

MINUTES

COMMITTEE OF THE WHOLE

July 18, 2007

A meeting of the Committee of the Whole of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Bill "Kaipo" Asing, Vice-Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Wednesday, July 18, 2007, at 2:15 p.m., after which the following members answered the call of the roll:

Honorable Bill "Kaipo" Asing
Honorable Tim Bynum
Honorable Jay Furfaro
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura

EXCUSED: Honorable Shaylene Iseri-Carvalho
Honorable Ron Kouchi

The Committee proceeded on its agenda items as shown in the following Committee Reports which are incorporated herein by reference.

Minutes of the May 30, 2007 Committee of the Whole Meeting.

Upon motion duly made by Councilmember Rapozo, seconded by Councilmember Furfaro, and unanimously carried, Minutes of the May 30, 2007 Committee of the Whole Meeting was approved.

CR-W 2007-8: on Bill No. 2228 A BILL FOR AN ORDINANCE
APPROVING A COLLECTIVE
BARGAINING AGREEMENT FOR
BARGAINING UNIT 1 BETWEEN JULY 1,
2007 AND JUNE 30, 2009 (UPW)
[Approved.]

CR-W 2007-9: on Bill No. 2229 A BILL FOR AN ORDINANCE APPROVING
A COLLECTIVE BARGAINING
AGREEMENT FOR BARGAINING UNITS
2, 3, 4, AND 13 BETWEEN JULY 1, 2007
AND JUNE 30, 2009 (HGEA)
[Approved.]

CR-W 2007-10: on Bill No. 2230

A BILL FOR AN ORDINANCE
APPROVING A COLLECTIVE
BARGAINING AGREEMENT FOR
BARGAINING UNIT 12 BETWEEN JULY
1, 2007 AND JUNE 30, 2011 (Police)
[Approved.]

CR-W 2007-11: on C 2007-236

Submittal by the Salary Commission of the
County of Kaua'i:

1. Amendments to the April 18, 2007
Report, and
2. Resolution Proposing an Ordinance
Amendment Relating to Salaries.

[Received for the record.]

ES-288

Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the Council's legal counsel on legal questions and issues pertaining to the Council's powers, duties, privileges, immunities and liabilities regarding Bill No. 2204, relating to Single Family Transient Vacation Rentals and Bed and Breakfast Operations.

[Received for the record.]

BILL "KAIPO" ASING, COMMITTEE OF THE WHOLE VICE-CHAIR: Let me just leave this next... we can receive this?

JOANN A. YUKIMURA: Mr. Chair, let me explain that we put this Executive Session on single family transient vacation rentals on the agenda just in case. We do have a request in to the County Attorney with a deadline, I believe, of the 27th of this month for a response and we will wait until then to get the response which means that we will probably take up the issue and have a discussion at our Committee meeting on the 1st, but we weren't sure if there would be other questions, so I think it would be appropriate to receive and I so move.

TIM BYNUM: So this same agenda item will be on the next Committee of the Whole meeting in two (2) weeks?

Chair Asing: It could be, yes. Let's just receive it.

Ms. Yukimura: And we can just repost it?

Chair Asing: Yes.

Ms. Yukimura: That is fine as long as we all understand that we will... because we will have a response back from the County Attorney, we will have then a need to discuss the issue and it will be on the agenda.

Chair Asing: Any further discussion? I am sorry, Glenn?

There being no objections, the rules were suspended.

GLENN MICKENS: So you are not going into Executive Session, is that right?

Chair Asing: That is correct.

Mr. Mickens: Okay, you have a copy of my testimony. In fact, I sent you all a... on 7/15/2007, I sent you all a copy of an e-mail. Did you all get it okay? I sent it to the Clerk's Office and they said they would send it along. Anyway, I think this is very interesting and it needs some clarification. Maybe you can help me out with this. Before you go into... which you are not going into Executive Session, I would appreciate clarification on my e-mail of that date. It was regarding 3.07E of the County Charter and H.R.S. 92-71 which says, "the provisions in this Chapter 92F shall apply to all political subdivisions of the State provided, however, in the event that any political subdivision of the State shall provide by Charter, ordinance, or otherwise more stringent requirements relating to mandating the openness of meetings the more stringent provisions of said Charter, ordinance or otherwise shall apply." Thus, it appears to me that H.R.S. 92-71 clearly means that 307E of our Charter governs the reasons that this body can go into Executive Session and under 307E, that means other than deliberations relating to confirmation of appointees or with the County Attorney on claims. All County Council and Committee Meetings shall be held on public, so I think... I am just looking for some clarification. If I read this thing properly and JoAnn I know you made mention that the fact and others may mention the fact that State supercedes County, but in this instance, it sounds as though the County still supercedes what the State is if you read this H.R.S. So it that not correct?

Chair Asing: I think, Glenn, maybe a letter to the County Attorney's Office from you might help you to clarify your points. I think that would be the better way to get it straight from the County Attorney's Office. We follow the County Attorney's (inaudible) on Executive Sessions.

Mr. Mickens: Because I presume that this would be quite a bombshell.

Ms. Yukimura: Well, for one, if you are speaking to this particular issue, this is a consultation with attorney which is covered by the Charter amendment. Excuse me, by the Charter provision.

Mr. Mickens: It is one of those two (2) issues on that, but anything else that you go into Executive Session for wouldn't be.

Ms. Yukimura: You mean other than...

Mr. Mickens: Other than those two (2).

Ms. Yukimura: There are other laws regarding privacy of personnel laws that nobody can violate. I mean, we would, you know, we would put ourselves in big liability to discuss in public, so it is... you know, I mean unless you are specific about something that should not be closed.

Mr. Mickens: Well, I am just citing the H.R.S. part of this thing saying that County law would supercede State law. In this instance, for these two (2) reasons and those are the only two (2) reasons that you should be able to go into Executive Session, otherwise, they should be open to the public. I mean, that is why I am reading the statute JoAnn.

Ms. Yukimura: Well, it doesn't say anything about Federal law, but we can't violate Federal law either, so there are times we have to go into Executive Session. But as the Chair mentioned, you could seek some explicit legal opinion.

Mr. Mickens: So I will be able to get it from the County Attorney a legal opinion on this case?

Chair Asing: Is there anyone else?

KEN TAYLOR: Chair and members of the Council, my name is Ken Taylor. I find it interesting that from to time to time, these issues of concern come up as Glenn has raised. In my past experience with government agencies and how they deal with the sunshine law is that once or twice a year, they would have County Council do a workshop on the Sunshine law and the Council would be there, the Planning Commissioners would be there, the Department Heads would be there, as well as anybody from the public that wanted to come, so that we could discuss item by item and the sunshine law and how it functions and how it pertains to how things are done. If something like that were to happen a couple times a year, it would eliminate a lot of issues that come up and I have heard in the last couple years, Richard had raised a number of times concerns... whether he is right or wrong, Glenn has raised the issues, others have raised issues and I just think that would be good government for you folks to ask the County Attorney to do a workshop where we all could attend and discuss this issue, get it out on the floor, so that we all have a good working knowledge. It makes the meetings go better, it makes public more aware of the process and I think it would be a very good benefit to the whole community. So I hope in the near future you would see fit to have a workshop like this. Thank you.

Chair Asing: Is there anyone else? Tim?

Mr. Bynum: Ken, I just want to make a quick comment that I don't think your ideas is a bad one at all. I don't know that it would be a Council workshop, but to have a way to inform the public about the Sunshine law and just to let you know that when I came on the Council, I had an orientation with the staff

here and with... you know, they brought in people on a number of issues including the Sunshine law, so there was a real interest that the Council... as a new Councilmember, I would be aware of the provisions of the Sunshine law and how it is applied, but I think having the public have more information and there is a great pamphlet that describes the Sunshine law that is available to the public would be a good thing because some of the challenges that I have seen to our processes here, I don't think have been that informed and we have taken time to explain why we are meeting the... so I don't know what form it would take, but the more information that we can get out about the Sunshine law, so citizens have an understanding, that is a good idea, but for my part, I got a pretty extensive briefing prior to assuming these responsibilities.

Chair Asing: Councilmember Yukimura?

Ms. Yukimura: I am also reminded that the... I believe the Office of Information Practices does hold workshops around the State.

Mr. Taylor: I am sorry.

Ms. Yukimura: They do hold workshops, the Office of Information Practices holds workshops around the State on the Sunshine law. I mean, it does provide that, in part, that venue that you are talking about.

Mr. Taylor: I understand, but we have a County Attorney and we have the decision makers sitting here and they are the ones that...

JAY FURFARO: They are the regulatory agency that guides us and I think that is what Councilwoman Yukimura is saying. As the regulatory agency that guides it, it would not hurt to have them, you know, make a general presentation and I am just saying that because, you know, the agenda item here was whether we went into an Executive Session or not. We are having a whole discussion here about a non-agenda item. You know, those are the rules, but I will personally follow up on your request and I will personally see that Glenn's testimony given today is forwarded onto the County Attorney, but that is not the agenda item right now, but I will follow up Ken.

Mr. Taylor: Thank you.

Chair Asing: Is there anyone else? If not, I would like to call the meeting back to order.

Upon motion duly made by Councilmember Yukimura, seconded by Councilmember Rapozo, and unanimously carried, ES-288 was received for the record.

There being no objections, the Committee recessed at 2:29 p.m.

The meeting was called back to order at 5:22 p.m., and proceeded as follows:

There being no further business, the meeting was adjourned at 5:22 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on August 15, 2007:



RON KOUCHI
Chair, Committee of the Whole