

MINUTES
COMMITTEE OF THE WHOLE

Council of the County of Maui

Council Chamber

December 8, 2003

CONVENE: 9:05 a.m.

PRESENT: Councilmember Robert Carroll, Chair
Councilmember Dain P. Kane, Vice-Chair
Councilmember G. Riki Hokama, Member
Councilmember Jo Anne Johnson, Member
Councilmember Michael J. Molina, Member
Councilmember Wayne K. Nishiki, Member
Councilmember Joseph Pontanilla, Member
Councilmember Charmaine Tavares, Member

EXCUSED: Councilmember Danny A. Mateo, Member

STAFF: Carla Nakata, Legislative Attorney
Pauline Martins, Committee Secretary

ADMIN.: Edward Kushi, Jr., Deputy Corporation Counsel, Department of the
Corporation Counsel
Donald Couch, Executive Assistant to the Mayor
Dyan Ariyoshi, CIP Coordinator, Planning and Development Division,
Department of Parks and Recreation
Gilbert Coloma-Agaran, Director, Department of Public Works and
Environmental Management
Glenn Correa, Director, Department of Parks and Recreation

OTHERS: Jonathan Starr, Chief Volunteer Officer and Board Chair, Boys & Girls Club
of Maui, Inc.
Colin Hanlon, Executive Director, Boys & Girls Club of Maui, Inc.
Kelly Pearson, Director of Operations, Boys & Girls Club of Maui, Inc.
Plus (1) other person

PRESS: None.

CHAIR CARROLL: Good morning, members.

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MEMBERS: Good morning.

CHAIR CARROLL: Committee of the Whole meeting of December 8, 2003 will come to order. We have with us this morning Vice-Chair Kane, Members Riki Hokama, Jo Anne Johnson, Michael Molina, Wayne Nishiki, Joseph Pontanilla, and Charmaine Tavares. Member Danny Mateo is excused. We will begin. Right off, we have only two people signed up for testimony. First, Jonathan Starr. Jonathan, you know you have three minutes with three minutes to conclude if you can't finish in a minute. Proceed.

... BEGIN PUBLIC TESTIMONY ...

MR. STARR: Good morning, County Council members, and happy holidays. My name is Jonathan Starr. I am here today as Chief Volunteer Officer and the Board Chair for the Boys & Girls Club of Maui. I know you are all familiar with the item before you and I am not gonna take much of your time, just . . . uh . . . I hope that all issues that anyone's had have been dealt with. We are here to answer questions or do anything else that needs to be done. Having this lease on the property will allow us to proceed with the construction of the new clubhouse and youth center for Central Maui, which is much needed. It will also allow us to work toward a greater purpose, which is something we've been striving to do for several years, which is we intend to build a gymnasium. You know, a kids' gym, a players' gym, not with bleachers for people to watch games but for the kids to play in. We will be going out to private entities--to foundations and private funding sources. And when we did that . . . uh . . . began that process about a year-and-a-half ago, the first thing they said is here is our checklist and the first item on the checklist is "do you own the property or have a long-term lease". Since we didn't pass that first hurdle, we couldn't even get to stage one. So now I think with your kokua, the way will be cleared to proceed with the project and also to allow us to go out and try to fund the gymnasium, which we believe we will be able to do and be able to bring a really great facility to the kids of Central Maui. Thank you and aloha.

CHAIR CARROLL: Thank you. Any questions for Jonathan? Thank you, Jonathan. Next, we have Colin Hanlon of the Boys & Girls Club.

MR. HANLON: Good morning, Chair Carroll and Council members. My name is Colin Hanlon, Executive Director with the Boys & Girls Club. As Jonathan just stated, I would like to stay as brief as possible and ask you to support the lease agreement for the Boys & Girls Club central project, and reiterate that it is one of the contingencies for this project to continue to move forward. He said that we had a greater goal and I think our greater goal truly is to serve more children, more youth in Central Maui and that has always been our goal for this project. Thank you.

CHAIR CARROLL: Thank you. Any questions for Mr. Hanlon? Hearing none. Thank you. Is there anyone else who wishes to give testimony this morning? Hearing none. If there's no objections, we will close public testimony.

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COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Public testimony is now closed.

... END OF PUBLIC TESTIMONY ...

CHAIR CARROLL: Members, this morning with us we have Dyan Ariyoshi of the Parks and Recreation; Mr. Gilbert Agaran, Public Works and Environmental Management; Don Couch, Executive Assistant to the Office of the Mayor; and of course, we have just heard from Mr. Hanlon and Jonathan Starr.

COW-12 GRANT OF A LEASE TO OCCUPY COUNTY REAL PROPERTY TO BOYS & GIRLS CLUB OF MAUI, INC. (KAHULUI) (C.C. No. 03-177)

CHAIR CARROLL: This morning we have only one item on the agenda. That is Item No. 12, a grant of a lease to occupy County real property to Boys & Girls Club of Maui, Inc. (Kahului). You have the December 5th correspondence, which is the one we will be working with today--the December 5th. The purpose of the resolution entitled "AUTHORIZING A GRANT OF A LEASE TO OCCUPY COUNTY REAL PROPERTY TO BOYS & GIRLS CLUB OF MAUI, INC."; revised proposed lease, dated December 4, 2003; proposed grant agreement for a lease of County real property; and revised proposed resolution entitled "AUTHORIZING THE GRANT OF EASEMENTS ON COUNTY OF MAUI REAL PROPERTY RELATING TO THE BOYS & GIRLS CLUB OF MAUI, INC., FOR ACCESS AND UTILITY PURPOSES". Please note that these are the four documents that were transmitted by correspondence dated December 1, 2003 and posted on the agenda for the committee's December 8, 2003 meeting. However, Document Nos. 2 and 4 have been revised by the Department of the Corporation Counsel to incorporate the changes I requested by correspondence dated December 2, 2003. With that, I would like to first call on--we have with us Corporation . . . uh . . . our Corporation Counsel this morning is Mr. Moniz.

COUNCILMEMBER JOHNSON: Kushi.

CHAIR CARROLL: I mean Kushi. I am sorry. Mr. Kushi. Yeah, we just got in this morning and we're a little slow today. I'll blame the tree that was on the road.

MEMBERS: . . . (*chuckled*) . . .

CHAIR CARROLL: Mr. Kushi?

MR. KUSHI: Yes, Mr. Chair. Good morning to you, too. What did you want me to do? Just review the situation?

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CHAIR CARROLL: Do you have anything you would like to say about the lease before I open up the . . . uh . . . go on to the members?

MR. KUSHI: No. Just for clarification, I believe since the last time this committee met, things have changed in that the property was subdivided pursuant to the direction that the committee had requested. Subdivision is completed. As a part and parcel of the subdivision, we had created . . . we need to create two separate easements. Accordingly not only the resolution for, to approve the long-term leases before you, it is another resolution to grant an easement--two separate easements--to the grantee (Boys & Girls Club of Maui, Inc.). These are required access and utility easements for their use. It's non-exclusive. It's in conjunction with the public's use and it was necessary because if we did not grant an easement, then we would--in essence--the Boys & Girls Club would have a lease over that access area and then they would have to give us back the right to use that area. So that is why you have two separate resolutions. I have been requested also to clarify the technical aspects of this lease. As you know, this lease is for less than fair market value. It's for a 35-year term. It's \$1 a year. Accordingly, the provisions, your standard provisions as included in . . . uh . . . contained in Chapter 3.40, which is concessions and . . . of leases or licenses, which have various bidding requirements does not apply because within that chapter alone, if it says less than fair market value, then you go to a different chapter, which is 3.36. This is the grants program. This proposal has been submitted through the grants program. It did go through the Grants Review Committee and now it's before you. The easement resolution is pursuant to Chapter 3.44, which is the acquisition and disposition of property sections. We framed the resolution as an access and utility easement. We have not valued it because we feel that we suggest that it is within the public interest to grant such an easement, and we have treated it such like utility easements to MECO. I believe that should summarize it your honor--I mean, Mr. Chair.

CHAIR CARROLL: Thank you, Mr. Kushi. Did you say 3.40? Or 3-point . . . ?

MR. KUSHI: Okay. Chapter 3.40 is the chapter on concessions, leases, licenses for fair market value. Chapter 3.36 is the chapter on the grants review . . . or the Maui County grants program. Chapter 3.44 is the chapter on the acquisition and disposition of real property.

CHAIR CARROLL: Are there any questions for Mr. Kushi? Mr. Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Chairman. Good morning, Mr. Kushi. Just for clarification, I guess, the December 2nd transmittal with the license shows 4.367 acres and then the December 5th transmittal for the lease shows 4.248 acres. Can you explain the difference between the two? Why one shows that number and the other shows . . .

MR. KUSHI: Correct. The previous transmittal that you described that was contained in the license was the entire property. The latest one with the lease is a smaller parcel but then if you add the easement area, it comes out to the same.

COUNCILMEMBER MOLINA: All right, thank you.

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CHAIR CARROLL: Thank you. Members, any further questions to Mr. Kushi or any of the other people we have to help clarify anything that you need to know? I think that we, from the last meeting, that we have answered and incorporated all of the concerns and changes in this document. Mr. Kane?

VICE-CHAIR KANE: My question is not in regards to Mr. Kushi's opening comments but it does have to do with the content of the lease itself. So whenever the appropriate time is for the questions for that . . .

CHAIR CARROLL: The appropriate time is now.

VICE-CHAIR KANE: Thank you. Good morning, Mr. Kushi.

MR. KUSHI: Good morning.

VICE-CHAIR KANE: In the lease, it references in Section A, Use of Premises, in the third sentence--I believe. It reads "lessee shall be able to charge reasonable user fees for such third-party use of the premises as reflected on a fee schedule proposed by the Director of Parks and Recreation and adopted by the Maui County Council by resolution". There is no fee schedule attached and there is no resolution to be approved. Is this something--this fee schedule, does it already exist? Or is this something that is gonna come down later on? Just for clarification.

MR. KUSHI: Yes, Mr. Chair. Member Kane, correct. As I understood your previous discussions, I believe you had a meeting sometime in August.

VICE-CHAIR KANE: Yes.

MR. KUSHI: And this was discussed. My colleague, Mr. Garneau, was here. I was not here. I believe the conclusion was that you either do the fee schedule now and you attach it as an exhibit, which would involve time and probably public hearings, or you do it later and you bring it back to this body. So it hasn't been made yet and when it does, it will have to come back here.

VICE-CHAIR KANE: Okay. So with that clarification . . .

MR. KUSHI: And in the meantime, there is no . . .

VICE-CHAIR KANE: Go ahead. That was gonna be my next question. In the meantime, there would not . . . uh . . . the lessee would not be entitled to charge user fees for third-party of the premises until such time that a fee schedule is made and signed by the Director and approved by the Council?

MR. KUSHI: Correct. That's my understanding.

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VICE-CHAIR KANE: Thank you.

MR. KUSHI: Yes.

CHAIR CARROLL: Members, any further questions? Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman. Explain to me--I may have missed the understanding. Exhibit-2, Page 8, on definition "lessor". Why do we need authorization for five different people to be able to sign? In your letter to Mr. Moto dated December 2nd, you state--Chairman--the revision there to Paragraph 28.B, "if that is what is intended". So my first question is--whose intention? . . . administration? . . . or is it your intention as our chairman? And then after we get that answered--why?

CHAIR CARROLL: Let's see. Administration, who would care to take that? Mr. Couch?

(NOTE: A long pause.)

MR. COUCH: Oh, I don't know.

MS. NAKATA: Mr. Chair, if I may? Prior to administration responding, just to clarify. The question in the transmittal to Mr. Moto was simply to clarify an ambiguity that seemed to exist in Exhibit-2, Page 8, under the prior version. And what we got back was presumably the clarification of that ambiguity from Corporation Counsel. So previously it read, "wherever the prior written consent or approval of the lessor is required in this lease, such consent or approval shall include but is not limited to the consent or approval of the Mayor, the Director of Finance, and the Directors or Housing and Human Concerns, Parks and Recreation, or Economic Development, where applicable".

CHAIR CARROLL: Mr. Hokama?

COUNCILMEMBER HOKAMA: So my next question is why? If the Mayor is gone, the Charter says the Managing Director. If the MD is gone, the Charter says Director of Finance. So what do we need all these other things for? Do you mean to tell me that we expect all our top personnel to be gone at one time and that nobody can sign on behalf of the County?

CHAIR CARROLL: Mr. Kushi?

MR. KUSHI: Before Mr. Couch responds . . . uh . . . the previous version that you had, I think it was more like a boilerplate standard provisions. I believe . . . and from our offices standpoint, it was meant not to be mutually exclusive in that . . . in some instances, you may need--we would say in all instances, you would need the Mayor. But in some instances, you would need the various directors to sign off depending on the situation. The Director of Parks would more likely in this case be involved. The Economic Development Coordinator may be in case of

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some promotion that that office is doing and they want to use the premises. Housing and Human Concerns may have some instances where they monitor the project. So in response to your question why, we didn't want to shortchange anybody and leave them out. That's about as simple as I can respond to.

CHAIR CARROLL: Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chairman. I understand what Corporation Counsel just shared with us Chairman and I would think that those other people would be signing off on the line that says "recommending for approval", but who signs off for the County, to me, is pretty explicit who the Charter says should bear the responsibility and burden. I don't feel to . . . *(inaudible)* . . . should be placed right on the people that want it and have it--simple.

CHAIR CARROLL: Anything further, Mr. Hokama?

COUNCILMEMBER HOKAMA: No. Thank you.

CHAIR CARROLL: Members, anything further? Ms. Tavares.

COUNCILMEMBER TAVARES: Yes. Would there be any problem taking that part out and leaving it as described in the Charter as Mr. Hokama has pointed out?

CHAIR CARROLL: Mr. Kushi?

MR. KUSHI: Mr. Chair. Member Tavares, I don't believe it's a problem. Again, maybe the intent--I didn't make myself clear. This provision is set in terms of there may be some situations, where it's not so much an amendment of the lease of the whole deal. There are some provisions in here that they may need consent of the lessor like bonding . . . uh . . . I can't pick it up but various non-substantive provisions, where they need our consent--the consent of the lessor in a private setting. Maybe the clarification should be this. If it's a substantive matter--if they want to change the term of the lease, if they want to change the use provisions--then it becomes a lease amendment. In that case, the Mayor signs the lease. The Director of Finance signs the lease. The various departments sign off recommended approval but it's our position, it comes back here because it's a substantive amendment. This is not . . . this provision does not serve that. So these are . . . this was added in for day-to-day consent provisions. But again, it's not problem if you want to change it. We could put whoever in there--Director of Parks, Director of Finance, the Mayor--and as you note, this body is not included in that.

COUNCILMEMBER TAVARES: Uh-huh.

CHAIR CARROLL: All right. The Chair did not have a problem with this. So, do the members wish to change or do anything with this section? Now is the time. The Chair personally feels that it's all right as it is, however. Ms. Tavares?

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COUNCILMEMBER TAVARES: This binder is driving me crazy. No, I just think that in practically speaking, when this is being administered, that the Mayor, the Managing Director, Director of Finance, or whatever is going to have somebody acting as their agent. Most likely it will be the Department of Parks and Recreation or Housing and Human Concerns. So the practical matter is that that will occur, you know, no matter what's in here but I think the official signing off or changes or amendments should be done per our Charter and County Code.

CHAIR CARROLL: Are you through, Ms. Tavares?

COUNCILMEMBER TAVARES: Yeah, I guess. Well when I took this out, I lost my place. Go ahead.

CHAIR CARROLL: Okay. Mr. Kane?

VICE-CHAIR KANE: I think--and I'm not sure . . . but what is referenced on Exhibit-1, the grant agreement for lease of County real property and on Page 3, as it's laid out there, whoever--as it is worded currently in front of us, that could be amended to consider it being set up to where the recommendation would come from the director or the coordinator who is currently involved with the issue at hand. But then as Member Tavares and Member Hokama have stated, the ultimate signing off on it would be consistent with what we have in the Charter, whether it's substantive or non-substantive, and that's just my point. I think that I am just trying to see if that's where we are going with this.

CHAIR CARROLL: Yeah. Thank you for clarifying that.

VICE-CHAIR KANE: That's all I have to say.

CHAIR CARROLL: Thank you.

(NOTE: A long pause.)

COUNCILMEMBER TAVARES: Mr. Chair?

CHAIR CARROLL: Ms. Tavares.

COUNCILMEMBER TAVARES: So if that portion just said "consent or approval of the Mayor", that would cover everybody.

CHAIR CARROLL: I believe so.

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COUNCILMEMBER TAVARES: Take the rest out . . . because the Mayor is not gonna do something in a vacuum, you know, he doesn't have time to do that kind of stuff. So it is gonna be in consultation with everyone whenever there is gonna be some sort of written, either amendment or whatever it might be, pertaining to the lease. So I don't see a problem with it just saying "consent or approval of the Mayor" and deleting the other people that are mentioned.

CHAIR CARROLL: Okay. Mr. Kushi, is there any problem with that?

MR. KUSHI: There's no problem, Mr. Chair. I would suggest including Director of Finance too because by Charter, the Director of Finance is responsible for all real property.

COUNCILMEMBER TAVARES: Okay.

CHAIR CARROLL: All right, members. We have a proposed change. Are you proposing that we change this?

COUNCILMEMBER TAVARES: Yeah, I'll propose that we change or amend this so that it says the Mayor and the Director of Finance.

CHAIR CARROLL: All right.

COUNCILMEMBER HOKAMA: Second.

CHAIR CARROLL: It's been moved and seconded. It's been moved by Ms. Tavares, seconded by Mr. Hokama. Mr. Kushi?

MR. KUSHI: Yeah, Mr. Chair. Point of clarification. So the changes would be on Exhibit-2, Page 8, paragraph B, definition of "lessor". I will change that. And also as Mr. Kane said, Exhibit-1, which is the grant agreement--wherever it references the grant agreement--and also the body of the lease at Page 3.

CHAIR CARROLL: Okay. All right. Any further discussion on this motion on the floor? Hearing none. All in favor signify by saying "aye".

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COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed?

VOTE: AYES: Chair Carroll, Vice-Chair Kane, Councilmembers Hokama, Johnson, Molina, Nishiki, Pontanilla and Tavares.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Mateo.

MOTION CARRIED.

ACTION: AMEND RESOLUTION.

CHAIR CARROLL: Motion carried unanimously. Thank you. Is there anything further before the Chair gives his recommendation? Hearing none. The Chair would accept a motion--let's see--to adopt the proposed resolution entitled "AUTHORIZING A GRANT OF A LEASE TO OCCUPY COUNTY REAL PROPERTY TO BOYS & GIRLS CLUB OF MAUI, INC."; the revised proposed lease is dated December 4, 2003; proposed grant agreement for a lease of County real property; and revised--I am not sure if I'm doing this the right way. Now, the revised resolution authorizing the grant of easements on County of Maui real property relating to the Boys & Girls Club of Maui, Incorporated, for access and utility purposes.

COUNCILMEMBER JOHNSON: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR CARROLL: It's been moved by Johnson, seconded by Molina. Discussion? Hearing none. All in favor of the motion signify by saying "aye".

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COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed?

VOTE: AYES: Chair Carroll, Vice-Chair Kane, Councilmembers Hokama, Johnson, Molina, Nishiki, Pontanilla and Tavares.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Mateo.

MOTION CARRIED.

ACTION: ADOPT REVISED RESOLUTIONS.

CHAIR CARROLL: Motion carried unanimously. Thank you, members. I appreciate your coming out today. Any announcements or further discussion? Mr. Kane?

VICE-CHAIR KANE: It's . . . are we gonna be considering filing of this communication? Move to file, Mr. Chair, County Communication No. 03-177.

COUNCILMEMBER JOHNSON: Second.

COUNCILMEMBER TAVARES: Second.

COUNCILMEMBER MOLINA: Second.

CHAIR CARROLL: It's been moved by Mr. Kane and seconded by Mr. Molina to file this communication. Mr. Kane, discussion? Hearing none. All in favor signify by saying "aye".

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COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed?

VOTE: AYES: Chair Carroll, Vice-Chair Kane, Councilmembers Hokama, Johnson, Molina, Nishiki, Pontanilla and Tavares.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Mateo.

MOTION CARRIED.

ACTION: FILE COMMUNICATION.

CHAIR CARROLL: Motion carried. Thank you, Mr. Kane. Hearing nothing else. Thank you again members, and members of the public for attending. This meeting stands adjourned.

ADJOURN: 9:34 a.m.

APPROVED BY:


ROBERT CARROLL, Chair
Committee of the Whole

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Transcribed by: Pauline Martins