

**COST OF GOVERNMENT COMMISSION
MINUTES
Via BlueJeans Videoconference
Friday, July 23, 2020**

PRESENT: Michael Williams, Chair
Michelle Del Rosario, Vice Chair
Paula Heiskell, Member
Lu Ann Lankford-Faborito, Member
Patrick O'Neil, Member
Sarah Simmons, Member

EXCUSED: Noemi Barbadillo, Member
Hannah Werth, Member

STAFF: Gary Murai, Deputy Corporation Counsel
Shelley Pellegrino, Technical Writer for the Commission

ADMIN. Ipo Mossman, Ex-Officio Member, Office of the Mayor
Darlene Endrina, Community Liaison, Office of the Mayor
Michele McLean, Director, Department of Planning

DOCUMENTS RECEIVED:

Correspondence

- June 5, 2020 Letter from Jeffrey T. Pearson, Director, Department of Water Supply, to Michael Williams, Chair, and Members of the Cost of Government Commission, Responding to Cost of Government Commission Questions (DWS Investigation)
- June 20, 2020 Letter from Sandy Baz, Managing Director, to Michael Williams, Chair, Cost of Government Commission, Regarding March 2, 2020 Inquiry Email (Opportunity Zone Federal Tax Subsidies for Wailuku Parking Garage)

Documents Transmitted by Michele McLean, Director, Department of Planning, Regarding Short-Term Rental Issues

- Contract #C7127 Between the County of Maui and Host Compliance LLC for Transient Vacation Rental Enforcement for the Department of Planning
- June 9, 2020 Memorandum from Michele McLean, Director, Department of Planning, to the Maui Planning Commission and Lanai Planning Commission, Regarding A Bill for an Ordinance Amending Chapter 19.65 of the Maui County Code, Relating to Short-Term Rental Home Permit Limits
- June 20, 2020 Transmittal from Michele McLean, Director, Department of Planning, to the Honorable Tamara Paltin, Chair, Planning and Sustainable Land Use Committee, Regarding Transient Vacation Rentals in the Apartment, Light Industrial and Heavy Industrial Districts (PSLU-59)
- Resolution No. 20-27 (March 13, 2020), entitled, "Referring to the Maui and Lanai Planning Commissions a Proposed Bill to Amend the Comprehensive Zoning Ordinance Relating to Short-Term Rental Home Permits on Maui and Lanai"

- Resolution No. 20-26 (March 13, 2020), entitled, “Referring to the Lanai Planning Commission a Proposed Bill to Establish a Moratorium on Transient Accommodation Permits on Lanai”
- Request for Proposals to Provide Services to the Department of Planning for Transient Vacation Rental Enforcement

Documents Transmitted by Michael Williams, Chair, Cost of Government Commission

- July 23, 2020 Hawaii Free Press article entitled, “Federal Lawsuit Challenges Revocation of Molokai TVR Permits”
- Maui Vacation Rental Association, Inc. et al. v. Maui County Planning Department et al. Complaint and Exhibits (filed July 10, 2020)
- July 23, 2020 The Maui News article entitled, “Panel: More study needed on short-term rental caps”

Informational Documents Related to COVID-19 and Open Meetings

- Governor’s COVID-19 9th Supplemental Proclamation (June 10, 2020)

I. CALL MEETING TO ORDER

Chair Williams called the meeting to order at 10:03 a.m.

II. ROLL CALL

Chair Williams took roll. Commissioners Heiskell, Lankford-Faborito, O’Neil, Vice-Chair Del Rosario, and Chair Williams were present. Commissioners Barbadillo and Werth were excused. The Commission has one vacancy.

III. PUBLIC TESTIMONY

Written Testimony

- Email from Jen Russo, Executive Director, Maui Vacation Rental Association, transmitting a June 1, 2020 letter to Lawrence Carnicelli, Chair, Maui Planning Commission, opposing Resolution No. 20-27 to phase out short-term rental homes

Oral Testimony

There was no oral public testimony.

V. COUNTY AUDITOR’S UPDATE

No update was provided.

VI. PRESENTATION BY MICHELE MCLEAN, DIRECTOR, DEPARTMENT OF PLANNING, REGARDING SHORT-TERM RENTAL ISSUES

Michele McLean, Planning Director, presented information to the Commission in the form of responses to a series of written questions asked of her by Chair Williams and set forth below.

1. The state of enforcement of the rules against illegal operators

a. Best estimate of the current number of illegal operations

Ms. McLean stated that the numbers are currently off kilter because there are so few tourists. She stated that there were fewer than 50 illegal operations prior to COVID. She added that there could be a resurgence of illegal operations if the Department were to stop enforcement practices.

b. Number of warnings and violations and fines issued, paid, and appealed

Ms. McLean stated that the Department first issues a Notice of Warning. If the operation does not stop what it is doing, then it could be subject to a Notice of Violation and potential fine. In 2019, the Department issues 75 notices of violation; two (2) resulted in the revocation of a permit and about \$50,000 was collected. Another \$300,000 is pending the outcome of litigation and collections actions. In 2020, new fines for illegal vacation rentals were introduced: a \$20,000 initial fine and an additional \$10,000 daily fine. The Department issued 92 notices of warning and 44 notices of violation. Of the 44 NOVs, seven (7) were related to violations of COVID emergency rules, eight (8) are pending resolution with the Department of the Corporation Counsel, five (5) are pending with the Board of Variances and Appeals, and eight (8) did not file an appeal within the requisite timeframe. The Department has not collected any fines to date.

c. Your current efforts to catch violators, number of staff who work on enforcement

Ms. McLean stated that there are eight (8) zoning inspectors. One inspector has been out on medical leave (expected to return in October) and one position is vacant, so currently there are six inspectors. The Department also has one clerical position devoted to short-term rental enforcement.

d. Your new vendor searching for internet ads (can you send us a copy of the RFP you issued and a copy of the current contract with this vendor?)

Ms. McLean explained that the Department previously used a vendor called LODGINGRevs. Its current vendor is Host Compliance. A copy of the RFP and contract was provided to the Commission.

2. *The current number of permitted STRs and B&Bs on each island, each district on Maui, and the current caps on those numbers.*

Ms. McLean stated that the number of permitted short-term rental homes (STRHs) and bed and breakfast homes (B&Bs) are available on the Department's website, separated by each community plan region. There are 137 permitted B&Bs, 227 permitted STRHs, and 10 transient vacation rentals (TVRs). Ms. McLean offered the Old Wailuku Inn as an example of a TVR. She explained that it has more than six bedrooms, so it does not fit the standard for a B&B, so it has a conditional permit.

a. *The recent changes or attempts to change these caps, by island.*

Ms. McLean explained that earlier in the year, the Department conducted outreach on possibly phasing out STRHs. The Department met with stakeholder groups (e.g., the Maui Hotel and Lodging Association, the Maui Vacation Rental Association, the Alliance of Community Associations, and the Realtors Association of Maui). The Department also conducted a public meeting where the vacation rental industry opposed the phase out. The Department did not have time to regroup after the meetings and its outreach has been put on hold because of COVID.

b. *A list and copies of the proposed bills to alter these caps and the status of them.*

Ms. McLean stated that the County Council then initiated a bill to lower the caps of the number of permits to existing permits and the number of permits in the pipeline. The Department was directed to take the bill to the Maui and Lāna'i planning commissions. The Lāna'i Planning Commission supported it, but also considered a bill, introduced by Councilmember Hokama, to establish a moratorium on issuing B&B and STRH permits. The Lāna'i Planning Commission recommended approval of the proposed bill. Ms. McLean added that the Department had been working separately on a bill to tweak the B&B and STRH laws for Lāna'i. The bill establishing caps for Lāna'i for the first time was also approved, but incorporated density provisions. All of these recommendations have gone back to the County Council.

The Maui Planning Commission met three different times to discuss lowering the caps. The Commission decided to ask the County Council to put more thought into the demand for vacation rentals and recommended that the caps be adjusted based on demand in each region. The Commission felt that the Council did not have data behind its proposal to adjust caps to the current numbers. Ms. McLean added that the Planning Department supports the bill to lower the caps.

Copies of the proposed bills were provided to the Commission.

3. *The legal but unpermitted STRs*

Ms. McLean stated that the Department sent to the County Council a bill called the "loophole bill." She explained that the Minatoya opinion was codified in the County Code and is now the Minatoya law. It says that apartment zoned properties that received permits and were built by certain timeframes — i.e., when the law allowed vacation rentals in the apartment district — could continue to operate vacation rentals indefinitely. Ms. McLean added that the Department believes the intention was that these properties not only needed to be permitted and built by a certain time, but they also needed to be used as vacation

rentals. The Department does not believe that it was intended to allow properties that may have been permitted and built by that same deadline, but which have never become vacation rentals, to convert tomorrow if they wanted to. Consequently, the Department drafted a bill to close the loophole, so that the vacation rentals need to be permitted, built, and in operation by a certain timeframe.

a. *How many in the apartment zone (Minatoya apartments)?*

Ms. McLean stated that there are 177 apartment zoned properties that fall under the Minatoya law. 103 of them have active vacation rental use. 74 of them do not have active vacation rental use, and the loophole bill would prohibit those 74 from starting vacation rentals. This would keep more than 3,000 units in those 74 apartments available for long-term occupancy. The combined total units for the 177 properties is 11,000. Of the 103 properties that have permitted vacation rental use, about 3,000 units are not being used for vacation rentals, but for long-term use.

b. *How many apartments, condos in the hotel zone? Are these separately counted from the Minatoya apartments?*

Ms. McLean stated that there are about 2,000 units in condo properties that are zoned hotel, in addition to the 11,000 Minatoya units.

c. *How many are allowed but do not rent out short term? (status of proposed bill to prevent new STR use by units that have not been rented out short term?)*

Ms. McLean stated that there are about 11,000 units, of which 6,000 units are not being used for short-term rentals, and 3,000 of those will be removed by the loophole bill.

d. *Plans to issue permit numbers for these?*

Ms. McLean explained that for enforcement purposes, it would be handy to have permit numbers. She added that the County Council budgeted funds this fiscal year for a contractor to issue those numbers. The Department plans to pursue this after the Council approves the loophole bill.

e. *Possibility, strategy for phasing out some of these?*

Ms. McLean stated that the Department was “blasted” when it suggested phasing out short-term rental homes. She added that she thinks the discussion is still worth having because the previous outreach got to only a minority of residents. She suggested that an attrition-type law might work, allowing existing short-term rentals to continue operating, but when they decide to stop operating or expire, new ones cannot take their place. Ms. McLean added that she would like to tweak the rules on what qualifies as a bed and breakfast because there have been a handful of short-term rental homes that were just shy of becoming a B&B, so became short-term rentals instead. These homes have local owners and operators and would be less impactful to the community as compared to a rental where the owner is detached from the operation.

Chair Williams asked whether hotel zoned condos also get permit numbers once the loophole bill is done? Ms. McLean responded that they could and it would make sense.

Vice-Chair Del Rosario asked Ms. McLean whether a list of the 74 properties is available to the public. Ms. McLean responded that she is not sure whether the list is on a website, but that the Department provided the list to the Council when it transmitted the loophole bill. Vice-Chair Del Rosario asked whether Ms. McLean could transmit that list to the Commission. Ms. McLean responded that she thought she had, but would do so if she had not.

Vice-Chair Del Rosario asked for the timeline for the Council to take up the loophole bill. Ms. McLean responded that she is reaching out to the Planning and Sustainable Land Use Committee to map out what the Committee will be reviewing over the next few months and see where it fits in with the Chair's priorities. The Department would prefer that the bill be taken up sooner rather than later. Vice-Chair Del Rosario asked when the implementation would take effect after passage of the bill. Ms. McLean responded that it would be effective immediately.

Vice-Chair Del Rosario returned to Ms. McLean's comments regarding the Lāna'i moratorium and caps on density provisions, and asked what the density provision was that was approved by the Lāna'i Planning Commission. Ms. McLean responded that she thinks the provision was for only one unit per block, but she is unsure because it was something that was led by Deputy Planning Director Jordan Hart. Ms. McLean offered to transmit the bill to the Commission.

Vice-Chair Del Rosario inquired about fines and stated that she is aware of an item on the Council's agenda regarding more than \$5 million in fines issued to Rick Markham. She asked whether those fines were for short-term rental use and, if so, why they would not have been included in the numbers provided to the Commission. Ms. McLean responded that she provided statistics for 2019 and 2020, and the violations Vice-Chair Del Rosario asked about were issued before that time period. She added that there were two judgments for \$2.7 million and only one of them was related to short-term rental use. The other had to do with building permits and other violations that the Planning Department was not involved in. She also pointed out that the property in question has gone into bankruptcy and the issue is very complicated and she would defer to Corporation Counsel. Vice-Chair Del Rosario asked whether the property in question was the Paia Inn, and Ms. McLean responded that the property is the Nalu Kai Lodge.

Vice-Chair Del Rosario asked what the total outstanding fines are for illegal vacation rental use that have not been collected to date and what steps are being taken to collect the fines. Ms. McLean responded that she did not have a figure available, but that she could ask her inspectors to put that information together. She added that anything outstanding is either pending with the Board of Variances and Appeals, pending with Corporation Counsel and collections, or has been appealed to court. Once Corporation Counsel gets involved, there are a number of paths that can be taken.

Vice-Chair Del Rosario asked how much money had been collected in short-term rental fines to date. Ms. McLean responded that collections have been in at least the six figure range, but beyond that she did not know. She offered to collect and provide that information to the Commission. Vice-Chair Del Rosario followed up by stating that she did not want to create more work for the Department, but she was interested in the return on investment. Ms. McLean responded that whether or not the Department collects the money, the non-monetary value controls the use, so there is value even if it is non-monetary.

Commissioner O'Neil asked how many unpermitted STRs there might be currently. Ms. McLean responded that she thought that with COVID, there might be only a handful. Before COVID, she estimated that there were likely fewer than 50 and probably closer to 25.

4. *Status of bill in the State legislature to grant authority to counties to regulate and subpoena web platform hosting systems like Air BnB, VRBO, etc.? HB 460 passed House, passed Senate with amendments this month, then House in final days of session failed to agree. What happened? Does the state have power now to regulate and subpoena these hosting platforms?*

Ms. McLean noted that the State legislature reviewed a bill that would give counties the authority to regulate the hosting platforms like Airbnb and VRBO, but the bill failed as it had in previous years. She added that the County had been approached by Expedia a while ago, and by Airbnb more recently, to sign agreements with them to require that advertisers list a permit number or a TMK, which would make enforcement easier. Ms. McLean stated that since the bill did not pass, the idea of entering into such agreements is more appealing.

5. *Do you have any ideas about how County policies could be changed to encourage conversion of those legal STRs into LTRs? Conversion of vacant or second homes into LTRs for locals?*

Ms. McLean stated that the Mayor's Economic Recovery Task Force is considering offering some type of incentive to short-term rental owners to enter into long-term leases for at least one year. Ms. McLean also suggested that creating a tax incentive for long-term rentals might also be worth examining.

Chair Williams asked Ms. McLean about phasing out some or all of the Minatoya properties and whether she thought there would be opposition to such a plan. Ms. McLean responded that she thought there would be tremendous opposition to phasing out even properties that have a small number of units of short-term rentals, because owners would see it as a first step to a larger removal plan. Ms. McLean stated that she would also be concerned because there would still be visitor demand, so phasing out short-term rentals would have to be in conjunction with other controls or incentives.

Vice-Chair Del Rosario asked Ms. McLean to explain more about her proposal to move short-term rentals into long-term rentals for one year. Ms. McLean stated that it is an idea that has been discussed by the Mayor's Economic Recovery Task Force and is in its conceptual stages.

Chair Williams thanked Ms. McLean for her time and effort.

VII. DISCUSS COST OF GOVERNMENT COMMISSION FISCAL YEAR 2021 BUDGET, INCLUDING POSSIBLE PURCHASE OF COMPUTER FOR TECHNICAL WRITER AND TRANSCRIPTION SOFTWARE

Chair Williams stated that the technical writer's contract does not coincide with the Commission's budget year, so he directed Ms. Pellegrino to postpone drafting the June minutes until her new contract term starts on August 1. He added that the Commission should examine the term differences as it prepares for the Fiscal Year 2022 budget. Chair Williams also stated that there is no repository for official documents and proposed that the Commission purchase a computer

for that purpose. Chair Williams also proposed purchasing a transcription program for minutes, which the Technical Writer could then review and correct.

Vice-Chair Del Rosario moved to acquire a computer to hold Commission records, and transcription software. Commissioner O'Neil seconded the motion.

Chair Williams asked County Auditor Taguchi to address the computer and transcription software proposal. Mr. Taguchi stated that the decision to purchase a computer must be approved by the Council Chair as the procurement officer. His role is to approve, disapprove, or remain silent on the issue. Mr. Taguchi also stated that the Commission must consider that the remaining unencumbered funds for the Fiscal Year 2021 is \$6,400, which would cover travel (airfare, ferry, rental car), mileage reimbursements, and office supplies. Mr. Taguchi added that the Commission has the option to request a budget increase from the County Council. Chair Williams stated that it would be helpful to receive a breakdown of Commission expenses.

Chair Williams thought that a computer would cost about \$2,000, and transcription software would cost approximately \$300 – \$400.

Vice-Chair Del Rosario stated that purchasing a computer for the Commission will provide the public with greater access to Commission records.

Deputy Corporation Counsel Murai commented on the Sunshine Law requirement regarding keeping minutes. He explained that the Sunshine Law requires boards and commissions to maintain minutes noting essential actions taken by the board or commission (e.g., members present, motions, discussion, and votes taken). The law does not require verbatim minutes, but requires an accurate and fair reflection of any action that was taken.

Chair Williams responded that he would prefer more detailed minutes because when the Commission hears presentations, it is helpful to have as close to a verbatim transcript as the Commission can get.

Mr. Taguchi stated that it is his understanding that audio is also allowed to serve as official minutes. Chair Williams responded that it is too difficult to search audio or video recordings of meetings.

Vice-Chair Del Rosario inquired why the Commission is not supported more by the Office of the County Auditor. Chair Williams responded that the Commission is under the Office of Council Services (OCS). Vice-Chair Del Rosario asked why OCS does not provide services to the Commission similar to what they do to Council committees. She thought the Commission should review whether it needs a technical writer or whether it could receive support from OCS. Chair Williams added that he would like to see the technical writer's contract align with the budget term, and suggested that a committee be formed to look into the issues raised.

Chair Williams stated that he will consult with Ms. Pellegrino and come back to the Commission with a recommendation on what type of computer and transcription software to purchase.

The Commission voted on the motion, which was approved unanimously (7-0).

Chair Williams then asked Mr. Taguchi to speak about the discrepancy between the technical writer's contract and the budget term. Mr. Taguchi explained that the technical writer's contract was intentionally written to extend one month after the start of a fiscal year. Whenever the Auditor's Office goes out to bid for the contract or initiates the option to renew the contract, there is a problem where the procurement process cannot start until there is an appropriation. The Finance Department started the policy whereby the Auditor cannot move forward until the end of

the fiscal year. As a result, the Auditor staggered the contract so that it ends at the end of July, so when funds are encumbered for the contract, it goes through July 30. Mr. Taguchi cautioned that if the contract term and the fiscal year were to end on the same date, the Commission would be without a technical writer during the time it would take to hire a new person or extend the contract.

Chair Williams entertained a motion to create a budget committee for the Commission. Commissioner Lankford-Faborito made a motion and Vice-Chair Del Rosario seconded the motion.

Deputy Corporation Counsel Gary Murai advised the Commission that it would need to wait to the next meeting if it was considering forming a temporary investigative group because it would need to be placed on the agenda. Chair Williams agreed to wait until the Commission's next meeting.

Mr. Taguchi then addressed document availability for Commission meetings. He explained that one option might be to use the Administration's Civic Plus system, which is what is currently used to post agendas. The system is robust enough to store documents and link them to the agenda. The Planning Commission currently uses this system. The Technical Writer uses the system to post the agenda and if she is provided more access to the system, she could take care of linking documents to the agenda.

VIII. TEMPORARY INVESTIGATIVE GROUP (TIG) UPDATES

A. Enforcement of Short-Term Rental Laws (Chair Williams and Commissioner Barbadillo)

There was no further discussion aside from Ms. McLean's presentation.

B. Capital Improvement Project Budgets of Department of Water Supply and Department of Environmental Management (Chair Williams, Vice-Chair Del Rosario, Commissioner O'Neill)

Chair Williams stated that he, Vice-Chair Del Rosario, and Commissioner O'Neil have held Zoom meetings with the Director of Water Supply and the Director of Environmental Management, both of whom have provided the Commission with a number of documents. Chair Williams stated that the dialog is ongoing, and the investigations are moving forward.

C. Wildfire Costs and Responsibility of Private Landowners (Commissioner Heiskell, Commissioner O'Neill)

Commissioners O'Neil stated that the Maui Fire Department point of contact is Battalion Chief Henry Lindo, who splits time between Molokai and Maui. He and Mr. Lindo discussed ideas for gathering data. Commissioner O'Neil added that he has some initial data on wildfire statistics, but it only goes through 2012.

D. Homelessness Issues in Maui County (Commissioner Werth, Commissioner Lankford-Faborito, Chair Williams)

Chair Williams stated that Commissioner Werth is on maternity leave. She previously arranged for a Zoom meeting with Department of Housing and Human Concerns Director Lori Tshako. He added that they are in touch with the County Council about a proposal to form a Homelessness Commission. Chair Williams stated that he is thinks the Cost of

Government Commission can come up with some specific proposals that will complement the work of the Homelessness Commission.

IX. INVESTIGATION (NON-TIG) UPDATES

A. Private Financing of the Wailuku Parking Garage Via Opportunity Zones (Chair Williams)

Chair Williams stated Managing Director Sandy Baz transmitted a number of documents related to the contract for the parking garage. Chair Williams is also in touch with consultants who handle opportunity zone investment funds. Chair Williams maintains that the County may have the opportunity to save a few million dollars if they allow the garage to be owned by an investor or investment fund that can take advantage of federal tax subsidies for buildings in opportunity zones.

B. Information Technology Issues (Commissioner Simmons)

Commissioner Simmons stated that she is still trying to compile a list of suggestions for the County to implement.

C. Proposed Charter Amendment to Establish an Office of the Managing Director and Provide for the Appointment of the Managing Director as the County's Chief Operating Officer (Vice-Chair Del Rosario)

Chair Williams stated that Vice-Chair Del Rosario asked at last month's meeting to defer the matter to decide whether she would take on the investigation. Chair Williams determined that he could not work on the issue because he supports the Charter amendment. He explained that the Commission previously investigated whether it would be more efficient for the County to have a managing director instead of a Mayor, and reported that such a change would be inefficient. The current Charter amendment, however, is different from the one previously under consideration because it keeps a strong mayor and removes department heads from being tied to the mayor's term in office. Vice-Chair Del Rosario asked whether the Charter amendment had been approved to be placed on the agenda and Chair Williams responded that it was approved about two months prior. Vice-Chair Del Rosario asked what impact the Commission might have if the Charter amendment has already been approved to go on the general election ballot. Chair Williams responded that any report the Commission produces would be more for the electorate than the Council. Vice-Chair Del Rosario asked whether the Commission would have time to complete an adequate investigation. Chair Williams responded that he thought there would not be enough time to complete the investigation. The Commission decided not to move forward with the investigation.

D. County Real Property Tax Policies Regarding Agricultural Lands (Chair Williams)

Chair Williams stated that Marcy Martin, Acting Real Property Tax Administrator with the Department of Finance, would be appearing before the Commission at its next meeting. He added that he has been reaching out to the Ag Working Group as well.

X. DISCUSS TOPICS TO REVIEW AND ESTABLISHMENT OF TEMPORARY INVESTIGATIVE GROUPS (TIGS)

Discussion and possible action regarding the establishment of Temporary Investigative Groups (TIGs) to review and investigate the below listed subjects, appointment of members, and setting of the parameters and scope of the investigation and review.

A. Residential Trash Service in Maui County

Chair Williams stated that the County Council will be reviewing the issue, so there is nothing the Commission needs to do at this time.

B. Other Potential Topics

There were no new potential topics proposed..

XI. DETERMINE NEXT MEETING DATE AND AGENDA

The next meeting is scheduled for Thursday, August 13, 2020, at 10:00 a.m. via BlueJeans teleconference.

XII. ADJOURNMENT

The meeting adjourned at 11:37 a.m.