

WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

October 2, 2012

Council Chamber, 8th Floor

CONVENE: 9:08 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Robert Carroll (in 9:46 a.m.)
Councilmember Elle Cochran
Councilmember G. Riki Hokama

EXCUSED: VOTING MEMBERS:

Councilmember Mike B. White

STAFF: Kimberley Willenbrink, Legislative Analyst
Yvette Bouthillier, Committee Secretary

ADMIN.: William Spence, Director, Department of Planning
Dave Taylor, Director, Department of Water Supply
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation
Counsel

Seated in the audience:

Paul Meyers, Deputy Director, Department of Water Supply
Pamela Pogue, Planning Program Manager, Department of Water Supply

OTHERS: John Stubbart, Director of Utilities, Castle & Cooke, Lanai Water Company, Inc.
Rosemary Robbins
Don Gerbig, Member, Board of Water Supply
Ron McOmber, Member, Lanai Water Advisory Committee
Butch Gima, Chair, Lanai Water Advisory Committee
Others (4)

PRESS: Akaku: Maui Community Television, Inc.

ITEM NO. 16: ESTABLISHING A LANAI WATER ADVISORY COMMITTEE
(C.C. 12-133)

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CHAIR VICTORINO: ...*(gavel)*... Good morning. The Water Resources Committee meeting of October 2, 2012 will convene. First of all, I am the Chair of the Committee, Councilman Mike Victorino. I want to welcome all of you in the viewing audience for being here this morning. At this time I'd like to introduce the Members that are present at this time. The Vice-Chair of the Council and the Vice-Chair of the Committee, Mr. Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR VICTORINO: Good morning. The lovely, young lady from Upcountry, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Good morning. Mr. Robert Carroll is excused at this time. He will be coming in a little bit late. The young lady from West Maui, Ms. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good morning, Chair.

CHAIR VICTORINO: Good morning. Our representative from Lanai, Riki Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR VICTORINO: Good morning. And this morning, excused from the Committee meeting is Mr. Mike White. From the Department I have Mr. Dave Taylor, Director of the Water Supply Division.

MR. TAYLOR: Good morning.

CHAIR VICTORINO: Department, I should say. I said division, pardon me. Will Spence from the Planning Department.

MR. SPENCE: Good morning, Chair.

CHAIR VICTORINO: He's our Director. Ed Kushi from the department...Deputy Corporation Counsel.

MR. KUSHI: Good morning.

CHAIR VICTORINO: Good morning. Also, available for questions or some help, if we need it, our Deputy Director, Mr. Paul Meyers from the Department of Water Supply. He's in the audience. And Pam Pogue who is the Long Range Planner for the Water Department. Good morning, folks. And our Committee Staff, Ms. Kim Willenbrink our Legislative Analyst, and...

MS. WILLENBRINK: Good morning.

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CHAIR VICTORINO: Good morning. And Yvette Bouthillier the Committee Secretary. Good morning, ladies.

MS. BOUTHILLIER: Good morning.

ITEM NO. 16: ESTABLISHING A LANAI WATER ADVISORY COMMITTEE
(C.C. 12-133)

CHAIR VICTORINO: I'm going to start a little different this morning. I'm going to hold up on public testimony. I know there's three people here. Does anyone have an urgency to testify and have to go somewhere else? If not, I'm going to allow the Departments to give their overview and some statements, and then I'm going to start public testimony. We are awaiting the Lanai ferry. Most of them will be here approximately 9:45 this morning, and right now it's 9:11. So if they are not here, I will leave public testimony until they have an opportunity to arrive and give their testimony, if that...there's no objections from the Committee.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you very much for your understanding. First of all, today we have just one item to discuss, WR-16: Establishing a Lanai Water Advisory Committee. The Committee is in receipt of the following: No. 1, a County Communication 12-133, from the Chair of the Board of Water Supply, transmitting the Board of Water Supply's recommendations relating to the establishment of the Lanai Water Advisory Committee; and 2, correspondence dated July 24, 2012 from Council Chair Danny A. Mateo, transmitting a correspondence dated July 23, 2012, from the Planning Director, submitted in response to Resolution 12-30, a summary of the Lanai Planning Commission's recommendations on the proposed bill entitled A Bill for an Ordinance Amending Title 2, Maui County Code, to Establish a Lanai Water Advisory Committee; and other related documents. The purpose of the bill was to establish a Lanai Water Advisory Committee to monitor the implementation of the document entitled the Lanai Island Water Use and Development Plan, adopted by Ordinance 3885 in 2011, and to advise the Lanai Planning Commission on related matters. So at this time, with no objections, I'm going to call on Mr. Taylor to say a few words, and then Mr. Spence from our Planning Department. Mr. Taylor, I will let you lead off. Please.

MR. TAYLOR: Thank you, Mr. Chair. The issue in front of you today to create the Lanai Water Advisory Committee as a advisory committee to the Lanai Planning Commission is...as far as that issue directly, I think is best left to Mr. Spence. I think...

MR. SPENCE: Thank you.

MR. TAYLOR: And he thanks you for that...thanks me for that. As far as how we got here, I know this has taken a long time so let me just give some historical perspective. Two meetings ago we put on a presentation of the Water Use and Development Plan, and the Deputy Director of DLNR who's the head of the State Water Commission was here. What we learned in that meeting...I think what he talked about is that State law says that each island shall have a water

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use and development plan. One for Oahu, Kauai, Lanai, Molokai, Maui, et cetera. So as part of that process, a number of years ago, the Department or the County was tasked by the State Water Commission to make water use and development plans for Maui, Molokai, and Lanai. That process for Lanai took more than a decade, and as part of that process, a group of people from Lanai was part of an advisory committee called the Lanai Water Advisory Committee. The Council passed that Water Use and Development Plan, it got sent to the State Water Commission, and recently, the State Water Commission accepted that plan. Okay. So the Lanai Water Use and Development Plan has been accepted by the State Water Commission. So now the question is what to do with the Lanai Water Advisory Committee. Should they stay in existence? Should they not, et cetera? The regulatory framework for all water systems in the State is the same. You've got the State Department of Health with...which regulates water quality, the Commission on Water Resource Management which regulates water quantity. The Commission regulates how much water can be diverted from streams and how much groundwater can be taken by wells. Private systems also have the Public Utilities Commission which regulates how much they can charge. So all water utilities, including the County's, fall under this framework. So Lanai does not have any County facilities, as you all know, so the private utility is regulated under all three of those. The County water utility is regulated only by Department of Health and the State Water Commission. So because of this structural framework, the Department of Water, the Maui County Department of Water Supply has no regulatory authority over the Lanai water system. Although it's part of the County, we do not own that system, we have no regulatory authority. So our view as a Department was that if the LWAC answered to us as the Department, there's really nothing we could do with any of their comments other than pass them on to either the State Water Commission, Department of Health, Public Utility Commission. Or if they felt it was land use related, passing it on to the Planning Department. So really, from the beginning, our feeling was having the LWAC exist under our authority gives a false sense that we're somehow have some authority to do something for them, that we could somehow add value. So it's always been our position that it just doesn't add any value having the LWAC reporting to us because there's nothing we can do. So we've discussed this with the Council previously during the Water Use and Development Plan. We've discussed it with the Board of Water Supply when they were advising the Council about this issue, and our primary concern is just that the public understands our role and our authority and doesn't think we can do something for them when we can't. So we felt that it doesn't make much sense to have the LWAC under the Department of Water Supply, because it gives the public some feeling that we can help them with issues on Lanai when as a Department we just can't. Currently, our current status on things with Lanai is we've worked with the Planning Department and agreed that when development permits come in for Lanai, our staff in Planning and Water Resources are going to look at them and as sort of experts with no authority, send letters saying something like although we have no regulatory authority, it's our understanding from the State Water Commission's website, here's the current status, here's what they're asking, this appears to be the situation. We're not going to make any recommendations for development. We're not going to give any criteria of shall and shall not, we're simply going to take the knowledge that we have access to as experts and share it. We thought that that is a way that we can meet the community's needs by sharing information we have some expertise in without confusing the fact that we have some teeth in this. So I think that's the big picture. That's where our Department comes in, and we've had similar talks about this overall structure in this Committee and also

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with the Board of Water Supply which has also made their own statement about their feelings on this issue. So I hope that can sort of frame this overall issue as far as where the Department comes from. Thank you.

CHAIR VICTORINO: Mr. Spence, would you like to give your comments? Please.

MR. SPENCE: Thank you, Mr. Chairman. And I would really love for this committee to be under Department of Water Supply. First comment. The...I understand that water is a major issue on Lanai. I mean of course, it's, you know, one aquifer, it's a limited resource, you know, limited development potential. It affects everybody and everything on that island, and the land use is directly tied to the use of water on that island. So I completely understand that, you know, if there's going to be development on Lanai, if there's going to be the well-being of that community, the health of that aquifer and the development of the Water Use and Development Plan is essential. That said, we did take the...you know, we looked over the resolution, we looked over the ordinance. We took the ordinance to the Lanai Planning Commission on June 20th of this year, and come up with a couple of really indecisive recommendations to this Committee. The...it's a part of your packet, what we took to the Commission, the report that we had where the Department really doesn't see the need for an additional committee, and I'll have a couple comments on that, particularly to the Planning Commission. The Planning Commission itself didn't come up with a definitive recommendation to the Council. Different...those particular comments are a part of the transmittal to this Committee. The...where some people really thought it would be a benefit, other people thought perhaps it was too broad, et cetera. The...I think overall, while recognizing the critical nature of water use on Lanai, I'm not particularly sure what this would add to the regulatory process, what benefit having another committee would provide to review on that island. My thought is that, well one, that, you know, the Water Department is not the regulatory agency for this, would be for a private water system. I would also add that the Planning Department does not have water planning expertise. We would be staffing a committee for which we have no training. Basically, we would be a conduit for any comments the Department of Water Supply would have or the Commission on Water Resources Management or other regulatory agencies. My thought, because water is a critical issue, when you do have development on Lanai or there are changes in projects or something, that those regulatory agencies report directly to the Planning Commission. Because those are the...the Planning Commission is going to have the decision-making authority on some land uses or they will report directly, that Commission will report directly to the Council. So instead of adding another intermediary commission who's advisory to the people who are advisory to the Council, you know, let's make it a little bit more direct with the Commission who in some cases are decision makers or they are directly responsible to advising the County Council. So my thought is that it's not a necessary commission. We have like seven...my Department already staffs like seven different commissions or boards. I don't particularly see the need for another one.

CHAIR VICTORINO: And that's it, Mr. Spence?

MR. SPENCE: Yep.

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CHAIR VICTORINO: Thank you. And also, I'll call upon the Lanai representative, Mr. Hokama, if he would like to say a few comments. And again, ladies and gentlemen, I do apologize. We are trying to delay a little bit to give the Lanai people a time to arrive to this Council meeting and give their public testimony. So we'll go a few more minutes and then I'll start calling up the public testifiers. Mr. Hokama, please.

COUNCILMEMBER HOKAMA: Chairman, thank you very much for the courtesies you're extending this morning regard testimony. I appreciate that. But let me just say that I'm interested in the gutlessness of our departments. This is not a new consideration, this is over 20 years old. Councils in the past authorized by resolution the creation of this Water Advisory Committee. When the water was under a semi-autonomous, those boards created Lanai Water Advisory Committees. They felt there was enough justification, enough need for additional oversight on an island that has basically no government oversight. Who watches the developer? Not the water utility, they own the water utility. If things was as good as the Departments say, I would agree, we wouldn't need advisory committees. That is not the reality of the real world, not on Lanai at least. There's a reason why this entity is already 20 years old, Chairman, because it serves a community purpose. Okay. You think I trust this company? They already...I know they're doing work without building permits, without electrical permits, without plumbing permits. Why would I want to trust them on their numbers they give me on what is the status of their wells? This is about the community participating and protecting a key, major resource, Chairman. We've paid for it in the past, we can afford it. You saw the numbers. What is it, \$2,500 a meeting they're budgeting or they're saying their expense is? The County can afford that, to protect an island's resource. It's a different situation with this island, Mr. Chairman, and I would agree with that. But Molokai and Lanai have unique situations and we need unique solutions to address those concerns, Chairman. To me, there's still validity in it. It was in the updated Water Use and Development Plan, points of consideration that we passed unanimously. The then property owner supported it. So interesting, they talk out of both sides of their mouth. How dependable is that? You know for me, Chairman, yeah, it's an inconvenience for me _____ some of the departments, but I think the oversight, it does...the peace of mind it gives to the residents of Lanai knowing that there's people who are concerned about the status of the water system. You know we even considered taking a look at acquisition. Okay. And the study says, yeah, it was way below County standards to even consider. It would be very costly, but that's what the system they're running. It tells you something about the system, isn't it? So for me, Chairman, you know, the Departments can talk but let's talk about when it started, and it wasn't 1 year ago, 2 years ago, it was like 20 years ago. It's not a new situation. I wish the concerns and the, some of the reasons why the original one has been addressed and not needed any more, but what they brought up 20 years ago is still the same today, Chairman. You know so if the people cannot get some assistance from the County, what is the people going to do? They have to go and get it...have a commission designate it? You know we decided that's not the best route for Lanai at this time that Molokai chose, Chairman. You know we have opportunities, Chairman, but I think the Departments need to know that this is going to be a legislative policy. I watched them, the meeting of the Board of Water Supply. All they told me was they're very good intentioned people, but the hell if they know anything about Lanai water situation and our history of water. Except for a few operational guys on Lanai, nobody else got history on that island. All those senior management is people that are called temporary residents. You think

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they're there for the community? They're there for their paycheck. You know so for me, Chairman, this is a no-brainer, this is something we have to do. If it doesn't work, we can always repeal it, but I would rather protect and give oversight to the community that is asking. Think about it, Chairman. When...how many people live on a company island, working on a company town, working at company jobs? Okay. Whether you like it or not, they exercise a degree of intimidation. The union has tried to strengthen their membership, letting them know that they have rights as workers, they have a contract to protect them, but we know corporate America. And intimidation is nothing new. It was before the union was, it's during the union time, and it's still being done today, Chairman. I lived through that, the hell if I'm going to continue to live through that. So, you know, I appreciate...and, Chairman, you and I know, if this meeting was on Lanai, you know right now we'd have about 100 Lanaians all testifying in support of this consideration. Thank you.

CHAIR VICTORINO: Yeah. Well thank you, Mr. Hokama. And it was a commitment you and I made way back when we were with the...when we went over to Lanai and there was a lot of testimony in support of it. So let us try to work this whole thing out, and where I believe that we can all have something. The Departments, I think their fear is what amount of liability and what amount of responsibility that would fall on them, and I think needs to be addressed. And Corp. Counsel will be chiming in a little bit later on some of those issues. But yes, since I've been working on water over 12 years now, this has been an issue that's been ongoing, so I think the time is now. And then we have a new owner, and hopefully he and his dream of what Lanai will be all about, this would be incorporated to protect that one aquifer in the entire island, because if it isn't protected, it will be gone forever, and you don't start over. And I believe you can't truck water in from Maui to Lanai, pretty difficult, yeah. So let us continue. At this time, with no objections, I'm going to call on the testifiers I do have. In fact, before I do that...yeah, no, I'll do that. And then if the others have not arrived from Lanai then I will take a short recess until they do arrive, and then with that point in time I will let them speak. Okay. So let us start with the public testimony, with no objections?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. First testifier will be John Stubbart, and John is the Lanai...Director of Utilities for the Lanai Resorts, LLC. Mr. Stubbart. Good morning.

...BEGIN PUBLIC TESTIMONY...

MR. STUBBART: Thank you. As noted, my name is John Stubbart, Director of Utilities for the Lanai Resorts, LLC. That's the new name for the company there. I wanted to share with you, you have in your packets testimony that I've already given to this Council, and so I won't repeat that. I want to say that we do have an approved Water Use and Development Plan as the Chair has noted that it's this guidance document, it's there. It's for our island, it's for me as the utility, it's for the public, it's for the agencies that are present here to use in planning the future. It's in place. It's approved. Some of the concerns we've always had is what would the resolution, this ordinance provide? What would this Committee...why is it needed? What would it do? As an advisory committee to the Planning Commission, how will it function in matters pertaining to the

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Planning Commission? What types of topics would it take up? How often would they meet? The Maui Department of Water and Planning Department already review these issues and advise the Planning, the Lanai Planning Commission on what they do and their advice on the issues. Will the same committee be launched and be used in other counties? Will it be across the State? Across this County? Why are we going to be singled out for these types of things? Yes, we are special in that we have a single island and a large private utility, but there are also other private utilities that have control over large portions of the island. Our current position is that Lanai Resorts does not support the concept of Lanai Water Advisory Committee as envisioned by many, including the group of LSG. We do support regular communications between the utility and the community in order to inform and educate the public about water, Water Company activities, conservation activities, et cetera. We think that it would be helpful to have dialogue around how to better achieve the goals of providing information to a broader community. We've offered to meet directly with the Lanai Planning Commission. Why have another advisory committee as noted in the document that is made up of people that as representative Hokama has mentioned, people that don't have expertise. You want to have people on a committee that might have expertise, but in the document they may not have that expertise. Also, they talk about meet, as required, to review all applications. All applications. Am I out of time?

CHAIR VICTORINO: Well you have one minute to conclude. I'm sorry.

MR. STUBBART: Oh, okay.

CHAIR VICTORINO: I had to stop the buzzing.

MR. STUBBART: Okay, thank you.

CHAIR VICTORINO: Okay, go ahead.

MR. STUBBART: I'll be done. And in the...also in here it talks about that they'll meet on all requirements or applications submitted to the Lanai Planning Commission. All? They're going to meet on everything that's...like the addition of a two, you know, an addition onto a house? And in their proposed agenda that they had last week, they identify status of the potable system, status of the non-potable system, and pending upcoming applications that require LWAC comments. So it's almost like they're a board, and I don't know the legalities of having a board of an advisory committee that's actually setting up themselves as a board over a private water system. So we do have some concerns in that regard. So we do have some ideas on options to talk to the commissioners directly rather than through a committee, and meet with them, answer their questions, bring them up to date on the Water Use and Development Plan. And it's a public forum where everybody else that has concerns can also speak at. Thank you very much for your attention, for this meeting, Chair.

CHAIR VICTORINO: Thank you. Questions to the testifier relating to the testimony? His written and/or his public or his oral testimony?

VICE-CHAIR PONTANILLA: Yeah, I get one.

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CHAIR VICTORINO: Mr. Pontanilla, go ahead.

VICE-CHAIR PONTANILLA: Just for clarification. When you mentioned commission, you're talking about the Planning Commission?

MR. STUBBART: The Lanai Planning Commission.

VICE-CHAIR PONTANILLA: Okay, thank you.

CHAIR VICTORINO: Any other questions? Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair. And thank you, Mr. Stubbart, for being here. I think what...the impression I'm getting is...I read all your testimony and I read most of the stuff that's, you know, been given to us. What I'm sensing from you is you feel that this would be duplicative, not necessary, and that it can be handled by the Planning Commission?

MR. STUBBART: Yes. The...I think part of their responsibility is with this guidance document, Lanai Water Use and Development Plan, the information's there on here's our limits on the aquifer, here's the demands, here's the planning part of it and the demands that would be placed on the aquifer, and here's the buildout of the sources. And so there's a plan laid out, and so by looking at that plan and that's my guidance plan also, are we on target with that plan? Do we have the resources? And that's it.

COUNCILMEMBER BAISA: Okay. Thank you very much.

CHAIR VICTORINO: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And good morning. So that plan you just mentioned, is there...do we have a copy of that? Or is there...are you sharing that with the general public?

MR. STUBBART: It is a public document, and it has been approved by the Council.

COUNCILMEMBER COCHRAN: It's part of the Water Use and Development Plan?

MR. STUBBART: The what? The...

COUNCILMEMBER COCHRAN: The plan you're speaking of right now.

MR. STUBBART: The plan...

COUNCILMEMBER COCHRAN: Your company plan.

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MR. STUBBART: Yes. That is the Water Use and Development Plan.

COUNCILMEMBER COCHRAN: Oh, okay.

MR. STUBBART: That's a document about yea big.

COUNCILMEMBER COCHRAN: Right, right.

MR. STUBBART: And...

COUNCILMEMBER COCHRAN: I thought it was a separate plan.

MR. STUBBART: No, no, this is...

COUNCILMEMBER COCHRAN: With the new owners there's a new thing coming down.

MR. STUBBART: Yes, this is...we have to follow this plan.

COUNCILMEMBER COCHRAN: Right.

MR. STUBBART: It's, as I stated, it's a guidance document. It's a living plan. It'll be adjusted when the Lanai Community Plan is revised. That plan will also then be reviewed and revised, so it has to keep up with what the expectations are for water demands.

COUNCILMEMBER COCHRAN: Right. And, Chair, I just have a comment for the testifier, if I may?

CHAIR VICTORINO: If it's related to...yeah, go ahead.

COUNCILMEMBER COCHRAN: Yeah. I'm just, you know, hearing, Chair, Mr. Hokama, who is the representative of the island and I hear his concerns, and going through the Water Use and Development Plan, it was yourself with the past, previous owners. And I had inquired and I had questions and things, and yet 'til today I still haven't received any answers, no documents, no things that I had asked. So I just feel this kind of disconnect and lack of communication and things, so I just wanted to relay that comment to you here today to share, you know, my past experiences with yourself and previous company. So hopefully, we have a better, you know, better relationship moving forward from here on.

MR. STUBBART: Absolutely.

COUNCILMEMBER COCHRAN: Thank you.

MR. STUBBART: And I think that when we did...

COUNCILMEMBER COCHRAN: Thank you, Chair.

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MR. STUBBART: I think we did respond and send a number of the documents we could find to you in our last meeting here, and we did convey a lot of the information that I could find and digitally send to you.

CHAIR VICTORINO: Okay, Mr. Stubbart, thank you very much. Thank you. Any other questions for the testifier? Seeing none, thank you, sir.

COUNCILMEMBER HOKAMA: I got one.

MR. STUBBART: Thank you.

CHAIR VICTORINO: Oh, excuse me. One more question.

COUNCILMEMBER HOKAMA: If I may, please, Mr. Chair?

CHAIR VICTORINO: Yeah, you may, please.

COUNCILMEMBER HOKAMA: Thank you. You know for Lanai, a few of us, people like me, you know, the current Water Use and Development Plan for Lanai is the second plan. We already had a first plan. The rest of the County was very slow in catching up to us, but we had an original plan that got updated. And we had the Lanai Water Advisory Committee in existence all that time, too, even before we had that plan. So why change your guys' position now?

MR. STUBBART: I don't understand the question.

COUNCILMEMBER HOKAMA: LWAC has been part of the island through its initial Water Use and Development Plan, during this update working, and then the adoption of this update. So why now you guys come and tell us you guys don't feel that there's a need for it? They've been around for 20 years. Are they just more accurate in doing your guys' job better?

MR. STUBBART: I know that in my position that I use the Water Use and Development Plan as a guidance document to plan. An example is we have, the new owner provided \$10 million that would not be recoverable from the ratepayer, a very generous offer. And we used --

COUNCILMEMBER HOKAMA: And that's another point, Mr. Stubbart. You guys continue to say that --

MR. STUBBART: --the Water Use...

COUNCILMEMBER HOKAMA: --that you guys be beneficial to this community.

CHAIR VICTORINO: Okay, hold on, hold on. This is not going to end up being a debate and an...you know, going back and forth. I'm going to stop here and say if it's relevant to the conversation, and I want the question asked, answer given, and not other comments in between. I'm going to ask Mr. Hokama, you have a question, let Mr. Stubbart answer it. Once you've completed, if

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you have another question, fine. Excuse me, but I'm going to keep this orderly. So would you finish your answer, and then if Mr. Hokama has any further questions he may ask it.

MR. STUBBART: So the Water Use and Development Plan is the first thing I went to, to identify the projects that we would use for that money, and so the priority projects were the ones that we listed and want to move forward on as quickly as possible which is redundancy to the system and providing safe, sufficient water.

CHAIR VICTORINO: Okay. Mr. Hokama, any other questions?

COUNCILMEMBER HOKAMA: You know you guys so full of it. Why don't you guys ask the community then with the need for adjustment in rates to help pay to improve our system that we can feel safe, secure, and dependable, and accurate? You know. You want the Committee to always go on its knees and go oh, thank you for that \$10 million?

CHAIR VICTORINO: Mr. Hokama, you have a question, please?

COUNCILMEMBER HOKAMA: I'm done with this . . . *(inaudible)* . . .

CHAIR VICTORINO: Okay, thank you, Mr. Hokama. Thank you, Mr. Stubbart. I appreciate you --

MR. STUBBART: Thank you.

CHAIR VICTORINO: --being here today. Next testifier, Rosemary Robbins, and this is from the Upcountry Oversight Advisory Committee. And she'll be testifying on WR-16, obviously. Sorry. Go ahead, Rosemary.

MS. ROBBINS: Thank you. And a concerned citizen. I thank you for delaying the meeting as well as you could in order to get that ferry in. I hope they're not late because what can happen on the water. I know what it's like to be on an advisory committee. Take it on the chin, take it anywhere, and the pain is terrible. And I don't live on Lanai, but I have been at a couple of meetings recently where the folks from Lanai came over in order to be able to be heard. I didn't see anybody from the County Council at those meetings down at Maui Waena that had to deal with the public lands--help me out--development, Public Land Development...Corporation...p.s. And I didn't see anybody from here, maybe I missed you, but for the idea of sending electricity over to another island. I saw loads of people from Lanai that came over from that. Bless their hearts. And I did do some homework here yesterday, I went and read the binder for this particular task this morning, and one of the things the Maui County Planning Director--good morning, welcome--had said that he was concerned about the cost of \$2,410 per meeting if the folks from this staff were . . . *(clears throat)* . . . excuse me, were to go over to Lanai for the meetings. Thanks be to God, we have in today's technology the opportunity to not to have to depend on ferries. I don't want them out of business. But as far as being able to get stuff done, two of our government outfits at the college and at the hospital have opportunities for video conferencing. So if indeed this plan goes through, that \$2,410 that you mentioned, Mr. Spence, if it were to be quarterly meetings would be \$9,640. That could disappear because of our use of

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technology that does exist, so please be at peace about that. And not to mention, the private companies that have that kind of technology available. Okay. Also, yesterday I read a May 25, 2012 communiqué from the Mayor to the County Council Chairperson that said in big, capital, heavy letters, do not have this go through. So we know some of the materials that have come in that are on the record, there's a definite difference between what one outfit says, what another outfit says, what the people who live and operate on Lanai are saying, what people who do not are saying. So we ought to pray a lot about this one. I'm also aware that the people from Lanai--most of whom I don't know, vastly most of whom I don't know--were around as was I when the Molokai Ranch went under, out, whatever. And the people on the island of Molokai were short watered. We can't continue to let that happen. These are our citizens of the State of Hawaii. These are our citizens of the County of Maui. We've had a series of land ownerships on Lanai in terms of multi-monied resource folks, Murdock was there, Dole before him, the current person now. The people, though, who live on Lanai...

CHAIR VICTORINO: Can you conclude your...into the four minutes already, so could you conclude?

MS. ROBBINS: Sure. Water Director, Dave, I want to thank you for pledging to keep the Lanai folks informed and updated, and if they get what you're talking about and Mr. Hokama, is accurate, timely information, they'll work with it. So thank you for being part of that team to be able to have this go through. We need to hear from the folks from Lanai.

CHAIR VICTORINO: Thank you, Ms. Robinson [*sic*]. And, Ms. Robinson [*sic*], I'm curious, I've got to ask you this question, where did you read that, that the Mayor said don't let this go through? 'Cause I have nothing, and I have spoken to him a few times and he's never told me anything definitive. So where did you read that, may I ask?

MS. ROBBINS: In the carrel on the seventh floor yesterday afternoon. The date of that was May 25, 2012, and it was addressed from the Mayor to the County Council Chairman.

CHAIR VICTORINO: To the Chairman?

MS. ROBBINS: Yes.

CHAIR VICTORINO: Not to the Committee Chair, right? You're saying to the Chairman?

MS. ROBBINS: I'm saying County Council Chair.

CHAIR VICTORINO: 'Cause I have his...

MS. ROBBINS: May 25.

CHAIR VICTORINO: Yeah, May 25. All he's saying here is he's...he says, to discuss this resolution, I strongly recommend to the Council that they do not establish a Lanai Water Advisory Council [*sic*], because it already exists. Regulatory authority over a private water system, land use, we believe additional bureaucracy layer is unnecessary. Additionally, we believe that there

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will be...set an unprecedent [*sic*] for similars [*sic*] on Maui and Molokai. I hope the Members on the Council will consider the recommendations in their discussions of this matter. And this came from Kevin Boteilho, chair. This is not from the Mayor, this was from the Board of Water Supply.

MS. ROBBINS: This one that also says in there, I didn't you mention this, so I'm wondering if we're talking about two from that date.

CHAIR VICTORINO: No, this is...okay. You have to remember, Ms. Robbins, that all transmissions from the boards that goes to the Mayor's Office for which then he forwards to us. If you look on the back page it shows it came from the Board of Water Supply, Dave...Kevin Boteilho who is the chair. This is not from the Mayor. It is transmitted from the Mayor to Danny Mateo to transmit to us. Okay. So this is a response from the Board of Water Supply. Just to get clarification for the record, okay.

MS. ROBBINS: Okay.

CHAIR VICTORINO: I have it right here, and if you want to verify what I just said you can read it again. But it has in the back, okay. So I just wanted to make sure we clarified that, yeah.

MS. ROBBINS: Okay.

CHAIR VICTORINO: I apologize for that miscommunication, but this is not coming from the Mayor, it is actually coming from Mr. Kevin Boteilho, who is the chair of the Board of Water Supply, if I'm not correct, right? Okay.

MS. ROBBINS: Okay.

CHAIR VICTORINO: Okay, so that's okay, Rosemary, I just wanted clarification, 'cause whenever you make a public statement I want to make sure it is clear who made or who sent the letter. But it does say it went to the Mayor, the Mayor then sends it to Mr. Mateo and who then forwards it to us. That's the chain of command that we work with or the protocol we work with, I should say.

MS. ROBBINS: Okay. The reason I'm asking that is when you just read what --

CHAIR VICTORINO: Yep.

MS. ROBBINS: --you did read on that --

CHAIR VICTORINO: Yep.

MS. ROBBINS: --I have here in quotes that it said that the...

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CHAIR VICTORINO: Remember what I...my first line was, thank you for allowing the Board of Water Supply to comment on the County Resolution 12-35 referring to the Lanai Planning Commission proposed bill to establish a Lanai Water Advisory Committee. Then it further says, the resolution was discussed at our meeting on April 26, 2012, and the Board strongly recommends to the Council not, do not establish a Lanai Water Advisory. But this is from the Board of Water Supply. I just want...it's not from the Mayor, it's from the Board of Water Supply.

MS. ROBBINS: Okay. And that's why I brought up a question as to whether or not there was a second one on that date, 'cause what you did not just say but was in there in that quote that said that there is already a regulatory authority...

CHAIR VICTORINO: Yep.

MS. ROBBINS: Okay. With...

CHAIR VICTORINO: This says, because there already exists adequate regulatory authority over private water systems.

MS. ROBBINS: Over private...

CHAIR VICTORINO: That's the next line.

MS. ROBBINS: Okay. Okay. And then after the water systems there's a few more words in there.

CHAIR VICTORINO: Yeah. Private water systems and land use issues.

MS. ROBBINS: Yeah, huge.

CHAIR VICTORINO: We believe that this additional bureaucracy layer is unnecessary.

MS. ROBBINS: Huge about the land use.

CHAIR VICTORINO: Well I'm saying this is coming from the Board of Water Supply. I just want to get that clear, it's not from the Mayor himself.

MS. ROBBINS: Thank you.

CHAIR VICTORINO: Okay? Just want to the public to be clear on what we're discussing here.

MS. ROBBINS: Okay. I certainly didn't intend to mislead --

CHAIR VICTORINO: No, no.

MS. ROBBINS: --anybody. I'm still questioning whether or not there is another one on that date.

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CHAIR VICTORINO: And that's okay, mistakes happen, but I want it clear so that the public truly understands that this came from the Board of Water Supply, not from the Mayor himself. Then we're okay. And it did say what you said, I did read the same thing. Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And thank you very much, Rosemary, for being here. Thank you for always participating in these tough decisions. I just wanted to clarify the testify...the testimony that you made. You mentioned that you didn't see any of the Council members at the PLDC meeting. For me, I was unable to attend, I had a conflict; however, I have watched every single one of those meetings on Akaku, and I'm very grateful that they've been broadcast because they're very helpful.

MS. ROBBINS: Amen.

COUNCILMEMBER BAISA: But although I wasn't there to hear about the story of sending or the issue that people wanted to talk about of sending power to another island, Member Cochran and myself have been appointed as members of the IRP PUC Committee that is overseeing the formulation of the IRP.

MS. ROBBINS: Okay. Do me a favor and just spell that out so that folks who are learning.

COUNCILMEMBER BAISA: Integrated Resource Planning. So we're doing a plan for how energy is going to be handled here in the State for many years to come, and we're involved. And so although we were not at those particular meetings, we are very involved in very long meetings that are going to go on for the rest of the year or two. And we'll be participating in the decision making as to where we're going with this issue of transmitting electricity around. So I just want you to know we're doing the best we can and representing everybody the best we can on those committees. And I wanted to comment on video conferencing. The interesting part is they're doing a lot of these meetings by video conferencing, and the last one we had was a disaster. We had video conferencing from Kauai, the Big Island, Maui, and Honolulu, and we could barely hear the voices and it was a strain. Frankly, several of us left because it was a waste of time, we couldn't understand, so if we're going to go to video conferencing, I'm going to make sure that we have good video conferencing. Otherwise, it really doesn't work, nothing like face to face. So I have a little bit of angst about saying well, we're going to go with that, just because of the experiences I'm having with this committee. But again, thank you very much for your work and, you know, being faithful with all of this. Thank you.

MS. ROBBINS: Well, thank you, ad infinitum, you and Elle for being on that, yeah, thanks a load. And the other thing was you mentioned that you had a lousy auditory...

COUNCILMEMBER BAISA: Terrible.

CHAIR VICTORINO: I'm going to...

COUNCILMEMBER BAISA: It's okay.

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CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: We're going...you guys are all of getting off the subject matter. I'm going to bring you right back to where we need to be, we're talking about LWAC and I want to keep it on that, please.

COUNCILMEMBER BAISA: Thank you, Chair.

CHAIR VICTORINO: 'Cause...

COUNCILMEMBER BAISA: Thank you for your indulgence.

CHAIR VICTORINO: And, please, let's...the Members, too, keep it on the matters at hand, okay. Because now we're going off into areas that, you know, I don't want to go to. Okay. Do you have any other questions for the testifier? Do we have any other questifiers...testi...questions for the testifier?

MS. ROBBINS: Okay.

CHAIR VICTORINO: Now you got me tongue twisted, sorry. Seeing none, thank you, Rosemary.

MS. ROBBINS: Thank you.

CHAIR VICTORINO: And thank you for all your hard work, I appreciate it. All right. Next testifier is Don Gerbig, and...oh, yeah, you're with the Board of Water Supply, he's a member, so now he can...please, Don, if you would. Go ahead, Don. And I see our Lanai people have arrived, so we can continue with the public testimony. Don, if you would go ahead, please. Good morning.

MR. GERBIG: Thank you. My name is Don Gerbig. I'm a member of the Maui County Board of Water Supply, Investigative Committee assigned to provide testimony on behalf of the Board of Water Supply on Resolution 12-30. The Board has discussed the proposed establishment of the Lanai Water Advisory Committee to monitor the implementation of Water Use and Development Plan and advise the Lanai Planning Commission on water issues to be an unnecessary, additional bureaucratic layer of regulation without regulatory authority. The Board of Water Supply correspondence--which was mentioned previously--sent to the Mayor, Mayor Arakawa and to Danny Mateo, Chair, on May 25th regarding the full opposition to Resolution 12-30. The Lanai Water Use and Development Plan, as Mr. Taylor said, is not an ordinance nor is it law; thus, such an advisory committee would have no authority over the implementation of the plan. Nor does the Department of Water Supply have any authority over a private water company water use and development plan such as the Lanai plan. As indicated above, there's no need for the establishment of such a committee under Maui County ordinances. Should there be a desire to establish such an authority, it is suggested it be created under State law and managed by either

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the State Department of Health, Public Utilities Commission, or the Commission on Water Resources. Thank you very much for the opportunity to testify.

CHAIR VICTORINO: Thank you, Mr. Gerbig. Any questions for the testifier? Seeing none, thank you, Don.

MR. GERBIG: Thank you.

CHAIR VICTORINO: Okay, I do have some more...you know what? Before we get started with our people from Lanai, if you guys would like, we could take about a ten minute break, if that's all right. Give them some time to get their sea legs back in to order, and if that's all right with the people from Lanai? Okay, no problem. Okay. Why don't we take a ten minute break, and can we have everybody back by ten after 10:00? This meeting stands in recess. . . .(gavel). . .

RECESS: 9:58 a.m.
RECONVENE: 10:11 a.m.

CHAIR VICTORINO: . . .(gavel). . . Water Resources Committee meeting of October 2, 2012 will reconvene. We'll continue our public testimony. I have from the island of Lanai, Mr. Butch Gima. He's with LWAC, and he is the chair of the LWAC Committee that exists today. Mr. Gima.

UNIDENTIFIED SPEAKER (FROM AUDIENCE): I think Ron's going to . . .(inaudible). . .

MR. McOMBER: I'm going to go first.

CHAIR VICTORINO: Oh, well they went put four and five the other way, sorry. Okay, sorry. Then we'll switch it around and we'll call upon Mr. Ron McOmber. He's also a member of LWAC. Thank you, Mr. McOmber, for making that trip over from Lanai, and then followed by Butch Gima. And also, before you get started, we are in receipt of a lot of what I call written testimony from various people from the island of Lanai, and including Mr. Gima. So if you, Members, would, you know, look upon that, there's information that's being shared by people from Lanai. Mr. McOmber, go ahead.

MR. McOMBER: Good morning, Mr. Chair and Members of the Committee. First of all, I'd like to start out by thanking the Council for the lovely recognition of my wife and the plaque that was delivered by Councilman Hokama the day of the funeral. Thank you very much. It's appreciated. I'm going to read a testimony from one of our members. This is from John Ornellas, he is also a member of LWAC and also sits on the Lanai Planning Commission. I'm a member of the Lanai Planning Commission and I sit on the LWAC --

CHAIR VICTORINO: Mr. McOmber --

MR. McOMBER: --that represents...

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CHAIR VICTORINO: --hang on a second. I know it's a policy of ours that we don't allow public testimony to be read by somebody for somebody else, so what I'm going to say at this point in time, this is your testimony. Right, Mr. McOmber? Just say yes.

MR. McOMBER: Well, you have a copy of it, so if you don't want me --

CHAIR VICTORINO: Yes.

MR. McOMBER: --to read it, that's fine. That's fine, too.

CHAIR VICTORINO: Okay. Okay, that's fine. Thank you.

MR. McOMBER: Is that sufficient? And then I'll just go ahead and do mine?

CHAIR VICTORINO: Yeah, go ahead. There you...better yet. Thank you, Mr. McOmber. Thank you very much.

MR. McOMBER: The testimony I'm going to give you, a lot of this is background. I noticed that in Mr. Ornellas' testimony that he said that it's been 15-plus years, actually it's been 23 years that we have been watching our water issues on Lanai. We asked for designation from CWRM on March 2, 1989. The community...the CWRM approved the procedure to designate on May 17, 1989, and the first public hearings was held on August 29, 1989. So you see, we've been doing this for 23 years, so this is not a new thing. When we asked for designation, this is when the hotels were proposed, the golf courses were proposed, and we were concerned about our water, and we had no...the County has nothing to say about it, the State has nothing to say...the State's the only one that we felt had any say-so in this. 'Cause they were CWRM, they're the ones that determined how much water, you know, if you can use it, if you can't use it, is it there, is it not there. Unfortunately, nobody knew anything about Lanai 'cause it was a private plantation for all those years, so CWRM didn't even have an idea of what there was under the...so we went through this lengthy process of getting...Patsy Mink has been over there, we got hydrologists from the mainland. We had people come over that had their hydrologists from CWRM, and it went through years and years of looking at what the aquifer, what did it hold, what did it think it held. And they came to the conclusion that the aquifer was a 6 million gallon sustainable yield aquifer. Okay. Now just take that in context of what have you on Lanai. Remember, CWRM came over here and was looking at water on Maui, and they said that the Iao Aquifer had 40 million gallons? And then they came back later and addressed it was only 20 million. So if, you know, that what concerns us, we don't know that truly we have 6 million gallons, we assume that, but with the drought conditions somebody has to watch this, has to watch the water. And LWAC basically is the entity on Lanai to do that. We took this upon ourselves. We've had people...Goro Hokama was originally on the committee. The committee was put together basically by LWAC...I mean by CWRM. CWRM put this committee together, and we've been together ever since. And there's been about four of us that have been with it from day one. So...and we meet, actually we try to meet once a month, and we have been doing that for 23 years, folks. So this is not a joke with us, this is really serious. And to have somebody control it and not have us be party to it, we're not asking to be a regulatory agency,

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folks, and this is what the Planning Department had set forth to the Planning Commission on Lanai that we want to be a regulatory agency. We don't want to be a regulatory, we want to be in the loop. We want to be there that when there's a new...and now we have a new owner, we have no idea what this guy is going to do. So we gotta know and we gotta be observant and we gotta be on top of things, and so we would like to continue. This is our plea that why LWAC should be an entity, and we would appreciate your help in this. Do you have any questions?

CHAIR VICTORINO: Thank you. Questions for the testifier? Seeing none, thank you, Mr. McOmber, very much.

MR. McOMBER: Thank you very much.

CHAIR VICTORINO: And next will be Mr. Butch Gima, the Chair of LWAC.

MR. GIMA: Good morning. My name is Butch Gima, I'm a resident of Lanai, and I've been on the LWAC for, like Ron said, over 20 years. I've submitted...I brought over a testimony from Sally Kaye and I think it's quite important, so, you know, please read this over and if you have any questions I can answer some of the questions pertaining to Sally's testimony. In regards to my testimony, I want to make four points, and included in my packet is my comments that I made in my testimony to the Lanai Planning Commission dated on June 18th which pretty much laid the framework for the establishment of LWAC and rebuts testimony to the contrary from William Spence, Kevin Boteilho, John Stubbart, and statements made at the April 26, 2012 Board of Water Supply meeting. My testimony's included in WR-16 referral from Council Chair Mateo, but I've also included a copy of that in that...this morning's packet. I'm willing to go into more detail about this testimony if you have any specific concerns or questions. Number two, in the back of the packet I've included a draft copy of a flow chart that proposes how a formalized LWAC would work. Now unlike what others have testified to, the proposed process would not, I repeat, would not add another layer of bureaucracy, and again, I can field some questions about the flow chart should you have any. The LWAC would serve in the same advisory capacity as all of the other County, State, and Federal agencies that provide comments and recommendations to the Planning Department when an application comes before them. Number three, now although the flow chart is a proposed process, this process has already been instituted and worked in LWAC. Several years ago, Castle and Cooke Resorts, as part of the Lanai Water Advisory Committee standing agenda which is attached in my packet, brought to the Committee a second swimming pool proposal for the Manele Bay Hotel. Now I reference the agenda because at every LWAC meeting there is a agenda item where if there is any upcoming applications that's going to involve water, the company would bring it to the LWAC for discussion. So that's what we did with this proposed second swimming pool at the Manele Bay Hotel. The LWAC at that time deliberated this project and recommended approval, and this recommendation was subsequently shared with the Lanai Planning Commission. Unfortunately, the project was never initiated. The point being is the process worked. As noted in John Ornellas' testimony, water issues are better deliberated in the LWAC instead of the Lanai Planning Commission because of LWAC's expertise in our island's water system. Lastly and probably most importantly, and I've shared this with you guys before, is our community's willingness to take responsibility for the stewardship of our water. No County or State agency

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has stepped forward to do so, nor has any County or State agency offered a plan or mechanism to ensure both the implementation of our Water Use and Development Plan and proper stewardship of our island's water. The County should be ashamed of themselves for not wanting to take responsibility for the water on our island. Thank you for the opportunity to testify and considering my request.

CHAIR VICTORINO: Thank you, Mr. Gima. Questions for the testifier?

COUNCILMEMBER HOKAMA: Chairman --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --if I may? Thanks for being here, Mr. Gima. I'm sure the Committee appreciates it. And as I shared earlier, I mentioned to the Members that if we were on Lanai we'd have a lot of residents testifying in support of this proposal this morning. Let me refer to your October 1st handout, please. And on page...or your first page to your attachment to Mr. Rabaino, the Lanai Planning Commission Chair. On page...your front page under Director Spence's analysis you mentioned in bold black about a violation of CC&Rs, and that was one of the sticking points of the establishment of this advisory panel. Can you give us your recollection of this violation and why it was so important for...part of the follow-up was Charley Ice's participation with the LWAC?

MR. GIMA: I believe the violation had to do with water being used from the high-level aquifer for irrigation of golf course down at Manele, and I think it was your father that brought this violation to the attention of the County.

COUNCILMEMBER HOKAMA: And this is when the State Land Use Commission was told to make some reconsiderations because they were making CWRM decisions instead of Land Use Commission decisions?

MR. GIMA: I believe so. I believe so.

COUNCILMEMBER HOKAMA: I remember this was a judicial court...it had to be settled in court, I believe.

MR. GIMA: Yes. In fact, we still are in litigation regarding the Land Use Commission deliberations on this issue. In fact, Condition 10 I believe it is.

COUNCILMEMBER HOKAMA: Okay. Thank you. And again, Chairman, the reason I bring it up is for those of us that understood the whole process of Lanai being the first project district for the County, Project Districts Manele and Koele, part of the conditions was of course the protection of the high-level aquifer, and the conditions that no potable water be used for golf course irrigation, and what would go to Manele for some of their needs could not be from the high-level, potable wells, as I understand the conditions that were set forth for entitlements. But then again, Chairman, here you have a private entity regulated by the PUC, potentially and again, it's

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going to be decided yet in court, but potentially there's this utility that violated its own requirements. So who protects the consumer? And the big point about this today, Mr. Chairman, is that while it is a private entity, what is its sole purpose? Public service to the island of Lanai, to all the residents. That's a public responsibility that a private entity has agreed to do. So to me there is a public component to this consideration, and the uniqueness of why past Board of Water Supply supported it, past Council supported it, because there is a public concern issue regarding this consideration today, Mr. Chairman. The other one I wanted to ask you, Mr. Gima, and I know it's attached to your submittal with Ms. Kaye, but in it she makes a point that because this is advisory, it would not be attached or be an issue with Chapter 92, I believe, of the Hawaii Revised Statutes.

MR. GIMA: Correct.

COUNCILMEMBER HOKAMA: Can you tell us why Ms. Kaye took such a position?

MR. GIMA: I believe there was a ruling from Corp. Counsel to that issue. In fact, throughout LWAC there was a number of questions around that issue, and so Ellen Kraftsow at that time requested a ruling from Corporation Counsel, and that's the ruling we received. And that ruling is important because we can't even remember if it was the Planning Department or the Department of Water Supply, who said that it would be cost prohibitive to have a formalized LWAC because it...they were going to have to bring over staff in part to meet a lot of their Sunshine Law requirements. And I think it's important to note that their objections to LWAC have more to do it seems with fiscal issues rather than issues of merit.

COUNCILMEMBER HOKAMA: Well today this is a legislative policy question and the Committee's going to make a policy decision, and we expect the departments to implement whatever is the Council's decision, Mr. Gima. Chairman, thank you. I relinquish the floor to other Members who may have questions. Thank you.

CHAIR VICTORINO: Thank you, Mr. Hokama. And I wanted to make one more point, what you said about a public and the utility taking care of the public. If we recall correctly, water is a public trust. You charge for delivery but no one owns the water. It belongs to the people, and that's in the State Constitution, so let us not forget that issue. No matter who does what, the water still belongs to the people. You can charge to deliver it but that's all you're charging for, it's not the water itself. So that has to be perfectly...I no care if you're private, public, it's the same constitution that rules the usage of water, okay. Other questions for the testifier? And I will also say that Mr. Gima will be a resource person for LWAC along with Mr. Stubbart for the company so that if there is questions specifically to these two issues, Mr. Stubbart and Mr. Gima are both here and they will act as resource so that Committee Members, if they have specific questions in that regard, they will be called forward. Okay, Mr. Gima?

MR. GIMA: Thank you.

CHAIR VICTORINO: And Mr. Stubbart has agreed to do that. Yes, Mr. Pontanilla.

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VICE-CHAIR PONTANILLA: Thank you. Thank you, Butch, for being here. One thing that sticks in my mind, right now, you know, the LWAC was created by, I guess, the Council way back when. And because Lanai Water Company comes under the jurisdiction of the State Water Commission, was there any talks in regards maybe the LWAC can be...should have been created by the State Water Commission who has oversight of the aquifer on Lanai?

MR. GIMA: I don't recall CWRM proposing that at all. Throughout the annual meetings that they held on Lanai following the initial application for designation, I think one of the recommendations...well they had a five-point trigger that...and one of 'em would be ongoing conflict within the community regarding water. And they put off designation because LWAC was in existence, and so they felt that with LWAC meeting on a monthly basis, coming up with the Water Use and Development Plan addressed that issue, one of those five issues. But they never came out and proposed forming LWAC by statute or law or ordinance from the State perspective, but they definitely saw, you know, the need for LWAC to oversee the water, you know, on Lanai.

VICE-CHAIR PONTANILLA: Okay. Thank you. Thank you, Chairman.

CHAIR VICTORINO: Okay. Thank you. Any other questions for the testifier? Seeing none, Mr. Gima, if you would please be around so that if there's questions we will call you up.

MR. GIMA: Okay.

CHAIR VICTORINO: Thank you, sir.

MR. GIMA: Thank you for waiting for us.

CHAIR VICTORINO: Not a problem, Mr. Gima.

MR. GIMA: Appreciate it.

CHAIR VICTORINO: Not a problem, sir. Mr. Gima was the last testifier to sign up. I will give anyone in the audience who hasn't testified and would like to testify one more opportunity to sign up, that you can sign up afterwards, just come on up. Seeing no tremendous rush to the podium, with no objections, I will close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

...END OF PUBLIC TESTIMONY...

ITEM NO. 16: ESTABLISHING A LANAI WATER ADVISORY COMMITTEE
(C.C. 12-133)

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CHAIR VICTORINO: Okay, I think we've gotten to the point where we need to discuss this matter, because we've heard the public testimony for and against, we've heard our departments, we've heard Mr. Hokama. And so I would like to put it on the floor, and this was a commitment we made to them last year when we were doing the Maui Island Plan, that was one of the issues that had come up. And we assured them that we would definitely take a look at this and bring it forward, so thank you, Mr. Hokama. You did bring this forward, and I'm more than honored to bring it forward to the Committee for us to discuss. So who would like to start? Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Mr. Chair. Trying to get to the heart of the matter here. Obviously, we have a very split testimony here, people that feel it's really important that we pass this, and people that really do not feel that way, so this is going to be a tough policy decision. What I'm trying to settle in my mind is this, we've been told that the Lanai Water Advisory Committee has existed for 23 years. The Planning Commission has existed for a very long time. The Water Board and the Water Department has existed for a long time, so all of these entities are here now. What will this resolution change if we pass it and if we don't pass it?

CHAIR VICTORINO: Well I'll turn to Corp. Counsel on that one. I'm going to turn it to you because I think that's something I can answer from a legislative side, but if not passed, what would be the ramification, Mr. Kushi?

MR. KUSHI: Mr. Chair, Member Baisa, to my understanding is it's not a resolution before you, it's a proposed ordinance.

COUNCILMEMBER BAISA: Okay.

MR. KUSHI: So if you pass this then it'll be an ordinance establishing this committee.

COUNCILMEMBER BAISA: Even though it already exists as an advisory committee?

MR. KUSHI: It exists...as far as I understand, it exists from...it started from 1999 via a Board of Water Supply resolution, and in the resolution itself it lists the various functions of this committee. And the primary function was as I understand it--and it's in your binders--that they assist in establishing the Water Use and Development Plan and the update which you passed a year or two ago. Also in that resolution it says the committee is to implement the plan. Now whether or not via that resolution this committee still exists, in my mind it's questionable; however, by passing this ordinance if you so choose, you would establish a committee via ordinance as a County agency which contrary to what Mr. Gima testified, it would be subject to the Sunshine Law under Chapter 92. Because the previous committee was established via ordinance, it was via a Board resolution. That is why our office said it's not subject to Sunshine Law. So that being said, now if you don't pass it, then in my mind there's arguments that this committee as established and as organized for the last 13 years goes away.

CHAIR VICTORINO: So that's it, mister...thank you.

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COUNCILMEMBER BAISA: Well I think it's really clear that we understand what the impact is if we pass it, and what the impact is if we don't pass it, because it exists. And will it continue to exist or will it go away, now we have the answer. If we don't pass this, it essentially goes away. So I think that's really important. Thank you, Chair.

CHAIR VICTORINO: Thank you. I'm glad that was clarified. Other...Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Yeah. Maybe for Director Taylor in regards to what oversights do we do right now in regards to Lanai Water Company or even the monitoring of the aquifer.

CHAIR VICTORINO: Mr. Taylor.

MR. TAYLOR: Thank you, Member Pontanilla. I think your question actually gets right to the heart of the technical aspects of this. I think there's no doubt that the public has a right to be involved in the process and knowledgeable about how their water is being used, and as Chair Victorino noted, the State Constitution says water is a public trust. The trustees of that is really the Commission on Water Resource Management. It's really those commissioners and that staff. On Lanai as well as everywhere else, every well has a permit from the State Water Commission. Pumping rates, how much...salinity, aquifer yield, all of these things are numbers that are the responsibility of that Commission and their staff. So the State Water Commission monitors pumpage, aquifer health, salinity, new requests for withdrawal from the aquifers. So these are technical things, they're not...there's no social values. My understanding of boards and commissions is they're supposed to bring social values and community values into the decision making process. The issue of how much water is in an aquifer is a technical determination by the State Water Commission. The issue of how much is coming out and whether it's more or less than is sustainable is a technical issue for the State Water Commission and their staff. I think where we've sort of been circling around is what exactly would...what isn't being done, because this technical analysis of what does the aquifer yield, what is the current withdrawal, and what are the new proposed withdrawals and is that within the sustainable yield, that's incredibly important and it is a State Water Commission function. All of their documents are accessible to the public through Freedom of Information. The general public has every right to read those documents, to comment on them, et cetera. And the State Water Commission has broad authority to designate aquifers, to tell people to cut back on their pumping, to do all sorts of changes and things. So what I'm unclear about is what the LWAC would do, what expertise they would bring, because they're really asking to comment on technical analysis that in my mind is completely already done by the State Water Commission. And because they're not a technical group, they're a community values group, I'm not sure what they would...what value they would add to basically what's a math and science exercise by the State Water Commission. So although we the Department don't do any of that, a government agency does, and when a testifier said that no government wants to protect this, I don't disagree...I don't agree with that, I think the State Water Commission wants to, is obligated to, and does that. Whether or not people think they're doing a good enough job or not, I don't know, but they are authorized to do it and that's what they already do. So I think the big question that has to be answered is what would the LWAC do that the State Water Commission isn't already doing, and where is the right place for them to do that?

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CHAIR VICTORINO: Okay.

VICE-CHAIR PONTANILLA: Thank you for that response. And, you know, one of the testifiers had mentioned, in fact, through his letter actually mentioning about the State Water Commission as the entity that should be providing this oversight. And, you know, for some reason...not for some reason, but I would think that if public input is required by a public entity, then it should come from the State Water Commission designating the LWAC as, you know, their, I guess, communication between the public as...and State government. So, you know, I'm kind of...well, that's an issue that I have in my mind, whether it should come from the County or should come from the State right now. Thank you.

CHAIR VICTORINO: Thank you. Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And thank you, Mr. Pontanilla, for bringing up that point, it got my wheels turning. And, you know, I think it is definitely a direct oversight by CWRM, it ought to be, but until that day happens, I believe this particular group needs to be in place. I really believe they are the oversight, you know, they're in charge of implementation of the Water Use and...you know in discussion and seeing that things are carried out in the Water Use and Development Plan. And I believe, Mr. Taylor, in your own words, I mean it's strictly informational, and also you mentioned that it can be followed or it can be also ignored, and that part scares me. And I believe that part is a huge concern for this island, that...and I think that's why the community feels like this group as advisory, yes, as sort of an oversight and voice of the people to follow along and make sure that things are carried out. So that's my reason for supporting this, and we did unanimously on the island itself and here we are today revisiting it. But I believe until...and CWRM didn't have a clue about what the situation was on Lanai in regards to water. They should have back in the day, but, you know, then this group was created so they can get them more information to better make decisions. So I believe there is still a need for them, and I totally support in keeping this group alive. Thank you, Chair.

CHAIR VICTORINO: Thank you. Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. I totally understand that it is important that we make a good decision here. One of the things we're dealing with here today is this issue of home rule and this issue of people in a community deciding what that community wants. And obviously, you know, we all attended that meeting on Lanai where we listened to a lot of people come out and talk to us about this, and it was overwhelmingly in support of keeping the committee. So in light of that, I want to ask a question, what harm will it do to keep this going? And I know I heard something about a cost and about duplication, but actual harm because this is advisory. Is there anything that's, you know, going to be really harmed by this continuing?

CHAIR VICTORINO: I don't think so, but I'll ask Corp. Counsel. I think that's the person I would want to...sorry, I put you on the spot again, Corp. Counsel. But, you know, from a...I guess from a legal standpoint what...

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COUNCILMEMBER BAISA: Well not just that. You know there's this...all we've heard was it's duplication, and then we have the people from Lanai testifying that they don't feel it is. That, you know, other people are not doing the function that LWAC performs, and then we also heard the issue about cost. But because this group is advisory, no matter what they say or no matter what they recommend, it's advisory, but it does give apparently the people of Lanai some feeling that they're being heard, that they have input. And so the other side of that is, then why would it be such a big thing to eliminate it?

CHAIR VICTORINO: Well I think to answer that question, you know, you're right as far as keeping them and them being an advisory group to the Water Company. And when I look at the cost, you know, and I point this out, the response that I got for cost, charter flight \$2,100. I don't...that's an awful lot for four people.

COUNCILMEMBER BAISA: I do the ferry for 20.

CHAIR VICTORINO: I think you can take the ferry and go over very, very inexpensive, so let's that's put that one.

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: And the...*(inaudible)*... and the per diem, and the parking, okay, fine, I got no problem with that. But, you know, I think \$2,500 for a meeting is a little excessive if, you know, we're talking transportation modems. And of course I think the other challenge comes up is if you always have evening meetings then somebody has to stay over or it's a charter, it's either/or.

COUNCILMEMBER BAISA: Chair, what about an alternative of not every month but maybe quarterly or something as a compromise?

CHAIR VICTORINO: Yeah. I mean I...it says here when needed. I mean if I remember someplace in here it says establish...*(inaudible)*... I forget where. I read something about...implement the plan...advisory commission on related matters...I thought there was something. There was nothing specific about meeting every month. I think they do that now pretty much on their own accord. So going back to Mr. Kushi, listening to what was just said and then maybe Mr. Spence, because it really would go to Planning, you know, more than it's going to go to Water. Why don't I start with you, Mr. Spence, you know, then see what your reaction to this is. Mr. Spence.

MR. SPENCE: Okay. Thank you, Mr. Chairman. The...I know...I mean just with regards to costs, I know as a part of our report to the Lanai Planning Commission, we mentioned about 2,400 bucks for per meeting. Okay. There's also a notation in there that, that does not include staff time needed to prepare reports or the clerical time needed to arrange travel or to do the minutes of the meetings, those kinds of things. I would say right now our staff is maxed out in staffing all of our committee meetings. That, you know, we do verbatim minutes, so they transcribe every meeting we have. So there's a substantial cost, not just with the meetings themselves but also in the preparation for those meetings, and posting agendas and clearing agendas, and arranging travel, and then following up for the, you know, typing out. If there's a several hour meeting,

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you know, it takes a substantive amount of time to do that. So there is a cost...a much...I would say a larger cost associated than just the numbers presented there. But also it...adding another advisory committee is one of...it is contrary to the efforts of streamlining. You know I think that the...we've all recognized that our permitting process is difficult. Adding another...it actually would add another layer of regulation, because then you're not just going to the State agencies and the County agencies and Federal agencies, you're dealing with another entity then that it is granted advisory in nature but you must hold a meeting with that entity. You must take into account all the comments that are received. You know so it does indeed add another layer to the flow chart here. So if we're trying to streamline our permitting processes, this I believe this is counterproductive to that. You know I...because our clerical is maxed out and our staff is maxed out, I don't...I can't tell this Committee what additional personnel if any we would need as a result of this. You know it...they would only...time would tell. The...and I think that's about all I have to comment, except maybe one last thing. Whatever the decision of this Committee and ultimately the Council, of course, you know, there was a comment made earlier that, you know, the Planning Department wouldn't staff this. And of course we would, you know, that's part of our function to implement whatever the Council, you know, puts in place, so we would do that.

CHAIR VICTORINO: Okay. Questions? Mr. Carroll, you have a question?

COUNCILMEMBER CARROLL: Thank you, Chair. The committee as it is now on Lanai, they have a committee over there right now at this time that is functioning, correct? All right. If we go through with this, are we doing them any favors? Right now, if they want to meet, they can meet down over there and by the store and say hey, we need to discuss this. I've heard the company is doing this or this, somebody is doing something or what, let's meet tomorrow night. They can do that now, right? They're not under the Sunshine Law at this time? Anyone.

CHAIR VICTORINO: Mr. Kushi, would you like to take that on? I think that's a question that pertains to the present status of LWAC.

COUNCILMEMBER CARROLL: The status that they are in right now.

CHAIR VICTORINO: Under right now, yeah.

COUNCILMEMBER CARROLL: Are they under the Sunshine Law at this time?

MR. TAYLOR: While Mr. Kushi's researching that, let me just say that...

CHAIR VICTORINO: And while you're doing that, I'm going to call Mr. Gima up also to address that.

MR. TAYLOR: To address part of your question, I can say that although they meet, I sent a letter last year sometime, maybe more than a year ago that said my understanding is only the Director of Water Supply can call an LWAC meeting. So I sent all the members a letter saying, you know, you can get together whenever you want and talk about water issues but it's not an LWAC meeting. It shouldn't be on LWAC letterhead. It's not positions of LWAC because there was

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not an LWAC meeting. So nothing prevents them right now from getting together as citizens who have common concerns and saying we're concerned about this. But in the last, you know, 20 months since I've been Director, I haven't called any LWAC meetings because the Water Use and Development Plan was finished. I think this is an important issue. Nothing stops these people from getting together, talking about things, and testifying anywhere they'd like. Whether or not they're an official County commission or not doesn't stop them from getting together. As this body well knows, lots of groups get together and come and testify saying, you know, we're a group of, you know, people concerned about, you know, whatever, and say these are our concerns. So when you say has the LWAC been meeting, I would say that members of the LWAC have been meeting, talking about water issues, but because we haven't called any actual LWAC meetings, I would say that the LWAC as entity has not met in at least 20 months.

COUNCILMEMBER CARROLL: Thank you. That clarifies my question actually. I realize it is like that as you said, and thank you for making that very clear. And what my question is, is right now they can get together anytime they want, not an official meeting, but they can get together anytime they want and have a discussion. And if...then they can decide oh, okay, you know, we really need to bring this up, they can call and, you know, have a meeting. If we pass this though, will they fall under the Sunshine Law and only be able to have these discussions by notifying you and having an official meeting? In other words, is this going to be more restrictive to their working together and with the community? It seems like it would be to me sitting here at this time.

CHAIR VICTORINO: And you're pretty much correct, it would have to be. You know if we establish this as advisory committee just like the Board of Water Supply and any other commission, board we have, you know, all the Sunshine Laws do apply. I mean that's not to say they can't meet in a restaurant, two of them and talk story, I'm not saying that, but I'm referring to if they get --

COUNCILMEMBER CARROLL: Business.

CHAIR VICTORINO: --this approved as meeting it has to be agendized, the whole nine yards. Absolutely.

COUNCILMEMBER CARROLL: Thank you, Chair. And this is what I wanted to bring up, and thank you for that clarification. Between the Chair and the Water Supply, this is what I am concerned with.

CHAIR VICTORINO: And I...*(inaudible)*...

COUNCILMEMBER CARROLL: We are hampering them, in my opinion, more than any other way passing this. They have more flexibility now to work together and represent their community. If we pass this, we are making it more restrictive for them to do what they need to do. Thank you.

CHAIR VICTORINO: Well let's hear from Mr. Gima, 'cause he's here as a resource for the LWAC. Mr. Gima, you heard the discussion that's been going on, go ahead, put your comments in now if you...I apologize, I was trying to get you up there.

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MR. GIMA: Okay. Thanks for asking that question, Bob. Yeah, we need to clarify that issue. The Director of Water Supply has never called an LWAC meeting. Okay. What Director Taylor did in his letter 20 months ago was very damaging to the LWAC process, and we had a personal discussion about that in this office and subsequently at the meeting on Lanai, too. The reason why it was damaging is when that letter came out, Castle and Cooke Resorts made an executive decision not to participate in the meetings, and as much as we've asked them to continue to come to the meetings, they have not because they made an executive decision. I don't know who specifically made that decision, but they haven't participated. The rest of us have met, but we can do only so much without the water purveyor at the meeting. You're right in that if LWAC is institutionalized by ordinance, there are going to be some restrictions, yes, and we recognize that. And it's been brought to our attention many times before; however, the whole foundation for wanting to be institutionalized is we want to be part of the process so we can implement the Water Use and Development Plan, so that when an application comes to the Planning Department that we are one of the commenters on that application. I disagree with Director Spence, it will add another layer. All they're going to have to do is make another packet, they're going to send it to the LWAC, LWAC will have what, 30 days to offer comments. If they don't offer comments then there is nothing regarding the Water Use and Development Plan on that application. I agree with him in that he's going to have to budget time for his staff to prepare for the meetings, but as you will see in Sally Kaye's testimony, one alternative that she...has been proposed and has been discussed in LWAC is to have the meetings on the same day as the Planning Commission so you can piggyback off of staff time on that day. That'll save money if they don't want to come by ferry. But again, I mean you guys cannot punt. Everybody is punting and advocating responsibility for the stewardship of our water. CWRM is not going to do it. They don't have the staff. Charley Ice, he hasn't been at our meetings for probably what, over five, six years. I mean when there are issues that come up regarding the wells, water pumpage, water usage, it's the LWAC that talks about it and asks questions about it. We don't get people from Department of Water Supply or Planning or Commission on Water Resource Management, you know, jumping on the phone saying hey what's happening on Lanai, no, it's LWAC that has taken the responsibility and they want to be accountable for our water. We want to do that, because it affects us. It doesn't affect you guys, you guys live over here. It doesn't affect Charley and CWRM, they live on Oahu, but it affects Lanai people. We want to take responsibility. We've made the commitment that we want to do that.

COUNCILMEMBER CARROLL: Chair?

CHAIR VICTORINO: Yes, go ahead.

COUNCILMEMBER CARROLL: Thank you. Question. First of all, you realize if it passes that there still...you cannot require them to be part of the Committee? Castle and Cooke.

MR. GIMA: Correct.

COUNCILMEMBER CARROLL: All right. The second part is that there's no intention of anyone on this Council to punt. The question today is whether this will make you more effective or less

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effective, and that is the bottom line, and that is what I am concerned about. I come from a small community also, I can strongly relate, and I worked on your island long time. And that is the question, and I thank you for the, you know, the clarification. But the bottom line is whether it is actually going to be better for you and the community if we pass this or not. And I appreciate your coming and all the information that you've given us. Thank you.

MR. GIMA: Thank you.

CHAIR VICTORINO: You know, Mr. Carroll and Mr. Gima, I want to make one correction. On the...if you look at the ordinance, one member from the Lanai water utility company regulated by the State...Utilities Commission, one of the members has to be. It has to be. Sorry, mister...it's right here. Number one, one member of the Lanai water utility company has to be a member.

COUNCILMEMBER CARROLL: So Castle and Cooke would have to participate?

CHAIR VICTORINO: Yeah, it's there. One member, it's there. Please, it's in there under 2.28.070, Lanai Water Advisory Committee. There is...if we accept it, there's the makeup of the committee and the various membership qualifications or membership desired for the committee.

COUNCILMEMBER CARROLL: Okay. I saw...thank you, Chair, I saw that, but I just didn't realize it connected with the company. Thank you.

CHAIR VICTORINO: Yeah. So...no, no, so it is included, I'm sorry. Okay.

MR. GIMA: So the ordinance that you guys are considering --

CHAIR VICTORINO: Considering right now.

MR. GIMA: --is the one that, is one LWAC proposed or the one that initially was proposed?

COUNCILMEMBER HOKAMA: The initial.

CHAIR VICTORINO: The initial one.

MR. GIMA: Okay. You have our proposed...

CHAIR VICTORINO: And that...and yeah, that is a proposed by you guys, it hasn't been formally accepted. I'm saying the one we're considering right now was the original proposal. That's the one we're considering. I know what you guys have put forward, Butch, but I'm saying for purposes of this meeting, that was what was proposed and that's still there. Until we change it, it is still there.

MR. GIMA: Okay. Please strongly consider the one that LWAC had proposed, you know, in terms of, you know, number and composition.

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CHAIR VICTORINO: Well I think we'll consider all factors, but I'm just saying right now you're saying it's not but that's your version. The version that we have in front of us right now, Mr. Gima, has a member of the Lanai Water Company as part of it. That's the version, the original version, and that's the one we're considering right now. We haven't made changes as of this point. Okay?

MR. GIMA: Okay.

CHAIR VICTORINO: Okay, thank you. I just wanted clarification. Ms. Baisa.

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. And again, Mr. Gima, if you can hang on for a second.

CHAIR VICTORINO: Wait, you're not done yet.

COUNCILMEMBER BAISA: You know I'm trying to find a compromise here, and you already heard my suggestion about costs. Maybe a monthly meeting might be too much or too expensive, and I don't know what your volume of work is. Maybe you can enlighten us about, you know, how much work you do have at these LWAC meetings. And the second thing that I'm looking at is in the ordinance it says all applications. Do you feel that maybe not having all applications reviewed by you guys, maybe more important or broad reaching or, you know, different kinds of applications? Just trying to look at how we can find a solution here.

MR. GIMA: Well, I'll answer your second question first. Obviously, if the application has no water involvement then yeah, I don't think it's appropriate for LWAC to review. I'd say an overwhelming majority of applications that come before the Planning Department for Lanai involves water. In answer to your first question, if you look at the standing agenda, historically we've talked about the four or five major things on that agenda. For the last obviously 12 years it had to do with the development of the Water Use and Development Plan --

COUNCILMEMBER BAISA: Right.

MR. GIMA: --but in addition to that the Director of Utilities provided an update on the status of the non-potable water system, a status of the potable water system. We discussed the periodic water report which showed both pumpage numbers and usage numbers. We also at times discussed upcoming applications that Castle and Cooke was going to be proposing that had to do with water. So those are the things that primarily took up, you know, much of our meetings over the last 20-something years.

COUNCILMEMBER BAISA: So to get it a little finite, would you really require a monthly meeting or could you do it with less?

MR. GIMA: We wouldn't necessarily have to meet monthly if there were no applications.

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COUNCILMEMBER BAISA: Based on history, do you have applications every month?

MR. GIMA: No.

COUNCILMEMBER BAISA: So you know where I'm going?

MR. GIMA: Yes.

COUNCILMEMBER BAISA: I'm trying to deal with this idea of this is costly, this is time consuming, so I'm trying to find a way to lessen that. And the lessening of course could be we don't meet that often, and secondly, we only meet on, you know, broad-based things that affect water. Does that sound like maybe a reasonable thing to look at?

MR. GIMA: I think most of the members of LWAC can live with that.

COUNCILMEMBER BAISA: Thank you very much. You know we understand, you know, we really want to address the needs of our sister and neighbor islands because we're all in this together.

MR. GIMA: That's right.

COUNCILMEMBER BAISA: But we also have to be aware of, you know, the needs of our departments and the things that they're saying, so we're kind of, you know, very open minded here at this point trying to sift all this out so we make a good decision. Thank you.

MR. GIMA: Yeah. I mean as I said earlier, if any of the departments or CWRM can demonstrate a plan or mechanism to achieve what LWAC's trying to do in terms of implementing the Water Use and Development Plan, we're all ears, but we haven't received anything yet.

COUNCILMEMBER BAISA: We understand.

MR. GIMA: Nor the commitment to do that.

COUNCILMEMBER BAISA: We understand. Thank you.

CHAIR VICTORINO: Well and I think, you know, Mr. Gima, just to tack on Ms. Baisa, I like the idea and would recommend that idea that you guys meet concurrently with the Planning, the Lanai Planning, because that would be the most opportune time to give your comments at that point. So that would make good sense, and the staff goes over anyhow, so that would kill two birds with one stone, I agree. Instead of coming over special, that you guys would have your meeting at...well it would have to be prior because you don't want it after because then you wouldn't have a chance, but prior to that to discuss any of your recommendations at that point. So I think something like that could be established so that it would run in concurrency, and then if there's no water issue then there would be no meeting, no necessary meeting for you, right? I mean that makes good sense, right?

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MR. GIMA: Yes, and you will have a lot more efficient Planning Commission meeting if they don't have to deliberate that.

CHAIR VICTORINO: That's correct. Yeah, okay.

MR. GIMA: They'll just take the recommendation of the LWAC.

CHAIR VICTORINO: Yeah. I think that would be something that I would like to incorporate when we're down to the final. Whatever we come up with, that would be one of the recommendations I would make. Mr. Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. I was a little bit slow the last time and I had one more question.

CHAIR VICTORINO: Okay.

COUNCILMEMBER CARROLL: Actually you're the one that generated this, and this is for Corporation Counsel. Over here as you stated, you have the, who will serve on the committee. Corporation Counsel, is any of these people that are listed on top here compelled to join this committee because of this ordinance? In other words, do they have a choice? Can they just say as they've told them before, no? Or not? Because of this ordinance, does that force them to be a member of this committee, Corporation Counsel?

CHAIR VICTORINO: Mr. Kushi.

MR. KUSHI: Yes, Mr. Chair. Member Carroll, you're referring to the ordinance before you, not the one proposed by LWAC. It's a five-member board, right, we're talking about. As I understand the proposed ordinance, five members appointed by the Mayor, confirmed by the Council, so...and one of them has to be a union member, one has to be a representative of the company. Now assuming that the Mayor doesn't submit or can't find a company representative, that leaves a vacancy on the committee, and then it would be instead of five members, it would be four members. A five-member committee, you need three votes to pass any action, so that may hinder the functions of the committee itself. You can't force anybody to serve on anything, that was abolished about 200 years ago. But so again but the makeup of the committee is what you have before you. And if may, Mr. Chair?

CHAIR VICTORINO: Go ahead.

MR. KUSHI: About these dual back-to-back meetings, I have a problem with that, because if you establish this committee by ordinance, it's subject to the Sunshine Law, it's subject to posting requirements for notices for meetings. Then if you have a back-to-back commission meeting which again, they're subject to posting agenda items, too, they need to have a committee report from this LWAC committee to take action on any jurisdictional issues, and there's just not enough time. You understand what I mean?

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CHAIR VICTORINO: Yep, yep. I got it.

MR. KUSHI: So I'm quite concerned about these back-to-back meetings.

CHAIR VICTORINO: Okay. I mean that was just one of many suggestions been thrown out around, yeah. So, yeah, I understand his point, if we had a back-to-back meeting you couldn't be commenting on the items that are coming up on the committee. You'd have to have then done the month before committee, and so you're kind of like always going to be 30 days behind, you know, you're not going to be current meeting, you're talking about questions that were brought up or you would be recommending what's 30 days out, yeah?

MR. GIMA: Correct.

MR. KUSHI: Mr. Chair, it's seven day posting for an agenda.

CHAIR VICTORINO: Yeah, no, no, no, but I mean if you have a monthly meeting, you're talking probably 30 days out is when you're talking, you know, unless you had your meeting 7 days is what he's saying. You've got to have your meetings posted 7 days out, so then you have to have your meeting 2-3 days before that so the staff can prepare the report and submit it into for your...for the Planning Commission. So there's still more things to be worked out, but I think what we're trying to find is ways of keeping costs down. If it's quarterly like Ms. Baisa said or when needed or I don't know, you know, so I guess there's a number of issues that still have to be discussed. But I think we're getting better at what we're looking for. I understand what you guys want to do, and I think the Committee is fairly in favor of something along those lines, but let's see what we come up with. You had another question, Mr. Carroll? Now that you got that answer.

COUNCILMEMBER CARROLL: That answer was what I was looking for is again, we want to make...our goal is to serve their community and make it more effective, and I worry that even with this ordinance, they might not have the participation of the major landholder and...in this. And I would hope that saying having this meeting over here that perhaps the new ownership might be more responsive to working with the community, no matter which way this goes. Thank you.

CHAIR VICTORINO: Thank you. Other questions for Mr. Gima or before I release him? Okay, Butch, just stand by in case there's more questions, yeah, please. Okay. Questions, Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. This question is not for, wasn't for Mr. Gima, but I have a general question. You know I'm looking at the proposed flow chart that we got, and it looks like a report from the LWAC would go to the Planning Department and then to the Planning Commission. Is it possible that they could report directly to the Planning Commission? And I'm wondering if Director Spence could comment.

CHAIR VICTORINO: Well before Mr. Spence, I would like to ask Mr. Kushi if something like that was to occur, what ramifications? Because I think right now most commissions report to the

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Department first, then send it out, if I'm correct. Mr. Kushi, maybe you can enlighten us on that whole issue.

MR. KUSHI: As...if I understand the question and the situation, the LWAC meets and instead of sending its...after it makes a decision on an issue, and then instead of sending its report or have staff send the report, LWAC itself through its non-County secretary submits a report direct to the Planning Commission?

COUNCILMEMBER BAISA: Yes.

MR. KUSHI: I guess it'll be possible, the question is then Administration, the staff then loses control of what's being sent to the Planning Commission. I see no rule or regulation saying that it has to go through the Department; however, historically, any agency is staffed by a department to make sure that all the I's are dotted, the T's are crossed, et cetera. So but I see no regulation prohibiting that. Again, I'm concerned about the timeframe between agency meeting, one, and the final agency meeting, two. Mr. Spence can clarify if he wants to.

CHAIR VICTORINO: Mr. Spence, you have any comments to that? And thank you for that clarification. So there is no rule, so any organization can go directly to send anything to the Planning Commission without going through the staff?

MR. KUSHI: I see no rule or regulation against that, but again, the Administration would then lose control of what's being sent to another commission which they have jurisdiction over. And if you want to open the flood gates and allow that kind of happening, so be it.

CHAIR VICTORINO: Okay, thank you for that clarification. I appreciate that. Mr. Spence.

MR. SPENCE: Okay. Thank you, Mr. Chairman. The...I'm sort of thinking that perhaps an alternative would be to step up the--and there's two parts of this--step up the Lanai Planning Commission's involvement with water issues. I mean I understand from the company...and I don't review every transmittal already to the Lanai Planning Commission, but I can double check on this. I believe we send quarterly reports. The company reports to the Planning Department. Whatever they're sending to CWRM they also send to us, and I believe they send to the Council. So we...I can make sure, but I...we can transmit those to the Lanai Planning Commission, those are public records. We can have an agenda item on their agenda when the pumpage, you know, numbers come out. I have not reviewed one of those documents so I can't tell you what's on it, but get more involvement in that form. That is staffed by, you know, by the Department, it is, you know, we budget for it every year, et cetera. The...and I'm just making the suggestion that maybe the LWAC would be much much like other community organizations. We send them the information, you know, we send certain organizations here, we send them the packet of the Planning Commission items, the reports. All those things are public documents. If people say hey, I want to receive everything that the, say the Maui Planning Commission is receiving, we, you know, we get that to them. So we have community organizations on Maui that are very involved with the Planning Commission here. I don't see why the LWAC would necessarily be any different. It's just perhaps not be an official, you know, County function or, you know,

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entity. But the Lanai Planning Commission could be much more repository for water issues, and that's where the...those issues would be vetted out.

COUNCILMEMBER BAISA: May I, Chair?

CHAIR VICTORINO: Yes, go ahead.

COUNCILMEMBER BAISA: So you don't see that necessarily as a bypass of your Department, you're saying that LWAC could communicate directly with the Planning Commission?

MR. SPENCE: Yes, just exactly like we see all the time here on Maui where community groups are very interested in Commission issues, just like a community association.

COUNCILMEMBER BAISA: But I do hear you saying that you'd like to see the Lanai Planning Commission delve more into water issues, and maybe it could be a standing agenda item?

MR. SPENCE: I think it could be. Or when we do receive information, and like I said I'll double check. When we do receive information from the company we can make that an agenda item on the Lanai Commission agenda.

COUNCILMEMBER BAISA: Thank you very much. It appears then that we might have a little more attention paid to the water issues that we're hearing people say, you know, they don't feel that the Big Brother's watching. Thank you.

CHAIR VICTORINO: I think that's what this was all about, to try to get some kind of lines of communication so that the people of Lanai feel like the company is responsive to them. So, Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. And I appreciate the Members' questions and comments on the proposals. The community over 20 years, Chairman, has grown to rely on members of the LWAC that has taken responsibility regarding the primary water issues of the island as part of our day-to-day how we operate. I can tell you, you know, I don't see us making land use decisions without LWAC's comments, not at the Council level, not at the Planning Commission level. So for me, what we're being asked to do to consider today is to continue what we've allowed and supported, what we have supported for 20-plus years. We're not asking to do changes, we're just saying we're going to recognize this in a new format that has existed for 23 years and has done the community's bird-dogging, oversight requirements that most people rely on other government entities to do. So we've heard the PUC, we've heard CWRM, we've heard Water Department, we've heard Planning Department, but Lanai's experience has been, you know, it's interesting how decision makers who don't live there look at Lanai and our issues. To me, it's very disconnected because there's no tie to the island. So it's easy to make a numbers decision, but for the members that live on the island, Mr. Chairman, they see how the companies have changed their irrigation patterns, they've seen what was cultivated lands now just being laid fallow, and they're worried about why they have deer issues and whatnot. Because a lot of it is management decisions that has impacted the island in a manner that to me

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hasn't been very productive or very advantageous to our community or to the island itself. So I believe there's great merit. One thing that, you know, hasn't been asked but, you know, the issue has been an ordinance, ordinance, ordinance. Well, we've established this by resolutions in the past, Chair, so would there be a difference if we establish it by resolution? Because that's how the Board did it in its past, that's how Council did it in the past.

CHAIR VICTORINO: I don't think there's a...well, as an ordinance then they have, you know, a standing.

COUNCILMEMBER HOKAMA: And I understand about the Sunshine --

CHAIR VICTORINO: Yeah, yeah.

COUNCILMEMBER HOKAMA: --and other State statute requirements, Chairman, so I appreciate that reminder.

CHAIR VICTORINO: That was one of the reasons.

COUNCILMEMBER HOKAMA: But Council has always also supported there's a Maui Planning Commission, but we have supported East Maui, Hana to have their own advisory group to give their unique perspective on issues regarding East Maui and Hana.

CHAIR VICTORINO: And that too is Sunshine and I think agendized, the whole nine yards.

COUNCILMEMBER HOKAMA: That's right. But we recognize the importance of Hana --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: --to have a say. And again, they understand they're advisory, but they have their opportunity to conduct their own meeting in their own backyard to discuss home rule issues as it relates to East Maui, Hana, and give their recommends to the Planning Commission or to the Council. Lanai is asking for the same consideration --

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: --Chairman. You know so for me, you know, it's something we've been doing 23 years. I think CWRM benefits from it. The County definitely benefitted from it because of the update. Who was doing the work for the County? The volunteer members of the community who served on LWAC, that's who did the work. So, you know, for the Water Department to say that we're completely disconnected but yet for how many years they worked with the community to do an update intrigues me, you know. You cannot be part of the family some of the time and disowned the other times. You know --

CHAIR VICTORINO: Okay.

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COUNCILMEMBER HOKAMA: --I hope this is not a matter of administrative convenience, because I see this as legislative policy, Chairman, and what is best for the sister island of Lanai in this County is to have this committee to continue and do its job until a government entity that has additional jurisdiction of this does it themselves. Because unless you're on that island, I can tell you nobody else cares, from what I see. So I'm ready to work on a vehicle to make this become a reality, Chairman. Thank you.

CHAIR VICTORINO: Well, I think I've come to the point now I believe that I'd like to recommend the passage of this, and make this recommendation so that we could work on the exact ordinance if there's any changes to the ordinance itself. So that's my recommendation so that we can make formal changes if you want formal changes. So I would like to move to pass the ordinance as submitted so we can make changes on it, but I'd like to do it in a formal matter, already.

VICE-CHAIR PONTANILLA: Chair?

CHAIR VICTORINO: Yeah.

VICE-CHAIR PONTANILLA: Wouldn't you consider a resolution as going forward on this matter here rather than an ordinance?

CHAIR VICTORINO: Up to you guys. You guys like change to one resolution, that's fine, but again, you know, to me, this ordinance had more meaning than --

VICE-CHAIR PONTANILLA: Yeah, it still gives the community...

CHAIR VICTORINO: --the resolution but that's fine.

VICE-CHAIR PONTANILLA: It still gives the community a chance to meet.

CHAIR VICTORINO: Yeah. Okay. Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Mr. Victorino. I know that this is a matter that we would like to conclude. You know these things just hang and hang and hang, so it gets to the point where let's get it done. But if we are going to suggest changes into the document that we're going to approve, whether that's a resolution or what we have before us, wouldn't it better that we do that and then take it out of Committee so that we don't have to make amendments on first reading?

CHAIR VICTORINO: that's why I wanna do it today, yeah. I mean whatever...I'm moving to bring this out so whatever changes you guys wanna make now, right here right now, yeah, in the Committee, yeah. I wasn't saying send this to...

COUNCILMEMBER BAISA: That's what I heard and I was concerned 'cause I don't wanna see this happen at first reading.

CHAIR VICTORINO: No, no, no.

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COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: I mean now. Right now, yeah.

COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: So in other words so that we can move on I would like, you know, to recommend the passage...recommend the ordinance as it is now and then you guys can make all the changes that you so desire, but if you wanna make it a resolution now, I think we have to...I don't know, now redo it. Mr. Kushi, if we change now from an ordinance to a resolution, what do we have to do, Mr. Kushi?

MR. KUSHI: Mr. Chair, first of all, the, a resolution creating this body is not on your agenda.

CHAIR VICTORINO: Yeah, okay, so.

MR. KUSHI: Second I would strongly advise you not do it by resolution.

CHAIR VICTORINO: Okay.

MR. KUSHI: Again, committees, advisory committees such as this, as I understand, are enacted through ordinances. For example, Urban Design Review Committee, Hana Advisory Committee, they're all in ordinances. In my experience, I don't know of any committee or board that has been created by a resolution that would be existing as long as it's not repealed. If you wanna do it by resolution, I imagine you could and, but I think you would have to incorporate a drop dead deadline or a sunset provision. Because again, differences between resolutions and ordinances, one definitely has a full effect of law, a resolution may have the force and effect of law, example 201G ordinances. However it to be clear, with no questions asked, I would strongly advise you do it by an ordinance.

CHAIR VICTORINO: Okay. Are we clear with that now? Okay. So that's my...that would be my recommendation so that we can...whatever we wanna clean up, change we can do that, but that's my recommendation to bring forward this bill and...

COUNCILMEMBER CARROLL: Chair, are you looking for a motion from the floor now?

CHAIR VICTORINO: That's what I'm looking for, a motion from the floor.

COUNCILMEMBER HOKAMA: I make the motion.

COUNCILMEMBER CARROLL: Second.

CHAIR VICTORINO: Okay. It's been moved by Mr. Hokama and seconded by Mr. Carroll. So now we formally can make changes to the document if anybody would like to make changes.

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CHAIR VICTORINO: Ms. Baisa.

COUNCILMEMBER BAISA: Chair, the changes that I'm thinking about have not been thought out or we haven't wordsmithed them, and we've got about a half an hour. My suggestions earlier, of course, were do we want to say all applications or do we want to define which applications? Do we want to talk about how often this board's going to meet? I am strongly in support of keeping it. I just want to be sure that if we're going make any substantive changes that we make it before we pass it out of Committee so that we don't run into that at first reading.

CHAIR VICTORINO: That's right.

COUNCILMEMBER BAISA: And I, like I said, I haven't really thought it out, and we need that wording for that all applications, so that'll take us a little time.

CHAIR VICTORINO: Well, we've got time now, and I intend to. Because we only have a few more meetings after this, and we will be getting the two resolutions for the water meter list and the other one coming down very shortly. It's going to be referred to Council to be referred to this Committee, so I'm anticipating all the rest of our meetings are going to be doing just those two items. And unless something comes urgent or I'm going to have to call a special meeting, I would like to finish and conclude this today, so.

COUNCILMEMBER BAISA: That's fine with me. Can we have help from Staff to kind of wordsmith the little changes we might want to discuss? Not necessarily make but at least discuss.

CHAIR VICTORINO: Okay. So the first one was the establishing meetings, right, you know. And again, when I read this over, there is nothing that says, right, that you have to meet at any given point.

COUNCILMEMBER BAISA: As far as I see it, no.

CHAIR VICTORINO: No, okay.

COUNCILMEMBER BAISA: But, you know, that may be something we want to do, and if we don't want to do it then it would be up to somebody to monitor that. And...

CHAIR VICTORINO: I would suggest with the okay with LWAC that them and the Planning Department work that out. Would that be all right with LWAC?

COUNCILMEMBER BAISA: We need a representative.

CHAIR VICTORINO: Yeah, yeah. I'm sorry. Yeah, yeah. I'm calling you up, Butch. I beg your pardon, Butch. I'm asking you to come up and you're looking at me and I'm saying....yeah, okay, I apologize, Butch. Go ahead.

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MR. GIMA: Yeah, it was my understanding if the ordinance was passed that there was going to be language in the ordinance that and I think in County Code that the LWAC would develop rules for the committee. And to address Gladys' concern, yeah, I think that we're going to work very closely with the Planning Department, you know, when meetings are to be held and when applications come, you know, come before the Planning Department. Keep in mind that although the applications and...is one of the things that LWAC wants to address, there are several other things in the Water Use and Development Plan that needs to be implemented, one of which being conservation and then the protection of the watershed. And there's an implementation matrix in the Water Use and Development Plan to address that. So, you know, those are some other things, but the primary thing is, you know, we want to be able to comment on applications coming before the Planning Department.

CHAIR VICTORINO: So that's why number one, monitor implementation of the adopted Lanai Water Use and Development Plan. That's the number one thing we've put in here.

MR. GIMA: Yes.

CHAIR VICTORINO: So I mean that's your number one charge.

MR. GIMA: Yes.

CHAIR VICTORINO: Number two, advise the Lanai Planning Commission on related matters. That's number two.

MR. GIMA: Right.

CHAIR VICTORINO: I mean I think that's covers just about all the things that you guys have discussed with us and want to be a part of, right?

MR. GIMA: Yes.

CHAIR VICTORINO: Okay. I think that's clear enough for me. Ms. Baisa, I think I would leave it to the Department and LWAC to work out these implementations as far as meetings dates and all that.

COUNCILMEMBER BAISA: Chair, I'm absolutely fine with that. I don't know what Mr. Hokama's comments might be. I'm very interested in what he thinks.

CHAIR VICTORINO: Riki, you got any...or Mr. Hokama, I apologize. Mr. Hokama, you have any direct comments? You heard what Mr. Gima is saying and the Department, so what do you feel on that?

COUNCILMEMBER HOKAMA: Chairman, I can agree with the first two points of the committee's advisory parameters. I'm like Ms. Baisa, to review all applications for me I would prefer to stay

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within the purview of what the water advisory, we understand it to be. They're not to supplant Planning Commission.

CHAIR VICTORINO: Right, right.

COUNCILMEMBER HOKAMA: You know that, we know that.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: Okay. And so I wouldn't agree that they need to have review of all applications.

CHAIR VICTORINO: So what would we put in that one? Because I think that's where I think the real sticking point is. I think everything else we're all okay with. So what word would we want to put in or what statement would we want to put in so that they feel that they're still a part of it and they're not stuck with every application, because if it's not applicable, maybe it's one faucet, you don't have to worry about it. You know what I'm trying to get to, Butch? So I guess that's what we're looking for, that language. Staff --

MS. WILLENBRINK: Chair.

CHAIR VICTORINO: --would you give some ideas, please. Ms. Willenbrink.

MS. WILLENBRINK: On number two, could we just say, advise the Lanai Planning Commission on water-related matters?

COUNCILMEMBER HOKAMA: Chairman? I mean it's basically the same thing but it's clear. So . . . *(inaudible)* . . . water.

CHAIR VICTORINO: Yeah. Okay. I can...so with no objections, we could change that word from water...from now it would read, they advise the Lanai Planning Commission on water-related matters. Any objections to that? I think I don't have to have a motion for that. Do we need a motion for that?

COUNCILMEMBER HOKAMA: Consensus.

CHAIR VICTORINO: Consensus? Okay. Is that all right with you, Mr. Gima?

MR. GIMA: Most definitely.

CHAIR VICTORINO: Okay. I think we're coming to where we need to be. Stay there, don't move yet 'cause I may have more questions. I wish I had a chair for you. There is a chair on the side if you need to sit down.

MR. GIMA: No, this is fine.

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CHAIR VICTORINO: Okay. Any more discussion? You know I think that was the main point that I think all of us were kind of jostling around, so I think that addresses the issues for what the LWAC really wants to be a part of. Is that all right, Mr. Gima? As best you can tell?

MR. GIMA: Yes.

CHAIR VICTORINO: Okay. Any other questions? Mr. Pontanilla, I see you have one.

VICE-CHAIR PONTANILLA: Thank you. Yeah, I see the Planning Department Director has some...I look the frown on his face. You have any comments?

CHAIR VICTORINO: Well you're not supposed to ask that kind of question, that was my responsibility. Okay, no. Go ahead, Mr. Spence, you have any questions?

MR. SPENCE: I was frowning at something unrelated.

CHAIR VICTORINO: Oh, okay. Okay. Okay.

COUNCILMEMBER COCHRAN: Chair?

CHAIR VICTORINO: Oh, okay, yes.

COUNCILMEMBER COCHRAN: Sorry, is he...you're done?

UNIDENTIFIED SPEAKER: Yes.

COUNCILMEMBER COCHRAN: Okay. Thank you, Chair. And so I'm just trying to, you know, cross reference our...the...what's in front of us today and also proposed from LWAC themselves in trying to figure out the differences. And it looks like in the makeup of the board itself we have five members and they are . . .(inaudible). . . nine. So I'm just curious where, you know, the...I don't know, I guess I just want comments on are we good with five? And then someone doesn't show up, now you're down to that even number of four or with the nine. So I think if --

CHAIR VICTORINO: Mr. Hokama.

COUNCILMEMBER COCHRAN: --Mr. Hokama has a preference there or comments or something.

COUNCILMEMBER HOKAMA: Thank you, Ms. Cochran. The reason I looked at five versus nine that the LWAC draft is asking us to consider is that, you know, I think I'm pretty realistic in looking at the community's makeup and how many people actually will give the time to volunteer. You know we've got issues on other boards and commissions, but we have 9 citizens for community...13 for community plan, 9 for Planning Commission just for Lanai specific. Now you're going to have between five and nine for this water. You know I don't mind the participation, it's just that I would like to, you know, try and focus it so that...I don't want issues

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dealing with vacancies with Planning Commission, and for me right now, the key committee that's going to impact the community and island the most right now is the Community Plan Advisory Committee. And that's kind of interesting, yeah, 'cause we appointed those advisory people through a resolution. But nonetheless, for me, you know, I'm open. I think Charley Ice from Commission on Water Resources made a good point, try not to put specific things. I think he made a comment regarding the Four Seasons component in his written testimony. You know I, you know, there's people that didn't want the word ILWU to be in it. There's people who don't want Four Seasons to be in it. There's people who don't want Lanaians for Sensible Growth in it. And so my proposal made it so that --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: --it fit in components that they could...like the nonprofits community organization, the business community, the labor union represented workers from the private sector, so it could a carpenters union member, an operating engineers member. And of course the...someone from the Lanai water utility company, and, yeah, there might hesitancy on their part to participate, but if they cannot participate in this then why would commissions and councils even consider entitlement requests then? If they cannot come and talk about water in this kind of format, why would they come and tell us the truth about water in our format? So it's a two-edged sword, Chairman, is how I see the water utility's participation. Or as Senator Tsutsui, our Senate Presidency, maybe it's time for government to consider acquisition of the watershed. Then there's no question our involvement and our need to regulate and ensure resource protection.

CHAIR VICTORINO: Thank you. And I tend to agree with...again, as I said earlier, it's a public trust, so, you know, utilities no matter what are just delivering water, they do not own it. So I mean so I'll take your...

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

CHAIR VICTORINO: Yeah.

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

CHAIR VICTORINO: Yeah. So I'll live with this five for now as I think I hear you saying that, and you've made it broad enough that it's not any specific union or specific business, it is made for the community to decide who they want on this committee. So yes, Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. I think the makeup is diverse enough and broad enough that, you know, you could get a pretty good cross section of the community on this committee. Also, what hasn't been mentioned is that our Lanai member would also be a non-voting member of the committee, so I think that makes it even stronger. So you're talking about really six people.

CHAIR VICTORINO: Yeah.

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COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: Okay. More discussion? Yes, mister...

COUNCILMEMBER COCHRAN: May I comment . . .*(inaudible)* . . .

CHAIR VICTORINO: Excuse me, Ms. Cochran.

COUNCILMEMBER COCHRAN: Yeah.

CHAIR VICTORINO: Okay. Mr. Gima.

MR. GIMA: I apologize, I didn't bring our --

CHAIR VICTORINO: Yeah.

MR. GIMA: --proposed ordinance, but the makeup, we're concerned. I mean we're in agreement that the water utility must be, you know, on this committee, and the reason why we had suggested Four Seasons or the entity operating the hotel is because the project district uses a lot of water. Especially the Manele Project District, they...there's about 67 percent of the water pumped every day goes down to the Manele Project District. So I think it's important to have the purveyor there but also the user in the discussions. Obviously, LSG wants to be a specific member of that based on our history and our commitment and our knowledge of the water system. And I agree with Riki that, yeah, you know, the Planning Commission and the CPAC has had difficulty getting members. If we have the LWAC, it would be our responsibility to go out and recruit. I don't think the LPC or CPAC has taken that responsibility, but historically we have done that when there have been vacancies, you know, on LWAC. We agree that the nonprofits is a good suggestion, you know, to be on the committee and the real general, at-large seats. Definitely have to have our Council member, and I think we have a couple ex-official members. So...and the ex-official members obviously, you know, don't vote. Five I think is too small of a number.

CHAIR VICTORINO: What if we...what if I ask for an amendment to put seven, and the two additional members that I'm suggesting would be at-large. I mean just strictly at-large. It's up to the community to decide where they come from. Would you accept something of that nature? And not specifically hotel, not specifically...anything, at-large.

MR. GIMA: And then...so you'd remove number...

CHAIR VICTORINO: No, I'm not removing anything. I'm adding...

MR. GIMA: I, yeah, I...

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CHAIR VICTORINO: It makes seven instead of five, go seven, and the two last ones, number six, the two last...if you put number six there, two Lanai residents at-large. There's no specific criteria for them to be a union member, a businessperson, nonprofit. You, anybody can be the two at-large members, no specific background necessary.

MR. GIMA: Possibly. I think there was some concern about specifying number four being representing only private sector, unions representing private sector. You know if you're going to leave the things in unions you have to say all unions. We prefer you take that out and replace that with the Four Seasons or whatever entity that's running the project district and the hotels and the resorts.

CHAIR VICTORINO: So you'd have no union representative, that's what you're saying? Or what about the member from the business community, would that be the hotel, no? What do you think? I'm just running some ideas right now.

MR. GIMA: No. It could be, but the reason why we were suggesting Four Seasons and...or the entity representing the project district is because of the amount, the disproportionate amount of water that the project districts use.

CHAIR VICTORINO: Okay. Gotcha, gotcha. What if we put the word...number six, one Lanai resident representing the project district, as you stated. What is that? Manele District or whatever it is. Whatever that district is.

MR. GIMA: Well, no. I mean you want to put Four Seasons or whoever's running the resorts, because you have the Koele Project Districts --

CHAIR VICTORINO: But that could change.

MR. GIMA: --and the Manele Project District.

CHAIR VICTORINO: You know I know what you're saying, but if another hotel comes in and buys it out, you know, that happens a lot, right? I mean another management company I should say. Like what if Marriott came in tomorrow and decided...took over the management of it and you said Four Seasons?

COUNCILMEMBER HOKAMA: Chairman? Chairman?

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: If I may, please?

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: You know I understand what Mr. Gima is saying --

CHAIR VICTORINO: Yeah, I understand that, too.

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COUNCILMEMBER HOKAMA: --but from my perspective yeah --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: --the management company does whatever they're told from the owner . . .(inaudible). . .

CHAIR VICTORINO: Yeah, I agree.

COUNCILMEMBER HOKAMA: So the ownership is Ellison --

CHAIR VICTORINO: Yeah, right, right now.

COUNCILMEMBER HOKAMA: --Investments or whatever it is, yeah.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: Four Seasons, you know, they can ask and tell...ask the entity, you know, this is what we need, this is how much water we need, but the ownership is going to make the call, not Four Seasons.

CHAIR VICTORINO: Right.

COUNCILMEMBER HOKAMA: And the ownership is going to tell their Water Company what to provide. As long as they got and can, they're going to give 'em, unless it's going to violate some kind of agreement whether it's with, you know, individual third-party agreements or what, or a government condition of approval. But for me, you know, the key people we gotta deal with it and the island's going to have to deal with is the ownership and the Water Company. After that it comes allocation tables, Chairman. So I'm not going to support that Four Seasons be on the committee.

CHAIR VICTORINO: So would you support my suggestion of seven and two at large? Would you support something like that, Mr. Hokama?

COUNCILMEMBER HOKAMA: I got no problem with at-large 'cause that opens it up to everybody.

CHAIR VICTORINO: Yeah.

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: I'm sorry. Oh, excuse me. I heard Chair and I had to look around. Sorry, Ms. Willenbrink.

MS. WILLENBRINK: Is number five an at-large? So would then would it be four plus three at-large?

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COUNCILMEMBER HOKAMA: Yeah.

COUNCILMEMBER BAISA: Yeah, that would cover it.

CHAIR VICTORINO: Oh, okay. I see what you're saying. Yeah, yeah, yeah. Okay, I see. I see what you're saying. Okay, I apologize. How's that?

COUNCILMEMBER BAISA: Perfect.

CHAIR VICTORINO: Mr. Gima? Remember, this is a battle of compromise, so we're trying to, you know --

MR. GIMA: Right.

CHAIR VICTORINO: --we're trying really come to...

MR. GIMA: All I'm saying for number four if you're going to make it unions, make it all unions. Our preference is removing number four. And I don't disagree with what Riki was saying, but if we're going to operate on that premise then that really strengthens the need for LWAC so we have checks and balances.

CHAIR VICTORINO: So why would one member from the labor union representing workers. Every union is considered labor, right? Whether it's HGA, HSTA, I consider everybody labor. I mean you're asking me to remove that, right?

MR. GIMA: No, I'm saying our proposal removed that, but if you're not going to remove it, may I suggest you say any union member, not just private sector.

CHAIR VICTORINO: Oh, I see what you're saying.

MR. GIMA: I'm not a private sector --

CHAIR VICTORINO: Oh, okay. Okay.

MR. GIMA: --union member, I'm a public sector union member.

CHAIR VICTORINO: I thought you were talking about labor union. Okay. Would you have any objections remove that, Mr. Hokama?

COUNCILMEMBER HOKAMA: No.

CHAIR VICTORINO: Well...huh?

COUNCILMEMBER HOKAMA: Nope.

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CHAIR VICTORINO: Okay, so take our private sector. See this is what this exercise is, to get it to where everybody's okay with. From...okay, so just...okay, that's it. One member from the labor union on Lanai. Okay. Are you satisfied now, Mr. Gima?

MR. GIMA: I can live with that.

CHAIR VICTORINO: Okay, thank you. We're getting close, aren't we? Okay. Anything else? Anything else you would suggest? Anybody would like to suggest anything else? Now we're up to seven, and it would be one from, one member from the Lanai Water Utility Company, yeah, we gotta have that. One member from the nonprofit community, I think that's great. One member from the business community, that's great. One member from the labor community, okay, and three at-large. So now you've got three people that can represent any entity, and that would be up to you guys, right? And of course those recommendations would still go to the Mayor and then we'd look at 'em, right? Are you okay with that, Mr. Gima?

MR. GIMA: I guess I can live with that.

CHAIR VICTORINO: Okay. Any other questions? Yes, mister...oh, wait, wait, I get Corp. Counsel waving so I better recognize Corp. Counsel first. Okay, Mr. Corp. Counsel. Mr. Kushi, I'm sorry.

MR. KUSHI: Yes, Mr. Chair, so as of now for clarification for Staff --

CHAIR VICTORINO: Yes.

MR. KUSHI: --you have a seven-member voting commission --

CHAIR VICTORINO: Yes.

MR. KUSHI: --committee, and --

CHAIR VICTORINO: Yes.

MR. KUSHI: --one ex-official, non-voting committee member.

CHAIR VICTORINO: Yes.

MR. KUSHI: So you have eight members.

CHAIR VICTORINO: Yes.

MR. KUSHI: Okay. I had a comment on Proposal C-2, terms of the committee.

CHAIR VICTORINO: Oh, okay. Okay.

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MR. KUSHI: It says, the committee chair and vice-chair shall be selected by a majority vote for a term not to exceed one year, and shall be rotated annually among other voting committee members.

CHAIR VICTORINO: Right.

MR. KUSHI: The Charter, for Charter-initiated boards or commissions just say the board shall be elected annually, it doesn't say it shall be rotated. By adding this in your ordinance, you may be...the situation is maybe you have a nice, I mean a good, competent chair and he cannot serve for more than one year. If that's your choice, so be it, but you're stuck if you put this in.

COUNCILMEMBER HOKAMA: Chairman?

CHAIR VICTORINO: Yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman...and thank you for bringing up that point, Corporation Counsel, Mr. Kushi, 'cause that was geared for, obviously, a five-member --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: --voting member with five-year terms, and my intent was to help provide leadership development within LWAC and eventually leadership development for the community by giving people who have those five-year terms an opportunity to become the chair after so many years of participation, learning from the more senior and experienced committee members. And it's something other organizations does, too. So that was my plan in that it would be part of a leadership development cycle allowing all members an opportunity to chair a major community committee. But that was a good point, you know, now we got seven, my five-member cycle not going to work, so I don't have a problem with either eliminating that or just say that the chair and vice-chair shall be selected by majority vote annually.

CHAIR VICTORINO: And with no objections, I will make that change.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: You know since it's already part of...okay, annually, yeah. And what about the terms, Mr. Hokama? You know these five year and then one...obviously that's different because now we've gone from five to seven, so how do we do that one? You got two appointed for five years, one appointed for four years, one appointed for three years, one appointed for two years. Now that's...you know, so would it maybe be better three for five, two for four, and leave the rest the same? I throw that out at you, Mr. Hokama, since it was your amendment. You can rotate the numbers any way you want, but we need to put two more members in there somewhere.

COUNCILMEMBER HOKAMA: I understand, Chairman, and...

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CHAIR VICTORINO: Yeah, you decide. Now I just...

COUNCILMEMBER HOKAMA: Well as I understand the current Charter --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: --if they do not have a full term, they are able to be considered for a second full term, right, Mr. Chairman?

CHAIR VICTORINO: Yeah. And I think the full term would be four years, right, Mr. Kushi?

UNIDENTIFIED SPEAKER: Five years.

CHAIR VICTORINO: Five years or four years?

MR. KUSHI: Yeah, it depends. The Charter initiated boards and commissions are usually five years.

CHAIR VICTORINO: Okay, five years. Okay, thank you. Okay. For the purpose of starting off. . .

COUNCILMEMBER HOKAMA: Yeah. That's the problem how do we initiate the cycle, yeah--

CHAIR VICTORINO: Yeah, yeah.

COUNCILMEMBER HOKAMA: --Chairman. So...

CHAIR VICTORINO: I understand and that's the dynamics when you start something new, yeah. But isn't also, Mr. Kushi, if you serve more than two years on a board you're...that is considered...if you go into a third year that's considered a full term? Now the reason why I'm asking that, that's the Board of Water Supply, if you get appointed and you serve three years that's considered a full term. Now correct me if I'm wrong.

MR. KUSHI: Yes, for reappointment purposes the term is not to exceed two years.

CHAIR VICTORINO: Yeah. Okay, so, Mr. Hokama, you must consider that also, because if a member serves more than two years they would not be eligible to be reappointed.

COUNCILMEMBER HOKAMA: Then why don't we just make a...three shall serve for a term of two years.

CHAIR VICTORINO: Okay, three for two. Do you still--okay.

COUNCILMEMBER HOKAMA: One for three, one for four, and one for five.

CHAIR VICTORINO: Three, one. . .no, no, now you come up short. Wait, wait. Try that again now, Mr. Hokama.

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COUNCILMEMBER HOKAMA: Right? Two for five.

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: One for four.

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: One for three.

CHAIR VICTORINO: That's four and three. Okay.

COUNCILMEMBER HOKAMA: Three for two.

CHAIR VICTORINO: Okay. And those, those will become eligible, okay.

COUNCILMEMBER HOKAMA: And then at least those people who have two-year terms will have an opportunity to be considered for a new full term, five-year term.

CHAIR VICTORINO: Okay, so any objections to those changes? Do we have consensus?

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: Okay. Anything else? I think that's pretty much...Mr. Gima, are you comfortable with that? I mean, again...

MR. GIMA: Yes.

CHAIR VICTORINO: Okay. I thank you very much for your assistance. I think you can sit down now.

MR. GIMA: Okay.

CHAIR VICTORINO: Sorry to keep you standing so long, sir. Okay. It was better you than McOmber, that's for sure as heck. Okay. Any other discussion on this matter? Seeing none, all those in favor of the change...well, I guess do we have...it's not amended. That wasn't amended. That was just changed on the floor--right?--on consensus yeah. So all those in favor of the ordinance establishing the Lanai Water Advisory Committee, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: All those opposed? Let the record show six ayes, no noes, and one excused, Committee Member White.

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VOTE: AYES: Chair Victorino, Vice-Chair Pontanilla, and Councilmembers Baisa, Carroll, Cochran, and Hokama.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember White.

MOTION CARRIED.

ACTION: FIRST READING of revised bill and FILING of communication by C.R.

CHAIR VICTORINO: Ladies and gentlemen, it's been a...kind of long day but I think we've got the thing accomplished. Welcome...

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: Yes. And filing of the communication. Do I have to file the communication?

MS. WILLENBRINK: Would you like to?

CHAIR VICTORINO: And with no objections, filing the communication.

COUNCIL MEMBERS: No objections.

COUNCILMEMBER COCHRAN: And, Chair? Wait, Chair. And the unsubstantive things.

CHAIR VICTORINO: Yeah, no, that's already taken care of.

COUNCILMEMBER COCHRAN: The seven...you changed the other five to seven.

CHAIR VICTORINO: I got all that done. Thank you.

COUNCILMEMBER COCHRAN: Very good. Thank you.

CHAIR VICTORINO: It's all done. Thank you. Anything else, Ms. Willenbrink, before I adjourn the meeting?

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MS. WILLENBRINK: No, Chair.

CHAIR VICTORINO: Okay, thank you. Well, congratulations to the Lanai Water Use and Development...Water Use...no, Lanai Water Advisory Committee. See, now I got myself all twisted. Congratulations. And, Lanai Water Company, I look forward to seeing you guys all work together and work as a community. Thank you very much. If no objections, nothing else to discuss...thank you, Department, for being here. Thank you, Committee Members. Thank you, Staff, for all your hard work, and all of the resource people out there, thank you very much. The meeting of the Water Resources Committee will now be adjourned. . . .*(gavel)*. . .

ADJOURN: 11:44 a.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:121002:ds

Transcribed by: Daniel Schoenbeck


**WATER RESOURCES COMMITTEE
Council of the County of Maui**

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CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 19th day of October, 2012, in Kula, Hawaii



Daniel Schoenbeck