

**POLICY COMMITTEE**  
Council of the County of Maui

**MINUTES**

**April 30, 2008**

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

**CONVENE:** 9:05 a.m.

**PRESENT:** Councilmember Danny A. Mateo, Chair  
Councilmember G. Riki Hokama, Vice-Chair  
Councilmember Gladys C. Baisa, Member  
Councilmember Bill Kauakea Medeiros, Member  
Councilmember Michael J. Molina, Member  
Councilmember Joseph Pontanilla, Member

**EXCUSED:** Councilmember Michelle Anderson, Member  
Councilmember Jo Anne Johnson, Member  
Councilmember Michael P. Victorino, Member

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

**ADMIN.:** Brian T. Moto, Corporation Counsel, Department of the Corporation Counsel  
Madelyn S. D'Enbeau, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
Jeff Hunt, Director, Department of Planning  
Francis Cerizo, Planner, Zoning Administration and Enforcement Division,  
Department of Planning  
Glenn Ueno, Assistant Engineering Program Manager, Development Services  
Administration Division (DSA), Department of Public Works

*Seated in the gallery:*

James A. Giroux, Deputy Corporation Counsel, Department of the  
Corporation Counsel

**OTHERS:** Don S. Fujimoto, Vice President, Dowling Company, Inc.  
Warren Suzuki, Senior Vice President, Government and Community Relations,  
Community Development, Maui land and Pineapple Company, Inc.

**PRESS:** *Akaku: Maui Community Television, Inc.*  
*Harry Eager, The Maui News*

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CHAIR MATEO: . . .(*gavel*). . . Policy Committee meeting for April 30<sup>th</sup>, 2008 will come to order. The Members present with us this . . .this morning, we have the Committee Vice-Chair and the . . .also the Chairman of the Council, Mr. Hokama; we have Members Baisa, Medeiros, Molina, and Pontanilla. Also with us from the Administration, we have the . . .Corporation Counsel, Mr. Moto; Deputy Corporation Counsel, Ms. D'Enbeau; and the Planning Director, Mr. Hunt. Also, the Committee Staff this morning with us, we have Ms. Hamman, our Analyst; as well as our Committee Secretary, Ms. Sakamoto. Members. . .we have just one item on today's agenda.

**ITEM NO. 1(18): SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS**  
**(HANOHANO, LLC V. COUNTY OF MAUI, ET AL., CIVIL NO. 06-1-0148(1))**  
(C.C. No. 07-11)

CHAIR MATEO: And before getting into the agenda item, Ms. Sakamoto, do we have anyone signed up to testify?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MATEO: Thank you. Members, there's no one signed up to testify. At this time, with no objections, the Chair would like to move on with our Committee item and at this time close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR MATEO: Thank you very much. Members, again, just one item on this morning's agenda, it's POL-1(18), settlement authorization of claims and lawsuits, Hanohano, LLC, versus the County of Maui, et al., Civil Number 06-1-0148(1). The Committee is in receipt of correspondence dated April 9, 2008 from the Department of the Corporation Counsel, requesting consideration of the proposed resolution that would authorize settlement of this case. The complaint seeks declaratory, injunctive, and other relief stemming from a County zoning decision. Members, we also have a request for executive meeting regarding this item. So please be aware that the Corporation Counsel and the Deputy Corporation Counsel will have limitations in terms of responding to . . .specific questions regarding this case. Having said that, the Chair will open the floor to questions to Corporation Counsel at this point--and perhaps before entertaining questions, Ms. D'Enbeau, would you like to provide an opening. . .comment?

MS. D'ENBEAU: Thank you very much, Mr. Chair. Yes, this case involves some property up in Pukalani. . .that is proposed for a subdivision. The County position had been that the land was zoned Interim. The developer, Hanohano, LLC, filed a lawsuit in the Second Circuit Court. And in November 20<sup>th</sup>, 2007, obtained. . .Partial Summary Judgment. To back up a little bit, this property. . .involves a . . .zoning determination that was made by the Board of Supervisors back in the '60s. And that determination said that it should be zoned for residential use was made in the face of the fact that the State Land Use

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Commission had already designated the property Agriculture. It was an early period of this land use designation and there were only a few months in, in difference, but it had been the position of the County for some time that the fact that the land was in the State Land Use designation of Agriculture, meant that the subsequent zoning by the Board of Supervisors was invalid. So Hanohano, LLC, went to court and sought an order from the Court determining that that Ordinance--which is Ordinance 395, by that, I mean the ordinance by which the land was zoned for residential use--was a valid ordinance. And the judge agreed with the Plaintiff, with Hanohano, LLC, and determined that in fact the ordinance was valid, is valid as to the property in question. And I do have--which we can pass out in public session since these are public documents. I do have a copy of the Judge's order, the Findings of Fact, Conclusions of Law granting the motion for. . .Partial Summary Judgment regarding the validity of the ordinance. And I also have a map which shows you where this land is located. So. . .I can ask that these be passed out now. And if there are any questions regarding. . .these matters that are a matter of public record, I'd be happy to answer them at this time.

CHAIR MATEO: Thank you, Ms. D'Enbeau. Members, any questions for Corporation Counsel at this time?

*NOTE: Pause while the documents were distributed to the Council Members.*

CHAIR MATEO: . . . Mr. Hokama?

VICE-CHAIR HOKAMA: Chairman, thank you. My first question, if you can answer this in open session is. . .why was Council never informed of this situation and whether or not a legislative solution was. . .preferred . . .

. . . over this judicial or administrative. . .option that was taken?

. . . You, do you have a response for us this morning?

MS. D'ENBEAU: Uh. . .I, I actually don't. I'm sorry. I don't know the answer to that question.

*NOTE: Silence.*

VICE-CHAIR HOKAMA: . . . Since. . .Chairman, if I may continue?

CHAIR MATEO: Go ahead, Mr. Hokama.

VICE-CHAIR HOKAMA: . . . For me. . .obviously the judge has reaffirmed what we knew. . .in the legislative branch regarding zoning. . .that it is within our purview and our authority only.

. . . Uh. . .my question. . .for, for our attorneys this morning is . . .

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. . . since the planner or the Department, Planning Department has . . . chosen to administratively stick 'em--and that's my, my term of those . . . *(inaudible)*. . . it's the "stick 'em zoning method".

. . . By this judge's decision or ruling. . . have we now taken care of all others with similar circumstances. . . or is this only about this one and only specific situation before the Committee this morning?

CHAIR MATEO: Ms. D'Enbeau?

MS. D'ENBEAU: Thank you, Mr. Chair. It is. . . the judge's ruling, if you'll notice on Page 4 of the ruling that we just passed out, his ruling specifically applied only to the property in question. Based upon--I'm reading, now, from the ruling at the bottom of the page: based upon these findings of facts and conclusions of law, the court concludes that Ordinance 395 is valid as applied to the properties involved in this dispute. So it is a specific decision that only applies to the properties. . . involved, which is, which is typical of, of a lawsuit. You, you--

VICE-CHAIR HOKAMA: Uh-huh. Uh-huh.

CHAIR MATEO: --the judge addresses what the issues before him. And this case, it was the property that's shown on the map that we passed out. I will note that Ordinance 395 does *cover* other properties. It's not *limited* to this 14-acre parcel. However, the judge's ruling. . . is limited to the facts of the case.

VICE-CHAIR HOKAMA: Uh. . . the Committee understands that, Ms. D'Enbeau. What I'm trying to determine is, by this ruling, has the depart, appropriate departments or departments assigned to this. . . area of responsibility. . . made adjustments so that whatever they administratively did in the past they've undone because this ruling, now, invalidates what they did?

. . . Would you know if this applies--

MS. D'ENBEAU: I--

VICE-CHAIR HOKAMA: --to other *like* property situations?

MS. D'ENBEAU: . . . I don't know what the Departments have done in that regard. But as far as the . . .

. . . the order of the court, as I said, it, it just applies to the one property. So it wouldn't cover other properties. And it is fact *specific*. There are certain facts about this property that were determinative. For example, the. . . the owners of the property had already *gone*

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to the State Land Use Commission. . .and gotten a designation change from Agricultural to Urban. So, clearly, this. . .even looking at the *facts*, this kind of, this decision wouldn't apply to properties that have not yet obtained a change in designation from Agricultural to Urban--for, as an example. So it wouldn't be an across-the-board. . .determination. This is fact specific.

VICE-CHAIR HOKAMA: . . . Thank you very much, Chairman.

CHAIR MATEO: Thank you, Mr. Hokama. Members, additional questions for Corporation Counsel?

. . . Seeing no additional questions, Members, with reference to this agenda item, 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, immunities, and liabilities of the County, the Council, and the Committee, the Chair entertains a motion to convene in executive meeting.

COUNCILMEMBER BAISA: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR MATEO: Been moved by Mr. Pontanilla, second by Mr. Molina. Members, any. . .any additional discussion? Hearing none, Members, we'll call for the question. All those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MATEO: Those opposed? Motion is carried.

**VOTE: AYES: Councilmembers Baisa, Medeiros, Molina, Pontanilla, Vice-Chair Hokama, and Chair Mateo.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Anderson, Johnson, and Victorino.**

**MOTION CARRIED.**

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

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CHAIR MATEO: Thank you, Members. We will take a very short recess just to set the Chamber up for executive meeting. The Policy meeting stands in recess . . .(gavel) . . .

**RECESS: 9:16 a.m.**

**RECONVENE: 10:42 a.m.**

CHAIR MATEO: . . .(gavel) . . . Policy Committee meeting for April 30, 2008 will reconvene. Members, if you will please turn . . .attached to the April 9, 2008 communication to the Chair, the Corporation Counsel attached their resolution. The Chair would like to have you note that as soon as--I'll give you time to find the resolution. Okay?

. . . On the third WHEREAS, on the third WHEREAS, the, the last line which reads, after 2008, says: which terms were discussed in an executive, the change would be "meeting before the Policy Committee on April 30<sup>th</sup>, 2008". That just makes it . . .it really clear. And on the second page, the BE IT RESOLVED, number 1, right after the word "executive", we're adding the same language. . .the executive meeting before the Policy Committee on April 30, 2008. Corporation Counsel has . . .had indicated that. . . that this change is not substantive. So if there's no objections, Members, the Chair would like to allow Staff to incorporate this language into, into the resolution.

COUNCIL MEMBERS: No objections.

CHAIR MATEO: Thank you very much, Members. Additional questions for Corporation Counsel regarding . . .regarding the item that we've been discussing in, in executive session? Any additional questions? Hearing none . . .Members . . .the Chair . . .recommends the adoption of the proposed resolution entitled authorizing settlement of Hanohano, LLC, versus the County of Maui, et al., Civil Number 06-1-0148(1), in accordance with the terms discussed in executive session.

COUNCILMEMBER PONTANILLA: So moved.

COUNCILMEMBER HOKAMA: Second.

CHAIR MATEO: It's been moved by Mr. Pontanilla, second by Mr. Hokama. Members, discussion? Hearing none, we'll call for--

VICE-CHAIR HOKAMA: Chairman?

CHAIR MATEO: Mr. Hokama, go ahead.

VICE-CHAIR HOKAMA: I am happy to support your recommendation with reservations, Chairman.



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**ABSTAIN:** None.

**ABSENT:** None.

**EXC.:** Councilmembers Anderson, Johnson, and Victorino.

**MOTION CARRIED.**

**ACTION:** Recommending ADOPTION of revised resolution.

CHAIR MATEO: Thank you, Members, very much. Mr. Hunt, did you wanna provide a comment?

MR. HUNT: I just want, if I could, respond to Chairman Hokama's comment.

CHAIR MATEO: Oh, no. Thank, thank you, Mr. Hunt. You can speak with him after the meeting directly. Thank you. Members, for announcements? Any announcements at this time? The Chair would like to take this opportunity to thank each one of you for being here today. I know Mr. Pontanilla put us through a *grueling* number of weeks.

ALL: . . .(laughter). . .

CHAIR MATEO: And you still came out after all of it. So thank you all very much for being here. Members, additional announcements?

. . . If not, Policy Committee for April 30<sup>th</sup>, 2008 is adjourned . . .(gavel). . .

**ADJOURN:** 10:48 a.m.

APPROVED:



DANNY A. MATEO, Chair  
Policy Committee

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Transcribed by: Camille Sakamoto