

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

April 1, 2016

Council Chamber, 8th Floor

CONVENE: 3:03 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair (out 4:21 p.m.)
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Riki Hokama

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

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
Edward S. Kushi, First Deputy Corporation Counsel, Department of the Corporation Counsel
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 1(35) and 1(36))
Brian A. Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 1(37))
Stewart Stant, Director, Department of Environmental Management (Item Nos. 1(35) and 1(36))
Francis Asiu, Wastewater Collection Systems Superintendent, Department of Environmental Management (Item Nos. 1(35) and 1(36))

Seated in the gallery:

David Sakoda, Arboriculturist, Department of Parks and Recreation

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OTHERS: Timothy McNulty, Esq.
(2) additional attendees

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

CHAIR GUZMAN: . . .*(gavel)*. . . Good afternoon. Welcome to the Committee of the Whole, April 1st meeting. My name is Don Guzman, the Chair of the Committee. I'd like to introduce our Members of today's meeting. We have our Vice-Chair of the Committee Stacy Crivello.

VICE-CHAIR CRIVELLO: Aloha and good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. We have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. Elle Cochran.

COUNCILMEMBER COCHRAN: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. Don Couch.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR GUZMAN: And Riki Hokama.

COUNCILMEMBER HOKAMA: Mr. Chairman.

CHAIR GUZMAN: Good afternoon. So we have for Corporation Counsel, we have Patrick Wong. Also, we have Moana Lutey, Deputy Corporation Counsel. For our Staff, we have Clarita Balala and Legislative Attorney Carla Nakata. Before I begin I'd like to ask everyone to turn off their cell phones or noisemaking devices. If you are wishing to testify, please come to the podium. Prior to that sign up in the lobby. When you testify, you'll have up to three minutes to testify. Please state your name and/or organization in which you represent. 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: Good afternoon.

MS. LONO: I have no one here to testify.

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

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MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai and there's no one here waiting to testify.

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

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

CHAIR GUZMAN: Thank you. Thank you, Ladies. We'll turn our attention to the gallery.

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

CHAIR GUZMAN: Okay. Thank you. Without objections, Members, I'd like to close public testimony.

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Thank you. Public testimony is now closed. Turning your attention to the first item of today's agenda. This is COW-1(29), Litigation Matters, Lars M. Gascon v. County of Maui; Disability Compensation Division Case 7-11-01155; Labor and Industrial Relations Appeals Board Case AB 2015-319(M). Members, the Committee of the Whole has met twice before this on February 5th and on March 18, 2016, to consider this appeal to the Labor and Industrial Relations Board. The workers' compensation appeal has been brought by Dr. James Hattaway, Lars M. Gascon's treating physician, of a decision by the Disability Compensation Division that Dr. Hattaway had committed 69 counts of fraud. We have here today we have our Corporation Counsel, Mr. Wong, who will be presenting this matter in open session. Mr. Wong, the floor is yours.

COW-1(29) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LARS M. GASCON V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-11-01155; LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD CASE AB 2015-319(M)) (CC 15-6)

MR. WONG: Thank you, Chair. Essentially, the facts as are you described. The County has pursued the complaint as against Dr. Hattaway. It's presently pending before the Labor and Industrial Relations Appeals Board and Dr. Hattaway has proposed a settlement resolution and the purpose of the notified presentation today is to discuss the contents of his proposal in the context of the claim. I would suggest that we move into executive session in order to further discuss this matter. Thank you.

CHAIR GUZMAN: There has been a request 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 HRS to consult with legal counsel on questions and issues pertaining to powers, duties, privileges, immunities, and liabilities of the County, the Council, and this Committee; and as well as Section 92-5(a)(8) of HRS to deliberate and make decisions upon a matter that requires consideration of information that is to be kept confidential pursuant to State or Federal law, or court order.

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CHAIR GUZMAN: Yeah, we can do that. Members, I'm also going to, without objections, call up Item No. COW-1(36) and this is under Merlino Fetalvero and that's a Claim No. 30153921887-0001. The Department of Corporation Counsel is requesting also consideration of this proposed resolution to authorize settlement of this claim. The claim alleges damages to the property at 103 Akai Street in Kihei, Maui, resulting again from sewage overflow into the home on or about November 17, 2014. The purpose of this proposed resolution is to authorize settlement of the case. Again, this is Ms. Lutey's case and she may present both cases in open session at this time. Thank you, Ms. Lutey.

COW-1(36) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM 30153921887-0001 OF MERLINO FETALVERO) (CC 15-6)

MS. LUTEY: Thank you, Chair. I appreciate that. So Ms. Sims matter is in active litigation. Mr. Fetalvero has filed a claim but both of these stem from the same sewage overflow. Basically, we had a blockage in Kihei and as a result of that blockage there was raw sewage that entered both Mr. Fetalvero's and Ms. Sim's home causing property damage to both. We did take immediate measures to attempt to both clean the house and do remediation, then there was some reconstruction done. At this point we are looking to resolve both of these matters. We do have Mr. Asiu here present, but I am asking for executive session to go into a discussion of what the settlement demands are in this matter and the facts and circumstances surrounding this matter.

CHAIR GUZMAN: Thank you. Members, there's been a request to enter into executive session. The Chair will entertain a motion to enter into executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of this Council, the County, and the Committee.

VICE-CHAIR CRIVELLO: So moved.

COUNCILMEMBER COUCH: Second.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Couch. Any further discussion? Mr. Couch.

COUNCILMEMBER COUCH: Mr. Chair, is this just for the Sim, et al. or is this for both?

CHAIR GUZMAN: The request is for both I believe.

COUNCILMEMBER COUCH: Okay. Thank you.

CHAIR GUZMAN: Is that...can you confirm that?

MS. LUTEY: Yes. Thank you, Chair.

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Currently, we have a mediation scheduled with retired Judge Joel August for April the 18th and Ms. Vitavec and her boyfriend will be coming here for the mediation from Austria on April 18. They'll actually be coming a week prior to that to be deposed prior to mediation and so I'm here today to discuss the case in executive session, give you our evaluation, and to seek settlement authority in order to be able to try to negotiate a resolution of the case at mediation on April the 18th and 19th.

CHAIR GUZMAN: Thank you. Members, any questions in open session? Seeing none, we have a request to enter into executive session. The Chair will entertain a motion to enter into executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of this County, the Council, and this Committee.

VICE-CHAIR CRIVELLO: I so move, Chair.

COUNCILMEMBER COUCH: Second.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have six ayes, no noes, three excused. Motion carries.

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're going to take a recess to set the Chambers for executive session. . . .(gavel). . .

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RECESS: 3:15 p.m.

RECONVENE: 4:43 p.m.

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

COW-1(29) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LARS M. GASCON V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-11-01155; LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD CASE AB 2015-319(M)) (CC 15-6)

CHAIR GUZMAN: Pursuant to our discussions in executive session, I'm calling up Item COW-1(29), Lars M. Gascon v. County of Maui; Disability Compensation Division Case 7-11-01155; Labor and Industrial Relations Appeals Board Case AB 2015-319(M). The Chair will entertain a motion to recommend adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF LARS M. GASCON V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-11-01155; LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD CASE NO. AB 2015-319(M)."

COUNCILMEMBER COUCH: So moved, Mr. Chair.

COUNCILMEMBER HOKAMA: Second.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have five ayes, no noes, four excused. Motion carries.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Victorino, and White.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

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CHAIR GUZMAN: Thank you, Members.

COW-1(35) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: JANET SIM, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 15-1-0571(2)) (CC 15-6)

CHAIR GUZMAN: Moving on to the next item. We have COW-1(35), this is the settlement authorization for Civil No. 15-1-0571(2), Janet Sims, et al. v. County of Maui. The Chair will entertain a motion to recommend adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF JANET SIM, ET AL. VS. COUNTY OF MAUI, ET AL., CIVIL NO. 15-1-0571(2)."

COUNCILMEMBER COUCH: So moved, Mr. Chair.

COUNCILMEMBER HOKAMA: Second.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have five ayes, no noes, four excused. Motion carries.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Victorino, and White.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Thank you, Members.

COW-1(36) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM 30153921887-0001 OF MERLINO FETALVERO) (CC 15-6)

CHAIR GUZMAN: Moving on to the next item on the agenda is COW-1(36). This is the Merlino Fetalvero case, Claim 30153921887-001—I think I'm missing a zero there—0001. The Chair will entertain a motion to recommend adoption of the proposed

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resolution entitled "AUTHORIZING SETTLEMENT OF CLAIM NO. 30153921887-0001 OF MERLINO FETALVERO."

COUNCILMEMBER COUCH: So moved, Mr. Chair.

COUNCILMEMBER HOKAMA: Second.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, four excused. Motion carries.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Victorino, and White.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Moving on to the next item, COW-1(37), Nadja Neidhart v. County of Maui, et al., Civil No. 15-1-0181(1).

COW-1(37) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: NADJA VITAVEC NKA NADJA NEIDHART V. COUNTY OF MAUI, ET AL., CIVIL 15-1-0181(1)) (CC 15-6)

CHAIR GUZMAN: The Chair will entertain a motion to recommend adoption of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF NADJA VITAVEC NKA NADJA NEIDHART V. COUNTY OF MAUI, ET AL., CIVIL NO. 15-1-0181(1)."

COUNCILMEMBER COCHRAN: Chair, so moved.

COUNCILMEMBER COUCH: Second.

