

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

July 16, 2015

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

**CONVENE:** 1:36 p.m.

**PRESENT:** Councilmember Don S. Guzman, Chair  
Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Elle Cochran  
Councilmember Don Couch  
Councilmember Riki Hokama  
Councilmember Michael P. Victorino (in 1:41 p.m.; out 3:46 p.m.)  
Councilmember Mike White (in 1:50 p.m.)

**EXCUSED:** Councilmember Stacy Crivello, Vice-Chair

**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  
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel  
Caleb P. Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel  
Richard B. Rost, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Mark King  
Doug Miller  
Ron McOmber

Timothy McNulty, Esq.  
Gwen Hiraga, Senior Advisor, Munekiyo & Hiraga Inc.  
(2) additional attendees

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

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CHAIR GUZMAN: . . .*(gavel)*. . . Committee of the Whole shall now come to order. I'm Don Guzman, the Chair of the Committee. Before we begin, may I ask everyone to turn off their cell phones or put it into silence mode. I'd like to introduce our Members today. We have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR GUZMAN: Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Aloha, good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. Riki Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR GUZMAN: Thank you. Joining us shortly will be Mr. Victorino and Mr. White. Excused from the meeting is Stacy Crivello. Joining us from the Department, we have our Corporation Counsel Pat Wong, as well as for our Administrative, no, excuse me, Committee Staff, we have Clarita Balala and Carla Nakata joining us for our staff. Just a brief announcement, anyone who would like to testify, please sign up in the lobby. You'll have three minutes to testify only for the items on today's agenda. Pursuant to the Rules of the Council, you'll have three minutes to testify. Upon that, also please identify your name and organization in which you represent. At this time, I'm going to go ahead and check in with our District offices. Hana Office, are you there?

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

CHAIR GUZMAN: Happy Birthday, Ms. Lono.

MS. LONO: Oh, thank you so much.

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

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

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

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

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CHAIR GUZMAN: Good afternoon, Ms. Alcon. Thank you. Staff, can you call the first testifier?

MS. NAKATA: Yes, Mr. Chair. We have Mark King here to testify on COW-1(19).

**. . .BEGIN PUBLIC TESTIMONY. . .**

MR. KING: Mark King, GIS Analyst, Long Range Division, Department of Planning, County of Maui. Good afternoon, Council Members.

CHAIR GUZMAN: Good afternoon.

MR. KING: When you see your name go across the marquee of Akaku on a Council meeting, it gets your attention pretty quick. Thank you for taking this matter into consideration. Wednesday night, February 26<sup>th</sup> last year, I watched three people die in a burning plane crash in a pineapple field on Lanai. We just finished presenting the land use forecast in the GIS to the Lanai Planning Commission for the Lanai Community Plan Update and it was a very good meeting. Sitting next to me was Kathleen and when the engine exploded and the plane caught on fire, I watched Kathleen die and I came very close to dying myself. It's just a miracle that I'm here today. The main thing I wanted to stress today is you know me, you know me, Mark King, personally. All of you know me from projects we've worked on. Councilmember Carroll in Hana when you and your family set up the food for the Hana meeting of the Maui Community Plan . . . beautiful food spread, you know, what a great meeting that was. Councilmember Baisa, all of the birthday parties at Wailuku Community Center we served dinners so often and all the parades. Councilmember Cochran, we saved Honolua during GPAC, all the testimonies. The dream of being a Councilmember I remember we were together at the State Transportation meeting and I said, wow, Councilmember Cochran, what committee will you chair and you said, whoa, we've got a long way to go before we get a committee. Councilmember Couch, I was your parking attendant at all of your dinners. Save parking spaces for Ms. Baisa and all of you. Councilmember Hokama taught me how to sing karaoke in Wailuku. Very good times. Very good friend, Councilmember Hokama, and also all the dinners at all of the events. Councilmember Victorino, boy, marching side-by-side every year at the Martin Luther King, Jr. parade. And also cheering for Shane in the World Series. Councilmember Guzman, relocated the archery area at Keopuolani Park for Maui archers, the Akahi Archers activity, and your staff and you took . . . personally stepped in and made that possible with Parks and Recreation, thank you. The archery community and very great service committee. So we've all worked together closely, and in addition to the Maui Island Plan and all of our assigned tasks, I've worked for you now over ten years. March 16<sup>th</sup>, 2005, I --

MS. NAKATA: Three minutes.

MR. KING: --started work of course for Councilmember Couch as Deputy Planning when he was in our Department, and you have all may have ridden on that same plane that I rode on. We're a four-island County, we travel to all the islands and we do want to have safe working conditions for our employees and you've got me for life. I give you another

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25 years till retirement. And I know if our places were reversed, you would do the same consideration for me as you will for, I would for you. Thank you so much for your time today.

CHAIR GUZMAN: Thank you, Mr. King. Members, do you have any questions or comments for Mr. King? Seeing none. I think what you've related to our Members is well felt and we feel the same towards you as we would other employees that we've worked for. And we will definitely do our best to make things right and fair. Thank you so much for coming forward, Mr. King. And God bless you and our prayers for your speedy recovery.

MR. KING: Aloha.

MS. NAKATA: Mr. Chair, the next testifier is Doug Miller. He will be testifying on COW-1(19).

MR. MILLER: My name is Doug Miller, representing myself and a Planner in Long Range Planning. And I, too, was on the plane that night and went through a pretty devastating experience. The sights and the sounds . . . and the suffering that night will stay with me for the rest of my life. So, I, too, ask you to just do the right thing. The law, as I understand it, says that the County has the right to take any settlement funds that we might be entitled to reimburse themselves for their costs, our wages, our workers' comp wages for medical bills. And, to me, it seems as though that's basically saying that because those funds would otherwise have been ours that we end up paying our own salaries and medical costs with that amount that would otherwise go to us. So it just doesn't seem fair. It may be legal but it just doesn't seem fair so I would like you guys just to consider that. You have these decisions to make on this issue so thank you for the opportunity to speak. I really appreciate it.

CHAIR GUZMAN: Members, do you have any comments or questions? Thank you very much, Mr. Miller, for coming forward. Our prayers are also with you for a speedy recovery.

MR. MILLER: Thank you. Appreciate it.

MS. NAKATA: Mr. Chair, no one else has signed up to testify in the Chamber.

CHAIR GUZMAN: Okay. Thank you. We're going to turn to our District Offices. On Lanai, is there anyone wishing to testify? Excuse me. I'll start with Hana. Hana Office, is there anyone wishing to testify?

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

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

MS. FERNANDEZ: Yes, we have one testifier here and that is Ron McOmber and he is testifying on Item COW-1(19).

CHAIR GUZMAN: You may proceed.

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MR. MCOMBER: I hope we can get this done. This power outage has screwed us all up. I'm calling in support of a settlement that's before me that I'm looking at. These folks were working for us. They were working for the County, they were working for Lanai at this time, and we need to show the respect and admiration for these people that come over to do this type of work. Particularly, I've lost a very good friend in that . . . Tremaine I've known for over 30 years. She wasn't even supposed to be there. She volunteered to take that position for a friend and then look what happens. But anyway, all these people deserve to have the fullest accounting and monetary or whatever it takes to set this right. I encourage the Council to support this for the utmost, please. Thank you very much.

CHAIR GUZMAN: Thank you. Any questions or comments for the testifier? Seeing none. Thank you very much. Is there anyone wishing, any other further testifiers in Lanai?

MS. FERNANDEZ: There is no one else waiting to testify.

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

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

CHAIR GUZMAN: Okay, thank you very much. Thank you, Ladies. I'm going to make one more call out to the gallery. Is there anyone else wishing to testify? Seeing none. At this time, Members, I'm going to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you.

**. . .END OF PUBLIC TESTIMONY. . .**

**COW-1(19): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM OF TREMAINE BALBERDI, CLAIM 5-14-00322; CLAIM OF JAMES A.Q. GIROUX, CLAIM 5-14-00345; CLAIM OF KATHLEEN KERN, CLAIM 5-14-00330; CLAIM OF MARK A. KING, CLAIM 5-14-00348; CLAIM OF DOUGLAS MILLER, CLAIM 5-14-00526 (RELATING TO MAUI AIR INCIDENT ON LANAI)) (CC 15-6)**

CHAIR GUZMAN: Members, turning to today's agenda. COW-1(19), Litigation Matters. The Committee is in receipt of correspondence dated June 30, 2015, from the Corporation Counsel, requesting consideration of the following:

1. A proposed resolution entitled "AUTHORIZING SETTLEMENT OF TREMAINE BALBERDI V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00322";

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2. A proposed resolution entitled "AUTHORIZING SETTLEMENT OF JAMES A.Q. GIROUX V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00345";
3. A proposed resolution entitled "AUTHORIZING SETTLEMENT OF KATHLEEN KERN V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00330";
4. A proposed resolution entitled "AUTHORIZING SETTLEMENT OF MARK A. KING V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00348"; and
5. A proposed resolution entitled "AUTHORIZING SETTLEMENT OF DOUGLAS MILLER V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00526";

Members, the claims in each case allege work-related injuries sustained as a result of an air crash on Lanai, Maui, Hawaii, on February 26, 2014. The purpose of each proposed resolution is to authorize settlement of each of the cases. The Committee may consider whether to recommend adoption of the proposed resolutions, with or without revisions. The Committee may also consider other related actions.

The Committee met on July 7, 2015, to consider this matter. This is our second meeting to discuss it. Corporation Counsel Patrick Wong and Deputy Corporation Counsel Rowe is here today to present in open session any statements they may have for the Members and also the general public. Mr. Wong?

MR. WONG: Chair, thank you. If you don't mind, given the moving testimony you heard today, I'd like to address a few general concepts. First of all, with all due respect to the testifiers and our employees that were involved in that tragic event, please understand that the County Administration and Council truly has done everything in their power up-to-date above and beyond to provide you with the best medical care and dispatch and it has been mindful, very sensitive about your capacity to resume work in some form, your ongoing treatment and so on. Unfortunately, the workers' compensation law is not created by the Council. It's a State law, and you can ask anyone out there in the world it's probably the first and foremost no fault law in Hawaii. Generally speaking, regardless of fault, the employer is required to provide workers' compensation coverage and that's what you got. Our consideration and our presentation to the Council is the attorney's obligation to properly inform the Council of all its options under the applicable law. The reason why we're doing it at this juncture is there is, as you know, the claims as against the airline. And although it may have difficulties in their insurance coverage there are required issues under the workers' comp law that forces the Corporation Counsel and our Department to properly advise the Council in advance of the arbitration that is currently set for July 31. It doesn't mean, quite frankly, that we are going to be active participants in that arbitration. All it means is that in the event the attorneys that represent the Plaintiffs in that matter may need to come to the Corporation Counsel for discussion about any rights and privileges that are still extended to you under the

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workers' compensation law. We, as the attorneys that represent the County, prefer to be in a position to actively discuss the rights, benefits, and privileges under the law that you may continue to be entitled to. The Council is not, in my opinion, looking to short change anyone or to pull the rug out from anyone. They're simply in a position now that I believe they need to be properly informed as to the status of the claims and we cannot have those discussions in open session because it involves medical issues that you're dealing with and I don't want to announce that to the world and we're prohibited by law from doing that. But I also want to make sure that they fully understand and we fully advise the Council of your current circumstances, of your projected future circumstances, so we're well aware of what you're confronted with and how we can best provide you with continued support. So with that said, I would like to, if the current body has any questions that you want to ask us in open session, I'm willing to address that at this moment. But before we go any further I'd like to remind the general public that the work comp law is a statutory law created by the Legislature that we're required, the County of Maui as your employer, as the largest employer in Maui County is required to follow. With that said, it is our obligation to properly inform the body that makes decisions and this is it. So with that said, I'm ready to move into executive session unless there's any questions we can entertain in open session.

CHAIR GUZMAN: Members, do you have any questions that you would like to present in open session? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I'm trying to phrase it so it can potentially be asked in or answered in open session. There was a comment made about the law allows us to take in any settlement award, it sounds like, in any settlement award take our cost and the salary cost and whatnot back to the County. Is that the way the law works right now? It allows us to but we don't have to?

MR. WONG: The provision that relates to reimbursement and lien rights does exist. It also provides the employer generally speaking in any third party case step into the shoes of the employer and to actually file claim. The only time . . . well, in those circumstances the extent of our pursuit of any claim would be up to the value that the employer has expended to and on behalf of the injured employee. So I'll give you a different hypothetical. Let's take a car accident for example. Someone runs the red light, runs into our employee driving our company car. That person that ran the red light would be at fault. That employee could file a suit against that person that ran the red light. If that employee chooses not to, the employer can file suit on behalf of the employee and the employer. The extent of that suit would be to recover only what's been expended—so what's typically referred to as special damages, wage loss, medical bills. The general damages component that typically is also pursued in a third party case is not something that the employer, insurance company, and/or work comp carrier would pursue. That general damages component is left for the injured person to pursue. So simply put, if we spent any money in that car accident case, we would be entitled and it starts to get complicated because the Hawaii Supreme Court has addressed the reimbursement issue and so there's a very complex formula that comes into play in that effort to determine the extent of reimbursement. And the responsibilities that the employer still has as it relates to attorney's fees and costs and so on. So it can get real complex real

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quick. My simplest way to explain it is, there is a lien reimbursement under the law and it's our obligation as the attorneys for the County to inform you of what that capacity is.

CHAIR GUZMAN: Mr. Couch?

COUNCILMEMBER COUCH: A follow-up if I may. When you talk about the car crash and you talk about general damages and then special damages, is it a situation where if those special damages weren't sought after or whatever that the general damages could be as much as what would have been awarded as special damages? I guess the concern is that if there's an award amount of "x" amount of dollars that if we are going to get our special damages, would it be taken out of that "x" amount of dollars or would it be a separate pot that wouldn't go to the employee?

CHAIR GUZMAN: Mr. Wong?

MR. WONG: If I may, Chair? Regardless of the categorization of the future recovery, any reimbursement is deducted from the gross values. So, if we paid a dollar and they recovered two, the law allows a reimbursement of that dollar that we paid. That's the simplest way I can put it. Again, there's a complex formula that's attached to it. There's other arguments and case law that would come into play but the simplest way to envision it is, if we spent a dollar we're entitled to a dollar back. And it would be deducted from whatever the recovery is. That's the simplest way, and I'm grossly --

COUNCILMEMBER COUCH: Uh-huh.

MR. WONG: --you know understating --

COUNCILMEMBER COUCH: Right.

MR. WONG: --the methodologies that can be employed in this fashion. So there's a lot of different things that come into play into what the actual value is in reimbursement, if anything.

COUNCILMEMBER COUCH: Okay. Thank you, Chair. And I do want to thank the testifiers for their heartfelt comments and I'm glad to see them back working. One of the best things you can do is to keep moving forward. So glad to have them back.

CHAIR GUZMAN: Thank you, Mr. Couch. I'd like to recognize the presence of Mr. Victorino as well as our Chair, Mr. White.

COUNCILMEMBER VICTORINO: Thank you.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR GUZMAN: Mr. Victorino?



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COUNCILMEMBER VICTORINO: Thank you, Chair. I'll start by saying, Mr. Wong, thank you for that explanation. I think you've made both our employees and the public have a better understanding that some of this really . . .

CHAIR GUZMAN: Mr. Victorino, can you get closer to the mike?

COUNCILMEMBER VICTORINO: I'm always accused of talking too loud. Oh, my God.

COUNCILMEMBER BAISA: We're not in executive session yet.

COUNCILMEMBER VICTORINO: I'm sorry?

COUNCILMEMBER COUCH: We're not in executive session yet.

COUNCILMEMBER VICTORINO: Okay. I'm sorry. My new ways not working out right away. Okay. Alright. Anyhow, Mr. Chair, not to make light of the situation but because of my occupation I understand that the work comp is a very complex policy. And it's not a clear cut . . . you do it this way, that way, and it varies and ranges from policy to policy, position to position. So I want the public to understand and especially our employees that we are trying to do the best we can. And I think, Mr. Wong, you've covered that and that we'll fight every tooth and nail to make sure they are as fairly and justifiably compensated for this tragedy, and there's no question in my mind cause any of us could have been on that plane or any other plane that we've used in the past. So, it hits home very hard when you know people and you're there then you have to decide what they get or how this is all finalized. That really makes it difficult 'cause you have an emotional tie. And I want to make sure that they know that we are trying our absolute best to come up with the finest settlement possible because they were working for us, they were doing their best to provide a great service to this County. So with that being said, Mr. Chair, with that being said, I'd really like us to go into executive session. I mean, others may have questions, but you know, because then we can really open up the matter because I've done some research and I want to see what else we can bring forward. Thank you, Mr. Chair.

CHAIR GUZMAN: Thank you, Mr. Victorino. Members, any other questions? Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. And I'd like to thank our employees for being here this afternoon. You know it's so inadequate to say, thank you, but I don't know what else to say. Thank you for the sacrifices. I know it hasn't been easy. But please know like my colleagues that we care very, very much. And we'll do our very best to settle this the best way we can, and I know our legal department is on that page too. Thank you.

CHAIR GUZMAN: Thank you. Any other questions that we'd like to present in open session? I have one additional question. I know that we have a Risk Management Office and for those employees that are faced in similar situations, do they go through some type of training session or, you know, acquiring knowledge or the process of workers' comp or are they sat down and then consulted with in terms of what . . . what I'm trying to get

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at is workers' comp is so complex and when you're an employee and you are faced with challenges you have other things that are on your mind and so is there a process that someone sits them down and walks them through, what will occur, or what are the options, things like that?

MR. WONG: Thanks, Chair, for that question. Typically, the employee . . . it really depends on the factual circumstances. For example, if an employee is injured and that employee immediately is transported for hospitalization and/or emergent care, then under the law we're required to self-report a claim like that. And we . . . as part of Risk Management and Corporation Counsel, we have a third party adjuster that handles most of the claims immediately. So, for every department, there's a personnel officer. They are trained on how to process those claims and how to notify Risk Management, and how to notify our third party Administrator, which is currently Sedgwick. So there's a whole process in place that automatically moves once an employee is injured. Whether or not an individual employee is consulted on the benefits that employee is entitled to, that doesn't quite occur in our Department. I do know that there's a pamphlet that has employees' rights and benefits that the State Department of Disability Compensation Division issues. And I'm pretty confident that those, that pamphlet goes out. And in it, it has quick blurbs of what the law is and what the benefits are. We do, from time-to-time, deal with some employees directly and it really depends on, again, on their factual circumstances. I can tell you that I personally went to help and assist with the victims in the crash and so I personally made contact with whoever I needed to make contact with and provided as much information as I could. So it depends on the factual circumstances, the severity of the condition but we don't, on a regular basis, for every accident that occurs train that employee of what their rights and benefits are. They get a pamphlet. During employee orientation they're provided an overview of what workers' comp benefits are and so on. And so we, what we do is instead train the DPOs, Department of Personnel offices, they're informed about how to process the claims, how the wages are calculated, how to submit the forms properly to Risk Management and so on. There's a timeline for everything. So I'd like to call it the work comp workflow that does exist.

CHAIR GUZMAN: Thank you very much, Mr. Wong.

MR. WONG: Sure.

CHAIR GUZMAN: Is there any other questions or comments at this time in open session? There's been a request from our Corporation Counsel to enter into executive session. The Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) and 92-5(a)(8) 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 COUCH: Mr. Chair? I move that we go into executive session pursuant to HRS 92-5(a)(4) and 92-5(a)(8).

CHAIR GUZMAN: There's a motion by Mr. Couch.

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COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Motion by Mr. Couch, seconded by Mr. Victorino. Any further discussion? Seeing none; all those in favor say "aye"?

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: We have eight ayes, one excused, no noes. Motion carries.

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

**NOES:          None.**

**ABSTAIN:       None.**

**ABSENT:        None.**

**EXC.:          Vice-Chair Crivello.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: Thank you, Members. Moving on to the next agenda item.

**COW-1(11):       LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEAL OF AUWAHI WIND ENERGY, LLC; TAX APPEAL 13-1-0302) (CC 15-6)**

CHAIR GUZMAN: We have COW-1(11). This is dealing with Tax Appeal Case No. 13-1-0302. The Committee is in receipt of correspondence dated June 1, 2015, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF AUWAHI WIND ENERGY, LLC V. COUNTY OF MAUI, TAX APPEAL CASE NO. 13-1-0302," transmitting a copy of the notice of the tax appeal for tax year 2013. In its tax appeal, the complainant alleges that the County of Maui improperly assessed the value of the real property it leases from the Ulupalakua Ranch, Inc., identified for real property tax purposes as Tax Map Key (2) 1-9-001:006 for tax year 2013. The purpose of the proposed resolution is to authorize settlement of the tax appeal. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions as well as consider any other related actions.

The Committee met on July 6, 2015, to discuss this matter but we had insufficient time to conclude or even start the executive meeting to discuss the matters on that day.

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Today, we have Deputy Corporation Counsel Mr. Rost who will present any opening comments he may have in open session.

MR. ROST: Thank you, Mr. Chair. I don't have any comments to add to what was discussed at the last meeting. But this matter continues to be in litigation so we would like to discuss it in executive session.

CHAIR GUZMAN: Okay. Members, do you have any questions that you would like to pose Corporation Counsel in open session? Seeing none. At this time, we have a request by Corporation Counsel to enter 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 regarding questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and this Committee.

COUNCILMEMBER COUCH: Mr. Chair, I move that we go into executive session pursuant to HRS Section 92-5(a)(4).

CHAIR GUZMAN: There's a motion by Mr. Couch.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Seconded by Mr. Victorino. Any further discussion? Seeing none; all those in favor say "aye"?

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no". We have eight ayes, one excused. Motion carries.

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

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Vice-Chair Crivello.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: Thank you, Members. At this time, I'm going to recess for our staff to set up the room for executive session. So we will be in recess.

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COUNCILMEMBER COUCH: Hold on, one second. Are you going to do both?

COUNCILMEMBER VICTORINO: Yeah, you get the other one.

CHAIR GUZMAN: Oh, excuse me. Thank you, Mr. Couch.

**COW-1(24): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEALS OF KAHEAWA WIND POWER, LLC; TAX APPEAL 10-1-1246) (CC 15-6)**

CHAIR GUZMAN: Members, calling up Item COW-1(24). The Committee is in receipt of the following: Correspondence dated May 18, 2012, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution authorizing settlement of the tax appeals of Kaheawa Wind Power, LLC, for tax years 2007, 2008, 2009, 2010, and 2011, which appeals have been considered under Tax Appeal Case No. 10-1-1246. The correspondence also transmits a copy of each of the notices of appeal. In its tax appeals, the Plaintiff alleges that the County of Maui improperly assessed the value of its real property located on 3000 Honoapiilani Highway. The Committee may consider whether to recommend adoption of the revised proposed resolution, with or without further revisions. The Committee may also consider other actions.

As our last date, when we discussed this matter it was July 6, 2015. We ran out of time, therefore, we had to defer this matter for today's agenda. Also, we have acting on the same case is Mr. Rost. Do you have any further comments for open session?

MR. ROST: No, I don't, Chair. Thank you.

CHAIR GUZMAN: Okay. Thank you. Members, we have a request by Corporation Counsel to enter into executive session. I'd like to entertain a motion to enter into executive session pursuant to 92-5(a)(4) of the Hawaii Revised Statutes to consult with legal counsel on matters of questions and issues pertaining to powers, duties, privileges, immunities, and liabilities of the County, the Council, and this Committee.

COUNCILMEMBER COUCH: Mr. Chair, I move that we go into executive session pursuant to HRS Section 92-5(a)(4).

CHAIR GUZMAN: We have a motion by Mr. Couch.

COUNCILMEMBER VICTORINO: Mr. Chair, I second.

CHAIR GUZMAN: Seconded by Mr. Victorino. Any further discussion? Seeing none; all those in favor say "aye"?

COUNCIL MEMBERS: Aye.

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CHAIR GUZMAN: All those opposed say “no”. We have eight ayes, one excused. Motion carries. Thank you, Members.

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

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Vice-Chair Crivello.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: Now, I will take a recess so that we may set up the room for executive session. . . .(gavel). . .

**RECESS:           2:14 p.m.**

**RECONVENE:      4:23 p.m.**

CHAIR GUZMAN: . . .(gavel). . . Committee of the Whole shall now reconvene in open session.

**COW-1(19):   LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM OF TREMAINE BALBERDI, CLAIM 5-14-00322; CLAIM OF JAMES A.Q. GIROUX, CLAIM 5-14-00345; CLAIM OF KATHLEEN KERN, CLAIM 5-14-00330; CLAIM OF MARK A. KING, CLAIM 5-14-00348; CLAIM OF DOUGLAS MILLER, CLAIM 5-14-00526 (RELATING TO MAUI AIR INCIDENT ON LANAI)) (CC 15-6)**

CHAIR GUZMAN: At this time, Members, pursuant to our discussions in executive session, the Chair will recommend a motion to adopt the following:

- 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”;

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- 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.”

COUNCILMEMBER WHITE: So moved.

CHAIR GUZMAN: Moved by Mr. White.

COUNCILMEMBER HOKAMA: Second.

CHAIR GUZMAN: Seconded by Mr. Hokama. Any further discussion? Seeing none. All those in favor say “aye”?

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say “no”?

COUNCILMEMBER BAISA: No.

COUNCILMEMBER COUCH: No.

CHAIR GUZMAN: Roll call.

MS. NAKATA: Councilmember Robert Carroll.

COUNCILMEMBER CARROLL: Aye.

MS. NAKATA: Councilmember Gladys Baisa.

COUNCILMEMBER BAISA: No.

MS. NAKATA: Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: Aye.

MS. NAKATA: Councilmember Don Couch.

COUNCILMEMBER COUCH: No.

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MS. NAKATA: Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: Aye.

MS. NAKATA: Councilmember Mike White.

COUNCILMEMBER WHITE: Aye.

MS. NAKATA: Committee Chair Don Guzman.

CHAIR GUZMAN: Aye.

MS. NAKATA: Mr. Chair, you have five ayes and two noes. The noes are Members Baisa and Couch. Two Members excused – Vice-Chair Crivello and Member Victorino. Motion is carried.

**VOTE:           AYES:   Chair Guzman, and Councilmembers Carroll, Cochran, Hokama, and White.**

**NOES:       Councilmembers Baisa and Couch.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Vice-Chair Crivello and Councilmember Victorino.**

**MOTION CARRIED.**

**ACTION:     Recommending ADOPTION of resolutions.**

CHAIR GUZMAN: Thank you. Moving on to the next item.

**COW-1(24):   LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEALS OF KAHEAWA WIND POWER, LLC; TAX APPEAL 10-1-1246) (CC 15-6)**

**COW-1(11):   LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEAL OF AUWAHI WIND ENERGY, LLC; TAX APPEAL 13-1-0302) (CC 15-6)**

CHAIR GUZMAN: Members, we are looking at COW Item 1(24) and 1(11). This is regarding the Kaheawa Tax Appeal, Case No. 10-1-1246, and Auwahi Tax Appeal, Case No. 13-1-0302. The Chair will entertain a motion to recommend filing of the correspondence dated June 1, 2015, from the Department of the Corporation Counsel, requesting consideration of the proposed resolutions as indicated in Items COW-1(24) and COW-1(11).



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COUNCILMEMBER WHITE: So moved.

CHAIR GUZMAN: Moved by Mr. White.

COUNCILMEMBER HOKAMA: Second.

CHAIR GUZMAN: Seconded by Mr. Hokama. Any further discussion?

MS. NAKATA: Excuse me, Chair. Just for Staff clarification, the intention is to file the correspondences for each of the two matters you called? The June 1<sup>st</sup> correspondence relates to the Auwahi Tax Appeal.

CHAIR GUZMAN: Okay. So then it would be the May 18, 2012 correspondence for the Kaheawa.

MS. NAKATA: Thank you, Chair.

CHAIR GUZMAN: Okay. Thank you. Any further discussion on this matter? Seeing none. All those in favor say "aye"?

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed, say "no". Eight ayes, one excused. Motion carries.

COUNCILMEMBER WHITE: Seven.

COUNCILMEMBER COUCH: Seven.

CHAIR GUZMAN: Sorry. Seven ayes, one excused --

COUNCILMEMBER COUCH: Two excused.

CHAIR GUZMAN: --two excused, Mr. Victorino. Two excused. Motion carries. Thank you.

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**VOTE: AYES: Chair Guzman, and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Vice-Chair Crivello and Councilmember Victorino.**

**MOTION CARRIED.**

**ACTION: Recommending FILING of correspondences.**

CHAIR GUZMAN: Members, that concludes our agenda for today and thank you for all your patience and discussions, for the Staff for being here, as well as Corporation Counsel, and the Administration. Thank you. . . .(gavel). . .

**ADJOURN: 4:28 p.m.**

APPROVED:



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DON S. GUZMAN, CHAIR  
Committee of the Whole

cow:min:150716

Transcribed by: Jo-Ann Sato