

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

July 24, 2015

**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 July 7, 2015, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated June 2, 2015, the Department of the Corporation Counsel requested consideration of the possible settlement of County of Maui v. Michael Baskin, et al., Consolidated Appeals BVAA 2014-0008; Seashore Properties, LLC, et al. v. Rhonda I.L. Loo, SCPW-14-0000773; and County of Maui v. Seashore Properties, LLC, et al., Civil 14-1-0064(1).

Attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI V. MICHAEL BASKIN, ET AL., CONSOLIDATED APPEALS BVAA 2014-0008; SEASHORE PROPERTIES, LLC, ET AL. V. RHONDA I.L. LOO, SCPW-14-0000773; COUNTY OF MAUI V. SEASHORE PROPERTIES, LLC, ET AL., CIVIL NO. 14-1-0064(1)." The purpose of the proposed resolution is to authorize settlement of the three referenced cases.

By correspondence dated June 18, 2015, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI V. MICHAEL BASKIN, ET AL., CONSOLIDATED APPEALS BVAA 2014-0008; SEASHORE PROPERTIES, LLC, ET AL. V. RHONDA I.L. LOO, SCPW-14-0000773; COUNTY OF MAUI V. SEASHORE PROPERTIES, LLC, ET AL., CIVIL NO. 14-1-0064(1); AND MICHAEL BASKIN, ET AL. V. COUNTY OF MAUI, CIVIL NO. 14-1-00194 LEK-KSC." The revised proposed resolution incorporates settlement authorization for an additional related case.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 2

Committee
Report No. _____

The Department also transmitted a copy of the First Amended Complaint in Civil 14-00194 LEK-KSC, and copies of documents reflecting the procedural posture of the cases.

The Corporation Counsel said an in-depth, confidential mediation process had been conducted on these cases.

A Deputy Corporation Counsel provided an overview of the cases. The Deputy explained the litigation stems from the issuance of multiple notices of violation by the Departments of Planning and Public Works, related to five properties that are located close to each other in Downtown Paia. The properties are on the makai side of Hana Highway between Baldwin Beach Park and the intersection of Hana Highway and Baldwin Avenue.

The Deputy explained that in November 2013, a notice of violation relating to a parking lot at 75 Hana Highway and a notice of violation relating to the Paia Inn at 93 Hana Highway were issued. A second set of notices of violation was issued to Mr. Baskin and his affiliates on three properties permitted as short-term rental homes, located at 40 Ae Place, 95B Hana Highway, and 23 Nalu Place. The notices of violation included the failure to obtain Special Management Area determinations for minor structures, construction at the properties without appropriate permits, and setback issues.

The Deputy outlined the posture of the cases, noting that a stay issued by the Hawaii Supreme Court has allowed the short-term rental homes to continue to operate.

Because of pending litigation, the Deputy requested the opportunity to convene an executive meeting.

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.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 3

Committee
Report No. _____

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 revised proposed resolution to authorize the settlement of the cases under the terms proposed in the executive meeting. Committee Chair Guzman, Vice-Chair Crivello, and members Carroll, Cochran, and White voted "aye." Committee members Baisa, Couch, Hokama, and Victorino were excused.

Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI V. MICHAEL BASKIN, ET AL., CONSOLIDATED APPEALS BVAA 2014-0008; SEASHORE PROPERTIES, LLC, ET AL. V. RHONDA I.L. LOO, SCPW-14-0000773; COUNTY OF MAUI V. SEASHORE PROPERTIES, LLC, ET AL., CIVIL NO. 14-1-0064(1); AND MICHAEL BASKIN, ET AL. V. COUNTY OF MAUI, CIVIL NO. 14-1-00194 LEK-KSC," be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DON S. GUZMAN, Chair

cow:cr:15001(12)aa:cmn

Resolution

No. _____

AUTHORIZING SETTLEMENT OF
COUNTY OF MAUI V. MICHAEL BASKIN, ET AL.,
CONSOLIDATED APPEALS BVAA 2014-0008;
SEASHORE PROPERTIES, LLC, ET AL. V. RHONDA I.L. LOO,
SCPW-14-0000773; COUNTY OF MAUI V. SEASHORE
PROPERTIES, LLC, ET AL., CIVIL NO. 14-1-0064(1); AND
MICHAEL BASKIN, ET AL. V. COUNTY OF MAUI,
CIVIL NO. 14-1-00194 LEK-KSC

WHEREAS, the COUNTY OF MAUI, DEPARTMENTS OF PLANNING and PUBLIC WORKS, issued multiple Notices of Violation on Properties Owned by SEASHORE PROPERTIES, LLC, MICHAEL S. BASKIN and NAOMI HILLINGER, as Co-Trustees of THE PAIA PAD TRUST , and MICHAEL S. BASKIN and WALTER HILLINGER, as Co-Trustees of THE PAIA PLACE TRUST, PAIA LIFE, LLC (collectively, “Owners”), the appeals of which are consolidated for hearing in BVAA 2014-0008; and

WHEREAS, the County of Maui filed a lawsuit in the Circuit Court of the Second Circuit of the State of Hawaii, Civil No. 14-1-0064(1), seeking injunctive relief regarding the violations (the “Circuit Court Action”); and

WHEREAS, the County of Maui revoked short-term rental home (“STRH”) permits on two of Owners’ properties and did not extend an STRH permit on a third; and

WHEREAS, SEASHORE PROPERTIES, LLC petitioned for a writ of mandamus with the Supreme Court of the State of Hawaii, SCPW-14-0000773, staying the injunctive relief sought in the Circuit Court Action; and

Resolution No. _____

WHEREAS, Owners filed a lawsuit in the United States District Court, District of Hawaii, Civil No. 14-1-00194 LEK-KSC, seeking declaratory and injunctive relief and damages; and

WHEREAS, the County of Maui and Owners sought to resolve all litigation by engaging in a confidential mediation; 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 all cases identified by way of a negotiated settlement; and

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

WHEREAS, having reviewed the facts and circumstances regarding these cases and being advised of attempts to reach resolution of these cases by way of a negotiated settlement by the Department of the Corporation Counsel, the Council wishes to discuss the opposing side's settlement offer; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby approves settlement of these cases under the terms and conditions set forth in an executive meeting before the Committee of the Whole; and

Resolution No. _____

2. That it hereby authorizes the Mayor to execute the Settlement Agreements on behalf of the County in these cases, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That certified copies of this resolution be transmitted to the Mayor, the Director of Public Works, the Planning Director, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



THOMAS W. KOLBE
Deputy Corporation Counsel
County of Maui