

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

February 20, 2004

Committee
Report No.

04-32

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on September 3, 2003 and February 9, 2004, makes reference to County Communication No. 03-19, from the Council Chair, regarding the settlement of claims and lawsuits.

Your Committee is in receipt of correspondence dated August 27, 2003, from the Department of the Corporation Counsel, requesting consideration of plaintiffs' written settlement demand in Laki Kaahumanu, et al. v. County of Maui, Case No. CV01-00689 ACK/LEK, United States District Court for the District of Hawaii.

Your Committee notes that the complaint alleges due process and other violations arising from a denial of Plaintiff Sandra Barker's application for a conditional permit to operate her wedding business on Maui.

At its meeting of September 3, 2003, your Committee met with the First Deputy Corporation Counsel and a Deputy Corporation Counsel.

There was no public testimony. The First Deputy Corporation Counsel provided a brief overview of the case, informing your Committee that the plaintiffs had served a written settlement demand upon the County, and that the Department of the Corporation Counsel had, therefore, requested the opportunity to present the settlement demand to your Committee prior to a September 4, 2003 settlement conference. The First Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting.

Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

At its executive meeting, your Committee met with the First Deputy Corporation Counsel and a Deputy Corporation Counsel.

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Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee deferred the matter.

By correspondence dated February 9, 2004, the Department of the Corporation Counsel transmitted Judge Alan C. Kay's January 28, 2004 Order in the Kaahumanu case.

At its meeting of February 9, 2004, your Committee met with the Corporation Counsel and a Deputy Corporation Counsel.

There was no public testimony. The Deputy Corporation Counsel provided a brief overview of the case, noting that the case has been fully resolved in favor of the County. The issue decided by the January 28, 2004 Order was whether the applicant, Sandra Barker, was afforded due process when the Council denied her application for a conditional permit. The court found that she did not have a protected property interest in the conditional permit application, but only a unilateral expectation that it might be granted, and the County, therefore, did not violate her right to procedural due process.

The Deputy Corporation Counsel noted that the court had earlier determined that—due to the small area involved and the fact that a single applicant was being considered—the decision made by the Council was not legislative, but administrative. Therefore, the defendant Council members were not entitled to absolute legislative immunity. The Deputy Corporation Counsel further noted, however, that the members were subsequently granted qualified immunity and dismissed from the case.

The Deputy Corporation Counsel noted that any appeal to the court's January 28, 2004 decision must be filed by February 29, 2004.

Your Committee voted to recommend filing of the correspondence dated August 27, 2003 and February 9, 2004 from the Department of the Corporation Counsel.

Your Committee of the Whole **RECOMMENDS** that the correspondence dated August 27, 2003 and February 9, 2004, attached hereto, be FILED.

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Adoption of this report is respectfully requested.

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MICHAEL J. MOLINA **Member**

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