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W. O. SMITH (1848-1929)
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92-60

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M E M O R A N D U M

TO: Charter Commission

FROM: Paul R. Mancini

DATE: July 22, 1992

RE: Criteria for granting variances.

4555j-----

At the last Charter Commission meeting I was asked to provide an explanation to the Commission concerning the granting of variances. As I indicated at the last Commission meeting, there are generically two types of variances, a "use variance" and an "area variance." As the names imply, the "use variance" is one which commits a use of land other than which is allowed under the zoning ordinance. For example, a variance which permits an office building in a residential district or one which permits a multi-dwelling complex in a district zoned for single family dwellings is a "use variance."

Area Variance and Use Variance Defined

An "area variance" is one which does not involve a use which is prohibited by the zoning ordinance and has no relationship to change of use. An "area variance" involves such matters as setback lines, height restrictions, lot size restrictions and the like. In other words, the term "area variance" is a way to describe a variance from structural or lot area restrictions.

The "use variance" is distinguished from the "area variance" in that the former changes the character of the zoning district while the later does not. Courts have held that the practical significance in the distinction between these types of

variances is that "use variances" are customarily concerned with "hardship" while "area variances" are customarily concerned with "practical difficulties."

As indicated, the "unnecessary hardship" is a requirement usually to be met in a "use variance", while practical difficulty is one usually addressed to the "area variance". The term "unnecessary hardship" is subject to many definitions but courts have often found the hardship must be substantial and compelling and that the circumstances leading to the hardship must be such as to constitute an arbitrary and capricious interference with basic property rights. Economic hardship alone usually is not enough. The fact that the literal enforcement of the zoning ordinance would result in a financial or pecuniary loss to the applicant does not, in itself, establish "unnecessary hardship."

"Unnecessary hardship" justifying a grant of the variance exists when a literal enforcement of the zoning restrictions would deprive the owner of all the beneficial use of his land and when the land in question cannot be reasonably used in a manner consistent with the zoning ordinance. Some courts have indicated that "unnecessary hardship" justifying the grant of a variance would exist if a land owner cannot yield a reasonable return from any permitted use under the zoning regulation.

CODE CRITERIA

As you are aware, counties are creatures of statute and the powers are delegated under statutory authority. H.R.S. Section 46-4 identifies the County zoning powers. The Maui County Code, Title 19, Chapter 19.520.505 identifies the provisions for variance procedures and standards. The standards for variance under the Maui County code require a finding that compliance with the zoning ordinance would "result in hardship to the owner which is not mere inconvenience or economic hardship." The Board (Board of Variance and Appeals) is required to make three findings, one of the required findings is that "the use sought to be authorized by the variance will not alter the essential character of the neighborhood; a second is that "compliance with the applicable provisions of the title would prevent reasonable use of the subject property"; and lastly that the "conditions creating the hardship were not the result of previous actions by the applicant."

The ordinance, which is controlling, does not distinguish between "use variances" and "area variances" and does not create distinct criteria for each.

CRITERIA UNDER CASE LAW

1. The necessity of proving "unnecessary hardship". As stated above, the requirement as to a showing of unnecessary hardship generally only applies to use variances (variances permitting a use other than that permitted in a particular zoning district). The hardship requirement does not customarily apply to area variances, i.e., variances extending relief from restrictions such as setback lines, height restrictions and lot-size restrictions. See Ivancovich v. Tucson Board of Adjustment, 22 Ariz. App. 530, 529 P.2d 242 (1974); Anderson v. Board of Appeals, 22 Md. App. 28, 322 A.2d. 220 (1974). Where an area variance is sought, the applicant customarily must only show that the application of such structural or lot-area restrictions will result in "practical difficulties". The discrepancy between the requirements for use variances and area requirements is ordinarily based on the fact that area variances do not effect a change in the character of the zoned area and, accordingly, do not pose a threat of incompatible use in the neighborhood in question. Anderson, 322 A.2d at 227.

However, where language of hardship appears in the zoning ordinance itself, the area variance sought will not be granted unless a showing of hardship is made. See Anderson, 322 A.2d 220.

2. What constitutes "unnecessary hardship"? Under the case law, where the standard of hardship applies, the applicant, in order to justify the grant of the variance must meet three criteria:

(a) If he complied with the ordinance he would be unable to secure a reasonable return from or make any reasonable use of his property. Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance.

(b) The difficulties or hardships are peculiar to the property in question and contrast with those of other property owners in the same zoning district.

(c) The hardship was not self-created or the result of the applicant's own actions.

Anderson, 322 A.2d at 226.

In Anderson, the applicant proposed to build an apartment complex with attendant facilities. Four of the proposed apartment buildings violated the zoning ordinance's requirement relating to a minimum horizontal distance of 300 feet between facing walls of buildings. The zoning board in Anderson granted the variance and the board's decision was appealed by two residents on the basis that the applicant had failed to show unnecessary hardship in support of his application.

On appeal, the Court of Special Appeals agreed with the appellants despite testimony by the applicant that the "L-shaped" character of the property and profit considerations prohibited him from relocating the buildings to comply with the zoning ordinance. The applicant's architect also testified that the proposed placement of the buildings was necessary to enhance the project's view of the bay and to preserve the overall "resort" character of the project. Anderson at 223 and 224. It was possible for the applicant in Anderson to maintain the proposed density of the project by reducing the number of buildings and increasing the height of the structures built; however, he was reluctant to do this due to "loss of profit". Anderson at 224.

In applying the hardship standard, the Court of Appeals ruled against the applicant and stated that he had not "presented sufficient proof of an unnecessary hardship, which deprived [him] of the reasonable use of his land". The court also found that it was possible for the applicant to develop the land at the maximum permitted density in accordance with the building distance requirement and that such development could be less costly. Anderson at 228.

In other setback cases, area variances have been upheld where a literal application of the zoning restrictions would deny the owner of all beneficial use of his property and constitute an unconstitutional taking. See Kane v. Zoning Bd. of Review, 97 R.I. 152, 196 A.2d 421 (1964); Commons v. Westwood Zoning Board of Adjustment, 81 N.J. 597, 410 A.2d. 1138 (1980). In these cases, application of setback requirements and lot-size restrictions prevented the owners from building any structure on their properties as permitted by the zoning ordinance. Because the application of such restrictions, for all intents and purposes, effected an unconstitutional taking, the courts in Kane and Commons directed the respective zoning boards to grant the variances sought.

If further clarification is necessary, please contact me as soon as possible.

92-61

DISTRICT 1 WEST MAUI

07-01	920
07-02	930
07-03	1370
08-01	1468

	4688

DISTRICT 5 PAIA/HAIKU

10-04	117
10-05	778
10-06	1935
10-07	999
12-01	340
12-02	1589

	5758

DISTRICT 2 WAIHEE/WAILUKU

08-02	485
08-03	1864
08-05	1169
09-06	955
09-07	235

	4708

DISTRICT 6 EAST

12-03	182
12-04	158
12-05	540

	880

DISTRICT 3 WAILUKU/KAHULUI

08-04	970
09-01	1582
09-02	1571
09-03	1698
09-04	1317
09-05	598
10-03	185

	7921

DISTRICT 7 PUKALANI/KULA

10-01	884
10-02	2598
11-01	1808
11-02	105

	5395

DISTRICT 4 MAALAEA/KIHEI

08-06	466
11-03	39
11-04	1047
11-05	2664
11-06	1851

	6067

DISTRICT 8 LANAI

07-04	960
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DISTRICT 9 MOLOKAI

07-05	441
07-06	1387
07-07	143
07-08	735

	2706

92-62 SUE-CHARTER

July 29, 1992

Memorandum to the Maui Charter Commission, Bob Nakasone, Chairman

Re: Department of Water Supply

The Maui Charter Commission proposes to strip the Board of Water Supply of its autonomy. At present ~~the~~ Board is appointed by the Mayor. This would not change. At present the Board has very real power. This would change, as the Commission proposes to make the Board's function 100% advisory. The Director ~~would~~ be appointed by the Mayor rather than by the Board. Thus the Mayor's power would be greatly enhanced and the Board's power stripped.

Commissioners have explained their reason for this proposal: The Water Department has not adequately planned for the present crisis in water supply, especially upcountry. Certainly it is true that growth upcountry has outpaced water supply, but we must ask: Is this really the present Board's fault? This Board has existed less than four years and it has taken this time to get a grip on our problems and come up with a game plan to solve them. To start over would be a step backwards, not forward. According to Mr. Buddy Nobrega, who was in a position to know, upcountry water planning was neglected prior to 1988 when the Board was non-autonomous. Thus the present Board is being blamed for a problem it inherited, and the Commission is proposing to return Maui to the structure that created the problem! I suggest we don't change horses in midstream.

The Commission's proposal ignores a very important function of the present Board. This Board spends a large percentage of its time and energy listening to our citizens who need the Board's approval for their unique situations regarding water supply.

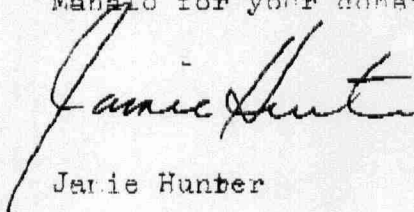
This is a quasi-judicial function properly served by an independent

Board with full power. If the Board were made entirely advisory, the Department would have to take over this function under direct political control. Political favoritism would rule in the absence of independent consideration. Furthermore, the most qualified and interested Board members would be less interested in serving on a Board with no real power since politicians would be able to ignore their decisions.

The present Board performs this quasi-judicial function with great patience, skill, and wisdom. These decisions seldom get much press, but they are very important to our citizens, for example, allowing a family who owns a piece of land to pass it on to their children.

In conclusion, I urge the Commission to leave the Board of Water Supply and its Department alone and allow them to get on with their important work on our behalf.

Mahalo for your consideration,



Jamie Hunter

Maui resident for 23 years

Graduated Punahou School 1957

Graduated Yale University School of
Engineering 1961

Graduated Stanford Law School 1964

Professor of Law University of Oregon
1966-68

Presently proprietor, Mauka Water Co

COUNTY COUNCIL

RONALD KOUCHI, CHAIR
RANDAL G.B. VALENCIANO, VICE CHAIR
BILL KAPO ASING
MAXINE CORREA
JESSE FUKUSHIMA
MAURICE MUNECHIKA
JAMES TEHADA



4396 RICE STREET, SUITE 206
LIHUE, KAUAI, HI 96766-1399

OFFICE OF THE COUNTY CLERK

JEROME Y.K. HEW, County Clerk
C. BUNJI SHIMOMURA, Deputy Clerk

PH. (808) 245-4771
FAX PH. (808) 245-5689

July 27, 1992

92-63

Mr. Robert Nakasone
140 Alamaha Street
Kahului, HI 96732

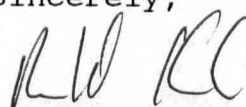
Dear Mr. ^{Bob}Nakasone:

Regarding your recent inquiry as to the change in term of Council office from December to January, please find the following comments:

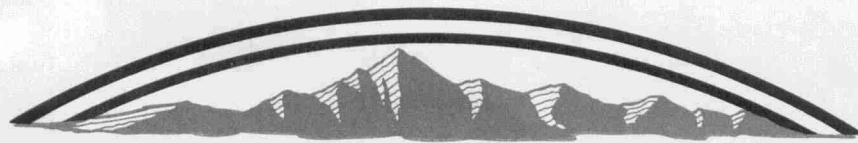
- 1) Because there exists such a short interval between General Election and the start of the term in December, the January term would provide Councilmembers additional time to spend with his/her family due to the enormous amount of time spent during the campaign session;
- 2) Further, it seems that Councilmembers favor an extended Thanksgiving vacation into the month of December which often creates scheduling problems for organizational and leadership caucus;
- 3) The January term would provide time for a new Councilmember elect to better orientate him or herself not only with County Clerk/Council Services operations but with the operations of County government and the various cabinet members; and
- 4) A January term would allow more time for Councilmembers elect to get better acclimated with the critical issues facing the County.

Thank you for this opportunity to comment.

Sincerely,


RONALD KOUCHI
Council Chair

RW:lki



WEST MAUI TAXPAYERS ASSOCIATION

92-64

Robert Nakasone, Chairman
Charter Commission
200 S. High Street
Wailuku, Maui, HI 96793
July 22, 1992

Re: Council District Representation

Dear Mr. Nakasone,

West Maui Taxpayers Association represents over 3,000 taxpayers in Maui County. On the behalf of these taxpayers the association is extremely concerned with representation at the county level. We have followed closely the commission's discussion in relationship to the District Representation on the County Council. After deliberation we feel strongly that the best representation for the people of the county would be Direct District Representation by a council person living in a district and receiving votes only from those people in the district.

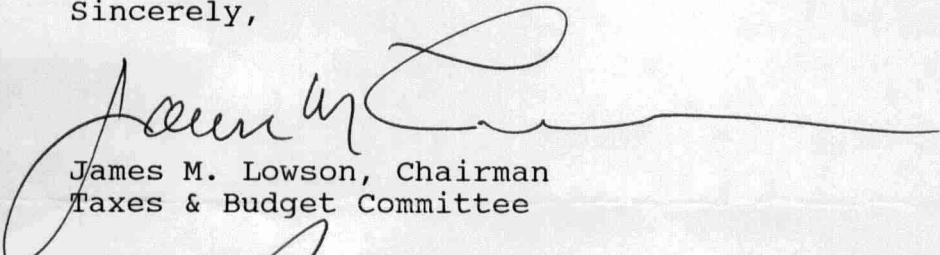
Our reasons are several. However, I think it can be summed up in a general statement indicating that the current system or any derivation thereof without equal representation is unfair to Maui voters. The people of an area, such as Lahaina, do not actually elect their representative. That representative is elected by the large population centers. That in the past has been central Maui and in the future probably Kihei, Upcountry and the Paia area.

This situation makes it extremely difficult for a representative of a district to campaign with effectness with the people who that representative will be representing. Instead the representative is forced to campaign in the entire county. A task which favors a different type of person than could get elected were direct representation be the case.

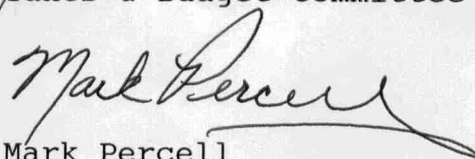
If, and only if the commission does not put forth district representation to the electorate, as detailed above, but instead decides to eliminate the at-large positions and create new districts in the County with a representative being required to live in one of nine districts and still requires that voters remain able to vote for all council persons; then, and we repeat, only then, we urge the commission to create equal representation districts based upon total population. In other words if the county population is 100,000 people, each council person should represent approximately 11,000 persons district. We are particu-

larly not in favor of continuing the current system where a small number of people, such as Lanai and Molokai have the decided advantage of a representative from their district, " which has a population of only 3,000 or 4,000 persons. We understand and sympathize with difficulty of moving "backward" for these areas. However, we feel that it is a much greater injustice for the remaining 90% of the population to be under represented. We feel that by election time this will be a commonly known and hard felt stance from the majority of the voters in the county. Any other proposal will therefore fail and your time and sincere efforts to improve the voting system will have been spent uselessly."

Sincerely,



James M. Lowson, Chairman
Taxes & Budget Committee



Mark Percell
Executive Director

3-8.1

REVISED ORDINANCES OF HONOLULU

92-66

"Officers and employees" shall be given the meaning as prescribed in subsections 3 and 4 of Section 13-101 of the revised charter; provided, that the terms "officers and employees" shall also include officers and employees under a personal service contract with the executive branch of the city as prescribed in subsections (g) and (h) of Section 6-303 of the revised charter or under equivalent contracts with the legislative branch of the city as prescribed in subsection (f) of Section 6-304 of the revised charter, but excluding independent contractors; and provided further, that an individual shall not be deemed an officer or employee solely by reason of such person's receipt of a pension, disability payments, or other payments not made for current services. (Sec. 6-1.1, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 3-8.2 Additional standards of conduct.

No officer or employee of the city, except as hereinafter provided, shall:

- (a) Participate, as an agent or representative of a city agency, in any official action directly affecting a business or matter in which (1) such person has a substantial financial interest; or (2) by or for which a firm of which such person is a member, an associate or an employee has been engaged as a legal counsel or advisor or consultant or representative in a matter directly related to such action; provided, that a councilmember is not precluded from voting on such matter before the council so long as a written disclosure has been made in the event there is a conflict of interest involving this subsection and relating to such matter.
- (b) Acquire financial interest in business enterprises which such person has reason to believe may be directly involved in official action to be taken by such person.
- (c) Appear in behalf of private interests before any agency other than a court of law, nor shall such person represent private interests in any action or proceeding against the interests of the city in any litigation to which the city is a party; provided, however, that a member of any board, commission or committee, whose board, commission or committee does not exercise either quasi judicial or quasi legislative power, may appear for compensation in behalf of private interests before 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 person serves, or to act on the same subject matter as the agency on 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 of grievances caused by any official act or action affecting such person's personal rights, privileges or property, including real property. This prohibition shall not apply to any architect, landscape architect, surveyor or engineer registered as such under the provisions of HRS Chapter 464, who is a city employee or officer, with respect to the affixing by such registered professional of such person's registered stamp to any plans, specifications, drawings, etc., to be submitted to the city for permits for such person's principal residence or that of members of such person's immediate family; provided, that the stamp is accompanied by a signed statement that the work was prepared by the person stamping the document or under such person's supervision; and provided further, that the registered professional may not, in the capacity of a city employee or officer, review, approve or otherwise act upon the plans, specifications, drawings, etc., such person has stamped. For the purposes of this section, "immediate family" means the employee's or officer's spouse, siblings, children or parents; spouse's children or parents; or children's spouses.
- (d) Accept a retainer, compensation, or election campaign contribution that is contingent upon action by an agency.
- (e) Enter into any contract in behalf of the city with an officer or employee or with a business in which an officer or employee has a controlling or substantial financial interest, involving the furnishing of services, materials, supplies and equipment unless the contract is made after competitive bidding; provided, that this subsection shall not apply to personal contracts of employment with the executive branch of the city as prescribed in subsections (g) and (h) of Section 6-303 of the revised charter or equivalent contracts with the legislative branch of the city as prescribed in subsection (f) of Section 6-304 of the revised charter.
- (f) Order any person to violate, or aid or abet any person in the violation of the provisions of Section 6-312.2 of the revised charter of the city, relating to prohibition on political activities of persons in the civil service. (Sec. 6-1.2, R.O. 1978 (1987 Supp. to 1983 Ed.))

Sec. 3-8.3 Restrictions relative to post employment.

- (a) No former officer or employee of the city shall disclose any information which by law or practice is not available

92-67

July 29, 1992

Mr. Robert Nakasone
Chairman, and Members of the Maui County
Charter Commission
County of Maui
Wailuku, Maui Hawaii 96793

RE: Proposed amendments to the Charter by the Commission
1991 - 1992

Dear Mr. Nakasone and Members of the Commission,

Recently, I reviewed proposed amendments to our Charter published in local new media. There are three areas that concern the relationship between our executive branch and legislative branch that need to be looked at in light of recent events.

The first is the proposed amendment to Section 9-11 to provide that the mayor shall notify the council within ten (10) days of the abandonment of any capital improvement appropriations. In our current Charter the exclusive authority to amend a budget is stated in Section 9-6 paragraph 5. The proposed amendment gives to the ~~an~~ executive branch the authority to amend the budget ~~by~~ in effect ^{by} deleting projects for whatever purpose.

This power is fundamental to our legislative branch and should not be so shared or subverted. Under Section 9-11. Lapse of Appropriations. it is stated that an appropriation for a capital improvement shall continue in force until the PURPOSE for which it was made has been accomplished or abandoned. It seems clear that the mayor is prohibited from abandoning a purpose set for in our budget ordinance as Section 7-5.17 of the Charter requires that the Mayor enforce the ordinances of the county.

If the intention of your amendment is to require that the Mayor inform the Council when lawfully appropriated funds will not be expended, and not to diminish legislative authority I suggest the language of the proposed amendment be changed to read: "To provide that the Mayor, when it is determined that the administration is unable to expend lawfully appropriated funding for any capital improvement, shall notify the Council within 10 days of that determination, as well as submit justification for non-compliance ~~its~~ determination."

Secondly, Amendments to Article 10 Code of Ethics Section 10-4 contain the phase "for compensation" which may in effect legitimizes representing private interests between departments or before Boards or Commissions as long as no money changes hands. This may not protect public trust and confidence in the integrity of government. I hope you will reconsider these amendments. It should be noted that the Mayor has a voice in the proceedings of all boards and commissions. (Section 7-5.15) It should be a unbiased voice, but that has not proven to be the case.

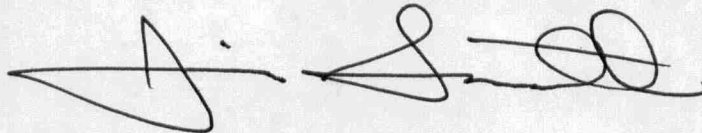
If the Mayor were to appear as an individual, then the amendment might be justified, in some fashion. But, the Mayor seeks to use the power vested in the Office of Mayor in a very "creative" way.

I request that this Commission reconsider an amendment I submitted to the Commission regarding our Ethic Code in light of a recent article in the Maui News describing an action of Counsel at an Board of Water Supply meeting.

The amendment was that Section 10 - 4 (2) be amended to include: "No agent of the Office of Corporation Counsel shall permit a Board or commission to take action upon an incomplete application, upon a misrepresentation of intention or content of a law or fact, nor shall proceedings be held without the presence of a representative of the Office of Corporation Counsel."

And further, that Section 10-5 be amended to read "If ~~an~~ the Corporation Counsel allows a violation of the provisions of this article, the Corporation Counsel shall publish a description of the action and a public apology in a local, daily and weekly newspapers addressed to citizens of this community."

Sincerely submitted,

A handwritten signature in black ink, consisting of a stylized first name followed by a last name with a large, decorative flourish.

92-68

Julie M. Higa
187 Alohi Place
Pukalani, Maui, Hawaii 96768-8707
July 23, 1992

Mr. Bob Nakasone, Chairman and members
of the Maui County Charter Review Commission
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Mr. Nakasone and members of the Charter Review Commission:

Thank you for taking the time to hear my concerns regarding your proposed changes to the charter. I would like to add to the comments I made at your meeting of July 22, 1992:

1. **Article 8 - County Departments, item 12:** The proposed amendments by the Commission to section 8-5.4.1 should be changed and additional language be added to read as follows:

- "1. Hear and determine applications for variances from the strict application of [any general plan, zoning, subdivision or building ordinances] the standards contained in the comprehensive zoning ordinance, the subdivision ordinance, and the building code. The board shall hold a public hearing prior to ruling on a variance application and shall issue findings of fact and conclusions of law on decisions granting or denying variance applications. The board shall comply with the general plan and the community plan provisions of the county. The board shall not grant a variance which requests a use which does not conform with the applicable community plan designation for the subject property. Variances may be granted by the board of variances and appeals if the board finds that due to the particular physical surroundings, shape or topographical condition of the subject property, compliance to the standards would result in hardship to the owner which is not mere inconvenience or economic hardship on the applicant. The board shall grant a variance if the board finds the following:

- a. That there is an exceptional, unique or unusual physical or geographical condition existing on the subject property which is not generally prevalent in the neighborhood or surrounding area and the use sought to be authorized by the variance will not alter the essential character of the neighborhood;

- b. That strict compliance with the applicable provisions of the standards would prevent reasonable use of the subject property; and
- c. That the conditions creating a hardship were not the result of previous actions by the applicant."

Justification: Although title 19 was recently amended to incorporate the above three criteria, these provisions in the charter will leave no question that the board cannot vary policy. The City and County of Honolulu also has similar language in their charter.

2. Article 8 - County Departments, item #14: In addition to the comments I made, I would like to elaborate on the details involved in administering to more than one planning commission. Some examples of the problems entailed in administering to more than one commission and the resulting confusion and complexity of doing business in Maui County:

Currently, we have two separate rules and regulations for processing Shoreline Setback Variances, Special Management Area Use Permits, State Special Use Permits and Administrative Rules and Regulations for each commission. In addition, whenever, recommendations to amend provisions of the general plan, community plans and comprehensive zoning ordinance (CZO) are made each commission have separate recommendations and two ordinances for the same issue have to be prepared and submitted to council. The CZO provisions are also being affected where exceptions for one island are being made for the same land use, which leaves some question, in my mind, on its validity. The environmental assessment application process and procedures also differ. This could also conceivably apply to the subdivision ordinance, rules and regulations, and ultimately, to all other development permit and approvals which come before a planning commission.

The per capita cost and the financial cost to the county, to the development community, to the consumer and to the community should be reviewed and considered. Further, the NIMBY effect, nepotism and the conflict of interests considering the small size of each community, as well as, the fairly liberal ethics laws existing should be considered. In a small population with limited economic opportunities and land ownership potentials, the decisions made may not be in the best interest of the public or the county as a whole.

In addition, residents of all communities feel that their community is "unique" and have "special qualities". If uniqueness and "special qualities" are the only bases for which a planning commission can be established in a community, how could any other community be denied from having a planning commission of their own?

3. Approval of Charter Amendments by the Voters. Another matter which concerns me, is the issue of how amendments are approved by the voters. The charter seems to be silent on how amendments to the charter are approved. Section 14-2.3 seem to indicate that the majority of the voters voting would have to approve the charter amendment. However, in the last charter revision, a small minority of voters approved the amendment creating another planning commission. In Robert's Rules and in most organizations, amending charter and by-law provisions are taken very seriously and two-thirds votes are required to change the documents. It should be of similar or higher interests to the public and the county that amendments to the charter are not made by the minority. I recommend the following amendment be added:

"Section 14-2.4. No amendment or revisions of this charter shall be effective unless approved by a majority of the voters voting thereon."

This same language is included in the Charter of the City and County of Honolulu.

4. Article 8 - County Departments relating to qualifications:

As I stated I am opposed to eliminating any qualification requirements and would encourage the Commission to consider including more specific technical and educational qualifications for department heads and deputies, particularly for those departments where the tasks are legal/regulatory and/or related to public health and safety. In addition, it is not clear what the function of a budget officer/director is, the qualifications and requirement since it is not a charter requirement.

Another point, relating to the problems of the Board of Water Supply, is that in addition to specific technical and educational qualification requirements of the director and deputy, there should also be qualification requirements for boards and commissions. Minimum criteria of the composition of the water board or minimum qualifications of individual members (other than or including geographic residency) should be considered.

There should be a balance of technical, as well as, special interest representation. In addition, consideration should be made to include public officials such as the planning and the public works director as voting members of the board, particularly since planning, zoning and other infrastructure facilities are intricately tied to water facilities; representation(s) from the technical/scientific such as a hydrologist/hydrogeologist and/or geologist and engineer; consumer(s), who has no development or interest other than as a consumer; financial or fiscal; major water and/or land ownership interests; and environmental interests. The same qualification requirements should be considered for other boards and commissions.

5. Administration of land use ordinances and rules and regulations.

Another major concern is the manner in which land use ordinances are currently prepared by the Planning Commissions and Planning Department but administered by the Department of Public Works. According to Chapter 46 of the Hawaii Revised Statutes, the legislative body (Maui County Council) is authorized to create a planning commission to formulate a master plan providing for the future growth, development, and beautification of the county in its public and private buildings, streets, roads, grounds, and vacant lots; to formulate subdivision and zoning regulations; and to recommend the establishment of building zones.

Chapter 8-8.4 of the Maui County Charter authorizes the Planning Commission and the Planning Director to recommend revisions and prepare ordinances for the general plan, zoning and other proposed land use ordinances and amendments. At the same time, the charter (Chapter 8-5.3) directs the Director of Public Works to administer the subdivision and zoning ordinances and rules and to approve subdivision plans. Is this charter provision in conflict with Chapter 46, HRS? What about Chapter 205, HRS? What qualifies the Director of Public Works to administer the zoning and land use laws? There are major differences in interpretation of land use laws, and inconsistencies in application of the laws.

For example, the Molokai Highlands, Waikapu Sandalwood, Waikapu Valley Country Club and Kapalua Plantation Golf Course projects are all on State Agricultural designated lands, classified C, D, and E where golf course are a permitted use. In one case, the developer's contact was with the Planning Department and in the others with the Department of Public Works. One case was required to apply for a State Special Use Permit and others did not. More recent cases, include a commercial kennel permitted by the Director of Public Works without State special use permits, when all previous commercial kennels the county (including other counties) have required special use permits. There are also other similar cases.

Other than constitutional and civil rights legal issues, there are also the problem of the lack of consistency and the unfairness to the public and the landowner.

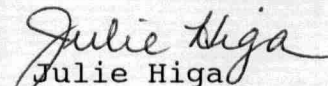
6. Section 3-5: Salary Commission. The salary commission duties should remain as it is. It seems that the original rationale for having a salary commission should be reviewed. It seems that it was to help elected officials to ensure that there is little appearance of a conflict of interest in regards to their own salaries and increases. The person or authority who hires and fires an individual should be permitted to set the salary of their own staff based on qualifications, responsibilities and need. In addition, the salary commission is an appointed citizens body. What qualifications are the members required to have. The decisions they make could also be highly political rather than

objective. Consideration should be given to requiring a portion of the commission to include personnel, labor, economic, fiscal, management type individuals, as well as citizen representation. In addition, the members terms should be staggered and should not run concurrently with the terms of the council members.

In closing, I hope that any amendment put on the ballot will have thorough statistical/technical/legal review and the public are made aware of the fiscal, legal and other consequences of the changes. For each amendment proposed, there should be brief "pro" and "con" or identification of the negative and positive consequences of each amendment. It surprises me that this has not been done yet. Further, any amendment which require major system changes, particularly where personnel changes and duties are involved, should require more realistic and longer transition time period than the minimum thirty days required by the charter.

Should you have any questions, please feel free to contact me.

Very truly yours,


Julie Higa

Council Chair
Howard S. Kihune

Council Vice-Chair
Patrick S. Kawano

Council Members
Vince G. Bagoyo, Jr.
Goro Hokama
Alice L. Lee
Rick Medina
Wayne K. Nishiki
Joe S. Tanaka
Leinaala Teruya Drummond



Gwen Y. Ohashi
Director of Council Services

RECEIVED

1992 JUL 30 PM 3:52

92-69

COUNTY COUNCIL
COUNTY OF MAUI
OFFICE OF THE MAYOR
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

July 30, 1992

Honorable Linda Crockett Lingle
Mayor, County of Maui
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

For transmittal to:

Linda Crockett Lingle
Mayor Date 7/31/92

Mr. Bob Nakasone, Chair
and Members of the Charter Commission
County of Maui
Wailuku, Hawaii 96793

Dear Chair Nakasone and Members:

SUBJECT: AUTHORIZATION FOR THE USE OF CHECKS
INSTEAD OF WARRANTS

According to the Acting Director of Finance, Wayne Fujita, the Charter Commission requested comments by the County's independent auditor, Deloitte & Touche, regarding a proposal to authorize the County to make payments by checks instead of warrants.

Because Deloitte is responsible to the Council rather than the Administration, Deloitte transmitted their comments in a letter addressed to the Office of Council Services. Deloitte's letter is attached hereto.

If I can be of any further help, please do not hesitate to contact me.

Yours truly,

Gwen Y. Ohashi
for HOWARD S. KIHUNE
Council Chair

124:k3:misc1:k

**Deloitte &
Touche**



Suite 1200
1132 Bishop Street
Honolulu, Hawaii 96813-2870

Telephone: (808) 543-0700
Facsimile: (808) 526-0225

July 28, 1992

Office of Council Services
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

RECEIVED
JUL 30 10 33 AM '92
OFFICE OF THE
COUNTY COUNCIL

Dear Sirs:

You have informed us that a proposed amendment to Section 8-4.3.7 (relating to the Director of Finance) has been submitted to the Charter Commission. Such proposed amendment would allow the Director of Finance to issue checks, in addition to warrants. You have asked for our opinion on this proposed amendment.

We believe that the issuing of checks by the Director of Finance is an acceptable alternative to the issuing of warrants, provided that sufficient internal controls are established over the operation of the checking accounts.

We would be pleased to assist the Administration in ensuring that the internal controls established over the checking accounts are sufficient and proper.

Yours truly,

Deloitte & Touche

**Deloitte Touche
Tohmatsu
International**

92-70

Opinion

Leave water board alone; members doing fine job without the politics

COMMENTARY
By JAMIE HUNTER

The Maui Charter Commission proposes to strip the Board of Water Supply of its autonomy. At present, the board is appointed by the mayor. This would not change. At present, the board has very real power. This would change, as the commission proposes to make the board's function 100 percent advisory. The director would be appointed by the mayor rather than by the board. Thus the mayor's power would be greatly enhanced and the board's power stripped.

Commissioners have explained their reason for this proposal: The water department has not adequately planned for the present crisis in water supply, especially Upcountry. Certainly it is true that growth Upcountry has outpaced water supply, but we must ask: Is this really the present board's fault? This board has existed less than four years and it has taken this time to get a grip on our problems and come up with a game plan to solve them. To start over would be a step backwards, not forward.

Upcountry water planning was neglected prior to 1988 when the board was non-autonomous. Thus the present board is being blamed for a problem it inherited, and the commission is proposing to return Maui to the structure that created the prob-

lem! I suggest we don't change horses in midstream.

The commission's proposal ignores a very important function of the present board. This board spends a large percentage of its time and energy listening to our citizens who need the board's approval for their unique situations regarding water supply. This is a quasi-judicial function properly served by an independent board with full power. If the board were made entirely advisory, the department would have to take over this function under direct political control. Political favoritism would rule in the absence of independent consideration. Furthermore, the most qualified and interested board members would be less interested in serving on a board with no real power since politicians would be able to ignore their decisions.

The present board performs this quasi-judicial function with great patience, skill and wisdom. These decisions seldom get much press, but they are very important to our citizens; for example, allowing a family who owns a piece of land to pass it on to their children.

I urge the commission to leave the Board of Water Supply and its department alone and allow them to get on with their important work on our behalf.

Jamie Hunter, a former law professor, is a resident of Olinda and owner of Mauka Water Co., a bottled-water company.

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Shink's venting their
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you conducted a poll.
Based on accounts in your publication "work on the budget" was nothing more than a petty fight with the mayor. The end result was a higher budget. And can you tell me exactly how many affordable units have been built as a result of her work?
I can't wait for your next unbiased analysis of the election.

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\$ Gulf: Maybe Win in the military

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Is this remarkable cultural experiment wise or foolish? Is it, over the long run, even possible? That depends on whether you see the armed forces as another equal opportunity employer, or as the public-works department or the fish and game commission, or an agency charged with the security of the country.
When The Washington Post suggested that these revelations would be discussed by the presidential commission studying the effects of assigning women to combat, certain feminists were enraged.

These feminists don't understand that women can't have it both ways. Men at war acting like men at war are the fleas that come with this particular dog. When Army Major Rhonda Cornum recently told the presidential commission how she was sexually abused as a prisoner of war in the Gulf War the impact was felt by everyone.

The president's commission asked a military historian from Israel to testify about the experience of women in the Israeli army. Women once fought with men, but not since Israel has become a nation. His government would never consider assigning women to combat units because they would undercut readiness and effectiveness.

"The very fact that this issue is being discussed (in the United States)," testified Dr. Martin Van Creveld, "shows that you don't really take the military seriously."

92-71

Fairfax A. Reilly
P. O. Box 49
Lanai City, HI 96763

Ms. Dolores Fabrao
Lana'i Representative
Maui County Charter Advisory Commission
P. O. Box
Lanai City, HI 96763

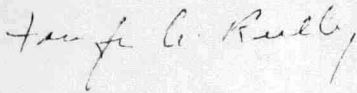
August 1, 1992

Dear Ms. Fabrao,

As a fourteen year resident of Lana'i I wish to support the creation of a Lana'i Planning Commission. Although Lana'i is a unique community as a result of the ownership by Dole Foods, Inc. of the majority of land, Lana'i residents whether company employees or residents employed by other businesses need to decide their destiny. I believe the creation of a Lana'i Planning Commission would more clearly identify accountability within the community.

The proposal should be presented to Maui County voters to decide in an informed and democratic process. In this way the costs and benefits may be openly discussed.

Cordially,



Fairfax A. Reilly

92-72

AUGUST 1, 1992

Box W, Lana'i City
Lana'i, Hi. 96763

Letter to the Maui County Charter Commission:

I am writing this letter in support of a Lana'i Planning Commission for our island. In the past five years we have had several permits given to Lana'i Co. for their developments, both at Koele and Manele, that we thought was not given enough consideration to our life style or to the water problems or to the social problem that might accrue.

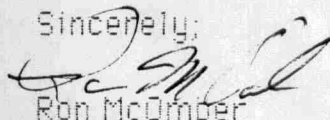
It is very frustrating for a small community like ours to have people from an other islands make all the decisions for us and we really don't have an in-put in that decision. If the developer had had to pass all of the items by this community, like it has to do with the Planning Commission, I believe this community would have been better informed. As it is now the developer knows he only has to talk to the County on these matters and not the people that should be a part of the process.

It may be almost to late for some of the community in-put to what is going to happen to our island but we still hope that we will be given that chance in what ever there is left after Mr. Murdock leaves.

This is such a big move for a small island but we have the people and the desire to be the masters of our lives not people that don't live here. I thought when Molokai got their own planning Commission that it was an unnecessary move but after dealing with Lana'i Co. for this many years I see why they made the move to home rule. We now ask you for that same chance that was given to Molokai. Please let the voters tell us if it is truly our right to be a party to what happens to our island.

Thanks again for all your hard work in all the matters that are before you we know that it is not an easy job. And we know that this is only one of several you'll have to make and we hope you decided in our favor.

Sincerely;


Ron McOmber

92-13

P.O. Box 374
Lana'i City, HI 96763
August 2, 1992

CHARTER COMMISSION
County of Maui
200 South High Street
Wailuku, HI 96793

Honorable Chairperson and Charter Commission Members:

Thank you for this opportunity to address you in writing. At this time, I would like to once again encourage you to include the proposal for a separate planning commission for the island of Lana'i in the 1992 Charter update.

As the immediate past president of Lanaians for Sensible Growth and a past member of the Lanai Advisory Committee to the Maui Planning Commission, I have experienced first hand the frustrations brought about by our inability to affect decisions which touch our lives. On several occasions, the recommendations of the Advisory Committee were overturned by the Planning Commission. We felt powerless. Likewise, after presenting telling evidence and strong testimony, we have watched while the developer was asked what he wanted. Decisions were then made in total accordance with the developers wishes. We, the community people, were left holding the bag.

For the above reasons, I strongly urge you to include a Lana'i Planning Commission in the items being presented by the Charter Commission for our consideration.

Thank you once again for your kind attention to this matter.

Sincerely,

Martha A. Evans
Martha A. Evans



Warren Orikasa

92-74

August 13, 1992

Mr. Robert Nakasone
Maui Charter Commission
200 S. High Street
Wailuku, Hawaii 96793

Dear Bob:

This letter is to strongly object to the recommendation to alter the community representation of the County Council based upon geographic parameters rather than population distribution.

Because the impact of such a change would be long term, you must consider carefully the projected growth for our community over the next decade. There already exists major residential projects that have been approved in Central Maui. This expanded population base would not be best served if the commission were to irresponsibly adopt the plan presently under consideration.

While the intent may initially appear practical, further examination will reveal the shortsightedness of such a decision. The population would not be fairly represented and this imbalance may lead to potentially devastating consequences. Other than for emotional reasons, there is no basis to alter our present representative basis.

Thank you for allowing me the opportunity to voice my position on this important topic.

Mahalo nui loa,

Warren Orikasa

P.O.Box 967
Wailuku, HI 96793
August 13, 1992

Please deliver to Bob Nakasone,
Charter Commission ASAP

92-75

Robert Nakasone, Chairperson
Maui County Charter Commission
County of Maui
Wailuku, HI 96793

Dear Mr. Nakasone:

I am writing to ask for the serious consideration of two issues by the Charter Commission before it makes its final recommendations. First, as a resident of Waikapu (south of Waiko Road), I strongly object to the main portion of our community being included in the South Maui district for County Council representation. While it may appear to be appropriate in terms of census information (which I also question as well), I do not believe it is in the best interests of the actual physical community. Our ties are with central Maui in terms of location. When one considers the major housing developments being implemented by C. Brewer and Maui Lani which will be immediately adjacent to Waikapu, these will have direct implications for Waikapu. In addition, Waikapu's needs should be considered when other planning and budgeting decisions are made for central Maui. We want to be represented by those who know us best.

I did raise this issue at the Waikapu Community Association meeting on Tuesday, August 11. Although no official association position was taken, many people did express their concern about the rationale both the state and now the County are taking in determining district boundaries. Please consider Al Spark's recommendation that Waikapu, physically as well as philosophically and fiscally, belong with the Wailuku-Waihee-Waiehu district.

Secondly, I would also like to express my objection to the deletion of one of the Central Maui district seats on the Council. Again, we should look at the fact that more than 6,000 new homes will be built in this area in the next few years. The population will burgeon; the infrastructure will be maximized in usage. On the other hand, there does not appear to be the same level of development in Hana, for example. Adequate and competent representation of this urban area which also encompasses the business and government centers of the County is critical.

Thank you very much for your consideration of my concerns. Although the general public has not responded en masse to the proposed recommendations of the Charter Commission, you should know that people-on-the-street are concerned and want positive decisions made which truly reflect their needs and desires.

Very truly yours,

Waillette Garcia Pellegrino

Waillette Garcia Pellegrino (life-long resident of Wku-Waikapu)

92-76

494 Melemele Street
Wailuku, Hawaii 96793
August 13, 1992

Mr. Robert Nakasone
Maui County Charter Commission
County of Maui
Wailuku, Hawaii 96793
FAX: 243-7686

Dear Mr. Nakasone:

As a life-long resident of Central Maui, I am writing to express my concerns about the possibility of reducing the Central Maui seats on the Maui County Council from three to two.

I believe Central Maui will continue to grow at a faster pace than other communities on Maui. For example, C. Brewer plans to build approximately 3,500 housing units and Maui Lani will contain 3,000 housing units. This substantial population increase in Central Maui certainly justifies the three-member representation on the County Council.

I would NOT like to see this item on the November ballot.

Sincerely,

Stephanie J Hall
Stephanie J. Hall

92-776
August 13, 1992

Mr. Robert Nakasone, Chairman
Members of the Maui Charter Commission
County of Maui
Wailuku, Maui Hawaii 96793

Subject: Proposed amendment to Article 10, Section 4 (d).

Dear Mr. Nakasone and Members,

Prior to my review of your draft report and listening to your comments of the issue described above, as the commercial goes, I thought you were on it.

But, now after speaking with Commissioner Wright and further study it seems the proposed amendment rips a gaping hole in the Ethics Code as it appears in our Charter. And I hope you will reconsider its wording. Your proposal deletes from the Code description of the very conflict that may cause a loss of trust and confidence in the integrity of government, necessary to determine specific conduct unethical. As the Code reads today, it is the act of representing private interests against the interest of the county, against the public interest, which triggers implementation of the provision.

The existing section seems based upon two premises: first the writers recognize in the Code that the office or position held by an individual carries with it power, and that this power influences the judgement of members of Boards etc. And, secondly, the Code recognizes that there exists a public interest which needs to be protected from private interest.

No elected official represents public interests, when they appear before a Board, because when you review the charter it becomes apparent that the public interest is expressed in law. It is the best judgement of many, not of one person. To say that the Mayor represents the public interest when she advocates for a private corporation before a Board is incorrect. Linda Lingle the citizen may express her support and her reasons for support. But, as Mayor she does not have the authority to define public interest.

By taking sides in public debate as an official of government, the fabric of the Code is ripped apart, because government is required to provide equal treatment, protection, opportunity, and elected officials are required to represent citizens equally. They must strike a balance between protection of a person's rights, and the promotion of citizen's interest. The public interest is vested in law.

I request that this commission retain the current language "Represent private interest in any action or proceeding against the interests of the county..." and add the phrase "as an officer or employee of the County". And delete the second part of the sentence.

Sincerely,

