

CHARTER COMMISSION
MEETING MINUTES
AUGUST 6, 1992
COUNCIL COMMITTEE ROOM

PRESENT

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

EXCUSED

Sherrilee Dodson (Vice Chair)

GUESTS

Dave DeLeon
Mark Adams (The Maui News)
Ed Tanji (Honolulu Advertiser)
Jim Smith

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 4:11 p.m.

II. PUBLIC TESTIMONY

A. Jim Smith, resident of Haiku.

Smith: There are two issues that I think you need to be aware of as you proceed in your deliberations, and one of them is the idea of the board of variance and appeals. It's been my understanding that the ordinances...people could receive certain exemptions from compliance with ordinances by going to the board of variance and appeals, and that authority was vested in our Charter. Recently, and by recently I mean 1991, there have been a number of ordinances enacted by our council which seem to place directors of different departments in equal authority to the board of variance and appeals. And that way, I think, it kind of lowers the authority of our Charter; and to me, that is a threat. Most recently, on Friday...this coming Friday, a Bill Number 51 is before the council; that bill concerns cluster housing developments as well as zero lot line. In an amendment contained in that bill is an amendment to Chapter 18.32. and its variances and exceptions. And, what the council has been doing has been including exceptions sections in its ordinances, that in effect neutralize, I think, and nullify the authority of the board of variance and appeals. For example, in this particular Bill the exception section states: "exception from specific compliance to the provisions of this title may be approved by the director." And, that to me is a real disruption of the hierarchy of authority...and what that does is put the decision into the authority of one person versus a multiple decision, which is, I think, where our political system is strongest; in the sense that we value the judgments of many bright minds higher than one mind. And, it seems to me the way things are going, it needs to be clarified that the board of variance and appeals is the authority to grant exceptions "or variances" to our ordinances. And, I'd hope you'd keep that in mind...as you do this.

We are changing from a government of we to a government of me, and by that I see authority going to individuals versus the law. And, that's one of the problems I have with some of the things that are going on.

The second point I'd like to make is...in your Article 10, code of ethics amendments. It seems to me that the "for compensation" inclusion was brought about as a result of my concerns raised concerning the mayor speaking on behalf of private corporations before public boards. And, that may be a misconception on my part, but I feel that

Smith: (Continued) the inclusions of the word "for compensation" sanctions any other appearances before that board, and I wouldn't want that to happen. And, I would ask you simply to leave it alone...just not to put in there "for compensation." And also, in your revision to include the first part of subparagraph d., that's Section 10-4, subparagraph d., which states "represent private interests in any action or proceeding against the interests of the county." I think that definitely needs to stay into that, and shouldn't be withdrawn.

I'd like to really express my appreciation for the work that you've done. I think if you've decided to keep the water board semi-autonomous in light of our current circumstances, I think that's a wise decision. And, I also would like to say that I volunteered to work at the polls, and so I would ask you not to make any more amendments than is absolutely necessary. Thank you.

Chair Nakasone: Are there any questions? Paul?

Mancini: Just a comment on one thing that Jim stated. I don't think it's unusual when you have any type of ordinance to create some discretions in the executive member branch of government in that ordinance. The problem that usually arises is that when you create discretions, you let someone deviate from the standards; there have to be standards under which you can deviate, and that's usually the basic problem with an ordinance -- is there adequate standards from which you can deviate from the rule. And most ordinances do have exceptions that allows a member of a department -- a department head or his deputy -- to make exceptions; but again, there has to be clear standards so that you know the guidelines it's following. And, that usually the problem with your ordinances -- it's the standards.

Smith: If I might comment on that...it seems to me that the director's already have a great deal of discretion, and that the variance section of our ordinance takes that into effect...into account with its appeals portion. In other words, if a decision of the director is considered to be a discretionary imbalance or out of the line, then they can appeal that. This particular idea -- that the exceptions are all right because they are standards applied which would mitigate that authority -- I think misses the point. Everybody should be subject to the same rule, and that same rule should be written down for everyone to read and understand specifically; and then if there's a problem, then the procedures for variances needs to be taken up. And, that's how I see it. Thank you very much.

B. Ed Tanji, Honolulu Advertiser.

Tanji: I do this only because I raised the subject with Mr. Sparks previously, and I realize that I should have told him something subsequently. In the assignment of Kahoolawe to a specific district for the council, I was talking to the county clerk and understand Kahoolawe is in fact part of the 1st precinct of the 7th representative district; which means that under the way that this is described, it's already included as part of the West Maui residency area.

Sparks: Oh, it's part of the...

Tanji: It's part of the 1st precinct of the 7th...

Chair Nakasone: 7th district.

Tanji: 7th representative district. And, to put it also within the East Maui

Tanji: (Continued) district might be causing problems.

Takabuki: That's true.

Mancini: So, it's part of West Maui already.

Tanji: If you're defining that by precincts.

Sparks: Good point.

III. APPROVAL OF MINUTES

The minutes of the July 29, 1992 Commission meeting were approved as circulated.

IV. COMMUNICATIONS

None.

V. COMMUNICATIONS

A. Paul Mancini, Charter Commission Counsel, review of redraft changes to Charter Commission Final Report.

Mancini: Let me make some suggestions; what I've done is taken the changes that you made on Monday (August 3, 1992) and embodied them in the Charter Commission Report... amended the old report to delete the sections that were not passed, and included the new sections. I created a draft yesterday and went through it last night. In an attempt to get some further input, I asked my secretary to get a copy to a few commissioners she could reach -- Allan, Lloyd and the Chair -- to give them an opportunity -- possibly overnight to look at it. I read it again last night and I had the opportunity to see some of Allan's comments, and I did my best to accommodate some of his comments in the draft that you have in front of you. When Allan looked at it, he had a suggestion that he wanted to give a run again at this council composition and change the precincts around...for a couple of reasons. So, I took those comments and they are in your booklet in yellow. What I mentioned to Allan was that I wasn't told to do this...I understood to some degree his reasons, so I made it part of the report in yellow. I did the same thing in the code of ethics; if you recall we didn't have a provision in the code of ethics... if you look at pages 42...or actually 43 and 44 identifies the issues. In that section what I did was I adopted more or less what you would find in the City & County of Honolulu's Charter, and that would be the ability of the council to create guidelines with regard to appearing before agencies representing private interests. The City & County has a rather large, elaborate ordinance, and as it reads now "that no officer or employee of the county shall represent or appear on behalf of private interests before any county agency, subject to such standards, conditions and guidelines prescribed by the council by ordinance." I changed the existing 4-1.d. -- I believe it's 10-4.1.d. which states "represent private interests in any action or proceeding against the interest of the county, or appear on behalf of private interests before any agency." The last sentence seems to me to be the broadest one -- if you can't appear before any agency for private interests, you obviously can't appear against the interests of the county -- because you can't appear at all. I took that prohibition, which is the broadest part of it, and I just combined the represent or appear, it seems to me the difference there is one could appear -- Debbie Wright could appear and violate the Charter if she appeared herself; but she could send her brother, who represents her client -- actually she'd still be representing the client, so it doesn't avoid it, so the represent and made the appearance have two different prohibitions attached; so, I took both of them. Then I added the catch-all "subject to standards" so the council could take a look at different ways to

Mancini: (Continued) deal with the issues. In the narratives in that section, let me read to you...it says..."The charter commission believes the prohibitions in appearing on behalf of private interests before any agency is overly broad. The commission is concerned that the provision may curtail or unnecessarily chill some political and civil rights of county officers and employees."

Then in the next paragraph I start to pose some of the questions..."Should officers and employees be prohibited from representing or appearing on behalf of non-profit agencies, even if they are not compensated for such appearances? Should advisory boards and commissions be subject to the same prohibition as quasi-judicial and quasi-legislative boards and commissions? Should architects and engineers on the Urban Design Review Board and the Code Appeals Board be prohibited from all involvement with county agencies? Should county employees who are registered under HRS Chapter 464..." et cetera. I posed those questions because it seems to me those are some of the issues that the City & County ordinance attempts to resolve in a somewhat, I won't say complex way, but they go at it one by one. So, that's the flexibility. What I did when Allan saw me yesterday, he said he didn't particularly like it very much...[LAUGHTER] Which is okay because it is only one approach to it. And, Debbie had asked me at the last meeting to see if I could come up with a substantive provision, rather than one that basically left it to ordinance. So, I gave a shot at it on page 44 in the yellow...and it does a few things, and it may not work for you but it's an approach. What it does is it adds a new section...10-4.4., because it doesn't word itself well under the general prohibition under 10-4.1. -- "no officer or employee of the county..." Both officer and employee are awful broad and we would have to start redefining them, so I started out with a new substantive provision...I'll read it to you slowly...

"Elected officials and full time employees" -- now, you could make all employees...I did full time employees because sometimes you have an employee who works three hours a week or four hours a week; and again, you may want to give all employees. Elected officials, officers rather..."shall not appear on behalf of or represent private interests before any county agency." That's where we were before, but I've limited it there to full time employees and elected. Then we have the exceptions..."provided that members of boards and commissions may appear on behalf of private interests before county agencies other than the one on which such person serves and other than those agencies that have the power to review the actions of the agency on which such persons serves, or to act on the same subject matter as the agency on which such person serves." So again, that's close to what you had before...that if you're a member of a board or commission, you can't appear before that or any agency that's somewhat related to that. But you can appear on behalf of private interests before another agency, and that was similar to one of the provision you had before. Then I tried to deal with Allan's concerns that there are certain things that people...county employees...obviously can do; for example, Anne when she was working for the county certainly could go and file an appeal for a real property tax assessment -- if you read the Charter literally, you couldn't do that because you're appearing for private interest...your own...before the board of review. So, there are many things where county employees themselves have their own rights involved and if you read the Charter literally, you would prohibit them from doing that. So, I dealt with that in a broad way..."provided further that no officer or employee shall be denied the right..." and that's everyone..."to appear before any agency to petition for redress or grievances caused by any official county action affecting such a person's personal rights, privileges or property, including real property." So, that deals with the part that's a bit absurd where you couldn't appeal your own real property tax assessment; or, if you're denied a building permit by the county inspector of codes, theoretically you're not supposed to appear before that agency. I don't think that was the intent, but if you read it literally, that's what it said. And so what this does is it creates maybe three standards -- it lets county employees and officials act for them-

Mancini: (Continued) selves in areas where they are personally affected; it allows members of boards and commissions to appear before other boards and commissions, but it doesn't let elected county officials and full time employees go and represent private interests. I don't know if that works for you...as I said, there are many ways...if you look at the City & County ordinances it deals with many more issues that this doesn't. But, those are two approaches.

The other thing I'd like you to look at is my attempt to address the board of water supply. Much of it was the same of course, but I had to change the ending of the story because in the first draft it would change its semi-autonomous status. Here I tried to give reasons why you didn't and tried to express your concerns; the last sentence Allan didn't think worked too well, so I deleted it...and he may be right, but I'll read it to you... "However, aware that the current system has only been in effect for three and one-half years, the commission is not recommending that the board of water supply lose its existing autonomy. The commission has concluded that such action would be a further step into chaos for a department that needs stability, tenure and strength. However, all commissioners remained concerned that the provision of water services to the public has not reached the standards that are or should be expected by the public. The commission is urging the mayor and the council to closely monitor the programs of the department of water supply, and to place renewed energy and emphasis on the council's and mayor's role under Section 8-11.2.3. of the Charter in approving the long range plan of the department of water supply."

I had this last sentence and I deleted it...Allan had concerns; he may be correct. The last sentence..."The mayor and council should do its best to provide a check and balance role to insure the department is responsive to the needs of the county, and if not, to act accordingly." That's the sentence that I deleted...the rest of it I kept.

Sparks: One thing that I think both Paul and I are aware of is that these kind of urging type of sentences in this report aren't going to do much to anybody anyway.

Mancini: I think your obligation is to leave the record that expresses your intent best, and I'm just trying to capture that intent; and, certainly everyone was concerned with these issues. So, that's what I tried to articulate.

So, my suggestion today is to take a run at three parts of this -- that's the council composition...Ed Tanji's already provided a good amendment to that that we'd have to make. Allan, I think, wants to speak on some changes; but after that, I suggest you look at the board of ethics because you've got to make a substantive decision on that... and give me some directions as to how that's going. And then lastly, decide whether I've stated what you want adequately under the board of water supply. And then I think, most of it after that is reading through this thing a few times and picking out stylistic problems or anything that may have been missed.

Wright: Mr. Chairman, if we could...I would...it's the one matter that is left to be voted on is the board of ethics; if we could possibly take that first because I have some time limitations tonight and there are only nine of us here...so if we could take the one we have to vote on first.

Sparks: The council composition one...I want a vote on that, too...the revisions to the lines...

Wright: Well, I understand that, but the one that we haven't voted on at all is really the one I'd like to take first if we could, just in case we run out of time. Plus, I understand that we're going to continue this...if we don't complete today...the meeting will be recessed rather than...

Chair Nakasone: Recessed to Monday, if anything is outstanding.

Wright: I can't Friday.

Chair Nakasone: Okay, I think we should take that question under the code of ethics, being that that's the only one. Yours is an amendment to a...

Sparks: Vote last time.

Chair Nakasone: Yeah, okay. Let's go to the two proposals that Paul has submitted in regards to by ordinance or make it a lot more clear... 10-4.d. is identifying that the council shall set the standards by ordinance, and in the yellow page 44...that adds a new section dealing with the same question.

Wright: I'll go ahead and make a motion that 10-4.d. be amended to read "represent or appear on behalf of private interests before any county agency, subject to such standards, conditions and guidelines proscribed by the council by ordinance.

Yonenaka: Second.

Chair Nakasone: Discussion?

Sparks: For clarification now, that's 10-4.d. -- as is would be deleted and these words would be put in.

Wright: Yes.

Sparks: And then the other suggestion that Paul had would be added at the bottom of that prohibition section?

Yonenaka: No.

Mancini: No; one way or the other.

Sparks: Okay. Do we need to go one way or the other? Is there some way we could...

Wright: Well you can't have both of them.

Sparks: What I'm wondering is if we could go with the suggestion on the yellow page, plus some clause that refers to conditions and guidelines proscribed by the council.

Wright: That could set some additional conditions then, or prohibitions, but you would have already set certain ones in there. So, if there were additional ones...Paul said the one on the yellow pages does not cover all the incidences that the City & County of Honolulu's ordinance covers...all the circumstances. I guess you could say we want 4. in there, and then anything additional that the county wants to...I mean, the council wants to do could be dealt with by the county. But, you've already covered a large area in 4., and I don't think you want to give the council the right to change that.

Sparks: No, he couldn't...not by ordinance they wouldn't.

Wright: That's what I'm saying...that could cause some confusion, depending on how you worded that.

Fabrao: Are we in the discussion phase then?

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

Fabrao: This covers it, Debbie, but then how are we to know that the council... proscribed conditions and guidelines will be...

Wright: Oh, you don't know that, but they will; you're leaving it to the council.

Fabrao: So then, I would rather go with the yellow section...or the one on the yellow page...because it really specifies it, at least for those three different areas.

Wright: Right; I understand. No one was making a motion; I wanted to have the discussion and get going on the voting one way or the other. I'm not arguing with you necessarily...

Fabrao: I understand; okay.

Chair Nakasone: Well, there's one question...if a person reading this section, compared to the yellow section, it's simpler.

Wright: Yes.

Fabrao: No, but...it may be simpler, but then also it brings up the question of what conditions and guidelines -- which is open to question, I think.

Wright: I can tell you that my only concern... I like what the yellow section says as far as what the elected officials, elected officers and full time employees can and can't do; what the members of boards and commissions can and can't do. I like the fact that you're not precluding elected officers and full time employees from pursuing their personal interests. However, as long as you're aware of the fact that that doesn't cover everything; that there are lots of other circumstances that come up. This is better than what we have -- no doubt. However, it doesn't cover, for example, some of the questions that Paul asked in the main body...the white section...on the board of ethics; it doesn't answer all of those questions...that revised section.

Mancini: That's why I deleted some of the narrative in the yellow section, because I resolve them.

Wright: That's right; you don't resolve them when you go into the yellow section. It's preferable to what we have in the charter right now, I believe, but you don't answer about whether or not...what architects and engineers can do; you don't answer the question that is answered in the City & County of Honolulu ordinance about what if a family member comes to you when you're an architect -- can you draw up plans and do this and represent them before certain boards or whatever, when maybe you couldn't represent other private interests. But if it's your brother or your sister, or your mother or something like that...this only says you can go for your personal. Under any circumstances you can go on your personal matters for a building permit or something, but it doesn't answer at all whether you can go and help your mother get her building permit...depending upon how you're employed by the county. So, there are other questions that are not answered by the yellow section, but I definitely think it's a big improvement on what we have now. I'd be happy to have it as compared to what we have now. The white section, however, requires a great deal of trust...[LAUGHTER]...and it may not accomplish what we particularly want; it may accomplish some standards, but the ones we're...our concerns will not necessarily be

Wright: (Continued) included then in what the ordinance says. That's leaving it up to someone else to make the decision on what should be in there. You're kind of in the situation of improving a situation -- what I consider to be a tremendous improvement -- or trusting that they are going to answer some of these same questions...especially the ones that we have outlined in here, if it does go to the council.

Sparks: I think Debbie's outlined the dilemma fairly well, except I'm not sure it has to be either/or. Certainly I'm a little nervous by just saying subject to standards that we hope the council will come up with in the future, and not saying anything else. So, we get a fair chunk of it done with the yellow provision, but why can't we put those prohibitions in and somehow or other also include a subject to standards by the council phrase in that one.

Mancini: We could do something like this... One point to Dolores, in the white narrative you might find...page 44...I did try to deal with Lanai to some degree. "Also, the charter commission is concerned that if the electorate accepts the commission's proposal with regard to the Lanai Planning Commission, that adequate flexibility be given to the Lanai Commission so that they can properly conduct their business. Such flexibility may not be available under the current charter." That's another reason to deal with it through ordinance.

But going back, let's see if this works...Elected officials and full time employees of the county shall not appear in behalf of or represent private interests before any county agency, provided that members of boards and commissions may appear on behalf of private interests before county agencies other than the one in which such person serves....and other than those it's the agencies that have the power to review actions of the agency in which the person serves, or to act on the same subject matter as the agency in which such person serves, provided further that no officer or employee shall be denied the right to appear before any agency to petition for redress or grievances caused by any official action...county action affecting such person's personal rights and privileges, including real property -- and then say subject further to such standards, conditions and guidelines proscribed by the council by ordinance.

Fabrao: Yes.

Wright: No, no; wait, wait. This is going to be subject to it? Or additionally...

Yonenaka: Yes, additional.

Wright: I don't want this...I don't particularly want this provision to be able to be revised by ordinance. I want it only to be that they can make additional guidelines.

Sparks: Right.

Woodburn: Why can't we just say that, then?

Mancini: Well, what don't you want further? Because you've got the...let's say you want to keep the prohibition that elected officers and full time employees of the county shall not appear on behalf of or represent private interests; you want to keep that so there can be no exceptions to that. So, maybe you keep that as a full sentence. The next prohibition is...you don't create a prohibition by that sentence on members of boards and commissions...because they are neither elected nor are they full time.

Wright: Right.

Sparks: I wondered about the sentence for that reason, because you talked about elected officers and full time employees -- provided that members of -- well, they're different than elected officers and full time employees anyway.

Wright: So it would just say...members of boards and commissions may not appear on behalf of private interests before county agencies on which such persons serves, or those agencies that have the power to...

Mancini: You could word that as an affirmative prohibition; what we're doing here is we're creating it the other way. We're saying you can do it unless that...without creating the prohibition first; so, you could create the prohibition and then create the exception to the prohibition.

Wright: Yes.

Mancini: And then you've dealt with only that scenario. And then the question is, do you want to create further exceptions to that scenario, or not?

Sparks: Suppose our first sentence said elected officers and full time employees of the county shall not appear on behalf of or represent private interests before any county agency subject to such standards, conditions and guidelines proscribed by the council by ordinance.

Mancini: Well then, you're taking out the standards that you've already created here.

Sparks: Then you go back to these other things that we want to allow, like members of boards and commissions can do this and that, and then the...

Wright: But you'll confuse things then, because it says they can't appear subject to what the council says...and then you have something else. I think it would cause confusion, is all I'm saying. If you say it first...they can't do it except as the council may provide by ordinance...

Sparks: That's elected officers and full timers.

Wright: Right, but you're saying the council can then say that elected officers can appear by...to represent private interests as long as the council says it's okay. I don't think we want to give the council the right to say that elected officers can go and appear for private interests. I don't think that was ever our intent, to say that they can do that as long as there's a council ordinance.

Woodburn: No.

Mancini: You created the prohibition to elected officials and full time employees, and then you've given an exception to that which relates to personal matters, right?

Wright: Yes.

Mancini: You created...you've implied a prohibition...you maybe have not created it clearly but you could create a prohibition that board and commission members not to appear before an agency, except...and then you basically create the exception...they can do it on other agencies but their own. And, that's all you've done.

Now, if you want the council to provide further rules, then the question is on what? Because up here, you've got the very broad provision...in the white. You have

Mancini: (Continued) the very broad provision that covers everything, and then you tell the council -- go and create exceptions to standards. Once you start into it yourself, this gets a little more awkward...you start to create your own prohibitions...let the council add it...

Wright: I mean, I could be happy with this in the yellow section; I think it maybe needs to be reworked a little bit, that's all.

Mancini: The only thing you could do is create the prohibition, which is not stated. I suppose one way to do it...you could say elected officials, full time employees and county officers shall not appear... You create county officers which are members of boards and commissions...up in number 4...and then you create the exception to that down below; that would only include one more group under the prohibition -- that's the easier way of doing it.

Wright: Well, see...

Mancini: So it would read county...elected...

Sparks: Just remove elected...

Mancini: No, you could say elected and appointed officers and full time county employees shall not -- that includes board and commission members.

Sparks: Right.

Mancini: And then you'd create the exception; I think that works pretty good.

Sparks: But there's no convenient way to say something about guidelines in a future ordinance as well as that.

Mancini: You could say provided...you could set further standards...see, these have to stay in place. You could say provided further standards, conditions and guidelines may be proscribed by the council by ordinance.

Sparks: Why not do that?

Wright: No. I mean, I'm just giving my personal viewpoint...which I still think that's going to be confusing as to what further standards -- further standards on different topics or on this topic?

Fabrao: No, it would be on different...

Wright: I know it will be on different topics, but the way Paul read it...you know, he's doing a good job on wording it, but there could be an interpretation like further standards included on this.

Mancini: You could create further standards on this, because you're basically having that verb...that phrase describing everything up above.

Wright: Yes, that's what I'm saying -- I don't want that standard.

Mancini: So, if you want further standards only on limited things...you ought to state it.

Wright: That's why I don't like it, because we understand what we are talking about here; but the words are not going to be our understanding, the words are going to be those exact words that's open to a lot of different interpretations.

Sparks: Those further standards could provide some exceptions, as well as...

Mancini: What Debbie says is she doesn't want an ordinance changing the prohibitions or the privileges created here. So you would say...provided further...

Wright: Maybe provided further except as stated here and above, the council shall have authority to give standards, or whatever...or, exclude what is stated above...except as stated in the Charter, the council may make...or except with regard to prohibitions...

Sparks: You're getting close.

Wright: I'm getting there...slowly. [LAUGHTER]

Reyes: I have concern about that idea of giving the council to propose other standards because the main purpose of the Charter is...it is the standard by which the council should act, or the county should operate; so, if you leave one portion...or one part of that body to change the standard of which they should be subject to, would I think...is dangerous.

Wright: Well, that's why we want to put that in there and we don't want to give them the right to change that part.

Reyes: But if you put it here, that could still undermine what we're trying to say here...because you're...

Sparks: That's why we're trying to word it a certain way.

Wright: Yes, we're going to try and change the wording on that, so it won't happen like that, Victor, because that's what we don't like -- I don't think we're disagreeing here. We don't want them to be able to change this...

Reyes: I thought you were proceeding in the direction that you'd be...I think that would be too dangerous.

Wright: I agree.

Mancini: Maybe something like this...

Chair Nakasone: Dolores, do you have a question?

Fabrao: Maybe it was a point of clarification...that when we were going to give the council that kind of opportunity or power, it's only in terms of the standards prescribed in the ethical conduct. Or you know, what we're talking about proscribing the council by ordinance -- not the whole Charter itself.

Wright: No, he was just talking about this.

Fabrao: You were just talking about this specific section...

Mancini: Yes, it's just this section.

Fabrao: You're only talking about this section...

Reyes: Even this section...

Fabrao: I know, that's what we're talking about...only this section...because there are other kinds of things that we need to have standards on, but we cannot work on it all right now, so...

Reyes: Yes; I would rather have a situation...that the future Charter Commission will deal with...you know, just like the situation we dealt with appointing the prosecuting and the county corp counsel. It came and so the Charter Commission, you know, this Charter Commission dealt with it -- because it was not dealt with in the past. I'd rather have it something like that, rather than proscribing something...we're all trying to do, to imply that the council can create an exception to...because we're proscribing such a standard, you know, it would undermine what we're trying to do; I think it's a little bit dangerous.

Chair Nakasone: Paul, is it possible to just add another section dealing with the guidelines that would be described by the council by ordinance? As just a general prohibition provision...

Fabrao: Yes, we could do that.

Mancini: Well, remember...the only subject matter we're dealing with here is whether an officer or employee can appear for private interests before an agency...because you've to a lot of prohibitions -- you've got a through g -- we're only talking about d -- this is the representing private interests.

If your intent is to make number 4 in yellow sacrosanct, that means that that's it. Maybe the words...that's your intent, or maybe it isn't. Maybe wording after that saying...providing further that without modifying or limiting the prohibitions and rights stated above, the council by ordinance may proscribe further conditions, standards and guidelines.

Fabrao: You've got it; that's wonderful.

Mancini: Concerning the representation of private interests before county agencies.

Sparks: That sounds good to me.

Fabrao: I would go with that.

Mancini: If that's the intent...is to keep this as it is...

Sparks: It's a complex situation; you can't do it with just a couple words.

Mancini: Because the language, without modifying, limiting...or limiting the prohibitions are rights...because you're granting rights as stated above, the council by ordinance may proscribe...

Reyes: Would that become like number 4-4.5.?

Mancini: Well, the reason I did it 4-4 is because you'd have to change the whole section...10-4.1. all around, because it's no officer or employee of the county shall -- that's a clear prohibition on all. And, what you're doing is taking that clear

Mancini: (Continued) prohibition on representing private interests, and you're changing it significantly...so I then bring it down to number 4, the last one in this entire section. Because, number 2 deals with former employees; number 3 deals with conflict of interest...contracts; number 4 then deals with representing private interests.

Wright: I would like to withdraw my motion, but I would prefer to see the redraft before voting on this, to tell you the truth.

Sparks: We've seen all but that sentence...

Wright: I was also going to do a redraft of this, just for you guys to take a look at; and, Paul has pretty much what he had. Let me just read to you the way I would organize this; you would say: elected officers and full time employees of the county shall not appear on behalf of or represent private interests before any county agency... I know why Paul has it grouped like this; but then I would put in that...provided further that no elected officers or full time employees shall be denied the right to appear before any agency -- that bottom section with that. Then it would go into what Paul talked about...is the provision that members of boards and commissions may not appear on behalf of private interests before county agencies...before the county agency on which such person serves, et cetera, et cetera...provided however they may appear before county agencies on which they do not serve and may represent their personal interests.

Okay? So, I would just have grouped it differently.

Mancini: Can you go through that again? I lost you...

Wright: Okay; first of all you take the first sentence, Paul, and you put your last provided further...that no elected officer or full time employee shall be denied the right to appear on their personal behalf...so, you keep everything that has to do with elected officers and full time employees together up there.

Mancini: Well, remember the last provided is no officer or employee...

Wright: No, no; I understand that.

Mancini: You basically want to broaden that? Because it looked like we broadened it to elected and appointed...officers...

Wright: No...

Sparks: That was just so it made sense to talk about members of boards and commissions.

Wright: I'm changing it back...or I'm separating the two groups out.

Mancini: Okay, what's the first group?

Wright: The first group is elected officers and full time employees, and I'm putting they can't do this, but they can do this. All right? They can't appear before...for private interests, but they can for their own personal property.

Mancini: Okay.

Wright: Then I was putting members of boards and commissions...I don't care if you call them appointed officers or what you call them, but anyway...members of boards and commissions may not appear...private interests before the agency on which they're

Wright: (Continued) appointed; however they may appear on the ones where they are not, or the ones that don't influence...and they can appear for their personal interests. I'm just separating the two groups out completely; and then, if you're going to put a modification by the council, it would go after that.

Mancini: I just think by not...you'd add a lot of verbage...

Wright: Right, you do.

Mancini: You do add a lot of verbage unnecessarily...if you just put elected and appointed officers...I can see putting the exception, which is last second, and have it relate to the same group.

Sparks: Yes.

Wright: Yes, but I'll tell you the only thing I didn't like about elected and appointed...because I agree it would be much simpler if we can do that...maybe there's still a way to find wording...but if you say elected and appointed officers and full time employees of the county shall not appear on behalf of or represent private interests before any county agency -- and then you say except they can if...you know. I thought it was a little confusing when you say they can't appear before any -- but they can.

Mancini: Well, you're making an exception to that for their personal rights and privileges.

Wright: No, I'm not talking about their personal rights and privileges, I'm talking about appointed can for other purposes, too.

Sparks: Right, so that's why the other provided...

Wright: Okay, I just thought that was confusing, but it may be fine.

Sparks: I still think if you just say officers and full time employees...like the first starts out...officers and employees.

Chair Nakasone: That covers your appointed members and elected...

Mancini: Elected and appointed officers and full time employees shall not...and then you can go...provided further that such officers and employees (because you already described them)...shall not be denied the right. If you already...

Sparks: Right; I'm just talking about how you can say this easier -- just say all officers and full time employees -- if you want to.

Mancini: You're right; you don't need elected...officers and full time employees...I agree.

Wright: It may just be my own confusion, but that's why I was saying that we should see it...

Sparks: No, I think what he said comes out the same way; it's all here.

Wright: I wish I could see it, because I'm still having trouble on some of the language...visualizing it.

Mancini: I think we Dave said he'd type it for us.

DeLeon: If you draft it.

Chair Nakasone: There's no motion on the floor right now.

Sparks: Okay, I like the looks of that but I guess we're not ready for a motion on that, right?

Chair Nakasone: You're ready for a motion?

Fabrao: Oh, no; Debbie wants to see it in print, to really understand it before we take a vote on it. So, Paul is writing it out so that Dave can type it up.

Sparks: Can we go back to the residency areas?

Reyes: Mr. Chairman, before we start...are we excluding then part-time employees? Is there any possibility that part-time employees might have a significant problem... well, I think...I hope we're not taking it out.

Yonenaka: I don't see how a part-time employee would be in a position that...

Fabrao: Of discretionary authority.

Reyes: I'm just asking, I mean I don't...

Yonenaka: Yes, I see your concern and I can't think of a situation...

Chair Nakasone: Paul, are you drafting something out?

Sparks: Can we raise another question on this issue that I have? We were talking about the rights of employees to appear about things affecting their personal rights and properties, and so forth. Do we also...somewhere in this verbage does it include their political rights? Let's say you're an employee somewhere in the county...and, there's a lot of them...and you want to go before a board or commission such as this, and as a citizen say you think something should be done this way or that way or the other way -- can they do that with this verbage? I don't think you can.

Chair Nakasone: They are not identified as an exception also.

Sparks: Can we have another provided that?

Wright: I don't think we need it; I think it is covered.

Sparks: For political rights?

Wright: Personal rights; that would include all of your personal rights and privileges.

Fabrao: Except for redress or grievance caused by any official county action.

Sparks: Like Mr. Smith, for example; if you happen to be working for the county...

Takabuki: Like Julie Higa, who came before us and...

Sparks: Like Julie Higa, who came before us...

Fabrao: As a private citizen.

Sparks: And they are employees...full time employees, doesn't it say shall not appear?

Takabuki: I don't know that it's covered, myself.

Sparks: On behalf of...well, we're talking about representing private interests here, I guess, so it wouldn't be in this section anywhere, would it.

Takabuki: Well, Paul said private interest is yourself. That's the way he was interpreting it, right? So, that would mean a Julie Higa...right now, to me...couldn't come before...

Wright: I don't know what political rights are, I mean really a definition; I consider that part of your personal rights and privileges of property. But, all I saying is I agree that they should have the right to do that, Allan; I just don't know what the definition of political rights is. So, I don't oppose it except I'm afraid of putting any ambiguity in.

Sparks: Well, political rights probably wouldn't be the term to use, but...

Wright: That's what I'm saying; maybe there's some other term or definition. but that kind of throws...

Sparks: It's your basic citizen's rights, too.

Chair Nakasone: Well, I think a good example is this airport question. Let's say a county employee wants to testify in favor or against the airport now, this would prohibit that...this provision.

Wright: It's already prohibited right now, before this ever goes in.

Chair Nakasone: So, are we actually keeping a private citizen, although he is an employee of the county, from testifying for an issue that's within the county?

Cockett: That's a good question there, so he can exercise his privilege of voting, because that will be an issue. [LAUGHTER]

Wright: I think that comes under your personal rights or privileges, personally.

Sparks: This is to petition for redress or grievances caused by any official county action affecting your personal rights, privileges or property.

Fabrao: Personal right to travel the way you want -- protection -- safety. [LAUGHTER]

Sparks: Maybe by having no prohibition in here about that, it's allowed.

Wright: I think it's broader right now, not more restrictive.

Sparks: Since there's no prohibition in there...

Reyes: If we delete that over here...

Wright: Yes, if we delete d., there won't be a prohibition.

Sparks: But isn't it true, that issue isn't even raised by any of the prohibitions.

Chair Nakasone: Well, we can delete that...that d.

Fabrao: Why don't we just forget this whole section, and then there won't be any...
[LAUGHTER]

Woodburn: Give them guns and let them...

Takabuki: Maybe we should get back to the white one.

Chair Nakasone: Okay, being that Paul is working on that proposal...Al, you had a recommendation?

Sparks: 6 on the yellow pages and 6 on the white pages... After our meeting the other day, I got to thinking about this problem -- there are a couple of problems with this. When Daryl made this, he was using that reduced version that was in the newspaper, and he tried to duplicate the lines he saw on there. In the process...let me take them one at a time...up here in the Wailuku-Kahului area, he put the boundary between a Wailuku residency area and a Kahului one -- he included this red section here and this blue section from Kahului, so the boundary would go like this. I think that's not the best because it would go right through neighborhoods. It seems much cleaner to me to follow this line like this, and then you have a line going between neighborhoods. To me they are residential areas and actually pretty much open space down Kaahumanu here; The only neighborhood that's close to them this way is the Harbor Lights condominium. It was even cleaner on the census tract, but that's irrelevant now since they decided on lining it this way. So, I'm suggesting that in what we call Wailuku-Waihee-Waikapu, we include 905 and 804 -- I think that's probably the way Paul wrote it up when he gave a description for that...on the yellow, 804 and 905.

Plus, there was a problem at Waikapu; if you lump Maalaea to being part of the Kihei-Makena area, then you also end up with a good share of Waikapu because the line would go right through Waikapu. Well, that leaves the potentiality that somebody living in Waikapu, or even Maalaea, is the resident for this...what we call South Maui sometimes. And, my feeling is the whole point of these residency areas is that the person lives in the unique area and experiences almost daily whatever travails those people have...in terms of sewage or the traffic, or the water and whatever. So, you would have somebody living up here perhaps, supposedly the resident of this area, not under normal circumstances daily experiencing their problems. Plus you have again, the problem of right through neighborhoods on this map. So, to put Waikapu in with this other section, because a person living there would be more likely to be daily experiencing the central area -- Wailuku problems anyway...is my objective. Unfortunately, to do that you also have to include Maalaea because that's all one precinct...Maalaea votes up here. I still think it's better to do that, and include 806 in with Wailuku and Waihee. Because even a person in Maalaea, my guess is, is not terribly likely to be spending a lot of time every day in this area -- they're more likely going up... They might work over here, and I might be wrong, but I think it's still the best compromise as long as we're stuck with precincts and we don't want to divide precincts, it would be to put this one and this one and this

Sparks: (Continued) one into Wailuku-Waihee-Waikapu area.

Yonenaka: Currently is Maalaea part of Central? Currently?

Sparks: No, I think they included it in South Maui.

Wright: They did.

Yonenaka: They did that by...

Sparks: When they took one of the no residency area seats and put it in South Maui.

Yonenaka: What did they use to describe that area in terms of precinct...or census tract...?

Sparks: Good question; how did they do that? I think they used precinct...

Chair Nakasone: You mean the South Maui seat?

Sparks: See, if we left it this way...this became part of this residency area, then whoever represents this area is going to be living here; I think that's closer to the intent of residency areas.

Wright: I don't like it either way; I don't like Waikapu being divided and part of South Maui, but I can tell you very strongly that Maalaea considers itself part of South Maui, not part of Wailuku.

Woodburn: I would agree with that.

Wright: So, it's not...you're going to have one side or the other unhappy. Because, Maalaea's not going to be happy -- they have the same problems as Kihei with the type of development, with the water and the traffic and everything like that, and they are very much connected down there. And I know Waikapu's not going to be happy, and I don't like dividing it.

Sparks: Here's a thought that just occurred to me; suppose, in this one case, we do divide the precinct, and use this highway as the...nobody lives off of that highway, do they?

Woodburn: They will soon. [LAUGHTER]

Yonenaka: Wait a minute; where's the highway now? It goes right through Waikapu, too.

Sparks: Well, it will up here in this new resort...but the existing Maalaea population is this side of the highway. That won't help us in Waikapu, though -- forget that idea.

Yonenaka: Because the store will be on one side and you live on the other...

Wright: It is going to happen though; you have that all the time in other places where they divide precincts. There are people that live on one side of the street or the other that are in different precincts, so somewhere it's going to have to be in some of these.

Sparks: Well, back to my original idea -- somebody living here is not routinely experiencing life here.

Wright: In Maalaea? Yes, they are.

Sparks: Are they?

Wright: Yes, they are.

Woodburn: I'll bet 50% of them probably work in the Kihei-Wailea area.

Sparks: I would go for that, sure, if there were a way to do it, and I originally did...again, it was not a problem with census tracts, because the line comes right through here.

Wright: It's not great either way. I understand what you're saying, I just don't think Maalaea is going to feel associated with Waikapu and Wailuku at all.

Sparks: Well, it's a close call, I guess. We ought to be able to find... What's hampering us is being stuck with precincts as currently defined.

Yonenaka: Can you use both?

Wright: No.

Sparks: No, but we could...in this one case...find some way to define a line here, I think; just write that in, huh?

Chair Nakasone: Well, the question is, you know, we're still at the point where the voters vote at large; it's really not that important in terms of even if you split a precinct, you know.

Sparks: But, we can split precincts; we can define it any way we want to actually because the ballot's going to be the same for everyone throughout the county, so we won't have any problems with the ballot like we do with the State House districts.

Yonenaka: Well, how would you split that precinct up?

Sparks: Well, you'd have to look at a detailed geographic map and maybe we could find something close to that. Maybe I'll work on that; then we could have it all if we do that.

Chair Nakasone: Well, we don't have much time to work on that.

Yonenaka: Recess five minutes. [LAUGHTER]

Sparks: That's not that hard...

Woodburn: Get your map out...[LAUGHTER]...Are the yellow pages intended to be the changes that were made at the last meeting?

Wright: No; they're Al's suggestions. They are basically these suggestions that I just...

Woodburn: I mean all the yellow pages.

Mancini: They should be...except the yellow pages...

Woodburn: I guess my question is relating back to the prosecuting attorney's office, and our empowering them with police powers.

Chair Nakasone: That action was taken.

Woodburn: Okay, so it's not part of this; it's not shown in here.

Sparks: Not changes...

Woodburn: Okay.

Mancini: I'm glad you brought that up, because in drafting it, I think Allan and I had one discrepancy, which he probably wasn't conscious of. When he went through my first draft on prosecutors there, he redrafted the first sentence on that to state that in pursuing their duties, the prosecutor shall have that. I didn't remember that that passed; I thought it was defeated.

Sparks: I thought it was in the performance of their duties.

Woodburn: I thought that we agreed that that would be the restriction.

Wright: It wasn't put in then; I don't think it was put in the wording that we actually voted on.

Sparks: Oh, really? I thought it was.

Fabrao: I thought so too.

Wright: Maybe we need to take a look and see what was voted on to start with.

Mancini: My recollection and my notes said that that did not pass.

Yonenaka: I thought it passed.

Cockett: What was the question?

Woodburn: The question was did we restrict the police police powers to the prosecuting attorney's staff to in the performance of their duties, or blanket the action.

Fabrao: We didn't vote on in the performance of their duties.

Cockett: I don't recall that; just that they had police powers.

Wright: We talked about that...

Cockett: Yes, but they had the powers and privileges of a police officer of the county of Maui.

DeLeon: Yeah, I thought they passed it.

Yonenaka: No, we didn't pass that.

Reyes: Everybody thought it passed, right?

Woodburn: No.

Takabuki: Yes.

Reyes: Well, actually it was 7-4, so it didn't pass.

Woodburn: Oh, that's right.

Yonenaka: What didn't pass?

Sparks: In the performance of the duties didn't pass?

Reyes: Yeah, I wanted that.

Yonenaka: Right, right, right; that did not pass.

Fabrao: Okay.

Wright: That did not pass.

Reyes: But if you guys want it, you can still put it in...no problem.

Wright: That's what happened...we voted on it as is -- it passed; and, we all forgot the amendment -- the amendment did not pass.

Sparks: We need to have a better memory, I guess. Okay, you're sure that's what happened?

Mancini: That was my recollection, and so I did not include it. But, if you read my narrative, I go to extremes...maybe too many extremes... Let me read it to you, because if it doesn't capture what you want...it's on page 20...the changes. It says...

"The prosecuting attorney testified before the commission that there were situations where he refused to utilize the investigators within his department because they did not have the needed police powers. The investigators from the department also testified that their effectiveness was curtailed and their safety was put at unnecessary risk because of their inability to make arrests and carry firearms. The commission found the prosecutor's request reasonable but was concerned that the commission did not intend to establish a mini-police department and wished to avoid a situation similar to what occurred in the City and County of Honolulu where there was a clash of police powers between the prosecutor's office and the police department. The commission wishes it to be clear that by granting the requested powers to the investigators in the prosecutor's office that it is not intending to create police officers in the prosecutor's office. The investigators are investigators and not police officers. The intent is merely to enhance the effectiveness of the investigators by giving them the power to make arrests under warrants and to carry firearms, as such powers are necessary and proper in implementing their duties as investigators. The commission is asking the chief of police and the prosecuting attorney to be cognizant of this and is further asking the mayor and managing director to monitor the situation (if the electorate votes in favor of this change) to ensure that there is no clash in these powers between the police department and the prosecuting attorney's office. The commission believes that with the proper exercise of management from the mayor and managing director and the proper coordination between the chief of police and the prosecuting attorney that the new powers will provide greater efficiency and enhanced safety that is intended. The commission has been assured by the department of police, department of prosecuting attorney and the department of

Mancini: (Continued) personnel services that investigators have adequate training and adequate skill levels to be given these powers, and the same will create no significant conflict with regard to the county's compensation plan and levels of compensation."

So, even though it didn't pass, in my report I'm sort of emphasizing these concerns. Now, if that doesn't express your intent, I should change it.

Wright: I think it's fine.

Cockett: It looks good.

Mancini: And, I called Larry and I called Ernest in the investigator's office, and asked them is there anything you need in addition to carry firearms and making arrests under warrants, and neither of them could give me anything else.

Wright: Sherri mentioned the last time that somebody had said they couldn't carry handcuffs even right now, and they wanted to be able to have handcuffs.

Fabrao: But that would be under with arrest powers, wouldn't that?

Wright: Well, all that says is you can make arrests under warrants, but...it may be part of that. That's the only other thing that the investigators said -- we don't even have handcuffs; we can't even handcuff somebody when we're arresting them.

Woodburn: Why are they arresting when the police...

Wright: Witnesses...because sometimes the police are not doing this...these are material witnesses for...

Chair Nakasone: They are serving warrants?

Wright: Yes, they are serving warrants.

Chair Nakasone: The investigators?

Wright: Yes, they are supposed to for the prosecuting attorney's office. They've got to get witnesses to court.

Chair Nakasone: I thought that goes under...doesn't that go under the sheriff's...

Wright: To some extent, except sometimes...I can tell you from civil litigation viewpoint...you can give a warrant to the sheriff's department, and it may be a month later before you can get anything done sometimes. That's another issue as far as the sheriff's department is concerned. But, they have to be able to get material witnesses and get them right away; they can't depend on the sheriff's office to take care of this. Plus, they may be investigating and find that person and they need to take that person right then; not go back and talk to the sheriff while the witness stands in line. So, they have to be able to make that arrest as soon as they find them. I can understand that just from a practical viewpoint, is all, but technically most warrants are served by the...you're right about that.

Woodburn: So, again -- why do these guys need guns?

Wright: They are investigating...they have to find a material witness; they go find

Wright: (Continued) a material witness -- do you think that the guy's going to hang around or wait for them while they go back, get the sheriff, get a warrant from the sheriff, and then the sheriff goes out to serve the warrant?

Mancini: Most of the time it's not the witness that's...

Wright: Well, it depends...if they are avoiding...

Cockett: That was explained by the prosecuting attorney, the fact that it is, you know, a danger there. And, I guess they could call the police department, but they'd take away from the police department...you know, they have their problems with their staffing situations.

Mancini: I think, personally, the arrests are not...

Wright: It's limited.

Mancini: Yeah, the problem; because when I talked to Larry he specifically said arrest under warrant and that's what I put in there. If you've got time to go get a warrant, you've got time to go get a police officer. I think that is more of a convenience than the other factor...the firearms...that's something that they are equally or more concerned about.

Chair Nakasone: Okay, let's get back to Paul's last draft of that prohibition...10-4.

Wright: Wait, there's more to this than that.

Mancini: This portion's left out here.

Sparks: But, the last sentence sounds good to me.

Takabuki: Are boards and commissions going to be separate?

Yonenaka: I think so...

Takabuki: A number 5?

Woodburn: No, I don't think so.

Fabrao: No, it's just been left out inadvertantly.

Takabuki: Oh, so just another paragraph?

Fabrao: He's gone to correct it.

Wright: How about instead of modifying...how about without amplifying or limiting -- in other words, leave it the same. [LAUGHTER]

Takabuki: How about just saying consistent with the above?

Wright: Well, something like that...consistent with what's stated in this provision, and then they may further...

Sparks: That's just whatever word you want...it seems okay the way it is.

Reyes: What happened to the...

Wright: No, he's getting it; he left it out.

Chair Nakasone: It's back to A1 again.

Sparks: Let me make a motion that we include in Wailuku-Waihee residency area this precinct and this precinct, which is 804 and 905. They are in Kahului now...they are in this area now -- I want to put them in that area, for the reason that the lines are here. And, incidentally, there's a population shift there...I worked some of that out.

Chair Nakasone: You added the 4th precinct then from the 8th...and the 5th precinct of the 9th.

Sparks: Those two precincts...

Chair Nakasone: The 4th precinct of the 8th and the 5th precinct of the 9th is part of the Wailuku-Waikapu-Waihee, huh?

Sparks: Right.

Chair Nakasone: And deleting that from Kahului.

Sparks: And, I don't know...well, let's put in the other one too, the 806...the one that goes Waikapu and Maalaea.

Chair Nakasone: Oh, boy.

Wright: You'd better take one at a time.

Sparks: Forget that one; let's take the other two. That shifts about 1,500 population...no, voter-wise...it shifts those voters in...

Wright: Is that located within Wailuku right now? Those precincts? Or are they within Kahului?

Cockett: Wailuku and Kahului.

Woodburn: Well, where's the eastern-most tip of the like 804? What is that? That's Kahului Beach Road?

Sparks: This is Kaahumanu...Maui Community College...right down the main intersection there; and, Kahului Beach Road, for some reason, is included in that -- there's nobody living on it but makai side is included in this one. So, look at what it does...it makes the border go behind the cemetery hill and the street that goes behind the hospital and then down Kaahumanu Avenue.

Woodburn: So that all becomes...

Sparks: So this Puuone area and this old Sand Hills area of Wailuku then is in Wailuku.

Sparks: (Continued) And, we no longer have a boundary that goes right through neighborhoods.

Yonenaka: And that's precincts?

Sparks: This is the precincts here...804 here and 905 here.

Chair Nakasone: Al, on your yellow sheet you have the 5th precinct of both Kahului...

Sparks: The 6th and 7th precincts of the 9th representative district, yeah.

Woodburn: No, you've got 5th on number 3...

Chair Nakasone: But, you want 5th on Wailuku...and you have 5th on Kahului also, the 9th district.

Sparks: Paul, did you get it messed up here?

Mancini: Isn't that yours? [LAUGHTER] I took your writing; whatever your writing was...

Sparks: Okay, it's my fault then.

Woodburn: Just in your written description, Al, you've included it in both places.

Yonenaka: You've included 905...

Sparks: It should be under...

Yonenaka: Wailuku.

Sparks: Wailuku, not Kahului. 905 is not in the Kahului one in my version.

Chair Nakasone: What about the 8th district? Wailuku...the Wailuku residency area? You have 5th and 6th of the 8th representative...

Sparks: In his paper where it says Wailuku-Kahului...that's confusing; just scratch out Wailuku from district 3 there. Which incidentally...district shouldn't be used there, we should have used areas.

Chair Nakasone: Scratch out Wailuku...

Sparks: That's another point I'm trying to make.

Mancini: Why don't you go to my page and work off the one that they voted on, which is on page 7.

Sparks: In addition to moving precincts around, I want to suggest some changes in the way we refer to places.

Wright: I live upcountry, Al.

Woodburn: Yes, so do I...this is all new material.

Mancini: You like upcountry?

Wright: I like upcountry because I live specifically in Kula, but if people ask me where I live, I normally will say I live upcountry.

Sparks: Well so do the people that live in Makawao, and they are not in that residency area.

Wright: No, I don't agree.

Sparks: That Makawao's not upcountry? Shall we take a vote on that? But what we call things is secondary; I wasn't going to try to focus you on that right now.
So, that's my motion -- that these two move to Wailuku side.

Mancini: Well, you've got the 4th precinct of 8 going into Wailuku...what else exactly?

Sparks: The 5th precinct of the 9th.

Mancini: The 5th of 9...which is currently...

Chair Nakasone: Kahului.

Mancini: In Kahului. So, you're taking two precincts out of Kahului and moving them to Wailuku.

Sparks: That's right, because I think they are more commonly understood as being Wailuku, and as I said before, this boundary is between precincts and it shifts population from what was a large one to one that wasn't quite as large.

Fabrao: What is the population difference...or that addition to Wailuku?

Sparks: I worked it out for including this one, too...it shifts about 1500 voters up to...from three to two.

Yonenaka: Four to three.

Cockett: No, from three to two.

Sparks: This number three is 7921 voters...that becomes 6353 voters; and two becomes from 4708 to 6742.

Yonenaka: Oh, you're using a different chart than we're using.

Sparks: Is there populations in there? There shouldn't be. Populations would be -- I've worked it out with this one, so I don't want to deal with that one right now.

Chair Nakasone: So, you're making a motion on that proposed Wailuku, huh? Adding the...

Sparks: On these two, yes. And then I want to make a motion on this one.

Chair Nakasone: Okay, you're adding the 4th of the 8th, and the 5th of the 9th.

Sparks: Right.

Chair Nakasone: Is there a second?

Yonenaka: Second.

Chair Nakasone: Discussion? None? The Chair just wants to say that I voted against this; do you have eight votes? [LAUGHTER]

Fabrao: Point of clarification...we are looking at the yellow pages when we're...he's taking two and three; or we're looking at the whites?

Wright: It doesn't make any difference because all we're talking about is moving this one...the 4th of the 8th and the 5th of the 9th to this.

Mancini: Page 7 on the white.

Fabrao: That's why I was confused, because I was looking at this.

Mancini: Go to page 7 on the white pages.

Cockett: In your motion, where is Maalaea?

Wright: Not yet.

Woodburn: We're not dealing with it yet.

Sparks: It's still in South Maui.

Cockett: Okay.

Wright: We're not doing this.

Fabrao: We're not dealing with Waikapu yet?

Wright: We're just not on Waikapu yet...

Fabrao: So the total population of that is what now, Al?

Wright: We're not getting to that yet.

Sparks: The population would be 16,800.

Chair Nakasone: Okay, any further discussion? Everyone understands the motion? We're taking away two precincts from Kahului and adding it to Wailuku; okay? Roll call.

<u>Takabuki</u> :	No.
<u>Mondoy</u> :	No.
<u>Fabrao</u> :	Yes.
<u>Wright</u> :	No.
<u>Reyes</u> :	Yes.
<u>Sparks</u> :	Yes.
<u>Cockett</u> :	Yes.
<u>Woodburn</u> :	Yes.
<u>Yonenaka</u> :	Yes.
<u>Nakasone</u> :	No.

MOTION DIES.

Sparks: So, you really want those illogical boundaries. [LAUGHTER]

Chair Nakasone: Okay, you have another motion, Al?

Sparks: Well, could I work up a way...if I had another chance... Okay, why don't we try... I'll make a motion that we put 806 into Wailuku.

Wright: That's Waikapu-Maalaea?

Sparks: Waikapu-Maalaea.

Yonenaka: How many people in Maalaea?

Woodburn: Waikapu's the one that's going to grow...

Sparks: There's 466 voters in here.

Woodburn: Where? Waikapu?

Cockett: Maalaea.

Sparks: There's about 980 population there according to one figures that I have that are approximate.

Cockett: It must be that Hawaiian family on the beach. [LAUGHTER]

Chair Nakasone: Al, what is your motion now?

Sparks: To move 806 from South Maui to Wailuku.

Chair Nakasone: 806?

Sparks: 806 is now a part of South Maui, isn't it?

Woodburn: Yes. The 6th of the 8th. You've got it under Wailuku now, you want to move it to South Maui?

Cockett: No, he wants to move it from South Maui.

Sparks: The yellow one has it that way.

Chair Nakasone: Okay, is there a second?

Yonenaka: Second.

Chair Nakasone: Discussion? None?

Woodburn: We're moving how many people? 900 registered voters?

Sparks: About 980.

Yonenaka: The problem we have right now is that breakoff between South Maui and Wailuku is actually Waikapu town. And it's...is it Waiko Road? So, actually the bulk of Waikapu

Yonenaka: (Continued) is in South Maui...currently, according to the way we've drawn it out...and that was because of the precincts. Waikapu and Maalaea are actually one precinct and I guess they vote in Waikapu Community Center. And, I think it's crazy to... you're taking the bulk of Waikapu right now and putting into South Maui -- they really should be in Wailuku.

Sparks: Remember, this is a residency area so this has the potential for having residents from here that are supposedly residents from South Maui on the council, and again as I said before, I wonder if that is really going to provide a resident that really experiences the Kihei and Makena area.

Wright: No, I don't like it either way. I don't like Maalaea residents being linked up with Waikapu, to tell you the truth, and I certainly can see your point that Waikapu residents belong more with Wailuku than down below. But, I don't like it either way, to tell you the truth.

Fabrao: Put them in West Maui, then...just throw them the other side.

Chair Nakasone: Okay, any further discussion?

Reyes: Al, is it possible to split and put Waikapu in Wailuku and put Maalaea in South Maui?

Chair Nakasone: Okay, no further discussion? Roll call.

Sparks: I think it's possible...it's just verbage.

Fabrao: Can you skip me first?

<u>Mondoy</u> :	No.
<u>Fabrao</u> :	Yes.
<u>Wright</u> :	No.
<u>Reyes</u> :	Yes.
<u>Sparks</u> :	Yes.
<u>Cockett</u> :	Yes.
<u>Woodburn</u> :	No.
<u>Yonenaka</u> :	Yes.
<u>Nakasone</u> :	No.
<u>Takabuki</u> :	No.

MOTION DIES.

Chair Nakasone: Okay, can we get back to the third draft? Code of ethics again...

Mancini: I've read it and the only changes I would suggest are in line two...represent private interests...interests -- plural, and in the very last line private interests is plural...and both county agencies. Other than that, see whether it addresses your intent.

Wright: What about where it says provided further...the last part? Anne had said something, and I may be saying this wrong here, but I thought it would be "provided further that except for the prohibitions and rights stated above, the council by ordinance may proscribe further standards." So anything else...

Fabrao: Without...the word without should...

Wright: Without changing would be good, because when you say modifying...that's one thing that's okay.

Mancini: So, without changing the prohibitions rather than modifying or limiting?

Wright: Yes, because once you say limiting...it sounds like maybe you can't amplify or something, and I...without changing those prohibitions and rights is...

Mancini: I don't have a problem with that.

Fabrao: Yes, that's more understandable to the lay person.

Chair Nakasone: Okay, what's the suggested change?

Mancini: To make the fourth to the last line...where it says without modifying or limiting...those two...three words...modifying or limiting would be deleted and the new word changing would be inserted in its place. So, it would read:

"provided further without changing the prohibitions or rights stated above, the council may proscribe further standards."

Modifying is the same as changing is all we're really doing.

Wright: It was limiting that was throwing me there, once you said modifying once.

Chair Nakasone: Okay, everybody understand the third draft? A motion is in order.

Wright: Okay, I'll make a motion that we delete the current section 10-4.d. of the Charter and that we add a new section...10-4.4. to read: "Officers and full time employees of the county shall not appear on behalf of or represent private interests before any county agency, provided that no officer or employee shall be denied the right to appear before any agency to petition for redress or grievances caused by any official county action affecting such persons personal rights, privileges or property, including real property, provided that members of boards and commissions may appear on behalf of private interests before county agencies other than the one of which such person or on which such person serves, and other than those agencies that have the power to review the actions of the agency on which such persons serves, or to act on the same subject matter as the agency on which such person serves, provided further that without changing the prohibitions and rights stated above, the council by ordinance may proscribe further standards, conditions and guidelines concerning the representation of private interests before county agencies."

Fabrao: I second the motion.

Chair Nakasone: Discussion? The motion is to delete that 10-4.d. completely, and add this new section as stated. Further discussion?

Takabuki: Paul, I still want to talk a little bit more about the right to testify before an agency, because I think Al brought it up and that still does concern me that if right now, if it is prohibited, isn't that really a denial?

Mancini: I don't think the right to testify -- the right to represent is different from the right to testify.

Takabuki: Okay, but you said when you go before an agency you are representing yourself as a private interest; didn't you say that earlier?

Mancini: If you're going to make an appeal, yeah, for yourself...you are representing yourself in your own... You know, the issue I guess I took is the fact that you may petition to the board of review for your real property taxes. You're representing yourself and your wife, or your family, or whoever lives there; and it seems to me, that representation...that personal right wasn't intended to be prohibited in that last line here. If you go before the council and testify on something, it seems to me what you're doing is giving your opinion based upon whatever the legislation is...I don't think that that's prohibited. Like when Jim Smith makes the point that the mayor is representing private interests -- that's not the way I take her testimony. Her testimony is on a Bill, and she's looking at the public interest question...as opposed to taking a look at...testifying about a piece of legislation that affects your real property...

Wright: It's sort of the difference between testifying and advocacy, you know. Just because she came down on one side or other as to what would suit the public interest... Jim Smith's saying that her alignment, because it aligns up with some other ones from private interests -- he's saying well she's appearing on behalf of them. But, Paul's saying...and I tend to agree with it...simply because she takes a particular stand and testifies about it does not mean she's appearing for a private interest or advocating their position.

Takabuki: That's fine, as long as...

Mancini: My argument would be that her position is that she is representing the public interests that the county needs greater affordable housing -- I don't know how private interests come into it. I don't see that as being a problem though.

Takabuki: Good; I just wanted to...I was just concerned about that.

Chair Nakasone: Okay, any further discussion? Questions? Roll call.

Takabuki:	Yes.
Mondoy:	Yes.
Fabrao:	Yes.
Wright:	Yes.
Reyes:	Yes.
Sparks:	Yes.
Cockett:	Yes.
Woodburn:	Yes.
Yonenaka:	Yes.
Nakasone:	Yes.

Okay, MOTION CARRIES. This item will be on the ballot.

Okay, Al, can we throw those yellow pages out then? [LAUGHTER]

Mancini: When I redraft the...adding this new 10-4.4. -- what I will do is I will take a paragraph from the yellow that relates to it, which states:

"The commission has proposed what it believes is a practical approach to the issues. It is proposing that members of boards and commissions can represent private interests before county agencies on which they do not serve or agencies which will not act on or reivev the same matters as the agency on which the board

Mancini: (Continued) or commission member serves. The proposal also allows county officers and employees to seek redress against the county action affecting their personal rights and privileges. The commission is retaining the existing broad prohibition as it relates to county officers and full time employees.." which it is, so I would add that paragraph to the white section.

Chair Nakasone: Al, you had a question?

Sparks: Yeah, is anybody else at all concerned with what we've kind of haphazardly... without much of a vote...decided to call these different residency areas? On the white section...I see a couple of faults. Upcountry, for the Pukalani-Kula-Ulupalakua one is not quite accurate because most of you consider Makawao upcountry too. And, Kahului... now that we've included those Wailuku districts, is not completely accurate either because it includes a part of what most people consider Wailuku -- I don't know how you would do that, but... We need shorthand terms that are fairly accurate that people can use to refer to these.

Cockett: Is it divided North and South?

Sparks: What?

Cockett: Kahului. East and West?

Sparks: You could call it Kahului and East Wailuku.

Wright: Waihee-Waiehu and East Kahului, or something like that. I'm sorry...West Kahului -- I was going the wrong way.

Chair Nakasone: Well, we could leave it as Central Maui.

Wright: Central Maui? Part of Central Maui? The other part of Central Maui.

Sparks: Well, we could say Central Maui-West and Central Maui-East.

Wright: Yes, that wouldn't be bad.

Chair Nakasone: Is there any objections about this deletion of Kahoolawe from East Maui? We voted on that last time, so if no objections that can be deleted.

Reyes: What was the question, Mr. Chairman? Do you want to delete Kahoolawe from East Maui and add it to South Maui?

Chair Nakasone: It would be West Maui.

Cockett: It's already there.

Sparks: Do we want to try a name change here a little bit? I have another substantive one that I wanted to mention. If you look on the yellow page 7...the top paragraph there, if you read down there's a place there where it says there shall be separate ballots for each council seat. That a sentence that I'm recommending that we include in there that wasn't in what we passed before. And, this occurred to me because Paul had mentioned one time that the Big Island discovered that it was up to the clerk to decide how to do the ballot, and if there's any potential there for the clerk to decide to put all these names on one ballot, you know, and then saying there has to be

Sparks: (Continued) one in each of these residency areas, that would be a mess...from what I'm intending to have happen anyway, and this would make sure that there's a separate ballot for each seat.

Chair Nakasone: Boy, you're making it expensive.

Cockett: Question; do you mean there are going to be nine ballots? I mean for the council seats.

Sparks: Well, by saying separate ballot, I don't mean a separate piece of paper -- does it have to mean that?

Cockett: That's what it sounds like.

Yonenaka: Yes, a ballot is one sheet. Oh, I see what you're saying...

Sparks: It's a separate race that I want.

Yonenaka: So you want to make sure that it says East Maui and these are the candidates; West Maui and these are the candidates...

Sparks: Right.

Chair Nakasone: Well, that's the way it is now.

Sparks: Yeah.

Yonenaka: You just want to make sure.

Sparks: I just wanted to make sure it's that way.

Chair Nakasone: Well, you'll be part of the committee that's going to review the ballot. [LAUGHTER]

Cockett: So you'll make sure.

Sparks: But you see, this is going into the Charter that will guide future elections too.

Chair Nakasone: Yes, but I don't think we should put it by ballot; then you're going to create nine ballots...just for the council members.

Sparks: Well, is there another way to do it?

Cockett: It ain't broke.

Sparks: By race? It might be a nightmare if we get all the names for the council races all on one ballot.

Chair Nakasone: The Chair is going to suggest that the three committee chairs...after we've submitted this report...the final report to the county clerk, that they will be working with the county clerk on the drafting of the ballot -- the questions. Any objections to that? Any member can be part of this meeting, but to give some input on how the questions are going to be put on the ballot...whether we're going individual questions, or

Chair Nakasone: (Continued) whether we can group them together.

Reyes: Will the rest of the members be notified, Mr. Chairman?

Nakasone: Yes, we'll have to post it anyway, but the thing is we have like to September 4...September 3rd to come up with the draft. Paul, we need your help, also.

Mancini: I have no problem...I wanted to bring up one other issue. Anne just brought it up and I think it's an excellent plan...on the salaries commission. We state that the salary commission shall set the salary of the department heads who are appointed by boards and commissions. Was it our intent that that should include the board of water supply in their semi-autonomous status?

Fabrao: Yes.

Cockett: Yes.

Sparks: Did we delete the appropriate section that said...

Mancini: We didn't delete it, but I think the way to handle it is in a footnote or just a narrative in the salary commission indicating clearly a sentence in there...and I'll draft it...that the intent here would include the director of the department of water supply. And, correspondingly, section such and such in the Charter would be deleted to reflect this. I don't think we need a new section, I think we just deal with it in a narrative. At least it will be clear that's the intent. I'll do that...

Fabrao: I thought that was in the motions...as provided that the salary commission would consult with the...

Takabuki: Right, but there's specific language in the body that says the board fixes the salary of the director. It would be an inconsistency.

Fabrao: I see.

Mancini: The problem is I wasn't here when it was addressed directly, and there's always an argument that you meant everyone except the semi-autonomous nature of the water board, because you didn't mention it. I'll put a paragraph in and then I think it's dealt with.

Sparks: Suppose the board decides to do it by their budget?

Woodburn: It still has to be approved.

Mancini: I don't think an appropriation can create the appropriation inconsistent with the requirement of the Charter...being inconsistent with the Charter.

I assume before Monday that people will go through this draft...and we made a few changes. If anyone sees a discrepancy, which you might, because every time I read this I find something that I may have missed or a typo -- I'd appreciate it if you'd call me...to do that. But, what's more significant to me is if we happened to miss a paragraph somewhere in the Charter -- something glaring. Stylistic changes, if you see something glaring that grammatically incorrect, let us know. Then, with that, I'll prepare the final document...and it will be bound...spiral binding. You may want a separate transmittal by Bob of the document to the mayor, chairman of the council, the clerk.

Chair Nakasone: I think we have to submit it to the county clerk through the mayor; isn't that the provision?

Mancini: I think it's directly to the clerk under the Charter. It says "commission proposed amendments which shall be submitted to the county clerk within fifteen months.." I think the submission is directly to the clerk. I think you should submit separate copies to the mayor and the council.

The purpose of the meeting on Monday is what?

Chair Nakasone: We have to look at the final...

Mancini: You're going to get it, and unless you plan to sit down here and read it for an hour and a half... Why don't we recess until 11:00 Monday...

Sparks: By that time we'll have read this...

Mancini: I'm only making a few changes to this...so it should really take very much time.

Sparks: Format question. I'm wondering if in these sections where Paul has written the new sections and changes...we shouldn't underline the new sections or something.

Mancini: You could ask corp counsel to do it and you put it in as a pocket section to the report...the report's not due until the 15th...

Sparks: That's where you bracket the deletes and underline the new material. I think we need to do that to be clear.

Mancini: I don't think you do; I think it's nice, it's convenient, it's helpful... I really suggest you get somebody from corp counsel...maybe I can ask Guy.

Chair Nakasone: This meeting stands RECESSED until Monday at 11:00 a.m.

[MEETING WAS RECESSED AT 6:27 p.m.]

ACCEPTED:

Robert Nakasone, Chairman Date