

To: County of Hawaii Charter Commission

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Date: December 18, 2009

Re: Comments **IN SUPPORT OF CHARTER AMENDMENT #25 (Re: CDPAction Committee)**

In the 2006 case of Leslie v. Hawaii County Board of Appeals and Planning Department, the Hawaii Court of Appeals took the County of Hawaii to task for giving short-shift to public input on development applications. In that case the Supreme Court found against the Planning Department and the Board of Appeals for reading the word “shall” in the Subdivision Code as a discretionary requirement and not a mandatory requirement. The provision in question concerned whether the Planning Department must require developers provide information about any proposed development improvements. In rejecting the County’s “its an unnecessary waste of effort” argument, the Court reflected upon the following exchange from the deposition of the Planning Director:

*Q: Do you find that the public can help you and your Department make better decisions by providing information to the Department?*

*A [by Chris Yuen]: Very often that true. In some cases though, there is, there is not a statutory means to implement what people might want.*

*Q: If the public had more information, could it then provide better information to the Department making its decisions.?*

*A [by Chris Yuen]: I think generally, yes. [109 Haw. 384, 126 P. 3d 1071, at 1081]*

In that case the attorney representing the County was BJ Leithead-Todd, the current Planning Director. Following this decision in the Leslie case, the Planning Director Yuen responded by asking the County Council to immediately delete the subdivision code provision requiring that the subject information be required in the development application. At the Council hearing on that proposed Code revision, the Planning Director promised to shortly follow-up with other amendments to the code including concerning issues relating to public input and participation. Despite that promise, the Planning Department never proposed any follow-up rules relating to public input and participation.

This same pattern of ignoring public input is still happening. For example, pursuant to the Waimea Design Plan, the Planning Department has allowed for community input in certain circumstances. In the case of the two recent significant developments, one a rezoning and the other an amendment to a use permit, the community comments were either misplaced or ignored by the Planning Commission.

So now to turn back to the question before you, first you must ask yourselves if is important for the public to be informed about proposed developments within the District, and be able to comment on those proposed developments. Next you should ask yourselves – should that information be considered by these CDP action committees at the time the development is being considered (when comments could be acted upon) or only subsequent to the development already having been approved.

In sum, the question here is: do you agree that “in-time” availability of information is important – as did the Court in Leslie, or do you agree with the Planning Director’s assessment that routinely providing information about development proposals to community committees is not worth the effort.

Currently the Planning Department sends to various agencies copies of the relevant information about proposed subdivisions, Planted unit developments, use permits, plan approvals, and zoning application too various County agencies. This requirement would add one more entity to that mailing list. The CDP action committee or other entity could then respond within the same time constraints as given to all the committees. No timely response, no consideration of the community’s input is needed. I don’t think this effort should be overblown in scope. However if there is a problem with doing so, a system of community volunteers to help with the paperwork would be possible.

Let me add that in Honolulu, it is standard procedure for the City Planner to ask the developer whether the appropriate Neighborhood committee has received a copy of what is being proposed, and what the concerns, questions, or responses have been.

In the context of a recent similar debate, one developer raised the question, isn't it in developers and the Planning Department's enlightened self interest to hash out the issues, before the application is presented to the Planning Commission, so that controversial issues can be considered at the appropriate time and forum. The Action Committees should, as Nancy Pissichio once pointed out, be looked at as an important District level or regional level resource. **Lurge you to vote in favor of Charter Amendment #25.**