

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

October 16, 2015

Council Chamber, 8th Floor

CONVENE: 1:30 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair
Councilmember Robert Carroll (out 3:49 p.m.)
Councilmember Elle Cochran
Councilmember Don Couch (out 3:49 p.m.)
Councilmember Riki Hokama (in 2:20 p.m.)
Councilmember Mike White (in 2:45 p.m.)

EXCUSED: Councilmember Gladys C. Baisa
Councilmember Michael P. Victorino

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.: Richard B. Rost, Deputy Corporation Counsel, Department of the Corporation Counsel
Jeffrey Murray, Fire Chief, Department of Fire and Public Safety
David Goode, Director, Department of Public Works
Victor Ramos, Assistant Chief, Uniformed Services Bureau, Department of Police

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

CHAIR GUZMAN: ...*(gavel)*... Committee of the Whole shall now come to order. The time is 1:30. Members, we just finished our full Council meeting and I'd like to at least give everyone a break or at least go out for lunch. I'm going to go and take a recess until 2:15 and will reconvene the Committee of the Whole. So we are in recess. ...*(gavel)*...

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RECESS: 1:31 p.m.

RECONVENE: 2:20 p.m.

CHAIR GUZMAN: . . .*(gavel)*. . . Good afternoon and welcome to the Committee of the Whole. It shall now reconvene. The time is 2:20. Today I'd like to make a brief announcement if you are in the audience or you have a cell phone, please put it on silence mode. I'm going to introduce our Members for today's meeting. We have our Committee Vice-Chair Stacy Crivello. Good afternoon.

VICE-CHAIR CRIVELLO: Aloha, Chair.

CHAIR GUZMAN: We have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: We have Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR GUZMAN: And Mr. Riki Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR GUZMAN: Excused is Michael Victorino, as well as Gladys Baisa, and joining us later will be the Chair of the Council, Mike White. I'd also like to introduce our Committee Secretary, Clarita Balala, as well as our Legislative Attorney, Carla Nakata. Before we begin with any testimony, I'd like to remind anybody who'd like to testify please limit your testimony to today's agenda items. You'll have three minutes to testify. I'm going to go ahead and check in with our district offices. Lanai District Office, are you there?

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

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

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

CHAIR GUZMAN: And on Hana District Office, Ms. Dawn Lono, are you there?

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

CHAIR GUZMAN: Thank you. I'm going to go ahead and turn our attention to the gallery or the Chamber. Is there anyone wishing to testify?

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

CHAIR GUZMAN: Okay. Thank you. Turning our attention back to the district offices. Lanai District Office, is there anyone wishing to testify?

MS. FERNANDEZ: There is no one waiting to testify at the Lanai Office.

CHAIR GUZMAN: On Molokai District Office, anyone wishing to testify?

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

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

MS. LONO: There's no one waiting to testify in Hana.

CHAIR GUZMAN: Thank you. Thank you, Ladies. Members, I'm going to turn your attention to today's agenda items. Without objections, on agenda item...the last one, Proposed Nahiku Community Center Litigation, County of Maui v. Maui Kupono Builders LLC, et al., Civil No. 15-1-0421(1), COW-6, without objections, I'd like to defer that matter due to the fact that we are running short on time on today's agenda.

COW-6: PROPOSED NAHIKU COMMUNITY CENTER LITIGATION (COUNTY OF MAUI V. MAUI KUPONO BUILDERS LLC, ET AL., CIVIL 15-1-0421(1)) (MISC)

COUNCIL MEMBERS: No objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: GCB, MPV, and MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Okay. Thank you.

COW-1(21): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: JUDSON K. MCCANDLESS V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-12-00096) (CC 15-6)

CHAIR GUZMAN: Members, today's first item on today's agenda is Litigation Matters of the Settlement Authorization of Judson K. McCandless v. County of Maui, Disability Compensation Division Case No. 7-12-00096. Today...what we'll have today is the Deputy Corporation Counsel, Richard Rost. This is his case. So if you would like to present some factual matters in regards to this case.

MS. NAKATA: Excuse me, Mr. Chair. Would you like to close public testimony before we start?

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CHAIR GUZMAN: Oh, thank you. Thank you for...without objections, Members, I'd like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you. Okay, Mr. Rost, the floor is yours.

MR. ROST: Thank you, Mr. Chair. And joining us is Chief Murray who may be here to address any questions that may arise to the Department. Just briefly, this as indicated is a workers' compensation matter. The claimant, Judson McCandless, was a firefighter from February of 2008 until December of 2012. While on duty in January of 2012, he was participating in a basketball game, which was actually part of his training, and he injured his ankle, and his workers' compensation claim is a result of that. He's since left County employment but the County remains liable for his medical expenses. Because it's a workers' compensation case involving employee medical information and because it remains in active litigation, we're requesting executive session to discuss settlement.

CHAIR GUZMAN: Okay. Members, I'm going to open up the floor for any questions that you may have in open session. Mr. Rost, if you could please screen any of the questions. If you cannot answer them in open session, please indicate so. Thank you. Members, excuse me, before we begin, can we get a comment/opening statement from Chief Murray? Welcome.

MR. MURRAY: Thank you. Good afternoon. This individual's employed by us and then he voluntarily left before any matters were cleared up for his injury. So I'll be happy to answer any questions for you. Thank you.

CHAIR GUZMAN: Members? Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair, and thank you, Chief, and Corporation Counsel, everyone for being here. So it's a workman's comp claim so obviously there's a dispute that it ought to be a workman's comp claim. But Mr. Rost you said, basketball but it was part of his duties. It was in...I mean on the clock or whatever --

CHAIR GUZMAN: Mr. Rost.

COUNCILMEMBER COCHRAN: --so I just wondering why it's here.

MR. ROST: Yeah, we aren't contesting that it was work-related.

COUNCILMEMBER COCHRAN: Oh, okay. Got it. Okay. Okay. That's all.

CHAIR GUZMAN: Is there any other questions? I guess I have one question in open session. Mister...I'm sorry, Chief Murray, is basketball part of the training program?

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MR. MURRAY: Yes, it is for aerobic exercise. That is one of the items that is sanctioned as it is today.

CHAIR GUZMAN: So it's my understanding that the claimant was injured while playing basketball.

MR. MURRAY: Yes.

CHAIR GUZMAN: When they were playing basketball are they on duty at the time when they are. . .

MR. MURRAY: Yes, he was on duty.

CHAIR GUZMAN: Members, any follow up questions in open session? Seeing none, we have a request for entering into executive session on this matter. The Chair will entertain a motion to convene executive meeting pursuant to 92-5(a)(4) of the Hawaii Revised Statutes to consult with our legal counsel on questions of legal matters, liabilities, and immunities concerning this Committee, as well as the County.

VICE-CHAIR CRIVELLO: Chair, so move.

CHAIR GUZMAN: Thank you.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: We have a motion from Ms. Crivello, seconded by Mr. Couch. Any further discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: We have six ayes, no noes, and three excused. Motion carries. Thank you.

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VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Cochran, Couch, and Hokama.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Victorino, and White.

MOTION CARRIED.

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

CHAIR GUZMAN: Moving on to the next items, Members.

COW-1(23): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: WALTER HAVEKORST V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-09-01885) (CC 15-6)

CHAIR GUZMAN: We have item number, I believe COW-1(23). This is Litigation Matters, Settlement Authorization, Walter Havekorst v. County of Maui, Disability Compensation Division Case No. 7-09-01885. The Committee is in receipt of correspondence dated September 11, 2015, from the Department of Corporation Counsel, requesting consideration of the proposed resolution authorizing settlement of Walter Havekorst v. County of Maui, Disability Compensation Division. The claim alleges work-related injuries sustained on September 8, 2009. The purpose of the proposed resolution is to authorize settlement of the case. This is also Mr. Rost's case. You may make an opening statement if you can in open session.

MR. ROST: Thank you, Mr. Chair. Walter Havekorst was employed as a Land Agent with the Department of Public Works. On September 8, 2009, he was sitting at his desk and turned to pick up a file box. The box slip and fell and he attempted to pick it up again and when he did that he experienced pain in his back and his right leg and then later the pain moved on to his left leg. Because this matter is in active litigation and workers' compensation and involves confidential employee medical information we're requesting executive session to discuss settlement. And joining us now is Director Goode of the Department of Public Works for any questions anyone might have for him.

CHAIR GUZMAN: Thank you, Mr. Goode, for joining us. If you...I'm not sure if you're aware of the case before us. If you could...if you are aware of such facts, can you briefly give us an opening statement?

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MR. GOODE: Good afternoon, Chair and Members. Mr. Havekorst was an employee with the Department for a relatively short time, maybe no more than a couple of years and evidently suffered a back injury and so we have workers' comp payments for a while. And then...so this would have been I think starting in '09 or 2010, something like that, and then early 2011 at the start of the Administration we went through all the outstanding workers' comp claims and this one looked to be like the biggest one within our Department. We actually don't have that many workers' comp claims—knock on wood—but this one looked difficult and so Corp. Counsel kinda rolled up their sleeves on it and I think we actually terminated the employee early 2011. So anyway this is the culmination I guess of all the claims.

CHAIR GUZMAN: Thank you, Mr. Goode. Members, do you have any questions in open session? How was the injury sustained, Mr. Rost?

MR. ROST: That was disputed but apparently it was sustained from Mr. Havekorst being in the same position, leaning over in his chair and attempting to pick up a box...a heavy file box.

CHAIR GUZMAN: Was this, excuse me, was this in the scope of his duties or...and I guess the other question is was this on County property?

MR. ROST: Yes, he was on the clock in his County office at the time.

CHAIR GUZMAN: Okay. Thank you. Members, any further questions in open session. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And Mr. Rost, stop me if I'm going too far, but Mr. Goode, do you have training on how to lift boxes or how to lift heavy objects? Usually, especially in a physical, labor intensive position, sometimes they teach people how to properly lift.

MR. GOODE: Mr. Chair and Mr. Couch, certainly in our Highways Division where laborers and particularly others, would be often lifting things and have the proper lifting techniques. In our office staff, I'm not aware of such training. It probably would fall more under common sense.

COUNCILMEMBER COUCH: Yeah.

MR. GOODE: Yeah.

CHAIR GUZMAN: Any further questions. . .

COUNCILMEMBER COUCH: Thank you.

CHAIR GUZMAN: Oh, thank you, Mr. Couch. Any further questions in open session? Seeing none, we have a request to enter into executive session from Corporation Counsel. The Chair will entertain a motion to convene executive session pursuant to

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Section 92-5(a)(4) of the Hawaii Revised Statutes, as well as Section 92-5(a)(8), to consult with our legal counsel on legal questions pertaining to duties, liabilities, and immunities for the County, this Committee, and the Council, as well as to deliberate or to make decisions on matters that require consideration of confidential information both pursuant to State, Federal, and County [sic].

VICE-CHAIR CRIVELLO: Chair, so moved.

COUNCILMEMBER COUCH: Second.

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

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: We have six ayes, no noes, and three excused. Motion carriers. Thank you.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Cochran, Couch, and Hokama.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Victorino, and White.

MOTION CARRIED.

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

CHAIR GUZMAN: Members, moving on to the next item.

COW-1(25): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF CLINTON GOUVEIA AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT; SHOPO CASE M-2014-073) (CC 15-6)

CHAIR GUZMAN: We have Litigation Matters, Settlement Authorization, In the Matter of the Grievance Arbitration Between the State of Hawaii Organization of Police Officers, on Behalf of Clinton Gouveia and County of Maui, Maui Police Department, SHOPO Case M-2014-073, COW-(25). The Committee is in receipt of correspondence dated

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September 11, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING SETTLEMENT OF IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF CLINTON GOUVEIA AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT, SHOPO CASE NO. M-2014-073." The proposed resolution states the State of Hawaii Organization of Police Officers has filed a grievance on behalf of former Police...Maui Police Department Officer Clinton Gouveia. The purpose of the proposed resolution is to authorize settlement of the case. I believe that you also have this case, Mr. Rost. If you could present any opening comments that you may have in open session.

MR. ROST: Thank you, Mr. Chair. This case involves the termination as indicated of former Police Officer Clinton Gouveia. He was terminated because MPD found that he assaulted a suspect, used excessive force, used his taser, and did not report any of those things on his police report. Mr. Gouveia was charged criminally with assault, however, he was acquitted. This grievance then followed and so that's sort of a very brief overview. Because it's in active litigation we can't get into too many details so we're gonna request executive session to go into the specifics.

CHAIR GUZMAN: Okay. Thank you. Chief Ramos, do you have any opening statements that you might have?

MR. RAMOS: Good afternoon, Mr. Chair and Members of the Council. Not yet. I'll wait 'till executive session to add further comments.

CHAIR GUZMAN: Members, do you have any questions that you may have in open session? Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, was that court decision a jury trial or just before the sitting judge.

CHAIR GUZMAN: Mr. Rost.

MR. ROST: It was a jury trial in front of Judge Bissen.

COUNCILMEMBER HOKAMA: Thank you.

CHAIR GUZMAN: District...I mean Circuit Court. Any further questions? Seeing none, there's been a request by Corporation Counsel to enter into executive session. The Chair will entertain a motion to convene executive committee [sic] meeting pursuant to Section 92-5(a)(4), as well as Section 92-5(a)(8) of HRS, to consult with questions pertaining to powers, duties, privileges, and immunities and liabilities for the County, Council, and this Committee, as well as to deliberate or make decisions upon a matter that requires consideration of information that is confidential pursuant to State, Federal, or court order.

VICE-CHAIR CRIVELLO: I so move, Chair.

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COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Don Couch. Any further discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Six ayes, no noes, three excused. Motion carries. Thank you, Members.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Cochran, Couch, and Hokama.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Victorino, and White.

MOTION CARRIED.

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

CHAIR GUZMAN: Members, we are going to...and the last item was deferred in the beginning of the meeting. So at this time, Members, we're gonna take a brief recess to set the Chamber for executive session. So we are now in recess. . . .(gavel). . .

RECESS: 2:37 p.m.

RECONVENE: 3:55 p.m.

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

**COW-1(21): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION:
JUDSON K. MCCANDLESS V. COUNTY OF MAUI; DISABILITY
COMPENSATION DIVISION CASE 7-12-00096) (CC 15-6)**

CHAIR GUZMAN: Members, after our discussion in executive session pursuant to our Corporation Counsel, we will go ahead and address the first item on today's agenda. The Chair will entertain a motion to recommend adoption of the proposed resolution

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entitled "AUTHORIZING SETTLEMENT OF JUDSON K. McCANDLESS V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-12-00096."

VICE-CHAIR CRIVELLO: I so move, Chair.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Moved by Ms. Crivello, 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 five ayes, no noes, four excused. Motion carries.

VOTE:	AYES:	Chair Guzman, Vice-Chair Crivello, and Councilmembers Cochran, Hokama, and White.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	Councilmembers Baisa, Carroll, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Moving on to the next item.

COW-1(23): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: WALTER HAVEKORST V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-09-01885) (CC 15-6)

CHAIR GUZMAN: We have Walter Havekorst v. County of Maui, Disability Compensation Division Case No. 7-09-01885, COW-1(23). Pursuant to our conversations in executive session and the recommendations of Corporation Counsel, the Chair will entertain a motion to recommend adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF WALTER HAVEKORST V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-09-01885."

VICE-CHAIR CRIVELLO: Chair, so moved.

COUNCILMEMBER WHITE: Second.

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CHAIR GUZMAN: Moved by Ms. Crivello, 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 five ayes, zero noes, four excused.
Motion carries. Thank you, Members.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Cochran, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Carroll, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Moving on to the next item.

COW-1(25): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF CLINTON GOUVEIA AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT; SHOPO CASE M-2014-073) (CC 15-6)

CHAIR GUZMAN: In the Matter of the Grievance Arbitration Between the State of Hawaii Organization of Police Officers, on Behalf of Clinton Gouveia and County of Maui, Maui Police Department, SHOPO Case No. M-2014-073, COW-1(25). Pursuant to our conversations in executive session and the recommendations of our Deputy Corporation Counsel, the Chair will entertain a motion to recommend adoption of the proposed resolutions entitled "AUTHORIZING SETTLEMENT OF IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN THE STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF CLINTON GOUVEIA AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT, SHOPO CASE NO. M-2014-073."

VICE-CHAIR CRIVELLO: I so move, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

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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. Five ayes, zero noes, four excused. Motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Cochran, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Carroll, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Members, thank you very much for all the diligence and to the Staff, as well as Deputy Corporation Counsel Rost, for all their hard work today. This meeting is now adjourned. Thank you. . . .(gavel). . .

ADJOURN: 3:59 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

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Transcribed by: Clarita Balala