

CHARTER COMMISSION
MEETING MINUTES
JULY 16, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Dolores Fabrao
Annette Mondoy
Robert Nakasone (Chairman)
Victor Reyes
Anne Takabuki
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)
Paul Mancini (Counsel)

EXCUSED

Sherrilee Dodson (Vice Chair)
Allan Sparks
Jamie Woodburn

GUESTS

Dave DeLeon
Mark Adams (The Maui News)
Rick Medina, Councilman
Georgina Kawamura, Budget Director
Daryl Yamamoto, County Clerk

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 4:04 p.m.

II. PUBLIC TESTIMONY

A. Councilman Rick Medina thanked Commissioners for opportunity to speak on proposals.

Medina: Basically I'm here to find out the exact language of the proposal to eliminate the three Central Maui seats and to divide the island up into seven districts, including Molokai and Lanai...that would give us nine total for the council, which is its present number. The present system, as I see it, is a good one considering the growth that will be situated and planned for in Wailuku/Kahului. There has been tremendous opposition to developing more housing upcountry, not only because people feel that upcountry should remain upcountry, but the lack of water has prevented the growth that could occur in that area. The growth may occur in South Maui, but basically most of the growth, as we foresee it, it will occur in Central Maui...especially in Wailuku where C. Brewer has plans for 3,000 homes, and Maui Lani down here for 3,000 homes. There will be some further inclusion of residential properties in the C. Brewer industrial zone, where we approved 480 units that will be developed by Jim Schuler. So, the growth for the next ten years... because of the infrastructure availabilities should occur within Central Maui. As I said, there has been tremendous opposition to further growth in Kihei, but growth will take place there; and possibly in the next three or four years, will not be as great as it was because of the economy. But, as I look at the present system of having three people from Central, having one from East, and one from South, and one from the West, and one at large -- it appears that the concerns of the residents in these areas are being represented now. I don't know what you hear, maybe you've heard that the representation is not as good... I think the system is good; maybe the people in the system may need to improve their representation methods...of the people they represent. So, I don't know if the representation is not that good, then we're going to hear about it at the ballot box. And, I think it's been my experience that after four years in the council, people can tell whether or not they're getting adequate representation. Now, I know that looking at the election returns from some areas, I do know that some incumbents got less votes in their district than their opponents; but because of the at large voting, were still able to win the election. However, because we have to run at large, the rest of us have to pay attention to what's happening on the neighbor islands such as Lanai and Molokai, and also in other districts because we all have to get votes from all of these areas. So, that's one thing that is good about running at large. And, I hope...I think the Commission turned down the

Medina: (Continued) idea of having single member districts. The concern I have further is how you're going to break up these areas. Politically, it may be bad for some of us...the way it's going to be broken up; but then again, my own personal apprehensions about how you might break up the Central Maui district should not be a consideration as to your final decision. What I'm saying here...if the present system is okay, why change it? If this position here is a compromise between a single member (district), then why cannot the Charter look at the present system and compare this system with that present system, rather than it be a compromise between a previous proposal and this one? Because to me, if the present system is working, and will work in the future because of the distribution of population, then maybe it should continue as we go down the road...looking at as the County of Maui grows, especially Maui island in particular...where the population centers are going to be. So, that's my concern...is that there's about 32,000 people now living in Wailuku/Kahului; and, I think that includes the outlying areas like Waihee, and places like that. With three people in Central Maui, I guess we represent about 10,000 people each. Kihei was given a seat; they represent about 15,000 people. But, as I said, I think the growth will occur in Central Maui because of our planning process; our planning has been that we would like to locate more residential properties in this area, because of its proximity to the infrastructure. It would be cheaper to develop housing in this area, because water, utilities and so on, and so forth, are located within this area. And, I see nothing wrong with having three people represent this area...which, ten years down the road...the population of this area could be 50,000. So, the final thing I would say to them, because of the growth patterns that will occur, maybe the Charter Commission should not determine in the Charter how the districts should be broken up. I think the question on the ballot should be "Should we have seven council districts on the island of Maui, one on Molokai, one on Lanai; and that you must be a resident of that particular district if you want to represent it." If the people say yes to that question, then I think the...a reapportionment commission should be convened to determine how each district is going to be laid out; because I don't know if you folks can make that decision here, while you're trying to make changes to the Charter. I know that the districts are identified in the Charter now, but...and, I can't remember the history as to how all those districts were set up... Paul, I don't think you...Paul Devons served on the Charter Commission...

Mancini: Devons served at the time when there wasn't a great deal of change, with regard to council composition...when Devons served on the Charter Commission...it was changed four years after that, when they got the two at large seats and the three in central...

Medina: Well anyway, I would propose that if you proceed to divide Maui up into seven districts...that a reapportionment commission be convened after...if it passes by the voters that they be convened to study how the districts should be aligned, and let them have a year to do this work...so that as they view the population distribution, and as they view the growth patterns, they can come up...because they'd be only focused on that one issue--how to best fairly and equitably distribute the districts. So, that's all I have to say; thank you for allowing me to speak.

Chair Nakasone: Okay, questions of the members? Rick, when you say that...to ask the question and possibly creating a reapportionment commission, are you stating that the voting will still be at large?

Medina: Yes. This is your intent, isn't it? That the voting would be at large?

Chair Nakasone: Yes, voting at large. It was basically a compromise between district and at large proposals, but splitting the Central Maui district was more like identifying a race that is one-to-one, rather than a multi-seat race, you know, where you have three seats available for Central Maui...that you have a competition of one-to-one, rather than

Chair Nakasone: (Continued) having the top three vote getters in one district, because the other districts have similar type of elections...they are all one-to-one, except for the Central Maui. And, I think the reasoning was there's more accountability if there were a single seat requirement versus having a multi-seat area; I think that was the reason for splitting the Central Maui. Because, you know, you can win with the second vote...not necessarily the first vote...second or third vote; so it's really not competing one-to-one.

Any other questions by the members?

Mancini: Rick, when you ask for a reapportionment commission, what criteria would you give that reapportionment commission to make a decision on it? You're saying the voters would say let's have seven seats on the island of Maui; in selecting the lines for those seven seats...would you give them criteria? Would it be on population, or any reason at all?

Medina: I guess you'd have to discuss that; I guess normally that the representative districts are amended, based on the shift in population, that...I don't know if it's the state constitution that says each representative must represent a certain number of people...so, as populations shift, they reapportion to include...

So, the reapportion commission would look at the population, and maybe project, you know, where the population growth would occur, and then try to develop the districts based on the existing population and possibly the future population; but, the population will grow, and so I think that has to be taken into consideration. As I said, I believe the growth of our island will occur in Central Maui, and there will be limited growth upcountry and possibly in Kihei...but not as fast as it has in the last ten years...there will be some growth in Kihei; but, the majority of your growth, I think, will take place in Central Maui.

Mancini: You're probably right to not set any criteria; let the reapportionment commission decide where the line would be based on their...

Medina: Whatever their guidelines...the other reapportionment commissions have followed maybe that's the guidelines they would follow.

Mancini: Usually a reapportionment commission is set out because you're trying to create a single member district, and you try to divide it up equally in population...but since we're an at large system, and I think you're advocating an at large system, you're not set into that criteria; you don't have to base the districts on population, you can do it any way you want. And, I think that's what's happened here; somebody thought well, we ought to give a seat to East Maui, we ought to give a seat to West Maui...and you come up with a number of different motivations for the overall plan.

Medina: I think it's normal for you to follow that guideline simply because the council voted to give South Maui a seat...which, I didn't support...but, it happened that way. So then, South Maui says they have 15,000 people, we certainly deserve a member on the council -- and, that's going to occur elsewhere, you know -- Pukalani/Kula...well, you have one district for them, but people are going to say we need that kind of representation; and that's why I say well, if you're going to do it, then have a reapportionment commission take the burden off you folks, and decide how the seven districts should be fairly and equitably divided. And, let them propose that to you...and the clerk's office will then have an opportunity to input and decide how they are going to run the elections. Because we have presently, right now, some people living on the same streets maybe voting in different representative districts; there has to be

Medina: (Continued) better guidelines for the clerk's office to follow; and, if you do it by addresses too, you have addresses like rural box 1...and maybe that person is voting on the ninth representative district and the guy across the street is voting for a guy from the eighth representative district -- there's a lot of confusion. So, hoping to avoid that kind of thing, another body should really look at this very carefully as to how the districts should be developed...if you go this way; if you plan to go this way.

Chair Nakasone: Any further questions? Thank you very much, Rick.

B. Georgina Kawamura, Budget Director, responding to proposed amendments.

Kawamura: Thank you for this opportunity, also. I'm here on behalf of the mayor, and we're here to comment on the proposal to amend Section 9-9 of the Charter as it pertains to requiring the mayor to certify revenues on a quarterly basis, in excess of what is in our annual budget. I hope that you have all received this letter, which unfortunately just got done today...we tried to get it out to you early enough...it's a lot for you to digest, we realize. But, if you'd allow me to summarize and just go through some points we want to make in this letter... [See Communication 92-52]

We are here basically to oppose the amendment because we believe it's going to weaken the administration's ability to manage our fiscal resources; it could possibly hurt our bond rating; and it could render us helpless, perhaps, to be able to respond to emergencies that may come out during the course of the fiscal year. Maintaining our carryover savings is a real practical and prudent fiscal management practice, and this is a real important factor that the bond raters look at when they are considering our credit rating. Another point we'd like to make is that we believe that certifiable excess carry-over funds are only available at June 30th, because at that point when we close the books, and the auditors have an opportunity to look at our books and review our accounts, only then do we know if we have excess revenues...which are in excess of our budget estimates. If we go through and have to do it each quarter, at the end of the first quarter there may be excess revenues coming in, but what's to happen in the second quarter? And, what's to happen in the third quarter? We are not able to predict how each quarter may fluctuate, so we believe the only time you can really see whether or not your actual is over your estimate is at the end of the fiscal year. I think that's a real important point I'd like to make. And, another point is also that we are required to send to the county council quarterly reports of our financial situation at that...quarterly basis of our fiscal standings; and what that quarterly report shows is how we're doing as far as our revenue collections, and as far as our expenditures. So, we believe that the information is available as far as notice to the council and how much revenues are coming in, as compared to how much we estimated for the year. But again, unless we have a clear audited number at the end of the fiscal year, we're not comfortable in having to certify those amounts. Talk has been brought up, well, a lot has been brought up about the council's ability to perhaps have the opportunity to introduce new programs or new projects during the course of the fiscal year, and we believe that the present process is flexible whereas that opportunity is available; during the course of the year, there's always a supplemental process where the council has the ability to either agree with what the mayor has proposed, or to throw everything away and fund totally different projects that they may propose. Again, what's attached here is a very long, specific arguments that we have come up with. We apologize...we realize that you will probably need some time to digest this; we have the deputy director of finance and our accounting systems administrator here if there are any questions that you may have now. If not, we'd be available at any time when the Commission would care to call us back to discuss all of these points; because, it may take a while before you can read through all of it and digest it.

Chair Nakasone: Being that we just received your concerns, I don't think it's appropriate for this Commission to ask questions or discuss the concerns...the administration's concerns; but, you're making reference to 9-9, right? Appropriations and changes?

Kawamura: Yes.

Chair Nakasone: Oh, I'm sorry; any questions?

Mancini: I haven't read the Charter on 9-9, but I have read the mayor's letter; and, she indicated she had three concerns...one is the December starting date; two, I assume, is this quarterly certification... What's the third concern? I didn't quite get that. The letter indicates that she came up with three concerns; she was writing a separate letter on one of them... So, I take it that the December start date is one concern; 9-9 is two concerns; I'm looking for the third concern.

Cockett: It's the water department on the second page.

Mancini: Okay, I'm sorry.

Wright: Bob, would it be possible for Georgina to come back so we can ask her questions? Because the problem is we don't know it, but if you could be here like next week or something like that, then we could have a chance to go over them.

Kawamura: Yes, we realize it is a very long paper for you to sift through...

Wright: Would you be able to come next week?

Kawamura: Sure. Is it next Thursday?

Wright: It's the 23rd; that's next Thursday.

Kawamura: Oh definitely, we will be willing to come.

Chair Nakasone: Just one question, Georgina; are you saying that the proposed amendment is forcing the mayor to release funds?

Kawamura: Well, by requiring the certification, you know, we believe that the opportunity is there for the council to appropriate at any time.

Chair Nakasone: But it has to be submitted by the mayor for any supplemental appropriation, you know, presently...

Kawamura: Not if you're just requiring a certification; that's where, I guess, we would need some clarification, too. Are you just requiring a certification without a proposal to spend? Or, would a package be submitted with it to spend it? Or...

Chair Nakasone: I think it's just informing the council in terms of that certification. But, if you go further, it says they may by ordinance make supplemental appropriations...

Kawamura: If it's a notification only, then it's...to me...quite different than a certification.

Mancini: May I comment? There's two things that I...one, it sounded to me like you

Mancini: (Continued) wouldn't certify because you're not going to conclude until June 30 ending whether there's anything...and then, it's too late, you've already got a new fiscal year.

Kawamura: Our feelings is that you wouldn't have an audited amount to certify because each quarter, if we are to... How can we know what's going to come in the next quarter or the next quarter or the next quarter...if at the first quarter we have to certify excess revenues -- what do you base the excess on? You know, because we have an amount that we expect should be coming in for the year...and you know, that's during the course of the year that we expect to receive it; so, at the first quarter, are you saying that we would divide the estimate by four and then you should have received that amount by the first quarter? Again, I guess it's clarification that we need, too.

Mancini: I think it's three steps; your first obligation, assuming this goes through, is to make an examination on a quarterly basis to determine whether you received funds which were not anticipated...you got a new grant you didn't anticipate...as far as funds more than you forecasted. And then the second step, is once you make the examination, make a forecast to see whether these are really available for appropriation; the last sentence reads...after such examination, the mayor determines these are available for appropriation after considering any expected shortfall in revenues, the mayor shall so certify. So, her obligation to certify is only if one, you've made the examination; two, you've determined they're available for appropriation, and after you've considered you might have a shortfall.

Kawamura: Okay, what I'm saying is that having to view whether or not there may be an unexpected shortfall at the first quarter, is going to be pretty difficult for us.

Mancini: Unless you knew you lost something, you'd expect it; I mean, you could know that an expectation is not going to be realized...that's a possibility; the same as you could realize something that you didn't expect. You know, usually your real property taxes you're always going to gain because you've got your assessments and you've got appeals...the grants-in-aid may differ...

Kawamura: Also, our real property taxes come in semi-annually, so at the first quarter, we wouldn't know.

Mancini: Well, you know what your assessments are...you just don't know whether the cash flow is going to come in.

Kawamura: Right; and that's what we're certifying too...you would have to certify that you have cash available for appropriation.

Mancini: What I got from your testimony is you would be very reluctant; if not, you probably will not certify until the audit is finished. So, the purpose of this, you know, would be nil.

Kawamura: Because, you know, we would want it examined by the auditors and all that; you need to be pretty sure before you could certify any excess revenues.

Takabuki: I'm sorry I missed some of your presentation, Georgina; but just a question... when the council brought this to our attention, I think one of their biggest concerns is not so much the quarterly certification; but that at the end of the fiscal year, after the books were closed, there was a significant amount of carryover savings...which many times was not ever certified to be reappropriated. So, for a period of time, you know, there's this quite large amount actually sitting there, and probably...I'm not saying it's not

Takabuki: (Continued) being used and not expected to be used at some point...maybe the next year; but I think the concil's concern was that they would like to have an opportunity to see those funds be spent on current programs, and not just carried over until the next fiscal year. So, my question is...if it were only a one time certification, after the books were closed, after the amounts were actually made certain by an audit, would that pose such a difficulty?

Kawamura: If the intent is that it's certified for them to appropriate, okay, it's one thing; as compared to certified as a matter of information.

Takabuki: Right, I know the intent was to certify for appropriation.

Kawamura: Certify for appropriation...then you get to a point where you have zero fund balance all the time; you may get to that eventual point, if you certify all of your... certify for appropriation all of your excess carryover savings, then you have no real fund balance for the next fiscal year.

Takabuki: Well, and that's assuming that one, the council appropriates everything; and secondly, the mayor spends all the appropriations, which probably...I mean, she has that control...she doesn't have to spend it, so you're not really looking at a zero fund balance...unless...

Kawamura: But, the potential is there for a zero fund balance.

Takabuki: Potential...but, I think you have the balance...the council may appropriate, but the mayor can, in her judgment, withhold and not spend for certain things. And, I just wanted to explain to you...I think that was the intent when the proposal came before us. That carryover savings was really the concern.

Wright: If it's certified for appropriation, even if the mayor at some point makes a determination that it's not going to be spent, but if it is certified so that it is technically available for appropriation...is that going to affect the bond rating?

Kawamura: If it's available for appropriation...

Wright: Now, if it's certified for appropriation...that's what we're talking about... is that going to affect the bond rating; or, is it only if it's spent or unavailable?

Kawamura: I think it's only if it's spent and unavailable.

Wright: Okay.

Chair Nakasone: Any other questions? Georgina, one question...if you look at current revenues against current expenditures, not including carryovers, are we in a deficit?

Kawamura: Let's put it this way, our current estimated carryover savings is for fiscal year 1993...is about \$20 million; our total budget is \$180 million...so, the source is \$20 million of \$180 million...

Chair Nakasone: It would be a deficit spending, right?

Kawamura: [Indicated yes.]

Chair Nakasone: Thank you very much; so, we'll set up a time for the next meeting.

III. APPROVAL OF MINUTES

The minutes of the following Charter Commission meetings were approved as circulated:

- A. June 30, 1992 - Full Commission Meeting
- B. June 30, 1992 - Central Maui Public Meeting
- C. July 2, 1992 - Full Commission Meeting

IV. COMMUNICATIONS

The following Communications were accepted by the Commission:

- A. 92-51 Letter dated 7/7/92 re: proposed amendment to Section 8-5.4., submitted by Brian Miskae, Director, Department of Planning
- B. 92-52 Letter dated 7/16/92 by Wayne Fujita, Deputy Director of Finance submitted with a cover letter dated 7/16/92 from Mayor Linda Crockett Lingle re: quarterly certification of excess revenues
- C. 92-53 Letter dated 7/16/92 re: administrative support and concern for some Charter Commission proposed amendments, submitted by Mayor Linda Crockett Lingle

V. COMMUNICATIONS

- A. Paul Mancini, continuation of review of all proposed amendments to the Maui County Charter.

Mancini: Did everybody get the supplemental report? And also, I typed up a checklist of some concerns I had...as I went through the report. I thought the first thing we might want to do is...council composition is the first section; and, although I was unable to capture Allan Sparks' thoughts very well, I did try to articulate some reasons for what was happening. But, my biggest problem was in drafting the specific section...I didn't know what to do with census tract...Allan wanted census tracts, rather than precincts; and in a way, I found both of them created problems because on East Maui you weren't going to have a total census tract or a precinct on 302, and on Makawao, Haiku, Paia...it wasn't going to be a complete one. And, I had no idea how that would be drafted; whether you were going to send Daryl up there with a measuring stick and put in a post or something...

Chair Nakasone: Daryl, would you mind joining us? Paul, the volunteer is approaching the...

Mancini: So, I took the easy way out and I say "That's Daryl's problem!"

Yamamoto: Thank you, Paul. Actually, I think there might be a slightly larger problem...because even the census tracts...I checked with the Lieutenant Governor's office and people that had staffed the reapportionment commission, and there are no written boundary descriptions for any of the census tracts. So if census tracts are used, and say for that one example where you used portions of a census tract, or even if you get all the census blocks...someone or a group of people would have to actually sit down and go through the maps and write up the boundary descriptions.

Mancini: Well, I suppose that can be done...

Yamamoto: Yes. [LAUGHTER] I'm not volunteering now... For precincts, it's required that precincts are in writing...the boundaries are actually described from this point to this point, along this road, you know, traveling in this direction...and, those descriptions exist. But, for census tracts, those descriptions do not exist...and, if this proposal were to be approved, at some point some officer or individuals would have to sit

Yamamoto: (Continued) down and draft the descriptions...so you can determine actually where the boundary lines are.

Mancini: With what I gave you this week, would you be able to convert those residency areas into precincts?

Yamamoto: I'd have to go back and check; there's going to be some discrepancies, I mean, we're not going to be able to get the precincts and just fit it in there, and match up with all the census tracts...I'm sure we're not going to be able to do that. Because, when the reapportionment commission did their work, they used the census tract boundaries and census block boundaries, and did their reapportionment...they established their house and senate districts; but, that doesn't necessarily mean that they kept census tracts intact...using old census tracts like is contained in the Commission's proposal.

Mancini: My thought was that we would give you the map, and we would give you generally the populations to identify in the narrative, and give you the census tracts and the precincts, and ask the best way to conform to the intent of the Commission...with those residency areas.

Yamamoto: You mean comparing the census tract numbers into precinct numbers?

Mancini: Well, I started out with precincts; Al asked me to convert to census tracts; I was never clear in my mind why he wanted census tracts, rather than precincts.

Yamamoto: I think that was probably at my suggestion initially, when we met with the Commission.

Mancini: That was my recollection -- you did say that.

Yamamoto: You remembered! [LAUGHTER] Well, the problem with using precinct boundaries...and I think I stated this when I first met with the Commission...was that precinct boundaries may change, and they have changed since the original council districts were set; and, they probably will change in the future. Census tracts won't change, okay? So that's why he...I'm sure that's why Al picked the census tracts; but, the problem is we don't have written descriptions of the census tract boundaries.

Reyes: Okay, since you're only concerned about the residence of a candidate...see, the candidate will be elected at large...why is it a big...I mean, we tried to allocate the candidates from as wide an area as possible. Now, in the census tract...is like Daryl said, it's fixed; I mean, it doesn't change...and, we're just trying to get a candidate...The candidate doesn't technically have to represent an area because he's elected at large; he's not a true representative of that area. Why do we have to be so precise on the boundaries where we're only looking for a candidate from an area? Because, that person will be elected at large anyway; for example, you're talking upcountry...let's say it runs from Pukalani, okay? On the left side of Hana Highway is the Haiku/Makawao and the right side is Pukalani/Kula -- it's just an example -- okay, it doesn't matter whether the person lives on the left or right side of the road because you're just asking for a...

Chair Nakasone: He has to be a resident of that area.

Reyes: That's right; based on the census tract. But, he's elected at large, so why is...

Chair Nakasone: No, but he has to live in that area. Let's say he lives across the street...the question is you know, he's not qualified; you have to have some distinct

Chair Nakasone: (Continued) lines of...

Reyes: But, he said the boundaries are exact as defined in the census tract; so, he has to reside within that boundary.

Mancini: What are you suggesting now?

Reyes: Okay, I'm looking at...the precinct boundaries might change, whereas the census tract doesn't change; since we...the Commission has by majority decided that we'll still remain at large, I mean, we're just trying to spread the pool of candidates or where the candidates come from. So, if the person happens to live in a certain area, he would be elected at large; why is it a very big difference whether he's...as Al has diligently proposed in this boundaries?

Mancini: That's the way it is today, regardless of what we put in the new Charter or how you want to revise it; right now if somebody wants to run from South Maui, you have to know what the boundaries are.

Reyes: And, that's what's in here, right?

Mancini: Yeah, but we're describing it differently; if you go to the existing Charter...

Reyes: Oh, the present Charter is precincts, right.

Mancini: It's stated in terms of precincts, so you know geographically where you have to reside in order to qualify for election from that residency area.

Reyes: But so does the census tract...we can know because the census tract has a boundary.

Mancini: But, Daryl says he doesn't know the boundaries.

Wright: He can't find the written boundary.

Yamamoto: The precincts that are enumerated in the Charter now are described in writing; the census tracts are not.

Reyes: But you said they exist.

Yamamoto: Well, the census tract boundaries exist on a map, but what I'm saying is a written description saying the census tract begins from this point to this point; and, as long as you have a residency district requirement, you need to know exactly where the boundaries are.

Reyes: I didn't know it was imprecise; I'm sorry.

Wright: Yeah, otherwise there'll be arguments all the time about where that line on that map really runs.

Yamamoto: A perfect example is Iao Valley Road...the middle of Iao Valley Road is split between the 8th and 9th districts; so, people living on one side...say if that were a council residency district, they would only be able to run for that council seat -- and people across the road from them would only be able to run for the other council seat.

Reyes: I misinterpreted it; I thought when you said the census district is defined... I mean, the boundary exists...it's going to be defined like when you describe a property, just what the language...

Yamamoto: I'm sorry if I didn't make that clear.

Reyes: Okay, I misunderstood.

Chair Nakasone: Any other questions? So, Paul, what's your recommendation? [LAUGHTER]

Mancini: My recommendation's a good one...it's to delegate.[LAUGHTER] To delegate to Daryl...taking our map and the narrative...to come back with a plan that best implements the intent of the Commission for these residency areas...whether they be by precincts, or whether it be by map...to think about it. What I'm afraid of...we get three weeks down the line and we decide we want to go with this, and then we're then stuck with the problem of if we want to do census tracts and it's not defined. If we want to do precincts, we don't fit exactly where the precincts are; so, my intent is to give Daryl a couple weeks to figure out what's the best way to do it. If it's precincts, possibly we don't fit 100% the way we want it, but the best we can to make the geographic areas definable.

Yamamoto: Well, what I could do...we have an island map showing all of the precincts, and it's color so it's really easily discernible and where the precincts are, so maybe it can be done on that basis. And, like I said, we have written descriptions of the precincts. As far as me to commit and say yeah, within two weeks I'll be able to do it...I can't even promise that, with...

Mancini: We'd love to delegate it to Allan Sparks, but it's not going to happen.[LAUGHTER]

Yamamoto: I could take a look at the precinct maps and see what precincts may, I guess generally, coincide with your proposal.

Mancini: Maybe by next Thursday you could take a look at the maps...take a look at what we're looking at, and try to identify as close as you can what precincts fit into the areas we're talking about, and where the problem areas are.

Yamamoto: Thank you. [LAUGHTER] This is by next week...

Mancini: We've always been friends, haven't we? I don't know, that's my suggestion. I'm fearful we get a few weeks down the line and we're going to be in trouble.

Yamamoto: I said something to him a long time ago, and he remembered.

Chair Nakasone: That's all we've got, really, is a couple weeks.

Mancini: I've got this checklist of concerns, and maybe the thing to do is go through the package and look at that at the same time. The second section...Anne and Jimmy Cockett and I met on Monday to go through this to see if they had any concerns...I've got some stylistic changes in most of this, but I haven't done the changes because I just didn't want to re-do everything in stylistic matters, just substantive matters. My recollection, other than that one issue...collectively we had no problems with Article 3, council composition, unless someone here wants to bring up an issue and wants to talk about it right now. That's the one we just covered with Daryl.

Another issue with number 3, terms of council members...is something that's

Mancini: (Continued) addressed by the mayor; I didn't have it as a problem area, from my standpoint, but certainly the mayor's asking to rethink this...in light of the fourth paragraph in her letter today; and, if it's for the administration, I assume that the complementary section's the council -- you wouldn't have the mayor starting office in December and the council starting in January, or the council starting in December and the mayor in January -- I suppose you could do that, but it has a little lack of grace to it.

Chair Nakasone: I have one question, Paul, on that qualification...Section 3-3...in regards to the time of residency...the filing of the nomination papers... It seems that... let's say if an incumbent moves, I mean, intends to move to file for a different district... residency district -- that particular incumbent would have to resign at the time of filing, right? This is the requirement...he has to be a resident of that area.

Mancini: You've got to be a resident of the county for ninety days prior to filing...that's just the county; and a resident of the residency area at the time of filing. So, you usually have to file in what month?

Takabuki: July.

Mancini: In July...so, let's take a hypothetical...Mr. Councilman now is in the residency area of...

Chair Nakasone: Let's say he's at large and he goes to Central or South Maui...

Mancini: That's a bad one, because if you're at large, you're free, you can roam.

Chair Nakasone: Oh, I'm sorry; well, let's say from Central to South Maui. Okay, so the day of filing is July, so he has to resign, right? So, there'd be a vacancy from July to January 1st.

Mancini: The council would have to fill the vacancy.

Chair Nakasone: Yes, and they've got what...thirty, sixty...so many days to fill the position... And, to me, it doesn't seem right...

Mancini: So, you're making an argument he should be a resident when he's elected? Or when he starts to serve?

Chair Nakasone: I would say elected.

Mancini: Then you'd have a month's vacancy.

Chair Nakasone: At least only a month, you know, rather than six months...five months.

Mancini: So, you've got issues of when you file, at election, when taking the seat...

Chair Nakasone: When taking the seat, yeah, it would fulfill the term rather than leaving a seat vacant.

Mancini: Those seem to be the three periods that are at least identifiable; right now, you've chosen filing. In the existing Charter we were afraid that it could be interpreted that it was ninety days prior to filing; but, it would seem to me if you wanted to create that flexibility the better selection would be not at the time of election, but at the time he qualifies to take the seat.

Chair Nakasone: Takes office.

Wright: Yes, but I don't like that at all for the electorate, I mean; I understand that as a practical matter that may be a better thing to some extent, but the whole point of even having a residency requirement is that you're getting somebody who is committed to living in that area. You're going to elect them and then they don't even have to move into that area until the day that they actually take office? I mean, I don't think that would fulfill, to tell you the truth, really what the electorate's been telling us...when they even want residency requirements. You know, it's like saying you can move in after the election and then that satisfies the requirement...I don't know. I mean, it seems like when there's been hassles in the past, the whole point has been not just technical requirements of whether or not somebody lived in that area, although that has come up.

Chair Nakasone: Well, I guess my concern is really leaving a void in the council, and it can be more than one; and, you know, it's critical when you have five months...probably it's going to be four months, because they've got thirty days for appointing...

Wright: Are you just talking about when this change comes because there will now be residency requirements? Or are you talking about every time there's an election...because you're just figuring that people are going to move around a lot?

Chair Nakasone: No...it just might happen where you have too many vacancies on the council and what action can they take...because of the vacancies? I know one year we had three...three resigned to run for the mayor...

Wright: Well, I know that happens, but that has nothing to do with the residency requirement...if they resign to run for the mayor.

Chair Nakasone: No, I'm saying that if the filing date will terminate the residency if they want to run for another district, they won't be able to serve their term out; they'd have to resign.

Yonenaka: I think there's actually two problems; one is on a... Well, maybe not two problems...maybe only one... The problem is if the new residency requirements go into effect, at that point everybody basically...well, not everybody, but a lot of people may have to resign; and, I think maybe we should look at that. But, that's a one time problem.

Wright: Yes, I agree; I think that initial change over...I can see the point Bob's making, because we are now changing and requiring different residency...making different residency requirements, and that could cause a problem for the first time, but in general, I don't think so.

Yonenaka: Yes, I tend to agree with you; in general, I mean they have to resign if they're going to change representative seats anyway to run in any other election. But, the first change over is going to be...could be interesting.

Chair Nakasone: Well, that was my concern.

Fabrao: I have a question. I don't understand about halfway through the paragraph of the amended section...if a council member seeks to be a resident of the county -- he's supposed to be a resident of the county for ninety days already, right?

Mancini: Which page is this?

Fabrao: That's on page nine...amended section, about halfway down the paragraph. If a council member seeks to be a resident of the county or ceases to be a resident of the council member's residency area...Oh, it's supposed to be ceases, right? That's what I thought...maybe I was reading it wrong or something.

Wright: No...it's a good point.

Yonenaka: Can you write something in as far as if this thing goes the way it's going and there's nine residency seats...it's possible three or four people who are on the council may have to resign at the time they file...during the change over...for instance in Central Maui.

Mancini: Let's take a scenario...in Central Maui you've got Rick, Joe and Wayne right now, okay? Let's say the Charter went through and they're still holding their seats...and that only one of them could run from... Well, you don't know; one of them could run from Kahului and one could run for Wailuku...

Yonenaka: But, let's just say three of them lived in Wailuku...so, only one could run from Wailuku; one might move to Kahului; one might move to upcountry or Kihei. So, two people have to resign their seat on July...

Mancini: Well, no; if they want to move upcountry...if they want to move out of the Wailuku/Kahului area, you're correct because at the date of filing the way it's written they would have to be a resident of say upcountry. But, if they wanted to keep where they were at that point in time they wouldn't have to resign.

Yonenaka: But, we're already going to break up Kahului and Wailuku...

Mancini: You could make the scenario where...let's say Rick lives in Kahului, and the new residency area is Wailuku...where he wants to seek the seat from...so you'd look at the date of filing -- is he a resident of Wailuku? If he isn't...but, he'll still maintain his status in the existing residency requirements, so that wouldn't be a problem.

Wright: What do you mean? I don't understand...how could he maintain his existing residency?

Mancini: Well, you've got three people in...

Fabrao: One is Kahului, one is Wailuku...

Takabuki: It's still Central...

Wright: So it's just a Central requirement...it's not that he's actually in Kahului...

Yonenaka: No, no...he will be, but he was elected as Central.

Wright: Oh, so it doesn't make any difference.

Yonenaka: Yes; he would have a problem if he moved to Kihei though.

Mancini: He doesn't have to resign as long as he stays within here...so, if he moves from here over here, he has no problem. In order to qualify for the next year, he would have to be there, but he doesn't have to give up his seat because that's still embodied in the residency area.

Yonenaka: Right; that's why you're here!

Reyes: Paul, how do they do it at the state level? Like we had a recent boundary changes...I know there was a question with a senator from Oahu now would be...would have to move to Lahaina...

Mancini: Russell Blair...he got a transitional period.

Chair Nakasone: Up until the next election.

Mancini: He's got some time and he keeps his seat, I believe, if he moves over.

Reyes: But he would have to run if he wants to...

Mancini: I think he's thinking of moving over this next year, but he would still be in the senate during that time.

DeLeon: And, he still has his seat and he doesn't have to run in this election.

Mancini: I don't know how the transition is but he doesn't lose his seat. It seems like the issue here is one...do you want to create greater flexibility in staying on the council and moving to other districts; or, do you want to create less flexibility and more of a tie to a new district -- those are the competing forces. Maybe what we can do is go through the inventory of the issues... Other than the mayor's concern on 3-2, which we can note...any questions on 3-2?

On 3-3...we just covered...

Fabrao: Excuse me...on 3-2...why would the mayor object to starting in December, as opposed to January? What is the difference in...

Mancini: She thinks there's not enough time to organize...as I read her letter.

Wright: To select her directors...

Fabrao: I know, but don't they usually have some preconceived notion as to who they want to...in case they win?

Yonenaka: Not necessarily; I think one of the problems...and it's interesting because it may not be her present problem...but I think when there's a complete change in administration...

Cockett: Yes, that's what she meant, wasn't it?

Yonenaka: There could be a problem if you have thirty days to find some cabinet members, department heads and whatnot...you may want that time to make some phone calls, as opposed to having to set it up within thirty days.

Fabrao: Oh, I thought when we changed the date, that was to have a functioning administration...but also give her the time to choose whomever; I didn't think at that time that everybody would be in place by December the first. That would be a working period for her to get her people.

Yonenaka: One of the arguments, I think, was we didn't want a two month lame duck period;

Yonenaka: (Continued) I think Al brought that up...where there's...after the election, basically there's two months before the person takes office. So, the person left behind or who is still in office has two months and maybe nothing gets done. It was an interesting concern...but I didn't even consider the part about, you know, you've got thirty days to find your people.

Fabrao: Thank you.

Mancini: Maybe I should go back and ask...for your council composition, does anyone have any additional reasons to put in to the narrative...or does anyone want any of the reasons taken out? I tried to piece together some logic in the narrative...obviously I did some guesswork, because I said in my first draft...Allan Sparks didn't like some of my reasons and he had me take them out -- he hasn't seen the redraft.

Wright: I thought it was good, Paul.

Fabrao: I did too; I didn't make any marks.

Mancini: What about terms of council? Any questions? Any reasons to add or deduct from that? Technically this should be your report, not mine; and, the reasons should be your reasons and you should sustain them.

Fabrao: They look good to me.

Chair Nakasone: I don't necessarily agree with it.

Fabrao: Oh, no?

Mancini: We can do a minority report. [LAUGHTER]

Chair Nakasone: Could you state the minority concerns here?

Mancini: Actually I think one year we did have a minority report...people concurring that we did have a minority report. I'm supposed to be totally impartial...

Takabuki: Can you clarify that very last sentence at the bottom of page six? Because it says here that the existing council...

Mancini: Okay, I was trying to think of a reason as I drafted this...it seemed to me that the question was whether this limitation on terms, and it always comes out, is applicable...say for example, you've got Wayne in there...he's had three consecutive terms...now four... Does that count against him?

Takabuki: No.

Mancini: And the logic would be that it doesn't count against him. Theoretically you could make it, because you're creating a law here...but it wouldn't be very fair. But, I was trying to think of a reason...your reason is the existing council members were elected without reference to the limitation; limitation is you can't run more than six terms...

Fabrao: Five.

Mancini: Five...and should not be affected by the new provision. In other words you're saying that since the voters voted for them when they ran for that, they should have

Mancini: (Continued) relied upon the old provision.

Takabuki: So it would be their future terms...and they start like one, two and perspective-ly, but it's not that they are never affected by this.

Mancini: They are not in the existing terms...if they've racked up three terms...

Takabuki: Right, and I agree with that; I think former terms should not be counted.

Mondoy: Everybody starts off...

Mancini: Maybe I can make that real clear, if that wasn't clear...I'll make a note of it. Okay, qualifications for council members...this is the one that Bob brought up.

Salary Commission...there's a couple of typos in there, stylistic changes... Does anybody want to delete the reasoning I had here or change it? I didn't hear the testimony with regard to the Salary Commission, so I was somewhat guessing at the logic. I couldn't grab it out of the minutes very well.

Yonenaka: I think it was basically continuity, one organization determining as opposed to... One particular situation...the water department...

Mancini: My reasoning here...it seemed like they were doing a good job with regard to the elected officials, and therefore you wanted to take that good work on the appointed officials, and you wanted appointed officials to get the benefit of that perspective.

Chair Nakasone: Well, that's where we're heading...right now, I think, the appointed are determined by ordinance.

Fabrao: And then the other point too was the department directors and deputy directors that are under the commissions and boards with appointing authority; we wanted to make sure that they came under that too, but that the (salary) commission would consult with them. It seems pretty clear there...

Chair Nakasone: Did you have a problem on that?

Mancini: No, it looks fine; I think it's a good idea...assuming that the first part is correct, that their work has been going well and people are happy with the way they're coming up with proper compensation levels...

Takabuki: It was supposed to be moved...

Chair Nakasone: 3-5 is supposed to be moved to another...

Takabuki: Moved to another section because right now it's only in that section pertaining to council.

Mancini: Oh, so you wanted to move the whole section?

Takabuki: I think it was going to be moved either to the later articles dealing with boards and commissions, or some other...

Mancini: Okay, I'll put it with boards and commissions section.

Fabrao: I have a question on that amended section. The terms of office of the salary

Fabrao: (Continued) commission member shall end with terms of office of council members or mayor?

Mancini: Right now it's council members...every two years.

Fabrao: Okay, the salary commission is appointed every two years...

Takabuki: It is right now; I think there was some discussion as to whether that was enough time, or if there should be continuity...because every time, I think, they're practically all being replaced.

Fabrao: I always thought that it was like anybody else.

Mancini: It's a very short term.

Takabuki: It is for a lot of research.

Cockett: We recommended no change.

Yonenaka: Four years...five?

Takabuki: The term of the mayor, right?

Yonenaka: That is a lot of information...

Fabrao: Because two years is short...I thought it was four years.

Takabuki: Well, initially they only dealt with the council and their salaries, and the mayor...so two years wasn't that much of a problem.

Fabrao: So, we're expanding it now...

Takabuki: But now they have to look at everyone...

Fabrao: That's why we need to consider that.

Yonenaka: Would they have to come up with a new salary schedule at every budget?

Takabuki: I don't know; I think it's up to them.

Yonenaka: And if they want to or not...

Mancini: Do you want me to change it or leave it as an open issue right now? I would leave it as an issue and leave it open so we don't have to make decisions today...just kind of go through so we can get this in order now...and make the changes.

Council voting procedures...pretty straight forward. The executive branch... 6-2.3...this is the corp counsel/prosecuting attorney scenario -- Anne and Jim didn't seem to have any problem on it. Term of the office of the mayor -- the mayor's letter implies this is something to talk about from a substantive standpoint.

Chair Nakasone: You know, my question is...if the other counties are doing it, why do we have to take so long? I mean, the Big Island's effective December first...so, are they having any problems with that? What is Kauai? January first?

Takabuki: Wasn't it December? Kauai, I'm pretty sure, is December. Honolulu is January.

Chair Nakasone: Okay, flag that one...make a checklist there.

Takabuki: First working day in December on Kauai.

Mancini: Prosecuting attorney...my question was you changed this such that the prosecuting attorney need not practice within the state for three years; you left corp counsel with that requirement -- and I just thought that created a bit of inconsistency.

Chair Nakasone: That was an oversight. [LAUGHTER]

Takabuki: Not actually; they testified in different views.

Chair Nakasone: Oh, really?

Takabuki: I remember Guy Haywood saying he thought it was important that they be in Hawaii for so many years...to know the local government, I guess, and various things. Whereas, Larry said he didn't feel it was necessary at all, and I think that's why we left it different. Do you recall that, Jim?

Cockett: Yes.

Mancini: It just seems to me you buy one philosophy...

Wright: For some reason I don't think we did; I thought we agreed we'd just change for both. I don't think we ever differentiated on that; if it didn't get into the notes that way... As I recall, we just said there was no particular reason for either one.

Cockett: I think we discussed it on the prosecutor because he brought it up, and we just did not tie it in with the corporate counsel; but, I agree...I don't see why it shouldn't be together.

Mancini: Okay, I'll do one for corp counsel and then you can decide whether you want it...

Wright: And, Paul, I have a question if we could go back on one of them. With regard to 6-2.3. which was saying the prosecuting attorney and corporation counsel appointment... I thought we also discussed, and I don't see it in here, that what would happen...you have in there that if a person is not confirmed then they may not continue in the post. I know we discussed that and that's agreed upon; but wasn't there some discussion of what happens then...she has sixty days to appoint another one. Who acts as the acting head in the meantime?

Mancini: Well, the mayor...under 4, the mayor has the authority of appointing on a temporary basis the administrative head of any department. So, she goes and exercises the power under 6-2.4. in that interim.

Wright: Oh, okay; I'm sorry...I see it.

Fabrao: And that position is in place until the person takes his office.

Wright: Or someone takes office.

Mancini: Somebody is temporary until the sixty days is reached, and then it continues. Fire arms section...I think Anne's given me some additional reasons for the fire arms...

Chair Nakasone: Fire arms?

Fabrao: That's full police power?

Mancini: The police power...

Fabrao: That doesn't need to be in there, does it?

Mancini: I didn't mention the fire arms, and one of the reasons for that would be they wanted the investigators in the prosecuting attorney's office to have police powers so that they can carry fire arms.

Fabrao: But isn't that already stated here? Shall have the powers and privileges of a police officer...which includes the...

Chair Nakasone: No, that's the amendment.

Mancini: That's the amendment, but there's the question of whether we want to add additional reasons for the amendment.

Fabrao: Oh, I see; okay...in the reason part.

Mancini: I just wasn't there when that was brought up and it wasn't brought to my attention; I just dwelled on the convenience factor.

Cockett: If I recall his testimony, it was police powers to include that but I don't think it was necessary to spell it out.

Fabrao: If it's understood, yeah?

Cockett: Yes.

Fabrao: Because they did mention that sometimes their men are...men and women are placed in hazardous positions because they don't carry any fire arms.

Wright: He said, in fact, that he can't send the investigators out on a lot of things 'cause he won't place them in that position.

Cockett: Yes.

Fabrao: But I think it's understood in the amendment.

Mancini: I make the statement here that we've been assured by the police department, prosecutor's department, personnel department that investigators have adequate training, adequate skills to be given these powers, and they say it will create no conflict with regard to the compensation...

Chair Nakasone: We're waiting for those letters.

Mancini: That assurance may not be here yet. Unless we just red flag the assured section...

Mancini: (Continued) I guess I'm still a little lost with regards to this problem with warrants and checks. My justification is not terribly lengthy; I did a little research in trying to determine what a warrant is, and I've got more definitions of a warrant than I really wanted.

Reyes: I read an article about a warrant.

Mancini: A warrant differs from a bond in that a bond is negotiable, whereas a warrant is non-negotiable and it is still subject to all the defenses...

Reyes: It's similar to the California I.O.U. -- it's a warrant; they don't have the money. They present it to the bank, the bank holds it...they can collect it from the state...so what they are issuing is warrants.

Chair Nakasone: This one was brought up by the finance director.

Reyes: I'd like to bring up something...California right now doesn't have a budget set so they're using I.O.U.'s, and from what I read it's a warrant. The banks take them ...right now they're kind of resisting because they haven't resolved their financial situation. So, this article said it's a warrant...what it is is a piece of paper the bank takes for them, and at some future time they redeem it...and then there's an interest paid for, you know, the amount of time they're holding this piece of paper which is a warrant. So that would be an example of how you...

Mancini: It's a dead instrument like a bond; a bond is an I.O.U.

Reyes: It cannot be traded, I guess; you have to redeem it to the issuing...

Mancini: Yeah, that's what it says...

Wright: It's non-negotiable.

Mancini: It's not negotiable; so, it's an I.O.U. and the Charter allows the finance director to issue I.O.U.s, which he apparently does. He wants the authority to issue checks...which I assume he also does, but I guess he doesn't. [LAUGHTER]

Chair Nakasone: In the present Charter, I think, he does not have by checks...just warrants.

Mancini: Well, we can put it...but, he doesn't issue checks, is that right? When the county employee gets paid it's not by a check?

[Staff: I get a warrant...it says warrant right on it.]

DeLeon: I never even paid attention to it. [LAUGHTER]

Fabrao: How do you get money then?

[Staff: You redeem it the same way as you do a check; but the thing is, with the checks they're insured...you're insured by the federal government; and, the county's underwriting the insurance basically on a warrant. Wasn't that the point that they made?]

Fabrao: The other thing too...the warrant...they have to go call back or recheck to see

Fabrao: (Continued) if the amount is available for disbursement.

DeLeon: Yeah, that's the way he explained it.

Wright: It's sort of an antiquated system...it really is; the warrants...

DeLeon: He just wants to be able to write checks.

Wright: He can call them checks because technically what he's doing is regardless of the differences...they're calling them warrants, but really they're operating as checks right now; that's all it comes down to. They are not the true old warrant system is all.

Chair Nakasone: I haven't seen a check yet; I've seen only warrants.

Mancini: I'll add a sentence about the added flexibility about issuing checks. The name of the different departments -- I did my best to guess why we wanted to do that.

Chair Nakasone: Victor?

Reyes: No objections. [LAUGHTER]

Mancini: The board of variances and appeals...the only thing I addressed, of course, was getting rid of the general plan, and the revision in there...

Fabrao: I read the mayor's letter...something about building ordinances...

Wright: That was Miskae.

Fabrao: Oh, I mean Brian Miskae's letter...

Cockett: 92-51.

Fabrao: On the matter of the sign ordinance, one must realize that although the sign ordinance contains language that deals with health and safety, the main reason for the ordinance is simply aesthetics. To allow for variances to this ordinance may tend to undermine its very fabric and objective. Which means, they don't want that to be included in there...this comes from Mr. Miskae...that letter, 92-51.

Reyes: Who said there'd be no problem if we include the sign ordinance?

Fabrao: Except that this is the director of planning. Wasn't it Cerizo who said that? That there was no problem?

DeLeon: He's the one that stated that opinion.

Mancini: Do we have the sign ordinance...

Reyes: In the original proposal.

Yonenaka: It's not in the amended section.

Fabrao: It's not in the amendment section, but I thought it was in our notes the last time they were going to add that.

Mancini: Seems like he's ambivalent with regard to subdivisions; with regard to the sign ordinance he thinks there shouldn't be any variances. And, with regard to variances generally...I guess he's saying there should be no such things as variances. [LAUGHTER] That's what he's saying.

Fabrao: Yes, that's what he's saying.

Mancini: You shouldn't be able to vary your ordinance...only performance standards; I'm not sure I know what the performance standard is.

DeLeon: She's going to make me stand up and go over to the mike...so, I don't want to bother.

Mancini: I just wanted to know if you knew what was meant by performance standards.

DeLeon: Basically, I think he was just trying to do the same thing that Guy (Haywood) was trying to do...is try to work within the concept of...he's really trying to wrestle with zoning; he's trying to keep the land use issues, you know, what kind of uses you can put on the land versus the standards within the zoning...you know, the set-back standards or whatever else the zoning requires.

Mancini: Oh, he's saying an area variance but not a use variance.

DeLeon: Yeah.

Mancini: He wants to take...

DeLeon: Well not necessarily those standards, but all the standards except for the actual use -- so, you couldn't put a business in a residential district, for instance, on a variance.

Mancini: You have conditional permits to...

DeLeon: That's a legislative action...

Mancini: That's right; there's an ordinance for it.

DeLeon: Right, so I mean that's, you know...

Mancini: But also there's an ordinance with regard to variance standards, which is legislative...the criteria for a variance is set by ordinance, not by the Charter. And, that ordinance could technically prohibit use variances.

DeLeon: I'm just guessing; I didn't have anything to do with the drafting of that...

Chair Nakasone: No, that's what I was concerned about when I saw this, you know...including any zone or subdivision. Zoning is actually a permitted use of a...identify permitted uses, and this would, you know...can go to this variance to change the use.

Mancini: Well there are such things as use variances; the criteria in most cases of use variance is that the zoning ordinance as a part of your property has to be almost taking your property away from you. For example, let's say the council zoned your property park...there's a park ordinance, and you ask yourself...the zoning of that ordinance use application to your property...what can I do with it? I can have a park there. Will that

Mancini: (Continued) application of that zoning ordinance...takes away any beneficial private use that I have and puts it to a public use. So, I move to seek a variance...looking to see if I can build one residential structure on it, or something like that. Then the board of variance and appeals would look at it...does that ordinance pretty much take away all the beneficial use.

Chair Nakasone: Yes but, Paul, you have a provision already now for change in zoning; it goes to the planning commission and goes through by ordinance. If it's park and he wants to upgrade use...to me, he has to go through the normal route of changing of zoning. But this would give him another avenue to change the use; if you have a park...he goes in in order to build a house, okay...that means he can go through this route for a variance. And, so called, have the board determine inconsistent use of that zone; they can allow him to go to a residential...

Mancini: Normally under variance law, you would not be able to get a different use if you've got uses stated there you can use.

Chair Nakasone: But, doesn't this say zoning?

Mancini: Well, you know, there are two types of zoning variances.

Chair Nakasone: But permitted uses are identified by zoning, isn't it?

Mancini: That's right; permitted uses are identified by zoning, set-backs are identified by zoning, lot areas...lot coverage are set by zoning...

Chair Nakasone: And you said they cannot go through this route for let's say, you know, apply for variance outside of the permitted uses of that particular zoning?

Mancini: I have never seen a variance having to allow a use which is not permissible within the zone. The only time I remember it was initially when The Cannery was being developed, and that was fifteen years ago. And that finally left itself through a change in zoning...it was never developed under a variance. The Wells Street building down here...that problem was the property...I forget what the zoning was...the general plan was quasi-public -- there was no quasi-public zone at the time to develop that. And, there may have been a conditional use permit...they may have applied for a conditional use permit because they had no zone in which to go, and they were looking to develop the property into an office building -- it was general planned but nothing to zone it...to go back... But, those are they type of issues you can often find...use problems...not from having a conditional use permit. A conditional use permit...if you look in your zone, and the issue you want to put your property to is not in your zone, and you can't find it in another zone -- because if you find it in another zone, you have to change zoning. If it's not in the other uses... then you can apply for a conditional use permit, it's not in your zone, it's not in another zone. Use variances are very difficult...

All I remember, and this was fifteen years ago when I was corp counsel, I looked at a number of the use variances and I said "this is crazy." I think I did an opinion that set the guidelines under which you can...I can go back and find that opinion if you want.

Reyes: I think Bob has a valid point; you want to be as clear as possible as to the intent and not subject to some future interpretations...although Paul is saying that it's not impossible, it's very, very difficult. Is there a way we can...

Mancini: Well, what you're looking to do, in my mind in this Charter, is to prohibit use variances...as opposed to saying...you're trying to say the board of variance and appeals

Mancini: (Continued) can grant area variances and not use variances.

Reyes: Because I thought I heard you have two types of zoning...area zoning or use zoning.

Mancini: Those are two types...an area variance would be like your set-back...from your line it has to be fifteen feet.

Reyes: Okay.

Mancini: For whatever reason that doesn't work, so you ask for an area variance. There's general criteria of hardship that you apply in an area variance. And, that's the normal type of variance you find. The use type variances that you might find...you might find some under the interim zoning ordinance...because you've got an interim zone...I think it's a different criteria for the use variance in the interim zone. You can enlarge your non-conforming use in an interim zone, but you can't enlarge a non-conforming use under a permanent zoning ordinance...

Reyes: Because I think what Bob's saying is, you know, zone changes should be within council's power rather than the board of variance and appeals if it's true zoning change, rather than through variance...is that correct, Bob? I think he has a point there, and we should be very clear and specific...so, including the word zoning here, it might lead someone to interpret it as "Oh, I can go through the board of variances and appeals." And, it's not once or twice...if I recall it correctly...it's been covered in the newspaper or for some reason it's been...gone through the board of variance and appeal, when it should have gone through the council.

Mancini: Let me do this...let me get you some material on use variances...just to show you first that it's an area of the law that's subject to criteria, and it's normally found in...and you usually find that in your zoning codes and in your Charter -- to show you it isn't anything unusual -- and also the criteria under which it's granted. I can do that for next time. Let's maybe revisit this next time.

Reyes: Okay.

Mancini: This is an important area; let's revisit it next time. And, what we can do in the report of the Charter Commission is come out with your legislative record as to what you want to do about use variances. I'm not saying that you can't prohibit them if you wanted to...that it would be quite different from a matter of property law to prohibit these variances; but, I'm not saying you can't do it. But at least, you should understand what it is, how it's treated around the country, and what the normal process is -- then you can make your decision as to what you want to do with it.

Wright: Paul, I think they don't understand... As I recall, and this is from other areas of the country...not here but, sometimes people can get different use...but even then, they have to come within certain zones. It's not like you completely, you know, say this is zoned X...heavy industrial so I can necessarily get permission to put up my house here. Sometimes there are limitations even then on where it can go and where it can't go ...at least that's the ones I used to see. There were certain changes on use that could be made, but again, sometimes those were within certain parameters; so, it wasn't a general zoning change in effect.

Mancini: I think Bob's concern is you've got a zone...and, let's say the zone is residential...and all of a sudden somebody says "I'd like to build a hotel here." And,

Mancini: (Continued) the general plan is residential, so he goes to the board of variance and appeals and they give you a variance to build your hotel. Well, that's crazy...but then, he wants to make sure that doesn't happen.

Wright: That is crazy. [LAUGHTER]

Chair Nakasone: Plus the set-backs and everything... [LAUGHTER]

Cockett: Reviewing the whole section...there's a whole new sentence that follows that that's not included in here. Does that make a difference? I'm in the original Charter, page 14. The section we're looking at...one...is only half of the paragraph.

Mancini: You bring up a good question which I asked myself. Has the council ever passed an ordinance which sets the criteria for them?

Cockett: My question was that...

DeLeon: Do you want me to go get the code?

Mancini: If you have it...

DeLeon: The code's here; I can look it up quickly enough.

Wright: You're saying where's the second half of the paragraph?

Cockett: Yes.

Wright: Paul, where's the second half of that paragraph in your draft?

Mancini: All I changed was number...

Wright: There's a second sentence in that, and we just wondered is that still going to be included? The board shall hold a public hearing prior to ruling...

Mancini: This is the way it was given to me...with this in it; now maybe that was incorrect because it was corp counsel's version, and maybe that last sentence was supposed to be included.

Cockett: It does make a difference with that addition, I think.

Mancini: The public hearing section...

Cockett: Yes.

Wright: I don't think we ever talked about changing that, Paul.

Cockett: No.

Chair Cockett: Actually, this proposal is only for the first sentence...I mean, the proposed amendment.

Wright: I know, but it's not clear; it sounds like it's taking out the second sentence -- that's the only thing.

Mancini: Fair point and it's a good one. I think it's the intent to probably include it.

Chair Nakasone: I wouldn't like to take it out.

Mancini: This was the public hearing section; it makes no sense not to have it. [LAUGHTER]

Chair Nakasone: I bet they were trying to slip a fast one on us. [LAUGHTER]

Mancini: This was corp counsel's language, if you remember. The provisions were changed and I just took what they...

Chair Nakasone: I think generally they were concerned about the general plan more... rather than...the terms for the general plan. I'm still kind of uneasy about this. I don't know, maybe I'm getting...

Yonenaka: Well, Dave's looking for that code...

Wright: Paul said he was going to bring us something for next week.

Mancini: I'll just give you the basic ordinance so you understand what it's all about.

Chair Nakasone: Maybe I'm the only one though that has this...

Mancini: Well, no; your point's a good one...and until you feel comfortable that people can't go and get variances like the one I described...you're going to feel rather uneasy. That's not to say that it hasn't been done in the past...

Chair Nakasone: There's some cases where the board actually has to go to the council, correct?

Fabrao: All has to be confirmed by the council.

Mancini: No, only interim zoning.

Chair Nakasone: So, only interim zoning?

Fabrao: So that was considered interim zoning?

Takabuki: Yes.

Chair Nakasone: And that required a simple majority?

Takabuki: To overturn.

Mancini: That's by ordinance though, right?

Takabuki: Yes. 7 votes, yes...

Mancini: They could change that if they wanted to. The reason I think they could do it there is because the Charter provides that the board shall hear and determine...and someone has interpreted the interim zoning ordinance as not to be the zoning ordinance that's applied here...or referenced here.

Chair Nakasone: Okay, we'll come back on this one.

Mancini: Fire Control.

Takabuki: Were we going to do anything with that second paragraph? Or, that was fine? It's a little confusing but I know it deals with appeals, not variances. Was there anything we needed to change there?

Mancini: Well, we talked about that for some time; the only thing that passed the votes was this one...because, if you recall, there was a lot of confusion...so let's bring Francis (Cerizo) and Aaron Shinmoto and George Kaya here to talk about this. Francis testified last time that he thought variances were important in the building code as well as appeals. There's really only one section that people get variances for was in the roadway improvements. Jim wrote the letter trying to address that, and you're supposed to get responses -- Brian has somewhat responded to it, and you just had Francis' testimony.

Takabuki: Well, that's okay; that second part is okay...as long as it doesn't cause any problems. I know right now it even deals with that water supply...which we talked about might be in conflict. At least this is kind of...

Mancini: Yeah, that's right.

Yonenaka: It's in conflict with...

Takabuki: Right now it allows a board to determine an appeal from a decision of the director of water supply.

Yonenaka: Wasn't it... I don't know; did I read that right? I thought it was...

Chair Nakasone: But it's dealing with materials, you know, your use materials...

Takabuki: I just thought it was odd...if they were semi-autonomous.

Yonenaka: At the same time, I think... The water doesn't have an appeal, does it?

Mancini: The board of water supply, sure.

Yonenaka: I thought the gist of this stuff...the testimony was everybody just goes straight to a variance now.

Mancini: Right now, almost anything that's at all to do with systems and rules goes to the board...

Takabuki: Okay, it was just a question.

Mancini: Fire Control...any problems with that?

Cockett: No, that was just an inclusion of the...

Mancini: Hazardous materials.

Chair Nakasone: Oh, we're not going to have the commission appoint the fire chief?

Chair Nakasone: (Continued) Wasn't that your recommendation? [LAUGHTER]

Mancini: Lanai Planning Commission...my notation here was the...I think Anne brought up to me Monday...that we need to address this conflict of interest situation.

Fabrao: But you address it in your narrative.

Mancini: Yes, I did and I said that somehow to resolve...

Fabrao: That this commission could take care of that. Because, it's kind of like self-defeating if you think that there're going to be problems just because of that...and not allow it to go through.

Mancini: What I say is that the need for them to have a planning commission outweighs any problems associated with conflict of interest.

Takabuki: Well, I think it doesn't mean that they're not going to have a difficult time getting started; and also, their decisions may be subject to a lot of challenge; and, that was my concern...that it could drag on and actually become a big problem. And, if there were a way to really deal with it...I wish we could try and think of one; if there isn't, then it just has to evolve...well, that's another situation.

Mancini: Maybe we can talk about it when we talk about the code of ethics, because that provision in the code of ethics...there are a lot of issues in the code of ethics.

Chair Nakasone: Paul, I have a question on that section...in terms of your planning commission. This section doesn't identify the makeup of the Molokai Planning Commission...I mean, if you go by the general boards and commissions...it doesn't say that that members have to be from Molokai.

Takabuki: That's true.

Mancini: What section's that in the Charter?

Yonenaka: That's true, but I don't know if anybody's going to appoint someone not from Molokai.

Chair Nakasone: No, but wouldn't that be inconsistent with the provisions in the Charter?

Fabrao: Maybe that's why they didn't state it; they just left it as is.

Chair Nakasone: It says when making appointments to boards and commissions, there shall be due consideration given to balanced geographical representation. In your report... page 27. It doesn't identify it has to be from Molokai.

Wright: Even for Maui; it doesn't say anything for any of them.

Chair Nakasone: But before it was the whole county. The general provisions of boards and commissions identifies geographical representation; but if you have a board or planning commission for Molokai...

Mancini: You've got a good point, because under...it doesn't look like there's a specific

Mancini: (Continued) requirement only members of that...residents of that island.

Cockett: You can have impartial people from Maui. [LAUGHTER]

Fabrao: But that's not governing Lanai or Molokai. It's the same thing; why have them?

Mancini: Since this is a concern, you could say the Maui Planning Commission shall be comprised of residents of the island of Maui, and shall be concerned...you could put it right in there. You're going to change the section to add Lanai, you might as well do it. You get a Machiavellian mayor sometimes...

Chair Nakasone: Is there a problem with that? I think we should be specific...if we are identifying a Molokai Planning Commission, or a Lanai Planning Commission...

Fabrao: It should be members from those islands.

Chair Nakasone: You know, it would be a contradiction to the general provisions of commissions...

[RECESS/RECONVENE]

Mancini: Board of Water Supply...I just took my best shot at trying to come up with some logic and I came down to accountability to voters as a focal point. I took the provisions in the Charter before the '88 change...exactly as it was. And, the mayor's letter has concerns with regards to 8-11.6. where the council can approve rules...

Chair Nakasone: Paul, I agree with that provisions too, but I have other concerns...you know, this seems to be the reverse of the process of action that has the force and effect of law, you know, which the council approves and it goes to the mayor for approval or disapproval. So, she can disapprove and veto, and there's a recourse for the council to override her. But, you know...for example like parks and recreation...I think fees are set by ordinance, yeah? You know, anything to do with fees are generally set by ordinance and it's part of the budget in terms of revenues. If it's going back to a department, I cannot see where there's, you know, no checks and balances here with regards to rates and everything else. Aside from the last...8-11.6...but to me, I'd be a lot more happy with having this type of rules that have the force and effect of law through either an ordinance process, or common law, rather than EPA provisions in there as she stated in her letter I think. I cannot see...this is the only area that...I mean, the procedures are kind of awkward to me, you know. Generally the administration has the veto power...this is turned around.

Cockett: Mr. Chairman, I did a little bit of research on this and I'm more of the opinion that the semi-autonomous situation we're in now needs more time. The idea of changing it to under the administration I think is wrong at this stage. And, in trying to find out what has happened over the last fifteen years...there have been so many problems and changes that I don't think that the present board, and it's leadership now in the water department has had the guts, I think, or the muscle to move forward because of...it's like they're walking on broken glass. I think if they had some kind of direction in which they are moving and then having assurance that they can continue...I think you'd get some action out of them. One thing bothered me and that I found out that I wasn't aware of...the clean water act that comes into place in 1993...and that's going to be a can of worms.

Chair Nakasone: You mean they have to comply by...

Cockett: Yes, '93...

Chair Nakasone: But the EPA was a long time ago.

Cockett: And, the bad part of that is in doing that, even the farmers must have that water that has been cleaned; and, for the farmers to have more expensive waters up in the upcountry is going to be another problem.

Chair Nakasone: Well, you know the thing about it...if I recall correctly, the statement made by the director saying that they have never used that section 8-11.6. where that was approved by the mayor and vetoed by the council...I don't think they've come as far as any actions that was denied by the mayor or was sent down to the council for action. Their proposal is total autonomy in which the rules and regs and rates are established by their decision, and there's no accountability to or so called check and balances to that. But, I believe he stated that there wasn't a time where they had to go down to this level in terms of action of the council of the veto provisions in here. I have mixed feelings about it...I can see the continuity question of a director; it's difficult to have some kind of commitment of let's say four years or eight years. I think the other directors from the other counties identified that they had continuity... And, I think in our discussions we were really bringing up some problems...it could go either way -- it could happen with a department under the mayor -- it could happen under a semi-autonomous board. There's good and bad to it.

Cockett: In my research also, I was surprised to learn that the previous mayor, Cravalho, spoke for the semi-autonomous body; whereas the mayor, Hannibal Tavares, spoke against the semi-autonomous to bring it under the county. I can't comprehend where you sit and how you want to control it; the only thing I know...water is just as important as land, if not more important than real estate.

Chair Nakasone: No question about that.

Cockett: How it's controlled is really going to be...

Chair Nakasone: Well, we'll have one more change to take a final vote. [LAUGHTER] Unless we come out with some proposal that everybody would agree with, it seems to be that there's both sides supporting semi- and having a department under the administration. So, somehow we're going to come to a head on the last final meeting...

Cockett: Again, in trying to get some history on the leadership of the board of water supply, I was quite interested to learn that it was more or less an area where leadership was at one time...I could be wrong in this, but I was told...a civil service position -- it was something like an easy chair for someone to sit in...they could always revert back to civil service. So, it was a matter of just plucking somebody to sit in that chair. The good marks of this gal, Sakuma, is that her name? That she tried to organize the water board when she was there for a short period, and unfortunately she had to leave, but she was on the right track as far as planning for the future. I just had to speak my piece on that...

Chair Nakasone: We will have a final decision made on August 3rd...

Mancini: Bob, you want rethought this whole question of rule making as opposed to policy by ordinance or fees by ordinance, if I understand you correctly. Is that...

Chair Nakasone: Well, I'm suggesting that it should be like any other department

Chair Nakasone: (Continued) dealing with...and especially dealing with rates and policies... not internal policies of the department -- policies that affect the community which have the force and effect of law. I believe these actions should be through ordinance, rather than rules.

Cockett: Well, Mr. Chairman, I disagree; I think they should be given that opportunity to take it away from politics.

Chair Nakasone: No, I'm discussing this...of the action taken by this Commission in having it under the department rather than semi-autonomous, you know, which is proposed right now...as stated in here. And, they have the provision under 8-11.6...as far as approval of rules.

Takabuki: Well, it's my understanding that if it came back to the administration, the rates, fees and assessments would have to be in the budget. Is that not correct? Because of language in the budget sections which say that all county rates, fees and assessments must be set in the budget.

Mancini: My recollection is the first year that it came back they had a separate section identifying the forecasted revenues of the Department of Water Supply in a separate section, and their expenses...and they lumped it all together in the budget. So, I forget exactly how it was organized but you've got your real property tax revenues, and you've got your fees, et cetera, you've got your grants-in-aid...and they created a new section for the department of water supply and just took their budget and appropriated those revenues.

Takabuki: But weren't the rates and fees also included in the budget? Or, wouldn't they have to be under that general language relating to all rates?

Mancini: No, it's just like your real property tax is not in the budget itself...you've got a separate ordinance for your real property tax rate.

Takabuki: Because of the state law provision that requires they do it on a resolution actually.

Mancini: It really depends on what your Charter says relative to rules. If your rules are set...if you authorize in the Charter the fact that you will set your rates by rules, they you basically don't set it by the budget ordinance; but, you are still obligated to appropriate those revenues because you're a department.

Takabuki: But it doesn't say here that the rates are set by rule...in your proposed language.

Mancini: It doesn't say it; it should say it one way or the other so it's very clear.

Takabuki: Well then, that's what I'm saying; wouldn't that general section then be operational...in this case that all rates, fees and assessments be set in the budget? So, it would have to be set by the council...

Mancini: Yeah, if you don't accept it here, you'd have to set it... We might go back and get one of the old budgets and look at it...when it was under the county.

Takabuki: My recollection is it was in the budget.

Mancini: Well, it makes sense what you're saying if you use that analysis.

Chair Nakasone: But that was rules...in terms of rates...

Takabuki: We might have had their rule too, but it had to be approved by the ordinance, if I recall, because of that section in the general budget article of the Charter.

Mancini: Sewer rates...every year you set your sewer rates in the ordinance?

Takabuki: In the budget ordinance.

Mancini: Budget ordinance... Well, I think that section would prevail, unless you accept it here and say their rates shall be set by rules.

Takabuki: So, if it's doesn't really matter, it really should be set by the budget, you would think.

Mancini: Yeah, I agree with that.

Yonenaka: This is the wording that was in existence before this one?

Mancini: I just took the Charter as it was. If you recall, you never voted on anything other than to take away the semi-autonomous status. My question was does the board... and Bob's response was we just take back what used to be. Okay?

Chair Nakasone: Okay. Well, Jim, you have another crack August 3rd. [LAUGHTER] There's some serious concerns...good and bad...on both sides. I think we had a lot of discussion on this, you know, pro and cons on semi- and you know... So, I think if we can gather our thoughts together on the final day...maybe we can come out with some possible compromise.

Fabrao: Earlier we discussed this...that I feel why should any one area be denied the privilege of having water up there, because an area doesn't want it to have it because of development. They are developing Kihei, Lahaina, Central Maui...and, as you heard Mr. Medina say, most of the development will come in Central Maui because there was probably a stronger lobby or the infrastructure's there, which is true. But, why should any area be denied water? There are people living up there; why can't a property owner subdivide his land and give to his children, and have them put houses on them? Why should they be denied that privilege or right...is what I'm saying.

Chair Nakasone: Well, I don't want to get into the water...

Fabrao: No, but I'm just saying I'm for the citizenry, and whatever way...and as it showed, they were semi-autonomous before and they apparently did not do so good, so it came back to the county. Now, they're back again giving them a chance...it's three years running, so...

Chair Nakasone: Well, I guess their particular problem existed during the time the department was under the mayor, and after that when it was semi-autonomous it...

Fabrao: It still continued.

Chair Nakasone: Yeah, so I don't know whether you can identify that to being related to semi-autonomous or being a department under the mayor; it's a hard decision to make on that.

Reyes: Bob, it's not only one side though; if you look at the research that Paul

Reyes: (Continued) did...they've been yoyoed out so many cycles; I mean, that's the whole thing...being jacked back and forth.

Cockett: No, I think, Mr. Chairman, something should be taken in perspective also...the type of leadership that they had in the past -- I fault that.

Fabiao: So then, how do you correct that? [LAUGHTER]

Cockett: Well, you've got new leadership...

Fabiao: Well, you know, it can keep on...it can also keep on...the selection of leadership. I mean, in three years they've had three different directors of water...

Chair Nakasone: Right.

Fabiao: So, every year they're going to have a new director?

Chair Nakasone: Well, unfortunately the first one that resigned...that ran for council...

Cockett: I can add to that...the fact that he didn't have the expertise in water management.

Chair Nakasone: So, the other one got pregnant... [LAUGHTER]

Fabiao: So then maybe we should consider the criteria for determining who is to be selected like...

Chair Nakasone: Right.

Fabiao: So then we need to get to the basic nitty-gritty of it.

Chair Nakasone: That's why I agree with this confirmation process. [LAUGHTER]

Fabiao: Yes, but you cannot have a confirmation process if they're semi-autonomous or autonomous.

Chair Nakasone: Well, you mean as far as the...

Fabiao: As far as the directorship is concerned.

Chair Nakasone: As far as the board members are concerned...they have to have an approval process by the council.

Fabiao: I see; I see...what you're saying.

Chair Nakasone: I'm saying the director maybe should be...

Fabiao: Also. Yes, but you can't have that if they're in that...

Cockett: I'd like to add just one more thing before we move on -- how many have been engineers before...as far as leaders...

Fabiao: That's what I mean...that the requirements for the position should demand...

Cockett: If you go back and check how many who have been directors have been engineers...

Takabuki: Most of them.

Chair Nakasone: Well, I think we came up with this discussion in regards to setting criteria for department heads, and we never did resolve that problem.

Fabrao: Yes, but again, if they remain semi-autonomous or full autonomy...there is no way that you can control that, unless the board...that the criteria that you set for the board to do their work can demand that kind of...

Chair Nakasone: Well, the worst scenario is you go through a recall process of your appointed board members. [LAUGHTER]

Yonenaka: Good point.

Chair Nakasone: I mean, the general provisions give us...the voters that authority to recall...not only elected but appointed members too. Okay? Where are we at?

Mancini: Something that's a little more mundane...the date for the public hearing for the mayor's budget. Anne brought up a good point here that although it allows the public hearings to take place prior to April 1st, you deleted that requirement...we still have the two week publishing requirement, which seems to have circumvented the extra time to begin with.

Takabuki: Initially there was talk about a summary to be published within five days of the mayor sending it down; but, when that didn't go through...to leave the language the same right now to require two weeks prior to the hearing, takes you right up to April 1st anyway. So, maybe there's not much point in having the amendment that it can be prior to April 1st. So, unless there's some thought about trying to go with a summary at an earlier date, then this one really doesn't make much sense.

Mancini: You can maybe drop it...you're not voting today...

Takabuki: Yes, either way...either consider putting the summary in at an earlier time, or decide whether or not you want to do it...

Chair Nakasone: Anne, you're going on the basis of the existing sunshine law requirements, right?

Takabuki: As far as the...

Chair Nakasone: Posting.

Takabuki: Posting? Well, this is a publication in the paper.

Chair Nakasone: Oh, publication.

Takabuki: Two weeks prior to the hearing, so if the budget goes down March 15th and you have a two week requirement anyway, that's April 1st; so, either change the notice for requirement...the timing, right; or, just don't make the change.

Yonenaka: Delete. [LAUGHTER]

Takabuki: Well, we're not too excited with it...that's the problem. [LAUGHTER]

Cockett: One less confusion...

Chair Nakasone: Yeah, it would back up to April 1st, actually, with that two weeks requirement...unless we changed it.

Takabuki: Right. That was the thing that was on the table one time and I don't think that one went through, so...

Mancini: Quarterly cerification of revenues...change and transfer of appropriations... I've got to make some changes to the narrative there... One point I brought up in our meeting on Monday...if you look at the definition of the budget in the Charter, the budget talks about an operating budget...it doesn't specifically make reference to a legislative and an executive budget. In here, in the way we're changing this provision...you're making reference to a legislative and executive budget; so, by implication we're just looking at past practice. We could make the change in the section defining the budget...so that the mayor shall submit a budget comprised of an executive operating and legislative operating budget...that would straighten it out. We also talked about maybe changing the language a bit...the way I have it now -- the way I have it now, the mayor and the council may initiate changes to their respective operating budgets; we don't say they can initiate changes to the others. And, maybe we don't have to...or another way to state it is once the operating budget has been passed, the mayor may initiate changes to the executive operating budget, but not the legislative operating budget; and, the council may initiate changes to the legislative operating budget, but not the executive operating budget. It gets a bit wordy... You can leave it the way it is, and just have our legislative record clear that that's the intent, and that may be the better way to do it.

Abandonment of capital improvements...the mayor didn't seem to have a problem with that.

Okay, the audit requirement...I had a little problem with this, and we discussed it at length.

Fabrao: That there was to be an audit at least every two years?

Mancini: Well, it wasn't the audit in two years...right now you have an audit every year.

Fabrao: But we were specifically addressing the finance director's request...

Mancini: What the finance director wanted was the obligation to audit the records of the finance director once that director's term had ended. Say the term ends... The existing Charter has it on a death, resignation or removal. The additional provision was at the end of a term...the term usually ends with that of the mayor, so a new term would start January 1st. What he's looking to do is audit the records...January 1st he starts; on June 30th an audit starts -- the audit period would be from June 30th back to the previous June 30th. So, you would have already had an audit theoretically up to June 30th of the year before he takes office because that would have been performed. So, what it is is an audit for the six months before...which you're going to get in any case starting the next June 30th. The whole provision seems to be a bit of a security blanket for a new finance director coming in...and he wants somebody to take a look at the accounts before he starts.

Chair Nakasone: You know the thing about it, if I'm not mistaken...my experience with these audits...I think the council sometimes gets it in November/December...the final

Chair Nakasone: (Continued) audit report?

Mancini: It takes a long time...

Chair Nakasone: Yeah, so it's going to take another four months or five months to get a six months report? And, I don't think it's going to get any cheaper...I mean, you have to go through the whole review again for the annual audit...

Mancini: I don't think it's too practical; that's my concern. You can require anything you want, but it seems to me if I was the finance director, I'd probably hire someone to come in and basically do a cursory review of the system...and at that time file that review to protect myself -- if that's what you're looking for. To pay for a full audit, I mean, that's what you write in here...an audit...and that's expensive.

Takabuki: That's more of what Travis meant is what you're talking about...sort of a very limited audit; I think it was probably fifteen pages, if that. He did show me that they had one done, but it was small scope and it probably cost about \$5,000...and, that's what he was looking at. Now, I don't know how to reflect that in there because right now it says audit...it could mean a broad based audit...with this language right there.

Yonenaka: Does he have the authority to call for that audit? That thirteen page audit?

Chair Nakasone: The council calls for an independent audit according to this.

Takabuki: For the full county...an independent audit; but what he did is just a very limited...

Mancini: Let's revisit it later.

Chair Nakasone: Any reactions?

Wright: Well, it doesn't seem to make sense; I don't recall when we discussed this but particular provision...

Takabuki: Travis had come down and I think he felt pretty strongly about it.

Cockett: Well, if I recall, he did it for his own purpose; and, he funded it himself.

Fabrao: Because the council wouldn't approve it.

Takabuki: Well, it wasn't required by the Charter.

Cockett: Yes.

Takabuki: Anyway, that's what he wanted...

Mancini: That brings us up to the code of ethics...you haven't had a chance to look at this as yet...let me walk you through it and give you my concerns. I had a number of difficulties with the code of ethics provisions, but Anne convinced me to just draft it the way you had approved it...which I did. In Section 10-1...I included the members of boards and commissions in the declaration of policy. And, my point was that they're already included with all elected and appointed officers and employees...and that includes board and commission members if you look at the definition of officers. I thought it was redundant, but I included it. The advisory opinions in forty-five days rather than thirty

Mancini: (Continued) days...on a substitute basis I can't see how that's going to make much of a difference, but I drafted it that way. Financial disclosures...what I didn't understand initially...what the request was, and then after Anne clarified to me that all we do is delete the listing of boards and commissions in the Charter, and then we say all members of boards and commissions established under this Charter shall file -- that's the only change I made there...pretty simple and I understand the motivation for that...in case you add a commission, or you don't have a commission, you've integrated it by reference. Interestingly, when we looked at that the civil service commission was never identified in the Charter. Now, it's hard for me to believe that that was intentional. That they just left them out intentionally...

Chair Nakasone: Maybe by statute?

Mancini: Well, they're not a state commission; I think it was just an oversight in the Charter.

And, the prohibitions...which to me was the most difficult one -- I initially redrafted it. Anne convinced me that I should be minding my own business, so I went back and...

Takabuki: No, I said we have to draft it as it was approved.

Mancini: I went back and drafted it as it was...as you passed it. That no officer or employee shall represent private interests for compensation before any agency by which the officer is employed or to which the officer is appointed, or represent private interests for compensation in any matter which is related to any official action to be taken, and shall not engage in any non public activity on county time -- I reworded that a little bit. My problem with that was it wasn't clear to me what we were trying to fix. The existing Charter provision doesn't make any sense, as I stated in the narrative. It's a bit redundant and it says represent any private interests in any action or proceeding against the interests of the county -- what does that mean? Against the interests of the county -- it makes a determination that if a council member goes down and testifies before the planning commission -- is he representing interests against the county? I don't think the intent is to prohibit a council member to go down to a board or commission and testify on issues before them, but... Or appear on behalf of private interests before any agency...well, that's a little clearer, but if you look at the second part...if you appeared on behalf of private interests -- you can't do that -- obviously you can't represent any interest before the county. So, it's a bit redundant. Then my question is... what are we trying to solve? What criteria are we trying to meet with this? And there are three or four scenarios that I have mentioned...the urban renewal design review board as one that always has problems with conflicts of interest. The Lanai situation Anne and I talked about. At times you've got these engineers who are on various commissions but they are not going to give up their practice, and they're always appearing and going down to process subdivisions and doing things, and they just overlook the provision -- if somebody calls them on it, they'll go ahead and resign. But what it does, I think even this wording ...it takes any professional who conducts any business with the county on private matters from participating in county government...generally in the form of a board and commission member. For example, let's take Debbie...if she wanted to go ahead and represent someone before the liquor commission...

Wright: I'll tell you, in fact, because I did get...called the ethics board. I had mentioned to Paul when this came up, I was concerned because I had some clients that wanted me to go with them on a variance and they were not the applicant, but they were going to testify and state a position, and they wanted me to do it for them. When Paul and I were talking about this I said "Gee, does that mean..." I mean, I really didn't

Wright: (Continued) really understand it myself. I said "God, that means I...does it mean I can't go because I'm on the Charter Commission? I can't go, and not even for an applicant or someone who was directly interested...I can't even speak." Well, I called the board of ethics and said "I want to know what I can do and what I can't do, so it's very clear to me." And, here's what they said...which doesn't make much sense, I mean, this is just the way it is...they said "It strictly precludes you from coming and testifying or stating a position; you may accompany your client"...you may coach your client, in effect. "You can talk to your client, you can consult with your client...as long as your client speaks." I said "what about my law partner?" "No, it's only directed to officers and employees, and therefore any one else in your firm can go." And, I said "well, that's real effective." [LAUGHTER] Personally I'm just telling you that if I sit there and tell my client what to say, or my law partner sits next to me and he's the only one who stands up and talks...then you've defeated the whole purpose of that thing anyway. At the same time, I thought to myself...as Paul's saying...I'm glad I'm on Charter Commission, and it's almost expired; I could not do this on a long term basis -- I have to appear before commissions. And, it would be for anybody...especially in a small practice or an engineer who's on his own or something like that...it just wouldn't be feasible for me to have to be prohibited that way for any extended time. You know, even though like I said on Charter Commission, I don't even...you know, this has absolutely nothing to do with something that would come up before the Charter Commission at all...what I'm going down on. But, at the same time, it's one of those things I couldn't do; so, it was interesting because I did call to find out what were the parameters and what they'd say I could and couldn't do and still abide by the code of ethics.

Mancini: Who told you that?

Wright: I'd have to go take a look at the notes, because to tell you the truth, I had Colette call; but I know that...I don't know if she got something just straight from the board of ethics...or I know Christine Hankerson...I told her to either call Christine... First call the board and get somebody to give her an opinion, or call Christine and see if Christine could get me an opinion on it. And, I've got the written out notes, but I didn't notice...

Mancini: Well, one good thing is they gave you some guidelines.

Wright: Yes, they did; I mean, that's what I said is I've got to know what I can do... I don't want to take it technically and show up there and they say you can't...you're not even supposed to be in the room, you know, or something like that. So, what does appear mean? Does it mean only talking or can I not accompany my client, or what does that mean? So I did a big list of questions and Colette went over every question and got all the answers and wrote them down for me.

Mancini: I would have guessed they would have said please submit a request for an advisory opinion; we'll give you an answer in thirty days. [LAUGHTER]

Wright: That's like when you call the disciplinary council for lawyers and they'll say send it in writing, and three months later you'll know what you can do.

Chair Nakasone: Okay, where are we at?

Takabuki: Well, we've got to address this.

Mancini: I just brought up the issue...that was the issue that I had some concerns that

Mancini: (Continued) I wasn't sure that we defined the problem and what we were trying to do with it. I understand that what we're trying to do is allow parties to appear before agencies for nonprofit organizations; and that's why we put in the compensation issue. So, if you're doing it for compensation you've got a prohibition; if you're not doing it for compensation, there's no prohibition...and, I assume we satisfied that. We haven't dealt with some broader issues...that's my point.

Takabuki: Should we discuss it now or do you just want to leave it on the table?

Mancini: Well, I think...

Takabuki: Because it's a valid point, I think; should we let this guy on the police commission be able to go before the board of variance and appeals? Right now they're not supposed to, and Debbie had a sort of similar problem. Is that unworkable for people who have to serve five years? It may very well be. So, if there was some way to be able to set some parameters...

Mancini: Well, what I initially did was I took a look at what the Big Island did...and, it's a bit complicated and quite different than ours. And, I was playing with their requirement which seemed to say you could appear for private interest as long as it wasn't before the agency you were involved with, or an agency that would take action on something you're involved with. So, it's a bit more liberal than ours...do you have Honolulu's? See what Honolulu does with prohibitions...

I'll read you the Big Island's...it says it shall constitute a conflict of interest for employees or officers to appear in behalf of private interests for compensation before any agency of the county, other than a court of law, nor represent private interest in any action or proceeding against the county in any litigation to which the county is a party. Officers serving the county without compensation, however may appear for compensation in behalf of private interests before county agencies other than the one in which the officer serves, and other than those agencies that have power to review the actions on the agency on which the officer serves or to act on the same subject matter as the agency in which the officer serves. So, they set up a new category of an officer who serves without compensation...that would be board and commission members...and it allows them to appear for private interests as long as it's not before their agency. Which sort of makes a little bit of sense. So, it deals with both the nonprofit situation and it deals with the board and commission member who has the need to work with the county on other matters.

Takabuki: (Referring to Honolulu Charter) so perhaps it's an ordinance.

Mancini: It looks like council passed this one...represent private interests in the actions or proceedings against the interests of the city, or appear on behalf of private interests...it's the same as ours.

Takabuki: No, it allows except as provided by law...so there must be an ordinance of some kind that outlines when you can and cannot. At least it's not so absolute...

Mancini: This says see resolution 83-357, so they've set the exceptions by that.

Chair Nakasone: You would think the board of ethics would establish guidelines for prohibitions.

DeLeon: Well, they're probably provided by law...

Mancini: Well, we don't have an as provided by law provision, and therefore they are limited to what the Charter says.

Chair Nakasone: You would think that they would establish more of a streamlined prohibitions, you know, if they establish by law...

Mancini: The one I remember when I was representing the board of ethics was the urban design review board...because we thought that was a good board, and we thought we needed professionals but there was no way we could get a professional from Maui that didn't have business with the county. And, we tried to carve an area out so that they could function... I forget exactly how we did it, but I think we just required disclosure.

DeLeon: You've got alternates too.

Mancini: Yeah, you've got alternates but technically the problem is you've got engineer one sitting on the board...the staff member of engineer one comes before the board and makes a presentation on a project -- he withdraws himself, but he's still a board member. That was Debbie's problem...because he doesn't do it himself, because he has an associate do it...is really him. An associate is his agent; it's like him speaking there.

Wright: You write it out for somebody and they stand up and say it -- what did that prove?

Mancini: And of course it's difficult for a board member to deny that application...it's awkward. It's an interesting problem.

Wright: Especially difficult in a small community.

Mancini: Yeah, there's no easy answers. I might get Sue to call over to the City and County and get us that resolution...have them fax it over...see how they're treating it.

Chair Nakasone: That's the city and county's proposal?

Takabuki: Yes.

Mancini: The initiative provision...it's somewhat straight forward; I'm not sure I got all the reasoning...15% of the voters as opposed to 20%...pretty simple. To delete the precincts I suppose it seems not terribly relevant...it makes it difficult...people usually don't know what precincts they live in. Filing with the clerk...the existing Charter has a thirty day requirement and we deleted that. For the life of me, I couldn't understand what the initial thirty day requirement meant...on the existing Charter.

Takabuki: You had to get all the signatures required within thirty days.

Mancini: After filing the affidavit all papers forming the initiative petition shall be assembled...right now we've elected without a time requirement. So, if you file the affidavit...and then you've got no time requirement to get in the signatures...I guess that's okay. Because the clerk doesn't do anything until he gets the signatures; it could just lie there forever. And, I put the requirement that if somebody wants to withdraw his signature he has fifteen days after filing the affidavit, but then I said well, the affidavit isn't the signatures...so, I was a little confused on the withdrawing.

Takabuki: I thought it was after the filing of the petition.

Mancini: It was after the petition? When an initiative petition has been finally determined sufficient...so is it from the date of sufficiency or... You see, that's the problem, I think...somebody...

Takabuki: No, filing; actually filing, I think.

Mancini: They come walking in one day...here's a hundred signatures; they walk in the next day...here's another hundred signatures...and this goes on for six months. The guy put in his signature six months ago, what's the time...what exactly is the time that starts the fifteen days from running? Is it when the clerk certifies that it is sufficient? I'm trying to...

Takabuki: It was supposed to be filing, as I understood the proposal...from filing with the clerk.

Wright: Of the petition, you mean?

Takabuki: Of the petition, right.

Mancini: You see, we've got the ability for eighty percent of the petitioning committee to withdraw the petition...the thirtieth day preceding the date for closing...

Chair Nakasone: You know what the confusing part is...we didn't set a time limit, that's why if you submit those signatures to the clerk, I guess the withdrawal starts from the time that thing was submitted to the clerk? Because we don't have a deadline right now; before we had thirty days...so from that day on...fifteen days, right?

Takabuki: That's true; not that the person signing would really know when it would be filed, so they wouldn't know when their clock would start to run...I can see that.

Chair Nakasone: That's what the problem is, being that we didn't establish a deadline.

Mancini: A policy decision -- why have the withdrawal? The reasons for having the withdrawal different from when the committee can withdraw the whole petition?

Wright: Withdrawal of a signature, you mean? An individual changes his mind...he's got a right to take it out?

Mancini: Yeah, I mean why are we setting that limit on that? The committee can withdraw the petition thirty days before the scheduled vote...it seems to me that's strange; the clerk goes out and the clerk does all the work and then on the thirtieth day they say ha, ha...we were kidding...so we take it back. [LAUGHTER] That's under the existing Charter...the thirty days...I didn't understand, it didn't make too much sense to me.

Wright: The three days or the thirty days...what are you talking about is under the existing Charter?

Mancini: It's under 2 -- 11-16.6.2 -- actually it's now 3. The way it reads now is an initiative petition may be withdrawn any time prior to the thirtieth day preceding the day scheduled for the vote of the county by filing with the clerk a request for withdrawal signed by eighty percent of the petitioner's committee. The committee is usually made up of five people, is that right?

Takabuki: So, four out of five.

Mancini: So, four out of five and you can take it back, and that's thirty days before the vote...that seems to me that that would be more of a problem to me, because to get the votes ready...the money you've got to spend...

Takabuki: Daryl's coming back next time anyway? Maybe we should...

Mancini: Yeah, he's going to make a presentation.

Cockett: I'm a little naive here; what would be the petitioner's committee? Would it be a body that's a formal body?

Takabuki: Five people can form a petitioner's committee.

Mancini: Us five here could do it; all we do is to say okay, we decided we want to down zone the Grand Hyatt...

Fabrao: Or the Sheraton. [LAUGHTER]

Mancini: So, we come here...we draft the ordinance...go and get the signatures, I mean, that's what happened in Kauai with Nukolii.

Cockett: Oh, so that's where that came from.

Mancini: Actually it was a little different...when they started it, it wasn't built. They finished it before it was built. [LAUGHTER]

Well, two concerns...one is the thirtieth day which could lead to some tomfoolery; and one is when does the fifteen days start. Okay, those are the issues I had on initiative.

Recall...it's quite similar to the problem...if you delete the voting precincts, print the signatures and the address, change the term of filing to sixty days instead of thirty... What is the logic for that?

Takabuki: The logic for increasing the amount of time? It's just to provide more time for the voters to reach the signature requirement.

Mancini: In the first one we deleted everything, and this one we added sixty.

Takabuki: I think this one we felt a little more concerned about the ability of the person recalled to not only operate effectively, but because of the actual human element involved...you're dealing with a person who might have to deal with this for a year, two years...depending on how long it drags out. So, I think those were the reasons we were thinking of -- setting some end to it.

Wright: No, he's asking why would we go to sixty days instead of thirty. It's actually just to give the people...cause if it's that serious...that would give them enough time to get signatures together, that's all.

Mancini: But in the initiative we didn't set any time requirements.

Wright: No; we understand that, but we also didn't feel like it was necessarily as serious a requirement...it just depends on the situation that initiative -- maybe we're wrong, but at the time the discussion was that there could be a very serious situation

Wright: (Continued) with someone in office, but thirty days is very difficult to get the kind of signatures together that you need. But, I think, didn't we raise the number of signatures or something like that? I don't remember what it was, but I remember at the time we were thinking that thirty days is an awfully short time period to get the kind of signatures that you need on a recall petition.

Mancini: Okay, and then the last point I had on that topic...I just put the language in that you had there...that I was having difficulty with it, and that is that you're going to submit it at the next general election but it would defeat the purpose by allowing the full term of office of the person sought to be recalled. And, you can also think of scenarios where this doesn't work too well...you've got recalls there and you're in your third month, and therefore you allow a year and a half to go by and then the term of councilmen would be up...if you waited until the general election.

Wright: But that's why it said, didn't it, unless it would be defeated...

Mancini: I know, but how do you set the criteria...

Wright: No, I understand that... The reasoning...the only reason that came up, I don't know if she explained it...there was a lot of concern about having to bear the expense of special elections if it was close to an already existing general election. But, it may be that we haven't come up with the right definition of when you can and when you can't wait until the general election. But, the point was if you didn't have to hold two months before a general election, a special election, it would be preferable not to do that.

Mancini: So, the existing criteria is ninety days, unless you're going to have another election within that ninety days. I mean, you could say within the next six months...as long as it's not going to be another election then. That might be a better...criteria. Well, we don't have to decide now...I'll make a note.

Charter changes...that looks pretty straight forward...twenty percent to get something in the Charter, rather than ten, and you can't change the Charter without sending it to the council...and then you want a new Charter Commission and you want sixteen months rather than... All that was pretty simple.

And, the last thing in your package is the police commission...I had forgotten that one from the week before -- you want them to submit the department's budget rather than preparing the budget.

Cockett: I believe the Police Commission is the one that submits the budget for the police department; what they wanted was the police department submit to the commission.

Mancini: I think the commission doesn't mind submitting it; they didn't want to be obligated to prepare it.

Cockett: Yes, I think that was the mix up...where the police wanted to be able to present it.

Takabuki: How about transitional provisions...are you going to get to that?

Mancini: Yeah, we've got a few things we have to do first before we do transitional... I can clean up some of this for the next meeting, but I guess where we are now is we've got a draft report with all of these sections with some language change... Another issue that I brought up to Anne and Jimmy was that I checked with the Big Island on how they developed their ballot. They told me that they got an opinion from corporation counsel that their ballot was none of their business...that they should submit their report and with the

Mancini: (Continued) report they should make the changes; and the jurisdiction of the ballot was with the county clerk. What they did was they proposed a Charter change to give them jurisdiction over the ballot, in effect. [LAUGHTER] Actually, there's some logic to that because if you read the Charter and you read your obligations of the Charter Commission in the Charter...upon receipt of the amendments, the county clerk shall provide for the submission of amendments of the new Charter to the voters -- so, that's where they get it from. You give it to the clerk and he's to provide for it to get to the voters.

Chair Nakasone: What does the Big Island Charter have?

Mancini: They say the Charter Commission shall decide how it goes to the voters. I asked Daryl about the way it's been done in the past...he said he gets the Charter Commission's report and he sends it up to corp counsel to go over it and corp counsel gives him a recommendation for the ballot, and he sends it to the lieutenant governor's office and they set the ballot. So, with that in mind and the fact that the ballot... The few times I've acted as adviser, I've had a draft report go up to corp counsel a couple of weeks before you act on it, and ask corp counsel to review it to see if they had any problems with legality.

Chair Nakasone: To me...although it's provided in the Charter...I think this Commission should have more or less an idea of how we should set it up in terms of ballot questions, and make the recommendation to the county clerk.

Mancini: What I don't want to happen...and it's happened in the past...is you submit your report and then corp counsel comes down...technically your legal advisor...and says I have a problem that you haven't had time to address. So, I'm more concerned that corp counsel gets it and addresses the legal questions first, so he doesn't get...after he gets it from the clerk says I have a problem, let's reconvene the Charter Commission. It's just a safeguard, and second, when you submit your report to the clerk, there's no reason that report can't also contain some recommendations about...

Chair Nakasone: I think that's the consensus of the members that we would make our recommendations on how the ballot is going to be prepared.

VI. NEXT MEETING DATE

Chair Nakasone recessed the July 16, 1992 meeting at 7:25 p.m. until 4:00 p.m. on Wednesday, July 22, 1992.

ACCEPTED:

Robert Nakasone, Chairman Date