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The Office of Information Practices (OIP) is authorized to resolve complaints concerning compliance with or applicability of the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Johann P. Lall
Board: County of Maui Planning Commission
Date: June 30, 2025
Subject: Sufficiency of Minutes (S APPEAL 23-12)

REQUEST FOR OPINION

Requester seeks a decision as to whether the Maui County Planning Commission's (Commission) written summary of recorded minutes violated the Sunshine Law by failing to record all votes made by the Commission at a meeting.

Unless otherwise indicated, this decision is based upon the facts presented in an email from Requester to OIP dated June 13, 2023, with an email thread and two attachments; an email from OIP to the Commission dated June 29, 2023, with three attachments; an email from OIP to Requester dated June 29, 2023; an email from Requester to OIP dated July 12, 2023, with an attachment; an email from OIP to Requester dated July 6, 2023, with an email thread; an email from Requester to OIP dated July 12, 2023, with an email thread; and an email from the County of Maui Department of Corporation Counsel (Corporation Counsel), on behalf of the Commission, to OIP dated July 14, 2023, with an attachment.

QUESTION PRESENTED

Whether the Commission complied with the Sunshine Law's requirement to include a written summary with specified information as part of its recorded minutes.

BRIEF ANSWER

No. The Commission failed to document all motions and votes by individual members, as required by section 92-9(b)(3), HRS, in the written summary accompanying the meeting recording. Several significant motions were omitted from the summary despite being present in the meeting recording. The written summary also included incorrect time stamps for motions and votes, violating section 92-9(b)(4), HRS. These inaccuracies hindered public access to key decision points in the recording. Therefore, OIP concludes that the Commission did not comply with the Sunshine Law's written summary requirement for recorded minutes. However, the Commission took corrective action to help mitigate public harm by subsequently posting complete written minutes that were akin to a transcript.

FACTS

On March 28, 2023, the Commission held a remote meeting (Meeting) under section 92-3.7, HRS,¹ to conduct a public hearing on a request for a special management area (SMA) use permit (agenda item C.2) and proposed amendments to its Special Management Area Rules and Shoreline Rules (collectively Rule Amendments) (agenda item C.3), and to hear, among other things, a motion to reconsider the Commission's decision in a contested appeal of a SMA use permit

¹ The Meeting notice stated that "pursuant to chapter 92, part 1, Hawaii Revised Statutes as amended, notice is hereby given of a regular remote public meeting." Section 92-3.7, HRS, allows boards to hold remote meetings where board members and the public participate from various non-public locations as well as at least one physical meeting site, all connected via a remote meeting platform.

(agenda item D)² and the Director's report (agenda item E).³ The Meeting started at approximately 9:06 a.m., and adjourned at 10:06 p.m. The entire Meeting was recorded, and although the Commission recessed at times during the thirteen-hour span, the recordings show that the meeting effectively lasted all day and into the night. On March 31, 2023, the Commission posted on its website a written summary of recorded minutes, which hyperlinked eight segments or chapters of the Meeting's audio recordings. That same day, the Commission posted written minutes only for agenda item D.

On June 13, 2023, Requester appealed to OIP, asking whether the Commission's written summary of recorded minutes violated the Sunshine Law by failing to record every vote made by the Commission at the Meeting. Requester specifically noted that the following time-stamped⁴ votes were missing:

6:37:15 Vote on phrase to keep in language for ground altering
cultural and natural resource impacts [written minutes
(WM): p. 133]

² Section 92-6, HRS, exempts the "adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of" the Hawaii Revised Statutes. The Commission does not assert on appeal that any of the matters heard at the Meeting are adjudicatory hearings exempt from the Sunshine Law. OIP takes notice of the Commission's meeting materials for this Meeting pursuant to section 2-73-15(f), HAR. The agenda, minutes, and meeting materials indicate that agenda item D was not conducted under the Sunshine Law, as public testimony was not accepted for this item only. Instead, the Commission held a contested hearing under section 12-202-31 of Title MC-12, Chapter 202 Special Management Area Rules for the Maui Planning Commission and section 205A-29, HRS. Although item D may be exempt from the Sunshine Law, none of the missing motions and votes at issue in this appeal relate to agenda item D. OIP therefore finds it unnecessary to determine whether item D was exempt from the Sunshine Law under section 92-6, HRS.

³ In OIP Opinion Letter F25-04 (Opinion F25-04), OIP examined whether the same Commission violated the Sunshine Law by failing to consider testimony submitted for the initial public hearing on the Rule Amendments on February 7, 2023, which was rescheduled to February 28, 2023, and again to March 28, 2023—the same meeting at issue in this appeal. OIP noted that although the Commission was required to conduct a public hearing on the Rule Amendments in accordance with section 91-3, HRS, because the Commission held the public hearing at a board meeting, it was also required to comply with the Sunshine Law's notice and open meeting requirements (e.g., to accept testimony). OIP Op. Ltr. No. F25-04 at 3 n.1. Like this appeal, Opinion F25-04 was "limited to the Commission's obligations under the Sunshine Law, as OIP lacks jurisdiction over the requirements of chapter 91, HRS." Id.

⁴ The time stamps provided by Requester correspond with an archived video recording of the Meeting, but not with the audio recording linked in the written summary.

6:45:15	Vote on notice sign size requirement [WM: p. 137]
6:48:40	Vote on no-need for soil and archaeological testing [WM: p. 139]
7:20:45	Vote on Erosion Hazard Line without 40ft setback to comply with Working Group compromise [WM: p. 151]
7:56:30	Vote on language “named hurricanes” [WM: p. 168]
9:24:00	Vote on elevation to protect against erosion based on Working Group recommendation [WM: p. 211]
9:28:25	Vote to remove requirements for beach access as mandatory permit conditions which Chipchase considers unconstitutional [WM: p. 212]
9:50:45	Vote on no-needs. Minor grubbing and grading now a no need 300 sqft in shoreline and 1000 sqft in SMA [WM: p. 236]
10:07:00	Vote on B&Bs and STRH and structural improvements not being subject to SMA permits [WM: p. 231]

(collectively, Missing Votes). After this appeal was filed, the Commission posted the written minutes for agenda item C.3 on July 10, 2023. Written minutes of the entire Meeting were eventually posted on the Commission’s website some time thereafter. The written minutes closely resembled a transcript.

DISCUSSION

The purpose of the Sunshine Law is to “protect the people’s right to know.” HRS § 92-1 (2012). The State Legislature declared that the only viable and reasonable way to safeguard the public interest is by opening “governmental processes to public scrutiny and participation.” *Id.* Therefore, “the formation and conduct of public policy – the discussions, deliberations, decisions, and action of governmental agencies – shall be conducted as openly as possible.” *Id.*

Section 92-9, HRS, requires boards to keep minutes of all meetings and post them on the board’s website within 40 days after a meeting.⁵ HRS § 92-9 (Supp. 2024). Boards may choose between two formats for meeting minutes: (1) written minutes, or (2) recorded minutes consisting of a recording of the entire meeting accompanied by a written summary. *Id.* Boards are not required to provide both formats. If recorded minutes are used, the written summary must include:

- (1) The date, time, and place of the meeting;

⁵ This automatic public disclosure rule does not apply to minutes of executive meetings properly closed to the public. HRS § 92-9(b). The Meeting was open to the public and did not include an executive meeting.

- (2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
- (3) A record, by individual member, of motions and votes made by the board; and
- (4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

HRS § 92-9(b) (Supp. 2024).

In this appeal, the Commission ultimately posted both written minutes of the Meeting and recorded minutes with a written summary. However, by the 40th day after the Meeting⁶ and at the time the Requester filed the appeal, only a complete copy of the recorded minutes was available on the Commission's website. Therefore, this opinion evaluates whether the Commission's written summary accompanying its recorded minutes met the Sunshine Law's requirements.

A. Record of Motions and Votes Made

Section 92-9(b)(3), HRS, requires the written summary portion of recorded minutes to include each motion and vote, identified by individual member. Legislative history indicates that the written summary should include "any significant actions taken by the board, such as the motions and votes made by the board." S. Stand. Com. Rep. No. 1487, in 2017 Senate Journal, at 1488. In response to this appeal, the Commission argued that it complied by noting the content of motions, who made them, and how each commissioner voted.

OIP reviewed the meeting recording and finds that the written summary included only three motions and votes from a meeting that lasted approximately 12 hours. OIP further finds, based on its review, that the Missing Votes occurred and were not documented in the written summary. In addition, OIP finds that other motions and votes⁷ were omitted from the written summary, including the

⁶ The 40th calendar day after the Meeting was May 7, 2023.

⁷ This is a non-exhaustive list of other motions and votes missing from the written summary. OIP notes that the Commission took several votes by asking commissioners to raise their hands without creating a record of how each individual member voted in the audio recording, written minutes, or written summary of recorded minutes (e.g., WM: p. 158). Although the Sunshine Law does not require boards to use parliamentary procedure that record each member's vote, OIP strongly recommends against non-verbal voting methods such as hand raising and nodding. These methods make it difficult to accurately record each member's vote and may hinder the board's ability to meet its obligations under section 92-9, HRS. OIP Op. Ltr. No. F24-03 at 26 n.24.

following:

- Motion by commissioner Freitas, and seconded by commissioner Pali, to add condition 11 prohibiting future tenants from warehousing or transferring large amounts of hazardous or bio-hazardous products or materials on property and requiring proof of compliance to be submitted in the project's final compliance report (WM: pp. 29-30) and vote (WM: pp. 26, 20)
- Motion by commissioner Pali to add the word fertilizer and vote (WM: p. 154)
- Motion by commissioner Pali to remove the new number one and vote (WM: pp. 156-58)

These motions relate to significant matters, including a special management area use permit and rule amendments. Section 92-9(b)(3), HRS, requires a written summary to include a "record, by individual member, of motions and votes made by the board." It does not limit that requirement only to "major" motions and votes, or to "selected" motions and votes, or otherwise qualify it. Thus, interpreting section 92-9(b)(3), HRS, to require recording only a few motions and votes in a written summary would be contrary to the plain language of the statute. For these reasons, OIP concludes that the Commission's written summary failed to record, by individual commissioner, all the Commission's motions and votes during the Meeting as required by section 92-9(b)(3), HRS. The Commission thus failed to comply with the Sunshine Law's minutes requirements set out in section 92-9, HRS.

B. Time Stamps of Motions and Votes Made

OIP, *sua sponte*, raises the question of whether the written summary of recorded minutes complied with the timestamp requirements. Section 92-9(b)(4), HRS, mandates that the written summary include time stamps for the beginning of the board's discussion of each agenda item and for the motions and votes taken by the board. The time stamps enable the public to quickly locate agenda items of interest and key actions taken by the board in a lengthy recording. The Commission asserted that it complied with section 92-9(b)(4), HRS, by including time stamps with the three motions and votes recorded.⁸ Although OIP did not verify every time stamp for accuracy, during its review of the record, OIP found at least one discrepancy between the time stamp noted in the written summary and the actual locations in the audio recordings hyperlinked in that summary that was significantly incorrect. The summary states that the first recorded motion—to approve the "Special Management Area Use Permit as recommended by the Department with the Addition of Condition 11 by the Commission"—occurred at

⁸ The written summary included time stamps for when discussion of each agenda item began, and Requester did not challenge the accuracy of those time stamps.

approximately 01:20:38, with the vote on that motion at 01:24:46 of chapter 1 of the audio recording (Ch.1 Audio). However, OIP found that this motion actually occurred at approximately 6:46:47 and the vote at 7:15:30.⁹ The Commission also did not note the time stamps for the Missing Votes. These significant inaccuracies and omissions hinder the public's ability to access key decision points in the recorded minutes.

Accordingly, OIP concludes that the Commission's written summary did not include accurate timestamps for all motions and votes, violating section 92-9(b)(4), HRS. As a result, OIP concludes that for this reason too, the Commission failed to comply with the Sunshine Law's minutes requirements set out in section 92-9, HRS.

C. Remedial Actions

After this appeal was filed, the Commission took proactive steps to improve its compliance with the Sunshine Law. It hired a professional transcription service to ensure accurate and timely posting of its minutes, conducted a Sunshine Law training for board members and staff, and re-held the public hearing on Rule Amendments (agenda item C.3) on July 25, 2023. Additionally, the Commission eventually posted written minutes, albeit after the 40-day deadline for doing so. Although these corrective actions do not cure the Sunshine Law violation, they do help to mitigate the harm to the public's right to know.

RIGHT TO BRING SUIT

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.

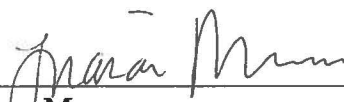
⁹ OIP retrieved these time stamps from a downloaded copy of Ch.1 Audio, which was hyperlinked in the summary. When Ch.1 Audio is streamed within an internet browser, instead of being downloaded to a computer device, the recording appears longer, and some portions may not play. Regardless, the time stamps listed in the written summary for this motion and vote are incorrect, even when the audio is streamed within an internet browser.

This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint with the circuit court within thirty days of the date of an OIP decision in accordance with section 92F-43. HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES



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APPROVED:



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