

**URBAN DESIGN REVIEW BOARD  
REGULAR MEETING  
MAY 6, 2014**

**APPROVED 07-01-2014**

**A. CALL TO ORDER**

The regular meeting of the Urban Design Review Board (Board) was called to order by Mr. Michael Silva, Chair, at approximately 10:04 a.m., Tuesday, May 6, 2014, in the Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

A quorum of the Board was present (see Record of Attendance.)

Mr. Michael Silva: . . . (Inaudible) . . . meeting to order. David will be joining us in a few minutes. Item B on the agenda is introduction of new member, Hunton. Clayton, will you, like, to help us here?

**B. INTRODUCTION OF NEW MEMBER - HUNTON CONRAD**

Mr. Clayton Yoshida: Yes, we have returning to the board, he was on the board previously, Mr. Hunton Conrad. He was recently confirmed by the Council.

Mr. Silva: Thanks. We'll go around do some real quick introductions. Mike Silva, civil engineer and land surveyor, working with Fukumoto Engineering. Jane, you want to?

Ms. Jane Marshall: Jane Marshall with Marshall Design Studio. I'm an interior designer and a lighting designer.

Ms. Frances Feeter: I'm Frances Feeter from Molokai. I don't have any professional designation other than a BS and graduate work, and have a great interest mainly in architecture and aesthetics.

Mr. Hunton Conrad: . . . (Inaudible) . . .

Mr. Silva: Please. Please.

Mr. Conrad: Hunton Conrad. I run a design and architecture firm here on Maui, and I'm happy to be here again.

Mr. Robert Bowlus: I'm Bob Bowlus and I'm an architect on Maui.

**C. PUBLIC TESTIMONY -- At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda items is discussed may testify at the beginning of the meeting instead and will not be**

**allowed to testify again when the agenda item is discussed unless new or additional information will be offered.**

Mr. Silva: Thank you, and welcome Conrad. Look forward to you joining us and giving us some insight. Next item on the agenda is public testimony so at this time if there's anybody that would like to talk about any of the items, we only have one communications. But if you talk now you will not be able to talk when the item is up. Is there anybody that wants to come forward? Seeing none, so closing public testimony.

**D. ADMINISTRATIVE APPROVAL OF THE MARCH 4, 2014 AND APRIL 1, 2014 MEETING MINUTES**

Mr. Silva: Next item, approval of the minutes. I gave some comments to Leilani about the minutes. Anybody else have any other comments? My comments were mostly had left-hand which was suppose to be left-turn for the Kahoma. Maybe that's our technical issues. Okay. So, if there are no other comments, we can administratively approve those meeting minutes which we'll do. So those are administratively approved.

**The March 4, 2014 and April 1, 2014 UDRB meeting minutes were administratively approved with the amendments as discussed.**

**E. COMMUNICATIONS**

- 1. MR. DAREN SUZUKI on behalf of MAUI LANI PARTNERS requesting review and approval of revisions to the Signage Plan for Maui Lani (Wailuku-Kahului Project District 1), TMK: 3-8-007: 121, Wailuku-Kahului, Island of Maui. (CSP 2012/0003) (Paul Mikolay)**

**This is the first revision of the sign design guidelines since the Board last reviewed them in 2003. There have been significant changes to signage regulations since then. The purpose of the revisions is to bring the guidelines up-to-date with the commercial sign regulations of the Maui County Code (Chapter 16.13 - Commercial Signs)**

**The Board may approve the proposed revisions or take some other action.**

Mr. Silva: Next item, E, communications. I will read the one and only agenda item on the communications. *(Chairman Michael Silva read the above project description into the record.)* And we have Paul from the Planning Department.

Mr. Paul Mikolay: Yes. Good morning Chairman Silva, members of the Urban Design Review Board. I am Paul Mikolay, the staff planner on this project. The first item on your agenda is this

review of the Maui – there's a signage plan of Maui Lani. Continuing development of the Maui Lani Project District has necessitated a need for review of the existing plan. This request is predicated on the significant differences between the Maui, the signage plan for Maui Lani and the County Code that governs signage. These differences make determining what is allowed for a sign in the project district difficult on almost impossible to determine any practical way.

So what I, I do is introduce some background to, to help you in your decision making process. There's three points. The first is regarding the signage plan for Maui Lani's history. The revisions to the signage plan for the Maui Lani Project District have been reviewed and approved by this Board at least twice previously. The first that I found record of is in December 1997, and the last was in October 2003. The revisions of 2003 addressed the project district gateway signage and since 2003 the main gateway has been constructed and the project district has started to fill in. There have been no updates to the other provisions of this signage plan for Maui Lani since it was originally adopted.

As to the Maui County Code, in 2002, there was a major rewrite of the County's sign ordinance. The rewrite changed the basic sign definition, its major content, and the layout of the code. Since 2003, there have been three updates to Maui County's Code 16.13 that governs signage. The main content of the signage plan for Maui Lani were adopted in the 1990s and that's prior to all of these changes. And lastly, other things have changed too since the signage plan for Maui Lani was adopted especially the technology of signage has changed considerably since this time. The range of design choices now available is much greater.

My first two points, the one about this history of the signage plan for Maui Lani, and that about the Maui County Code highlight the difficulty of comparing the signage plan with the current regulation, current County regulation. And the final point I highlight, things of your realm in particular that is to say design considerations.

So, lastly, the commission might consider the importance of design guidelines and its nexus with the permitting process. The County Code and design guidelines are both referred to when reviewing projects. These guidelines are important as they define attributes to be preserved or enhanced in a specific area. The guidelines tend to be further, let's say, restrictive when it's compared to the County Code.

At this time, I'd like to introduce the applicant, Daren Suzuki, who's here to represent Maui Lani Partners, Jeff Benner is here is architect for the project, and Richard Vierra, their sign consultant. Daren will speak, and I'll be available for questions as well if you need me.

Mr. Daren Suzuki: Thank you Paul. Good morning Chair and members of the Board. My name is Daren Suzuki. I'm with Maui Lani Partners. And thank you Paul for that. That was a good summary. He took the words right out of my mouth. Basically Maui Lani is requesting approval of the revisions to our signage plan which was originally adopted in 1997, and amended in 2003. And we're requesting these revisions in order to just bring consistency with the current sign ordinance. So with that I'd just like to turn it over to Richard Vierra. He's gonna go over the submittals that he sent out to you to you folks, and be available to answer any questions.

Mr. Richard Vierra: Good morning Chairperson Silva, committee members. We submitted certain documents to Maui Planning Department, and I'm sure that you all have copies of these. Again, first of all, it's a cover letter to Chairperson Silva and to all of the committee members, basically summarizing what we're proposing as far as revisions. So we have the current plan, again, that had been reviewed and approved by the committee members back in 2003, again the latest revisions. And again, just for comparison and what I also included was a draft dated April 21<sup>st</sup>. And again that's all of the proposed revisions that we would like to have implemented. But really in summary we're just proposing to remove all of the reference and overlap of the Maui County Code Chapter 16 regarding commercial signs and what's shown in the 2003 signage plan. If you refer to in the draft document this is number page 3, section 2, signage standards – basically I have two paragraphs there, authority and general revisions. It basically summarizes what we're proposing. So basically remove all reference signage that is currently covered by County Codes, and make all reference to that signage back to the Codes, whether it's current or any future revisions to these Codes. And, you know, with those two paragraphs basically proposing to remove about 75% of the County signage plan. I mean, not the County, but Maui Lani's signage plan. So that really summarizes it, and we'd just like to open it up for any questions, concerns, that you may have.

Mr. Silva: Thank you. So, as a Board we are actually going to be approving this. Clayton, is that correct, this plan or is it –? And that's what it reads on the agenda.

Mr. Yoshida: Yes, Mr. Chair, as the Board had or your predecessors had previously approved the revised plan, 2003, we're asking the Board to approve the proposed revisions in 2014.

Mr. Silva: Okay, so is it our approval or our recommendations for approval to the Planning Department?

Mr. Yoshida: We thought it would be your approval.

Mr. Silva: Okay.

Mr. Michael Hopper: Clayton, that was one of my questions was why did the Board approve this originally? Because the Code requires a comprehensive signage plan, or was there a condition on the Change in Zoning for the Project District that said you had to have approved sign guidelines or was it part of a comprehensive signage plan that the Code? Because it's a little odd because if, if you just didn't have anything they would have to go by the ordinance any way which it seems like that's where they're headed here. Do you know why they originally had to have a signage plan approved by the, the Urban Design Review Board?

Mr. Yoshida: Well back in the 90s for the larger project districts like Maui Lani and Kehalani as they started to develop, they had certain villages. They wanted certain project signs visible from major highways – Kuihelani Highway, Honoapiilani Highway, so forth – so we had asked them to develop a comprehensive signage plan to identify the project signs for the Maui Lani and Kehalani projects. Also for any type of villages or subdivisions within the project, like, Kaimana at Kehalani, other modules at the Kehalani Project District or the Maui Lani Project District.

They also, I guess, developed signage, proposed signage for their commercial and we just wanted to have it sort of integrated into one package as they were all part of the Maui Lani Project District.

Mr. Hopper: So was there an ordinance that authorizes the Board to adopt these? Is it a comprehensive signage plan in the code we're talking about or was there some other condition in the zoning? I'm just curious it's not the department that's dealing with the design guidelines, it's the Board, and I just wanted to be kind of clear on historically why the Board has – had actually approval authority over this rather than review and recommendation authority.

Mr. Yoshida: Yeah, at that point we felt that the Board would approve the design guidelines. Henceforth, say for the Maui Lani Village mixed use project they have come up with design guidelines that have been reviewed by the Board, and have also gone to the Maui Planning Commission. And so for those signs that are coming up in the Maui Lani Village mixed use project, like the Walgreens and the Ace Hardware, Marmac Ace Hardware and so forth, there is an existing plan, design guidelines that was approved by the planning commission. But in this particular case there weren't design guidelines for signage within what was then the Maui Lani Project District.

Mr. Hopper: Okay. I'm still unclear as to why the Board's looking at this. Is it, is it a Code requirement or is it a condition of zoning? I mean, do we, do we know this at this point or do we need to look at that a bit more?

Mr. Yoshida: No, at this point it's a not a Code requirement or a condition of zoning. Previously the Board had approved the comprehensive signage plans. But now the department approves comprehensive, comprehensive signage plans unless there are sign variances that are being applied for in conjunction with the comprehensive signage plan, like, for Costco when they wanted bigger signs, more signs.

Mr. Hopper: But at the time the Code required the Board to approve that, the comprehensive signage plan? And that's why it approved in the past?

Mr. Yoshida: At the time the Board was approving comprehensive –

Mr. Hopper: Okay. So this is kind of an amendment to the approval. Previous Code required the UDRB to approve it. They approved it, and now are amending that under the old ordinance?

Mr. Yoshida: Yes. Since the, since the Board had originally approved the comprehensive signage plan.

Mr. Hopper: Okay. I just wanted to get that clear on the record. Because normally the Board would be recommending something to the department. But you're saying now they're actually being asked to authorize amendments to this plan that they had originally approved.

Mr. Yoshida: Yes. Correct.

Mr. Hopper: Okay. Thank you.

Mr. Silva: So now everybody has that now. We are reviewing and we will have the final approval from our Board's previous approval of these amendments. So what we're going to do is go around the Board once with any kinds of questions, comments, clarifications you guys need. And then the second go around if there are any conditions that you want to add to the plan we could do that on the second go around and we can have Paul maybe write those down once we get to that second round if we have any. So to start off with the first round, Jane, do you have any questions, clarifications, comments?

Ms. Marshall: In spirit what you're doing is just eliminating having two simultaneous guidelines for signage. You're just saying that there's no reason to duplicate that as a Maui Lani – separate from the County of Maui.

Mr. Vierra: Yes, that's correct.

Ms. Marshall: In spirit. That's basically what you're doing with this revision.

Mr. Vierra: That is. And it's, it's just creating a lot of conflict. As Paul mentioned it was based on outdated codes. You know, it since been revised. So now there's –

Ms. Marshall: We have one County set of guidelines, and everybody gets to used that.

Mr. Vierra: That's what we're proposing is that we just refer everything back to current County Codes, and any future revisions.

Ms. Marshall: Thank you. Sorry for the glasses I have an eye injury.

Mr. Silva: Dave, you have any?

Mr. David Green: Well, I have a few questions. I don't – my – I don't have substantive questions on the content other than there's just a few typos or something. Do you want me to point those out to you or don't you care?

Mr. Vierra: Absolutely.

Mr. Green: Okay, on page 6, under General Prohibition, it says all signs not specifically authorized by the, and then there's a red box, it says Maui County Ordinance, period. And then it says signs ordinances are prohibited. So I don't know if that's what you meant to say. And then the next sentence it says, and function condition. I imagine it's suppose to be functional. All signs are to be maintained in a state of functional condition? It's a little awkward.

Mr. Vierra: Yeah. So really the first sentence should read all signs not specifically authorized

by the Maui County Ordinance are . . . (inaudible) . . . so signs ordinance should be deleted.

Mr. Green: . . . (Inaudible) . . .

Mr. Vierra: And then, yes, the grammar is correct as far as functional.

Mr. Green: And on page 12, under point B, design concept, next to the last sentence, it says colors throughout Maui Lani, comma, the signage will communicate have a unified community identity. I don't think you want to have "have" in there.

Mr. Vierra: I'm, I'm sorry could you point that out again?

Mr. Green: Page 12, third paragraph, under B, Design Concept, very last sentence, it says the signage will communicate, I think it's suppose to be, a unified community identity, but you have the word "have."

Mr. Vierra: Yes. That's correct.

Mr. Green: Okay? And then the last one is on page 16 where it says note three levels of landscape planting. And in the past, it was ground cover was turf grass, shrub planting was bougainvillea, and tree planting was coco palms. It's changed twice in other locations here, but you left Queen Emma Lily in this one, so I didn't know if that was intentional to leave that or it should've been changed to bougainvillea like in the other areas.

Mr. Vierra: Paul, maybe you can help me out with this one, but, but I think the 2003 revisions were specifically for landscaping?

Mr. Mikolay: Yes. Is this microphone working? Yes. In – that, that is correct. Board member Green has pointed out that the approval of 2003 replaces the – well, to allow for bougainvillea in place of Queen Emma Lily. So it's to allow for bougainvillea in place of Queen Emma Lily. So it was a typo that it wasn't repeated here in back, and it should be corrected.

Mr. Silva: Okay.

Mr. Conrad: When you guys use the word for allow for does that mean you can have either or is specific to bougainvillea?

Mr. Mikolay: Yeah, good point. Clayton, question for you.

Mr. Silva: I think the letter in December 12, 1997 does not – no sorry. No, it's correct. Go ahead.

Mr. Yoshida: Yeah, that was the modification that was approved in 2003.

Mr. Conrad: So they may have a choice in any given . . . (inaudible) . . .

Mr. Mikolay: By natural, by natural language I would think that means they have a choice.

Mr. Conrad: That's fine with me, I'm just asking.

Mr. Mikolay: Okay.

Mr. Silva: Does the – I guess – the applicant have any comments on that if it's one or the other, or was it meant to replace – the bougainvilleas were meant to replace the lily completely?

Mr. Vierra: My reference would be either or.

Mr. Silva: Okay. Yeah, you always want to leave your options open.

Mr. Conrad: And that makes sense.

Mr. Suzuki: Daren Suzuki, Maui Lani.

Mr. Silva: Sure, please.

Mr. Suzuki: We would prefer to leave our options open, and if we can leave both of them that would be better.

Mr. Silva: Okay.

Mr. Green: Yeah, I've got one more, on page 17, on Residential District, and I don't know if this is meant to be different or not, but everywhere else you've eliminated deeply incised into the cement plaster surface, and then the decoration theme will consist of an appropriate organic kapa design. And replace that language so, again, I don't know if it was meant to be replaced and it was missed or this is the way you want it.

Mr. Vierra: No, you're correct. It was meant to be replaced and it was overlooked. So, again, if you refer to page 16, it makes reference to removal of that kapa design, and again, allowing for more general type, whether it's a floral or a leaf pattern, but – and organic design – but not specifically reserved for kapa. So, yes, you're correct.

Mr. Green: Okay, that's it.

Mr. Vierra: Thank you.

Mr. Silva: Thank you Dave. Bob?

Mr. Bowlus: I have no questions.

Mr. Silva: Hunton?



Mr. Conrad: No questions.

Mr. Silva: Frances?

Ms. Feeter: No questions. I'm glad to see you simplifying something.

Mr. Vierra: Thank you.

Mr. Silva: Sure.

Mr. Hopper: Just one point. The variances section talks about the – it says that “the Maui County Department of Planning has the sole right to approve, approve with conditions or reject any variance application.” The Code has – this Board actually acts on sign variances, so maybe that should be noted. I know the intent is to have the application after the Board of Directors approves it, forward to the Department of Planning, which I think it's where it would go. But for processing, so that this Board could decide on a variance. So, I probably would note there, change –

Mr. Silva: Can we say in accordance to the Maui County Code?

Mr. Hopper: That's fine.

Mr. Silva: Rather than –

Mr. Green: Which page are you?

Mr. Hopper: It is page 10. I'm sorry. Variances, at the bottom of that page. I think in accordance with the County Code because if the Code changes again, then who knows, maybe the Director will give, will be giving the authority. You wouldn't want to have to change this.

Mr. Vierra: Yes, we agree with that.

Mr. Silva: Yeah, and I think, actually the only one other thing I had on that first sentence was property owners may apply for a sign variance only with written consent with Maui Lani Community Association. Maybe you could say the application for the sign variance is to the Maui County, just so they know it's not a variance with, like, Maui Lani.

Mr. Vierra: Right.

Mr. Silva: Just to call up that variances for Maui County. And then one other clarification, I guess, I know this is draft form, but this would all be cleaned up and all the cross outs would be removed, and then your document would be generated?

Mr. Vierra: That's correct. We'll, you know, make a final draft removing all of the edits and including all of the comments from the Board members.

Mr. Silva: Okay.

Mr. Conrad: And that doesn't need to come back in front of us again. It just goes to Planning Department and that's it, right?

Mr. Silva: Yeah. We would approve these changes, these, I guess, administrative type marks.

Mr. Conrad: So we could do that today.

Mr. Silva: Correct. Yeah, and we wouldn't have to see the final compiled document.

Mr. Conrad: Great.

Mr. Silva: Paul, were you writing down any of those comments? Sorry, I know we were writing comments down the second round, but I don't know if you –

Mr. Mikolay: . . . (Inaudible) . . .

Mr. Silva: Okay, page 12 was the, under B, design concept, it's the, that first paragraph under that subheading, the very last sentence says the signage will communicate have a unified community identity. So the "have" should be crossed out.

Mr. Green: It actually says identify. Probably means – should be identity. The last word.

Ms. Feeter: Identity.

Mr. Green: I'm usually not this . . . (inaudible) . . .

Mr. Silva: So knowing what, what Paul has, we can go around one more time with any other comments, or if anybody has any other comments they'd like to make on the document. Not seeing any. Sure, we'll get Daren to come up.

Mr. Suzuki: Daren Suzuki. Just a clarification on the comment you made regarding the variances. For Maui Lani I would prefer the applicant not go directly to the County to obtain a variance. They should actually be coming to us if they have some, I don't know, obnoxious design, I would rather it be filtered through us.

Mr. Silva: Sure.

Mr. Suzuki: Before the applicant goes directly to the County for a variance. So, I wasn't clear on your amendment to the variance section, but I would, I would prefer that the association also be a part in that section.

Mr. Silva: Okay, no. I believe we are in agreement. I don't, I don't think there was the intent to bypass the community association. The two comments on that variance section was that the

Maui County Department of Planning doesn't have final say on the variance. It actually comes to this Board, so we could remove reference to them having the final say. And then the first sentence, my comment, was that it just states any owner that has to apply for a sign variance should go to you guys first. So I just wanted to identify that sign variance as a County sign variance, so they understand it's not something with actually Maui Lani themselves. It's just confusing for me.

Mr. Green: . . . (Inaudible) . . .

Mr. Silva: County of Maui. You know, property owner may apply for a sign variance with the County of Maui only with written consent of the Maui Lani Community Association. Just to identify that variance process is with the County. So Paul, do you think you could just summarize? Clayton?

Mr. Yoshida: I guess, as a point of clarification on the matter regarding the authority of the Board to approve the revisions. In the – as it was pointed out to me in the sign design guidelines themselves on page 11, at the bottom, regarding the purpose and intent, it cites to section 19.78.070A of the County Code, and at the top of page 12, it says "the Maui Lani Signage Plan as a design and development guidelines shall be reviewed and approved by the Maui County Urban Design Review Board."

Mr. Hopper: And then Clayton, just to clarify, I have that section it doesn't actually seem to mention the Urban Design Review Board. It does say "a comprehensive signage program shall be designed for individual project areas and defined to, at least, include size, format, conceptual design, landscape planting and color scheme." That's in subsection F, for signage. And, and I guess, historically that's always been approved. But this doesn't seem – 19.78.070, General Standards of Development, doesn't seem to specifically reference the Urban Design Review Board. So I think just over historically that section requiring an approval of a plan has gone to the Board which I think is fine and it's essentially a Code requirement to have the signage plan. And I don't know if in maybe phase two conditions that was something the Planning Commission gave to this Board, or just historically this Board has always approved them. But I don't have a problem with that. But this isn't an exact citation apparently for that code section which was a bit odd.

Mr. Silva: So Paul, do you think you can come up and summarize the comments you have down?

Mr. Mikolay: Going through in order, starting at the front. First one I have is on page 6, and the way it would read would be that all signs not specifically authorized by Maui County. The Maui County sign ordinance are prohibited. All signs shall be maintained in a safe – in a safe and a functional condition, and no permit shall be required for such maintenance. That's on page 6.

Variations section, page 10 – it would go unchanged until – all required documents shall be submitted to the Board of Directors for review and approval prior to submitting to Maui County

in accordance with Maui County Code. Again, if approved, the Board of Director shall provide a written letter to Maui County in accordance with Maui County Code acknowledging that the variance submittal has been approved by the Maui Lani Community Board of Directors.

Mr. Silva: And could we just add to that first sentence, property owners may apply for a sign variance with the County of Maui only with? Just adding the with the County of Maui. Just to identify that the sign variance is with the County of Maui rather than the Maui Lani. For a Maui County sign variance. Yeah, either way.

Mr. Mikolay: Property owners may apply for a sign variance – I'm sorry.

Mr. Silva: A County of Maui sign variance, I think it should be.

Mr. Mikolay: A County of Maui sign variance.

Mr. Silva: Yeah.

Mr. Conrad: So I have a question.

Mr. Silva: Sure.

Mr. Conrad: Just a procedural question. So if – is it the property owner within Maui Lani or the association that would be applying for the variance? I'm assuming it's the property owner.

Mr. Silva: It would be the property owner.

Mr. Conrad: Okay. After approval from the Maui Lani, then they come here.

Mr. Silva: Yeah. So Maui Lani just wants to be kept in the loop.

Mr. Conrad: They want to be in it. Okay, got it. Thank you.

Mr. Mikolay: On page 12, the first paragraph after the title, design concept, the last sentence would read the decoration theme will consist of an appropriate organic kapa design and by constructing signs with consistent design theme and color throughout Maui Lani, the signage will communicate a unified community identity, is the way it would read.

Page 16, it's taken as is except for, for shrub planting we would be inserting bougainvillea – a bougainvillea or a Queen Emma Lily. Bougainvillea and or Queen Emma Lily.

Mr. Silva: And that would be the same comment for 15 also, the previous page to add the "or Queen Emma Lily." If that's the interpretation.

Mr. Mikolay: Page 15, yes. Or Queen Emma Lily. And then the, page 17, residential district section, the same wording would be used as it's used on page 16 to describe the Hawaiian

theme design of the ground sign. Concrete masonry and –. Let's see I'll start from the beginning of the sentence. The residential ground signs will be constructed of concrete masonry and graphics shall be individual letters and or logos. Background shall be match the finish in color of the ground sign structure. And then the decorations will consist of an appropriate organic Hawaiian theme design such as kapa, floral or leaf pattern. Proposed design shall be submitted to the Maui Lani Community Association Board of Directors for review and approval prior to final implementation. So, yeah, and I think that's all.

Mr. Silva: Okay. That's all I have. Anybody else have any? Anybody has any discussion? If we are all in agreement we can approve those changes unanimously. Is there any, anybody have any issues? Hearing no oppositions, so we will forward those changes and approve as noted. Thank you.

Mr. Conrad: Thank you.

**After discussion were ensued, the Board unanimously approved the proposed amendments with the changes as discussed.**

Mr. Suzuki: Thank you Chair, Board.

## **F. ORIENTATION WORKSHOP**

- 1. Rules and Responsibilities - Chapter 2.26 Maui County Code (Clayton Yoshida)**
- 2. Meeting Schedule (Clayton Yoshida)**
- 3. Sunshine Law (Corp. Counsel)**
- 4. Ethics (Corp. Counsel)**
- 5. Country Town Design Guidelines (Erin Wade)**

Mr. Silva: Next item up, F, Orientation Workshop.

Mr. Vierra: Sorry. Thank you. Thank you Chairman Silva, and Committee members.

Mr. Silva: Again, we always like to simplify things. Orientation Workshop, Rules and Responsibilities. Clayton Yoshida is at the podium. He's leaving the podium. Clayton?

Mr. Yoshida: Good morning Mr. Chair and members of the Board. Clayton Yoshida, administrator of Current Planning Division, Planning Department. I thought we would have an annual, kind of a refresher as to the Board's roles and responsibilities, and as a Board discussion about the sunshine law and ethics. And we would want to have a discussion about the Country Town Design Guidelines, but Erin Wade has been out for the past several days with this flu that's been kind of going around. So we'll probably defer that to a future meeting.

Again, this the Maui County Urban Design Review Board. Your authority is established under

Chapter 2.26 of the Maui County Code, stating under 2.26.010A that “to ensure that the architecture qualities prevalent in a community are preserved is deemed essential that new construction, reconstruction and renovation within a community enhance and compliments the existing built environment.” And so the intent of the chapter is to protect and preserve the architectural character of the community, encourage the identification, preservation and enhancement of the architectural character of the community, and to encourage the formulation of county-wide comprehensive design policies, guidelines, programs and plans.

This is a – well, a rather unique Board. Before you were a unique Board in that you consisted of nine members and four alternates. Prior to the creation of the Public Works Commission, no other Board had alternate members. But Public Work Commission is kind of patterned after this Board, so they have alternate members. Paul Mikolay is an alternate member on the Public Works Commission that was established this year. And you have certain vocational requirements that we have at least two registered architects, one registered landscape architect, two registered civil engineers, and four persons with interest or experience in urban planning, fine arts, beautification, conservation or historic preservation. Also we have residency requirements to have one member shall be a resident of the island of Molokai, and one resident shall be – one member shall be a resident of the island of Lanai. And for the four alternate members there are other vocational requirements that they consist of two registered architects, one registered landscape architect, and one registered civil engineer. So the members are appointed by the Mayor, and approved by the Council. The intent for having alternate members is, well, at that time, I guess Maui was a small community and I guess it’s still a small community, and sometimes people are – members on the Board are the consultants for the particular project so they would have to recuse themselves. So that they would have representation from someone within the discipline, like, an architect or a landscape architect or a civil engineer, we call upon the alternate members to sit through that project and make, help make the decision of the recommendation. So that’s why we have alternate members. And so quorum is five, at least five.

And so your powers and duties, you would advise the appropriate planning commission on matters within the jurisdiction of the Planning Commission, and carry out such duties as may be delegated to it by the appropriate planning commission as provided by law. We’ll say for the Country Town Business Design Guidelines for Lanai, they were adopted in 1996. There was Council member Hokama did float a resolution in 2012 to propose amendments to the Lanai Country Town Design Guidelines and establish them as standards. So this Board reviewed and commented on those proposed amendments to the 1996 design guidelines and made your comments to the Lanai Planning Commission who then made their comments to the Maui County Council.

The Board may review and advise the Planning Department on design related matters involving projects within the County. A lot of times we would like to Board to review some of the public projects so they may not be located within a special management area such as the new elementary school that came up on the hill here at Kehalani, the Kihei Police Station and other public projects. And of course, primary one is to review project plans for projects located within a special management area, and provide your recommendations to the appropriate planning

commission. And then the Board has adopted Rules of Practice and Procedure back in 2000. Another duty of the Board is to approve sign variances. If people want more signs, bigger signs than what the Code allows, then it would come to this Board, and you are – that's probably the only case where you're the final authority. You make the final decision on that. We've had examples with the proposed Foodland Shopping Center coming up here, Kehalani, where they wanted bigger signs, more signs, so forth. Or the Outlets of Maui in Lahaina where they wanted bigger signs, more signs for the various businesses that are out there.

We meet on the first Tuesday of the month typically, unless it's a holiday, like 4<sup>th</sup> of July, General Election Day. Then we might meet on the Wednesday. We use to meet, the Board, if Hunton recalls, we use to meet twice a month. But that was when we were receiving something like 40 SMA Major permit applications a year. Now we're getting maybe 15 or 20, I mean, due to the down turn of the economy.

So I guess your primary crew are a staff of myself, with the Planning Department, Leilani Ramoran-Quemado, secretary to this Board along with three other boards, or two other boards, and Mike Hopper, attorney. So if you can't make a meeting make sure to let Leilani know, or if you're conflicted out because your firm is the consultant for the project then let Leilani know. And then she'll contact an alternate member – she'll try to contact an alternate member so we could have a full array of members so we can try to make a decision at that meeting. Okay, with that are there any questions? If not –

Mr. Silva: If someone doesn't make it actually that's like me as an engineer, you guys try to get the engineer is that how it works, the alternate member?

Mr. Yoshida: Yeah we – the agendas are – that's why we require 19 copies of all agenda packets because they all go out to regular members and alternate members. And if at the last minute a regular member can't make because they got the flu or whatever, then we can call the alternate member and say, you know, can they come to the meeting so we can have a quorum, or we can have a larger pool of voting members here so that we could make a decision rather than having a bare quorum of five. And you would need all five to vote one way or the another in order for the Board to make a decision. So, yeah, we have that advantage of being able to contact alternate members to come to meetings so we can conduct business.

Mr. Silva: Okay. Any other questions? No, that's it.

Mr. Yoshida: Okay, if not, I'll turn it over our legal eagles and they can talk about the sunshine law and ethics.

Mr. Silva: Okay. Thank you Clayton.

Mr. Yoshida: Linden.

Mr. Silva: I should say, yeah, thank you Clayton, Leilani and Mike for your guys assistance and help, guidance. It's very much appreciate it.

Ms. Linden Joesting: We have what I call . . . (inaudible) . . . suspenders we have handouts and a flash drive. Jerrie's a new attorney in our office. She comes very highly recommended from the Prosecutors and so she came to learn sunshine law and board of ethics.

I'm going to start . . . (inaudible) . . . the sunshine law and ethics but it's not . . . (inaudible) . . . As part of the training when someone had a question, a good question, I would throw them the coin. Except one time one person wasn't paying attention and I bonked them in the head. So I don't throw it anymore, but if you do ask good questions I will come running and give you a coin.

Mr. Silva: Jane has her glasses on. She's prepared.

Ms. Joesting: So I'll start with the sunshine law. The sunshine law is what I will start off with the bad news. It is not intuitive. It is something you'll just have to learn. It's not common sense. But the purpose of it is to open up government to public participation. It imposes requirements on all County and State Boards and Commissions and how they conduct their business. I put the question, is it open meetings always or efficiency? And actually in the last few years there have been a number of changes to the law that allows for more efficiency in how you hold your meetings and taking testimony.

The spirit of the law is to open up government process to participation. It goes back to the premise that we want to know what our government is up to. Which goes way back to our American Revolution when we did not know what our government was up to because at the time it was the British Crown. So Americans feel very strongly that they have an entitlement or a right to know what their government is up to, and this is one of two major state laws that, that make that happen. The sunshine law is about your meetings, and your discussions, and deliberations. The other law is the open records law which is the sort of the state version of . . . (inaudible) . . ., so you can ask for records and copies of records from government. The preference is always for an open meeting, and you can only close your meeting if you have a specific statutory exception.

Why does it matter? It matters because we have a recent court case, and it also matters because someone can void the decisions you make if you don't follow the law properly. The Kanahele case just came out this past year. Well, the past year being August 2013, and it talks about the Maui County Council and how they made two mistakes. I should say that's what plaintiff alleges, that there were two mistakes made by the County Council. One was that they did not properly notice their meeting and how they were going to be discussing a certain topic. And the second was that they passed around memos before each meeting about what they were going to talk about at the subsequent meeting. The Supreme Court found that there wasn't a problem with the notice, that they properly followed the sunshine law on how that they noticed their meetings. But that they did not properly follow the sunshine law when it came to sharing information amongst one another. They found that sending these memos which would be like sending an e-mail to another board member violated the sunshine law. So we're, we're now making changes with the County Council on how they do their practices and they take this kind of thing very seriously.



How does it apply to you is that if you don't properly notice your meeting and describe the things in your agenda, then someone can come and say you violated the sunshine law and any decisions made subsequent to that problem can be voided. So, for example if today, if your discussion on the rules was not properly described and people couldn't understand what you were going to talk about, then the decision that you make today could be challenged in court and could be voided. And they – then, they get attorney fees too. . . (inaudible) . . .

The kind of problems that come with open meeting that people are not allowed to testify either in writing or if they come in person. I thought of this today because when you say the meeting is closed to public testimony. Let's say if someone wants to come in now and talk about something that's on the agenda, they, they have the right to testify. So even though public testimony is pau, you still have to take their testimony even after the Maui Lani decision has been made. So any person has the right to testify. At another meeting someone just asked me, you know, someone came up and we have a sign up sheet and they didn't want to sign in. And then when they were asked to testify, they were asked to give their name, and they said, I don't want to give my name. And so they told this man that I'm sorry but you can't testify. And under the sunshine law you're required to let someone testify whether or not they give their name or sign in on a roster because they're part of the public and their testimony is important to the process of government. So any interested, all interested persons shall have the opportunity to submit testimony to you on any item on the agenda.

Board meetings are open. We can't go ahead and lock the doors now and continue the open meeting and have the doors locked. So, a board meeting is always open unless you pose it for certain specific purposes.

We just talked about oral testimony. However, you can set a time limit to testimony so that you don't have someone going on for 20 minutes like lawyers get to do. You can set a reasonable time limit. I've often seen it to be three minutes.

The other problem that often comes up is that people talk about board business outside of a noticed meeting. So if you run into another at Safeway or at any Foodland, you want to say, hi, nice to see you. We, we finally had a dry weekend this past weekend, and I'll see you at the next board meeting. There is an exception where two people can talk about board business. I really strongly caution people to limit the kind of discussions you have under that exception. You can have a conversation about what happened at the past board meeting that you may have missed. But I really caution you about limiting talking about future or prospective things that can come before the Board. Any questions? Yes?

Ms. Feeter: Is there any regulations about, like, after this meeting if I went home and told somebody I know that we approved the signage change? Is that a problem?

Ms. Joesting: No a member of the public you can certainly talk to them about what happened at the board meeting. It's just talking amongst yourself and the alternates that would be a problem. Yes?

Mr. Bowlus: If I could go back one, about the statement you made a person has a right to testify even after public testimony is closed.

Ms. Joesting: Yes.

Mr. Bowlus: That's – I, I don't know understand how that's possible. And when the meeting is over is that when it ends or is it anytime to infinity?

Ms. Joesting: . . . (Inaudible) . . . Can everybody hear me okay?

Mr. Silva: She has to do the minutes. Yeah, you have to have that with you.

Ms. Joesting: A lot of boards and commissions take testimony on each agenda item as it comes up. So if someone wanted to come and testify about how I'm not summarizing the sunshine law correctly they could do that. However, for convenience, a lot boards will take testimony all up front so people don't have to wait to testify on the thing that they want to talk about. It's a matter of convenience to taking it at all up at one time. So if someone does want to come later and talk about something they should be allowed to testify.

Mr. Bowlus: We've been limiting testimony so that they get a chance to speak at the beginning or during the, during the meeting itself –

Ms. Joesting: Sure.

Mr. Bowlus: – on the specific agenda item. Is that wrong? Are we doing that wrong by giving them, once they miss the first opportunity or they speak then they can't speak later?

Ms. Joesting: You can give them one opportunity to talk. That's reasonable. You should have it under your rules for the, for the commission. There – there should be rules that limit a person testifying only one time. It's not a requirement, but you can just have one person testify at one time, either at the start of the meeting or at the time the agenda item comes up. Does that answer your question? Partially.

Mr. Bowlus: Partially, not fully satisfied. I guess my concern is that, your comment that even after public testimony is closed they still have the right to testify.

Ms. Joesting: Well because the, the public testimony is closed is really a phrase of convenience for the board. It's not a reflection of the law.

Mr. Bowlus: But when, but when that agenda item is done, that agenda is done and we've moved on.

Ms. Joesting: If you've moved on and it's no longer going to be considered, and someone says, well, I still want to testify. It's my right to testify. It is their right to testify. Even though what they're going to say is not going to impact your decision because it's already made.

Mr. Bowlus: Got it. Thank you.

Ms. Joesting: Thanks.

Mr. Conrad: My question was answered. Thank you.

Ms. Joesting: Okay. Sorry if I was unclear at first. What is a meeting? Clayton already covered the definition of a quorum? Did you get a second coin for your question? Okay. What is a quorum has already been discussed by Clayton. It's also actually interesting enough in the County Charter. You have to have a majority of the members to which the commission is entitled to be a quorum. All of your actions and decisions have to be made by a quorum, not just the majority of who's present at a meeting. A meeting is when you convene to deliberate on a decision on a matter over which you have supervision. I see a furrowed brow, is that – any question on that – on the quorum?

Mr. Silva: I'm just curious – not on the quorum, but the – must be taken by a motion. When I say, we or all approved unanimously, is that me making the motion? Because we do unanimous decisions also, is that –?

Ms. Joesting: Unanimous decisions are fine. It's easy certainly for the minutes of a record.

Mr. Silva: But there are no motions when we do that.

Ms. Joesting: That's a Robert's Rule of Order. You can certainly have the chair make the motion and then have it approved unanimously.

Mr. Silva: Okay.

Ms. Joesting: So it's both. Robert's Rules of Order is what they call Parliamentary law which is not the sunshine law so sometimes you have the two of them going like this. But they can both apply with the sunshine taking priority.

Mr. Conrad: The way that we did the unanimous vote today he essentially brought up the motion and we essentially agreed by not disagreeing because that's the way it was presented. And that was fine.

Ms. Joesting: Correct.

Mr. Hopper: Yes. There's a unanimous consent provision in Robert's Rules of Order. I think the effect from a sunshine law perspective would be essentially a unanimous vote in favor even though you didn't take the vote. If any one of the members says I object, then you have to do a motion and a vote. But what Robert Rules allows is certain actions. A lot of times it's approving minutes. A lot of times it's – it can be forwarding, forwarding recommendations or something like that. We don't typically do it for approvals where we're the final authority, but it's acceptable. So it's got the effect of unanimous vote.

Ms. Joesting: What is board business? Board business are matters over which you have supervision control which are before you presently or you can reasonably expect that they will come before you. So if there's a new subdivision coming up, I think you can probably anticipate that you're going to get questions on signs.

When not to discuss board business? More than two members cannot gather to discuss board business with some exceptions under the sunshine law. You cannot do a serial communications which is to go two people to talk to two people to talk to two people, and then you go around the wheel sharing the same information. So that's, that's a no-no. You're not to discuss board business in person, so if made by telephone, e-mail. You can't post things on Facebook and have other people, other people post back saying what a great idea, I'll vote for that at the next meeting. And social gatherings the same thing. Certainly you have the First Amendment Right to remain social, but you should avoid discussing board meetings at social gatherings.

Your question ma'am was about discussing with non board members, absolutely. That's, in fact it's a large portion of why you're here as a board member.

Mr. Green: I have a question.

Ms. Joesting: Yes sir.

Mr. Green: I've been to a couple of Maui County – the, the Council meetings – and frequently they take a break and they all get together and huddle, and talk about something going on. And then they come back, and wham, you know, they make a decision. Is that – I had questions when I saw that.

Ms. Joesting: Is that a problem.

Mr. Green: Yeah, is that a problem? Is, is Maui County Council have the same rules? I assume they have sunshine law requirements, but they're very active at the breaks in talking to each other. And you know what they're talking about, especially if it's a controversial topic.

Ms. Joesting: The sunshine law does apply to the County Council. If they're doing things and in a group of people that they're not suppose to be doing, yes, that would be a violation of the sunshine law. I can't say for any specific instance, but there certainly could be a problem. They do have lawyers advising them on the sunshine law also, so I would hope that they get the same advice that you folks get here.

You can also have meetings by teleconference. So for example if someone's not able to come over from Molokai, you can notice a meeting location as being over on Molokai. And you would have to have a meeting location in a public setting. And the person there would have to allow any member of the public to come and testify over the teleconference, or really through Skype. If you wanted to do that, you could certainly use Skype to hold a meeting at remote locations.

There's also a fairly recent provision for people who are disabled. There's a couple of boards and commissions that are composed of mostly disabled people, and they were having real trouble getting quorum for meetings because it was so physically difficult for these people to actually get to the meeting locations. But they're now allowing disabled board members to attend a board meeting at home and not have to have the public come to their house and testify.

There's an exception to this meeting of only two people, and that's what I call a P.I.G., permitted interaction group. And that's where you can set up an investigative group to look into certain specific matters. And they can then go off on their own to investigate. They can talk to other people. They can talk to other groups. They can hold meetings on their own. They then combine their information from their investigation, put together their findings and recommendations and present it to a board. So it takes always at least three meetings before you can take action on what a P.I.G. does. The first meeting would be to set up a P.I.G. A second meeting would be when they come back and present you with their findings and recommendations. And the third meeting would be when you could talk about their findings and deliberate and make a decision.

Mr. Silva: And those three meetings are public? Is that –?

Ms. Joesting: Yes, that's correct. Any meetings that the P.I.G. would have outside would not necessarily be public. A P.I.G. can also present, negotiate and take a position on behalf of the board. I've seen P.I.G.s often used for evaluations of, like, at department head. Or I've also seen it when they go out and they act as search committee and they look for new head of The Hawaii Tourism Authority or something like that.

You can talk amongst yourself as long as its less than a quorum about who's going to be the next board officers. The P.I.G.s are meant only for a short term. They're not meant to be a budget and finance standing committee, or some other group that goes on for a long period of time.

If you cancel a meeting – for example let's say that several of you have to leave today before the substance of the meeting is done, then – if there were people here to testify, you could receive their testimony and at the next board meeting, you could deliberate on whatever was the topic, to talk about what testimony and presentations and information was provided, and then the members could deliberate at the subsequent meeting. So this is one of the fairly recent additions to the sunshine law that allows for what I call common sense. So that if someone comes along who wants to provide information but didn't have an opportunity before people had to leave, then there's a way that still the public could be accommodated and provide their testimony.

There is some provisions for attending conferences. In the past this is always less than a quorum. There's a new provision that just came out of the State Legislature this year that only applies to County Councils. So less than a quorum where you can attend a conference together if there's an Urban Design Review meeting that you all folks want to attend. You can

have less than a quorum attend a conference, come back and do a presentation or discussion of what you learned at your conference and then share that information by doing a presentation. If you go to such a conference, you can discuss matters at the conference as long as you don't make any commitment to vote in a certain fashion.

Executive Sessions when you want to talk to Mr. Hopper. We're closed to the public. There's a certain list of what are the reasons that you can go into an executive session. If you have legal questions for your attorney, then you can close the meeting to the public. But only the people who are needed for the closed meeting can be present. You can't have, you know, the rest of staff of six people if they're not going to be participating in the conversation, cannot attend the closed session. So only the staff that are needed for the discussion can actually be in the meeting. I see a furrowed brow again. Any questions? Okay. The purpose needs to be announced in an open meeting before you close the session. And there's an example at the bottom is when you want to consult with your attorney. Any questions on closed executive sessions?

The minutes – the requirements for minutes are actually fairly small. At first they require the date, time and the place of the meeting to be included. And then after that it's who's present, a record of all matters proposed, discussed, and how the votes were taken, any other information provided by board members at the meeting, and then a summary of the minutes is certainly fine. In fact, all that's required is a true reflection of what was presented and discussed at the meeting. I have a little asterisk as to the second from the bottom item that if you do want to put something into the record for a meeting, you need to do it at the actually meeting. You may have seen or heard that in federal government and congress, they can submit and insert things into the congressional letter, congressional record after the actual time of the meeting. That's not possible under the state sunshine law. You have to present something at the meeting, and have it included in the minutes at the time of the meeting. Minutes have to be available to the public within 30 days even if it's a draft.

A second area other than, other than communications outside would be the agenda. If it's faulty then the meeting has to be canceled. If the description of the item is faulty then you cannot consider the item that was anticipated. You cannot add to the agenda unless there's a two-thirds vote of all the members to which the board is entitled. So since you have nine that would be six would agree to add it. And, it cannot be of reasonably major importance, and the action would not affect a significant number of people. So if you were the Board of Water Supply you couldn't add, say, upcountry water meters to your agenda. There has to be a sufficient description of the agenda item. And then there's the 2014 change which allows for amendment of rules to be by of a general description rather than to specify each area that the rules would cover. There actually was a certain gentleman who would challenge two different department's board meetings and their description of rules, and he was almost able to hold them up almost for years because they were not describing the changes to their rules adequately. So they were not able to implement their rule changes. So this change in the law came about largely because of his behavior.

The sufficient description and agenda item. It has to have a date, time, and place. It has to list

all the items that you'll consider. If you plan to take an executive session you need to say on your agenda what the executive session will be for. And it has to be filed with the County Clerks six days before the meeting. There was not any prior guidance in the case law on Kanahale – until Kanahale – and OIP which stands for the Office of Information Practices was the only state office that provided any guidance.

I talked earlier about the impact of having a sunshine violation. You might have canceled meetings, you might have to void an action on a decision that you made and start all over. There's also the possibility of having a court injunction to state any action. And individual can be found guilty of a misdemeanor. And you can also be removed from the Board.

These are the two changes from the 2014 legislature. The first was the description of administration rules. The other is that County Council can attend a community meeting, once a month, with more than a quorum of members. However, it has to be another group holding a meeting, like the Kula Community Association, and what are called the limited meeting provisions apply which is you have to have a video taped record of it, and it has to be provided at the next meeting. So at the next County Council meeting they have to provide information on it.

Limited meetings are also – are sort of what I call the Kahoolawe exception. Where there's danger to the public, you can limit the number of people who can attend. So it doesn't make a lot of sense to me that this is where they put this provision. But that's where it is right now. And it's a temporary provision. You know it has a certain number of years until it sunsets. And that's it on the sunshine law. Are there any questions? Yes, ma'am.

Ms. Feeter: A small question. It may have been covered. Is there any personal liability to board members – . . . (inaudible) . . . ?

Ms. Joesting: Sure. I think that's a good question. A personal liability would be only if you acted outside the scope of your authority. So Mr. Hopper can probably more accurately describe what is the scope of your authority. But if you went off making commitments of the county to act on certain areas for which this Board doesn't have authority, then that would be outside of your scope.

Ms. Feeter: But if for a decision that the Board made itself, we would not be individually liable if somebody decided to sue us.

Mr. Hopper: The times where people have been sued individually and I can't remember a board member ever being sued, but employees have been sued at least ambiguously enough where the County Council takes action and has, has indemnified the, the people that were sued in that capacity and basically voted that the county will defend those people. But that's a decision the Council has to make though, for indemnity. But in general, yes, if you are acting within the scope of your authority by, for example, making comments on a, on a plan, or doing whatever else is in your capacity as a, as a board member, then there's generally would be no personal liability. And in rare cases where individuals have been sued, in their individual capacity, I

cannot remember a situation where the Council hasn't indemnify them – voted to indemnify them. But, generally, yes, act within the scope of your authority, and I think personal liability would only be reserved for rare cases where you – I mean, if there were some type of egregious violation where you weren't even – it's not case of making a mistake. That, that goes to – that could go to an appeal and a court could reverse your decision. That's happened before, but that's a separate issue than personal liability. I've – personal liability is generally if you're acting completely outside of the scope of your authority, if there's some type of corruption issue or bribery issue or something like that. You know, things that are really reserved for extreme cases. So, again, though, if there's a suit against individuals, County Council does have to take action to indemnify the people that are sued. That has happened, in my experience, a handful of times. And every time that I can ever remember that happening, the Council has voted to indemnify. So basically you get defended the same way as the commission itself would be defended.

Ms. Joesting: Yes, Clayton.

Mr. Yoshida: I had a question say if you had a public hearing scheduled for sign variance, and there were only – say Lanai and Molokai members came to the meeting. You only have four members present. Say it was a sign variance in Kapalua. You had 40 people drive over from Kapalua to testify at the meeting. Can public testimony be taken or do they have to – I mean, no action can be taken because you don't have quorum, but can public testimony be taken?

Ms. Joesting: Is it a meeting of this Board that you're talking about? The Board has a meeting some place and people want to come testify on the sign variance?

Mr. Yoshida: Yeah, and people wanted to testify on the sign variance application.

Ms. Joesting: If they started with a quorum, but then lost it, then you can receive testimony. Absolutely. If you don't have enough people to even open a meeting, then unfortunately you would not be able to receive testimony. Good on that? Okay, so I passed out more chocolate because now we're into another dense area, and that's the code of ethics. The Maui County Code of Ethics is found in the Maui County Charter. And there's another handout. The shorter one with the dark, dark background. At some point the fine print is very fine and hard to read on this so that's another reason for this slide.

Ethics guidelines apply to you as sitting members of the county board or commission. And essentially what you're going to be doing is you wear two hats. One hat is in your personal capacity, and the other hat is in your county capacity. And under the sunshine law and the Code of Ethics, really, that county hat is never going to come off because your responsibility under the Code of Ethics and sunshine law will apply at all times.

Unlike the sunshine law, the Code of Ethics is more common sense. It take into account human behavior. And if people gives us gifts and wine and dine us that we're more amenable and subject to their influence. So there are provisions that limits the receipt of gifts and hospitality. Michael's joke about the talk of being a gift of aloha is actually an exception under this Code



of Ethics. I also say, you know, you've seen the bumper stickers around, it's also doing what's right, the County Code of Ethics. And then I saw a couple of funny ways that it was put on the internet.

The Code of Ethics applies to all county employees whether appointed, elected. The purpose of which is to have – to set an example by your conduct to the highest standard of conduct so the public can have trust and confidence in their county government. The Board of Ethics hears any allegations of violations of the Code of Ethics. And one reason why they have me doing this training is because I'm also the attorney that advises the County Board of Ethics. So the Board of Ethics can issue advisory opinions relating to whether or not certain conduct is permitted. Some people come before the Board of Ethics to ask for permission, for example, to have another job outside of county government if it might interfere with their county job.

And any person can file a complaint and request an advisory opinion. It can be one of you, it can be a member or the public, or it can be another county employee. We had another person who just recently request to file a complaint, but did not want to put their name down to complain for fear that they will be blacked balled by the same department to which they worked. So what another possibility is that they will submit the information to board. The board will investigate it, and then the board on its own may initiate the complaint and issue an advisory opinion.

A person doesn't – bless you – doesn't have to identify themselves, but they have to identify enough specific information to form the basis for a complaint, and then board may take it from there.

There are eight major prohibitions. These are the first four. And we'll go through them in more detail. And these are the second. Has everybody done their financial disclosure reports? Great. If you're a new board member.

Mr. Silva: This board? Do we have to do that? I guess we did. Okay, it was a long time ago.

Ms. Joesting: Okay, if you're a new board member, then you have 15 days to file a financial disclosure form. You can find it on the county's website under the Department of the Corporation Counsel. There's one that you can print out and send in. Did you get one too? Okay. No? Are they exempted for some reason? Okay, then I will look into that.

Mr. Silva: It might have been with our application. I don't know. It said something – nothing with the application?

Mr. Hopper: This isn't, this isn't a Charter created Board. It's a Code created Board. I don't know if that has a difference.

Ms. Joesting: It does have an impact.

Mr. Hopper: Yeah, so that may be it. But, yeah, I'd definitely would look into that.

Ms. Joesting: Okay, if it's a Code created Board, then it probably does not have to file a financial disclosure form. That's a specific exception created by Code. First area is gifts, gift to public officials. So this is where it gets a little harder. You're not to solicit, accept, receive, directly or indirectly, whether it's money, travel, loan, entertainment, hospitality, some thing or a promise, or any other form under circumstances in which you can be infer that the gift is meant to influence you and the performance of your official duties or meant as a reward for your past duties. So my gift of chocolate is very small, and I'm not asking . . .(inaudible) . . .

Ms. Feeter: . . . (Inaudible) . . .

Ms. Joesting: Yeah, it's, it's a gift of aloha, and it's not meant to influence you in your performance of your duties. But the presentation is meant to influence you on how you perform your duties. The prohibition is where the gift is intended to influence or reward the officer or employee. Gifts of aloha is an exception. There's been past opinions done by the County Board of Ethics and the Hawaii State Ethics Commission, that small token gifts are permitted. And there's actually a definition. That the gift was given freely in a traditional spirit of aloha, there was so solicitation on your part to receive the gift, it's of a nominal value, like a coin, a chocolate coin, and there's no other circumstances suggesting or indicating an intent to reward for past services or to influence you in your future services.

Mr. Green: Is there a definition of "nominal value?"

Ms. Joesting: That's a very good question. There is not presently a monetary value given. The Board of Ethics is considering on making a rule on a monetary value. The numbers that people look at now are about \$50. But there's no limit on the dollar figure that can be received as a gift. So long as it doesn't influence you in the performance of your duty.

Mr. Green: Pretty subjective.

Ms. Joesting: Well – yes, you can say that. There's also – here's a, here's a picture example. No to the tennis racket, and television, and car. But a small gift given with aloha is permitted. Hospitality can be accepted if it's offered generally to a group. This often you'll see at conferences. Free coffee and pastries is not a problem. Were there any questions so far? Disclosure, you're not suppose to use or disclose to other people any information that you get in the course of your duties unless it's already public information. So if you look towards the bottom, the bottom two lines, information received during executive session in which as a matter of practice is not available to the public, is not information that you should disclose to someone else.

Outside business activity. This is really what the financial disclosure form is suppose to flesh out which is if you have an outside business activity and those conflict or would come before the Board. Then what you would need to do is you would need to recuse yourself from making any decision or deliberating on that matter. So if, for example, you had a company that made signs, that then wanted to get a contract or had a contract with a certain subdivision that was coming for a decision, it would be wise to disclose that fact to the full Board here, and get an

opinion whether or not there's any conflict on making a decision on that. If there's any question, you can ask for an opinion ahead of time. Yes?

Mr. Hopper: This Board actually has a special rule with the, with the Board of Ethics, based on Board of Ethics advice that if you're, if you're actually a member of the project team that is presenting the project before the Board, you not only have to recuse yourself, but you actually can't participate in the presentation to the Board. You can answer technical questions. For example, you're a landscape architect, and there's a landscape architect question, then you can answer those. But you cannot advocate on behalf of the project in front of the Board. It's basically to prevent you from getting up from your chair, going over to the podium, advocating for a project, and then coming back and sitting here. And so that's a special rule. It's actually probably not a special rule. I think it would – the Board of Ethics would probably have that same reasoning in other cases for other Boards. But because this happens so commonly with this Board, it did give an opinion and it's actually written into your rules. So that happens from time to time. And it's happened. I don't think we've had a problem exactly really with it. But the advocacy is also prohibited if you are a member of that project team.

Mr. Conrad: I have question about that because this is going to come soon. I'm a very small firm. There's basically three of us. So I would have – another member of my office make the presentation and . . . (inaudible) . . .

Mr. Hopper: Yes. And, and not participate in that presentation.

Mr. Conrad: . . . (Inaudible) . . .

Mr. Hopper: Recuse yourself, and then – I mean, you can sit over there.

Mr. Conrad: . . . (Inaudible) . . . sit in the corner.

Mr. Hopper: Yes, and answer technical questions. But, yeah, the opinion very much discourages or prohibits advocating on behalf of, of the project. So if you have another member of the team make the presentation, do the advocacy, that's allowed. Obviously, you wouldn't be able to vote on it. But they also want the extra step of not advocating on the project because I think that's a, that's an issue the Board of Ethics had potentially with something like that happen.

Mr. Conrad: Great. Thank you.

Ms. Joesting: So, if you have any concerns ahead of time, you can talk to Michael or myself, and we'll help iron it out.

Mr. Conrad: Okay. Sure.

Ms. Joesting: Well, this may not apply to if you don't have to do financial disclosure forms, but you're suppose to – if you did, we have to disclose any financial interest which could be affected

by the action of county agencies. In this matter, it sounds like there's a separate rule that applies to this Board.

Mr. Hopper: Yes, for, for presentations, but, again, you've got a general conflict of interest rule as well. I, I can site that for you. The one that I gave is kind of a more specific one. This, this section is – Disclosure of Conflict, and it says "whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the Board, the affected member shall promptly make full disclosure of the circumstances to the Board. When the member is deemed by the Board or the Boards of Ethics to have a conflict of interest, the member shall be disqualified from voting and all actions relating to that matter." In Subsection B of the rule is what I had said earlier. So I think the disclosure requirement is still there. You may not have fill out the form. But if you've got a financial interest in the project – if you've got – if the project passing gives you some sort of financial benefit, then that's definitely something you should disclose. If you've got any doubt, again, Linden and myself are available for questions. We can get a Board of Ethics opinion if we're not sure. But that should definitely be disclosed. Whether or not you do the disclosure form you should disclose that if a project is coming up where you may have that interest.

Ms. Joesting: That also combines well with your question about if there's any personal liability. So if you get a written opinion ahead of time, guidance on that, then that should help protect you from any personal liability.

Contracts with the county – what all this says essentially is that if you want to seek a contract with the county and it goes through the competitive bidding process and you're awarded it based on that, then there's no conflict. If, however, there's – if it's just someone awarding you a contract, there's an example that came up from the Board of Water Supply where one of their former employees now works for a firm, and they want to hire him back to do work on their software. However, he works for a firm that also that does business before the Board, and so he's come to the Board of Ethics to ask for an opinion on it if that's possible. So doing any contracts with the county, you want to be very cautious that it's awarded on a competitive basis.

Financial disclosure statements, we talked about that. Representing others – if you want to represent other people before a board that you sat on, there's restrictions on that. You're not to appear on behalf of private interest before a county agency. That probably goes directly to what you're talking about. And to – or to petition for a redress that would be taken by an official county action. Basic purpose is that you don't use your public office for personal gain. Representing others – more about this, even for a time period – I believe it's one year after being on a board or employed by the county. There's restrictions on here representing others back to the, the same board. And that's it. Any further questions?

Mr. Silva: No. Thank you Linden.

Ms. Joesting: Sure.

Mr. Conrad: Thank you Linden.

Mr. Silva: And thank you for your gifts of aloha.

Mr. Conrad: I don't know, it looks like –

Ms. Joesting: Do you have any questions? No? Well, thanks for your time. I know getting through ethics can be a little tedious so I appreciate it.

Mr. Silva: That was a nice condensed orientation workshop. There was a few things left off, so it made it a little, a little easier to bear. The next item on the agenda, Director's Report, Clayton, status of board vacancies and agenda for next meeting.

## **G. DIRECTOR'S REPORT**

- 1. Status of Board Vacancy**
- 2. Agenda items for the June 3, 2014 meeting.**

Mr. Yoshida: Thank you Mr. Chair, members of the Board. As you noticed we're still missing one regular member, as we lost two at the end of March, Linda Berry and Morgan Gerdel, and we picked up one, Hunton, in April. So, we're tracking the progress of the Council Policy Committee and – because it probably – it will have to go there – the nomination will have to go there first. But the Council has been tied up with the budget which they – I guess, the Budget Committee recently finished their work so maybe the committees might start to meet again. So we still have one regular member vacancy.

For the next meeting on June 3<sup>rd</sup>, we do have an agenda item, which is a Kalama Heights Workforce Housing Project. It's next to the Kalama – the properties next to the Kalama Heights Senior Retirement Center in Kihei. It's a 40-unit workforce – multi-family workforce housing project.

## **H. NEXT MEETING DATE: June 3, 2014**

## **I. ADJOURNMENT**

Mr. Silva: Okay. Thank you Clayton. As Clayton mentioned, next meeting is actually June 3<sup>rd</sup>. Meeting's adjourned. Thank you.

There being no further business brought forward to the Board, the UDRB meeting was adjourned at approximately 11:41 a.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO  
Secretary to Boards and Commissions II

**RECORD OF ATTENDANCE:**

**PRESENT:**

Robert Bowlus, Vice-Chair  
Hunton Conrad  
Frances Feeter  
David Green (~10:07 a.m.)  
Jane Marshall  
Michael Silva, Chair

**EXCUSED:**

Fiona van Ammers

**ABSENT:**

Bryan Maxwell

**OTHERS:**

Clayton Yoshida, Planning Program Administrator, Current Planning Division,  
Paul Mikolay, Staff Planner  
Michael Hopper, Deputy Corporation Counsel  
Linden Joesting, Deputy Corporation Counsel