

# MINUTES

## COMMITTEE OF THE WHOLE

Council of the County of Maui

Council Chamber

July 3, 2001

**CONVENE:** 1:34 p.m.

**PRESENT:** Councilmember Dain P. Kane, Chair  
Councilmember Robert Carroll, Member  
Councilmember Jo Anne Johnson, Member  
Councilmember Michael J. Molina, Member  
Councilmember Wayne K. Nishiki, Member  
Councilmember Charmaine Tavares, Member (ar. 1:35 p.m.)

**EXCUSED:** Councilmember Alan M. Arakawa, Member  
Councilmember G. Riki Hokama, Vice-Chair  
Councilmember Patrick S. Kawano, Member

**STAFF:** Richelle K. Kawasaki, Legislative Attorney  
Gary Saldana, Legislative Analyst  
Pauline Martins, Committee Secretary

Morris Haole, Executive Assistant to Councilmember Carroll

**ADMIN.:** Victoria Takayesu, Deputy Corporation Counsel, Department of the Corporation Counsel

**PRESS:** None.

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CHAIR KANE: Council's Committee of the Whole will come to order. For the record, we have Councilmembers Carroll, Johnson, Molina and Nishiki present. Excused is Kawano, Arakawa, Hokama and Tavares. We also have with us today--Tori Takayesu from Corporation Counsel--our Deputy as well as staff . . . uh . . . Pauline Martins and Richelle Kawasaki-Lu. Good afternoon, members. We have one item on the agenda today.

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COW-11(5) MODIFICATION OF CHARLTON AND FAYE WALLACE'S DAMAGE CLAIM  
NO. 96-102

CHAIR KANE: If you can please direct your attention to Item No. COW-11(5), the modification of Charlton and Faye Wallace's Damage Claim No. 96-102. Members . . . uh . . . just a little bit of background. This claim results from a, an alleged flooding of the Wallace's home on Moloka'i. Authority to settle this claim was originally granted when the Council adopted resolution No. 00-7, and this was done last term . . . uh . . . back in January of 2000. For those of you who--I think both Wayne and I are familiar with this particular one. For the new members . . . um . . . that allowed the Council to make final decisions on claims. In other words, if Corp. Counsel and/or Administration decided that they would reject a claim, the Council--through resolution authority--would be able to take a final look at that before moving forward with any type of claim consideration. For the record, we also have Member Charmaine Tavares--good afternoon, Charmaine.

COUNCILMEMBER TAVARES: Hi . . . (*inaudible*) . . .

CHAIR KANE: No problem--we got your message. So this was the first of many. This was the first one and then we dealt with the Lahaina claims right after that. Okay, and so this was the very first one. We, actually, did a . . . uh . . . again--for the old members--we did a site inspection. We went out to the property. We did have . . . uh . . . some discussions. We went into executive session and we did come out with a settlement amount. Up to now, the . . . uh . . . claimant or the res., the receiver of this check that we've sent has rejected the check.

MS. TAKAYESU: Correct.

CHAIR KANE: And she has made . . . uh . . . at first, outright rejected it. And then later communicated to us that she would accept if certain things were considered . . . um . . . and the Chair's comments--and I will reserve it for after . . . uh . . . Ms. Takayesu gives her comments--is gonna be supportive of it because it will be consistent or in-line with the, how we dealt with the Lahaina claims as well. So . . . uh . . . I'll let . . . uh . . . I'll give the floor to Tori from Corp. Counsel and then we'll go from there, members.

MS. TAKAYESU: Thank you. There's not too much to add except that the provision that the Wallace's had an issue with regarded a bar on future claims. I'd like to discuss that further in executive session. Just for the record, this was flood damage that occurred on November 12, 1996 in Moloka'i.

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CHAIR KANE: We have six members. We would be able to go into executive session. you feel that what . . . has to be said in exec., does it have to be said in executive session? Or can we, can your comments be general enough to keep it in open session? And unless we have any types of questions that may be of a sensitive nature . . . uh . . . I would prefer to just keep it in open session.

MS. TAKAYESU: Sure.

CHAIR KANE: I think that number is already . . . out in front. We've already disclosed the dollar amount in the resolution. There's no request for any increase in that . . . um . . . and I think the consistency with the Lahaina claims--they've already been disbursed as well.

MS. TAKAYESU: Uh-huh.

CHAIR KANE: So, I think we're--I don't know what we would be able to discuss in executive session that would put us in harm's way, so to speak. So--

MS. TAKAYESU: Okay.

CHAIR KANE: --Tori, why don't you go ahead.

MS. TAKAYESU: Fine. . . . *(chuckled)* . . .

CHAIR KANE: I mean just cautiously but . . . uh . . . go ahead and continue your comments.

MS. TAKAYESU: Okay. Specifically, what the Wallace's object to is Paragraphs 3.1 of the Settlement Agreement. In that particular paragraph . . . um . . . we had asked that the Wallace's waive any future claims on any future flood damage. They have a problem with that because apparently they feel that future flood damage may occur--the County may be responsible and they don't want to waive their future rights. And as Councilmember Kane had mentioned, this was the first of the flood claims that the Council had discussed. At that time, I think there was some discussion on how to handle this because . . . um . . . legally, they weren't on very firm ground. Eventually, with the Lahaina flood claims, the . . . um . . . consensus was not to insist on that provision and to allow them to go ahead. If there is future flood damage, they could file their claims--that doesn't mean that we would accept them or, or . . . uh . . . grant them. So, in tho., in the interest of fairness and consistency, the recommendation of Corporation Counsel is to amend that provision to delete the waiver . . . blah . . . insist on the waiver of any future flood claims.

CHAIR KANE: Members, any comments or questions, or concerns, or issues? Yes, Ms. Tavares?

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COUNCILMEMBER TAVARES: Yeah. If that makes it consistent with the other claims then I don't see a problem with us waiving it and then we would be reviewing the ne., future claims anyway.

CHAIR KANE: Exactly.

COUNCILMEMBER TAVARES: Yeah.

CHAIR KANE: And just to follow up on that comment, Member Tavares. The only reason the Chair is supporting this is because it brings it in line. It's consistent with how we've dealt with other claims as well.

COUNCILMEMBER TAVARES: Okay.

CHAIR KANE: To limit one and then give something else to somebody else, I think, would not be good policy. So . . . uh . . . we're not looking at an increase in dollar amount. There were some issues there but they've been willing to, since resolved that issue. So . . . uh . . . Chair's recommendation is to approve the modification.

COUNCILMEMBER NISHIKI: So moved.

COUNCILMEMBER MOLINA: Second.

COUNCILMEMBER CARROLL: Second.

CHAIR KANE: It's been moved by Nishiki, seconded by Molina. Any further discussion on this matter? Hearing none, all in favor, say "aye".

COUNCILMEMBER NISHIKI: "Aye".

COUNCILMEMBER MOLINA: "Aye".

COUNCILMEMBER TAVARES: "Aye".

COUNCILMEMBER CARROLL: "Aye".

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CHAIR KANE: Opposed?

**VOTE: AYES: Councilmembers Carroll, Johnson, Molina, Nishiki and Tavares, and Chair Kane.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Arakawa and Kawano, and Vice-Chair Hokama.**

**MOTION CARRIED.**

**ACTION: ADOPTION OF PROPOSED RESOLUTION.**

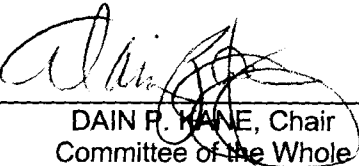
CHAIR KANE: It's been carried unanimously by the body here for recommendation to the full Council. Members, thank you very much. I think that's the fastest COW Meeting we've ever held.

MEMBERS: . . . (*chuckled*) . . .

CHAIR KANE: And if there are no announcements, this meeting is adjourned.

**ADJOURN: 1:40 p.m.**

APPROVED BY:

  
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DAIN P. KANE, Chair  
Committee of the Whole

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Transcribed by: Pauline Martins