Charter.

Takabuki: But disclosure doesn't amount to ability to appropriate, I think that's a big difference.

Mancini: That's right; it's a different scenario...that's why they want it, so they can appropriate it; that's why the executive branch may not want to give it, because they're saying, hey...I've got to juggle the funds. Once I certify, my neck's on the line. And, if they're obligated to certify when you exceed one revenue source, and you may be lacking on the other...

Takabuki: Could you somehow make it clear that it shouldn't...if you have a deficit in another...that that also needs to be disclosed, so it would be unreasonable to try and spend money that you might have in one category, when you know maybe in another category there is a shortfall.

Mancini: Sometimes you don't know; I mean, how or where your revenues are coming in. We're not bad in the real property sources, as opposed to the state, because the state's fluctuate a lot more. But, they set these assessments on real property, and people start to appeal all of them...I know this year there's a lot of appeals...

Takabuki: And they have to set aside that, as I understand, a certain amount.

Mancini: Yes; they put it aside...I suppose they can expect them, even though they don't receive them; because if they receive them...real property goes twice a year?

Takabuki: Right. I think it's February and August.

Vice Chair Dodson: So what you're saying, Anne, is if she has certified...at that point -- no matter what else is happening with the rest of the budget -- those funds can be pulled out for appropriation; even though we've got a deficit in every other portion of the budget?

Takabuki: No, I think that shouldn't be the case; and, if there was a way to insure that's considered...if there is any kind of shortfalls...

Vice Chair Dodson: What if we don't call it a certification? Once it's certified, right, in the way the Charter reads now, then it's available for appropriation. What if she just gives a quarterly report showing this is where we have some money, this is where we don't have some money, and that's it.

Takabuki: Okay, but I think then, again, a disclosure is not the same thing as the ability to appropriate the money; that's the difference there.

Vice Chair Dodson: I thought you just said that we had a problem with that.

Takabuki: No. I would say we'd have a problem if overall there was a shortfall; but say in one category you're running ahead; yes, that would be a problem.

Sparks: Have we given the council any authority to appropriate money, anyway? I don't think we have yet. To change priorities, and initiate changes in appropriations... didn't those get chopped down?

Takabuki: Yes. But if funds are certified, those monies are available for appropriation by the council.

Vice Chair Dodson: In a supplemental budget?

Takabuki: Yes. That's the difference.

Sparks: Which has to be initiated by the mayor, right?

Takabuki: As long as he or she certifies, then the money -- it's like you have a free shot at it. This is money that we have that we didn't expend, and therefore it can be spent on any number of policies or priorities.

Mondoy: And then later on during the year, if there should be a shortfall, where are we? For instance, your real property taxes don't come in as large as you had anticipated -- say you have a lot of appeals like Paul mentioned.

Takabuki: And then that particular instance is dealt with under 9-10. Because as soon as there is a shortfall, or serious shortfall, the mayor is supposed to report that deficit.

Mondoy: Right; but in the meantime these other people -- the council -- may want some money appropriated for programs that they might have been shorted on, for instance. What happens then? Let's say they get the money appropriated...

Takabuki: Then the mayor doesn't have to spend it.

Sparks: So, we're back to square one.

Takabuki: Even though the money may be appropriated, there's still that decision on her part to spend it.

Mondoy: So what good does that...

Takabuki: Well hopefully, I guess the thought is that at some point, hopefully, there might be something that they can agree on that the money should be spent for. And I think, in most cases, they do.

Fabrao: My concern would be that if the mayor...whatever monies are there...and she does certify the amount there as being supposedly extra money; and the council does go ahead and use that money to appropriate, when there's no chance for the mayor to say that there's going to be a shortfall in some other programs or some other revenues that she's expecting...that the money would already be expended. And so, how would you handle that then?

Takabuki: She would probably not expend in certain areas, if she felt that there was that possibility of a shortfall.

Fabrao: But you said that if she certifies that amount as being extra, the council then goes ahead and appropriates.

Takabuki: Appropriates, subject to her...she can veto it again; there's always that balance there. And still yet, she doesn't need to spend it; I think if the mayor is worried about that kind of a problem...

Sparks: We're not nailing any of the mayor's powers here, are we? What it seems we might do by accepting this is prevent those kind of games that Paul was talking about, where they have extra money...but they're just not telling anybody. And generally, I'm for exposing what's going on in the county government to the public, and God, and everybody else -- not letting them play games.

Fabrao: You did say there was a quarterly report already made by the finance director?

Takabuki: There's a report...I don't know exactly... I think it just reports on certain departmental expenditures, I'm not sure what the form of it is. But every quarter, I think it's the budget director's responsibility right now to recap, you know, what the status is for certain appropriations...so they know pretty much what their status is.

Cockett: But aren't you recommending that there be a quarterly report?

Takabuki: A quarterly certification, is what the recommendation is.

Cockett: Certification...in other words, it's exposed every quarter for the council, whatever...the public...

Vice Chair Dodson: Not just exposed -- certified. Not just reported or exposed or told -- this is certified. Certified meaning...

Takabuki: The proposal is to certify, right.

Cockett: But when it's certified like that, it becomes public knowledge, doesn't it?

Vice Chair Dodson: No, not necessarily; I think what certified means is that it becomes available for appropriation. Whereas if you just report it, everybody knows about it, but it may not be available for appropriation.

Sparks: That's a very interesting distinction, I would say. [LAUGHTER]

Mancini: The language is...I agree with Al, because in 9-9. the mayor has to certify that it's available for appropriation. She could certify that there is excess funds over that expected, without certifying that it's available for appropriation.

Takabuki: Yes, I suppose so.

Mondoy: So that would take care of it.

Cockett: Yes.

Takabuki: If there is that concern about it, that's true.

Vice Chair Dodson: Any other discussion? Okay, all those in favor...

[Staff: Wait; I don't show any motion.]

Takabuki: Oh, I'll make the motion.

Vice Chair Dodson: You did make the motion.

Takabuki: I don't...

Yonenaka: No.

Vice Chair Dodson: Oh, okay. Is there a motion?

Takabuki: I'll make the motion.

Vice Chair Dodson: Is there a second?

Sparks: Yes.

Vice Chair Dodson: Okay, all those in favor? All those opposed?

[Staff: How about a show of hands?]

Vice Chair Dodson: Okay, all those...

Yonenaka: Wait, wait...let's go back; what is the motion?

Vice Chair Dodson: We're getting tired...to require certification of revenues...

Mancini: Maybe I can put it into perspective -- what you are voting on. Are you voting on the obligation merely for the mayor to certify that she's received funds in excess of that which was appropriated; or, are you obligating her to certify that she's received funds that is in excess of what has been appropriated, and that those funds are available for appropriation? The first one is just saying a disclosure; the second one...that fits into 9-9. -- not only is it a disclosure, but they are available for appropriation.

Takabuki: Right. The motion is for the latter, and that by saying that it is available for appropriation, that she can take into consideration any possible shortages. I mean, that would be the key there, right? We were...that's the point you were trying to make.

Mancini: But what I'm saying is that I'm not sure that that change is what you have

Mancini: (Continued) now. It's in her discretion to say I've received... There's two parts to the puzzle -- one, I've received funds; two, in my opinion, they're available for appropriation. That's discretionary...the latter part; because she could say 'look, I don't think they should be available for appropriation, because I think I'm going to be short somewhere else.'

Takabuki: Okay, if that were the only reason why they were not available, I think that's a definite difference; because in the past, it's been purely discretionary -- it has been known, for instance, that there's been a quite large sum -- but there was no, I guess, desire to push that forward and make it available. I think there's a difference.

Mancini: Yes, one's being conservative in what it's saying; the other one is saying it is there and let's go and take it and be aggressive with it.

Vice Chair Dodson: Okay, what you're proposing is that she certifies for appropriation.

Takabuki: Yes; that's what the proposal is...meant to be.

Mancini: With no discretion.

Vice Chair Dodson: No discretion.

Takabuki: Well...

Yonenaka: And this is not only on the revenues received, but the revenues expected to be.

Mondoy: No.

Takabuki: No, right now only on received.

Mancini: I'm seeing that she may have to juggle. You're obligated under number one to come down and say 'I've received \$10 million more than I expected; consequently these funds are available for appropriation; but, I'm also sending you another message under 9-10. I think I've got a shortfall here. So therefore, in my first letter, don't appropriate them, because I'm countermanding in my second letter.'

Takabuki: It could happen.

Mancini: Yes. I'm just trying to play a little scenario.

Sparks: Why can't she do it in one letter, and say we've received these revenues...
[LAUGHTER]

Takabuki: You can.

Mancini: I was trying to make a point.

Sparks: But we've got this shortfall, so therefore we have x amount of surplus available for appropriation.

Takabuki: And I think that would be the responsible thing to do.

Sparks: That's what this would ask her to do.

Mancini: It's kind of, in a sense, nonsensical...because up front she's saying it's available for appropriation, because I'm required to do this, and tell you it is; but down here, I'm required to tell you it's not available for appropriation.

Vice Chair Dodson: It may be available on paper, but in reality, we have a deficit someplace else...

Mancini: As the person responsible for juggling revenues and expenditures, this is my opinion...

Sparks: If we were talking here on this motion about excess revenues...considering any existing shortfalls...that are available, right? Then, we wouldn't have this nonsense that he's talking about.

Takabuki: Well, that's the way I would have seen it; considering all that...this is what's available.

Sparks: Yeah; it's very sensible, what Anne's talking about. But, that's taking into account shortfalls on this, when you say something's available.

Vice Chair Dodson: So our language is going to reflect that, Paul?

Mancini: Language...I'll have to think about a little bit...but it would say at any time that the mayor receives funds in excess of that which has been appropriated, she shall certify those funds as available for appropriation.

Sparks: To the extent of which they are in excess of any occurring shortfalls.

Takabuki: And then you just refer to 9-10. in some way, I suppose.

Mancini: But then you're just duplicating 9-10 by saying that, because she's already got that power in 9-10.

Takabuki: She has the power to come and reduce an appropriation, right?

Mancini: Sure, but what you're doing is setting... I'm not being critical, I'm just trying to think it through. You're setting a mandatory requirement...that if she receives some monies in a category above which they have budgeted, she has to disclose it and she has to say it's available for appropriation. She's got the authority elsewhere to say don't appropriate it.

Takabuki: Look, but what I think what we're saying is to the extent do not otherwise require because of a shortfall; I mean, that would be the logical, responsible way to say that yes, they are available. It's because they are not necessarily needed elsewhere, because of an emergency or a problem.

Mancini: I have a problem with it. Day one you do the audit; the audit shows that I've got \$500,000 or \$1 million available there. She has no idea what's happening with the other revenue sources that early in the year; she's obligated then to send it down for appropriation. And, maybe that's okay; you're early enough in the year and it's about what she expected.

Sparks: Let's say it's half-way through the year; in her quarterly report she shows more revenues than they expected...subtracts some of the shortfalls that were unexpected

Sparks: (Continued) from those surplus revenues, and what's left? She has to certify that as available -- that's what we're saying. We don't want her to have the discretion to hide it.

Mancini: At the same time, is the council then obligated to appropriate it?

Takabuki: No.

Mancini: No? You don't have to have a balanced budget? Once you certify that it's available...

Mondoy: But that was the purpose, right? To mandate her to certify so that funds are available...

Takabuki: It's available, but not necessarily appropriated.

Mondoy: But it could be appropriated.

Sparks: She might initiate appropriation ideas too, at the same time; or they might.

Mancini: I suppose it's discretionary...whether they want to appropriate or not.

Takabuki: I know it's not a simple issue...

Sparks: Wait a minute...he's got to understand what we have in mind, for sure.

Mancini: Well, I have it...but let's let me reword it. Anytime during the fiscal year the mayor receives funds, or the county receives funds, in excess of that which has been appropriated, the mayor shall certify those funds as available for appropriation; provided that...provided that what? Well, she wouldn't certify them if they weren't available...

Sparks: The amount of those funds that are available in excess of shortfalls somewhere else.

Fabrao: How would you know if this quarter... Excuse me; where's Sherri?

Yonenaka: No, go ahead.

Sparks: We're leaderless.

Fabrao: If she had this much excess here, how would she know that she's going to have a shortfall, because not all the revenues have come in for the other programs.

Sparks: She may not have a shortfall yet; or, she may have a shortfall. But, it may be the third quarter before a shortfall shows up in some category. But, in each quarter, we're mandating some kind of report that indicates what's in excess, and therefore available.

Fabrao: I have no problem with that portion. My concern would be if the council went ahead and expended those monies for some other appropriation, when she has not recognized if there might be or she doesn't know if there might be a shortfall somewhere else.

Sparks: Nobody knows the future that well.

Fabrao: Okay, then why would we...

Sparks: They're usually very cautious; you heard the budget director say how cautious they are in estimating the revenues, and so forth and so on...they usually end up with a surplus, they don't end up in the hole.

Cockett: I don't know about this year...

Vice Chair Dodson: Are we ready to take a vote on this? We have a motion...why don't you read the motion, Anne? [LAUGHTER]

Sparks: And its many permeantations [sic - permutations], right?

Takabuki: I move what Paul said. Well, the idea is that there shouldn't be more certified than what would actually be needed, if there was an anticipated shortfall.

Vice Chair Dodson: Okay, so the motion is to require certification of revenues on a periodic basis...right?

Cockett: Quarterly was mention, I think.

Takabuki: Well, quarterly was mentioned, but I don't know if that poses an issue, then... we'll just say periodic.

Cockett: Well, periodic can be monthly...

Sparks: Well, periodically is every two years...I mean, and then they will never get around to doing it...

Vice Chair Dodson: Okay, and we will require certification of revenues every quarter. All those in favor...

Mondoy: Excess revenues...

Mancini: Let me read it -- During any fiscal year the county receives revenues in excess of budget estimates, the mayor shall certify such funds as available for appropriation, provided the mayor has not forecasted a deficit from revenue sources which would make such funds not available for appropriation.

Sparks: That came closer.

Vice Chair Dodson: Okay, let's vote on the principal; how's that? Not exact wording...

Sparks: Substance, not exact wording.

Vice Chair Dodson: All those in favor, say aye. All those opposed? [MOTION CARRIED/Unanim.]

Cockett: Did I hear a unanimous?

Takabuki: Yes...how about that?

DeLeon: That was the first one.

Takabuki: Second one.

DeLeon: Great...I must have missed the first one.

Takabuki: The first one was probably to change the hearing date, right?

Cockett: Next.

Takabuki: Okay, the next one...9-10.

Mondoy: We just went over that, right?

Vice Chair Dodson: No, this is to clarify that the appropriation changes within the executive branch are initiated by the mayor, and that the council chair has the authority to initiate changes to the legislative budget. Oh oh...

Takabuki: That's just trying to say that each branch has authority over, control in a sense, over their own budget.

Vice Chair Dodson: Their own operating budget?

Takabuki: Right.

Yonenaka: Yeah, I think that's fair.

Vice Chair Dodson: Would you like to make a motion?

Takabuki: So moved.

Vice Chair Dodson: Any second?

Yonenaka: Second.

Vice Chair Dodson: Anybody have any problems with letting each branch...

Fabrao: Discussion time?

Vice Chair Dodson: Oh, yeah.

Fabrao: The mayor's budget is approved by the council, right? The legislative branch's budget is reviewed by the mayor?

Takabuki: Well, she can veto portions of it, or line item...she has the authority. It's part of the entire county operation...operating budget.

Fabrao: Okay, when the council initiates changes to its legislative budget, does it have to go to the mayor?

Vice Chair Dodson: It's only initiating the changes, right? It's not making them. It's only initiating them, so it goes back to the mayor...

Takabuki: Right, but read the next one because there's one allowing transfers between different council offices by resolution. That doesn't have a veto-type of authority over it.

Fabrao: Okay, but the one that we're addressing now, is this section, right? Yes, as long as there's a check and balance, I have no problem with that.

Yonenaka: As far as it stands now, the council has to authorize the mayor's budget...I

Yonenaka: (Continued) mean the mayor's department...although the mayor can veto.

Takabuki: Technically right now, because only the mayor can initiate the amendments, the council would have to ask the mayor to send down an amendment to them to change their portion of the budget. So, that's what they're trying to say...that they should have some ability to initiate it on their own.

Fabrao: That sounds alright to me; they initiate it, but then it goes back to the mayor for...

Takabuki: If it's an ordinance, she would have veto powers. If it's a reso[lution] she would not.

Vice Chair Dodson: Is this saying that they can do...they can make changes via resolution -- oh, we're going to come to that.

Takabuki: We're going to come to that next.

Vice Chair Dodson: Okay.

Fabrao: How can we make a rational decision on this one, in my mind's eye, if...

Vice Chair Dodson: Well, I'm assuming that this one just includes by ordinance...and not by resolution.

Takabuki: Really, that's what it's intended to...those changes that would need to be done by ordinance. Okay, the next one...I'm sorry...

Sparks: But, we're not talking about the wording here, we're just talking about the idea. We haven't identified how it's going to be worded yet.

Vice Chair Dodson: That Paul will do later.

Fabrao: So, it's assumed then...it's alright to assume that it would be by ordinance? The changes would be made by ordinance?

Takabuki: Except for certain transfers, which we will deal with under the next provision; that would be the exception.

Vice Chair Dodson: Okay, any further discussion? All those in favor, say aye. All those opposed? [MOTION CARRIED/Unanimous]

Mancini: May I ask for clarification? On 9-10. -- this is not transfers, you're not talking about transfers. We're talking about...

Sparks: Appropriation changes.

Takabuki: Yes. Appropriation changes.

Mancini: So, let's take the council for example...the council wants to add a new position in their staff; they could initiate that, but obviously they have to have the revenues...they have to be estimated to do it.

Takabuki: Not necessarily, if they can live within their appropriated amount for salaries.

Mancini: So, they could reduce another position?

Takabuki: No, they would probably just authorize a position, and if they had a vacancy... say, they would have enough money in their lump sum salary account to cover that position. Right?

Mancini: Is the budget that detailed that they don't get a lump sum, they get monies appropriated for each position?

Takabuki: No. I don't know what it looks like now, but before they had a number count -- you'd say council services had twelve positions -- say they wanted to change it to thirteen. I don't know if it's still like that, but that was my last exposure to it -- just a number count, but it was still in the budget.

DeLeon: I can run up and get you the budget, but really it's not my kuleana.

Takabuki: Is Ken still here?

Mancini: I'm just trying to figure out how I'm going to word this now.

Vice Chair Dodson: Paul, are you just trying to figure out...talking to yourself, or do you need...

Mancini: Well, I'm trying to see what we did...and that is we're just saying that the mayor... It seems to me that the mayor, unless I'm missing something...the mayor and the council are going to initiate changes to the budget any time -- can they not? No? Only the mayor can?

Takabuki: That's been the way it's been working out.

Mancini: Is that stated in the Charter somewhere?

Takabuki: I think that's an interpretation; I believe that's an interpretation that as far as the operating budget goes, only the mayor can initiate. Well, actually both in this case.

Mancini: Well, that explains it a little better. We're dealing with an interpretation.

Vice Chair Dodson: Okay, Anne, you want to keep going?

Takabuki: Okay, the next one would allow transfers between departments by reso[lution] and also transfers between some of the different council offices by reso[lution]. Right now, transfers within a department can be done by reso[lution], but transfers between must be done by an ordinance.

Vice Chair Dodson: And, what do you want?

Takabuki: To allow them by reso[lution].

Vice Chair Dodson: All of them...between departments and...

Takabuki: Between departments and between the two council offices.

Vice Chair Dodson: Is there a motion on the floor?

Takabuki: I so move.

Cockett: What was that? I didn't hear you. You wanted to... What was the change?

Takabuki: The change was to allow transfers between departments by reso[lution] and also transfers between the two council offices by reso[lution].

Vice Chair Dodson: Is there a second?

Sparks: Yeah, I'll second it.

Vice Chair Dodson: Discussion?

Sparks: Question. Your rationale is that this allows for changes to be made efficiently?

Takabuki: Right, and it would be the mayor that would propose the change between departments, anyway. So, it would be not something that she would be likely to veto. And, it just facilitates the whole process.

Sparks: Is there a down side?

Takabuki: I don't know of one offhand. Paul?

Fabrao: What is the difference between a resolution and a...

Takabuki: Ordinance. Two readings and it must be signed by the mayor.

Fabrao: And a resolution?

Takabuki: It's just passed by the council, one time.

Fabrao: The resolution?

Takabuki: Yes.

Fabrao: The ordinance?

Takabuki: Two readings...two times, and then subject to approval by the mayor.

Fabrao: So, which is more binding by law?

Vice Chair Dodson: They both are.

Takabuki: Well, this would give the resolution the binding status...if you put it in the Charter.

Sparks: Does it conflict with any other Charter provisions about resolutions or ordinances?

Mancini: Well, there used to be a Charter provision that resolutions don't have the force and effect of law...somewhere.

Fabrao: Yes, that's what I thought.

Takabuki: I thought unless otherwise provided herein.

Mancini: Right.

Fabrao: Because the council has sent us resolutions regarding their recommendations, and it's not an ordinance, so it's not binding by law. So, I don't see how the two can...

Takabuki: I think what we'd be doing is we'd be giving it the status of law, by saying it can be done by resolution. What is that, Paul?

Mancini: Article 4, Ordinances and Resolutions...defines it...every legislative act of the county shall be by ordinance, unless otherwise provided for herein. So, we're otherwise providing for it here.

Fabrao: So then if we do it by resolution, it would be like law.

Mancini: Yes. It's okay as long as we spell it out.

Fabrao: Okay, I could buy that then.

Vice Chair Dodson: Is there any further discussion? All those in favor? All those opposed? [MOTION CARRIED/Unanimous]

Cockett: What's next?

Vice Chair Dodson: We're down to twelve now, aren't we? Since eleven sort of took care of that one too.

Takabuki: Eleven had to do with that sort of odd situation where there might be a transfer from a county department to a legislative office. But that, I don't think, seems to be that much of a problem from what we hear...it was maybe only one isolated situation.

Sparks: And they took care of it? Were they able to find a way to do what they wanted or should have done?

Takabuki: They went ahead and did it. [LAUGHTER]

Yonenaka: Your favorite scenario...they just ignored it.

Takabuki: I don't know that that's a huge problem; I'm not really committed to that.

Sparks: You don't want to lose faith in the Charter out of this whole process...

Vice Chair Dodson: You mean you haven't? [LAUGHTER]

Takabuki: So let's go down to...are we going down to...what did you say, twelve or thirteen?

Sparks: So, you're recommending that we skip eleven?

Takabuki: I don't think it's a huge problem, myself, and the last time we got testimony, it seemed like the budget director didn't even realize that there was -- outside of one situation -- a problem.

Vice Chair Dodson: Does anybody else feel compelled to make a motion on this?

Takabuki: I didn't think so.

Vice Chair Dodson: Okay, moving right along to twelve. Authorize the council chair to initiate appropriation transfers within the legislative branch. Didn't we just do that?

Takabuki: Right. We kind of combined that, I'm sorry, with number ten.

Vice Chair Dodson: That's fine; so we'll skip number twelve then.

Takabuki: And that...allow for that by resolution, also. Thirteen.

Vice Chair Dodson: Allow for the reduction of an appropriation to pay... Excuse me?

Takabuki: Again, this is one where it probably doesn't come up too often; and, it's a situation where monies might be appropriated for debt service...anticipating that a bond might be issued early in the year...so they would appropriate say for two payments of debt service. What happens is sometimes they don't issue it at all, or they issue it late in the year; so, they make only one payment on debt service. So, what this proposal would allow would be to be able to take those monies that were appropriated for debt service, and move it to something else...whereas right now, you cannot take any money that's appropriated for any debt service amount and move it anywhere else.

I don't know, again, if it's a huge problem.

Sparks: Can't they fix some of these things by ordinance? Why do these have to come to the Charter?

Takabuki: No, it is in the Charter. There's a section that says no appropriations for any indebtedness shall be reduced...or something of that kind.

Sparks: So, it has been a problem?

Cockett: Not really.

Takabuki: I don't... I personally don't think it's a huge problem, but it has come up before. And, I suppose there's been a desire, at least once, to do it. But personally, I don't think it comes up frequently.

Vice Chair Dodson: Do you want to make a motion?

Takabuki: Unless anyone feels strongly...I'm willing to pass over it.

Cockett: Okay.

Fabrao: That's fine with me.

Sparks: You've got all this committee time behind these recommendations for approval, and now it's late and... [LAUGHTER]

Cockett: And, it's not earthshaking.

Sparks: Who else from your committee is here?

Vice Chair Dodson: Actually, we've had a lot of discussion on this too, Al. We went over this once before.

Sparks: I know.

Vice Chair Dodson: And so I...

Takabuki: I think when we did go over it, we realized that a lot of these were very technical; and maybe not necessarily that huge in the whole list of...priorities...

Sparks: Well, under the philosophy of if it ain't broke, don't fix it...is also the assumption that if it is broke -- fix it. And so if they're substantially broke, let's fix it.

Takabuki: But how broken? It's not that broke.

Yonenaka: Well, part of the problem was first of all you've got to understand how it works. [LAUGHTER]

Vice Chair Dodson: To see if it's broken or not.

Yonenaka: Sometimes to listen to this...I'm going huh??

Mancini: It seems like all you've got to do is amend the budget.

Sparks: Yeah.

Vice Chair Dodson: Yeah, for all this stuff...

Takabuki: Amend the budget itself? The budget ordinance?

Mancini: Yeah, I mean if the indebtedness isn't there. They are forecasting an indebtedness that didn't exist...and all they would have to do is then amend that in the budget to reduce the indebtedness; and then that money would be available on the revenue side. If I understand the problem...the problem is that the indebtedness...they think the indebtedness exists...

Takabuki: When they appropriate it, right.

Mancini: But when it comes into the year, it doesn't exist, and therefore, they've actually gotten more revenues. But, since it says that you can't take the money away from the indebtedness...then it's stuck there...and all they would have to do is pass an ordinance reducing that indebtedness from what they thought it was, to what it actually is.

Takabuki: And that automatically that other appropriation can be reduced?

Mancini: Well, you had the indebtedness for \$1 million...it comes out to \$½ million.

Takabuki: Right, and you appropriate to interest...\$100,000...

Mancini: Yeah, so that's an expense to the indebtedness...it's an appropriation; if you decrease that appropriation by the \$½ million...and that's going to give you excess revenues.

Takabuki: Oh, you just fool around with the revenues.

Mancini: Yeah.

Takabuki: I don't... I know what you're saying; I don't think they would reduce a revenue amount.

Mancini: You aren't really reducing it; it just automatically...the revenue side automatically goes up, because your expense side has gone down.

Vice Chair Dodson: Moving right along...

Takabuki: I don't know mechanically how that would work.

Vice Chair Dodson: Okay, so number 14...establish a longer CIP appropriation...

Takabuki: That's not even referred.

Vice Chair Dodson: That's not referred? Okay, so number 15. Define abandonment procedure... Oh, you're kidding! Define abandonment procedure?

Takabuki: If you recall when Georgina came down, she did say that they themselves think that's a good idea...at a certain point to look...at a certain point in time to say that a certain project won't go. And so that is, I guess, the idea behind this; that that be somehow put in there to say...and it's still discretionary that the mayor would abandon at a certain point, and free up those revenues for appropriation.

Mancini: Example?

Takabuki: Example of when she would abandon, or how she would abandon?

Mancini: Yes, just an example of the scenario.

Takabuki: Twelve months into the year or nine months into the year, she looks at the projects and some of them aren't going for one reason or another. Or, she talks to her department heads -- which is what the budget director said -- and they indicate that they can't get it done for some reason. So if that's the case then, she tallies up those projects and says well these are abandoned, because we're simply not going to be able to start them...it doesn't make sense; and she'd come down and she'd have the money reappropriated...to something that they either can start quickly, or to something that's ongoing.

Mancini: Is there criteria on the ones that she would abandon?

Takabuki: It would be discretionary. It is discretionary; in fact, she said they're actually doing something of the kind right now.

Mancini: But if there's no criteria, well basically she would go to the departments and say...well, you're not working on this...

DeLeon: They do weekly CIP meetings under administration action, and if they notice that there are certain projects that aren't going to make it... Well, at twelve months, if it looks like they aren't going to make it, they start having serious conversations about it and drop it if it's not going to happen.

Mancini: But there is an obvious reason why the project isn't going?

DeLeon: It just gets stuck...maybe there's not enough manpower, or there's complications in the processes that they didn't anticipate...sometimes eighteen months is rough.

Mancini: Yeah, I'm just looking for the... What I want to try to avoid is the drafting problem where two months after this discretionary..."I abandon." You can't abandon -- you just appropriated it. "I've got the discretion to abandon." Abandonment without the criteria is abandonment.

DeLeon: Part of the problem was there was more on the plate than could be swallowed. And, some of them got reprioritized...

Mancini: And a council member comes and says you're giving her the ability to basically abandon the CIP program we just passed, anytime she wants.

Sparks: But they're requiring that the council be notified. That may be a step forward, from what happens now. Although I think what happens now is pretty much along those lines, but it could happen that they abandon and never notify.

Mancini: There's no sense in going through the abandonment procedure if you're not going to notify anybody...because that's the same thing as letting it sit on the books.

Sparks: Right.

Mancini: I guess the question is...do you have the right to abandon; that's the first question -- once it's appropriated and it's set as policy, do you have the right to abandon?

Sparks: Are you suggesting you have a right to let it sit on the books, and this discretionary authority of whether to spend or not...but you don't have the right to abandon and notify? What's the difference?

Mancini: It's your intent, that's all.

Sparks: But your intent is...

Mancini: Abandonment.

Sparks: Is abandonment versus...

Takabuki: Maybe I'll do it.

Sparks: Maybe I'll do it someday. [LAUGHTER]

Yonenaka: Is abandonment a different thing?

Takabuki: Abandonment is 'hey, I'm not going to do it.' It's a definite, isn't it?

Yonenaka: I guess so.

Takabuki: I think so.

Mancini: Lost property and abandoned property...if you lose it, you lose it; if it's abandonment, you know you lost it. [LAUGHTER]

Vice Chair Dodson: Are you going to be able to come up with some language to define abandonment?

Mancini: Well, I'm trying to see whether that's the criteria, whether we have to... If it's merely within her discretion to abandon would be a reason...it's easy to draft -- the mayor shall notify the council of any project or program that she has abandoned within five days of abandonment.

Vice Chair Dodson: Well, don't we have that in the Charter now? It says that the purpose of such appropriation for capital improvements shall be deemed abandoned six months after the close of the fiscal year.

Takabuki: That's your lapsing...that's your eighteen month lapsing.

Vice Chair Dodson: Oh, okay. So we're saying that...if it's...

Takabuki: Anytime during the year, if she decides...or whoever decides...they're going to abandon something, then within five days they would notify...or whatever...

Vice Chair Dodson: So to define abandonment means when she says it's abandonment.

Mancini: Part of it...your lapsing is only twelve months now?

Vice Chair Dodson: Eighteen months.

Takabuki: No, it's eighteen...well actually, it's six months after the fiscal...so it comes out to eighteen; but it could be less, if there's something...

Mancini: It used to be two years.

Takabuki: Right.

Fabrao: I have a note in my thing...I don't know if it's appropriate at this time, but... The purpose of any such appropriation for capital improvement which is less than \$100,000 shall be deemed abandoned eighteen months after the close of the fiscal year. Is that appropriate to what we're discussing? Where did we come up with this?

Mancini: At any time during the fiscal year the mayor determines that an appropriation cannot be achieved during the fiscal year, and the mayor says...that the mayor shall so notify the council and the reason for abandonment.

Vice Chair Dodson: That sounds good.

Fabrao: Yeah.

Takabuki: I...that's fine.

Vice Chair Dodson: I knew you could do it, Paul. Is there a motion to define abandonment procedure?

Takabuki: I so move.

Fabrao: I'll second.

Vice Chair Dodson: Okay, can we vote on it then? All those in favor of defining abandonment procedures, say aye. All those opposed? [MOTION CARRIED/Unanimous] We've got two more left in this section.

Takabuki: Okay, Audit of Accounts. To require that an audit be performed after the expiration of the finance director's term...and that came from Travis [Thompson, director of finance]...because he had a situation, I guess, this time around.

Vice Chair Dodson: Do you want to make that a motion? This is going to be a tough one.

Takabuki: I'll move to approve.

Vice Chair Dodson: To provide for an audit after the expiration of a finance director's term. Second?

Cockett: I'll second.

Vice Chair Dodson: Anybody need any clarification on that? All those in favor of the motion to provide for an audit after the expiration of a finance director's term, say aye. All those opposed? [MOTION CARRIED/Unanimous]
Okay, the next one we skip...

Takabuki: Number 18; I think it's pretty self-explanatory -- to add a section requiring a five year operating plan. I would note that Jamie had a comment that he'd like to see it be four years.

Vice Chair Dodson: Would you like to make a motion?

Takabuki: I'll so move...at five years.

Vice Chair Dodson: Second? Is there a second?

Yonenaka: Yeah, I'll second.

Vice Chair Dodson: Okay, discussion?

Fabrao: Explain to me what you just did? This five years?

Vice Chair Dodson: We're going to add a new section to require the mayor to submit a five year operating budget...plan with budget.

Fabrao: Oh, okay.

Yonenaka: So, the budget is an annual...so every year she would have to submit a...

Takabuki: They would extend it out another year.

Vice Chair Dodson: So with every budget would come one additional five year...at the end of five years...

Takabuki: Right now they do it for CIPs, but not for operating.

Yonenaka: I guess it wouldn't...well, hopefully it wouldn't change...

Takabuki: It's not a commitment; that's the thing...it's a plan.

Yonenaka: I'm just thinking of the extra work, but I don't think it'll be that big of a change.

Sparks: At the fifth year, is that going to be real in any sense? Or are we just making real guesses?

Vice Chair Dodson: It's a plan; it's a...

Sparks: I mean, how do you know what your revenues are going to be five years away?

Vice Chair Dodson: It's just a plan; it's just a plan.

Takabuki: Of course, it'll be less accurate as time goes on...

Sparks: I guess that's my question; how inaccurate is it going to be? Maybe that's what Jamie was thinking about, too...

Takabuki: Maybe that's why he wanted the four years; that's a thought...

Cockett: I still think it's a good idea, because it moves on every year...even though the mayor's term expires.

Fabrao: It's just like a strategic plan, you know, it's a moving workable thing; it doesn't get placed on the shelf anywhere...you work with it...

Cockett: And they can change it every year.

Fabrao: Whatever projects you want to put through, it either gets done or it doesn't get done; and then you just go on with it.

Vice Chair Dodson: Any other discussion?

Mancini: This is an operating budget, not capital improvements...

Vice Chair Dodson: They already have one for capital improvements.

Mancini: Yeah, so what she'd be doing is forecasting the program needs, and her staffing needs on a five year basis. And, also forecasting revenues. Is it practical to do it? Who's suggestion is this -- council's?

Takabuki: Right.

Sparks: Where did this come from?

Takabuki: It came from that letter from council...I'm sorry, Alice Lee's committee.

Cockett: I kind of misunderstood that; I thought it was capital.

Vice Chair Dodson: Georgina didn't say she had a problem with it, did she?

Fabrao: If I recall her saying...I think they have some kind of operating plan for several years.

Takabuki: I think she said she wanted to clarify what would be required; at least that's what I have.

Yonenaka: I think she wanted specifics.

Takabuki: I think the intention is to be quite general, but still to give a picture of what kind of operational needs, staffing requirements...would be in the future. But as you get further and further, it's going to be less accurate...like anybody's...like any corporation's plan.

Sparks: Right now they have nothing two or three years in advance?

Takabuki: Not required. I don't know, maybe the mayor does have something, but it's not required.

Fabrao: It would seem to me, that any reasonable administrator would have some kind of plan. Say that they were questioned as to what their projections would be for the next year or two, or three, four or five...they would have some idea. And you can't have any idea, without anything...at least in some written form.

Vice Chair Dodson: I'll tell you, in her seventh year...she's not going to care what happens in five. [LAUGHTER]

Sparks: I don't know...what are they going to go to...an Ouija board or something? To figure out when the next recession's coming? When the next United strike is coming, and all that sort of thing?

Vice Chair Dodson: This isn't something they have to stick by, Al.

Fabrao: So, do we even need to address this?

Mondoy: You know, we do it for capital improvement; but even that, we don't really... You know, we go five years down the line...

DeLeon: The thing is, you know what your big ticket items are and it's going to take ten years to get them on-line anyway.

Takabuki: But you don't know what the revenues are...that's a stab in the dark. I know for a fact that you look at it, and you think well, we hope we can get this from the state, we hope we can get this from the fed...but they don't know... [LAUGHTER]

Vice Chair Dodson: The question's been called. Is there any objection to the call of the question? Okay, we'll take a vote on it. All those in favor of a motion to add a new section to require the mayor to submit a five year operating plan with the budget, say aye. The motion doesn't go. [MOTION LOST/4 Yes and 4 No]

The meeting is adjourned.

[TAPE WAS REQUESTED BACK ON BY DAVE DELEON FOR THE FOLLOWING DISCUSSION.]

[Staff: So, what do we do?]

Vice Chair Dodson: Alright, if you guys want to go on, then somebody else can chair the meeting.

Sparks: Well, I agree; it's getting a little late.

Takabuki: I don't mind staying, for myself anyway, but unless people will stay, I'm not going to get my thing even reviewed.

Sparks: How about a Friday meeting? How many could we get here for a Friday meeting?

[Staff: I was going to suggest that...why don't we recess...]

Vice Chair Dodson: We need to post the agenda.

[Staff: No we don't, not if we recess.]

Takabuki: I can't come.

Fabrao: I can't be here Friday.

Vice Chair Dodson: What about Monday?

Sparks: Thursday?

[Staff: Tomorrow's a holiday, but we can't have it here...we'd have to have it somewhere else.]

DeLeon: At a public hall...

Vice Chair Dodson: How about Monday?

Mondoy: Monday's a bad day.

Fabrao: Monday I'm out; I'm at Maui Memorial.

Mancini: You have a public hearing Tuesday?

Fabrao: Yeah, there's a public hearing on Tuesday and a public hearing on Thursday.

Mancini: But how are you going to disclose to the public what you're suggesting? It's already been set for the public hearing then?

[Staff: All the public hearings are set for the month.]

Mancini: The first one's on...

[Staff: Next Tuesday, and it's already posted; because it had to be posted today.]

Mancini: What was the forum that you expected in that? Did you just...

[Staff: Basically what I did was go with the top priorities on the two committees that are finished. And then we added that little catch-all phrase that said...in fact, you guys should all have copies of the agenda. You all have them.]

Vice Chair Dodson: Anne has a suggestion here, and considering this is her committee, it should come from her.

Takabuki: I have no problem if we just take out what's approved on a certain list...what we've dealt with today; and then on another list, say these have not yet been acted upon...but are being under consideration...if we can't meet before Tuesday.

Fabrao: Well, that's one way of doing it.

Takabuki: And we'll just disclose that they haven't been acted on and what they are, and I don't think there are that many on the ethics...initiative; I think we've gotten through the bulk of the work...since we got through budget.

Vice Chair Dodson: It's not like it's dead because we haven't acted on it before the public hearings, it just means that on one particular list that we're going to have...things that we have already acted on...it may not be on there. It doesn't mean that it can't be brought up by Anne, herself; by anyone on this committee; by anybody in the public...

Mancini: Let me ask Anne if there's anything left over in these eight pages that you find to be terribly significant.

Vice Chair Dodson: She finds everything significant.

Sparks: Not true; her committee did, but she said 'well, I don't think it's a very big problem.' [LAUGHTER]

Takabuki: That's not true either; I found a lot of these important, but I don't think people want me to entertain all of them.

Sparks: Okay. Hit the big ones.

Takabuki: Under ethics...

Vice Chair Dodson: We're going to end up going through all this stuff... I like your first suggestion, Anne.

Takabuki: Ah...I think the one regarding representation of a private interest; that's number four.

Mancini: On what page?

Takabuki: Page six.

Mancini: Page six, number four.

Vice Chair Dodson: Okay, at this point if we're going to go on with the meeting, I need to appoint another chair. I'm going home, guys.

Sparks: Anne's logical.

Cockett: What page? Oh, you're looking at that page...

Vice Chair Dodson: Anne, do you want to take over?

Takabuki: Let's go...even though we have quorum...

[Staff: You'd have six, but you'd have to do everything unanimous...but you'd have six.]

Vice Chair Dodson: I propose we go with your first thing, Anne, where you...

Takabuki: I think so; I'll prepare a sheet that will say they have not yet been approved.

Vice Chair Dodson: Okay, is that alright with everybody?

Fabrao: That's fine if we bring it up to the public...and they can get input that way.

VI. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:11 p.m.

ACCEPTED:

Sherrilee Dodson, Vice Chairman Date