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4 COUNTY OF MAUI, STATE OF HAWAII
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9 BOARD OF ETHICS
10 REGULAR MEETING
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16 Held at the Planning Department Conference Room, 250
17 South High Street, Wailuku, Maui, Hawaii, commencing at
18 12:00 p.m. on Wednesday, August 13, 2014.
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22 Reported by: Tonya McDade, CSR, CRR
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1 (Wednesday, August 13, 2014, 12:00 p.m.)
2 * * *
3 CHAIR LEACH: I'd like to call to order the Maui
4 County Board of Ethics, Wednesday, August 13th, 2014 meeting
5 to order. To be more efficient today, to accommodate the
6 testifiers on the various item agendas -- or agenda items,
7 we're going to move around our agenda schedule to
8 accommodate everyone the best that we can. In Regular
9 Session, we're going to go to Item 4d, e and f. They're all
10 related. We're going to review and approve an advisory
11 opinion for Councilmember Couch, Victorino and Cochran.
12 Board Members, here, I am going to pass around the
13 advisory opinion that we will be signing from, actually, at
14 our last meeting. And the opinion on that request is,
15 "After review of the request, receiving testimony and
16 reviewing the relevant law, the Board advises you to pay the
17 company or entities providing the tour the fair market value
18 of the gift." Everyone understand that from the last
19 meeting? Okay. Could I have a motion to approve the
20 Advisory Opinion 14A-05?
21 MEMBER KAHOOHANOHANO: So move.
22 CHAIR LEACH: Is there a second?
23 MEMBER PREY: Second.
24 CHAIR LEACH: Any more discussion? All in favor,
25 say "aye."

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1 ATTENDANCE
2 BOARD MEMBERS PRESENT:
3 Randol Leach, Chair
4 Norman Franco, Vice-Chair
5 Noreen "Dee Dee" Yabuta, Secretary
6 Abel Kahooohanohano, Jr.
7 Sydney Kikuchi
8 Lois Prey (Out, 1:59 p.m.)
9 Michael Westfall
10 STAFF PRESENT:
11 Linden Joesting, Deputy Corporation Counsel
12 Angela Andrade, Executive Secretary
13 ALSO PRESENT:
14 Frank Krau, Department of Corporation Counsel
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1 (Response.)
2 CHAIR LEACH: Opposed?
3 (No response.)
4 CHAIR LEACH: Thank you. Pass these down to Mike
5 and then send them back around for signature.
6 MS. JOESTING: Just a point of clarification. I
7 think they actually have different numbers, so it's approval
8 of three opinions.
9 CHAIR LEACH: Yes.
10 MS. JOESTING: Thank you, Mr. Chair.
11 CHAIR LEACH: Thank you, Corp Counsel.
12 Now we're going to go to Executive Session due to
13 confidentiality and privacy issues and to consult our legal
14 counsel. So if I could ask everyone in the audience to
15 please exit the room, and then we will go through our agenda
16 items in Executive Session, and, as needed, call particular
17 people in as warranted. Thank you.
18 All in favor of moving into Executive Session,
19 please say "aye."
20 (Response.)
21 CHAIR LEACH: Opposed?
22 (No response.)
23 CHAIR LEACH: Thank you.
24 (Recess to Executive Session, 12:05 p.m. to 2:08
25 p.m.)

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1 CHAIR LEACH: I would like to call to order back
 2 into session Regular Session. Review and approval of July
 3 9th, 2014 minutes.
 4 VICE-CHAIR FRANCO: I move.
 5 MEMBER KAHOOHANO HANO: Second.
 6 MS. JOESTING: June 11th?
 7 CHAIR LEACH: July 9th. Okay.
 8 MS. JOESTING: I got something different.
 9 CHAIR LEACH: Maybe that was the first draft. Was
 10 there a second?
 11 MEMBER KAHOOHANO HANO: Second.
 12 CHAIR LEACH: Any discussion? All in favor of
 13 approving the July 9th minutes, say "aye."
 14 (Response.)
 15 CHAIR LEACH: Thank you. Public testimony, is
 16 there any? I see none.
 17 Old Business. Finance Disclosures for Arakawa,
 18 Bruch, Hawkes and White. If I remember correctly, those
 19 were updates from our last meeting. Is that correct Angela?
 20 MS. ANDRADE: Yeah. There were just a couple
 21 blanks.
 22 CHAIR LEACH: Yeah. Is there a motion to
 23 acknowledge receipt?
 24 VICE-CHAIR FRANCO: So move.
 25 MEMBER KAHOOHANO HANO: Second.

1 MS. JOESTING: Does that mean these would not be
 2 gifts that should be accepted because they're already
 3 compensated by the County for these duties?
 4 CHAIR LEACH: Yes.
 5 VICE-CHAIR FRANCO: Is it considered gifts, then,
 6 personal gifts.
 7 MS. JOESTING: I would consider them gifts.
 8 MEMBER KIKUCHI: The other part of it was if they
 9 still wanted to donate money, they could do it to the
 10 County.
 11 MS. JOESTING: Yeah. Yeah.
 12 MEMBER KIKUCHI: Through the department, which
 13 would, in turn, turn it over to the General Fund.
 14 MS. JOESTING: Yeah. Okay. So that would be OHA,
 15 instead of giving honorarium.
 16 CHAIR LEACH: Is that the advisory opinion?
 17 MS. JOESTING: I drafted part of it.
 18 CHAIR LEACH: Did we get a copy of that?
 19 MS. JOESTING: No, because it was a draft.
 20 CHAIR LEACH: Okay. That's your draft.
 21 MS. JOESTING: I will have that ready for next
 22 time.
 23 CHAIR LEACH: Okay. Yeah, then we'll just -- then
 24 it will be an Agenda Item again. We'll review the letter
 25 and then sign it.

1 CHAIR LEACH: Any more discussion? All in favor
 2 of acknowledging receipt of the financial disclosure, say
 3 "aye."
 4 (Response.)
 5 CHAIR LEACH: Thank you. Communication Items,
 6 none.
 7 4c, discussion on request for an advisory opinion
 8 from the Department of the Prosecuting Attorney regarding an
 9 honorarium of \$250 from the Office of Hawaiian Affairs to
 10 Deputy Prosecuting Attorney Tracy Jones, \$100 to the victim
 11 witness counselor.
 12 MS. JOESTING: There was a question last time
 13 whether or not the County has a policy on accepting an
 14 honorarium and asked me to look into it. The answer is no.
 15 And I would differ with Mr. Kim that honorarium is
 16 not a gift. It's actually what the definition is. An
 17 honorarium is an acknowledgment and thank you for someone
 18 who is speaking or doing something. My sense of the
 19 conversation last time is that the Board felt that if this
 20 was part of their duties, like the one got compensated
 21 overtime, another woman, her duties extend 24/7, so it's
 22 really folded into her usual work. In addition, that she
 23 could have used the County car to go instead of renting a
 24 car. Is that a good summary what people felt last time?
 25 CHAIR LEACH: Yeah.

1 MS. JOESTING: Correct.
 2 CHAIR LEACH: Okay. Thank you, Linden. New
 3 Business, 5a, Financial Disclosures. None.
 4 Communication Items. A letter to our Board from
 5 Riki Hokama. I will give everybody just a second to find
 6 that and do a quick review. Oh, here it is.
 7 MS. JOESTING: There was, actually, a hearing with
 8 Mr. Hokama about the composition of the Real Property Tax
 9 Board. And the concern at that committee was whether or not
 10 it's not a proper balance on the Real Property Tax Board.
 11 If there's three realtors on the Board, they then would have
 12 a majority and could have a vote in whatever way that might
 13 benefit realtors. So the proposal is to limit the number of
 14 realtors on the Real Property Tax Board to only two. And he
 15 was hoping for a statement from the Board of Ethics that it
 16 was not appropriate to have three realtors who could then,
 17 you know, use their --
 18 VICE-CHAIR FRANCO: I got to excuse myself.
 19 MS. JOESTING: Who could then use their influence.
 20 One of the other councilmembers was talking how they could
 21 use their influence to benefit other realtors. So that's
 22 why he sent the letter about having this many realtors on
 23 the Real Property Tax Board.
 24 MEMBER YABUTA: I have a question. How can that
 25 benefit? And you know what, I actually have a license, but

1 it's inactive. It's been inactive for 30 years.
 2 VICE-CHAIR FRANCO: The way it can benefit
 3 realtors is that they're supposed to be advocates for
 4 private property rights. And in the process of representing
 5 their clients, they're always trying to get the best
 6 possible arrangement. And real property tax is a tax that
 7 has to be paid, but you want to minimize the impact to the
 8 client. So, in fact, they have some kind of a conflict of
 9 interest because they're advocates for lower tax rates, when
 10 the County's trying to maintain the budget and everything
 11 else to support the government services through real
 12 property tax.
 13 The way I see it is, okay, we know if somebody has
 14 an active license that he's, you know, in the process of
 15 taking care of his clients' needs and desires. Inactive,
 16 well -- you might say, well, they're inactive, but they're
 17 still knowledgeable about the process or the advocacy of
 18 realtors. So it's like, say, someone who is a congressman
 19 who gets out of office, then, a few years later, becomes a
 20 lobbyist. That's the way I see an inactive person. And
 21 that's why I feel that it doesn't matter if you're active or
 22 inactive.
 23 Sometimes you can easily become active from
 24 inactive status. And lot of people just say, well, I don't
 25 want to be active until I find a deal for my family, then he

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1 activates the license, you know. It's not that hard to do.
 2 You just have to take some courses.
 3 MEMBER KIKUCHI: I just have a question. Does
 4 that actually fall under our authority?
 5 CHAIR LEACH: That's the question.
 6 MEMBER KIKUCHI: Should it go through County Code
 7 or Charter to change that, the composition of boards?
 8 CHAIR LEACH: That starts from the Mayor's Office.
 9 MEMBER KIKUCHI: Right.
 10 CHAIR LEACH: They do the appointment.
 11 MEMBER KIKUCHI: And the second part, and I think
 12 I made that comment before, though, that the Council is --
 13 although it comes from the Mayor, the -- what they call it,
 14 the recommendations of who should be on the board or
 15 whatever, but it's still the Council that approves that.
 16 So --
 17 MS. JOESTING: You don't have to approve if
 18 they're a realtor or not.
 19 MEMBER KIKUCHI: I believe it doesn't come under
 20 our purview, but, also, that they make the decision, not us.
 21 They can limit the amount of people that are realtors or
 22 inactive, active, whatever they are, I think, anyway.
 23 CHAIR LEACH: Those board members are supposed to
 24 be impartial and abide by the Code from the get-go.
 25 MEMBER WESTFALL: We used to have that mantra that

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1 we don't comment on a hypothetical. So this is a
 2 hypothetical question, in a sense. We don't know who the
 3 individual is, so we don't know if he would be violating any
 4 of the Code of Ethics. It seems like it's more a policy
 5 question.
 6 CHAIR LEACH: Yeah.
 7 MEMBER WESTFALL: Not ours.
 8 VICE-CHAIR FRANCO: Some realtors have multiple
 9 ownership of properties, then you wonder, you know, is he
 10 gonna really be looking out at the interest of the County as
 11 a member of the board, or maybe there's some guy, you know,
 12 that just started in real estate. So you got to look, like
 13 Mike said, on the individual basis.
 14 MEMBER WESTFALL: This is like the same thing has
 15 gone on. On Lanai, you know, everybody on some Planning
 16 Commission works for the Lanai Company. That's a policy
 17 issue.
 18 MEMBER KAHOOHANOANO: You know, I have a slightly
 19 different perspective on the whole thing because I work for
 20 the union. We've been told on several occasions that you
 21 already get two union people on the board, not put any more
 22 than that. So, you know -- because especially on the
 23 Planning Commission, you know, the board -- the commission
 24 that has the ability for development, to pass development
 25 and stuff like that. So, I mean, my perspective on the

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1 whole thing is that, yeah, I don't -- I not saying that
 2 these people would be devious or dishonest in their duties,
 3 but just a potential is there. The same thing with a union
 4 representative heavily laden in the Planning Commission,
 5 that potential is there for bias, yeah. So, yeah. But, I
 6 mean, I agree with them, might not even be our call.
 7 Ethically, if they asking for an opinion, my opinion would
 8 be, no, I don't think so, not three. It's crazy. But --
 9 VICE-CHAIR FRANCO: Yeah, I think two is the
 10 maximum you want to go. Just like, you know, you say for
 11 union.
 12 MEMBER KAHOOHANOANO: Put a retiree on the board,
 13 yeah, even it off a little bit.
 14 MEMBER WESTFALL: But that's a -- I am repeating
 15 myself here. That's sort of a policy issue that you want to
 16 get the broadest perspectives and thoughts on something. So
 17 in that regard, you want to have a mix of different people.
 18 VICE-CHAIR FRANCO: That's right.
 19 MEMBER WESTFALL: But that's not to say they're
 20 unethical or violating the Code.
 21 VICE-CHAIR FRANCO: Just can cause a real problem
 22 when property values increase now and some guy says, eh, how
 23 come my real property tax so high. You know, some guy down
 24 the street selling for maybe 30, 40 percent above market,
 25 kind of skews the whole thing.

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1 I am also an appraiser. So I understand the
 2 process. And the process is appraisers for the County have
 3 a different approach than private fee appraisers. And you
 4 have a broad stroke. And so we always get called by people
 5 affected. In fact, I am doing them right now for a guy on
 6 the Big Island.

7 So, anyway, that's -- it's a dangerous thing,
 8 anyway, not to have a complete mix reflecting of the
 9 community instead of placing specific professions or group
 10 of certain elements.

11 MS. JOESTING: I know he asked for a response to
 12 his letter. So, if you want, I can draft a letter back to
 13 him saying that it's a policy question, without any specific
 14 issues before the Board of Ethics to decide; however, you
 15 think that if too many of one -- and I am kind of -- a mix
 16 of variety of people's background is used for
 17 decision-making, and that if it's weighted too heavily on
 18 one side or another, there's a potential for bias.

19 VICE-CHAIR FRANCO: Yeah. So it's just an
 20 opinion, advisory opinion.

21 MS. JOESTING: No, it's not even an opinion. It's
 22 just a letter.

23 VICE-CHAIR FRANCO: Just a letter. Okay, perfect.

24 MS. JOESTING: Just by a funny twist of small
 25 town, I am also the lawyer for the Real Property Tax Board.

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1 So I was asked by my office to be at the hearing when
 2 Mr. Hokama had questions. So he had questions of me and I
 3 told him how many appeals there are before the board and
 4 that they are very diligent and that it helps to have some
 5 expertise and understanding of real estate and how the whole
 6 process works. But you're right, you don't want to be too
 7 heavily biased on one side or the other. That is my
 8 disclosure.

9 CHAIR LEACH: Thank you.

10 MEMBER YABUTA: Although, I've been inactive since
 11 1990, so --

12 VICE-CHAIR FRANCO: The laws have changed a little
 13 bit.

14 MEMBER YABUTA: I just pay every other year just
 15 to keep it up.

16 CHAIR LEACH: Thank you, Linden. Very good.

17 The next agenda item, 5c, Lobbyist Registration
 18 for Eugene Soquena. We'll acknowledge receipt of that. Any
 19 discussion?

20 Announcements, none.

21 I think that ends our Regular Session.

22 MEMBER KIKUCHI: Can I go back to just something
 23 really quick? Just a question, actually. On the items on
 24 the -- under Old Business, it's d, e and f, the advisory
 25 opinions to the councilmembers, I would -- and I forgot to

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1 ask -- I should have asked this earlier, before you all
 2 signed it, but should that -- should it have included that
 3 they were actually given advice not to attend this thing
 4 because of --

5 MS. JOESTING: Potential conflicts.

6 MEMBER KIKUCHI: And they went, anyway. So,
 7 therefore -- well, I am just throwing that out.

8 MS. JOESTING: No. That kind of goes to their
 9 state of mind when they accepted the gift. That was,
 10 actually, information I had received from talking to their
 11 attorneys.

12 MEMBER KIKUCHI: Oh, okay.

13 MS. JOESTING: And we didn't have testimony here
 14 on their attorneys about that.

15 MEMBER KIKUCHI: Okay.

16 MS. JOESTING: Because that would be an
 17 attorney-client thing, yeah.

18 MEMBER KIKUCHI: Okay.

19 MS. JOESTING: So that's why I didn't put it.

20 MEMBER KIKUCHI: I thought that would be a good
 21 thing to put, if it was, yeah, presented in such a way.

22 CHAIR LEACH: Anything else?

23 MS. JOESTING: If you want, we can revise it. We
 24 can put in that, you know, all the Members of the Council
 25 were invited and only three accepted.

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1 MEMBER KIKUCHI: No. That's okay.

2 MEMBER YABUTA: The fact that they had legal
 3 counsel, right? I mean, she was here.

4 MS. JOESTING: She was here.

5 MEMBER YABUTA: And they didn't listen to them,
 6 you know. I mean, we can acknowledge the fact that we know
 7 that they had legal counsel.

8 MS. JOESTING: But it does mean revising the
 9 opinion and waiting to sign it. And that's up to you folks.

10 CHAIR LEACH: I'm okay with the letter going out.

11 MEMBER KIKUCHI: I am okay. I am okay.

12 CHAIR LEACH: Dee Dee, you're okay? The gist of
 13 the --

14 MEMBER YABUTA: We're not going to say that, you
 15 know, you didn't listen to your legal -- I mean -- well, I
 16 mean, because don't -- I mean, they -- the Council have
 17 legal counsel.

18 MS. JOESTING: They do.

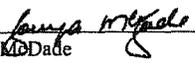
19 MEMBER YABUTA: Right?

20 MS. JOESTING: Although, I think under the
 21 Charter, their only legal counsel is supposed to be the
 22 Corporation Counsel, but they also do get legal advice
 23 because their Office of Council Services has -- it's filled
 24 with lawyers. But they are called as staff to the Council,
 25 not as attorneys to the Council.

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1 MEMBER YABUTA: Oh, okay.
2 CHAIR LEACH: Okay. Any more business or
3 comments? I am going to see if there's a motion to adjourn
4 our Regular Session.
5 MEMBER KAHOOHANO HANO: So move.
6 CHAIR LEACH: Second?
7 VICE-CHAIR FRANCO: Second.
8 CHAIR LEACH: All in favor, say "aye."
9 (Response.)
10 CHAIR LEACH: Meeting adjourned.
11 (Meeting adjourned, 2:24 p.m.)
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1 CERTIFICATE
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4 I, TONYA MCDADE, Certified Court Reporter of the
5 State of Hawaii, do hereby certify that the proceedings
6 contained herein were taken by me in machine shorthand and
7 thereafter was reduced to print by means of computer-aided
8 transcription; and that the foregoing represents, to the
9 best of my ability, a true and accurate transcript of the
10 proceedings had in the foregoing matter.
11 I further certify that I am not an attorney nor
12 an employee of any of the parties hereto, nor in any way
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