

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as circulated 6/27/16

Board/Committee:	CHARTER REVIEW COMMISSION	Meeting Date	May 23, 2016
Location	Mo'ikeha Building, Meeting Room 2A/2B	Start of Meeting: 2:00 p.m.	End of Meeting: 4:10 p.m.
Present	Chair Allan Parachini; Vice Chair Ed Justus. Members: Michael Perel; Patrick Stack; Cheryl Stiglmeier; Russell Wong Also: Deputy County Attorney Phil Dureza; Boards & Commissions Office Staff: Support Clerks Barbara Davis and Darcie Agaran; Administrator Jay Furfaro		
Excused	Member Merilee (Mia) Ako		
Absent			

SUBJECT	DISCUSSION	ACTION
	Prior to the start of the meeting Council Administrative Assistant Eddie Topenio gave the Oath of Office to new Commission Member Michael Perel.	
Call To Order		Chair Parachini called the meeting to order at 2:00 p.m. with 6 Commissioners present which constitutes a quorum.
Approval of Minutes	<p><u>Regular Open Session Minutes of April 25, 2016</u></p> <p>Page 7, 9th sentence, Mr. Justus suggested changing “and” at the end of that sentence to “but”. Page 11 in Ms. Ako’s statement Mr. Justus thought she meant to say 2027 because the Commission would not be reconvening in 2017, it would be 2027. It was noted that you cannot amend the words of another when they are not present. Mr. Perel said having read through this he finds the entire discussion on the life of the Commission extremely confusing at best. The meaning of the simplest words like “shall” caused great confusion and the whole interpretation on the life of the Commission in that section he found to be extremely confusing.</p> <p>For the sake of the newest Commission member, Chair Parachini asked if Mr. Dureza or Mr. Furfaro would like to summarize it. Attorney Dureza recollected that the issue was whether or not the CRC would sunset after the end of this year. His interpretation is that it will sunset based on the Charter</p>	Mr. Justus moved to amend the minutes. Mr. Wong seconded the motion.

SUBJECT	DISCUSSION	ACTION
	<p>language. Chair Parachini added that if voters do not approve the amendment that is being put on the ballot the CRC is done. Mr. Perel said perhaps what is confusing is the statement that the mayor with the approval of the council shall appoint a charter commission at ten year intervals – does the word interval mean every ten years or is it interpreted as a ten year period between. Attorney Dureza agreed that it was not the most articulate language, but the most reasonable interpretation of it is that interval means the ten years following the sunset is the ten years where there is no CRC; after that the mayor with council approval may then reinstate the CRC. The language prior to that refers to studying county government for ten years, so the most reasonable interpretation of that language is ten years on, ten years off, ten years on again. Mr. Perel thought they could have written it more plainly because it is a vital tool for the public to have access to the governance of the county and to have a ten year hiatus seems unreasonable.</p> <p>Mr. Furfaro offered that perhaps the term “ten year increments” should have been used, but it is not like they will be going through a period without any change because the authority to make changes to go to the ballot during that ten years still rests with the council. Mr. Justus said he is starting to have questions about that interpretation because in the 2006 minutes it states that their intention was that a commission was constituted for a period of ten years and then thereafter it would go back to being a full time commission for ten years. They would study and review the operation of government for a ten year period in 2007 and thereafter the mayor with the approval of council appoint a charter commission at ten year intervals. Mr. Abrams who was chair of that commission said it would then go back to what the charter calls for which is once every ten years. It sounds like what they are saying, and the language would match in both, that this is a ten year period commission. After this one the mayor and the council can decide to impanel another commission at whatever time they deem for another ten year interval period. Mr. Furfaro pointed out that question should be posed to the county attorney on their interpretation; we don’t</p>	

SUBJECT	DISCUSSION	ACTION
	<p>make interpretations about the various way we read the minutes. We interpret what was actually voted upon and that should be the focus right now. Mr. Justus said if they had people from that prior commission come in and tell us what their intention was wouldn't that make a difference. Mr. Furfaro said no. The interpretation now is what was voted upon and not what was discussed in the minutes and making various interpretations of what was said. The focus by the legal counsel should be on the ballot question that was voted on and the interpretation of the question itself. Mr. Justus said the meaning of the amendment and the meaning of the ballot question would change..... Mr. Furfaro said we are getting into a period now that if we don't accelerate some of the discussion about how the ballots are worded we could come up with a weak interpretation again so the focus should be not discussing minutes that were covered ten years ago but what was voted on the ballot. Mr. Justus said he was just trying to understand the process so that means regardless of what was discussed in the minutes what is pertinent is how the county attorney interprets it now.</p> <p>Mr. Wong suggested they get back on track with approving the minutes. Chair Parachini thought this was a discussion to approve the minutes. Mr. Furfaro reminded the Commissioners that changes on minutes should be focused to actually indicate changes to what you may have said and not to what you may have interpreted. It should be left to the individual committee members to change something that was misrecorded that they may have stated. Chair Parachini called for the vote on the minutes as amended.</p> <p><u>ES-014 Approval of Executive Session Minutes of April 25, 2016</u></p>	<p>Motion to approve as amended carried 6:0</p> <p>With no discussion, changes or questions to take them into Executive Session, Ms. Stiglmeier moved to approve the Executive Session Minutes as circulated. Mr. Wong seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Justus asked the County Attorney if there was anything in the minutes that would be necessary to keep from the public. Attorney Dureza did not believe so. Staff requested they finish the motion on the floor before making the next motion.</p> <p>Mr. Wong said he was opposed to waiving the confidentiality. Starting with the assumption that the purpose of the executive session or belief that the purpose of the executive session is to somehow hide something from the public starts with the feeling why people have a distrust in government. The purpose of the executive session is to protect counsel’s opinion so they can be free and open with us. When we get into the habit of – you minimize the importance of an executive session if the assumption is that if there is nothing in there that is confidential that it should be released – if there are things that aren’t confidential they should be brought up in open session if need be. You have to protect the purpose of the executive session and it is wrong for a commission like ours to continually feel like you should publish everything you discuss in open session – you devalue the importance of that and he will be voting against the motion. Ms. Stiglmeier agreed with Mr. Wong. Mr. Perel said it was his understanding that the rules for executive session are written in statute and asked if there was anything in this discussion, this executive session that would be protected under the regulations that go along with the executive session. Attorney Dureza said it was attorney-client privilege so it would be covered under that and was not sure what Mr. Perel...Mr. Perel said normally (executive session) was (for) personnel issues or issues pending litigation and this seems to be just normal county business. Mr. Perel stated he is not a fan of executive session - it causes more problems so he likes to stick to the absolute statute of what you can put into executive session. Attorney</p>	<p>Motion to approve the minutes carried 6:0</p> <p>Mr. Justus moved to waive the confidentiality of the minutes so they can be made available to the public. Mr. Perel seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Dureza said when something is covered by the attorney-client privilege that is what they hang their hat on and he is not sure what other laws there are in terms of keeping it confidential. In terms of this situation, County Attorney Trask came into this discussion with the belief that it was going to be in executive session and although you are the client and you hold the right whether or not to release it Mr. Trask did come to the executive session probably thinking what he is saying is going to remain confidential. There are some references regarding testimony of Mr. Dahilig as well. A lot of the types of things this Commission has encountered before was just Attorney Dureza's opinion and in those situations he can confidentially say it is whatever and release it. But in a situation like this you do have other individuals who came to this executive session probably with the expectation that this session was going to be confidential and that should be kept in mind. Mr. Perel said what concerns him is any discussion they would have with counsel would be privileged. Attorney Dureza said that is normally the case. Mr. Perel thought that broadened the executive session rule. Chair Parachini said in this particular instance Attorney Dureza was correct that it was an unusual circumstance – Mr. Trask came to the Commission to express some concerns with an item we had previously voted on. His contribution was very valuable and the Commission members see the issue in a slightly different light. Chair Parachini remembered Mr. Trask remarking that as far as he was concerned in the moment Mr. Dahilig was the client and given the litigation exposure the matter of the Zoning Board of Appeals creates, while being no fan of executive sessions, the Chair said he was going to vote against this motion. Ms. Davis cited §92-5 a of the Hawai'i Sunshine Law (Hawai'i Revised Statutes), item (4) you can go into a closed session to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities – that gives the blanket to discuss this with the attorney and that is always part of the agenda. Mr. Wong agreed with Mr. Perel that to the extent possible they should limit</p>	

SUBJECT	DISCUSSION	ACTION
	<p>going into executive session, but when you go into executive session you go into executive session for a reason. If we don't feel we should be going into it then we should not go into it. But once you start publishing minutes of executive session and being told it is going to be protected if we just start releasing information we set a precedent that people will be less confident to share opinions openly with us because they won't know whether or not what was covered will be released. We limit when we need to go into executive session, but when we do we have to protect the executive session and the reason we went into it. Chair Parachini said this was an unusual situation in that the Zoning Board of Appeals is an issue that could embroil the County in a whole lot of litigation down the road. It is up to us to be as careful as we possibly can in anticipating what unintended consequences any decision we might make would create for a County Council five, ten, fifteen, twenty-five years from now. Mr. Stack said he sympathized with Mr. Justus' desire for an open air situation but we have a lawyer who ostensibly is to take care of us. What this comes down to is transparency versus doing the right "legal" thing. In this particular case Mr. Stack said he would be voting no. Mr. Justus said he appreciated everyone's perspective. Given the fact they are still waiting for the revised version of what Mr. Dahilig was going to present as well as more information from Mauna Kea Trask he would be more comfortable releasing executive session minutes on the full discussion after they have gotten all the information. Ms. Davis and Chair Parachini both stated those revisions were included in the packet in Open Session. It is as discussed by Attorney Trask who wanted approval from his client, and it was then forwarded to our office for distribution to the Commission. Chair Parachini said it is on the agenda when they get to that item. Chair Parachini called for a Roll Call Vote.</p>	<p>Roll Call Vote on motion to waive confidentiality of executive session minutes: Aye-Justus; Abstain-Perel; Nay-Stack; Nay-Stiglmeier; Nay-Wong; Nay-Parachini. Motion failed 1 aye/4 nays/1 abstain</p>

SUBJECT	DISCUSSION	ACTION
	<p>Mr. Furfaro wanted to point out that through this Commission they also have to balance the fact of what kind of exposure a legal item would in fact give the County. As we go through evolution you will have periods of time where your decision to release things are based on the fact that the County would also have a strong position to defend itself on some of their ordinances. You have to consider those things when you look at what you are releasing. This Commission does an excellent job with transparency but there is a balance.</p>	
<p>Business</p>	<p><u>CRC 2015-02 Decision-making on the Charter Commission’s corrective changes to the 2015 Codified Charter on gender neutral language, grammatical, spelling or formatting errors, the Findings and Purpose, and a ballot question for consideration of placement on the 2016 ballot (On-going)</u></p> <p>Attorney Dureza noted the version which should also have included the Findings and Purpose and the Ballot Question was not included as part of the packet. It was further noted that portion was part of the previous month’s packet but failed to be included this month. Staff noted the F&P and the Ballot Question still had to go to the Attorney’s Office for an official review, however, the Commission needs to make a final decision today on whether or not to accept the corrections they have been making to the Charter over time.</p> <p>Attorney Dureza went over his objections to the proposed changes:</p> <p>6.05 A – remove the comma following employees in the next to last line. The conjunction “and” separates two verbs so it is not a series of three and the comma is superfluous.</p> <p>7.01 – insert “of the mayor” following the election in the next to last line to</p>	

SUBJECT	DISCUSSION	ACTION
	<p>read <u>the election of the mayor</u>. Changing to gender neutral by changing “his” to “the” makes it unclear and you would be better off saying said mayor’s election. Mr. Justus suggested using “general” or “special election”. Attorney Dureza said “his” refers to the mayor but to be accuratediscussion was interrupted to determine if each change needed to be voted on seriatim or after all changes have been made. Mr. Wong asked if the suggestion was to make a motion to approve as presented from which a discussion can ensue with corrections made from there.</p> <p>Mr. Stack said perhaps they could ask the Attorney how many changes he planned to bring up – two or three, or twenty or thirty. Attorney Dureza responded closer to twenty. Mr. Stack said he would like to repeat what he said in the last meeting. This document has had hundreds of man hours handling it and he does not believe when they come up with the final product it will be perfect – it is never going to be perfect. To that end he would hope they add a little realism and make it as good a document as they can without nitpicking. Attorney Dureza said the problem with that is they are telling the voters they are making all these grammatical changes to correct it – that is not true. Mr. Justus said they said “minor changes”. Attorney Dureza said they would have another legal problem there if they do not define what minor changes are. If you say you are making grammatical changes or corrections to these things and if you are not doing that then that is misleading the voters by saying vote for this change because it is grammatically correct when it is not. This is the problem that has been highlighted from the very beginning of this effort. To the extent you are okay with just ignoring grammatical errors and telling the voters you are making these corrections that is on you, but it does not pass legal scrutiny. Mr. Wong said rather than discussing proper grammar can they just go through each of the recommendations individually and say yes or</p>	<p>Mr. Wong made a motion to approve the Charter Commission’s corrective changes to the 2015 codified Charter. Ms. Stiglmeier seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>no. Chair Parachini said one issue is on the Findings and Purpose and Ballot Question.</p> <p>Chair Parachini explained what they are discussing now does include the Findings and Purpose and the Ballot Question. Attorney Dureza said there is the reference about correcting (inaudible) grammatical errors so that tells the voters when you add a comma or whatever else you do it is correcting a grammatical error. Attorney Dureza said what you are doing in many instances is not correcting grammatical errors – you are actually making grammatical errors. To that extent it is wrong and what you are telling the voters is wrong. Mr. Stack said the Ballot Question says in part <i>to the greatest extent possible</i>. To his interpretation that means best efforts – not perfection, best efforts. Attorney Dureza said the Ballot Question is also different and there is another problem there. Even the Ballot Question doesn't include any reference to grammatical changes so it does not reflect what you are all doing in this amendment. For that reason it is also misleading and would not pass legal sufficiency. Instead of actually improving the Charter you are adding grammatical errors in the Charter. Mr. Wong said grammatical errors do not concern him as much as changing the intent – if a comma changes the meaning of the code we have to be worried about it. Mr. Wong suggested going through each one to see where the comma would change the meaning. Educated people can have very different opinions on grammar. Attorney Dureza said to a certain degree that is correct. There are certain grammatical rules that are subject to interpretation – there are some that are not. Chair Parachini suggested they come back later to the Findings and Purpose and Ballot Question and now go through quickly and note the other areas in question.</p>	<p>A recess was called at 2:34 p.m. to allow Mr. Furfaro to make copies of the Findings & Purpose and Ballot Question. Meeting resumed at 2:38 p.m.</p>

SUBJECT	DISCUSSION	ACTION
	<p>Attorney Dureza started again with his suggested corrections.</p> <p>6.05 A – remove comma after employees. It is superfluous and not needed.</p> <p>7.01 – changing “his” to “the” makes it less unclear and it is better to stick with “said mayor’s”, which is what they did in other parts of the charter.</p> <p>Mr. Wong said he saw the Attorney shaking his head but heard him say when Mr. Justus brought up the change that they are saying the exact same thing. Based on the Attorney’s comment Mr. Wong was concerned with his shaking his head to which Mr. Dureza said it was fine. Mr. Furfaro said they were trying to reconfirm what the Attorney was saying when they are both the same. Quite frankly in the precedent of things the Attorney’s recommendation to the Commission (in Mr. Furfaro’s opinion) should have stood. They made the change because he said it was the same, but now he is shaking his head. Attorney Dureza said the shaking the head part – if they are going to try to get through this let’s get through this and not invent multiple ways to say the same thing.</p> <p>9A.01 – same idea – either “said prosecuting attorney” or “the election of the prosecuting attorney”.</p> <p>Mr. Wong said his concern was they need to come up with something to replace “he” then it should be like in other parts of the document where you</p>	<p>Mr. Perel moved to remove the comma. Mr. Wong seconded the motion. Motion carried 6:0</p> <p>Mr. Wong moved to change “the” to “said mayor’s”. Ms. Stiglmeier seconded the motion.</p> <p>Mr. Justus moved to amend the motion to say “the election of the mayor”. Mr. Perel seconded the motion. Motion carried 6:0</p> <p>Main motion as amended carried 6:0</p> <p>Mr. Justus moved that it read “the election of the prosecuting attorney”. Ms. Stiglmeier seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>are referring to someone. The “election of the prosecuting attorney” is not really “he”. Attorney Dureza said through phrasing it that way it was pretty much the same meaning – the election refers to the election of the prosecuting attorney who was just elected.</p> <p>Mr. Furfaro pointed out again that if both are the same he would strongly recommend they stay with the opinion of the County Attorney.</p> <p>10.04 B – the comma after “moneys” is superfluous.</p> <p>10.04 D – the comma after “county” is superfluous.</p> <p>10.04 N –remove the comma after “roadways”.</p> <p>11.03 C – the commas after “department” and “members” are superfluous.</p> <p>Mr. Justus thought “or any of its members” is referring to something attached to the department and is why they inserted the comma. Attorney Dureza said “or” is a conjunction and when you separate a series of two with a conjunction it does not require a comma. It is “of the department or any of its members” – it is not “of the department” or the sub-department “of any of its members”. The “or” separates two items in a series which is why you don’t need the comma.</p> <p>11.05 A – the comma after “detection” changes it inappropriately. The proper coupling is “detection and arrest of offenders” but if you add the comma it changes it to “prevention of crime, detection, and arrest of</p>	<p>Motion carried 6:0</p> <p>Mr. Wong moved to eliminate the comma. Mr. Perel seconded the motion. Motion carried 6:0</p> <p>Mr. Wong moved to eliminate the comma. Mr. Perel seconded the motion. Motion carried 6:0</p> <p>Ms. Stiglmeier moved to eliminate the comma. Mr. Wong seconded the motion. Motion carried 5:1 (nay-Justus)</p> <p>Mr. Justus moved to delete both commas. Mr. Wong seconded the motion.</p> <p>Motion carried 6:0</p> <p>Mr. Justus moved to delete the comma. Ms.</p>

SUBJECT	DISCUSSION	ACTION
	<p>offenders”.</p> <p>16.03 – the entire paragraph is grammatically incorrect; adding the comma after “advocates” does not fix it and should be removed. All the dependent clauses are being separated by a semi-colon which is grammatically incorrect and adding the comma does not fix anything.</p> <p>19.15 C (2) – the comma after “section” is superfluous.</p> <p>20.02 B – correct typo for “the officer of employee” to read “the officer or employee”</p> <p>20.05 E – the comma after “witnesses” is superfluous.</p> <p>29.03 – change the semicolon before “provided” to a comma because “provided that” is a dependent clause.</p> <p>30.05 I – the comma after “introduced” is superfluous.</p> <p>Mr. Justus stated that on page 64 the word “appendix” is bolded and suggested a space between “C” and the word and that it should be centered.</p>	<p>Stiglmeier seconded the motion. Motion carried 6:0</p> <p>Mr. Wong moved to delete the comma. Mr. Perel seconded the motion. Motion carried 6:0</p> <p>Mr. Wong moved to delete the comma. Mr. Perel seconded the motion. Motion carried 6:0</p> <p>Ms. Stiglmeier moved to change the word to “or”. Mr. Justus seconded the motion. Motion carried 6:0</p> <p>Ms. Stiglmeier moved to remove the comma after “witnesses”. Mr. Perel seconded the motion. Motion carried 6:0</p> <p>Mr. Justus move to change the semicolon to a comma. Ms. Stiglmeier seconded the motion. Motion carried 6:0</p> <p>Ms. Stiglmeier moved to remove the comma after “introduced”. Mr. Perel seconded the motion. Motion carried 6:0</p>

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	<p>Staff said alignment within the document has been discussed before and once the Ramseyering is complete the document can be returned to the correct format. Every time something is added or deleted within the document it affects the alignment of other sections but will be corrected later.</p> <p>Chair Parachini asked if they wanted to try to resolve the Findings and Purpose and the Ballot Question and asked Attorney Dureza what he was proposing. Chair Parachini noted for the record that the page including the Findings and Purpose and the Ballot Question was inadvertently not included in the packet but was presented to the Commission last month. Staff will send the F&P and Question to the Attorney so he can provide an opinion for the June meeting. Attorney Dureza said he knew with the Ballot Question there was reference there to making changes based on statutory or other authority but he was not sure what that referred to.</p> <p>Mr. Furfaro announced that Deputy Attorney Dureza's last day with the County would be this Friday (May 27) as he has taken employment with the University of Hawai'i and the Attorney that would be getting back to the Commission has not yet been announced by County Attorney Trask.</p> <p>Mr. Wong referred to the ballot question and he is concerned in that the County Attorney mentioned that it almost implies that the Commission is making statutory and other authority changes. While he would vote for gender neutrality he would ask what kind of authority is being changed. Chair Parachini said it would be reviewed and come back next month.</p>	
	<p><u>CRC 2016-09 Request dated 4/27/16 to the County Clerk to appear before the Commission to provide an update on the status of the preamble</u></p> <p>It was noted the County Clerk was not present to which it was explained there was a county-wide training going on that would probably last until</p>	

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	<p>4:00/4:30 p.m. Attorney Dureza said this has come up before and he believed he issued a legal memo regarding it. Ms. Davis did not recall if there was a written opinion but remembered the Attorney did discuss a preamble not being legally required and it is part of the minutes on file. Mr. Justus recalled a conversation with the County Clerk in which he told her where in the original charter minutes they had approved the preamble to put into the charter. The Clerk said she was waiting for the County Attorney to get back an opinion to her if they had the authority to reinsert it back into the charter. Ms. Davis said in reviewing the minutes, the County Clerk had said that the State Elections could not find a record of such. Mr. Justus said it is non-substantive so they could put it in as part of the overall grammatical changes because it wouldn't matter. Attorney Dureza said the agency or department that is responsible for printing out the Charter is the Clerk's Office and he had said then that this Commission does not have any authority to tell the Clerk's Office whether or not to include the preamble when they publish it. It is outside of your jurisdiction but that was not kindly accepted and people still want to put it in there so it is still an issue now. Chair Parachini said they should move to the next item and see if Ms. Tanigawa arrives (later) and then figure out what to do with this.</p>	
	<p><u>CRC 2016-08 Discussion and final decision-making on Findings and Purposes, Amended Charter Language, and Ballot Question (On-going)</u> <u>CRC 2015-04 b. – Article XIV Creating a Zoning Board of Appeals</u></p> <p>Chair Parachini explained for Mr. Perel's benefit that the Commission had taken action on a version of this (proposed amendment). The County Attorney appeared before us at the last meeting and raised some questions about whether the changes that we had previously approved were sufficiently protective in a legal context to the possibility of litigation down the road challenging actions on zoning appeals. He conferred with the Planning Director and they came up with what we have before us today. The Findings and Purpose would be unchanged and the Ballot Question</p>	

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	<p>untouched. Ms. Davis stated those two items had not gone up for legal review until they approve the amendment as presented today.</p> <p>Chair Parachini called for a motion to approve the revised language relating to Article XIV for the Zoning Board of Appeals.</p> <p>Mr. Justus noted (in Section 14.12) there was a lot of discussion about whether having the phrase “wherever possible” being a major area of contention. It was his understanding they were to be getting something back from them to give us some guidance on what should happen here. Mr. Furfaro asked the Chair if he would like him to call Planning to which the Chair responded sure. Attorney Dureza asked if it were in terms of “wherever possible” language. Mr. Justus said he remembered that was an issue. Ms. Stiglmeier also remembered if they said they tried their best but couldn’t find anybody have they reduced the Board of any knowledge they could or should have. Mr. Justus also thought the expression that “wherever possible” was a very hazy phrase because how would you quantify what that means – did they scour the entire County looking for these people and if they didn’t could the County be held liable for not scouring the whole island. Since we have just gotten back basically everything we got before Mr. Justus wanted to know what their final opinion was on this before it is put to the voters. We went into Executive Session for this and we got the same thing back. Attorney Dureza said they had discussed it before and he did not know where Planning stands on it. His understanding was the first time this came up there were concerns about whether or not you can find adequate individuals with the requisite criteria as stated by the charter language which is why it was changed to “wherever possible” and following that there were questions whether that was too vague. Mr. Justus asked a question about a legal definition. It says at least one member should have knowledge - that does not mean required to have</p>	<p>A brief recess was called at 3:10 p.m. with the meeting resuming at 3:12 p.m.</p> <p>Mr. Justus so moved. Ms. Stiglmeier seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
	<p>knowledge. Attorney Dureza said right. Mr. Justus asked if “should” and “wherever possible” would be almost the same thing. Couldn’t they just eliminate “wherever possible” and (then) “should” would basically cover everything as far as how they select members. Chair Parachini said in the current Charter there is a discussion of what the Planning Commission background should be and wondered if that “wherever possible” language appears in the existing description of the membership of the Planning Commission. Attorney Dureza agreed that “wherever possible” and “should” both have the same effect where both languages are aspirational rather than mandatory. Chair Parachini stated that language does not appear in (the Planning Commission language). Mr. Justus thought maybe the Charter (sic) Commission added it or maybe that was how it was presented the “wherever possible”, and instead of saying one member shall we put one member should. Mr. Wong said it appeared they addressed in item G some of the questions the Commission had about going back and forth and they were supposed to send back (to this Commission) what they were comfortable with and this is what they sent back. It seems for some reason their recommendation to us is to leave “wherever possible” in. Mr. Perel said where he came from the Zoning Board of Appeals was basically a department of the government that (dealt with) violating the law. When you wanted to do something against the zoning code you went to the Zoning Board of Appeals saying the zoning regulations say thus but we want to do this. If the ZBA approved it then that was the stamp of approval going forward, but they were not the enforcement arm of zoning – that fell under the discretion of the building inspector and his department because they spent a lot of time and had the expertise to interpret not only the building code but the zoning rules and it separated it totally from the planning department and commission who had their own set of tests and functions before them, so the ZBA became a whole animal into itself. It was not used for enforcement but for interpretation and changes; allowances to do something outside of the written law. Chair Parachini noted that was there</p>	

SUBJECT	DISCUSSION	ACTION
	<p>and this is here. Chair Parachini welcomed Planning Director Mike Dahilig to the meeting and stated that the question is on the revised wording that was received.....</p> <p>Mr. Dahilig said he had a discussion with the County Attorney about this subsequent to the last discussion with this Commission. Chair Parachini told Mr. Dahilig that what sparks this Commission’s interest is in Section 14.12 the words “wherever possible” and asked how important is that? Mr. Dahilig thought that language was part of the discussion regarding the demographic makeup of the ZBA and there was a desire to have it parallel the type of demographic makeup the current Planning Commission has pursuant to its makeup. Mr. Dahilig said he personally is indifferent as to whether it is included or not included in the language. What is more critical for the Planning Department is that there is such an entity to actually handle the current overload that the Planning Commission is currently under. Chair Parachini said they just looked at the existing Charter language defining the membership of the Planning Commission and that these two words specifically or anything equivalent to it do not appear. Mr. Dahilig believed it is in the enabling ordinance in Chapter 8 of the Kaua‘i County Code that has the demographic makeup of the Planning Commission where 2 members are environmental, 2 are business, 2 are labor and one.....</p> <p>Chair Parachini asked if the ordinance had language equivalent to “wherever possible”. Mr. Dahilig did not know if that was their language or the language that was included as part of the desire of the (Planning) Commission. If asked whether the Department would or would not support this he would reiterate they are indifferent to that language. Mr. Wong asked if it would be possible because of the broadness of the qualifications if they eliminated “wherever possible” and left it that the Planning (sic) Commission shall have at least one memberwith it being so broad, awareness of environmental concerns by way of a person’s education, training, occupation, or experience – there is sufficiently broad language</p>	

SUBJECT	DISCUSSION	ACTION
	<p>there where you could probably find somebody in that category. There is sufficiently broad language for business concerns and there is sufficiently broad language with respect to labor concerns. If we eliminated “wherever possible” does that significantly deter the ability of finding people for this Board? Mr. Dahilig said he would characterize it with the difficulty the County already faces with respect to filling the seats is in some respects monumental. To narrow the pool of individuals that a particular seat may or may not be intended for may pose a logistical question for the Boards and Commissions Office because that does not fall under the purview of Mr. Dahilig’s department. It really becomes a policy question for this body whether having such a balance is purposeful and intentional versus making sure there are five members to actually conduct the work. Mr. Dahilig again said he would be indifferent in terms of whether it is included or not included, but it may pose some logistical questions for finding the (inaudible) volunteers. It was determined that might be a better question for Mr. Furfaro. Mr. Wong asked how much difficulty if they made the language similar to what is in the Charter currently with respect to the Planning Commission where it says “shall have” and eliminate “wherever possible” – does it significantly minimize the ability to attract five qualified individuals. Mr. Furfaro said they do have some challenges currently and that is with the Building Board of Appeals which is very specific for skill levels to be part of that commission and Mr. Furfaro said he has not be able to get that commission up to a full agendaed group. It is a matter of finding an architect, an electrician and a plumber, but with the Planning Commission those issues are ones that also deal with a larger overview of zoning issues - that has a tendency to tell him that candidates are also very concerned about the disclosure reports. The skill, the labor association, and the disclosure all make it difficult. The “wherever” would probably be a welcome. Asked if there was a board that did not have a representative of labor on it and they filled the ZBA is that something that would concern the Director to be missing one of those key areas? Mr. Dahilig said his primary</p>	

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	<p>concern is the fact there is a body – whether the body should be balanced based on life and work experience is a policy question best left for the discourse of this body. Mr. Dahilig said he is not there to stack the Board a certain way; he is looking for the administration of justice when it comes to the contested case hearings. If this Commission feels it is appropriate to have a balance in terms of adjudicating administrative procedures with our contested case hearings then he is fine with that. Mr. Wong asked if there was a check and balance inherent in it if we just say “wherever possible” – doesn’t the Council have to approve the Commission and if they feel it is out of balance they can say no – it is out of balance. If we leave “wherever possible” in the Council still has the ability to approve this person. Mr. Furfaro said the process is that the nominees come in from the Administration. They are subject to a review and interview by the Council. The Council can vote yea or nay on an individual but he did not know what the interpretation would be for them to say to what degree they can reject somebody’s skill level but having 5 commissioners – two at-large and one of the three conditions we are looking for in professional skills might be a reasonable way to go, but not to put all 5 into that kind of category. Mr. Justus wanted to make sure this version is the version Mr. Dahilig is finally happy with and the reason he had a question was the County Attorney came into the last meeting and was very concerned about the phrase “wherever possible” because he was concerned about potential legal snafu if the County does not comb through the entire island of what would be considered possible. It says in this language, which is different than what the Planning Commission language is, the Planning Commission language does not have the phrase “wherever possible”. It also states that one member “shall” have such and such criteria whereas this (proposal) states one member “should” which is a more ambiguous term. Mr. Dahilig said if it does concern the body in terms of being this prescriptive what could be an option is if the makeup of the Zoning Board of Appeals is prescribed by ordinance and leave it up to the lawmakers to determine how to designate.</p>	

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	<p>Rather than prescribe it at this point, because the Planning Commission language is not prescribed it is done by ordinance, then you can indicate it by stating as prescribed by ordinance and the Zoning Board of Appeals shall be balanced in its makeup and that leaves it up for interpretation. Chair Parachini just reviewed the minutes to see what County Attorney Trask said at the last meeting and he did question the ambiguity of that and asked if Mr. Dahilig was saying “wherever possible as defined by ordinance”. Mr. Dahilig said if they are looking at the issue of whether to force the makeup as being one from each of these three groups versus trying to provide flexibility in the event that logistically you can’t find a member his suggestion would be to let the lawmakers try to resolve it via ordinance to try to sort out that balance of making sure we have an operating board versus having something that is too prescriptive in nature. “Wherever possible” – we gave a position on this but if you feel that given the timeline for the deadlines that are coming forth and trying to resolve that particular phrase it can be left up to the legislative process there are ways to do that as well. Chair Parachini said what he was hearing was that the Planning Director is indifferent to whether the words “wherever possible” remain in or go, but Mr. Furfaro is looking for the flexibility that the “wherever possible” phrasing would provide to the Boards and Commissions Office. (Mr. Furfaro was off microphone and there was over-talking by members)</p> <p>Mr. Justus said in the proposal it says at least one member should have the knowledge and asked Mr. Furfaro if that did not give him the same flexibility without the phrase “wherever possible” because it is saying should instead of shall. Mr. Furfaro said he is not married to “wherever possible” but he is married to the fact that at least three of them should be skill levels. Mr. Justus again repeated should but not required to which Mr. Furfaro said it depends on where you go with the search. Chair Parachini said it was fair to say with the language including “should” incorporated that they could lose “wherever possible” without causing the Boards and</p>	

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	<p>Commissions Office heartburn. Chair Parachini noted there was a motion on the floor to approve the revised language.</p> <p>Attorney Dureza asked if the Commission was just approving the body of the proposed amendment or were they also addressing the Findings and Purpose as well. Attorney Dureza said he had reviewed the Findings and Purpose and he would like to make a suggestion. Attorney Dureza addressed the first sentence of the last paragraph saying he did not think that was necessarily the most accurate. He thought it would be more accurate to say “establish a five person zoning board of appeals that would hear appeals of the planning director’s decision regarding zoning and subdivision ordinances and that would conduct evidentiary hearings per the request of the planning commission regarding the same”.</p> <p>Chair Parachini called for a Roll Call Vote on the main motion to accept the statement of Findings and Purpose as revised by the amendment and the wording as revised of the article itself. Attorney Dureza indicated he thought the Commission had adopted his language change for the Ballot Question so it was good.</p>	<p>Mr. Justus moved to amend the proposed amendment to strike the words “wherever possible” from section 14.12. Ms. Stiglmeier seconded the motion. Motion carried 6:0</p> <p>Mr. Wong moved to amend the Findings and Purpose to accept the language as the Attorney has suggested. Mr. Justus seconded the motion. Motion carried 6:0</p> <p>Roll Call Vote on the main motion as amended: Aye-Justus; Aye-Perel; Aye-Stack; Aye-Stiglmeier; Aye-Wong; Aye-Parachini. Motion carried 6:0</p>
	<p><u>CRC 2016-10 Discussion of public education strategy and how to relate to the voters full text online publishing versus summaries published in the newspaper</u></p> <p>Chair Parachini asked Mr. Furfaro to explain what has typically been done in the past. Mr. Furfaro said there have been several versions of</p>	

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	<p>publications that have gone out with the formatted ballot questions. There have been public meetings and the ability to put radio messages out there, but working closely with the County Clerk in advance of the elections to have a good clean draft narrative that goes along with each of the questions. Using media and public meetings have all been part of it. Mr. Furfaro has also been researching printed media with more information to follow.</p> <p>Ms. Davis told the Commission that the purpose of this agenda item is this body needs to determine how it gets into print and do they pursue the educational aspect using “pros and cons” or “yes or no” qualifiers. In the past this Commission eliminated using the “no” qualifier because the Commission felt they were proposing the correct changes so why tell people not to vote for something that you are for. This is the strategy needed to give to the (County’s) Public Information Office so they can start putting together something in writing for the Commission’s approval. The question is what method does the Commission want to use to educate the public?</p> <p>Mr. Wong said he thought they would want try to explain why they are amending the Charter and he did not think the “pro and con” approach makes sense based on the earlier comments. We should just say here are the reasons why we felt it was important to amend the Charter and then let the people decide. Ms. Davis added that if you tell someone to vote no that means there is no change.</p> <p>Chair Parachini asked what is the sequence? The Commission makes this determination and Boards and Commissions communicates that to Ms. Daubert’s Office. What further interaction is there? Ms. Daubert would work from the Findings and Purpose statements, correct? Ms. Davis said that office would work with the Findings and Purpose statements, the ballot questions and the proposed amendment, but most of that information would</p>	

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	<p>probably be gleaned from the Findings and Purpose which pretty well states why you are proposing a change. Mr. Furfaro reminded the Commission that it then does come back to them for final approval.</p> <p>Mr. Justus said that he and Mr. Stack are the longest serving members of this Commission and have been through many different public education things and may have experience as to what has and has not worked in the past. Mr. Justus said from his experience anything they did using Ho‘ike television to show people the amendments and to explain their reasoning reached a really wide audience and got pretty much all of the ballot questions passed. In the 2012 election Mr. Justus said he was called by The Garden Island Newspaper and they asked him about the charter amendments and what they meant and why people should vote for them. People thanked Mr. Justus for helping them understand the charter questions and he suggested they set up interviews with The Garden Island newspaper as it apparently does have an effect. He further said he did not know how effective ads would be. Ms. Davis explained that outreach (for public education) is scheduled for the following month’s agenda. Today they need to determine what format to educate people with. What message does the Commission want to send and in what format.</p> <p>Chair Parachini said he found himself longing for California where they receive in the mail a publication that has all of the wording of all the initiatives plus arguments in favor, rebuttal to arguments in favor, arguments against and rebuttal to arguments against. That is not where we are and our capability of doing that kind of package does not exist. Mr. Furfaro said in 2002, 2004 and 2006 those charter amendments came through the County Council (sic) and that was where they had the yes and noes attached to the ballot question. As pointed out, you are promoting a ballot you worked on and that a majority of you want to get passed so that is one of the questions – is the pro and con going to be part of the question.</p>	

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	<p>Ms. Stiglmeier asked what the budget is that they have to work with to promote these amendments as narratives; pros and cons might be longer and take up more newspaper space. Mr. Furfaro said they spent \$5,200 last year and that is about the same number they have this year. The media piece is currently estimated around \$1,800 but that is dependent on the final number of amendments and how much publication is needed. Ms. Davis stated this year they can publish the charter with all the corrections online with a summary being published in the newspaper to include a referral to go online for the full text/changes. Mr. Wong thought with the budget they had the emphasis should be on putting out the reasons why the Commission thinks these are effective charter amendments and why they should be passed. Mr. Wong was certain that with any charter amendment in the past, hypothetically someone doesn't like gender neutral language because they feel that is just being politically correct and they don't like that they will then mount a campaign to inform people to vote against it. The public is going to get the information they need. It is the Commission's job to say why we think it is important and those opposed to anything we have will mount a campaign to present their side.</p>	<p>Mr. Wong moved to propose wording that demonstrates why we feel these amendments are important. Mr. Perel seconded the motion. Motion carried 6:0</p>
	<p><u>CRC 2016-09 Request dated 4/27/16 to the County Clerk to appear before the Commission to provide an update on the status of the preamble</u></p> <p>Mr. Wong asked for a summary on the issue of the preamble. Mr. Justus said sometime back he found in the Clerk's records one of the old charters that had listed a preamble in it. In doing more research to find out what happened, half of the old charter commission minutes are missing but he did find minutes where (the Charter Commission) approved the preamble as part of the charter. Mr. Justus also found in the KCC Library a copy that was printed from The Garden Island newspaper of the approved charter</p>	

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	<p>from 1968 with the first page listing all of the Councilmembers of the time with the first page showing the preamble and the next page beginning with everything we know of the charter today. But every charter since that time has not been printed with the preamble even though it was voted on and approved by the public so it should be in the charter. Mr. Justus brought this to the Commission who decided to find out from the County Clerk what happened and we are still waiting to find out if there is any reason why it should not be included. We got an opinion from our Deputy Attorney who said preambles by the US Supreme Court are considered non-substantive so it does not have to be in the charter. That being said there is no reason why it shouldn't be in there considering the public already approved it; it would be like removing the preamble from the Constitution. Mr. Wong asked if there was any other information the County Clerk could give us that would help us make a decision because if we know what the preamble is we can say we recommend it is or it is not included. Deputy Attorney Dureza said it is a preamble and it is non-substantive. Mr. Wong said as a Commission they can vote that we think it is or is not important to have in the charter. Mr. Justus said that Attorney Dureza was saying they do not have the authority to do that. Mr. Wong said if they are being told they don't have that authority then they should kill this item – why keep dragging it around if it is not within the Commission's authority to debate. Attorney Dureza said the fact that it is not published in the official (charter) does not mean it is deleted. Mr. Justus said it came up because they were doing non-substantive changes and the question was do we need to include this back into the charter in our non-substantive package or is this something the County Clerk can just reinsert back into the charter considering it was already approved. We are finding out whether the County Clerk can just put it back in. Mr. Justus was asked to read the wording of the preamble. Mr. Stack said the preamble is non-substantive and cited the one that precedes the US Constitution. That is not law – that is someone's opinion. In academia a preamble is known as an abstract and is simply a preface as</p>	

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	<p>to what the document is going to say. Whether we do it or don't do it is irrelevant.</p> <p>Mr. Perel said he was in favor of including it – it is a descriptive piece and sets a tone for what the thought was when the charter was adopted. It does no harm and it does good because it lays out the thought and the plan that went into the acceptance of the charter. He is in favor of adding it even if it is not a legally substantive item. Ms. Stiglmeier said based on what their Attorney has said they do not have that authority anyway.</p>	<p>Mr. Wong moved to remove CRC 2016-09 from the Commission's things to do. Ms. Stiglmeier seconded the motion.</p> <p>Roll Call Vote on the motion: Nay-Justus; Nay-Perel; Aye-Stack; Aye-Stiglmeier; Aye-Wong; Aye-Parachini. Motion to remove from the agenda carries 4:2</p>
<p>Announcements</p>	<p>Chair Parachini noted they had changed the meeting time from 4:00 p.m. to 2:00 p.m. in recognition of the possibility of a protracted discussion, but he is aware of one commissioner who finds the timing inconvenient as relates to her job. A compromise was proposed to schedule the meeting at 3:00 p.m. There was a discussion of what work before the Commission now needs to be completed before considering future election amendments.</p> <p>Next Meeting – Monday, June 27, 2016 at 3:00 p.m.</p>	
<p>Adjournment</p>		<p>Mr. Stack moved to adjourn the meeting at 4:10 p.m. Mr. Wong seconded the motion. Motion carried 6:0</p>

Submitted by: _____
 Barbara Davis, Support Clerk

Reviewed and Approved by: _____
 Allan Parachini, Chair

- Approved as is.
- Approved with amendments. See minutes of _____ meeting.