

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

March 15, 2010

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 1:31 p.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Danny A. Mateo, Vice-Chair  
Councilmember Gladys C. Baisa, Member (In 1:33 p.m.)  
Councilmember Sol P. Kaho‘ohalahala, Member  
Councilmember Bill Kauakea Medeiros, Member  
Councilmember Wayne K. Nishiki, Member  
Councilmember Joseph Pontanilla, Member  
Councilmember Michael P. Victorino, Member (In 1:38 p.m.)

**EXCUSED:** Councilmember Jo Anne Johnson, Member

**STAFF:** Kirstin Hamman, Legislative Analyst  
Camille Sakamoto, Committee Secretary  
Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

**ADMIN.:** Madelyn S. D’Enbeau, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 1(28))  
Marian Feenstra, Executive Assistant, Office of the Mayor (Item No. 2(12) and 2(13))  
Darlene Endrina, Executive Assistant, Office of the Mayor (Item No. 2(12) and 2(13))  
Adrienne N. Heely, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 2(12) and 2(13))

*Seated in the gallery:*

Brian T. Moto, Corporation Counsel, Department of the Corporation Counsel (Item No. 1(28))

**OTHERS:** Darren Strand, President, Maui County Farm Bureau (Item No. 2(12))  
Ronald Ogomori (Item No. 1(28))  
Kevin Boteilho, Mayor’s nominee to the Board of Water Supply (Item No. 2(12))  
Paul Mikolay, Mayor’s nominee to the Subdivision Engineering Standards Committee (Item No. 2(13))  
Seven (7) additional unidentified attendees

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

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CHAIR MOLINA: . . .(*gavel*) . . . This special meeting of the Committee of the Whole for March 15th, 2010 will now come to order. For the record, we have in attendance Committee Vice-Chair Danny Mateo, Committee Members Bill Medeiros.

COUNCILMEMBER MEDEIROS: Aloha.

CHAIR MOLINA: Aloha. Wayne Nishiki, Joe Pontanilla, and yours truly your Chairman for today, Mike Molina. Excused are Gladys Baisa, Jo Anne Johnson, Sol Kaho`ohalahala, and Mike Victorino. And just now entering the room is Mr. Kaho`ohalahala for our proceedings today. Thank you for joining us. And Members, thank you for being here. This is normally an off-week for members of the public who are wondering why we're meeting on an off-week. This is the time for Members to meet with their constituents on other issues affecting this County so, Members, I certainly appreciate you taking time out of your busy schedules today. And of course, we just received the budget from Mayor so our plate is quite full. So, as the Chair of this Committee, I appreciate all of you for being here today. Chair would like to recognize Committee Staff in attendance, we have our Committee Analyst, Kirstin Hamman, as well as our Committee Secretary, Camille Sakamoto. And from the Corporation Counsel's office joining us here today is Ms. Madelyn D'Enbeau. Thank you for being here.

We have two items on our agenda, Members, which is Committee of the Whole Item 1(28), relating to a settlement authorization, and then Committee of the Whole Item 2(12), relating to nominations to Boards, Committees, and Commissions, and also another Committee of the Whole Item 2(13), related to nominations to Boards, Committees and Commissions. So with that being said, Members, before we delve into our business, the Chair would like to entertain public testimony first, and the Chair would like to recognize Member Baisa who is here at our proceedings as well. We have at this point, Chair has received two requests for public testimony. First to testify is Darren Strand on Committee of the Whole Item 2(12) and Ron Ogomori on Committee of the Whole Item 1(28). And the Chair would like to go over a few ground rules before we begin public testimony. It's okay for you to proceed, Mr. Strand. You'll be given three minutes to testify with one minute to conclude. And please state your full name and any organization you may be representing. And please turn off all cell phones and other noise making devices so as not to disrupt our proceedings today. So, with that being said, good afternoon, Mr. Strand, you may proceed.

**...BEGIN PUBLIC TESTIMONY...**

MR. STRAND: Thank you. I'm Darren Strand, the President of Maui County Farm Bureau. Chair Molina and Committee Members, Maui County Farm Bureau, on behalf of our member commercial farm and ranch families, strongly support the nomination of Kevin Boteilho to the Board of Water Supply. Mr. Boteilho is a member of the Farm Bureau Board of Directors. He is also an active board member of the Maui Association of Landscape Professionals, and most recently with the Kula Community Association. His...he has a background in landscape and is, this is especially valuable this time.

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Water conservation is a key concern for the Board of Water Department [*sic*] and he has experience in a lot of these areas that will be applicable to this position. He has a strong technical background and has a proven commitment to volunteering and a commitment to agriculture, and we felt that he would be a good candidate for this position. We respectfully request your support for the nomination of Mr. Boteilho for the Water Board. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Strand. Committee Members, questions for the testifier? Seeing none, thank you very much for your testimony, Mr. Strand. Next to testify on Committee of the Whole Item 1(28), Ron Ogomori.

MR. OGOMORI: Good afternoon, Council Chair and Members. My name is Ron Ogomori and I'm here on behalf of the developers of the Sandhills Estate and Maui Lani Project. The developers and the members of the developer who are mainly local residents were sued and named as defendants in a lawsuit filed by two of the lot owners within the Sandhills project. The developers have filed a cross claim and basically in relation to my testimony today, I've submitted written testimony and I'm here to answer any question that any of you might have. I would note that the developers have been working with the County and will continue to work with the County in trying to see if an amicable settlement can be reached of this lawsuit, the Cabebe lawsuit, as well as the underlying claims. Thank you.

CHAIR MOLINA: All right. Thank you, Mr. Ogomori. Members, as you heard from Mr. Ogomori he is here to answer any questions in open session if you prefer to wait once we get to that committee item. Otherwise, if you don't have any questions on his opening testimony here then I will excuse Mr. Ogomori from the stand. Okay.

COUNCILMEMBER MEDEIROS: Mr. Chairman?

CHAIR MOLINA: Oh, question? Okay, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Not a question but he alluded to written testimony. Is it in our binders?

CHAIR MOLINA: I believe it is.

COUNCILMEMBER MEDEIROS: It is?

CHAIR MOLINA: Staff, uh. . .

COUNCILMEMBER MEDEIROS: It is, okay.

MS. HAMMAN: Yes, it is.

COUNCILMEMBER MEDEIROS: Under Item 1(28)?

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MS. HAMMAN: 1(28).

CHAIR MOLINA: 1(28), yeah.

COUNCILMEMBER MEDEIROS: Okay. Thank you.

CHAIR MOLINA: Okay, Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. I just want to note for the record, Mr. Chairman, that this 47 page communication to this Council was just received in case you're looking at dates. And Mr. Chairman, I will save my statement when this item is being discussed and I have a lot of questions as far as to the legality of what is occurring today. So, I will tell you Council members that I'm really concerned about we consider to be integrity in this County --

CHAIR MOLINA: Mr. Nishiki, can I excuse Mr. Ogomori?

COUNCILMEMBER NISHIKI: --and I will just wait.

CHAIR MOLINA: And I will give you the floor. Okay. Any other questions related to Mr. Ogomori's testimony at this point?

COUNCILMEMBER MEDEIROS: Yeah. Mr. Chairman?

CHAIR MOLINA: Councilmember Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, mahalo, Mr. Chairman. Mr. Ogomori, so you are representing and you are legal counsel for the developers? Is that correct?

MR. OGOMORI: Yes, yes.

COUNCILMEMBER MEDEIROS: And I did find your submitted written testimony. Thank you.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Joining us for our proceedings is Member Victorino. Mr. Victorino, do you have any questions for the testifier at this point?

COUNCILMEMBER VICTORINO: Unfortunately, I missed his testimony so it would be inappropriate for me to ask questions. Thank you.

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CHAIR MOLINA: Okay, thank you, Mr. Victorino. Seeing no other request at this point for you, Mr. Ogomori, I'll go ahead and excuse you.

MR. OGOMORI: Thank you, Committee Chair.

CHAIR MOLINA: Thank you. Mr. Ogomori was the last person to have signed up for public testimony. The Chair will offer the public in the gallery one last opportunity to testify on either of our agenda items today. Seeing no one approaching, then Member, the Chair will close public testimony for our three agenda items. Any objections?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay, so ordered by the Committee. Testimony is closed for this afternoon's meeting.

**...END OF PUBLIC TESTIMONY...**

**ITEM NO. 1(28): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CHERYL CABEBE, ET AL. V. NEW SAND HILLS, LLC, ET AL.; CIVIL NO. 09-1-0245(1)) (C.C. No. 09-14)**

CHAIR MOLINA: Okay, Members, we'll go right into it. Our first item is Committee of the Whole Item 1(28), which is a settlement authorization: Cheryl Cabebe, et al. v. New Sand Hills, LLC, et al. Committee is in receipt of a correspondence dated March 4, 2010, from the Corporation Counsel's Office, requesting consideration of a proposed resolution entitled "AUTHORIZING SETTLEMENT OF CHERYL CABEBE, ET AL., V. NEW SAND HILLS, LLC, ET AL., CIVIL NO. 09-1-0245(1)", and transmitting a copy of the complaint. The complaint seeks damages for various alleged violations of State and Federal law related to the Plaintiffs' purchase of residential lots in the Sandhills Estates, within the Maui Lani Project District, and their inability to utilize the lots for residential purposes. The purpose of the proposed resolution is to authorize settlement of the case. And we have Ms. D'Enbeau from the Corporation Counsel's Office. In open session, Ms. D'Enbeau, would you like to make some opening remarks --

MS. D'ENBEAU: Yes.

CHAIR MOLINA: --to inform the Committee of this consideration?

MS. D'ENBEAU: Thank you very much, Mr. Chair. This morning, on further consideration, I decided I should reduce my opening remarks to writing as well as to give them orally because it is a very complicated case. So, for the benefit of the Council members, I do have what I'm going to say also written down so you can follow easily.

**NOTE: Pause while the Corporation Counsel's memorandum was distributed to Council Members.**

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MS. D'ENBEAU: With your indulgence, I'll read through this and there may be questions. This describes the litigation and events that have taken place to date. Thank you for the opportunity to discuss the aforementioned matter. This memorandum shall serve as a brief summary of the events that have transpired. This lawsuit involves two lots in Sandhills Estates, a subdivision in the 1,000 acres Maui Lani Project District, which was established in 1990. To date, Maui Lani has been developed with approximately 1,200 homes. At the time of Maui Lani's Phase II approval on September 18, 1990, "building height" was defined in the Maui County Code as "the vertical distance from finished grade to the highest point of the finished roof surface...". A year after Maui Lani's Phase II approval, the definition of "building height" was changed to "...means the same as height" and a provision defining "height" is as follows: "...the vertical distance measured from a point on the top of a structure to a corresponding point directly below on the natural or finish grade whichever is lower". And the important part about that, I'll ad lib a little here is that basically what happened is before this amendment in 1991, the height of a structure was measured from the finished grade, and afterwards it was from the finished or the natural grade whichever is lower. The definition of height was not applied to Maui Lani and building permits for approximately 1,200 homes were issued measuring height from the finished grade.

On August 2, 2004 and February 17, 2005, grading permits for Sandhills Estates were issued by the Department of Public Works and Waste Management. These permits were lawful pursuant to the grading ordinance. On October 21, 2004, Public Works issued final subdivision approval for Sandhills Estates. Final approval was rescinded and reissued on February 15, 2005. The Sandhills Estates 108-lot subdivision is now complete and 98 of the lots have been sold to individuals, according to the information we've been provided.

On September 21, 2005, Cheryl and Joseph Cabebe purchased Lot 76 in Sandhills Estates, reportedly for \$421,380 (including closing costs). And that information is in their complaint. According to the Cabebes, Lot 76 contains approximately 38 feet of vertical fill. Again, this is from their complaint.

On September 25, 2005, Melissa and Gerry Riopta purchased Lot 22 in Sandhills Estates, reportedly for \$357,435 (including closing costs). According to the Rioptas, Lot 22 contains approximately 15.1 feet of vertical fill. So these two events took place in the fall of 2005.

On December 31, 2008, obviously the very end of that year, the Honorable Joel E. August, Judge of the Circuit Court of the Second Circuit, issued an order in a different case, not the case we're here about today but a case called KAREN GOO ET AL V. MAYOR CHARMAINE TAVARES, SUCCESSOR IN-INTEREST TO MAYOR ALAN ARAKAWA, ET AL. And that order prohibited the County from issuing residential building permits in the Sandhills Estates and Fairways Subdivisions, if the resulting height would exceed 30 feet as defined in the Maui County Code.

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On March 31, 2009, so that was some three months later, the Cabebes and the Rioptas filed their lawsuit, naming the New Sand Hills, LLC, Thirty-Six Branches, LLC, Paul Kyno, Robert Greenfield and Valentine Peroff, that they alleged were the developers of Sandhills Estates; Carol Ball, Inc. they alleged was the realtor that sold the lots to them; the County of Maui and Alan Arakawa in his official capacity as the former Mayor of Maui County, as defendants and alleging that the application of the 1991 height definition could render their lots unusable for residential purposes. Again, this is from their complaint. The developer defendants cross-claimed against the County as did Carol Ball, Inc., and the County cross-claimed back against the developer defendants and Carol Ball, Inc.

Plaintiffs have requested a jury trial which is presently set to commence on July 6, 2010, in Judge August's courtroom. Plaintiff's Motion for Summary Judgment is scheduled for Thursday, April 1, 2010. I do have the Plaintiff's settlement demand that I would like to present in executive session. But hopefully, this provides you some background for you to understand where we are in this case.

CHAIR MOLINA: Okay, thank you, Ms. D'Enbeau. Members, questions in open session related to Ms. D'Enbeau's comments? Seeing none at this point, Members. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Members, Hiram and Annette Hue, Anthony Galo, Jr., Joe and Rene Medeiros, Dwight Nacua, Karen Goo, Nancy Oshiro, Scott Oshiro, Larry Oshiro, Ren Tateyama, Yoshi and Jan Sukuma, Adrian Owens, Vicki Nagata, Lillian Torrecer, Clark Takemoto, Norman Waiwai'ole, Emily and Eric Eng, Ron and Sue Lineweber, Victor and Claire Flocco, Emery Lee, John Zaner, these are only a portion of names that have put their money, their life savings, some of them retired, and went to the court of Mr. August. Today, Mr. Ogomori, if you read in his March 15th letter is urging the Council to take immediate action to enact a proposed ordinance by amending the definition of height as part of a settlement of a lawsuit filed by the Cabebes. Ordinances to amend the definition of height are currently pending before the Planning Committee, PC-44. The Planning Committee, Mr. Chairman, has met numerous times to deliberate on whether the proposed ordinance should pass, join many testifiers in opposition, particularly homeowners who live on Palama Drive. There are actually two bills to amend the definition of height that are pending before the Planning Committee. Who knows which bill the Council will agree to enact. Asking Members today, Mr. Chairman, to consider passing an ordinance as part of a settlement of a lawsuit would usurp the legislative process. The ordinance is not posted on the agenda. Members of the public, who have previously come before the Planning Committee to testify in opposition to the proposed ordinance, will not be aware that the Committee of the Whole is considering the proposed ordinance as part of the settlement and will have no opportunity to express their opposition. These are the people that went to court. Passage of the ordinance will have Countywide effect. The public should have the opportunity to participate in a deliberative legislative process. That process would be eliminated if the Council just agrees to pass the ordinance as part of a settlement. Some obvious questions,

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Mr. Chairman, I have today. Considering a lack of public notice, is it even appropriate for the Council to consider this matter today? Does the Council have the legal authority to promise to enact an ordinance in the future should we pass this agreement? Even if the Council has the legal authority to do such a thing, why should the Council ever disregard the normal legislative process? Mr. Chairman, we say that we, in the Council, are for openness, and yet, somehow someone is trying to lead us to do this action today. Right there. (*pointed to Ms. D'Enbeau*) The height definition is in Sol's Planning Committee, I believe and not posted on today's agenda. So I don't think we can discuss height definition as part of the proposed settlement. Numerous residents of Palama Street woke up one morning to see that a large wall holding tons of fill had replaced their views. They then had to hire attorneys, go to court, and deal with a lawsuit. And today, we would want to make all their efforts moot. Who on the Corporation Counsel advised former Mayor Alan Arakawa that the new height definition didn't apply to the Maui Lani Project? Was it Brian Moto? Was it Madelyn D'Enbeau? If it was Brian Moto or D'Enbeau that so advised Mr. Arakawa then I ask if you can truly represent us, the Council, and the residents on this matter? Corp. Counsel's advice to Mayor Arakawa is the same as the developer's position relating to the definition of height. Corp. Counsel and the developer lost in court, Mr. Chairman, and then filed an appeal of Judge August's ruling. So the Corp. Counsel disagreed with Judge August and now wants the Council to take its side. Shouldn't the Corp. Counsel recuse itself from these matters?

CHAIR MOLINA: Mr. Nishiki, I'll let Corp. Counsel respond to some of your questions.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR MOLINA: Okay. Ms. D'Enbeau?

MS. D'ENBEAU: Councilmember Nishiki is totally correct. What's on today's agenda is the settlement of the Cabebe lawsuit. And any matter dealing with the definition of height and an amendment is in Mr. Kaho'ohalahala's Planning Committee. So I do have to present to you in executive session what the settlement offer is, excuse me, the settlement demand from the Cabebe's and the Riopta's from their attorney, David Merchant. Mr. Merchant, I understand is on vacation right now but I do believe that his clients and another one of their attorneys is here in the courtroom [*sic*] today. So that is the matter that's before us today and I'll be happy to discuss the settlement demand in executive session.

CHAIR MOLINA: Ms. D'Enbeau, any other responses to Mr. Nishiki's questions? So, basically what it is, we're legally...this is fine we can have this meeting just on specifically the settlement but we cannot delve into the actual proposed ordinance that is in Mr. Kaho'ohalahala's committee because it's not noticed on the agenda?

MS. D'ENBEAU: That's correct.

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CHAIR MOLINA: We can maybe brush on it, if you will, but not get into specifics and so forth because of Sunshine Law issues.

MS. D'ENEAU: Certainly we would not be asking anyone to consider the proposed changes in the ordinance today cause that's in Mr. Kaho`ohalahala's committee.

CHAIR MOLINA: All right. Thank you. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Mr. Chairman, and this is why I say when I use the word, and excuse me, Madelyn, because now I am really getting upset. If you read this letter today it says, this letter shall supplement my letter dated February 11, 2010 to respond to Mr. Merchant's letter dated March 4, 2010, and urge the County to take immediate action in enacting the proposed height amendment as part of the settlement of the lawsuit filed by Plaintiffs Cabebe and Riopta. This is what it's asking us to adopt this settlement, which would, in essence, adopt the proposed height amendments. This is a devious way just because he wasn't able to and the developer wasn't able to in Sol's committee because we had a lot of questions in regards to this ordinance. This is a devious back door way to get us to adopt this settlement and not have any discussion on the height amendment. And then what? Then she goes to court with a settlement. And then what? We all have already said that we agree to this amendment? So, the question is moot in Sol's committee in which the people from Palama Street that fought for this lawsuit, Mr. Chairman, is not even here. This is how devious this whole process today is. And I just want Council members and that's the reason why I read the names of these people. These are kamaaina families. Most of them are retired that have been affected by this, and now D'Enbeau and the developer wants us to go ahead and approve this settlement agreement. We should not even deal with this because I just feel that, number one, it is a back door way of dealing with this. The people from Palama Street that fought in court are not even here today. They don't know. Why? And yet, they're asking us to do this. In my conscience, in my heart, I cannot do this to people in Maui County that have given their blood and sweat and have retired in that area and now adopt this, and then homes go up in that area. It's still in court. It is still in court. Isn't it in court, Madelyn?

MS. D'ENBEAU: You're talking about the Goo lawsuit?

COUNCILMEMBER NISHIKI: Yes.

MS. D'ENBEAU: Yes, it's on appeal.

COUNCILMEMBER NISHIKI: It's on appeal. And now they want us to legitimize this. Hey, you know what, if you do wrong, you do wrong. But let's not be part of this devious back door action today by approving this. It's unconscionable. We've not even had this discussion. And Mr. Chairman, it's like...Madelyn, you know that in Sol's committee we were still discussing this and there were many questions. And Sol will attest to the fact, I would think, that he has not received all the information, and yet, aren't you trying to now

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tell the Council to agree in a settlement agreement of this ordinance as stated in here as part of the lawsuit?

CHAIR MOLINA: Ms. D'Enbeau?

MS. D'ENBEAU: No. What we're doing here today is to talk about settling the Cabebe lawsuit and present to the Council in executive session to the Committee of the Whole the demand that came from the Cabebe and Riopta families for their settlement of their lawsuit. So, any matter on changing the height definition, as I've said before, and I'll say again, is in Mr. Kaho'ohalahala's committee, and when he deems it appropriate, if he does deem it appropriate at any point to convene it, meeting of his committee, then the items that Mr. Nishiki refers to will be discussed in his committee. That's where it will be. But this lawsuit that the Cabebes and Rioptas have filed is coming right up to trial. So the court will be holding settlement negotiations and wants to know the position of the County Council to at least have some indication of what the position might be.

CHAIR MOLINA: Ms. D'Enbeau, what is that date again? You mentioned the April 1st I guess ...

MS. D'ENBEAU: April 1st is the day that the Summary Judgment Motion that the Plaintiffs have filed will be heard in Judge August's court. And as some of you may be aware Summary Judgment is a way of asking the court to rule prior to having a trial based on the fact that there are no material issues of fact, and the Plaintiffs are entitled to Summary Judgment as a matter of law. Of course, we're opposing that motion but that is the thing that's coming up next in the litigation. In addition, there's a motion by the Finance Factors who have foreclosed on the Cabebe property to join in this Cabebe lawsuit, and that will be heard on April 8th. So, things are moving fairly rapidly and the reason I asked for an executive session is to get an idea of what type of settlement the Members are interested in pursuing with this case.

CHAIR MOLINA: Okay. All right, Members, you've had a chance to ask and we've heard Mr. Nishiki on his stance. Any other comments, and as Ms. D'Enbeau suggested, I would concur with Ms. D'Enbeau that we go into executive session, hear what this proposal is all about, and when we come out, then Members, the floor is open again to state your opinions, what you think, and so forth so if we could proceed with that. Any other questions in open session as it relates to the document that Ms. D'Enbeau passed out? Otherwise, the Chair will make a recommendation. Mr. Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. I would just like to respond only because the testifier, Mr. Ogomori, stated that he submitted testimony and this is just something that I received just now. So I am curious though in his closing remarks that he makes reference here and underscore the need for immediate action on a proposed height amendment ordinance as though it is a demand. And I would like to say for the record that the Planning Committee has been working on this particular item, PC-44, and the Chair's challenge was trying to get information far beyond what's available in our binders

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on the item. And that has been what I've been tasked with trying to do is gather more information on the PC-44 item, but I'm just concerned that now comes testimony which now leaps over. And I think the point that Member Nishiki makes is very troublesome in terms of trying to now bridge that gap to seem as though part of the settlement that we're tasked with in this Committee with this testimony today by Mr. Ogomori has everything to do with the item that's within my committee. So I just want to make those comments for the record that Planning has been meeting on this. We don't have all the information before us but now comes these kinds of testimony so I'm very troubled by that fact. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Kaho`ohalahala. Members, any other questions in open session for Corp. Counsel? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. And I really don't think Madelyn should be the one here. I just wanted to say it for the record, Mr. Chairman, just because did you not give Mr. Arakawa the advice in regards to allowing the fill to occur to these Palama Street people? Were you not part of that?

CHAIR MOLINA: Mr. Nishiki, can I just ask for a clarification? Are you talking about the Public Works Mr. Arakawa or the former Mayor?

COUNCILMEMBER NISHIKI: The former Mayor.

CHAIR MOLINA: Okay. Ms. D'Enbeau?

MS. D'ENBEAU: I was not part of that.

COUNCILMEMBER NISHIKI: If we authorized the settlement, which includes an amendment to the definition of height, how can this or any future Council then not change the definition via an ordinance in the future without violating the settlement agreement?

MS. D'ENBEAU: Well, the terms of whatever the settlement agreement is going to be we need to discuss, in my opinion, in executive session. So you could ask that question at that time.

COUNCILMEMBER NISHIKI: I mean, to me, you can answer that question.

MS. D'ENBEAU: Well, could you repeat that?

COUNCILMEMBER NISHIKI: Because it is saying that you want to urge the County, this is Mr. Ogomori & Yoshimoto in the letter today...Council member's first paragraph. The letter shall supplement by letter of February 11th to respond to David Merchant's letter dated March 4, 2010, and urge the County to take immediate action enacting the proposed height amendment as part of the settlement of the lawsuit filed by the Plaintiffs today.

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MS. D'ENBEAU: That's . . .

COUNCILMEMBER NISHIKI: Is it or is it not?

MS. D'ENBEAU: You'd have to ask Mr. Ogomori. That's his demand.

COUNCILMEMBER NISHIKI: Isn't it yours also?

MS. D'ENBEAU: No.

COUNCILMEMBER NISHIKI: This is what he is saying?

MS. D'ENBEAU: Yes.

COUNCILMEMBER NISHIKI: Then what is your demand?

MS. D'ENBEAU: In executive session...I don't have a demand but in executive session I'll present to you the demand from Mister, oh, excuse me, from the Cabebes and the Rioptas' attorneys, and then we can discuss what you all feel the position should be.

COUNCILMEMBER NISHIKI: Why would you want to have this discussion when there is a court case that's coming up?

MS. D'ENBEAU: There are two court cases going on.

COUNCILMEMBER NISHIKI: That's right. I'm surprised that you today can, without any conscience, without any conscience . . .

CHAIR MOLINA: Mr. Nishiki, point of order. Mr. Victorino, can you state your point?

COUNCILMEMBER VICTORINO: Yes. Mr. Chair, I would like us to go into executive session to hear specifically what we need to hear. What Mr. Ogomori has demanded and his law firm is what they demand. And best I know, we're not accommodating this demand. But I need to know what specifically we are, so Ms. D'Enbeau, just for point of clarification, are we, is what Mr. Nishiki is saying this is the demand that you made or was it Mr. Ogomori and his associates making a demand saying not only on behalf of these clients but all the other clients as he mentioned in here?

MS. D'ENBEAU: That's Mr. Ogomori's demand.

COUNCILMEMBER VICTORINO: Okay. I think we should move on, Mr. Chair, so we can get to our point of business. Thank you, Mr. Chair.

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CHAIR MOLINA: Thank you for stating your point, Mr. Victorino. Mr. Nishiki, again, if you could --

COUNCILMEMBER NISHIKI: One last question.

CHAIR MOLINA: --keep it brief.

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: Thank you.

COUNCILMEMBER NISHIKI: You know, normally when there is any litigation, Mr. Chairman, we've always been told, hey, because we're in litigation, we should not be acting on these kinds of circumstances. Today, I find that so surprising that Madelyn would be pursuing this direction. It really troubles me. And I'll say it again, I think it's devious, I think it's back door, and you know something, Mr. Chairman, it really hurts me. I never used to think money was dirty but in this situation when there is this type of scenario occurring, I can see how dirty money can be, and how even to a point where they're trying to usurp the legislative government by asking us to adopt this type of agreement. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Nishiki. Any other comments in open session or questions for Corporation Counsel in open session before the Chair makes a recommendation?

COUNCILMEMBER PONTANILLA: Recommendation?

COUNCILMEMBER BAISA: Recommendation?

CHAIR MOLINA: Okay, Members, the Chair will recommend entering into executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

VICE-CHAIR MATEO: Chairman, I move for executive session.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR MOLINA: Okay, the motion to go on to executive session has been made by Committee Vice-Chair Mateo and seconded by Committee member Victorino. Discussion, Members? Seeing none. All those in favor of entering into executive session signify by saying "aye"?

COUNCILMEMBER VICTORINO: Aye.

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CHAIR MOLINA: All those opposed?

COUNCILMEMBER NISHIKI: No.

CHAIR MOLINA: Okay, Chair marks it 7 ayes and 1 no, Mr. Nishiki. The motion to enter into executive session passes.

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

**NOES:     Councilmember Nishiki.**

**ABSTAIN:  None.**

**ABSENT:   None.**

**EXC.:     Councilmember Johnson.**

**MOTION CARRIED.**

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

CHAIR MOLINA: Okay, Members, we will take a short break to prepare the Chambers for executive session, so please don't go anywhere. This meeting will now recess to enter into executive session. . . .(*gavel*). . .

**RECESS:     2:07 p.m.**

**RECONVENE:  3:27 p.m.**

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for March 15th, 2010 is now reconvened in open session. Members, we're on Committee of the Whole Item 1(28), relating to the settlement authorization of Cheryl Cabebe, et al. v. New Sand Hills, LLC, et al., Civil Case No. 09-1-0245(1). The Chair's recommendation based on the discussion in executive session is to approve the proposed resolution to authorize settlement of the case.

COUNCILMEMBER MATEO: So move, Mr. Chair.

COUNCILMEMBER PONTANILLA: Mr. Chair, I second.

CHAIR MOLINA: Okay. The motion has been made to approve the proposed authorizing the settlement of this matter. Motion has been moved by Committee Vice-Chair Mateo and seconded by Committee Member Pontanilla. Discussion, Members? All right, seeing no

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discussion on the floor, the Chair will call for the vote. All those in favor signify by saying “aye”?

COUNCILMEMBER BAISA: Aye.

COUNCILMEMBER PONTANILLA: Aye.

CHAIR MOLINA: All those opposed? Okay. The Chair will mark it 8 ayes with one excusal - Member Johnson. This matter will pass on to the full Council.

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmember Johnson.**

**MOTION CARRIED.**

**ACTION: Recommending ADOPTION of resolution.**

CHAIR MOLINA: Thank you, Members.

**ITEM NO. 2(12): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (BOARD OF VARIANCES AND APPEALS; BOARD OF WATER SUPPLY) (C.C. No. 09-15)**

CHAIR MOLINA: We have two more items on our agenda, Members. Committee of the Whole No. 2(12) nominations to boards, committees, and commissions. The Committee is in receipt of a correspondence dated March 1, 2010 (received on March 1, 2010), from the Mayor, requesting consideration of the following: 1) Nominees to boards, committees, commissions, requiring Council approval or disapproval within 60 days (for terms expiring on March 31, 2013). First, to the Board of Variances and Appeals – Bernice Vadla (replacing Sandra Duvauchelle); and B. Board of Water Supply – Kevin Boteilho (replacing Scott Luck). The Council has until April 5, 2010, to nominate and approve the appointment of a person to fill the vacancy on the Board of Variances and Appeals, and until April 22, 2010, to nominate and approve the appointment of a person to fill the vacancy on the Board of Water Supply. The Committee may consider whether to nominate and approve either or both of the people whose names were submitted by the Mayor. The Committee may also consider other related action. Joining

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us from the Mayor's Office, we have Marian Feenstra and Darlene Endrina. Would you like to make a couple of opening remarks before I turn matters over to the Committee?

MS. FEENSTRA: Good morning afternoon, Committee of the Whole Chair Mike Molina, Council Members, persons in the gallery, and Mayor's nominees. Mayor would like to thank these members who previously served, to those who applied, and those whose nominations are before you for consideration today. The members of our community who are willing to volunteer their time for the betterment of our community are to be commended for doing so because without which we could not, we would not have the community that we have today. So I would like to thank members for their consideration today and special thanks to one of the nominees, Mr. Boteilho, for coming forward today to be interviewed.

CHAIR MOLINA: Okay, thank you, Ms. Feenstra. Any questions for Ms. Feenstra prior to the Chair making a recommendation? If there's no objections, the Chair would like to make a recommendation for a separate vote on the Board of Variances & Appeals and the Board of Water Supply.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: Any...

COUNCILMEMBER VICTORINO: If you're going to do that, Mr. Chair, then...

CHAIR MOLINA: Do you have a question for Ms. Feenstra?

COUNCILMEMBER VICTORINO: Not Ms. Feenstra; for Mr. Boteilho.

CHAIR MOLINA: Yeah, I'll be calling him up.

COUNCILMEMBER VICTORINO: Since you're going to do that, then that's fine.

CHAIR MOLINA: Okay. Members, any objections to proceeding in that manner?

COUNCILMEMBER VICTORINO: No.

CHAIR MOLINA: Okay. The Chair will entertain a motion to approve the nomination of Bernice Vadla (replacing Sandra Duvauchelle) to the Board of Variances and Appeals.

VICE-CHAIR MATEO: Mr. Chair, I move for the approval of Bernice Vadla to the Board of Variances and Appeals.

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

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CHAIR MOLINA: Okay. Motion has been made to approve Bernice Vadla to the Board of Variances and Appeals by Committee Vice-Chair Mateo and seconded by Committee Member Victorino. Any discussion, Members? Seeing none, all those in favor signify by saying "aye"?

COUNCILMEMBER VICTORINO: Aye.

VICE-CHAIR MATEO: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it 8 ayes, 1 excusal - Member Johnson.

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

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:     None.**

**EXC.:       Councilmember Johnson.**

**MOTION CARRIED.**

**ACTION:     Recommending NOMINATION and APPROVAL of Bernice Vadla to the Board of Water Supply.**

CHAIR MOLINA: All right, Members, we're down to the Board of Water Supply nominee and we have Mr. Boteilho who's in the gallery. I'd like to ask Mr. Boteilho if he'd like to come up to the podium and make yourself available to answer questions from the Committee. And for the record, I asked for Mr. Boteilho to appear as well as Committee Members Nishiki and Victorino. We requested your presence here today. And thank you for being very patience. We had a very long discussion on the first committee item. I'd like to ask you, Mr. Boteilho, if you could give us some few opening remarks, a little something about yourself and why you would like to be considered for the Board of Water Supply.

MR. BOTEILHO: Sure. My name is Kevin Boteilho. I've been involved in the Ag industry for 16 years now and I'm willing to serve openly to discuss any issues that come up before the Board of Water Supply. I think I can be fair and open to all issues. It's about it, if you guys have any questions.

CHAIR MOLINA: Okay. Thank you very much, Mr. Boteilho. I'll recognize Mr. Victorino and followed by Mr. Nishiki.

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COUNCILMEMBER VICTORINO: Thank you. Thank you, Mr. Boteilho. First of all, for offering yourself and to be here. I was one of the three that did request to meet you today. I know of you and I think we've met on a few cases.

MR. BOTEILHO: Yeah.

COUNCILMEMBER VICTORINO: But I don't know much about you. I've read your bio and again that's kind of limited. But let me ask you again in a general frame of the question as far as water issues are concerned. You are of the understanding that we are at a very pivotal point as far as water and some of the issues for the Upcountry area and throughout the County of Maui, but really Upcountry in particular. And you know there's the East Maui issue which has...could and will have some effect to Ag usage, not only in Central but also in the Upcountry area. But knowing these ramifications, how...when these ramifications are presented to you, would you be able to make or render decisions if called upon when it comes to these various areas since you are, pardon the expression, really tied to Ag because your life is around agriculture. But it involves culture, it involves environment, it involves domestic and it involves agriculture. So it's all one kind of package, although different facts. How would you be able to make decisions in that sense?

MR. BOTEILHO: I think I can do it fairly because I believe everyone deserves their fair share as far as when it comes to water. So culturally or for commercial or business, I think everyone should have a fair amount and I think it will be decided by...most likely by the State. But on my end, I think I can fairly accept what is brought forth to me.

COUNCILMEMBER VICTORINO: Okay. And then the last question I have for you is being that you have been very active in agriculture up in the Upcountry area, especially Kula, and I think you're presently the Operations Manager for the Hawaii Growers Product Incorporated?

MR. BOTEILHO: Correct.

COUNCILMEMBER VICTORINO: Okay. Do you see the viability of water to make agriculture itself more prosperous as well as sustainable?

MR. BOTEILHO: Definitely. Without water nothing will grow, obviously.

COUNCILMEMBER VICTORINO: Right.

MR. BOTEILHO: But to continue the delivery of water to the farmers Upcountry that will sustain the current operations as well as any increase in new productions definitely.

COUNCILMEMBER VICTORINO: Okay, thank you. Thank you, Mr. Boteilho. Thank you, Mr. Chair.

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CHAIR MOLINA: Okay, thank you, Mr. Victorino. Mr. Nishiki?

COUNCILMEMBER NISHIKI: No, I don't have any questions.

CHAIR MOLINA: Okay. Thank you. Mr. Boteilho, just one quick question. You're Maui Community College and your background...you have an Associates in Agriculture or...

MR. BOTEILHO: No. I just have college...

CHAIR MOLINA: Took college courses to supplement your employment?

MR. BOTEILHO: Yeah.

CHAIR MOLINA: Okay. Good, good. And your availability to be on the Board, you have the time and no conflict with your job?

MR. BOTEILHO: No conflict with my job.

CHAIR MOLINA: Okay. All right. Members, other questions for Mr. Boteilho? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Boteilho, good afternoon.

MR. BOTEILHO: Good afternoon.

COUNCILMEMBER MEDEIROS: Thank you for being here and for being a nominee. I just wanted to ask you, as part of the application form you mentioned something about Planning Commission. So was Planning Commission your first desire to be on a commission?

MR. BOTEILHO: No, it was not.

COUNCILMEMBER MEDEIROS: Oh, okay.

COUNCILMEMBER VICTORINO: Mr. Chair? I think, if you're looking at...

COUNCILMEMBER MEDEIROS: Yeah, I think I have the wrong one. Okay, let me also ask you then, what are your...and you live in Kula, right?

MR. BOTEILHO: Yeah, I live in Kula.

COUNCILMEMBER MEDEIROS: You live in Kula. So do you have any thoughts on the meter, water meter list?

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MR. BOTEILHO: Well, it's a very contentious issue. I think the key would be to provide more water in the area whether it's via additional sources, via surface or from groundwater. But I think it's only fair for the people on the list to be supplied eventually. You would hope that it would be sooner than later.

COUNCILMEMBER MEDEIROS: Okay. And you're willing to make a commitment to the Board of Water Supply for the commute that you would have to make to come to meetings and the term of a commissioner on that board?

MR. BOTEILHO: Yes, I would.

COUNCILMEMBER MEDEIROS: Okay, thank you for your responses. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Committee Members, any other questions for Mr. Boteilho?

COUNCILMEMBER KAHO`OHALAHALA: Chair?

CHAIR MOLINA: Mr. Kaho`ohalahala?

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. Kevin, I want to thank you for considering service with this one. I just have a question on your comments about being fair. I don't fully understand how fair is applicable with no other kinds of context for what is fair. But when it comes to water, what do you mean when you are saying that you would try to be fair?

MR. BOTEILHO: Well, I believe everyone should get their share of water and not all be sent to one location or one person. So if someone really, for example, East Maui people they do deserve their share of the water that comes out. I know that the State will decide on that issue, Commission on Water Resource Management, but I feel that the taro growers do deserve water. Environment deserves water as well as the business community.

COUNCILMEMBER KAHO`OHALAHALA: Okay. And how do you quantify that? How do you come to some understanding of quantifying that?

MR. BOTEILHO: Well, there's traditional uses as well as what was historically used and currently used by the business community. So quantities would be determined by...I would just assume, without having a real in-depth knowledge to what their needs are currently in their operations. Hopefully, I've answered your question.

COUNCILMEMBER KAHO`OHALAHALA: Okay. Well, assumptions are in my view not the best way to just to try and make decisions because that means that you don't fully have all of the information before you.

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MR. BOTEILHO: Currently, I don't have a full knowledge at this time but I'm always willing to learn the full issue of it.

COUNCILMEMBER KAHO`OHALAHALA: Okay. And public trust doctrine, you understand that?

MR. BOTEILHO: Yes, I do.

COUNCILMEMBER KAHO`OHALAHALA: Okay.

MR. BOTEILHO: To a certain extent.

COUNCILMEMBER KAHO`OHALAHALA: Can you explain to me what you understand?

MR. BOTEILHO: It's the public's right to have, in this case, water is to be guaranteed to everyone. Hopefully, I have the right understanding of it.

COUNCILMEMBER KAHO`OHALAHALA: That's a good one to have.

MR. BOTEILHO: Yeah.

COUNCILMEMBER KAHO`OHALAHALA: Thank you very much.

CHAIR MOLINA: Okay, thank you Mr. Kaho`ohalahala. Any other questions for Mr. Boteilho? And by the way, for the record, Mr. Boteilho and Members, we did receive written testimony in support of Mr. Boteilho's nomination from Ernest Rezentes, Gina Flammer, and William Jacintho, and of course we heard earlier today, Mr. Strand testifying in support of Mr. Boteilho. Any final questions before I excuse Mr. Boteilho? Seeing none. Thank you, Mr. Boteilho, for making yourself available --

MR. BOTEILHO: Thank you.

CHAIR MOLINA: --for questions from the Committee. All right, Members, the Chair is ready to offer a recommendation on the nomination of Kevin Boteilho to the Board of Water Supply.

COUNCIL MEMBERS: Recommendation?

CHAIR MOLINA: Okay, the Chair's recommendation is to approve Mr. Boteilho's nomination to the Board of Water Supply.

COUNCILMEMBER MATEO: Mr. Chairman, I move for the approval of Kevin Boteilho to the Board of Water Supply.

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

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CHAIR MOLINA: Okay, the motion to approve has been made by Committee Vice-Chair Mateo and seconded by Committee Member Victorino, and this would be to replace Scott Luck on the Board of Water Supply, Members. Member Baisa, discussion?

COUNCILMEMBER BAISA: Thank you very much, Chair. I'd like to speak in support of your motion. I've had the opportunity to get to know Mr. Boteilho through his connection with the Kula Community Association. I have to tell you how excited we were to get a young, local boy who was very interested in his community, and wants to spend his time helping. You know, it's really refreshing and wonderful that we see some of our younger people that are willing to step to the plate and serve on boards and commissions and try to make our Upcountry area better and our whole community better, and I'm just so delighted. He's been a willing participant, volunteers to help all the time, and I think he would be a great member of the Water Board.

CHAIR MOLINA: Thank you, Member Baisa. Member Victorino?

COUNCILMEMBER VICTORINO: Yes, Mr. Chairman, I also was very impressed with Mr. Boteilho's answers especially on the public doctrine and understanding that water is a public trust belonging to the people, and that we must continue to strive in that direction. And I think he will make a very young and dynamic addition to the Board of Water Supply, and I would like to put my support behind of him also. I think if somebody from Upcountry, somebody who has farming, somebody who has the understanding of agriculture, somebody who has the understanding of the public at large, and willing to help this community, I think that's pretty interesting when you have somebody that young who is willing to put all of that together. So, I can support that, Mr. Chair, and I'll wait for the vote. Thank you, sir.

CHAIR MOLINA: Okay, thank you, Mr. Victorino. Any other comments before the Chair calls for the vote? Okay, seeing none. All those in favor of approving the nomination of Kevin Boteilho to the Board of Water Supply signify by saying "aye"?

COUNCILMEMBER VICTORINO: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it 8 ayes with 1 excusal - Member Johnson. Very good. Congratulations, Mr. Boteilho.

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

**NOES:       None.**

**ABSTAIN:   None.**

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**ABSENT: None.**

**EXC.: Councilmember Johnson.**

**MOTION CARRIED.**

**ACTION: Recommending NOMINATION and APPROVAL of Kevin Boteilho to the Board of Water Supply.**

CHAIR MOLINA: Moving right along, Members, to our final item of the day. Committee of the Whole Item 2(13) to the Animal Control Board and Subdivision Engineering Standards Committee.

**ITEM NO. 2(13): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (ANIMAL CONTROL BOARD; SUBDIVISION ENGINEERING STANDARDS COMMITTEE) (C.C. No. 09-15)**

CHAIR MOLINA: The Committee is in receipt of a correspondence dated March 3rd, 2010 (received March 4th), from the Mayor, requesting consideration of the following: to the Animal Control Board - Dr. Brian Atwell, for a term expiring on March 31st, 2012; and to the Subdivision Engineering Standards Committee - Paul Mikolay, for a term expiring on March 31st, 2015. And the Council must approve or disapprove the nominations by May 3rd, 2010 or the nominations will be deemed approved. And before we discuss this very briefly, the Chair was remiss in not recognizing Corporation Counsel Adrienne Heely to our proceedings today. My apologies to you.

MR. HEELY: No worries.

CHAIR MOLINA: Administration, any brief comments with regards to the nominations to the Animal Control Board and Subdivision Engineering Standards Committee?

MS. FEENSTRA: Well, it was a long hard road trying to find a veterinarian willing to serve so we're very, very happy that we have one. And we do have Paul in the audience who is an engineer who is willing to step forward to take on the position, the engineering vacancy that we have with the Subdivision Engineering Standards. So we're very pleased to have these two nominees before you today.

CHAIR MOLINA: Okay, thank you. Members, questions for the Administration? Mr. Victorino?

COUNCILMEMBER VICTORINO: Not really a question but just more of a comment. We're thankful that they're coming forward. These are specialties and they're not just like any of us in the general public. So I'm very appreciative that we can get an engineer like Paul and Dr. Brian Atwell to come forward to serve. I'll await for your recommendation but

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I'm excited to approve people like this cause they don't come here every day, so let's not lose the opportunity. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. I haven't seen you so cheery and enthused. It's a Monday, too. Member Baisa prior to the Chair making a recommendation?

COUNCILMEMBER BAISA: Well, I would like to thank and support these nominees. You know, I'm feeling really proud today because my district is stepping to the plate. And this is the third nominee from Kula, and I'd like to thank these folks very, very much. You know, it's so difficult to get professionals to give the time and that they're willing to do that. It's very noteworthy so I'm anxious for your recommendation, Chair.

CHAIR MOLINA: Okay, thank you very much, Member Baisa. All right, Members, Chair is going to offer a recommendation.

COUNCILMEMBER VICTORINO: Recommendation?

CHAIR MOLINA: Chair will entertain a motion to approve first to the Animal Control Board, Dr. Brian Atwell, for a term expiring on March 31st, 2012, and to the Subdivision Engineering Standards Committee, Paul Mikolay, for a term expiring on March 31st, 2015.

VICE-CHAIR MATEO: Chairman, I move for the approval of Dr. Brian Atwell, for a term expiring March 31st, 2012 to the Animal Control Board as well as Paul Mikolay, for a term expiring on March 31, 2015 to the Subdivision Engineering Standards Committee.

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

CHAIR MOLINA: Okay. The motion to approve has been made by Committee Vice-Chair Mateo and seconded by Committee Member Victorino. Discussion, Members? Seeing none, all those in favor signify by saying "aye"?

COUNCILMEMBER BAISA: Aye.

COUNCILMEMBER VICTORINO: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it 8 ayes, 1 excusal - Member Johnson.

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

**NOES:       None.**

**ABSTAIN:   None.**

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**ABSENT:** None.

**EXC.:** Councilmember Johnson.

**MOTION CARRIED.**

**ACTION:** Recommending APPROVAL of Dr. Brian Atwell's nomination to the Animal Control Board and Paul Mikolay's nomination to the Subdivision Engineering Standards Committee.

CHAIR MOLINA: All right, Members, I believe this concludes our business for today. It is 3:45 p.m., the Chair wants to thank all of you for your hard work and participation as well as our Committee Staff and the Administration. Thank you all for your very hard work. So with that being said, this Committee of the Whole meeting for Monday, March 15th, 2010 is now adjourned. . . .(gavel). . .

**ADJOURN:** 3:46 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair  
Committee of the Whole

cow:min:100315

Transcribed by: Jo-Ann Sato