

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

April 20, 2015

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

**CONVENE:** 1:35 p.m.

**PRESENT:** Councilmember Don S. Guzman, Chair  
Councilmember Stacy Crivello, Vice-Chair  
Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Riki Hokama  
Councilmember Michael P. Victorino  
Councilmember Mike White

**EXCUSED:** Councilmember Elle Cochran  
Councilmember Don Couch

**STAFF:** Carla Nakata, 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.:** Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel  
Richard B. Rost, Deputy Corporation Counsel, Department of the Corporation Counsel  
Peter Delima, Captain, Department of Police

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

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**COW-1(9):** **LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: STRATFORD GOODHUE AND DOREEN GOODHUE V. COUNTY OF MAUI, ET AL., CIVIL 14-00006 ACK/KSC) (CC 15-6)**

CHAIR GUZMAN: *... (gavel) ...* Good afternoon. Welcome to the Committee of the Whole. I'm Don Guzman, the Chair of the Committee. Before we begin, I would ask everyone to please put their cell phones on silence mode. I'm going to introduce our Members today. Our Vice-Chair of the Committee is Stacy Crivello. Good afternoon.

VICE-CHAIR CRIVELLO: Aloha, Chair.

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CHAIR GUZMAN: And then we have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR GUZMAN: And Mike Victorino.

COUNCILMEMBER VICTORINO: Aloha and good afternoon, Chair.

CHAIR GUZMAN: Excused momentarily is Riki Hokama, Mike White, and excused for the entire Committee meeting is Elle Cochran and Don Couch. Today we have from our Corporation Counsel office, we have Moana Lutey, and also Richard Rost, and from the Maui Police Department, Captain Delima. From our Staff we have Committee Secretary, Clarita Balala, and Legislative Attorney, Carla Nakata. I'm going to go ahead and check in with our Districts Offices. Hana Office, are you there Ms. Lono?

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

CHAIR GUZMAN: Ms. Lono, is there anyone wishing to testify there.

MS. LONO: There is no one wishing to testify.

CHAIR GUZMAN: Thank you. And Lanai Office, Ms. Fernandez?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR GUZMAN: Thank you. And on Molokai, Ms. Alcon?

MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR GUZMAN: Thank you. And I'm going to turn our attention to the Chambers. Is there anyone wishing to testify in the Chambers?

MS. NAKATA: There are no testifiers, Mr. Chair.

CHAIR GUZMAN: No one signed up. In the gallery, no one appears to be there. Moving on, Members, without any objections, I would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you. Turning to our agenda item, COW-1(9), Litigation Matters, the Stratford Goodhue and Doreen Goodhue v. County of Maui, et al., Civil No. 14-00006.

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The Committee is in receipt of the correspondence dated April 10, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution, entitled "AUTHORIZING SETTLEMENT OF STRATFORD GOODHUE AND DOREEN GOODHUE V. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00006 ACK/KSC", and transmitting a copy of the First Amended Complaint. The complaint alleges that, on or about October 5, 2013, the Goodhues were "offering a religious pamphlet to passers-by while standing on a public sidewalk near the entrance to the Maui Fair fairgrounds when officers of the Maui Police Department ordered them to cease their protected First Amendment activities and ejected them," and seeks declaratory and injunctive relief, attorneys' fees, costs, and actual and nominal damages. 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. As noted in the correspondence, this matter is time sensitive, as there is a settlement conference with the Court scheduled April 24, 2015. The Court has requested that this matter be presented to the Committee prior to the settlement conference. I would like to ask the Corporation Counsel to provide comments in open session on the status of the case that you can so that the public and this Committee can more fully understand this case. Deputy, can you please proceed with the background and any of the status of the procedural posture.

MR. ROST: Yes. Thank you, Mr. Chair. As you indicated in your summary, Mr. Chair, this lawsuit was filed by Stratford and Doreen Goodhue. They were attempting to distribute religious pamphlets near the entrance to the 2013 Maui County Fair. While they were doing that Avery Chumbley, who's an executive with the Fair Alliance, observed their activities and determined in his mind they were creating a safety hazard because...his testimony was that they were walking the sidewalk forcing people to walk into the street to get around them. So he asked Sergeant Ramos of the Maui Police Department who was working off duty as security for the fair to remove the Goodhues from the area. Sergeant Ramos went and spoke to the Goodhues and had what he described as a pleasant conversation with them but ultimately he instructed them to leave the area. He suggested that they cross Kaahumanu Avenue and pass out their literature near the parking lot of Kaiser. They did so, but subsequently they filed this lawsuit in the United States District Court for the District of Hawaii. So it's a single count complaint that alleges violation of their First Amendment rights, particularly their freedom of speech. They allege that Sergeant Ramos acted improperly when he ordered them to leave the area. The Plaintiffs recently filed a Motion for Summary Judgment against Sergeant Ramos, not against the County, which the Court recently denied. The trial in this matter is scheduled for July 28<sup>th</sup> of this year. Since this matter is in active litigation we're going to request executive session before getting into any of the details about the posture of the case. But if there are any questions in open session, I'm happy to address them and we also have Captain Delima here to address questions as well.

CHAIR GUZMAN: Thank you. I'd like to recognize the presence of Mr. White and Mr. Hokama.

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COUNCILMEMBER HOKAMA: Chairman.

CHAIR GUZMAN: Members, do you have any questions in open session?

COUNCILMEMBER VICTORINO: No, not, not...Mr. Chair?

CHAIR GUZMAN: Mr. Victorino.

COUNCILMEMBER VICTORINO: Go ahead. Mr. Hokama raised his hand. Go ahead.

CHAIR GUZMAN: Mr. Hokama.

COUNCILMEMBER VICTORINO: Yeah, go ahead, Riki.

COUNCILMEMBER HOKAMA: I have a question and you can determine whether it's appropriate to respond in this matter or not, Chair. I, for the life of me, for somebody that's not working for us, we getting sued? I get one problem with that. I don't care about general orders or general practices, that person is not working on the County's behalf, why am I getting a request for settlement?

CHAIR GUZMAN: Yeah. Corp. Counsel, if you feel that you can answer that question in open session, please do so. If you cannot, please respond by saying that you need to answer that in executive session.

MR. ROST: I think we can respond at some level to that question in open session. Part of this lawsuit is a request for a declaratory judgment. A request that this kind of activity would not be permitted in the future. That Plaintiffs would have the right at future County fairs to pass out their literature without further interference. So that aspect of the case is directed squarely at the County. There are issues with Sergeant Ramos. . .

COUNCILMEMBER HOKAMA: But Counselor, the County was not making a position about whether or not they could or could not do their, whatever it's called, public information, public education component.

MR. ROST: And that...that's true. The other aspect of what's going on in this case is the Fair Alliance purchased an insurance contract that named the County as an additional insured through Ace American Insurance. The County tendered this lawsuit to Ace for indemnification and defense. Ace has refused to defend the County so we filed a declaratory judgment action against Ace seeking judgment from the Court that Ace must defend us in this action. That matter is currently pending before a different judge in Federal Court and we're waiting for a ruling from her on that issue. So if we were to get insurance coverage from Ace, then that would change the posture of the case considerably.

COUNCILMEMBER HOKAMA: It still doesn't matter to me. They not...they weren't working representing the County.

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MR. ROST: If I'm going to address the legal issues there, that should probably occur in executive session.

CHAIR GUZMAN: I guess what Mr. Hokama is trying to present is how come there hasn't been a request for indemnification for those two officers.

MR. ROST: Yeah, I think that needs to be addressed in executive session.

CHAIR GUZMAN: Okay. Is there any other questions from the Members in open session?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR GUZMAN: Mr. Victorino.

COUNCILMEMBER VICTORINO: Although Mr. Hokama basically got the same questions I was gonna ask and I was gonna ask about the Fair's insurance because I know they have a policy, and that you know, the County is named as additional insured. So they become the first line of defense basically when it comes to these kinds of issues, and I know that from my professional aspect. However, the other thing I wanted to point out to you and this is a small thing, when reviewing this, I noticed that they had—and I want to make sure they get this correct in the future—that they had put down on the first line the Department respectfully requests the opportunity to present information to the Policy and Intergovernmental Affairs Committee and that is, you know, and I don't want to know...I don't want a legal problem later on that it was sent to the wrong Committee. But it should be addressed to the Committee of the Whole --

CHAIR GUZMAN: Right.

COUNCILMEMBER VICTORINO: --not to us in the future. So just an FYI. In reviewing I noticed that right off the top and I said, oh, that's not good if they aren't catching it. This is April. I can see in January, but this is April. So I would hope they would have got the change by this time. But they did send it to you, Mr. Chair, as the Chair of Committee of the Whole.

CHAIR GUZMAN: Right.

COUNCILMEMBER VICTORINO: So just small little things, but important. But I'll wait until the executive session to find out about the insurance portion. Thank you, Chair.

CHAIR GUZMAN: Thank you. Any other questions in open session?

COUNCILMEMBER BAISA: No.

CHAIR GUZMAN: Okay. Seeing none, there has been a request from Corporation Counsel to enter into executive session. I would like to entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes, to

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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; and Section 92-5(a)(8) of the Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Stacy Crivello.

COUNCILMEMBER BAISA: Second.

CHAIR GUZMAN: Second by Ms. Baisa. Any further discussion? Seeing none, all in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say no. We have seven ayes, no noes, two excused. Motion carries.

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

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Cochran and Couch.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: We will now take a recess to convene executive session. . . .(gavel). . .

**RECESS:       1:45 p.m.**

**RECONVENE:   2:15 p.m.**

CHAIR GUZMAN: . . .(gavel). . . The Committee of the Whole shall now reconvene in open session. The time is 2:15 p.m. Pursuant to the executive session deliberations, the Chair will entertain a motion to recommend filing of the correspondence dated April 10, 2015, from the Department of the Corporation Counsel, transmitting the

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proposed resolution entitled "AUTHORIZING SETTLEMENT OF STRATFORD GOODHUE AND DOREEN GOODHUE V. COUNTY OF MAUI, ET AL., CIVIL NO. 14-00006 ACK/KSC".

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any discussion? Seeing no further discussion, all in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say no. We have seven ayes, two excused. Motion carries.

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Cochran and Couch.**

**MOTION CARRIED.**

**ACTION: Recommending FILING of correspondence.**

CHAIR GUZMAN: This will conclude our Committee of the Whole agenda item and I thank you, Members, for attending, and we are adjourned. . . .(gavel). . .

**ADJOURN: 2:17 p.m.**

APPROVED:



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DON S. GUZMAN, CHAIR  
Committee of the Whole