

**LANA'I PLANNING COMMISSION
REGULAR MEETING
NOVEMBER 16, 2016**

APPROVED 02-15-2017

A. CALL TO ORDER

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair Kelli Gima at approximately 5:30 p.m., Wednesday, November 16, 2016, in the Lana'i Senior Center, Lana'i City, Hawaii.

A quorum of the Commission was present (See Record of Attendance).

Ms. Kelli Gima: We're going to go ahead and get started. Good evening everyone. It is the November 16th, 2016 Lanai Planning Commission meeting. We are going to start off with welcoming our new member, and that is Ms. Caron Green. Would you like to introduce yourself or say something about yourself to the audience?

B. INTRODUCTION OF NEW MEMBER – CARON GREEN

Ms. Caron Green: Hello. I think many of you know me already, but I'm Caron Green. And my husband, David and I moved here 10 years ago. We first came to Lanai in 2001 and I immediately fell in love with the island. And then when we decided that we were retiring in 2004 we came, look at Oahu, we looked at Maui, and then we came to Lanai and it was just no competition. So we bought a lot, and then, oh my goodness, we figured who's going to build our house? So that ended up being a real challenge, but we're thrilled to be here, and I'm very honored to be able to sit on this Commission.

C. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Ms. Gima: Thank you Caron, and again welcome. Next, we're going to move along to public testimony. Has anybody signed up to provide testimony? Okay, Ron, we'll start with you.

Mr. Ron McOmbler: My name is Ron McOmbler, resident of Lanai. I'm a little disappointed. Obviously the planning commission is not drawing the crowds that we just had at the bowling alley. This is shameful. Why is this any different than having paid 60 people to come over there and testify? Or not even testify, give their written testify -- their written agenda items on water use. There's nothing on here. I don't see Lynn McCrory here. It must not be very important for you folks. I'm really disappointed that the company did what they did at the bowling alley. It was a show of force. They paid their employees to be there.

It's, to me, it's sad to see this. We should have people come here and, and find out what the Lanai Planning Commission is made of and what they're supposed to be doing here. I don't see anybody here except the ones that really care. So what -- I guess I'll close this out by just saying that I'm disappointed. Obviously it's not very important or Lynn McCrory would be here, and, and egging people to come in here and testify on whatever she might want to testify for. So it's getting to be a joke on Lanai and political football, and it's got to stop. Thank you.

Ms. Gima: Thank you. Anyone else wishing to provide -- Gabe? Come on up.

Mr. Gabe Johnson: Aloha, my name is Gabe Johnson, a resident of Lanai, for 12 years. I'm a Pulama employee. I'm just going to piggy back off of what Ron had said, and I -- he's right, I got paid to go there. Lynn McCrory came to our...our...our office and said -- and prepped up on the debate of what was, and they said if you can make it come on in and, come on in and testify, you'll be on company time. And we heard one side of the story which was Pulama's -- LWAC was never invited to come and discuss their side of the story. Or I'm sorry, not LWAC, Sustainable Growth. Sustainable Growth was not there to discuss their side of their story, and we weren't allowed to talk to LWAC or any, any other entities besides that. We just heard one side of the story and they offered us to come in and testify on it. So they, they also -- they also said you're entitled to your opinions so you don't have to hear the company's side or say what the company's advocating for so I went on and I testified my own opinion. So that's just what I'm piggy backing up on what Ron said.

This is what -- I wanted to testify on something related in a different issue in regards to last month's where we didn't make quorum in regards to the...the community plan. The Lanai Community Plan and the way we --. It seems that the Mayor is kind of taking away the power of the community plans and I'm against that as a, as a member of the community and a member of watching all of you guys hard work through the years, and I think we should strengthen the community instead of weaken them. I don't think that the -- I don't think that we should take zoning laws and put them above our community plans, so that's the, the nitty-gritty of it. That's the thing, my number one concern was that the community plans should be, should be the end of -- should have the final say on what goes down in our communities. So I think the whole little tweak where they made the zoning laws more powerful than the community plans, I'm against it, and I just wanted to voice my opinion on that.

The last thing I wanted to say was...I want to go to these meetings. And just like what Ron was saying, there's hardly anybody ever goes to these meetings. And it's, it's kind of sad because this is the one chance where we get to voice our opinions. And I think a lot of it, yeah, it's on, you know, Joe, Joe Schmo or whoever who's, you know, too busy working, whatever. But it's also on us, the people, who sit in the committees, and you know, the people in power, you should go out and tell all your friends to come out here. I know that they're -- sometimes they're posted in our places, like, you know, come on down, there's a

meeting tonight, you know, you guys post them once a while and I appreciate that. But I was just down at Manele and there was this electronic sign that said “slow down, slow down, slow down,” and it’s run by solar power. And there’s also one up here by the -- in town, it said, this week is domestic violence month and pay attention to that. Those are great, cheap ways to tell the community of what’s going on. And I think if you guys were to - - you know, this is just a suggestion -- if you guys were to go out and, you know, get one of those, tonight community plan or community meeting, tonight’s the Lanai Planning Commission meeting. I talked to people about what you guys are doing, and a lot of times, they’re like, when’s the meeting? When is that? And they just don’t know. They would go if you remind them that very day. You know, people have a short attention span. So I think to engage the community, to reach out and say this is part of the democratic process, come on in, testify, you know, share your voice. I don’t think we’re -- we could do better. I think, this is the same people that are here every time. And, you know, it’s, it’s -- there’s 3,000 people out here, and we’re all working guys and girls, and we just got to get better. We got to engage the community more. That’s all. Thank you.

Ms. Gima: Thank you Gabe. Anyone else wishing to provide public testimony? Alright, I’m going to ahead and close public testimony, and go on to Item D which is the approval of the minutes of September 28, 2016 meeting. And then we also have in the packet our October 19th, 2016 meeting, but that --. Leilani, are we approving those minutes?

D. APPROVAL OF THE MINUTES OF THE SEPTEMBER 28, 2016 MEETING.

Ms. Richelle Thompson: . . . (inaudible) . . .

Ms. Gima: Okay, so I’m going to go according to the agenda then, and just looking at approval of the September 28th, 2016 meeting. Commissioners, any discussion?

Ms. Beverly Zigmond: I, I would like you to repeat that. I’m sorry, I didn’t hear what you said.

Ms. Thomson: So when -- when you have to cancel a meeting due to lack of quorum, you can still take public testimony and presentations so the people that are here can offer their, their thoughts. So what the Sunshine Law requires the Commissioners that were present at that meeting to update the rest of the Commission. And so they’ve prepared basically action minutes, so that you can, you know, understand and hear what was presented, and what the testimony was, what the gist of it was. So it’s -- they’re not minutes because you didn’t have an actual meeting, so they’re more like a summary of what, what the testimony was.

Ms. Zigmond: Well Madame Chair, in that case, I will move to approve the minutes of the September 28, 2016 meeting.

Mr. Stuart Marlowe: Second.

Ms. Gima: Okay, so it's been moved by Beverly, second by Stu, to approve the September 28th, 2016 meeting minutes. Any discussion Commissioners? Okay, all in favor of the motion raise your hand. Okay. Opposed? And you're abstaining. Okay.

Ms. Zigmond: So Caron you know abstaining is a positive. Okay.

Ms. Gima: Yeah, but, yeah she wasn't here so --. No, and that's, that's fine. So that does pass.

It was moved by Commissioner Beverly Zigmond, seconded Commissioner Stuart Marlowe, then

VOTED: to approve the September 28, 2016 meeting minutes.

*(Assenting: M. Badillo, S. Koanui Nefalar, S. Marlowe, B. Oshiro,
B. Zigmond)*

(Excused: M. Baltero, S. Ferguson)

E. REPORT PURSUANT TO SECTION 92-2.5(D), HAWAII REVISED STATUTES, BY THE COMMISSIONERS PRESENT OF THE TESTIMONY AND PRESENTATIONS RECEIVED AT THE OCTOBER 19, 2016, 5:30 P.M. SCHEDULED MEETING WHICH MEETING WAS CANCELLED DUE TO LACK OF QUORUM.

Ms. Gima: Okay, so next is Item C, which, I think, Richelle was just discussing which is --. I'm sorry, Item E, which is *(Chair Kelli Gima read the above project description into the record.)* So we're just discussing the minutes or just discussing the meeting?

Ms. Thomson: . . . (inaudible) . . .

Ms. Gima: Okay. Commissioners, you want to pull out that summary for the October 19th meeting. And again, this was -- we did not have quorum at that time. We did take public testimony. We had quite a few people give testimony. I think this was where we had our Mayor here. Talked about the ideas for recreating the planning process. This was just for discussion. There was -- this was not an action item. He came in response to rumors about getting rid of the planning commissions. Anybody want to key in on this here Commissioners?

Ms. Zigmond: I think it's all, it's all there, everybody can read it.

Ms. Gima: Yeah, it's all there. Well, I'm just stating kind of just the topics for the audience.

So that was discussed. There's a lot of discussion there. We had discussion with the Deputy Director about our planning commission meeting schedule. I think both the commission and the community provided various feedback on that, suggestions and ideas. We also had --

Ms. Zigmond: We had Joe, and Joe is here, yeah?

Ms. Gima: Yeah, Joe gave --

Ms. Zigmond: And he'll be giving it again so --.

F. UNFINISHED BUSINESS

- 1. MR. WILLIAM SPENCE transmitting a proposed bill amending Chapter 19.04 of the Maui County Code that would allow the Planning Department to establish fees in the annual budget for the review of ministerial and discretionary applications. The proposal would exempt roadway lots or utility lots from minimum lot area requirements and would allow commercial and non-commercial filming, photography and other temporary commercial events in all zoning districts under certain restrictions and standards. (J. Alueta) (Opportunity for public testimony was made on November 16, 2016.)**

The Commission may provide its recommendations to the Maui County Council.

Ms. Gima: Right, because we weren't -- that was our action item and we weren't able to, to vote due lack of quorum. We got a status update from Pulama Lanai regarding permitting for the jet fuel storage tank. And I think that was -- and then our Director's Report, you know, our open applications. But that was the gist of the meeting so...any discussions commissioners?

Okay. We'll go ahead and move to Item F, which is our unfinished business and Item #1 (*Chair Kelli Gima, read the above project description into the record.*) And there was an opportunity for public testimony -- oh, there's an opportunity after Joe gives his presentation. So I'll turn it over to you Joe.

Mr. Joseph Alueta: Good evening Commissioners. Again, this is sort of a 19.04 amendment to Title 19. For those who are not familiar, my name is Joe Schmo -- I mean, Joe Alueta. I'm with the Maui County Planning Department. I am the Administrative Planning Officer. There are two methodologies in which you can amend Title 19, which is the Zoning Code for the County of Maui in which Lanai is a part of. You can either amend it

either through administratively, through the department, or propose it, meaning the Mayor, the Planning Director will make proposals, or it will come by resolution by via the County Council, Maui County Council. The Charter requires that all three Planning Commissioners -- all three Planning Commissions review any changes to Title 19, provide their feedback to the Maui County Council prior to its enactment.

So, again this is an administrative initiated change to Title 19. The Chair read basically what the summary of what the four major changes. One, it allows us to establish some type -- in the budget -- again, this would be done at the budget time...fees for ministerial permits and other permits that we currently review. Currently the division that I -- one of the divisions I supervise is ZAED. We review building permits for zoning compliance. We -- and when someone files for a building permit, and pay a building permit fees, those go to the Fire Department and they go to Public Works. None of that fees get routed to our cost for the Planning Department. What we are --. We are not seeking to have those fees, building permit fees raised, and we get a portion of it. What we're seeking is just to be able to charge in the future through a budget process for re-review. We get a lot of re-reviews meaning they submit the plans, they're missing information, we ask for corrections, we don't get the corrections. They only make -- correct two out of the four -- we constantly go back and forth. We need to have a stick as well as a carrot when we're dealing with both the lay people as well as the developers so that we can review the permit once, yay or nay, and be done with it. So that all it does is it allows us to establish a fee and that fee would be then be reviewed and approved by the Maui County Council during the budget process.

The other issue is sub -- smaller lots within all the zoning categories. Almost all of the zoning categories -- R1, R2, Business, BCT, B1 -- in the zoning category has a minimum lot size, so --. But what we find is that when you have a roadway or you need to create a small lot for a utility substation or for a transformer, maybe for -- maybe if it's a condominium complex you have mailboxes that need to be on a separate TMK. We don't --. I mean, there's various reasons. MECo as well as HawaiianTel, the cable company sometimes, they want to have a separate lot. In that zoning, rather than create a 10,000 square foot lot in the R3 District for a small little utility area, or in the case on Maui, MECo had to subdivide out two acres for, for a substation. They really didn't -- they only needed like 5,000 square feet. It's kind of wasteful. This, does not, as I explained before, does not allow that lot to then be used for anything other than a utility lot, or roadway, whatever it was dedicated for. I gave you some examples last time about how we previously had created existing utility lots in Kihei for like when GTE was in town or was the provider, and when technology changed not all of those substations were needed, they sold them off and there were like these 2,000 square foot, 3,000 square foot substations. And people built condos or build an apartment on it, and we wouldn't allow for that. Under these rules, if you create a substandard lot within a zoning category for utility purposes, it will remain that. And if you dissolve the purpose of that lot, meaning the utility purpose of it, for some reason, you would have -- they only way you could do is consolidate it with an adjacent lot. You need to get rid of it.

The other one is dealing with photography, and commercial and noncommercial video and photography. We feel a lot of times that's an allowable -- it should be allowed. It's really a nonintrusive for the most part, but we did create standards for that so that it can be done in all zoning categories. This would allow for --. And also if it, if it gets a video permit or something like that then we could establish -- conditions can be established. If, if something comes to our attention and there is -- we find that there is a nuisance or a permit we can enforce it through 19.510. So it doesn't give -- this doesn't give carte blanche. It says this is the standards for video shooting. If you don't meet those standards, then it's not a permitted use. Okay? So that's basically what it says.

The next one is allowing for commercial, noncommercial -- temporary events. You've all been to a church bazaar, I'm assuming at some point in your life, a -- or a, say...church farmer's market, a school rummage sale. All of those are commercial, technically commercial activities, but they're temporary. If someone asks, like, well, how can they do that? Well, a lot times they're allowed as, you know, we consider them to be accessory to the permitted use on the property. And this would allow us to make it clear that, yeah, it's not -- it's not a real commercial, quote, quote, event that the zoning -- zoning has the perfectly match. That you can only do it in a commercial use zone. This would allow it for any zoning category provided that it was a set -- related to...the activity or the use on the property.

So that's pretty much a summary of basically the four key things that this bill does in 19.04. Do you have any questions for me at this time?

Ms. Green: So I'm assuming on these filming and these temporary like bazaars and things, they still need to go to you for permit.

Mr. Alueta: No, they would not.

Ms. Green: They wouldn't have to.

Mr. Alueta: No. They would still meet -- they would still meet other criteria such as they could assess parking based on that thing. But as far as the use being allowed, we would consider it to be allowed.

Ms. Zigmond: Joe, didn't you say last time, though, that, let's say in the case of, of filming, that they would have to notify people within a certain area, and do it only during certain times of the day. So Caron, I don't know if you saw the -- from last time, but there were some restrictions on that.

Mr. Alueta: Correct. And I'm going by the staff report, the memo report that's dated September 29th, that was passed out at the last meeting and I'm hope you --. And it's

Exhibit 1 is the actual ordinance, and it's in Ramseyer, and so we're basically amending 19.04 to allow these certain uses as a permitted use in all zoning categories.

We're doing it in 19.04, in this section rather than...list it and go through every zoning, amend every zoning chapter and say it's allowed, you know, it's allowed under these categories because we're establishing the criteria right here.

Ms. Gima: Commissioners, any other questions? I'm going to open public testimony so if anyone in the audience would like to provide testimony, ask any questions. Okay, no one. Come on up and state your name please.

Mr. Myles Saruwatari: My name is Miles Saruwatari, Lanai resident. On the fourth thing they talk, you know, bazaars and stuff like that, I just have one question, if in those functions they sell food, would they have to have health inspectors and all that kind of stuff too, or is that exempted? Not exempted.

Mr. Alueta: . . . (inaudible) . . .

Mr. Saruwatari: Okay. Alright.

Ms. Gima: Yeah, so other permits that would be needed, what I'm hearing for filming if they needed a permit or if you're providing food, they would still have to go all those necessary routes. Okay. Anyone else wishing to provide public testimony, ask any questions? Alright, we'll go ahead and close public testimony.

(Commissioner Stephen Ferguson attends the Lanai Planning Commission meeting at approximately 5:55 p.m.)

Mr. Alueta: So basically we are recommending approval of the proposed bill. There are four options that you can do. You can, again, recommend approval of the proposed bill to the Maui County Council. Recommend approval of the proposal with amendments to the Maui County Council. Recommend denial of the proposed bill to the Maui County Council. Or vote to defer action on the proposed bill in order to gather more specific additional information.

Ms. Gima: Commissioners, again, any -- any other questions for Joe, any discussion?

Ms. Zigmond: Madame Chair, I move to recommend approval.

Ms. Gima: Do I hear a second? Second by --. Okay, so Beverly has made a motion to recommend approval, second by Stu. Any other discussion? All in favor of the motion raise your hand. Okay, all opposed? None, so it's unanimous.

It was moved by Commissioner Beverly Zigmund, seconded by Commissioner Stuart Marlowe, then

VOTED: to recommend approval of the proposed bill to the Maui County Council.

(Assenting: M. Badillo, S. Ferguson, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmund)

(Excused: M. Baltero)

Mr. Alueta: Thank you very much.

Ms. Gima: Thank you Joe.

G. ORIENTATION WORKSHOP NO. 2

(Previously scheduled for the June 15, 2016 meeting)

1. **Opening Remarks**
2. **County Policy Against Discrimination**
3. **The Sunshine Law (Chapter 92, Hawaii Revised Statutes)**
4. **Ethics**
5. **Contested Cases**
6. **Property Rights**
7. **Rational Nexus and Rough Proportionality**

Ms. Gima: Alright, we're going to move along and go to Item G, which is Orientation Workshop No. 2. This was previously scheduled for the June 15th, 2016 meeting, so glad that we can finally have this on the agenda.

Ms. Thomson: Okay. I'll just -- I'll let you know when I'm turning the page so you can kind of follow along. The first section is on the open meetings law, also called The Sunshine Law. It's Hawaii Revised Statutes 92. And the purpose of the Sunshine Law is to open up government processes to the public so that the public is made aware of what's going on with its government and that decisions aren't made behind closed doors. So that's the purpose behind the law.

Kind of the things to remember as far as the Commission goes is that board business is business that you either have before you currently or that you know is going to be on, on an upcoming agenda. And the thing to keep in mind is don't talk about it with other commission members outside of a public meeting. So, outside of a meeting like this. The reason for that is that your decisions made later could be challenged as being improperly made, and so there's been a recent court case regarding Maui County Council regarding that issue. You know, whether decisions were made outside of open meetings, that kind of

a thing, so just stay away from -- just try to stay from talking about board business with each other outside of open meetings here.

Ms. Zigmond: A point of clarification please.

Ms. Thomson: Sure.

Ms. Zigmond: So that I totally understanding what you just said, but is it not correct that I can say something to Brad about business currently before us or anticipated to come before us if we do not try to convince each other of voting one way or another.

Ms. Thomson: Right. So the Sunshine Law allows two board members to talk to each other. The kind of the problem with that is that it's really hard for each of those two not to want to talk to someone else. So that's why my general advice usually is just try to stay away from that. But it is an exception to the Sunshine Law that two board members can discuss board business. Whether or not you try to convince each other of your positions or not that's kind of in material. But it's really, just in practice, it's much better not to, not to discuss board business. The other -- the other thing is that those discussions, it doesn't matter whether they're in person, on the phone, Facebook, if you're talking amongst board members that can be considered a meeting for Sunshine Law purposes.

That's the slide on the bottom of page 2 is it basically says that, so no more than two members of the board can gather to discuss board business and no serial communications. Serial communications is kind of this, you know, how we use to play telephone where you, you know, one person tells the next one, it goes down the line.

I'm on page 3. This is a Sunshine Law exception, a permitted investigative group. So say an issue comes before the board and you feel that it needs much more in-depth investigation, the board can decide to set up this temporary or permitted investigative group. It needs to be less than quorum, so it would be between two and four members, and they would be assigned a task to go out and investigate whatever this task is. They come back, report to the board as a whole. Action on whatever that topic is can't be taken until the next meeting, so it actually takes a minimum of three meetings. One to step up this group, one for the group to come back and report back to the board, and then one for the entire group to make a decision on whatever the matter is.

Ms. Gima: Can you give some examples of when an investigative group is necessary?

Ms. Thomson: Let me think.

Ms. Gima: Sounds kind of serious when it's like investigative. So are you going out and investigating something pertaining to an application in front of us, or is it more of issues amongst the commission?

Ms. Thomson: Not usually. So it would be -- maybe for example related to this board, you're looking at redoing you SMA boundaries. So there may be a subset of topics that you don't -- you feel that a few of the members could go out, get more resources, find out some answers, and come back and report to the board. So it's more like that. It's like assignments basically, but generally it doesn't come up very often. You know, it's a fairly -- it's fairly rare. Almost all of your business can be done by the entire board so there's not really a reason...except on rare occasions to set up such a group. But you can, it's an option you have available.

Ms. Zigmond: So that is separate from a field trip which we have done on a number of occasions where the entire commission, all of us, went and actually had a meeting at the site. It was a field trip, like, at the solar farm or whatever.

Ms. Thomson: Right, yeah. They're just consider just meetings, but held at a different location basically.

Ms. Green: And when you say "reporting back," that's in front of everybody. That's an open board meeting, not . . . (inaudible) . . .

Ms. Thomson: Right. Yeah. So the second type of -- this is a Sunshine Law allowed, allowed use, is a permitted interaction. So the Commission, again, can assign two to four members, so it's less than quorum, to present, discuss or negotiate positions that the Commission has formally taken. So the Commission as a whole would formally take a position on something, SMA boundaries for example. When that's before Council, say, you could nominate that group of individuals to represent the Commission as a whole's opinion and to provide information to a different body.

One of the things to, to keep in mind, though, is as Commissioners unless you're acting with the authority of the full board you shouldn't represent that you're acting with that authority. So it needs to be a formal action before you do that.

The last one, this just came up at your last meeting, so testimony and presentations at cancelled meetings. If you have less than quorum or you have to cancel a meeting, you can still, the Commissioners that are present can still receive the testimony and presentations, and then as you did today, provide kind of synopsis of what occurred at that meeting to the rest of the Commissioners.

Another Sunshine Law exception, permitted interaction, so attendance at other meetings. Say there's a training on historic preservation that a number of you want to attend. You can, you can attend that even though there may be aspects of that training that would come before you. So it could kind of leech over into being board business, but those types of, like, seminars and you know, educational things, those are, you can, you can go. And when

it comes up, we can -- we would talk about how to, how to handle it if you had any questions.

Ms. Zigmond: Okay, that brings up something else in my mind, please. For instance when the CPAC was drafting our recent community plan, Planning Commission members wanted to go and be informed, and am I correct in assuming that as long as, you know, we didn't sit there and huddle and even give the appearance of, of having our own little meeting that we are allowed to attend that.

Ms. Thomson: Right, so the -- it's the top slide on page 4 basically --less than quorum, so up to four may attend informational meetings or presentations on matters relating to board business. So the Community Plan would be something that comes before this board, that's including meetings of other boards or the County Council. When you're there, you can participate in the discussions. You want to refrain from making any kind of commitment to vote one way or another, you know, until you're actually within your board. If you go to attend something like that, at the next meeting of this body, you would want to, you know, take a few minutes to update the rest of the members about the meeting that you attended, what was discussed.

Ms. Gima: Even if we're attending just as residence of our community?

Ms. Thomson: Because you're on a board, if it involves -- if involves a matter that you know is going to be board business that's, that's when it would potentially change. Probably what I'd do is if you have a question on it, just, you know, give me a call or send me an e-mail, and we can kind of look at it.

Ms. Gima: So if there was something --. For example, Pulama Lanai they hold informational meetings on projects that they are going to be doing, and that may most likely come before us although we don't know it at that point, but it's open to the community, we're all community members. So at that point you're saying that only four of us could attend.

Ms. Thomson: I think if -- you know, if it's -- if you don't really know if it's going to be board business or not, I would use your judgment.

Ms. Gima: Okay. But it's when we know that it will be on our agenda, we're going to be reviewing that application, that's when having just four --. Okay.

Ms. Thomson: Yeah. And you know, say like the helicopter facilities that were before the board earlier, if Pulama was having an informational meeting for the, you know, the larger public and you know about in advance, I would bring it up at a meeting here and just say, you know, I'm planning on going, who else is going, so you don't walk in there and there's five or six, and you know, that kind of thing. So you can kind of head some situations off.

Ms. Zigmond: Okay, I have something else that I think of. Sorry.

Ms. Thomson: Sure.

Ms. Zigmond: So let's say like the recent Land Use Commission meeting, what if somebody works for the company and was strongly encouraged by the company to go and testify but yet they are Planning Commission, they sit on this Commission. Can they do that?

Ms. Thomson: That's a different --. The Land Use Commission, State Land Use Commission, and I don't believe that that's currently board business so I don't believe the matter that's being before the State Land Use Commission is going to be back before this particular body, so it's not board business. So, it would be attending as a member of the public.

Ms. Zigmond: Okay.

Mr. Bradford Oshiro: Real quick one. You know, I attended a Pulama meeting and where they're talking about housing. Okay, I know it's going to come in front of us.

Ms. Thomson: Right.

Mr. Oshiro: Okay, so that was just opened to the community, and they were just talking about what might happen which might not happen for another 10, 15 years, so what do you do about stuff like that.

Ms. Thomson: I think I would kind of narrow board business to be, you know, the things over which you either advisory control, or decision making authority. So if it's...like for housing, if there's going to be a housing project that you know needs a, say, a community plan amendment or a change in zoning or something that's going to be before you and you, and you know it, then I would consider that to be board business. Like, upcoming board business. But if it's just more general, you know, projects that may happen or here's our overall plans, but it's not specific, you know, project based or things that you know are going to come before you in the...more in the near term future rather than really far out.

Ms. Zigmond: Okay, I think that, that last statement that you made is maybe where Brad was going because if something is going to conceivably take, you know, five years before it comes before the Planning Commission, we, you know, won't be here.

Ms. Thomson: Yeah.

Ms. Zigmond: Okay, thank you.

Ms. Thomson: I realize that on a, on such a, on such a small island, it's hard to -- harder to

manage some of these Sunshine Law issues than it would be in a larger community.

Ms. Gima: Yeah, and I think specifically in what we're talking about with other meetings because there are so many informational meetings in our community that, you know, majority of us who sit on the Commission want to attend, not as part of, you know, wearing our Commission hat, but just as, as residents.

Ms. Thomson: Right. As one when you're looking at it, I would look at it and say is this currently before the board. And if it is, then it's clearly board business. If it's something that's likely to come before the board, and you know it, I'd probably air on the side of treating it as if it were board business. It doesn't mean you can't go, but there's just a little more formalities. Yeah. Sure, I really appreciate the questions. It's terrific. Thanks.

So Executive Meetings, those are -- we've done that a few times where we've need to go into Executive Session to talk about some questions regarding law and, you know, what are your responsibilities, what are the possible risks with a decision that are -- you need advice usually, you know, from your attorney and we do that in Executive Session and we come back.

Sunshine violations, as I mentioned...if a, if a decision is made by the body and challenged later for violations of the Sunshine Law, the decision could be overturned, it could be voided. There could be an injunction issued by the Court. The Commissioners could be found guilty of a misdemeanor and so -- or you could be removed from, from this board. So it is -- it is serious, but it's fairly easy to navigate, I think, once you get into it. And if you ever have questions please call.

So just quickly, moving on to Robert's Rules of Order. So this helps keep the meetings flowing smoothly and proper decorum, the Chair controls the meeting. Normally you request permission from the Chair even if it's, you know, just casually, just so people aren't talking over one another. When the Chair gives you permission, you have the floor. So motions are made, seconded. Once they're seconded they become the body -- they become the property of the body as a whole, so they no longer belong to the person who made the motion. Any amendments whether it's by the person who made the original motion or somebody else, those are completely separate. So the amendment gets acted on first, then you go back to the main motion, either as amended or not amended.

So there's some confusion on other commissions, but they call them friendly amendments. And they're an amendment as an amendment. It doesn't matter if it's friendly or unfriendly; it's just an amendment.

On the top of page 6, so basically your roles and duties, you know, try to go through your packet ahead of time. I think, you are all a little good about that. If you have any questions about what you're reading when you're going through it, you can call me. You know, you

can call staff. The Sunshine Law doesn't prohibit you from talking to, you know, your other resources. What you're trying to do is not talk to each other to make decisions outside of a proper meeting. You know, but if you need information please feel free to ask.

We'll just go through Ethics.

Ms. Gima: Wait. I have a quick question.

Ms. Thomson: I'm sorry. Yes.

Ms. Gima: When you talk about if we had questions and we need, on whatever is in our package, and we need to call you or staff, so are you guys required to answer our questions? I mean is there --? And the reason I ask is, I think, at our last meeting when the Mayor was here, I mean, it was -- he basically said something to the degree of you guys, you know, don't have to be here and don't have to help us and so -- which kind of threw me off but -- so I'm wondering is there something within our rules and procedures or wherever that says that you do have to help us.

Ms. Thomson: Well, the --. That's a good question. The Charter -- so the Planning Commissions -- the Planning Director, you know, is over the Department and the Planning Commissions. There are difference -- so I don't know actually on this Commission whether we you have de facto members, but say the Maui Planning Commission, the Public Works Director is a nonvoting member essentially of the board. As far as, you know, whether there's an obligation for staff to either attend or to answer questions -- I mean, the way that I look at my job, it's, it's not written in my job description that I had to answer every question, but I'm your resource person. So if I don't know your answer, I try to find. You know, if I can't find it, I would try to let you know. You know, so it's -- and I think that the Planning Department is, you know, has that same view point too. You know, we're here to help you make the decisions.

Ethics, just fairly quickly. Some of the obvious things, you know, don't accept gifts or money from applicants. There are people in the, you know, community that are trying to get decisions made. Don't engage in business transactions that are adverse to your rules, but if you do, or if you have financial interest such as employment relationships -- we've talked about that before -- you need to disclose that on the record and depending on what the nature of the interaction is, sometimes you would recuse yourself from voting. The important thing is disclose it, you know, and then we can deal with it whatever it happens to be.

Your Lanai Planning Commission Rules say that "whenever a conflict of interest or other ethical question is raised by anyone, regarding any member of the Commission, the affected member shall promptly make a full disclosure of the circumstances to the Commission." So that would be during the meeting. "If the Commission member has a

financial interest in any matter that may be affected by an action of the Commission that member shall be disqualified from voting in all actions relating to such matters.” These are almost always case by case things, and what you would do if you know in advance and you’re not certain whether you do have or don’t have such a conflict of interest, you can get a Board of Ethics opinion. And if you act in accordance with that opinion then you’re fine. If there’s not -- sometimes there’s not time or you don’t know you have a conflict until it’s actually, you know, on an agenda, that kind of a thing, and in that case we would have to, you know, do our best to handle it at that time.

Ms. Zigmond: Richelle, just a comment. Several meetings ago you provided us with some valuable information at a time when actually Fergie chose to recuse himself because he worked -- he would have had a financial interest in that of sorts, and I think somebody else did too so that was really helpful.

Ms. Thomson: Thanks. So and -- that’s -- and that’s basically what you would -- what you would do if you found yourself in that situation. This is page 8 at the top. So when in doubt, you know, as a Commissioner you decide whether to proceed or not, to abstain from voting. You can request a deferral of the matter and seek an advisory opinion from the Board of Ethics, and then as I just mentioned, if you obtain -- if you obtain an opinion from the Board of Ethics and you act in accordance with that opinion, then you won’t experience any liability for that decision made later.

Contested Cases, I’m going to go through this fairly -- fairly quickly. It’s almost always, to me, easier to kind of go through the area of law at the time that you’re making a decision. So if you’re making a decision on a Special Use Permit, you know, go through kind of the criteria and the law, and then analyze the facts as they apply to it rather than doing in the abstract. But generally contested cases are any kind of application or permit that requires a public hearing. So if it requires a public hearing, that’s a contested case, and it follows certain rules and state law. So it’s the opportunity for a hearing, you know, presenting your case, you know, hearing both sides, that kind of a thing. It’s more formal.

I’m going to skip down to case law review. This is -- I’m at the top of page 11. So the law is a guiding principle. So every -- every action of the Commission takes has a basis in law or rules that apply to it. The law determines, you know, what and how you can decide something. My rule is to help you make decisions that are in compliance with whatever law applies to that circumstance.

Legal advice is just that; it’s advice. You can choose to follow it, or not follow it. I hope that you will follow it, or, you know, ask me enough questions so you feel comfortable making the decision that you do ultimately.

The Takings Clause of the 5th Amendment. This is the 5th Amendment to the U.S. Constitution. It bars government including -- you’re an arm of the government -- from

forcing some people alone to bear public burdens which in all fairness and justice should be borne by the public as a whole. Takings can be by permits with excessive or unrelated conditions. So when you're making a decision or setting conditions on, like, a permit or something, the conditions that you set should be tailored to address the application and the -- mitigate the effects, the negative effects of an application or a land use.

So how to avoid Takings Claims. And Takings Claims are claims that would be brought by someone who's disgruntled with a decision, saying that your decision was made in excess of the law. One of the things to keep in mind as Commissioners you'd want to try to avoid that because having to go through a lawsuit involving a Takings Claims is incredibly time intense. You know, you lawyer up and it can take years to go through the Court. It takes a lot of your time, depositions, how did you get to this decision, you know, and all of the stuff. So it's really good to understand the law that you're applying and try to avoid getting in trouble with it.

Basically the things to avoid Takings Claims, a central nexus is a legal contract, so the nexus is a connection between the anticipated effects of a land use and a real property exaction. Basically the Commission identifies a project's anticipated effects, and then shows how that permit condition relates to those effects. So sometimes in a -- when we're discussing like permit conditions is the easiest example, one of the things that I'll try to remind you is on the record put your reasons for that permit conditions. What are the effects that you're addressing? Those things end up being incorporated into the Decision and Order, into the written document that reflects your, your decision making process. And the more information that you put onto the record to support the decision you made, the better it is, and the less challenge worthy it would be if it were challenged later.

Rough Proportionality is kind of a sister to that. What that generally means is that your -- I'll use permit conditions again -- your permit condition should not be greatly in excess of the harm that you're trying to mitigate by it, so it needs to be roughly proportional to the impact.

And those are -- those are two tests that have developed through the U.S. Supreme Court, and those are the tests that other Courts use to determine whether or not an exaction, you know -- if it meets those tests, then you're great. If it's excessive, the decision could be either voided or overturned or kicked back to you.

The rest of that page 13 kind of goes through some examples -- some of the situations are those I was talking about. One of the -- one of the examples that comes up probably fairly frequently here would be Special Management Area Use Permits, so SMA Major is what we call those. The Special Management Area, its protection of the shoreline, and beach and coastal resources. So kind of examples of good SMA Permit conditions would be provision and maintenance of beach access, preservation of archaeological sites, protection of life and property from coastal hazards, boundary setbacks, building height restrictions that preserves coastal views, etcetera. You can -- you can obviously think of conditions that

would be unrelated to the SMA that you don't want to include in an SMA permit...such as, I don't know, donations of money, or, you know, construction of, of a, you know, a child care center or, you know, things that are excessive or unrelated to the permit that you're, that you're analyzing. And that's -- that is about it. I can, I can go into any of those topics in much more depth. So if you have questions or you want to do a certain training on one aspect of, of the law, just ask and we can do it. Thanks.

Ms. Gima: I just had a question and it wasn't really brought up in here, but given that this is an orientation workshop, I was just wondering in our rules and procedures are there rules about attendance? Because we've --. I mean, it's so nice that we have almost our full commission here tonight, but, you know, we've had issues with attendance, and you know, last month didn't have quorum. So, wanting to get some clarification.

Ms. Thomson: I don't believe that there are rules regarding attendance and, like, say if someone is chronically late or, you know, can't make meetings that kind of thing, generally what happens is that, you know, it kind of becomes an issue, and then either staff or, you know, where you folks would ask us to request that the Mayor's Office contact that person and request that they resign if, you know, they just can't do their duties as a Commissioner. But as far as rules, no.

Ms. Gima: Okay. Yeah, because I had heard and, and I'm not sure if this is accurate, but does a Commissioner have to resign or could they be asked to resign? Because we've had, as long as I've been on, we've had a few who showed up once the entire time, and never, you know, it didn't seem like anyone did anything about it. And, you know, instead of having someone who could, you know, actively make meetings, we just had this --. It was filled spot, but pretty much vacant.

Ms. Thomson: If they don't resign of their own volition then the County Council can remove them, those Commissioners.

Ms. Gima: Okay. Okay.

Ms. Thomson: Yeah. They have to go -- it's kind of process which is why usually they just, you know, the Mayor's Office request that they resign.

Ms. Gima: I see. Okay.

Ms. Thomson: Yeah.

Ms. Gima: Thank you. Commissioners, any other questions? I will open public testimony if there's anyone in the audience wishing to give testimony or ask any questions. Alright, no. Closing public testimony. Thank you very much. Okay, we're going to move to the next agenda item which is Item H, and that's the Director's Report...starting with #1, Open Lanai

Applications Report.

H. DIRECTOR'S REPORT

1. Open Lanai Applications Report as distributed by the Planning Department with the agenda.

Mr. Clayton Yoshida: Yes, thank you Madame Chair. We -- the Department has circulated the Open, Lanai Open Applications Report. As you can see most of them, the Commission has dealt with before such as the three houses in Lanai City, and the Manele Golf Course Conditional Permit for Special Events. The installation of the metal trellis for photo voltaic by 1036 Lanai Avenue, LLC, is an administrative approval. So the only other items -- well, possibly the short-term rental home application for The Artist House, short-term rental could be an administrative approval. So there's not much in the near future to come before the Commission as far as open projects.

Ms. Green: I'm sorry, I didn't quite understand about the Manele Golf Course and the houses on Lanai, you said that's come before the Commission before?

Mr. Yoshida: Yeah, the -- these items came before the Planning Commission earlier this year. However, Conditional Permits -- the Conditional Permit for the Manele Golf Course Special Events, and the Community Plan Amendment and Zoning Change for the three houses in Lanai City, the final authority is the Maui County Council, so we have attached to your agenda say the transmittal letter for the Conditional Permit. Well, we also have, I guess, the transmittal of the Conditional Permit for the helistop -- Manele and Koele helistop project. So, they're still open because the final authority is the Council. So until the Council decides it's still -- the application is still open.

Ms. Green: So I have a personal interest in this because I have friend whose daughter wants to get married down in Manele. And this -- you guys approved that a long time ago, and yet it's taking all this time to get through the system. The Planning Commission, you say now has approved it or sent it on to the County, to the County Council.

Mr. Yoshida: Planning Commission held a public hearing, and they made a recommendation for approval of the Conditional Permit subject to various conditions. That package has been transmitted to the Council, so it rests with the Council as far as scheduling the item for decision making.

Ms. Green: So will this be the final hearing on it or --?

Ms. Thomson: . . . (inaudible) . . .

Ms. Green: Amen.

Ms. Zigmond: Clayton, I have a question please. The -- if a new house is being built down in the Manele Project District, right, you know, the luxury homes, are -- are they -- are they all within the SMA? Are some of them? I was down there recently and there was one that looked like it was -- it was really, really close. It was a brand new place and I don't remember anything coming before us, so I'm kind of curious how, how that works down there.

Mr. Yoshida: I think the Manele, some of the Project District is located in the SMA, and some is not. So we would have to check the specific location of the property that you're asking about to see if it is in the SMA.

Ms. Zigmond: So if I -- if that was my house and I was building it, would I not have already had that determination made? Or would I try maybe just to get away with it, and see if anybody catches it?

Mr. Yoshida: Well, the building permit would be reviewed -- the application would be reviewed by the Planning Department, and they would check if it's in the SMA or not. And if it needs an assessment or a permit, they would tell the applicant that you need at least to come in for an assessment.

Ms. Gima: But then there's the SMA Minors...that wouldn't come before us, correct?

Mr. Yoshida: Yes, that's correct.

Ms. Gima: . . . (inaudible) . . .

Ms. Zigmond: I'm certain that no house down at Manele would fall under the SMA Minor.

Ms. Gima: Well, I know which house you're talking about and that's right on the edge so...closer than the Manele Bay Hotel pool.

Mr. Yoshida: Well, we can, we can check on it.

Ms. Gima: So is that something, like, if, you know, we, as Commissioners or if someone in the community observe, we can bring it to your attention. I mean, obviously we don't have the TMK number or the address, but if we had that we could inquire about that?

Mr. Yoshida: Yeah, they could file for a Request for Service (RFS) with the County.

Mr. Gima: Okay.

Ms. Green: I see in here you do have something on the helistop, but it's not in your list here. Should it be?

Mr. Alueta: Madame Chair, I just want to make sure that it's always best if you have a concern to file an RFS. Do not put your request through us at the meeting.

Ms. Gima: Okay.

Mr. Alueta: Because it just becomes too cumbersome.

Ms. Gima: Sure.

Mr. Alueta: Because, again, you don't have an address or a thing. It becomes an information.

Ms. Gima: So how would you do an RFS?

Mr. Alueta: You would either go online --

Ms. Gima: Online.

Mr. Alueta: -- or send an e-mail, and we will then print it out and then we'll create an RFS in the system. That way anyone in the public can track that number --

Ms. Gima: Perfect. Okay.

Mr. Alueta: -- and we know what's going on -- everybody knows what's going on.

Ms. Gima: Great. Thanks Joe. Caron?

Ms. Green: Thank you. So there is a letter here from the Planning Department about the helistop, but it's not on the list. Should it be on the list?

Mr. Yoshida: Yes. That application still should be open because it's the Council that makes the final decision on the Conditional Permit.

Ms. Green: Right, it just wasn't one of the open ones listed here. But I do have a question about that one. When they put in their original request it was for two helistops, and I believe it was 30 times a month, was it? Something like that. And --

Ms. Gima: Oh, less than 30. Maybe like 12.

Ms. Green: I can't remember how many times a month, but since there's only one helistop,

does it get the full number of flights then? That you didn't make any -- did you make any restrictions as to the number of times?

Ms. Gima: We, I think we voted -- and correct me if I'm wrong Commissioners -- we went with what was proposed for Manele. We didn't, like, carry over Koele's flights to Manele. It was whatever the applicant was asking for Manele that was kept.

Ms. Green: As I -- and I could be wrong -- I thought the original request didn't specify how many for each location, but just said how many in total per month, or per . . . (inaudible) . . . or per time period. And I do know you amended and said only seven -- between 7:00 a.m. and 7:00 p.m.

Ms. Zigmond: It doesn't specify in that letter, and I'd have to go back to our minutes, but I believe we did not give the Koele...landings to Manele. But I'd have to go back on the, the minutes for that one.

Ms. Gima: Yeah, and I -- I don't recall if it was presented to us as total for both areas or -- total flights for both areas or flights for each, beginning of this year. I can't recall. I got to look in the minutes. Commissioners, any other questions for Clayton on the open projects? I'm going to open public testimony. Community members, any questions regarding the open or completed project's list? Okay, closing public testimony. Clayton, next item?

2. Agenda Items for the December 21, 2016 Lanai Planning Commission meeting.

Mr. Yoshida: Thank you Madame Chair. The next meeting is scheduled for December 21st. We really don't -- again, going to the open application list, we don't have any application, land use applications ready to go to hearing on December 21st, nor do we have any legislation being proposed either by the Department or the Council ready to go to hearing before the Commission on December 21st.

Ms. Gima: Is this meeting scheduled to be held at the Senior Center? Because I know in the past, December meetings we've had to hold it at other --. It's here? Okay.

Mr. Yoshida: So Leilani says it's to be held here.

Ms. Gima: Oh, that's right because the Senior Center changed, I think, its policies for parties and whatnot. Commissioners, any comments, discussions regarding agenda items for the December 21st meeting?

Ms. Zigmond: Madame Chair, I was wondering if that would be a good opportunity to continue the very brief workshop informational meeting that we had on the SMA boundaries.

Ms. Gima: Yeah, we haven't had that --

Mr. Yoshida: Yeah, I would have to check with Kathleen Aoki with our Plan Implementation Division because she's kind of spearheading that effort.

Ms. Gima: Right. I think if we could make that request because it might be a good time to bring that up again. I think when it's been on the agenda the brief couple of times it's been kind of more brief discussions. And then I know that at our last month's meeting we had asked the Deputy Director to come back regarding the meeting schedule. I think it would be nice to go into 2017 with a clear plan as to what the meetings will look like so that we're not having to constantly revisit the meeting schedules, the times, and whatnot.

Mr. Yoshida: Yes, Deputy Director did --. She wasn't able to be here tonight. I guess there's three sets of meetings today. One is State Land Use Commission meeting on Maui on the Manele Golf Course in order to show cause. There's a Council Land Use Committee meeting on the Waiale South, the Project District by Alexander & Baldwin. And there's this meeting so we just had to kind of split up the staff assignments to attend the three meetings. But she did write a response, a memo, dated November 16th, to some of the suggestions that -- and alternatives -- that were presented at the last month's, the October, scheduled for the October meeting.

Ms. Gima: Commissioners, any other requests? Alright, thank you Clayton. So our next regular meeting date will be December 21st. If there's no other items or anything --

I. NEXT REGULAR MEETING DATE: DECEMBER 21, 2016

J. ADJOURNMENT

Mr. Yoshida: We wish all of you a Happy Thanksgiving.

Ms. Gima: Thank you Clayton. Same to you. If no objections, I'm going to adjourn the meeting. It is now 6:45 p.m.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 6:45 p.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO

Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Medigale Badillo
Stephen Ferguson
Kelli Gima, Chair
Caron Green
Stacie Lee Koanui Nefalar, Vice-Chair
Stuart Marlowe
Bradford Oshiro
Beverly Zigmund

EXCUSED:

Marlene Baltero

OTHERS:

Clayton I. Yoshida, Planning Program Administrator, Current Planning Division
Joseph Alueta, Administrative Planning Officer
Richelle Thomson, Deputy Corporation Counsel