

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

March 4, 2015

Council Chamber, 8th Floor

CONVENE: 1:37 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Don Couch
Councilmember Riki Hokama
Councilmember Michael P. Victorino
Councilmember Mike White (in 1:47 p.m.)

EXCUSED: Councilmember Robert Carroll
Councilmember Elle Cochran

STAFF: Sharon Brooks, Legislative Attorney
Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Brian A. Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 1(6) and 1(2))
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 1(3))
Richelle M. Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 1(3))

OTHERS: Colleen P. Doyle, Esq., Hunton and Williams LLP

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

CHAIR GUZMAN: ...*(gavel)*... Good afternoon. Welcome to the Committee of the Whole. I'm Don Guzman, the Chair of the Committee of the Whole. Before we begin, I'd ask anyone in the gallery, which there's no one there, to turn off their cell phone. I'd like to introduce our Members for today starting with Gladys Baisa. Good afternoon.

COUNCILMEMBER BAISA: Good afternoon, Chair.

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

CHAIR GUZMAN: Thank you. Mr. Couch...Don Couch.

COUNCILMEMBER COUCH: Good afternoon.

CHAIR GUZMAN: Good afternoon. Vice-Chair of the Committee, Stacy Crivello.

VICE-CHAIR CRIVELLO: Good afternoon, Chair.

CHAIR GUZMAN: Thank you. And Riki Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR GUZMAN: Thank you. And Mike Victorino.

COUNCILMEMBER VICTORINO: Good afternoon, Chair.

CHAIR GUZMAN: Thank you. Excused is Mike White, as well as Elle Cochran and Robert Carroll. I'd also like to check in at this time at the District Offices. The District Office for Hana, are you there?

MS. LONO: Yes. Good afternoon, Chair. This is Dawn Lono at the Hana Office.

CHAIR GUZMAN: Thank you, Ms. Lono. Lanai Office, are you there?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai.

CHAIR GUZMAN: Good afternoon, Ms. Fernandez. And Molokai Office, are you there?

MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai.

CHAIR GUZMAN: Thank you. Thank you very much, Ms. Alcon. I'd also like to introduce the Staff today is Clarita Balala is our Committee Secretary, as well as Legislative Attorney Sharon Brooks. Present today from the Corporation Counsel's office is Deputy Corporation Counsel Moana Lutey, as well as Brian Bilberry. Today I would also request anyone who would like to testify...let me ask this, is there anyone in the. . .

MS. BROOKS: There are none in the Chamber.

CHAIR GUZMAN: None in the Chamber. Okay. I'm gonna go directly to the District Offices. Is there anyone wishing to testify in Hana?

MS. LONO: The Hana Office has no one waiting to testify.

CHAIR GUZMAN: Thank you. What about Lanai?

MS. FERNANDEZ: The Lanai Office has no one waiting to testify.

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

CHAIR GUZMAN: Thank you. And Molokai Office, anyone wishing to testify?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR GUZMAN: Thank you. Last call to the gallery, anyone wishing to testify? Seeing none, Members without objections, I would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you.

ITEM 1(6) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION AND STATUS: DOUGLAS LEONE, ET AL. V. COUNTY OF MAUI, ET AL.; CIVIL 07-1-0496(2))

CHAIR GUZMAN: Members, we're going to go ahead and look at today's first item for the agenda is COW-1(6), litigation matters, settlement authorization and status of the Douglas Leone, et al. v. County of Maui, et al., Civil No. 07-1-0496(2). The Committee is in receipt of the correspondence dated February 26, 2015, from the Department of the Corporation Counsel, requesting an opportunity to provide a status update on the case and consideration of the proposed resolution, entitled "AUTHORIZING SETTLEMENT OF DOUGLAS LEONE AND PATRICIA A. PERKINS-LEONE V. COUNTY OF MAUI, ET AL., CIVIL NO. 07-1-0496(2)", and transmitting a copy of the Complaint. The Complaint alleges inverse condemnation, denial of substantive due process rights, and denial of equal protection, and demands damages, including punitive damages, arising out of a dispute concerning plaintiffs' proposals to construct a single-family residence on their property located at 4492 Makena Road, Kihei, Maui, Hawaii. The Committee may consider whether to recommend adoption of the proposed resolution with or without revisions. The Committee may also discuss the status of the case and consider other related action. Today, Members, we have Deputy Corporation Counsel Brian Bilberry and he will advise us. I guess he's advising us that his office has been in ongoing settlement with the discussions with the mediator, retired Judge Joel August, and that they are in receipt of a Settlement Demand dated February 10, 2015 from Plaintiffs Doug Leone and Patricia Perkins-Leone. I would ask at this time that Corporation Counsel provide any comments on the case status that can be made in open session to the public for more of a fully understanding of the case and possible synopsis. So Mr. Bilberry, can you please give us an update on the case?

MR. BILBERRY: I can, Chair. Thank you very much. Just a quick. . .

COUNCILMEMBER COUCH: Mr. Chair, can you have him use the microphone.

COUNCILMEMBER VICTORINO: The mic.

CHAIR GUZMAN: Oh, yes.

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

MR. BILBERRY: Yes. Sorry about that. Just a quick background. As you recall, this case was filed back in 2007 and the County at that time filed a motion to dismiss alleging that the Plaintiffs' claims were not ripe for adjudication because they hadn't gone through complete administrative process. The Circuit Court granted that motion to dismiss. The matter went up on appeal. The ICA reversed the dismissal holding that the Plaintiffs' claims were in fact ripe for purposes of bringing a lawsuit, and as we understand it, that reversal was limited to the opinion that the Plaintiffs' claims were ripe. The Plaintiffs has some other ideas about what that decision means and they've been making us aware of that since the decision was overturned. The punitive damages claim has been dismissed. We were able to get that dismissed via motion within the last month or so, and as you are aware, we have settled with the Larson claimants who were co-plaintiffs with the Leone's in this case. We have in fact been in ongoing negotiations with the Leone's and their lawyer and with the assistance of retired Judge Joel E. August, who has been serving as a mediator in this case and working with the parties and the court to see if we can hammer out a resolution. It's not been easy, but the parties have made some progress. As the Chair...Chair Guzman has indicated we did receive a demand from the Leone's dated February 10, 2015. They have since withdrawn that demand/offer for some reasons that I think we will need to discuss in an executive session along with the details of the proposed settlement. I think it's still worth our time to have a discussion about the proposal that was made although it's been rescinded because they are still interested in furthering discussions with us, and have asked that we address some concerns they had regarding their particular proposal for settlement, and that's something that we are currently doing. We will in fact be having a in person discussion tomorrow with the mediator and with the Leone Plaintiffs' counsel to see if we can resolve some difficulties that have proved to potentially obstruct a possible settlement. So what I would ask is if we defer this matter for the moment and go into executive session at some point in time and when it's convenient today and discuss the details of the settlement proposal and give you our thoughts on what the response could be.

CHAIR GUZMAN: Thank you. Members, preliminarily, if you have any questions, go ahead and ask them now before we go into executive session. I would ask Mr. Bilberry to filter those questions and if you cannot respond to those questions in open session, please place that on the record that the response needs to be made in executive session. So, Members, do we have any questions in open session? Seeing none, thank you, and we will go ahead and take a vote on whether we will go into executive session. I will entertain a motion to convene an executive meeting for Committee Item COW-1(6) pursuant to 92-5(a)(4) of the HRS, Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: So moved by Vice. . .

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

CHAIR GUZMAN: So moved by Vice-Chair Stacy Crivello, seconded by Member Victorino. Discussion? None? Seeing none, all in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All opposed, say no. None? Okay, there is seven ayes. . .

COUNCILMEMBER COUCH: Six.

CHAIR GUZMAN: Oh, excuse me, six ayes, three excused. The motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Couch, Hokama, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Carroll, Cochran, and White.

MOTION CARRIED.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR GUZMAN: Okay. Mr. Bilberry, we'll call you when we convene executive session.

ITEM 1(2) LITIGATION MATTERS (STATUS: OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 13-1-0848(2))

CHAIR GUZMAN: So right now I'm going to call the next item, which is, Members, on the next item is COW-1(2), litigation matters regarding the Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil No. 13-1-0848(2). The Committee is in receipt of the correspondence dated February 12, 2015 from the Department of Corporation Counsel, requesting an opportunity to provide a status update on the case and transmitting a copy of the First Amended Complaint. The First Amended Complaint alleges violations of equal protection, due process, and the State Sunshine Law. The Committee may discuss the status of the case and/or consider other related actions. Again, it's going to be presenting Deputy Corporation Counsel Brian Bilberry and his office has received a settlement demand, dated January 28, 2015, from Plaintiffs, Ocean Resort Villas Vacation Owners Association and Ocean Resort Villas North Vacation Owners Association, and this matter has been set for trial to commence in May...sometime in May 2015 of this year. Mr. Bilberry,

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

would you please give us a synopsis and a case history and an update in regards to this case.

MR. BILBERRY: I will, Chair. Thank you. As you recall, the factual basis for the claims that had been made in this case had to do with tax classification which was created I believe in or around 2005 for timeshares, pulling them out of the Hotel bracket. And the complaint alleges that is a violation of equal protection, due process, and they have also alleged in intentional conduct in animus. From what we can tell, what they would really like is to be reclassified as Hotel. We have received a demand from them and it's rather lengthy. That's something, again, I would like to discuss in a little more detail in executive session. Before I request that, let me point out that the trial has been continued from May until September of this year pending some difficulties that have existed between the parties regarding discovery matters, which I believe everybody is aware of. The demand is although somewhat lengthy, quite simple, and so I don't want to get into it here but we can have a discussion about it in executive session, as I requested we be allowed to go into executive session when it's convenient to discuss in more detail what it is they're actually asking.

CHAIR GUZMAN: Okay. Thank you, Mr. Bilberry. Prior to that we will...I will ask the Members if you have any questions in open session. Seeing none, at this time I will entertain a motion to convene this item in executive session pursuant to 92-5(a)(4), HRS, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

VICE-CHAIR CRIVELLO: Chair, so moved.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Moved by Vice-Chair Stacy Crivello and seconded by Mike Victorino. Discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say no. Seven ayes, two excused. Motion carries.

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

VOTE: **AYES:** **Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Couch, Hokama, Victorino, and White.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmembers Carroll and Cochran.**

MOTION CARRIED.

ACTION: **APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR GUZMAN: Thank you, Mr. Bilberry.

ITEM 1(3) LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION AND STATUS: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK)

CHAIR GUZMAN: Moving on to the next item, Members. Item No. COW-1(3), litigation matters, the settlement authorization [sic] and status of the Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK. The Committee is in receipt of the correspondence dated February 17, 2015 from the Department of the Corporation Counsel, requesting an opportunity to provide a status update on the case and consideration of the proposed resolution. The Committee is in receipt of the correspondence dated March 4, 2015 from the Department of Corporation Counsel, transmitting a revised proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL HUNTON & WILLIAMS LLP, IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK". The purpose of the proposed resolution is to authorize the employment of Michael Shebelskie, Esq., of Hunton & Williams LLP, to provide legal services related to appellate work in this matter and to authorize an increase in compensation of the employment of the special counsel by 500,000 for a total compensation not to exceed 1.75 mil. The Committee may consider whether to recommend adoption of this proposed resolution with or without revisions. The Committee may also consider other related actions. Today we have Ms. Thomson from the Corporation Counsel office and if you have any opening remarks in terms of what you can share in this open session, can you please do so.

MS. THOMSON: Thank you, Chair. So as the Committee Members are aware, in 2012 the Plaintiffs' group filed a complaint alleging that the County of Maui violated the Clean Water Act by operating the Lahaina Wastewater Reclamation Facility without NPDES permits. The Federal Court Judge found on May 30, 2014 and on January 23, 2015

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

that the County had violated the Clean Water Act for failing to operate the facility without an NPDES permit. Skipping forward to the events since our last meeting. On January 28, there was a telephonic status conference with Judge Kurren, followed by February 12, a settlement conference held also in Honolulu. On February 19, the County filed its Motion for Certification of Appealability and a Motion to Stay the Proceedings for those...the two prior orders that established Clean Water Act liability. So the appeal has been filed. Coming up March 11, 2015, next week is the last day for the County to file its expert reports in the penalty phase of the trial. And the hearing on the appeal is going to be held on April 20th. So that basically brings us up-to-date as far as the events that have occurred since our last meeting.

CHAIR GUZMAN: Thank you, Ms. Thomson. Prior to entering into executive session I would allow the Members, do you have any questions to pose to Deputy Corporation Counsel at this time? Seeing none, Members, I would like to entertain a motion to convene an executive session meeting for Committee Item COW-1(3) pursuant to 92-5(a)(4), HRS, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

VICE-CHAIR CRIVELLO: Chair, so moved.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Moved by Vice-Chair Stacy Crivello and seconded by Mr. Michael Victorino. Discussion? Seeing none, all in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All opposed, say no. Seven ayes, two excused. Motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Couch, Hokama, Victorino, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Carroll and Cochran.

MOTION CARRIED.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR GUZMAN: At this time, Members, I am going to adjourn --

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

COUNCILMEMBER VICTORINO: No, no.

CHAIR GUZMAN: --no, no, sorry, recess. I'm going to recess this Committee so that we can reconvene in executive session for Items COW-1(6), COW-1(2), and COW-1(3). So at this time we will take a recess to set the Chambers. Thank you. . . .(gavel). . .

RECESS: 1:54 p.m.

RECONVENE: 3:29 p.m.

CHAIR GUZMAN: . . .(gavel). . . Good afternoon. We shall reconvene in open session, the Committee of the Whole, dated March 4, 2015.

ITEM 1(6) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION AND STATUS: DOUGLAS LEONE, ET AL. V. COUNTY OF MAUI, ET AL.; CIVIL 07-1-0496(2))

CHAIR GUZMAN: At this time I'm going to call on the Agenda Item COW-1(6), litigation matters of the Douglas Leone, et al. v. County of Maui, et al., Civil No. 07-1-0496(2). Pursuant to our discussions in executive session, without objections I would like to defer this matter.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: RC and EC)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you, Members. The item is therefore deferred.

ITEM 1(2) LITIGATION MATTERS (STATUS: OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 13-1-0848(2))

CHAIR GUZMAN: I'm calling on Item No. COW-1(2), litigation matters of the Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil No. 13-1-0848(2). Without objections, Members, I would like to defer this matter pursuant to our discussions in executive session.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: RC and EC)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you.

COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

ITEM 1(3) LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION AND STATUS: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK)

CHAIR GUZMAN: Members, I'm going to call on Item, sorry, Item No. COW-1(3), litigation matters, special counsel authorization and status, the resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL HUNTON & WILLIAMS LLP, IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK". At this time I would like to entertain a motion to adopt the resolution.

VICE-CHAIR CRIVELLO: So moved, Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Moved by Vice-Chair Stacy Crivello and seconded by Mr. Victorino. Any discussion, Members? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say no. Motion carried, I mean sorry, resolution is adopted and carried with seven ayes and no noes, two excused. I believe it's Ms. Cochran and Mr. Carroll.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Couch, Hokama, Victorino, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Carroll and Cochran.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

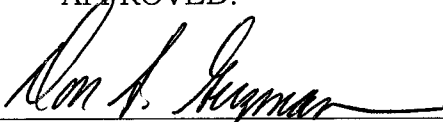
COMMITTEE OF THE WHOLE MINUTES
Council of the County of Maui

March 4, 2015

CHAIR GUZMAN: Thank you, Members. So this will conclude our items for today's Committee meeting. I thank everyone for going through it all and sitting patiently, and also thank the Staff, as well as the Department and Ms. Doyle. Thank you very much. We shall now adjourn this meeting. Thank you. . . *(gavel)* . . .

ADJOURN: 3:28 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

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Transcribed by: Clarita Balala