

SPECIAL COUNCIL MEETING

FEBRUARY 17, 2016

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Vice Chair Ross Kagawa at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Wednesday, February 17, 2016 at 1:31 p.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock (*present at 1:32 p.m.*)
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable JoAnn A. Yukimura
Honorable Mel Rapozo (*present at 3:26 p.m.*)

Excused: Honorable KipuKai Kuali'i

APPROVAL OF AGENDA.

Councilmember Yukimura moved for approval of the agenda as circulated, seconded by Councilmember Kaneshiro, and carried by a vote of 5:0:2 (*Councilmember Kuali'i and Council Chair Rapozo were excused*).

Council Vice Chair Kagawa: I would now like to recess this Special Council Meeting to go back to the Housing & Transportation Committee.

There being no objections, the Special Council Meeting recessed at 1:32 p.m.

The meeting reconvened at 3:26 p.m., and proceeded as follows:

(Council Chair Rapozo is noted as present at 3:26 p.m.)

Council Chair Rapozo: I want to call back the Special Council Meeting to order. I am not sure how far we got after lunch. Did we approve the agenda?

SCOTT K. SATO, Deputy County Clerk: Yes.

Council Chair Rapozo: Can you read the items, please?

EXECUTIVE SESSION:

ES-835 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on the Mediation of: Michael S. Kocher, Sr., individually and on behalf of the Estate of Michael S. Kocher, Jr.; Patricia Kocher and County of Kaua'i; Irvin Magayanes, Mediation No. 15-0482-M, and related matters.

ES-836 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(2), (4), and (8), the purpose of this Executive Session is to consider matters that require confidentiality under state law, to wit, the hiring of a County Auditor. The further purpose of this Executive Session is to meet with the Council's legal counsel on questions and issues relating to the Council's powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as such powers, duties, privileges and immunities and/or liabilities, claims and or potential claims relate to the foregoing item, and to take such action as the Council deems appropriate. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-837 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(2) and (4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session with the Council pertaining to the County Attorney and, if necessary, to consult with the County's legal counsel. This session pertains to the evaluation of the County Attorney where consideration of matters affecting privacy will be involved and, if necessary, to consult with legal counsel regarding the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-838 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(2) and (4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session with the Council pertaining to the County Clerk and, if necessary, to consult with the County's legal counsel. This session pertains to the evaluation of the County Clerk where consideration of matters affecting privacy will be involved and, if necessary, to consult with legal counsel regarding the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Kagawa moved to convene in Executive Session for ES-835, ES-836, ES-837, and ES-838, seconded by Councilmember Yukimura.

Council Chair Rapozo: I will suspend the rules with no objections.
Mr. Trask.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, County Attorney: For the record, Mauna Kea Trask, County Attorney. Honorable Chair and Councilmembers, I would just like to speak on the agenda item relating to the County Attorney evaluation. I just want to make it clear for the record that first off, I am thankful for this opportunity to hear your input about my performance so far for about a little over one (1) year now. It has been brought to my attention by the Clerk's Office and various other people in the County that in the past, specifically in 2008, this is prior to when I joined the County Attorney's Office...I do not know who the County Attorney was at that time...it was prior to Al Castillo, I believe.

Council Chair Rapozo:

Judge Pyun.

Mr. Trask: Okay. Thank you. It had been opined and advised to the Salary Commission and the County Council as memorializing the letter from then County Clerk Peter Nakamura in July 2008 that the evaluation of the County Attorney was beyond the scope of the Council's authority given the separation of powers in Section 3.18 of the Kaua'i County Charter. Nonetheless, Resolution No. 2008-200 reflected this opinion and amended the Salary Commission Ordinance at that time to remove the evaluation of the County Attorney by the Council, replacing it with, "The council chairperson shall be provided the opportunity to review the county attorney's performance." I am the current County Attorney and without offending any prior legal opinions, I nonetheless think that today's review of my performance is appropriate and appreciated. You folks are a very important client of the County Attorney's Office. I think your input to my current performance and any improvement I can make in the future is appreciated and well-sought after. I just wanted to make that clarification for the record that I do not believe that what is going to be done today offends that or offends the Kaua'i County Charter. I spoke with the Mayor about this and he agrees that it is good for me to get your input about the Office's performance and how we can continue and strive to provide you better and more accurate service. Like has been said today in the context of other matters, the County's budget as a whole is tight and we all resource short, and that includes the County Attorney's Office; nonetheless, I think that is why your input is even more necessary and important. I just wanted to make that clarification for the record that this does not offend any precedent and I do welcome and humble myself to hear what you have to say today. That is all.

Council Chair Rapozo: Thank you, Mr. Trask. Any questions or comments for Mr. Trask? Like you said, we are your client; not just the Chair, but the Council. That is why I decided or informed staff that it would be a Council evaluation of all matters and not just the Chair. I look forward to the discussion as well. Councilmember Yukimura.

Councilmember Yukimura: I just want to publically acknowledge your very positive and managerial attitude in receiving feedback. This is, as I understand it, part of the process that all the department heads are going through

with the appointing body or the confirming body and it is good practice, best practice probably. Even as we look at a county-manager form of government where we are going to have to be very involved with the appointment and evaluation of a county-manager and it is good practice, also. I appreciate it.

Mr. Trask: You are welcome.

Council Chair Rapozo: Thank you. Councilmember Kagawa.

Councilmember Kagawa: If I could go to another item, I wanted to keep everything in the public light. Mr. Trask, can you give a brief description of C 2016-39, the Kocher and Magayanes item, just to let the public know what claim that refers to? I think when the public hears it, they are not sure what claim this is.

Mr. Trask: The Kocher incident regards...let me see...I can talk about what has been discussed publically, and this was relayed in The Garden Island newspaper. On or about January 3, 2015, I believe, there was an incident west of Kaumakani near one of the old sugarcane overpasses involving a collision with a couple...I do not want to say the wrong last name, but a pedestrian was struck by citizens, as well as a County police officer. This will be discussing matters involved not with the underline claim, but insurance...or underline claim and related insurance matters, most importantly, regarding the County's Self-Insured Retention (SIR) limit.

Councilmember Kagawa: That is good. Thank you. I appreciate it.

Council Chair Rapozo: Thank you very much. Any other questions or comments for Mr. Trask? If not, thank you. I will call the meeting back to order. Any further discussion? With that, may we have a roll call to convene in Executive Session?

The motion to convene in Executive Session for ES-835, ES-836, ES-837, and ES-838 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: At this point, we will recess the Special Council Meeting and I will call the Committee of the Whole back to order.

There being no objections, the meeting recessed at 3:35 p.m.

The meeting reconvened at 5:17 p.m., and proceeded as follows:

Council Chair Rapozo: The Special Council Meeting is called back to order. Can you read C 2016-39, please?

COMMUNICATION:

C 2016-39 Communication (02/05/2016) from the County Attorney, requesting authorization to expend up to \$50,000.00 in funds from the Claims and Judgments account in relation to the Mediation of: Michael S. Kocher, Sr., individually and on behalf of the Estate of Michael S. Kocher, Jr.; Patricia Kocher and the County of Kaua'i; Irvin Magayanes, Mediation No. 15-0482-M, and related matters: Councilmember Yukimura moved to approve C 2016-39, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Discussion? No one from the public is here to testify. Can I get a roll call, please?

The motion to approve C 2016-39 was then put, and carried by the following vote:

FOR APPROVAL:	Chock, Hooser, Kagawa, Kaneshiro, Yukimura, Rapozo	TOTAL – 6,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kuali'i	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Six (6) ayes.

Council Chair Rapozo: That ends the formal agenda for today. This meeting is adjourned. Let us report back to the Executive Session Chambers in five (5) minutes.

ADJOURNMENT.

There being no further business, the Special Council Meeting adjourned at 5:18 p.m.

Respectfully submitted,



SCOTT K. SATO
Deputy County Clerk