

MINUTES

PUBLIC WORKS COMMITTEE

June 18, 2008

A meeting of the Public Works Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Mel Rapozo, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, June 18, 2008, at 9:06 a.m., after which the following members answered the call of the roll:

Honorable Mel Rapozo
Honorable Shaylene Iseri-Carvalho
Honorable Tim Bynum
Honorable Ron Kouchi
Honorable Jay Furfaro, Ex-Officio Member

EXCUSED: Honorable JoAnn A. Yukimura
Honorable Bill "Kaipo" Asing, Ex-Officio Member

There being no objections, the Committee recessed at 9:06 a.m.

The Committee reconvened at 4:09 p.m., and proceeded on its agenda items as follows and as shown in the following Committee report which is incorporated herein by reference:

Minutes of the June 4, 2008 Public Works Committee Meeting.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Iseri-Carvalho, and unanimously carried, the Minutes of the June 4, 2008 Public Works Committee Meeting was approved.

PW 2008-2 Communication (4/7/2008) from Committee Chair Rapozo, requesting that the County Engineer provide for discussion purposes an action plan, timeline, and cost proposal for the repair, removal, and/or maintenance of the seawall fronting the Pono Kai Resort in Kapa'a.
[This item was deferred.]

MEL RAPOZO, PUBLIC WORKS CHAIR: Thank you. At this time I'll suspend the rules. Donald.

There being no objections, the rules were suspended.

Donald Fujimoto, County Engineer: Okay, I'd just like to say that right now...

Mr. Rapozo: You might want to state your name for the record.

Mr. Fujimoto: Oh, Donald Fujimoto, County Engineer. Okay, right now, we have acquired, we're still working with Oceanit on the Environmental Assessment, and due to the sensitivity of this project and our request to discuss issues in Executive Session, we were hoping to be able to provide a report. The timeline is we're expecting the EA to be completed in another 3-4 months and hopefully we can defer any discussion in open session until the completion of the EA.

Mr. Rapozo: Any questions for...

Mr. Furfaro: Yeah, are we looking at this schedule from
Mr. Fujimoto?

Mr. Fujimoto: There's no schedule for Pono Kai, again because of the issues at Pono Kai. On the lower left-hand corner, you know, I apologize...

Mr. Furfaro: Oh, I see it, I see it, okay.

Mr. Fujimoto: Microsoft still has a way to go, but the title is on the lower left.

Mr. Furfaro: Lower left-hand.

Mr. Rapozo: And that is the next item. We can talk about that at the next item.

Mr. Furfaro: I'm sorry. I was just typically looking for a headline title.

Mr. Fujimoto: Yeah, yeah, normally you would see it...

Mr. Furfaro: I didn't see it.

Mr. Fujimoto: ...up on the middle of this.

Mr. Furfaro: Thank you, Mr. Rapozo.

Mr. Rapozo: Thank you. Go ahead, Councilmember Iseri-Carvalho.

Ms. Iseri-Carvalho: Well, I, I guess, why do we have to go in Executive Session?

Mr. Fujimoto: Because of liability issues pending.

Ms. Iseri-Carvalho: Well, I guess, I would like to start the discussion because I'm not sure if. Well, first of all, we can't go into Executive Session because it's not posted and we don't have enough to go into Executive Session because we don't have a quorum. So I would like to start the discussion in public and should it become necessary for us to go into Executive Session, then we can terminate the discussion at that point. I know this item has been deferred numerous times and so I'd like to really take it off the agenda, you know, and have the discussion. I don't know what else is necessary at this point.

Mr. Rapozo: Donald, I guess, the action plan, timeline, right now your next step is the EA?

Mr. Fujimoto: Yes, we are in the process of getting the EA.

Mr. Rapozo: And that EA, you just said, we're about 3-4 months out?

Mr. Fujimoto: Yes.

Mr. Rapozo: Until the EA is completed, can anything be done?

Mr. Fujimoto: No, the, I think all of the other permits and work is pending the EA, the outcome of the EA.

Mr. Rapozo: And the EA is being done by...

Mr. Fujimoto: Oceanit. So, the preliminary designs are being made which is submitted with the EA, which will be submitted with the EA. And right now, they're trying to finalize the conceptual plans, design plans so that that can be incorporated with the EA that will be sent out for agency comments.

Mr. Rapozo: Okay. And the Executive Session that you're requesting doesn't have to wait for the EA to be completed.

Mr. Fujimoto: No, no, we can, we can, again we can schedule an Executive Session and I can brief the Council at that time.

Mr. Rapozo: Any questions on timeline as far as, I mean, from what I gather we're 3-4 months before the EA...

Mr. Fujimoto: Yes.

Mr. Rapozo: ...is completed. And is that in a perfect world?

Mr. Fujimoto: Yes, that's, that's a perfect world.

Mr. Rapozo: Okay.

Mr. Fujimoto: Normally, the EA process, you go through an agency review and upon getting responses from the agencies, then there's a public hearing process, and then the finalization, yeah.

Mr. Rapozo: Do we have any idea when the public hearing process is?

Mr. Fujimoto: That's about 3-4 months out.

Mr. Rapozo: Oh, that (inaudible).

Mr. Fujimoto: Because that's the last step, yeah.

Mr. Rapozo: Okay, so everything else is premature? Cost proposal, all, is it premature for that?

Mr. Fujimoto: Yes. Yeah, actually I stand corrected, it's not a public hearing, it's a public comment period.

Mr. Rapozo: Correct.

Mr. Fujimoto: Yes.

Mr. Rapozo: But they could do a public hearing, correct?

Mr. Fujimoto: Yes.

Mr. Rapozo: Any other questions?

Ms. Iseri-Carvalho: Oh, I don't have a question. I have a comment and, you know, this issue was raised back... We had an evaluation done and I just want to, I guess, read the letter that I wrote with respect to the bike path that was put in this area which is why we are here today with respect to the Moana Kai as well as the Pono Kai. There was a variance request by the Commission to grant an SMA permit or shoreline setback variance regarding that area, as you recall. And I have my letter here dated August 28, 2007. We are almost a whole year from when that letter was written to the Planning Commission and basically it goes and starts, "As you may know, the County Council's Public Works Committee has brought to the forefront many discussions regarding the illegal seawall fronting Pono Kai in the interest of sustainability to preserve our already rapidly disappearing beaches due to illegal construction of structures, which was the seawall, and unnecessary cost we would have to incur if the bike path was laid and it was determined later that to get underneath to fill the sinkholes and/or repair or remove the seawall, the bike path would be destroyed. The Committee Chair, Mel Rapozo, and myself further

advised the Administration to provide/to obtain a new shoreline certification as the 2002 one was invalid for several reasons including, but not limited to, the fact that no shoreline certification could be valid with an unpermitted structure (the seawall) and even assuming one could be obtained, the 2002 certification had expired prior to construction. Despite these serious concerns, the Administration decided to not only seek a new shoreline certification but to lay the path in that risky and hazardous area fronting Pono Kai which is the reason for the crisis we are here today. On July 31, 2007 along with the County Engineer, which is yourself; the Director of Parks and Recreation, Bernard Carvalho; myself; and Oceanit and the Committee Chair Rapozo assisted Oceanit in doing a site analysis of the Pono Kai seawall, the seawall fronting Fujii Beach and other areas. Because of the urgent nature of the situation at Pono Kai and the fact that funds were limited because they were reallocated from other budgeted items, the experts concentrated their efforts in this area with a caveat that they would do a preliminary assessment of Fujii Beach on this date and follow up at a later time. At this time we had no knowledge that the County was anticipating proceeding with the path in the Fujii Beach area which was the subject of my letter to the Planning Commission. On August 15, 2007, the Director of Parks and Recreation presented to the Public Works Committee the draft evaluation and recommendations for the seawall at the Pono Kai, which is entitled Draft, that was prepared by Dr. Bucher, I guess, the senior engineer of Oceanit, and we have that draft. It is profoundly compelling that the draft conclusively validates the reiterated statements made by the Chair of the Public Works Committee that the seawall is illegal and it was never permitted by the County or by the State. Further, because a shoreline certification is invalid without a legally permitted structure, a new survey of the shoreline needs to be redone and recertified to determine whether it falls under County, State or Federal jurisdiction to determine the appropriate party from which the County needs to seek permits to do any work.”

Okay, I'm gonna stop there. So at this point, what has been determined as to whose jurisdiction are, you know, I mean this issue with respect to the illegal seawall? Shouldn't that issue be addressed before the EA?

Mr. Fujimoto: And that is why I would like to reserve comments until the Executive Session.

Ms. Iseri-Carvalho: Okay and the concern I have is that, you know, we had already been at a crisis back on August 28, 2007 and we're almost a year now into it and it appears that there has not been any significant changes that have occurred. So, you know, I'm at a loss for words here because it was known that it was, you know, a crisis back at that point and we know, at that time, that the seawall was illegal and it was never permitted, and so I guess, I would like to move on from there. I mean, so when we have this timelines and all of this, I don't think any of this can be addressed without addressing this permitting issue, right? Is that correct?

Mr. Fujimoto: And that is why I would like to defer to Executive Session.

Ms. Iseri-Carvalho: And I guess my question is why because the communication went back out on April 7 and why when we had talked about the illegal seawall back on August of 2007, why only now, today you asking that we have an Executive Session for this?

Mr. Fujimoto: We already had an Executive Session at which time we briefed the Council on our course of action. And, again, based on that Executive Session, we thought we were, again, we can update the Council and I strongly advise that it be in Executive Session. Nothing has changed since the last Executive Session.

Ms. Iseri-Carvalho: Okay, so why do we need to go back into Executive Session? Something has changed?

Mr. Fujimoto: Were you at the, yeah, were you at the Executive Session?

Ms. Iseri-Carvalho: I'm pretty sure I was.

Mr. Fujimoto: Yes, so if you remember what was discussed and again, this is not to be brought out on the open floor because of the issues that were brought up at that Executive Session.

Ms. Iseri-Carvalho: You know, I guess at this point, I don't feel a need to go into Executive Session. And, you know, I'd like to continue to have this discussion at this point. I really don't see any need in going into Executive Session. We've discussed the fact of the illegal seawall. That's been discussed from 2007, August 2007. So, if nothing has changed since then, what would warrant us to go into Executive Session?

Mr. Fujimoto: I'm not sure that you understood the issues that led us to the Executive Session.

Ms. Iseri-Carvalho: Oh, I think I do. Well and then maybe if I didn't, you can educate me right now as to what...

Mr. Fujimoto: I think half of the things that you just cited was the reasons why we went into Executive Session.

Ms. Iseri-Carvalho: And I don't think based on those reasons that we need to go into Executive Session.

Mr. Rapozo: Donald.

Mr. Fujimoto: Yes.

Mr. Rapozo: Have you been in communication with the County Attorney's Office.

Mr. Fujimoto: Yes. I need to again re-consult with the County Attorney. I am not an attorney. But again, just based on my understanding of the situation, I definitely do not feel comfortable discussing this on the open floor right now.

Ms. Iseri-Carvalho: Because I can tell you that we can bring the minutes that were presented on August 15, 2007 and that discussion discussed exactly what I said in this letter to the Planning Commission back on August 28, 2007. So, you know, I feel, for me number one, I'm concerned that there has been a delay of almost a year and especially when...

Mr. Fujimoto: I, I would like to just add that during that year, a lot of information has come up and...

Ms. Iseri-Carvalho: And okay, then feel free to...

Mr. Fujimoto: ...based on the new information, that has led us into this path that is now an Executive Session issue.

Mr. Rapozo: Okay. You know what I'm gonna do? We're gonna defer this, but I want to defer this only for...When are you gonna be back?

Ms. Iseri-Carvalho: I'm not gonna be back until, I won't be here next week. Where's the calendar?

Mr. Rapozo: The next committee meeting.

Ms. Iseri-Carvalho: I'm not here on July 2.

Mr. Rapozo: Okay, what's the next one?

Ricky Watanabe, Council Services Administrator: July 23 is the next committee meeting...

Mr. Rapozo: July 23?

Mr. Watanabe: ...after July 2.

Mr. Rapozo: Okay, I'm gonna defer this to July 23 and I'm gonna ask the staff to make sure we post two, one open and one Executive Session.

Mr. Watanabe: Okay.

Mr. Rapozo: We'll take the Executive Session first. Any concerns we have, this body, of whether or not it belongs in open or closed will be heard. And if at that point the Council feels or the Committee feels...Well, it's a Committee Meeting, right?

Mr. Watanabe: Yes.

Mr. Rapozo: Does it have to be at a Council Meeting, Executive Session? Not really, right?

Ms. Iseri-Carvalho: It's preferred. It's better.

Mr. Rapozo: Okay, can we post it in Committee of the Whole, the Executive Session and then we post this item in Public Works and if in fact...

Ms. Iseri-Carvalho: So that can occur because I, I'm only...Oh, next week, you're not here next week. I mean, the Council Meeting is next week.

Mr. Rapozo: No, we'll do the, we'll do the Committee of the Whole. We'll do it at a Committee Meeting and we can do it on the same day. So, we'll have Committee of the Whole, and maybe we can convene Committee of the Whole initially, do the Executive Session so we can clear up any new information that you may have, Donald, and if at that point the Committee feels that it can move into Executive Session or open, we'll make that decision at that point.

Mr. Fujimoto: Thank you.

Ms. Iseri-Carvalho: Well, again, you know, for purposes of giving credence to the concerns that have been raised by, you know, the eighth councilmember sitting there, with respect to going into Executive Sessions, you know, if there is a claim that is outstanding or existent, then, you know, we should know about that and it should be posted appropriately. I don't know what the posting is gonna say for your Executive Session.

Mr. Rapozo: Well, it's gonna have to state the, a legal purpose, Donald, and then you can work with our staff to make sure it's posted properly. I agree if it's to discuss what's already been discussed, then it's in open, then it doesn't belong in Executive Session.

Ms. Iseri-Carvalho: It belongs in Executive Session if it's to consult with the Attorney regarding a claim.

Mr. Rapozo: Correct.

Ms. Iseri-Carvalho: If that is not the purpose of Executive Session, then we should continue the discussion immediately right now since we have the County Engineer here. So is that what you are proposing...

Mr. Fujimoto: (Inaudible)

Ms. Iseri-Carvalho: ...that we need an Executive Session because it's to consult with our Attorney...

Mr. Fujimoto: Yes.

Ms. Iseri-Carvalho: ...with respect to a claim, with respect to this agenda item, the Pono Kai Resort.

Mr. Fujimoto: Yes.

Ms. Iseri-Carvalho: Well and if that is the case, then, you know, hopefully it'll be justified at the time that you come at that, but I can tell you, based on the information I've been provided at this point, I don't feel that there is any necessity in going into Executive Session.

Mr. Rapozo: Okay and I'm not sure. I'm not privy to the new information, Donald, so you know, I look forward to hearing that in Executive Session.

Mr. Fujimoto: Thank you.

Mr. Rapozo: And if in fact, in the opinion of this Council, it doesn't fit, then we have the discussion in open in Public Works on that day.

Mr. Fujimoto: Yes. Thank you because I would feel a lot more comfortable going through that process rather than just going right into open discussion.

Mr. Rapozo: Okay. So, Donald, if you could work with the County Attorney to get, work with our staff to get the language posted properly.

Mr. Fujimoto: Thank you.

Mr. Rapozo: Thank you. Anything else for Donald. If not, anybody in the public want to testify on this matter? If not?

Ms. Iseri-Carvalho: Going once, going twice, Glenn.

Mr. Rapozo: Thank you.

There being no one wishing to testify, the meeting was called back to order.

Mr. Rapozo: Any discussion before I entertain a motion to defer? The motion will be to defer to July 23 Public Works Committee as well as an Executive Session item posted in the Committee of the Whole with language that'll be forthcoming.

Mr. Bynum: So moved.

Ms. Iseri-Carvalho: Is it just on PW 2008-2 so we will continue with 2008-3?

Mr. Rapozo: Correct.

Ms. Iseri-Carvalho: All right.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Iseri-Carvalho, and unanimously carried, item PW 2008-2 was deferred to July 23, 2008 Public Works Committee as well as an Executive Session item to be posted in the Committee of the Whole.

CR-PW 2008-11: on PW 2008-3 Communication (4/25/2008) from Committee Chair Rapozo, requesting the County Engineer to be present to discuss the possible need for environmental assessments for the Pono Kai and Moana Kai Road seawalls prior to commencing any repair, removal, and/or maintenance.
[Received for the record.]

PW 2008-4 Communication (05/14/2008) from Committee Chair Mel Rapozo, requesting that the Department of Water provide a report on their list of projects and associated water allocations projected for future developments on Kaua'i.
[This item was deferred.]

Mr. Rapozo: Thank you. I'm gonna be asking for a motion to defer for a couple of reasons. Number one, the Council Chair is not here and he's very interested in this report. The second item is that our Water Department head actually is probably at a meeting right now and I did not want to postpone the meeting any further. So, it's not time sensitive, so I'll be asking for a motion to defer for one week. Go ahead.

Ms. Iseri-Carvalho: What I'll ask concurrent to this agenda item is during the discussions of the budget with respect to the Water Board, there was some questions raised by Councilmember Kouchi regarding water allocation and

how they allocate water meters or water sources to different projects and there was a suggestion at that point for myself to undertake drafting a resolution for the Council to determine a fair process of water allocation of meters. So, if we could just concurrently with this item put an agenda item requesting the Water Board to provide us information or a briefing on their policy so that we can address that in a resolution whether it's for or against or what kind of direction we want the Water Board to take, I think that would be very beneficial.

Mr. Rapozo: Okay. I believe in the report that was submitted, they have their policy written out. We'll be able to discuss the policy at the same time with the current posting. The other thing is I'm not sure if Mr. Kouchi is, I believe he's in the process of drafting a resolution. I'm not sure if it's the same one. Are you guys co-drafting something or?

Ms. Iseri-Carvalho: Well, he asked me to draft.

Mr. Rapozo: Oh, he asked you?

Ms. Iseri-Carvalho: He asked me to do it, so, but I'm sure we can work together in getting that done.

Mr. Rapozo: And, you know, I don't think it's a problem to have the two items posted on the same agenda because I think the discussion with the Water Board or the Water Department will influence the vote of this Council as far as what the resolution is requesting.

Ms. Iseri-Carvalho: Yeah.

Mr. Rapozo: Any more discussion before I entertain a motion to defer? How about the public? Anybody want to testify?

(Inaudible from the gallery.)

Mr. Rapozo: You need to come up Mr. Rosa. I will suspend the rules.

There being no objections, the rules were suspended.

Mr. Rapozo: And it's pertaining to the water allocation.

Mr. Rosa: Yeah, the water allocation and spending too, same thing. The reason as I said, they came change water meters all over the place in Līhu'e, Isenberg tract area, that's Ron Kouchi's territory. They said supposed to be better water service, better meter service, (inaudible) change my meter, my water bill is still the same. Never go up, never come down. So, I don't know why they changed the water meters when it was correct and okay, running right. But they

just gave somebody job that came from the mainland because the people that did the changes were all mainland people because I looked at them I said, "Where you guys from?" They said we were hired by the County to come change all the meters. So, I don't know why they changing something when it never need, no need to be changed.

Ms. Iseri-Carvalho: (Inaudible.)

Mr. Furfaro: I had a question.

Mr. Rapozo: Go ahead, Mr. Furfaro.

Mr. Furfaro: Mr. Rosa, how long have you been in that home?

Mr. Rosa: Forty years.

Mr. Furfaro: Maybe it's just time to change the water meter.

Mr. Rosa: Not even leaking by the meter over there. They had to dig deep.

Mr. Furfaro: I understand, but that might be the rationale. I mean, you know, homeowners like yourself 40+ years.

Mr. Rosa: Forty, but, I live there but my retired going be 22 years and the roads haven't been resurfaced. That's another thing.

Mr. Furfaro: Well, I can't speak for the Water Department.

Mr. Rosa: I know, yeah, right.

Mr. Furfaro: You asked the question, I just thought it would be appropriate to put the longevity of your occupancy as part of their rationale. Thank you.

Ms. Iseri-Carvalho: And if your bill didn't go up, you should count it as a blessing, if they had improved, up-graded your services, and your bill hadn't changed.

Mr. Rosa: Yeah.

Mr. Rapozo: I hope they not watching this show because you're gonna get a new bill for the new meter.

Mr. Rosa: No, no, no, no, that's why I said they came over there and they dug it and they dug it. They told me two days. They said they had

to go too deep over there. The olden days they put 'em deep. I said oh yeah was deep. So, they had to go get an auger, kind of dig it up and then they reached in. They had to dig it around and then they finally put everything back. So...

Mr. Rapozo: Did they do a good job?

Mr. Rosa: Well, I must say they did a good job. They didn't leave no holes where people would fall in and get hurt and the County be liable.

Mr. Rapozo: Thank you, sir. Make sure you here next Committee Meeting and you can address your concerns to the (inaudible).

Mr. Rosa: As I say, I'm the dollar and cents man. Thank you.

Mr. Rapozo: Thank you.

Mr. Bynum: Thank you.

There being no one else wishing to testify, the meeting was called back to order.

Mr. Rapozo: If no more discussion, I would entertain a motion to defer.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Bynum, and unanimously carried, PW 2008-4 was deferred.

There being no further business, the meeting was adjourned at 4:44 p.m.


Respectfully submitted,

Wilma Akiona

Wilma Akiona

Secretary

APPROVED at the Committee Meeting held on July 23, 2008:



MEL RAPOZO
Chair, Public Works Committee

