

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

April 30, 2015

Council Chamber, 8th Floor

CONVENE: 1:06 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Gladys C. Baisa (in 2:12 p.m.)
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Michael P. Victorino
Councilmember Mike White

EXCUSED: Councilmember Stacy Crivello, Vice-Chair
Councilmember Riki Hokama

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)

ADMIN.: Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel
Kyle Ginoza, Director, Department of Environmental Management

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

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

COW-1(3): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION AND STATUS: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK) (CC 13-41)

CHAIR GUZMAN: ...*(gavel)*... Good afternoon. I'm Don Guzman, Chair of the Committee of the Whole. The date is April 30th. The time is 1:06 p.m. Before we begin, may I ask anyone to...everyone to turn off their cell phones or put it in silence mode. I'd like to introduce our Members in attendance today. Mr. Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

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CHAIR GUZMAN: Good afternoon. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Aloha, Chair.

CHAIR GUZMAN: Chair, Mike White.

COUNCILMEMBER WHITE: Aloha.

CHAIR GUZMAN: And Member Mike Victorino.

COUNCILMEMBER VICTORINO: Afternoon, Chair.

CHAIR GUZMAN: Afternoon, and myself. I believe Vice-Chair of the Committee Stacy Crivello will join us later. Excused is Gladys Baisa, as well as Riki Hokama. Today we have from the Department of the Corporation Counsel, Deputy Moana Lutey.

MS. LUTEY: Good afternoon.

CHAIR GUZMAN: Good afternoon. We have the Director of Environmental Management, Kyle Ginoza.

MR. GINOZA: Good afternoon.

CHAIR GUZMAN: Good afternoon. And we have our Special Counsel Colleen Doyle.

MS. DOYLE: Good afternoon.

CHAIR GUZMAN: Good afternoon. And for our Staff we have Committee Secretary Clarita Balala, as well as Legislative Attorney Carla Nakata. Just a brief inquiry—do we have any testifiers today?

MS. NAKATA: Yes, Mr. Chair.

CHAIR GUZMAN: Okay. Individuals wishing to testify please sign up at the desk here at the lobby area. You'll have about three minutes...approximately three minutes only to testify. Please identify yourself or your organization which you represent, and if there are any other testifiers, please make yourself known. I will go ahead and start with Lanai Office. Are you there?

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

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CHAIR GUZMAN: Thank you, Ms. Fernandez. Molokai Office, are you there?

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 Members, Hana is not accepting public testimony today due to some I think other priorities...not priorities, I think we don't have any staff personnel manning that District Office. So we'll go ahead and proceed with our gallery or our Chamber testifier.

MS. NAKATA: Yes, Mr. Chair. The first person to testify is Rosemary Robbins.

. . .BEGIN PUBLIC TESTIMONY. . .

MS. ROBBINS: Good afternoon, everybody, Chair, Members. Rosemary Robbins here on this April 30th meeting of the County's Council [*sic*] of the Whole, meaning all of the people who have been elected to the Council are eligible to be part of this particular group affectionately called COW. So if you hear that, that's what it is, Council [*sic*] of the Whole. I'm here today to testify on the single item, COW-1(3), and the Committee of the Whole is in reception of correspondence from Corporation Deputy Counsel and it identifies other papers that were sent in for this. It relates to and cites an April 20, 2015 communication. So I went to the seventh floor and as always they're wonderful about making those documents available to the public. Everybody's welcome to come. And I found the April 20th document in there. I have that with us for us to reference today. Just in terms of today's agenda it also refers to two other sheets that came in with this from March 4th and March 10th and they both refer to the fact that there could be executive sessions and that there are documents that exist that were not in the folder. So that kind of leaves folks in the community feeling again left out on what the total scene might be. Anyway, on April 20th, this communication came in from one of the Deputy Counsel members from our staff here in Maui County and it was filed on April 20th. That's 11 days after a Federal Judge on the 9th of April 2015 had again identified that this has been going on long enough. This has to do with the mess up on the Lahaina side of wastewater. And it says that, gonna read this for you now, it says that there are continued unpermitted discharges. The County is in the situation because it has violated the 1972 Federal Clean Air Act. That's 43 years ago that we know that that law existed and it's indicating that there will be no more delays --

MS. NAKATA: Three minutes.

MS. ROBBINS: --or stays. And that hopefully, this is going to be an end to what had started out not to exceed \$250,000 in order to hire other attorneys to come in on that, not to exceed 250,000, which is now last I had read, \$1,750,000. So time to get this over with and it doesn't talk about the health of the community. That's the whole point of the 1972 Clean Air and Clean Water Acts and the 1974 Clean Drinking Water Act. Thank you.

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CHAIR GUZMAN: Thank you, Ms. Robbins. Any follow-up questions, Members? Seeing none, thank you very much for your testimony.

MS. ROBBINS: You're welcome.

CHAIR GUZMAN: Thank you. Members, I'm going to turn back to our District Offices to just briefly check in with them. On Molokai Office, is there anyone wishing to testify?

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

CHAIR GUZMAN: And on Lanai Office, is there anyone wishing to testify?

MS. FERNANDEZ: There is no one waiting here on Lanai to testify.

CHAIR GUZMAN: One last call to the gallery. Seeing none. Members, seeing no further testimony, without objections I will close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR GUZMAN: Members, we have a single litigation matter on today's agenda. It's COW-1(3), Litigation Matters, Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK. The Committee is in receipt of correspondence dated April 20, 2015, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution, entitled "AUTHORIZING THE SETTLEMENT IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK", and transmitting a copy of the Order Denying Motion for Certification for Interlocutory Appeal and Denying Motion to Stay Proceedings, filed in the case on April 9, 2015. The First Amended Complaint, transmitted by correspondence dated January 27, 2015, alleges violations under the Federal Water Pollution Control Act, also known as the Clean Water Act, caused by the discharge of wastewater into the ocean from injection wells operated by the County at the Lahaina Wastewater Reclamation Facility. 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 actions. As noted in the correspondence, this matter is time sensitive. According to the Department of the Corporation Counsel, Plaintiffs presented an offer of settlement on April 17, 2015. In addition, on April 9, 2015, the Federal District Court filed an Order Denying Motion for Certification for Interlocutory Appeal and Denying Motion to Stay Proceedings. I would like to ask our Corporation Counsel and/or Special Counsel Colleen Doyle to provide any comments on the status of the case that can be made in this open session so that the public and this Committee can have a full understanding of the case. Whichever one of you want to proceed first, you can go

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ahead and give us a brief background, as well as procedural posture at this time. Thank you.

MS. LUTEY: Thank you, Chair. We have been here previously on this matter and the purpose of our appearance here today before this Committee is to convey the latest settlement demand that has been made by Plaintiffs' counsel in this case. As our Chair has detailed for you that settlement offer/settlement demand was made on April 17, 2015. Because this matter is in active litigation it is something that we will need to present to you in executive session. As the Chair has also pointed out, the Court did deny our Motion for Certification for the Interlocutory Appeal and denied our Motion to Stay the Proceedings. That order is provided for in your binders and so that is something we can also discuss if you'd like to...if there's some questions in open session that we could, that's fine, but I think for the most part it'll probably need to be executive because we'll get into our thoughts and strategy and so forth involving those matters and that would need to be executive session. But our next settlement conference is May 4th so this is a pressing matter. We will need to get back to the Judge on that date about this. So at this time I would move for executive session.

CHAIR GUZMAN: Okay. Thank you. Before we move into executive session I'd like to ask the Members if they have any questions that they'd like to present in open session. I'd also like to remind our Deputy Corporation Counsel if you cannot answer these questions...any of the questions, please reserve those answers for executive session. Members, do you have any questions? I have one question. What is the trial calendar date again?

MS. LUTEY: August 11, 2015.

CHAIR GUZMAN: August 11th?

MS. LUTEY: Yes.

CHAIR GUZMAN: Okay. Members, any other questions? Mr. Couch.

COUNCILMEMBER COUCH: Yeah. What was the May 4th date?

MS. LUTEY: May 4th is the settlement conference with our Magistrate Judge.

COUNCILMEMBER COUCH: Okay. Thank you.

CHAIR GUZMAN: Okay. Any other further questions? Okay, since the Corporation Counsel has requested to go into executive session, the Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) of the 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.

COUNCILMEMBER VICTORINO: Mr. Chair, I move...so moved.

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CHAIR GUZMAN: Moved by Mr. Victorino.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none. All those in favor, say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say no. We have six ayes, four [sic] excused. Wait, excuse me, three. My math...sorry. . . .(laughter). . .

COUNCILMEMBER VICTORINO: Whoa!

COUNCILMEMBER COUCH: . . .(inaudible). . .

CHAIR GUZMAN: Yeah, I better get back into Budget. Anyway, excuse me. Do we have that down for the record? Okay, very good. So the ayes have it. Motion carries.

VOTE: AYES: Chair Guzman, and Councilmembers Carroll, Cochran, Couch, Victorino, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa and Hokama.

MOTION CARRIED.

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

CHAIR GUZMAN: We will now recess the open session to prep for the Chambers. Thank you. . . .(gavel). . .

RECESS: 1:19 p.m.

RECONVENE: 2:12 p.m.

CHAIR GUZMAN: . . .(gavel). . . The Committee of the Whole shall now reconvene in open session. Pursuant to the discussion that we had in executive session without objections I'm going to defer this matter.

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COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: SC and RH)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you. This will conclude our open session for the April 30th meeting and I'd like to thank everyone for all their patience, as well as Administration and Staff. At this time I will now adjourn the open session. Thank you. . . .(gavel). . .

ADJOURN: 2:12 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

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Transcribed by: Clarita Balala