

CHARTER COMMISSION
MEETING MINUTES
APRIL 9, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Sherrilee Dodson (Vice Chair)
Dolores Fabrao
Robert Nakasone (Chairman)
Victor Reyes
Allan Sparks
Jamie Woodburn
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)

EXCUSED

Annette Mondoy
Anne Takabuki
Deborah Wright

GUESTS

Takashi Domingo, Big Island Councilman

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 2:16 p.m.

II. COMMUNICATIONS

A. Takashi Domingo, Councilman, Big Island

Chair Nakasone: If there is no objection, the chair would like to defer the items on the agenda and go to item IV. We have Mr. Takashi Domingo from the Big Island, councilmember; one of the old timers. I thought we might kind of pick on his brains today as to what is happening on the Big Island, four years versus two, the question of districts, and the question of considering confirmation of department heads, and possibly the question of limited terms for the councilmembers.

Just give us a brief overview of what's happening on the Big Island and then pick on these points of...your ideas about them.

Domingo: Okay, thank you. I feel kind of flattered to have been asked to come before your commission to speak on this, and in a way I'm glad because it gives me an opportunity to give you folks some information that might really give you some guidance as to what kind of decisions you'll be making. And I say that because I sat, prior to being elected into office, I sat on the second Hawaii County Charter Commission at that time, and as you probably may know, we had three Charter Commissions until we adopted a Charter for Hawaii County. The time that I sat in the commission, one of the issues that were widely discussed and which generated a lot of interest among the people of the County, and especially different organizations from the community, what you might even call special interest groups, one of the widely spoken of issues was council representation. And, I guess because we had three Charter Commissions, the fact was at one time or another there were different suggestions -- council make up -- from the Charter Commissions, and apparently because of those differences in the council make up, the people of the island rejected the Charter. But I'm not saying that was the only issue that was in question, but it was one of the real important issues.

The third Charter Commission came up with an arrangement that we have now. It's a hybrid kind of situation. You have a councilmember representing the district, but each councilperson is elected on an at large basis, and that's what we have been working on for the past, in my case, for the past fifteen years. It will be sixteen years by the time my term is through.

As far as the council representation is concerned, I think I appreciate what you guys are going through. I know the kind of problem and the

Domingo: (Continued) kind of pressure, the kind of decisions that you make are often really hard and I know that there are special interest groups, so perhaps people in different geographical areas pushing for a certain type of make up of the council. We used to have that before and last year the very same scenario was repeated because our Charter Commission had their ten year review. And, what happened in the last election was that the people decided to rather than go four year term in at large basis, you see, at large basis, they all decided that we'd have nine council districts and two year terms. The present time the present council make up is six council districts and three at large; they can be from any part of the island. At the present time, and as in the past, the three at large council persons came from East Hawaii. And then we had, of course, one councilmen representing six geographical districts. And, as I indicated, everybody on the island voted for each councilperson; they had nine votes to cast.

You know, when we look at the council at large scenario, I think this is something we'll be coming to what you people are hearing now. It's a costly campaign for one thing, and it differs on each island. Our island is twice the size of all the islands put together. You can put Oahu in the district of Puna. For one thing, it's a costly campaign and for anyone deciding to run for office, you would need a huge campaign machine to conduct a successful campaign. And, what one would have to do because the island is so large, and you don't have a huge campaign machine, what you'd have to do is rely on the media -- radio, the news print, mailouts, of course, and probably television. And those are, perhaps, some of the drawbacks if you are thinking about an at large scenario. And what it would do, of course, is cost you a lot of time and money.

And, some of the complaints we've been hearing from other districts when they were considering a new change in the Charter was the fact that some of the drawbacks with the council at large was the fact that others from the outlying districts can choose your council person, and it's not truly only representative of the district where you come from. That's one of the issues that was spoken of. But, on the other hand, a voter has, as I indicated, on our island, nine votes and he has...and that voter has an opportunity to choose all nine council persons. And a voter in any district can call a council person, not necessarily from his or her district, and can talk to the individual and get a response. And a councilman will definitely feel obligated to respond with his constituency, whether the individual is from his own district or not.

Now, when we look at council representation from only one district, if you would weight the issues you know, it's not too expensive. It gives people, whoever wants to run, an opportunity to it because there's not much, as much cash outlay that's needed compared to running at large. And what that council representative would do is represent one-ninth of the population of the county's geographical district. Right now, from the next term, we will have nine council districts rather than six. So one council person per district, and those districts have been established based on the one man, one vote concept. And the third Charter Commission originally came with a hybrid situation -- one representation from each district but voted from the entire island, was merely to meet the one man, one vote concept required at that time.

But now, the people decided that they would want it to be that their vote would decide who their council representative would be. You know, it might be rightfully so because it's much easier for one person to run...they don't need as much exposure. You can be well known in your district and not known in the the other districts right now as it is, and still not be elected to office because others throughout other parts of the island really don't know the individual. And of course, you don't need media coverage, you don't need the wide recognition, because if people in that district know you that's all that's needed. And your

Domingo: (Continued) campaign...an individual wishing to run, his campaign can be geared to have a more personal kind of approach. And of course one of the most overriding factor is that there is more accountability by the person representing you in the district.

But I think one of the disadvantages, or one of the arguments that people often use as to why individual council districts are not good, is that individual would look at issues based on a real narrow perspective, and that there suddenly would be provincialism. There's not much concern for the other districts because your primary concern -- you're answerable to only people in your district.

Now those are the pros and cons that I'm sure you people have heard of. And it will be an argument that will always be brought up no matter where you talk about it, or who you talk about it. But being in the council for as long as I have, sixteen years, although for me it would seem that if I have to run from a district, I certainly endorse it. It's perfect; it's just perfect for me. You know I have the exposure, I'm known and I feel so confident that I can get the support, knowing that I would venture to say that I think it would be unwise to go from a district representation -- from an at large representation that we have to a district representation. And, let me tell you why.

I live across the island on the West side and right now I represent the entire population of the Big Island. I often get calls from people from Kona -- I'm the chairman of the planning committee -- and the way growth is taking place, often times people wish to input, wish to discuss with you personally the issues which we discuss in the committee. And I have a lot of concerns and phone calls expressed to me, and I try to respond to them; I drive over the island, meet with them, meet with any groups, and it doesn't necessarily have to be with West Hawaii, I mean it can be from the southern portion of the island. But the fact of the matter is that I feel obligated; they are my constituents, they vote me in.

And, what I'm seeing now... We haven't gone into district representation, but already on the council level, what I am witnessing is the fact that some of the council persons are looking at it from a real narrow perspective. And what is happening is their only concerned about their districts, you know -- what are we going to have for my district, I need something for my district, what the people in my district say -- and often times I have to say, "Look, we're not talking only about East Hawaii or West Hawaii; we're not talking about the district of Puna or North Kohala. What about the rest of the island?" We need to be concerned about the whole island and not only the districts that are well populated.

I come from Hamakua district; it's a rather large district but it's not as widely populated as other parts of the island. And, what I fear is when we go into this new kind of established council district, it will be difficult to make any decision on a rational basis, based on facts; and, I think what will happen is perhaps more based on emotions rather than facts. And, I think that's why fifteen, sixteen years ago the Charter Commission in its wisdom came with the so called hybrid at large organization of council.

Mr. Chairman, I would be very glad to respond to any kind of specific questions.

Chair Nakasone: Okay, we're open for questions.

Yonenaka: I was just going to ask you, on the two year and four year... Currently it's two year terms? And it used to be four year. What was the reasoning behind the switch?

Domingo: I really don't know. It could have been maybe public sentiments that's prevalent throughout the nation; you know, anti incumbent approach to everything. I can't really explain that. It might be because the issue at that time was

Domingo: (Continued) either/or, council districts or at large, and with four year terms. But, probably the people at that time felt if we are going to a district council then let's give them two years. And, I think if they had gone on an at large basis they would have probably gone on a four year basis. Because I think it depends on the geography of the whole island, it's so large, and campaigning on the Big Island, I tell you, it's taxing because of the size of the island itself and the time that's going to be spent. And, I think, at that time that the Charter Commission felt that a four year term would have been -- the Charter Commission of fifteen or sixteen years ago -- felt that in order to attract people who would be dedicated to the work, who would be qualified, would best be attracted to the position if a four year term were given.

Woodburn: It's not on the summary here, but was the issue of term limitations brought up and if so, what was the response?

Domingo: I was not privy to the discussions on the Charter Commission and I believe that perhaps the term limitations were not even brought up. What was really, I think, uppermost in their mind was to have a situation which provides more accountability. And it's simply because I think certain parts of the island felt that they were not getting a fair share of their real property tax dollars in return in the form of capital improvements. And, maybe that was a retaliation to that.

Just yesterday, a new individual announced for election and what he's saying is I'll bring home the bacon -- I'll definitely bring home more pork to the district. And that's the kinds of sentiments that are being expressed.

What I see is a danger here. We have nine council persons and it depends on perhaps the personalities, depends on the philosophy of the individual who's from whatever district they come from. If that person is not able to articulate his feelings properly and causes some dissention, and maybe it's because of some personality conflicts, I tell you the retaliation will be worse in that respect when a vote is needed for certain projects in that part of the island, in a district. So that's why I say provincialism will surely be rampant...it will be one of the highest concerns. It's not that I care for that district, if I don't care for the district I'll get what I can, but in doing it you're going to horse trade, and that's the name of the game. But, to what extent will one be able to do that -- to get something for your district? If the people is looking for accountability, it will show that no matter how hard an individual worked for that district, it will be hard for that individual to get anything if that individual is not able to articulate and get together with the rest of the council. That's the danger of it.

Dodson: Having served for sixteen years on your council, what are your personal feelings about limiting the terms?

Domingo: I think there's a good part and a bad part. I think, ideally, it would seem ideal, I would think, because you get a different point of view, new ideas, new approach to issues and probably what you would label a hard working individual. But at times, and if you don't have an individual who doesn't meet that criteria surely the electorate can replace that individual. But I think to put a mandate that a person serve for a number of years and just -- bang -- shut the door and he's out already; if you have somebody effective and somebody who can contribute a lot to government, and someone who the people can relate to and who has the highest confidence and respect, I'm sure you'd like that individual to stay in office. But if you have a mandate that after a two year term then he's out, you start from ground zero again.

Domingo: (Continued) I firmly believe any issues relative to that can be taken care of or addressed at the ballot box.

Sparks: Let's just assume something... If you decide to run again, you'll be elected by a district for a two year term. And let's say that happens and you're again planning committee chair, and people from another district, like Kona, have a lot of issues before the planning committee and they call you. Will you be less likely to go and meet with them than you are right now?

Domingo: Oh, yes, I would.

Sparks: You would.

Domingo: It's my responsibility.

Sparks: You would go and meet with them.

Domingo: I would go.

Sparks: Yeah, even though they don't elect you any longer. That's what I thought.

Domingo: I'd go. But, you know, there's a line that you draw on... The other day we had an issue on the council, and it was a general plan amendment. We had, previous to that meeting and in the past for a number of years, the people in that particular -- it's a houseslot subdivision, old time residents, and it's still general plan light industrial; but as people buying into the area, coming in for rezoning for light industrial, the old timers strongly oppose it. They always came to the council and said we don't want it, let us live in peace, let us die as we lived here all our years. They're in their old age already. So, we tried to then appease them and come up with a resolution to suggest that we general plan that into low density and that would be residential. And we had that for consideration, then we had the other side of the issues, you know the business people or people who bought into the area with an idea to develop light industrial use basis came and then... now they are coming upon us and complaining.

I got a phone call from this guy... You know, as politicians probably you realize we get irate phone calls, people call to us... I had a shouting match with him over the phone. And, the manner in which he spoke to me, I don't think you as a private individual, private businessman, would even care to speak to him, and would slam the phone. But what I did, in a nice way, I said look, I realize what you are saying, and this is something that we have decided for a number of years; it wasn't something that was slowly taken out from the closet and with any intent to just push it through. We had dialog from many sections of the business community and from the people who live there. But, I could care less...he's not going to vote for me. But, I think what makes a good politician is someone who can look at things positively, not from a narrow perspective, because the decisions we make concerns the whole island. And I think that anyone who looks at it differently, well people will later find that that person is not as effective in office as he should be.

Sparks: That relates to another question. How many decisions do you think that you are dealing with are really specific to a district? I can see where there's a land use issue that affects only one district, or a CIP project that affects only one district, but then there is a lot of other stuff that the council has to do, right?

Domingo: That's right.

Sparks: Some of the CIP projects, driveways and so forth, don't just affect the district in which the pavement goes in.

Domingo: No, not necessarily so.

Sparks: So, percentage-wise, how much of your policy making is susceptible to this district only narrow view?

Domingo: That's why I'm saying right now you know, I would prefer being in an at large council rather than a district, and it's because of the very reason you are saying. The decisions that we need to address covers the entire island. We need to have dialog with people in Kona and in all the districts, and I think that because the people in the other districts vote for us, that behooves us to listen. I think that's a real important point we need to consider.

Fabrao: Do I understand that you now on the district now, or are you going to vote for that this year?

Domingo: We are going to start campaigning to run from only the district.

Fabrao: So that's not in effect yet.

Domingo: No, that's not in effect yet.

Fabrao: So, you're still at large -- the nine...six and three.

Domingo: Still at large, but already what I see, I'm seeing signs of people acting or behaving as if they are from a district. And you know, government is not as it used to be before. Before you can just come from your district and you feel that you are covering it in taking care of the whole island needs. But today it's so wide, and with the growth and the kind of things we need to work with, it's over encompassing of the whole island. It's real important that you need to be in touch.

Yonenaka: Is this the first time it's going to be districting? True districts?

Domingo: Yeah. That's right.

Yonenaka: I was just wondering if it might be possible if, because it's the first time, everybody is just jockeying around, and it's just a normal thing that wouldn't normally happen. And, maybe later on -- because the state is districting, state legislature -- and I guess there is horse trading or whatever... I was just wondering if it's just a normal thing, a phase, that will happen.

Domingo: Perhaps. I think it's a phase that is happening. You know, one of the more vocal and strong push came from West Hawaii. They have one councilman from Kona, north and south Kona, and what they are saying, like I indicated, they are saying that they are not having their fair share. So, they strongly pushed for district representation. They are going to have two council districts there -- north and the south district will go from the south part of Kona all the way to Volcano, if you folks are familiar with the island, and then you have Kailua-Kona and mauka side; you have two council districts. And, they say look, we've been shortchanged.

Domingo: (Continued) And I tell my friends, if you guys think you're being shortchanged, wait til that council district comes along, it's going to be worse. If they had just waited, because demographics show the population there is really growing, and if they think that East Hawaii is getting all the attention, there will come a time when north and south Kona will be the controlling factor in how the council make up would be. Because we have three at large council districts right now, north and south Kohala is one council district, they have one councilman, but there are three at large. It will be in time to come that north and south Kohala, or West Hawaii, would be possibly having four councilpersons on there. But, you know, I think it's public hysteria and the reaction to things on a real harsh approach to it.

Fabrao: Just a comment. I guess I can see when you go true districting that when you have, like you said, the Kona side is going to be more populated and have more representation there and that kind of thing that they get into an agreement with another section that's populated, the less populated areas would have problems getting their requests through, their concerns addressed; much as we have here in Maui County.

Sparks: I'm curious. You've been in the council for a long time, so you've run a lot of campaigns throughout the entire island. When you're campaigning and others are campaigning, typically do they spend a lot of time out in those very low population areas?

Domingo: Oh, yes. Yes.

Sparks: They do? Percentage-wise how much time though? It just strikes me that it's not too logical to spend too much time where there's a few voters, when there's a lot of voters somewhere else.

Domingo: Yes, that's right, it doesn't. And, I was going to tell you honestly, we spend time in those less populated areas, but definitely you have to go where the voters are the most. I spend a lot of time in Hilo and in north and south Kohala, that's where the votes are.

Sparks: Just a commentary here, that's the argument about at large systems is that where the votes are are where all nine council people are really controlled, electorally, right? So even though you had required somebody from Kona, if they weren't doing well in Hilo or Kohala, or where ever the other area is that's so heavily populated, they weren't going to get elected. So where the massive votes are controls all nine seats, pretty much.

Domingo: Yes. But I think... But the fact of the matter is that that's why, I think, in its wisdom the third Charter Commission stipulated that you shall have one council person from each geographical area of the island. That offsets the question or the concern about the widely populated areas picking the councilmen...

Sparks: But still, the widely populated areas control the electoral fate, you know. Do you happen to know what the average population of the different at large residency districts were? Were they fairly similar in size, or were there some of them a lot smaller than others?

Domingo: At large?

Sparks: The one you are under now, yeah.

Domingo: Council districts...they were probably fairly in size.

Sparks: Fairly equal in size.

Domingo: Yeah, fairly equal in size. They tried to make it as...

Sparks: So there wasn't one residency area with just a few thousand and then some other areas where 15-16,000?

Domingo: No, no. I think the mandate was each geographical area should be of the same historical, cultural kind of background, and not be intermixed.

Sparks: And you can do that when you are not forced to make them exactly equal in size.

Domingo: You know, again, that's why making that decision would seem awfully difficult because surely the widely populated areas in the past have chosen the council representative from your district, but now with this new concept coming in it can also be...a detriment also, because with one council member from one district pitting against the majority of the other council in other districts, it's going to be adverse. And, it's for you gys to decide that, which is the most... which is the lesser of the two evils. I don't want to say evils, but I don't know how to describe it...

Sparks: There are downsides to all...

Domingo: Yeah, downsides to all; what I'm saying is that in the sixteen years that I've been in the council, I personally feel that this has worked in the best interest of the people. It's from my perception, it's how I look at my service to the community. And, perhaps if you talk to another council person you might have a different view, but in general, that's the way most of us feel about it. I think we've tried to make government as fair and equitable to our constituents, and I think that's what the people want, you know, to be heard and to be treated fairly.

Fabrao: So then, we have these feelings about already the negative things that's happening with the...before you even start districting...that there might be a possibility that you might want to work towards changing that, if it works more negatively. Because, you're going to start it this year... That's like asking a question that may not have an answer for right now.

Domingo: I guess what will need to happen is for the island to go through that experience that we've had during the past sixteen years, and they'll naturally find out that it may not be working.

Fabrao: Did you ask that question already, that population breakdown for the districting? Or you just broke it down...

Sparks: Well, the at large system that they're in now, they have residency districts like we do but they're fairly equal in population, he said they're not grossly...

Domingo: No, not grossly. They tried to maintain the historical boundaries in the past. Like Haumakua...like all the way from Waipio Valley up to the ranching town of Kamuela, and cover the sugar plantation communities up to a certain point.

Domingo: (Continued) You know, those are all common in historical, cultural kind of values that are the same representing one segment. I think why they did it on this hybrid situation is that then it addresses the concept of one man, one vote, because everybody votes for you. So, that's no problem.

Sparks: It's the same thing we've got here. A comment; when we were talking to a councilman with a fairly long experience who had been elected by a district on Oahu, he said that system works fine. I just wonder if people don't like what they are used to.

Domingo: Probably, probably, but I think it depends on the demographics also. That plays an important part of it. What might be good for Oahu, might not work right for the Big Island or Maui, because of the size and the way the communities are located.

Fabrao: I think I just wonder because even if Oahu has the greater number of people as compared to the other islands, then not all the people go out to vote so then maybe a lot of them don't care either way.

Sparks: Same here.

Chair Nakasone: Any further questions? I have some questions, Takashi. When you first got elected to the council, you were on the four year term, yeah?

Domingo: Yes.

Chair Nakasone: I know it's kind of unfair to ask you what would be the impact now that, the next election, you go back to two years. What would be the disadvantage of a member serving a two year term after they have been serving four years?

Domingo: You know, my comments might be construed to mean that I'm self-ish or self-serving... I was really frustrated when they made our council... Or, I appreciate the congressional delegation, house of **representatives** when they have to serve two years. You know, the moment you get elected you've got to think of campaigning for the next term. And more important, more important than that is the fact that any individual, let's say young, aspiring individual who really wants to come in and do something, who really wants to work out a program or do something that would be good for the populace; he comes in, he's a novice, he doesn't know the workings of the body, the rules, how its done, he has to go through a learning process. Give him two years, and that's not much time. And, on top of that, he has to know the people, and his colleagues has got to know him; he has to instill some kind of trust and confidence in himself so he'll get the necessary support that he needs to do what he wants to do. Giving him two years would be difficult. Before he gets off the ground, it will be time for reelection, and who knows whether he will be coming back again. Give him time to prove himself. Four years? It's good enough, and once...if he can't do it in four years, given the necessary provisions, then it would be fair to make that decision on him, but... I think let your turn in the ballot box decide whether that person should stay in or not, in more ways than one.

Chair Nakasone: I'd like to get away from this question on the council. Based on your guys current Charter, your department heads go through an appointment and confirmation process through the council, and your confirmation process is only when when a department head is hired or appointed, but as far as releasing the department head you don't need confirmation; so, it's just a one way confirmation.

Domingo: It's a one way.

Chair Nakasone: What are your feelings about this review by the council of department heads?

Domingo: For confirmation?

Chair Nakasone: Yeah.

Domingo: I think it's good, you know, because we work closely with administration and it's good to know the qualifications of that individual. I think more than that it's good to know what kind of individual is that person, and that opportunity is given us when we confirm him. We can ask him questions, and if we further need questions we can interrogate him on a private basis if we need to. But, I think it's important that you go through that process. Our corp counsel, who's the legal arm of the administration, also is supposed to advise the council. As I said, we need to know what his capabilities are and how well we think we can work with him. And giving that opportunity to interrogate him and to talk to him would give us some kind of semblance of what kind of individual he is. And, that goes for all the county department heads; because sitting on the council often times, and because county government is the lowest form of government to the people. If something happens in Honolulu, they don't call the guys in Honolulu, they pick up the nearest elected official regardless if it's a state -- even federal issue -- they call us, they complain to us. And, receiving those complaints, if it's a county issue...if we feel we have a qualified department head, someone who we had confirmed and spoken with, interrogated, we can go to the individual and talk to him.

I'm the planning chairman, I take real special care in finding out who our planning director would be for administration. We need to work closely hand in hand, because irregardless whether they are administration and we are council, there needs to be some kind of semblance of organization between administration and council so that it gives people confidence in this case the planning process and in the planning decisions we got to make. So it's important for me to know my planning director, and this is the time that we can do it.

Once, for us, he's appointed and he's confirmed we're stuck with him for the next four years, unless the mayor decides to release him or whatever.

Sparks: Can I follow up the same point? Have there been many cases where the council has refused to confirm an appointment, in your sixteen years?

Domingo: Yes.

Sparks: Has it been two or ten or what? Twenty? How many cases?

Domingo: Just two.

Sparks: Have you heard of situations where people were approached but didn't want to take on a job like that because they didn't want to go through council confirmation?

Domingo: No, I haven't heard that.

Cockett: Do I understand you to say that all of the appointments are confirmed by the council?

Domingo: Not all. The water engineer...the water department is a semi-autonomous body on the Big Island; the water commission makes the appointment. The police commission makes the appointment of the police chief, and the civil service director is appointed by the civil service commission, and the liquor board hires the manager for the department.

Cockett: Another question. Are there any appointees by the mayor that is not confirmed by the council?

Domingo: We have an office of housing and community development that the head is not confirmed.

Cockett: Is that the only one?

Domingo: That is the only one, I think, aside from the ones I mentioned.

Chair Nakasone: Any other questions?

Domingo: I think that individual is not confirmed because it's out of the mayor's office; it's not supposed to be a department in itself.

Chair Nakasone: There's no question that the Maui County Charter is a very strong mayor Charter, compared to there's a lot more check and balance with the Big Island Charter, which I think is similar to the County of Kauai Charter. I noticed in the Honolulu Charter they have, I think the managing director is not appointed in so many days, the council appoints the managing director. So, you can see where we are at compared to the other counties. But, I think something about confirmation by council of department heads has some merits, but I think we talked about this before...

Domingo: I think when you speak of accountability, that's one way of having accountability, too. In the eyes of the public if somebody in county government screws up, they're not going to say it's administration or council, they're just going to say it's county government, there's something wrong with the county government. So if we are going to be accused of that and be assumed that it's our responsibility, let's grab the bull by the horns and take that issue in hand and address that.

Reyes: This is a follow up question to one of the earlier ones. Your recollection, you said there was a couple of appointees who were not confirmed by the council. Can you recall what their reasons were or why the council did not approve the mayor's appointment?

Domingo: I think at that time there was a large scale change in the council, and I think the buzz word at that time was 'get the rascals out,' so at that time six of us got in, and that's the year Bob was elected to the council and that's when I got to know him, too. But, aside from that, six of us got in and it would have been interpreted to be these new guys are not part of the machine, or whatever, and we were trying to make a large scale in everything. And, it might be one of the issues was some kind of personality conflicts and ill advised, being ill advised by others, by the supporters of the new council people. And, during the hearing there had been a lot of people come in and speak of unfairness, and being treated unfairly, and this was one by chance was the planning director, and favoritism and his ineptness at doing certain things. And this is where, you know, the council had the power to decide whether those individuals were to be confirmed or not. I think it's real important

Domingo: (Continued) that that power be given to the council. That's my personal opinion; I'm not saying that you folks should do that but that's through the years of experience I've had.

Chair Nakasone: Any further questions? If not, thank you very much, Takashi.

Domingo: Thank you for having me. I appreciate it.

III. PUBLIC TESTIMONY

A. Jim Smith, Haiku (Individual)

Chair Nakasone: We have one gentleman here, Jim Smith, to testify. Would you identify the sections of the Charter you want to testify to?

Smith: Mr. Chairman, members of the Charter Commission, my name is Jim Smith and I am a resident of Haiku. And, I am here to express some concerns in an overview, as well as to request that you consider an amendment to our Article 10, the ethics chapter of the Charter.

I've prepared a statement which I'll read and then if there are any questions, I'll answer them.

[See Communication 92-28, with reference to the Mayor's State of the County Address, which are hereby attached and made a permanent part of these minutes.]

Chair Nakasone: Any questions from the members?

Cockett: What do you mean by empowerment? I may have a different thoughts about what I think empowerment becomes. In reading that article also, I looked at it from the point of view that... The message I got, she was empowering the voters, the citizens. Would you contrue that to be part of her message, or otherwise?

Smith: I don't think that you should consider the transfer of power...

Cockett: No, I'm talking empowerment, not power. Empowerment is a new buzzword on trusting the citizens, you know. This is the way I look at it.

Smith: It means what to you?

Cockett: Trusting the citizenship, the voters.

Smith: Trusting the citizenship? Oh, I don't... I think, of course, it's a political catch phrase. I don't think that it means the government trusts the citizens. I think that there are always citizens and the issue is to trust and have confidence in government. Government is not an outside entity, which in turn trusts you as an individual. The issue is reversed, I think.

Fabrao: I'm an American citizen, just as you are I think, Mr. Smith, and I believe that we, the people, are the government; that we elect officials that run our county. And, empowerment is that situation, that attitude, that thing that helps us to make our government work by giving our input, as you are doing right now. That's what empowerment is is to give you the opportunity, the power to say what you want, and it may or may not be listened to, but at least you... And that's my impression all these years of what government is; that we are the government, as well as being the governed, because we elect those officials to run our country. And it's always been that way for America, as far as I know.

Smith: I think one of the problems is that the power and the authority that we submit to is in law, it's not in individuals.

Fabrao: And, this is where empowerment comes in; that you make the systems go by... If you wanted to have something enacted upon then you lobby your congressman or your legislators, and those people, to do the will of the people. And so, if a greater majority of the people say we want this to happen, and if everybody approached their own legislators, that could happen because then it becomes law by voice of the people, which is the government, our government. And, I may be wrong... Am I wrong?

Chair Nakasone: Any further questions?

Smith: If I might respond to that; I think that people elect representatives, and they elect them because they believe that those individuals are wise, and that the decisions that they make in a group will be just. They will create just laws. People don't vote for laws; we're not ruled by consensus, we are ruled by fairness embodied in laws the councilmen create. So, one of the distortions that's come out of this political upheaval is the idea of consensus being the rule. The most people who say the same thing the most times prevail. I don't think that's our system. Our system is to elect representatives because we feel their skills as legislators will create laws that embody the authority; it will empower the law that we'll submit to. It's not empowering citizens. The mayor has the office of mayor; she has a great deal of power, or at least she thinks she does, but the real authority is in law. The mayor won't expend money for a budget 'cause she doesn't want to, but that is the law, that's the judgment -- expend the money. That's one of the problems with this Charter is the authority rests in the law, not any individual council person or the mayor. And we lose when that law is circumvented by anybody, in my opinion.

Fabrao: I will not argue that with you, but I do know that we as citizens are empowered, we are given the opportunity to make those things change if we want to, and that is what you are trying to do. And, I'm just trying to understand where you are coming from with this empowerment, because even when you talk about other things and empowering your employees to be better employees because you are giving them the opportunity to improve themselves and tell you what they need. And so I think... I am not a lawyer, like we have many lawyers on our Commission -- three lawyers on the Commission, or a big honcho businessman or anything like that, but that for me, if there's something in government that I don't like, I'll speak up like you're trying to do. And then... Laws are made by people, yes, because they are from our representation, they represent us, and so we're saying okay, go ahead and make those laws and if it's for the common good, then it should be passed and they usually are. I'm not saying any law that is not good is not going to be passed because that is not for the general good; because all of our laws the intent is for the general good. And even morally speaking, everything is for the general good. And so when they say empowerment, it's not a political catch phrase that says okay the mayor has all the power to say this and that. She is only given the power because we have given her that power to exercise that authority. And so she does it within her office, or within any administrator's office. Like Mr. Nakasone is the chair for this commission; we elected him as that body -- for the chairpersonship for this body -- so therefore we have empowered him to help us then to continue our work to review the Charter. That's what empowerment is; we empower each other when we give each other the opportunity to do that which is good for the general good.

Smith: Certainly that's a facet, but when I speak to you, I don't feel

Smith: (Continued) any sense of power. I just am presenting concerns to you. I think the power will eventually be in your product. That's where the authority is going to rest.

Fabrao: That's how you have empowered us to do...

Smith: And you were empowered by law, in the enactment of this commission. None of us have a great deal of strength, it's the decision and the wisdom that is in your ultimate work that I'm looking to for power.

Reyes: I have one more question. Will you please repeat your proposed amendment?

Smith: [See Communication 92-28] I did change one word. I inserted officer or agency. We're having a great problem in our council with the idea that consensus prevails, so that there are a lot of odd things happening. There's a request for exemption from churches to make roadway improvements that's before the council, that's passed on first reading. And this is the establishment of a total privileged class and the only logic seems to be there were more people speaking to the issue before the public works committee, than the substantive issue of abandoning the public hearing process through a variance proceeding that already grants variances for that same thing. So we're in a struggle right now on a daily basis with what we were just talking about; consensus versus embodiment of authority in laws, And for this speech to come out and seem to throw the weight and the idea that physical needs are all we are in business to meet, and that's scary.

Reyes: It seems to me in the two examples you cited, that you meant or you implied that the mayor is exercising extra authority in interpretation of the Charter. What I fail to see is how those two examples link to your proposed amendment to the Charter. What I'm trying to say then is, would you like to clarify what a temporary position is in the Charter, and in terms of the other example, would you like to clarify in the Charter who... There is a provision in the Charter the mayor can appoint individuals, but how far down it extends of course is not clear. By extension of course, when the mayor appoints a department head, that department head can appoint... It seems to me that by addressing those two questions where they belong rather than putting it in the ethics provision, you might solve the dilemma here. You understand I'm trying to clarify...

Smith: I understand. Why I presented these two examples was not to argue for their inclusion in the Charter. It was to demonstrate that the Charter isn't effective when it relates to this interpretation, this individually... I mean the mayor is going off of what she interprets, or fails to interpret, or doesn't want to interpret the meaning of the Charter. That is an expression of that deception... That relates to deception...

Reyes: You can say that the Charter is wonderful, we have a working system and it seems the mayor is trying to do something else. So, you're trying to solve that by you concluding the mayor has done an unfair decision, therefore, whoever is the mayor, penalize the mayor...

Smith: But on many occasions. These are two, but there are probably others, and I mentioned others. But the concern I address with this is the concept of unfairness as it relates to these partnerships, as it relates to her administration working with a particular developer who has an affordable housing project in an area where there is great concerns about rural identity versus density, and then

Smith: (Continued) losing before the planning commission because of the support in the preparation of information or in the streamlining of the process, losing materially in quality of life and confidence in government, because of the participation of and the decision of this administration to pursue interest with another interest or another party like myself.

Reyes: I'm trying to be a little bit more specific to address your concern, that's what I'm trying to do.

Smith: I appreciate that.

Reyes: And, I'm wondering whether or not your proposal is really going to have the desired effect by attaching those, because those amendments you're proposing are still subject to interpretations. And so what is fair and what is unfair...those are all in the purview of the courts I would say...

Smith: This would be in the purview of the ethics commission.

Reyes: Well, when you make a decision whether it's fair or unfair...

Smith: Well, this is a prohibition and it remains to be seen whether in fact it's been done. The method, the access to this process would be for the individual who feels aggrieved to have access through the ethics article.

Reyes: So the fact that we are not able to come to a common point here, is exactly the same effect that if we put this in the Charter, it would be all subject to different interpretation. I don't see whether it will improve or enhance the Charter to deal with that particular situation or not.

Smith: What point can't we come to agree on.

Reyes: We have a different... I'm interpreting your proposal differently already, that's what I'm trying to say, and I'm just one individual, I'm just one member of the Commission.

Smith: You're interpreting differently? I don't see where you are. I mean it's written in language that we both understand well. What you're questioning is use of the word unfair and where will it in effect be defined. And, it's spelled out in the Charter that Charter Commission will define... I mean in the ethics committee will define it when they rule if there's been a violation...

Reyes: You know before it goes to the ethics commission or board of ethics...

Smith: Board of ethics.

Reyes: Well anyway, the point I'm trying to say here is, you know, you did mention two examples and for some reason they struck me and maybe we should address those concerns more specifically rather than going to a proposed solution to a problem that was a result of a misinterpretation by the administration or exercising something that was not specific in the Charter.

Smith: That would be nice but that is not why I am here. I didn't come to address those specific issues; I came here with the simple request that the ethics

Smith: (Continued) prohibition paragraph d. be amended.

Chair Nakasone: Are you done, Victor?

Reyes: Okay, Mr. Chairman.

Chair Nakasone: Dolores?

Fabrao: Just one more -- a point of clarification. When you say the mayor has entered into these "agreements" with the developers, my understanding with government is that before they can really go through and work with a developer, they have to go through a bid process. And that then gives the mayor the authority to work with the person or the developers bid was accepted by whomever, and because to do otherwise would be in violation of the Charter itself.

Smith: It's not done that way when the government and the developers developing affordable housing, for example, a private developer. Say the owner of a restaurant wants to put employee housing up on a piece of land in Haiku. There's no bid process. The planning director decides if it meets the conditions...

Fabrao: Well, isn't it all right for anybody in government to inquire about these things?

Smith: That's quite all right, as long as there's no bias, as long as it's an objective approach for information...

Fabrao: So how do we know if there is a bias if there is no other example...

Smith: I'll show you an example and the planning department sponsored it. A change of zoning of two acres of ag land into fourteen lots, and the planning director -- speaking to the issue -- said since it was employee housing, it was in effect, ohana dwelling. And, there was a clause in the Haiku Community Plan that said that family subdivisions are okay, so in a way this is a family subdivision. And this was said to the planning commission.

Fabrao: You spoke of this issue the last time.

Smith: No, this is a separate issue.

Fabrao: Several times before when you came wasn't that about the lighting and...

Smith: No, that was a separate issue entirely. That was an issue that was further out. But, that was just an example of this partnership as it affects fairness, trust and confidence.

Fabrao: That's all for me, Mr. Chairman.

Chair Nakasone: Okay, any questions? If not, thank you very much, Mr. Smith. Okay, we're back to our agenda.

IV. APPROVAL OF MINUTES

Approval of the minutes of the March 12, 1992 Commission meeting were deferred to a later date.

V. COMMUNICATIONS

The following communications were received by the commission:

- 92-08 Committee Report No. 91-211 submitted by G. Hokama
- 92-09 2/18/92 Synopsis of Operations submitted by R. Kokubun
- 92-10 2/6/92 Letter from Maui County Board of Ethics
- 92-11 Recommended Amendment to Article 10 submitted by Board of Ethics
[NOTE: THIS WILL BE REPLACED WITH A FUTURE COMMUNICATION]
- 92-12 2/18/92 Copy of letter sent to B. Cayetano submitted by mayor
- 92-13 2/20/92 Testimony submitted by J. Smith
- 92-14 Proposed Amendment to Article 11 submitted by D. Yamamoto
- 92-15 Letter re: Salary Commission submitted by mayor
- 92-16 2/27/92 Testimony submitted by J. Smith
- 92-17 12/5/91 Committee B minutes submitted by J. Cockett
- 92-18 1/9/92 Committee B minutes submitted by J. Cockett
- 92-19 1/23/92 Committee B minutes submitted by J. Cockett
- 92-20 Informational materials submitted by A. Morgado
- 92-21 Proposed Amendment to Article 9 submitted by A. Lee
- 92-22 Proposed Amendment to Article 12 submitted by D. Yamamoto
- 92-23 Letter submitted by D. Evans
- 92-24 Letter submitted by M. Luuwai
- 92-25 12/5/91 Committee C minutes submitted by A. Takabuki
- 92-26 2/27/92 Committee C minutes submitted by A. Takabuki
- 92-27 3/29/92 Letter re: Townships submitted by S. Sykes
- 92-28 4/9/92 Testimony submitted by J. Smith
- 92-29 Recommended Amendments to Article 10 submitted by M. Luuwai
[NOTE: THIS REPLACES COMMUNICATION 92-11]
- 92-30 4/9/92 Memorandum re: Rules of the Charter Commission submitted by M. Luuwai
Rules of the Charter Commission submitted by R. Nakasone

VI. NEXT MEETING DATE

The next meeting of the Charter Commission will be April 23, 1992 at 2:00 p.m. in the Council Committee Room

VII. ADJOURNMENT

There being no further business, the meeting was adjourned at 3:53 p.m.

ACCEPTED:

Robert Nakasone, Chairman Date