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2 COUNTY OF MAUI, STATE OF HAWAII
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7 BOARD OF ETHICS
8 REGULAR MEETING
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14 Held at the Planning Department Conference Room,
15 250 South High Street, Wailuku, Maui, Hawaii, commencing
16 at 12:30 p.m., on Wednesday, April 10, 2013.
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21 Reported by: Tonya McDade, CSR, CRR
22 Certified Shorthand Reporters Maui
23 Wells Street Professional Center
24 2145 Wells Street, Suite 302
25 Wailuku, Hawaii 96793
(808) 244-3376
reporters@csrmaui.com

Page 1

1 ATTENDANCE
2 BOARD MEMBERS PRESENT:
Michael Westfall, Chair
3 Donald Sheridan, Secretary
Sydney Kikuchi, Member
4 Randol Leach, Member
Norman Franco, Member
5 Lois Prey, Member
6 STAFF PRESENT:
Gary Y. Murai, Deputy Corporation Counsel
7 Angela Andrade, Executive Secretary
8 ALSO PRESENT:
Councilmember Mike White
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Page 2

1 (Wednesday, April 10, 2013, 12:30 p.m.)
2 * * *
3 CHAIR WESTFALL: Call the meeting of the Maui
4 County Board of Ethics for Wednesday, April 10th, 2013,
5 to order. What we're going to do is I am going to take
6 attendance, and then I am going to ask the members to
7 approve a change in the agenda so that we can have
8 Councilman White address us right at the beginning. Are
9 we all okay with that?
10 MEMBER SHERIDAN: Yes.
11 MEMBER PREY: Yes.
12 CHAIR WESTFALL: In attendance today is myself
13 as Chair, Don Sheridan as Secretary, Sydney Kikuchi,
14 Randol Leach, Norman Franco, Lois Prey. And the one I
15 never am able to get, Lilah Inaba. I got it right for
16 the first time in six months, she's not here.
17 Anyway, we're going to go ahead and skip to
18 Item 7 under New Business, Section (b), Communication
19 Items, Correspondence from Councilmember Mike White
20 dated March 19th, 2013.
21 Councilman White, I did prepare a few
22 questions that I had, and I discussed a little bit with
23 Gary, but why don't you just go ahead and give us an
24 overview? And then we'll open it up to see if any
25 members have questions.

Page 3

1 COUNCILMEMBER WHITE: Sure. Well, thank you
2 for inviting me to address you today.
3 Having operated a hotel at various levels for
4 the last, good grief, almost 40 years, one of the things
5 that I have come to understand as well as anything else
6 is the corrosive effect of favoritism on the staff. And
7 it can be the most destructive thing in any
8 organization.
9 Having come to the Council, you get a much
10 more up close and sometimes friendly and sometimes not
11 so friendly view of what's going on. And it's come to
12 my attention that, in a number of areas, there is a fair
13 amount of nepotism.
14 And, you know, we all -- in the private
15 sector, we all have nepotism policies.
16 One of the other things we find in government,
17 at the Council level, is that some policies are actually
18 followed and some are not. And so I went to -- not on
19 this issue, but on another issue -- I went to talk to
20 Corp Counsel.
21 I said, what's the difference between a rule
22 and an ordinance. They said, well, an ordinance is
23 something you have to do, and a rule is left up to the
24 discretion of the department head as to whether it's
25 enforced or implemented or not. And so I've come to the

Page 4

1 feeling that if there's something important that I'd
 2 like to see done, I'd rather do it by ordinance, if
 3 possible, than by trying to do it by rule.
 4 And you brought up some very good points about
 5 is this a Charter issue or a --
 6 CHAIR WESTFALL: You did see my notes. Okay,
 7 great.
 8 COUNCILMEMBER WHITE: Or a Code issue. But
 9 this is something that I feel we need to be looking at
 10 because, for me, nepotism is possibly the highest rank
 11 of favoritism that there can be. And when people are
 12 spending public money and allowing favoritism and
 13 nepotism to have its usual impact on operations, I think
 14 we have a responsibility to cut it off as early as we
 15 possibly can because of the corrosive impact that it
 16 has.
 17 So that's the -- the basis for which I am
 18 sending this bill to the Council. And I really would
 19 love to have you all involved in helping us come up with
 20 something that really makes sense.
 21 I think some of your questions are very, very
 22 good. And so I would be happy to address them. I
 23 brought our trustee staff attorney along with us. And
 24 Gina is going to help craft whatever suggestions you
 25 might have that we would like to incorporate. So, with

Page 5

1 that, I will take any questions.
 2 CHAIR WESTFALL: All right. Members,
 3 questions?
 4 MEMBER SHERIDAN: I think all the questions
 5 that you asked were all the questions that I would ask.
 6 COUNCILMEMBER WHITE: Let me put my glasses
 7 on.
 8 CHAIR WESTFALL: I'm sorry, Mr. White --
 9 Councilman White. Members, I think let me just explain.
 10 We have a Rules Subcommittee. And your description of
 11 rules is great because we just had that discussion,
 12 what's the difference between Charter, ordinance,
 13 statute and -- anyway, so the Rules Subcommittee meets
 14 before this meeting. So about four of the members,
 15 based on Sunshine, have seen my memo. The others have
 16 not.
 17 COUNCILMEMBER WHITE: Oh, okay.
 18 CHAIR WESTFALL: So I asked Gary if it would
 19 be all right to send it to you so we could be a little
 20 more efficient in time.
 21 COUNCILMEMBER WHITE: I appreciate it.
 22 CHAIR WESTFALL: So some of them haven't seen
 23 the questions, some of them have.
 24 COUNCILMEMBER WHITE: Do you want to ask the
 25 questions? Or I can just -- I can read them off.

Page 6

1 CHAIR WESTFALL: Read them and just address
 2 them.
 3 COUNCILMEMBER WHITE: The question -- the
 4 first one is Code versus Charter. Historically, the
 5 Maui County Charter has been looked at as the authority
 6 for all prohibitive activities under the Code of Ethics.
 7 Having -- will having different provisions with respect
 8 to prohibitions in the Code versus the Charter create
 9 confusion. I think that's a valid concern. The way
 10 it's been expressed to me is that the Charter -- the
 11 Charter -- I just -- I am not sure this works, but it
 12 works for me.
 13 CHAIR WESTFALL: Okay.
 14 COUNCILMEMBER WHITE: The Charter versus Code
 15 is kind of like the difference between Code and rules.
 16 The Charter provides us guidance as an absolute, but it
 17 also doesn't prohibit us from going beyond what the
 18 Charter outlines we must do. So that's the way I look
 19 at this. The Charter doesn't allow it -- or doesn't --
 20 doesn't address nepotism, but I feel we have the
 21 responsibility to take this issue a little bit further.
 22 CHAIR WESTFALL: Okay.
 23 COUNCILMEMBER WHITE: The next is the
 24 definition of nepotism.
 25 CHAIR WESTFALL: Maybe I will just add a

Page 7

1 little background to the question.
 2 COUNCILMEMBER WHITE: Yeah.
 3 CHAIR WESTFALL: We spent how many years, two
 4 or three years, redoing the rules for the Ethics
 5 Commission. And we sort of went the opposite of what
 6 you might normally do. We didn't make the rules, we
 7 didn't condense the rules, we actually expanded them.
 8 Because what we determined is that the general public is
 9 the one looking at the rules.
 10 COUNCILMEMBER WHITE: Right.
 11 CHAIR WESTFALL: And there was all kinds of
 12 legalisms. And unless you're an attorney, you wouldn't
 13 know what the word nepotism means. Or you might have a
 14 faint idea, but you wouldn't have a definition for a
 15 working definition. So what we did in the rules is
 16 expanded all of the definitions to be more -- provide
 17 more clarity. So that's where that question is coming
 18 from.
 19 COUNCILMEMBER WHITE: Yeah. And I think
 20 that's one of the most salient points, because, you're
 21 right, we do need to expand on the definition. So Gina
 22 has been playing around with that.
 23 CHAIR WESTFALL: Okay.
 24 COUNCILMEMBER WHITE: Because, yeah, it's --
 25 how do you -- how do you define nepotism if it's

Page 8

1 something to do with a significant other as opposed to
 2 a --
 3 CHAIR WESTFALL: I'm sorry. I will just chime
 4 in here. Members, if you have anything?
 5 What we did find in other jurisdictions,
 6 looking at their advisory opinions, is that, you know,
 7 what we have come to describe as a family is no more.
 8 And that bears on the term nepotism in drafting these
 9 rules. There's all kinds of other relationships now
 10 that delve into the issue of favoritism, but they're not
 11 necessarily a husband and wife or a husband and son,
 12 that kind of thing.
 13 COUNCILMEMBER WHITE: Correct.
 14 CHAIR WESTFALL: Could be two roommates and
 15 all these kind of things. What we noticed in Honolulu
 16 as well as the State is that their provisions, they use
 17 the term -- and I am just skipping to another section
 18 here -- fair and equal treatment. And in their
 19 prohibitive activities, they never use the term
 20 nepotism; however, if you go look at their advisory
 21 opinions, it's all over the place and they say it's a
 22 prohibitive transaction. But in order to get around
 23 this description of what is a family, they use the words
 24 just everyone has to be -- that's more for the attorneys
 25 to discuss, but we did notice that that was the phrasing

Page 9

1 everywhere else.
 2 COUNCILMEMBER WHITE: Well, I guess one of my
 3 concerns would be if you -- if you don't have some
 4 reference to family and to nepotism, then it may be
 5 easier for people to think, well, I don't know, I can --
 6 if I am fair and honest, I can do stuff for my family
 7 because I am being fair. And, yet, there are examples
 8 in the County where people have been hired by parents.
 9 So it's -- yeah, the crafting is gonna be difficult
 10 because, as you get down into the definitions, it's
 11 going to be very difficult to address every single angle
 12 from which all of us might see something that's unfair.
 13 CHAIR WESTFALL: Uh-huh.
 14 COUNCILMEMBER WHITE: But, to me, we have to
 15 -- we have to work at it. We have to make it such that
 16 we start chipping away at this.
 17 Another thing I would love your thoughts on is
 18 what happens to situations that are already in place.
 19 CHAIR WESTFALL: I think that was one of our
 20 questions.
 21 COUNCILMEMBER WHITE: Oh, was it?
 22 CHAIR WESTFALL: I will just throw this out,
 23 since we're just chatting here, so to speak.
 24 COUNCILMEMBER WHITE: Yes.
 25 CHAIR WESTFALL: This Commission historically

Page 10

1 has operated from the perspective of prevention. We
 2 have no enforcement mechanism. There's no one here that
 3 goes out and sees that rules are being enforced or --
 4 COUNCILMEMBER WHITE: Right.
 5 CHAIR WESTFALL: So we were wondering how does
 6 this get enforced.
 7 COUNCILMEMBER WHITE: That's right, you did
 8 have the enforcement.
 9 CHAIR WESTFALL: For situations that may be
 10 already out there.
 11 MEMBER SHERIDAN: We have no budget for it.
 12 CHAIR WESTFALL: We have no budget.
 13 COUNCILMEMBER WHITE: Fortunately, we have the
 14 ultimate hammer of funding, but that is the only hammer
 15 we have. We can't reach -- as you all know, we can't
 16 tell the Administration what to do; all we can do is
 17 withhold funding or move funding.
 18 But I guess part of my concern is if we -- if
 19 a recommendation were made to say, well, any existing
 20 situation should be grandfathered, you know, I would
 21 have a little bit of a problem with that because we --
 22 you know, we have some -- I was advised not to state the
 23 area that came to our attention that is -- that lit the
 24 fire for me to do something about it, but it's a
 25 situation where, in one department, the -- let me see if

Page 11

1 I can be as vague as I can. Somebody has hired two
 2 immediate family members. And, you know, I don't -- I
 3 just -- I don't know how that happens, to begin with,
 4 without being questioned or stopped, but I would have a
 5 real hard time being comfortable that that should be
 6 grandfathered. Because it's happened, it gets to stay
 7 status quo? I just -- I can't be comfortable with that.
 8 So enforcement is a -- is a question.
 9 Penalties is another question. If you -- I will give
 10 you an example. If you're hiring your son into a
 11 position that they will have for a lifetime, what kind
 12 of penalty is going to dissuade you from taking that
 13 action?
 14 CHAIR WESTFALL: Sure.
 15 COUNCILMEMBER WHITE: Other than maybe losing
 16 your own job. But then, if you're about to retire and
 17 you name your son, you're not losing a whole lot. So I
 18 don't -- again, I don't know what level of penalties
 19 would have to be established to have -- you know,
 20 provide the disincentive.
 21 CHAIR WESTFALL: Because we only have -- how
 22 to say -- things that come in front of us are when
 23 someone files a complaint.
 24 COUNCILMEMBER WHITE: Uh-huh.
 25 CHAIR WESTFALL: And the only remedy we have

Page 12

1 to that is saying you're not supposed do that, don't do
 2 it. We don't have any enforcement beyond that. I think
 3 we can fine \$1,000, but there's some question who
 4 actually collects it, because we've never fined anyone.
 5 It hasn't happened. And, actually, it's a recent change
 6 in the State statutes that allow that. But there's been
 7 a question of who actually goes out and collects the
 8 \$1,000 fine. So I think what you're describing is more
 9 appropriate, why would the guy get to stay in the job?
 10 COUNCILMEMBER WHITE: Right. I mean, I think
 11 we all here have instances where somebody in the
 12 governmental position has made -- has either done
 13 something that in the private sector would get them
 14 fired or has done something just terribly irregular,
 15 and, yet, nothing seems to happen. So when we're
 16 dealing with just this issue, the penalties are kind of
 17 fleeting when you're dealing with civil service because
 18 there are people that in a civil service position are
 19 protected by civil service laws and union contracts at
 20 the same time.
 21 CHAIR WESTFALL: I think that was a question
 22 our attorney here had earlier.
 23 COUNCILMEMBER WHITE: So I guess my point is I
 24 don't see many things that allow for someone to be
 25 removed from their job. Whether this rises to that

1 anything to these individuals? And, basically, our tool
 2 is withholding money.
 3 But if -- you know, these are for future
 4 projects, but -- or future allocations, but if it's a
 5 smart thing to do, why would you withhold the money?
 6 And if it's a stupid thing, why would you give it to
 7 them in the first place? So we -- we go through the
 8 same kind of frustration that there's not a lot of
 9 effective enforcement.
 10 CHAIR WESTFALL: On slightly a different
 11 topic, but it's great we're discussing it, is we sense
 12 that the general public assumes we have all kinds of
 13 authority. And they issue -- or they come in here and
 14 they file, they go to the trouble or the -- the trouble
 15 of filing a complaint. The only thing we can do is make
 16 a suggestion to the department either remove the person,
 17 fine the person or tell them don't do it again. And
 18 whether that gets done or not is beyond our scope.
 19 COUNCILMEMBER WHITE: Are the actions of
 20 boards such as this -- and this is question for the
 21 lawyers, but are they guided more by State statute than
 22 by County Code?
 23 MR. MURAI: We're guided solely by the
 24 Charter, which contains the Code of Ethics. The Code of
 25 Ethics is kind of repeated in the Maui County Code, and

1 level or not, it's hard to say. At what point, if
 2 you're hiring a direct immediate relative versus doing
 3 the favor for a friend's son or doing a favor for
 4 somebody else's relative?
 5 MEMBER SHERIDAN: Knowing what our limitations
 6 are at this point, what would you recommend we can do?
 7 COUNCILMEMBER WHITE: You mean as far as your
 8 own fines that you levy or the Board of Ethics? I would
 9 be happy to consider legislation that would provide you
 10 with more of a bite if somebody is violating the Code of
 11 Ethics.
 12 CHAIR WESTFALL: That's been a regular topic.
 13 MEMBER SHERIDAN: We would be happy to help
 14 you if we had the power to do so.
 15 COUNCILMEMBER WHITE: Well, I believe we can
 16 do that by changing the Code. There's no -- there's
 17 nothing that says we can't -- you know, for me, one of
 18 the highest duties that we have as public officials is
 19 to encourage and enforce ethical behavior; otherwise,
 20 we're losing the public trust. So your feeling of lack
 21 of impact in your situation is similar to ours.
 22 We've come across certain things, I won't get
 23 into, that the Administration has done. And my question
 24 has been, so, can we -- can we claw back the revenue we
 25 appropriated if we find something wrong? Can we do

1 it's in the Code that you have things like the penalty
 2 provisions. And so that's the source of our authority.
 3 COUNCILMEMBER WHITE: Okay.
 4 MR. MURAI: You know, we sometimes look at --
 5 well, I bet I have to back up a little bit. The source
 6 of our authority is based on the State Constitution, and
 7 there is also a HRS statute that requires that each
 8 County to promulgate their own code of ethics. So,
 9 yeah, you know, it starts with the Constitution and the
 10 HRS, but we've developed -- but -- all that does is
 11 allow us to develop our own rules, our own standards.
 12 COUNCILMEMBER WHITE: Well, if you all want to
 13 develop an addition to the County Code relating to
 14 penalties and enforcement, I'd be happy to submit it.
 15 CHAIR WESTFALL: We'll discuss that in our --
 16 MEMBER SHERIDAN: We'll take advantage of
 17 that.
 18 CHAIR WESTFALL: See where we go with that.
 19 COUNCILMEMBER WHITE: Because I feel your
 20 frustration, because it's --
 21 CHAIR WESTFALL: I think it's the general
 22 public's --
 23 COUNCILMEMBER WHITE: It is.
 24 CHAIR WESTFALL: -- frustration. They have a
 25 vision that this Board can -- has much more authority

1 than it does. We're just advisory, that's it.
 2 COUNCILMEMBER WHITE: Right. And the bill
 3 speaking to nepotism from the human resources
 4 perspective, the only question is do there exist
 5 personnel issues or other considerations with current
 6 staff collective bargaining that would be affected by
 7 the enactment. It's kind of what we --
 8 CHAIR WESTFALL: Yeah, I think you kind of
 9 addressed it.
 10 The only thing I did see in other areas -- and
 11 I am going beyond what your concerns are, but they
 12 included procurement and things of that nature.
 13 COUNCILMEMBER WHITE: I think that was a --
 14 that was another very good point.
 15 CHAIR WESTFALL: Same activity should occur in
 16 the process as hiring and employing people.
 17 COUNCILMEMBER WHITE: You know, these are all
 18 things that we have in place in private sector. I don't
 19 deal with -- I mean, Randol may know, I won't -- I have
 20 never made a phone call to ask for anything in the way
 21 of assistance for my kids. My father made it clear to
 22 us when you come home from college, you can come in back
 23 in the house long enough to pack and then you're on your
 24 own. And he would never -- he worked for Amfac and he
 25 -- my grandfather worked for Amfac and my dad worked for

Page 17

1 Amfac. And so, you know, he was in a position he could
 2 have made calls, but he wouldn't do it. I thought,
 3 well, you know, that's the right thing to do. And so I
 4 refused to pick up the phone for my kids. And, you
 5 know, other parents think that's kind of harsh, but, you
 6 know, I just -- they'll feel better if they do it on
 7 their own. And I will feel better because I don't -- I
 8 am not putting pressure on people that I work with to do
 9 something that they may be uncomfortable with. But in
 10 some cases, it just seems like, well, that's just what
 11 you do, you know, you've got to help your friends,
 12 you've got to help your relatives. And, for me, it's
 13 just at a point where it's got to stop.
 14 MEMBER SHERIDAN: I think at this point, us
 15 helping you and you helping us would be mutually
 16 beneficial and beneficial to the whole community. So my
 17 question is, how would you suggest that we proceed from
 18 here?
 19 COUNCILMEMBER WHITE: Well, I would like your
 20 thoughts on -- well, maybe we should -- at another
 21 meeting we can come back and share what -- you know, how
 22 we intend to address the items that we've brought up.
 23 And we can just -- and get your -- we'll send the --
 24 we'll send the new draft over ahead of time. And maybe
 25 you, in the meantime, guys can give some thought to what

Page 18

1 we might be able to do from an ethics enforcement
 2 standpoint.
 3 MEMBER FRANCO: Mike, I have one question.
 4 Does the County have any standard guidelines for
 5 employment? Is this up to the department heads to make
 6 that decision or is there any kind of a overall
 7 employment -- you know, in the private sector, you have
 8 job descriptions and qualifications, which job. Do you
 9 have something like that in the County?
 10 COUNCILMEMBER WHITE: We do. The way -- and I
 11 don't know -- I don't have -- I haven't gone to the
 12 source, but the way it was explained to me, this person
 13 that I was talking about earlier, the two people, the
 14 two sons that he hired didn't meet the qualifications
 15 that all the other people in the department did or were
 16 required to. I haven't absolutely validated that, but,
 17 you know, if that's the case, I mean, how does -- how do
 18 the rest of the people in the department feel?
 19 MR. MURAI: Frankly, if I may -- sorry,
 20 Mr. White -- the County does follow Hawaii civil service
 21 law.
 22 MEMBER FRANCO: Okay.
 23 MR. MURAI: So we have a very well developed
 24 and rather extensive system, which includes, as
 25 Mr. White pointed out, the position descriptions and

Page 19

1 qualifications. But it gets complicated because there
 2 are a whole laundry list of employees that are either
 3 considered excluded or exempt from the civil service
 4 rules. So, you know, we do have a very extensive system
 5 that's based on both the Hawaii Revised Statutes and our
 6 own Department of Personnel Services Administrative
 7 Rules.
 8 MEMBER FRANCO: How do some people get
 9 exempted? What's the difference between some people
 10 falling under the civil service rules and some don't?
 11 Why don't everybody that's working for the County come
 12 under civil service?
 13 MR. MURAI: Well, there's -- it's probably
 14 beyond the scope of this meeting.
 15 MEMBER FRANCO: Okay.
 16 MR. MURAI: But in this very room, there are
 17 several employees, including me, Angela.
 18 MEMBER FRANCO: Oh, these are like appointees.
 19 MR. MURAI: Mr. White, of course, would be
 20 elected.
 21 MEMBER FRANCO: Okay. Yeah.
 22 MR. MURAI: Angela and I are both appointees,
 23 so we're not strictly civil services.
 24 MEMBER FRANCO: So this conflict of possible
 25 nepotism is appointed positions and not regular civil

Page 20

1 service positions?
2 COUNCILMEMBER WHITE: Well, that's another
3 question of, you know, how -- how far does this apply.
4 Does this need to apply to have positions that are
5 long-term in nature because the benefits gained are so
6 much larger. Because appointments, basically, if you're
7 appointed, you're appointed for -- are you guys
8 appointed for four?
9 MS. ANDRADE: For four.
10 COUNCILMEMBER WHITE: So they're appointed for
11 four. Our staff, both the Council Service level and our
12 own executive assistants, are appointed for two years.
13 So, you know, when it's a short-term appointment, is
14 there that same level of --
15 MEMBER FRANCO: Scrutiny.
16 COUNCILMEMBER WHITE: Scrutiny. And I think
17 there should be, but, at the same time, you know, if
18 you've got a job to do in a short amount of time and
19 your auntie, you know, is damned good at what she
20 does -- but that's the kinds of things you can help us
21 noodle through.
22 MEMBER LEACH: Mike?
23 COUNCILMEMBER WHITE: Yes.
24 MEMBER LEACH: I am trying to get a picture of
25 practicality. If you had, like in the Police or Fire, a

Page 21

1 chief or assistant chief, one of their sons or daughters
2 wanted to become a firefighter or a police officer,
3 would that chain of command go down to the recruit
4 level?
5 COUNCILMEMBER WHITE: That's another challenge
6 because, mainly, if you're in a position of making that
7 hiring decision -- I think, basically, the way we've put
8 it is you can't hire somebody directly, nor can you --
9 nor can you advocate and influence. So if I were a
10 police chief, I'd tell my kids to go apply at the fire
11 department, don't -- don't come here. So I guess I am a
12 little more comfortable with saying no than others, but,
13 to me, the important thing is that -- we have a small
14 island, relatively small population, so there is going
15 to be situations where you've got to accommodate people
16 as long as they're not working in a direct report. So
17 -- and that's part of the difficulty in crafting this is
18 that where do you draw that line. Because we all know
19 that no matter where you draw the line, there's going to
20 be a whisper here and a whisper there. And that's just
21 about as bad.
22 I mean, I have families at my hotel. None of
23 them work in the same department. And I am just fine
24 with that. They don't make -- none of them are in
25 hiring positions, so one can't make a decision or

Page 22

1 influence somebody in another department.
2 CHAIR WESTFALL: Any other questions?
3 MEMBER SHERIDAN: No.
4 CHAIR WESTFALL: Sydney, do you have anything?
5 COUNCILMEMBER WHITE: Well, thank you all very
6 much. We'll be happy --
7 CHAIR WESTFALL: I think what we'll do is your
8 letter asks us to send you any questions. I think the
9 memorandum I sent you is our questions. And we'll leave
10 it at that.
11 COUNCILMEMBER WHITE: Yeah.
12 CHAIR WESTFALL: Then if you prepare anything
13 and you want any more input, we're certainly willing to
14 do that.
15 COUNCILMEMBER WHITE: Well, what we'll do --
16 we've already started working on addressing some of the
17 things that you pointed out. And I really appreciate
18 your taking the time to do that because, you know, we --
19 none of us like doing things in a bubble. You know, we
20 love to have other perspectives. And so what we'll do
21 is we'll take these as your response and your comments
22 today, we'll redraft and send it back. And maybe we can
23 get together and you guys can put together some ideas on
24 enforcement and penalties for the Board.
25 CHAIR WESTFALL: Sort of a long-range -- as I

Page 23

1 said, we have this subcommittee, we're working on a
2 couple other things. We'll put that on the agenda there
3 because it's been something that's come up. And
4 certainly we thank you. I think, as we were discussing
5 this in our earlier meeting, all of us could cite where
6 there's an appearance of nepotism. A lot of times if
7 you read the foundation to ethics, they talk about
8 appearance as being just as bad as actually doing it.
9 So I think this is an important thing.
10 COUNCILMEMBER WHITE: So this is a very
11 difficult piece of legislation to craft.
12 CHAIR WESTFALL: Yes. I personally --
13 COUNCILMEMBER WHITE: As your questions point
14 out.
15 CHAIR WESTFALL: And, you know, the ironic
16 thing as we sat and discussed, I saw several of my
17 relatives walking around the County building that have
18 worked here for many years. And it's everywhere.
19 Anyway, thank you.
20 COUNCILMEMBER WHITE: Thank you for your time.
21 Appreciate it.
22 MEMBER FRANCO: Appreciate it.
23 MEMBER PREY: Thank you.
24 CHAIR WESTFALL: Members, any other discussion
25 on that particular topic?

Page 24

1 MEMBER SHERIDAN: I think that's the most
 2 important thing, to appear in front of us.
 3 CHAIR WESTFALL: Yeah.
 4 MEMBER PREY: And some action should be taken
 5 on it, on the disclosures. They are too important --
 6 CHAIR WESTFALL: I'm sorry. Go ahead, Lois.
 7 I didn't mean to interrupt.
 8 MEMBER PREY: No. That's all right. No.
 9 They're important topics that we've been -- the
 10 subcommittee has been talking about and they should be
 11 addressed, you know.
 12 CHAIR WESTFALL: I think in the past, we had
 13 one other instance where Council passed legislation.
 14 And that was to change the Charter so that they had to
 15 file their -- candidates had to file their financial
 16 statement at the same time that they filed their papers.
 17 MEMBER SHERIDAN: Right. Right.
 18 CHAIR WESTFALL: We drafted some kind of memo
 19 that went into public testimony that we were in favor of
 20 that. So there will probably be a point where he will
 21 want testimony from us. And I assume we will do
 22 something as a commission at that point as well as if
 23 you want to individually do it.
 24 I will, I guess, for the record, mention we
 25 would be the only jurisdiction in Hawaii with this type

1 of ordinance. No other jurisdiction has it. And you
 2 brought up an excellent point, some of the other
 3 jurisdictions that I read, they simply make a
 4 distinction that you can hire your relative, it's just
 5 that that person has to be equal to whoever else you
 6 interview. So it's not a prohibition on hiring; it's
 7 simply that you have to be fair in that process. And
 8 Gary and I have had some discussion and I have sent them
 9 some stuff. There's a lot of legalisms in that regard
 10 to this. So that's --
 11 MEMBER FRANCO: Maybe one way to avoid
 12 conflict of interest is to have somebody, even a deputy
 13 or someone else, to hire someone that's related to the
 14 director. I mean, it's just trying to find a, you know,
 15 practical way of doing this.
 16 MR. MURAI: Well, you know, it's a very
 17 complex thing because what you're talking about as far
 18 as hiring is not our kuleana. That's DPS. And, you
 19 know, again, I think that -- you know, I am sure that
 20 Mr. White is not just talking to us. I am sure that
 21 he's probably consulting with DPS.
 22 CHAIR WESTFALL: DPS would be?
 23 MR. MURAI: Department of Personnel Services.
 24 And he's probably, also, if not consulting with, at
 25 least considering the fact that we have public worker

1 unions. And, you know, the unions may have positions
 2 about hiring practices as well. So -- and, you know,
 3 again, what we have to remember is just because you have
 4 two relatives working for the same employer does not
 5 necessarily per se mean there was nepotism.
 6 As I understand it, nepotism means trying to
 7 gain an advantage for someone -- for someone because of
 8 your familial relationship. You could be, you know --
 9 otherwise, we would preclude many highly qualified
 10 people --
 11 MEMBER FRANCO: That's true.
 12 MR. MURAI: -- just because they have a
 13 relative that works for the employer.
 14 CHAIR WESTFALL: I think what he presented to
 15 us was very strong in a sense that it just outlawed that
 16 class of individual. Anyway, I am getting into the nits
 17 and grits. This is an interesting topic and we'll see
 18 where it goes.
 19 MEMBER KIKUCHI: Yeah. I think it's very
 20 interesting. It will be quite a undertaking, I think.
 21 MEMBER FRANCO: So there's stuff you have to
 22 look at?
 23 CHAIR WESTFALL: There's a whole lot of
 24 things.
 25 MEMBER KIKUCHI: Whistle-blowing, because how

1 are you going to find out something about this unless
 2 someone brings it up? You know what I mean? Somebody,
 3 whether it be a underling or another staff member or
 4 hiring member. I would think because the department
 5 head is responsible for the overall action of his
 6 department, he would be the one, if there's a fine
 7 levied, he should be fined or she should be fined,
 8 whatever. Because --
 9 MEMBER SHERIDAN: I think you're getting ahead
 10 of us.
 11 MEMBER KIKUCHI: Well, that's some things that
 12 was going through my mind as far as --
 13 CHAIR WESTFALL: I see what you're saying.
 14 MEMBER KIKUCHI: -- how are you going to fine
 15 someone, who is going to investigate the allegation, are
 16 you going to let the department investigate itself
 17 against like a chief or a department head, or where is
 18 that going to all come about. So --
 19 MEMBER FRANCO: Yeah. The classic example of
 20 possible nepotism is when Vice President George Bush
 21 asked President Reagan to find a place for his son to be
 22 employed. He said he couldn't find any place for him.
 23 And so -- I mean, I think if we put the standards out
 24 there -- and like Gary said, going to have situations
 25 where family members are equally qualified, but if you

1 have standards of employment or, you know, appointment
 2 or whatever, again, then you kind of eliminate the
 3 possibility.
 4 MEMBER SHERIDAN: Something else was brought
 5 up during of this conversation. And that was that he
 6 was looking into funding us so we could have an
 7 investigator. So that's something for the future. That
 8 would certainly put this Board in a whole different
 9 position.
 10 MEMBER KIKUCHI: Yeah. You know, part of the
 11 -- Gary, I don't know if you remember, but we had a big
 12 problem down in Kihei with the -- the rec permits, the
 13 -- all these businesses going to the Parks, Recreation,
 14 I forget what the actual title was, but what had
 15 happened was there was a lot of administrative -- well,
 16 there was a lot of rules -- there was an ordinance for
 17 it, but there was no administrative rules and no fine --
 18 not no fines, there was a fine set, but no one to
 19 investigate it. So it was --
 20 MEMBER SHERIDAN: No enforcement.
 21 MEMBER KIKUCHI: It was meaningless, sort of.
 22 They went through a whole rigmarole about that. So I
 23 would hate to see that happen with this.
 24 MEMBER SHERIDAN: Well, it sounds as if he is
 25 precluding that.

1 hope not.
 2 MEMBER PREY: No, we don't bring in
 3 mistresses.
 4 CHAIR WESTFALL: Even Hawaii has laws on the
 5 books for hanai children in the trust law. I mean,
 6 there's all kinds of unique things out there.
 7 Anyway, this is a fun discussion. And I am
 8 sure this is going to take some time to get it. And
 9 we'll --
 10 MEMBER FRANCO: We'll wait.
 11 CHAIR WESTFALL: And see what happens. Thank
 12 you, Members.
 13 Now we'll go back to Regular Session, Item 3,
 14 Election of New Officers. Does anyone have a nomination
 15 for president? President --
 16 MR. MURAI: I'm sorry. Before we do that, I
 17 think we should probably first agree on what we're going
 18 to -- how we're going to do this.
 19 CHAIR WESTFALL: Okay. Why don't you do it,
 20 then, rather than me?
 21 MR. MURAI: Well, no, I won't -- I will do it,
 22 but I guess we should agree on, first of all, which
 23 offices we're going to have elections for. And then
 24 what we'll do is open the floor for nominations, we'll
 25 receive nominations. If all nominations are received,

1 MEMBER PREY: Yes. Yeah, that's how it
 2 sounded to me, too.
 3 MEMBER KIKUCHI: By the way, there is
 4 definition for family member.
 5 MR. MURAI: Oh, yeah? There's --
 6 MEMBER KIKUCHI: State definition under abuse
 7 of family and household member. So that's something
 8 that they can take a look at, also.
 9 CHAIR WESTFALL: The issue we were getting at,
 10 also, is interesting. I will just share it with you. I
 11 read some advisory opinions in Seattle where it's a
 12 double-edged sword, where they had a husband and wife
 13 came in with nepotism, wife gets fired, and they sued
 14 for discrimination because, in the very same office,
 15 they had a boyfriend and girlfriend that were working
 16 there. And the argument -- the legal argument was
 17 they're getting a salary, they're cohabitating, what's
 18 the difference? And the husband and wife won
 19 discrimination. The other side of it is they're saying,
 20 you know, so the remedy, do we ask everyone who they
 21 live with. Then you are violating privacy issues. So
 22 it's a -- it's a interesting one.
 23 MEMBER KIKUCHI: That was my other question,
 24 is dating, dating within the department. I mean --
 25 MEMBER FRANCO: It never happens, right? I

1 we'll close nominations. Then we'll have, you know,
 2 people speaking for or against the nominees or their
 3 nominee or people who speak on your own behalf. And
 4 then we'll take the vote. And the vote can be either by
 5 ballot, you know, where you write down your vote, show
 6 of hands or, you know, whatever. I say we do it by show
 7 of hands. That's probably easiest. So we'll probably
 8 start with the Chair, then Vice-Chair, if that's
 9 acceptable.
 10 Go ahead, Michael.
 11 CHAIR WESTFALL: Okay. Well, do I have any
 12 nominations for Chair?
 13 MEMBER SHERIDAN: Yeah, I would like to
 14 re-nominate you.
 15 MEMBER PREY: I second it.
 16 CHAIR WESTFALL: Any other nominations? What
 17 I will say is I've been doing this for a little while.
 18 I will do it. And I don't -- no. I want to make sure
 19 other people get involved. So I have two more years
 20 left -- sorry, I am going out of turn. I have two more
 21 years left on the Commission, so I will make this my
 22 last as Chairman so there's some succession. So one of
 23 you can think about stepping up next time. I don't see
 24 anyone really --
 25 MEMBER PREY: You're going out when, '14?

1 CHAIR WESTFALL: Two more years.
 2 MEMBER LEACH: '15.
 3 MEMBER PREY: Oh, '15.
 4 CHAIR WESTFALL: So is there any other
 5 nomination for Chairman? Close the nominations. All
 6 those in favor of me?
 7 (Response.)
 8 CHAIR WESTFALL: Okay. I guess I am the
 9 Chairman for another year. Thank you.
 10 MEMBER LEACH: Thank you.
 11 CHAIR WESTFALL: Thank you so much. Okay,
 12 vice-Chair, nominations for Vice-Chair are open.
 13 Norman.
 14 MEMBER FRANCO: I nominate Don for Vice-Chair.
 15 MEMBER PREY: Yeah.
 16 MEMBER KIKUCHI: Second.
 17 MEMBER PREY: Don, second.
 18 CHAIR WESTFALL: Any other nominations for
 19 Vice-Chair? Seeing none, all those in favor signify by
 20 saying "aye."
 21 (Response.)
 22 CHAIR WESTFALL: Okay, Don, you're it. You
 23 get to move up.
 24 MEMBER SHERIDAN: Boy, oh, boy.
 25 CHAIR WESTFALL: I think we have another

Page 33

1 position, which is secretary. Do I have --
 2 MEMBER FRANCO: Randol Leach, he's got
 3 experience and be a good secretary.
 4 MEMBER LEACH: Okay.
 5 MEMBER KIKUCHI: Second.
 6 CHAIR WESTFALL: Any other nominations for
 7 secretary? Seeing none, all those in favor -- oh, you
 8 have?
 9 MEMBER SHERIDAN: Yeah, I was going to
 10 nominate Lois.
 11 CHAIR WESTFALL: Okay. Now we have a
 12 contested --
 13 MEMBER LEACH: I will withdraw if you --
 14 MEMBER PREY: No, no, no, no. I am -- my
 15 plate -- you realize how many boards I serve on? And,
 16 please, I mean, my plate --
 17 MEMBER SHERIDAN: Get the violin out.
 18 MEMBER PREY: No. My plate is really full.
 19 CHAIR WESTFALL: We'll close the nominations
 20 for secretary.
 21 MEMBER PREY: So you're secretary.
 22 CHAIR WESTFALL: But, Lois, remember, next
 23 year, you're going to --
 24 MEMBER FRANCO: Put her on notice.
 25 MEMBER LEACH: Yeah.

Page 34

1 CHAIR WESTFALL: All right. All those in
 2 favor of Randol for secretary, signify by saying "aye."
 3 (Response.)
 4 CHAIR WESTFALL: All right. I think our
 5 elections are concluded.
 6 MEMBER LEACH: Can I ask a procedural
 7 question? This has always confused me. We have two new
 8 Board Members coming in at the next meeting. Is that
 9 when our -- the year starts, the board year?
 10 MR. MURAI: March 15th.
 11 MEMBER LEACH: March 15th. Is there --
 12 because it always seems funny to me. They're coming, it
 13 would be nice if they had a chance to be involved with
 14 the election of the officers.
 15 MR. MURAI: We were somewhat at the mercy of
 16 the Mayor's Office's ability to fill the positions.
 17 MEMBER LEACH: Yeah.
 18 MR. MURAI: I think, also, the County Council
 19 has to --
 20 MEMBER LEACH: It always seems to be --
 21 MEMBER PREY: Well, you know what, when you're
 22 new, it's hard. You don't know, you know, a lot -- you
 23 don't know people and you don't -- so it's hard to ask
 24 them, you know, to elect -- I mean, they're doing it,
 25 you know, just on a whim or by your face or the way you

Page 35

1 wear your hair. So I think, you know --
 2 MEMBER LEACH: No. But the other side of it
 3 is we just lost two Board members that would have been
 4 -- they would have good input on voting, too, for the
 5 previous. We kind of lose people.
 6 CHAIR WESTFALL: So should we have done the
 7 election last week?
 8 MEMBER LEACH: There's a void.
 9 MEMBER PREY: We're fine. We're fine. Yeah,
 10 we're fine.
 11 MEMBER LEACH: It's not a perfect system, but
 12 it always was confusing.
 13 CHAIR WESTFALL: As secretary, Randol, you'll
 14 be in charge of the election next year.
 15 MEMBER LEACH: There we go. But is that in
 16 the Charter or the Code, when the election is held?
 17 MR. MURAI: No.
 18 MEMBER LEACH: Oh, okay. We could do it the
 19 meeting before.
 20 CHAIR WESTFALL: We'll leave it up to you.
 21 MEMBER LEACH: We'll look at it.
 22 CHAIR WESTFALL: All right. Minutes from
 23 March 13, 2013. Do I have a motion to approve those?
 24 MEMBER SHERIDAN: I so move.
 25 MEMBER PREY: Second.

Page 36

1 CHAIR WESTFALL: I will just ask for unanimous
2 consent. All those in favor, just say "aye."
3 (Response.)
4 CHAIR WESTFALL: Public testimony. I don't
5 believe we have any.
6 Financial Disclosures. Old Business, Item 6,
7 Financial Disclosures, none.
8 Item B, Communication Items, none.
9 (c) is Status of Research Subcommittee. I'll
10 make just a brief report. We did meet. We had two
11 discussions. One was on the gift issue. And we will be
12 issuing some kind of memorandum at our next meeting or
13 the meeting after that on that, too, so you can review
14 that and see where we go with that. The second item is
15 we briefly discussed Mike White's proposal to amend an
16 ordinance with respect to nepotism.
17 New Business, Finance Disclosures. Would
18 anyone like to read these or, I guess, give me a motion
19 to acknowledge them? Sydney, I will ask you, you can
20 just read the last names, that's fine.
21 MEMBER KIKUCHI: Okay. Arakawa, Correa,
22 Goode -- this is Kinoza. It should be Ginoza.
23 MR. MURAI: Yeah.
24 MEMBER KIKUCHI: -- Johnson Winer, Miyamoto,
25 Regan, Spence, Takamori and Yabuta.

1 compensation of the spouse?
2 CHAIR WESTFALL: Yes.
3 MEMBER PREY: Oh, yeah. She just left the
4 Foundation, yeah.
5 CHAIR WESTFALL: We're assuming it's zero, and
6 we're going to --
7 MEMBER PREY: She just retired from the
8 Foundation, and was paid quite well.
9 MR. MURAI: So I think Mr. Correa would
10 disclose his spouse's income up until the time she
11 retired. So asking for disclosure for calendar year
12 2012.
13 CHAIR WESTFALL: Retired in April?
14 MEMBER PREY: Right.
15 CHAIR WESTFALL: So four months. Let's go
16 back. Now, that changes a little bit because it won't
17 be just a zero, it will be something.
18 MR. MURAI: I am assuming she got -- it may be
19 zero, but, you know --
20 CHAIR WESTFALL: Let's do this.
21 MR. MURAI: It appears she was employed for
22 four months.
23 CHAIR WESTFALL: We'll pull this one and,
24 Angela, if you can get that information, we'll re-submit
25 this at the next meeting.

1 CHAIR WESTFALL: Do I have a second?
2 MEMBER FRANCO: Second.
3 CHAIR WESTFALL: Any discussion? Anyone see
4 anything on any of these?
5 MEMBER LEACH: Just one item. It will come up
6 on the Financial Disclosures in Executive Session, too.
7 I know it's the form. Item 1 for Glenn Correa, for
8 spouse and sometimes under the self, under annual
9 compensation, blank. Do we want to be consistent? Even
10 if it's zero, it still would be A?
11 CHAIR WESTFALL: Should be something. Maybe
12 you can just, Angela, give them a call. I don't think
13 it's material, but just get that and put a zero in there
14 if that's what it is.
15 MEMBER FRANCO: One question on the Mayor's
16 Item Number 3. It says Green Energy Solutions,
17 undetermined.
18 CHAIR WESTFALL: I'm sorry, Norman. One
19 second while -- on this for her.
20 MEMBER FRANCO: Okay.
21 CHAIR WESTFALL: On Correa, Angela, we'll just
22 assume that it's zero. If it's something other than
23 that, you can bring this back to the next meeting.
24 MS. ANDRADE: Okay.
25 MEMBER PREY: Are you talking about the

1 MS. ANDRADE: Okay.
2 CHAIR WESTFALL: All right. Is everyone okay
3 with that?
4 MEMBER SHERIDAN: Fine.
5 CHAIR WESTFALL: Norman, back to you. I'm
6 sorry I interrupted.
7 MEMBER FRANCO: I am just asking what
8 undetermined means in the area of percentage ownership
9 for something called Green Energy Solutions. Shouldn't
10 there be some kind of number there?
11 MR. MURAI: Sounds like he doesn't know.
12 MEMBER FRANCO: Maybe. But if you own
13 something, you usually know what you own, right, what
14 you own and what kind of percentage you own?
15 CHAIR WESTFALL: Any other thoughts on that?
16 Randol, you're the stock guy.
17 MEMBER PREY: Green Energy Solutions.
18 MEMBER LEACH: He says the value is under
19 \$1,000.
20 CHAIR WESTFALL: Right.
21 MEMBER FRANCO: It may be insignificant, but,
22 you know --
23 MEMBER LEACH: But there should be --
24 undetermined is kind of nebulous, yeah. We could get a
25 clarification for that.

1 CHAIR WESTFALL: Angela, you want to get that?
 2 MS. ANDRADE: Sure.
 3 CHAIR WESTFALL: I think what we want is a
 4 better definition.
 5 MEMBER PREY: Than undetermined.
 6 CHAIR WESTFALL: One percent or 90 percent,
 7 some range would be fine.
 8 MEMBER PREY: Right.
 9 CHAIR WESTFALL: Are we all okay with that?
 10 MEMBER SHERIDAN: Yeah.
 11 CHAIR WESTFALL: Okay. Any others?
 12 MEMBER FRANCO: David Goode is Page 3. I
 13 don't have it with me right now.
 14 MEMBER PREY: Norman?
 15 MEMBER FRANCO: David Goode.
 16 MEMBER PREY: Oh. David Goode?
 17 MEMBER FRANCO: Yeah, okay. Number 3, Page 3,
 18 he lists all the different companies he owns or -- it
 19 says, each ownership or beneficial interest held in any
 20 company carrying on business in the state. I notice
 21 there is one, two, three, four of them, but then he
 22 lists the percentage of ownership of only two of them.
 23 Look at the last page of the report. It says Autumn
 24 Breeze, LLC is 40/C, then it says "tax credit
 25 investment." I don't know if that's an entity or he's

Page 41

1 receiving tax credit investments.
 2 MEMBER LEACH: I think that's the nature of
 3 the business.
 4 MR. MURAI: It's a description of his
 5 business.
 6 MEMBER FRANCO: Description of the business,
 7 okay. Then that's true with the other one, real estate
 8 development. He should have put in parenthesis or
 9 something. Kind of looks like another entity. I just
 10 needed clarification. So I guess that's it.
 11 MEMBER PREY: Okay.
 12 MEMBER FRANCO: All right. That's all.
 13 CHAIR WESTFALL: This is the one we had issues
 14 with previously, but I think maybe, by the nature of the
 15 form, this is all he needs to disclose. I will leave
 16 that one for another day.
 17 Any others? Okay. I will ask for -- well,
 18 let's do this. We will be asking for a motion to
 19 acknowledge receipt of all of the aforementioned
 20 financial disclosures with the exception of Correa and
 21 Arakawa, yeah, with the exception of those two.
 22 MEMBER SHERIDAN: I so move.
 23 MEMBER PREY: Second.
 24 CHAIR WESTFALL: Do I have unanimous consent?
 25 Signify by saying "aye."

Page 42

1 (Response.)
 2 CHAIR WESTFALL: Okay. That passed.
 3 We did Communication Item, (b).
 4 Lobbyist Registration, none.
 5 Announcements, none.
 6 Our next meeting will be Wednesday, May 8th,
 7 here in this room, at 12:30.
 8 We will now move to Executive Session. I
 9 would like to read the predicate to the Executive
 10 Session. Sydney, I will ask you, since I am making you
 11 work today.
 12 MEMBER KIKUCHI: Oh, thank you. With
 13 reference to the agenda items listed below, one or more
 14 executive meetings are anticipated. In particular, the
 15 Board of Ethics anticipates it will consider the
 16 evaluation, dismissal or disciplining of an officer or
 17 employee of the County of Maui, where considerations of
 18 matters affecting privacy will be involved. The Board
 19 may also consult with the Board's attorney on questions
 20 and issues pertaining to the board's powers, duties,
 21 privileges, immunities and liabilities. Therefore,
 22 pursuant to Hawaii Revised Statutes, ("HRS") Sections
 23 92-5(a)(2) and(4), the following items may be considered
 24 in Executive Session. The Board may also convene in
 25 adjudicatory session pursuant to Hawaii Revised Statutes

Page 43

1 Section 92-6.
 2 CHAIR WESTFALL: Thank you, Sydney.
 3 (Recess to Executive Session, 1:23 p.m. to
 4 1:31 p.m.)
 5 CHAIR WESTFALL: Okay. Then we're back into
 6 Regular Session. Is there any comment or messages for
 7 the next meeting, any suggestions for the agenda? Okay.
 8 Seeing none, do I have a motion to adjourn the meeting?
 9 MEMBER SHERIDAN: I so move.
 10 MEMBER PREY: Yes.
 11 CHAIR WESTFALL: One and two?
 12 MEMBER PREY: Yes.
 13 CHAIR WESTFALL: Do I have unanimous consent?
 14 Everyone say "aye."
 15 (Response.)
 16 CHAIR WESTFALL: Meeting is adjourned. Thank
 17 you.
 18 (Meeting adjourned, 1:31 p.m.)
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Page 44

1 CERTIFICATE
2
3
4 I, TONYA MCDADE, Certified Court Reporter of
5 the State of Hawaii, do hereby certify that the
6 proceedings contained herein were taken by me in machine
7 shorthand and thereafter was reduced to print by means
8 of computer-aided transcription; and that the foregoing
9 represents, to the best of my ability, a true and
10 accurate transcript of the proceedings had in the
11 foregoing matter.
12 I further certify that I am not an attorney
13 nor an employee of any of the parties hereto, nor in any
14 way concerned with the cause.
15 DATED this 2nd day of May, 2013.
16
17
18
19 Tonya Mcdade
20 Certified Shorthand Reporter #447
21 Registered Professional Reporter
22 Certified Realtime Reporter
23 Certified Broadcast Reporter
24
25