

POLICY COMMITTEE

Council of the County of Maui

MINUTES

July 29, 2008

Council Chamber, 8th Floor

CONVENE: 9:02 a.m.

PRESENT: Councilmember Danny A. Mateo, Chair
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael J. Molina, Member
Councilmember Joseph Pontanilla, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember G. Riki Hokama, Vice-Chair
Councilmember Jo Anne Johnson, Member

STAFF: Kirstin Hamman, Legislative Attorney
Camille Sakamoto, Committee Secretary

ADMIN.: Mary Blaine Johnston, Deputy Corporation Counsel, Department of the
Corporation Counsel
Brian T. Moto, Corporation Counsel, Department of the Corporation Counsel

OTHERS: Jocelyn Costa
Melissa Prince (with video camera)

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

CHAIR MATEO: . . .(*gavel*). . . The Policy Committee meeting for July 29, 2008 will come to order. For the record, the Members present with us this morning are Members Anderson, Baisa, Medeiros, Molina, Pontanilla, and Victorino. Excused this morning is Chairman Hokama and Ms. Johnson. Members, we have just one item on the agenda for today. And before getting into POL-1(20), has anyone signed up to testify this morning?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MATEO: Thank you. Members, there is no one signed up to testify this morning. And because we do want to proceed with . . .our agenda, if there is no objections, the Chair would like to close public testimony at this time.

COUNCILMEMBER MEDEIROS: No objections.

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COUNCILMEMBER BAISA: No objection.

COUNCILMEMBER VICTORINO: No objection.

CHAIR MATEO: Thank you. Members, we're gonna go right into our item for today, POL-1(20), settlement authorization of claims and lawsuits, Kanahele, et al. versus Maui County Council, et al., Civil Number 08-1-0115(3).

ITEM NO. 1(20): SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS (KANAHELE, ET AL. V. MAUI COUNTY COUNCIL, ET AL., CIVIL NO. 08-1-0115(3)) (C.C. No. 07-11)

CHAIR MATEO: Members, this Committee is in receipt of correspondence dated July 21st, 2008, from the Department of the Corporation Counsel, consider. . .requesting consideration of a proposed resolution entitled: authorizing settlement of Daniel K. Kanahele, et al. versus Maui County Council, et al., Civil Number 08-1-0115(3), Second Circuit Court, State of Hawaii. This complaint alleges the Maui County Council violated the Sunshine Law, Chapter 92, Part I, Hawaii Revised Statutes. The purpose of the proposed resolution is to authorize settlement of the case. And, Members, in your binders, you also see the communication we received from the Deputy Corporation Counsel, Mary Blaine Johnson [sic]. And in the communication, there is the request for executive session. Members, with us this morning from the Department of Corporation Counsel, is the Corporation Counsel, Mr. Moto; as well as the Deputy Corporation Counsel, Mary Blaine Johnson [sic]. Members, the. . .again, the reminder of executive session. The Chair will allow Ms. Johnson [sic] to provide a brief opening statement, followed by the Chair opening the floor to the Members for questions. Ms. Johnson [sic]?

MS. JOHNSTON: Vice-Chair Mateo . . .

. . . Council Members--

COUNCIL MEMBERS: Mic.

COUNCILMEMBER VICTORINO: Use you mic. Sit down, better. Yeah, there you go.

MS. JOHNSON: Council Members. . .I have received a settlement proposal. . .which I would like to go over with you in executive session, as well as update you on the status of the case and answer any questions you may have in regard to a recent memo you got requesting information from you. So these matters all need to be taken up in executive session. Thank you.

CHAIR MATEO: Thank you. Members, the floor is open for questions for Corporation Counsels at this point.

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. . . Ms. John. . .uh, Ms. Anderson? And good morning.

COUNCILMEMBER ANDERSON: Good morning. Thank you. Is this resolution any different than the we, one we had previously?

MS. JOHNSTON: Yes, this is a different settlement proposal entirely.

COUNCILMEMBER ANDERSON: Uh. . .so the wording of this resolution is different from the one that we previously looked at?

MS. JOHNSTON: I think the, the wording is similar, it's just that the settlement proposal that's being made is quite different from the one previously considered by you.

COUNCILMEMBER ANDERSON: Okay. And is this settlement proposal coming from. . .the County or is it coming from the Plaintiffs?

MS. JOHNSTON: It's coming from the Intervenor Wailea 670, who is now a party in the action. I don't believe when we were here before, I can't recall whether the, the Judge had granted the motion to intervene. But they are now party to the lawsuit.

COUNCILMEMBER VICTORINO: They had already.

COUNCILMEMBER ANDERSON: . . . Interesting. Thank you, Chair.

MS. JOHNSTON: Okay.

CHAIR MATEO: Thank you, Ms. Anderson. Members, additional questions? Hearing none, Members--uh, Mr. Medeiros, go ahead.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Uh. . .I don't know if you'll allow this. And if you don't, then I'll ask it in executive session. But. . .Mr. Kanahele's "et al.", I'm assuming the "et al." is other parties that are part of the suit. Is that what "et al." means?

MS. JOHNSTON: May I respond?

CHAIR MATEO: Ms. Johnson *[sic]*?

MS. JOHNSTON: There are five Plaintiffs. . .Daniel K. Kanahele, Warren S. Blum, Lisa Buchanan, James L. Conniff, and Cambria Moss--are the named Plaintiffs in the lawsuit.

COUNCILMEMBER MEDEIROS: Okay. So total of five Plaintiffs?

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MS. JOHNSTON: There are five plaintiffs, yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Corp. Counsel. Mahalo, Mr. Chairman.

CHAIR MATEO: Thank you. Members, additional questions? Hearing none, then. . .then we do have a request for executive session. Members, in reference to Policy Item 1(20), pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, and immunities and liabilities of the County, the Council, and the Committee, the Chair will now entertain a motion to convene in executive meeting.

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER MEDEIROS and COUNCILMEMBER BAISA: Second.

CHAIR MATEO: Been moved by Mr. Victorino, second by Mr. Medeiros to convene in executive session. Is there continued discussion, Members?

. . . Hearing none, Chair will call for the question. All those in favor of the motion, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MATEO: Those opposed? Motion is carried.

VOTE: AYES: Councilmembers Anderson, Baisa, Medeiros, Molina, Pontanilla, Victorino, and Chair Mateo.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: APPROVE; RECESS Open Session and CONVENE Executive Session.

CHAIR MATEO: Members, please stick around. It'll take us just a couple of minutes to secure the Chamber and. . .to start the executive session. This Committee will stand in recess . . .(gavel). . .

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RECESS: 9:09 a.m.

RECONVENE: 11:35 a.m.

CHAIR MATEO: . . . *(gavel)*. . . Policy Committee meeting for July 29, 2008 will reconvene. Members, are there any questions for Corporation Counsel?

. . . Hearing no request or no questions, Members, based on the discussion held in executive. . . meeting. . . meeting, the Chair recommends the filing of this communication.

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER BAISA: Second.

COUNCILMEMBER PONTANILLA: Second.

CHAIR MATEO: Moved by Mr. Victorino, second by Ms. Baisa. Additional discussion?

. . . Hearing none, Members, we'll call for the question. All those in favor of the motion to file, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MATEO: Those opposed?

. . . Motion is carried.

VOTE: AYES: Councilmembers Anderson, Baisa, Medeiros, Molina, Pontanilla, Victorino, and Chair Mateo.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Johnson and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: Recommending FILING of correspondence dated July 21, 2008 from the Department of the Corporation Counsel.

CHAIR MATEO: At this time, the Chair will also ask Ms. Johnson *[sic]*, that the information or the materials that she had wanted to share with us. . . Staff--

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COUNCILMEMBER MEDEIROS: Distribute it.

CHAIR MATEO: --if you could help distribute the information?

COUNCILMEMBER ANDERSON: Mr. Chairman, point--

CHAIR MATEO: Yes?

COUNCILMEMBER ANDERSON: --of information? Did we just file the settlement proposal--

CHAIR MATEO: Yes.

COUNCILMEMBER ANDERSON: --or this whole item.

CHAIR MATEO: We file, uh, we're filing, we filed the correspondence dated July 21st, the correspondence is what was filed. And what was attached to the correspondence was the resolution.

COUNCILMEMBER ANDERSON: . . . I see.

CHAIR MATEO: And the . . . resolution was for the proposed settlement.

COUNCILMEMBER ANDERSON: So if we wanna discuss this again, they're gonna have to give us another resolution, another communication?

CHAIR MATEO: Uh. . . I believe at that next time, it won't, it probably will not be the same. . . request anyhow because--

COUNCILMEMBER BAISA: . . . *(inaudible)*. . .

CHAIR MATEO: --in their negotiations, the Plaintiff would, we, we're not even sure of what the Plaintiff, whether or not they will or interested in this proposed settlement. So there could be changes made to, to the, the next proposed settlement. So whatever they reach or whatever additional settlements that they conclude, will once again be submitted to this body by Corporation Counsel for us to review--

COUNCILMEMBER ANDERSON: With a new cover letter and new reso?

CHAIR MATEO: Yes.

COUNCILMEMBER ANDERSON: Okay, thank you. Thank you.

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CHAIR MATEO: And the attachment that we have added, that we will be adding to the binders--

COUNCILMEMBER ANDERSON: Okay.

CHAIR MATEO: --Ms. Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman.

CHAIR MATEO: You're welcome. Members..please wait for the information that Ms. Hamman is passing out. And earlier the..the Chair failed to recognize my own Committee Staff's presence--Ms. Sakamoto and Ms. Hamman.

NOTE: Pause.

CHAIR MATEO: . . . Go ahead.

MS. JOHNSTON: Okay. I just wanna explain to you what you've been given. First is the order granting the preliminary injunction--which you see is very. . .short. Just so you have, can see what that looks like. Second, as I indicated earlier, both, the County posed interrogatories. . .to the Plaintiffs about certain, their allegations; and the Wailea. . .Intervenor Wailea 670 posed questions also. Some are very similar. Some are a little bit different. Um. . .the answers are not. . .always that clear. I will tell you in the set of answers to the County's interrogatories, there's a funny page that looks like it's out of order. And I went back and checked, and it's provided to you just exactly the way I got it. So there's confusion there. For some reason, Mr. Collins doesn't number his pages, so it makes it really hard. . .you know, make reference to it. But use it for whatever you wanna do to get more information about what their claims are. And if you have, you know, questions, you wanna talk about. . .talk about them or just clarifications, you, you can call me just for. . .as I said, these are public. . .it's a public document. But you might get a little bit better handle on where he's coming from when you read through his. . .read through their answers.

CHAIR MATEO: Thank you, Ms. Johnson [*sic*]. Members, as an additional note, before you leave this afternoon, if you. . .if you could leave the materials with. . .on your desks, and Committee Staff will add it into your binders. So they will be all in one location so when you do have the time to review them, you can just go and pull your Committee binders. Okay?

COUNCILMEMBER VICTORINO: Okay.

CHAIR MATEO: Additional questions or comments, Members? Hearing none, thank you all very much. Ms. Anderson?

COUNCILMEMBER ANDERSON: Yeah, in reading this . . .

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. . . order from the Judge granting a preliminary injunction, he says Defendants are enjoined from engaging in any conduct--"Defendants" being *us*. . .from engaging in any conduct that violates Robert's Rules of Order, Newly Revised, unless otherwise provided by Hawaii law, Chapter 92, which is the Sunshine Law. Um . . .

. . . And is hereby further ordered that nothing herein shall prevent Defendants from conducting new meetings on the matters noticed in paragraph 1, provided the same complies with Robert Rules of Orders. Well, this is something that we haven't discussed and. . .as. . .you know, as we discussed the idea of. . .well, I think this is something that we should also look at. . .having a workshop on.

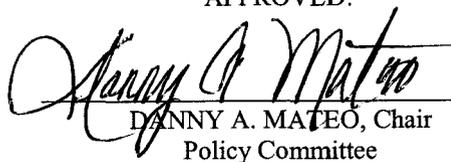
CHAIR MATEO: . . . Thank you, Ms. Anderson.

. . . Members, additional questions?

. . . Hearing none, as you go through your materials, if there's additional questions, please. . .contact Committee Chair. Or if you need to, you can always contact Deputy Corporation Counsel Johnson [*sic*] as well for clarification. Members, with no additional information, thank you all very much for taking your time on an off-week to, to meet with us. The Chair greatly appreciates. . .your commitment. This meeting stands adjourned. . .(*gavel*). . .

ADJOURN: 11:41 a.m.

APPROVED:


DANNY A. MATEO, Chair
Policy Committee

pol:min:080729

Transcribed by: Camille Sakamoto