

**COST OF GOVERNMENT COMMISSION
MINUTES
Via BlueJeans Videoconference
Thursday, September 10, 2020**

- PRESENT:** Michael Williams, Chair
Michelle Del Rosario, Vice Chair (arr. 10:02 a.m.)
Noemi Barbadillo, Member (arr. 10:07 a.m.)
Paula Heiskell, Member
Lu Ann Lankford-Faborito, Member
Patrick O'Neil, Member
Susan Pu, Member
Sarah Simmons, Member (dep. at 11:50 a.m.)
Hannah Werth, Member
- STAFF:** Gary Murai, Deputy Corporation Counsel
Shelley Pellegrino, Technical Writer for the Commission
Lance Taguchi, County Auditor
- ADMIN.** Ipo Mossman, Ex-Officio Member, Office of the Mayor
Darlene Endrina, Community Liaison, Office of the Mayor
Moana Lutey, Corporation Counsel, Department of the Corporation Counsel
Richelle Thomson, First Deputy Corporation Counsel, Department of the Corporation Counsel
Lisa Kahuhu, Office Manager, Department of the Corporation Counsel
Cory-Lynn Vicens, Private Secretary, Department of the Corporation Counsel
- OTHER** Bobbie Patnode, Ag Working Group
Sydney Smith, Ag Working Group
Kyle Caires, Ag Working Group
William Jacintho, Ag Working Group
Annette Niles, Ag Working Group

DOCUMENTS RECEIVED:

Minutes

- Draft August 13, 2020 and August 27, 2020 Meeting Minutes

Correspondence

- August 12, 2020 Transmittal from Sandy Baz, Managing Director, to Michael Williams, Chair, Cost of Government Commission, Regarding "Use of Federal Opportunity Zone Tax Subsidies to Finance Wailuku Parking Structure"

Presentation by Bobbie Patnode and Other Members of the Ag Working Group, Regarding Ag Use Valuations for Property Tax

- September 3, 2020 Email from Michael Williams, Chair, Cost of Government Commission, to Bobbie Patnode, Ag Working Group, Regarding Ag Working Group Presentation to Cost of Government Commission on September 10, 2020

- Document entitled, "Selected Real Property Statistics for Budget Consideration, Fiscal Year 2020 – 2021," prepared by County of Maui, Finance Department, Real Property Assessment Division
- Ag Working Group PowerPoint Presentation by Bobbie Patnode

Informational Documents Related to COVID-19 and Open Meetings

- Governor's COVID-19 Twelfth Supplemental Proclamation (August 20, 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 Heiskell, Lankford-Faborito, O'Neil, Pu, Simmons, Werth, and Chair Williams were present. Vice-Chair Del Rosario arrived at 10:02 a.m. and Commissioner Barbadillo arrived at 10:07 a.m.

III. PUBLIC TESTIMONY

There was no public testimony.

IV. DISCUSSION WITH MOANA LUTEY, CORPORATION COUNSEL, REGARDING ACCESS TO PUBLIC DOCUMENTS FILED IN COUNTY LITIGATION

Corporation Counsel Moana Lutey appeared with Richelle Thomson, First Deputy Corporation Counsel, Lisa Kahuhu, Office Manager, and Cory-Lynn Vicens, Private Secretary, with the Department of the Corporation Counsel.

Chair Williams invited Ms. Lutey to speak on the topic of public access to County of Maui civil litigation documents and the costs to the County to make these documents publicly available. Chair Williams first asked how many civil litigation matters the Department currently has open. Ms. Lutey responded that there are over 400 open cases. Chair Williams asked whether the County is party to litigation in state courts other than Hawai'i. Ms. Lutey responded that the County is party to a case in New York City, but the vast majority are in Hawai'i state and federal courts.

Chair Williams asked about other administrative courts or agencies, and Ms. Lutey responded that the Department handles matters before the Department of Labor, the Public Utilities Commission, Planning, Water, and more. Ms. Thompson added that administrative hearings are handled by the Department's counseling and drafting section, which is separate from the litigation section. Other administrative hearings boards include the Board of Land and Natural Resources State Land Use Commission, and State Water Resources Board.

Chair Williams asked Ms. Lutey whether she reviews all litigation documents prior to filing. Ms. Lutey explained that large motions are circulated for review and editing throughout the litigation section, and that the attorney assigned to the case (or his or her secretary) files the document with the court. Ms. Lutey is notified electronically about every pleading that is filed in every litigation matter. The Department uses the Legal Files case management software system to manage its electronic filings.

Chair Williams stated that he spoke to an individual from Legal Files who handles the Maui County account and was told that Legal Files would be able to generate a list of all matters that could then be exportable to some type of database. Ms. Kahuhu responded that the Department can generate a list of open cases in PDF format which could be posted on the County website. Chair Williams asked whether the list could be exportable to some type of spreadsheet. Ms. Kahuhu stated that the Department would not post a Word or Excel document to the County website if that document was editable. The document would need to be in PDF format.

Chair Williams asked how much time and effort it would take to post a document. Ms. Kahuhu stated that she does not receive notice of all filings. For example, from August 31 – September 4, 2020, there were 160 filings in Circuit Court alone. The office is not staffed to handle inputting it into the Department's system, let alone uploading it to the County's website. Chair Williams asked about the staffing issue. Ms. Kahuhu responded that the information is uploaded into the Department's system, but that uploading it to a separate website would be a different process.

Ms. Lutey stated that it is the secretary's responsibility to upload the information into Legal Files. Chair Williams asked whether it would be feasible for the secretary to also upload the document to a publicly-available database. Ms. Kahuhu responded that it would not be feasible with three clerical staff supporting eight litigation attorneys and the case management responsibilities they have. Chair Williams asked whether the work could be done with an additional full-time employee. Ms. Lutey responded that she is not sure. She added that the State and Federal websites offer searchable databases, and the County simply uploading the files, but not making them searchable, would not be helpful. She stated she does not know how much it would cost to get such a system up and running.

Ms. Lutey explained that the Department also currently handles all requests for travel-related exemptions during the COVID-19 pandemic, and has processed approximately 9,000 requests over the last 2–3 weeks. The Department is operating seven days per week and is unable to take on more work.

Chair Williams stated that searching the State and Federal court systems is cumbersome and costly.

Vice-Chair Del Rosario asked whether Mayor Victorino had allocated CARES Act funding to the Department to hire additional staff to process travel-related exemptions. Ms. Lutey responded that he has not, though he is aware of the situation.

Vice-Chair Del Rosario moved that the Commission send a letter to Mayor Victorino requesting immediate funding for the Department of the Corporation Counsel to hire staff to process travel exemptions. Commissioner Lankford-Faborito seconded the motion. The motion was approved unanimously.

Chair Williams asked Ms. Lutey to estimate what extra staff positions would be needed to create a publicly-accessible, searchable database. Ms. Lutey responded that she is not sure, but assumed that an attorney would be needed to ensure that the Department does not inadvertently upload something that is protected. In addition, she stated that the Department would need information technology assistance.

Chair Williams asked whether a paralegal could do the work as opposed to an attorney. Ms. Lutey stated that the Department currently has 1.5 paralegals for all eight attorneys. She speculated that a paralegal might be able to assist, but that the application pool for paralegals is very small.

Chair Williams thanked Ms. Lutey and her staff.

V. PRESENTATION BY BOBBIE PATNODE AND OTHER MEMBERS OF THE AG WORKING GROUP, REGARDING AG USE VALUATIONS FOR PROPERTY TAX

Bobbie Patnode and Sydney Smith, from the Ag Working Group (AWG), shared a PowerPoint presentation regarding the AWG's work. Ms. Patnode first explained that the AWG was formed in 2013 by former Councilmember Don Guzman, who was the County Council's Agriculture Committee Chair. The AWG's members must be active farmers or ranchers, but the AWG also includes members from the State Department of Agriculture, County of Maui, and State Department of Land and Natural Resources. The AWG previously assisted with drafting and passage of the "Farm Stand Bill." The AWG also worked to defeat BF-70, which would have cancelled existing agriculture dedications and eliminated the Ag Use Valuation in favor of a Market Valuation on Ag land.

The AWG strives to be neutral and represent large and small farms and make agriculture successful in Maui County. Members of the AWG are volunteers.

One of the issues the AWG has been working on is a unified definition of agriculture. Currently, each County department defines "agriculture" differently, which creates confusion for farmers, ranchers, and County employees. In addition, farm property owners must complete paperwork annually for each department. The AWG is looking for ways to reduce paperwork and unify the definition.

Ms. Patnode explained that the agriculture rules have been in place since 1981.

Ms. Smith then provided some background into the current agriculture policies. She stated that these policies are being written and adopted at the State and County level by non-farmers, and agricultural inspections are being made by non-farmers with no education or experience in farming or ranching. Ms. Smith explained that these inspectors do not know what a real farm looks like, or think everything needs to be in straight rows or clear cut, which is the opposite of what Federal government guideline require. Real farmers and ranchers are being further restricted with more regulation in the County's efforts to catch the "cheaters." Wealthy land buyers are not informed about the "right to farm" act and file complaints against farmers and ranchers for nuisance smells, noise and view issues. Agriculture theft is not perceived as a serious crime by law enforcement. The State of Hawaii has a majority of its land zoned in agriculture, yet spends less than 1% of its budget on agriculture. No water source/storage/reservoir improvement has happened in decades, which has led to draconian water restrictions every year. Farmers are required to do agriculture, but they need water to do it.

Ms. Smith then reviewed the State Right to Farm Act. She provided an example where a young calf is crying all night because it is being weaned from its mother, which leads to a neighbor calling the Department of Health to complain about the noise. Other examples include smells (such as the smell of roasting coffee) or spraying crops (which may or may not be pesticide). The Right to Farm Act protects farmers against complaints. Ms. Smith noted, however, that many individuals receiving the complaints are not aware of the Act.

Ms. Patnode stated that the AWG has advocated for knowledgeable agriculture inspectors. She explained that each department has its own inspectors, but they are not farmers and not qualified. The Department of Water Supply, for example, uses pipe fitters as inspectors. The Planning Department uses zoning and enforcement officers; in one instance, a Planning inspector showed up in stockings and high heels. In another instance, the inspector was in the middle of a taro patch and asked, "Where's your farm?" Another inspector had never seen a beet before. The Real Property Tax Division uses tax assessors. The lack of an inspector with any ag experience is not cost effective and leads to numerous problems. The AWG believes that the County could save money if all inspection requirements could be placed in one department

The AWG has also been working to pass an ag tourism ordinance that would bring Maui County into compliance with State law.

The AWG also worked with the Planning Department during the Orion Audit of Title 19 of the Maui County Code, and is currently assisting with rewriting Title 19 and reviewing Planning Department rules.

The AWG worked with the Planning Department to eliminate the Farm Plan requirement, where homeowners were required to submit a Farm Plan prior to building a house. Homeowners can now sign a declaration agreeing to farm on more than half of the land.

Ms. Patnode then discussed the work the AWG has done with the County's Real Property Tax (RPT) Division over the past six years. She stated that Gerry Madriaga from the RPT Division, is an active participant in the AWG's effort to help update the rules that have been in effect since 1981. They are going line-by-line through the rules to make sure they agree with what agriculture is and to accurately have the rules say what ag is. One of the issues that has come up is that the rules say a farm has to be commercial, but part of the culture in Hawaii is subsistence farming. The AWG is focusing first on commercial farming.

Ms. Patnode turned the presentation to Kyle Caires to explain some research into ag use values that he did for the AWG. He researched and compared ag appraisals on Maui with that on the Mainland.

Ms. Caires shared a PowerPoint presentation entitled, "Hawaii's Agricultural Land Values and Cash Rents Summary," summarizing his work. Mr. Caires stated that he met with Mr. Madriaga regarding real property tax and agricultural exemptions. He then created an analysis of ag market values for the last 25 years that could be used to provide better assessments.

He provided a graph comparing the market value of cropland versus pastureland (\$/acre). The market value of pastureland has increased, whereas the market value of cropland has stayed relatively flat. Hawaii's cropland rent rates (based on a 12-year rolling average) have increased and are projected to increase. Irrigated cropland is running around \$410 per acre and will increase by about \$25-\$50 over the next few years.

His work will assist RPT with calculating a rate that is more commensurate with the land use and do so in a manner that fits the cost structure of the person doing the ag. This will allow the County to get its fair share and will make the inspector's job easier.

Returning to irrigated cropland rates in Hawaii, Mr. Caires shared a graph showing that the current rate is more akin to \$325 per acre as opposed to the \$410 per acre that has been reported. For non-irrigated cropland, the graph depicts about \$55 - \$130 per acre, which is more realistic for allowing smaller farms to stay in business in light of its fixed costs. Pastureland has seen a downward trend since about 1998.

Mr. Caires reiterated that the information he has gathered can be used as a tool to assist RPT Division determine the valuation and the exemption, and RPT will get the type of revenue that is expected.

Chair Williams asked whether there is a distinction between irrigated and non-irrigated pastureland, just as there is for cropland. Mr. Caires responded that there is no distinction because Hawaii is generally devoid of irrigated pastureland.

Mr. Caires then shared a graph depicting the ratio of pastureland value to pastureland lease value (\$/acre), where Hawai'i's ratio is the highest of all 50 states. By comparison, the ratio of cropland value to cropland lease value (\$/acre) depicts Hawai'i's value as quite low.

Mr. Caires stated that he will continue to work with the Ag Working Group. His work — which projects five-, ten-, and 15-year rolling averages — will be published as a university publication. It can then be used by the RPT Division and homeowners alike.

Ms. Smith asked Mr. Caires to explain the concept of carrying capacity. Mr. Caires explained that carrying capacity is the number of animal units that can be supported (grazed) for a specific period of time on a specific period of property. For example, if the carrying capacity is 200 animal units, then a single animal could be supported for 200 days, or 200 animals could be supported for a single day. There are many factors that go into calculating carrying capacity, including weather and location. Experienced ranchers have a “sense” of just how much carrying capacity they have.

Ms. Patnode summed up Mr. Caires' presentation by stating that the AWG is trying to research ag use values now so that tax assessments will be calculated correctly in the future. Current ag use values that are being used are about 40 years old. Mr. Caires' work will help keep these values up to date.

Mr. Caires added that his modeling will provide the RPT Division with the ability to lock in a rate for ten years, and adjustments can be made in an unbiased manner in 10-year increments.

Ms. Patnode then answered written questions transmitted by Chair Williams. First, Ms. Patnode addressed ag “cheaters,” and reiterated Ms. Smith's comment that they are not really “cheaters.” She stated that most are following the law that required them to farm in order to build a house. She then addressed the question of how many farmers are “subsistence” farmers and whether that is a problem. She stated the issue is being reviewed, and provided the example of the person who has “two papaya trees and a goat.” Ms. Patnode stated that the AWG is working with the RPT Division to come up with clear rules. Ms. Patnode stated conversely that the AWG is also looking at big landowners who are claiming ag use, but there is no ag going on. Ms. Patnode explained that they want the law to be applied equally.

Ms. Smith added that State law does not require a property owner to be commercial, but only that the owner be doing agriculture. Right now, the AWG is torn because they want it to be easy for the RPT Division; it would be easy to require an IRS Form Schedule F or a State Form G-49. However, there are subsistence farmers in Hana, Moloka'i, and elsewhere that share with their 'ohana and/or their community. These farmers would not file a Schedule F or G-49 because subsistence farming is part of their culture. As a result, the AWG has decided to focus on commercial farming right now. Encouraging subsistence farmers to farm their land without losing it is a big problem, and the AWG is not sure how to handle the issue. Ms. Patnode stated that she thinks there will need to be a separate part of the Code to address subsistence farming.

The second question posed by Chair Williams was whether there is any use for keeping the ag dedication program. Ms. Patnode stated that there is still a question in her mind about the issue. Dedication was created in the 1960s in an effort to preserve agricultural land. Ms. Patnode learned that dedication does work to slow down the conversion of ag land to houses, but what really works is zoning enforcement. Another reason to retain agricultural dedication is to preserve open space.

The third question was whether there needs to be new rules to allow actual farmworker housing on ag land. Ms. Patnode stated that the law allows one farm dwelling, an 'ohana of no more than 1,000 square feet, and farmworker housing. Ms. Patnode explained that to help with Maui's

housing problem, the AWG has suggested increasing the size of the second dwelling to 1,500 square feet, but also allowing for more farmworker housing. She stated that Planning Director Michele McLean is in the process of bringing some of these proposals to the Planning Commission.

The fourth question was whether there is a problem with those who buy fallow ag land for their dream home, and then learn they need a farm plan before they can build an 'ohana or a pool. Ms. Patnode responded yes.

The fifth question was whether there are state statutes concerning ag land that restrict or constrain what the County can do about such land. Ms. Patnode responded yes.

The last question posed by Chair Williams was whether the AWG has any position statements, papers, or a list of issues that it could share with the Commission. Ms. Patnode responded that the AWG does not have position statements because it tries to be neutral, but if the group agrees, it will provide testimony in support of or opposition to a certain issue.

Chair Williams thanked Ms. Patnode, Ms. Smith, and Mr. Caires for their presentation.

Chair Williams then asked whether the AWG supports the Department of Agriculture Charter Amendment. Ms. Patnode responded that the AWG decided to support the amendment. The decision was made based on its determination that if a department exists to advocate for farmers and it is in equal standing with other County departments, it might help resolve conflicting information from other County departments.

Chair Williams then asked about RPT Administrator Marcy Martin and the RPT Division team's belief that the general principle of providing a significant property tax break is to encourage genuine farming, so is it worth it to the County to not tax it at market value, but to allow a lower ag use value. In other words, should ag land that is not being used for ag be taxed as market value as an incentive to convert to ag use. Ms. Patnode agreed that if the land is not being farmed, it should not receive the ag use value. The issue is how to determine what ag use is.

Vice-Chair Michelle Del Rosario asked about people purchasing land and not having clear expectations of what to do with the land. She asked whether the AWG has ever thought about doing an educational program with the local realtors association about the Right to Farm Act. Ms. Smith responded that she has spoken with many realtors, some of whom have told her that because it is not a requirement, they do not want to scare off the buyer by telling them something that they are not required to reveal. Ms. Del Rosario offered to connect the AWG with the Realtors Association of Maui. She also suggested a presentation be made to the broader community.

Chair Williams stated that he hopes the Commission will draft a report that is supportive of the AWG's goals.

VI. REVIEW AND APPROVE AUGUST 13, 2020 AND AUGUST 27, 2020 MEETING MINUTES

Vice-Chair Del Rosario moved to approve the August 13, 2020 and August 27, 2020 meeting minutes, and Commissioner O'Neil seconded the motion. The motion was approved unanimously.

VII. CORRESPONDENCE RECEIVED

- August 12, 2020 Transmittal from Sandy Baz, Managing Director, to Michael Williams, Chair, Cost of Government Commission, Regarding "Use of Federal Opportunity Zone Tax Subsidies to Finance Wailuku Parking Structure"

Chair Williams deferred discussion until Item X.A. of the agenda.

VIII. COUNTY AUDITOR'S UPDATE

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

IX. TEMPORARY INVESTIGATIVE GROUP (TIG) UPDATES

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

Chair Williams reported that the County Council would be reviewing two proposed bills regarding short-term rentals, so it is premature to finalize any report.

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 been formulating new questions to be transmitted to the directors of the Department of Water Supply and Department of Environmental Management.

Commissioner Simmons departed at 11:47 a.m.

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

Commissioners O'Neil stated that he received information from the Pacific Fire Group and the Hawai'i Wildfire Management Organization. He explained that there has been an extensive collaborative process to address wildfires, so there is more information than he anticipated. Unfortunately, obtaining cost information is the difficult because there is no central repository for information. The overall takeaway is that combustibles (e.g., non-native grasses) is the biggest issue and quite a lot of work has been done in this area. Water is also a large issue.

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

Commissioner Werth reported that she has no new information to provide.

X. INVESTIGATION (NON-TIG) UPDATES

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

1. Review and Possibly Approve Proposed Report Recommending that that the County Issue a Request for Proposals Seeking Private Investors

Chair Williams stated that he could not finish the draft report in time and hopes to have it available for the next meeting. He plans to recommend that the County issue a request for proposals for private investors to build and operate the garage.

B. Information Technology Issues (Commissioner Simmons)

No new information was provided.

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

There was no additional discussion following Corporation Counsel Moana Lutey's presentation.

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

There was no additional discussion following the Ag Working Groups presentation.

XI. UPDATE ON POSSIBLE PURCHASE OF COMPUTER FOR TECHNICAL WRITER AND TRANSCRIPTION SOFTWARE

Technical Writer Shelley Pellegrino explained that she has been working with the Office of the County Auditor to identify the equipment, software, and foot pedal (to aid in transcription) to purchase. Mr. Taguchi added that his office is prepared to assist the Commission with the purchase once the Commission makes a decision. Chair Williams stated that he will work with Ms. Pellegrino to provide a request for specific equipment and software.

Chair Williams stated that he has not yet found transcription software that would meet the Commission's needs.

XII. 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.

There was no discussion of new topics.

XIII. DETERMINE NEXT MEETING DATE AND AGENDA

The next meeting is scheduled for Thursday, October 8, 2020, at 10:00 a.m. via BlueJeans teleconference. Vice-Chair Del Rosario asked whether the Commission is mandated to meet on the second Thursday of every month. Chair Williams stated that the group can change the date. Vice-Chair Del Rosario stated that the Commission meets on the same week as Council committees, so it conflicts with her work. She asked whether the Commission could meet on the first or third Thursday of the month. Chair Williams suggested taking a poll of the commissioners because the calendar is set at the beginning of the year. Deputy Corporation Counsel Gary Murai also pointed out that an additional consideration will need to be the availability of the Mayor's Conference Room (for when meetings resume in person) as well as the availability of staff such as himself and the County Auditor.

XIV. ADJOURNMENT

The meeting adjourned at 12:00 p.m.