

**LANA'I PLANNING COMMISSION
REGULAR MEETING
SEPTEMBER 21, 2022**

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Mr. Reynold Gima, Chair, at approximately 5:00 p.m., Wednesday, September 21, 2022, online via BlueJeans videoconferencing platform, Meeting No. **936 628 764**, and at the Current Planning Conference Room, One Main Plaza, 2200 Main Street, Wailuku, Hawaii, 96793, and the Maui County Council, Lanai District Office, 814 Fraser Avenue (entrance on Gay Street), Lanai City, Hawaii 96763.

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

Mr. Reynold Gima: Good afternoon everybody. Um, welcome to the September 21st, 2022 meeting of the Lanai Planning Commission meeting. Let the record show that we do have quorum and on camera, I am alone. Lisa?

Ms. Elisabeth Grove: Alone.

Mr. Gima: Okay, thank you, Lisa. Nikki?

Ms. Nicole Alboro: I'm alone.

Mr. Gima: Okay, thank you. Erin?

Ms. Erin Atacador: Hi. I'm alone.

Mr. Gima: Okay, thank you. Zane?

Mr. Zane de la Cruz: I'm alone.

Mr. Gima: Okay. Chelsea?

Ms. Chelsea Trevino: I'm alone.

Mr. Gima: Okay. And lastly, Sally?

Ms. Sally Kaye: I'm alone.

Mr. Gima: Alright. Thank you. Um, let's see, like I said the last time if I do not see your hand being raised, you know, please just, just ask to have the floor. And we need to, I need to be able to recognize you because I've neglected to do so. And it's important that I recognize you when you want to speak because then whoever is doing the minutes will know who is speaking at that time.

That being said, regarding public testimony for those who are in attendance via BlueJeans, if you wish to testify on an agenda item, please sign up with Leilani in the chat and provide your name and which agenda item you wish to testify on. And we ask that you mute your audio and video until such time that you do testify. And in addition, to those of you testifying on BlueJeans we will also ask Leilani who is at the County Building, and Roxanne, who is a Councilman Johnson's office if there is anyone there wishing to testify.

So at this time, we will go straight into our orientation workshop number one, number one, and I will hand this off to...I'm not sure who I'm handing this off to.

B. ORIENTATION WORKSHOP NO. 1

- 1. Lanai Planning Commission's Roles and Responsibilities**
- 2. Robert's Rules and how to properly conduct a planning commission meeting**
- 3. The Sunshine Law (Chapter 92, Hawaii Revised Statutes)**
- 4. Ethics**
- 5. Contested Cases**
- 6. Property Rights**
- 7. Rational Nexus and Rough Proportionality**

Ms. Richelle Thomson: Hi, Chair. This is Richelle.

Mr. Gima: Okay, floor is yours, Richelle. Thank you.

Ms. Thomson: Okay. Thanks. Hi Commissioners. Richelle Thomson, and I know you all know me. I am the deputy assigned to the Lanai Planning Commission. I'm also the First Deputy Corp Counsel. And I have the annual training. I am on my laptop, so feel free to interrupt me and ask questions. That's completely fine. If I don't see you, though, please interrupt because your pictures are very small when I share screen. So we're going to go over this evening the Lanai Planning Commissions' rules and responsibilities; Robert's Rules, those are rules of parliamentary procedure; the Sunshine Law; the County Code of Ethics so on contested cases and property rights; and some these are legal concepts, rational nexus and for proportionality, which are important when you're creating conditions to go along with permits and things like that, or recommending conditions to the County Council.

So without any further ado, I'm going to share screen and switch over to my presentation. One sec. All right. Let me know if everybody, with the thumbs up, can you see my presentation? It's just the openings meeting screen? Great. Thanks a lot.

Okay, the picture of beautiful downtown Lanai City. So just, you know, to give context to what we're talking about regulatory authority in Hawaii, comes from obviously the Hawaii Constitution. It doesn't grant the County's complete home rule. Our County Charters, which

are our primary governing document, are still subject to the authority of the Legislature to enact rules of law that have general applicability, applicability throughout the State.

At the top of the pyramid, we have the U.S. Constitution, Hawaii Constitution, the Hawaii Revised Statutes. Those are statewide laws. The Charter, as I just mentioned, is a, is authorized to be created under the Hawaii Constitution. And Maui County Code, in our office, we refer to it as the book of spells because it's a giant book with all of the ordinances passed by Council. And then flowing from the Maui County Code and also the Charter are the Lanai Planning Commission rules.

The Department of Planning, and this is in the County Charter, the Department of Planning includes the three Maui Planning Commissions and also the Board of Variances and Appeals. The Planning Director, Michele McLean, is the chief planning officer of the County, and she's also the technical advisor to the Mayor, the Council and all planning commissions. The Directors of Public Works, Environmental Management and Water are non-voting ex-official members of the planning commissions. I mean, they most often show up as resource people when they have, when applications are before you that involve any of those departments. But they are actually officially members of your Commission. They just can't vote.

The planning commissions under the County Charter advise the Mayor, the Council, and the Planning Director in matters affecting your geographic area. So the entire island of Lanai and the waters off shore of it. You review the General Plan and the Community Plans. You review all land use ordinances like you're going to be doing tonight, and conduct the public hearings so that members of your community can voice their opinions and you can take that into account in your transmission to the Council. You're also the authority with regard to the Coastal Zone Management law. That's, we usually refer to it as SMA, Special Management Area. And that's generally the area that is closest to obviously the shoreline. The Lanai Planning Commission recently -- I can't remember what year it was, but very recently -- updated its Special Management Area. And we did that based on some terrific data from Planning, you know, including tsunami inundation zones and things like that. So your island has the most updated SMA of the three islands in Maui County.

Your job description, one of the most important things that you do is conduct contested cases. And so while you're a sunshine law board, you also have another hat, and that's to conduct contested cases and that's called an adjudicatory function. Basically, you're acting as the judge and jury to do things such as issue an SMA permits under the authority of the Charter, Special Use Permit, and review things such as the Project District Phase Two, which you have done recently, as well, or components of that. And then also, as I just mentioned, you hold open meetings the subject to the Sunshine Law.

So just a section on contested cases. So a contested case, it's the legal definition is a proceeding in which the legal rights, duties, or privileges are required by law to be determined after an opportunity for an agency hearing. One of the ways that you can tell whether you're in a contested case or not is where do you appeal, and do you have an appeal right? If you

do have an appeal right, you're most likely in a contested case. The Lanai Planning Commission's decisions can be appealed to the Circuit Court, Second Circuit Court.

Some contested cases require a public hearing, hearing, and some do not. And that's set out in whatever the applicable law is, whether that requires a public hearing or not. So some of the contested case requirements, the parties can submit evidence, they can cross-examine. If there are two parties, they can cross examine each other's witnesses and offer rebuttal evidence. And the party initiating the proceedings, so the party asking you for whatever permission they're looking for, has the burden of proof. So they need to convince you that their evidence is accurate so that you can act on that.

Contested case procedures are very strict, and the reason that they're strict is because they can be appealed. But also you're, you're determining the rights of parties. So that's the reason that the rules are fairly rigid, and it's also the reason that that the Corp Counsel advising you will say things like, you know, be sure not to do your own investigations, stay within the record, you know, don't go outside. And the reason that we say things like that is to prevent errors in your procedure so that your decisions are sound, and when and if they're appealed to Court that the Court would find that you made an accurate decision and followed your procedures. So that's, that's why we nag you sometimes.

Ms. Thomson: That the -- your agency record.

Mr. Gima: Richelle, I have a question.

Ms. Thomson: Sure.

Mr. Gima: Um, if a party wants to appeal our Planning Commission's decision, does it automatically go to a contested hearing or is there a body that determines whether it's appropriate to be a contested case hearing?

Ms. Thomson: Um, the contested case would actually happened before you, so it would be before the Lanai Planning Commission. So, like an SMA Permit is actually a contested case. There's a requirement for a hearing before you, and you're the final decision maker. So if a party is unhappy with your decision, it would be appealed to the Second Circuit Court. So that's the --

Mr. Gima: I mean --

Ms. Thomson: -- if the contested cases is appealed.

Mr. Gima: So it automatically goes to the Second Circuit?

Ms. Thomson: Yes. I mean, they would have to file an appeal, and it's usually a 30-day window that they have to actually file the appeal with the Circuit Court.

Mr. Gima: Okay, thank you.

Ms. Thomson: Sure. So some of the things in your, your agency record, so, and this is all contested case related things. There, any of the pleadings or the motions, it's all of the testimony that you receive. And we have -- this hasn't always been procedure, but in the last few years we have gone to swearing the testifiers in, in a contested case procedures. And that's the result of, it was a result of a court decision that found -- not this commission but a different commission -- had committed some errors in their procedure. And so one of them being that we weren't following the swearing in of witnesses in a contested case. It was, you know, we're treating it a bit too casually.

In your record, you also have findings and exceptions. So that's one of the, you know, when you're with, say, I'll just keep bringing up the SMA because it's an easy example, you're deciding on an SMA permit and you're going to be issuing findings, and you find that if, you know, it is in compliance with the law and things like that. So that's why findings are put into the record. Often you'll adopt the staff's report and recommendation as your findings. So that's what, that's what that means when we refer to it.

The bold part at the bottom of this slide is, I kind of mentioned this earlier, that no matters outside of the record can be considered by the agency making its decisions unless that's specifically provided in the law. And that is to allow due process and, and the fair application. So the parties, you know, both the party requesting a permission and if, say, an intervention is granted that that party, they have full access to everything that you have considered in your decision. There's some case law on that, you know, with Commissions, you know, going to say a UH law professor who is, you know, specializes in the area that they were having a contested case on, and they just, the commissioners, just really wanted more information. But because they went outside of the proceeding, you know, outside of the formal context of the hearing, the Court of Appeal found that to be an error. So that's what this slide is all about.

The other, another case site down there is an example of, of going outside of the, the boundaries of the contested case. You know receiving a letter from the party that's called ex-parte communications or taking a view of the premises after the public hearing was closed. Where irregularities in the process that led the appellate court to reverse the decision of that particular agency. So if you're, if you're, if the Court is taking a look at your record, what a Court could do is say you did a good job, they affirmed your decision. They could remand it, and that's often the case. They will remand it back to you with instructions on how to correct the errors that the Court saw in the proceeding. They can also on their own reverse or modify the decision and then issue an order. So they can, um, either, you know, thumbs up, thumbs down, or remand it. And this slide is just, these are reasons that a Court could remand or reverse your decision. And I think one of, you know, some of these are can be related to, for example, permit conditions that are excessive, and that would be an example of exceeding statutory authority, unlawful procedure, you know, going outside the record, so things like that.

A little bit of case law review. So every decision that you make is it's a creature of the law. So, you know, if you're looking at a Special Use Permit, or an SMA Permit, or a Project District, you know, two or three, all of those are creations of the law. So the procedure that you follow is, is in those laws. And that's why the staff's report or recommendation and, and then of course, whichever deputy is there, we're your resources, kind of help you figure out which path. Ultimately, it's your decision, though.

One of, one of the things that you'll hear about is like, say, an excessive permit condition or a condition that's unrelated to the impacts of a project. And that can be what's called a taking. And it's, the legal definition is forcing some people to bear a burden that should be borne by the public as a whole. Another takings claim is can be based on a lack of a nexus or the connection between the effects of the land use and the real property action. So what the Commission does is identify the anticipated effects of the, of the impacts of the project, and then permit conditions should be designed to mitigate the effects of, of that project, but they shouldn't be excessive. And so it's a, it's a balancing act. You know, you want to design conditions that mitigate the impacts, but that aren't, you know, don't go too far out of the bounds of that so that they would be excessive.

And so this, this is one of the takings cases that comes up quite a bit in terms of in which made, which made law. And so you are allowed, of course, to impose conditions. And the thing to keep in mind is that the condition needs to further governmental purpose. So it needs to be obviously furthering the purpose of the law that you're applying.

The concept of rough proportionality is in the context of a condition. It needs to be in the same proportion as the impact. So not greater than what's necessary to mitigate the condition. So the Nolan and Dolan test is the shorthand permit conditions need to have an essential nexus. And what that means is how is that condition related to this, in our case, it's the Lanai Planning Commission's interests and the law. So what is being protected? How does that condition address it? And then the condition needs to be roughly proportional to the project's impact and not excessive.

Unconstitutional conditions, those are conditions that go too far. And so the just compensation, you know, is when property is taken for public use. And so if the condition is excessive, a Court could say, well, that is, you're actually taking public property or private property for a public use, and so that needs to be paid for. So another --

Mr. Gima: Richelle, I've got a question.

Ms. Thomson: Sure.

Mr. Gima: Yes. In your experience, have you run across conditions that were excessive and if so, could you give us some examples so we have some frame of reference?

Ms. Thomson: Sure. So a -- let's see. We haven't had, we haven't had a, a takings case in a while. I think the last, the last one was a case where a, and this is a regulatory takings. So this isn't in the context of a of a permit, but it was through, like, the Community Plan process. So an area was community planned, community planned say park, and which would not allow, you know, a residence to be placed there. So the -- and I may not have all of the background are completely accurate -- but the, the owners brought suit for a regulatory taking, meaning that they couldn't use their property because it was, it was both community planned and zoned to not allow any development. So that was, that was one. We ended up winning that case, though, which is good.

And there are -- let's see. They come up, it comes up more often in permit conditions that go too far. So I can't remember if it's Nolan or Dolan, but requiring, like say, requiring beach access that impacts the property to such a great extent when it really should be either purchased from the property owner or, you know, made much smaller, that kind of thing. And I'm not sure if, if those help. I can come up with a few more examples and, and, and give those to you next time. But that's, that's why one of the, you know, in the recommended conditions that the Planning Department comes up with and those, you know, those are, they have enough familiarity to know what is within the bounds and what isn't. And that's why sometimes when we're, when we're crafting conditions for, especially for a kind of unique circumstances, we'll spend a lot of time discussing it, you know, and really narrowing it down so that we know that the condition is directly addressing an impact and is not an excessive condition.

Mr. Gima: Okay, thank you.

Ms. Thomson: And it's a, it is --. Yeah, it's definitely a gray area. There's not, you know, a specific, you know, where the line is, but, you know, obviously makes our determination. And in the context of, again, we're talking about permit conditions and things, you look at the law that you're applying. So with regard to SMA, you're looking at the things that the same law is designed to protect. So recreational resources, public beach access, I mentioned, historic resources, open space and scenic resources, and coastal ecosystems, hazards, and also managing development.

And you can deny permits, and you know, you have in past years denied permits. This body has. So the, the Commission can impose reasonable conditions to achieve, you know, minimizing impacts. But sometimes that can't be done. You know, the impacts are too great, and you know, the Commission will need to, will need to look at denying the permit outright. And so what you would, in your record, you would want to put those, those reasons that you're, you're issuing a denial into your records so that the, if it's appealed that a Court can understand how you made that decision and why you felt that there were no mitigation measures, which means conditions, there were no conditions that you could impose that would have mitigated the impacts sufficiently.

Mr. Gima: What's that case you cite?

Ms. Thomson: Topliss?

Mr. Gima: Yeah.

Ms. Thomson: I don't know how to go backward. Yeah, I can send you the case if you'd like. It's actually a pretty interesting read. I honestly don't remember the, it's been, it's been a couple of years since I've read it so I don't know that I would give the specifics of it closely enough. But I can, I can send that to the Commission.

Mr. Gima: So this is a, this is a case where the Planning Commission denied the application?

Ms. Thomson: The, on topliss, um, I'm going to have to look at it again. I just can't remember honestly. It is, it is one of the, one of the line of takings cases, though.

Mr. Gima: Okay, thank you.

Ms. Thomson: I wrote it down to remember to, to send that. So these are just a few examples of SMA permit conditions; the maintenance of beach access, preservation of archaeological sites. So designated areas where development can't occur, where it needs to be protected, such as through archaeological monitoring, you know, when there is any disturbance activity. Coastal hazards, you know, so the tsunami inundation zone. You know, having a building not being too close, things like that. Setbacks and building height restrictions, those are in the Maui County Code, but they are, the reason that they're there were also related to some of the SMA law requirements. Drainage improvements to control runoff into the end of the ocean. And then also lighting, minimizing artificial lighting and such. And that's an on contested cases. Just a little bit on the --

Mr. Gima: Richelle, before we leave SMA, when you're, when you're referencing the Planning Commission made changes to the SMA rules, didn't Planning Commission extend the SMA boundaries? And if so, where, where would we find that in the SMA rules that were in our packets?

Ms. Thomson: The SMA rules have been amended over time, but what was just amended was actually the SMA map. And believe it's a digital map now, and I think Jacky can probably, or one of the planning folks can point to where that's most easily accessed. I don't, I'm not sure if it's on the Lanai Planning Commission homepage. But that's another, and if it's not, I can send you the link. And that's the, that's the actual SMA map for the entire island.

Mr. Gima: Because didn't the planning commission extend the amount of land inward? They took a much more conservative approach than the other? Can you comment about that, about the approximate distances?

Ms. Thomson: Sure. You know, I think that it was, and it was a really fantastic process to go through with this Commission and it was a few years ago. It was very, in my opinion, very, very well done because you had so much data, that the Commission at that time had so much data in its records. So you got to look at tsunami inundation, presence of archeological sites, you know, along and within the coastline area. So rather than, you know, generally the SMA on other islands is kind of back to the main coastal road. So like Hana Highway or, you know, the, the certain roadways, which that's a very arbitrary line. It doesn't necessarily mean that that's the, the most ecologically sound designation of the coastal area. So, you know, like I was saying, the Lanai Planning Commission back a few years ago really went through a lot of data. So your line, when you go around the coast, it really looks kind of squiggly, you know? So where areas where you have geological features that go further inland, you'll see that the line backs up inland and in accordance with where those features are. So rather than just basically a circle, you know, around the perimeter of the island, it's much more scientifically based. And so, I, to me, that's it's a really terrific model for the other, the other counties. They haven't quite gotten around to updating theirs, so you're ahead of the game.

Mr. Gima: Okay, I'll look forward to the digital map. Thank you.

Ms. Thomson: Okay. Yeah. I'll, after the, after this, I'll take a look and we'll see where it is and I can put it in the chat.

Ms. Takakura: Excuse me.

Ms. Thomson: Hi, Jacky.

Ms. Takakura: Richelle, I just, I put the links in the chat. I found them on our website, so I just put them in the chat. That's all.

Ms. Thomson: Awesome. Thank you. Perfect. And just a little bit on the sunshine law. The sunshine law is its under, under State Law. So the purpose of it is to open up government meetings so that the public can view the decision making process. Contested cases are not subject to sunshine law. Certain other things that you do are considered sunshine law matters. The, the public hearing that you're conducting tonight, that's going to be held in accordance with a sunshine law. And like I said, kind of a shortcut on how do you know which one you're doing? If the decision you're making is final, meaning you're the, you're the last stop, no one else makes a decision, it doesn't go to Council for a decision and a Court could review, that's a contested case. If it doesn't have those qualities, it's usually sunshine law. So the main thing with sunshine law is do your business in an open meeting; testimony is required to be offered; and the sunshine law just recently changed so that testimony previously was normally taken at the beginning of a meeting. The Sunshine Law was amended so that you have to take testimony at each item or as Council is doing at each kind of block of items. So they do all their testimony for committee reports, all their testimony for resolutions at one point.

Another way that the Sunshine Law was amended was to allow virtual meetings like we're doing now. Previously you could only do virtual meetings under very limited circumstances. So I think that was one of the, in my opinion, one of the benefits of, of the experience of the pandemic was, you know, all of us figuring out how to remain in contact with one another using this technology. It's not perfect. I agree with everyone that in-person meetings, there's a lot to be said for that. But one of, one of the benefits I've seen is a lot more public participation. So pluses and minuses.

So meetings, there's a State definition, a State, statewide definition. What it means is that you, it's not just, you know, you getting together at a, you know, a community event simply because you're, you're commissioners it doesn't mean you can't gather outside of, outside of a meeting. So if you have something that you've got supervision, control, jurisdiction, or advisory power over a topic or an application, then that's something that you should only discuss in the context of a meeting, of a noticed meeting. And of course, all of you know the actions of the Commission, you can't do them unilaterally. So it needs to be by at least five of your nine members.

Mr. Gima: Richelle, I've got a question.

Ms. Thomson: Sure.

Mr. Gima: So I just want to clarify. If I heard you right, you said contested case hearings where the entity has the final word, does the sunshine law does not apply to that process? Was that accurate?

Ms. Thomson: Correct. Yeah.

Mr. Gima: So, so the, so the Lanai --

Ms. Thomson: But --

Mr. Gima: So the Lanai Planning Commission, the Lanai Planning Commission has seven applications where we're the final authority. So in those applications coming before us, where we have the final say, the sunshine law does not apply to us. Oh, I never knew that.

Ms. Thomson: Correct.

Mr. Gima: Thank you.

Ms. Thomson: Yeah, the sunshine law, but, yeah the contest case procedures do, and there are, there are some similarities. One of, one of them is like going outside the record or doing your own investigations. There are limitations both in the sunshine law context and then also in contested case context.

Ms. Grove: Richelle, I also was --. I'm sorry, go ahead.

Ms. Thomson: Sure.

Ms. Grove: I was also sort of tripped up on that language. So if we have final authority on something, I mean, when you say that we're not subject to the sunshine law, does that mean we're also then not required to take public testimony?

Ms. Thomson: That's a very good question. So some contested cases require a public hearing and it's just, you know, whatever law it is, it will say that must hold public hearing. And what we've started to do with contested cases that require public hearing is swearing in those public testifiers, and then asking the applicant, do you have any questions? What that really means is we're offering the applicant the opportunity to cross-examine or question them on, you know, what they've said.

Ms. Grove: I got it. Thank you.

Ms. Thomson: Yeah, so we do in certain circumstances have to take public testimony. Other times it has become such a, it's become such a thing that the public expects that sometimes Commissions still do take public testimony even if it's not a public hearing. So even if it's not required. We have moved away from that in other bodies, such as the Board of Variances and Appeals. They, they do like 99-percent contested cases, and very, very tiny, you know, little fraction sunshine law matters. And in those, in that context, a variance, a land use variance is a public, it requires a public hearing. But appeals that they handle are basically single-party contested cases, and they don't require a public hearing, and we haven't been having public testimony, taking public testimony on those. So it's, it's kind of an evolving area in terms of how the various Commissions in the County has been handling that.

This, the slide I have up here is in the sunshine law context, um, communication between members. And basically, I just tell all the boards if it's something that you know is going to be on your agenda, don't talk about it with each other until you're in the context of the meeting. The Sunshine Law does allow two members to talk to each other as long as you don't make an agreement on how you're going to vote. The trouble with that exception, of the two member exception, is that especially on a small island, small community, it's very easy to have a communication with one person and then that person talks another person. And so by the time you get to the third person, you've violated the Sunshine Law. So that's why I always just say it's best if you can avoid talking about board business outside of, outside of meeting.

One of the things that is, is kind of just a weird caveat of this law is that you can talk to other people about it. So you can talk to me, you can talk to the Planning Department, you just can't talk to each other. And you know, the reason behind that is that the public doesn't have the opportunity to see how you made your way to that decision if they're missing, you know, some of the communications between you all. Not a perfect law, but it's what we've got.

This is one of the exceptions to the Sunshine Law. It's called a Permitted Investigative Group (PIG) or a Temporary Investigative Group, a TIG. It's less than quorum. So if you're a nine member board, that would be between two and four of the Commissioners. It takes a minimum of three meetings. One to set the TIG up and to define what this group is supposed to go out and investigate. At least a second meeting for that TIG to come back and report to the group. And it takes a third meeting before the body as a whole to make any decisions on whatever assignment that TIG had. And the reason is so that the public has the opportunity to listen and offer their comments prior to you making a decision on it. That's why that, the rule of three.

Ms. Grove: I have a question about that one. How is that ever used? I mean, is it the TIG thing can be . . . (inaudible) . . . and in what context?

Ms. Thomson: Um, it is used not, not a lot, you know, because one of the nice things about having a TIG is that you don't have to have public meetings. So say three members are assigned to a -- say in the Board of Water Supply, there was a TIG that was assigned to basically look into some components of the East Maui Water System. And so that's obviously quite a big task. So they, they went out and gathered up that information and created a report, and then came back and reported it to the rest of the board. So that's, that's one context.

Ms. Grove: Thank you.

Ms. Thomson: Um, you know, for --. Yeah, there could be something within the, you know, that comes up in your, in your purview that might be, might be suitable for a TIG. And it just allows you a little bit more flexibility to be able to look into matters outside the confines of the meeting.

And this is another sunshine law permitted interaction. If a meeting is canceled due to a lack of quorum. So, you know, and this is not going to happen, but say when we have the water workshop, you know, where we organize, you know, many participants that are going to come and speak to you all and all of that. So say, for whatever reason, only three people, three planning commissioners show up. So the meeting is, has to be canceled for lack of quorum. But in order for the, you know, the public who has taken the time to come out and, and those presenters, you can go ahead and receive the presentation and the testimony, and the Commissioners who are present at that canceled meeting at the next meeting will let every, all the other Commissioners know the gist of it. You know, what the presentation was about, what the testimony was about. Obviously, you wouldn't miss the water workshop because it's really super interesting and I've seen it several times and I always learn things. So I know no one's going to miss that.

Ms. Grove: So I have a question about that. I'll try to be quick. But it says that the Commissioners may, the word may was used about receiving testimony, which made it sound like it was arbitrary, or that, there was some deciding factor? Or how does that get determined?

Ms. Thomson: You know, it's, it's really determined by the Commissioners, themselves. So sometimes, yeah, if there aren't that many testifiers or if the presenters can come back, you know, then it's, then it's really just best to just cancel the meeting and not hear the, the presentation. Yes, it's still up to, it's really up to the members who are present.

Mr. de la Cruz: I have a question on it.

Ms. Thomson: Sure.

Mr. de la Cruz: Um, like we had a similar but different circumstance happened once where we lost quorum during a meeting, and like, we, that option wasn't available. Like I think we had, we had to cancel the meeting. Can you kind of explain like what the difference between not having quorum in the beginning and losing quorum during the meeting is?

Ms. Thomson: Unless it doesn't make logical sense, but it's just a, it's a function of the law. So this, that exception is only for meetings that are canceled due to lack of quorum. So a meeting is it's not canceled if you've, if you've already started the meeting, and you have quorum, but then you lose quorum, you have to terminate the meeting then. So because you've already started it, that exception is not available basically.

Executive meetings, those are, it's another sunshine law exception. And usually it's to go into a private session, and BlueJeans offers breakout rooms. Zoom also has a similar function. And it's usually just, it's, it's just the necessary people. So it's all the Commissioners, and your attorney. Sometimes there will be specific staff that would come in as well. Yeah, so like I said, usually with the Planning Commissions, it's to talk about, you know, to be able to speak very frankly and to ask for advice and get it outside of the public setting. Sometimes we'll use it to talk about conditions, you know, like we were talking about earlier is does this condition go too far? You know, and then I can, I can tell you, you know, well, yes, it does, but here's a way that you might think about fixing that. And you don't want to do that in, in the public frame for obvious reasons because that's a liability issue, you know. So that's, that's a reason to go into executive session.

Sunshine law violations. So what happens if the Sunshine Law is violated? The decision can be voided by a Court. It could be enjoined, meaning it could be, you know, whatever the decision is, it could be halted. It is a misdemeanor where a Commissioner could be removed from, from the Commission.

Robert's Rules of Order. You have your own Rules of Procedure and those would govern. Robert's Rules of Order are a, it's basically the book of, you know, how meetings are, are held. And you know, if there's debate on the floor, you know, what happens if you need to rescind a decision or and all of that stuff. So it's just a, it's a how to, a how to guide. So this is just a slide on flow of a meeting. This is all, this is a function of Robert's Rules of order, and not so much your, your own, your own rules.

So the, the Chair controls the meeting, and the order and the flow of the meeting. That's why you request the Chair's consent to speak both so that the transcript is clear, but also so that, so that the Chair can control so that one member doesn't dominate. You know, and offers all of the members equal opportunity.

And as you all know, motions are made and seconded. Once a motion is seconded, it does, it no longer belongs to the maker of the motion, it belongs to the body. And under your Rules, once you get to the vote, silence or a recusal to vote, absent a conflict that you have disclosed previously, is counted as a vote in favor of whatever the motion is.

Ms. Kaye: Can I ask you a question about that, Richelle?

Ms. Thomson: Sure.

Ms. Kaye: It used to be, the understanding was that if you . . . (inaudible) . . . it was considered an affirmative vote. I understand that's no longer the case.

Ms. Thomson: An abstinence, if you abstained on something? Yes, so if you abstain without, without a conflict, say, you know, if, like, you know in your case with the project district issue, you know, the Board of Ethics wanted you to refrain from participating on that. So then your vote would just not be counted, you'd be abstaining. But sometimes there are, there are situations where it doesn't, you know, it doesn't rise to the level of a conflict. It's just a member either is not ready to vote or has something that doesn't rise to the level of a conflict, but just, is, you know, is unwilling for whatever reason to vote. And then that's counted as an affirmative.

Ms. Kaye: I'm sorry, I thought that . . . (inaudible) . . . is that written down somewhere as part of our rules?

Ms. Thomson: Yeah, it's, it's in part of your rules. Yeah. Different boards do have . . . (inaudible) . . .

Ms. Kaye: Okay.

Ms. Thomson: Well, it's --. Yeah, it's part of Robert's also. But your Rules govern over Robert's. So unless your Rules don't specify and then we look to Robert's Rules.

Ms. Kaye: Okay, so are there no commissions where abstention is just simply an abstention?

Ms. Thomson: Nope, not the County. Not that I'm aware of.

Ms. Kaye: Okay. Thanks.

Ms. Thomson: And so this --. One of the, one of the things you'll hear this at Council more than on the Boards is they will say I have a friendly amendment. There really aren't any friendly or unfriendly amendments, they're just plain amendments. But like I said, you know, once a motion is made and seconded, it belongs to the body. So you can, you can amend friendly or not.

Mr. Gima: Richelle?

Ms. Thomson: Uh-huh.

Mr. Gima: I have a question going back to that silence or recusal. So what's the protocol as Chair when someone does that? Do I just recognize that they're not going to vote, or do I try and solicit a vote? And then if they choose not to vote, how is that reflected in the tally? So for like, three, three . . . (inaudible) . . .

Ms. Thomson: So the minute will actually --. So the minutes will, you know, say it's you have all nine members and it's --. Say you have four and four and one abstention, that abstention will be reflected and it will be counted as a vote in favor of the, of the whatever the motion was. In terms of how you as Chair would handle them, yeah, I would, I would check with the member, you know, because sometimes, you know, they've either said something and it was not audible, you know. But the member normally would, would say, I abstain and then usually I'll, either you or I would remind them, if you don't, if you don't vote, you know, unless you have a conflict, if you, if you just abstain, that's going to be counted as an affirmative. And, you know, sometimes they will decide one way or the other on their vote and, and then other times they're just not prepared or willing to do it, and then it's just counted as an abstention.

Mr. Gima: I'm a bit confused. So silent slash recusal is the same or not the same as abstention.

Ms. Thomson: It's the same.

Mr. Gima: Okay, so as Chair --

Ms. Thomson: Unless you --

Mr. Gima: -- if, if, if the person does not want to state that I am abstaining, then as Chair, do I then have to say by your refusal to make a claim or just buy your silence I am considering your vote as an abstention, and as an, an affirmative on the motion. Is that accurate?

Ms. Thomson: Yes.

Mr. Gima: Okay, thank you.

Ms. Thomson: Yeah, yeah. And these are pretty commonsense, right? These are just things to remember in all meetings. You know, try to remain fair and impartial. You know, to give the applicants a fair hearing on whatever it is that they're asking. Try to avoid pre-judgement. You know, it's important to read all of the materials before you get to a meeting, but try not to make your mind up which way you're going to, which way you're going to vote until you've heard all the evidence, including the oral presentations that you'll, that you'll have at that meeting. It's -- so your, your decision is needs to apply the law and not feelings, which sometimes can be difficult. Obviously and sometimes meetings can get heated, but you know, it's -- and then the Chair will call for a break, you know, when things get a little bit too, too heated. But, you know, always try to avoid comments on anyone's race, sex, gender or religion.

Also, and I mentioned this a bit earlier, avoid doing your own investigations or rely on facts or opinions that aren't in the record. Use your resources. So you can request of the Planning Department, you know, if it's a legal request, you know, with me. But you can ask for more information, you know, of the applicants. You can do site visits, things like that. Those would all be you acting as a Commissioner, in the role of a Commissioner, and within the confines of, of a meeting, rather than going and doing your own site visit or, or things like that. And it's just to keep your process as clean as possible.

Mr. Gima: Richelle, just, just as an aside, I got my hands severely slapped when I was on the Advisory, the Lanai Advisory Committee to the Maui Planning Commission in the early 90s because I did my own site visit when they were trying to approve the clubhouse down at the Manele Golf Course. And so I went and checked it out, and I came back to the meeting and then, yeah, I got, I got scolded big time by planning staff and Corp Counsel.

Ms. Thomson: Yeah, I know, that's never fun. And I mean, unless, unless you've kind of heard this a few times too, it's incredibly tempting, especially, you know where it is. So it's, it's, you know, unless you understand that it's just something you can't do, it's very tempting to do it, and you would know that it's not correct.

Just a quick bit on the -- and I say quick, it may not be. I'll try not to make it long. On the, the Code of Ethics, that's in the County Charter, in Chapter 10. Some of these are fairly obvious. Don't accept gifts or money, or engage in any business transactions that would be not compatible with your duties as a Commissioner. That includes failing to disclose a financial interest or vote on a matter that you may have involving such interests. On Lanai that frequently comes up because Pulama is the largest employer so there are -- it's, you know, it's not the case that someone who works for Pulama is automatically going to have to be conflicted out of participating. But that's, you know, when it comes up and if it's close call, obviously there's some that are kind of clear cut where the applicant entity is, you know, going to be working on a project and you work directly with that so you would be working on the project. That's kind of a clear one issue. You know, we'll discuss it and then usually you'll recuse yourself from voting or participating because of that conflict.

But saying you worked on a component of the project, you know, many months ago or a year ago, and you don't have any current involvement and no anticipated future, that's probably far enough attenuated that it wouldn't rise to the level of a conflict. But I think you have some, just because of the nature of, of Pulama, and you know, Lanai being such a small community that does come up more frequently than it does on Maui or on Molokai. We can always talk it through too if anything comes up.

And this is in your planning commission rules, and talking about conflicts of interest. So if you have a conflict or a potential conflict, you make a full disclosure to the other members, especially the Code of Ethics talks about and your rules talks about financial interests that can be affected by the action that the Commission will take, that member is disqualified from voting.

And we kind of touched on this before, an employer employee relationship isn't automatically a disqualification. And it really depends on the circumstances and the Board of Ethics, unfortunately, sometimes the timing doesn't work out, ideally, but the Board of Ethics is available for advisory opinions. And if you seek an advisory opinion from the Board of Ethics and you act in accordance with that, you are obviously not considered to violate the Code of Ethics.

So if you know, if a complaint is filed and they think that you know, one of the members did have a violation, a conflict, but was silent on it and continue to participate and vote, you could possibly face a fine or be removed from the Commission. But I think one of the things you know is also an unfortunate ramification is that the Board's decisions can be called into question and voided, and nobody wants that.

So thank you for your, thanks for your attention. I'm sorry, I probably rambled on a little longer than I had hoped, but I really appreciate the questions that you had during --, it makes much more interesting, and I think for everybody when we talk about that. And I will follow up with that case I mentioned earlier. Thanks Chair.

Mr. Gima: All right. Thank you, Richelle. Commissioners, any questions or comments about what we covered in the last hour? All right, hearing none, let's take a five minute recess and then move on to the, tonight's public hearing. So be back in five.

(The Lanai Planning Commission recessed at 6:03 p.m. and reconvened at 6:09 p.m.)

C. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.12, MAUI COUNTY CODE, RELATING TO CONVERTING APARTMENT BUILDINGS FROM TRANSIENT VACATION RENTAL USE TO LONG-TERM RESIDENTIAL USE**

Ms. Michele Chouteau McLean, AICP, Planning Director, referring to the Maui, Molokai and Lanai Planning Commissions a proposed bill to amend Maui County Code Chapter 19.12 – Apartment Districts, to allow property owners of buildings located in the Apartment Districts to permanently convert property from transient vacation rental use to long-term residential use. (J. Takakura)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/134354/Bill-for-Ordinance-amending-Chapter-1912-relating-to-converting-vacation-rentals-to-long-term-use>

Mr. Gima: We have quorum on screen. At this time for a public hearing, we have a bill for an ordinance amending Chapter 19.12, Maui County Code, relating to converting apartment buildings from transient vacation rental use to long-term residential use. Michele McLean, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions, a proposed bill to amend Maui County Code Chapter 19.12, Apartment Districts, to allow property owners of buildings located in the Apartment Districts to permanently convert property from transient vacation rental use to long-term residential use. So at this time, I will hand this over to, to Jacky.

Ms. Jacky Takakura: Okay, good evening Lanai Planning Commission. I don't have a power point presentation. This bill is pretty short, and it's related to the Apartment Zoning District, and that's Chapter 19.12 of the Maui County Code. And as Chair Gima mentioned it's to allow owners to convert from transient vacation rental use, or TVR use, to long-term residential use.

Just some background information. The Apartment District, the purpose and intent of the apartment district is to provide higher density housing options and occupancy on a long-term residential basis. However, Maui and on Molokai, there are apartment district properties with vacation rental use because they meet certain criteria. Basically, they were conducting the transit vacation rental use before it became prohibited.

The County Council proposed this bill to add a new section to Chapter 19.12 to establish criteria for property owners to voluntarily, voluntarily discontinue TVR use if 100 percent of the owners agree to execute a declaration which would be filed with the State Bureau of Conveyances. The declaration would state that the owners will use a property for long-term residential use only, and that they forfeit any right to TVR use. My understanding is that the benefit to the property owners would be the lower rate for real property taxes. The County Council did discuss bringing the percentage down to 67 percent instead of 100 percent of owners, but they decided to leave that up to the Planning Commissions.

The Planning Department, as I mentioned, if you read the memo report, we just have one proposed revision and that's, let's see, if you look at the memo report, it's on page two. And that's for the proposal to add this 19.12.025 (D) as in dog. The resolution from the Council

has that this wording about unless such use is then allowed in accordance with a valid permit. And to us that that's kind of contradictory because first you would prohibit it and then you would allow with a permit. So we proposed to remove that language, allowing the use with a permit, and just make it really clean. And the Finance Director agreed with that, and so we have that on there. And that's about it. I'm here to answer any questions, and I do know that on the island of Lanai, you do have some apartment zoning district properties. But as far as I know, I don't think they conduct vacation rental use because they don't meet the criteria of having their building permits before 1989 and so forth. At least as far as I know. So I don't believe that this bill affects any of the Lanai District Apartment District parcels. But I've been wrong before, so I allow myself to be stand corrected if I need to be. But that's it in a nutshell for this bill. I can answer any questions if you have.

What the Lanai Planning Commission can do is approve the proposed bill, approved the bill with amendments, deny, or defer action. Chair, I'll stop here and like I said, I can always answer any questions if you have them. Thank you.

Mr. Gima: Okay, thank you, Jacky. So before we, the Commissioners' comments or ask any questions, I will now open it for public testimony. Leilani, do we have anyone wishing to testify on this agenda item?

Ms. Ramoran-Quemado: Thank you, Chair. There is no one who signed up on BlueJeans and there is no one in the Planning Conference Room wanting to testify.

Mr. Gima: Okay, thank you. Roxanne, how's about anybody in the Lanai Office?

Ms. Roxanne Morita: Nobody here.

Mr. Gima: Okay, thank you, Roxanne. At this time, I will close public testimony and now open it up for Commissioners' questions, comments for Jacky. Go ahead, Lisa.

Ms. Grove: Thank you. Jacky, I'm sorry, there's some things that I was having a hard time tracking, and so I apologize if these are kind of pedestrian questions. But it said that in the, in the memo from the Director of Finance, a couple of things on, one is that this would increase the proliferation of second home owners. And when I read it, I was like, oh yeah, we're going to provide more apartment rentals to the, you know, full-time residents and kama'aina. And I'm just curious, like, how does this increase the second homeowners or is that is that something to be concerned about? I mean, does it still make the rentals for the people who live on Maui and Molokai more difficult?

Ms. Takakura: Commissioner Grove, my understanding with the second homes issue would be that property owners who did conduct vacation rental use would let their unit sit empty because they do use it occasionally. And so instead of vacation renting it out when they're not there, it would just sit empty. That's my understanding in terms of the second homes.

Ms. Grove: Thank you. That, earlier in that that document it says the bill has the potential to reduce real property tax revenues by over \$18 million. Has the potential has me a little worried because that's not obviously a fixed number, but that \$18 million in reduction in property tax revenues. Can you talk a little bit about that? That's a chunk of change.

Ms. Takakura: So Commissioner Grove that would probably be like an, an extreme example if all of the 87 projects switched over.

Ms. Grove: And, and because they get it, the taxes that they pay on it are just at a different rate?

Ms. Takakura: That is correct because --

Ms. Grove: Okay.

Ms. Takakura: -- the short-term rental rate is the highest of all the real property tax classes.

Ms. Grove: Okay. And then before, as before I got to the, the, later in the report, I was concerned a little bit about that 100 percent number instead of the sixty-seven. I just get worried that's hard to get anybody, 100 percent of anybody, to agree on anything. Is there -- ? Can you --? How come the decision was made to keep it at a 100 and not at 67, and is anybody else recommending that maybe that number be lowered?

Ms. Takakura: Commissioner Grove, thank you. That's a really good question. So I was listening to the discussion at the Council. I believe it was the PSLU Committee, Planning and Sustainable Land Use Committee meeting. And yes, some testifiers did say exactly what you said, that it's, it's very difficult to get the 100 percent. And so that's why that suggestion of the two-thirds, the 67 percent came up because I think that's consistent with, I guess, how, how maybe HOAs or CCRs can be changed. But yeah, that was the conversation at PSLU. So I was actually myself a little bit surprised that they kept the 100 because of the testimony received that the 67 percent would be more realistic. But I guess, yeah, they just wanted to get your folks' thoughts on that.

Ms. Grove: Okay, thank you. And then my last question is just what's the incentive for an apartment owner to, to move to this long-term residential situation?

Ms. Takakura: So, Commissioner Grove, I do, I can, I know of one example in Kapalua where, it's Kapalua Ironwoods where they all have agreed that they are going to be long-term rental and not do any vacation rental. And I believe it's their tax class because they have this agreement that's on file with RPA and that allows them to have a better tax class. That's my understanding of what the benefit is.

Ms. Grove: To switching over?

Ms. Takakura: Yes.

Ms. Grove: Okay.

Ms. Takakura: And it's just easier to . . . (inaudible) . . .

Ms. Grove: So . . . (inaudible) . . .

Ms. Takakura: I'm sorry.

Ms. Grove: It would be -- I'm sorry -- in their best interest to they get a tax benefit to switch to a long-term residential. Okay, thank you. That's, that's all I had. I'm sorry, one last question, which is could they just do this now without this Charter? Do they need the Charter to get it done because it's a voluntary thing here, right? So I'm just kind of wondering why this exists if they can, and it's a voluntary program, what was the sort of inception?

Ms. Takakura: So Commissioner Grove that's a really good point, too, because like I mentioned, Kapalua Ironwoods has chosen to do this, but I think they would like to encourage other properties to do this because, you know, that one, there might be like one or two others, but I don't know. I don't, I don't think this is very common. So if they can kind of encourage other property owners to do the same, then you know, maybe might, more might want to. And I have gotten calls from various unit owners here and there that have asked about this. But you know, they would have to talk to the rest of their, you know, to make the change. So I know there is some general interest, but we'll see if it does cause more to become long-term rentals.

Ms. Grove: Great. Thank you.

Mr. Gima: Any other Commissioners have questions, comments about this bill or proposed bill? Zane, go ahead.

Mr. de la Cruz: I, um, I guess they're, yeah, like looking at the change over from the short-term rentals to long-term rentals, I think, was pulling from some of the attached documents where there was some concern about, like, I think we had discussed this previously is, well, about like an LLC purchasing the unit and using it as a de facto timeshare. And so is there -- and therefore like allowing like a timeshare, essentially effectively a timeshare unit outside of the resort areas. Was I reading that right? Is that the concern that was brought up? I think it was a financial director in his report, or their report.

Ms. Takakura: Chair Gima, may I try to answer that one?

Mr. Gima: Yes, please.

Ms. Takakura: Okay. So I don't know if you remember, but maybe a month or two, maybe, maybe more than two months ago, we did propose a bill to include in the definition of transient those LLC type operations so that they would be subject to that same 180 days rule to try to eliminate that type of, you know, these corporations buying a house and then, you know, selling partial memberships. So with that bill, which has not been passed by County Council yet, but I did transmit it already, so it's with the County Council, those LLCs would be treated just like anybody who owns a property, and they would have to follow those 180 days. And anything less would be subject to the vacation rental rules. You know, they'd have to have -- it have to be like in a hotel zoning district or a place where they can do that use. So that's kind of an attempt to put them on a level playing field with any other property owner. But this, you know, if it's in the Apartment Zoning District and, you know, they can get enough votes --. Well, if this changes to 67 percent or something else, then they would have to follow the rules, you know, just like all the rest of the unit owners. Not sure if that helps answer your question.

Mr. de la Cruz: I guess it's, it's, there is --. Since that other bill hasn't been passed yet, there is potential for this to be opened up as a kind of like de facto timeshare, like these units? Like that loophole exists because that other bill hasn't passed yet.

Ms. Takakura: Yeah, I think so. The, the potential is there, yes. Yes.

Mr. de la Cruz: I think -- I'm not sure if this is really a question or something. I just kind of want to get out to the rest of the Commission. Like with that bill we were looking at, not sure if was last month or two months ago, that was looking at reducing and capping short-term rentals and all the other zones, like one of the, at least for me, one of the takeaways of that meeting was that people coming to visit or looking for, I guess, a more diversified stay option than just hotels. And, you know, with this stuff going purely into long-term rentals, like how is that going to affect like short, short-term stay? Because we're potentially removing hundreds of units from short-term rental. I'm not saying that's good or bad in either direction, but I think there are definitely consequences there if we don't think about that.

Ms. Takakura: So Commissioner de la Cruz, you know, the apartment buildings that can conduct the rental, vacation rental use, those are going to be a lot of the older properties, like in Kihei or Lahaina that were built or got their permits before 1989. And so those are the condos. So I guess that this bill could have the potential to remove some of that type of lodging from the pool. Yeah, it's mainly those older apartment district properties that we're conducting the use, you know, from the 80s or so. There's a lot of them in Kihei. I mean, they're all over. There's one in Paia, you know, . . . (inaudible) . . . But yeah, it's a lot of the older properties. So that's the kind of vacation rental option that this could impact if the owners want it. And what I'm thinking is the properties that would want it would be the ones that are still very high, long, you know, long-term residential use. Because if the property is already, you know, real high, vacation rentals, there's not going to be the motivation to convert to long-term.

Ms. Trevion: Hi, this is Chelsea. I would like to ask a question.

Mr. Gima: Yes. Go ahead Chelsea.

Ms. Trevino: Okay, so I guess I didn't realize when I was reading it until you made the comment, Jacky, earlier, the context of the 67 percent versus the 100 percent. So I think what you were saying is if 67 -- if we went with the 67 percent -- if a building had 67 percent or a little bit more than who wanted to transition to the long-term, it would, it would force the whole building. Is that correct? Versus -- so there could possibly be some apartment owners who maybe were reluctant to or didn't want to that would have to. Correct? So maybe that's why they opted with the 100 percent.

Ms. Takakura: Yes. If you're -- if the Lanai Planning Commission recommended changing the number from 100 to 67 percent, then you're correct. I guess, you know, it would just be, yeah, that 67 percent of property owners voting and then the 33 percent who were not in support would be obligated to follow along. Yeah.

Mr. Gima: Go ahead Zane.

Mr. de la Cruz: Yes. A clarification for me. So these apartment districts that have short-term rentals as an allowed use, the long-term rentals also an allowed use, but what we believe the incentive is, is that if the disallowed short-term rental use, then their tax liabilities are lowered? Is that kind of the incentive?

Ms. Takakura: Yes. And just FYI, I do have a list on our Planning Department's homepage, it's under, it's the last of the hot topics, and it's the list of the different properties. And there's, you know, there's Wailea, Maalaea, Kihei, Lower Honoapiilani Road. And then just two in the Island of Molokai. So if you're interested that I do have that list posted on our website...of, of properties that can have vacation rentals in the Apartment District.

Mr. Gima: Chelsea, Zane, you guys . . . (inaudible) . . . ? Nikki, Erin, Lisa, Sally?

Ms. Kaye: Yeah, I have a follow up question. I had the, I had the same question that Chelsea did, and I guess from a legal perspective, if I'm the 37 percent who don't want to do this, how are, how are is it going to be anticipated that you avoid a huge amount of litigation over this?

Ms. Takakura: I think that's a great question for Corporation Counsel.

Ms. Thomson: Hi there. Can everyone hear me? Okay good. I think that that's definitely one of the concerns that that we had too. You know, not necessarily that the County would be drawn into a lawsuit, but that it would generate a lot of litigation, you know, in these older condo complexes. One of the options that hasn't been discussed and I know both the property tax division and also, I believe, Planning, are not necessarily in favor of this, is unit by unit, where units can opt out. So legally, that's an option. I know that just from record keeping and trying to keep track of, you know, if you have one building that's, you know, some are still going with the short-term option that they have currently and others opt out, you know. But,

but, it is also a way of achieving that goal of systematically trying to convert to weeding out this short-term exemption, or exception that certain condos have. But yeah, you're, you're completely right, Commissioner Kaye.

Ms. Kaye: Okay, so I'm going to assume the impetus for this is to try to provide more opportunity for residence to have long-term rental opportunities. I don't --. I think Richelle is right. I think it either has to be 100 percent or unit by unit. I think 67 is a recipe for endless litigation. And yeah, maybe the County won't get pulled into it, but nothing going to get resolved until the litigation is. So I would think we'd have to think about which of those options might better achieve the goal here.

Mr. Gima: Go ahead Zane.

Mr. de la Cruz: Um yeah, like, I, I agree with what was just said. Is there --. Like does it have to be a one or the other? Can it be, you know, like, say, a building and for the sake of math, there's a 100 unit in it. Um, and you know, they can't get the 100 percent that's, you know, the extreme end, but they can get the 67 percent. Could that be like a trigger that would allow them do a unit by unit so that way you can try to keep the record keeping paperwork as manageable as possible. But, um, sometimes it's just not going to happen. Like if they can get the 100 percent, great, easy, or relatively easy. But if they can't get the 100 percent, then maybe that trigger is a unit by unit thing.

Ms. Takakura: Chair Gima, just to address that, you know, in the Department's recommendation, we didn't really go down that path about discussing the percentage, so I think the Lanai Planning Commission could make any recommendation they thought was, you know, made sense to the Commission. You know, I, yeah, I think it's up to you folks because you have some really good issues here to bring up.

Ms. Trevino: I don't --. This is Chelsea. I just wanted to ask about now this is the Exhibit A and B which is part of the, the Director of Finance's response. I'm just looking at I'm assuming it's showing us, you know, the, the condo and then it's giving us the total, it sounds, it looks like total apartment, I don't know. And then there's several columns, and some have, they have numbers in them. And then when you add them all together they equal the total. Do you have any idea what the nine, one, zero, 11 and 12 are? Because maybe that helps us understand which ones are being used for short-term or I don't know.

Ms. Takakura: Commissioner Trevino, yes, that, those are those classes of real property tax class. And I do have it on another spreadsheet so I can look for it real quick. But yeah, that's, those are the real property tax codes from RPA. So I can tell you what those are in just a moment. Let's see here.

Ms. Trevino: Because number 11 seems to be very high, so I don't know what that is.

Ms. Takakura: I just need a minute. I have it somewhere else in a different spreadsheet than they've given me. Okay, so one is non-owner occupied in a residential, so that would be like rentals. I don't know if they have a two. Is there --? So one is non owner occupied residential. And then nine is owner occupied homeowner. So nine is the ones where you actually have long-term rentals. So one is non owner. And I don't have the codes for 11 and 12. So those are very good questions. I will have to ask RPA what the zero, and the 11, and the 12 is. The 11, it could be short-term rental tax class, STR. I just don't have that. Just looking at how high the number is for 11. So I can get that information. Sorry about that.

Ms. Trevino: And then just to make sure I understand correctly. The whole, the way it is right now, the whole building is short-term or there are some short-term and some long-term currently like.

Ms. Takakura: Some of these, like, for example, I'm looking at Exhibit A, Wailea Ekahi, which is the third one where it's got 100, under 11, that's probably all, all units are probably short-term rental.

Ms. Trevino: Yeah, but I guess what --? I'm, well, what I'm trying to ask is -- I'm sorry because, because somebody can have a short-term lease but still rent long-term. Like, I think what I'm trying to figure out is these people who are renting long-term, are they renting from short-term rental people which might increase their rent? I'm just trying to figure out, like, the play of this thing because I mean, to be honest, to look at these numbers, how would somebody get the whole building to turn it over if, if they're all, you know. So I just kind of just trying to understand who, who it would benefit or what would be the benefit of it and, and, who maybe it may cause more challenges for. And in that context, I'm, you know, I'm generally for something that contributes to a little bit more ease on a full-time resident, right? I mean, that's just me personally, so that's why I'm asking that. Because I wasn't sure if the whole building, then, is short-term, or you can have some that aren't because the earlier suggestion was, well, maybe we could do unit by unit.

Ms. Takakura: So Commissioner Trevino, so real property tax, which is where this spreadsheet, the attachment is from, is going to know which units are short-term rentals and which are, you know, have homeowner exemptions and so forth. And it does seem like the vast majority are mostly, you know, some sort of short-term rental tax class. Whereas for what we look at in Planning Department, we look at the entire property because as we've said before, unit by unit is really hard to for us to manage and it can create a sense of unfairness, you know, like why can one do it, and then next door, they can't and so forth when, when, you know, as far as the structure is concerned, they are basically the same. So, yeah, that's the main difference is. RPA knows the details. But yeah, for Planning, we don't keep track of that. And just looking at some of these numbers, yeah, it might be hard for some of them to get even 67 percent. It might just be a small majority that might try to take advantage of this bill.

Mr. Gima: So Jacky, from a planner's perspective, from a planning's perspective, there seems to be a lot missing in this bill. I mean, or I should say, as written, does the bill meet the goals of what a planner or the Planning Department is striving for?

Ms. Takakura: Um, it might encourage some properties to switch, but like I said, you know, just looking at some of these numbers on how high the numbers of vacation rental units are on these properties, it may not have a lot of impact overall.

Mr. Gima: I mean, is the goal -- I'm looking at the letter -- is the goal to phase out transient accommodations or is the goal to increase affordable housing, long-term affordable housing opportunities?

Ms. Takakura: Well, in the, that's a very good question, Chair Gima. It actually has both. In, in the Planning and Sustainable Land Use Committee report, you know, the purpose of the bill is to create long-term affordable housing opportunities by phasing out transient accommodations. By doing it on a voluntary basis, then you know, you eliminate that takings claim, I guess.

Ms. Kaye: Okay, can I, can I have a follow up question for you, Jacky, and possibly Richelle? Why couldn't those units who individually want to do this, just do it? And then the ones that are remaining, I don't know how you could force them to do it without doing litigation. So I'm not sure why there's even a percentage at all. Yeah, I think the unit by unit, if it's, if it's attractive enough to do it, I understand the tax, the tax ramifications of, okay, it's going to sit empty and people won't be spending money in the, in the community. But if those are the two goals, it seems to me that you've got to give as much leeway as possible to the property owners or you're going to be in Court forever.

Ms. Takakura: Chair Gima, if I may? I don't know how to answer that, but I'm going to write that down as a big concern by the Lanai Planning Commission, if that's okay. I'm not sure if Richelle has any comments on that.

Ms. Thomson: I agree with that. I think that the having the percentage would make this probably just less useful. I think if you're, you know, if they're able to get 67 --. What, I mean, where that comes from is from as Jacky said, the condominium law and it's generally, it's not set across the board, but it's generally the amount of the percentage of the, the owners that would have to vote to change the, the bylaws. And you know, the, the trouble, though, the trouble is that these units because they have they've been grandfathered in and is allowed short-term use, I think that that's also one of the things that makes them more sellable and saleable when people do want to sell. So I'm not quite sure that the 67 would work for a practical sense. And then I also think that those holdout owners, if they are really committed to wanting to maintain that property value, it comes with short-term rental, I think they would be willing to invest in litigating.

Mr. Gima: So Jacky, going back to my earlier question, I mean, if the goal is long-term affordable housing opportunities by getting rid of transient accommodations, why is it limited to only the apartment districts?

Ms. Takakura: Chair Gima, I believe it's because the specific purpose of Apartment District is, is that, you know, long-term residential use at a higher density. Whereas other zoning districts that have vacation rentals, you know, might have more commercial type uses, you know, like B2 or, you know, Business Zoning Districts, or BCT, Business Country Town. Or, you know, short-term rental homes and B&Bs are a whole another subject because they're single-family dwellings. But I guess because apartment district, you know, the intent, like I mentioned, is supposed to be for housing. Not sure if that's a very good answer, but this is one of those complicated zoning districts.

Mr. Gima: So in, so in Director Teruya's submittal he identifies 6,954 units in 87 reserved condominium project. Those that 6,954, is that the bulk of the transient vacation accommodations? I mean, what percentage is that of the total on the island of, or in the County?

Ms. Takakura: So Chair Gima, based on some 2021 data I had, you know, they're from real property, they, they, they had a little bit over 24,000. So if we take, let's round this to 7,000. Where's my calculator? Seven thousand divided by twenty four five hundred, so 28 percent. But you've got to remember that that 24,000 from RPA is a mix of hotel units and short-term rental homes and parcels, and so it's kind of a mix of units versus parcels. And so this 28 percent is a very rough estimate.

Mr. Gima: Okay, thank you. Someone else had a question?

Ms. Grove: I did. I just said one question of the planning experts. Just in your opinion, how effective do you think this is going to be in transitioning these units to long-term residential? I mean, it's voluntary. I hear and agree with Commissioner Kaye on the litigation issue. Um, I'm just wondering -- . Like and I guess my second question is are, are there concerns about unintended consequences? Because I will tell you, it doesn't look like this is going to be terribly effective. And I get the 100 percent; I'm now totally on board. But like you can, it's saying, the County saying, well, you can voluntarily do this. These people have no real financial incentive to do it. Probably many of them don't live on island or even in Hawaii, so they don't have, they don't feel the pull every day of the housing crisis that the people of Maui are feeling. So there's no kind of emotional righteous reason for them to do this. And then we're left with this thing that and I guess the question is what, how do the risk and rewards work in your mind and what kind of damage could we be getting ourselves into if we pass this?

Ms. Takakura: Thank you, Commissioner Grove. That's a very good question. I personally, based on the phone calls I get regarding properties, I don't know that it's going to make a big difference. It might affect a few properties here and there, but I think the pressure to vacation rent is so strong. You know, I get calls from real, real estate agents all the time about, you

know, being able to conduct vacation rental use. And then they want that answer right now because they have a sale. Maybe not so much lately, but you know, there's so much pressure because the potential to make money is there. And I feel my heart goes out to the few long-term tenants of these properties because, you know, the vacation renters, you know, they're going to play at the pool and make as much noise as they want at 11 p.m. because they're on vacation and they don't care. And like you said, the property owners are not here. And so my heart goes out to those people who are trying to live in these properties. But it's, it's always going to be a challenge against this, this pressure to profit off of these, these properties. And, yeah, I don't know, it's so difficult. I'm not sure. But you know, this might help a few properties if, if, if the ones, unit owners who want to do this can convince the rest of their group. I know it's hard once, once a transient vacation rental unit owner or when those owners get onto the board, then forget it, it's not going to happen. The board has to be made up of the long-term renters or people who live there. So that's just what I see based on the calls I get. I don't know.

Ms. Grove: Thank you. And it just seemed like from your Kapalua example that they can. If there is the will, they found the way, and they didn't need this to get it done. And so I'm just, I'm a little worried about just another layer of something that could have some unintended consequence or create some pain to the people living on Maui and Molokai.

Mr. Gima: Jacky, I have two questions. One, when did the 120-day time limit start and the second one was the need for long-term affordable housing has been around for, for years. Did anything happen that prompted Council to introduce this bill?

Ms. Takakura: Okay, Chair Gima, so the first question about the 120-days. We actually have not had the last public hearing yet. That one is going to be the Moloka'i Planning Commission, which is next Wednesday, the 28th. So the clock has not really started ticking until the 28th of this month. So it would be four months after. So I guess September, October, November, December, I guess January, end of January or so.

And then what triggered this? I think, you know, the Planning and Sustainable Land Use Committee has been trying various ways to try to increase long-term residential use in Apartment District and prior attempts, I think, got kind of close to becoming takings. And this latest bill is by making it voluntary, it takes away that that threat of takings claims. Just on my, what I've been observing from the Planning and Sustainable Land Use Committee.

Mr. Gima: Okay, thank you. Commissioners, any other questions, suggestions, recommendations? Zane, go ahead.

Mr. de la Cruz: Just referring back to Exhibit-A again, with those different numbers representing different tax codes. So is this saying that, you know, some of these units there are owner occupants. With this breakdown, does that mean that --? So are the owner occupants paying for short-term rental tax or are they paying owner occupant tax?

Ms. Takakura: Um, so Commissioner de la Cruz, they would be owner occupied homeowner tax class. So yeah, they would have the, they must have submitted their, you know, proof that so they could be that, they could get that homeowner exemption. That would be number nine, column nine, the first one is the homeowner owner occupied slash homeowner. And then number one, non nonowner occupied residential, that might be that that long-term residential rate, but I'm not sure. Sorry, I interrupted you.

Mr. de la Cruz: No, that's fine. Um, I forgot -- yeah, the thought slipped my mind. Sorry, I remember now. When -- so with, so when this building with, you know, we'll say the majority of them were short-term rentals, taxed as short-term rentals, and these other ones that are taxed as owner occupied, is that permanently owner occupied or is that still like if someone else purchased the unit, then they could go back into short-term rental? Is that, is that true? Am I reading that correctly?

Ms. Takakura: Commissioner de la Cruz, my understanding, yes. If, say, a unit is sold, I would imagine the new owner would have to file all that information and then check off which box for which tax class they're going to be claiming as far as real property tax goes. As far as zoning goes, the entire property can do vacation rentals so, you know, they can switch. And even like if that owner isn't changing, but they want to change the use like they're going to move out and then change it to short-term rental, they can. They just got to --. We do work with real property because like if we see ads, you know, we do let them know, hey, we're seeing ads, they need to be taxed at the right tax class. But I do believe that when, you know, they're supposed to go to RPA and file the correct tax class when they change the use.

Ms. Grove: And just to follow up with that, this doesn't change that, right? The building is grandfathered in because of the age of the building and no matter what happens, someone who has a long-term lease can switch it over because of the date of the building or when the, when the law was passed or whatever.

Ms. Takakura: Commissioner Grove, I believe if this were to pass and 100 percent of the unit owners voted on it, then they would become ineligible to vacation rent and I would remove them from that STR list.

Ms. Grove: So they could still do that now, right? I mean, is there any --? There's, there's nothing in this that says if you're a long-term rent, you know, if you're a long-term resident and you sell, there's nothing to stop that, that new buyer from turning it into a short-term rental in that in this language, correct? Thank you.

Ms. Takakura: In the current Code, there's nothing stopping property owners. Yes.

Ms. Grove: In this, this this proposed -- sorry for interrupting -- this proposed amendment doesn't do anything, either, yeah?

Ms. Takakura: Well, I think if they, if they file that, with, with the Bureau of Conveyances that they're forfeiting the right, then I guess they wouldn't be able to ever convert to or change their tax class to short-term rental.

Ms. Grove: Okay, so 100 percent of the people in, in a unit and then somebody sells that person who can't come in and switch it, right? So that's going to be a reason to go for it.

Ms. Takakura: Correct.

Ms. Grove. Okay, thank you.

Mr. Gima: I miss . . . (inaudible) . . .

Ms. Trevino: . . . (inaudible) . . . Sorry.

Mr. Gima: Go ahead, Chelsea.

Ms. Trevino: No, I just was going to say so we could look at this in a long, with the vision of long-term in the context of these are the numbers we're seeing now, this is how it's being used now. But if in the future more, more long-term start or more owners, you know, decide they don't want to do the short-term anymore, then conceivably little by little you might have buildings switching over here and there, and then that would just keep them from ever going back to short-term rental, right? Because man, these are some old buildings.

Ms. Takakura: Commissioner Trevino, you're absolutely correct. Yes.

Mr. Gima: So Jacky, I misunderstood. So all of these buildings were built or got the designations before 1989, and the entire building was giving carte blanche short-term rental opportunities. I mean, everyone, all the units in the building are short-term accommodations.

Ms. Takakura: Chair Gima --

Mr. Gima: So they didn't have --. So they do --.

Ms. Takakura: Sorry to interrupt.

Mr. Gima: So did they have, so did the individual units have to apply to the County for short-term rental designation or just, just because that they were part of this building it's automatic that they get it?

Ms. Takakura: Chair Gima, um, I think what happened recently was real property switched all of their tax classes the highest and best use. And then ones who can prove that they're long-term or homeowner occupied had to go in and tell them, oh, this is my correct tax class.

Ms. Trevino: This is Chelsea. I have another question. So in regards to that bill we were talking about previously, that one was, if I understood correctly, right, what was being suggested was capping out short-term rental and hotels and everything where they're at, yeah? No, no decrease. And so if that took place, like if that passed, then assuming we hit the cap, then then people would even if it was zoned for a short-term, you know, you, it could be short-term use. If we had hit the cap, they would not be able to change, correct?

Ms. Takakura: Commissioner Trevino, so if for Apartment Zoning District, the proposal in the moratorium is, is correct that no new ones, the number can't change. But actually in Apartment District, there's already is a cap because you have to meet all this criteria, including having your building permit by 1989. So there really can't be any new ones right now anyway. I guess what this bill is, is to try to, you know, get it to drop. Not, not stay steady at a cap, but actually to decrease.

Ms. Trevino: I'm going to just throw it out there that I feel like we possibly should pass it because I don't see the harm that it's going to do to anyone currently who, who, who lives and owns. If anything, it will at least contribute to possibly at some point moving forward more buildings turning into long-term and being allocated that forever, like not being able to go back. So I can, I can I make a motion or --?

Mr. Gima: Sure. Hold, hold on one second. Jacky, given the points that some of the Commissioners brought tonight, is the Planning Department still recommending that this bill be approved?

Ms. Takakura: Chair Gima, yes. It's consistent with the purpose and intent of the Apartment District, so yes. Just with that one revision about allowing the use with a valid permit. Yeah, it's okay.

Mr. Gima: Okay. Go ahead, Chelsea.

Ms. Trevino: So I would say I'm motion to accept with the, what is that thing called, the suggestion, recommendation for the valid permit as an option. I don't know how to word it.

Ms. Kaye: Can I ask just a point of clarification? Chelsea, does your motion include the 100 percent?

Ms. Trevino: Yeah, that's what it's at right now, right? It's at 100 percent.

Ms. Kaye: Okay.

Ms. Trevino: Yeah.

Ms. Takakura: So Chair Gima, if I can clarify that, yes. We're not proposing any changes to that percentage. The 100 percent is what we're in agreement with that. But you folks can change if you want to, but yeah, we're not proposing any changes to that.

Mr. Gima: Okay, was there a second?

Ms. Grove: Yeah. Grove second.

Mr. Gima: Okay. It's been moved by Commissioner Trevino, seconded by Commissioner Grove that we approve the proposed ordinance to allow properties to convert to long-term residential use, and as amended by the Planning Department in Section 19.12.025 (D) where there's a strikeout. Okay, any discussion?

Ms. Kaye: Yeah, I'm sorry. I want, I want to just clarify. I think that's fine. But my question to Jacky and Richelle is if I'm a homeowner and I want to opt out of a short-term opportunity and I want to do this conveyance, I mean, recommendation with the Bureau conveyances and give up my right, can I do that under this as an independent owner or do I have to wait for 100 percent of my building to agree to it?

Ms. Thomson: Good question. Right now, you'd have to wait until 100 percent of the building to also locked in. So you can't do it individually.

Ms. Kaye: Okay. But, but, you could, if I'm the owner and I want it, I could change my tax classification and get the benefit that this bill would allow me, I'm just not hindering a future use of the, of the property by making the recommendation that a future owner would be saddled with. Is that right? So I could do it. I just won't have -- well, I don't know what the benefit would be, except that you would be in perpetuity saddling the property with that designation, which is not a bad thing. But is that right?

Ms. Thomson: Yes, that's correct. So the way that you could change your tax class would be either, you know, as a homeowner to file a home exemption application or long-term rental. And those two are still opportunities regardless of the situation that we're talking about with these 80-plus condos.

Mr. Gima: Okay, anything else, Sally, or does the, does the motion need to reflect that or is it assumed?

Ms. Kaye; No, I'm, I'm just making sure there's no downside for an individual who's either wanting to go long-term or already has. The only option for the one who already has that long-term designation is to make it permanent. And, and I'm guessing that's not possible under this bill. But I'm not sure what the benefits of that property owner would be. So if I've got that right, then then, yeah. No, I think I understand where we're going.

Mr. Gima: Okay, Commissioners, any, any comments or questions with what Sally brought up and that was clarified by Richelle? Okay, if there's no further questions, all in favor of the motion raise your hands? One, two three, four, five. Okay. All opposed? Any abstentions? Okay, so with five ayes, motion passes. All right. Thank you.

It was moved by Ms. Chelsea Trevino, seconded by Ms. Elisabeth Grove, then

VOTED: To recommend approval of the proposed ordinance, as amended by the Planning Department, to the County Council.

(Assenting: N. Alboro, Z. de la Cruz (abstain), E. Atacador, E. Grove, S. Kaye, C. Trevino)
(Excused: S. Menze, S. Preza)

Ms. Takakura: Thank you.

Mr. Gima: All right. Moving on. Yes?

Ms. Kaye: I'm sorry, Chair, did we lose quorum? I mean, did we lose some people here? You said only five. We had more than five.

Mr. Gima: Five voted. Yes, five voted in the affirmative. No one voted against the bill, and one abstention.

Ms. Kaye: Oh, who was that?

Mr. Gima: Zane.

Ms. Kaye: Okay. All right. I'm just -- I thought we needed that for the record.

D. DIRECTOR'S REPORT

1. Open Lanai Applications Report as distributed by the Planning Department with the September 21, 2022 agenda.

Mr. Gima: Okay, let's move on to the Director's Report.

Ms. Cua: Good evening Chair, members. A couple of things. First of all, we have the open Lanai applications report, and I do have one update on the third item, the fleet yard repair and maintenance buildings, the Country Town Business District Approval. That was, that was actually approved on September 13th. Other than that, everything else is still in process. You just completed, at your last meeting, your review of the Koele Project District items. The Department is waiting for the minutes to be prepared so that we can send the ordinances up to the County Council on those. And the other two items are still in process by staff. Any questions?

2. Table of Permit Types for the Lanai Planning Commission.

Ms. Cua: Okay, seeing none, I'd like to go on to the table of permit types. So this is something that the Chair had requested, just as part of overall training and just to kind of have a cheat sheet. So this is what we started with. Kurt prepared this. We took a look at it. Basically, the, the chart lists all the different types of permits that could come before you, who is the final authority, and if there's any type of notes that go along with that authority. Any questions?

Mr. Gima: Yeah, I noticed some of them have, um, a timeline. I'm wondering why the -- do the other ones not have timelines and when the clock starts?

Ms. Cua: Yeah, so -- um, which, excuse me, which one are you seeing a timeline? Because I know that you had requested timeline and, you know, some of these in terms of timeline, it's kind of like, some we have to get to you at your next meeting. You know, if we, if the Department, for example, does an intervention, I mean, I'm sorry not an intervention, if the Department does, is planning to do an exemption of an SMA Permit, we have to let you know that at your next meeting. So that's, that's one thing. There are applications where we need to get to Council by a certain date, but the application doesn't become approved if, if we don't get it to them in time. The minutes is usually something that sometimes holds us up just because if you have lots of meetings, the minutes may be behind. So we cannot transmit to the County Council until we have meetings, I mean, minutes.

Mr. Gima: So the only one listed on here is bill for ordinance with a 120-day timeline. I think one of the reasons why I asked because, I mean, especially when we have a packed calendar, I mean, a packed agenda, I sometimes feel somewhat pressured to, to move things along. And I typically ask at the beginning of the agenda item how much time we have. It would be good to know, you know, on the cheat sheet timelines and when, when the clock starts.

Ms. Cua: I mean, we can look at this further. We wanted to send this out as like, you know, a first pass. You know, some of the, some of the bills that Jacky brings before you do have timelines and -- well Jacky just left the call -- but we're, we're required to get comments from, from different boards and commissions by a certain time. And so, you know, that, at those times, you know, there is going to be some pressure to get the comments back. But for the majority of the applications that have to go to Council, we usually just do the best we can even though it takes longer than what is recommended on the timing. It's more of the bills that Council sends us that they give us a turnaround time that we really try and adhere to that time and get comments back to them so that they don't make a decision without your comments.

Mr. Gima: Okay. Commissioners, any, any comments or questions about this cheat sheet?

Ms. Cua: Okay, the next item --

Mr. Gima: I mean, part of the --

Ms. Cua: Oh, sorry.

Mr. Gima: Yeah, I think part of the reason I'm asking about timelines, I mean, let's say a project district phase one. I mean, without timelines, I mean, technically, we could we could drag it out for a long time. But if there is a timeline, then we have to abide by it so we don't get, so if someone doesn't, so the applicant would not appeal our decision even though we may not be the final authority.

Ms. Cua: Yeah. And on things like, you know, Community Plan Amendment, Change of Zoning, Project District, they don't automatically come approved, be approved if you don't get your comments in a timely manner or your, or your recommendation in a timely manner. Because remember, for all of these applications, you are not the authority, the Council is the authority. So you're just making a recommendation. And there's, there's various things that adds to the time as, as you well know. Just getting agency comments a lot of times add to the time. You know, public testimony can cause you to not conclude your review of an item and so it has to be deferred to another agenda like happened with, you know, with this particular application. Whether it's coming questions from the public or questions from the Commission, you want to feel really comfortable before you make any kind of recommendation. But on those type of applications, there's not a like, if you don't get your, your recommendation to the Council, it would be automatically approved. That does not happen.

Mr. Gima: Okay thank you.

Ms. Kaye: Okay. Can I, can I just jump in here with the little historical note here? James Giroux --

Mr. Gima: Go ahead.

Ms. Kaye: -- and, James Giroux and Michael Hopper, both at one time, explained to previous Planning Commissions that there are two types of permits. One was County generated and Council generated, Planning Department generated and discretionary. And if it was discretionary, then that applicant tends to want to work with the Commission to work on condition that everybody can agree with or whatever. But there was a deadline if, I understood it, of 180-days so that if we didn't move to do something, they could then take it back to County Council. That was the . . . (inaudible) . . . give up the opportunity to say anything about it and it actually went to County Council . . . (inaudible) . . . And that was the only thing that I understood was had a time limit if it was a discretionary permit application.

Ms. Cua: And we could check further on that. And I don't know if Richelle has anything to add to that.

Ms. Thomson: I'm not quite sure of the context that they might have been talking about. But those, the deadlines come from the Charter and there are actually two sections of the Charter. One mentions 120-days, and the other mention a 180, but, you know, we tried --. Anyway, I won't segue too long, but we did try to fix that in this last Charter Commission, and it wasn't one of the things that did end up making it through. So that's still going to be in the next Charter, this 120, 180 days.

What those deadlines are, are for you to get your comments back to Council, since they're the, they would be the deciding authority on it. And so they could take action without the Planning Commissions' comments. In practice, I don't think the Council really prefers doing that. They do want to hear from you, and I think they, they value your comments because you know, your island better than anyone does. So in practice, I think that they, you know, even if it's delayed a little bit, you know, or a lot, they'll still wait for your comments. But those deadlines are there.

Mr. Gima: Thanks, Richelle. Okay, Ann, go ahead.

3. Agenda Items for the October 19, 2022.

Ms. Cua: So the, the last item, number three is agenda items for your October 19th meeting, and all we have so far is the water workshop with the Commission on Water Resource Management. That's all we have scheduled so far. Not to say that something else couldn't come up, but that's, that's what we've been working actively towards coordinating with Pulama Lanai.

Mr. Gima: What happened to the Film Bill deferral?

Ms. Cua: Um, yeah, my understanding is at this point in time, that's not planned to be on your October 19th meeting. I'd have to, I'd have to check when the Director or Deputy wants that to be placed back on the agenda.

Mr. Gima: Okay, thanks. Looking forward to the water workshop.

Ms. Kaye: Can I ask when the next training would be because I noticed that we didn't have much tonight on our duties and responsibilities under the public trust doctrine and some of the other case law. So I'm assuming there's going to be more training coming and I just wonder when that might be scheduled.

Ms. Cua: Well, we have training for the various permits that we do. We have a separate section on the shoreline where we have usually people from the shoreline team that come up. And then we have the zoning section that we give you. October we have that staff that normally gives the training on, most of them on vacation, so it might be closer in November when we do that.

Ms. Thomson: And I'll just chime in. I put together a, from that County's perspective, kind of a compliment to the water workshop, which we don't necessarily have to do that the next meeting, but it could be worked in at some point. And I'm happy, also I'm happy to provide it. I can just send it to Leilani to forward to you all so that you can have the slides and then we can schedule, you know, another training. I think it may be too much to add that on to CWRM. They do have a lot to talk about and it's incredibly interesting, but you know, it's a lot of material, so you may want to do the County side, you know, another opportunity.

E. NEXT REGULAR MEETING DATE: October 19, 2022

F. ADJOURNMENT

Mr. Gima: Okay, thanks Richelle. Okay, what about the rest of the Commissioners? Anything you want to add to next month's agenda? Okay, I think concludes our business for tonight. So we will see all of you on October 19th. Any of you will not be able to make the October 19th meeting? All right, great. So if there are no objections, meeting is adjourned. Thank you, everybody. Okay, good night.

There being no further discussion brought forward to the Commission, the meeting ended at 7:22 p.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Nicole Alboro
Erin Atacador
Zane de la Cruz
Reynold Gima, Chair
Elisabeth Grove
Sally Kaye, Vice-Chair
Chelsea Trevino

EXCUSED:

Sherry Menze

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Shelly Preza

OTHERS:

Jacky Takakura, Deputy Planning Director
Ann Cua, Planning Program Administrator
Clayton Yoshida, Planning Supervisor
Richelle Thomson, First Deputy, Corporation Counsel