

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

September 13, 2016

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

**CONVENE:** 3:19 p.m.

**PRESENT:** Councilmember Don S. Guzman, Chair  
Councilmember Stacy Crivello, Vice-Chair  
Councilmember Gladys C. Baisa (out 4:30 p.m.)  
Councilmember Robert Carroll  
Councilmember Elle Cochran  
Councilmember Don Couch  
Councilmember Riki Hokama  
Councilmember Michael P. Victorino (out 4:25 p.m.)  
Councilmember Mike White

**STAFF:** Carla Nakata, Legislative Attorney  
Clarita Balala, Committee Secretary

David Raatz, Director, Office of Council Services

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

**ADMIN.:** Edward S. Kushi, First Deputy Corporation Counsel, Department of the Corporation Counsel  
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel  
Brian A. Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel  
Kristin K. Tarnstrom, Deputy Corporation Counsel, Department of the Corporation Counsel  
Michael Miyamoto, Deputy Director, Department of Environmental Management

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

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CHAIR GUZMAN: . . .(gavel). . . Good afternoon. Welcome to the Committee of the Whole. I'm Don Guzman, Chair of the Committee. We have also, before I begin I'd like to introduce the Members that we have here today in the Chambers. Our Vice-Chair of the Committee, Stacy Crivello. Good afternoon. Bob Carroll. Good afternoon.

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COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Gladys Baisa. Good afternoon. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Aloha and good afternoon.

CHAIR GUZMAN: Riki Hokama, Mike White, and Mike Victorino. Thank you very much. We also have the Committee Secretary, Clarita Balala, . . . *(laughter)*. . . Legislative Attorney, Carla Nakata. I'm trying to go a little faster than usual to speed it up here. So before we begin in the Chambers I'm gonna check in with our District Offices. In Lanai Office, are you there?

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai.

CHAIR GUZMAN: Oh, Ms. Fernandez, is there anyone wishing to testify?

MS. FERNANDEZ: There is no one waiting to testify at the Lanai Office.

CHAIR GUZMAN: Thank you. In Hana Office, is there...hello?

MS. LONO: Good afternoon, Chair, this is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR GUZMAN: Thank you, Ms. Lono. And Molokai Office?

MS. ALCON: Good afternoon, Chair, this is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR GUZMAN: Thank you, Ms. Alcon. Turning our attention to the Chamber, anyone wishing to testify?

MS. NAKATA: Mr. Chair, no one has signed up to testify in the Chamber.

CHAIR GUZMAN: Okay, with no one signed up to testify, close public testimony.

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Thank you. Public testimony is now closed.

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**COW-1(2)      LITIGATION MATTERS    (STATUS:    OCEAN RESORT VILLAS  
VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI,  
ET AL., CIVIL 13-1-0848(2); OCEAN RESORT VILLAS VACATION  
OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL.,  
CIVIL 15-1-0435(1)) (CC 15-6)**

CHAIR GUZMAN: Members, starting with our first item on today's agenda. This is COW-1(2), Litigation Matters, Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil No. 13-1-0848(2); Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil No. 15-1-0435(1). Today we have with us Corporation Counsel Deputy Moana Lutey, as well as Brian Bilberry. Mr. Bilberry or Ms. Lutey, the floor is yours. I believe this is Mr. Bilberry's case. Thank you. Any opening statements?

MR. BILBERRY: Do I have to hold it down? Okay, great. Thank you, Chair. I'm here today for the timeshare tax litigation and just wanted to give you a status update of the case. We've had some developments that have moved the case forward a little bit, including a couple hearings with Judge Peter Cahill on dispositive motions which he has asked us to brief further and in connection with which the Plaintiffs' counsel to the two timeshare associations have asked for certain of your depositions long last. So we wanted to...I wanted to have a further discussion with you about the case in those respects and so I will be asking to go into executive session to have that discussion because the matter is in litigation, and you know, we can't have the conversation publicly.

CHAIR GUZMAN: Okay. Members, any opening questions that you'd like to present? Seeing none, there's been a request to enter into executive session. The Chair will entertain a motion to convene executive meeting pursuant to Section 92-5(a)(4) under the HRS to consult with legal counsel on questions and issues pertaining to powers, duties, privileges, immunities, and liabilities of the County, this Council, and this Committee.

VICE-CHAIR CRIVELLO: So moved, Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Nine ayes. Motion carries. Thank you.

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**VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR GUZMAN: Moving on to the next item, Members.

**COW-1(39) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: COUNTY OF MAUI V. LANAI WASTE REMOVAL, INC., ET AL.; CIVIL 15-1-0476(2)) (CC 15-6)**

CHAIR GUZMAN: This is COW-1(39), Litigation Matters, Settlement Authorization of the County of Maui v. Lanai Waste Removal, Inc., et al., Civil No. 15-1-0476(2). We have here on the floor, Deputy Corporation Counsel Kristin Tarnstrom and also Moana Lutey. I believe this is Ms. Tarnstrom's case.

MS. TARNSTROM: Yes. Thank you, Chair.

CHAIR GUZMAN: You may present.

MS. TARNSTROM: This is a collection action for amounts owing to the Department of Environmental Management, the Solid Waste Division. We received a settlement offer from Defendants' counsel some months ago and wanted to take it to this Committee for review and discussion of the case, as well as the status update on...going forward. So we would also ask for executive session to discuss settlement.

CHAIR GUZMAN: Members, have any questions in open session? Seeing none, there's been a request to enter into executive session. The Chair will entertain a motion to convene executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, and immunities of this County, this Council, and this Committee.

VICE-CHAIR CRIVELLO: Chair, so moved.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

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CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Nine ayes. No noes. Motion carries. Thank you.

**VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR GUZMAN: Members, we will recess to convene executive session. . . .*(gavel)*. . .

**RECESS: 3:25 p.m.**

**RECONVENE: 4:32 p.m.**

CHAIR GUZMAN: . . .*(gavel)*. . . We shall now reconvene open session.

**COW-1(2) LITIGATION MATTERS (STATUS: OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 13-1-0848(2); OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 15-1-0435(1)) (CC 15-6)**

CHAIR GUZMAN: Members, pursuant to our discussion in executive session in regards to COW-1(2), Litigation Matters, Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil No. 13-1-0848(2); Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, Civil No. 15-1-0435(1), it's this Chair's recommendation to defer this matter without objections.

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**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: GCB and MPV)

**ACTION: DEFER PENDING FURTHER DISCUSSION.**

CHAIR GUZMAN: Thank you, Members.

**COW-1(39) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION:  
COUNTY OF MAUI V. LANAI WASTE REMOVAL, INC., ET AL.;  
CIVIL 15-1-0476(2)) (CC 15-6)**

CHAIR GUZMAN: Moving on to the next item, COW-1(39), Litigation Matters, Settlement Authorization, County of Maui v. Lanai Waste Removal, Inc., et al., Civil No. 15-1-0476(2), pursuant to our executive session, it's Chair's recommendation to defer this matter without any objections.

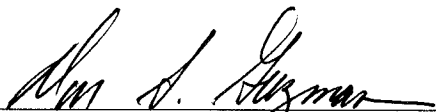
**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: GCB and MPV)

**ACTION: DEFER PENDING FURTHER DISCUSSION.**

CHAIR GUZMAN: Thank you, Members. This concludes our items on today's agenda and thank you very much. Adjourned. . . .(gavel). . .

**ADJOURN:** 4:33 p.m.

APPROVED:



DON S. GUZMAN, CHAIR  
Committee of the Whole

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Transcribed by: Clarita Balala