

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

July 7, 2015

Council Chamber, 8th Floor

CONVENE: 1:35 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair
Councilmember Gladys C. Baisa (out 4:50 p.m.)
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Don Couch (out 2:41 p.m.)
Councilmember Michael P. Victorino (in 1:45 p.m.; out 4:10 p.m.)
Councilmember Mike White

EXCUSED: 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)

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

ADMIN.: Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel

Thomas Walter Kolbe, Deputy Corporation Counsel, Department of the Corporation Counsel (COW-1(12))

Caleb P. Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel (COW-1(19))

Lydia Toda, Risk Management Officer, Department of the Corporation Counsel (COW-1(19))

William Spence, Director, Department of Planning

OTHERS: Francine Aarona (COW-1(12))
Martin Brass (COW-1(12))
Michael Baskin (COW-1(12))
Nina Rivers (COW-1(12))
Sarah Sparks (COW-1(12))
Michelle Cockett (COW-1(12))

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

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CHAIR GUZMAN: . . .*(gavel)*. . . Good afternoon. The Committee of the Whole shall now come to order. I'm Don Guzman, the Chair of the Committee. Before we begin, I'd like to ask everyone to turn off their cell phones or put it in the silence mode. I'm going to introduce our Members today. Our Vice-Chair of the Coun...of the Committee --

VICE-CHAIR CRIVELLO: Okay.

CHAIR GUZMAN: --Stacy Crivello. Good afternoon.

VICE-CHAIR CRIVELLO: Good afternoon, Chair.

CHAIR GUZMAN: Thank you. And we have Mr. Carroll...Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR GUZMAN: Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Aloha, Chair.

CHAIR GUZMAN: And joining us shortly will be the Chair of the Council, Mike White, as well as Mr. Michael Victorino. Excused is Riki Hokama. Today, I'd also like to introduce our Deputy Corporation Counsel or I mean our Corporation Counsel, Mr. Pat Wong, and his Deputy Tom Kolbe. Good afternoon. For Administration Staff, our Committee Staff, we have Secretary of the Committee Clarita Balala, as well as Legislative Attorney Carla Nakata. Those who would like to testify please sign up in the lobby. You'll be limited to today's agenda and your testimony will be up to three minutes, a lot of time. If you are going to testify, please state your name and/or any organization in which you represent. At this time, I'm going to check in with our District Offices. Hana Office, are you present?

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

CHAIR GUZMAN: Good afternoon, Ms. Lono. Lanai Office, are you present?

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

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

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

CHAIR GUZMAN: Good afternoon, Ms. Alcon. Thank you, District Office. I'm going to turn back to the Chamber, is there anyone wishing to testify?

MS. NAKATA: Yes, Mr. Chair. The first testifier is Francine Aarona. She will be testifying on COW-1(12).

CHAIR GUZMAN: Please come to the podium. And then you can state your name for the record.

. . . BEGIN PUBLIC TESTIMONY. . .

MS. AARONA: Aloha, Councilmembers. . Mahalo for allowing me to once again speak to you on behalf of our neighbors who live on Ae Lane. My name is Francine Kekahuna Aarona and I am here to speak about the proposed County settlement agreement with Michael Baskin. I live at 37 Ae adjacent to 40 Ae and 23 Nalu, kitty corner to 95 Hana Highway. I guess you could say that I am in the heart of all the action. In reading the content of the settlement, it only talks about his misfortune – how he was attacked by the County and other prominent people and neighbors who do business in Paia, including rentals. It also talks about events that have happened that causes me to question the factual history of the claim. Laws are written for a reason. Bottom line, Mr. Baskin got caught by neighbors and business people that say, “No More.” As I shared in my letter to the Council, dated July 29th, 2014, we have B&B which we didn't have. We have vacation or STRH which we didn't have. We had Mom and Pop stores that we no longer have except for Hew Store untouched. The Chong-Kee Ohana sold their home (95 Hana Highway) out of frustration and harassment and others in need of money. The settlement talks about due process and the Equal Protection clause under the Fourteenth Amendment. What about the people that Mr. Baskin has attacked and the people who live on Ae and in Paia? What about our due process and equal protection under the Fourteenth Amendment? His plea for mercy on his financial status for his livelihood is very unfortunate but he knowingly continued to operate illegally and he continues to this day. The people of this town deserves our due process and equal protection by you, the Councilmembers, who govern this County. My heart hurts for our residents and for you who have to make the right decision for your people. Thank you so much.

CHAIR GUZMAN: Thank you. One moment, please?

MS. AARONA: Any questions?

CHAIR GUZMAN: Members, do you have any follow up questions? Okay. Seeing none. Thank you very much for your testimony.

MS. AARONA: Thank you.

MS. NAKATA: Mr. Chair, the next testifier is Martin Brass.

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MR. BRASS: Good afternoon, Councilmembers. I appreciate the opportunity to stand before you to speak before the proposed County settlement agreement with Michael Baskin. My name is Martin Brass. I am a resident, business owner, and property owner in Paia. I am also a direct neighbor of Mr. Baskin for the past nine years. I sold him a commercial property and share an access easement with him. I know firsthand his methods, conduct, and character. I recognize that the forthcoming comments are made without the benefit of knowing any aspect of the proposed settlement you are about to consider. However, I believe it's important that as a legislative body for Maui County and as the men and women who create the laws that we are meant to abide and live under, that I need to express my concerns that a bad precedent may be at risk of being established. Over two years ago, I and five of my neighbors (Francine Aarona, Chris and Annie McNeil, Josh Stone and Peter Winn) all met in person with Councilmember White in Paia to inform him of Mr. Baskin's activities. We all have the common experience of owning properties adjacent to Mr. Baskin. After a 90-minute review of our documented history of Mr. Baskin's threats, intimidations, obstructions, bullying, and outstanding violations, Councilmember White believed he had cause to file, on our behalf and for our concern of reprisal, five separate Requests for Service (RFS). These five RFSs eventually led to the 30 violations referenced in Mr. Baskin's April 29, 2014 Complaint for Declaratory and Injunctive Relief that you see before you. In the interim, Mr. Baskin's attorneys have employed a legal strategy for the last 12 months that has effectively sequestered the Planning Department to communicate with the public. I am concerned that by the legally binding, confidential nature inherent in a settlement proceeding, the County has not had the benefit of input from any of the neighbors to separate fact from fiction. I am concerned that there may be terms of the settlement that are based on misinformation, misrepresentation and/or allegations that have not been corrected.

I have read Mr. Baskin's complaint and there are certain statements within it that are patently false. There is no indication of contrition. The complaint clearly makes the argument that because other people may have disregarded the rules why should anyone be held accountable. He claims being targeted by the County but he doesn't acknowledge the two dozen plus after-the-fact permits that have been issued to him for his benefit over the past 12 years. He claims hardship for the loss of business income investment--a situation he created by his own actions in willful disregard of the ordinances and laws that the rest of us must abide by. He has reaped significant benefits from ignoring the rules while others who struggle to comply with much smaller requirements have foregone income, incurred materially significant expense or have lost their businesses altogether. Please let us not lose sight of the fact that the County had cause to issue 30 violations. Furthermore, the Circuit Court upheld the Planning Department's revocations. This is not one person's animus against another. Such accusations are disrespectful to the hardworking, --

MS. NAKATA: Three minutes.

MR. BRASS: --dedicated people the County employs. No, this is one person's abuse of the system for personal gain. The system only became unfair and inequitable when he was

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caught. Quoting Fair and Equal Protection under the Fourteenth Amendment to claim disproportionate treatment is a perversion of the founding principles of this country.

CHAIR GUZMAN: Mr. Brass, can you wrap it up?

MR. BRASS: Yes, I'm at the end. And an attempt to deflect focus from the fact that Mr. Baskin stands without peer in the scale and scope of his violations. I respectfully ask each of you to consider the implications a settlement may have for these many violations. Our laws have been created to be administered and enforced for the benefit of the community, to protect us each from gross abuse and deliberate manipulation.

CHAIR GUZMAN: Thank you. Members, do you have any follow up questions? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Thank you, Mr. Brass for being here. Do you have that in writing?

MR. BRASS: I tried to email it but it was getting, I do, I've been trying to email it but I can leave a copy or try to get my email to work.

COUNCILMEMBER COUCH: Okay. And also, you mentioned some things in the Complaint, I guess, that were not true. Can you, when you submit that, list those too, please?

MR. BRASS: I could send that . . . I have my notes at home. I could send it as a follow up email.

COUNCILMEMBER COUCH: Okay. I thank you.

CHAIR GUZMAN: Thank you. Any other questions? Seeing none. I would like to thank you for your testimony. I would like to acknowledge the presence of Chair Michael White as well as Mr. Victorino. Is there any other persons wishing to testify?

MS. NAKATA: Mr. Chair, the next person to testify is Michael Baskin.

MR. BASKIN: Good morning. I'm Michael Baskin here on my own and my company's. I just want to make it brief and comment that we've worked really hard with the County in the last year to try to come up with an agreement that everybody was happy with. We tried to address all of the neighbors' concerns, Mopsy's as well as Mr. Brass and the others. And I think after all that work, we've come up with something that is difficult for us to agree to but nonetheless we have. I think that the County has done an incredible amount in coming onto our properties and giving us violations that we then cured. I don't want to say too much about the neighbors. I wish that they were happy as we are with our business. I believe that in Paia we have created something very special. If you look back over the last 40 years, I've been a resident of Paia and the town has been, there's been issues with safety, with how the old buildings looked. We've done a tremendous job in repairing our properties. I think a lot of the properties that we own there were drug-related problems and people living in them and concerns. We've addressed that. I'm pretty proud of the staff and the people that we have today. We

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would love for the neighbors to be happy. They have their own issues. They have done work without permits. They have after-the-fact permits. Mr. Brass has a number of them for his business right now. In the case of Ms. Aarona she gives access to vacation rentals around us through her property so I don't believe that this is an issue for her in terms of the character of the neighborhood. We're in downtown Paia. It is a commercial area. Ms. Aarona's property is located 60 feet away from a gas station. It is a busy area. The area has changed. We recognize that. We have a tremendous amount of great revenues from people that are staying at our properties and we're very proud of that. So, I hope that you can just move forward with this with all the hard work that the County has done for this agreement. We will live by it. And I will give you, uh, I will tell you that we will continue to make sure that our properties are in compliance and we will do everything on our part to work with the community and with the neighbors around us. Thank you.

CHAIR GUZMAN: Thank you. Members, do you have any questions at this time for the testifier? Just a cautionary note that please refrain from asking about the terms and conditions of the settlement. At this point, it is confidential. If and when, if the Council does approve the settlement then it will be executed upon the execution of the settlement it will be made known as a public document and be open for public review. But at this time, the terms and conditions of the settlement are confidential. So if there's any questions to the testifier at this time? Mr. Couch, did you have any questions? Seeing none. Thank you very much for your testimony.

MR. BASKIN: Thank you all very much for your time.

MS. NAKATA: The next testifier is Nina Rivers. She'll be testifying on COW-1(12) and she'll be followed by Sarah Sparks.

MS. RIVERS: Hello. My name is Nina Rivers. I'm the Hotel Manager at the Paia Inn and I've been there since we opened on June 17th, 2008. Michael and Sarah hired me from working at a previous local tax accountant and I had been looking for a full-time job and was thrilled to be hired by the Paia Inn, as I was being interviewed amongst 40 other candidates and there was little opportunity to have a steady career on the North Shore. It was finally my opportunity to work just a mile from my house and save an hour a day from my commute and be closer to my family. I have seen the past seven years tremendous growth in accommodating guests here at the hotel. I started with no reservations and seven years later we're very proud to have accommodated over 20,000 guests and very proud of our rave reviews and press we've received. The Paia Inn is a family business that has spoiled me from wanting to ever work at a major corporate hotel and I feel lucky that I'm able to help guests enjoy their limited time on Maui. I've worked here 50 hours a week and we have never received any complaints from any neighbor regarding any issues. I've reached out to our neighbors in the past to notify them of work or noise that took place on property and have never received a call back message or communication. Guests repeatedly tell me how much they appreciate an alternate accommodation, how they love Paia, and the family feel of the hotel. We have 600 reviews on TripAdvisor and for only being open for seven years, we are rated in the top three out of 500 hotels on Maui. We are very proud of this and have seen growth in

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business and encouragement with all the press, not only on the stories of the hotel, but the attraction of the town which they'll include stories on the shops, restaurants, which we also give to recommendations to travelers staying with us. The Paia Inn has been a huge supporter of nonprofit and community organizations, not only with monetary donations but room nights as well. We have donated 103 \$250.00 gift certificates which would be valued at \$25,000. In addition to room night donations, we also donate a portion of proceeds to Camp Imua, Hawaii Wildlife Fund, and Paia Youth and Cultural Center based on our sales. Not only our community monetary donations but the remodeling of the hotel property has improved the neighborhood greatly. Thank you for your time.

CHAIR GUZMAN: Thank you. Members, do you have any follow up questions for the testifier? Seeing none. Thank you very much. Is there any further testifiers?

MS. NAKATA: Next testifier is Sarah Sparks on COW-1(12) and she'll be followed by Michelle Cockett.

MS. SPARKS: Aloha, Maui County Council. My name is Sarah Sparks and I operate the Paia Inn and Vacation Rentals with Michael Baskin. I've lived and worked in Paia for 11 years and I'm raising my family there. I stand before you here today to urge you to agree to the settlement that we have spent years trying to reach with the County. Since the initial complaints by neighbors in 2013 to the County inspecting our properties and countless manini violations that were issued, we have consistently demonstrated a willingness to cooperate with the County to bring all of our properties entirely into compliance. Unfortunately, it has felt like every step of the way that the County has been completely against us and has tried every way to prevent us from obtaining proper permitting including refusal to even process our submitted permits for well over a year. This has been incredibly discouraging especially coming from an administration that boasts its support of small family-owned businesses such as ours. Despite the County's harsh attitude towards us, we still wish to cooperate and carry on with our business knowing that it enhances the community and economy of Paia. Our small business brings visitors into Paia where they shop and eat helping to sustain the other local businesses of Paia. Our properties are located in the perfect location for such activity as they are centrally located in the bustling commercial area of Paia. We have responsibly created a business that takes the community into consideration. We've also purchased a parking lot just for our patrons' use. I ask that you stand and support of the arduous agreement that we have reached so that we can all move forward and stop wasting ours and the County's valuable resources. Thank you.

CHAIR GUZMAN: Thank you, Ms. Sparks. Is there any follow up question for the testifier? Seeing none. Thank you for your testimony.

MS. SPARKS: Thank you.

MS. NAKATA: Mr. Chair, the last person who has signed up to testify in the Chambers, Michelle Cockett. She'll be testifying on COW-1(12).

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MS. COCKETT: Good afternoon, Members of Council. My name is Michelle Cockett. I'm a permit facilitator and I've been doing this for about 11 years now once I left the County. And Michael had called me over in December of 2013 when he first obtained these violations. And to help him coordinate and facilitate the approvals of the various permits that were required, and there were many that needed to be done between the SMAs, grading permits, building permits, and we worked very diligently to provide all the documents that were needed in order to obtain those approvals. And I'm very happy to say that we have done our very best to accommodate all of the requirements down to the details, and I could surprise you of some of the details that were required to and we have accomplished a great deal by doing this. We have met all of the criteria at this point to bring everything into compliance. We have few outstanding items that we're still trying to work towards and those are literally plans of actions. There were many meetings, there were many inspections, there was a lot of communication that was going on and at this point having this settlement agreement be placed and complete will accomplish more than you realize. We will put an end to this year and a half endeavor, maybe two years based on some of the issues that prior to my coming on board to help them do this. But at this point, it is fair to say that this is a complete document. It does contain all the elements and it is suitable for approval. Thank you.

CHAIR GUZMAN: Thank you, Ms. Cockett. Members, are there any further questions for the testifier? Seeing none. Thank you very much. Mr. Couch, did you have . . .

COUNCILMEMBER COUCH: No, sir.

CHAIR GUZMAN: Okay. Thank you very much. I'm going to turn to the District Offices. Hana Office, is there anyone wishing to testify?

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

CHAIR GUZMAN: Thank you, Ms. Lono. On Lanai Office, is there anyone wishing to testify?

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

CHAIR GUZMAN: Thank you, Ms. Fernandez. On Molokai Office, is there anyone wishing to testify?

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

CHAIR GUZMAN: Thank you, Ms. Alcon. Members, without any objections, the Chair would like to close public testimony at this time.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you.

. . .END OF PUBLIC TESTIMONY. . .

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CHAIR GUZMAN: Members, returning to our agenda item. The first item on our agenda is COW-1(12).

COW-1(12): **LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: 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 14-1-0064(1); AND MICHAEL BASKIN, ET AL. V. COUNTY OF MAUI, CIVIL 14-1-00194 LEK-KSC) (CC 15-6)**

CHAIR GUZMAN: The Committee is in receipt of the following:

Correspondence dated June 2, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution to authorize 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. 14-10064(1). The purpose of the proposed resolution is to authorize settlement of the referenced cases.

Correspondence dated June 18, 2015, from the Department of the Corporation Counsel, requesting consideration of 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. PHONDA 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 Department also transmitted a copy of the First Amended Complaint in Civil No. 14-00194 LEK-KSC and other related documents. The purpose of the revised proposed resolution is to authorize settlement of the cases as noted. The Committee may consider whether to recommend adoption of the revised proposed resolution with or without further revisions. The Committee may also consider other related matters and/or actions.

Today, we have on the floor Deputy Corporation Counsel Tom Kolbe as well as Corporation Counsel Patrick Wong. And I believe that . . . I think Deputy Kolbe will be the one presenting the case at this time to the Members in open session. So, Mr. Kolbe, the floor is yours.

MR. WONG: Actually . . .

CHAIR GUZMAN: Oh, excuse me, I guess it would be Mr. Wong first.

MR. WONG: Chair, if you don't mind, I'll make a few opening remarks and allow Mr. Kolbe to address the procedural posture in open session. Generally speaking, you heard testifiers on both sides, and as any litigated matter we have contentious positions on both sides. This matter before you is no different. It's pretty complete and what I'll suggest to you is just reading the captions in and of itself should give you some

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indication on how extensive the work has been in getting to this point. With due respect to the testifiers and the positions that they've taken what's before you will be thoroughly vetted in executive session the terms and conditions of which will be discussed in detail in executive session. But getting us there what you should understand is that Mr. Kolbe ventured into this with extensive work and a very I think in-depth mediation process. So we used all the tools that are available to us in order to get to this point. And with that said, I'll let Mr. Kolbe bring you up to speed on the various issues and contentions and then we will go into executive session.

MR. KOLBE: Good afternoon, Mr. Chair, Members. This litigation all stems from the issuance of violations, multiple violations, and Notices of Violation issued by the Departments of Planning and Public Works related to five properties that are very close to each other in downtown Paia. The five properties in question are on the makai side of the Hana Highway between Baldwin Beach Park and the intersection of Baldwin Avenue. The violations that were issued in November of 2013 relate to kind of two issues. There were single violations issued on the parking lot located at 75 Hana Highway and a single violation issued related to the Paia Inn which is situated at 93 Hana Highway. A second set of violations of Notices of Violations were issued on three properties that were permitted as short-term rental homes to Mr. Baskin and his affiliates. Those are located at 40 Ae Place, 95B Hana Highway, and 23 Nalu Place. After issuance of these NOV's, letters were also sent out to the owners of the properties revoking the permits to operate the short-term rental homes on two of the properties and not renewing a third property. And so based on those actions by the Department of Planning and Public Works, Mr. Baskin and his affiliates filed appeals for all of the Notice of Violations. Those appeals were filed to the Board of Variances and Appeals and to the Maui Planning Commission depending on the type of violation. The nature of the violations included failing to get Special Management Area determinations for minor structures at the properties without permitting, some setback issues, and . . . in any event, all of those were set on appeal. As a result of that, the County of Maui because it had revoked the short-term rental permits filed an action in the Second Circuit Court for injunctive relief to stop Mr. Baskin from operating his short-term rentals. That matter went on for a hearing before Judge Loo in April of 2014 and the Judge granted preliminary injunctive relief which would act as a cease and desist order for the operation of the three short-term rental homes. Based on that, Mr. Baskin and the other owners sought relief in two places. They filed a petition for a writ of mandamus to the Hawaii Supreme Court asking for relief from the injunction and they asked for similar relief from the United States District Court, which is the Federal District in Hawaii. And they actually filed an amended complaint to that, which is one of the documents that's been submitted to you for your review. That all happened in the month of April 2014.

On May 2nd the Hawaii Supreme Court issued a stay of the Circuit Court's injunction against continued operation meaning that based on that stay the various STRHs were allowed to continue to operate. A hearing on all of the various appeals was set for June 26th and all of the appeals were, on the various properties, were consolidated to one hearing and retired Judge John McConnell was appointed to preside over the whole matter.

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In July, the parties got together and decided to see whether or not they could engage in a confidential mediation to see if they could resolve all litigation, the lawsuits, the injunctive actions as well as the consolidated appeals. After several days in August of 2014, some settlement agreements were reached. The nature of those settlement agreements is the product of that confidential mediation. And I request that the terms and conditions of any settlement terms and conditions be discussed in executive session as well as the current status of all litigation that is currently pending. So that's my request and that's the basis for why we're here so you can go forward. Thank you.

CHAIR GUZMAN: Thank you. I see that the Director for Planning is here as well. Can you join us on the floor? Do you have any opening statements for our Members in open session? Please identify yourself.

MR. SPENCE: Good afternoon, Mr. Chairman, Committee Members. I don't really have anything to say . . . I'm sorry?

MR. WONG: Please introduce yourself.

MR. SPENCE: Oh, my name is Will Spence. I'm the Director of Planning. Pardon me. I was involved with all the mediation first-hand with Judge McConnell and the different parties. I don't really have any opening statements for this. It's a very long process. I'm happy to answer any questions regarding the terms in executive session.

CHAIR GUZMAN: Okay. Thank you. Members, do you have any questions for the Administration or Corporation Counsel in open session? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And if this is getting too close to executive session, I'm sure you'll let me know. The mediation was between the County and Mr. Baskin, is that correct?

MR. WONG: Yes.

COUNCILMEMBER COUCH: Now the County acted not necessarily on behalf of the neighbors but as a result of neighbor complaints, is that right?

MR. WONG: I prefer to discuss that in executive session.

COUNCILMEMBER COUCH: Okay. I guess my question is, are the neighbors involved in the mediation or is that, are they left out?

MR. WONG: No, they're not.

COUNCILMEMBER COUCH: Okay. Thank you.

CHAIR GUZMAN: Thank you. Any other further questions? Seeing none. There's been a request by Corporation Counsel to enter into executive session. At this time, the Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4)

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- A proposed resolution entitled “AUTHORIZING SETTLEMENT OF TREMAINE BALBERDI v. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION, CASE NO. 5-14-00322”;
- A proposed resolution entitled “AUTHORIZING SETTLEMENT OF JAMES A.Q. GIROUX V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00345”;
- A proposed resolution entitled “AUTHORIZING SETTLEMENT OF KATHLEEN KERN V. COUNTY OF MAUI DISABILITY COMPENSATION DIVISION, CASE NO. 5-14-00330”;
- A proposed resolution entitled “AUTHORIZING SETTLEMENT OF MARK A. KING V. COUNTY OF MAUI DISABILITY COMPENSATION DIVISION, CASE NO. 5-14-00348”; and
- A proposed resolution entitled “AUTHORIZING SETTLEMENT OF DOUGLAS MILLER v. COUNTY OF MAUI DISABILITY COMPENSATION DIVISION, CASE NO. 5-14-00526.”

The claims in each alleged work-related injuries sustained as a result of an air crash on Lanai, Maui, Hawaii, on February 26, 2014. The purpose of each of the proposed resolution is to authorize settlement for each of the cases. The Committee may consider to recommend adoption of the proposed resolutions, with or without revisions. The Committee may also consider other related actions and or matters. Today, we have Corporation Counsel Patrick Wong as well as I believe the Risk Management Lydia Toda present today to give opening comments for this matter.

MR. WONG: Thank you, Chair. Also, with us is Deputy Caleb Rowe. Chair, I’ll allow Mr. Rowe to do the opening statements on these matters and then we’ll be requesting executive session to discuss the details of the proposed authorization that we’re requesting.

MR. ROWE: Thank you, Chair. As you mentioned, these five settlement requests that we’re currently seeking all relate to the aircraft carrier that crashed in February of last year, and the five victims of that crash. Currently, the company that owned the airplane is about to start mediation with all of the individual claimants in this issue. That is a separate litigated matter from our concerns which are workers’ comp. related. However, even though they are separate, we are entitled to certain rights in that litigation that would have an effect on what happens in their workers’ comp. claims. So, in advance of the mediation between Maui Air and the five victims, we want to get some direction from you as to how we’ll go about handling those negotiations, and we have specific recommendations on how to do so. I would like to get more into that in executive session because these deal with very sensitive legal matters as well as personal medical history.

CHAIR GUZMAN: Do you have any opening statements from Risk Management, Ms. Toda?

MS. TODA: No, Chair, not at this time.

CHAIR GUZMAN: Okay. Thank you. Members, do you have any questions that you would like to present in open session? Seeing none. We have a request to enter into executive session by the Corporation Counsel. At this time, the Chair would entertain a motion

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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 this Committee.

VICE-CHAIR CRIVELLO: Chair, I so move.

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: Moved by Vice-Committee Chair Stacy Crivello, seconded by Mr. Victorino.

MS. NAKATA: Excuse me. Mr. Chair, could you also include in the motion pursuant to 92-5(a)(8)?

CHAIR GUZMAN: Oh, because of employee. Okay, 92-5(a)(8).

VICE-CHAIR CRIVELLO: So noted.

MS. NAKATA: Yes, for the confidential medical information.

CHAIR GUZMAN: Yes. Correct. So as incorporated. The...all those in favor say "aye?"

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say no. Eight ayes, zero noes, one excused. Motion carries. Thank you, Members.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Hokama.

MOTION CARRIED.

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

CHAIR GUZMAN: At this time, I'm going to take a recess so that we may enter into executive session by setting up the Chamber. Thank you. . . .(gavel). . .

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RECESS: 2:15 p.m.

RECONVENE: 4:52 p.m.

CHAIR GUZMAN: . . .*(gavel)*. . . The Committee of the Whole meeting for July 7 shall now reconvene in open session.

COW-1(12): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: 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 14-1-0064(1); AND MICHAEL BASKIN, ET AL. V. COUNTY OF MAUI, CIVIL 14-1-00194 LEK-KSC) (CC 15-6)

CHAIR GUZMAN: Members, regarding COW-1(12), pursuant to the executive session meeting, the Chair will entertain a motion to recommend adoption of the 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."

COUNCILMEMBER CARROLL: So move.

VICE-CHAIR CRIVELLO: I second.

CHAIR GUZMAN: Moved by Mr. Carroll, seconded by Ms. Crivello. Any further discussion? Seeing none. All those in favor say "aye?"

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say no. We have five ayes, three excused, oh sorry, four excused. Motion carries. Thank you, Members.

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COUNCILMEMBERS VOICED NO OBJECTIONS. (Exc.: GCB, DC, RH, & MPV)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you. Members, I would like to thank all of you for today's meeting. It was long but I think we had a lot of good discussion. So thank you, Mr. Wong, for your participation and the Staff and the Administration. The meeting is now adjourned. . . . *(gavel)* . . .

ADJOURN: 4:55 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

cow:min:150707

Transcribed by: Jo-Ann Sato