

COUNCIL MEETING

DECEMBER 14, 2016

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, December 14, 2016 at 8:30 a.m., after which the following Members answered the call of the roll:

Honorable Arthur Brun (*present at 8:31 a.m.*)
Honorable Mason K. Chock (*excused at 2:45 p.m. – 3:14 p.m.*)
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable Derek S.K. Kawakami
Honorable JoAnn A. Yukimura
Honorable Mel Rapozo

APPROVAL OF AGENDA.

Councilmember Kagawa moved for approval of the agenda as circulated, seconded by Councilmember Kaneshiro, and carried by a vote of 6:0:1 (*Councilmember Brun was excused*).

MINUTES of the following meetings of the Council:

October 19, 2016 Council Meeting
November 2, 2016 Council Meeting

Councilmember Kagawa moved to approve the Minutes as circulated, seconded by Councilmember Kaneshiro, and carried by a vote of 6:0:1 (*Councilmember Brun was excused*).

(*Councilmember Brun was noted as present.*)

INTERVIEWS:

COST CONTROL COMMISSION:

- Preston I. S. Chong – Term ending 12/31/2019

Council Chair Rapozo: Good morning, Mr. Chong, and thank you for being here today. I think this is your first time here for an appointment interview, so the way we do it here is you will have a few minutes to tell us about yourself, your background, why you are interested to serve on the Cost Control Commission, and then we will open it up for questions. Can you start by stating your name?

PRESTON I. S. CHONG: My name is Preston Chong. I am currently employed by First Hawaiian Bank as a Business Banker. I am also employed at The Club at Kukui'ula as a Food and Beverage Server. I grew up on the westside here. I have my accounting degree and I think I could help out the County by being on this Commission.

Council Chair Rapozo: Thank you very much. Are there any questions for Mr. Chong? Councilmember Yukimura.

Councilmember Yukimura: Good morning.

Mr. Chong: Good morning.

Councilmember Yukimura: Thank you for your willingness to serve. I just wondered if you had any experiences in cost-cutting in the work that you have done thus far?

Mr. Chong: Not directly, but I have been reviewing payroll. I used to work at ITT at the Pacific Missile Range Facility (PMRF), so I was in charge of payroll and have seen a lot of the budgeting there.

Councilmember Yukimura: Is there any particular area of the County where you are interested or you think there is cost cutting potential?

Mr. Chong: As far as right now, I have no information to answer that.

Councilmember Yukimura: Yes, I know. There is a learning curve. Thank you for your willingness and I am sure you will find it interesting.

Mr. Chong: Thank you.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Good morning, Preston. Thank you for your willingness to serve. What high school did you graduate from?

Mr. Chong: Waimea High School.

Councilmember Kagawa: Waimea?

Mr. Chong: Yes.

Councilmember Kagawa: I will approve your nomination.

Council Chair Rapozo: And I will not. I just have one (1) question and it is a question that I ask all of the Cost Control Commission appointees or nominees. As far as the role of the Cost Control Commission, are you aware that the sole role of that Commission is to find cost-cutting measures, cost-saving measures, not revenue generation, not how else we can make more money, but where can we cut our County government in a way that will not reduce services to the public? Are you aware of that?

Mr. Chong: I was aware of that after reading the information I found online.

Council Chair Rapozo: Perfect, thank you. Are there any other questions? If not, thank you very much Mr. Chong, and we will be meeting on this resolution on January 14, 2017. Thank you. Next.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, the next interview is for the Civil Service Commission, Vonnell Ramos for a term ending December 31, 2019.

CIVIL SERVICE COMMISSION:

- Vonnell F. Ramos – Term ending 12/31/2019

Council Chair Rapozo: Good morning, Mr. Ramos. Thank you for being here today.

VONNELL F. RAMOS: Good morning. Thank you.

Council Chair Rapozo: I think for you, too, it is your first interview for a Commission here with the County.

Mr. Ramos: Yes, it is.

Council Chair Rapozo: Thank you, Mr. Furfaro, for finding all of these new people because we constantly get criticized that we run the revolving door and I appreciate you finding these fine people. Mr. Ramos, you were here for the first interview, tell us a little bit about yourself and then we will open it up for the Councilmembers.

Mr. Ramos: Okay. Where do I start?

Council Chair Rapozo: You can start with your name.

Mr. Ramos: My name is Vonn Ramos. People know me as Vonnell, but Vonn is the name that I am called by. I was born and raised in Hanamā'ulu, graduated at Kaua'i High School, 1994 graduate. I attended University of Hawai'i (UH) for my undergraduate in Family Resources, attended graduate school at the University of San Diego, and received my Master's Degree in Marriage & Family Therapy. I moved back to Kaua'i in 2000, started to work in the Department of Education (DOE) with the Mokihana Project, doing clinical work, case management, then worked for nonprofit. I worked for Hawai'i Behavior Health as an Intensive In-Home Therapist, then moved over to Hina Mauka working with our adolescents in the schools, providing treatment. During those work experiences, I was blessed to move up into leadership positions. I sort of moved away from the direct services to more administrative functions and Human Resources (HR) functions. I took a break from being in a leadership position and worked at Drug Court for a year and a half and was able to get back into doing direct services working in the judiciary system, and then moved over to Parents and Children Together (PACT). I was the Assistant Program Director. A month and a half ago, I recently started as the new Executive Director at Hale 'Opio Kaua'i. I am in a position where HR is a huge part of being an Executive Director and the reason why I approached the Office of Boards & Commissions wanting to serve was, I remember when I went through Leadership Kaua'i and I want to recognize Councilmember Chock who was the Executive Director during that time. Throughout the years, I heard that the purpose of Leadership Kaua'i was to raise up leaders to be able to serve on these Boards & Commissions and

so it has come full circle. I am now in a position where I can give back to the community and I also want to enhance my HR skills. Three (3) years ago, I realized that I wanted to learn more about management and so I pursued a second Master's Degree in HR Management. I did try to find employment in HR on Kaua'i and it was quite difficult to find employment in HR with a Master's Degree if you do not have prior experience in HR. A lot of the HR positions on Kaua'i seem to be an entry-level type of position or people that have moved into the HR position, and so it is an area that many of us that have pursued a graduate degree in HR find the challenge on Kaua'i. Therefore, this is a way that I can apply my skills that I have learned and also to enhance and build up my skillset in HR. The Civil Service Commission will be a great opportunity to do that.

Council Chair Rapozo: Thank you. We do accept Master's Degree here. Are there any questions for Mr. Ramos? Councilmember Yukimura.

Councilmember Yukimura: Good morning.

Mr. Ramos: Good morning.

Councilmember Yukimura: Thank you for stepping up and for your interests. You mentioned that you understand the primary duties of the appointment to learn and apply HR functions, serve the Kaua'i community, adopt rules and regulations, and carry out the civil service and compensation laws of the State and County. Are you aware that one (1) of the functions of the Civil Service Commission is also to hire and/or fire the HR Director?

Mr. Ramos: Yes.

Councilmember Yukimura: Okay. Do you have any experience in doing executive-level evaluations?

Mr. Ramos: Yes, I have. When I worked for PACT, that was a primary role.

Councilmember Yukimura: Because part of that role, with respect to the Director, is to annually evaluate and review.

Mr. Ramos: Yes.

Councilmember Yukimura: Okay, that is good. Thank you.

Mr. Ramos: I also want to add that in my position at Hale 'Ōpio Kaua'i, there is currently a transition and so I am sort of being part of that evaluation and the transition of me becoming a full-fledged Executive Director.

Councilmember Yukimura: Well, I am personally glad to see you heading Hale 'Ōpio Kaua'i. Thank you for that.

Council Chair Rapozo: Are there any other questions?
Councilmember Kagawa.

Councilmember Kagawa: I just want to thank you for being willing to serve. I am going to strongly support your nomination.

Mr. Ramos: Thank you.

Councilmember Kagawa: You are a local boy who is highly educated. I want to congratulate you on your education and your Executive Director job.

Mr. Ramos: Thank you.

Councilmember Kagawa: I hope that going forward you will be open to change and if you see something that is wrong on the Commission that could lead to improvement because there are situations brought up such as the County having trouble filling, for example, electricians and plumbers to work for our County because the pay in the private sector is two (2) to three (3) times more than the County pay. It is not rocket science why we are having trouble filling those positions. We do not have any trouble finding firemen or policemen because the pay is sufficient for the job, but I am hoping that you will see things that could be improved and speak up and try to make rational changes that can lead to the County getting more success and not having these vacancies sit for so long. I welcome you and I am going to support you. Thank you for being willing to serve.

Mr. Ramos: Thank you.

Council Chair Rapozo: Are there any other questions?
Councilmember Chock.

Councilmember Chock: Vonn, thank you so much for being here and for being willing to step up and serve. You have been serving in so many ways and I appreciate that the "soapbox talks" at Leadership Kaua'i did make a difference. I just wanted to know if you were briefed on and are aware of some of the issues in this Commission and what you might be focusing on in light of that. You spoke of some of your HR experiences, but are there anything specific that you see you might be bringing to it that you would like to also focus on?

Mr. Ramos: I have not really thought about it. This interest sort of happened really quickly and so while I am settling into my new position at Hale 'Opio Kaua'i, that has been my main focus at this time and so now that I am settling in, I feel that I could be connected more into the community and provide more of my service. In the past, I have watched the Council Meeting's and just know some individuals in the community that sort of know the HR issues and so I have been hearing about it. I am very curious and excited to know what the issues are and how the issues can be resolved and of course abiding by the laws and regulations. That will also assist me in my work as an Executive Director at Hale 'Opio. I would be able to transfer those skills there.

Councilmember Chock: Congratulations, Vonn, on the new position and thanks again for stepping up.

Council Chair Rapozo: Anyone else? If not, thank you, Vonn. One thing you will notice is, if you have not already, there is a huge difference between the private sector and the public sector. I think the civil service law is one that will take extensive research because it baffles me about how some of these laws exists. Being able to have that Commission assist and work with the HR Department to formulate the rules to make sure we are in compliance and I am not going to discuss the shortcomings here, but I will say that there are some. I look to you with your experience as well as the other commissioners to work with HR and get some of these

shortcomings fixed so that we are in compliance. I anticipate you having unanimous support on this Council and I look forward to meeting with you over coffee one day just to share some issues that I think should be looked at. Thank you very much.

Mr. Ramos: Thank you.

Council Chair Rapozo: I misspoke earlier, I said January 14, 2017, the resolutions for the various Boards & Commissions will be on January 12, 2017.

Mr. Ramos: Okay, thank you.

Council Chair Rapozo: Next.

Ms. Fountain-Tanigawa: The next interview is for the Liquor Control Commission. This is for former Mayor Maryanne Kusaka.

Council Chair Rapozo: I saw her walk in. Oh, she is behind Mr. Furfaro. I get that same problem, Jay. Before she comes up, I just need to ask and maybe Councilmember Kagawa can help. Does schoolteachers all write the same, like doctors all write the same? I read your application and it is all my schoolteachers wrote the same way.

LIQUOR CONTROL COMMISSION:

- Maryanne W. Kusaka – Term ending 12/31/2019

MARYANNE W. KUSAKA: That is how we were trained.

Council Chair Rapozo: Okay, Mayor. This is your first time, too, as well, or have you served on a Commission before?

Ms. Kusaka: No.

Council Chair Rapozo: First time?

Ms. Kusaka: Second.

Council Chair Rapozo: Second time, okay, so you know the drill.

Ms. Kusaka: Good morning and congratulations to all of you. It was a long journey, I am sure, this last year especially working so hard, but I congratulate you. It is not easy to campaign and get elected. I am Maryanne Kusaka and you asked the question about serving before and that is why I continued to have a passion for the Liquor Control Commission. Years ago, Mayor Tony Kunimura appointed me and then nine (9) months later, he took me into his office as the Administrative Assistant. I told him at that time, "but I prefer to work on the Liquor Control Commission," because I really enjoyed learning from the seniors who were the Chair there, Mr. Saito, he was absolutely wonderful, I learned so much from him. I just enjoyed working on issues like preventing teens from getting ahold of alcohol because as an educator, I have witnessed a parent in the Big Save parking lot, and funny how things stay in your mind, buying a case of beer and giving it to fifteen (15) year olds; passing it along in the car in the parking lot. I thought that has got to stop. Of course, it has gotten worse, but that really propelled me to wanting to serve in this capacity with the Liquor Control Commission. I must say in those nine (9) months,

we really honed in on the licensees who, especially in the Nāwiliwili area, there were some small bars, and we really watched the bars so that we could have our inspectors stop serving alcohol to minors. We were quite successful at that time. Anyway, I just feel that as long as I am able, I want to serve the public. That has been my mantra and I love people, as you all know. I try to be everywhere still as I can physically do and so I just want to give back and this is another opportunity for me to continue to serve our community.

Council Chair Rapozo: Thank you very much. Are there any questions for Mayor Kusaka? Councilmember Yukimura.

Ms. Kusaka: Yes, of course, Councilmember Yukimura.

Councilmember Yukimura: Mayor.

Ms. Kusaka: Good morning.

Councilmember Yukimura: Thank you and good morning. There is no question about your qualifications and I want to mention how Sue Kanoho honored you at the Kaua'i Visitor Bureau lunch the other day.

Ms. Kusaka: Oh, thank you.

Councilmember Yukimura: I just wanted to ask and you already shared some of the ideas about how to stop underage drinking. I just wondered, looking into the future, do you have some specific ideas about how we can address it?

Ms. Kusaka: Certainly, I am not sure whether they continue to go into the high schools, but I remember when I worked there before and served as Mayor, Eric Honma had a great program where he presented the downsides of alcohol and drugs to eleventh (11th) graders at our high schools. I think it was a great program. In many cases, it is eye opening for our young people because drugs and alcohol are all around them, no matter where they go, they are surrounded by the temptation. One (1) of the reasons I have always supported Teen Court at Hale 'Ōpio is that when they have their cases, they really hone in on that to educate the parents and the recidivism of that program is so minute...I continue to strongly support Hale 'Ōpio. I am hoping that maybe I could suggest that we work on more educational programs and work hand in hand with nonprofits like Hale 'Ōpio to see how the Liquor Control Commission can help. Maybe they have some suggestions also and certainly working with the Police Department, I do not know how they handle young people now. I know they have a fabulous Police Activities League (PAL) program and I support that also with our deputy at the Police Department. We will look at ways that we can certainly support and push forward. I know Shirley Akita is on the Commission now and we are great partners, we have worked together in education and we continue to be great friends. Maybe together we can twist a few arms and make some changes.

Councilmember Yukimura: Thank you, Mayor. I am so glad you mentioned education and with you and Shirley as supreme educators, that will be a plus. Have you heard of the Botvin LifeSkills Training?

Ms. Kusaka: No.

Councilmember Yukimura: It is an evidence-based program that shows reduction of sixty percent (60%) to seventy-five percent (75%) when the kids have the course. So that might be a...

Ms. Kusaka: Is it in our Hawai'i schools?

Councilmember Yukimura: It was. It was a directive from the State DOE about ten (10) years ago, I think. You might want to look into that.

Ms. Kusaka: Okay. Thank you for the suggestion. What is the name again?

Councilmember Yukimura: Botvin LifeSkills Training, which is out of Cornell University and it has been in effect for about twenty (20) years and there is a lot of evidence showing that it is very effective. Thank you.

Ms. Kusaka: Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Thank you, Mayor. I am ecstatic that you are willing to serve.

Ms. Kusaka: Thank you.

Councilmember Kagawa: And with your answer to Councilmember Yukimura, you hit the nail on the head. I cannot think of anything more valuable than what you just said, that we put more effort into trying to educate our youth and try to help guide them. I think half an hour or one-hour investment and sacrifice instead of teaching geometry or biology and teaching them about the dangers of alcohol and drugs and trying to guide them is going to be way worth the investment. Thank you for your ideas and I know as a proven leader, you will definitely bring positive change to the Liquor Control Commission.

Ms. Kusaka: Thank you, Councilmember Kagawa.

Council Chair Rapozo: Anyone else? Councilmember Chock.

Councilmember Chock: Good morning.

Ms. Kusaka: Good morning, Councilmember Chock.

Councilmember Chock: I am pleased to see you continue to serve.

Ms. Kusaka: Thank you.

Councilmember Chock: I am ecstatic about what I am hearing in terms of how we need to connect our families, actually infiltrate our families with the types of values that I think would be needed to shift how it is we raise our children. I think this is a great venue for it and not only that, I think you are the right person for it because you are a great influence to people. Certainly, you have been of influence to me as a teacher and as my Mayor as well. Thank you for serving.

Ms. Kusaka: Thank you.

Council Chair Rapozo: Councilmember Brun.

Councilmember Brun: Thank you, Mayor, for coming up and being willing to serve. I like your idea of going back into schools. I just talked to one of my friends, he is on a work release program and I called the Principal from Waimea High School to do some talks and try to educate the kids before they go down the wrong path. I look forward to working with you and hopefully we can get in the schools, do some talks, and hopefully help our youth. Thank you.

Ms. Kusaka: Thank you, Councilmember Brun.

Council Chair Rapozo: Thank you. Anyone else? Thank you, Mayor. The education is vital. You want to prevent these kids from even going to a store to get an adult to buy them beer, so I definitely would like to see an enhancement there, as well as the parents and the general public, but also the licensees. A couple of years ago, a good friend of mine was terminated from his management position at a store and he did not personally sell the alcohol to an underage person, but one of the employees did and that company has a zero tolerance policy. The Manager goes because he or she failed to educate the employee. At some point, we do the best we can in education, but there are still some licensees who elect to violate, whether it is lack of training their employees and at that point, I think the Commission has to be strict and really exercise the rights of revocating the permits. I think that is when you get their attention. When they are not allowed to sell booze for a weekend or a week or a month. Although I really agree that we need to educate because until we get that done, then it would be really unfair to just start revocating permits, but we have to get to a point that we are satisfied that every licensee is aware what will happen and when they violate, we take action that actually changes their behavior. For some reason, I see that with you. I would not want to face you at some revocation hearing.

Ms. Kusaka: I will tell you that when I was there just that short time, I advocated a very stiff fine and this is like in 1986 and we got a two thousand dollar (\$2,000) fine for a vendor in Nāwiliwili. That just stunned them because it is a lot of money and it takes a lot of time and work to earn that money in their shop, so they need to pay attention. It is so simple. There are signs all over that people are carded, so just card.

Council Chair Rapozo: Perfect. Thank you very much. Are there any other questions? If not, thank you very much, Mayor. Again, January 12, 2017 the resolution will be up at the full Council.

Ms. Kusaka: Thank you very much and Merry Christmas.

Council Chair Rapozo: Same to you. Okay, we can move on.

Ms. Fountain-Tanigawa: Chair, on Consent Calendar, items for receipt.

CONSENT CALENDAR:

C 2017-02 Communication (10/17/2016) from the Mayor, transmitting for Council consideration and confirmation, Mayoral appointee Roy M. Morita to the Police Commission – Term ending 12/31/2019.

C 2017-03 Communication (10/31/2016) from the Mayor, transmitting for Council consideration and confirmation, the following Mayoral appointments to the various Boards and Commissions for the County of Kaua'i:

- a. Board of Ethics
 - Mia R. Shiraishi – Term ending 12/31/2018
- b. Board of Water Supply
 - Thomas J. Canute – Term ending 12/31/2019
- c. Planning Commission
 - Donna Apisa (Business) – Term ending 12/31/2018

C 2017-04 Communication (11/15/2016) from the Director of Human Resources, transmitting for Council information, the November 15, 2016 Human Resources Reports, pursuant to Section 19 of Ordinance No. B-2016-812, relating to the Operating Budget of the County of Kaua'i for the Fiscal Year 2016-2017, which includes new hires, transfers, reallocations, promotions, and vacancies for the period of July 1, 2016 to November 15, 2016.

C 2017-05 Communication (11/17/2016) from Council Chair Rapozo, transmitting for Council consideration, the nomination of Councilmember Arryl Kaneshiro to fill the remaining term of Councilmember KipuKai Kualii as a Director on the National Association of Counties (NACo) Board of Directors.

Councilmember Kagawa moved to receive C 2017-02, C 2017-03, C-2017-04, and C 2017-05 for the record, seconded by Councilmember Kaneshiro.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2017-02, C 2017-03, C 2017-04, and C 2017-05 for the record was then put, and unanimously carried.

COMMUNICATIONS:

C 2016-243 Communication (11/04/2016) from Council Chair Rapozo, requesting the presence of the Managing Director, to provide the Council with a briefing on the auction and relocation of the old Kapa'a Police Substation building near Kapa'a Beach Park: Councilmember Chock moved to receive C 2016-243 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I did see, I guess, as we all know that the building is gone, but I do have questions about the last time I saw it, there were foundational piers that were still there and that could still be a hazard.

Council Chair Rapozo: With that, I will suspend the rules with no objections and ask that Mr. Rezendes to come forward.

There being no objections, the rules were suspended.

WALLACE G. REZENTES, JR., Managing Director: Good morning Councilmembers, Wally Rezendes, Jr., Managing Director. We are intending to take off those piers. I believe the substation was moved the day before Thanksgiving and we are going to schedule the removal of those four (4) piers.

Councilmember Yukimura: I think there are six (6).

Mr. Rezendes: Six (6), okay. Yes, that was noticed in recent inspections that that took place. I do not have a timeline, but we will remove those and hopefully that will create one (1) or two (2) more stalls.

Councilmember Yukimura: Yes, as long as it is done before something happens to create liability for the County.

Mr. Rezendes: I hear you. I do not think we have reason to use it for another building.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Thank you. Are there any other questions for Mr. Rezendes? If not, do we have any public testimony? Seeing none, I will call the meeting back to order.

(Councilmember Kawakami was noted as not present.)

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Further discussion? It is sad that it had to take this long and it had to get the Council involved. I guess my only comment would be for the Administration when we go through these procurements, that there is language and that it gives them a timeline to remove the things that they bought whether it is a car, house, shack, or whatever it is, so we do not get into this situation. It was unfortunate it took this route, but I am glad it got removed. Thanks, Wally. I know you were working quite hard and trying to get that out, but at the end of the day, it is gone. I agree with Councilmember Yukimura that we need to get those pillars taken out.

The motion to receive C 2016-243 for the record was then put, and unanimously carried *(Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kawakami was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

C 2017-06 Communication (10/20/2016) from the Fire Chief, requesting Council approval of the indemnification language contained in State Lease No. DOT-A-16-0005, to release and indemnify the State of Hawai'i Department of Transportation Airports Division: Councilmember Kaneshiro moved to approve C 2017-06, seconded by Councilmember Brun.

Council Chair Rapozo: I do not see the Fire Chief or anyone here.

Councilmember Yukimura: I have questions.

Council Chair Rapozo: Yes, I want to get a briefing. This is a big, major lease and I just want to make sure...I would actually prefer this be sent to Committee, to be honest with you. I do not know if it is time sensitive.
Councilmember Kagawa.

Councilmember Kagawa: I would agree. I think there are significant questions that should be asked.

Council Chair Rapozo: Yes, and there are some external issues going down at the airport involving some hangers being taken back and so I want to make sure that we know what we are approving. If there are no objections, I would ask for a referral to the Public Safety & Transportation Committee Meeting.

Councilmember Kagawa moved to refer C 2017-06 to the January 4, 2017 Public Safety & Transportation Committee Meeting, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any further discussion or public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Jade, there is an accompanying Bill as well. The Bill is Bill No. 2641, so is it okay to entertain that motion for the Bill as well? Oh yes, forget it, let us just move on the Communication.

The motion to refer C 2017-06 to the January 4, 2017 Public Safety & Transportation Committee Meeting was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kawakami was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Council Chair Rapozo: We will address the Bill later because that one has to go to a public hearing. Next item, please.

C 2017-07 Communication (11/03/2016) from the Executive on Aging, requesting Council approval to receive and expend funds, in the amount of \$500.00, from the National Kidney Foundation of Hawai'i, to be used for County of Kaua'i Agency on Elderly Affairs Diabetes Self-Management Programs: Councilmember Kagawa moved to approve C 2017-07 with thank-you letter to follow, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Councilmember Kagawa.

Councilmember Kagawa: I had a quick question for the Agency on Elderly Affairs, if they are here.

Council Chair Rapozo: She is here. With that, I will suspend the rules if there are no objections.

There being no objections, the rules were suspended.

LUDVINA K. TAKAHASHI, Executive on Aging: Good morning. Kealoha Takahashi with Elderly Affairs.

Councilmember Kagawa: Thank you for all you do, Kealoha, for the elderly population on Kaua'i. Diabetes is really becoming a significant issue not only for elderly, but for our entire population on the island and it is just a growing problem and need. I am wondering what role the Agency on Elderly Affairs has to help with the diabetes problem.

Ms. Takahashi: We provide a six (6) week workshop and we meet one (1) day a week for two and a half (2.5) hours. There is a proven curriculum that we use from Stanford University.

Councilmember Kagawa: Thank you.

Ms. Takahashi: You are welcome.

Councilmember Kagawa: How has the attendance been?

Ms. Takahashi: Working with the National Kidney Foundation has really helped because they have brought in a lot of referrals from the doctor's office, so it is getting people and referrals and for them to come and take the class. In the past, we have had maybe two (2) classes, but we can have more. Our scheduling next year is to conduct and hold more classes.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Thank you. Are there any other questions for Ms. Takahashi? If not, thank you very much, Kealoha.

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

The motion to approve C 2017-07 with thank-you letter to follow was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kawakami was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

C 2017-08 Communication (11/14/2016) from the Fire Chief, requesting Council approval to accept a donation from the Kaua'i Lifeguard Association (KLA), of one (1) New 2016 Ram 4x4 V-8 Pickup Truck (\$43,152.83), one (1) Truck Rack (\$749.95), one (1) Light Bar with Siren and Speakers (\$2,496.86), and one (1) New 2016 Yamaha Jet Ski and Trailer (\$15,819.23), for a total amount of \$62,218.87, which will be utilized by the West District roving patrol unit: Councilmember Kagawa moved to approve C 2017-08 with thank-you letter to follow, seconded by Councilmember Yukimura.

Council Chair Rapozo: Thank you very much. I saw Dr. Downs, I am going to suspend the rules, if there are no objections. I am going to have you come up.

I do not have a question, but I know you have been recognized in the past...please state your name.

There being no objections, the rules were suspended.

MONTY DOWNS, M.D., President, Kaua'i Lifeguard Association: Monty Downs, President of the Kaua'i Lifeguard Association.

Council Chair Rapozo: Dr. Downs, I really just wanted to take this opportunity to thank you and Kaua'i Lifeguard Association (KLA). We get these requests for approval throughout the year and this one is quite significant of sixty-two thousand dollars (\$62,000), but we get these requests that just adds up. Unless you are familiar with...let us say, procurement. For us to get a 2016 Ram 4x4 truck for our Fire Department or lifeguards, it would take probably a year and a half just for procurement. You folks are able to fill these *pūka* relatively quickly, so I guess I just want to take this opportunity seeing you here in the audience to thank you and KLA for all that you have done to keep our beaches safe and that is really why I had asked you to come up. Thank you and it actually deserves a round of applause. You are relentless, you just do not ever stop, and you get the results, so thank you again.

Dr. Downs: Is it okay if I say a couple words?

Council Chair Rapozo: Sure, please.

Dr. Downs: That money reflects, really, the community's support. It is kind of a conduit, Kaua'i Lifeguard Association is a nonprofit and they can donate to us knowing what the money is going to, mainly to ocean safety. Really, our donation is a reflection of the community's great interest in trying to make Kaua'i safer. This donation was really geared towards the Roving Patrol Unit and I am sorry Kalani is not here because he told me that he was going to be, but it actually went into effect December 1, 2016 so it has been up and running for a couple weeks. I have already heard some really good things because of the Roving Patrol, for instance the day the Hanalei Bridge was washed out, a couple weeks ago. They were the actual responders north of the bridge for not only ocean safety, but for people in their homes for a couple health emergencies that took place in homes, so it is quite impressive how our lifeguards are stepping up beyond their formal job description. I want to thank the Council for supporting.

I mean, we supported this Roving Patrol Program and with the equipment, we were able to get the community to donate, and this is the second truck that we donated, but it was the Council who several months ago agreed to put this Roving Patrol Program into effect in some sort of way to try to work on this problem. Even with all the work, I and many other people have done, we still had thirteen (13) drownings this year. It is a real head scratcher and we try and this is a great, creative, and hopefully a productive idea that will help be safer for our people and for our visitors, so thank you.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: Dr. Downs sixty-two thousand dollars (\$62,000) is not small change and by doing this, we have sixty-two thousand dollars (\$62,000) to spend for other really pressing County needs as well. This is a huge gift

to us and we really want to acknowledge and thank you and KLA for this contribution. I was just curious though, what happened with people in homes?

Dr. Downs: I do know the details about it, Kalani told me about it, but when the bridge flooded out, there was a call for a medical problem in a home and the only first responders, really, on that side of the bridge, the Fire Department is up in Princeville and paramedics are up in Princeville, so the lifeguards became the on the ground first responders, which I was very happy about.

Councilmember Yukimura: Yes, and I too wish that the Fire Department or Kalani was here. Who is paying for the equipment of the other two (2) patrols?

Dr. Downs: KLA donated a truck about two (2) months ago.

Councilmember Yukimura: For north or east.

Dr. Downs: Same thing, from King Auto Center. Yes, from our fundraising this year, we were able to donate two (2) of the three (3) trucks required to get to the three (3) Roving Patrol Units. There is one (1) for north, one (1) for east, and one (1) for south-west, and the third one is from the County—it is not a new truck...

Councilmember Yukimura: From the County inventory.

Dr. Downs: From the existing County fleet, you might say.

Councilmember Yukimura: Okay, thank you.

Dr. Downs: These two (2) trucks that we donated were key to getting the program off the ground.

Councilmember Yukimura: Yes, indeed.

Dr. Downs: And I am hearing good things. Before it started I was not really sure how their day would go, how the rovers would go because in Po'ipū, you got Shipwreck's, Lāwa'i Beach Resort, Kōloa Landing, all within two (2) miles of each other, but none of them visible from the Po'ipū tower. Therefore, what do they really do? Do they spend two (2) hours at one and two (2) hours at the other? It kind of depends on the people, so I was not exactly sure how the operations would work out and even on the north shore where it is more challenging. Lumaha'i River Mouth all the way to Larsen's Beach is quite a few miles, so how do they actually spend their day? I have not quite figured that out, but again, one day we will get Kalani to go into the details. Even on the north shore, during that flood down by Black Pot, there were some visitors trying to cross the river mouth from Princeville side to Hanalei side and the Roving Patrol was there with their blow horn to say, "Hey, no." River mouths sweep people out to sea is a renowned way of having people get in trouble, so there is an incident right there that took place because of our Roving Patrol. So far it is up and running and one day I will get Kalani to give you more details when the instances come up.

Councilmember Yukimura: Thank you. You are so compassionate and I know you take personally every drowning that happens on the island, but I think we

want to think in terms of what was preventable and what was not. Sometimes if it is a heart attack or something that happens...I do not know that it is preventable by our actions.

Dr. Downs: I agree with you. Preventable by education and by the Roving Patrol being at Shipwreck's that "today is not a day for snorkeling or something," but yes, I agree. Number 13 hold quite a large portion of that number, it was their data passed on, if you will, for the underlying conditions of one kind or another.

Councilmember Yukimura: Right. I just want to say to everyone that I believe it was the latest Kaua'i Chamber of Commerce dinner that it was announced that Dr. Downs, as the Doctor to the Kapa'a Football Team, has not missed a game for forty (40) years.

Council Chair Rapozo: Forty-eight (48) years or something.

Dr. Downs: Forty-four (44) years.

Councilmember Yukimura: Forty-four (44) years.

Dr. Downs: I missed one (1) or two (2), but not many.

Council Chair Rapozo: He was delivering a baby or something like that.

Dr. Downs: I remember seeing this player get hurt pretty bad when he was playing for Waimea.

Councilmember Yukimura: Well, that was an incredible record and just speaks to your dedication to our community, so I think that deserves another applause. Thank you, Dr. Downs.

Dr. Downs: Okay, thank you.

Council Chair Rapozo: Are there any other questions or comments for Dr. Downs? If not, thank you very much, Sir.

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

The motion to approve C 2017-08 with thank-you letter to follow was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kawakami was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Council Chair Rapozo: Next item, please.

C 2017-09 Communication (11/14/2016) from the Director of Economic Development, requesting Council approval to receive and expend funds, in the amount of \$20,000.00, and indemnify the Hawai'i Tourism Authority, to provide greetings at the Harbor area for most ships docking at Pier II at Nāwiliwili during calendar year 2017: Councilmember Kaneshiro moved to approve C 2017-09, seconded by Councilmember Yukimura.

Council Chair Rapozo: Thank you. Is there any discussion? Is there any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2017-09 was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kawakami was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

C 2017-10 Communication (11/16/2016) from the Executive on Transportation, transmitting for Council consideration, proposed amendments to Ordinance No. B-2016-812, as amended, relating to the Operating Budget of the County of Kaua'i, for the Fiscal Year 2016-2017, by revising the amounts estimated in the General Fund, to fund six (6) additional on-call Bus Driver positions to reduce overtime expenses and increase the efficiency of transit operations. (*Transportation Agency – Six (6) New On-Call Driver Positions*)

Councilmember Yukimura moved to approve C 2017-10.

Council Chair Rapozo: No, this is the Communication. We need a motion to receive.

Councilmember Kagawa moved to receive C 2017-10 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Thank you. The Bill will come up as Proposed Draft Bill (No. 2642) later and we can have our discussion then. Is there anybody in the audience wishing to testify on the Communication?

There being no objections, the rules were suspended by take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Further discussion?

The motion to receive C 2017-10 for the record was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kawakami was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Council Chair Rapozo: Next item, please.

(*Councilmember Kawakami was noted as present.*)

C 2017-11 Communication (11/18/2016) from Council Chair Rapozo and Council Vice Chair Kagawa, transmitting for Council consideration, a Proposed Draft Bill to Repeal Chapter 22, Article 23 of the Kaua'i County Code 1987, as amended, Relating to Pesticides and Genetically Modified Organisms (also known as

Ordinance No. 960 and Bill No. 2491, Draft 2): Councilmember Kagawa moved to receive C 2017-11 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Likewise, this is the Communication that accompanies Proposed Draft Bill (No. 2643). Is there anyone in the audience wishing to testify on the Communication?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Any discussion? No.

The motion to receive C 2017-11 for the record was then put, and unanimously carried.

C 2017-12 Communication (11/29/2016) from the Planning Director, transmitting the Planning Commission's recommendation to amend Condition No. 7 of Ordinance No. PM-94-82, relating to affordable housing at Tax Map Key (TMK) 3-7-03: por. 1, Hanamā'ulu, Kaua'i: Councilmember Kagawa moved to receive C 2017-12 for the record, seconded by Councilmember Yukimura.

Council Chair Rapozo: Thank you. Likewise, this is accompanying Proposed Draft Bill (No. 2644). Is there anyone in the audience wishing to testify on the Communication?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Yes, I do have some questions. I presume that Ms. Fu and Mr. Dahilig will be here.

Council Chair Rapozo: Okay. Staff, if you could let them know to be available for Proposed Draft Bill (No. 2644). There is an amendment that I would like to put on before it gets to the public hearing and I did speak with the Housing Director yesterday, so they will be here at some point. Councilmember Kagawa.

Councilmember Kagawa: This is only first reading...

Council Chair Rapozo: Yes.

Councilmember Kagawa: ...so hopefully what we can gather there is to inform the public as to what this Bill is about. It is worded, quickly, if you just read what is on the agenda, you would not really know what it is about and hopefully when we have those discussions on first reading, we can educate the public so that they know whether they should speak up about it or not.

Council Chair Rapozo: I agree. I think if you just pass it through public hearing, no one knows, and I would really like to have that one (1) amendment

done today before it goes to public hearing so the public will have an opportunity to testify.

The motion to receive C 2017-12 for the record was then put, and unanimously carried.

C 2017-13 Communication (12/01/2016) from the County Attorney, requesting approval of its recommendation for authorization to expend additional funds up to \$900.00 to close out Special Counsel's services provided to represent the Planning Department in Transient Vacation Rental (TVR) Appeals and related matters.

Council Chair Rapozo: This one relates to an Executive Session, ES-886, so we will take care of this after the Executive Session. Is there anyone wishing to testify on this matter? Thank you. We will just put that to the end of the agenda. Next item.

Councilmember Yukimura: Council Chair?

Council Chair Rapozo: Go ahead.

Councilmember Yukimura: I have some questions that I think would be appropriate for open session.

Council Chair Rapozo: With that, I will suspend the rules and call up, Mr. Trask.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, County Attorney: *Aloha*, Honorable Chair and Councilmembers, for the record, Mauna Kea Trask, County Attorney.

Councilmember Yukimura: I believe that it would be okay for you to explain the background behind why you are closing out the Special Counsel services.

Mr. Trask: Sure. As you recall this goes back, I think, to 2012 or 2013. It was the time when there was a big push to enforce our TVR Ordinance, Ordinance No. 904 and Ordinance No. 960, et cetera, not Ordinance No. 960, I am sorry. Ordinance No. 904 and subsequent amendments, but what happened at that time is that Office of the County Attorney, there was a discussion as to whether or not we could do it in-house or we should get Special Counsel. The decision ultimately was to procure Special Counsel and Ms. Broder was selected for this contract. Subsequent to that, although the issues were relatively simple whether or not you were operating without the appropriate permit, they became very complex in the administrative process. I saw that these cases were taking a long time. They were being turned into very complex matters by the respondents and they are land use, so as you know, a lot of issues come up. Now, the way I see it is that these will and with the Airbnb issue across the nation, east coast to west coast, in Maui, O'ahu, I see this as going to be an ongoing impact to our Special Counsel budget. With the creation of Litigation, I feel confident that we can take it in-house. The last time we came before you, I asked the Special Counsel to estimate what their amounts would be to the next quarter, and she was about nine hundred dollars (\$900) off and we got this invoice relatively recently. Prior to today, we have transferred all of this litigation in-house; therefore, Ms. Broder is not doing these cases anymore because they will get appealed to Circuit Court, they will get appealed to the Intermediate

Court of Appeals, they may be appealed to the Supreme Court, and that is a running bill. My understanding since being appointed to the Office, was that we wanted to keep this low and so if we do not do this...I would like to pay this bill of nine hundred dollars (\$900), finally close out the contract, and we will just take this all in-house. Therefore, we do not have to pay. Her current rate is two hundred seventy-five dollars (\$275) an hour and you get us at salary, and so that is what I am looking to do.

Councilmember Yukimura: That is cost-cutting, if you will, and an efficiency move, but you are ensuring that the quality of representation is still going to be good and high.

Mr. Trask: I have nothing, but faith in the diligence and work ethic of the County Attorney's litigation division, definitely.

Councilmember Yukimura: Diligence, work ethic, and skills. That is very commendable. The only question is will that raise more conflict of interest issues?

Mr. Trask: We do not believe so. The Office is divided into the Litigation, Advice, and Counsel Divisions. We have a Deputy who has relatives who have legal TVRs and that Deputy...in all attorney's, you have your own professional obligation to the Supreme Court as officers of the court, and that is articulated in the Rules of Professional Conduct. That Deputy did not feel comfortable and so we do not give him or her any of these cases. We do not think there is any conflicts of interest. If they do come up, then we deal with them as required by the rules, but the law allows as long as you bifurcate the Office appropriately and we do not share staff. All our staff really goes to litigation, but we do not share staff between the advice and counsel deputy for the Planning Commission or the staff, we do everything we can. The solution is always a larger office and more people; however, I am not going to ask for that, so we are doing everything we can to make the appropriate divisions to keep it clean.

Councilmember Yukimura: Okay, but it is an issue because you have some people advising the Planning Department and you have some people representing...

Mr. Trask: Well we have one (1) person advising the Planning Department and then...but they do not mix at all.

Councilmember Yukimura: Okay, but in the case whether the case grows.

Mr. Trask: Excuse me.

Councilmember Yukimura: What if the caseload grows?

Mr. Trask: Then it will be an issue and the resources really...if you do not pay the Special Counsel, then the time and resources becomes the issue.

Councilmember Yukimura: Correct.

Mr. Trask: And our society is getting more litigious, so we have to deal with it. If we cannot deal with conflicts as they come up, then that is a necessary fact that we will need to come to you, but we can handle this caseload now and that is the best we can do. I am not going to say that there are issues because

that would assume that there are presently issues, but there is always the potentiality. If and when that happens, we will definitely take it seriously and then we will come to you at that time.

Councilmember Yukimura: Can we get a report on the results of the work done by Ms. Broder?

Mr. Trask: Sure.

Councilmember Yukimura: How many appeals were handled? What the results were with each appeal?

Mr. Trask: My understanding is that with the Campos case was one that was decided in our favor and it has been the only one that has been decided. He has gotten really tied up in the administrative process, yesterday we had a hearing in front of the Planning...

Council Chair Rapozo: Mr. Trask, I do not want to stray away from this agenda item.

Mr. Trask: Okay.

Council Chair Rapozo: This one is specific and I too, am interested and we will send over a request to have you give us a briefing at a later time. It is a valid question, just not for today's agenda.

Mr. Trask: It is very slow going.

Councilmember Yukimura: I think another separate briefing would be appropriate and I think we could learn a lot from it.

Mr. Trask: I am happy to do that.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Your staff has been working along Ms. Broder, I would assume, or has it been where she does her own thing and we...was there an opportunity for us to learn going forward?

Mr. Trask: Definitely. Ms. Broder is very good at sharing her work product; the motions, we looked a lot at it. At the same time, I did not give her any new cases when I took office. She just handled her pile. She had about ten (10), so we took all the new ones, but she always made herself available. All of our Special Counsels are very kind in being resources for us.

Council Chair Rapozo: Perfect. Thank you.

Mr. Trask: Thank you.

Council Chair Rapozo: Are there any more questions for Mr. Trask? If not, thank you very much.

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

Council Chair Rapozo: I am not sure if you are prepared to vote on this now based on what you just heard or you want to do it after the Executive Session. That is your pleasure. It is to close out the contract, so it is entirely up to your folks. Councilmember Kagawa.

Councilmember Kagawa: I am comfortable approving after what I have heard.

Council Chair Rapozo: We will still have the briefing.

Councilmember Yukimura: Can you still have the Executive Session if we vote?

Council Chair Rapozo: Yes, we can.

Councilmember Yukimura: Okay, sure.

Council Chair Rapozo: The benefit is that we do not have to keep B.C. here. If we can get rid of some of these things, we do not have to come back and keep B.C.

Councilmember Yukimura: That is a good benefit. It just seems like the reason for the Executive Session is to support the decision-making, so if you make the decision beforehand, but if it is okay with everyone, then it is fine.

Council Chair Rapozo: Let me read the posting real quick. Yes, it is not specific to the approval, so we are okay. Councilmember Kagawa.

Councilmember Kagawa: I want to have some discussion on why we are willing to approve, but do we have to go to public testimony first?

Council Chair Rapozo: I already asked for public testimony.

Councilmember Kagawa: Okay.

Council Chair Rapozo: There was not anybody here so we are back to discussion.

Councilmember Kagawa: The reason why I feel comfortable...

Council Chair Rapozo: Oh, I am sorry.

FERN ROSENSTIEL: Could I have an opportunity to testify on the appeal on Proposed Draft Bill (No. 2643)?

Councilmember Kagawa: This is not the item.

Council Chair Rapozo: No, we are on...

Ms. Rosenstiel: Is it not going to come up?

Council Chair Rapozo: It is going to come up, but we are still early on in the agenda.

Ms. Rosenstiel: Oh, okay.

Council Chair Rapozo: Go ahead, Councilmember Kagawa.

Councilmember Kagawa: The reason why I am willing to approve it at this time is that for years we have heard numerous Councils pound the Office of the County Attorney, "Why are you going to have staff if you are going out for outside counsel on issues and spend outside counsel's moneys when we have staff in the Office of the County Attorney? When are we going to fight cases with our staff?" Mauna Kea has been a breath of fresh air because he is the only County Attorney, as far as I have been here, that has started to take on more cases and he has been successful. I feel like we are getting a better result for free. We are already paying for it, it is not for free, but it is already in our budget, we would have spent it anyway, but instead of spending hundreds of thousands of dollars using outside counsel when perhaps we can maximize the talent we have. I am going to support this. I think his leadership there has been a breath of fresh air and I think what is important is that at the point when his staff is overloaded or the work is beyond the capabilities of his staff, then come to the Council and report in a timely manner when the help is needed. I hope that we can get that working relationship with Mauna Kea as we support him in trying to do more with less. Thank you, Chair.

Council Chair Rapozo: I would echo that. It is very hard to quantify what the value of Mauna Kea's office since he took over and I think Councilmember Kagawa touched on it. It was a normal routine for Councils of the past to approve Special Counsel almost on a regular basis. It seemed like every single case we had, we either were too busy, we did not have the expertise, or we had a conflict. This Council kept approving Special Counsel moneys over and over and I do not even know how many requests we have had since Mauna Kea has been on, I think there has been a few, less than a hand full because the case was above the...it was so specific that we had to go outside. Other than that and I think Mauna Kea deserves a commendation because he has taken them on. He has taken it on not just saying, "Let us settle," but actually fighting it, which is something we have not seen. It has brought down settlements way down and in some cases convinced plaintiffs to reconsider their asking price because now they have to fight it. Mauna Kea said he was going to do this and reduce the Special Counsel contracts and he did and this is just one (1) more example of that. Thank you, Mauna Kea. I appreciate the work that you have done and likewise, if it is more than your Office can handle, then this Council is definitely supportive of seeking Special Counsel. Any further discussion?

Councilmember Kagawa moved to approve C 2017-13, seconded by Councilmember Kaneshiro, and unanimously carried.

C 2017-14 Communication (12/02/2016) from the Prosecuting Attorney, requesting Council approval to receive and expend Federal funds and to indemnify the State of Hawai'i, Department of the Attorney General, in the amount of \$48,462.00, to be used for salaries/wages and supplies for the Domestic Violence Prosecution Unit: Councilmember Kagawa moved to approve C 2017-14, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Councilmember Yukimura.

There being no objections, the rules were suspended.

JAMIE OLIVAS, Grant Coordinator: Good morning, Jamie Olivas with the Prosecuting Attorney's Office.

SARA MCNAMEE, Deputy Prosecuting Attorney: Sara McNamee.

Councilmember Yukimura: My questions are somewhat substantive about the programs, so I guess they go to Sara?

Ms. McNamee: It can go to both Jamie and I depending on statistics or process.

Councilmember Yukimura: Okay, good. In your narrative, you say that statistics collected from January 2015 to December 2015 indicate that there were two hundred fifty-one (251) reports for abuse of family and household members. The year before, there were three hundred fifteen (315), which was a substantial reduction from 2014 to 2015. Was that due to efforts to reduce violence or was it due to unreported cases?

Ms. McNamee: Jamie runs our statistics. I do not have an answer for the cause. There could be numerous causes, one (1) could be not reporting, one (1) could be a decrease in violence. Those statistics come from our case management system, so we are in the process and we are always very careful of making sure that cases are logged appropriately. I do not know what the difference is. We are hoping it is a decline in violence.

(Council Chair Rapozo, the presiding officer, relinquished Chairmanship to Councilmember Kagawa.)

(Council Chair Rapozo was noted as not present.)

Councilmember Yukimura: Well since that is your main purpose to reduce domestic violence, it seems that it would be important to know what the cause of the reduction is.

Ms. McNamee: Yes. We do take data. As the attorney, I am not the attorney on this grant, but I do work in the Domestic Violence Unit.

Councilmember Yukimura: Yes.

Ms. McNamee: My job is to take the cases as they come and do justice as the cases come and through that process of the individual cases, help to keep our community and the families safe. The overall answer, I do not have an answer.

Councilmember Yukimura: Do you know? Okay. I guess this question is to your Office, so perhaps you can get the answer later.

Ms. McNamee: Certainly.

Councilmember Yukimura: Could you follow-up? It is so key to know whether you are achieving your goals or not.

Ms. McNamee: Yes.

Councilmember Yukimura: My next questions are regarding that. This is a recurring grant, right? We have been getting it since...

Ms. Olivas: 1997, probably. I think that is what we have.

Councilmember Yukimura: 1997, the Office of the Prosecuting Attorney (OPA) has been a recipient of these Violence Against Women Act (VAWA) funds. The objective number one is to vertically prosecute ninety-five percent (95%) of domestic violence cases, objective number two is to screen and charge ninety-five percent (95%) of all police reports within thirty (30) days of receipt, and objective number three is to achieve a seventy-five percent (75%) successful conviction rate. Those are excellent objectives. I have a question about all of them and I think Sara, you could probably address this one. What does it mean to vertically prosecute? Excuse my ignorance, I think I should know, but I do not.

Ms. McNamee: It means that when the case comes to OPA from Kaua'i Police Department (KPD), the same attorney screens it, decides and uses their discretion on whether to charge it, meets with the victims, does all of the preparation, says the plea offers, and does the trial all the way through.

Councilmember Yukimura: Okay, that makes a lot of sense. and that is a good objective. Your objective is to vertically prosecute ninety-five percent (95%), so not handed off back and forth between different attorneys.

Ms. McNamee: Exactly.

Councilmember Yukimura: Okay, good. "To screen and charge ninety-five percent (95%) of all police reports within thirty (30) days of receipt," so you do not have a stale case and facts?

Ms. McNamee: Yes.

Councilmember Yukimura: Then, the other is to achieve a seventy-five percent (75%) conviction rate. My question is, what has been our record over the last three (3) years on these objectives?

Ms. McNamee: I do not have the statistics.

Ms. Olivas: It kind of fluctuates. I just did the last report for the last six (6) months. We did not get the seventy-five percent (75%) conviction rate, but we did get a, I believe it was a sixty-nine percent (69%) conviction rate, so it was fairly close. It is still a work in progress.

Councilmember Yukimura: As a follow-up, can you provide the past three (3) years in terms of how you reached these indicators?

Ms. Olivas: Sure.

Councilmember Yukimura: I do not think we are going to get upset if you have not achieved your objectives one hundred percent (100%) because I do not think any Department in the County does that all the time, but I think it is important to see. That is it. Thank you very much.

Ms. Olivas: Thank you.

Ms. McNamee: Thank you.

Councilmember Kagawa: Further questions, Members? Seeing none, thank you. We will have staff do a follow-up so you will have all of the questions. Anybody from the public wish to speak on this?

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2017-14 was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Council Chair Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

LEGAL DOCUMENTS:

C 2017-15 Communication (11/16/2016) from the Executive on Aging, recommending Council approval to enter into a Memorandum of Understanding (MOU) and Network Partner Agreement with Kim Gropper, LCSW, who will be involved with the Aging and Disability Resource Center (ADRC).

- Memorandum of Understanding Between the County of Kaua'i Agency on Elderly Affairs and Kim Gropper, LCSW; and
- County of Kaua'i Agency on Elderly Affairs Network Partner Agreement.

Councilmember Kaneshiro moved to approve C 2017-15, seconded by Councilmember Yukimura.

Councilmember Kagawa: Any discussion? Anybody from the public wishing to speak on this?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and provided as follows:

The motion to approve C 2017-15 was then put, and unanimously carried (*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Council Chair Rapozo was noted as silent (not present), but shall be recorded as an affirmative for the motion.*)

Councilmember Kagawa: Motion carried. Next item, please.

C 2017-16 Communication (12/02/2016) from the Housing Director, recommending Council approval of a conveyance by the County of Kaua'i and Rice Hoala Partners, LLP to the Board of Water Supply, County of Kaua'i, for Kaniko'o at Rice Camp, Tax Map Key (TMK) No. (4) 3-6-004:020, Lihu'e, Kaua'i, Hawai'i, for maintenance and repair of potable water pipelines and related meters, valves, and other associated waterworks facility improvements and appurtenances.

- Grant of Easement
- Conveyance of Water Facility

(Council Chair Rapozo was noted as present.)

(Councilmember Kagawa returned Chairmanship duties to Council Chair Rapozo.)

Councilmember Kagawa moved to approve C 2017-16, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2017-16 was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

CLAIMS:

C 2017-17 Communication (11/15/2016) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Wilber & Associates, P.C. for State Farm Insurance on behalf of Robin R. Avina, for damage to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2017-18 Communication (11/21/2016) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Alamo Rent A Car as subrogee of Larry Castillo, for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2017-19 Communication (12/05/2016) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Catherine Heartsong, for damage to her personal property, pursuant to Section 23.06, Charter of the County of Kaua'i.

Councilmember Kagawa moved to refer C 2017-17, C 2017-18, and C 2017-19 to the Office of the County Attorney for disposition and/or report back to the Council, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Public testimony? Seeing none.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion to refer C 2017-17, C 2017-18, and C 2017-19 to the Office of the County Attorney for disposition and/or report back to the Council was then put, and unanimously carried.

Council Chair Rapozo: Next item, please.

COMMITTEE REPORTS:PUBLIC WORKS / PARKS & RECREATION COMMITTEE:

A report (No. CR-PWPR 2017-01) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be Received for the Record:

“PWPR 2017-01 Communication (11/10/2016) from Councilmember Chock, requesting the presence of the Director of Parks & Recreation, to provide an update on the repair/replacement of playground equipment located at the Anahola Village Park,”

A report (No. CR-PWPR 2017-02) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be Received for the Record:

“PWPR 2017-02 Communication (11/28/2016) from Committee Chair Kagawa, requesting the presence of the Acting County Engineer, to discuss the building permit review, issuance, and inspection process,”

A report (No. CR-PWPR 2017-03) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be Received for the Record:

“Bill No. 2628 – A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 18, 20, AND 23 OF THE KAUA‘I COUNTY CODE 1987, AS AMENDED, RELATING TO REVOCABLE PERMITS IN COUNTY DESIGNATED RIGHTS-OF-WAY,”

A report (No. CR-PWPR 2017-04) submitted by the Public Works / Parks & Recreation Committee, recommending that the following be Approved as Amended on second and final reading:

“Bill No. 2635, Draft 1 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 19, KAUA‘I COUNTY CODE 1987, AS AMENDED, RELATING TO THE WAILUA GOLF COURSE,”

Councilmember Kagawa moved for approval of the reports, seconded by Councilmember Kaneshiro.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the reports was then put, and unanimously carried.

ECONOMIC DEVELOPMENT & INTERGOVERNMENTAL RELATIONS COMMITTEE:

A report (No. CR-EDIR 2017-01) submitted by the Economic Development & Intergovernmental Relations Committee, recommending that the following be Received for the Record:

“EDIR 2017-01 Communication (09/26/2016) from the Director of Economic Development, requesting agenda time to provide a presentation on the Tourism Strategic Plan for Fiscal Year 2015-2016,”

Councilmember Kaneshiro moved for approval of the report, seconded by Councilmember Kagawa.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

BUDGET & FINANCE COMMITTEE:

A report (No. CR-BF 2017-01) submitted by the Budget & Finance Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2639 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Kaua'i Fire Department, Training Bureau, Other Small Equipment, Fifty (50) Automated External Defibrillators – \$151,000.00*)

A report (No. CR-BF 2017-02) submitted by the Budget & Finance Committee, recommending that the following be Approved on second and final reading:

“Bill No. 2640 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Kaua'i Fire Department, Fire Operations Public Safety, Sixty (60) Self-Contained Breathing Apparatus (SCBA) – \$390,000.00*),”

Councilmember Yukimura moved for approval of the reports, seconded by Councilmember Chock.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the reports was then put, and unanimously carried.

PUBLIC SAFETY & TRANSPORTATION COMMITTEE:

A report (No. CR-PST 2017-01) submitted by the Public Safety & Transportation Committee, recommending that the following be Received for the Record:

“Bill No. 2573, Draft 2 – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE UNDER CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO DECLARING A PUBLIC NUISANCE,”

Councilmember Yukimura moved for approval of the report, seconded by Councilmember Kaneshiro.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for approval of the report was then put, and unanimously carried.

RESOLUTIONS:

Resolution No. 2016-60 – RESOLUTION AUTHORIZING THE ACQUISITION OF A PUBLIC PEDESTRIAN BEACH ACCESS EASEMENT IN LAND REQUIRED FOR PUBLIC USE, TO WIT: A PUBLIC PEDESTRIAN BEACH ACCESS EASEMENT TO KUKUI‘ULA BAY, KUKUI‘ULA, COUNTY OF KAUAI, HAWAII, AND DETERMINING AND DECLARING THE NECESSITY OF THE ACQUISITION THEREOF BY EMINENT DOMAIN

Council Chair Rapozo: Before we entertain a motion, the Planning Department has requested a deferral until February 22, 2017 to get an official appraisal on the parcel. I obviously support that request. I think it is important for us to get an appraisal before we start going out and passing resolutions of condemnation. With that, were there any questions? Councilmember Chock.

Councilmember Chock: I do have a few questions for the Planning Department and anyone who represents the Public Access, Open Space and Natural Resources Preservation Fund Commission in regards to some of the process and what we have been receiving in testimony.

Council Chair Rapozo: Okay. My intent is actually...and this request came from the public that once we get that information after the February 22, 2017 meeting that they are requesting another public hearing. I do not object to another public hearing. Once we get the information that we need, I think it is premature to go out without knowing what this cost...there has been a lot of talk about “the million dollar, million dollar,” but we do not know what that cost is. I will definitely support the deferral as well as the public hearing at some point. Councilmember Kagawa.

Councilmember Kagawa: Just before they speak, I just want to announce to the public that we received a lot of E-mails from residents against the acquisition. The two (1) reasons they state is that it is too expensive at one million dollars (\$1,000,000) and second, that perhaps the million dollars (\$1,000,000) would be better used to improve access to Allerton’s Beach. Those are the two (2) main reasons why the opposition has stated that it is small beach, not much room for enjoyment for all, not safe, and why do we not use one million dollars (\$1,000,000) to improve the access Allerton’s Beach. I just wanted to share that with the public. Thank you.

Council Chair Rapozo: Thank you. Any other discussion before we suspend the rules? Councilmember Yukimura.

Councilmember Yukimura: I am glad that we are going to have an appraisal done because I think the one million dollars (\$1,000,000) is an assumption and we need to know what the real figure is. I am supportive of a deferral and I do have some questions before we defer.

Council Chair Rapozo: Okay. Any other discussion? If not, I will suspend the rules. Councilmember Chock.

There being no objections, the rules were suspended.

Councilmember Chock: We did get some figures already on one side and so I just wanted to make sure that we are on schedule to receive the estimate from the Planning Department on time.

KA'ĀINA S. HULL, Deputy Planning Director: Deputy Director of Planning Ka'āina Hull, for the record. We did transmit a memorandum to you folks concerning some figures that we already have, say, for the cost of improvements. In particular, there was a recent appraisal that was done just for the value of the easement itself, which came in at a roughly around one hundred fifty-two thousand dollars (\$152,000). Now, because we have briefed you folks before, this is not anticipated to be a friendly acquisition and in fact, it would be a condemnation proceeding. In that, you also have to take into account statutory damages by severance. Given the interest of the Council in looking further how much this could actually cost if we went through with the condemnation proceedings, we have begun the procurement process for an appraiser to do not only the addition to the one hundred fifty-two thousand dollars (\$152,000) that the easement is assessed at, but also the statutory damages that would be due to the property owner.

Council Chair Rapozo: I have a quick question, if you do not mind.

Councilmember Chock: Yes, please.

Council Chair Rapozo: So we are hiring a real estate appraiser to give us a market appraisal?

Mr. Hull: No, that was already completed. Just the regular raw market value was completed.

Council Chair Rapozo: And you are saying that was one hundred somewhat thousand?

Mr. Hull: One hundred fifty-two thousand dollars (\$152,000).

Council Chair Rapozo: How? Okay, I am not going to get into details. Then, we are hiring someone else to do a statutory damage and will it be an attorney?

Mr. Hull: No, it is within a regular appraiser, who can render these services and so we are just going out to bid for that as well.

Council Chair Rapozo: A regular real estate appraiser can tell us the statutory damages? Okay.

Mr. Hull: Well, they will go into what the potential statutory damages will be. I think the other question the Council had was concerning what would attorney's fees be for this, and I believe the County Attorney had transmitted a communication to that effect to your folks, which essentially depends on how far the court case goes.

Council Chair Rapozo: Councilmember Chock, did you want to finish?

Councilmember Chock: Just to follow-up. Do we have any idea of what these typically costs, this statutory? Because we are coming in way under one million dollars (\$1,000,000) and that is why I am trying to get a sense of where we are headed.

Mr. Hull: The rough ballpark figure that a Deputy County Attorney did two (2) or three (3) years ago, he anticipated the statutory damages being around three hundred thousand dollars (\$300,000), but no professional appraiser was actually ever contracted to render those services. That is the closest we have come to it and that does not, again, include the attorney's fees. I do not know if I should defer to Mauna Kea on this, but the attorney's fees depend on how far this case could go. If it is resolved here immediately, the attorney's fees could be relatively small, but as the appeals go up and it goes through the court system and could end up all the way up to the Supreme Court system, those attorney's fees grow and grow and grow. It just depends on how long the process takes.

Councilmember Chock: I have some other questions, but I know there are other follow-ups.

Council Chair Rapozo: Are there any other follow-ups?
Councilmember Kagawa.

Councilmember Kagawa: So you are talking about the statutory damages, is that include rebuilding the wall if and when we move it? Is that part of the three hundred thousand dollars (\$300,000)? There is an existing wall that is going to be used, right? We are going to acquire it; the wall is already built, right?

Mr. Hull: There is a wall built adjacent to the roadway, however, there is a gate essentially in front of that easement.

Councilmember Kagawa: So it may not include having to rebuild.

Mr. Hull: It may not necessitate demolishing the wall and rebuilding the wall.

Councilmember Kagawa: Okay.

Council Chair Rapozo: Please.

Councilmember Yukimura: If the Deputy County Attorney anticipated statutory or severance damages, then why did we not ask for that to be done in the appraisal that we first got?

Mr. Hull: We were just looking at the raw market value, quite frankly.

Councilmember Yukimura: Yes, but it would be much cheaper if we had asked for the entire packet in one (1) sweep, just ask for the appraisal, because we knew that was going to be an issue. Maybe in the future we can. If we get a new appraiser and they have to brief themselves on the background and everything when this first appraiser could have done it, I think we would have saved a lot of money. Can you explain to the public, what is severance damage is?

Mr. Hull: I would defer to the County Attorney on that question.

Council Chair Rapozo: We will have Mauna Kea come up afterwards. I just wanted to get Planning Department in and out, but that is...we have tossed around that term and I do not know if everybody understands what that is. Any other follow-ups on that? Councilmember Chock.

Councilmember Chock: I have a different question for the Planning Department.

Council Chair Rapozo: Go ahead.

Councilmember Chock: Because of the volume of testimony that we are receiving in opposition and a petition that we received, I am inclined to question some of the process that the Public Access, Open Space and Natural Resources Preservation Fund Commission has gone through in reaching out to the community. I know this has been something on the books for many, many years and initially when I get this I am like, "Yes, move on it," because these people have been waiting a long time for it. Now that it is moving forward, I am curious to know what it is in terms of outreach we have done to ensure everyone is onboard with and the reasons why the Commission is moving on this. Can you speak to what happens in terms of engagement with the community?

Mr. Hull: This goes so far back that there was a discussion during the Kukui'ula subdivision process with the community association and this was almost two (2) decades ago. This was identified as a spot desired for a public access and essentially moneys were in fact set aside from the Kukui'ula subdivision for acquisition of this easement, but there was a timeline on the expenditures of those funds. Ultimately, those funds were not expended. We are not expended to meet within that specific timeline, the funds were moved over to the Department of Parks & Recreation to use for parks in that area, and were eventually used, I believe, for Po'ipū Beach Park improvements. So there was ultimately twenty (20) years ago, a strong desire from the community, at least it appeared to have an acquisition of this cite. As it is moved over to the Public Access, Open Space and Natural Resources Preservation Fund Commission process, we have gone out to various public venues such as farm fairs and craft fairs to outreach to various community associations and then public hearings are held once a month and this has been on the docket for several years. As I understand it, there has been time for public testimony at least at the Public Access, Open Space and Natural Resources Preservation Fund Commission public hearings, there was public testimony to the effect in strong support of the acquisition. Now, as it often happens with commission level reviews, a lot of times a lot of the public does not come out until it gets to the Council level, quite frankly, right? That is just the course of how things happens often

just given that there are more attention paid up to this body in particular and the final decisions are made. To that, I would say there are some explanation of why you might be seeing some people come out that we have not heard of previously.

Councilmember Kagawa: I just want to make sure the full picture is painted correctly. Tessie did a petition and she had three hundred (300) signatures and for me, I think I recognized about ninety-five percent (95%) of those people on that petition. With the second wave that came in recently, I think we probably received about forty (40) E-mails and I recognized maybe one (1) or two (2) and I am from the west side, but that is the true picture, not to say that the arguments are not valid as well. They are just saying that the cost is too high and there could be a better benefit to Allerton's Beach. I just wanted to make sure that it is not all against because Tessie's petition is far more significant with local residents.

Mr. Hull: I would not want to speak on behalf of the Public Access, Open Space and Natural Resources Preservation Fund Commission itself. We did notify the Chair and the Members of the Commission that we did have intended to request a deferral to get this additional appraisal figure and that is probably why the Chair or representative is not here. I also do not want to speak specifically on behalf of the Public Access, Open Space and Natural Resources Preservation Fund Commission.

Councilmember Yukimura: I want to come back to Councilmember Chock's question about the process before the Commission. It appears that this issue has been before the Commission as a top priority for ten (10) years and so the question is, if there are all of these considerations of cost and so forth, were they given that information? Were they given the severance cost, which we know they were not? Were they given monk seal information if that place is in fact a monk seal habitat or resting place? That has been raised by those who oppose this resolution, but I do not know factually whether that is the case. I am not even sure how monk seals can get there and that is only based on what I saw when I walked that area. Does someone prepare a factual dossier or something that lays out everything so both the community and Commission and the Planning Department can really see all of the facts? I mean it should not be done at this level.

Mr. Hull: There was a dossier package that was submitted to the Council several times with this acquisition in it. As far as covering and weighing the pros and cons, indeed, the Department has gone through that process with the Commission. I would also say to a certain degree up until recently it was a little nebulous as far as who takes the lead on recommending acquisitions to the Council. Whether or not it was the Public Access, Open Space and Natural Resources Preservation Fund Commission or whether or not it was the Planning Department, the actual ordinance is not very clear. Over the past few years, we begin to understand that there is somewhat of this unknown as far as who is to take the lead. In the past year and an half, the Department has gone through the process of working with the Public Access, Open Space and Natural Resources Preservation Fund Commission to establish administrative rules in which indeed it is set up that the Public Access, Open Space and Natural Resources Preservation Fund Commission is the lead on recommending acquisition to the County Council and the Planning Department serves as an advisory capacity only to the Public Access, Open Space and Natural Resources Preservation Fund Commission. So we have changed those rules, we have put on different deadlines and timelines for the Department to get specific reports analyzing the pros and cons and they be recorded on the record. We have gone through that process in the past year and a half, but before it was a

little nebulous. Concerning the property itself and that is where our previous Deputy County Attorney gave his estimate on say when you are talking about severance and that is what the Public Access, Open Space and Natural Resources Preservation Fund Commission received. The Public Access, Open Space and Natural Resources Preservation Fund Commission has been kind of sending it and resending it back up to Council and to a certain degree in at least two (2) situations, the Council just ultimately received the recommendation and nothing was moved forward on it. In looking at the previous actions of the Public Access, Open Space and Natural Resources Preservation Fund Commission, in fact they are still saying, "We still want the Council to take a look at this and consider it for acquisition," because I think when it first was proposed, it looked like the acquisition could have been done around two hundred thousand dollars (\$200,000) to two hundred twenty thousand dollars (\$220,000) at the time and it was a friendly acquisition. At that time, the property owner was willing to sell that easement to the County.

Councilmember Yukimura: Wow, we missed.

Mr. Hull: But at the time, there was not any desire of the Council to move forward on that type of acquisition.

Council Chair Rapozo: I do not mean to interrupt, but when was that? I do not recall that.

Mr. Hull: No, that was back when the Kukui'ula moneys were set aside.

Councilmember Yukimura: I do not recall that either.

Council Chair Rapozo: I was here. Councilmember Yukimura was here. The Council said, "No."

Mr. Hull: I know that it was transmitted up to Council. I do not know if an official vote was ever taken.

Council Chair Rapozo: I just want to clarify for the record because you are making the Council look like idiots right now by saying, "We had an opportunity at two hundred thousand dollars (\$200,000), but you folks said not," and I do not know if that happened. I do not recall and if it did happen, I will call myself an idiot.

Mr. Hull: I am not saying that the Council voted "no" on it, but I am just saying that it was transmitted to Council.

Council Chair Rapozo: You said that the Council decided not to take action, but I am not sure if we had that option. We will follow-up on that, but I want to make sure because that is kind of harsh. I do not recall it at all. I do not recall having the opportunity to say, "Yes, we can purchase that for two hundred thousand dollars (\$200,000)," I do not and maybe Councilmember Yukimura does, but I do not.

Councilmember Yukimura: There always have been open space recommendations, but they have never taken a level of a resolution. Has a resolution on this property been sent to us before? I do not believe so and that is an action item. That is when it says, "We are ready." The Planning Department or the Public Access, Open Space and Natural Resources Preservation Fund Commission, whoever, and I

agree there were some unclarity about it, but we have always received the report from the Public Access, Open Space and Natural Resources Preservation Fund Commission, but that has never been at an actionable level and we have always waited for the next step doing all the homework because there has always been a list. It has never been, "This is ready to go, let us go," and I hope we get Waipa soon. Thank you for the explanation about, "it is now clear that it is the Public Access, Open Space and Natural Resources Preservation Fund Commission's *kuleana* to bring forward the action items to the Council and they have done that with this resolution. You say that the Planning Department is advisory, but is the Planning Department advisory or is Planning staff?

Mr. Hull: It is clear in the ordinance that the Planning Department will staff the Public Access, Open Space and Natural Resources Preservation Fund Commission. What is not clear in ordinance is who takes the lead and kind of the comparison you can make in the various commissions in the Planning Department, say with the Planning Commission, the Planning Commission on use permits on zoning amendments takes the lead. They will approve the Use Permit on the zoning amendments and they will transmit something to Council, whereas the Planning Department just advises the Planning Commission on the role or on taking action on the various issues. We just advise and they have the final say. On the flip of it is on the Kaua'i Historic Preservation Review Commission. The Kaua'i Historic Preservation Review Commission will actually be advisory to the Planning Department in its approval of the over the counter permits. So, you have those two (2) pillars in which the Public Access, Open Space and Natural Resources Preservation Fund Commission is kind of just there and there was no clear distinction on who is advisory and who takes the lead. We have since adjusted the process whereby the Planning Department is advisory to the Public Access, Open Space and Natural Resources Preservation Fund Commission and the Public Access, Open Space and Natural Resources Preservation Fund Commission's action is that final recommendation that gets transmitted to this body.

Councilmember Yukimura: My question is about advisory versus staff. Those are two (2) different positions and two (2) different roles. If you are staff to the Public Access, Open Space and Natural Resources Preservation Fund Commission, the Commission can say, "We want an appraisal and we want the entire thing. We want not just the cost of the land, but the severance part and the statutory damages. We also want you to find out about monk seals and we want a full report." Is that your understanding of their role versus your role?

Mr. Hull: Yes.

Councilmember Yukimura: They can tell you and I think everybody is adjusting to this clarification so I can understand where everybody is learning their roles now. So they are able to make requests of you in terms of what they need as far as staff work?

Mr. Hull: Yes.

Councilmember Yukimura: Okay, thank you for the clarification.

Council Chair Rapozo: Are there any other questions?
Councilmember Kaneshiro.

Councilmember Kaneshiro: I asked this before and I do not know if it is the Planning Department or the Public Access, Open Space and Natural Resources Preservation Fund Commission that you would look into it, but when I think about this I think about what the end result is. Are we going to need to do further improvements to the walkway? Are we going to need to put up a fence as a boarder? What is our total cost and what is our maintenance obligations going further in the future? If you can direct that to the right spot, so we can get a better picture.

Mr. Hull: I can say that whether or not the fencing or wall is going to be necessary to keep individuals off of the private property, that may come out of the settlement proceedings with the property owner. As far as actual improvements, there are existing improvements...or I should not say...there are existing beach accesses that do not have the physical sidewalk going to the beach. Therefore, it is not necessary should this body decide to move forward, it would be up to this body on whether or not it would be inclusive of a sidewalk or a paved path to the beach or not, but there are several beach accesses that exist today on the island that do not have actual pavement, so to speak.

Councilmember Kaneshiro: So the expectation right now is to just acquire it and leave it as-is and people just access it...

Mr. Hull: That is my understanding, but at the same time I do not want to speak fully on behalf of the Public Access, Open Space and Natural Resources Preservation Fund Commission.

Councilmember Kaneshiro: Okay, thank you.

Councilmember Yukimura: As a follow-up to Councilmember Kaneshiro's question, to me when we are acquiring anything, we have to have a whole plan for how this is going to work. One of my questions is six foot (6 ft.), I think we might need more than six feet (6 ft.) wide if we are going to put in improvements or if there is going to be a wall or if we are going to build a wall. Therefore, there needs to be a complete plan. Parking, if there is going to be parking. Is it going to be an access just for fishermen, which is what we did at Crater Hill? Is it going to be for every tourist that comes by? Are there going to be steps down? Are we going to have to build a platform over the pipe? In order to have a workable plan and to know how much land we are going to ask for or condemn, we are going to have this overall plan. Who works on that plan?

Mr. Hull: Ultimately, the recommendation is just for acquisition for a beach access.

Councilmember Yukimura: But even if it only for acquisition, you have to have a plan to know how much land you need to acquire.

Mr. Hull: It is a six foot (6 ft.) wide easement that the proposal from Public Access, Open Space and Natural Resources Preservation Fund Commission is saying, a six foot (6 ft.) wide easement over the existing drain easement. A similar case would be about half a mile down the road on Lāwa'i Beach Road, there is another beach access in which it is plainly just an access. There is no pavement, there is no dedicated parking, it is just a straight line to the beach.

Councilmember Yukimura: But is that working well? Is that our best practice for access? When we are creating an access now, is that what we want? If

the Planning Department is the advising body, what are you advising the Public Access, Open Space and Natural Resources Preservation Fund Commission? If you disagree, then do you stop advising them and just say, "You folks go and do it?"

Mr. Hull: The process is working out. It is a new process.

Councilmember Yukimura: Yes, it is. I agree with that. The Planning Department needs to think about these things though because even assuming that the Planning Department wants the access, say there is a developer before you and we have had people say, "Oh, just a path down is fine," but remember the one to Kauapea Beach, it went over a cliff because nobody went to inspect it and they just drew lines on a map. Afterwards, we had to go back and redo the entire thing. I think the Planning Department has to have an approach to access assuming that sometimes you folks are going to be the primary mover on it when you put conditions and permits. Thank you.

Council Chair Rapozo: Are there any other questions for the Planning Department or the Public Access, Open Space and Natural Resources Preservation Fund Commission? If not, thank you.

Mr. Hull: Thank you.

Council Chair Rapozo: Is there any public testimony?

Ms. Fountain-Tanigawa: Chair, we have three (3) registered speakers. The first registered speaker is Anne Punohu.

ANNE PUNOHU: *Aloha* Council. To the new Members, I am the furniture that comes along with the room, so welcome, to the new Council. I hear there is some opposition now. Anne Punohu. I hear there is some opposition now and I think I know exactly where it is coming from. It is coming from a change of national regime. It is coming from a change of large landowners who have a lot of money who now say they are ready to support other larger landowners who want to prevent us from our rights now to access what we have on this island left. I question the individuals who have step forward with their great opposition now is not in the general public's best interest, but in their own best interest. The confusion now that is swirling around the Council table today about who is going to take the lead and who does this or that, and "Oh, this is too much money and do we need all these bells and whistles." This is not what is before you today. This was a group of individuals of community members who are born and raised here on Kaua'i, are from here from the west side, and they have been accessing this place forever. A large, wealthy landowner come in and decide to hold the County hostage and is probably willing to take it to the Supreme Court so that they can set a precedence and make sure that in the future that this Council and the people will be very careful to never try to do this again and absolutely not bow to any condemnation process because that is an obliteration of their God given rights to this Country to property ownership blah, blah, blah. I expect this Council and the Planning Department to uphold its obligation to the people to provide safe access, yes, but logical access. This is an access for fishermen, this is an access for the people that know the area, and this is well protected by the people that are there who access it everyday. The rule of law should go to the people of this community on the west side and not to this selfish, greedy homeowner who wants to set a precedence possibly up to the Supreme Court to make sure that all of his other rich newcomer millionaire, wealthy homeowner friends can

now prevent any normal resident Kaua'i people from accessing their right to access the public right-of-way of our beaches. *Mahalo*.

Ms. Fountain-Tanigawa: Chair, the next speaker is Tessie Kinnaman, followed by Jean Souza.

TESSIE KINNAMAN: *Aloha*, Council Chair and new Members. Tessie Kinnaman, for the record. Where do I start? When I was younger, patience was such a virtue. I was born during the Territory and it was good times. Now, it is like, "Oh my gosh," and my patience is no longer. Let us cut out the middleman, let us cut out the Planning Department, and go straight to the County Attorney whereas this Resolution says in number 2, "The County Attorney of the County of Kaua'i is hereby authorized and empowered to institute proceedings in eminent domain as provided by law for the acquisition," of this parcel, "for a public pedestrian beach access easement." You have the authority to empower the County Attorney to follow through with this. When he does have that authority, he can go and get the property appraised, he could do all the statutory things, we do not need the middleman because they are just blowing bubbles. I find it offensive that they call our group, the previous Public Access, Open Space and Natural Resources Preservation Fund Commission Commissioners, a nebulous bunch. I do not know if they meant our decision or the group, but I find that very offensive. As far as the amount, I have a 2006 memorandum from John Herring, the real property administrator back then and he did a ATF (at the fence) appraisal, the methodology. The appraisal was for a bigger parcel than three hundred forty-three (343) square feet that is on the Resolution. This is for one thousand five hundred seventeen (1,517) square feet, I do not know where that number came from, but the minimum value of that was ninety-one thousand twenty dollars (\$91,020). Fast forward to the Planning Department's June 2015 appraisal on that Hoban property, assessment of one hundred ten thousand (110,000), second bullet point, landowner not willing to sell. Third bullet point, believes value at six hundred thousand dollars (\$600,000), estimated legal fees at three hundred fifty thousand dollars (\$350,000), and that is where the million dollars (\$1,000,000) figure came from. The Department is supposed to be working with the County Attorney on issues related to acquisition including title matters, landowner negotiations, et cetera. From this 2015 report, almost a year and a half to take care of that appraisal. Do not tell me that they could not get the same appraiser to do this last appraisal that was done. Can I come back for another three (3) minutes?

Council Chair Rapozo: You can come back after everyone is done.

Ms. Fountain-Tanigawa: Jean Souza.

JEAN SOUZA: Good morning. Jean Souza, former commission member, former Vice Chair, and Chair of the County's Public Access, Open Space, and Natural Resources Preservation Fund Commission. I have a few things to say. First is that the Commission has held many meetings, dozens, each year. The County Attorney and the Planning Department are present at all of the Commission meetings. I questioned why an updated appraisal was not done sooner knowing that this Resolution was coming before the Council. My observation is that a delay like this is not unusual, it is, in fact, symptomatic of the need for improved efficiencies and support of the Commission. For those that are new, I just want to summarize a little bit that Kaua'i voters in 2002 approved an amendment to the County Charter to establish the Public Access, Open Space and Natural Resources Preservation Commission Fund and stipulated that each year a minimum of one half of one percent (0.5%) of the County's certified real property taxes would be deposited

to the fund and then the County adopted a number of ordinances to support that. There are about nine (9) different types of purposes that the lands could be acquired and two (2) of those are: access to beaches and improving access to public land and open space. As part of the process in which the Commission comes up with the list of recommended actions or acquisitions to the County Council and the Administration, the Commission is required to conduct a number of public input sessions. The public has the opportunity to attend all of the Commission meetings. During the public comment period there are surveys either online or paper form. There is a public suggestion form that are usually used in these sessions. Is that time already?

Council Chair Rapozo: You have thirty (30) seconds.

Ms. Souza: Okay. There have been mapping workshops, field trips that the public can go on, and then there are regional public meetings. Here is the process, generally. Public input, the Commission does an assessment, they have a number of things that they look at in doing the assessment, and it might go through this process a couple of times before they actually come up with a list of recommendations.

Council Chair Rapozo: I will have to stop you there. Anyone else wishing to testify that has not spoken or signed up to speak? Okay, you can come back Jean.

Ms. Souza: Okay.

JAN TENBRUGGENCATE: Thank you, Council Chairman. I would just like to echo the sentiments of Anne, Jean, and Tessie. My name is Jan TenBruggencate. You do not, in our State, as result in having the resources to acquire beachfront land also get free access and exclusive access to the beach. It is critical that we acquire these accesses and I support the Council in moving in that direction. Thank you.

Council Chair Rapozo: Thank you. Anyone else wishing to speak for the first time? If not, who was the first speaker? Anne, did you want to speak again?

Ms. Punohu: No, thank you.

Council Chair Rapozo: Tessie.

Ms. Kinnaman: Thank you. Tessie Kinnaman, again. I was going to present the petition today. So far we have five hundred fifty (550)...I would love to say thousand, but we have five hundred fifty (550) signatures. If we delay this to February, I am sure we are going to get way more. The opposition for, how many was that, forty (40)...they do not know the history of this place. I used it when I was little, so can any of them say how many of them used it when they were little, over sixty (60) years ago. According to the Bureau of Conveyances, the footpath in this Resolution clearly describes an easement that is six foot (6 ft.) wide.

Councilmember Yukimura: Did you just say, "Is," or "Is not." What did you just say about the six feet (6 ft.)?

Ms. Kinnaman: There is a description of the footpath easement.

Councilmember Yukimura: Okay. Thank you.

Ms. Kinnaman: Which is a drainage easement. As for improvements on that easement, there should not be improvements, just take down all of the plants they installed, knock that wall down, and that wooden fence they have there was when we had flooding over in that area because it is the lowest point on that road. When they forgot to open that wooden gate, you could see the flood line was half way up the gate because that is where the flood line was. You should see the other beach accesses footpath along Lāwaʻi Beach Road. There is one right across from Julie Souza's house and it ends up on rocks and most of the throw netters use that path. There is another one at Baby Beach where the Waterhouse Estate is and their wall is as high as this and the sand is a foot below that, so there are no real solid walls there. In this case, the wall on the west side, the tall wall running towards the beach, is not Hoban's. It is the other property, the last property owner's wall. Hoban does not have a wall. The only wall is along Lāwaʻi Beach Road and there is parking on that road, in fact, on the public right-of-way. These landowners have planted a lot of vegetation, so you cannot park on the public right-of-way. There is a lot parking at the Spouting Horn and when Kukuiʻula moves on with their development, they will put parking on the *mauka* side, as they have on Lāwaʻi Beach Road.

Council Chair Rapozo: Okay, Tessie. Thank you.

Ms. Kinnaman: Thank you.

Ms. Souza: Jean Souza. I want to call your attention to a chart that I did. This shows all of the annual reports on the first column. The second column shows the dates for the reports, which indicates also that the Commission came before the County Council to discuss the recommendations in the reports. Remember when I said there were public meetings. Here are all of the regional public meetings that were held in these various locations in association with the recommendations that were in each of these annual reports. The yellow column indicates the status on the Hoban recommendation in each of the annual reports. For example, the first one for the 2005 annual report, 1/10 means that Kukuiʻula Bay/Hoban was one (1) of ten (10) recommended sites for acquisition. So you can see that there has been public input through a systematic public input process that the Commission has had from before 2005 all the way to today. To get to Councilmember Kagawa's input that he has gotten from other community members, this is not an either or. This is a project that has been the first one to come this far to the County Council. There is substantial amount of money now in the fund and so there are opportunities for anybody to suggest any project, it does not have to be public access, it can be parks or other things, that they want to see acquired. They have the same opportunities as the people who we are advocating Hoban to go through. It is unfortunate, I think, that they are using this process now after all of these years to pretty much hijack this idea. I am open to questions as well. Thank you.

Council Chair Rapozo: Thank you. I am sorry, Jean, hold on.
Councilmember Yukimura.

Councilmember Yukimura: Thank you for putting this together. I just wondered in your 2007-2008 one of six (1/6) – I forget what...this was not of the first list? When it says, "Secondary."

Ms. Souza: Right, it was not in the first list.

Councilmember Yukimura: Okay.

Ms. Souza: In the early years, just to give some background, there was some confusion or a need for clarification, so the annual reports chose to emphasize different things. One year, there were a lot of concern about different access problems and blocked accesses, another time there were many complaints about promises made or arrangements that were supposed to be made as part of some other deal to have an access provide. So sometimes we chose to address that. For 2007-2008, it was not in the primary list, but it was in the secondary list.

Councilmember Yukimura: Okay, thank you.

Council Chair Rapozo: Thank you, Jean. Anyone else wishing to testify? Please.

CHAD DEAL: Good morning, Council Chair and Councilmembers. My name is Chad Deal. I would just encourage our Council to support any acquisition of beach access for the community of Kaua'i and I thank you very much for the opportunity to testify.

Council Chair Rapozo: Okay. Anyone else? If not, I will call our meeting back to order and at this time we will take our caption break. It is 10:30 a.m. and then we will come back for the final discussion.

There being no further testimony, the meeting was called back to order, and recessed at 10:27 a.m.

The meeting was called back to order at 10:44 a.m., and proceeded as follows:

(Councilmember Kagawa was noted as not present.)

Council Chair Rapozo: I will call the meeting back to order. Mauna Kea, I forgot to bring you up to talk about the severance cost, so with that, I will suspend the rules.

There being no objections, the rules were suspended.

Mr. Trask: Aloha, for the record Mauna Kea Trask, County Attorney.

Council Chair Rapozo: Councilmember Yukimura, would you like to pose your question?

Councilmember Yukimura: Yes, I would like to ask for your help, Mauna Kea, in explaining to the Council and to the public the issue of severance costs and any other costs, which may contribute to this one million dollar (\$1,000,000) suggestion.

Mr. Trask: Thank you. Just a brief context. Both in the United States Federal Constitution and the Hawai'i State Constitution, no property shall be taken unless for a public purpose with just compensation. Condemnation proceeding is two (2) issues. Is it a public purpose, which this would be, it is beach access, no problem. The second is just compensation and that is what we are talking about. It is not just the value of the land and the relevant chapter is Hawai'i Revised

Statutes (HRS) 101-23, entitled Damages assessed, how. According to the law, "in fixing the compensation or damages to be paid for the condemnation of any property, the value of the property sought to be condemned with all improvements thereon shall be assessed," so that would include a home, a pool, a wall, as mentioned by Councilmember Kagawa. "If the property sought to be condemned constitutes only a portion of a larger tract," because you can condemn any interest in property, fee simple or less, so this would be just an access easement, so it would be less. "...the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff shall also be assessed," so that would be the wall again, et cetera. So that is severance damages. When you take a part of or you sever the larger property to be taken. That is not the only damage though. There is also other statutory damages you could argue about, but I am not going to go into all of them. There is also blight of summons damages, so if you proceed with the condemnation, you have to go in. You are playing to win, that is it. Blight of summons is when you go to file a condemnation proceeding and you serve the summons upon the landowner. The law provides that...you start ticking away a percentage of the damages from the date served to and until the court gets the order conveying the property because no one is going to buy a parcel with the pending condemnation proceeding on it. The cha ching, ching, ching—it just goes, you pay more money. Ultimately, you will take it, it is just a matter of cost, but in order to keep it down, strategically what you do is you do a quick take or an order of possession of condemnation, which is pursuant to HRS 101-29. This is why so important to have a full appraisal of the property to file or you serve, is you get the estimated amount of compensation including damages and you deposit with the Court Clerk. That is like escrow, you put the money in the bank. The landowner is entitled to take that money anytime and the government agency, in this case, the County who has taken the property can immediately take possession and use that property pending litigation. That mitigates the amount of blight of summons damage calculated at the end. This will just be the battle of the experts. The landowner will have their experts saying it is however much. The County will have their experts saying however much. It is always an issue of expert testimony and that issue always goes to the jury. So we need one hundred percent (100%) fair just compensation values so we can mitigate. I understand that we probably have enough money to take it ultimately, there is a couple million in the Public Access, Open Space and Natural Resources Preservation Fund Commission account, but as far as the best use of the money and for litigation strategy purposes, you should know what it costs like Council Chair said, before you proceed. The gentleman to my right, Mr. Max Graham, knows this as well.

Councilmember Yukimura: Thank you, Mauna Kea. So the real arguments are about the value or the cost of the land and any related damages to the property over which the easement will go?

Mr. Trask: Correct.

Councilmember Yukimura: And that could be a very complicated long process with expert witnesses, et cetera, before a jury?

Mr. Trask: Correct.

Councilmember Yukimura: But we can take possession as soon as the Resolution passes or as soon as we enter the money?

Mr. Trask: Yes, once you file and serve. I do not want to give everything away, but we do everything very quickly.

Councilmember Yukimura: Yes, I am trusting you not to say anything that is...

Mr. Trask: Yes, so you do not want to do it all at once and to minimize it as much as you can.

Councilmember Yukimura: Okay, but it take really careful planning.

Mr. Trask: Very careful planning, correct.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Just one (1) follow-up. If the County takes possession and basically takes that parcel away from the landowner, then we are on the hook for some...

Mr. Trask: All liability, you are the landowner now, correct.

Council Chair Rapozo: But if we do not, if we initiate the condemnation proceedings, but we do not take possession and we allow the landowner to continue to use that parcel as he is using that parcel, there is no damage, correct?

Mr. Trask: Well you get blight of summons, so if you file and serve.

Council Chair Rapozo: Right.

Mr. Trask: That is the starting point to a blight of summons, because he cannot sell it or if it puts it on the market, no one is going to buy it, and when you get property one of your bundle of sticks you get is the right to alienate it now.

Council Chair Rapozo: Right, but he is not being denied any use of the property.

Mr. Trask: No.

Council Chair Rapozo: Let us say he cannot sell that parcel because that is being condemned, yes, we are liable for the difference, if in fact he does try to sell that property, right?

Mr. Trask: It is a statutory calculation. It is complex to -it is what it is essentially.

Council Chair Rapozo: Okay. Councilmember Yukimura.

Councilmember Yukimura: Once the issue is settled, the amount of damages and cost is determined and we pay it off that is when this blight of summon...we are not liable for any problems with sale after that.

Mr. Trask: I am sorry.

Councilmember Yukimura: Once we complete the condemnation there is...

Mr. Trask: Yes, once the jury gives the award and you pay, including all damages, then it becomes our property, but we would encourage a "quick take" because that lowers the damages.

Councilmember Yukimura: Thank you.

Council Chair Rapozo: Where did the one million dollars (\$1,000,000) come from? The opposition E-mails that I have been getting is really specific, targeted to the one million dollar cost. Everybody is upset that we are going to spend one million dollars (\$1,000,000) on a little access way. Where did the one million dollar number come from?

Mr. Trask: I do not know. I really do not know.

Council Chair Rapozo: Because I do not see how it will reach one million dollars (\$1,000,000).

Mr. Trask: Yes.

Council Chair Rapozo: Thank you. Are there any other questions for Mauna Kea? If not, thank you. Further discussion?

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

Council Chair Rapozo: We already have the appraisal. The real estate appraisal is probably—I do not know how old it is and we are going to wait for an appraisal to determine damages. It seems awkward that it would be a real estate appraiser doing that number than an attorney doing that number based on what I just heard from Mauna Kea. Based on what little I read with this blight of summons issue, it just seems to me that that estimate should be provided by an attorney and not a real estate appraiser. It just sounds weird to me. Councilmember Yukimura.

Councilmember Yukimura: I think maybe what we want is an expert in this area because that is the person who will defend our numbers in court. I agree with you that it is not just somebody off the street, but it is somebody who has to have real expertise in this area and I think it is a particular kind of appraiser that has that kind of expertise and I hope that our Planning Department will act accordingly.

Council Chair Rapozo: Someone who has done this before, someone who has gone through the process of trial, and someone who can tell us that, "Yes, I am pretty accurate and this is what I have done in court." Not just John Doe, the appraiser, down the street that is going to estimate and then we get our butts kick. What I would really like to see Mauna Kea and Max is that the two (2) of you get together before February 22, 2017 and try to come up to some kind of solution, so we do not have to go to court. I think it is inevitable and I am sure these two (2) might disagree, but I believe if we went through the proceeding based on that definition of use, based on the cost and the process that was used with the Public Access, Open Space and Natural Resources Preservation Fund Commission, the County would prevail, in my opinion. Now the cost is the other thing. How much would that cost

be? Maybe Max might disagree, but at the end of the day, we would probably be successful, it is just that the cost...and if that is a potential outcome in court, then why would we not want to reduce both sides, try to reduce the cost, and come to some kind of agreement of what the property is worth and what the County should pay. That is what I am hoping before February 22, 2017, maybe even before Christmas. That would be a great Christmas present to the County and to the people. Councilmember Yukimura.

Councilmember Yukimura: I concur. I would love to see much more communication between the County and the landowner. I would like to know what the landowner's concerns are because they may be real concerns and they may be concerns that are more in the mind, but we could address. We also need a really clear plan of what kind of access we are going to create over there. I think all of this needs communication and so I think it would be much cheaper for both sides if we could do that kind of communication before we get into court.

Council Chair Rapozo: With that, I will need a motion to defer to February 22, 2017.

Councilmember Chock moved to defer Resolution No. 2016-60 to February 22, 2017, seconded by Councilmember Yukimura, and carried by the following vote:

FOR MOTION:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*,
AGAINST MOTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).

Ms. Fountain-Tanigawa: Seven (7) ayes.

Resolution No. 2017-04 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE POLICE COMMISSION (Roy M. Morita): Councilmember Chock moved for adoption of Resolution No. 2017-04, seconded by Councilmember Yukimura.

Council Chair Rapozo: Is there any discussion? Is there any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for adoption of Resolution No. 2017-04 was then put, and carried by the following vote:

FOR APPROVAL:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*,
AGAINST APPROVAL:	None	TOTAL – 0,

EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauaʻi, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Ms. Fountain-Tanigawa: Seven (7) ayes.

Resolution No. 2017-05 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF ETHICS (*Mia R. Shiraishi*): Councilmember Chock moved for adoption of Resolution No. 2017-05, seconded by Councilmember Yukimura.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for adoption of Resolution No. 2017-05 was then put, and carried by the following vote:

FOR APPROVAL:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kauaʻi, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).*

Ms. Fountain-Tanigawa: Seven (7) ayes.

Resolution No. 2017-06 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BOARD OF WATER SUPPLY (*Thomas J. Canute*): Councilmember Chock moved for adoption of Resolution No. 2017-06, seconded by Councilmember Yukimura.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for adoption of Resolution No. 2017-06 was then put, and carried by the following vote:

FOR APPROVAL:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,

RECUSED & NOT VOTING: None TOTAL – 0.

(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).

Ms. Fountain-Tanigawa: Seven (7) ayes.

Resolution No. 2017-07 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE PLANNING COMMISSION (Donna Apisa – Business): Councilmember Chock moved for adoption of Resolution No. 2017-07, seconded by Councilmember Yukimura.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

The motion for adoption of Resolution No. 2017-07 was then put, and carried by the following vote:

FOR APPROVAL:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).

Ms. Fountain-Tanigawa: Seven (7) ayes.

Resolution No. 2017-08 – RESOLUTION APPROVING A NOMINATION TO FILL AN UNEXPIRED TERM ON THE NATIONAL ASSOCIATION OF COUNTIES BOARD OF DIRECTORS FOR FISCAL YEAR 2017: Councilmember Yukimura moved for adoption of Resolution No. 2017-08, seconded by Councilmember Brun.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: This is to nominate Councilmember Kaneshiro to fill the unexpired term of a NACo Board of Director from former Councilmember Kualii.

The motion for adoption of Resolution No. 2017-08 was then put, and carried by the following vote:

FOR APPROVAL:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*,
AGAINST APPROVAL:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,

RECUSED & NOT VOTING: None TOTAL – 0.

(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).

Ms. Fountain-Tanigawa: Seven (7) ayes.

BILLS FOR FIRST READING:

Proposed Draft Bill (No. 2641) – A BILL FOR AN ORDINANCE AUTHORIZING THE EXECUTION OF A LONG-TERM LEASE AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, AIRPORTS DIVISION: Councilmember Yukimura moved for passage of Proposed Draft Bill (No. 2641) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for January 12, 2017, and referred to the Budget & Finance Committee, seconded by Councilmember Kaneshiro.

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I have questions.

Council Chair Rapozo: We did refer the other item to the Committee, the communication that accompanied this.

Councilmember Yukimura: Yes. Okay. I will wait until Committee to ask my questions.

Council Chair Rapozo: Okay. Thank you. If you have any questions, send them over ahead of time so that they are prepared. I had a chance to speak with the Chief on the break and it clarified a lot for me. Anyway, we will have that discussion in the committee. Any further discussion? Seeing none, roll call.

The motion for passage of Proposed Draft Bill (No. 2641) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for January 12, 2017, and referred to the Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).

Ms. Fountain-Tanigawa: Seven (7) ayes.

Proposed Draft Bill (No. 2642) – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Transportation Agency – Six (6) New On-Call Driver Positions*): Councilmember Yukimura moved for passage of Proposed Draft Bill (No. 2642) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for January 12, 2017, and referred to the Budget & Finance Committee, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion?

Councilmember Yukimura: Could we suspend the rules and have Ms. Mahikoa come forward?

Council Chair Rapozo: Sure. Celia, could you please come up?

There being no objections, the rules were suspended.

CELIA M. MAHIKOA, Executive on Transportation: Good morning. My name is Celia Mahikoa, Executive on Transportation with the Transportation Agency.

Councilmember Yukimura: This appears to be a very good move and I just wanted you to explain briefly, before the public hearing, so that members of the public understand what is being proposed by the Transportation Agency.

Ms. Mahikoa: Basically we are requesting approval for six (6) additional on-call bus driver positions within our agency. The request requires zero funding or involves zero funding. Why we are needing to do so, we are experiencing some challenges right now, operationally, with the existing manpower that we have. We typically rely on our pool of on-call bus drivers to fill in the last minute vacancies that occur each day with last minute vacation requirements and sick leave call-ins in order to maintain scheduled bus service for the public. We are falling short right now because we have four (4) bus drivers who are out on lengthy medical situations, as well as the fact that we had requested these six (6) positions in our budget request for this current fiscal year, and unfortunately it was overlooked at the point of budget approval. At this point, we are asking if we would be able to appeal for that action to be taken for us to have the six (6) additional on-call positions to recruit and get the schedule lightened up. Right now, our drivers are heavily taxed with covering what is needed in order to sustain the current demand of service. This will help to lighten that load operationally on the rest of our team.

Councilmember Yukimura: The bus is like the “pony express,” right? It has to deliver because otherwise people will not get to work, school, or whatever. So, you are making sure that your operations can continue on a smooth basis.

Ms. Mahikoa: Exactly.

Councilmember Yukimura: And you are doing this by moving some of the drivers from part-time to full-time, which is also something that we feel is a good thing to do whenever you can.

Ms. Mahikoa: We typically do recruit from our on-call pool when we have vacancies that occur in full-time. Those who have performed well and safely, we will typically recruit that way. With this action, the reason it is requiring no additional funding is because right now what we are expending in overtime at being time and a half, we see being able to delegate those funds over to paying our on-call pool. We typically have a pool of funds that we pay our on-call drivers with, and within that, I have provided a little section showing that with us being at forty-two percent (42%) into the fiscal year and looking at our wages and hourly pay budget, which is where our on-call drivers are paid out of that account, it is showing that we have only expended twenty-four percent (24%) of what is in that account versus if you look at our overtime right now, it is extremely high because of that shortage in our on-call pool. What we are wanting to do is just reallocate funds from the use of overtime drivers to being able to just pay straight time on-call drivers by enlarging our pool.

Councilmember Yukimura: So you are not actually making them full-time, you are just enabling to call on your on-call people?

Ms. Mahikoa: Right. We are wanting to expand the number of individuals that we can call on to fill the shifts so that we are not having to tax our current full-time drivers as extensively.

Councilmember Yukimura: Right. I mean the issue of overtime always is also in terms of the health and alertness of your drivers, which is really important.

Ms. Mahikoa: Exactly.

Councilmember Yukimura: Okay. Thank you very much.

Council Chair Rapozo: Any other questions? Celia, the on-call drivers do not have benefits, right? They are just basically on an on-call basis.

Ms. Mahikoa: Yes.

Council Chair Rapozo: For these position numbers that are going to be created, will that be specifically used? My concern is that every time we expand position numbers in this County, some departments take those position numbers to utilize for contract positions and all of that. I guess my question is, would you have a problem if we set a proviso that those position numbers would be limited or restricted to the on-call bus drivers and not to be used anywhere else? I get nervous when we create new position numbers.

Ms. Mahikoa: I understand.

Council Chair Rapozo: I see it every year. Somebody needs a contract position—"Hey, grab that position number from Transportation Agency and we will reallocate it up to where we need," and I do not like that practice. Would you have a problem if we, as we go through that process, adding in that proviso?

Ms. Mahikoa: I have no problem, whatsoever.

Council Chair Rapozo: Thank you very much.

Ms. Mahikoa: Thank you.

Council Chair Rapozo: This is going to save a ton of money, thank you.

Ms. Mahikoa: Thank you.

Council Chair Rapozo: Any other questions? If not, thank you very much.

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

Council Chair Rapozo: Further discussion? The motion is on the floor. Roll call.

The motion for passage of Proposed Draft Bill (No. 2642) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for January 12, 2017, and referred to the Budget & Finance Committee was then put, and carried by the following vote:

FOR PASSAGE:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative for the motion).

Ms. Fountain-Tanigawa: Seven (7) ayes.

Proposed Draft Bill (No. 2643) – A BILL FOR AN ORDINANCE TO AMEND THE KAUA'I COUNTY CODE 1987, AS AMENDED, BY REPEALING ARTICLE 23 OF CHAPTER 22, RELATING TO PESTICIDES AND GENETICALLY MODIFIED ORGANISMS

Ms. Fountain-Tanigawa: Chair, we have registered speakers.

Council Chair Rapozo: Before we take the motion, I want to yield the floor to Councilmember Brun who is going to make a statement before we proceed.

Councilmember Brun: I want to state for the record that on December 12, 2016, I sent a request to the Board of Ethics to inquire as to any conflict that may exist regarding my participation in Proposed Draft Bill (No. 2643) because I am an employee of Syngenta Seeds on Kaua'i. I have been notified that my request will not appear on the agenda until January 20, 2017. Given that, out of an abundance of caution, I will be stepping out of the Chambers at this time until I receive clearance from the Board of Ethics.

(Councilmember Brun was noted as recused from Proposed Draft Bill (No. 2643)).

Council Chair Rapozo: Thank you. Any other discussion? Let us take the motion at this point.

Councilmember Kaneshiro moved for passage of Proposed Draft Bill (No. 2643) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for January 12, 2017, and referred to the Committee of the Whole, seconded by Councilmember Yukimura.

Council Chair Rapozo: Thank you. Any discussion before we take public testimony? Councilmember Chock.

Councilmember Chock: I have some questions for Mauna Kea.

Council Chair Rapozo: Yes, let us do that now.

There being no objections, the rules were suspended.

Councilmember Chock: I understand this is somewhat ministerial in housekeeping for this Bill, but I wanted to validate that this is the practice that we do for all of the types of ordinances that get invalidated through the court system. That is my first question. I wanted to also understand...I have not been briefed on the Joint Fact Finding Group (JFFG)...I have reviewed it, but we have not had any discussion on it or the outcome of the appeal. I was wondering if you had been in contact with Mr. Minkin on it and how it might relate to or affect this repeal.

Mr. Trask: For the record, Mauna Kea Trask, County Attorney. A couple of things—I believe some time in the summer of 2014, the United State Federal District Court for the District of Hawai'i enjoined the County of Kaua'i from implementing any and all portions of Ordinance No. 960. That included essentially—I do not want to say JFFG, the County's Joint Fact Finding process, so pursuant to that, the State Department of Agriculture took that up. The County, I believe, granted money to the State DOA, so as not to violate that court order, the State did it, and that was the JFFG process. Scott Enright and a bunch of community members were part of that and that stands alone. Recently, the Federal Appeals Court of the Ninth Circuit affirmed the Hawai'i Federal District Court order and this law remains ineffectual; we are prohibited of effectuating it. Subsequent to that, I am aware currently...I really do not know much more about it. I did go to a Federal Bar Association meeting last week and they are talking about the spread at the Supreme Court, the next appeal would be United States Supreme Court and they have never seen any split. It is for democratic appointments, for republican appointments. To and until there is a majority, if they are unable to reach any decision per rule of court, the lower appellate court's decision would stand. That is what you are seeing right now. As far as wisdom of it, I do not know—I am not on the case obviously, but I have read the press just like everyone else and I think I saw that on Mr. Achitoff from Earthjustice...it appears that they are going to focus on legislative action at the State level versus pursuing it further, so I do not know anything more beyond that. Did you have any other questions?

Councilmember Chock: The first question was more about the housekeeping measure.

Mr. Trask: I looked in the code and there is nothing that provides for automatic repeal and in speaking with the County Clerk's Office, this is the historical practice and it makes sense. Only an ordinance can repeal another ordinance. It is my opinion that it would be...not would be appropriate, but this would be an appropriate action, let us say.

(Councilmember Kagawa was noted as present.)

Councilmember Chock: Okay. Chair, my only request would be that we have gone the distance with our Special Counsel that we at the very least hear some sort of response on what their plans are in how this might relate to them moving forward. Thank you.

Mr. Trask: Yes.

Council Chair Rapozo: Questions? Councilmember Yukimura.

Councilmember Yukimura: Are you aware that the County, as the appellant, I guess...

Mr. Trask: One (1) of the appellants. I think Earthjustice and Center for Food Safety, I believe, joined as well.

Councilmember Yukimura: Right. Okay. So were they full on co-appellants or were they amicus?

Mr. Trask: I believe they were parties. I remember hearing that they were present at United States District Court.

Councilmember Yukimura: Are you aware of whether the appeal deadline has passed?

Mr. Trask: I am not aware.

Councilmember Yukimura: Okay. I guess we should be advised on that at least. You have just said that based on historical practice, this is an appropriate action.

Mr. Trask: Let us to say any ordinance. If any ordinance would have been invalidated or the County would be enjoined from enforcing any ordinance in the County Code, the Council would have to take action to repeal that ordinance via another ordinance. So it is not automatic.

Councilmember Yukimura: Would the appropriate time would be after all appeal has been exhausted or determined not to be desirable as an action?

Mr. Trask: I would not comment on that. There is a lot of strategic stuff. It is a matter of fact. This was kind of discussed at the meeting that I went to last week, which did not pertain to this, but if you look at the current split with Justice Scalia passing away, the guy who is holding the torch for originalism, which was Scalia's favorite motive jurisprudence is Justice Thomas. Justice Thomas was in-house counsel for Monsanto and so you have to look at if you are going to decide strategically to appeal, that is your decision...likelihood of that, I do not know. I am not saying that anyone would be unfair, but you can kind of tell where someone is going to come from given where they are from.

Councilmember Yukimura: I was not really asking for your advice whether we should appeal or not, I just wanted to know whether there is still an option. I do not know whether the deadline has passed.

Mr. Trask: You should speak to your special counsel about that.

Councilmember Yukimura: Correct. Also, what our past practice has been with respect to these kind of things. I know that the court invalidated the charter amendment or the ordinance pursuant to the charter amendment that restricted growth in this County several years back, and I do not remember whether we actually took the trouble of repealing it or it somehow just got erased in our codification.

Mr. Trask: In the Charter, there is still that tax provision that is still in there. It is still ineffectual. There is a public defender (PD) provision in the Charter that is not used and the State is the PD.

Councilmember Yukimura: And there is a public utility provision in the Charter, too.

Mr. Trask: Correct.

Councilmember Yukimura: Which should be cleaned up by Charter review.

Mr. Trask: Then you will have to put it to the vote and whether or not these pass, the political process is its own process.

Councilmember Yukimura: Okay, thank you.

Council Chair Rapozo: Any other questions for Mauna Kea?
Councilmember Kagawa.

Councilmember Kagawa: Mauna Kea, has the County Attorney opinion you wrote been released to the public?

Mr. Trask: Yes, the opinion I wrote to the Mayor was released upon his veto and that has been on the website since November 2013, I believe.

Councilmember Kagawa: How many pages was that?

Mr. Trask: I think it ended up around sixty (60), somewhere around there.

Councilmember Kagawa: Okay. I just wanted to say that I think you did a fabulous job because you hit the nail right on the head.

Council Chair Rapozo: Any other questions for Mauna Kea? If not, thank you very much. Can we have the first registered speaker, please?

Ms. Fountain-Tanigawa: The first registered speaker is Anne Punohu.

Council Chair Rapozo: As Anne is walking up, let me just say that we just received a flutter of a close to one hundred (100) and it is still coming in. It is all replicated E-mails, but it talks about the Joint Fact Finding Group. This has absolutely nothing to do with the Fact Finding Group. This is an ordinance that has been invalidated by the court. This does not stop any movement on JFFG, so I am not

sure what these people that are sending in E-mails were told, but they are mixing up two (2) very different processes and that is what I want to make sure the public understands. Thank you. Anne.

Ms. Punohu: *Aloha* Council, my name is Anne Punohu. I am here to agree to this process today. This is a housekeeping issue. We did go through the process. We have had our determinations in court. For me personally though I want to make a personal statement about my participation in the process. It was a great education for me. I learned a lot. I learned a lot about the new state of my community and my island which has significantly changed for me, both personally and as far as testifying on all issues, as someone who was sitting in that room that night. However, I think that what Mauna Kea was just speaking about the Supreme Court was extremely important. We have had a very serious regime change in this country, which means that we will have a court that will lean right. We have a new head of the Environmental Protection Agency who has of course not been confirmed yet, but has been very clearly stated that he is not a friend of the environment and is absolutely in favor of resending many important laws and regulations that may affect our water, our air quality, and our quality of life in this country. For me personally, I have moved on from Bill No. 2491 only in the way that my fight is larger. My fight is nationally now. Environmentalists, if you are truly an environmentalist, you need to think about things across the board and not pinpoint certain tiny, little things that we may not be able to fight, but look at things in an overall larger way. I think that this is my biggest take away from Bill No. 2491, is at the time I felt that I was doing what was important, standing up for what I believe for. However, I do believe that Bill No. 2491, in part, was flawed. Its major flaw was that it did not go enough. It did not go far enough. It did not go across the board. It pinpointed only certain groups and when it could have been much broader and much more equitable, and that is where I think our movement failed. I do not think it is over, but I think it is on a much larger scale. It is much more terrifying now at this point then it was for this particular subject matter. Repealing is important because we need to know where we can come back to the board and revisit these issues on a county and state level since we may not have any further support at the federal level in the future where the federal guidelines maybe absolutely erased to protect ourselves from various hazards that will come up to our people on Kaua'i. I do not expect this will be the last thing that we will hear about environmental issues along these ways, but as an environmentalist now that I will be working on the national level, I feel that our fight is much broader, much different, and much more taken to the federal level now. *Aloha, mahalo*, and thank you for letting me speak on this issue and I support the repeal.

Council Chair Rapozo: Thank you very much. Next speak, please.

Ms. Fountain-Tanigawa: Chair, we have no further registered speakers.

Council Chair Rapozo: Anyone wishing to testify? Please.

FERN ĀNUENUE ROSENSTIEL: My name is Fern Ānuenue Rosenstiel. I helped with the development of Bill No. 2491. I was born and raised in Kapahi. I have a Bachelors Degree in Science with Majors in Marine Biology, Wildlife Management, and Environmental Sciences. I have researched the impacts of these chemical corporations on land, community, and children's health for nearly a decade. I come here today disappointed, but not surprised that this is on the agenda. There is absolutely, in my opinion, no reason to repeal Ordinance No. 960 other than to

insult and divide the community further. The recent interpretation of Hawai'i State Law passed down by the Ninth Circuit is part of an ongoing conversation happening throughout the nation relating to home rule, county authority, and better regulations relating to pesticides. Ordinance No. 960 was invalidated and it is not going to affect anyway, yet it is a symbol of community empowerment of county home rule and a statement to our state and federal government that we demand and desire better protections. Ordinance No. 960 was based on responsible requests and its need has only been supported by the data released in the Good Neighbor Program, which I thank you for supporting. This data shows that very large amounts of very toxic restricted use pesticides are being sprayed in mass by these corporations, adjacent to sensitive areas in our communities. The science is very clear that the Academy of Pediatrics published *Pesticide Exposure in Children* reviewing over one hundred ninety-five (195) medical studies. Their main concern that pesticides are linked to childhood cancers, neurological behavior and cognitive defects, adverse birth outcomes, and asthma. Pesticide exposure is linked to Non-Hodgkin lymphoma, bladder and colon cancer, Parkinson's disease, depression, and disrupting hormonal systems, which includes health effects like diabetes. Look up one of the impacts of the exposure to these heavily applied pesticides: Atrazine, Paraquat, Acetochlor, Chlorpyrifos, and then tell me that there is no need for disclosure, no need for buffer zones around our schools to protect our children. The very Joint Fact Finding Group that was supported has clearly established that we need the measures. The report asks for better data, disclosure, and recommends buffer zones and studies. This is reasonable, it is responsible, and it should be done by our government at whatever level can do so. Let us use Ordinance No. 960 as an example and as a template to work with the State to get these regulations in place statewide. Let us work together to do this. Let us investigate the violations we bumped into: the tax violations and the agricultural designations that are given to chemical corporations without requiring the grading and grubbing requirements or the water and soil management plans. Let us investigate the violations to the Clean Water Act and the potential threat to the children and environment. Let us look at what pesticides are coming up in our children's hair and the sediment around our reefs and coastlines. Let us push the state for better regulations, protections, and information united as one community. Regardless of what happens today, and if you do or do not repeal Ordinance No. 960, know this: this battle has just begun and Ordinance No. 960 stands on the side of truth, stands on the side of our State motto, "*Ua Mau Ke Ea O Ka Aina I Ka Pono*," and it stands on the side of justice. *Mahalo nui* for your time.

Councilmember Kagawa: Question.

Ms. Rosenstiel: Yes, please.

Councilmember Kagawa: Fern, one of Mr. Hooser's statements in the minutes of the final override of the Mayor's veto was that, word for word he says, "We have many lawyers who have said there is nothing wrong with the Bill and it is solid." Do you believe that an invalid bill is solid?

Ms. Rosenstiel: I believe that this is new ground and we were one of the first counties in the entire United States to pass a bill that deals with this issue and I think that that preemption aspect of who has what rights is battling out throughout the nation. Counties in Oregon are having the same debates and the Ninth Circuit ruling is part of that. I do not understand the specifics of preemption on the State and Federal level, and to be honest, a lot of the lawyers, it says that it is silent in a lot of ways. So it is not about whose responsible, I am just saying that what we did as a county was make a representation to the world that we are standing for

our people and our environment and I think as a County Council, maybe a resolution and maybe adopting it into a resolution or something that does push the State to take action. Whomever responsibility it is to take action, the bottom line is that we have a problem that needs to be addressed and unless the problem is addressed by any level of government, nobody will protect us. The only people that can protect us is government.

Councilmember Kagawa: So, is it solid or not?

Ms. Rosenstiel: I believe it is solid.

Councilmember Kagawa: Okay.

Council Chair Rapozo: Okay, thank you.

Councilmember Kagawa: Right on.

Council Chair Rapozo: Anyone else wishing to testify? If you folks want to testify, please sign up. We want you folks to sign up so that we can have an idea of how long this takes. Thank you.

Mr. TenBruggencate: I will be quick. My name is Jan TenBruggencate. I sat through this process with most of you. My sense about this Bill is that our County Attorney recognized that it was flawed legally, the United States District Court recognized that it was flawed, the Ninth Circuit Court of Appeals agreed that it was flawed, and it clearly is. It cannot be put into effect. Let us clean up our County Code and get it out. Thank you.

Council Chair Rapozo: Next speaker. Mr. Parachini.

ALLAN PARACHINI: Allan Parachini, I live in Kilauea. You have received an E-mail from me supporting repeal of this Bill. I was not going to speak this morning. This is the first time I ever appeared to speak to a bill before this body. I think there has been some intentional disinformation embarked upon in the last couple days, particularly, and as Council Chair Rapozo notes, the Joint Fact Finding Group report is not relevant to whether this Bill should be repealed. This Bill should be repealed because it has been found to be in conflict with State and Federal law by a federal judge and a federal appeals court. That is the reason it should not be on the books in this County anymore. As to what the Joint Fact Finding Group said about buffer zones, you have been the victim of an attempted misinformation and I would just like to read you what it says about buffer zones. "The establishment of additional buffer zones is under review in many localities, including California. The Pesticide Advisory Council should review similar efforts elsewhere and establish a comprehensive buffer zone policy for the State. It is important to know that this report is not recommending any specific buffer zones such as those that would have been required like Kaua'i County Bill No. 2491. Instead, this recommendation is to establish a consistent policy that would take into account scientific and regulatory studies." That is all it said and all it means. There was no buffer zone position taken by the Joint Fact Finding Group, it is that simple. This is a bill, this is an ordinance that has been declared unlawful. I was invited to listen in on a web seminar last week, run by the Center for Food Safety. I E-mailed a question into that seminar asking what their review or their lawyer's perspective on whether this ordinance could be sustained on appeal to the United States Supreme Court. Their lawyers answered directly, "No." They see no prospect of the Supreme Court accepting certiorari (cert)

on this case. They see no prospect of this prevailing in the Supreme Court should the Supreme Court accept cert even if they were not down one (1) justice right now, so let us be real. This ordinance has no place in our County Code, it has no force of law, and to leave it in place as a symbol is misguided or would be on your part, a misguided and ineffective matter of policy. Thank you.

Council Chair Rapozo: Thank you. Anyone else wishing to testify? Seeing none, I will call the meeting back to order.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Further discussion? Councilmember Kagawa.

Councilmember Kagawa: I would like to start by putting up an excerpt from the minutes of November 14, 2013 Special Council Meeting, the override of the Mayor's veto. Of course, I am going to pull an excerpt from the leader of the Bill, Mr. Hooser. My main reason for opposing the Bill was my legal issues, and I, unlike many proponents of the Bill, read Mauna Kea's opinion and I think he did a fabulous job. It will probably turn out to be one of the greatest documents written by any County Attorney in the State of Hawai'i because it was an issue that was not tested directly in court, yet he came up with a detailed sixty-six (66) page document that told us exactly what was going to happen in court. It was our job whether to listen or to ignore it. Myself and Councilmember Rapozo listened because we felt in our hearts that he would be right. I am not faulting other members because it was not really tested directly in court, but for me it was the unbiased opinion, unlike attorney's for the Bill, who wanted to see it passed, a lot of these mainland attorneys and what have you. Let me just read what Councilmember Hooser said, an excerpt. "We have nine (9) preeminent attorneys who have said in writing that this Bill is solid. We have a former Supreme Court Justice, George Kimbrell from the Center for Food Safety, and a long list of people who have looked at this and they do not sign letters slightly. We have two (2) University of Hawai'i Law Professors who signed this. We have four (4) letters in writing from four (4) very credible attorneys offering to defend the Bill for free, *pro bono*. Two (2) offered to defend the County for free. Two (2) offered to defend the community groups for free. One of these fellows, Peter Schey, has done over one hundred (100) major cases throughout the nation. He has done cases in the United States. He has been before the United States Supreme Court. Ms. Tico was a former President of the Kaua'i Bar Association. Others have been before the Hawai'i Supreme Court. We have a credible legal defense team prepared to do this all for free. We have many lawyers who said there is nothing wrong with the Bill and it is solid." I will just go on and say when a bill is ruled invalid by two (2) courts; I would say the Bill is the farthest thing from solid. It is dust. Myself and Councilmember Rapozo spent a lot of time trying to find a solution. We have many friends out there who had health concerns and they believe some of the fear that perhaps some of their family members were being affected by the spray and the poisons of the chemical companies. One in particular, the Ibara family, very close to me, they were my teachers in school and they are good people, very good friends. They were part of the class action lawsuit against DuPont Pioneer. Myself and Mel, in trying to get the best result for the community, knowing that this Bill was flawed because of preemption...I flew up around ten (10) times to meet with the State Department of Health, the Deputy Director Gary Gill, who had a very open door with me, and the Department of Agriculture, Thomas Matsuda, who was in charge of the Pesticide and Agriculture Branch. During that time, I got Mr. Gill to fill the

Kaua'i DOH Clean Air Quality vacant position that Mr. Yama used to be in, so I just stayed on him and we got that position filled. With Thomas Matsuda, I asked, "How can we get more response and oversight?" We added another inspector. We had one (1) inspector and we added another one, double the inspection team for Kaua'i. It was not the proponents of the Bill who got the things that are now in place. It was our work, myself and Council Chair Rapozo, who knew that this Bill was not the solution. We even met with Governor Neil Abercrombie and his Chief of Staff Bruce Coppa and his Attorney General who told us that the State had the jurisdiction and expertise. Governor Abercrombie in his own words said, "What in the world are you folks doing on Kaua'i trying to pass this Bill? This thing is not going to hold up on court." He told us straight and he asked, "How can we help you, Ross? How can we help you, Mel?" We got him to do the increased voluntary buffer zones and voluntary noticing of spraying. We got him to do those things and when we brought this to the Council, we said, "Hey, we do not need this Bill. We have these solutions." The other members laughed and said, "Are you folks kidding? The State does not do anything. This and that." Now that the Bill has failed, they are trying to take credit for that. Do you believe that? Unbelievable. I think the proof is in the pudding. Maybe somebody needs to ask Governor Abercrombie himself who is responsible for the improvements that were made voluntarily because I guarantee you, one hundred percent (100%) sure, it is not Gary Hooser. Chair, I would have hoped that with this item we would just clean it up, it would not be controversial, but based on our E-mails, it seems that they want to keep something that is invalid alive just for pride's sake. It just does not make sense. Just like any sports team, when you go into the game you are not sure whether you are going to win or you lose, but you are going to try your best. I think five (5) members of this Council tried that. They thought it was the best thing to try and pass this Bill, try and get the County to oversee pesticides and agriculture, but you know what, they lost. The game is over. They played twice in fact, two (2) judges ruled that they lost. What do we want to do? Do we want to play another game? A third game? Let us kill this Bill and let us just move on. Let us help in ways we can. Work with the State government, work with the federal government. You are not going to get any help by calling them names and this is what the proponents of this Bill do. They ridicule them. Let us take a different step. We have a new Council. I think this Council is much more positive and I am hoping that we can put this to rest and let us get some help for the people instead of playing politics here at this table. Thank you, Chair.

Council Chair Rapozo: Thank you. Anyone else? Any more comments before we move on? Councilmember Yukimura.

Councilmember Yukimura: Whether we repeal this Bill or not, the issue raised by the introduction, excuse me, whether we repeal this law or not, the issue raised by the introduction of the Bill is not going away, the issue of pesticides and health. I think a lot of the concern about it is still there and is valid. I think the Bill as written caused great polarization in our community, but it raised some really important issues that I believe had a role in the responses from the State and the companies. Repeal does not mean that there is no need to disclose pesticide use or there is no need to regulate pesticides, because there is a need. What the court decision has said is that need has to be addressed not at the County level, but at the State and Federal level. That is really where the attention needs to be focused now. I am going to listen at the public hearing, but my initial position is that it is reasonable to repeal this Bill because it has been declared invalid by the courts and I have sworn to abide and follow the laws of the County, State, and Federal government. Also, because as a lawyer, I believe in the process of law and must respect the decision making of the judiciary. When the Bill came before us, I worked

and I succeeded in getting significant amendments to it that made the disclosure provisions much stronger and also removed the requirement for Genetically Modified Organism (GMO) permit, which the County had no expertise on and for which there were no clear guidelines for. I also, with then Councilmember Nakamura, replaced the Environmental Impact Statement (EIS) that was going to be required with the Joint Fact Finding process. That was done with majority vote of the Council. I wanted to make the Bill as enforceable and as effective as possible, but the real issue that had to be addressed was the issue of preemption. I said many times that as an attorney and every attorney has the right to discuss the prospects of any bill, I saw a sixty/forty (60/40) chance that it was going to be found that the County was preempted from passing any law. I also know and have seen in the history of the judiciary that courts have adopted very different legal theories over time and have reversed themselves over time. So for me, nothing is decided, no matter how many attorneys you line up on one side or the other until the courts have spoken. We would still be arguing today about what the law is, except that we now have a judicial opinion and decision. That is why to me it was so important to pass the Bill because without passing the Bill, it would not have gone to court and we would not get a clear decision. Now we know where the effort has to go if you want to regulate pesticides. It has to be at the State level. That is where those of us who want to see better regulation have to go.

Council Chair Rapozo: Thank you, Councilmember Yukimura. Any other comments? Councilmember Chock.

Councilmember Chock: Chair, I was not here for most of the proceedings for Bill No. 2491, up until right at the final hour. I believe that regardless of being right or wrong, agree or disagree; our people need and really want to have a government process that they can trust, one that will listen to their concerns and respond. In this respect, based on the feedback and the outcome, I believe that this Council, at the time, did their job in terms of listening to what the people's concerns were. While this measure might be ministerial in nature, I think what is important for me is to ask the question about given the outcome, what can we continue to do to help our citizens and people in any way that we can? Part of that is seeing some of the recommendations from the JFFG and continue to move forward and see what we can do to support it. I will be supporting this on first reading. My main concern and what I am looking for, just for the sake of being thorough is to hear back from our special counsel on what the move is for them. I have not heard anything back from them. They talked about taking it as far as they can for free at one time, so I just want to hear that that through this repeal it does not affect it in any way understanding the implications and the challenges moving forward. But really again, I am just asking what we can do to support those who are asking for help. Thank you.

Council Chair Rapozo: Any other discussion? Let me just say that in reading all of the E-mails that we had just been receiving, reading the blogs, reading *The Garden Island* newspaper—I cannot believe *The Garden Island* would give so much ink to what I believe Mr. Hooser is trying to do, is really trying to keep his agenda alive using this body, and it is frustrating. I am trying to keep my level of professionalism at a level that is proper. To say Councilmember Kagawa and I carried the water buckets for the seed companies—let me tell you what me and Councilmember Kagawa did, because we are not like Mr. Hooser in a sense. We do not go to our blogs, we do not send things to the newspaper, we do not take pictures and put it on Facebook and say, “Hey, look at what we did.” We are not like that. It does not mean that we sit back here, show up on Wednesday's, and vote. When we had the State's Department of Agriculture up here, and it is on YouTube, somebody

posted that *fiasco* on YouTube. That day, it was such a dismal performance. It was so clear why the community was upset, because our State was not doing their job. They were not listening to complaints. They took the complaints and said, "Sometimes it takes two (2) to three (3) years to get back to the complainants," that was said on the record here. Councilmember Kagawa was a relatively new Councilmember. I asked staff to get me an appointment with Governor Abercrombie this week. I took Councilmember Kagawa with me and we went up to meet Governor Abercrombie. I cannot repeat what I told Governor Abercrombie because it starts with the letter "F." Councilmember Kagawa is my witness, I told the Governor, "Governor, if I was you, I would fire every single one of them that showed up on Kaua'i, every single one of them. We need your help Governor. We need the State's help because we are taking the bullets for the State's failure to do their job." That is what we did. Governor Abercrombie relied with some "F" words as well, but what he said to his staff was, "I want those seed companies here. I want to meet with every single one of them and there is a way we can work through this." I came back home and met with every single seed company boss in a conference room in Puhi and I said, "Why is it so hard for you folks to agree with what the people want? Disclosure, buffer zones, that is not going to kill you." You know what they said...they agreed. They agreed with the Good Neighbor Policy. Yes, if you go back to the Good Neighbor Policy, you are going to see the Governor, you are going to see the State Representatives, and the Senators all taking picture, but the reality is that happened as a result of their poor performance on the County Council. I thanked the State for working with the Governor, the County, and the seed companies for coming up with the Good Neighbor Policy, but that was not enough. We had to go with Bill No. 2491, even though we were told we did not have the jurisdiction; even though we were told by our County Attorney that this is not going to fly. Like Councilmember Kagawa, I respect everybody's vote on this table. Councilmember Yukimura, I remember her saying that the only reason I am voting for this is because I want to see it go through the court process, this is the only way we are going to get it through the court process. Well, it went through the court process and now we have the ruling from the court process. Can you put that thing up? I have heard in the E-mails and even today, "There is no reason to repeal. This is politically motivated. We are corporate, sellout politicians." Can you imagine when slavery was deemed unconstitutional? When the women's right to vote was deemed unconstitutional? When same-sex marriage was...when the Supreme Court ruled that it was fine and nobody should be discriminated against. Can you imagine if municipalities like us said, "I do not agree, so let us keep those illegal laws on the books? Let us keep the slavery laws. Let us keep the prohibition that prohibits women to vote. Let us keep those bills on the books because we want to make a statement. No, you do not do that. We as leaders, as lawmakers, when we have the right to make a law, we also have the duty and obligation to remove the ones that have been invalidated by the Supreme Court or the Appeals Court. Now, I do not know what more information we need to even...I thought this was just going to go on. I figured we would get some opposition and some people would be upset, but we are getting E-mails saying, "Hey, if you repeal this then the JFFG recommendations go away," and I am not sure where that started. I have an idea. We got through this whole process. It was never based on fact; it was always based on fear. Getting the people so afraid that they joined in the movement to come up and yet the simple issue regarding Bill No. 2491 and Ordinance No. 960 was preemption. It was not about whether pesticides were safe. We all know that it is dangerous. We all know that the illegal application of pesticides and all these chemicals are no good for you, we know that, but this had nothing to do with that. This had everything to do with whether or not this County has the authority to pass a law like this. But no, it was a great opportunity for the Center for Food Safety, Hawai'i Alliance for Progressive Action (HAPA) and all of these nonprofits that are in place today. They are activist, they

jump on something like this, and it is self-preservation. We are not in here; Council will be in here whether we are in here or not, Council is going to stay, we do not have to worry about self-preservation. This Council will stay. The people will change, but the body will stay. I think what is happening now, the newspaper again printing this big article, about an editorial, basically saying this is repeal is no good and we do not care about the people because...this Bill is useless. This law is invalid and that is the reality of it. Why would we keep it on the books? Should we appeal? Should we go one (1) more level to the United States Supreme Court? Well, you know the "free attorneys" that we keep talking about—Council Services over time for Bill No. 2491: twenty-four thousand eighty dollars (\$24,080). Kaua'i Police Department (KPD) sixty-one thousand fifty dollars (\$61,050), and we took out the moneys that were reimbursed to the Police Department by 'Ohana o Kaua'i, they paid they share, but our County share was sixty-one thousand dollars (\$61,000). The County Attorney's time, Mauna Kea—we pay him a salary, he thinks it is free, but it is not because the taxpayers pay for that and that was eleven thousand dollars (\$11,000). We spent two hundred seven thousand ninety-two dollars (\$207,092) on Special Counsel. Therefore, as of today, three hundred three thousand two hundred forty-seven dollars (\$303,247) to get where we are at. Now, do we need to spend more to get another ruling? We talk about all the moneys that we short, telling ourselves, "We cannot do this. We cannot do that. We cannot do this." We have two (2) courts to say this is invalid. We have a County Attorney opinion that says it is invalid. So three (3), what I call, "Formal reviews," that said this is not valid. It is not because pesticides are safe. They did not say it is safe. What they said was that the County does not have the jurisdiction to pass this law. That is all that was in contention and the Supreme Court or the Appeals Court has ruled and I believe it is our duty and obligation now that we must fix the code. To appeal it one (1) more time would be, I think, fiscally responsible, number one. That does not take away the fact that we do have some concerns and that does not prevent us from working with the State to improve the process we have in place today. If it means that we have to go up there and say, "F" words to Ige, we will do that. My point is, why is all the anger and hatred pointed to this body? That is what I do not understand. Why did five thousand (5,000) not march at the Capitol? Why did the one hundred or so E-mails that we got today not go to the State? Why is there so much anger to this body? That is what gets me. That is what I wish would end and that is what I was hoping that once we dissolve this problem and do what we need to do, we can direct our energies towards the State where it needs to be taken. We can try to heal. I can tell you that some of the scars and wounds that were created cannot be fixed. I just read the E-mails today. When we have a chance of coming together and say, "Hey, let us work together as a community, as the County of Kaua'i, let us work together and go up as a collective unit, as a collective force to the State." No, we rather just keep pulling at that scab on the Council. Let us just dig that scab and not let that heal. You know who I am talking to—stop it already. Let us move on, let us work together, let us bring both sides together, and let us work with the State to get something that is going to benefit all of us. I was hoping that is what would happen, but no, I opened up *The Garden Island* today and the first thing, "Bam." Thank you for even digging the wound even deeper and then he will write a rebottle and it will be deeper again. After today's hearing, there will be more. Stop. Let us go back to how Kaua'i used to be. Let us talk and figure out a way and work with the State. It should not take two (2) years to do an investigation out there on a complaint. In fact, it should take a week. The complainant should get a response in ten (10) days. That is what we have to work on. Two (2) years? But no, we are at fault, the Council; not the State. The Council is at fault. Obviously, there are some frustration. More frustration for me because of the E-mails I have been getting that come from people that no idea of what we went through. They are being told that, "The County will repeal this and all the work will

be for nothing. They are disregarding the health and safety of our west side community, they want to see babies with their intestines born outside of them. We have to stop this repeal. Please send an E-mail.” It is so obvious that it is replicated because some forget to take out the brackets where it says, “Insert your comments here.” There were a bunch of them with that on. We are not stupid. I will tell you something, and will close with this, maybe some of the activists feel that the people of Kaua’i are dumb. Maybe some of the activists think that as long as we feed them this information they will believe. Well guess what, the people of Kaua’i can tell the difference between fear mongering and factual based data. If you do not believe that, look at the election results for the last two (2) elections. The people of Kaua’i are not stupid. They read, they understand, and they vote accordingly. Thank you. Councilmember Yukimura.

Councilmember Yukimura: I think it is a good approach if we can go together to the State because the issue of pesticides is not over with repeal of this Bill. I want to affirm, personally, the JFFG’s report, which I think even though it was not a perfect process, it still has findings that are very important, like the need for monitoring the ocean and surface waters, doing a better job of health impacts, and better responses to critical pesticide incidents. That really does give us a platform from which to proceed and address these issues and I hope we can do that together.

Council Chair Rapozo: Thank you. Again, to the reporter that is here, the Bill No. 2491 appeal had nothing to do with pesticides and with JFFG’s. It was whether or not the State preempted the County. So the fact of the matter is repealing this has nothing to do with the County’s desire to move forward on making sure our community is safe—nothing. This is a preemption issue and that is what it should be limited, and not to JFFG. That is another issue that I believe this Council should address as well and I believe we will at some point. The motion is to approve on first reading. Again, the public hearing will be set for January 12, 2017. Roll call.

The motion for passage of Proposed Draft Bill (No. 2643) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for January 12, 2017, and referred to the Committee of the Whole was then put, and carried by the following vote:

FOR PASSAGE:	Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 6,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	Brun	TOTAL – 1.

Ms. Fountain-Tanigawa: Six (6) ayes and one (1) recused.

Council Chair Rapozo: Thank you. Next item.

Proposed Draft Bill (No. 2644) – A BILL FOR AN ORDINANCE AMENDING ZONING CONDITION IN ORDINANCE NO. PM-94-82 RELATING TO ZONING DESIGNATION IN HANAMA’ULU, KAUA’I (*Amfac Property Development Corp.*) (ZA-2017-1): Councilmember Chock moved for passage of Proposed Draft Bill (No. 2644) on first reading, that it be ordered to print, that a public hearing thereon be scheduled for January 12, 2017, and referred to the Planning Committee, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: We have an amendment that I am introducing. If you read the proposed Bill, what the developer is offering to do is to originally the zoning ordinance says that they will sell us sixteen (16) lots at ten percent (10%) less than market. They are proposing that instead of selling us the land, they would provide or build out thirty-two (32) units. When the County had the obligation or responsibility to build these units out, there were some exemptions in fees, obviously, because the County was being the developer. There were subdivision fees, park dedication, real property tax, sewer fees, and so forth. When the amendment was proposed that the developer was now going to build out these thirty-two (32) duplexes, they would enjoy the same exemptions and I talked to the Housing Agency yesterday and said, "I am not going to support that." If the County is building it, that is one thing, but when a private developer is going to build thirty-two (32) units at one hundred forty percent (140%) of median, which to me is market, at five hundred thousand dollars (\$500,000) a unit, it equates to sixteen million dollars (\$16,000,000), that they should not be exempted from these fees. They should be required to pay the fees. The amendment really just takes that out as it should be. It was more of a clerical incident; it was not intentional by the Housing Agency. So, that is what the amendment does. I wanted this amendment in before it went to public hearing because I can only imagine what the public is going to say when they see all these waivers or fees for a developer to develop market units or...the bill says that it is affordable, but it is one hundred forty thousand dollars (\$140,000), it is not market. Councilmember Kagawa.

Councilmember Kagawa: I would like to move to amended as circulated.

Councilmember Kagawa moved to amend Proposed Draft Bill (No. 2644) as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Thank you, Councilmember Kagawa.
Councilmember Yukimura.

Councilmember Yukimura: I believe it is not just the developer, but it is the Housing Agency that is proposing this too. It is a co-sponsorship.

Council Chair Rapozo: You can have the credit. I just said I called Kanani yesterday because she was not aware of it. I said, "Can someone...come early tomorrow and we can work on an amendment," but you know what, if you want the credit, you can have the credit. It is not about credit. It is about correcting a typographical error.

(Councilmember Brun was noted as present.)

Councilmember Yukimura: I am not trying to give credit or anything. I am just trying to get clear on the facts. I do not believe this is just a developer-initiated proposal. I think it is partly because the County does not have two million dollars (\$2,000,000) to pay.

Council Chair Rapozo: Okay.

Councilmember Yukimura: Just so that is clarified. I presume there is concurrence from the Administration to this amendment. Is that correct?

Council Chair Rapozo: Yes. They actually worked with Aida to prepare the amendment.

Councilmember Yukimura: So, it is okay with them? Okay, that is all I wanted to confirm.

Council Chair Rapozo: Any other discussion? If not, all in favor of the amendment?

The motion to amend Proposed Draft Bill (No. 2644) as circulated, and as shown in the Floor Amendment, which is attached hereto as Attachment was then put, and unanimously carried.

Council Chair Rapozo: Motion carried. Back to the main motion. Any discussion or public testimony?

Councilmember Yukimura: I have questions.

Council Chair Rapozo: Okay, I will suspend the rules. You have questions for the Housing Agency?

Councilmember Yukimura: Yes.

Council Chair Rapozo: Okay, hang on, Anne. I will suspend the rules. Housing Agency, can you please come forward?

There being no objections, the rules were suspended.

KANANI FU, Housing Director: Good morning, Council, my name is Kanani Fu, Housing Director.

GARY MACKLER, Housing Development Coordinator: Good morning, my name is Gary Mackler.

Councilmember Yukimura: Thank you. I know I have been thoroughly briefed on this and I appreciate that. I just realized that I am not totally clear on one point and I just want to get that clarified. There will be thirty-two (32) or sixteen (16) homes sold at the one hundred forty percent (140%) of median income price.

Ms. Fu: In this amendment, there is a total of thirty-two (32) duplex units build out on sixteen (16) lots.

Councilmember Yukimura: Okay. We are doing this because the County does not have the two million dollars (\$2,000,000) to buy the lots, correct?

Ms. Fu: We are doing this because the amendment that is being proposed given the housing need, given the resources that the County has, and given what is being proposed by the developer, we believe that it is a better option than purchasing the lots.

Mr. Mackler: Also, as part of that it will allow for the more rapid delivery of housing for this income group because we have a dire need to serve all of the income range that we serve. We have very few opportunities to see homes built for this gap group, so this will actually start delivering homes for that group in

the summer of 2017. If we were to buy lots and then figure out how to build homes on those lots, we would be lagging by several years, the market development. Therefore, we think it has a distinct advantage by getting those units built sooner.

Councilmember Yukimura: I agree with that. I agree that it is good to accelerate the process, but I am realizing that what we give up is the permanent affordability. We are not going to be selling leaseholds and we are not going to be owning the fee, is that correct?

Mr. Mackler: We do. There will be a twenty (20) buy-back restriction placed on the thirty-two (32) units. What we also get back is by not putting two million dollars (\$2,000,000) of our resources into sixteen (16) lots, is when we use two million dollars (\$2,000,000) on other projects, we are getting much better leveraging in terms of the total units that we can see produced. We feel that by not investing the two million dollars (\$2,000,000) for the sixteen (16) lots, we can take that money and get a better bang for the buck elsewhere on another project.

Councilmember Yukimura: What other housing project are we working on in Līhu'e?

Ms. Fu: We are currently finishing up Kaniko'o Phase II.

Councilmember Yukimura: I know.

Ms. Fu: That will come online in January.

Councilmember Yukimura: Yes.

Ms. Fu: In addition with Ho'oluana at Kohea Loa, we do have an agreement with Visionary LLC, which is Grove Farm, which will bring affordable housing of their requirements of thirty percent (30%) once they begin development on any of their Līhu'e parcels.

Councilmember Yukimura: What is the timetable for that?

Ms. Fu: The timetable is not definite. It is based upon Grove Farm's development schedule, so there is no definite date that has been set of when we would proceed.

Councilmember Yukimura: That is part of the problem because we have been waiting for many years now for Grove Farm to develop. I guess that is my concern that we have slated Līhu'e as the place for development. We want to put affordable housing where the jobs are, which is Līhu'e, and as the Chair pointed out a house and lot at four hundred thirty-five thousand dollars (\$435,000) to four hundred fifty thousand dollars (\$450,000) is not affordable by most families. Kaniko'o at Rice Camp is good, but it is for the elderly so it is not addressing our young families and we know that the bulk of our affordable housing need is at one hundred percent (100%) of median income and lower. Therefore, in twenty (20) years, if the market is really high, those houses can go out of the market and we will have to do replacement housing for our affordable inventory, not add to it, but replace. Kanani, you and I have talked about accelerating Phase II of this particular development. I know the developers are eager to provide affordable housing, too, and help us meet our need. Are there any prospects or plans for how to do that?

Ms. Fu: To accelerate, we need to get through Phase I to get to Phase II with this particular development. A large part of what you referred to as the need, the hundred percent (100%) to the eighty percent (80%) median income, that will be served will come in Phase II of Ho'oluana at Kohea Loa. With addressing with whether or not we are building affordable housing in Līhu'e, I can say that the County has taken a multi-prong approach. We are working very closely with the State, with the County, with private landowners to identify land parcels that we can potentially purchase or potentially work in partnership with to expedite the development of affordable housing. We need land that the County has very little of in Līhu'e, and then we are working to ensure infrastructure capacity which includes water and sewer. While we pursue those opportunities, we should not be prevented from pursuing or working with D.R. Horton to complete this amendment to the zoning ordinance. I want to make very clear that our housing policy serves families up to one hundred forty percent (140%) area median income. Affordable is determined, we generally use an equation that no more than thirty percent (30%) of a family's income is for housing costs. That is how the prices for Ho'oluana at Kohea Loa will be determined. We do have families that qualify for these homes. We have working families. We currently have approximately three hundred sixty (360) families on our list that could potentially qualify for these homes. So though the prices may seem unaffordable to many, we believe that it will address a group of residents on Kaua'i that the Housing Agency has not been able to serve in the past.

Councilmember Yukimura: I am fully supportive of this.

Ms. Fu: Yes.

Councilmember Yukimura: I know that the need is far beyond what this is going to provide for.

Ms. Fu: Yes.

Councilmember Yukimura: Therefore, my question is, like we did with Princeville where we gave an additional million dollars (\$1,000,000) to Kolopua so that we could make our housing permanently affordable and secure the land in a place where there are many jobs and where the market is terrible in terms of affordable housing. Is there a way that we can even add a part of the second phase to the first phase by somehow finding some incentives or resources or expediting infrastructure logjams to help D.R. Horton to provide some affordable housing at the lower end of the affordable scale? That is an open question and I guess we are just hoping that the Housing Agency might look more deeply and see if there is something we could do there.

Mr. Mackler: We have representatives here from D.R. Horton who are listening to this.

Councilmember Yukimura: Yes, I know and I know they have a sincere desire to help, but as Kanani pointed out, the first phase is a big job and so the question is, will there be a way we can partner or assist in return for achieving our mission?

Ms. Fu: Okay.

Councilmember Yukimura: Thank you very much.

Council Chair Rapozo: Any more questions for the Housing Agency? Kanani, the fact of the matter is that the reason of your support is not because we cannot afford the two million dollars (\$2,000,000), right? I mean if this thing does not pass today, we have the two million dollars (\$2,000,000) to purchase this land.

Ms. Fu: We could find it, potentially, yes.

Council Chair Rapozo: So you are saying that you believe it is more feasible to go this route?

Ms. Fu: Yes.

Council Chair Rapozo: That you will get a bigger bang for our buck if we go this route?

Ms. Fu: Yes. Historically, when the County does an investment of its own money into units, and I can just give you some cost data, if we are just looking at sixteen (16) lots with two million dollars (\$2,000,000), we are already starting the price point at one hundred twenty-five thousand dollars (\$125,000) per unit, without the vertical. For example, with Kaniko'o, we put in two million dollars (\$2,000,000) of federal funds and we leveraged ninety (90) units at forty-four thousand dollars (\$44,000) a unit. Just in looking at, again, the bang for the buck and the leveraging, it would not be something we would recommend because we can get a better opportunity or we can get a better return with our investment if we were to utilize it elsewhere, the two million dollars (\$2,000,000).

Council Chair Rapozo: Could we purchase the sixteen (16) lots, turn it into thirty-two (32) units, like the developer is going to do? Could we do the same thing using external financing or what I call it, "creative financing?" In other words, we purchase the parcel, the sixteen (16), and we do what they are going to do to create thirty-two (32), in other words we put up thirty-two (32) duplexes and then we retain the affordability forever?

Ms. Fu: I would have to clarify, but I believe the sixteen (16) lots would be prohibited to sixteen (16) units because the density would be restricted.

Council Chair Rapozo: How are they getting thirty-two (32)?

Ms. Fu: They are using their density...

Council Chair Rapozo: From their other part of the project...

Ms. Fu: ...to utilize it on this parcel, yes.

Councilmember Yukimura: Why could you not do a 201H?

Council Chair Rapozo: So anyway...because they are using their existing density.

Ms. Fu: Yes, and what has been allocated with infrastructure, like sewer and water. Therefore, they were going to utilize their

offerings onto these thirty-two (32) duplexes. I could be mistaken, this may be a planning...

Council Chair Rapozo: Well, this is only on first reading, but I just wanted to be sure that the public understands what we are trying to do before we go to the public hearing. I do not want to get into the detail debate of affordable housing, but I do want to make sure that the public understands what we are trying to do prior to the public hearing.

Ms. Fu: Yes, we have to look at density allocation and if density exists there after...

Council Chair Rapozo: Okay. I would ask that you look up that possibility of the County creating the thirty-two (32). Councilmember Yukimura.

Councilmember Yukimura: If we bought the sixteen (16) lots, could we turn it into a self-help project where they would get their own financing and use a 201H process to increase the density?

Mr. Mackler: I am not clear if we could do that. I think one of the components of the current ordinance is that there is external design consistencies, which the developer has a voice in to make sure there is continuity and design throughout their development. That would be hard to achieve if we were to insert habitat homes. They build what they build and they are not going to look the same as what is going to be there at Ho'oluana at Koheha Loa.

Councilmember Yukimura: I do not know that it has to be habitat, there are other self-help developers. I strongly believe in consistency of design so that that has to happen, but I do not think it is insurmountable problem. Okay, thank you.

Council Chair Rapozo: Any other questions for the Housing Agency?
Councilmember Kaneshiro.

Councilmember Kaneshiro: Just to clarify for the public, it all boils down to carrying costs and risks, right? In the original language, we would be purchasing sixteen (16) lots and we would be responsible for finding someone or if we took it upon ourselves to build the units and we need to sell it. In this case, D.R. Horton is taking all of the risks, they are putting up the units, and we are basically dictating what price range they can sell it at, which is one hundred forty percent (140%) affordable rates, right?

Ms. Fu: Yes.

Councilmember Kaneshiro: Is there anything more it to?

Mr. Mackler: Not really. I think you are correct. You have to remember that this ordinance was passed in 1982 and it was different time and selling sixteen (16) lots to the County was probably a much better climate to do that then and here we are in 2016 and it is not quite the same as it was. I think there are distinct advantages by allowing the developer to bring the capital in to build these units and to take the risk as well.

Councilmember Kaneshiro: Thank you.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Do you have a projection as to what is the goal of lowest minimum price that you can foresee that you would have a unit for sale for the public? I am hoping that there is some way to service *kama'āina* first.

Ms. Fu: With this particular project, the income range can go up to one hundred forty percent (140%) area median income for Kaua'i. We project when we execute the actual sale price, it will be based upon United States Department of Housing and Urban Development's (HUD's) new data published for area median income, so there are some variable factors. There is that and there will be some prevailing interest rates that we will have to consider so there is no definite pricing. I can tell you that with preliminary numbers and looking at HOA and interest rates, we are looking at approximately four hundred sixty thousand dollars (\$460,000) to four hundred ninety-five thousand dollars (\$495,000) for a sale of one of these duplex homes.

Council Chair Rapozo: Try that again.

Ms. Fu: Approximate four hundred sixty thousand dollars (\$460,000) to four hundred ninety-five thousand dollars (\$495,000).

Councilmember Kagawa: Per unit?

Ms. Fu: That is the scale where we are looking at right now. Again, there are varying factors that we have to consider at the time.

Councilmember Kagawa: Okay.

Ms. Fu: This is just preliminary numbers that I proposed.

Councilmember Kagawa: But the sign says, "As low as four hundred thousand dollars (\$400,000)," when you drive pass, right?

Ms. Fu: No.

Councilmember Kagawa: Wrong sign?

Ms. Fu: No, the sign says, "Starting at four hundred ninety-five thousand dollars (\$495,000)," I believe.

Council Chair Rapozo: No, it says, "Starting in the upper four hundreds," but you do not see that though.

Ms. Fu: Upper four hundreds.

Mr. Mackler: Those are the markets.

Council Chair Rapozo: The four hundred thousand dollars (\$400,000) is here, but when you go close, you see "upper."

Councilmember Kagawa: When I am driving pass, I see "starting as low as four hundred thousand (\$400,000)."

Council Chair Rapozo: You see the “Starting,” and you see the, “Four hundred thousand dollars (\$400,000),” but you do not see the line in between.

Councilmember Kagawa: Okay.

Council Chair Rapozo: Try to look at the lining and that is what is frustrating, I guess.

Councilmember Kagawa: I hope for continued work in bringing it down. I consistently ask the public, “What do you think is affordable,” and I am asking the local residents. The prices they say are affordable, they believe in their minds and we service the public, is two hundred fifty thousand dollars (\$250,000). Again, anything we can do to get it down, let us do it and work together on both sides. Thank you.

Mr. Mackler: One other part of your question was for *kama‘āina*, for residents—the portion of the ordinance that is not being amended is that for the first six (6) months of sale offer all lots only to Kaua‘i residents. Actually, the affordable and the market, there is a six-month period of time where all of those units will be offered only to Kaua‘i residents.

Councilmember Kagawa: *Mahalo*.

Council Chair Rapozo: Councilmember Brun.

Councilmember Brun: That was going to be my question about whether it was going to be offered to Kaua‘i residents first.

Mr. Mackler: Yes.

Councilmember Brun: As far as residents, somebody living here for two (2) weeks is considered a resident. What does that consist of?

Mr. Mackler: In Ordinance No. 860, we have a section that defines what a qualified resident is and we have certain documentation that we require in order to establish an individual or a household as a qualified resident. We look at tax returns and we look at documentation that establishes residency on the island of Kaua‘i. I do not have all of the details of that in my mind at the moment, but we do have that in our ordinance to work from. For “for sale” housing, it is easier for us to prevent that type of occurrence for someone just moving here or being here a week or less or what have you and being able to purchase a home. With a rental, which utilizes federal funding, for example, we really cannot curve that because of fair housing law, but we always try to isolate our marketing efforts here locally as much as we can.

Councilmember Brun: Out of that list, the three hundred (300) families, I hope we are not looking at three hundred (300) something families, but millionaires that can afford bigger houses coming here to buy a duplex to save money. I hope we are going to stay to help the local families within that range who qualify for that instead of the folks who can afford the million-dollar house or the eight hundred thousand dollar house—let them buy that house. Let us take care of the local people that can afford.

Ms. Fu: What we have built into our housing policy, and in particular for the thirty-two (32) units that will be offered, the participants or the homebuyers must come off the Homebuyer Loan Program list. That is one way we can prevent or curtail non-residents or non-qualified applicants from purchasing these units.

Mr. Mackler: Councilmember Brun, the other way that we address this is with the twenty (20) year buyback—someone is not going to come here and buy a property that they have to live in for twenty (20) years before they can resell it, so that curbs speculation.

Councilmember Brun: Is the six (6) months is from when the house is built or is it from...because we are giving them six (6) months and then we drag our feet and we say, “Six months is up and now let us sell it to a higher bidder.” We have to make sure that it is open for six (6) months and give a local family a chance to buy a house instead of...that is what I hope we can work out and make sure we are on top of that. Thank you.

Council Chair Rapozo: What was the answer to that? Was it from date of construction? Do we know?

Ms. Fu: That has not been clarified.

Mr. Mackler: The ordinance is not clear.

Ms. Fu: But we will take that into consideration.
Thank you.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: People do not qualify if they already own a residence, right?

Ms. Fu: For the affordable units under our program,
no.

Councilmember Yukimura: Right.

Ms. Fu: They have to be first-time homebuyers and have no interest in a property.

Councilmember Yukimura: If the property were to be sold at a leasehold price, what would be an approximately leasehold price?

Mr. Mackler: It would range between two hundred thousand dollars (\$200,000) to twenty hundred fifty thousand dollars (\$250,000) typically and if you look at what the cost would be to produce a unit on one of these lots, we would be taking some very deep subsidies to make that happen.

Councilmember Yukimura: Correct, it would be a deep subsidy, but it gets very close to what Councilmember Kagawa was talking about, two hundred fifty thousand dollars (\$250,000).

Mr. Mackler: Right.

Councilmember Yukimura: That is why leaseholds can be a win-win.

Mr. Mackler: They can and we have been using them as much as we can. Back to your question about prior ownership, the ordinance also reads "that priority shall be given to Kaua'i residents who do not own fee simple or leasehold properties suitable for residential purposes anywhere within the United States," so there is that language in the ordinance.

Councilmember Yukimura: However, once the buyback is over, it can be sold to somebody for whom it would be a second home.

Mr. Mackler: It can.

Council Chair Rapozo: Councilmember Kawakami.

Councilmember Kawakami: Thank you, Council Chair. Can we lower the cost of construction and increase affordability by increasing our height ordinance, building higher?

Ms. Fu: In this particular phase, we do not foresee that happening only because there are restrictions on density in this phase. As it pertains to our lots, the sixteen (16) lots...

Councilmember Kawakami: But that is not the question. The question is, can we lower the cost of construction by building taller?

Ms. Fu: In particular to our sixteen (16) lots or in general?

Councilmember Kawakami: In general, yes.

Ms. Fu: There is a...what is the word I used yesterday?

Mr. Mackler: Economy of scale.

Ms. Fu: Economy of scale. We have not ran those numbers particularly what is the height we should get to lower the costs. We do not have that.

Councilmember Kawakami: (Inaudible).

Council Chair Rapozo: Yes.

Ms. Fu: There is a potential with construction costs and those things, but we never explored that option.

Councilmember Kawakami: I have questions, but you know what, I have to get used to the Sunshine Law again.

Council Chair Rapozo: I know it sucks.

Councilmember Kawakami: I strayed way off.

Council Chair Rapozo: He was at the State for so long that he forgot that we cannot really talk to each other.

Ms. Fu: Yes.

Council Chair Rapozo: Good though because maybe he can go back and tell his friends up there to fix it. Real different, right?

Councilmember Kawakami: Yes.

Council Chair Rapozo: Okay. Councilmember Yukimura. Let us focus it on this Bill. I think we will need another update/discussion on affordable housing on Kaua'i in the Committee and I think that needs to happen sooner than later.

Councilmember Yukimura: You are already getting some economies of scale by doing a duplex, are you not? I do not know if it is economy of scale, but you are getting savings from actually doing what is Councilmember Kaneshiro's bill calls for is multi-family and sharing common walls or whatever.

Mr. Mackler: Yes.

Councilmember Yukimura: So, they are maybe saying more in terms of multi-family than in terms of height. Probably?

Mr. Mackler: I think, yes.

Council Chair Rapozo: Our lunch break is coming up at 12:30 p.m., and I know we have some public testimony, which I want to wrap up. How many of you in the audience are wishing to testify? Just two (2) of you? Okay.

Mr. Mackler: That is it?

Council Chair Rapozo: I am going to ask a question, but I do not expect an answer right now. I am going to ask you to take your "Housing" hats off and as parents, family members, and people with children, at five hundred thousand dollars (\$500,000), twenty percent (20%) down payment that is required by the bank, that is one hundred thousand dollars (\$100,000). I just read this morning that the feds are increasing the mortgage rates, which is going up in 2017, three (3) times, which means that mortgages are going to be expensive. My question to you, and I do not expect an answer, not as a Housing person that is trying to build unit fast, even if it is for a higher income level—can your children afford one hundred thousand dollars (\$100,000) down and if they cannot, then is this truly affordable? It is just for you to take back, digest, and chew on. I do not want to embarrass you on the floor.

Ms. Fu: I would like to respond to that. I do not have my "Housing hat" on, but five (5) years ago, I was that person looking for a home. We have been very fortunate to have a great County Housing Agency that has provided our local families with a variety of financing opportunities to finance homes. In addition to that, a lot of the major lenders now—we can use United States Department of Veterans Affairs (VA), Federal Housing Administration (FHA) loans, Fannie Mae; they all require three percent (3%). Some of them will even take care of the Private Mortgage Insurance (PMI), so the opportunities to finance a home at five hundred

thousand dollars (\$500,000) are there. It is a lot easier now than it was five (5) to ten (10) years ago. We see families come into the Housing Agency that are purchasing four hundred sixty-five thousand dollar (\$465,000) homes and their income is at the lower one hundred twenty percent (120%); therefore, we know that it is possible. We can see that. We have those families. Right now, a family of four (4) that earns one hundred ten thousand dollars (\$110,000) would qualify for this home. Based on that income, they qualify for a four hundred sixty thousand dollar loan, granted their credit all has to be in line. Yes, we know the greatest need is in the eighty percent (80%), but we do have our working families that this is for and they can do it if they opted to buy their home and not buy their eight hundred dollar (\$800) a month Yukon. It is choices.

Council Chair Rapozo: You make it sound so easy. I can tell you that that is maybe in a "best case" scenario, but I can tell you the reality, and again, I do not want to waste time because there are Councilmembers that have to leave at 12:30 p.m. for a meeting and I do want to get to the public testimony. I can tell you that in my experiences with people that have come to me, it is not that smooth and not everybody qualifies for those fancy loans. I agree with the trucks though. They would rather buy an eight hundred dollar (\$800) a month truck than put that towards a mortgage. Anne, you may come up.

Ms. Punohu: My name is Anne Punohu and I need to take a few minutes and just take a deep breath. There is no love-loss between me and HUD, and I am sure I will probably never have another HUD unit the rest of my life, but today I really do not care. I have been trying to fight for these issues for almost thirty (30) years. I have butted heads with HUD over and over again. When I went to HUD and said to HUD, "I want you to prevent discrimination in public housing against HUD voucher holders," HUD came and went against me, along with the real estate agency. Today, I am fighting right now for rent control. Today, I heard out of their own mouths who they are working for, who they are interested in putting in a house, and at what level they are willing to make sure they take care of these people at. Today, I am absolutely at war with HUD until HUD changes its policies or changes the people who run it because they are no longer serving the people of Kaua'i. They are serving developers, they are serving people who want to pay...I do not want to hear anything these people have to say this morning because as far as I am concerned, today is my demarcation line across the sand. Something needs to be done immediately. You are going to sit here and tell me that you are going to make real estate deals for one hundred forty thousand dollars (\$140,000) of the median income and that is the people who you are concerned about being taken care of right now? A deal that will help a developer to get the same deals as you got to help the people. These are not the people who need help. These people can go out and get their own house, okay. Thank goodness that we have Councilmember Brun on this Council right now. Bless you, Councilmember Brun. Bless you. Because I am so glad to see sitting in that chair because Councilmember Brun knows because Councilmember Brun is with me, because Councilmember Brun is the real people, and he knows what is really going on. Hopefully you can appreciate my thirty (30) years of my fight and what I put myself through by, of course, not having any friends back there and I really do not care today. Today, it all came out in the open and shame, shame, shame, and *hewa, hewa, hewa*. If this Council does not do something to get this department in order, I do not know what to tell you folks. You talk about a future agenda and regime in this country now, we are not going to have any housing for anybody and everyone is going to be homeless on this street and out of houses, but there are one hundred forty percent (140%) median and above, and those nice developers will have their units filled. By the way, our buyback, yes, we cannot wait for that, can we? We cannot

wait for it to fail so we can resell it to somebody else who can make a profit. I am sorry, I have never sworn in this room, but I have never been so angry because I beat my head against the wall for decades to try and fight for the people, to get fair housing, to get real help, to get help at the real median income level which is between thirty thousand dollars (\$30,000) and fifty thousand dollars (\$50,000)—it sure is not one hundred forty thousand dollars (\$140,000). *Mahalo*.

Council Chair Rapozo: Thank you, Anne. Mr. Deal.

Mr. Deal: Chad Deal, Interim Government Affairs Director for the Kaua'i Board of Realtors. I would like to take this moment you, the Councilmembers, and also our housing authority for moving forward on getting additional homes for Kaua'i residents, especially Kaua'i residents. I want to see them in there also. I want to keep it as for our local people. That is where the need is. We do not need houses for people who are coming here because they are going to find them. We need houses for local people, for our people on this island. Thank you very much. I also would like to let you know to please include us in anything you need us for. We are a great organization for information and we are here to help, so please call on us. Thank you very much for this opportunity.

Council Chair Rapozo: Thank you, Mr. Deal. I am assuming that testimony is, "As the President of Kaua'i Board of Realtors," or was that your individual testimony?

Mr. Deal: I believe I speak for the Kaua'i Board of Realtors.

Council Chair Rapozo: Perfect, thank you.

Mr. Deal: I might get in trouble for that.

Council Chair Rapozo: No, I do not think so.

Mr. Deal: But from my heart, I do. Thank you.

Council Chair Rapozo: I do not think you are going to get into trouble. Thank you. Any other members in the public wishing to testify? If not, I will call the meeting back to order.

There being no further public testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Final discussion before we break for lunch. I just want to say that for the Housing Agency and the developers, I think you hear the concern about the cost and getting these homes for Kaua'i residents and long-term affordability. We will have a lot of opportunities to work as we move forward, especially at the Committee level. With that, roll call.

The motion for passage of Proposed Draft Bill (No. 2643) as amended on first reading, that it be ordered to print, that a public hearing thereon be scheduled for January 12, 2017, and referred to the Planning Committee was then put, and carried by the following vote:

FOR PASSAGE: Brun, Chock, Kagawa, Kaneshiro,

	Kawakami, Yukimura, Rapozo	TOTAL – 7,
AGAINST PASSAGE:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: With that, we will take a lunch break and will be back at 1:45 p.m.

There being no objections, the Council recessed at 12:34 a.m.

The meeting was called back to order at 2:35 p.m., and proceeded as follows:

Council Chair Rapozo: I will call the meeting back to order. I believe we are on page 9.

BILLS FOR SECOND READING:

Bill No. 2573, Draft 2 – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE UNDER CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO DECLARING A PUBLIC NUISANCE: Councilmember Kagawa moved to receive Bill No. 2573, Draft 2, for the record, seconded by Councilmember Kaneshiro.

Ms. Fountain-Tanigawa: Council Chair, we do have a registered speaker.

Council Chair Rapozo: Okay, with that, I will suspend the rules. Who is the registered speaker?

There being no objections, the rules were suspended to take public testimony.

Ms. Punohu: *Mahalo.* Anne Punohu for the record. I was not sure if I was going to weigh in on this or not because I wanted to get some clarification. I read it, but then I realized I may not want to testify on it. Is this the smoking ban bill?

Council Chair Rapozo: The fireplace bill.

Ms. Punohu: I stand on my former testimony. I thought it was something else, which is why I was...therefore, I am just going to stand on my old testimony, which is I think it is silly and let us not do it. That is my opinion. That is the one that you cannot put a smoker in your backyard or something, right? Please clarify me.

Council Chair Rapozo: No. It is the bill that says you cannot have a fireplace during the no-burn days where the smoke would bother your neighbors.

Ms. Punohu: I see what you are saying. This was when that neighbor that came up who had the smoker and they had all of those situations going on.

Council Chair Rapozo: It started off as a neighbor dispute.

Ms. Punohu: But we are expanding it to a no-burn, okay, yes, I am either or on it. Yes, I should not be up here now. Goodbye. Thank you.

Council Chair Rapozo: Thank you. Anyone else wishing to testify? Seeing none, I will call the meeting back to order.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: The motion is to receive. Roll call.

The motion to receive Bill No. 2673, Draft 2, for the record was then put, and carried by the following vote:

FOR RECEIPT:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7*,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Yukimura was noted as voting silent, but shall be recorded as an affirmative for the motion.)*

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item.

Bill No. 2628 – A BILL FOR AN ORDINANCE TO AMEND CHAPTERS 18, 20, AND 23 OF THE KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO REVOCABLE PERMITS IN COUNTY DESIGNATED RIGHTS-OF-WAY: Councilmember Yukimura moved to receive Bill No. 2628 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Any public testimony? I will suspend the rules.

There being no objections, the rules were suspended to take public testimony.

Ms. Punohu: This is about being able to permit and vend in places where there are...this is really important to me. I have been putting together ideas and processes for this for about ten (10) or fifteen (15) years since I was technically, illegally vending up at Wailua Falls. For many years, I have been a crafter and I have used this source of income to support my family when my kids were small and I am so glad to finally see a process finally being proposed where we can legally vend. In a way, it will not cost people an arm and a leg like it has at Spouting Horn, which has become ridiculous for people to try and vend there. I am hoping that this becomes an order of the day. This will promote entrepreneurialship for so many of our people. It will give us an opportunity to have a job and be our own bosses so that we do not have to worry about being hired and fired. For someone like me who is disabled, who would like to work, and has a hard time keeping jobs out on a regular workforce because they are too physical for me now, but crafting and being able to vend and do something like this legally would be great for someone like myself and many other people. I am here to support the opportunity to have the process and I

hope that it works and that we will be able financially to step forward and be able to apply and be able to do this. I think it is wonderful, a long time coming, and I am really sorry there are not many people in the room because it is going to be, I am hoping, such a good opportunity for so many people here. That is all I want to say. I support it. Thank you. *Mahalo*.

Council Chair Rapozo: Thank you. Anyone else wishing to testify? Seeing none, I will call the meeting back to order. Councilmember Kagawa.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Kagawa: When the Bill comes back, because of the importance to economic development, it will go under Councilmember Kawakami's Committee and I am supportive of that. I would like to give some of my take on some of the ramifications. I do not think it is a one-size fit all. I think Councilmembers did a good job in giving advice to the Administration as to where to go with this. The Hanapēpē event and the Kapa'a event, though they both attract very large crowds, they are not the same place. One is not on the main highway, the other is in a town, and sometimes large events that are successful for many years are successful because of the chaotic look where there are a lot of different variety of foods. I am kind of wary going forward that we make sure that we cross as much "T's" and dot as much "I's" as we can when we bring forth the bill. Nothing is perfect when tried on the first time, but certainly we can make sure that we try and do the best we can and not go in with a concept that it is a one-size fits all and that perhaps listening to the Council's advice, taking more time and looking at different options may be a better solution. I certainly do not want to see us pass a bill and then have a lot of complaints come to the County and normally it comes straight to the Council. Again, we need to be cautious and we need to make sure that we take our time and do it the right way before we pass the bill. The events are successful as-is, right now. Without passing this Bill, the events are successful. The problem is that the store owners complain that it is too congested or it is blocking parking for them, but this is just a once in a month event or once a week event, and again, a big change could jeopardize the success of each event. We just have to be really careful going forward. Thank you, Chair.

Council Chair Rapozo: Anyone else? Anne, for your information, the Administration had requested based on the discussions we had over the last few months, that they were going to start all over, basically. They recognized some flaws in the Bill that was presented, so rather than try to significantly change it, which would require a whole new bill and public hearings, they just asked us to receive it and they are going to start all over, working more with the community. What happens a lot of the times is when the Administration comes up with a project like this, they have their community meetings, if you do not see the notice, you do not go, and only when it gets here where it on television or the newspaper covers it, then the people all of a sudden say, "Oh my goodness, I did not know that was happening." They show up, they submit testimony, we ask the questions from the people, and the Administration realizes, "We did not see that and we did not consider that." I applaud the Administration for saying, "You know what, we want to explore more options and please give us the opportunity." Councilmember Kawakami has volunteered to take it in his Committee of Economic Development & Intergovernmental Relations, which I agree where it belongs. I look for a much better process going forward. I will say that I am very concern for the County, the Council, or the Administration to exclude people from participating in events on County's rights-of-way. That is a concern of mine. I do not think we should give any body, any entity, the ability to tell Anne

Punohu, "Sorry, we do not want you at our event," if it is on a County right-of-way. On private property, you can do what you want, but on a County right-of-way—so I am more interested in finding a way where these events get permitted as the events occur and not one (1) blanket permit that gives you the right to tell a local resident, "Sorry, we do not want you at our event." That needs to be cleared up before it gets my support. I am looking forward to a great discussion moving forward. Councilmember Kawakami.

Councilmember Kawakami: Council Chair Rapozo and Committee Chair Kagawa, thank you so much for the opportunity to manage this. What I would say is a considerable piece of legislation and I would like to agree with everything that you folks have said. Hopefully, as we move forward, the vision that I have is to create legislation that provides the basic infrastructure for allowing these type of events. Then, in the rules, it should reflect various economic districts, similar to how other jurisdictions handle it where each area is unique. I agree if it is a County right-of-way, there should be a vehicle and a process for everybody to participate and capitalize, and in the same time maintain that special sense of place that each community has. So, moving forward I am going to lean on all of you folks for your input, the Administration's input, and most importantly these neighborhoods that these events are happening in. Thank you.

Council Chair Rapozo: Thank you very much. Any further discussion? Seeing none, the motion is to receive.

The motion to receive Bill No. 2628 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL - 7,
AGAINST RECEIPT:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Ms. Fountain-Tanigawa: Seven (7) ayes.

Council Chair Rapozo: Next item.

Bill No. 2635, Draft 2 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 19, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE WAILUA GOLF COURSE: Councilmember Yukimura moved for adoption of Bill No. 2635, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Kagawa.

Council Chair Rapozo: Any discussion? Any public testimony? Did you want to testify?

There being no objections, the rules were suspended to take public testimony.

Ms. Punohu: I stand on my previous testimony, but for Councilmember Brun and Councilmember Kawakami, I have been opposing this Bill. I do not feel that it is right. I feel that it is wrong to put alcohol or give more permitting ability to sell alcohol at a public golf course, not because it is a golf course or because I have anything against the entity that is there—that is not my reason for objecting. My reason for objecting is because it is a public golf course and because this is not

private property and because I feel that although the argument has been made that of course we are not going to look at putting alcohol at other public sporting events, I just do not feel that selling alcohol is the only way to increase the economic development of the golf course. I feel that there are other ways to do that and I have been objecting to it at every hearing, so I am still objecting to it today, but I am sure it will pass. I will just continue to state my opinion because that is just me. I am still standing on my opinions that I have been making this entire time. *Mahalo.*

Council Chair Rapozo: Thank you. Anyone else wishing to testify?
Seeing none. Councilmember Kagawa.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

(Councilmember Chock was noted as excused.)

Councilmember Kagawa: First, I would like to thank Councilmember Chock for working with me in trying to... basically, we are trying to keep our current vendor from not closing the restaurant and snack bar concession prematurely. I think his contract has another three (3) years on it and the benefit that we have to look at is whether even if he closed, is nine hundred dollars (\$900) a month sufficient to keep the concession close and will the number of golfers drastically reduce, especially the non-Kaua'i residents because those are the moneymakers for the Wailua Golf Course, will those drop if we do not have a restaurant concession there. I am a regular golfer and I do think it will have a huge negative impact. If you times nine (9) times twelve (12), what is that? Eight thousand four hundred dollars (\$8,400) a year. Easily we make that up with more play. I think this gives an option if we pass it. The Administration can look towards possibly doing a new bid that will get the current vendor out of the contract that he is in. It will allow somebody else who is willing to put more effort and making the restaurant, snack bar, and concession more successful. I believe it was successful in the past. People asked the question, "Why it was not?" I say it is not the best location if somebody is just going there to eat. The traffic there is pretty scary when pulling out when you are turning left from the golf course back to Lihu'e. It is right across the jail which is always not the most attractive site, but on the other hand, it succeeded in the past. I think good food, reasonable prices, and of course beverages of all sorts can help something be successful, but I think we see the letter written on the wall. We heard Ian talk about how the current vendor is probably going to close up at the end of this month and just somehow pay the rent and take his losses. We need to open up some options because I am worried that if we do not get a restaurant concessionaire there, the subsidy to the Wailua Golf Course could be significantly higher going forward and I cannot see the County doing that at this point. I think we need to look at reducing the subsidy and that will come if we can get more mainland players especially to play. It is a beautiful course, top 10 course in the nation for public municipalities and there is no reason why we should not be attracting more golfers. Having said that, Wailua Golf Course does not have the roving concession serving alcohol as do all the other private courses on Kaua'i and I do not think it is a level playing field to attract our tourists that are on vacation, who loves to golf, and they would like to enjoy their recreation and have a few beverages on the course. Our parks allow alcohol to be consumed, but at this golf course park, you cannot consume alcohol. I can see the negatives; however, alcohol is consumed at our parks, period. Why are we only banning it at the golf course when there is a significant economic impact that could be saved if we try to open up the window and see if it is successful or not? If it is not successful, then we should kill the bill and repeal it because it is not working. It is not because it is invalid, it means

that it is just not working. Let us leave that to be. I think the purpose should be to try and reduce our subsidy to the golf course, encourage more play, and this Bill will open up that window of opportunity. Thank you.

Council Chair Rapozo: We are done with the public testimony unfortunately, but I am going to ask that we take our caption break right now. Councilmember Chock had to leave, I have to make a phone call, and I do want Councilmember Chock here for the vote. If you do not mind, we can take the caption break now or we can do the other items. I do want to make sure that we have the seven (7) members here for this vote.

Councilmember Kawakami: I want to say something on this matter also. Did you want me to do that now?

Council Chair Rapozo: You can do that now.

Councilmember Kawakami: Thank you, Council Chairman. I would like to say that I appreciate all the testimony and opposition, and philosophically I cannot disagree with them. The topic of whether or not we should allow drinking on public property is a philosophical argument that I would not be able to win, but I am planning on supporting this measure for a few reasons. One, I do not think it is going to be the savior of any vendor, but I do think that it offers another tool for vendors to be successful. I also think that it offers another amenity for us to be able to market our golf course, because when golfers are choosing between which golf course they want to spend their day at, they are out there looking at what amenities we have to offer. I can only imagine that we are landlords. Not too long ago, one stone's throw away from this building, we operated a grocery store and I can only imagine how hard it would be to be able to conduct business if we had our hands tied. Do I think this is going to be the "save all" or "win all" for the vendors moving forwards? Absolutely not. Do I think there are windows of opportunity for government to be better landlords and be better marketers of our amenities and our facilities? Absolutely. So I plan on supporting this. I can tell you that the golf course in their days when they were not accepting credit cards lost one of their biggest target markets, which is business golfers. Business golfers refuse to golf at that golf course because business golfers are going to use credit cards. Therefore, as we move forward, I just think this is one small piece of the puzzle of how we can improve government and when people say, "At times government should operate more like private sector business," I think that this is just one way to improve our operation. Thank you.

Council Chair Rapozo: Councilmember Kaneshiro.

Councilmember Kaneshiro: I think I said it the last time this was on the agenda regarding it being able to not only offer an additional amenity, but I also see the opportunity of us being able to do bigger and wider things. Events that we do at the Kaua'i War Memorial Convention Hall or at the Kaua'i Veterans Center—that is probably not ours—but maybe baby parties or a wedding on the golf course. You see those at other golf courses and if we are allowed to offer alcohol, then we can charge a site fee. Whomever the contractor is there can charge for the alcohol and someone can have a party there, someone can have a small wedding on the golf course on a hole where golfers are not golfing already or it is a slow time or almost evening. I see it as a bigger opportunity for success. Again, it is not going to guarantee success. I said last week that I do not think we should make it mandatory that they have somebody driving a cart around because I do not know what the cost of hiring a person full-time to drive a cart around and if people are going to buy enough things to make

it viable. Again, it is just expanding the opportunity and allowing them to try and be successful, and giving us more of an opportunity. We saw the Kaua'i Visitor's Bureau provide magazines of our beautiful golf course. We could even provide it as a site for weddings, parties, and for other things. The building is there, they have food, it would be easy to set up a tent or something outside, next to the putting greens, not on the putting greens, where they could cater food and parties there also, which would be another way to get people to that location. For me, it is just to help them be successful and try and help our golf course be successful.

Council Chair Rapozo: Councilmember Brun.

Councilmember Brun: I will be supporting this Bill. I am hoping that we can go ahead and put a marshal back on the course and get him back on there to control some things. In looking at this right now, people are drinking on the course anyway, no matter what way you look at it. By having a vendor do it, we will have added liability insurance on top of the vendor and they can control how much alcohol is going out of the course. I am hoping that we can look into putting our marshal back on that course and try to help control our alcohol usage and people parking on the side of the road and playing a couple of holes in the evening. I see that one same truck there every day I go to Kapa'a. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I really like Councilmember Kaneshiro's entrepreneurial thinking because I think that is what is going to be needed to pull the golf course out of the hole. I do remember that even Mr. Costa was telling us about how other golf courses are doing a lot more of a variety of things in terms of uses of the golf course to help the golf course stay in the black. I will be voting for this measure because there already is drinking going on and I think putting it under the jurisdiction of the licensed alcohol provider will be better control. We may need to put the marshal back, but that is going to be additional cost, which will be a greater deficit and greater general fund subsidy unless there is more entrepreneurial thinking and better management. It was pretty incredible that it took us, seemed like a year, to get the use of credit cards. As Councilmember Kawakami pointed out, that was a huge business loss at a time when tourism was at a nice peak. As we said in Committee, I think there needs to be a whole look at the overall management of the golf course and I am glad that we are going to put that on as another agenda item. As far as this particular bill, I think it could help our vendor. I do not think it is the end-all and I think there is a bigger and better solution that will take up separately.

Council Chair Rapozo: Councilmember Kagawa.

Councilmember Kagawa: Just a short note, I had some E-mails saying, "Get rid of the golf course. Close it. It is a loser." But one thing that Baron brought up to me, and I did not ever think about, was that the golf course receives a lot of the treated effluent and in a useful way. If we did not have the golf course, how much millions would we spend on safely getting rid somehow, taking that effluent that would not be used to water the golf course? We did significantly upgrades where we use effluent water and look how green the grass is out there. That is why. Thank you.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: I agree, I do not think the solution is getting rid of the golf course. I think it is to manage better and get it in the black.

Council Chair Rapozo: Councilmember Chock should be back any time now. I would ask that we move on and then we can get his comments before we take the votes. It is obvious where this is going. Let us just finish up the last two (2) items and then we will come back to this item.

Bill No. 2639 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Kauai Fire Department, Training Bureau, Other Small Equipment, Fifty (50) Automated External Defibrillators – \$151,000.00*): Councilmember Kaneshiro moved for adoption of Bill No. 2639, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Roll call.

The motion for adoption of Bill No. 2639 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Brun, Kagawa, Kaneshiro,	
	Kawakami, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Chock	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Next item.

Bill No. 2640 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2016-812, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND (*Kauai Fire Department, Fire Operations Public Safety, Sixty (60) Self-Contained Breathing Apparatus (SCBA) – \$390,000.00*): Councilmember Kaneshiro moved for adoption of Bill No. 2640, on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura.

Council Chair Rapozo: Any discussion? Any public testimony?

There being no objections, the rules were suspended to take public testimony.

There being no one present to provide testimony, the meeting was called back to order, and proceeded as follows:

Council Chair Rapozo: Roll call.

The motion for adoption of Bill No. 2640 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Brun, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 6,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Chock	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Let us go back to the golf course bill. Actually, let us take a ten (10) minute caption break.

There being no objections, the Council recessed at 3:02 p.m.

The meeting was called back to order at 3:14 p.m., and proceeded as follows:

(Councilmember Chock was noted as present.)

Council Chair Rapozo: We are back on Bill No. 2635. Councilmember Chock. I already went around the table.

Councilmember Chock: Thank you, Chair. I appreciate the consideration. I did not listen to the discussion, but not much has changed for me from last week. I am still in support of this Bill, in recognition that what we are trying to do is create some means of sustainability and viability for our vendors at the course. The only other thing for me would be that along with the proper enforcement of our rules on the course, I believe that this will give us, not only the vendors, but our players what they want in a way that can be monitored closely. That is what my hope is. We just need to do what we say we are going to do and follow the rules as we stated. With that, I will be in supportive of this measure. Thank you.

Council Chair Rapozo: Anyone else? I will just start by saying I really cannot support the Bill. I did a lot of research Statewide with the other Counties and none of the other County municipal golf courses allow alcohol on the golf courses and for liability reasons, that is really what it was. To me, that is important. It is also important to make sure the vendor is able to operate, but I think we have to remember that when the vendor bid on the contract, the limitations were there. It is what it is. At nine hundred dollars (\$900) a month...and it is difficult for me because the concessionaire is a very good friend of mine or he was. I understand his dilemma, but I also, as Councilmember Kawakami mentioned, a philosophical part of me that just does not see that is something we should be doing. As far as generating revenue on the course, I think there is a huge opportunity right now just serving food, such as sandwiches, water, soda, juice, and smoothies. I think that should be considered by the vendor. As Councilmember Kawakami said earlier, this is not going to make or break the concessionaire that fact that this moves forward. I do believe and agree that going forward it would be attractive. I think it would be attractive to the next vendor, and if this current concessionaire decides to bail out of the contract, I think there will be quite a few people knowing now what the bid was to try and get that restaurant. There are other things. too. When that used to be the Fairway Restaurant, that was a common place for parties, catering, events, and graduations. A lot of those things generate a lot of revenue and that is another option

that the concessionaires should consider and that would be within the parameters of the liquor license where you could serve alcohol in that party area. I think there are a lot of opportunity options for the concessionaire to take advantage of. The enforcement component, the fact that they are all drinking out there right now—I am not so sure I would be happy about that and I think that shows that we are not doing our job as far as enforcement. I said this at the last meeting that if we properly enforce that, you would drive a lot of that traffic to the restaurant to buy their beer or whatever they drink after their round. Right now, they are going to the parking lot, but they should not be in the parking lot and we allow that to happen, and for that the vendor is suffering. I am surprised that he has not made a claim against the County because we should be enforcing that and we do not. We got rid of the marshal. Again, philosophical, I do not think it is going to make a difference in the concessionaire’s success or failure. It is an added benefit, but not one that is going to change the world for that operation. I think he needs to start looking at other avenues before we change the entire culture of our golf course. Yes, it is all about choice. If the person wants to drink while he golfs, then unfortunately he will have to go to a private course, but we will know when we send our kids or relatives to the golf course, we will know that it is an alcohol-free park. For that, I am not going to be supporting it and we will see what happens. The other thing, too, is that I spoke to the Mayor and he does not support it as well. I am not sure what the Mayor will do when this passes, but let us see what he does with it. I can count. It is “veto-proof,” but we will see how it goes. With that, roll call.

The motion for adoption of Bill No. 2635, Draft 2, on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura	TOTAL – 6,
AGAINST ADOPTION:	Rapozo	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Ms. Fountain-Tanigawa: Six (6) ayes and one (1) no.

Council Chair Rapozo: Thank you. Can someone read us into Executive Session, please?

Ms. Fountain-Tanigawa: Chair, on page 10 are the Executive Sessions.

EXECUTIVE SESSION:

ES-883 Pursuant to Hawai‘i Revised Statutes (HRS) Sections 92-4, 92-5(a)(2), 92-5(a)(4), and Kaua‘i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Kaua‘i County Council, requests an Executive Session to brief the Council on matters regarding the Notice of Violation and Order (NOVO) from the State of Hawai‘i Department of Health, Clean Water Branch for National Pollutant Discharge Elimination System (NPDES) Permit related violations and penalties at four (4) refuse transfer stations, and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-885 Pursuant to Hawai‘i Revised Statutes (HRS) Sections 92-4 and 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 and request for authority to settle the case of Klaus Burmeister et. al., vs. County of Kaua'i, et al., CV 16-00402-LEK-KJM (United States District Court), and related matters. This 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-886 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 Special Counsel's continued representation of the Planning Department in Transient Vacation Rental (TVR) Appeals and related matters. 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-887 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 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 in the case of Grant W. Gribble v. County of Kaua'i, Fifth Circuit Court Civil No. 08-1-023, to obtain settlement authority, and related matters. This 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.

Councilmember Kagawa moved to convene in Executive Session for ES-883, ES-885, ES-886, and ES-887, seconded by Councilmember Chock, and carried by the following vote:

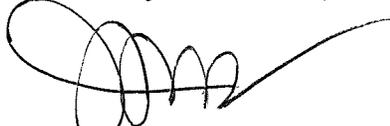
FOR EXECUTIVE SESSION:	Brun, Chock, Kagawa, Kaneshiro, Kawakami, Yukimura, Rapozo	TOTAL – 7,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: Thank you. That will end the formal proceeding. BC, you can leave. With no objections, the meeting is adjourned.

ADJOURNMENT:

There being no further business, the Council Meeting adjourned at 3:23 p.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

:dmc

(December 14, 2016)

FLOOR AMENDMENT

Proposed Draft Bill (No. 2644), Relating to Zoning Designation in Hanamā‘ulu, Kaua‘i

Introduced by: Council Chair Mel Rapozo

Amend Ordinance No. PM-94-82 by amending the proposed Condition No. 7 to read as follows:

“7. As represented by the developer, in lieu of the sale and conveyance of 16 improved lots to the County, the developer (D.R. Horton) shall develop and sell 32 completed duplex affordable housing units in the first development phase of Koheha Loa, described as Ho‘oluana (Phase 4), on designated lots, as per the Ho‘oluana at Koheha Loa Subdivision Map attached hereto as Exhibit A.

a. The 32 duplex affordable housing units shall be 3-bedroom 2.5-bath units and offered for sale to Kaua‘i households with incomes up to 140% of the Kaua‘i median household income, as established by HUD.

b. Development, marketing, and sale of the 32 duplex affordable housing units shall be done concurrent with the market units in Ho‘oluana (Phase 4) and shall be subject to and in accordance with the terms of the Housing Policy for the County, Chapter 7A of the Kaua‘i County Code 1987, as amended, and as modified by the Affordable Housing Agreement (Līhu‘e-Hanamā‘ulu Master Plan Area) dated June 8, 2008, as amended, by and between the developer and the County, including Section 2.a of said agreement respecting housing credits to be earned by the developer for each affordable housing unit.

c. For the 32 duplex affordable lots, the following fees and assessments are to be waived:

- [1. Subdivision application fees and any other related fees.
 2. Park dedication fees.
 3. Real property tax.
 4. Sewer fees.
 5. Water Facilities Reserve charge, upon approval by the Board of Water Supply.]
1. Sewer connection fees.
 2. Water Facilities Reserve charge, upon approval by the Board of Water Supply.”

(Material to be deleted is bracketed. New material to be added is underscored.)