

**COUNCIL OF THE COUNTY OF MAUI**  
**COMMITTEE OF THE WHOLE**

November 19, 2010

**Committee**  
**Report No.** \_\_\_\_\_

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on October 28, 2010, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated October 6, 2010, the Department of the Corporation Counsel requested consideration of the possible settlement of Richard Certo, et al. v. County of Maui, et al., Civil No. 09-1-0438(1). Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF RICHARD CERTO, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0438(1)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that the complaint alleges that the County failed to pay Mr. Certo, and other similarly situated persons, interest or actual earnings realized on the overpayment of real property taxes.

The Deputy Corporation Counsel explained that Mr. Certo appealed the County's assessment of his property with the Real Property Tax Review Board ("Board"). While the appeal was pending, Mr. Certo made two payments based on the challenged assessment in order to avoid penalties. The Board determined that the assessed valuation of the property was lower, and the Department of Finance subsequently refunded Mr. Certo's overpayment. However, the refund did not include interest or other earnings realized by the County during the appeal process.

The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting, closed to the public.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS).

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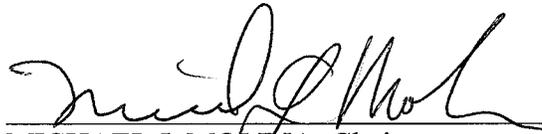
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Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 5-0 to recommend adoption of the proposed resolution to authorize the settlement of the matter under the terms proposed in the executive meeting. Committee Chair Molina, and members Baisa, Kaho'ohalahala, Medeiros, and Victorino voted "aye". Committee Vice-Chair Mateo and members Johnson, Nishiki, and Pontanilla were excused.

Your Committee of the Whole RECOMMENDS that Resolution No. \_\_\_\_\_, attached hereto, entitled "AUTHORIZING SETTLEMENT OF RICHARD CERTO, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0438(1)" be ADOPTED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.

  
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MICHAEL J. MOLINA, Chair

# Resolution

No. \_\_\_\_\_

AUTHORIZING SETTLEMENT OF  
RICHARD CERTO, ET AL. VS. COUNTY OF MAUI, ET AL.,  
CIVIL NO. 09-1-0438(1)

WHEREAS, Plaintiff Richard Certo filed a lawsuit on June 12, 2009 in the Second Circuit Court for the State of Hawaii, alleging that Plaintiff and others are entitled to certain refunds on their real property taxes; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Committee of the Whole; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

