

COMMITTEE OF THE WHOLE
Council of the County of Maui

MINUTES

March 5, 2010

Council Chamber, 8th Floor

RECONVENE: 1:32 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Danny A. Mateo, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member
Councilmember Sol P. Kaho'ohalahala, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Wayne K. Nishiki, Member (In 1:34 p.m.)
Councilmember Joseph Pontanilla, Member (In 1:34 p.m.)
Councilmember Michael P. Victorino, Member (Out 2:45 p.m.; In 4:14 p.m.)

STAFF: David Raatz, Legislative Attorney
Camille Sakamoto, Committee Secretary
Leinaala Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Marian Feenstra, Executive Assistant, Office of the Mayor (Item No. 2(10) and 2(11))
Darlene Endrina, Executive Assistant, Office of the Mayor (Item No. 2(10) and 2(11))
Adrianne N. Heely, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 2(10) and 2(11))

OTHERS: Dana Naone Hall
Irene Bowie
Gordon Cockett

PRESS: *Akaku: Maui Community Television, Inc.*
Ilima Loomis, The Maui News

CHAIR MOLINA: ...*(gavel)*... The Committee of the Whole meeting for March 4, 2010 is now reconvened. The time is Friday, March 5th, the time is 1:32. Thank you very much, Members, for making yourselves available for this recessed portion of the Committee of the Whole meeting. We last left off on Committee of the Whole Item 2(10).

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ITEM NO. 2(10): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (VARIOUS) (C.C. No. 09-15)

CHAIR MOLINA: We had, on Thursday, we conducted a vote on the nominees for the Maui Planning Commission, which is letter "T." on the third page of your agenda. Members, I'd like to ask you to redirect your attention to letter "H.", we had a request for separation on the Commission on Culture and the Arts. The nominees for that Commission was, one, Clare Apana; and number two, Phillip Gagle. But before I do that, Chair would like to recognize the Members in attendance here today. We have the Committee Vice-Chair and Council Chairman, Danny Mateo; and Committee Member Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR MOLINA: Good afternoon. And good afternoon to Committee Member Jo Anne Johnson.

COUNCILMEMBER JOHNSON: Aloha.

CHAIR MOLINA: Along with Member Sol Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Aloha.

CHAIR MOLINA: Aloha. And Member Bill Medeiros.

COUNCILMEMBER MEDEIROS: Aloha and good afternoon, Chair.

CHAIR MOLINA: Aloha. And Committee Mike Victorino.

COUNCILMEMBER VICTORINO: Afternoon and aloha, Chair.

CHAIR MOLINA: And excused for the moment is Committee Member Wayne Nishiki and Joseph Pontanilla. And from the Administration, from Corporation Counsel's office we have Adrienne Heely.

MS. HEELY: Good afternoon, Chair.

CHAIR MOLINA: Good afternoon. And from the Mayor's Office, we have Marian Feenstra.

MS. FEENSTRA: Good afternoon, Chair.

CHAIR MOLINA: And we also have Darlene. . . Endrina, if I'm correct.

MS. ENDRINA: Good afternoon, Chair.

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CHAIR MOLINA: Thank you very much. And thank you all for being here. And our superman Analyst filling in for our regular Committee Analyst, Kirstin Hamman, we have David Raatz joining us for this afternoon's proceedings. Good afternoon, Mr. Raatz. And of course we have our Committee Secretary, Camille Sakamoto. And joining us for the festivities now is also Committee Members Wayne Nishiki and Joseph Pontanilla. All right, Members, so again I would like to ask you to redirect your attention to letter "H", Commission on Culture and the Arts. The first nominee, Clare Apana, as we heard in her own testimony yesterday requested to be . . . removed from consideration for the Commission on Culture and the Arts. The Chair is ready to make a recommendation on Clare Apana.

COUNCIL MEMBERS: Recommendation?

CHAIR MOLINA: Chair's recommendation is to deny approval for Clare Apana to the Commission on Culture and the Arts.

VICE-CHAIR MATEO: So moved.

COUNCILMEMBER MEDEIROS: Second.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR MOLINA: Okay, thank you. The motion to deny has been made by Committee Vice-Chair Mateo and seconded by Committee Member Victorino. Discussion, Members?

. . . Seeing none, all those in favor of the motion to disapprove Clare Apana for appointment to the Commission on Culture and the Arts, signify by saying "aye".

COUNCILMEMBER VICTORINO: Aye.

COUNCILMEMBER MEDEIROS: Aye.

CHAIR MOLINA: All those opposed? Thank you, the Chair will mark it unanimous, nine "ayes" with zero "noes".

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

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EXC.: None.

MOTION CARRIED.

ACTION: Recommending DISAPPROVAL of Clare Apana's nomination to the Commission on Culture and the Arts.

CHAIR MOLINA: The next appointee is Phillip Gagle. The Chair's recommendation is to approve the nomination of Phillip Gagle to the Commission on Culture and the Arts. The Chair will entertain a motion.

VICE-CHAIR MATEO: So moved.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR MOLINA: Okay. Motion has been made by Committee Vice-Chair Mateo, seconded by Committee Member Victorino to approve Phillip Gagle for the Commission on Culture and the Arts. Any discussion?

. . . Seeing none, all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

. . . Thank you, the Chair will mark it unanimous--nine "ayes" with zero "noes". Thank you very much.

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Phillip Gagle's nomination to the Commission on Culture and the Arts.

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CHAIR MOLINA: Thank you very much, Members.

. . . Members, I'd like to direct your attention to letter "M.". We had a request for separation from Lanai Council Member Kaho'ohalahala regarding the nominees for the Lanai Planning Commission. And those nominees are, number one, Shelley Barfield; and number two, John Ornellas. At this point, the Chair will turn matters over to Mr. Kaho'ohalahala who made the request.

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. If we can separate the, the nominees out?

CHAIR MOLINA: Okay, you'd like to conduct a separate vote? Would you like to consider Ms. Barfield first?

COUNCILMEMBER KAHO'OHALAHALA: Would, if we can consider Barfield?

CHAIR MOLINA: Okay.

COUNCILMEMBER KAHO'OHALAHALA: Okay.

CHAIR MOLINA: Then the Chair would like to offer a recommendation to approve Shelley Barfield to the Lanai Planning Commission.

VICE-CHAIR MATEO: Chairman, so moved.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR MOLINA: Okay, motion has been made by Committee Vice-Chair Mateo and seconded by Committee Member Victorino to approve Shelley Barfield to the Lanai Planning Commission. Any discussion?

. . . Seeing none, all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

. . . Thank you, the Chair will mark it unanimous--nine "ayes" and zero "noes".

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: None.

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ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Shelly Barfield's nomination to the Lanai Planning Commission.

CHAIR MOLINA: Okay, the next nominee is John Ornellas to the Lanai Planning Commission. Chair would like to recognize Lanai Councilmember Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Okay, thank you, Chair. Thank you for giving me this opportunity to separate these out. At this time, Chair, I wanted to disclose to the body that this nomination and one to follow puts this Council member in a very awkward position. I want to disclose that the nominee, John Ornellas, is currently a plaintiff in a court lawsuit against me and trying to remove me from my office. And that the other part that makes it really awkward is that Darlene Endrina is also named on that same lawsuit to remove me from office. And then I'm having to now sit before this body to try and make approvals of these specific individuals who have already claimed that I do not represent them. So what I would like to put before this body is that I want to take part in the actual decision on these nominees, but I want the Council to understand that it puts me in a very, very awkward position in that the Administration is a part of that suit as well as the nominees that are coming before me who are seeking to remove me from office. So, I want to disclose that. And my intent is to participate if having made those disclosures as to why. I'm trying not to...I made specific note that I did not want to request these people to come forward to the body for any reason to review because I don't want to be placed in a further position of having to confront any of them aside from the fact that they were looking at them as nominees. But beyond that, I want to disclose that, that that's currently what's happening.

CHAIR MOLINA: All right, thank you, Mr. Kaho'ohalahala, and the Chair certainly appreciates your disclosure of this matter. Members, you've heard Mr. Kaho'ohalahala's disclosure. Any comments from the body?

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino followed by Mr. Nishiki.

COUNCILMEMBER VICTORINO: Mr. Chair, I've been very consistent in my beliefs that we can execute our jobs in a fair and equitable manner. And I think unless Mr. Kaho'ohalahala wants to recuse himself, I have no problem with him being a part of

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the decision-making process so long as he's looking at just the fact of what they're doing and leave the other issue aside. And if he can do that, I have no problems, sir. I've been consistent all the way across. I've never asked any of my Members to recuse themselves I have at that time, asked to be recused for certain issues, and we've all decided that until a ruling comes down which is a little different than this one, we're talking nonprofits now but until a ruling comes down that clearly defines that I will continue to believe that we're doing the right things for the people of Maui County. So, if Mr. Kaho`ohalahala in his ability to be fair in his judgment and leave that aside, then I would have no problem with that. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah. I want to ask the question of - what is her name?

CHAIR MOLINA: Sorry, I lost my place...Darlene...

MS. ENDRINA: Darlene Endrina.

COUNCILMEMBER NISHIKI: Charlene Endrina?

MS. ENDRINA: Darlene.

COUNCILMEMBER NISHIKI: Is it true that you're involved in this lawsuit against the Council member?

MS. ENDRINA: No, I am not.

COUNCILMEMBER NISHIKI: Oh, you are not?

MS. ENDRINA: I am not.

COUNCILMEMBER NISHIKI: Okay. Can you explain your position, is it your husband --

MS. ENDRINA: No, he is not.

COUNCILMEMBER NISHIKI: --or his brother?

MS. ENDRINA: No. I explained to Adrienne that I did not realize I was a part of this. There was a petition that went around a long time ago about this residency of living on Lanai that I had signed and my husband. I had received something through an email some months back and from that point I have been trying to remove myself. And I do know that at this point, it's been about a month, there is that removal in Sol's attorney's office but it is not come back to me accepting that we were removed. Like I said, it was not something that we were aware, we were a part of.

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COUNCILMEMBER NISHIKI: When you say we, you're talking about --

MS. ENDRINA: My husband and I.

COUNCILMEMBER NISHIKI: You and your husband?

MS. ENDRINA: My husband and I, yes.

COUNCILMEMBER NISHIKI: So you are not currently involved in that lawsuit?

MS. ENDRINA: No. There was supposed to be a reply to the attorney but nothing has been, nothing came back from Sol's office yet, Sol's attorney's office.

COUNCILMEMBER NISHIKI: But you do attest that initially when that petition was being sent around, which was asking for his removal, you did sign it?

MS. ENDRINA: I'm not sure I would actually say that it was the removal that I was aware of or the petition for him running at the time.

COUNCILMEMBER NISHIKI: Okay. And just because of the awkwardness that the Council member is feeling, what are your thoughts about your position here now?

MS. ENDRINA: I have no problem with Sol at all. And I do not feel that it would hinder anything in what is being done here with Boards and Commissions.

COUNCILMEMBER NISHIKI: Okay. Thank you, Mr. Chair.

CHAIR MOLINA: Okay, thank you, --

MS. ENDRINA: You're welcome.

CHAIR MOLINA: --Mr. Nishiki. Committee Members, any other questions for the Administration? Member Johnson followed by Member Kaho`ohalahala.

COUNCILMEMBER JOHNSON: Yes, I'd like to know if Ms. Endrina had any...played any role whatsoever in this election or the bringing forward of this particular nominee, Mr. Ornellas before us today? If there was any vote or any input that you had on this particular nominee.

MS. ENDRINA: The process is as the applications come in, you know they are gathered in our office and then we meet with the Mayor.

COUNCILMEMBER JOHNSON: Well, I just want a simply yes or no. Did you have any role whatsoever in this nominee coming before us today, like whether reviewing, submitting the names to the Mayor, any role whatsoever?

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MS. ENDRINA: Submitting the applications that came in, yes.

COUNCILMEMBER JOHNSON: Okay. And you had no and this would be for Marian, is Ms. Endrina on that selection board that made the recommendations?

MS. FEENSTRA: The Mayor makes the selection.

COUNCILMEMBER JOHNSON: Okay, so...

MS. FEENSTRA: Darlene, um, I wouldn't say...no, she did not make the selection. That was the Mayor.

COUNCILMEMBER JOHNSON: Do you make any recommendations? At any time you make no recommendations then whatsoever to the Mayor, is that what you're telling me?

MS. FEENSTRA: We let the Mayor know, in the process we let the Mayor know who is available, what the Commission or the Board needs at the time, you know, as far as the area, the expertise. So in that respect if you consider that advising her, then, yes, we do. As far as determining the selection, that's the Mayor's ultimate decision.

COUNCILMEMBER JOHNSON: Okay. But there's no review or analysis or anything done then by you or, you know, you don't keep some applications out. You send her every single applicant?

MS. FEENSTRA: Well, yeah, she does. We take in the application books and she sees the list. At the top of the list we say what district we need, what profession we may need for that Board or Commission and on the list it states the profession, it states the area the person lives, and then instead of reviewing each and every person only those that are needed are reviewed and then the applications go to the Mayor, they're in a binder. So she could see every application if she wanted to or select specific ones.

COUNCILMEMBER JOHNSON: I guess let me further question. Were there other applicants to the Lanai Planning Commission?

MS. FEENSTRA: There were very few applicants and I believe that one of the applicants is just coming off of term now. I believe that was Kay, Sally Kaye and she was not available to be reappointed because she had served five years. And the only way you can be reappointed is if you served under two years. So she wasn't applicable for the nominee. There was another, and I'm not real familiar with Lanai persons, there was another Lanai person and that was selected, and then the third one was not interested in the Lanai Planning Commission but wanted to be on the Lanai GPAC.

COUNCILMEMBER JOHNSON: Okay, so these were the only two applicants that were left then out of that group?

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MS. FEENSTRA: Yes.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR MOLINA: Okay, thank you, Member Johnson. Before the Chair recognizes Mr. Kaho`ohalahala, Ms. Feenstra, I'm just trying to get an understanding of Ms. Endrina's role at this point. My understanding is she, is she in an apprenticeship role at this point? My understanding is she will eventually be taking over your current role in this position as I guess the person in charge of gathering up nominees for boards and commissions. How long has Ms. Endrina been with the current Administration?

MS. FEENSTRA: I believe she started working part-time in September and she has been assisting with the boards and commissions during the recruitment period, which started in December as far as gathering applications. She was on Lanai for the majority of that time. So we are in a transition but I would say at this point, I've still been the lead EA and Darlene has been kind of learning the ropes.

CHAIR MOLINA: All right. So eventually there will be a transition where she will take your role?

MS. FEENSTRA: Yes, there will.

CHAIR MOLINA: Okay, thank you. Mr. Kaho`ohalahala?

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. I just wanted to clarify some of the statements of Ms. Endrina. You said that you are not a party to this suit, is that correct?

MS. ENDRINA: Yes. Now according to Ken's office and I don't even know the last name of that attorney.

COUNCILMEMBER KAHO`OHALAHALA: He's your attorney?

MS. ENDRINA: Yes, but I don't know the last name. I spoke to a woman name Crystal and she said that she had sent over to your attorney's office my removal from this.

COUNCILMEMBER KAHO`OHALAHALA: I just want to clarify that because the awkwardness is that I have you and your names on a suit with your name on that. And that's why I'm raising it but I'm surprised to hear you say that today that you're not. So that's news to me. I just want that clarification.

MS. ENDRINA: And I have been trying for well over six months once I had realized it. And without saying too much, I was not getting any answers by my phone calls and emails and then finally . . .

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COUNCILMEMBER KAHO`OHALAHALA: The other thing that I just wanted to -- back on Lanai prior to the actually the Committee receiving these nominations for these boards and commissions, there was already talk in Lanai about the appointment of John Ornellas to this before it even came. So I was surprised to hear that and it was said that you had already made the nomination for him. And I said, you know what, it has not come even to the Committee yet, so, I'm not aware of that. So,--

MS. ENDRINA: No, I have no idea what that is, Sol. I'm very sorry, but I have no idea.

COUNCILMEMBER KAHO`OHALAHALA: Okay, I can get verification on that from people who said that they spoke to you and that you had already indicated the nomination of John to this position. So, that's why it makes it real tough for me to come before this time.

MS. ENDRINA: I can understand that, yes. But no, I'm not out revealing anything.

COUNCILMEMBER KAHO`OHALAHALA: So, thank you for that further clarification.

CHAIR MOLINA: Thank you, Mr. Kaho`ohalahala. Members, questions? Mr. Medeiros followed by Ms. Johnson.

COUNCILMEMBER MEDEIROS: Yes, Mahalo, Mr. Chairman. My position on this is Member Kaho`ohalahala is a member of this Council. Nobody in authority has removed him so he should still represent his island and he should still be a part of this proceedings. So I have no problem with Member Kaho`ohalahala participating. If he wishes on his own not to participate, then that's different. But certainly I would not oppose his participation. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Ms. Johnson?

COUNCILMEMBER JOHNSON: I just also want to state that I don't oppose his participation whatsoever. I think that the awkwardness and the manner in which this is coming forward I think the Administration has perhaps maybe not used the best judgment and perhaps on this particular item they should have at least disclosed that to those of us that do not know what's going on. Obviously, they know because you know people are in their employ. And I know because I have been the subject before. And you know, Mr. Chair, because you have also been targeted. I don't think it's comfortable for any of us. I have a huge problem with somebody who is a former political opponent and who is a party to litigation and the Administration knows this. I would have left it up then my judgment is that where there is a question then you leave it up to the Council because we have that right to make that recommendation. If you can't make the decision or if you have a conflict, you should not be bringing these names forward. That just shows extremely poor judgment in my view. This is really placing us in an awkward position.

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CHAIR MOLINA: Okay, thank you, Member Johnson.

COUNCILMEMBER JOHNSON: I'm not happy.

COUNCILMEMBER PONTANILLA: Chairman?

CHAIR MOLINA: Thank you. Member Baisa followed by Member Pontanilla.

COUNCILMEMBER BAISA: Thank you very much, Chair. When we talk about being uncomfortable, I don't think any of us are feeling very comfortable at this moment. This is a very awkward situation for all of us; however, I trust that Member Kaho`ohalahala will represent whatever he says appropriately and the final decision is ours to make. We will vote. Member Kaho`ohalahala does not cast a lone vote so, you know, whatever goes on is our decision in the end because we will make the votes. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Member Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chairman. I have no problem with Sol participating in this proceedings. And I agree with Member Baisa that we, the Council, approve or disapprove any nominee. But I just want to make a comment in regards to the character of both Ms. Endrina and Mariana [*sic*]. I respect these two ladies. I've known Darlene for a number of years, Darlene and her husband. And they're real good community-minded people. So, for me, Chairman, I trust their judgment and if these are the names that were provided to us, then let's take action on those names. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Members, any other comments before the Chair offers a recommendation? Mr. Victorino?

COUNCILMEMBER VICTORINO: Just to close it out, I would imagine. Again, I've known these particular people for many years, both Mariana [*sic*] and, you, Darlene, for many years, and I know the Administration, and they send down names for whom they feel are best suited for the position. I think it takes a lot of character to then send somebody, you know somebody who's been politically active and I've seen other politically active people put on boards and commissions. So, Mr. Ornellas is not the first one. I have had my run-ins with the man. You know, we've had our run-ins cause John is a very strong willed, independent-minded person. If he doesn't like you, if he doesn't agree with you, he's going to tell you to your face. That much I'll give him credit. But we've had our run-ins. There will be nine of us deciding on this, not just one. And so I hope we decide on the merits, not on all these personal issues. I think being uncomfortable, it's not the first time in this Council. Come on now, everybody, we've been uncomfortable before. This ain't nothing new gang. So I'm not worried about being uncomfortable. We're here to make the decision. If you don't want 'em, vote no. You want 'em, vote yes. It's your call. You got one vote, you can make the decision. And I'll trust that Mr. Kaho`ohalahala can make a decision based on the issue at hand as a Planning Commissioner. The other issues, again, have to be put to the wayside for right now. Uncomfortable as it may be, it's the

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fact of life. And I think he should participate. I said that from the beginning and I've been very consistent, Mr. Chair, in that respect. I've not changed my tune every time somebody else speaks on the matter, right? So, I leave that and I'll say, let's make a decision and I'll await your recommendation, Mr. Chair.

CHAIR MOLINA: Okay, thank you, Mr. Victorino. Well, Members, the Chair will offer a few comments before he makes his recommendations. First of all, I have no problems with Mr. Kaho'ohalahala participating in regards to taking action on Mr. Ornellas. And I'm okay with Ms. Endrina sitting in these Chambers as well to observe the proceedings. It's unfortunate that Mr. Ornellas was not able to come here today. For the record, I did request his presence as well as Ms. Barfield and also the nominees for the Maui Planning Commission as well. As all of you know, the Chair did send a memo out and because actually I was the only one that made the request for the Lanai Planning Commission folks to come over but being that there was no other members that requested at the time to have these folks come over, that is why they're not here. And, yes, I guess Mr. Ornellas has generated some discussion, if you will. But in all fairness, I will give him the benefit of the doubt. And I will throw out my recommendation to approve Mr. Ornellas to the Lanai Planning Commission and let the discussion go forth from there. So the Chair will entertain a motion to approve.

VICE-CHAIR MATEO: Mr. Chairman, I move to approve the nomination of John Ornellas to the Lanai Planning Commission.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay. The motion to approve the nomination of John Ornellas to the Lanai Planning Commission has been made by Committee Vice-Chair Mateo and seconded by Committee Member Victorino. Members, discussion?

NOTE: Silence.

CHAIR MOLINA: . . . Okay, seeing no discussion, then the Chair will call for the vote. All those in favor of nominating or appointing John Ornellas to the Lanai Planning Commission, signify by saying "aye".

COUNCILMEMBER BAISA: Aye.

COUNCILMEMBER PONTANILLA: Aye.

CHAIR MOLINA: Those opposed?

COUNCILMEMBER NISHIKI: No.

COUNCILMEMBER KAHO'OHALAHALA: No.

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COUNCILMEMBER VICTORINO: Roll call, Mr. Chair.

CHAIR MOLINA: Thank you. Committee Secretary, roll call, please.

MS. SAKAMOTO: . . . Councilmember Gladys Baisa?

COUNCILMEMBER BAISA: Yes. Aye.

MS. SAKAMOTO: Councilmember Jo Anne Johnson?

COUNCILMEMBER JOHNSON: No.

MS. SAKAMOTO: Councilmember Sol Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: No.

MS. SAKAMOTO: Councilmember William Medeiros?

COUNCILMEMBER MEDEIROS: No.

MS. SAKAMOTO: Councilmember Wayne Nishiki?

COUNCILMEMBER NISHIKI: No.

MS. SAKAMOTO: Councilmember Joe Pontanilla?

COUNCILMEMBER PONTANILLA: Aye.

MS. SAKAMOTO: Councilmember Mike Victorino?

COUNCILMEMBER VICTORINO: Yes.

MS. SAKAMOTO: Vice-Chair Danny Mateo?

VICE-CHAIR MATEO: Aye.

MS. SAKAMOTO: And Committee Chair Molina?

CHAIR MOLINA: Yes.

MS. SAKAMOTO: . . . Mr. Chair, the vote is . . .four "ayes", five "noes", the motion fails.

CHAIR MOLINA: Could you, could you restate--

COUNCILMEMBER BAISA: No, the other way around.

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COUNCILMEMBER VICTORINO: No, no.

COUNCIL MEMBERS: . . . *(inaudible)* . . .

MS. SAKAMOTO: Oh, do I have it wrong?

COUNCILMEMBER PONTANILLA: Opposite.

COUNCILMEMBER BAISA: The other way around.

MS. SAKAMOTO: I'm sorry.

CHAIR MOLINA: Is it five. . . five "ayes"? Okay, for the record, the "ayes" are Members Baisa, Pontanilla, Victorino--

MS. SAKAMOTO: That's right.

CHAIR MOLINA: --Mateo and Molina. The "noes" are Johnson, Kaho'ohalahala, Medeiros, and Nishiki. So, five to four, the motion passes. Okay? Thank you very much, Members.

VOTE: AYES: Councilmembers Baisa, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: Councilmember Johnson, Kaho'ohalahala, Medeiros, and Nishiki.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of John Ornellas' nomination to the Lanai Planning Commission.

CHAIR MOLINA: All right, Members, we had another request moving on to letter "N.", Liquor Control Adjudication Board. A request for separation was made by Member Kaho'ohalahala. Mr. Kaho'ohalahala, I'll give you the floor...initial comments?

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. The comments I have, have to do with the recommendation for the nomination of Ron McOmber. Members, I handed out to you communications that was sent to our offices concerning this particular

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individual. And I want to call your attention, and this is the first one, a letter from Mr. Lawrence and in that, if you would turn to the third page, and if you would look at the second paragraph on the third page, and I want to read to you what it says here. It says, *A check into Mr. McOmber's background proved to be very disturbing. According to the files of the Second Circuit Court in Wailuku, there are sworn affidavits that Mr. McOmber sexually harassed numerous employees of Lanai Community Hospital while he was employed there and had to be transferred to another maintenance job at the Lanai Airport before being allowed to take early retirement. While assigned to the airport, he harassed two State firefighters who filed lawsuits against the State Department of Transportation citing Mr. McOmber's actions. The State was found liable, in part, because of Mr. McOmber's actions, and tens of thousands of dollars of taxpayer's money went into both defending the lawsuit and ultimately paying a sizable settlement of the two fire fighters. As part of this investigation, it was also alleged that Mr. McOmber brought a rifle to work and was shooting at cats at the airport. In my book, he has absolutely no credibility.* In the second communication that I've handed out to the Members, this just happened last week. I was on Lanai for our Lanai Water Advisory Committee meeting and there were two things happening. We had the fire truck dedication on Lanai that happened just prior to our LWAC meeting, and evidently when I walked into the meeting this had already occurred and I was not present but the person who is sending this letter is Mr. John Stubbart, who is a member of the Lanai Water Advisory Committee, and I want to call your attention to his email letter that has been sent out to all the Members as well as others. In the very last paragraph where he says, *I left the Lanai Water Advisory Committee meeting during this discussion as I was made to feel my presence at the LWAC was immaterial. I was accused of being a liar by Ron McOmber, and this is the second accusation to this by Ron in a public forum. I will not continue to attend meetings and have my character defamed. It seems my position, contributions, expertise, years of experience and efforts must not be worthy of further participation. Unfortunately, I will no longer attend any LWAC meetings or present any information if this is going to be the conduct of these meetings. I will participate in future meetings if the participants frame their remarks appropriately.* And you'll see that this is dated February 26th, which is just last week. I think this should be raised as concerns for this particular individual who is being appointed and nominated, and these are the kinds of characterizations of the individual even as early as last week. So, I will also disclose that Mr. McOmber is on the same lawsuit that is seeking to remove me from office. But aside from that, I want you to look at the character of the individual as I think what is being called for, in our determination, as to whether they should serve. So, I will not be supporting his nomination because of this.

CHAIR MOLINA: Okay. Thank you, Mr. Kaho'ohalahala. Before I open the floor up for questions to the Administration, the Chair has a question for Corporation Counsel. I'm hoping you can answer this at this time. With regards to the conduct of anyone who currently serves on a board or commission, is there a mechanism for removal for any inappropriate conduct on a board or commission? Can you share with us what the process is if somebody, for example, on a board of commission is, for example, being I guess harassing testifiers or just, in general, some conduct that's deemed inappropriate or

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out of sort of breaks a lot of the so-called Robert's Rules. Can you share that with us if there's a mechanism there for removal from someone from a board or commission for that kind of conduct?

MS. HEELY: Mahalo, Mr. Chair. Boards and Commission members are governed by the Code of Ethics. But in terms of specific examples or specific boards, they have their own Administrative Rules just like Council has their own rules that the Chair can look to, to see if there's inappropriate behavior and address it accordingly within each board or commission. So I'm not sure if I'm able to answer your questions specifically.

CHAIR MOLINA: Sure. Okay, and I bring it up because of what Mr. Kaho`ohalahala had shared with us with regards to Mr. McOmber's conduct at a meeting. And if he is going to be put on a board or commission, and for example, that kind of conduct occurs, and I was just curious about whatever mechanisms there are. So, basically, it's just whatever rules the boards or committee establish or an ethics complaint can be filed against a board or commission.

MS. HEELY: That's correct.

CHAIR MOLINA: Okay. All right, Members, the floor is open for questions with regards to the nomination of Mr. McOmber. But you know what, Members, let's first take action on the first nominee, Marilyn Chapman, if there are no objections.

COUNCILMEMBER VICTORINO: No objections.

CHAIR MOLINA: All right, Members, the Chair will recommend approval of Marilyn Chapman to the Liquor Control Adjudication Board.

VICE-CHAIR MATEO: Mr. Chairman, I move for the approval of Marilyn Chapman to the Liquor Control Adjudication Board.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay, the motion to approve Marilyn Chapman to the Liquor Control Adjudication Board has been made by Committee Vice-Chair Mateo and seconded by Committee Member Victorino. Discussion, Members? Seeing none, all those in favor signify by saying "aye".

COUNCILMEMBER VICTORINO: Aye.

COUNCILMEMBER MEDEIROS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it--nine "ayes" with zero "noes".

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VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Marilyn Chapman's nomination to the Liquor Control Adjudication Board.

CHAIR MOLINA: Okay, now we are back to Mr. McOmber, his nomination. Any discussion or questions for the Administration with regards to Mr. McOmber's nomination?

VICE-CHAIR MATEO: Chair?

CHAIR MOLINA: Mr. Mateo?

VICE-CHAIR MATEO: Chairman, thank you, and it goes to Administration. Since the individual who participates in the formation of nominees is familiar with Lanai, was this common knowledge, the information we received today?

MS. ENDRINA: No, it was not.

VICE-CHAIR MATEO: Okay. So you had no idea of Mr. McOmber's prior allegations as well as conduct at any other meeting?

MS. ENDRINA: No, I am not, and I have been at meetings on Lanai where he was present.

VICE-CHAIR MATEO: Okay. Then in reviewing your list of nominees prior to submitting it to the Mayor for her final consideration, had you gotten a hold of information like this?

MS. ENDRINA: No.

VICE-CHAIR MATEO: Would this have made any bearing in you still submitting the name for the Mayor's consideration?

MS. ENDRINA: Well, we would still have to submit whatever applications come for specific boards. But whatever other information would come with that, that would go with it.

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VICE-CHAIR MATEO: And you would flag it for the Mayor to be aware of situations like that.

MS. ENDRINA: We would have put that together but I had no information on this at all.

VICE-CHAIR MATEO: Okay. Thank you. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Mateo. Questions for Administration before I recognize Mr. Medeiros? Mr. McOmber, I guess, was involved with other community groups, participation. I notice here on his application Harbor Advisory Group, Lanai Working group, and the Hulopoe Beach Park Council, am I correct, Administration? And you want to respond?

MS. ENDRINA: Yes, I am familiar with each one he's on. I haven't been to all the meetings but, yes, he is on numerous committees and boards.

CHAIR MOLINA: Okay. And for many of us who've been to Lanai for meetings we've seen Mr. McOmber testify at almost every Lanai related issue. So, we've got to know him quite well. So, anyway, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And I wanted to ask this question of both Corp. Counsel and the Administration. And it's not directed to any nominee but since the information was shared I just wanted to know, Corp. Counsel first, are there any provisions of what would disqualify an applicant for a board or commission? And an example I'll give you is you can't vote if you have a felony. So, are there any provisions about criminal behavior or criminal, a record that has been adjudicated or has been through the court?

MS. HEELY: Mahalo, Mr. Chair --

CHAIR MOLINA: Go ahead.

MS. HEELY: --and thank you, Councilmember Medeiros for the question. I'm not aware of any provisions within Maui County Code or the Charter that prohibits service on a board or commission if you have a record or felony conviction. I am aware in terms of civil service and when you're a public servant certain positions require criminal background checks especially if you work with members of the public in parks, around young children, et cetera. But in terms of boards and commission members I don't think there's any provision precluding that.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that information. Administration, any comments on that?

MS. FEENSTRA: I don't have any additional comments.

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COUNCILMEMBER MEDEIROS: Okay.

MS. FEENSTRA: And this information that was presented today is the first that I have been made aware of that.

COUNCILMEMBER MEDEIROS: Okay. Thank you, both of you. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros: Ms. Feenstra, just a follow up, did the Administration, in general, do you folks do background checks in light of the information that's been given to us by Member Kaho'ohalahala and the letter written by Mr. Lawrence who is a retired police lieutenant? Was the Administration aware of what happened in Mr. McOmber's background?

MS. FEENSTRA: No, we weren't, Chair.

CHAIR MOLINA: Do you do background checks as part of your process?

MS. FEENSTRA: We don't do official background checks on each and every member. Mr. McOmber was, is currently serving on a board and commission. This information has never been...I'm not sure when this occurred or if he was convicted. I didn't have the paperwork before me that was presented. We do ask for background checks for Liquor and for Police, and for those commissions that involve areas where we don't want someone with a police record being on the Police Commission. But as a general rule, we don't do an official background check on each and every person.

CHAIR MOLINA: All right. Thank you. Corp. Counsel, did you want to interject a remark? I saw your hand go up. I was just curious.

MS. HEELY: No. Thank you.

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair. Just a follow up. So on the application there's no there's no section that states that if you've been convicted of any crime?

MS. FEENSTRA: No, that's not on the application.

COUNCILMEMBER MEDEIROS: Okay, thank you. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. You bring up a good point. I would hope maybe in the future with regards to application, a lot like a job application, am I correct, Member Medeiros, that maybe we should include that kind of information for someone in the public to disclose if they had any prior brushes with the law. Member Baisa?

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COUNCILMEMBER BAISA: Thank you very much. I'm quickly trying to scan this testimony that was given to us today and I am missing it somewhere where it says that our applicant has a history of a felony. Has had brushes with the law but I don't see anything about a felony, unless somebody can point it out to me.

CHAIR MOLINA: Administration?

COUNCILMEMBER MEDEIROS: Mr. Chairman, not to interrupt Member Baisa, but I hope she doesn't mistake my question on that. It wasn't about Mr. McOmber. It's about any applicant. That's part of the record, you know, if they're still allowed to apply. It was nothing about Mr. McOmber. So it wouldn't be in the application.

CHAIR MOLINA: Thank you for making that clarification. Member Baisa?

COUNCILMEMBER BAISA: I'm not looking at the application but, anyway, you know, we have allegations about sexual harassment and encounters with the Police and whatever. But you know that being what it is I think we have to be a little careful about how we talk about these kinds of things. In America, nobody is guilty until accused and when you are convicted you go to jail and you pay your debt to society, and so when does the payback stop? Now, in the case of current employment law, it is my understanding that unless the offense is relative to the position that you are applying for, you can ask about it. If you're going to take a financial job in a company and manage money, then you would be, having to disclose any kind of background of being convicted for theft or embezzlement or whatever. And if you're going to work with children, you'll have to disclose sexual offenses. But today's laws are very different so we have to approach this with caution.

CHAIR MOLINA: Thank you, Member Baisa. You make some good points there. I mean, it's unfortunate that Mr. Omber is not here to respond to the information that was presented here to us today. Mr. Kaho`ohalahala?

MEMBER KAHO`OHALAHALA: Thank you, Chair. Again, Members, this communication that I sent to you was one I believe that was sent to all of you. And you all are aware of this and you have had this since the date of April 30, 2009. So this is not a solicited response on my part from anyone. If you read the entire document, you'll see why this gentleman pursues looking at this because of an incident of which he is finding difficult that involves Mr. McOmber. I did not read you the sections where Mr. McOmber responds to him. I'm not going to go there. But I think we're looking at character and that's what I'm trying to raise here as the character of the individual and the ability to serve. I'm surprised to hear that Ms. Endrina doesn't know about his character at meetings. He is, after all, one of the most outspoken persons in all meetings to the point that he has been very degrading of people who he is not in support of at those meetings. So, I find it interesting that you don't know that about this person and you claim to be from Lanai. So, but I don't want this to appear as though I'm bringing up things just for this purpose. I'm just calling to your attention already information that you've had and it calls to question, I think, what I'm raising is the ability for a person to be given this kind

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of responsibility, and I do serve on LWAC and I do serve with Mr. Omber, and he is that kind of person. I just happened to walk in right after this incident had occurred, and had I been there, I would have given you first-hand information on this specific incident. But this was just sent to us as a result of that meeting, which happened last week. So, here again, if we're talking about the character of a person, then this kind of participation and this kind of action by an individual to serve on a board and commission that carries on in this matter is not, I think, what we are seeking to nominate and to approve. So that's why I'm bringing this forward to you so that I had no part of his prior appointments but I am the sitting Council member at this time and these are issues that are before me and that's why I'm raising them. Okay.

CHAIR MOLINA: All right, thank you, Mr. Kaho`ohalahala. Ms. Baisa?

COUNCILMEMBER BAISA: Chair, just one more statement and then I think we should just get on with up or down here. But again, it brings up the issue of the process. We have to look at how this is done and we have to find a way of doing it better. This has not been fun these last two days having to go through all of this embarrassing situation that could have been prevented with a better process. So, I, for one, have already made inquiries to see how we can change the laws or do whatever it is we have to do to do a better process because I don't want to be a party to this again. Thank you.

CHAIR MOLINA: Okay, thank you, Member Baisa. I don't think anyone here on this Council wants to be part of this any uncomfortable situation. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chairman. I'm just looking at his application. He served five years on the Liquor Adjudication Board. Do you know what years that he served on this particular board?

CHAIR MOLINA: Ms. Feenstra?

MS. FEENSTRA: I don't have that information before me but that is a five-year term. If you can wait one second, I will look it up in this document here.

COUNCILMEMBER PONTANILLA: Chairman?

CHAIR MOLINA: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: While they're looking, I agree that we should take a look at, somebody got to take a look at the board and commission application form and provide more clarity, more information in regards to possibly background check. And also, when a board member leaves any commission then we should make an exit interview in regards to the particular person that sat on the board or commission that will give whoever if he or she would reapply a good indication to the Administration on the performance of that individual. Thank you.

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CHAIR MOLINA: Thank you, Mr. Pontanilla. Ms. Feenstra?

MS. FEENSTRA: Yeah. The date he was appointed was 3/17/06 to the Liquor Control Commission.

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. And you know what, I really think more and more the nomination process needs an overhaul whether it be minor or major. I'm just really surprised over the years that the form was not treated like the same as a job application...at least leave it to the applicant to disclose if they've had any, you know, questionable activities or run-ins with the law. And I really think that the Administration needs to take a serious look at this...creating maybe a new application. This just creates some very uncomfortable situations. Mr. Mateo?

VICE-CHAIR MATEO: Chairman, thank you. Chairman, in the past when the Administration considered some of these nominations, the Administration would touch basis with the respective district representatives and run this potential nominee by asking the district representative that this is who I'm considering, and if you have any comments if we can discuss it. And somewhere along the line that kind of got lost, which ends up in situations like this. So perhaps a more equitable flow of communication between both branches, I repeat that, between both branches might be of some assistance in the very near future. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Mateo. And you know it's interesting the prior Administration there was I guess a Blue Ribbon panel that did screening and whatnot. I'm surprised though that this issue of the application was not addressed or at least mentioned that maybe we need some improvements on the applications. Maybe it was, but I don't know if, I don't want to say fell on deaf ears but anyway, any other comments, Members, before the Chair offers a recommendation?

COUNCILMEMBER VICTORINO: Recommendation?

CHAIR MOLINA: Okay, Members, like I did for the last consideration, I'd like to just make a couple of general comments. And it's unfortunate that Mr. McOmber is not here. We talk about due process, you know, due process, Members. I think we're all familiar with that. And the opinion of this Member because he's not here to defend what's been said about him it makes me uncomfortable to consider rejecting his nomination at this point until information can come to me to verify the statements that was submitted by Mr. Lawrence. Until I get that information in front of me to verify it, then it would help me in making a decision, you know, in the negative. But for the moment, I'll support at least considering Mr. McOmber to the Liquor Control Adjudication Board, and of course, if information comes to us prior to, if this matter, first of all, passes to the Council, then the Chair depending on what comes before the Council prior to first reading then like any of you we have the option of reversing our positions for those of you who will support his

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nomination here today. So at this point, the Chair will accept a motion to approve the nomination of Ron McOmber to the Liquor Control Adjudication Board.

VICE-CHAIR MATEO: Mr. Chairman, I move for the approval of Mr. Ron McOmber to the Liquor Control Adjudication Board.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR MOLINA: Okay. The motion to approve Ron McOmber to the Liquor Control Adjudication Board has been made by Committee Vice-Chair Mateo and seconded by Committee Member Victorino. Members, the floor is open for discussion. Member Medeiros followed by Member Johnson.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. It has always been my practice to be able to listen to both sides of a complaint. Because that's not available to us today, I don't know how to treat the information that has been presented to us. It is, in part, important for us to consider information presented to us but we still need to, especially information like this, be able to have the person be able to respond to that. And at this point like you have said, that's not been an opportunity that we've had. So unless something comes by of a more legal declaration then at this point I will support the nomination as you have stated for yourself of Mr. Ron McOmber. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Ms. Johnson followed by Mr. Kaho`ohalahala.

COUNCILMEMBER JOHNSON: You know for me I've known Mr. McOmber for a while. I have nothing against Mr. McOmber. He served on Grants Review Committee for quite a number of years. He served in other situations but most of those did not involve interaction with other people. I have also seen him when he has interacted with members of the public both on...that were taped, that I viewed on television and I seen him in person. This is an adjudication board and adjudication means using your judgment. Mr. McOmber has used, in many situations, very poor judgment. I've observed it. I'm sure other people have observed it. You cannot interact with people and totally insult them and, you know, trash their reputations or make accusations, and that has occurred on many different occasions. I've had personal interaction with Mr. McOmber. I think, for me, a board that actually makes a judgment call it's not where you're simply saying up or down like in a Liquor Control Commission it's very different. You know, you're just looking at the applications and you're saying whether they can or cannot be approved. So it's a little bit different. This is one that involves judgment. And if you are making judgments about other people, you have to first be able to make judgments about your own behavior, your own conduct and how you are with other individuals. I don't think Mr. McOmber has the temperament to do that from my experience. And, you know, it's simply the way he interacts with people, I think it's going to be very difficult. Sometimes he's very outspoken and he has, I've seen him be rude to people. I just don't think...people that sit on boards or commissions where they're interacting with Members

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of the public, that bothers me and it has always bothered me. Even when people do it here in our Chambers it bothers me because we should show respect for one another even if we disagree. I've had many times when that's not the way I try to conduct myself. But that's just me. So I will not be supporting Mr. McOmber's name. If he wants to go on some back in the Grants Review, he wants to go on to the tax or the Cost of Government where you're not interacting with members of the public perhaps that would be okay. But in this particular situation, it has nothing to do with the papers I've seen today. This is just because I know certain people have certain tendencies and they don't always use the best judgment. And their interaction with people is less than exemplary. I would prefer to think that there were other people that may do a better job in serving in this capacity and be able to respect other people and treat them with dignity, whether they like them or not. Thank you.

CHAIR MOLINA: Thank you, Member Johnson. Members, any other comments?
Member Pontanilla followed by Member Kaho`ohalahala.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. I will be supporting your recommendation. What you told the eight of us if there is something that comes up before first reading, I trust your judgment in pulling this nominee prior to first reading or at first reading. Thank you.

CHAIR MOLINA: Thank you, Chair. Mr. Kaho`ohalahala?

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. And that's why coming into this meeting it was very, very awkward for me to come forward and then have to sit here and if you thought I was going to be the one to request the presence of these individuals before this body for an interview, can you understand the situation? I'm not even been told by the Administration, by this representative here, of who was being nominated until this list was sent. And so, here I am now trying to talk to this body about what is occurring here and we're looking at perhaps the changes that Mike V. needed to look at how we do this appointment or nominations of boards or commissions, what that process might be, but it doesn't solve the situation that we're faced with. And that's the awkwardness of this all. Now we have information that I, that you have had and I only added what occurred last week by the person who is the Water Department person for Lanai Water Company. So, yeah, it becomes very awkward and then for us to say, well, because we don't have any other response, how are we going to do that? Who was going to request for these people to come forward? If I had requested them to come forward, can you imagine what the perception would have been? So, therein lies why I think this is very, very uncomfortable for me. And then the body continues to move forward as though nothing happened. So, I just had to say that.

CHAIR MOLINA: Thank you, Mr. Kaho`ohalahala. And the Chair appreciates your comments.

COUNCILMEMBER VICTORINO: Mr. Chair?

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CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah. I'd like some clarification, if I may? Mr. Kaho`ohalahala said when this list came down, how long ago does this list come to us?

MS. FEENSTRA: The list was sent January 29th.

COUNCILMEMBER VICTORINO: And this is March 5th, right? I think that's adequate time. If somebody wanted to request anybody, which I did request certain people, and we had a privilege if three or more, right, Mr. Chairman, that's a practice again; not a rule. It's a practice but you had a chance to call on somebody if you had a challenge, right? And if my math is pretty quick, I mean, that's a little over a month to call 'em in if you had a question about them. Okay. And I don't know and I apologize, Mr. Kaho`ohalahala, I don't remember getting this from Mr. Lawrence. I don't remember getting it, so I'm going to be honest with you, sir, it was addressed to you. If you forwarded it to me, I do not remember getting it. So I apologize if you did get it to me, I apologize upfront that I never saw it before today. So, beyond that, I know Mr. McOmber very well also, and I think he's been very community-minded, very proactive, and in a sense he's always been a little against the company. I think if that's apparent, that's apparent with Mr. McOmber. But he's got good reasons why he's taking that position on a number of issues. But that's not all and let's leave that at that. I'm saying at this point in time, like you said, if you can show me some legal and Corp. Counsel can say, yes, this is a problem, then I could always change my vote between now and first reading. So, Mr. Chair, I can support what you're saying. And maybe the Administration can hear the overwhelming response from these Council members. If you're from a local district or if somebody is coming from a certain district, then contact the district representative to get a feel of that person because a lot of us do know our people in our areas and most other areas probably. And finally, if the application has to be changed, well, this is a lot of years this application has been around, right? And I'm surprised that everybody is saying that we should change the application today. Maybe it should have been changed years ago but could've, should've would've, it's done. We're here today. Let's make a decision today and let's move on because we've got others to decide on. We've made it very uncomfortable for everybody but yet we've been uncomfortable before, right, Mr. Chair? This is nothing new. Let's make the decisions and at least move on. And so that's my closing statement to you, Mr. Chair. Thank you.

CHAIR MOLINA: Thank you, Mr. Victorino. Member Baisa?

COUNCILMEBER BAISA: Uh, yes, thank you very much, Chair, and I will be supporting your recommendation with reservations. And the reservations that I have are because I don't think we have two sides of a story and that kind of bothers me a little bit even though I'm sure that our district member from Lanai is much familiar with the people in his community. But you know we represent all of the communities and have to be careful.

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The other thing that I'm thinking about is, you know, he's being appointed to a Liquor Control Adjudication Board on Lanai. How busy is a Liquor Adjudication ...

COUNCILMEMBER KAHO`OHALAHALA: It's on Maui.

COUNCILMEMBER BAISA: It's on Maui. So this happens on Maui too so he would be spending a lot of time on Maui? Okay, now I can see where there is the interaction. I needed to ask where this interaction on Lanai. They can't have that many people violating liquor laws on Lanai. Okay, got it. Thank you very much. I'm ready to vote.

CHAIR MOLINA: Okay, thank you, Member Baisa. Members, any other comments before the Chair makes closing comments on the proposed nomination? Okay, seeing none. The Chair will take the opportunity to speak last on this. Mr. Kaho`ohalahala is correct about this document being sent on the date prescribed, April 29, 2009. What's interesting though I received no other complaints from the folks from Lanai. I think we have to give a lot of deference to the people from Lanai other than Mr. Kaho`ohalahala there have been no other formal complaints about again his background allegations or issues that have been brought forth by Mr. Lawrence. And Mr. Lawrence is a Maui island resident. And Members, you also did receive a letter of concern regarding Mr. McOmber's appointment as well as Mr. Ornellas from Mr. Lester. And I believe Mr. Lester lives on Maui island, so I think we have to take into consideration the whole island of Lanai and where they stand on any of their nominees up for consideration for any board and commission. So that is why I've taken the position that I have. So, please understand, Members. And I certainly can agree this whole thing is quite uncomfortable for us. So with that being said, Members ...

COUNCILMEMBER JOHNSON: Question?

CHAIR MOLINA: Member Johnson, you have a question?

COUNCILMEMBER JOHNSON: Yes.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: I thought that this was for Maui and not Lanai?

CHAIR MOLINA: Yeah, this is for the Maui Liquor Control --

COUNCILMEMBER JOHNSON: Yeah.

CHAIR MOLINA: --but I was making reference to the allegations, or the comments made from Mr. Lawrence. But my point was, he is from the island of Lanai and I would have hoped to have heard some additional comments whether it be on his background or conduct, I mean, from the Lanai residents.

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COUNCILMEMBER JOHNSON: All right. I understand what you're saying. Okay, cause it confused me because I thought you were going back to the fact that this was a Lanai nomination.

CHAIR MOLINA: And one other point, Members, again, it's due process and we may not like what people say when they testify. All of us have disagreements with some of our constituents who say what they say and it's all part of the process called democracy. So, that's the way it is whether we like it or not. Then again my opinion is that we have to give people the benefit of the doubt. So, anyway, with that being said, the Chair will call for the vote. Members, would you like a roll call vote on this matter?

COUNCILMEMBER VICTORINO: Yes.

CHAIR MOLINA: Committee Secretary, roll call, please with regards to the motion to approve Ron McOmber to the Liquor Control Adjudication Board.

MS. SAKAMOTO: Member Baisa?

COUNCILMEMBER BAISA: Yes, with reservations.

MS. SAKAMOTO: Member Jo Anne Johnson?

COUNCILMEMBER JOHNSON: No.

MS. SAKAMOTO: Member Kaho`ohalahala?

COUNCILMEMBER KAHO`OHALAHALA: No.

MS. SAKAMOTO: Member Medeiros?

COUNCILMEMBER MEDEIROS: Yes, with reservations.

MS. SAKAMOTO: Member Nishiki?

COUNCILMEMBER NISHIKI: Aye.

MS. SAKAMOTO: Member Pontanilla?

COUNCILMEMBER PONTANILLA: Yes.

MS. SAKAMOTO: Member Victorino?

COUNCILMEMBER VICTORINO: Aye.

MS. SAKAMOTO: Member Mateo?

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VICE-CHAIR MATEO: Aye.

MS. SAKAMOTO: And Chair Molina?

CHAIR MOLINA: Aye.

MS. SAKAMOTO: Mr. Chair, the vote is 7-2. Motion passes.

CHAIR MOLINA: Okay. Thank you. As stated by the Committee Secretary, the vote is 7-2. This matter will move on to the full Council.

VOTE: AYES: Councilmembers Baisa, Medeiros, Nishiki, Pontanilla, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: Councilmembers Johnson and Kaho`ohalahala.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Ron McOmber's nomination to the Liquor Control Adjudication Board.

CHAIR MOLINA: All right, Members, I'd like to turn your attention next to the next Commission which was requested for separation, that is the Maui County Cultural Resources Commission. The two nominees are . . .

COUNCILMEMBER JOHNSON: Liquor Control.

CHAIR MOLINA: Oh, excuse me. Was there a request for the Liquor Control Commission?

COUNCILMEMBER PONTANILLA: Yes.

CHAIR MOLINA: I'm sorry. I went ahead of myself. That is Lee Ohigashi and Monica Revells. I'm trying to recall who made the request. That was you, Mr. Kaho`ohalahala?

COUNCILMEMBER KAHO`OHALAHALA: Yes. Thank you.

CHAIR MOLINA: I'll give you the floor, Mr. Kaho`ohalahala.

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COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. Before you make any recommendations then I just wanted to raise this because this came to my attention from a Lanai resident who sent me his concerns and I spoke with him by phone would like to have served on the Liquor Control Commission but he said that he was given the dates for the closure of the application and said that he found out later that the application dates had not been closed and, therefore, missed an opportunity to send in his recommendation. But the point that he wanted to make was that the Liquor Control Commission historically has had a Lanai person and wanted to raise a concern that by taking the Lanai person out of this Commission that it would be awkward that there would not be anyone serving. He raised an issue of an incident of Molokai where there was no one on the, I believe on the Adjudication Board, and having to deal with a Molokai issue and thought that Molokai and Lanai should be represented on these bodies, and that's why he was seeking to become a member of the Control Commission. But he was told by Ms. Endrina that the deadline had passed and he said that he found out later that that was not the case. So, I'm just trying to see whether or not this is something that we want to consider in making sure that there are representations from Lanai. And if you look, Lanai has had people serving on those, and the current person in that place is Darren Lopez, I believe.

CHAIR MOLINA: Okay, Administration, would you like to respond?

COUNCILMEMBER KAHO`OHALAHALA: No, it's Ron McOmber. Is that right? The Liquor Control Commission . . .

MS. ENDRINA: Is Lee Ohigashi --

COUNCILMEMBER BAISA: Is Lee Ohigashi?

MS. ENDRINA: --and Monica Revells.

COUNCILMEMBER KAHO`OHALAHALA: Okay. I'm sorry.

MS. ENDRINA: Darren Lopez did call me.

COUNCILMEMBER KAHO`OHALAHALA: Yeah.

MS. ENDRINA: It was kind of an interesting conversation. He told me that he wanted to switch seats with Ron McOmber that I took very strange as a comment call. We did not even have a current or up-to-date application from Darren saying that he wanted to be on anything after his time was finished on the board he is now. He did send an application dated February 22nd but these had been done way prior.

COUNCILMEMBER KAHO`OHALAHALA: Okay. His telephone call to my office was that he had spoken with you --

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MS. ENDRINA: Yes, he did.

COUNCILMEMBER KAHO`OHALAHALA: --and then he said that he was given incorrect information about the expiration date for applications and then ...

MS. ENDRINA: Expiration date?

COUNCILMEMBER KAHO`OHALAHALA: Yeah, due date for applications. And then he found out later that the date was not what he was told so he submitted his application.

MS. ENDRINA: Well, first I told him that he could not swap seats. I had no idea what that was. And second, I told him that the positions had been filled. And he said that he would send in an application because he would like to get on a board again next year. And I said that would be great.

COUNCILMEMBER KAHO`OHALAHALA: Okay.

MS. ENDRINA: And we did get it on February 22nd.

COUNCILMEMBER KAHO`OHALAHALA: Okay. And so I'm just raising that and the other concern was having a Lanai seat on the Commission.

MS. ENDRINA: That I'm going to have Marian answer.

MS. FEENSTRA: There were...and by the way, any time a Council person has a recommendation for someone that they feel would do a good job serving on a board and commission, please feel free to let our office know. You know, I have received both types of calls and I think we do, we are open to listen but also remember the process is I make the suggestion or I let Mayor know the recommendations but it is still her that makes the appoint, the nomination, and then it is this body that approves or disapproves. As far as that particular commission, generally speaking we would try to have a Lanai person on it. Unfortunately, we did not have a Lanai applicant and because of the Charter and the due dates to this body, there was no way that we could, you know, we're on a timeline. We have ten days before the end of January to get all those applications to you, the nominations. So it's kind of tight for us too. So just know that, that you know...

COUNCILMEMBER KAHO`OHALAHALA: Yeah.

MS. FEENSTRA: I'll give you my number. Call. It's not a problem.

COUNCILMEMBER KAHO`OHALAHALA: Okay.

MS. FEENSTRA: If you have information that you feel is detrimental, I noticed that April 30, 2009 was almost a year ago. So don't wait. Let us know.

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COUNCILMEMBER KAHO`OHALAHALA: I think Mr. Lopez who called was interested in applying to this Liquor Control Commission. And that's why he said he put in his application even after he was told that the deadline was there but his point was that he thought that Lanai should continue to have a person in this Commission, and that's why he was seeking to that appointment or nomination to this Commission. And then the only thing that we have done on Lanai is to let the people on Lanai know that there is an open application time for anyone interested but I have not made any specific recommendations to you except in other, in the community, have encouraged people to pick up an application form of which we put notices out to help support that.

CHAIR MOLINA: Okay. Thank you, Mr. Kaho`ohalahala.

COUNCILMEMBER KAHO`OHALAHALA: Thank you.

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: And in fairness, you know, I'd like to make sure that I disclose and I will ask to be recused from voting on this group, well, I will be asking not to vote on one member, and that will be Lee Ohigashi because Lee's wife happens to work in my office as an EA. And although I can be fair on the board, I always put that out because I operate the same way as any other member. If there is a conflict or I think there is something I should recuse myself, I'll bring it up and let the group decide. So I want to make that known right now, Mr. Chair.

CHAIR MOLINA: Okay, thank you for the disclosure, Mr. Victorino. So, Mr. Raatz or Corporation Counsel to make it clean I guess we would ask Mr. Victorino to make a motion to recuse himself.

COUNCILMEMBER VICTORINO: So move, Mr. Chair.

CHAIR MOLINA: Okay. The motion made by Mr. Victorino to recuse himself from voting on Liquor Control Commission nominee Lee Ohigashi. Is there a second?

COUNCILMEMBER PONTANILLA: Second.

CHAIR MOLINA: Okay, a second has been made by Mr. Pontanilla. Any discussion, Members? Okay, seeing none. All those in favor of the motion for Mr. Victorino to recuse himself from voting on Liquor Control Commission nominee Lee Ohigashi, signify by saying "aye"?

COUNCILMEMBER KAHO`OHALAHALA: Aye.

CHAIR MOLINA: All those opposed?

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COUNCILMEMBER PONTANILLA: No.

COUNCILMEMBER BAISA: No.

CHAIR MOLINA: Okay, two noes - Member Baisa...was there another no?

COUNCILMEMBER PONTANILLA: Yeah.

CHAIR MOLINA: Mr. Pontanilla. Okay, for the record, we'll have seven "ayes" and two "noes" - Members Baisa and Pontanilla.

VOTE: AYES: Councilmembers Johnson, Kaho'ohalahala, Medeiros, Nishiki, Victorino, Vice-Chair Mateo, and Chair Molina.

NOES: Councilmembers Baisa and Pontanilla.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: APPROVE.

CHAIR MOLINA: Okay, thank you, Mr. Victorino. You are recused. Members, any other questions for the Administration regarding the nominees to the Liquor Control Commission - Lee Ohigashi and Monica Revells.

COUNCILMEMBER KAHO`OHALAHALA: Just a question. When is the next available opening in this Commission?

MS. FEENSTRA: Generally speaking there's an opening each year; however, there are rare occasions that we come across where there is not, so I will double check. Next year, we have two members that will be coming off the Commission.

COUNCILMEMBER KAHO`OHALAHALA: Okay, and just to clarify, you have...

MS. FEENSTRA: Their terms expire.

COUNCILMEMBER KAHO`OHALAHALA: So you have two expirations a year from now.

MS. FEENSTRA: Yeah. 3/31/11. It's always 3/31 and then the year for term expirations on all of the boards and commissions.

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COUNCILMEMBER KAHO`OHALAHALA: Okay. And just to clarify, you said you have received the application from Mr. Lopez?

MS. FEENSTRA: Yes, we did.

COUNCILMEMBER KAHO`OHALAHALA: And he is requesting to serve on this commission?

MS. FEENSTRA: I believe so cause that was the one we're discussing, so we can check cause we don't have his application with us but we can check to make sure that's the commission.

COUNCILMEMBER KAHO`OHALAHALA: I just want to make sure that he is in your files and that you have his application and he is requesting to serve on this commission because it is his feeling that there should be a Lanai person.

MS. FEENSTRA: Yes, he is in the files.

COUNCILMEMBER KAHO`OHALAHALA: Okay. Thank you, Chair.

CHAIR MOLINA: Okay, thank you, Mr. Kaho`ohalahala. And I would ask the Administration to stay in contact with Mr. Kaho`ohalahala, and definitely consider an individual for representation to this commission as well from Lanai. Members, any other questions before the Chair offers a recommendation on the two nominations for the Liquor Control Commission?

COUNCILMEMBER BAISA: Recommendation?

COUNCILMEMBER JOHNSON: Recommendation?

CHAIR MOLINA: Okay, the Chair will recommend...Members, I'm just going to incorporate both names in one motion. The motion is to approve the nomination of Lee Ohigashi and Monica Revells to the Liquor Control Commission.

VICE-CHAIR MATEO: Mr. Chair, I move for the approval of both nominees, Lee Ohigashi and Monica Revells, to the Liquor Control Commission.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay, the motion to approve Lee Ohigashi and Monica Revells to the Liquor Control Commission has been made by Committee Vice-Chair Mateo and seconded by Committee Member Medeiros. Members, discussion? Seeing none, all those in favor, signify by saying "aye".

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COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay, thank you. The Chair will mark it eight "ayes" with one recusal [*sic*], Member Victorino.

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Victorino.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Lee Ohigashi's and Monica Revells' nominations to the Liquor Control Commission.

CHAIR MOLINA: Thank you very much, Members. We have one more Commission that was requested for separation but, Members, I'd like to ask for just a short five-minute recess to take care of a personal matter. This meeting is in recess and, Members, let's return in five-minutes. . . .(*gavel*). . .

RECESS: 2:47 p.m.

RECONVENE: 2:54 p.m.

CHAIR MOLINA: . . .(*gavel*). . . The March 4th, 2010 Committee of the Whole meeting has now reconvened. The time is five minutes to the hour of three o'clock. Today is Friday, March 5th. We are in a recessed meeting, Members, and we have our last commission that's requested for separation and that is the Maui County Cultural Resources Commission. The two nominees are: 1) Jacey Laborte, and 2) Bruce U'u. Members, before I open this up for consideration, can we consider a vote on the first nominee, Jacey Laborte? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah, Mr. Chairman, thank you. Just because of what happened yesterday I decided to do my homework. And because of this I've given you Chapters 2.88 and then I've given you the Federal Ordinance which is, I guess, 36 CFR. Now, if you look at Cultural Resources Commission, and then we'll go under the Definition, it's on the first page, the second column. Under "Professional" it says, to mean a person whose qualifications enumerated in Appendix A of the Code of Federal Regulations, and then it gives 36 CFR 61. Then it goes down, go farther down and it

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goes down to 2.88.030 under alphabet B. The commission shall consist of nine appointed members. The members shall be appointed by the Mayor with the approval of the Council and shall be chosen from professionals and persons with special interests in the following disciplines. And then it goes on to say, architecture, history, archaeology, planning, architectural history, Hawaiian cultural, and ethnic history and the culture of the County. The Mayor shall solicit lists of two or more persons recommended by the community and professional organizations such as the Maui Historical Society, and the Maui Chapter of the American Institute of Architects, as well as the State Office of Hawaiian Affairs for consideration in making commission appointments. Commission members should have a demonstrated interest, competence and knowledge in historic preservation. "C." goes on to say, that the majority of the commission members shall be professionals in the discipline of archaeology, planning, architecture or architectural history, Hawaiian culture or history each having professional representation on this commission to the extent such professionals are available in the community. Now, turn to that Federal regulation that they talk about under professional – 36 CFR 61 and Page 6 of 16 is the page number. Excuse me, excuse me, Page 12 of 16. And then one, two, three paragraphs that come to Appendix A of Part 61 Professional Qualifications Standards. And in there, it talks about the definition, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuance periods of full-time or part-time work adding up to the equivalent of a year of full-time experience. Then it goes, "a" History, and then it talks about the minimal professional qualifications in there. And then it goes to "b" Archaeology, the minimum professional qualifications and what it is. It goes to Architectural History, again, minimal qualifications; and then it goes to Architecture and then the minimal qualifications; and then "e" goes to Historic Architecture and the minimal qualifications. So I went down, Mr. Chairman, and looked at the existing members of the Cultural Resources Commission. And I don't know if the Administration did this but I figured I'd do it for us because we're cast with, as many of you said, the responsibility now of making or acknowledging that we want these two members to be appointed. And then I found of the sitting members, Veroncia Marquez of Molokai - no qualification; Eric Frederickson of Pukalani, he is an architect; Raymond Hutaff of Kula - no qualification; Kepa Maly of Lanai, I think he's got, not I think I know he's got some cultural qualification; Makalaha Pua Kanuha - no qualification; and Rhiannon Chandler - no qualification. Of course, when I looked at the two nominees today, just at the application forms none of them seem to have any qualifications, and for me and I think for all of us here in Maui County, we receive Federal funds, Mr. Chairman, for this program. Now, if we cannot follow what Appendix A is saying and, again, our 2.88 which talks about in the definition that the professional means that they need to address this Federal qualifications, Mr. Chairman, we're in trouble of losing Federal funds. And so, I am just saying that today, you know, we should deny both of these individuals because they do not fit under the definition of professionals in here and follow any of the disciplines. And I think that would be, and then this would again ask Administration too you guys really need to do your homework on this because of the circumstance in which Chapter 2.88 and then the disciplines under 36 CFR 61.

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So, Mr. Chairman, I know that you know there was all kinds of statements made yesterday so I figured that we better do the homework and so I got my staff to do some homework and we came up with the list. Thanks to Marian who supported, gave Jock the list and we checked all the different people sitting on there and came up with this so-called score card or report card. And nothing against Administration but I think all of you have been calling that we need to look at how we process these applications. This is the reason why, Mr. Chairman, I'm recommending that these people don't fall under the professional definition and under the Federal definition and qualifications. So I just feel that they should be sent back and, again, Administration can probably look for these qualified individuals. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Nishiki. Committee Members, questions? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I want to thank Mr. Nishiki for bringing this up. The only part that I may have some disagreement with is that in the Chapter 2.88, Cultural Resources Commission, in the Part B of that as he has pointed out, it describes the membership shall be appointed by the Mayor with the approval of the Council and shall be chosen from professionals and persons with special interests. To me, this leaves it open for somebody that may not have professional certification or even have a degree but has a special interest and a special knowledge in something such as culture. And I want to say that my mother was a high school graduate but she had more knowledge and research than someone with a degree because she spoke Hawaiian as a first language, she spoke to the kupuna at that time when I was like five years old I used to tag along with her where at that time became like 106 years old. So they were part of the Kamehameha line of kings...the later lineage of the kings that they participated with as chanters and as kahunas and special disciplines. So I want to say this leaves it open that it not only requires professional certification or degrees but I think that part gives an opening for people with the knowledge and the interest not to have, or not need a college degree or certification. So I just want to bring that up. And in bringing that up, I would say that in one of the nominees that the Mayor sent down, Mr. U'u who I know and I have watched his tenure in the Planning Commission, and I know Mr. U'u to be very sincere about Hawaiian culture and his constant trying to learn about Hawaiian culture. So I just want to bring up that. I think this leaves it open for somebody that has a special interest and a particular discipline or what his concern with this commission. So I just want to bring that up and if other Members feel the same way or I would like to ask Corp. Counsel what she would determine as her interpretation of that section?

CHAIR MOLINA: Okay, thank you, Mr. Medeiros. Prior to recognizing Corp. Counsel, you bring up an interesting point, Mr. Medeiros that didn't occur to me till now. You know for many times my tenure on this Council, I've heard the respect for the kupuna and their wisdom. And how many of the kupuna have the so-called westernized Ph.D. and Master's Degrees, I don't know, but they're very akamai and we rely on their wisdom. So you have to look at it from both sides, Mr. Medeiros, as you're basically implying. To be, they have a lot of wisdom or knowledgeable in the cultural issues you don't necessarily

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need the so-called professional degree - Ph.D., Masters, et cetera. Good point, Mr. Medeiros. Corporation Counsel, please?

MS. HEELY: Mahalo, Mr. Chair and thank you for the question, Councilmember Medeiros. You do bring up a good point and as I read Section 2.88.030 it does state - a member shall be appointed by the Mayor with the approval of the Council and shall be chosen from professionals and person with special interest in the following discipline. So it's making the distinction between professionals and persons and above where Councilmember Nishiki highlighted professional, defines professional under the Code of Federal Regulation. So it doesn't necessarily require someone with a professional degree but if they have those special interests and those following disciplines that's listed in that section...architecture, history, archaeology, planning, architectural history, Hawaiian culture, and ethnic history and culture of the County. So I think it does leave it open and invite more people than try to exclude more people.

COUNCILMEMBER MEDEIROS: Thank you, Corp. Counsel, and Mr. Chairman, thank you for that consideration.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo.

CHAIR MOLINA: Member Johnson?

COUNCILMEMBER JOHNSON: Yes, but if you read in the definition if Corporation Counsel will look in the definition of professional it does say people who have those qualifications enumerated in Appendix A in the Code of Federal Regulations, therefore, the indication may be that we would want to clarify this or say, you know, equivalent knowledge in those areas. Because just somebody I have an interest in Hawaiian culture but there's no way I would be qualified, in my opinion, to sit on this Cultural Resources Commission because I don't have that particular area of expertise. Makalaha Pua Kanuha, for example, I think she was one of the names that was read from that list, but she is the Cultural Advisor for Kaanapali Beach Hotel, therefore, she has special expertise in that given area. She knows hula, she knows the language, she's well studied in it but that's her job. She has learned that. So I can see some credence given I guess to that or equivalent. But you know for me, Mr. Chair, I don't care if people want to separate, I think quite frankly Ms. Laborte has cultural anthropology. So you know to me even though she's looking for something in the socio-economic field and that's the field she's currently in her degree, one of her degrees in Bachelor of Arts is in Cultural Anthropology, which has its roots in history and cultural preservation. So, to me, I look at that that may meet the criteria. I have other reasons why I would ask for separation of the nominees, which has nothing to do with interest or qualifications. Perhaps qualifications.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Prior to recognizing Member Baisa, Members, you know it's interesting if you look after letter B and you look at letter C,

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maybe Corporation Counsel can help clarify, it states, the majority of the Commission members shall be professionals in the disciplines of archaeology, planning, architecture, architectural history, Hawaiian cultural history, each having professional representation on the Commission to the extent such professionals are available in the community. The Commission shall also include members from different areas of the County with at least one representative from each island, who possess a knowledge and interest in local area history. And when one of the aforementioned disciplines is not professionally represented, the Commission shall seek, through appropriate means, the expertise in the disciplines when considering national register nominations and other actions that will impact properties which are normally evaluated by a professional in such a discipline. So, I'm trying to get to understanding between B and C. So, Corporation Counsel, are you able to ...

MS. HEELY: I'll attempt to. You do bring up a good point because it doesn't require and it also takes into consideration that the representation of the Cultural Resources Commission may not have the particular professionals in the certain disciplines available so it gives the option of the Administration to look out there in the community, if they cannot find those particular individuals with those certain professions --

CHAIR MOLINA: Okay.

MS. HEELY: --and discipline.

CHAIR MOLINA: All right, thank you.

MS. HEELY: It seems to be more inclusive than excluding people in terms of requiring those. And it also says the majority of the Commission members shall be professionals and the disciplines of those areas. But it doesn't necessarily say that it have to be.

CHAIR MOLINA: Lots of twists and turns. Member Baisa?

COUNCILMEMBER BAISA: Thank you very much. You did have read one of the things that I wanted to bring up and that was about being able to get that expertise to the Commission when it was needed, when it was not readily available on it. But I want to speak about Mr. U'u and I think it's important that we recognize those who are born and raised in Hawaiian culture, although they may not have professional degrees. I happen to know this young man from when he was born. His mother and I are classmates so I'm no stranger to him and I know them from my Paia days and I'm almost 70 years old so that's a long time. And I remember his tutu and his grandpa and his parents and they were very, very Hawaiian, very traditional Hawaiian. And that's how he was brought up so I know that somewhere he has those Hawaiian values ingrained in him. And yes, he has moments when he's a little rough around the edge but he's a young man and I think we're always talking about how we want to groom and grow our young leaders, well, what better way than to involve them. You know when you come to a commission, I think if you bring the basic knowledge and the basic commitment to what the commission is

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about you will learn a lot doing that. I've served in many commissions, State and also in the County. And many times you join the commission you have an interest and some knowledge but part of being on that commission is the knowledge that you gain and you learn because you train and you attend workshops and you rub elbows with professionals and you learn. And so I want to say that I don't have any regrets or any negative feelings about giving him the opportunity to serve., Thank you.

CHAIR MOLINA: Okay, thank you, Member Baisa. Members, any other comments, questions for Administration?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: Mr. Nishiki?

COUNCILMEMBER NISHIKI: You know when you read 2.88, I think it is very clear and I'll ask Administration under B, it says, the Mayor shall solicit lists of two or more persons, recommended by community and professional organizations, such as the Maui Historical Society, and the Maui chapter of the American Institute of Architects, as well as the State Office of Hawaiian Affairs, for consideration in making commission appointments. Commission members should have a demonstrated interest, competence and knowledge in historic preservation. And then it goes on to C., the majority of the Commission members shall be professionals in the disciplines of archaeology and so on. The words are very clear. It says, "shall". Now that does not lead to any mental speculation for many of us. So, Administration, did the Mayor solicit this, two or more persons recommended by the community?

MS. FEENSTRA: The Mayor is always requesting from the different cultural whether it's at the MACC or it's at the museum or its members of other organizations. She's continually recruiting and asking for people to serve. So I would say, yes, and it's not just once a year. It's on a continual basis because this is, it might be clear to you, Wayne, but this is probably one of the most difficult ones for me, personally, to try and fulfill successfully and feel like I'm doing a good job with it, you know, in presenting applications because there is the professional and then or those that have years and years of service. I look at how the sixth floor decides who's professional and who's not, how many years of experience does it take to be considered professional. It's not easy. If you look at, if you go on through that and you look at 2.88.090 then again you start questioning do I need to, do we have to or do we not. The Director shall appoint a professional from the disciplines of archaeology, architecture, architectural history, Hawaiian culture, history of historic preservation to serve as the liaison with the State Historic Preservation Office pertaining to matters which deal with the purpose and intent of this chapter. So I think that we're trying to do a really good job with this and we have to present to you those nominees that we feel have background, have the desire, have educational background and that's what's before you now. And as I read through I get confused and I'll just admit that upfront.

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COUNCILMEMBER NISHIKI: Yeah, and Mr. Chairman, I guess why I continually do this kind of work, and I'm sure that all of you care, and I thank you for it but why is this criteria so stringent? I think it's because it's the cultural on which all of us in our different nationalities got so lucky to be born in Hawaii. But yet, I can see one, two, three of you, perhaps four, I'm not sure, come from the culture. Molina, Kaho`ohalahala, and Medeiros, and if I left anybody else out, I apologize, maybe Victorino. But we've got to do this because we constantly hear as time comes up whether it be the Burial Council, the resources whatever, dedication of land that we get because of the iwi, you know it goes on and on and it rings in my ears. And I'm sure that, hopefully, it has hit your heart. But hitting the heart means in this arena, god, you know, it's like being serious about it and really finding qualified individuals. And that's the reason why the Federal regulation is so strict in here. And, and please let's not speculate so much or stretch it. And Marian, I appreciate your sincerity in what she just said, it's the hardest. But you know what, it should be the hardest if we damn mean what we want to do is trying to protect the culture and what Maui and the State of Hawaii and the...what is that word, Maui I ka pono, what is that called?

CHAIR MOLINA: *Ua Mau Ke Ea O Ka Aina I Ka Pono* - The life of land is perpetuated in righteousness.

COUNCILMEMBER NISHIKI: The State motto is protected in righteousness. Come on, Medeiros and Kaho`ohalahala, you know, it's like we've gotta fight for this kind of stuff. We gotta be serious and please let's not stretch it because that's what is happening with this culture and that's why the very things we talk about ahupuaa. We talk about the ocean which means so much to the Hawaiian culture. We talk about burials and iwi which means so much, and yet, we hear from them and they're having to come and fight. Why should they have to come and fight? We should be the ones that should be defending them. But instead, they're having to come and ask us to fight on their behalf. This is what I'm saying and excuse me if I get emotional about it but it's like I was lucky enough, I was really lucky enough to have some people like Uncle Harry Mitchell or Eddie Chang, Sr., or Uncle Leslie's mama or Reverend Kaalakea, and they didn't even teach me as much but I got the feeling and I learned from them and when you look at other people and what we fought for. George Helm, Kimo Mitchell, come on, these guys gave their lives, and so it's like we cannot be cheap about this. We cannot talk and not act and this is the reason why I say, let's not stretch it. Let's really look at these disciplines, Corporation Counsel, you know. Read what it means under the Federal law and let's be strict about it, Mr. Chairman. And I ask for your leadership today and I thank you.

CHAIR MOLINA: Okay, thank you, Mr. Nishiki. Member Johnson?

COUNCILMEMBER JOHNSON: I just want to ask a question to, for clarification. This section of the County Code we can amend that to clarify? Is that correct, Corporation Counsel? Is this particular section under Chapter 2.88? Not now but...

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MS. HEELY: Right. You have the...

COUNCILMEMBER JOHNSON: No, I'm not saying now at this moment but at some point to go along with the issues that are being raised by Member Nishiki.

MS. HEELY: Yes, Council has the authority to amend Charter...

COUNCILMEMBER JOHNSON: Okay, that sounds like a plan. All right. That being said though I think they should still be separated because I would like to give people the opportunity to support one person or the other and I can tell you, I will not support one of them for reasons which I will disclose.

CHAIR MOLINA: Thank you, Member Johnson. Member Medeiros followed by Member Baisa.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I want to thank Member Nishiki because he's always advocating strongly with a lot of heart for the host culture, Hawaiian culture, and I appreciate that. And I can understand the need for professional certification but I also want to bring up that in a commission like this, we need to have a mix of people that are born into the culture. And as I described, you know my mother she didn't have a degree but she had more knowledge than somebody that learned it in a book. And you don't learn things in Hawaiian culture, a lot of things that are from books. It comes from living that culture. And Member Nishiki brought up Uncle Harry Mitchell, Reverend Kaalakea, indeed they were respected members of the Hawaiian culture. They didn't have degrees but do we deny their knowledge and their participation? No, no. Cause I've learned through my years that in working with people with degrees and very high degrees lot of times they are book smart but lack common sense and feel the experience. And engineers that I've worked with have designed projects without consulting with local knowledge and local experts and those projects have failed because in the book it may have been all right but in the local area it wasn't all right. So I want to be sure, you know, in our advocacy to be sure that we have professionals certified that in such a commission as we're discussing now it needs to have people that have been born and live in that culture that you're trying to have participation in. So I want to be sure that if we're talking about amending this section, I certainly won't be a part of an amendment that excludes people just because they don't have a professional degree or certification because that's not Hawaii and I want to be sure that's clear. Mahalo, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. Ms. Baisa?

COUNCILMEMBER BAISA: Uh, yes, thank you, Chair. Earlier when it was mentioned the current Members on the Commission, Ms. Rhiannon Chandler was kind of passed over as not being an expert or a professional or whatever they're looking for but I've had the opportunity to get to know this young woman very much through my work with Ka Ipu Kukui, and Rei served as one of the cultural advisors for the students. And she works

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very, very closely under the tutelage of Rosalie Bailey, and shares a lot of that responsibility with Kuhea who we all know. And you know I don't know how we decide who is the expert and who isn't but this girl is a girl that was brought up in the Hawaiian culture and exudes it and lives it and loves it, and I think that is a very, very important part for what work this Commission does. This work has to involve understanding and living Hawaiian culture. And as Member Medeiros said, much of that is gained through being born and raised in it and having a true understanding as well as, you know, there are people who need to learn the professional rules and, you know, archaeology and those kinds of things. But I think there is room for balance. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Member Mateo?

VICE-CHAIR MATEO: Mr. Chairman, thank you very much. And I, too, wanted to thank Mr. Nishiki for providing this information to us. Chapter 2.88 is, in fact, quite clear and it was nice to see the document in its extent because Section C from 2.88.030 does in fact provide for inclusion. Inclusion enough that the very people that Mr. Nishiki talks about that really made an impact on his life that kind of solidifies his need to help to protect and maintain the very essence of the Hawaiian culture they themselves would not be eligible, in part, should they not have qualified with palapala. And we all know that the palapala is not as important as what is in the pu`uwai. And you know, for example, Mr. Nishiki mentioned that Ms. Marquez, one of the current members on the Cultural Resources Commission on Molokai indicates that was not actually have qualifications. Veronica Marquez is a teacher with the Department of Education. She is a kupuna retired. And in her retirement she teaches Hawaiian culture. She teaches language, she teaches our keiki about Hawaiian culture. So maybe it's not a specific skill but she's skilled and knowledgeable enough to be a designee or a person serving, which is why Section C is so important because it allows for people like this to participate in the process. So, you know, I thank him for the information and I'm just ready to go with it. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Mateo. Members, any other comments before the Chair makes a recommendation? Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. I hear people referring to Section C of 2.88 but I think this is where, if I asked Administration when it says, the majority of the Commission members shall be professionals and the disciplines of archaeology, planning, architecture, architectural history, Hawaiian culture each having professional representation on the Commission to the extent such professionals are available in the community. Now, do we have a majority of people sitting on there that fall into each category as traded by 2.88 and then as defined in 36 CFR 61 when its definitions in 2.88 acknowledges 36 CFR 61?

MS. FEENSTRA: Well . . .

COUNCILMEMBER NISHIKI: I'm just saying that...I hear everyone making reasons why and I can accept that. But when we look at the different areas of representation as stated in

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here and then we look at what professional means from that Federal Regulation, is there a majority that is from a different group, do we have that?

MS. FEENSTRA: I guess what I'm going to do, Wayne, is say to the extent such professionals are available in the community and willing to apply and serve, I can't go to an archaeologist and make them serve. But we do have, actually, that professional on the Committee. So, you know, I have to go back to that, to the extent such professionals are available in the community. And if we need the advice of a professional that is not serving then we can go to 2.88.090 and, you know, the Director is free to pay for that advice.

COUNCILMEMBER NISHIKI: I've exhausted myself.

CHAIR MOLINA: Thank you, Mr. Nishiki. The Chair certainly appreciates your passion and your research into this particular issue. Members, any final comments before the Chair...the Chair is going to request a separate vote on each of the two nominees as an FYI for you. Okay. Members, seeing no other questions, the Chair will call for the vote, first for Maui County Cultural Resources Commission nominee, Jacey Laborte. Chairman will call for a motion to approve.

VICE-CHAIR MATEO: Chairman, I move for the approval of Jacey Laborte to the Maui County Cultural Resources Commission.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay, the motion has been made by Vice-Chair Mateo to approve the nomination of Jacey Laborte to the Maui County Cultural Resources Commission, and seconded by Committee Member Medeiros. Members, discussion? Member Nishiki?

COUNCILMEMBER NISHIKI: I'm going to be voting against this nominee. As I said, when I look at the law and apply it to the list that I've got and my concern, I just feel that the Administration has not gotten in the people that we have and the people that we are about to appoint the majority of people that fall into the category in these disciplines. And so, I cannot support that. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Nishiki. Members, any other discussion as it relates to the nominee, Jacey Laborte. Seeing none, the Chair will call for the vote. All those in favor signify by saying aye.

COUNCILMEMBER MEDEIROS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER NISHIKI: No.

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CHAIR MOLINA: Okay, the Chair marks it seven "ayes", one "no" Member Nishiki, and one excusal, Member Victorino.

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Pontanilla, Vice-Chair Mateo, and Chair Molina.

NOES: Councilmember Nishiki.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Victorino.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Jacey Laborte's nomination to the Maui County Cultural Resources Commission.

CHAIR MOLINA: Members, we're now on the next nominee - Bruce U'u to the Maui County Cultural Resources Commission. The Chair will recommend and will ask for a motion from the floor to approve.

VICE-CHAIR MATEO: Chairman, I move for the approval of Bruce U'u to the Maui County Cultural Resources Commission.

COUNCILMEMBER MEDEIROS: Chair, I second the motion.

CHAIR MOLINA: Okay. The motion to approve Bruce U'u to the Maui County Cultural Resources Commission has been made by Committee Vice-Chair Mateo and seconded by Committee Member Medeiros. All right, Members, discussion on the motion? Member Johnson?

COUNCILMEMBER JOHNSON: I will be voting against his nomination. I think one of the other requirements for anybody to serve on a board and commission, particularly Cultural Resources Commission, is that you exhibit strength of character, you exhibit good judgment, you respect others, and you treat people with dignity. And I have seen many of the kupuna, we've had this discussion about people that maybe don't have an educational background, that is not my issue with Mr. U'u. I have seen him repeatedly malign people. I have been myself harassed and victimized when I went forward to testify something that was having to do with curiously enough the historic district in Lahaina, and I was totally insulted. I don't think anyone, myself included, should be treated in a manner that is totally unbecoming a person who is sitting on a board or commission. I could have filed, technically, some kind of a complaint but I chose not to. And I have seen him repeatedly do this in front of a camera and it is broadcast before

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others. And its only certain people he does it with. Perhaps I'm not born and raised here and that's why he does it. But I don't care where I was born and raised. I expect, particularly from Cultural Resources Commission, conduct that is not going to degrade and insult people. I expect the highest level, the very highest level of conduct, particularly on something that is such an important Commission. You are representing your whole culture, and if this is the way you disrespect people and you saw what happened yesterday, I don't care. There's no excuse for that. There is absolutely no excuse. And I, perhaps, was not born and raised with this individual. I don't know if he has some axe to grind against me but he does not treat all people equally and with dignity. And if that Commission when you're looking at historic dwellings, and I come forward on an issue having to do with the historic district in Lahaina, and I'm telling you people right now you don't need to have independent verification because I do not lie. And I'd have no reason to seek any personal vendetta against this individual. I don't even know except by his behavior the kind of individual that this is, but I would be embarrassed if this person is representing my culture and he's sitting on a cultural commission? I would be embarrassed. Dana Hall is a native Hawaiian. Do you think it's good for somebody to get in another person's face because they don't agree with you and start raising a ruckus? That is not proper conduct. It is not befitting someone who sits on a cultural commission that should be an example. They should lead by their example. I expect someone who is dignified and respectful who has the good common sense to treat people decently. That is not what I expect from anyone, and I, for one, as the Lahaina representative, if I go forward to represent my community on a cultural issue, I think is very unfair for me or anyone else like me that happens to become coming before that Commission to be subjected to that. It will chill me from ever going before the CRC; I can tell you that right now because I will not put myself in that predicament again. And it is not right. And if you condone that kind of behavior, I'm sorry. I totally disagree with that, but that is my view. Perhaps you have not been on the receiving end but I have and I know others who have, and I've witnessed it. So you can take it from me. You don't need to read it in the letter from Lenny Lawrence. You can take it from me and you can take that to the bank, but I will not support anyone, and for this Administration to say that they're ignorant of that kind of conduct and they have not watched the commission meetings before and they are totally not observing any of this behavior, I suggest they turn on their television and observe because that is not right. I do not want to see that again, and I will not cast a vote for someone and subject another person in this County to that kind of conduct. And I don't care whether he's here to defend himself or not, there is no excuse for that behavior. And I am entitled just as anyone else is to respect. I've earned it. I will not be treated that way by that man.

CHAIR MOLINA: Thank you, Member Johnson. Chair appreciates your comments. Just a clarification on the letter from Mr. Lawrence, that was in reference to Mr. McOmber.

COUNCILMEMBER JOHNSON: I know.

CHAIR MOLINA: I guess you were using that as an example.

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COUNCILMEMBER JOHNSON: As an example.

CHAIR MOLINA: Thank you. Members, any other comments before the Chair makes his own comments and calls for the vote? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Throughout this whole process it's been very challenging to the Members of this body to come to some decision and voting and how do we vote. And I appreciate what Member Johnson expressed. But I will support Mr. Bruce U`u because I know him personally. He may not be the person that opens the door for you or things like that but we have Members of our society that have a different way of their lifestyle, and I'm not here to judge anyone. So I think there are people that our culture used to rely on in order to pass the information and the knowledge on. We're using the last of those people. The baby boomer generation, our parent's generation, we're gradually losing them, and we must remember that in old Hawaii, knowledge and information and skills were mostly transferred to younger generations by word of mouth, by chants, by hula. It wasn't from a book and wasn't in a book, and we're losing those people. So we take on the kuleana, the responsibility in the next generation, after our parent's generation, to take on that and to become responsible for that, to learn it, to pass it on to our children and grandchildren. I see Mr. U`u as trying in his way to do that...to pass on information or to have the kuleana to represent that. So, his willingness to be an applicant to be nominated by the Mayor for this Commission I think is commendable. When you serve on boards and commissions, there is no compensation, and the time that you commit to it is a generous time of yourself. And it's not easy to hold a full-time job and be a commissioner or board member. So, I appreciate Mr. U`u making that commitment to our County and to the other people that live in our County. So I will support the nomination of Mr. U`u for this Commission and, hopefully, we can come to a better understanding of things. And finally, not to carry on the position of being treated respectfully, and I think Member Johnson should always be treated respectfully. But I just say one thing and I don't want to say anything more to generate any other conversation on this is that we must remember that the Hawaiian culture certainly did not get very much respect from the 1700s on. And what happened to them grew into the younger generations, and we're hoping that we can take that out of the part of being Hawaiian. But let's not remember that our kupuna, my mother included, and my grandmother that were threatened if they spoke Hawaiian in public. This all created things that got left in people's minds and in their pu`uwai like our Council Chair says. So let's not forget that history part of Hawaii that we're trying to get out of and try to be more in line with what we understand was aloha. So, thank you, Mr. Chairman, for this opportunity. Mahalo.

CHAIR MOLINA: Thank you, Mr. Medeiros. Any final comments, Members? Ms. Baisa?

COUNCILMEMBER BAISA: Yes, Chair, thank you very much. This is a very difficult discussion we're having, and I certainly can understand Member Johnson's, you know, position. Everybody knows I'm basically a peacenik. I don't particularly subscribe to harassment or violence or any kind of disrespect of human beings because it's not a good

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thing. I think Member Medeiros tried very hard to do a good job of explaining some of the feelings that we're dealing with here on Hawaii today, and it is my hope that things are going to get better with the Hawaiian renaissance and people will feel more comfortable and less disenfranchise. But I want to just say one more thing about Mr. U`u before we take the vote. I noticed on his application and I've seen him there, he is an active member of the Hawaiian Chamber of Commerce, and he was a canoe paddler and maybe still is, I don't know if he has time. He probably would be very upset with me for talking about this but I think you need to know. The measure of a person often is what they do unheralded. Mr. U`u several years ago took into his home at great financial cost as well as disruption in his own family, he took the kids of his brother and is raising them as his own children. And that has not been easy for him financially or emotionally or whatever but he treats them like his own kids and is working very, very hard to bring them up. And for me, that tells me a lot about the kind of man he is.

CHAIR MOLINA: Thank you, Member Baisa. Any other comments? Member Kaho`ohalahala followed by Member Nishiki.

COUNCILMEMBER KAHO`OHALAHALA: Thank you, Chair. I've been trying to listen very intently on this one, and it is something that I think is very close to me. I have served myself on the Cultural Resources Commission and understand the work and the responsibilities that come before this board. I am not going to support Mr. U`u today and I think my reasons for not support have nothing to do with the person himself. But it has to do with the fact that I think, you know, this Commission is lacking kupuna. If you look at the make-up of the body right now, you have a lot of professionals here but you are sorely lacking in the caliber of I think the quality that is being described by Member Medeiros. And while the person is Hawaiian, I would support them fully as being Hawaiian. But whether or not the person has the qualities I think that we are seeking, that I think is not something that we can confer unto ourselves. That is something that is really conferred upon you by your peers and those that are amongst you and your family and your broader community. So I just have some words that I would like share. (*Spoke in Hawaiian...*) I think those are the qualities that I think we're seeking in this particular commission of all the commissions that are before us. And it is with that, that I would like to leave Mr. U`u for his thought and consideration. I expect that it will pass this body but my vote against him is to help him to seek those things that I think are necessary if you truly want to serve in this capacity. So, Mahalo, Chair.

CHAIR MOLINA: Mahalo, Mr. Kaho`ohalahala. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Thank you, Sol. I think...let me put it this way, I won't be supporting Bruce U`u also. Not against the person. I guess there are certain people in this community whom I have grown to respect because of what they do, how they speak, the homework that they do, and based on that information that is given to me. I can only tell you of one person now who I've come to respect, and I'm sure that many of you have held her in high esteem and that is Dana Hall. When we look at this most important commission as Sol has stated, it's not about that person and his or her qualities. It is

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about serving that commission in the perpetuation of the Hawaiian culture, in very specific areas of the culture. And when I look at 2.88 and laws that we've passed and looked at why these laws are there I think they were again if I may sound repetitious, they're very specific, and we want people that fall into that category who have expertise, who have not only studied as you said, but who have some idea and we can see through their own actions. The two individuals that have been presented don't fall into that category, I'm sorry. I would be voting just because we need somebody, and I tell you something...not against these two people but if we don't strive to get the best, Administration, and present to this Council then we end up with mediocrity. And for me, the preservation of the host culture and the responsibility of this commission is too important, again, for me to see and adopt these two individuals. So for that reason, again, Administration, please do better work and this is not that you've not done good work but I think you can do better work when you choose individuals like this for this most important commission. I just hate, Mr. Chairman, especially for this commission to not see this Administration do better work. And again, not against these individuals but I think we need more, as Sol said, kupuna kind of people. And I think that you know what we're saying, you know what we're saying. And I just hate to see a commission again where people like Dana Hall are going over there and they're having to have to prove or fight with these individuals. I think Dana is still alive and because of what she says, this is one person that I've grown to not only love but I've grown to respect and I think many of you have because when you listen to what she has to say, I think in your heart she can move you because of her reverence and her love for this host culture. And I don't mean to glorify any individual because she happens to sit here. But I think if any of you have opened your ears, have moved your brain, have opened your heart, I think that she has touched you many times as she speaks, and so I will be voting against Bruce. Thank you.

CHAIR MOLINA: Thank you, Member Nishiki. Members, any final comments? All right, with that said, Members, I must certainly say all of you have some tremendously good reasons for the positions that you are taking I must say that. Member Johnson?

COUNCILMEMBER JOHNSON: Mr. Chair, I just wanted to say for my final comment, you know, the reason that I was at that meeting before the Planning Commission was at the request of Lahaina Restoration Foundation. Then he was the head, Mr. Keoki Freeland, and it was on a cultural issue and it was in the Historic District. And what I was offering was testimony that was given by someone who is native Hawaiian, somebody who has great respect for the history and the culture. And that information was basically ignored in favor of development that basically destroyed an area, a historic area. And I think that irrespective of the fact that he treated me disrespectfully because that doesn't seem to much matter to people, I think that, that particular situation illustrates another reason why. If you don't have a connection or cultural sensitivity or respect for the historic district and particularly Lahaina is filled with historic structures and it is...it's just a wonderful area. If you don't have, I'm not from here, I care more about that district and I care more about what happens in terms of the Hawaiian culture than I believe some other people do who were born and raised here because they take it for granted. And that, is sad for the CRC because who, if you have people that were born and raised here that care

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nothing, forget about my comments but these were the comments and the things that I was asked to share on behalf of Mr. Freeland, who was head of the Lahaina Restoration Foundation. If that doesn't matter, then what does? What does? That said it all for me. Thank you.

CHAIR MOLINA: Thank you, Member Johnson. Members, as I stated earlier, I certainly appreciate all of your comments, all very impressive from the way you justified your positions. Mr. Nishiki brought up an interesting point with regards to the Federal funding. I will ask Staff to make an inquiry at least to look at that part if by the nomination process it would in fact have any impact on Federal funding because I certainly would hate to see any impacts in that area as well. So thank you for bringing that to the attention of the Committee, Mr. Nishiki. And Members, if you look at all the appointment dates of the Commission members range from the year 2005 up through 2009 it's interesting that all of this was just brought up now. And maybe because we sometimes, I don't want to say take for granted, but we just assume things are okay. Sometimes it's good to pause and look and make sure that we are trying to adhere to the guidelines established in Chapter 2.88. And Member Johnson brought up a good point about maybe we should look down in the future considering amending the chapter as well to avoid any potential misunderstandings or conflicts or anything of that nature. And I'll give my testimony for Mr. U`u very brief. Those of you who are in the affirmative for Mr. U`u I think you pretty much said it all. I've had positive experiences with Mr. U`u and, yes, he is a very passionate person who speaks his mind, and again, it's democracy. And I'm impressed to hear of your encounter with Mr. U`u, Member Johnson, and I only pray that some form of healing can occur between you and Mr. U`u down the road. So, Members, I think I've said enough on this. I will just, at this point, thank you again and call for the vote on the recommendation to approve Mr. U`u to the Maui County Cultural Resources Commission. All those in favor signify by saying "aye"?

COUNCILMEMBER MEDEIROS: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER JOHNSON: No.

COUNCILMEMBER NISHIKI: No.

COUNCILMEMBER KAHO`OHALAHALA: No.

CHAIR MOLINA: Okay, Members, I have three "noes" - Members Johnson, Kaho`ohalahala, and Mr. Nishiki; five "ayes" - Members Mateo, Baisa, Medeiros, Pontanilla, and Molina. And one excused - Member Victorino. Okay, the nomination passes.

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Council must or disapprove the Mayor's nominations that have a deadline by April 26, 2010, or the nominations will be deemed approved. I've asked Corporation Counsel, Members, if you'll note in your binders there was a correspondence that the Committee Chair sent out to the Corporation Counsel to comment on the fact that these four boards that I spoke earlier, the Mayor at that point missed the deadline in terms of nominating to those boards and commissions, and the Chair needed clarification on that. I would like to ask Ms. Heely to give further comment.

MS. HEELY: Mahalo, Mr. Chair, and good afternoon, again everyone. Our office reviewed your Chair's request dated February 12, 2010, it's under Item 2 in the binder. But the question posed relates to vacancies in boards and commissions and what happens when the Mayor does not make a nomination and Council does not make a nomination during the time frame prescribed via the Charter. In a nutshell, the power of appointment rests with the Mayor subject to the approval of the Council. The major Charter provisions as referenced in your request and our response are 13-2, Subsection 16, which relates to expiration of terms, and 13-2, Subsection 17, which relates to resignations. Section 2.41 of the Maui County Code also provides some guidance as well. However, the specific Charter and Code provisions say nothing specific as to what happens when the Mayor and Council fail to nominate within those prescribed time frames. But when you look specifically at the specific Maui County Code section describing the establishment of each board, for example, in your memo the Animal Control Board, the Commission on Children and Youth, Commission on Cultural and the Arts, Maui County Outdoor Lighting Standards Committee, and Subdivision Engineering Standards Committee, states that the members be appointed by the Mayor with the approval of Council. Also research in the leading treatise municipalities explain that the general rule is where the power of appointment exists it may be exercised at any time during the term of office. Accordingly, when the Mayor and Council have not made nominations to fill vacancies within time periods provided by law, the Mayor may make subsequent nominations to fill vacancies subject to Council approval. I hope that clarifies or answers your question.

CHAIR MOLINA: Okay, thank you. I think it's a good start. And Members, also if you want to look at the February 12, 2010 letter from myself, the Committee Chair, making that inquiry and the response, of course, given to us by Corporation Counsel because some deadlines that were missed. Ms. Heely?

MS. HEELY: Yes, and one more point. I did want to reference in regards to two items on the agenda. I did speak with Council Services' Staff and Mayor's Staff in regards to the Cost of Government Commission nominee and the Hana Advisory Committee nominee, there may be an issue within the Mayor's nomination that's within the time frame that the Council suppose to nominate, and specifically Maui County Code Section 2.41.050 states that, if the Mayor nominates within Council's time frame to nominate, the Mayor's nomination shall be invalid. However, nothing prohibits or precludes the Council from nominating the same person.

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CHAIR MOLINA: So, Ms. Heely, again, we can do it like we did with the other Committee item, we can vote it up or down. And if we vote it down then because the deadlines were missed then the Council can appoint to these various boards and commissions.

MS. HEELY Yes.

CHAIR MOLINA: Okay. I just wanted that clarification for the Members, if they're wondering why we have a separate committee item on this as well and which is, again, related to the missing of the deadlines. So, Members, I'll ask Administration to give additional comments, if you have any?

COUNCILMEMBER BAISA: No comment.

CHAIR MOLINA: Okay. Members, any questions? First, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I just want to ask on the Hana Advisory Committee, Administration only one nominee came down from the Mayor's Office so that leaves a vacancy?

MS. FEENSTRA: Yes, and I have spoken to Morris on numerous accounts asking him if you had any recommendations.

COUNCILMEMBER MEDEIROS: Okay. We did try to get recommendations through our Hana District Council Office, our staff there. But I think what happens is when the applications go into the Mayor's office we do not get any feedback about what got there and what you're considering. So we don't know if there's enough applications in or not because there's no feedback from the Administration to the district representative. We have no idea of the status.

MS. FEENSTRA: I'm sorry but I did speak with Morris --

COUNCILMEMBER MEDEIROS: Okay, Morris . . .

MS. FEENSTRA: --many times --

COUNCILMEMBER MEDEIROS: --yeah.

MS. FEENSTRA: --actually to letting him know that we had not received any applications and I did let him know as soon as Edward Cashman's application came in and asked him for any advice on that.

COUNCILMEMBER MEDEIROS: I would suggest that something like an email or something that's you know more hard copy --

MS. FEENSTRA: Okay.

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COUNCILMEMBER MEDEIROS: --than a conversation with our Staff. Okay.

MS. FEENSTRA: I can do that.

COUNCILMEMBER MEDEIROS: I appreciate that. So there's one vacancy so what happens to that vacancy? Does it get sent down at another time if we have applications in for that?

MS. FEENSTRA: Well, I believe and correct me if I'm wrong, Deputy Counsel, that we have missed that deadline and so if you as a body have a nomination you can put that forth to the Council. I will let you know if we get any applications regardless.

COUNCILMEMBER MEDEIROS: Okay.

MS. FEENSTRA: And then when that time limit has been exhausted, which I believe is a 60 -day time limit, and the clock starts ticking.

COUNCILMEMBER MEDEIROS: Okay.

MS. FEENSTRA: I'm not sure when, I would have to defer that. Then it would be back I think in both of our courts or back in the Mayor's court at that point. So, I mean, if we get applications I will communicate via email with you folks.

COUNCILMEMBER MEDEIROS: Okay, thank you, Administration, for that. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. And Members, I just wanted to give you, and Staff, please correct me if I'm wrong, I mentioned the Maui County Cultural Resources Commission we had just a very lengthy discussion related to that. We filled two vacancies. There is one vacancy open; also on the Subdivision Standards Engineering Committee. So my interpretation on this, am I correct that the Council can put in a name down the road? Am I correct? If any Council member chooses to, they can contact the Administration if there's an intent to communicate on this. So it's open right now, right, because we have missed deadlines from the Administration so we can recommend?

MR. RAATZ: Thank you, Mr. Chair. I call the Member's attention to Page 4 of today's agenda under COW-2(11). In paragraph a. under the Description section, it notes that for these four Commissions - the Cost of Government Commission, the Hana Advisory Committee, Maui County Cultural Resources Commission, and the Subdivision Engineering Standards Committee, it's already in the Council's area of responsibility to nominate and approve individuals for the noted vacancies. And that deadline for the Council's exclusive authority expires on March 31, 2010.

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CHAIR MOLINA: Okay, so time is short. And also there is one vacancy for the Hana Advisory Committee as it stands for the moment. So one vacancy in the Hana Advisory Committee, one vacancy in the Maui County Cultural Resources Commission, and one vacancy in the Subdivision Engineering Standards Committee. The Administration is asking us for our consideration on the vacancies for the Cost of Government, and one for the Hana Advisory, Commission on Children and Youth, and Urban Design Review Board. So, there you have it, Members. Member Johnson?

COUNCILMEMBER JOHNSON: I just wanted to find out where we do not approve a nominee that does not apply then because let's say when a nominee is sent down, we disapprove that, we can't go ahead then as Council and put in that name?

CHAIR MOLINA: Corporation Counsel or Staff, are you able to answer that?

MS. HEELY: I believe the Charter says if you disapprove a nominee it goes back to the Mayor for that ten day period.

COUNCILMEMBER JOHNSON: And then if she does not make a nomination, then we would be eligible to do that?

MS. HEELY: Right.

COUNCILMEMBER JOHNSON: Okay.

CHAIR MOLINA: Okay, Members, as an FYI for you to consider down the road. At this point, the Chair would like to make a recommendation first on the Commission on Children and Youth - Janet Bermejo Barrera replacing Rafael Boritzer, for a term expiring on March 31, 2011, and this is, again, a recommendation from the Mayor. The Chair will recommend approval and ask for a motion.

VICE-CHAIR MATEO: Chairman, so move.

COUNCILMEMBER NISHIKI: Second.

CHAIR MOLINA: Okay, it's been moved by Committee Vice-Chair Mateo, seconded by Committee Member Nishiki. Any discussion? Seeing none, all those in favor signify by saying "aye"?

COUNCILMEMBER BAISA: Aye.

COUNCILMEMBER MEDEIROS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it seven "ayes" with two excusals - Members Pontanilla and Victorino.

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VOTE: AYES: Councilmembers Baisa, Johnson, Kaho‘ohalahala, Medeiros, Nishiki, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Pontanilla and Victorino.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Janet Barmejo Barrera’s nomination to the Commission on Children and Youth.

CHAIR MOLINA: Moving on to letter B. - Cost of Government Commission. The Chair is going to recommend approval for the nomination of Norma Barton, for a term expiring on March 31, 2012. The Chair will seek a motion.

VICE-CHAIR MATEO: So move.

COUNCILMEMBER NISHIKI: Second.

CHAIR MOLINA: Okay, moved by Member Mateo, seconded by Member Nishiki. Any discussion? Seeing none, all those in favor signify by saying "aye"?

COUNCILMEMBER BAISA: Aye.

COUNCILMEMBER MEDEIROS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it seven "ayes" with two excusals - Members Pontanilla and Victorino.

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho‘ohalahala, Medeiros, Nishiki, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Pontanilla and Victorino.

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MOTION CARRIED.

ACTION: Recommending APPROVAL of Norma Barton's nomination to the Cost of Government Commission.

CHAIR MOLINA: Next, letter C. - Hana Advisory Committee, the nomination of Edward Cashman, for a term expiring on March 31, 2015. The Chair recommends approval and will seek a motion.

VICE-CHAIR MATEO: So move.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay. Moved by Member Mateo, seconded by Member Medeiros. Any discussion?

COUNCILMEMBER MEDEIROS: Chair?

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: I just ask the Members to support this nomination because I do know Mr. Cashman very well and he is retired and can make a commitment like this. He is community-oriented and has participated in many events in Hana so I would ask the Members for their support of this nomination.

CHAIR MOLINA: Thank you, Mr. Medeiros. Any other discussion? Seeing none, all those in favor signify by saying "aye"?

COUNCILMEMBER NISHIKI: Aye.

COUNCILMEMBER BAISA: : Aye.

COUNCILMEMBER MEDEIROS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it seven "ayes", two excusals - Members Pontanilla and Victorino. Mr. Cashman has been approved to the Hana Advisory Committee.

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

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ABSENT: None.

EXC.: Councilmembers Pontanilla and Victorino.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Edward Cashman's nomination to the Hana Advisory Committee.

CHAIR MOLINA: And finally, to the Urban Design Review Board, the nomination of Linda Jean Berry, for a term expiring on March 31, 2014. The Chair will entertain a motion to approve.

VICE-CHAIR MATEO: So move.

COUNCILMEMBER NISHIKI: Second.

CHAIR MOLINA: Okay, moved by Committee Vice-Chair Mateo, seconded by Committee Member Nishiki. Any discussion? Seeing none, all those in favor signify by saying "aye"?

COUNCILMEMBER NISHIKI: Aye.

COUNCILMEMBER BAISA: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair marks it seven "ayes", two excusals - Members Pontanilla and Victorino.

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Pontanilla and Victorino.

MOTION CARRIED.

ACTION: Recommending APPROVAL of Linda Jean Berry's nomination to the Urban Design Review Board.

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CHAIR MOLINA: Staff, I believe this does conclude our business for today. We dealt with Committee of Whole 1(27) yesterday and today, am I correct, Mr. Raatz?

MR. RAATZ: Nodded yes.

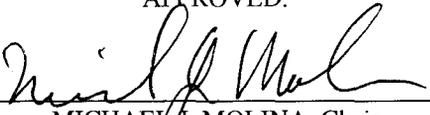
CHAIR MOLINA: Whew! Well, we had quite an entertaining two days, Members, and I'm hoping the Administration certainly takes into consideration the comments as it relates to the process and so forth. Thank you all, Members, for your hard work, well-deserved rest for you on the weekend and next week, and safe travels to Mr. Victorino and Mr. Pontanilla as well.

COUNCILMEMBER VICTORINO: Thank you, Chair.

CHAIR MOLINA: So it is 4:15 Friday, March 5th, 2010. This Committee of the Whole meeting of March 4th, 2010 is now adjourned . . .(gavel) . . .

ADJOURN: 4:15 p.m.

APPROVED:


MICHAEL J. MOLINA, Chair
Committee of the Whole

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Transcribed by: Jo-Ann Sato