

## MINUTES

### COMMITTEE OF THE WHOLE

August 1, 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, August 1, 2007, at 11:52 a.m., after which the following members answered the call of the roll:

Honorable Bill "Kaipo" Asing  
Honorable Tim Bynum  
Honorable Jay Furfaro  
Honorable Shaylene Iseri-Carvalho  
Honorable Ron Kouchi  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura

Minutes of the June 13, 2007 Committee of the Whole Meeting.

Minutes of the June 27, 2007 Committee of the Whole Meeting.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Asing, and unanimously carried, Minutes of the June 13, 2007 and June 27, 2007 Committee of the Whole Meetings were approved.

The Committee proceeded on its agenda item as shown in the following:

- ES-289** 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.  
**[This item was deferred.]**

RON KOUCHI, COMMITTEE OF THE WHOLE CHAIR: If there are no objections, I would like to suspend the rules.

There being no objections, the rules were suspended.

Mr. Kouchi: Mr. Tagupa or Rosa, Ms. Flores... ES-289 is regarding the ability to go into Executive Session regarding the TVR bill. Mr. Tagupa?

JAMES TAGUPA, DEPUTY COUNTY ATTORNEY: 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.

Mr. Kouchi: Any questions? If not, thank you. Glenn? Thank you Jim.

GLENN MICKENS: Thank you Ron. Do you have a copy of my testimony and let me read it for the record. Maybe somebody has an answer for me. At the July 18 Council meeting with respect to a scheduled Executive Session, I advised you members of the provision Section 307E of the County Charter that all meetings of the Council must be open to the public except for those to consult the County Attorney about claims and as to confirmation of nominees and of the provisions of Section 92-71 of the Hawai'i Statutes providing that if the County had more stringent requirements for open meetings, then those in State law... that the County provisions would prevail. It would appear to me that since the County Charter, Section 307E is very restrictive as to what Executive Sessions can be held, it would have to be more stringent than the State statute, thus making it the governing provision. I understood that the information I had offered would be given to the County Attorney and I would be advised whether the provisions I had cited would be honored by the Council. I would appreciate your courtesy in giving me response. Obviously, this Executive Session isn't one of these two (2) things, so it wouldn't be sanctioned, so...

Mr. Kouchi: Well, obviously, Mr. Tagupa has just expressed an opinion different from yours Glenn. Thank you for your testimony.

Mr. Mickens: In what way has he expressed the difference of opinion.

Mr. Kouchi: If he has just said that he feels that based on the subject matter, we are authorized to go into Executive Session and that is what he just said.

Mr. Mickens: But that is completely against 307E. How can that be Ron? I don't understand.

Mr. Kouchi: I am just telling you what he said.

Mr. Mickens: Maybe Mr. Tagupa can come back here and explain it for clarification.

Mr. Kouchi: Jim, did you follow up on that issue?

Mr. Tagupa: (Inaudible).

Mr. Kouchi: Thank you very much and let's get Mr. Tagupa to the stand.

Mr. Tagupa: In response to Mr. Mickens issues, our office takes a position that this is a proper matter for Executive Session and we can research his issue. It was the first time I have been confronted with that issue, so if he wants to, he can submit that to our office and we can look at it.

Mr. Kouchi: Thank you very much. Any other questions for Mr. Tagupa at this time? Jay?

JAY FURFARO: Just a statement. Mr. Tagupa, the question asked by Mr. Mickens, I had requested that it does... it would go over to the County Attorney's Office, so I believe that happened at the last meeting. The staff is acknowledging that the question did go over and we will leave it at that at this time. Thank you Mr. Tagupa.

Mr. Tagupa: Thank you.

Mr. Kouchi: Thank you. If there are no other questions, thank you Jim.

The meeting was called back to order, and proceeded as follows:

Mr. Kouchi: Can we have a motion to go into Executive Session per the advice of the County Attorney?

Councilmember Asing moved to go into Executive Session to discuss ES-289, seconded by Councilmember Rapozo, and unanimously carried.

Mr. Kouchi: So we will convene in Executive Session and I guess Council Committees will reconvene with the Salt Pond issue at 1:30 this afternoon.

There being no objections, the Committee recessed at 11:57 a.m.

The meeting was called back to order at 5:35 p.m., and proceeded as follows:

Councilmember Bynum made a motion that the County Attorney written opinions dated May 30 on bed and breakfast, April 16 on vacation rentals, June 22 on vacation rentals and July 31 on vacation rentals be made public, seconded by Councilmember Yukimura.

TIM BYNUM: I would like time to discuss the rationale.

Councilmember Iseri-Carvalho moved to defer ES-289, seconded by Councilmember Furfaro.

Mr. Kouchi: We have a motion to defer. Any objections to the motion to defer?

Ms. Yukimura: Can we have a vote on it?

Mr. Bynum: I prefer to be able to discuss...

Mr. Kouchi: Under Robert's Rules...

Mr. Furfaro: There is no discussion under a move to defer.

Mr. Kouchi: Again, I will state what just happened. We had a motion about discussing four (4) opinions.

Ms. Yukimura: To release four (4) opinions.

Mr. Kouchi: Release four (4) opinions and then we had a motion and a second to defer the item and a motion to defer has no discussion.

Ms. Yukimura: It takes precedence.

Mr. Kouchi: We need to take...

Mr. Bynum: So we had a motion to make these opinions public and a second and usually that results in discussion.

Mr. Kouchi: Usually it does, but there has now been a motion offered to defer and on a motion to defer, there is no discussion.

Ms. Yukimura: And the motion to defer takes precedence over the main motion.

Ms. Iseri-Carvalho: That is, I believe, according to Robert's Rules of Order.

Mr. Rapozo: Call for the question Mr. Chair.

Mr. Kouchi: So, again, any objections to the motion to defer?

Mr. Bynum: Yes, I object to the motion to defer.

Mr. Kouchi: Two (2) objections so noted.

Mr. Bynum: I'd like the courtesy of being able to discuss my motion.

Mr. Kouchi: Two (2) objections so noted.

The motion was then put, and carried by a vote of 5-2 (Councilmembers Bynum and Yukimura voting "no").

Mr. Kouchi: The item is deferred and we have no further business.

Mr. Bynum: I didn't hear a vote Mr. Chair.

Mr. Kouchi: I asked for any objections, one, two; two (2) objections, motion carries. There are no further items, but in case we need the Executive Session, the Committee of the Whole stands in recess.

There being no objections, the Committee recessed at 5:40 p.m.

The meeting was called back to order at 6:52 p.m., and proceeded as follows:

Mr. Kouchi: While we recessed the Executive Session, the subsequent motion to defer moved any item that would allow us to conduct further business, so just for the record, I will now adjourn the Executive Session (so noted for Executive Session minutes to end at 6:53 p.m.) because we have no item in which to meet and since we now have no further items on the Committee of the Whole agenda, with no objections, Committee of the Whole is also adjourned. Thank you.

There being no further business, the meeting was adjourned at 6:53 p.m.

Respectfully submitted,



Lisa Ishibashi  
Council Services Assistant

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



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RON KOUCHI  
Chair, Committee of the Whole

