

**COST OF GOVERNMENT COMMISSION  
MINUTES**

**Via BlueJeans Videoconference**

**Thursday, August 13, 2020 (Recessed and Reconvened on Thursday, August 27, 2020)**

**AUGUST 13, 2020**

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

**EXCUSED:** Hannah Werth, Member

**STAFF:** Gary Murai, Deputy Corporation Counsel  
Shelley Pellegrino, Technical Writer for the Commission  
Lance Taguchi, County Auditor

**ADMIN.** Marcy Martin, Real Property Tax Administrator, Real Property Assessment Division,  
Department of Finance  
Darlene Endrina, Community Liaison, Office of the Mayor

**DOCUMENTS RECEIVED:**

Minutes

- Draft June 12, 2020 Meeting Minutes
- Draft July 23, 2020 Meeting Minutes

Correspondence

- July 23, 2020 Email from Michele McLean, Planning Director, Transmitting the Following Documents:
  1. June 26, 2020 transmittal from Michele McLean, Planning Director, 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)"
  2. Draft bill for an ordinance amending Chapter 19.64, Maui County Code, relating to Bed and Breakfast Homes (Lāna'i)
  3. Draft bill for an ordinance amending Chapter 19.64, Maui County Code, relating to Short-Term Rental Homes (Lāna'i)

Presentation by Marcy Martin, Real Property Tax Administrator, Regarding Real Property Tax Policies for Agricultural Lands

- August 13, 2020 PowerPoint Presentation by Marcy Martin, Real Property Tax Division

### Private Financing of the Wailuku Parking Garage Via Opportunity Zones

- August 3, 2020 Letter from Michael Williams, Chair, Cost of Government Commission, to Sandy Baz, Managing Director, Regarding “Use of Federal Opportunity Zone Tax Subsidies to Finance Wailuku Parking Structure”

### Access to Public Documents Filed in County Litigation

- August 2, 2020 Email from Michael Williams, Chair, Cost of Government Commission, to Moana Lutey, Corporation Counsel, Regarding “Cost of Government Inquiry Re Public Posting of Civil Litigation Court Records”

### Cost of Government Commission Budget

- Cost of Government Commission Fiscal Year 2020 Budget Details

### Informational Documents Related to COVID-19 and Open Meetings

- Governor’s COVID-19 Tenth Supplemental Proclamation (July 17, 2020)

## **I. CALL MEETING TO ORDER**

Chair Williams called the meeting to order at 10:00 a.m.

## **II. ROLL CALL**

Chair Williams took roll. Commissioners Barbadillo, Heiskell, Lankford-Faborito, O’Neil, Pu, Simmons, Vice-Chair Del Rosario, and Chair Williams were present. Commissioner Werth was excused.

## **III. PUBLIC TESTIMONY**

There was no public testimony.

## **IV. PRESENTATION BY MARCY MARTIN, REAL PROPERTY TAX ADMINISTRATOR, REGARDING REAL PROPERTY TAX POLICIES FOR AGRICULTURAL LANDS**

Ms. Martin shared a PowerPoint presentation entitled, “Real Property Assessment Division, Department of Finance, Agriculture Use Value Program.” She began by explaining that the Maui County Code (MCC) has “Use Value Program.” Under MCC 3.48.320, Maui County assesses a property at its market value, but it also maintains use values for properties such as golf courses and agriculture. She explained that there is an agriculture use program (MCC 3.48.325) and an agriculture dedication program (MCC 3.48.350).

Under the agriculture use program, a property owner does not have to make a commitment to agricultural use, but it is subject to a rollback (recapture/deferral) upon a subdivision or zoning change. There is no penalty if the owner stops agricultural use, but the property must be zoned agriculture.

Under the agriculture dedication program, the property owner commits to 10 or 20 years of use, and the use value is less than that for agricultural use properties. One benefit is that there is no roll back upon subdivision, but there is roll back for non-compliance (e.g., not farming during the

entire dedication timeframe). The property does not have to be zoned agriculture; it can be zoned urban, conservation, or rural. Property owners in the urban zone must provide proof of income. Ms. Martin noted that most dedications are from more than 20 years ago, so they are now on a year-to-year provision. Fewer than 10 parcels are in their dedication term, and the program has become less popular over time.

Ms. Martin explained that both programs have administrative rules and regulations that can be found on the County website (<https://www.mauicounty.gov/1755Rules-of-Procedure>). Included in the rules is the definition of “agricultural use,” which means lands “actually put to agricultural use adhering to acceptable standards . . . .” It includes crops actually in cultivation, but does not include areas used primarily as yard space, setbacks, or for residential landscaping.

Chair Williams asked how long the regulatory definition has stayed the same. Ms. Martin responded that the definition has not changed since 1981.

Ms. Martin stated that the definition “actually put to use” is well received by farmers, but not well received by property owners who wish to lower their taxes for activities such as, for example, planting hedges, maintaining horses as pets, or planting a few fruit trees spread out over an acre.

Ms. Martin explained that the average market (highest and best use) value of land is \$7,400 per acre, and the average “ag use” land value is \$1,700 per acre, which is a reduction in value of 77%. She added that the ag use values are dated (they were last reviewed in the early 1990s), and run between \$6 and \$1,125 per acre.

Chair Williams asked about the discrepancy between the \$1,700 per acre value and the \$1,125 per acre value. Ms. Martin explained that sometimes a property includes both agriculture and non-agriculture value, which would account for the different figures.

Ms. Martin then provided some examples of properties with different market values and agriculture values. The first is a 683 acre parcel (owned by Mahi Pono), with a market value of approximately \$10 million and an agriculture value of \$69,500. The reduction in value resulted in a 99% reduction in taxes assessed by the County (from \$55,000 to \$378). The second example is of a parcel with multiple uses, including a home and 17 acres used for farming. This parcel received a 21% reduction in taxes (from \$8,000 to \$6,325).

Chair Williams asked why the property owners in the two examples above were assessed at different agriculture rates. Ms. Martin replied that there is a difference between diversified agriculture (plants) and pasture (animals). Within each category, there is a range of rates based on soil tables and soil quality. The diversified agriculture rates are lower than the pasture rates because the latter is usually leased land. The large landowners receive a large tax break, which they pass on to their lessees in the form of low rents. She explained that property owners will rent land at \$1 per acre to save \$100,000 per year in taxes.

Ms. Martin’s third example is of a 2.21-acre parcel that claims to be using 1 acre for diversified agriculture. That property owner received a 24% reduction in property taxes (from \$3,406 to \$2,590).

Ms. Martin’s next slide discussed the cost to government and noted that 1,912 or 55% of the parcels receiving an agriculture assessment have a residential home. More specifically, 3,448 parcels receive a tax benefit of \$13.9 million per year because they receive some type of agriculture assessment.

Ms. Martin compared the agriculture assessment program to other County tax relief programs, and stated that the agriculture program is less onerous and receives a greater average benefit (\$3,943) than the owner-occupied (\$2,824) or circuit-breaker (\$991) tax relief programs.

The only classification that receives a greater average benefit is the condo classification (\$6,121). Chair Williams noted that the Commission is also reviewing short-term rentals and asked why the discrepancy. Ms. Martin responded that a condo owner whose parcel is zoned to permit short-term rentals, but who claims via a classification form that he or she is not renting the condo, receives a non-owner-occupied condo classification. She added that the option is exercised for 1,900 condos, at a cost of \$11.7 million. Chair Williams asked whether it matters whether the condo is not being rented at all or whether it is being rented long term. Ms. Martin responded that there are a few long-term oceanfront rentals. None of the 1,900 are owner-occupied.

Ms. Martin noted that it is easier to qualify for an agriculture assessment than for an owner-occupied home exemption or circuit breaker tax credit. In addition, it is easier to qualify for agriculture use than it is for Department of Water Supply agriculture rates. To receive an owner-occupied home exemption, the owner must file State of Hawaii resident income taxes before applying. The circuit breaker tax credit requires a home exemption for four of the last five years and an IRS official transcript. There is also a cap on the credit of \$6,500. By comparison, the agriculture assessment program requires an owner declaration and a property inspection by staff.

Chair Williams asked how many inspectors there are. Ms. Martin responded that there are three inspector positions. One is vacant, but is expected to be filled. She added that the Department relies heavily on imagery and on full cooperation by the applicants. The three staff people work with other programs as well. She also stated that the standard for reviewing properties is every six years.

*At about 10:30 a.m., the Commissioners learned that the meeting could not be accessed by members of the public through the videoconference link. The meeting was recessed at 10:31 a.m. to assess the issue. The meeting reconvened at 10:40 a.m., at which time Chair Williams explained that because members of the public missed a portion of the presentation on real property tax assessments, he would recess the Commission meeting and reconvene at a future date. Marcy Martin agreed to return and start her presentation from the beginning.*

**AUGUST 27, 2020 (meeting reconvened)**

**PRESENT:** Michael Williams, Chair  
Michelle Del Rosario, Vice Chair  
Noemi Barbadillo, Member  
Paula Heiskell, Member  
Lu Ann Lankford-Faborito, Member  
Patrick O'Neil, Member  
Susie Pu, Member  
Sarah Simmons, Member  
Hannah Werth, Member

**STAFF:** Stephanie Chen, Deputy Corporation Counsel  
Shelley Pellegrino, Technical Writer for the Commission

**ADMIN.:** Kari Stockwell, Real Property Technical Officer, Real Property Assessment Division,  
Department of Finance  
Gery Madriaga, Assistant Real Property Tax Administrator, Real Property Assessment  
Division, Department of Finance  
Lance Taguchi, County Auditor  
Darlene Endrina, Community Liaison, Office of the Mayor  
Sandy Baz, Managing Director

**OTHER:** Gladys Baisa  
Bobbie Patnode  
Hugh Starr  
May Anne Alibin  
Sarah Pajimola  
Richelle Thomson

*Chair Williams reconvened the meeting and returned to the beginning of the agenda.*

**I. CALL MEETING TO ORDER**

Chair Williams called the meeting to order at 10:00 a.m.

**II. ROLL CALL**

Chair Williams took roll. Commissioners Barbadillo, Heiskell, Lankford-Faborito, O'Neil, Pu, Simmons, Werth, Vice-Chair Del Rosario, and Chair Williams were present.

**III. PUBLIC TESTIMONY**

There was no public testimony.

#### **IV. PRESENTATION BY MARCY MARTIN, REAL PROPERTY TAX ADMINISTRATOR, REGARDING REAL PROPERTY TAX POLICIES FOR AGRICULTURAL LANDS**

Marcy Martin could not attend the meeting, so Kari Stockwell, Real Property Technical Officer, presented in her absence. Ms. Stockwell reviewed the PowerPoint presentation entitled, "Real Property Assessment Division, Department of Finance, Agriculture Use Value Program."

Ms. Stockwell reviewed the first slide regarding the difference between the agriculture use program and agriculture dedication program. Chair Williams asked what is meant by the statement that there is no penalty for non-agriculture use. Ms. Stockwell replied that the agriculture use program is year-to-year, so an owner may do agriculture use one year, but decide not to do it the next year without penalty. Under the agriculture dedication program, the owner must commit to a 10- or 20-year period. If the owner does not fulfill the term, the County can recapture the taxes.

Ms. Stockwell reviewed the definition of agricultural use administrative rules and regulations, as well as the differing valuations for market and ag use values. Chair Williams asked about the discrepancy between the average "ag use" land value of \$1,700 per acre, and the top of the agriculture use value range of \$1,125 per acre. Ms. Stockwell replied that average land "ag use" value includes properties with houses on them (e.g., a 5-acre parcel with 1 acre being farmed and 4 acres being a home site). She added that if just ag land was considered, the ag use values would continue to be low.

Ms. Stockwell discussed a new slide that was added after Ms. Martin's August 13, 2020 presentation. The slide lists various soil qualities. A parcel with poor soil quality would have a diversified ag use value of \$30, but if it was dedicated for 20 years, the value would be reduced by 50% to \$15. The market value of this same parcel would be \$7,000.

Ms. Stockwell reviewed the three slides depicting the Mahi Pono parcel, the diversified ag parcel, and the owner-occupied parcel. She also reviewed the slide delineating the various tax class subsidies that total \$13.9 million, as well as the cost comparisons and qualification comparisons between the various tax relief programs.

Chair Williams asked about the condo classification figure and how a condo owner can receive the subsidy. Ms. Stockwell responded that the condo classification is the only program where the owners are permitted to self-declare how they are using the parcel, and there are many properties in short-term rental zoning that are given the apartment classification for property taxes, which benefits the taxpayer.

Ms. Stockwell then discussed a slide entitled, "basis for the tax relief," and stated that the benefit to society or government should be equal to or greater than the tax relief. She also discussed fairness in taxation such that urban-designated land owners may not farm for personal use or "donations" and receive an agricultural use assessment. Similarly, an agriculture designated land owner should not be able to farm for personal use or "donations" and receive an agricultural use assessment.

Ms. Stockwell presented a slide showing aerial photographs of two properties that receive the same tax relief. The first photograph showed a parcel with a few trees planted sporadically and the second photographs showed a parcel with land being cultivated in rows and with irrigation. Chair Williams asked why the two properties are being valued similarly, and asked whether it was because regulations do not allow the Department to fix the issue or because the Department has not had a chance to revalue each property. Ms. Stockwell responded that the Department does

not necessarily draw circles around each tree in cultivation, but tends to draw rectangles around an area in cultivation. She explained that “real” farmers like the Department’s definition that a parcel be put to agricultural use, whereas property owners who want the tax benefit do not like the definition because they simply want to plant a few trees and call it “ag.” Because property owners only need to “self-declare,” it is easy to obtain an ag use valuation.

Gery Madriaga, Assistant Real Property Tax Administrator, interjected to explain that the Department’s compliance staff have reviewed more than 4,000 parcels, and that the Department tries to explain to owners about the definition of agriculture use. He added that the Department has requested copies of IRS Schedule F from property owners, but that when the property is inspected, it does not match the information provided. Mr. Madriaga stated that he has been working with the Ag Working Group to develop some rules and regulations to avoid these types of incidents.

Ms. Stockwell shared suggestions to improve the viability of the program, its administration, and compliance issues. First, change the title of Mau County Code 3.48.320 to “Land classified as agriculture and used for viable commercial agriculture” (new language underscored). Second, revise the definition of agricultural use in the rules and regulations to include land actually put to a viable commercial agricultural use. Third, add language stating that “viable commercial agricultural use shall be evident when the annual gross income generation from the commercial agricultural use exceeds \$1,000.” Finally, add language stating the director “*may* demand documentary evidence such as income and excise tax returns indicating that the gross income for the commercial agricultural use exceeds \$1,000.”

Ms. Stockwell offered additional considerations for the Cost of Government Commission to review. First, the Real Property Assessment (RPA) Division, the Planning Department, and the Department of Water Supply (DWS) have worked together to form a “one farm application” process. The application is nearly complete. Second, RPA compliance will make inspections, and DWS pipefitters will no longer make ag inspections. Third, data will be shared through document management and email. Ms. Stockwell pointed out that the hold up is that “RPA needs an income requirement to match water,” which might need to be done through legislation.

Commissioner Heiskell asked whether the RPA Division would be interested in volunteers assisting with inspections. Mr. Madriaga responded that it could be considered. He noted, however, that much of the work is done with imagery. He also provided an example where owners who hear that an inspector will be visiting soon will “borrow” animals (e.g., horses, goats, cattle) from friends and put it on their property until the inspection is finished, so that they can obtain their exemption.

Chair Williams thanked Ms. Stockwell and Mr. Madriaga for their presentation.

## **V. REVIEW AND APPROVE JUNE 12, 2020 AND JULY 23, 2020 MEETING MINUTES**

Commissioner Werth moved to approve the June 12, 2020 and July 23, 2020 meeting minutes, and Vice-Chair Del Rosario seconded the motion. The motion was approved unanimously.

## **VI. REVIEW CORRESPONDENCE RECEIVED**

- A. July 23, 2020 Email from Michele McLean, Planning Director, Transmitting the Following Documents:
- June 26, 2020 transmittal from Michele McLean, Planning Director, 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)”
  - Draft bill for an ordinance amending Chapter 19.64, Maui County Code, relating to Bed and Breakfast Homes (Lāna‘i)
  - Draft bill for an ordinance amending Chapter 19.645 Maui County Code, relating to Short-Term Rental Homes (Lāna‘i)

There was no discussion on the correspondence received.

## **VII. COUNTY AUDITOR’S UPDATE**

County Auditor Lance Taguchi reserved discussion for Item X of the agenda.

## **VIII. TEMPORARY INVESTIGATIVE GROUP (TIG) UPDATES**

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

Chair Williams reported that there is intense activity surrounding this issue, so it is premature to draft a report because so much is in flux. He is in continued communication with Planning Director Michele McLean.

- 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 the TIG has interviewed and received reports from the directors of the Department of Environment Management and Department of Water Supply. The TIG is formulating new questions to be transmitted to the directors. Chair Williams anticipated that the investigations will be lengthy because they involve projects including the injection wells, the Upcountry water system, and the Water Use and Development Plan that is currently under Council consideration.

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

Commissioners O’Neil stated that he held a telephone conference with Elizabeth Pickett, Co-Executive Director of the Hawai‘i Wildfire Management Organization, and Battalion Chief Henry Lindo from the Maui Fire Department (MFD), both of whom have useful historical information. Commissioner O’Neil stated that one interesting thing he has learned is that there does not seem to be a central repository of cost information; the information is instead held by individual departments, so it is difficult to determine the overall cost of a wildfire. He

also found out that the MFD has an exhaustive inventory of all properties to assist with locating structures and water sources.

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

Commissioner Werth reported that she has spoken with Lori Tzuhako, Director of Housing and Human Concerns, and Maude Cumming, Executive Director of the Family Life Center. She has also reached out to the Homeless Resource Center and is monitoring the Council, which is creating the also Commission on Homelessness, so that the COGC can ensure that its report complements the work already being done.

## IX. INVESTIGATION (NON-TIG) UPDATES

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

- Document to Review

1. August 3, 2020 Letter from Michael Williams, Chair, Cost of Government Commission, to Sandy Baz, Managing Director, Regarding "Use of Federal Opportunity Zone Tax Subsidies to Finance Wailuku Parking Structure"

Chair Williams stated that he thinks he is getting close to being able to write a draft report for the Commission's review.

B. Information Technology Issues (Commissioner Simmons)

Commissioner Simmons stated that met with a representative of the Department of Management and hopes to provide a draft report to the Commission soon.

C. Access to Public Documents Filed in County Litigation (Chair Williams)

- Document to Review

1. August 2, 2020 Email from Michael Williams, Chair, Cost of Government Commission, to Moana Lutey, Corporation Counsel, Regarding "Cost of Government Inquiry Re Public Posting of Civil Litigation Court Records"

Chair Williams stated that Corporation Counsel Moana Lutey has been invited to meet with the Commission at its September meeting.

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

Chair Williams stated that he has invited representatives from the Ag Working Group to the Commission's September meeting. He also believes the Real Property Assessment Division is eager for the Commission's assistance in modernizing the Commission's definition of ag use.

**X. DISCUSS POSSIBLE PURCHASE OF COMPUTER FOR TECHNICAL WRITER AND TRANSCRIPTION SOFTWARE**

Chair Williams reported that he reviewed a BlueJeans transcription of the Commission's last meeting and found it useless. He will continue to search for a transcription service that might work for the Commission.

County Auditor Lance Taguchi stated that he is waiting for direction from the Commission regarding the computer purchase. Chair Williams explained that the Office of Council Services offered an older laptop to the Commission, but he preferred that the Commission purchase a new computer with available funds.

Mr. Taguchi stated that his office would assist the Commission with procuring a computer, and that he would work with the Office of Council Services information technology person so that the equipment can be standardized and supported when necessary. He agreed that using an older computer would result in its becoming obsolete sooner.

Chair Williams recommended that Ms. Pellegrino work with the Auditor's Office to determine the type of computer is needed, and to consult with the OCS information technology person, and bring back a recommendation to the Commission.

**XI. 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. Cost of Government Commission Budget

- Document to Review

1. Cost of Government Commission Fiscal Year 2020 Budget Details

Chair Williams stated that he preferred to wait until later in the year to discuss the Commission budget. He inquired about the travel funds available for Commissioners Barbadillo and Lankford-Faborito. Mr. Taguchi responded that the Fiscal Year 2020 budget figure estimated \$3,000 for Commission travel.

B. Other Potential Topics

There were no new potential topics proposed.

**XII. DETERMINE NEXT MEETING DATE AND AGENDA**

The next meeting is scheduled for Thursday, September 10, 2020, at 10:00 a.m. via BlueJeans teleconference. Chair Williams planned to invite an Ag Working Group representative(s) and Corporation Counsel Moana Anderson to the meeting.

**XIII. ADJOURNMENT**

The meeting adjourned at 11:16 a.m.