

CHARTER COMMISSION
MEETING MINUTES
JULY 9, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Sherrilee Dodson (Vice Chair)
Dolores Fabrao
Annette Mondoy
Robert Nakasone (Chairman)
Victor Reyes
Jamie Woodburn
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)
Paul Mancini (Counsel)

EXCUSED

Allan Sparks

GUESTS

Dave DeLeon
Mark Adams (The Maui News)
Francis Cerizo, Land Use & Codes
David Craddick, Water Department

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 4:08 p.m.

II. PUBLIC TESTIMONY

None.

III. COMMUNICATIONS

The following Communications were accepted by the Commission:

- A. Communication 92-49 Letter dated 7/3/92 Re: request to make the Department of Water an executive department under the mayor and county council, submitted by Nona Bohannon, Kula resident.
- B. Communication 92-50 Cover letter dated 7/9/92 and draft Water Use and Development Plan for the County of Maui, submitted by David Craddick, Director, Dept. of Water Supply.

IV. COMMUNICATIONS

- A. Francis Cerizo, Land Use & Codes, responding to June 12, 1992 Charter Commission letter of inquiry re: changes concerning variances and appeals - Section 8-5.4.1.

Chair Nakasone: Charter Commission members were concerned about the proposal on the amendment...and we wanted some kind of reaction in regards to that proposal.

Cerizo: My response would be pretty much to your questions here on page two, second paragraph...you asked some questions as far as the number of codes appeals versus the variances from the building code. First of all, you had a question when you have a variance from the code with the board of code appeals, and a variance from the board of variance and appeals. The code appeals deals with the building code; strictly with the building code...and it's the uniform building code that regulates the construction of buildings. And, as far as variances...when there's a variance on the building code, it deals with just one section of the code, and that's the code that was recently added into the building code that deals with road improvements. In the past, the code appeal applications or appeals for the building code, we've had two in 1990, one in 1991

Cerizo: (Continued) and two in 1992. As far as variance applications to the building code...that deals only with the road improvements section...we've had about fifteen (15) in the past two years. Actually, it's eight in 1990, and six in 1991; we've had one this year so far. So, to delete that variance provision from the building code, it would affect a process that's used often.

Chair Nakasone: Questions from the members?

Mancini: Francis, the Charter talks about appeals from the building code, plumbing code, electrical code and the housing code; it says 'the council may by ordinance defer to another county agency the authority to hear appeals from decisions of the building officials and public works director.' If you read the ordinance that was drafted to implement this, although it talks in terms of appeals...it really seems to give the code of appeals the ability to vary...to grant the variance; as opposed to to sustain an appeal, someone would have to say...the public works director made a mistake.

Cerizo: Right.

Mancini: And, if you read the ordinance, the ordinance talks...well, it relates more in terms of varying the building code. You administer that though...those agencies, don't you?

Cerizo: Yes.

Mancini: Do you really use a different criteria in your analysis when you're looking at an appeals and when you're looking at a variance?

Cerizo: Yes; when we do a variance from the building code...there's no real variance criteria in the code itself; but, what we have done is that the code...the building code... that section of the code that deals with road improvements refers to Title 18 as the standards that is utilized to put road improvements in. And, based on that, there is a section in Title 18 that addresses variances, and we've been using the criteria of Title 18...which is the subdivision ordinance...for criteria that must be met in order to grant a variance.

Mancini: The Charter says 'in accordance with principles, conditions, procedures prescribed by the council, the board of variance and appeals shall grant variances... from general plan, subdivision, building ordinances.' It's unclear to me, but I assume the council passed an ordinance which sets up the criteria under which the variance can be granted.

Cerizo: They set the...for most of them, except for the building code; there's no criteria for the building code.

Mancini: Okay, there's none for the building code; the subdivision ordinance in itself has the criteria to grant the variance.

Cerizo: Right.

Mancini: The zoning ordinances has their own criteria.

Cerizo: Yes.

Mancini: And, I assume there's none for the general plan.

Cerizo: Well, I haven't seen any.

Mancini: I haven't either, so... And, I assume you've never received an application for a variance to the general plan; is that a correct assumption?

Cerizo: Yes; I can't recall one.

Mancini: So, if the Charter Commission deleted general plan under paragraph one here granting variances, you wouldn't see any problem with that, would you?

Cerizo: No.

Mancini: That's one thing that they voted already to consider. I think there had been general confusion since the Charter currently allows variances for building ordinances, and then seems to delegate appeals to another board; why bifurcate the responsibility? Why give a variance to the board of variance and appeals, and the appeal to the code of appeal? There may have been some logic when this was done, but it hasn't been clear thus far why that was done. You don't have any idea, do you?

Cerizo: Well, appeals is when you have an appeal from the building code, the code of appeals would be the more appropriate appeals board because their make up is more technical...they consist of architects and construction personnel, so they're more of the technical appeals board...versus board of variance and appeals, their background is more broad.

Mancini: The criteria in granting an appeal would be if there was an error in judgment in the interpretation of the code.

Cerizo: Right.

Mancini: The criteria for granting a variance would be unnecessary hardship in one form or another.

Cerizo: Or as noted in the different ordinances as far as the zoning and the subdivision ordinance, the criteria is set in those ordinances.

Mancini: The issue has come before the Charter Commission with regard to the old controversy...concerning the granting of variances concerning the interim zoning ordinance. And, I did my best to give my understanding how that came about; the understanding was for many years subdivisions were being processed in the interim zoning ordinance, which allows, I think, lots of 6,000 square feet...people subdividing it. At a certain point in time, corp counsel advised public works that subdivisions should not be permissible under the interim zoning ordinance; and at that time, public works stopped processing subdivisions. And, when public works stopped processing that, a series of both appeals and variances were brought before the board of variance and appeals; and individuals and applicants usually brought both saying "we believe this is a wrong decision, but was a decision consistent with the code -- we would like it varied -- because we'd like to subdivide our interim zoned land." And, there had been no moratorium set on subdividing interim zoned land, but it was an interpretation by corp counsel that whoever had interim zoned land must first change their zoning to conform to general plan before it was subdivided. So, all the subdivisions had a condition in them...before it would grant the subdivision...please change your zoning to conform to general plan. And, if your general

Mancini: (Continued) plan happened to be inconsistent with your residential zoning under interim, you couldn't do anything -- you were in Catch-22. And then, the next step was the council that passed an ordinance with the first public policy statement which said you can't subdivide interim zoned land; so when that happened, you stopped getting appeals.

Cerizo: Well, it didn't say that; it just says you can't get a variance if your zoning is inconsistent with the...you had to have appropriate zoning, and interim is not an appropriate zone...as a criteria of the variances...they indicated we would have to have the appropriate zoning for the proposed use. If you didn't have zoning, you couldn't subdivide.

Mancini: So, there's still no law that says you can't subdivide interim zoned land?

Cerizo: No.

Mancini: So what you're still working under is that corp counsel's opinion...

Cerizo: Correct.

Mancini: That basically said that you had to...

Cerizo: That your project had to become in conformance with the community plan.

Mancini: So you've been told that, and what the council did was they prescribed the conditions and procedures as they are authorized under the Charter 8-5.4., and said don't grant variances for interim zoned property...subdivisions.

Cerizo: They say that's one of the criteria...that your zoning had to be in conformance with the community plan.

Mancini: Well, did they pass an ordinance that dealt with the criteria for a variance, or did they pass an ordinance which conditioned your ability to get a subdivision?

Cerizo: They passed an ordinance that revised their criteria for the variance...obtaining variances, and in that criteria they added that condition that in order to be granted a subdivision variance, the zoning would have to be consistent with the community plan.

Wright: I'm sorry, but that doesn't make any sense; it says in order to get a variance, you already have to have the zoning. That's why you want a variance, because you don't have the zoning; I'm not understanding... It may be just that I don't understand how this works, but it sounds like you're saying in order to get a variance, you have to already have the zoning -- in which case, you wouldn't need the variance. I mean, it sounds like -- talk about a Catch-22 -- it sounds like in order to get what you want, you have to already have it. And so, I don't understand it, is all.

Cerizo: For example, if you wanted a variance from a...to reduce your road widening lot from ten feet...you want to go down to five feet only, as one of their criteria of the variance that parcel would have to be zoned, and the zoning would have to be consistent with the community plan.

Wright: Okay, so that's what you're talking about then, Paul; interim zoned could not...

Mancini: You can't grant a variance.

Wright: Then you could not grant a variance to interim.

Cerizo: Right; as soon as an application came in for a variance, and if you find out it's in an interim zoned area, that petition is actually returned.

Mancini: Well, I guess the situation is status quo with regard...you are not processing subdivisions within an interim zone.

Cerizo: What we would do... Yeah, we would deny the application; the application is denied and we inform the applicant that in order for you to process the subdivision, you would have to obtain a zoning that's consistent with the community plan.

Mancini: It used to be you put a condition when you processed it, and put the condition to change the community...change the zoning, which was difficult on people because they'd go through the entire subdivision process and it would be useless, because if they had to change the zone...all of the lot sizes would have to change.

Cerizo: It was a procedural change.

Chair Nakasone: Questions? Francis, you don't see any problems with the proposed amendment, as far as deleting the general plan and also deleting the building ordinance?

Cerizo: No, I...there may be a problem as far as the building ordinance, being that if that's removed, the section of the ordinance that deals with road improvements...they would not be able to get a variance from any...they would be able to get a variance from that portion of that requirement.

Chair Nakasone: Does it...as far as your appeals board on codes, you can't use that road improvements under that existing...

Cerizo: When you do an appeal, let's say you're questioning the judgment or the interpretation of the ordinance...and, it's pretty much black and white you have to do road improvements. There's no question...usually, there's no question...there has not been any appeals on how we interpret that ordinance...it's pretty straight forward. The variance is due to the criteria set in the subdivision ordinance, and usually that's because of geographical conditions and it would be an extreme or extraordinary hardship, and the other criteria...they feel they should have a variance. What happens is in those cases, you know, they will not have an opportunity to have a variance.

Chair Nakasone: If you look at the proposed amendment, you have provisions contained within any zoning or subdivision; wouldn't road improvements be a part of that concern about...under subdivisions?

Cerizo: When you look at the subdivision ordinance...well, the building portion would not...if you're saying that can you cover the building variance under subdivision ordinance...is that the question?

Chair Nakasone: Yes.

Cerizo: The building code somewhat stands alone; all it does is it refers to the subdivision ordinance as a standard...if refers to the subdivision ordinance for standards.

Cerizo: (Continued) The building code requires basically...if you put a new building on the property, you're required to put road improvements. And as far as the definition of road improvements, it refers to Title 18 of the Maui County Code for standards on how the road is to be built. Instead of listing all the road improvement requirements in the UBC, it made reference to Title 18.

Woodburn: Didn't our amendment leave the building ordinance in? No?

Fabrao: No, it was bracketed...to be excluded, plus general plan.

Woodburn: In this material it's still in there, right?

Mancini: In the one that was given to me it's still in there too.

Dodson: Didn't we defer action on everything until we heard from Francis?

Fabrao: Yes, it was to be clarified.

Mancini: The only thing that we did is we deleted general plan and we adopted corp counsel's language which said the provisions contained within any zoning, subdivision, building ordinances; as opposed to taking the language which is in the code right now. To hear and determine variances from the strict application of any general plan, zoning, subdivision or building ordinance... For some reason we couldn't figure out, they wanted to change it to provisions contained within any. If you recall, Allan was in favor of that and I asked him...when we do that, why are we making the change...and he didn't know.

Woodburn: So, that's inconsistent with what you're talking about, right?

Chair Nakasone: Yes, well I'm just looking at this communication that identifies deleting the building ordinance...it has a bracket.

Mancini: The administration's request was to delete it. And, we looked at the code and tried to figure out whether if we took it out...whether it was covered; and then, we couldn't determine whether there ever had been a variance, and we decided to write the letter to Francis and ask him whether there ever has been a variance. And, his response is that he has had variances...eight in 1990, six in 1991, and one in 1992. But, it's one singular provision, I think, and that's the same provision that we're having this church controversy over now.

Woodburn: Is the road...

Cerizo: Correct.

Mancini: Is the fact that if you're going to build a structure next to a government road, you shall basically put your utilities underground, do roadwidening...to curbs and gutters...sidewalks, which is very expensive. Curious...were these variances granted?

Cerizo: I would say most of them are granted.

Mancini: I would guess the department basically recommended denial on all of them.

Cerizo: Normally, yes. [LAUGHTER]

Woodburn: Wonderful!

Mancini: The reason why you'd recommend a denial is that economic hardship is not a criteria for a variance, correct?

Cerizo: Yes.

Mancini: And most of the issues are economic hardship.

Chair Nakasone: Any further questions?

Woodburn: I'm just a little confused; so we're...we want to leave it as is? As is proposed on page 24? Is that your recommendation, or is that our recommendation to you?

Mancini: I don't know what you want to do. [LAUGHTER] But, I think Francis answered our question...there are these variances, they have been processed, and they have been granted...

Woodburn: Above the department's recommendation.

Mancini: There is one correction question to Francis...the Charter talks in terms of building ordinances and building code. Is there really a difference?

Cerizo: No, they're the same.

Mancini: Because they use two different...under the variance section, it talks in terms of building ordinances; and on the appeals section, it talks in terms of building code. For the life of me, I don't know why they used the two terms.

Cerizo: Well, the codes also...when looking at building code, it also includes the electrical code...

Mancini: Well, it specifically talks in terms of appeals from the building code, plumbing code, electrical code, housing code, and the fire...theoretically... Do we have a fire code?

Cerizo: Yes.

Mancini: It doesn't say...and the fire code. And for variances, we don't have...we just have building ordinances -- which I assume includes the plumbing code, electrical code, housing code -- it's a broader concept.

Cerizo: Right.

Mancini: There's building ordinances...do you have variances for the plumbing code, electrical code, housing code?

Cerizo: I haven't seen any variances for those; it's usually appeals. Except for the road improvements, there's not that many variances on the plumbing and electrical. Or, none...evidently.

Mancini: Did we ask you the question for that answer? [LAUGHTER]

Chair Nakasone: Any other questions? What about this sign ordinance? Do you have a problem with that?

Cerizo: No, I have no problems with that.

Chair Nakasone: So actually, the one thing we're doing now is looking at deleting the provision of the general plan...

Cerizo: And adding the sign ordinance.

Chair Nakasone: Yes.

Mancini: Didn't they also ask a question...or the issue was raised as to whether the subdivision should be taken from public works and provided to planning?

Cerizo: Well, I'm not prepared to answer that question. We can have one prepared, but that's not something I can answer.

Cockett: That's in the letter here...do you want to comment on that? It's the fifth paragraph on page...

Cerizo: Yeah, that's...as Mr. Mancini indicated...that's the same question; I'm not prepared to answer that question on the...whether the subdivision and zoning ordinances should be transferred from public works to planning department.

Cockett: Do we need an answer on that, Mr. Chairman?

Dodson: Well, if he can't give it to us then...

Cockett: I mean he can't, but could we pursue it further? Or, should we?

Chair Nakasone: I thought you were going to have...well, we sent this letter to the public works director and the planning director. Maybe we could get a response from them... to this question.

Cockett: Whatever you recommend.

Chair Nakasone: David (DeLeon), would it be a problem if we could schedule something with the planning director and the public works director? This question of the...

DeLeon: I don't know if it would be a problem or not, but I can try and check.

Chair Nakasone: This question of land use and codes administration...whether it should be under planning or public works...

DeLeon: I'll try to get it.

Chair Nakasone: Okay, no further questions? Thank you, Francis.

DeLeon: For the record, both of those individuals have spoken to that issue, in their interview with the Commission. Remember Brian said that he didn't have a big desire to have extra work, but if that was your decision, he'd go along with it; and, I believe that George said that that would put too much power in one department -- a thumbnail sketch off the top of my head. Do you want to go into it one more time?

Chair Nakasone: Yes, one more time.

Woodburn: Bob, with respect to the June 12th letter...it looks like what we were requesting comment on, in terms of what our initial position was...deleting building ordinance, adding the sign ordinance...and what we've got in terms of proposed action on the part of the committee's a little bit different.

Dodson: We're going to go over this stuff later.

Woodburn: Okay...it can wait then.

Cockett: Make a note.

B. David Craddick, Director of the Department of Water Supply, responding to Communication 92-50.

Chair Nakasone: We have Dave from the Department of Water Supply here; you all received that Communication 92-50. And, he has the development plans here for the three islands -- you got ten more of these? [LAUGHTER]

Woodburn: He's saving a tree...

Craddick: We'll make copies for whoever wants to read through them. If anyone wants to read through them, we'll definitely get some copies.

Chair Nakasone: Okay, you want to go over this? Talk about this...

Craddick: Yeah, I would; I mostly came up here out of response to that article in the newspaper where the Commission felt that we didn't have a long range plan. And of course, the major plan we're working on right now is that East Maui plan...to develop wells out there. And corp counsel somehow convinced our board that that was not a plan, even though it clearly states on the thing that it is the East Maui development plan. But, be that as it may, I'm not a lawyer...and by the next board meeting, said that the state water use and development plan is the plan that meets the Charter Commission's requirements. I don't know if our board wholly embraces that view, but that was the view of the lawyer for the board...so, they did go along with it. That plan has been submitted to council; it is updated every two years. The first portion of the plan passed in 1990, included available sources in the county. This one here mainly details the present uses, and I would hope by the next two year update the community plans would all be updated, and we could actually come up with a plan that would meet the community plan. But, to try and come up with a plan right now while they're reviewing all the community plans...we didn't feel was very productive, other than including in all the things that we're presently doing...which are included in there.

And then the other thing that that article mentioned was there seemed to be some concern about upcountry water restrictions. The board never did vote on that. The reason why I brought it out was to bring a little more clearly in focus what was necessary if the board did not get out the assessment fee. I believe at this next board meeting here we'll see whether that assessment fee does come out, and I'm pretty sure it will be out for public hearing. Anyways, that's all I have to say there; we do have a plan and they are moving on it regardless of the pressure that they felt to not get that assessment fee out, because we feel with that, we would not need any restrictions anywhere on water use.

Chair Nakasone: Okay, questions from the members?

Reyes: Just clarification...you said you feel that you have a plan, which is that East Maui drilling and so forth, and you feel that's your plan; but then the corp counsel said it's not a plan according to the definition what the Charter wants. What the corp counsel kind of insisted was the state water development plan; now where does that state water development plan emanate? Does it emanate from the state or the commission under state format, or is it from the board of water...

Craddick: It comes in under Hawaii Revised Statute, but there is an ordinance in the county that also embraces that as being a plan that council has to approve. Myself, I feel that's a little bit too general to...myself, I feel when you have a plan such as East Maui...you develop that water. Whether that water went to upcountry or to central Maui, it could provide water to approximately two-thirds of our customers; I mean, that has a very far reaching effect. And, there's certainly no plan that is more far reaching that the board of water supply has done in say the last five years...and that's why I put it to our board to pass to council as our long range plan. And, after the board had actually voted on saying yes, they put it up for discussion and our corp counsel says no, this isn't a plan; and, to go into the legal reasons right now why he felt it wasn't...I think it was more an opinion, than a legal reason. But, I would think right here, this board...if a lawyer was sitting there and said the board should not do something, you probably wouldn't do it.

Woodburn: Do you feel that you'd be significantly or negatively impacted by the proposed requirement for the water department to function as an executive branch department of the county?

Craddick: You know, I can't say what will happen into the future; I know it has been negatively impacted while it was under the mayor...that's all I can say. And, the only thing other than that...assuming that that has happened in the past, I would presume that would happen in the future also. Each mayor, of course, is different.

Dodson: Are you...I get the feeling that...are you dissatisfied with this stuff as being your long term goal or your long term plan?

Craddick: It's not a matter of being dissatisfied; it doesn't give the detail that I think people want to look at in a plan.

Dodson: And nothing like what you're suggesting...a detailed plan...has been put forward?

Craddick: Well...I would say...okay, here's another thing, too. In '89, the board came up with what they felt was a twenty year plan; it was actually sent to council, and council disapproved it. It came coupled...this plan...with an assessment fee, and the council, rather than focusing on the assessment fee, focused on the plan and said well, we're spending too much money upcountry, we're not going to approve this. So, it killed it.

Dodson: So right now, there's not a plan in existence that you are satisfied...that is detailed enough to be termed a long term plan.

Craddick: You're talking about one plan for the whole county?

Dodson: I'm talking about any plan.

Craddick: Oh yeah, I feel that East Maui plan is very...definitely very comprehensive

Craddick: (Continued) of what we're going to do there.

Dodson: For the island of Maui.

Craddick: Well, for the central area.

Dodson: For the central Maui...

Craddick: Yeah.

Dodson: So that particular plan doesn't necessarily talk about water needs, let's say, upcountry or Kihei, or...

Craddick: Well, Kihei is central Maui.

Dodson: Oh, it is? We think of ourselves as South Maui.

Craddick: Well, in our system it's Central Maui.

Dodson: So, let's say it doesn't deal with upcountry though...the East Maui plan...

Craddick: Not per se, but there again, it's very easy to divert that water upcountry, provided you have some ability to pay for it. Right now, they don't pay for it, so there is no plan to send it upcountry right now.

Wright: I don't understand what you mean by they don't pay for it.

Craddick: There is no way to pay for improvements upcountry. The source of the money... now granted, we went through this, I think, before...that first block of money that we are getting...a major portion of it was state; and that's why I made the proposal to use that for drought emergencies. You know, it's not a constant source upcountry, but it could be used for backup because it wouldn't be being used full time. But, that East Maui plan is very definitely a comprehensive plan and would certainly be one that should have gone to council prior to having environmental impact statement on it, because environmental impact statement is costing us a lot of money that is not really necessary if people don't want to develop that water.

Dodson: This proposal to divert...you said it would be very easy to divert the source...

Craddick: Easy mechanically.

Dodson: Mechanically...to divert it to upcountry; is that part of the plan? Is that included in the text of it?

Craddick: Not presently.

Dodson: You're just saying that it could be incorporated...

Craddick: Yeah, it requires getting easements from A & B that are very hesitant about allowing a connection between the Central Maui system and upcountry, because of the way...let's see, how to put this...in diplomatic terms with the newspaper sitting here... They have a fear that water from upcountry will come into Central Maui; and, the agreement with EMI to use that water specifically says it's to be used...well, it says it's for the benefit of Maui...and to me, Central Maui is Maui. But, it goes on further, detailing it's

Craddick: (Continued) for the benefit of Maui, and more specifically, to the benefit of upcountry areas. And, they just have a fear that once that water starts coming down, there's no way to turn that off, if there is a physical connection there. Of course, their biggest fear is that it would go back under the mayor; they feel they can deal with the water department, but if it went under the mayor...then if it came to the condition of a moratorium in Central Maui, and you had a pipeline all in there ready to let the water come down, you know, who's to say they wouldn't just say 'well, open the valve' and let the water come? And, they have a real fear of that, and that's the only thing preventing it right now.

Dodson: So, as far as upcountry is concerned, besides this particular...especially this one on Maui...there is nothing else that talks about resolving the problems of upcountry? I haven't read this, so it's hard for me to...

Craddick: No, no...it does give suggestions for...

Dodson: This one?

Craddick: Yeah.

Dodson: Yes, but I'm saying besides this...

Craddick: Not besides that right now, no.

Dodson: Okay, and you say you're dissatisfied with this.

Craddick: I don't feel that that is what the Charter envisioned as being the plans... I mean, that didn't exist when the Charter put that provision in there, so how could it be what the Charter envisioned as being the plan?

Dodson: Are you satisfied with this addresses problems upcountry?

Craddick: Yeah, in the manner that they are addressed, yes.

Dodson: Okay, do you think it could be better addressed?

Craddick: Oh, yeah, definitely. But, we do have to have a consensus community wide, if water is wanted to go up country. And, that's what we're fighting right now; you've got people that don't want water going upcountry, you've got people that do want water going upcountry.

Woodburn: Don't you also have people upcountry saying there's enough water here, let's develop that resource?

Craddick: What's that?

Woodburn: Don't you also have people upcountry saying we've got a lot of water already up here, let's develop the resource?

Reyes: You mean down here.

Woodburn: No, I'm talking about up there.

Craddick: You're talking about if you put more reservoirs in? Yeah, you've still got to pay for those.

Wright: What you're saying is that right now what the board is going to do is revive the ohana assessment? Or, are they coming up with a different type of assessment? I don't understand what the plan was to come up with the capital...to possibly do those kinds of improvements, or if there was any plan.

Craddick: You're talking about the assessment fees?

Wright: I'm not sure I understand what you're talking about by assessment fees.

Craddick: Okay, assessment fees are used to pay for source development, transmission lines and storage.

Wright: And what's the determinative factor that they're saying would be the way they would determine an assessment now?

Craddick: It's based on the cost of the existing system, plus an increase for inflation.

Wright: Spread over every user?

Craddick: No.

Wright: How's it going to be...

Craddick: Charged to new users.

Wright: Okay, that's what I didn't understand when you were talking about the board coming out with something shortly...

Craddick: It's basically to charge new users for development of new carrying capacity of the system.

Wright: Have you all done predictions on how much you're going to be able to...if that were to be approved...how much you were going to collect, and when the improvements would be able to be begun, or anything like that?

Craddick: We expect to get about \$5.5 million a year.

Mancini: New assessments?

Craddick: Yes, if the assessment fee is put in.

Mancini: Upcountry?

Craddick: No, no...that's system wide.

Mancini: But most of that's going to be from Central Maui, correct?

Craddick: Actually, it's hard to predict what would happen upcountry...if they had water. I would imagine that place would develop way faster than Central Maui, if you gave them water.

Mancini: There's very few urban areas upcountry.

Craddick: Yeah, but there's quite a few rural and ag areas where you could build.

Mancini: Even rural areas that have not been developed are quite limited.

Wright: I don't know, I think you'd be surprised, Paul. There are a lot of people, if they could get a meter, would be up and running.

Craddick: We spend sixty percent of our board meetings telling people why they can't have water up there.

Mancini: Where in Kula is designated rural? There are a couple of pockets, but most of them have already been developed to its rural designations. I'm just trying to think of an area up there now that has...the biggest push is going to be up at the top of Kimo Drive, in that urbanized property up there -- that's already urbanized.

Woodburn: Maliko Gulch and all that property...from Kuau and Hookipa, and Maliko Gulch mauka...

Craddick: But that Hookipa coming this way is not on the upcountry system.

Woodburn: What about going the other way?

Craddick: Going the other way, that Haiku Hill development would use that upcountry water.

DeLeon: It's not using it now.

Craddick: Only because it's not built, and if it's built...when they start coming in for permits, that water will be coming from Kamaole Weir.

Fabrao: You mentioned earlier that the plans that you have here are not as detailed as you would like to have; is there anything preventing you from getting it as detailed as you would like?

Craddick: Well, like I say, we have that East Maui development plan that is very detailed, but for some reason, you know, corp counsel said that that's not what the council is supposed to be approving, so it never got sent.

Fabrao: Are you planning to...or is your department planning to write any more detailed things for upcountry, to include in these present documents?

Craddick: If the assessment fee comes in and we have some way to pay for improvements, there's no question that we'll have to come up with some way to service the demand.

Fabrao: I understand you do have some monies put away for development; is that true or not? You do have some monies...

Craddick: That we've collected in Central Maui and West Maui, yes. And also, corp counsel says that those cannot be used to develop in any areas other than where they were collected. And, that's another reason for wanting a county wide assessment fee that is equivalent, so that it all goes in one fund and you can divert the whole fund to the worst area.

Fabrao: You're talking in terms of the assessment fee being spread out over the whole county for the new users...not the present users...just new users?

Craddick: Right.

Fabrao: What would that mean in terms of dollars to a user? If you're planning to collect \$5.5 million a year?

Craddick: Okay, to go over the whole schedule is kind of tricky...I don't know if I could off the top of my head, but single family residence -- 5/8 meter -- is \$3350. Now of course, if the individual has to go and get that meter, that's very expensive; but if the contractor gets it, or the developer gets it, that's included in their mortgage over fifteen years or thirty years...and I hardly doubt that they'll notice it.

Fabrao: That's one blanket amount...\$3300?

Craddick: Right, yeah.

Woodburn: What is it now?

Craddick: In Central Maui it's...well, actually in Central Maui it does not include all three of those things -- source, transmission and storage; there is a source and storage fee of \$2700. In West Maui it's \$3400. Upcountry pays what they call a facilities reserve charge for the same meter of about...I think it's \$300.

Fabrao: Would the charges be different for a big development firm like A & B? How would they...

Craddick: Right now, it's based on the meter size; whatever meter they want, that's the fee they pay. If they need a bigger meter, they pay a larger fee.

Fabrao: No matter the amount of water they use, just the size of the meter?

Craddick: Right, but the more meters you have, the more water you're going to use.

Dodson: You said earlier that if you get this assessment passed, then you'll be able to make some plans for upcountry. How do you know what to assess, if you don't have any plans? Doesn't it make sense to get the plans so you know how much it's going to cost first, and then assess on that basis? I'm a little confused about why you're doing it the other way.

Craddick: Well, there's two ways of getting water there for upcountry; one, putting in bigger reservoirs and getting surface water, or developing ground water, or possibly desalinization plants. Okay, the East Maui plan takes Central Maui out to 2015 -- now, there's no reason why you couldn't develop more wells faster to include upcountry as well as Central Maui with those wells -- and it wouldn't cost any more to develop them. So, that plan...whether you send that water upcountry or to Central Maui...it doesn't cost any more to develop the source or put in the transmission line or the storage tanks.

Woodburn: But doesn't it cost more to pump water uphill....

Craddick: It does, but that doesn't come in an assessment fee; that comes in rates. And if there's a reason, you know, if upcountry...let's say enough people get up there and the rates have to go high enough...keeping in mind that Central Maui essentially supports upcountry as far as usage -- it's not because of the domestic users, it's because of the farm users. And, that's another issue altogether. As far as the domestic users,

Craddick: (Continued) now if you did have to pump more water up there, there's no reason why their rates couldn't be higher.

Dodson: You said the assessment then is just going to include that; the assessment is not going to have anything to do with developing like new reservoirs or anything upcountry?

Craddick: There's no present plan to do that. I, myself, feel that if reservoir or surface water is developed, it should probably go to farm use rather than domestic use because it costs us as much to treat and pump the water, as it does to pump it from a well. So, there's not much benefit in developing surface water for domestic use.

Dodson: So this assessment essentially will create more sources down here in Central Maui; it will be pumped upcountry so that upcountry will pay an assessment on top of higher rates?

Craddick: Well, if they want the water to go up there. I would imagine people in Central Maui would eventually not want to support them, if enough users get up there. See, that's part of the problem; why I say there's a group that doesn't want water to go up there, because it costs more to get it up there.

Dodson: But then, what happens to the people upcountry? It seems to me that the end result is going to be that the upcountry people are still going to be with no water...at the whim of Central Maui; that they'll be paying higher assessments, that they'll be paying higher rates for a certain amount of time, and in the end they may be cut off completely again. I mean, what's being done to solve the problem...not for Central Maui...but for upcountry?

Craddick: I don't know...I'm not quite sure what you're...I mean, why would water be cut off if they are paying for it upcountry?

Dodson: Well, you just said at some point the people in Central Maui are going to want to stop sending it up to upcountry.

Craddick: No, no...stop paying the differential between what it costs up there and what it costs down here.

Dodson: Okay, so the people upcountry are going to be ending up paying more...

Craddick: Higher rates. Yeah, maybe...

Dodson: Because the water is down here. Is there any plan to develop water up there?

Craddick: It wouldn't matter; if you develop water up there, it's still going to cost you the same amount to get it up to the higher elevation. And, I don't know if you're saying develop more surface water, and then when we have a drought, we have the restrictions... myself, I figure if the two systems are tied together, and you have a drought upcountry, then everybody's got to suffer because it's one system. And, it's a lot easier with everybody cutting back a little bit rather than trying to get upcountry to cut back a whole lot. You've got to keep in mind if we cut back on pumping Central Maui to where...even if we pump twenty-five or thirty million in Central Maui over the period of one or two months, it would not hurt the system over the span of one year. I don't know if that makes sense to you there, but you know, let's say you develop a bunch of wells out in East Maui...and most of that water is coming into Central Maui...and you're not pumping what you can, you could pump down here. Okay, and then a drought comes upcountry...you use that water to

Craddick: (Continued) solve the drought situation upcountry, and you over pump down here; meanwhile, you tell everybody to conserve on their water usage...that's one way of working it. But, as long as upcountry is on surface water, when a drought comes, I mean, we don't control the rain...I hope everybody here realizes that.

Mancini: I wanted to get back into the assessment fee. The Central Maui assessment fee... do you have any idea how much it's raised since it's been instituted?

Craddick: Oh boy, no.

Mancini: No idea?

Craddick: No, not right off the top of my head.

Mancini: My recollection is that when it was instituted, one of the primary reasons to institute it was that the source water from the Central Maui joint venture system was really on borrowed time; it was water that was technically owned by A & B, Brewer and Seibu. And, the county was borrowing that water from them and selling it to the customers. And then, nothing was happening to replace that borrowing; so, I think, in the late '70s a source assessment was developed...saying let's develop this money so we can go out and replace that water. So, I always felt that that pool of money that was being developed wasn't really going to be for new sources...but to develop sources so that that water could be paid back.

Craddick: Right.

Mancini: And, I always felt...really the ability to generate a lot of money in that source assessment was falling apart, because most of the major development in Central Maui had already taken place...you had the major hotels already under there, and development was going down rather than up. Now, assuming that some of those assumptions are true...it seems to me the source assessment is not going to be the major way to finance major capital improvements -- it's going to have to be bonds or grants-in-aid to be paid back through user rates for big capital improvements...because we're not going...hopefully, we're not going to have a lot of development in the future. Only if people develop can you hit them, and right now there's not a lot of big projects on the line to be developed. So, to say assessments is going to get us that big pool of money...maybe it is, but I just don't see the economics working out.

Craddick: Well, as far as that Central Maui thing...there's a lot...probably a lot more to that than we need to discuss right here, but the money that was generated from that... it was contemplated that forty million gallons could be developed here in Central Maui, and they contemplated developing it here at the cost of per thousand gallons...that it cost to develop in Central Maui...and of course, in East Maui it does cost more; no question about that. And so, we do have to develop...you know, generate more funds to pay for that. But, the assessment fee is not only for source, you've got to keep that in mind; it's source, transmission and storage.

Mancini: Right now, in Central Maui and West Maui you've got a source fee that the people pay based upon the units that they're developing...

Craddick: Source and storage.

Mancini: Storage is separate, isn't it? You pay \$1000 per unit for storage when you build a tank...

Craddick: Yeah.

Mancini: And upcountry you've got facility reserve, which is a bit different. I always understood the upcountry problem to be you've got two lines upcountry...an upper line and a lower line...and going from the lower line to the upper line had a limited capacity; you really can't pump a lot from one to the next. Is that still the situation?

Craddick: Well, we have the ability to pump twice what we use up there right now.

Mancini: You can move it from the lower line to the upper line...

Craddick: Yeah.

Mancini: I thought that was the limitation, because to get water to the lower line, you've got the East Maui system which, I think there's a right to take from that system?

Craddick: You're talking about Kamole? No, there's three sources of water up there... Upper Kula, Lower Kula and the Kamole Weir.

Mancini: The Kamole Weir is the major EMI one.

Craddick: Right.

Mancini: And you've got a right to take so much from that.

Craddick: Yeah.

Mancini: Isn't that correct?

Craddick: Right.

Mancini: But I always thought the problem was to get from that source...to get enough up to the upper line, which is limited.

Craddick: Well, like I say, we have the ability to deliver twice what's being used right now.

Mancini: To the upper line?

Craddick: Yeah.

Mancini: And that's both to domestic and agriculture?

Craddick: Well, it's only one line so it doesn't...

Mancini: So, it must be the problem of storing it then. If you can bring up through the line twice than what's used, it has to be a problem of storing it up there.

Craddick: Yeah, yeah.

Chair Nakasone: Okay. Say, Paul, you live at the 3,000 elevation...you don't pay less than the guy that lives at 5,000. [LAUGHTER]

Dodson: Move downcountry.

Chair Nakasone: Aside from responding to what you read in the papers, is there anything else you want to present to this Charter Commission?

Craddick: No, just...hope you don't turn the clock back. [LAUGHTER]

Reyes: Mr. Chairman, I'd like to pursue something... Let me retrace the lack of plan or the lack of implementation of a plan upcountry...you did mention that in the process of drafting the plan, the county council disapproved it because incorporated in that plan was to have an assessment fee. Is that correct?

Craddick: I don't know if it was as much that, as it was the \$70 million that the plan envisions spending up there; and, for the number of customers up there, you know, to spend I think...let's take just the upper line for instance...I believe it was somewhere around \$20 million for on the order of 1,000 customers -- the economics aren't there for that kind of cost.

Reyes: Okay, but what I'm trying to say is did the board and the department of water supply envision...and they wanted to do something, but somewhere along the line...because maybe it was not economical or for some other reason...it was not included in the plan, and therefore you withdrew from it and left it the way it is...

Craddick: I don't think anybody withdrew; the council didn't pass it.

Reyes: Yeah, well, the board or the department did not pursue it because there's no authority or mandate or blessing by the council to go ahead with it, and it hasn't been incorporated in the plan...because there's no way to finance it.

Craddick: Yeah, well there was a way to finance it there, but I don't think they liked the way it was being spent maybe; you know, it would just be conjecture on my part...but they didn't pass it. All I know was that it wasn't passed.

Reyes: Okay, well what I'm trying to get at here is we have an existing problem and that is what is causing this whole thing...the reaction of the Commission. There is a plan but it's not politically palatable...[LAUGHTER] So is that...I mean, I'm trying to get to the bottom of this. You can say it the way it is...that's all we need to know.

Craddick: Well, that's true...that's very true.

Reyes: Maybe it's not politically palatable...acceptable; why can't the board, let's say, come out to the public -- we have a plan and it's been voted down; or get something out there so the public will understand. The whole thing is we don't really understand what's happening. And, I believe that there's a plan, and it's just like there's not enough of public relations, I guess...or educational information available to the public... what's being done. And, if the council voted you down, or withdrew it because you did not push it...I think we have to know about it; I mean, did you consult the mayor or the executive branch? Did you ask their help on...

Craddick: Well, this happened even before the existing mayor...you know, so...I know I haven't rehashed that plan.

Reyes: I think what's happening is during all these hearings...aside from water... we hear that...we have some various proposal... You know, I'll go back again to why the district...true district and the at large came about... One proponent says by remaining

Reyes: (Continued) at large then it'll be a unified county concern, you know, problems will be addressed; and, the water is being singled out...the water upcountry is being singled out and the people upcountry are paying. Well, why can't we incorporate that in the same philosophy...the services, facilities to the county... It's like roads; roads in Kula are more expensive to fix than roads up here, because of the source...I mean, why can't we do that with water? Why can't the board do something about it? I think, that's what we're trying to get and we'd like to hear...and if it's being stumbled by some forces outside of the board, we need to know about it. And, you've got to be upfront about it; how much is it going to cost now to catch up with upcountry...I mean, the upcountry system catch up with the central system?

Craddick: Well, I'm still not quite sure what you mean by catch up...

Reyes: Well, catch up means...okay, right now people can't get water up there because there's no assessment fee, okay; you want to impose an assessment fee.

Craddick: Yeah.

Reyes: Okay, now if you can impose an assessment fee, how much do you need to get that thing going...so you can issue water meters?

Craddick: How much assessment fee, you mean?

Reyes: Yes.

Craddick: Well, the fee that we're proposing is what we feel we can do it with.

Reyes: But that would be county wide.

Craddick: Right.

Reyes: Okay.

Craddick: Because like I say, it doesn't cost any more to develop that water to send it upcountry than it does to send it to Central Maui; the operating cost, of course, is higher.

Mancini: It sort of begs the question...say you had all the money in the world that you want -- what would you do with it to bring the water upcountry?

Cockett: No assessment...just a lot of money.

Craddick: Nothing.

Mancini: Say money was not the issue...raising the money; what steps would be taken to bring water upcountry?

Craddick: Well, if you had all the money in the world, I guess you'd buy the Kamole Weir.

Mancini: And basically take EMI's water.

Craddick: Yeah.

Mancini: That's what you're saying; but we've just said...

Craddick: Put them out of business, and cut off their...

Mancini: But once you have EMI's water, it's a problem of storage, isn't it?

Craddick: No, not really...not any more, not for a long time.

Mancini: It's not a storage problem?

Craddick: Not if you had that whole facility there; I mean, it becomes a question of economics. You know, it's what the people are willing to pay to get the water.

Mancini: But you just said you've got the ability to bring to the upper line twice the amount that you can use...

Craddick: Right.

Mancini: So, I assume since we...when we have a drought, it's because we can't store that water up there; so it seems to me the next step is how do you store it. As you said earlier, the problem is that it's a ground water system that costs you more to treat it than it would be to pump up the ground water from down below up to Kula.

Craddick: Yeah.

Mancini: So, you've got the two systems going; you've got the run off system, which you'd have to store and treat, or you'd have to pump ground water system...and the cost associated with further ground water wells seems to be less than pumping it upcountry. But you'd still have to store upcountry...

Craddick: You still have to store, yeah.

Mancini: But, your choice was to take the Weir...which is ground water, which is inconsistent...

Craddick: That's surface water.

Mancini: Surface water...which is inconsistent with bringing upcountry the ground water which is technically less expensive. But, the ground water sources are limited until you develop all of East Maui sources, correct?

Craddick: Yeah, correct, yeah. But also, when you take surface water systems, you are subject to the weather; if it stops raining for a long period of time, you don't have it... so you've got to have some way to back up that surface water system.

Mancini: I guess my point was taking the Weir, it's not the end all drought...

Craddick: Well, they have enough water coming in on that thing that, you know, we could do quite a bit with that.

Reyes: But during a drought that would still be affected...you still need the ground water that you said...

Craddick: Yeah, certainly if we were using fifty million gallons upcountry, you know, a day upcountry and if the ditch went down to the twenties that it was now...you'd certainly need backup.

Chair Nakasone: If there's any other questions that's aside from the Kula water system...[LAUGHTER]...then you members from Kula can check with David later. But, I guess Dave wanted to respond to some of the statements that were made in previous meetings; so, if there's no other questions...I'd like to thank Dave for coming over.

[RECESS/RECONVENE]

Vice Chair Dodson: This meeting will come back to order. It's been suggested by the Chairman that the review of the proposed amendments that Paul gave us...that we all take this home, have a chance to review it, and at the next meeting we'll be in a better position to make suggestions and comments on it. And, everybody's expected...that next meeting will be extremely long as we go through all of it. And, I think, Paul, you had some comments too, before we...

C. Paul Mancini, Charter Commission Counsel, review of all proposed amendments

Mancini: I would like to meet with Anne and I guess Jimmy...you are the two other subcommittee members? That would be helpful to me in trying to get some of this intent down...I had to do a lot of guess work. And, reading the minutes of the committee reports didn't help too much to figure out the logic. What I tried to do...as you read through this...is go into the subject matter, explain some reasoning -- the logic behind the change -- and then draft the change, which you'll find here is indexed...

Let me just walk through it quickly...A through F is some background material which sets up the Commission's record, and Sue is going to help me put that together. And, that's going to give a background to somebody reading the document, and set your record which would be part of the report...which is all of your minutes, all of your public hearings, all your letters, et cetera...and your work plan.

Then what I started drafting was the substantive changes; and, the way I did it is I started to try to justify the change...in most cases I knew what the change was going to be -- in some cases, I wasn't even sure when I got to it what it was going to be. What I tried to do was the best I could...looking at your record and the limited meetings where I appeared...tried to come out with the rationale for the changes; and then, after coming up with the rationale, I created the amended section showing what it would be. So, like on page 4, you'll see the council section amended.

Now, to give you an example, I initially drafted this a bit different than it is here because I took some assumptions...and, I had the opportunity to speak with Al Sparks and he sort of destroyed a couple of my assumptions... [LAUGHTER] What you were intending to do re: basically...he gave me his assumptions as to what you intended to do. And, you can see he wanted all of these districts from census tracts -- I originally tried to do them in precincts...and a couple of the census tracts don't work, because they're not full census tracts...and, without going up there with a surveyor, I have not idea where it starts and ends.

[Staff: I did talk to Daryl, and he suggested a different way of identifying these also.]

Mancini: If I had some time, I'd like Daryl to go through this too; I'll give him... because he... I started out with precincts; Allan pushed me to census tracts; and then my feeling was not define anything...just to draft it the best I could in a short period of time. The logic, again, if you remember what you're doing...is you're taking that central district which is comprised of three council members, and you're biforcating that in Wailuku/Kahului and another one...and then you're taking away one of the at large seats. And, I was doing my best to try to create the logic of breaking that up; and the initial reasons I came up with were not Allan's reasons...so I tried to go back and draft

Mancini: (Continued) as best as I could Allan's reasons...from it, and I'm not quite sure that I still understand. But, we're going to have to do the best we can on that.

Some of the rest of the front section...terms of council members...is fairly simple; qualifications of council members...was fairly simple to draft. Salary Commission...whether I got the logic correctly or not, it was fairly simple to draft the amendment...and I had to just guess at the logic. Council voting procedures...I assumed that the council says this aye and nay procedure creates a problem, so I had to create the logic for that. The corporation counsel/prosecuting attorney section...that flowed pretty smoothly because we had talked about that -- I had done a memo on that. The term of the office of the mayor -- one of the major problems I had...it's not an important problem...it was to change the qualifications in the prosecuting attorney; for the life of me, I couldn't figure out one, why you wanted to take away the qualification...as I first read it, you didn't have to practice law for three years...then Allan told me it wasn't that, they just didn't have to practice in the state for three years. Then I said...why create a difference from the corporation counsel...you haven't changed the corporation counsel, so the corporation counsel has to practice three years in the state but the prosecuting attorney doesn't have to practice three years...and that didn't make too much sense to me. And then I said...well, I suppose the logic is that you can go to outside this jurisdiction, but if you haven't passed the bar you can't practice here anyway, so I played with that the best that I could -- and you can see what I did with that.

The finance director...the warrants -- I couldn't understand what we were doing there...actually I xeroxed the legal definition of warrants...and I couldn't understand what problem we were trying to fix there, to be truthful...

Fabrao: That was so they could issue checks and warrants.

Dodson: We'll get into that one...

Mancini: I'm not sure that we really issue warrants now to begin with... We do? Well, we ought to just delete the warrants.

Fabrao: They said they want warrants until the whole system gets changed.

Mancini: Okay, well it was easy to draft but I didn't understand it. Renaming Human Concerns and Public Works...I guess the Board of Variance and Appeals...a simple change except I still don't understand what we're doing with this section...

Fire control...hazardous materials...I had no background to that, so I just did guesswork as to why we were doing that. Lanai Planning Commission was easy to do -- whether I got the logic for that correct, is another question. Department of Water Supply...this was a feat...to try to come up with the collective logic behind that.
[LAUGHTER]

Woodburn: Well, wasn't it really clarified today for you? [LAUGHTER]

Mancini: You will enjoy reading that...it will be a continuation of the mystery. The drafting was easy, but the logic... Financial procedures...I had problems here and there... some of it was a little easier than I thought it would be. The only problem I had was this authorization for the mayor and council to initiate changes to the legislative and executive budgets -- was the intent to have them only initiate within their own budgets?

Takabuki: Right.

Mancini: So the council couldn't affect the mayor's? Okay, that was a bit unclear to me;

Mancini: (Continued) that's the way I drafted the logic of it, but I may have to do some redrafting...that was unclear...

Dodson: I think it will help too to meet with Anne...

Mancini: Quarterly estimates...when I finally got down to drafting it, I thought it was a lot easier than I thought it would be. Changes and transfers of appropriations...I wasn't quite sure that I got the logic...

You can see at the end of the package, I put all of the changes as separate documents so you can read those separately without looking at the narrative. Where I really got into difficulty was with this...ethics section.

Dodson: Well, I think meeting with Anne will help you a little.

Mancini: Maybe if I could do that, because...especially (number) four...I assumed the problem had to do with the section that says represents no officer or employee...

Takabuki: Right.

Mancini: I assumed the Charter defines officer as all board and commission members, and that's why I couldn't understand why we were going through this procedure that you define everything apropos to them...I thought it did already. Represent private interest in an action or proceeding against the interest of the county...well, I never understood the first section...against the interest of the county; if you were for the interest of the county... But, it seems to me the second section is all encompassing...that you can't appear on behalf of a private interest before any agency -- so, whether you're for or against -- as long as they're private interest...they couldn't do it. Now, it seems to me there was an intent to change that somehow...

Takabuki: Right.

Mancini: And, it seems to me the intent was to say you couldn't do it in front of your own agency.

Takabuki: That was part of it; the other part was to allow people who represent nonprofits to be able to go before different agencies. Right now the way it's read is that as long as you are say even on this board...we can't appear for private interest before another board or commission.

Mancini: The board that has the biggest problem with this...and I haven't been close to this for a long time, but in my brief analysis...is Urban Design Review Board; it's made up of professionals throughout the county, and there's no way those professionals don't have projects which come before that board itself from time to time...because you've got engineers, you've got architects, you've got landscape architects...and even the proposed situations wouldn't allow any of those professionals on that board...or even this code appeals board that Francis was talking about...to process their applications; they would have to resign. Now, when I was corp counsel, this was ten or fifteen years ago, we did an opinion and we tried to shape the opinion in a way that those boards could still function... and still adhere to this. This was fifteen years ago so I can't remember what it was, but even with this change...the board that's most difficult with that, I think would still have the problem.

Takabuki: They would still have the problem; it was only really to help those who are

Takabuki: (Continued) representing nonprofit types; that's what they identified as the concern.

Mancini: So, you're doing that by saying a private interest...because if you represent... If I go and represent the Cameron Center before one of these agencies, and they say okay we want you to process this application...I can do it as long as I don't get paid. That's right. Strange criteria. [LAUGHTER]

Takabuki: How else can you suggest to do it? I think they identified the problem; I'm not sure how we'd draft to go about it.

Mancini: I'd focus in on this Urban Design Review Board because, it seems to me, that represents a broader problem; and, the board is a fairly important board...you want these professionals to be there... I'd have to go back and look at that opinion that was drafted a long time ago...but we tried to provide so that board could still function. And, under this provision which I think is a carryover from old Charters...it really couldn't function. But, we can talk about it when we get together.

Dodson: Okay, so you want to meet with both Jim and Anne?

Mancini: What I'll do...I was going to have my secretary maybe contact you and set up a time for a collective meeting... Let me call both of you tomorrow; I'll get you both on the phone and we'll talk collectively.

V. NEXT MEETING DATE

Vice Chair Dodson reminded members that the next meeting would be Thursday, July 16, 1992 at 4:00 p.m. in the Council Committee Room, and that it would be a long meeting.

VI. ADJOURNMENT

There being no further business, Vice Chair Dodson adjourned the meeting at 5:40 p.m.

ACCEPTED:

Robert Nakasone, Chairman

Date