

MINUTES

COMMITTEE OF THE WHOLE

August 15, 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 Ron Kouchi, Chair, at the Historic County Building, Room 201, Līhu'e, Kaua'i, on Wednesday, August 15, 2007, at 11:40 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

The Committee proceeded on its agenda items 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.

BILL "KAIPO" ASING, COMMITTEE OF THE WHOLE VICE-CHAIR: With that, can we have the County Attorney up please?

There being no objections, the rules were suspended.

Chair Asing: The plan is to move into executive session.

Ms. Yukimura: And when we come back, we will take public input on any of the two (2) amendments that you are now seeing, so during executive session, members of the public can have time to look at the proposed amendment.

HARRISON KAWATE, FIRST DEPUTY COUNTY ATTORNEY: Mr. Chair, Councilmembers: 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.

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

Ms. Yukimura: There is public testimony.

Chair Asing: Okay.

There being no objections, the rules were suspended.

GLENN MICKENS: Thank you Kaipo. You have a copy of my testimony and let me read it for the record. You also have a copy of the OIP's opinion on this. You can see that and I will read it also. For several meetings now, I have attempted to persuade the Council that it should conform to the law regarding executive sessions by observing the mandate set forth in County Charter Section 307(e) and the reinforcement it gets from Section 92-71 of H.R.S. (the sunshine law). As Councilwoman Iseri-Carvalho wisely said at the meeting of 8-7 and this is an exact quote or close to her words. The law is not synonymous with policy. My insinuation here is not that Shaylene uses (inaudible) in the context of 307(e), but 307(e) is law, not policy, so in my opinion, her words fit the situation. The County Council does not have the power to change 307(e). Also, I have previously stated that under 307(e), the Council only has two (2) legitimate reasons for going into executive session. I wish to change this statement to: (1) Since the OIP ruled on opinion letter number 05-04 on 1-25-05 that the Council cannot hold executive session to interview appointees, this means that the Council can only hold executive sessions pertaining to claims, nothing else. I have asked very politely for an explanation from the Council or its lawyers as to why they persist in disregarding the two (2)... now changed to one provision that I have cited to you. People have talked in (inaudible) the Council's inaction to this point to be highly disturbing even though I am sure that they are acting on the advice of Council. If the Council or their attorney has any reason whatsoever to believe that these provisions are not applicable to guide its context, the citizens are waiting for the answer. Remember that a month ago, Jay said that he would send a communication asking for clarification on this matter. To date, all we get is a stony silence and not even a meager comment. It should not be necessary to mention that the County Charter has content as to the performance of the duties of Councilmembers. Please act in accordance with the terms of the law. Then, of course, you got a copy of my notice from the Office of Information Practice from OIP. I don't know if I have to read it or not. You can read it and they basically agree with my premise, that's all. They agree with it 100%. So in other words, I am saying that it is illegal to go into executive session for anything other than what it states in 307(e). So Kaipo, can you or can our attorneys over here give me any...

Chair Asing: Glenn, we have given you an interpretation. We told you that the County Attorney has advised us that we are in conformance to...

Mr. Mickens: For what reason Kaipo? For what reason?

Chair Asing: Glenn, I have given you the County Attorney's opinion.

Mr. Mickens: What is that opinion Kaipō?

Chair Asing: Glenn, thank you. Do you have anything else you want to say?

Mr. Mickens: No, no, I am just waiting for an answer okay?

Chair Asing: Thank you. Is there anyone else? If not...

Ms. Yukimura: I would estimate half an hour.

Ms. Iseri-Carvalho: Then we are going to lunch.

Ms. Yukimura: Okay, so after lunch, then we should at least give the public some notice.

Chair Asing: Possibly 1:30 p.m. Let's try for 1:30 p.m. Okay, with that, I'd like to call the meeting back to order.

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

Councilmember Rapozo moved to go into executive session to discuss Bill No. 2204, seconded by Councilmember Yukimura, and unanimously carried.

Chair Asing: We are going to move into executive session. Thank you.

There being no objections, Committee recessed to go into executive session at 11:46 a.m.

The meeting was called back to order at 6:44 p.m., and proceeded as follows:

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.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Rapozo, and unanimously carried, ES-289 was received for the record.

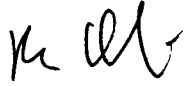
There being no further business, the meeting was adjourned at 6:46 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on September 12, 2007:



RON KOUCHI
Chair, Committee of the Whole