

COMMITTEE OF THE WHOLE
Council of the County of Maui

MINUTES

August 6, 2009

Council Chamber, 8th Floor

CONVENE: 9:01 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Danny A. Mateo, Vice-Chair (In 9:02 a.m.)
Councilmember Gladys C. Baisa, Member
Councilmember Sol P. Kaho‘ohalahala, Member (In 9:11 a.m.)
Councilmember Wayne K. Nishiki, Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Jo Anne Johnson, Member
Councilmember Bill Kauakea Medeiros, Member

STAFF: Kirstin Hamman, Legislative Analyst
Camille Sakamoto, Committee Secretary

ADMIN.: Marian Feenstra, Executive Assistant, Office of the Mayor (Item Nos. 2(6) and 2(7))
Tamara Horcajo, Director, Department of Parks and (Item No. 1(10))
Tracy Takamine, Chief, Solid Waste Division, Department of Environmental
Management (Item No. 1(13))
Adrienne N. Heely, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item Nos. 2(6) and 2(7))
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation
Counsel (Item Nos. 1(10) and 1(13))

PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR MOLINA: ...*(gavel)*... The Committee of the Whole meeting for August 6, 2009 is now in session. For the record, we have in attendance Committee Members Gladys Baisa, Wayne Nishiki--

COUNCILMEMBER BAISA: Morning, Chair.

CHAIR MOLINA: --Joseph Pontanilla, Mike Victorino, and Committee Chair Mike Molina.

COUNCILMEMBER VICTORINO: Good morning, Chair.

CHAIR MOLINA: Good morning. Good morning, everyone. Excused from our proceedings this morning, we have Council Vice-Chair and Committee Vice-Chair Danny Mateo,

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Committee Member Jo Anne Johnson, Committee Member Sol Kaho'ohalahala, and Committee Member Bill Medeiros. Members, we have a . . .um. . .fairly light agenda today.

COUNCILMEMBER VICTORINO: . . .*(laughter)*. . .

CHAIR MOLINA: At this point, so the Chair is confident we can take care of business in a very expedient manner this morning. And joining us is our wonderful Staff. We have our Legislative Analyst Kirstin Hamman, and Committee Secretary Camille Sakamoto. And from the Corporation Counsel's office we have Adrienne Heely. And from the Mayor's Office, we have Marian Feenstra. Committee Secretary, do we have anyone signing up for testimony today?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay. Seeing no one in the gallery. . .you know coming up to sign up for any of our agenda items, if there are no objections, Members, the Chair will close public testimony for our agenda items today.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay, seeing no objections and ordered by the Committee, public testimony will be closed on all of our agenda items this morning. And joining us is the Council Vice-Chair Danny Mateo, for our proceedings this morning. Good morning, Mr. Mateo.

VICE-CHAIR MATEO: Morning.

CHAIR MOLINA: All right, Members, let's get right down to business. We will start, first, with Committee of the Whole Item 2(6), nominations to boards, committees, and commissions.

**ITEM NO. 2(6): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS
(VARIOUS)**

CHAIR MOLINA: The Committee is in receipt of . . .of a correspondence dated July 21st, 2009, received on July 22nd, from the Mayor, requesting consideration of the following nominees to boards, committees, and commissions requiring Council approval or disapproval within 60 days for terms expiring as indicated. First, to the Board of Variances and Appeals, Ray Shimabuku, replacing John Torchiana, for a term expiring on March 31st, 2014. Second, to the Commission on Children and Youth, Sunny Cabello, replacing Lydia Lee, for a term expiring on March 31st, 2011. Third, to the Cost of Government Commission, Ivan Lay, replacing Gina Marie Flammer, for a term expiring on March 31st, 2010. And fourth, to the Salary Commission, Agnes Terao-Guiala, replacing Douglas Levin, for a term expiring on March 31st, 2010. And just as a reminder, Members, the Council must approve or disapprove these nominations by September 20th, 2009 or the nominations will be deemed approved. And I'll turn matters

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over to Ms. Feenstra from the Mayor's Office for additional comment on these nominations. Ms. Feenstra?

MS. FEENSTRA: Good morning, Committee Chair Mike Molina, Council Members. Mayor would like to thank the nominees, their willingness to serve our community as volunteers to the boards, commissions, and committees. She would also like to take this opportunity to thank those who served and for the various reasons have needed to resign. Thank you, Council Members, for your consideration of these nominees today.

CHAIR MOLINA: Okay. Thank you, Ms. Feenstra. Prior to opening up the floor for questions, for the record, the Committee did. . .I guess try to get responses from each of your offices as to, asking any of the nominees to appear this morning. Ms. Sakamoto, did we get the three, any three Members requesting any of the nominees to appear for questioning. . .questions from the Committee this morning?

MS. SAKAMOTO: Mr. Chair, of the Members that responded, no one requested any interviews with the nominees.

CHAIR MOLINA: Okay. All right. We just wanted to note that for the record. All right, Members, the floor is now open for questions to Ms. Feenstra related to any of the nominees for the boards and commissions. Mr. Victorino?

COUNCILMEMBER VICTORINO: Really no questions. I just wanted to say that most of these people on this list, I'm familiar with, have dealt with in various aspect in our community. And I'm very grateful they've come forward to. . .volunteer their services. You know, it's not easy. . .situation to be many times. You have been, like myself, on various boards and commissions. And sometimes the criticism and the other aspects of that while you serve for a measly no compensation and a lot of time and effort, you know, it, it's difficult. And we're finding it harder and harder to get people. So most of these people, like Ray and the rest that have been around, and Sunny and Ivan. . .I've known. . .I'm really thankful they're here and they're willing to help us and assist us on our boards and commissions. So, Mr. Chair, I'd like to say I support. . .and that's why I had no question, no problem with interviews. I said, no. When I read over them, I said I'd liked to see them aboard. So I can support whatever recommendation you make, Chair. Thank you.

CHAIR MOLINA: All right. Thank you very much, Mr. Victorino. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chairman. I share the same sentiments. I've worked with some of these people in the past and continue to work with them. They are high. . .they have high integrity in regards to the things that they do. So, Chairman, I am willing to move forward on this. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Ms. Baisa?

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COUNCILMEMBER BAISA: Thank you very much, Chair. I, too, did not request any presence, the presence of any of the nominees today. It's unusual that we have a tremendous amount of folks that, you know, we are excited about that are gonna be a real asset to us. I know all of them and have worked with one of who, with them in one. . .capacity or another. But I did want to especially say thank you to and mention the service of Gina Flammer. I've had the opportunity to get to know Ms. Flammer as a member of the, she's the current President of the Kula Community Association. And she's an outstanding woman and has worked *really*, really hard on the Cost of Government Commission. And we're going to miss her, and we thank her very much. But we're not gonna cry too much because the reason why she's resigning is *because* we have her now as a member of our County staff--she has received a position in Planning. So we have her working for us anyway. So I'm ready to vote on this. Thank you very much.

CHAIR MOLINA: Okay. Thank you very much, Member Baisa. Mr. Mateo?

VICE-CHAIR MATEO: Chairman, thank you. And I, and I echo the same sentiments as the other Members. And I'd just like to ask Ms. Feenstra whether or not these individuals as submitted to us, these individuals actually submitted for the actual commissions, boards that they actually are being recommended for?

CHAIR MOLINA: Ms. Feenstra?

MS. FEENSTRA: Yes, they did. And. . .and in fact a number of them were willing to serve on any board of, or commission to provide support for the community.

VICE-CHAIR MATEO: Thank you. Thank you very much. Mr. Chairman, we await your recommendation.

CHAIR MOLINA: Okay, thank you, Mr. Mateo. Any--

COUNCILMEMBER VICTORINO: Mr. Chair, just one more quick comment.

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: That, that is even more admirable that these people would be willing to serve in *any* capacity. 'Cause you know many times people come in and they want one or two boards or commission, if not they don't wanna be, you know, they not, they don't wanna. . .participate. So what you're saying, Ms. Veestrom [*sic*] really encourages me that there are people like this that are out there willing to serve in *any* capacity so long as they can serve the people of Maui County. And I think that's very commendable. So thank you, Ms. Veestrom [*sic*], and I'd like to tell all those poor people congratulations and thank you very much. I wait for your. . .recommendation, sir.

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CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Any other comments or questions? For the record, Members, is there any request for separation, a separate vote on any of these. . .nominees for the boards or commissions?

. . . Okay. Seeing none, then the Chair will make, offer a recommendation.

COUNCILMEMBER VICTORINO: Recommendation?

COUNCILMEMBER BAISA: Thank you.

CHAIR MOLINA: The recommendation is to approve all of the nominees to the various boards and commissions. And again, for the record--to the Board of Variances and Appeals, Ray Shimbuku, replacing John Torchiana, for a term expiring on March 31st, 2014; to the Commission on Children and Youth, Sunny Cabello, replacing Lydia Lee, for a term expiring on March 31st, 2011; and to the Cost of Government Commission, Ivan Lay, replacing Gina Marie Flammer, for a term expiring on March 31st, 2010; and to the Salary Commission, Agnes Terao-Guiala, replacing Douglas Levin, for a term expiring on March 31st, 2010.

VICE-CHAIR MATEO: Chairman?

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay--

VICE-CHAIR MATEO: Chairman, I, I--

COUNCILMEMBER VICTORINO: Oh . . .

CHAIR MOLINA: Go ahead, Mr. Mateo.

VICE-CHAIR MATEO: Chairman, thank you.

UNIDENTIFIED SPEAKER: . . .*(laughter)*. . .

COUNCIL MEMBERS: . . .*(laughter)*. . .

COUNCILMEMBER VICTORINO: Hoo, sorry.

VICE-CHAIR MATEO: Chairman, I move for the approval of the nominees as read by, by the Chairman.

CHAIR MOLINA: Okay--

COUNCILMEMBER VICTORINO: . . .*(laughter)*. . . I second . . .*(laughter)*. . .

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CHAIR MOLINA: Okay, Members. All right, it's been moved by . . .Committee Vice-Chair Mateo--

COUNCILMEMBER VICTORINO: . . .*(laughter)*. . .

CHAIR MOLINA: --to approve the nominations to the various boards and commissions, and seconded by Member Victorino. Floor is open for discussion.

. . . Seeing none, all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

. . . Thank you. The Chair will mark it six "ayes"; three "excusals", Members Johnson, Kaho'ohalahala, and Medeiros.

COUNCILMEMBER VICTORINO: . . .*(inaudible)*. . .

VOTE: AYES: Councilmembers Baisa, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson, Kaho'ohalahala, and Medeiros.

MOTION CARRIED.

ACTION: Recommending APPROVE nominations and TRANSMIT copy of committee report to the Mayor.

CHAIR MOLINA: Thank you very much, Members.

COUNCIL MEMBERS: . . .*(inaudible)*. . .

CHAIR MOLINA: So happy, everybody's in a good mood this morning.

UNIDENTIFIED SPEAKER: . . .*(laughter)*. . .

COUNCILMEMBER PONTANILLA: Yesterday was a hard day . . .*(inaudible)*. . .

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COUNCILMEMBER VICTORINO: Yeah, we worked hard yesterday, Chair, I want you to know that.

CHAIR MOLINA: Yeah, thank you, Members. I know we had a hard day yesterday.

COUNCILMEMBER VICTORINO: You got it.

CHAIR MOLINA: You deserve a . . .

UNIDENTIFIED SPEAKER: . . .*(laughter)*. . .

CHAIR MOLINA: . . . a lot of sunshine this morning.

COUNCILMEMBER VICTORINO: Yes.

CHAIR MOLINA: All right, our next item. . .Committee of the Whole Item 2(7), nominations to boards, committees, and commissions.

**ITEM NO. 2(7): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS
(VARIOUS)**

CHAIR MOLINA: The Committee is in receipt of a correspondence dated July 29th, 2009, from the Mayor, requesting consideration of the following nominees to boards, committees, and commissions requiring Council approval or disapproval within 60 days for terms expiring as indicated. First, to the Civil Service Commission, Arnold Wunder, replacing Ellen Pelissero, for a term expiring on March 31st, 2011; and second, to the Maui County Grants Review Committee, Gene Zarro, for a term expiring on March 31st, 2014. And once again, the Council must approve or disapprove these nominations by September 27th, 2009, or the nominations will be deemed approved. And the Chair will turn matters over, once again, to Ms. Feenstra from the Mayor's Office for additional comment regarding these nominees. Ms. Feenstra?

MS. FEENSTRA: Thank you, again, Committee Chair and Members. The following two nominees. . .have also. . .they have a lot of experience in the particular two commissions that they are being nominated for today. So I did want you to be aware of that--that their experiences. . .in those commissions are well known and. . .very well respected. And we thank them for coming forward and volunteering their services. And also thank you for. . .determining whether or not these nominees will move forward.

CHAIR MOLINA: Okay, thank you, Ms. Feenstra. Committee Members--

COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: --the floor is now open for questions. Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I did not, again, request to see either of these gentlemen 'cause I happen to know both of 'em personally and have great

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respect for both of them and wanna thank them very, very much for volunteering. They'll be *great* additions to our commissions. Thank you very much. They're great nominees.

CHAIR MOLINA: Okay, thank you, Ms. Baisa. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yes, thank you. And I'll echo the same sentiment. And. . .you know all these years, I never known Gene's first name was "John" until I read the application. I've known 'em as Gene Zarro for more years than I count. Gene and I go back 15 years or more, especially with school issues. He's always been very active and still is very active in school issues in South Maui and many other issues in South Maui. And same thing with Arnold. You know, they have been. . .they're well respected and they're gonna bring a great deal of experience to both of these commissions. So I wanna thank them upfront and thank the Mayor for making good selections. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. I, I. . .gonna be supporting both nominees. You know, I worked with both of 'em in different aspects, mainly nonprofits. And both of 'em have high integrity within the community. So, you know, Chairman, I await for your recommendation on these two individuals who I think are good nominees, very good nominees. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Chairman Mateo?

VICE-CHAIR MATEO: Mr. Chairman, thank you. Question for the Department. For Mr. Zarro, under he, his community and professional organizations and activities, it lists the Maui County Grants Review Commission. Did he serve prior?

MS. FEENSTRA: Yes, he did. He served, it was an, under a two-year term. He did replace someone. . .and his expiration was March 31st of this year. So it's, he's being appointed again--

VICE-CHAIR MATEO: Okay.

MS. FEENSTRA: There has been a gap.

VICE-CHAIR MATEO: Thank you for the clarification. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank, thank you, Mr. Mateo. Members, any other questions before the Chair offers a recommendation? Oh, good morning. And joining us for our proceedings this morning is Member Kaho'ohalahala. Mr. Kaho'ohalahala, you have the floor.

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COUNCILMEMBER KAHO‘OHALAHALA: Thank you, Chair. I, I don’t have any comments on the, the. . .the nominees, but I did, wanted to. . .take an opportunity, acknowledge the outgoing. . .member for the Civil Service Commission, and that’s Ellen Pelissero. And to thank her for her. . .her service to Maui County in her capacity. . .as a commissioner as well as in her own personal capacity. So thank her very much.

CHAIR MOLINA: Okay, thank you, Mr. Kaho‘ohalahala. And with regards to the Civil Service nominee, Mr. Wunder. . .Members, you’ll note, if you look at his application, he did serve on this Commission from 1991 to 1998. So I think he’s a solid choice to rejoin the Commission. And as you well know, recently there have been discussions related to the hiring procedures of the County. So I think with his experience, I think, I’m hoping that we can. . .you know, get some. . .maybe some improvements if possible or some very helpful suggestions to improve. . .or expediency with hiring our personnel for the County. So anyway, with that being said, the Chair will offer a recommendation.

COUNCILMEMBER VICTORINO: Recommendation?

COUNCILMEMBER BAISA: Recommendation?

CHAIR MOLINA: The recommendation is to approve the nominations, first, to Civil Service Commission, Arnold Wunder, replacing Ellen Pelissero, for a term expiring on March 31, 2011; and to the Maui County Grants Review Committee, Gene Zarro, for a term expiring on March 31st, 2014.

VICE-CHAIR MATEO: Chairman, I move for the approval of the nominations as read by the Chair.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay. The motion has been. . .moved by Vice-Chair, Committee Vice-Chair Mateo, and seconded by Committee Member Victorino. Any discussion, Members?

. . . Seeing none, the Chair will call for the vote. All those in favor, signify by saying “aye”.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

. . . Okay, thank you. The Chair will mark it seven “ayes”; and two “excusals”, Members Johnson and Medeiros.

VOTE: AYES: Councilmembers Baisa, Kaho‘ohalahala, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

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NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Johnson and Medeiros.

MOTION CARRIED.

ACTION: Recommending APPROVE nominations and TRANSMIT copy of committee report to the Mayor.

CHAIR MOLINA: Thank you very much, Members. Moving on to our next item, Committee of the Whole 1(10), regarding a proposed settlement claim of Wade H. Sanders, Claim Number 2007-080.

ITEM NO. 1(10): LITIGATION MATTERS (PROPOSED SETTLEMENT: CLAIM OF WADE H. SAUNDERS, CLAIM NO. 2007-080) (C.C. No. 09-14)

CHAIR MOLINA: The Committee is in receipt of a correspondence dated June 9th, 2009 from the Corporation Counsel's office requesting consideration of a proposed resolution entitled: authorizing settlement of Claim Number 2007-080 of Wade H. Saunders, and transmitting a copy of the claim. The claim alleges that on October 13th, 2007, Mr. Saunders was injured at D. T. Fleming Beach Park in Kapalua, Maui. The purpose of the proposed resolution is to authorize settlement of the case for 10,358 dollars and 17 cents. And from the Corporation Counsel's office, joining us this morning, we have Ms. Moana Luey. Good morning, Ms. Luey.

MS. LUTEY: Good morning.

CHAIR MOLINA: And I shall turn matters over to you to give the Committee additional overview on this matter.

MS. LUTEY: Thank you. Good morning, Council.

COUNCILMEMBER PONTANILLA: Good morning.

COUNCILMEMBER VICTORINO: Morning.

MS. LUTEY: On October 13th, 2007, Mr. Saunders was seated on a picnic table bench at D. T. Fleming beach when the bench suddenly fell off of its base and landed on his pinky finger. His finger was fractured and cut open. I have provided you with some color photographs of . . .the after effects. You can see that there is a problem with the extension of his pinky finger. I am requesting settlement authority in the amount of 10,358 dollars and 17 cents to resolve this claim. I am available for questions on this. If you wanna get

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into things like medical information or something like that, we'll need to go into executive session. But otherwise, I think we could handle this on the floor.

CHAIR MOLINA: Okay, thank you, Ms. Lutey. Committee Members, the floor is open for questions. In open session, if there's a consideration for executive session, please let the Chair know. We'll start first with Mr. Victorino, followed by Ms. Baisa.

COUNCILMEMBER VICTORINO: Okay, thank you. This accident, when this occurred, had. . .we made attempts to check these various benches and tables to make sure they were in good repair or. . .do we do that on a regular basis, or do you know . . .*(inaudible)*. . .

MS. LUTEY: My understanding, I have asked about that as well--

COUNCILMEMBER VICTORINO: Yeah, thank you.

MS. LUTEY: --is that there were some. . .checks of the benches, but now there are far more frequent. And--

COUNCILMEMBER VICTORINO: Okay.

MS. LUTEY: --we also have put up a guard to prevent vehicles from getting into the park. Apparently, there were not guards previously.

COUNCILMEMBER VICTORINO: Yeah.

MS. LUTEY: And allegedly. . .four-wheel drive vehicles would drive up onto the benches.

COUNCILMEMBER VICTORINO: Ah. . .okay.

MS. LUTEY: So. . .there, there's some belief that maybe that caused the bench of this--

COUNCILMEMBER VICTORINO: Okay.

MS. LUTEY: --particular picnic table to, to become disengaged from the base.

COUNCILMEMBER VICTORINO: Okay. And so. . .I guess the last question I have for you in this area. . .this, this, this settlement that you're proposing is acceptable by the party involved that, as far as giving up all rights and liability from this point forward?

MS. LUTEY: Yes. I've secured a release from him, basically. . .getting rid of all of his claims if it's approved by Council. He does understand it's contingent on Council approval.

COUNCILMEMBER VICTORINO: And does this--and the last question I have, is any of this money going to have to pay back any kind of medical bills from his side?

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MS. LUTEY: Yes. There is, a chunk of it goes to his medical bills. There's some wage loss--

COUNCILMEMBER VICTORINO: Uh-huh.

MS. LUTEY: --that he's claimed because he wasn't able to work while this finger was in the process of being healed. He works in the restaurant industry.

COUNCILMEMBER VICTORINO: Uh-huh.

MS. LUTEY: And then general damages, which is basically emotional distress, pain, suffering, that type of thing.

COUNCILMEMBER VICTORINO: Okay. Okay, so long as this is fair and you know, 'cause it seems even though it might have not been totally our fault, we're responsible for those benches. And. . .so I, you know, again, I'd like to. . .I always like to make sure that the person injured because of lack of. . .due diligence on our part. . .*at that time*, and hopefully now we've corrected it--

MS. LUTEY: Uh-huh.

COUNCILMEMBER VICTORINO: --that we compensate and make sure that they don't suffer in any way.

MS. LUTEY: Sure.

COUNCILMEMBER VICTORINO: Any *further* way, I should say.

MS. LUTEY: Right.

COUNCILMEMBER VICTORINO: Okay. Thank you, Ms. Lutey.

MS. LUTEY: You're welcome.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair.

CHAIR MOLINA: Okay, thank you, Mr. Victorino. Prior to recognizing Member Baisa, the Chair would like to recognize the attendance of our Parks Director, Tamara Horcajo, for this particular matter this morning. Member Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. No need to ask a question, it's all ready been answered. Thank you.

CHAIR MOLINA: Okay, thank you. Committee Members, additional questions for either Corporation Counsel or Parks Director Horcajo?

. . . Okay. . .all right--

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COUNCILMEMBER VICTORINO: . . .*(inaudible)*. . .

CHAIR MOLINA: --Mr. Victorino? Oh, excuse me, Mr. Pontanilla, go ahead--

COUNCILMEMBER VICTORINO: . . .*(inaudible)*. . .

CHAIR MOLINA: --followed by Mr. Victorino.

COUNCILMEMBER VICTORINO: . . .*(inaudible)*. . . go ahead.

COUNCILMEMBER PONTANILLA: Maybe a fast question for our Parks Director. I know some of these bench. . .benches are placed by nonprofit groups who, you know, enhance some of our parks. Those nonprofit groups that put up benches just like this--'cause this kind of reminds me of what we did for. . .certain areas, by the Lion's Club. Is there any liability. . .that releases the nonprofits should they. . .construct something like this in any of our County parks? Or do we allow them?

MS. LUTEY: . . . If you don't mind, could I answer that--

COUNCILMEMBER PONTANILLA: Sure.

MS. LUTEY: --Chairman?

CHAIR MOLINA: Corporation Counsel?

MS. LUTEY: Thank you. I, I think it would depend on what their contractual relationship is with us on that particular matter. And I haven't reviewed it in this particular case. But it would really be dependent on the contract.

COUNCILMEMBER PONTANILLA: Thank you.

MS. LUTEY: In some cases, we ask for indemnification and so forth. But. . .I'm not aware of that on this one.

COUNCILMEMBER PONTANILLA: Okay. Fine. Thank you. Thank you, Chairman.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Prior to recognizing Mr. Victorino, the Chair would like to remind everyone to turn off their cell phone--

ALL: . . .*(laughter)*. . .

CHAIR MOLINA: --and pagers.

ALL: . . .*(laughter)*. . .

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CHAIR MOLINA: Mr. Victorino, you have the floor.

ALL: . . .*(laughter)*. . .

COUNCILMEMBER VICTORINO: You know, Mr. Chair, it happens to the best of us. We tend to forget. You know the other day, my computer was on sound and it went off. So, yes, I can empathize with that. Ms. Horcajo . . .*(laughter)*. . . actually the question is for you. Um. . . what are, or do you have now a, what I call “regular. . . maintenance check or equipment check for these various benches”? And not only for D. T. Fleming, but all our parks to ensure that in the future things of this nature do *not* occur?

MS. HORCAJO: . . . We do have in place. . . a standard parks check policy now. And that the records are being kept, which should assist us in the future greatly with any kind of concerns like this that come up.

COUNCILMEMBER VICTORINO: Oh, that’s good. Because I, again, we all know that things do--especially at beach parks--deteriorate, you know, rust, corrosion, and usage and then sometimes illegal usage. So the other thing I wanted to ask you is. . . Ms. . . gee, I forgot your name. I went blank again. Corp. Counsel mentioned something about you know have guards for the, the purpose of not allowing or. . . keeping four-wheeled vehicles out of D.T. Fleming beach. Can you elaborate a little bit about these guards and what they, the purpose of them are?

MS. HORCAJO: Previously, there was a. . . a parking area that was not gated. So we have put up a gate there so that vehicles cannot. . . enter the park, as well as some post-and-rail. So. . . the vehicles that used to enter the park by either jumping the curb or going in--

COUNCILMEMBER VICTORINO: Uh-huh.

MS. HORCAJO: --through a small. . . driveway area there will not be able to go in now.

COUNCILMEMBER VICTORINO: And I will assume that is where the restroom area is when you first turn in. Is that what you’re referring to or is it further out?

MS. HORCAJO: That’s correct. Right when you first turn in, if you take a. . . a hard right--

COUNCILMEMBER VICTORINO: Right.

MS. HORCAJO: --there is a gate there now.

COUNCILMEMBER VICTORINO: Okay. Yeah, ‘cause there was none for, for, for the longest time.

MS. HORCAJO: Correct.

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COUNCILMEMBER VICTORINO: Okay. Thank you. I appreciate that. Thank you, Mr. Chair.

CHAIR MOLINA: Okay, thank you, Mr. Victorino. Committee Members, additional questions?

. . . Seeing none, the Chair will offer a recommendation.

COUNCILMEMBER VICTORINO: Recommendation?

CHAIR MOLINA: Okay, the recommendation is, the Chair will entertain a motion to approve a resolution authorizing settlement of Claim Number 2007-080 of Wade H. Saunders for a total of 10,358 dollars and 17 cents.

VICE-CHAIR MATEO: Mr. Chairman, I move for the adoption of the proposed resolution entitled: authorizing settlement of Claim Number 2007-080 of Wade H. Saunders.

COUNCILMEMBER BAISA: Chair, I second the motion.

CHAIR MOLINA: Okay. The . . . motion has been made by Chairman Mateo and seconded by Committee Member Baisa. Members, discussion?

. . . Seeing none, all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

. . . Thank you. The Chair will mark it seven "ayes"; with two "excusals", Members Johnson and Medeiros.

VOTE: AYES: Councilmembers Baisa, Kaho'ohalahala, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Johnson and Medeiros.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

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CHAIR MOLINA: Thank you very much, Members. Moving right along to our last item for this morning, Committee of the Whole Item 1(13), litigation matters, a proposed settlement, Claim of Ronald Pirone, Claim Number 2007-083.

ITEM NO. 1(13): LITIGATION MATTERS (PROPOSED SETTLEMENT: CLAIM OF RONALD PIRONE, CLAIM NO. 2007-083) (C.C. No. 09-14)

CHAIR MOLINA: The Committee is in receipt of the following, a correspondence dated July 24th, 2009 from the Department of the Corporation Counsel, requesting consideration of a proposed resolution authorizing settlement of Claim Number 2007-083 of Ronald Pirone, and transmitting copies of a release and indemnity agreement dated June 5th, 2009 along with the claim. The claim alleges bodily injuries related to an accident near the Mokulele Highway and Hansen Road intersection in Kahului, Maui on September 4th, 2007. Second, a correspondence dated July 30th, 2009 from the Corporation Counsel's office transmitting a revised proposed resolution entitled: authorizing settlement of Claim Number 2007-083 of Ronald Pirone. The purpose of the proposed resolution is to authorize settlement of the case for 15,000 dollars. And, Members, as an FYI for you, in your binders, we did receive a *third* resolution, a revised reso dated August 5th. We will be working off of *that* resolution. So, Members, are we clear? There should be an August 5th reso that we will be working off of today.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: So I will ask Ms. Lutey from Corporation Counsel's office to give us an additional overview on this matter. Ms. Lutey?

MS. LUTEY: Thank you. The final . . . revised resolution just . . . made the reference to the exhibit, the release/indemnity agreement. . . clearer so that you know exactly what we're referring to by that exhibit. That's the only change there. On September 4th, 2007, Mr. Pirone was driving his pickup truck on Hansen Road towards the intersection at Mokulele Highway. When Mr. Pirone got into the merge lane for Mokulele on Hansen Road, a vehicle in front of him suddenly did a u-turn which caused Mr. Pirone to break. At that point, a County vehicle then rear-ended Mr. Pirone's vehicle causing him some injuries which he has sought treatment for. I am seeking settlement authority in the amount of 15,000 dollars to resolve this claim against the County of Maui. Again, we can, I think, do this in open session. However, if you wanna talk about some of his medical issues and so forth, we'll need to go into executive because I can't discuss that in open session.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey. Committee Members, questions for Ms. Lutey? And along with Ms. Lutey, we have Mr. Tracy Takamine from the Solid Waste Division for additional clarification and information related to this matter. Questions, Members? Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Maybe a question for Mr. Takamine in regards to . . . um . . .

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NOTE: *Silence.*

COUNCILMEMBER PONTANILLA: . . . accident report by the County of Maui regarding this accident. Uh. . .I. . .I don't know how your procedure. . .are or is in regards to employees having accidents--if they fill out an accident report. . .noting their side of the story. Because when I read that this guy did a, some kind of a u-turn, of course he's gonna stop, you know, the stop and, and. . .and, and. . .the rear-end. . .accident that was caused, was, was it, you know seems like was a timing issue. In other words, he did the u-turn, stopped, our vehicle was coming at the same time.

. . . If you can provide some clarity?

CHAIR MOLINA: . . . Mr. Takamine?

NOTE: *Silence while Mr. Takamine conferred with Ms. Lutey.*

MR. TAKAMINE: . . . Yes, we do do a, when we, we have an accident, our, our drivers are required to fill out the County, actually it's a County accident report form. So I don't know if it was in there or not, but we, we did, he did do a form and submit this police report that was submitted.

COUNCILMEMBER PONTANILLA: Yeah, I, I, I think in the future, you know, things like this, we, we should have the County's side of that accident report, you know, submitted by the employee. And, and you know my, my take on this one here, just reading this thing, you know that one question is in my mind--when this guy did that u-turn, I don't know if it was legal or *illegal*. . .you know. And if our vehicle coming down. . .uh, the accident was caused because of this guy making this sudden u-turn, stopped and, and our vehicle was, you know, in the process of going in the other direction. . .you know, it posed a question. Yeah?

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Corporation Counsel?

MS. LUTEY: Thank you. Mr. Pontanilla, I can attach those in the future. My office does get copies of all incident reports. However, they're not sorted through my Department by which department we're getting them from. So normally it's very voluminous. But they're required, all employees that are operating County vehicles, are required to have an. . .accident report filed with the Police Department because it's considered a major collision regardless of the amount of damages.

UNIDENTIFIED SPEAKER: Uh-huh.

MS. LUTEY: So in the future, I will do that. There's no problem with that. But typically they're very short because they're normally signed off by the supervisor of the employee who's involved in something like that. But I have no problem providing that.

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COUNCILMEMBER PONTANILLA: Thank you. Thank you. And, and that would provide us some information in regards to, you know, the condition. . .of our vehicle as well as the condition of the employee when reviewing some, you know, this type of cases.

. . . You know, I, I know the Chairman sees a lot of, you know, accident reports. And you know it's. . .something that we cannot afford, you know, as a County as we move forward into the future years because of. . .money.

MS. LUTEY: Sure.

COUNCILMEMBER PONTANILLA: You know, every accident that we can prevent don't cost us money. So. . .thank you. Thank you, Chairman.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Driver's education, if you'd like.

COUNCILMEMBER PONTANILLA: Uh-huh.

CHAIR MOLINA: Mr. Kaho'ohalahala, followed by Mr. Victorino.

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. Just some clarification. You said that a person who. . .uh. . .did a u-turn--

MS. LUTEY: Uh-huh.

COUNCILMEMBER KAHO'OHALAHALA: --caused this gentleman to stop his car abruptly.

MS. LUTEY: Uh-huh.

COUNCILMEMBER KAHO'OHALAHALA: And then it is our County vehicle behind that rear-ended that? Okay. Is there liability on the person who did an illegal u-turn?

MS. LUTEY: Not in a situation like this. Typically what you'll see if this was to turn into litigation is that the allegation against the County vehicle was that we didn't have the minimum space provided for by law. . .in traffic situations, to have prevented an accident like this. The illegal u-turn would be a separate offense for *that* particular driver. But you're supposed to have two to three car lengths . . .

COUNCILMEMBER KAHO'OHALAHALA: Uh-huh.

MS. LUTEY: . . . between, and that should be sufficient breaking time depending on your speed.

COUNCILMEMBER KAHO'OHALAHALA: Okay. So we are currently in violation of. . .of that then?

MS. LUTEY: Normally when we settle claims like this, it's because I think that liability is pretty clear. In cases like this, it's normally that it's hard . . .*(end of tape, start 1B)*. . . be

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an opportunity for us to try and . . . manage our damages as best as possible. I'll tell you that this demand . . . when, before negotiations happen, before I've come before Council, was . . . about three to four times higher than what we've actually resolved it for. But a lot of times, that's something they *could* be awarded for if we went through the process of litigation.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Now do we know that the other party is involved in this. . . as a separate. . . settlement in itself?

MS. LUTEY: The person that did the u-turn?

COUNCILMEMBER KAHO'OHALAHALA: Yes.

MS. LUTEY: No. I don't believe there's any information on who that might have been.

COUNCILMEMBER KAHO'OHALAHALA: . . . Okay. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Kaho'ohalahala. Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. And . . . I'll give you some insight because in the 25 years I've been in the insurance business. . . business, 99.99 percent of the time you hit somebody from behind, you're wrong.

UNIDENTIFIED SPEAKER: Yeah.

UNIDENTIFIED SPEAKER: Uh-huh.

COUNCILMEMBER VICTORINO: There's no ifs, buts, ors about it. You, you know, you can say what you want, you illegal u-turn, the whale was beautiful and I stopped all of a sudden to look at the whale, and if you hit somebody from behind. . . I've been there, done that, sorry. So you're gonna be wrong and you're gonna liable. There is no liability on the other act. The other act would be only a violation *if* that person was caught. And I don't imagine that person would sit there, wait 'til the police arrive, and say the other way, I caused this accident because I made an illegal u-turn. . . .*(buzz)*. . . Doesn't happen. So my experiences taught me that. . . this kind of situation unfortunately--exercise in caution, having the proper distance is very important. So drivers need to be reminded. You know, but we all guilty . . .*(laughter)*. . . I'm guilty at times. You know, you drive along Honoapiilani Highway and try get the proper distance. You get guys behind of you start honking at you 'cause they're upset that you're taking up too much space. So it's a darned if you do and darned if you don't kind of situation. So I understand that. But clearly, Ms. Lutey, you did correctly answer the question as that--we'd be liable no matter which way we look at it. And unfortunately. . . I'm glad that you brought it down. And I think that's a fair settlement in that sense. But I'll wait for the recommendation of the Chair. Thank you, Ms. Lutey.

MS. LUTEY: Thank you.

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CHAIR MOLINA: Okay, thank you, Mr. Victorino. Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I want to confirm what Mr. Victorino is saying. I've lived with a ex-cop . . .

UNIDENTIFIED SPEAKER: . . .(laughter). . .

COUNCILMEMBER BAISA: . . . and I've been told by him many, many times it doesn't matter what went on in front of you, if you hit from the back, forget it, you are wrong. So . . .I certainly can say that's what I understand, too. So there's no point in trying to figure out what happened with the other guy because if you hit him from the back, forget it. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Any other questions, Members?

. . . Okay, seeing none, the Chair will offer a recommendation.

COUNCILMEMBERS VICTORINO and BAISA: Recommendation?

CHAIR MOLINA: Okay, recommendation--Chair will entertain a motion to authorize settlement of Claim Number 2007-083 of Ronald Pirone, for a sum of 15,000 dollars.

VICE-CHAIR MATEO: Mr. Chairman, I move for the adoption of the revised proposed resolution authorizing settlement of Claim Number 2007-083 of Ronald Pizone *[sic]*.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay. The motion has been made by Chairman Mateo to . . .authorize the revised proposed resolution to author. . .authorize a settlement of this matter regarding Ronald Pirone for 15,000 dollars. And again, Members, that will be based on the August 5th revised proposed resolution. And the motion has been seconded by Mr. Victorino. Any discussion, Members?

UNIDENTIFIED SPEAKER: No.

CHAIR MOLINA: Seeing none, all those in favor, signify by saying "aye".

COUNCILMEMBER VICTORINO: Aye.

CHAIR MOLINA: All those opposed?

. . . Okay. Thank you. The Chair will mark it seven "ayes"; two "excusals", Members Johnson and Medeiros.

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VOTE: AYES: Councilmembers Baisa, Kaho‘ohalahala, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Johnson and Medeiros.

MOTION CARRIED.

ACTION: Recommending ADOPTION of revised resolution.

CHAIR MOLINA: Well, Members, this concludes our day. It is 9:35--

COUNCILMEMBER VICTORINO: Oh . . . *(inaudible)* . . .

CHAIR MOLINA: Thank you, thank you so much, Members, for appearing this morning. I know you, we all had a hard, hard week. Chair certainly appreciates your work, as well as the Committee Staff's and the Administration. So, Members, we do have a Economic Committee meeting later on at 1:30 this afternoon. So thank you, again, for all your hard work and professionalism. It is 9:36 on August 6, 2009. This Committee of the Whole meeting is now adjourned . . . *(gavel)* . . .

ADJOURN: 9:36 a.m.

APPROVED:


MICHAEL J. MOLINA, Chair
Committee of the Whole

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Transcribed by: Camille Sakamoto