

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

October 1, 2009

Council Chamber, 8th Floor

CONVENE: 9:00 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member (In 9:32 a.m.)
Councilmember Sol P. Kaho'ohalahala, Member
Councilmember Wayne K. Nishiki, Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Danny A. Mateo, Vice-Chair
Councilmember Bill Kauakea Medeiros, Member

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

ADMIN.: Marian Feenstra, Executive Assistant, Office of the Mayor (Item No. 2(8))
Madelyn S. D'Enbeau, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 1(11))
David A. Galazin, Deputy Corporation Counsel, Department of the Corporation
Counsel (Item No. 2(8) and 3(3))

OTHERS: Evelyn Goo (Item No. 1(11))
Anthony Ranken (Item No. 1(11))
One (1) additional unidentified attendees

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

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for October 1st, 2009 is now in session. It is 9 a.m. Good morning, Members. For the record, we have in attendance Committee Member Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR MOLINA: Good morning. And Committee Member Sol Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Good morning.

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CHAIR MOLINA: Good morning. Committee Member Wayne Nishiki.

COUNCILMEMBER NISHIKI: Morning.

CHAIR MOLINA: And Committee Member Joseph Pontanilla.

COUNCILMEMBER PONTANILLA: Good morning.

CHAIR MOLINA: And Committee Member Mike Victorino.

COUNCILMEMBER VICTORINO: Aloha, Chair.

CHAIR MOLINA: Good morning. And Committee Chair Molina is present as well. And excused this morning is Committee Vice-Chair, Danny Mateo; Committee member Jo Anne Johnson; and Committee Member Bill Medeiros. And we have our illustrious staff with us this morning. Our Legislative Analyst, Kirstin Hamman, and Committee Secretary, Camille Sakamoto. And from the Administration joining us this morning is Marian Feenstra as well as our Corporation Counsel, Mr. David Galazin, good morning.

MR. GALAZIN: Good morning, Chair.

CHAIR MOLINA: We have three items on our agenda, Members, but before we do that, Committee Secretary, do we have any sign ups for public testimony this morning.

MS. SAKAMOTO: Yes, Mr. Chair.

CHAIR MOLINA: Okay, we do have one member of the public who'd like to testify on our agenda item. And before the Chair entertains public testimony, I'd like to just go over a few ground rules. You'll have three minutes to testify with one minute to conclude. Please state your full name for the record and any organization that you may be representing. So, with that said, I'd like to call up to the podium to testify on Committee of the Whole Item-1(11), Evelyn Goo.

. . . *(Pause)* . . . Good morning.

. . .BEGIN PUBLIC TESTIMONY. . .

MS. GOO: Aloha. Good morning, Chair, Council Members. I'm a little nervous so bear with me. I originally was not going to testify in front of you today for various reasons. I decided to testify because I would like you all to know that I am a real person and what I have endured and gone through I will not go into detail. A lot of it is stipulated in documents that I put forth to you folks a couple of days ago, maybe yesterday. I can't even begin to tell you what my family and myself have gone through. I just . . . I'm at a lost for words to tell you. I just would like to tell you that I am a person of integrity, of principle, I've supported a lot of nonprofits, I was a strong person in this community and,

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unfortunately, I was wronged by . . . by the County. And um . . . the damages and the documents that you see are real figures. They are valid figures. We have documentation to back them up. My original intent was not to sue this County. This actually became under Mr. Alan Arakawa's rule and Mike Foley's rule. This case began five years ago. At that time, before it became a case I became, I came to you Council members, the ones, which some of you are still Council members today, thank God. I came before you and presented my case. I showed you documents, I told you things about this case and pretty much most of you were appalled. One of you even stipulated let's just call a spade a spade and this is a spade. This is definitely a spade, Council Members and Chair. I have done nothing wrong. I followed the process. I went to BVA, which I originally was going to come to the Council members that is why I came in the beginning five years ago with the documents to you. I was forced to go before BVA which I very happily did. I will follow the system whatever rules and regulations you put forth. I was doing that. However, it got side tracked and the documents will show how it got side tracked. I will not publicly say but it's in the documents. I don't know what else to say to you guys. I will remain here throughout this meeting. When you go into executive session, I will be here should you have any questions, any concerns. I have nothing to hide. I have put all of the documents forward. This has taken five years --

MS. HAMMAN: Three minutes.

MS. GOO: --of my life and five years of my family's life. And I am just here hoping that you folks would do what is pono -- do what is right. Read the documents. They speak for themselves. Cut out all the garbage, the . . . you know, the courts, the . . . it's just a run around, you know. It just, um, it's a lengthy process that shouldn't have needed to be and my family has been drugged to hell for five years, and the past three years has been immense hell. So, I would just appreciate if you just read the documents. I have nothing to hide. I will be here to answer any questions, any concerns you may have. And . . . you know, one of you Council members and I won't say who but told me, you know, I admire your stamina; I can't believe you're still here. And I told that Council member --

MS. HAMMAN: Four minutes.

MS. GOO: --I am here by the grace of God and by God alone. That's how I've stood here today. And that's all I have to say. Should you have questions or concerns, I will definitely be here.

CHAIR MOLINA: Okay.

MS. GOO: Thank you so much.

CHAIR MOLINA: Thank you, Ms. Goo. Committee Members, questions for the testifier? Mr. Nishiki? Hang on, Ms. Goo.

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COUNCILMEMBER NISHIKI: Did you say in your opening statement that you submitted testimony yesterday or more documents yesterday?

MS. GOO: I actually went to my attorney's office. I typed up a letter because what happened, I reviewed, I came in and reviewed what documents had been presented to you folks and I found out that there were actually none. So I went to my attorney's office, we drafted the cover letter. I enclosed the damages, which we were asked to give to you guys from the prior meeting, which we did turn in - July 23rd, and we've been waiting to get before the Committee as a Whole [*sic*] since July 23rd when those documents were turned in. I found out in reviewing them, I believe it was the day before yesterday, and I came in to Clerks Services [*sic*], I reviewed them, there were no documents put forward to you folks and I thought you should know what's really going on. So I went to my attorney's, we, together drafted the cover letter. We gave you all of the documents that we have presented since the last committee meeting of a whole, and they were put in your mail boxes so that you would have time to review them before this meeting so it wouldn't be sprung on you last minute.

COUNCILMEMBER NISHIKI: Oh, so, you . . . I guess there's a cover letter from your attorney and it was in each individual Member's mail box?

MS. GOO: There was a cover letter from me written by my attorney and I, and there was also . . . I have my packet here, I believe it was four letters, maybe more. One stipulating damages, how we came to the amount of damages and everything, and I just wanted you folks to know what was going on, to have them in your hand, to be able to review them not being, you know, having someone talking and you guys trying to read documents and understand them.

COUNCILMEMBER NISHIKI: Thank you.

MS. GOO: Thank you.

CHAIR MOLINA: Thank you. Committee Members, additional questions? Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: No question. But we did receive or I did receive your letter, September 29th date from Ms. Goo.

CHAIR MOLINA: Yeah.

COUNCILMEMBER PONTANILLA: And all of the correspondence from her attorney. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Member Baisa?

COUNCILMEMBER BAISA: Thank you. I have my packet also. I got it yesterday.

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CHAIR MOLINA: Any other questions for the testifier or comments? Seeing none; thank you, Ms. Goo.

MS. GOO: Thank you.

CHAIR MOLINA: Ms. Sakamoto, do we have any other sign-ups for public testimony on any of our agenda items?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay, Members, there's no one else signed up for public testimony and seeing no one else approaching the gallery for testimony. If there's no objections, the Chair will close public testimony for all three of our agenda items.

COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER BAISA: No objections.

CHAIR MOLINA: Okay, thank you very much, Members.

...END OF PUBLIC TESTIMONY...

CHAIR MOLINA: Okay, let's get right to business, Members. Committee of the Whole Item 2(8), Nominations to Boards, Committees, and Commissions.

ITEM NO. 2(8): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS
(VARIOUS) (C.C. No. 09-15)

CHAIR MOLINA: The Committee is in receipt of a correspondence dated August 25th, 2009, received August 26th, 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 on the dates indicated.

First, to the Council on Aging:

1. Judith Mikami, replacing Deldrine Manera, for a term expiring March 31st, 2013; and
2. Wanda McMaster, replacing Amy Kastens, for a term expiring on March 31st, 2012.

And to the Lanai Planning Commission:

David Green, replacing Darlene Endrina, for a term expiring on March 31st, 2013.

And the Council again must approve or disapprove these nominations by October 25th, 2009, or the nominations will be deemed approved. The Committee may consider whether to recommend approval or disapproval of the nominations as well as other

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related action. At this point, Members, I'll turn matters over to Ms. Feenstra from the Mayor's Office to give us additional comments on these nominees.

MS. FEENSTRA: Good morning, Committee Chair, Council Members, and persons in the gallery. Thank you for your time today reviewing Mayor's nominees to Boards and Commissions. The Mayor would like to thank those who previously served for their time and service commitment as well as the nominees before you for consideration today. I believe that you have their applications and attached paperwork. So I am available for any questions should you have any. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Ms. Feenstra. Before we proceed with the questions from the body, Ms. Sakamoto, did we have any request for any of the nominees by Council Members to appear before us today?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay. Thank you. All right, Members, the floor is now open to Ms. Feenstra for any of our nominees to the Council on Aging or the Lanai Planning Commission. I'll recognize Mr. Victorino, first.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair. And I really don't have many questions about these people and I am very honored and pleased that they're willing to serve. And I know the time and effort that they put forth. So, I would like to say that when you are ready to call for the vote, I will support these nominees. I'm thankful that they're there because they are becoming more and more difficult to find. So I'm thankful for anybody to step up and serve this community. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Mr. Nishiki followed by Ms. Baisa.

COUNCILMEMBER NISHIKI: No.

CHAIR MOLINA: Oh, okay. Ms. Baisa?

COUNCILMEMBER BAISA: Uh, yes, Chair, thank you very much. I'm personally familiar with one of the nominees and I'm very happy to see her volunteering to serve on the Office on Aging or the Council on Aging. Wanda McMaster is a retired professor from MCC and I had the opportunity to work with her for many, many years with Head Start. She's very involved in children and youth. It's interesting that now that we're in the golden age, Wanda will be transferring those skills to helping the elderly. So I am very excited to support her, and I read the resumes of the other two people and they seem very well qualified. So, I have no issues with any of the nominees.

CHAIR MOLINA: Thank you, Member Baisa. Committee Members, any other comments or questions related to the nominees for the Council on Aging or Lanai Planning Commission?

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COUNCILMEMBER KAHO`OHALAHALA: Yeah.

CHAIR MOLINA: Member Kaho`ohalahala?

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. Ms. Feenstra, I'm just wanting to know how many applicants were there for the Lanai Planning Commission?

MS. FEENSTRA: I don't have that list with me. But there were maybe a half a dozen at the most.

COUNCILMEMBER KAHO`OHALAHALA: A half dozen, okay. Um . . . okay, maybe at some time I'll just come and see you.

MS. FEENSTRA: Okay. We do have two vacancies that will be occurring.

COUNCILMEMBER KAHO`OHALAHALA: In March, yeah?

MS. FEENSTRA: March 31st.

COUNCILMEMBER KAHO`OHALAHALA: Okay, thank you.

CHAIR MOLINA: Okay, thank you, Member Kaho`ohalahala. Committee Members, any other questions for Ms. Feenstra, before the Chair makes his recommendation.

COUNCILMEMBER PONTANILLA: Recommendation.

CHAIR MOLINA: Okay. The Chair would like to recommend a motion to approve the nominees to the Council on Aging - Judith Mikami, replacing Deldrine Manera, for a term expiring on March 31st, 2013; and Wanda McMaster, replacing Amy Kastens, for a term expiring on March 31st, 2012; and to the Lanai Planning Commission - David Green, replacing Darlene Endrina, for a term expiring on March 31st, 2013.

COUNCILMEMBER VICTORINO: So move.

COUNCILMEMBER PONTANILLA: Second.

CHAIR MOLINA: Okay. It's been moved by Member Victorino, seconded by Member Pontanilla. Members, discussion?

COUNCILMEMBER PONTANILLA: Yep.

CHAIR MOLINA: Mr. Pontanilla?

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COUNCILMEMBER PONTANILLA: I just want to say Darlene Endrina because I know her very well that, thank you for serving on the Lanai Planning Commission. I know she's a busy woman, so. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Any other discussion? Seeing none; all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it six ayes, with three excusals - Members Mateo, Johnson, and Medeiros. This matter will now go to the full Council.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Johnson, Medeiros, and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: Recommending APPROVAL of nominations and TRANSMITTAL of copy of committee report to the Mayor.

CHAIR MOLINA: Thank you very much, Ms. Feenstra.

MS. FEENSTRA: Thank you, Members.

CHAIR MOLINA: Members, we're now on the second item of the day - Committee of the Whole Item-3(3), Hawaii State Association of Counties (HSAC) nomination to the National Association of Counties (NACo) Board of Directors.

**ITEM NO. 3(3): HAWAII STATE ASSOCIATION OF COUNTIES (HSAC)
(NOMINATION TO THE NATIONAL ASSOCIATION OF COUNTIES' (NACO)
BOARD OF DIRECTORS) (C.C. No. 09-17)**

CHAIR MOLINA: The Committee is in receipt of a correspondence dated September 1st, 2009, from Councilmember Joseph Pontanilla, requesting consideration of Honolulu City Councilmember Romy Cachola to the NACo Board of Directors. Mr. Pontanilla, your comments?

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COUNCILMEMBER PONTANILLA: Thank you. I urge the Members to support the presidential appointment of Councilmember Romy Cachola of the City & County of Honolulu. As you know, our President of NACo, Valerie Brown, has ten presidential appointees that she can provide. And we're so fortunate that we have a presidential appointee for the State of Hawaii. Thank you.

CHAIR MOLINA: Thank you, Mr. Pontanilla. As we all know, Mr. Cachola has years and years of experience and I'm sure will make a fine representative. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yes, thank you, Mr. Chair. I also can attest to that when a lot of us attended the NACo Conference, both the regional as well as the national, and Mr. Cachola is well-respected throughout the various areas, especially the Western Region and the Central Area of the United States. Many of the people we work when we go to our NACo Regional Convention, yeah. So I can support this and I think Mr. Cachola will do very well. And I'd like to thank our new president, Valerie Brown, because with her leadership we will be facing like everything else real austere and difficult times ahead of us. And if some of you read your recent email, there are forces outside and this may not be related to this but I'll just make a quick mention of it that there is a representative from New York that's trying to put aside lands in Utah when the entire delegation of Utah, the entire legislative delegation of Utah opposes it, which is just a cry of saying outsiders coming in and trying to tell what you have or how you operate, home-rule, you know, someone from the outside trying to tell us. So, NACo is very supportive of keeping home-rule for our State, Counties and municipalities. So, I want to just say that I think Mr. Cachola will add a great deal of ambience and leadership to this. So, thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Members, any other comments or questions before the Chair makes a recommendation?

COUNCILMEMBER VICTORINO: Recommendation.

CHAIR MOLINA: Okay. Thank you. Members, the Chair will entertain a motion to approve the nomination of Councilmember Romy Cachola to the NACo Board of Directors.

COUNCILMEMBER PONTANILLA: So move.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR MOLINA: Moved by Member Pontanilla; seconded by Member Victorino. Discussion? Seeing none. All those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

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CHAIR MOLINA: All those opposed? Thank you. The Chair will mark it six ayes, with three excusals - Members Mateo, Johnson, and Medeiros. Thank you very much, Members.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Johnson, Medeiros, and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: Recommending APPROVAL of appointment and TRANSMITTAL of copy of committee report to the Hawaii Association of Counties (HSAC) Executive Committee.

CHAIR MOLINA: Moving right along. We're on our third and final item today. Committee of the Whole Item 1(11).

ITEM NO. 1(11): LITIGATION MATTERS (PROPOSED SETTLEMENT: EVELYN GOO, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 08-00172 DAE BMK; AND IN THE MATTER OF MAUI'S BEST GIFT AND CRAFT FAIR, LLC, APPEAL OF THE NOTICE OF VIOLATION, DOCKET NOS. BVA 2005-0013, BVA 2005-0024, AND BVA 2005-0027) (C.C. No. 09-14)

CHAIR MOLINA: The Committee is in receipt of a correspondence dated September 17th, 2009, from the Corporation Counsel's office requesting consideration of a proposed resolution entitled AUTHORIZING SETTLEMENT OF EVELYN GOO, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 08-00172 AND IN THE MATTER OF MAUI'S BEST GIFT & CRAFT FAIR, LLC APPEAL OF THE NOTICE OF VIOLATION ISSUED BY THE DIRECTOR OF PLANNING IN REGARD TO THE USE OF PROPERTY LOCATED AT 270 LAHAINALUNA ROAD, LAHAINA, MAUI, HAWAII. The complaint alleges interference with contractual relations and perspective economic advantage, breach of the duty of good faith and fair dealing, and violation of plaintiff's constitutional rights through the maintenance of illegal customs and policies. The purpose of the proposed resolution is to authorize settlement of the case. The Committee may consider whether to recommend adoption of the proposed resolution with or without revisions. The Committee may also consider other related action and also consideration for executive session as well. And we have from the Corporation Counsel's office to give us an overview of the matter, we have Ms. Madelyn D'Enbeau. And Members, the Chair will open the floor for questions in open session for

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Ms. D'Enbeau related to this matter. Ms. D'Enbeau, would you like to give us an overview?

MS. D'ENBEAU: Yes, thank you very much, Mr. Chair. Good morning, Members.

COUNCIL MEMBERS: Good morning.

MS. D'ENBEAU: This case involves a craft fair that Ms. Goo was operating at the corner of Lahainaluna Road and Honoapiilani Highway in Lahaina. As the Chair read to you, a complaint was filed in Federal Court alleging tortious interference with contractual relationships, which basically according to the complaint meant that or refers to the fact that she, Ms. Goo was attempting to purchase the property where her craft fair was located, and alleges that the County interfered with that purchase. Eventually, the land was sold to the West Maui Federal Credit Union. Now, the County did never own the land. This land was owned by a gentleman named . . . his last name is Brown. And the . . . so, the tortious interference doesn't, isn't relating to the fact that the County owned the land or refused to sell it to her. It's an allegation that the County interfered with her attempt to purchase the property. There's also an allegation that the Board of Variances and Appeals proceedings took too long. And you'll notice from the proposed resolution that the proposed settlement involved settling both the Board of Variances and Appeals issue and this Federal lawsuit. The Federal lawsuit was filed by her previous attorney, or one of her previous attorneys, James Fosbinder in April of 2008. The Board of Variances and Appeals process began in 2004 when Ms. Goo, um, actually when I say Ms. Goo she has an LLC that she uses Maui's Best Gift and Craft, LLC more technically that's the correct party, but in any case, that entity filed an appeal of a Notice of Violation for the operation of the Gift Fair at this location. And the Notice of Violation was based on the fact that . . . I can't remember the exact year but some years back, Mr. Brown, the owner of the property, had come to the Council and asked for a Change in Zoning from Residential to Business. And that Change of Zoning was granted with conditions. And the conditions basically were an attempt by the Council to because of the traffic situation there in that particular location to limit the activities on that property to certain types of business uses but not others. So you'll see if you look at the complaint, actually it's set forth in the complaint what the . . . starting on Page 5 it shows you what was prohibited and what was permitted. So that was the issue before the Board of Variances and Appeals is whether or activities were permitted or prohibited under the Conditional Zoning. And then several years down the line, this lawsuit was filed as well. So, this morning I've asked for a . . . to meet with you to discuss the settlement demand, which is the position of the Plaintiffs and what they should receive in order to settle the case and then the County's response. I do have those documents here to pass out in executive session. I understand from the comments this morning that perhaps you've already received at least the Plaintiff's documents directly from Ms. Goo. So, during executive session I'll give you a copy of the County's response and ask for an executive session to discuss the actual possibilities of settlement.

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CHAIR MOLINA: Okay. Thank you very much, Ms. D'Enbeau. Before I turn matters over to the Members for questions in open session, as it was mentioned earlier this morning by Ms. Goo she did drop off documents to each of our offices, and the Chair, at this point, would just like to ask for the body's consideration to approve this in the binder if there are no objections.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: And being that once it's been dropped, you know, the documents dropped off by the Plaintiff, Ms. D'Enbeau, this does become a public document, am I not correct?

MS. D'ENBEAU: Uh, yes. Ordinarily settlement documents are confidential in order for the settlement to proceed between the parties without fear that this would be used later in court should the matter proceed to court. I discussed this at some length with Ms. Goo's attorney, Mr. Ranken, and I think they understood that by bringing the documents forward that they would then become a part of the public document. But perhaps it would be appropriate since they are here to establish that fact clearly.

CHAIR MOLINA: Okay. Members, any objections, I'd like to ask the Plaintiff's attorney, Mr. Ranken, to come up to the podium just to acknowledge a matter that has been brought forth by Ms. D'Enbeau. Any objections to having Mr. Ranken come up?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Good morning, Mr. Ranken. If you could just state your full name for the record.

MR. RANKEN: Thank you, Mr. Chair. My name is Anthony Ranken. Good morning, Members of the Council.

COUNCILMEMBER BAISA: Good morning.

MR. RANKEN: Yes, Mr. Chair, you are correct and Ms. D'Enbeau is correct. We have no objections to those letters being made public. I did not include her one or two letters in response to mine because, you know, I respect the privacy between the County and its attorney. Of course, that's up to you folks but as far as our letters there's nothing secret in there. We're not waiving any . . . if the matter proceeds to litigation, we're not waiving the rules of evidence in terms of that those would not necessarily be admissible in court. I think Ms. D'Enbeau understands that but the matter of whether they're included in the public record is a wholly separate matter. So, I will also be here throughout the executive session and afterwards if the Council has any questions, but I already spoke at the last meeting so I wasn't going to speak today; just be available in case needed.

CHAIR MOLINA: Okay, thank you very much, Mr. Ranken. Committee Members, any questions for Mr. Ranken at this point? Seeing none, thank you very much, Mr. Ranken.

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Okay, Members, questions for Ms. D'Enbeau in open session related to this matter? Okay, seeing none, then Members . . . Ms. D'Enbeau, you are going to recommend executive session then I presume for --

MS. D'ENBEAU: Yes.

CHAIR MOLINA: --further discussion.

MS. D'ENBEAU: Yes, Mr. Chair.

CHAIR MOLINA: Okay. At this point then, Members, the Chair will entertain a motion pursuant to Section 92-5(a)(4), HRS, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, and immunities and liabilities to the County, uh, County Council and the Committee of the Whole. So the Chair will entertain a motion to go into executive session.

COUNCILMEMBER PONTANILLA: So move.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay, moved by Member Pontanilla, seconded by Member Victorino. Any discussion? Seeing none, all those in favor of moving this matter into executive session, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. Chair marks it six ayes with three excusals - Members Mateo, Johnson, and Medeiros. So the matter passes.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Johnson, Medeiros, and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: APPROVE; RECESS Open Session and CONVENE Executive Session.

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CHAIR MOLINA: We'll go into executive session. Members, if you need to . . . Members, I know you have some personal needs you need to take care of, if you could take care of them as soon as possible and we'll prepare the Chambers to go into executive session. So we'll call for a recess subject to the call of the Chair. . . .(gavel). . .

RECESS: 9:27 a.m.

RECONVENE: 11:06 a.m.

CHAIR MOLINA: . . .(gavel). . . Committee of the Whole meeting for Thursday, October 1st, 2009 is now back in session. Members, we are on Committee of the Whole Item 1(11), related to the Evelyn Goo, et al. versus County of Maui, et al., Civil Case Number 08-0017(2), along with the matter of Maui's Best Gift and Craft Fair, LLC appeal of the notice of violation. This is the resolution that's . . .has been discussed. And based on the comments from the majority of the Members in Committee, the Chair is gonna recommend a deferral on this matter. Members, objections to the deferral?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: No objections? Okay. So--

COUNCILMEMBER JOHNSON: I object--

CHAIR MOLINA: --as far as--

COUNCILMEMBER JOHNSON: --Mr. Chair.

CHAIR MOLINA: Okay. And the Chair will also express his reservations with the recommendation. . .even though the Chair is suggesting it. But based on what I heard from the majority of Members, Chair has reservations on the . . .deferring this matter as well. And, Members, keep in mind it is. . .this Committee will not hear this matter again until Corporation Counsel presents something to this Committee. So . . .in the future. So anyway . . .

NOTE: Silence.

CHAIR MOLINA: . . . Okay. Thank you. Staff has reminded me being that we did have one formal objection on the floor, we will need to take a vote on the recommendation of deferral. Okay. All right, Members, the recommendation has been made by the Chair-- although with reservations--to defer the matter, based on comments from. . .the majority of you. So the Chair will entertain a motion to defer.

COUNCILMEMBER PONTANILLA: So moved.

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COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. Motion to defer has been made by Member Pontanilla, seconded by Member Victorino. Discussion?

. . . Okay, seeing none, the Chair will call for the vote on the matter to defer Committee of the Whole Item 1(11), signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Okay, Chair will mark. . .well. . .state his vote with reservations to support the deferral. We have one "no", Member Johnson; two "excusals", Members Mateo and Medeiros. The matter has been deferred.

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

NOES: Councilmember Johnson.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Medeiros and Vice-Chair Mateo.

MOTION CARRIED.

ACTION: Recommending DEFER pending further discussion.

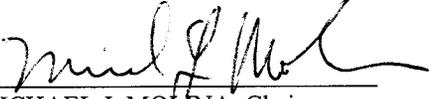
CHAIR MOLINA: Members, it is 9 minutes after the hour of 11 o'clock. I believe this concludes business for today. Chair would like to thank all of you for your participation, as well as Staff and the Administration. The Committee of the Whole meeting for Thursday, October 1st, 2009 is now adjourned . . .(gavel). . .

ADJOURN: 11:08 a.m.

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APPROVED:



MICHAEL J. MOLINA, Chair
Committee of the Whole

cow:min:091001

Transcribed by: Jo-Ann Sato