

MINUTES
COMMITTEE OF THE WHOLE

Council of the County of Maui

Council Chamber

December 14, 2006

CONVENE: 9:03 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Michelle Anderson, Member (in 9:52 a.m.)
Councilmember Robert Carroll, Member
Councilmember G. Riki Hokama, Member
Councilmember Joseph Pontanilla, Member
Councilmember Charmaine Tavares, Member

EXCUSED: Councilmember Dain P. Kane, Vice-Chair
Councilmember Jo Anne Johnson, Member
Councilmember Danny A. Mateo, Member

STAFF: Shelly Espeleta, Legislative Analyst
Clarita Balala, Committee Secretary

ADMIN.: John Buck, Deputy Director, Department of Parks and Recreation
Kalbert Young, Director, Department of Finance (in the gallery)
Madelyn D'Enbeau, Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: Additional attendees (1)

PRESS: AKAKU – Maui Community Television, Inc.

CHAIR MOLINA: . . .(*gavel*). . . The December 14, 2006 Committee of the Whole meeting is now in session. For the record we have in attendance, Chairperson Molina, Members Hokama, Pontanilla, Tavares, and Carroll. Excused are Members Anderson, Johnson, Mateo, and Kane. We have from Staff, we have our Legislative Analyst Shelly Espeleta; Committee Secretary Clarita Balala; and we have from the Administration to give us an overview on our one item on our agenda, we have Corporation Counsel Madelyn D'Enbeau; and also from the Parks Department we have Deputy Director John Buck. And from the Finance Department, Director Kalbert Young, to give us an overview of this particular matter, which is Committee of the Whole Item 1(45), which is a settlement authorization of claims and lawsuits, Hoa Le, M.D. and Jennifer Yang, M.D. versus the Kea Lani Hotel Corporation, dba the Kea Lani Hotel, a Hawaii Profit Corporation, et al., Civil No. 04-1-0124(2).

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But before we get into discussion on this, Members, the Chair would like to ask if there's anyone in the gallery that would like to testify. Seeing no one is available. At this point the Chair will leave the opportunity for the public to testify open until we . . . a little bit later once we get through this matter. So no objections. . .if there are no objections, the Chair would like to proceed in that manner.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. Thank you very much, Members.

COW-1(45) SETTLEMENT AUTHORIZATION OF CLAIMS AND LAWSUITS HOA LE, M.D. AND JENNIFER YANG, M.D. V. THE KEA LANI HOTEL CORPORATION, D/B/A/ THE KEA LANI HOTEL, A HAWAII PROFIT CORPORATION, ET AL., CIVIL NO. 04-1-0124(2) (C.C. No. 05-24)

CHAIR MOLINA: Alrighty. Let's get into our item. First of all, the . . .with regards to Committee of the Whole Item 1(45), the Committee is in receipt of a correspondence dated December 8, 2006, from the Council Chair, transmitting a copy of a correspondence dated December 7, 2006, from the Corporation Counsel's Office, requesting consideration of a proposed resolution with regards to this matter. This complaint alleges damages due to injuries sustained at Kalama Park, Kihei. The purpose of the proposed resolution is to authorize settlement of the case for \$100,000, and the Chair would like to note that this is a time sensitive matter which is why we're having this meeting here today, which is a result of recent mediation sessions on December 4th and 5th whereby the County reached a tentative settlement agreement with the plaintiffs subject to Council approval. So with that said I'd like to ask Corporation Counsel D'Enbeau to give us a brief overview in open session.

MS. D'ENBEAU: Yes. Thank you very much, Mr. Chair and Members, and thank you for accommodating us with this special meeting. We much appreciate it. As, as is noted in the letter the trial in this matter was . . .is set for February 12 and that's one of the things that makes it so time sensitive so we can complete, if it's the Council's wish, we can complete this before the trial date. As, as you pointed out this accident involves a 27 year, well, at the time he was 27 years old. Dr. Hoa Le was in his second year of medical residency and he was honeymooning on Maui staying at the Kea Lani Hotel when he decided to take . . .he and his wife decided to take surf lessons. The surf lessons were arranged through the Kea Lani and its activity provider, Play Pacific, and they took place at Kalama Park.

The . . .Dr. Le fell while descending into the water across the revetment that's there at Kalama Park. He went on to do some of the surf lesson, began to feel weakness in his legs, exited the water, and an ambulance was called. He is now suffering from apparently irreversible paraplegia, which means he's confined to a wheelchair, and a suit was filed against the Kea Lani Hotel, against the County of Maui, against the surf instructor, his name is John Lafferty, and against Play Pacific, which was the entity that, that arranged for the lessons.

The claims against the County were made that there was improper signage, improper maintenance of the accesses to the ocean that are cut into the revetment, and failure to promulgate rules and regulations regarding our permits that we issue for the ocean recreation providers. I do have some documents and

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some. . . can answer some further questions, but I think it would be appropriate in executive session, if that's the will of the body, Mr. Chair.

CHAIR MOLINA: Okay. Thank you very much, Ms. D'Enbeau. Committee Members, any questions in open session for Corporation Counsel or the representatives from the Parks Department and Finance? Member Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. If I'm straying, just let me know. Maybe a question for Parks Department in regards to Play Pacific Incorporated. That's one of the ocean activity people that do have the right to provide surface. . . surfing lessons at Kalama Park?

MS. D'ENBEAU: I probably misspoken. I apologize, Member Pontanilla. The surf instructor was John Lafferty and his, his surfing school. Play Pacific wasn't one of our permittees. They're just the activity provider. I'm sorry, that's where the confusion came in. They're the ones that sign people up for various activities not specifically the surf instructor. But, yes, the surf instructor, John Lafferty, was. . . did have a permit.

COUNCILMEMBER PONTANILLA: He did have a permit?

MS. D'ENBEAU: Yes.

COUNCILMEMBER PONTANILLA: Okay.

CHAIR MOLINA: Okay. Mr. Pontanilla, if you want to proceed with your question for Mr. Buck from the Parks Department.

COUNCILMEMBER PONTANILLA: Yeah. I think Ms. D'Enbeau answered the question about Mr. Lafferty having a permit to provide surfing lesson at Kalama Park.

CHAIR MOLINA: Okay. Mr. Buck, do you have any comments?

MR. BUCK: Mr. Chair, I do have some comments but at this point in regards to this case I would prefer to make those comments during executive session.

COUNCILMEMBER PONTANILLA: Okay. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Pontanilla. Committee Members, any other questions in open session? Seeing none. Based on the recommendation from Corporation Counsel, the Chair will ask for a motion to convene in executive session pursuant to Section 92-5(a)(4) 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 PONTANILLA: So moved.

COUNCILMEMBER TAVARES: Second.

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CHAIR MOLINA: Okay. It's been moved by Member Pontanilla, seconded by Member Tavares. Any discussion? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

VOTE: AYES: Councilmembers Carroll, Hokama, Pontanilla, and Tavares, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Anderson, Johnson, and Mateo, and Vice-Chair Kane.

MOTION CARRIED.

ACTION: EXECUTIVE SESSION.

CHAIR MOLINA: Thank you. The Chair will mark it 5-0 with four excusals. We will now convene in executive session. . . .(gavel). . .

RECESS: 9:10 a.m.

(THE COMMITTEE OF THE WHOLE MEETING ENTERED INTO EXECUTIVE SESSION AT 9:12 A.M. AND ENDED AT 9:54 A.M.)

RECONVENE: 9:56 a.m.

CHAIR MOLINA: . . .(gavel). . . The Committee of the Whole meeting for December 14th is now back in session, and Members, for the record we don't have a clock in the chambers at this time. It is 9:56 and we have been discussing Committee of the Whole Item 1(45), which is a settlement authorization of claims and lawsuits, Hoa Le, M.D. and Jennifer Yang, M.D. versus the Kea Lani Hotel Corporation. And at this point, Members, if you don't have any other questions in open session for Corporation Counsel or our resource personnel from Parks Department and the Finance Department, the Chair will give his recommendation. Let's see. . .and, oh, and Chair would like to add one more thing. For the record, we've had no one approach us about giving testimony for today so we will close public testimony on this item. Any objections to that?

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COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. Seeing no objections. Thank you, Members. So with that said. . .seeing that there are no questions in open session on this matter, the Chair will give a recommendation. For the record the Chair sent a December 11th transmittal to the Council Chairman, Riki Hokama, with regards to having this matter discharged at the December 19th Council meeting. Because of the time constraints and sensitive matters as it relates to this case, as shared with us by Corporation Counsel, so therefore it is your Chair's recommendation to defer this matter today. Any objections to deferral?

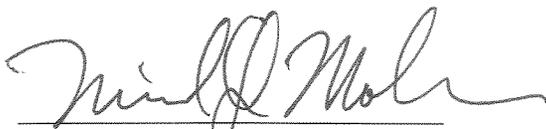
COUNCIL MEMBERS VOICED NO OBJECTIONS. (Excused: JJ, DK, and DM)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR MOLINA: Okay. Seeing none. The matter is deferred as ordered by the body and that I believe would conclude our matters for today. Any announcements, Members? The Chair would like to make one acknowledgment or announcement and would like to thank Kaunoha Services for these beautiful Christmas floral arrangements that they've shared with us today. So it's very much appreciated and definitely fits the time of year that we have today. Any final announcements from the Members? Seeing none. The Chair would like to thank those of you who managed to attend today. I know it's an off week and, and I know you. . .many of you had some prior commitments so I thank you very much for your professionalism and dedication for being here this morning. So with that being said, the Committee of the Whole meeting for December 14, 2006 is now adjourned. . . .*(gavel)*. . .

ADJOURN: 9:59 a.m.

APPROVED BY:



MICHAEL J. MOLINA, Chair
Committee of the Whole

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Transcribed by: Clarita Balala