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MAUI COUNTY BOARD OF ETHICS
STATE OF HAWAII

2019 APR 30 AM 11: 13
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BOARD OF ETHICS

TRANSCRIPT OF PROCEEDINGS
REGULAR MEETING

Held at the Planning Conference Room, Kalana Pakui Building, 250 High Street, Wailuku, Maui, Hawaii, commencing at 12:33 p.m., on April 10, 2019.

REPORTED BY: SANDRA J. GRAN, RPR/CSR #424

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APPEARANCES

BOARD MEMBERS PRESENT:

CHAIRPERSON: MATTHEW MACARIO

VICE-CHAIRPERSON: DAVID COURSON

SARA GADARIAN

RACHEL PHILLIPS

DONNA CLAYTON

NAPUA GREIG-NAKASONE

WILLIAM CURTIS, JR. (in at 12:38)

DAVID WEISS

GERALDINE LEWIS

STAFF PRESENT:

DEPUTY CORPORATION COUNSEL: GARY MURAI

COMMISSION SECRETARY: CORY-LYNN VICENS

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(April 10, 2019, 12:33 p.m.)

* * *

CHAIR MACARIO: (Gavel.) Okay. Calling the April 10, 2019 meeting of the Maui County Board of Ethics to order. The first item on the regular session agenda is Review and Approval of the March 13, 2019 Minutes. Is there a motion to acknowledge and approve those minutes?

MEMBER WEISS: Mr. Chair, I'll acknowledge and approve the minutes.

CHAIR MACARIO: Is there a second.

MEMBER GADARIAN: I second.

CHAIR MACARIO: Any discussion?

MEMBER PHILLIPS: I'd just like to note that I wasn't present at that meeting.

CHAIR MACARIO: That was one of mine, too. I've got some changes as well. Thank you, Rachel.

Anyone else have any corrections? If not, I'll --

MEMBER GADARIAN: Yes, I do.

CHAIR MACARIO: Okay. Go ahead, Sara.

MEMBER GADARIAN: On page 35 there's a reference to former council person Bob Carroll and it's spelled C-A-R-R-O-L-L.

CHAIR MACARIO: Right. It's misspelled, that's correct. I caught that as well.

MEMBER GREIG-NAKASONE: I wasn't present also.

1 CHAIR MACARIO: Yeah, that's another one I noticed.
2 Okay. So just for the record, on the appearances page, page 2
3 indicates that Members Phillips and Greig-Nakasone were
4 present, they were not present, so we'll just correct that.

5 The other corrections I have are to page 5, lines 13
6 and 23 indicate that it's me talking, but it was actually Vice
7 Chair Courson talking then because I had recused myself from
8 that discussion. So the record -- or the minutes should
9 reflect that that was Vice Chair Courson and not me.

10 The next correction I have is page 11, line 16, this
11 is me talking in this paragraph and there's a reference there
12 to the word "histories," I believe that word should be
13 "issues." I don't think I said "histories," but it's a minor
14 change, so I don't care too much about that.

15 Any other corrections to the minutes?

16 (No Response.)

17 CHAIR MACARIO: All right. Hearing none, all in
18 favor of approving those minutes, say "aye."

19 (Response.)

20 CHAIR MACARIO: All opposed?

21 (No Response.)

22 CHAIR MACARIO: Okay. That carries unanimously.

23 The next item on the agenda is a welcome to new
24 member Gerald "Gerri" Lewis. Hi, Gerri.

25 MEMBER LEWIS: Hi.

1 CHAIR MACARIO: So for everyone who wasn't here when
2 I said it earlier, Gerri lives just down the street from me
3 and has agreed to be part of our board.

4 So, Gerri, if you just want to say a few things,
5 introduce yourself and tell us a little bit about yourself,
6 that'd be great.

7 MEMBER LEWIS: Oh, okay. Well, again, my name is
8 Gerri Lewis. I'm married and we live in Wailuku right here in
9 Kehalani on the street with Matt. Currently I am a substitute
10 teacher with the department of education, I've been with them
11 for about 11 years. And I'm also a cue Wan math and reading
12 instructor in Kihei at the Kamalii School, so that's pretty
13 much my job. And I also have a teenager and she's a freshman
14 and she attends Seabury Hall and she keeps us very busy.

15 CHAIR MACARIO: Oh, yes.

16 MEMBER LEWIS: Yeah.

17 CHAIR MACARIO: Well, welcome.

18 MEMBER LEWIS: Thank you.

19 CHAIR MACARIO: Thank you so much so much for
20 agreeing to be part of the board.

21 MEMBER LEWIS: Thank you. I appreciate it.

22 CHAIR MACARIO: We're very happy to have you.

23 Okay. The next item on the agenda is Public
24 Testimony.

25 Do we have any public testimony today?

1 MS. VICENS: Chair, we do not.

2 CHAIR MACARIO: Thank you.

3 Next item, 5. Old Business. a. Financial

4 Disclosure Statements: None.

5 b. Communication Items: None.

6 Item 5.c on the agenda is Review and Approval of
7 Advisory Opinion No. 19A-01, Jordan Hart, Deputy Director
8 Department of Planning dated February 20, 2019 regarding
9 direction in order to avoid potential conflicts of interest.

10 I recused myself from the handling of that matter,
11 both discussion and voting, since I had previously worked with
12 Mr. Hart on another matter for a client of mine, so Vice Chair
13 David Courson agreed to handle that matter at the last meeting
14 and has also agreed to handle this item on the agenda.

15 Thank you, David. Go ahead.

16 ACTING CHAIR COURSON: Thank you, Mr. Chair.

17 (Member Curtis entered the room.)

18 ACTING CHAIR COURSON: Has everyone had the
19 opportunity to review Advisory Opinion No. 19A-01?

20 (No Response.)

21 ACTING CHAIR COURSON: All right. Seeing that
22 everyone has had that opportunity to review that, the acting
23 chair will solicit a motion to approve and issue the opinion.

24 MEMBER WEISS: Acting Chair, I'll make a motion to
25 approve and issue an opinion on Advisory 19A-01.

1 MEMBER GADARIAN: Second.

2 ACTING CHAIR COURSON: It's been moved and seconded.

3 Is there any further discussion?

4 (No Response.)

5 ACTING CHAIR COURSON: Seeing that there's no

6 discussion, then the acting chair will entertain a motion to

7 call for the question.

8 MR. MURAI: All in favor?

9 ACTING CHAIR COURSON: All right. All in favor?

10 (Response.)

11 ACTING CHAIR COURSON: Opposed?

12 (No Response.)

13 ACTING CHAIR COURSON: None. Thank you, Chair.

14 CHAIR MACARIO: One abstention, just for the record.

15 MR. MURAI: The record should also reflect that

16 Board Member Curtis has joined us.

17 CHAIR MACARIO: Yes. Thank you.

18 All right. And thank you again for handling that

19 agenda item, David.

20 Moving on, 5.d, Review and Approval of Advisory

21 Opinion 19A-05, Scott Teruya, Director of Finance, dated March

22 6th, 2019 regarding potential conflict of interest as Director

23 of Fiance and the Wailuku Civic Complex. This is another one

24 of the advisory opinions that we received as part of our

25 materials today, I believe. Yes. So at this time I'll

1 entertain a motion to approve and issue this advisory opinion.

2 MEMBER GREIG-NAKASONE: I so move.

3 CHAIR MACARIO: Is there a second?

4 MEMBER GADARIAN: Second.

5 CHAIR MACARIO: All right. Any discussion?

6 (No Response.)

7 CHAIR MACARIO: All in favor.

8 (Response.)

9 CHAIR MACARIO: All opposed.

10 (No Response.)

11 CHAIR MACARIO: Okay. That carries unanimously.

12 I'm sorry. We have a relatively large number of
13 items on the agenda today, so I'm going to try and move a
14 little bit more quickly than I otherwise would.

15 MS. VICENS: Chair, would you speak into the mic a
16 little bit.

17 Oh, sure. Sorry. Is it working? Okay.

18 And I'll just note for the record also that we are
19 passing around an informal advisory opinion that's on the
20 executive session agenda and because it's on the executive
21 agenda, I'm not going to reference it by number or topic, but
22 if you could just -- I'm going to pass it around. If you
23 could review it so that we're ready to handle that matter when
24 it comes up on the agenda, I'd appreciate it.

25 Next item, 5.e. Review and Approval of Advisory

1 Opinion No. 19A-02, Michael Victorino, Mayor of the County of
2 Maui, dated February 14, 2019 regarding potential conflict of
3 interest of County employees serving on Boards and
4 Commissions. Is there a motion to approve and issue Advisory
5 Opinion 19A-02?

6 VICE CHAIR COURSON: Mr. Chair, so moved.

7 CHAIR MACARIO: Is there a second?

8 MEMBER GADARIAN: Second.

9 CHAIR MACARIO: Any discussion?

10 (No Response.)

11 CHAIR MACARIO: Hearing none, all in favor.

12 (Response.)

13 CHAIR MACARIO: All opposed.

14 (No Response.)

15 CHAIR MACARIO: Okay. That carries unanimously.

16 So we've reviewed and approved the issuance of all
17 three advisory opinions and I will ask Cory to circulate the
18 original so that -- originals, excuse me, so that they can be
19 signed and issued.

20 The next item on the agenda, 6.a. Financial
21 Disclosures: Elected & Appointed. We have Donald Guzman,
22 Linda Muscle -- or, excuse me, Munsell, Cynthia Razo-Parker,
23 and Lori Tshako. Is there a motion to acknowledge receipt of
24 those financial disclosures?

25 MEMBER GREIG-NAKASONE: So moved.

1 CHAIR MACARIO: Okay. Is there a second?

2 MEMBER PHILLIPS: Second.

3 MEMBER CLAYTON: Second.

4 CHAIR MACARIO: Any discussion?

5 All eyes turn to Sara. No discussion, Sara?

6 MEMBER GADARIAN: No.

7 CHAIR MACARIO: Okay. Hearing no other discussion,
8 all in favor of --

9 MEMBER GADARIAN: Whoop, whoop, whoop.

10 CHAIR MACARIO: Sorry. Go ahead.

11 MEMBER GADARIAN: Sorry. I did have a red pen on
12 that.

13 CHAIR MACARIO: Okay. Go ahead.

14 MEMBER GADARIAN: Okay. Donald Guzman, I'm
15 wondering, he had -- he has -- has had an ownership of
16 beneficial interest in the business, the Law Offices of Don S.
17 Guzman. He closed the office as of March 1st, 2019, but I'm
18 wondering whether an opinion -- advisory opinion should be
19 issued or a cautionary letter that former clients of his
20 practice, if he's involved in his position as prosecuting --
21 acting --

22 MEMBER WEISS: He's appointed now.

23 MEMBER GADARIAN: -- prosecuting attorney, that any
24 matters that should come before his office that involve former
25 clients, particularly recent clients while he was engaged in

1 business, I think it's -- it's a matter of caution.

2 CHAIR MACARIO: Sure. That he should consider
3 recusal or at least identifying that former representation?

4 MEMBER GADARIAN: Yes.

5 CHAIR MACARIO: Yes.

6 Gary, do you have any thoughts on that?

7 MR. MURAI: My only comment would be I believe that
8 the Rules of Professional Conduct which govern all attorneys
9 in Hawaii are extremely detailed and, therefore -- I mean,
10 it's up to the board if they wish to issue a cautionary
11 letter; however, in my opinion, I don't believe one is
12 necessary.

13 MEMBER GADARIAN: For this particular --

14 MR. MURAI: In this particular instance because it's
15 a -- it's his former law practice and, you know, again, Rules
16 of Professional Conduct are quite detailed in how you would
17 handle potential conflicts with former clients.

18 MEMBER GADARIAN: Okay.

19 MEMBER WEISS: It seems he's a council member now,
20 he's not the prosecuting attorney. Mine's crossed out.

21 MEMBER CURTIS: He was a council member last year,
22 he's been appointed.

23 MR. MURAI: And, remember, folks this --

24 MEMBER CURTIS: That was his income from last year.

25 MR. MURAI: This financial disclosure requests

1 information from the prior year.

2 MEMBER WEISS: Right. I'm sorry. Yeah, that's
3 right.

4 MR. MURAI: Yes, he's just recently confirmed as the
5 prosecuting attorney.

6 MEMBER WEISS: I saw that.

7 MR. MURAI: But his prior employment in 2018 was as
8 a council member.

9 CHAIR MACARIO: Okay. So with Gary's recommendation
10 that the Rules of Professional Conduct are actually -- well,
11 would definitely apply to Mr. Guzman and provide him with the
12 guidance he needs on ethical issues with former clients, Sara,
13 are you satisfied with that?

14 MEMBER GADARIAN: Yes. Thank you.

15 CHAIR MACARIO: Okay. Any other discussion about
16 these financial disclosures?

17 (No Response.)

18 CHAIR MACARIO: Hearing none, all in favor of
19 acknowledging receipt of these financial disclosures, say
20 "aye."

21 (Response.)

22 CHAIR MACARIO: All opposed.

23 (No Response.)

24 CHAIR MACARIO: Okay. That carries unanimously.

25 Next item, 6.d, Communication Items: None.

1 Next item on the agenda, 6.c, Request for an
2 Advisory Opinion No. 19A-03 dated March 15, 2019 from William
3 Spence, former County Planning Director, regarding request for
4 direction on limitations of his former position wit the County
5 of Maui as it relates to future employment or providing
6 consultation.

7 I see that Mr. Spence is here today. We have your
8 materials, we've reviewed those. Would you like to make any
9 sort of introductory comments, some explanation about what it
10 is you're asking exactly before we ask you a series of
11 questions?

12 MR. SPENCE: Sure.

13 CHAIR MACARIO: That would be great. Thank you.
14 Just come up to the podium.

15 MR. SPENCE: Good afternoon, Board Members. I'm
16 William Spence. I've held a couple of directorships within
17 the County of Maui. And the questions, I think, are pretty
18 simple. Two of them I think I know what the answers are, but,
19 you know, it's always good to have these things on the record
20 so if any questions come up, you can say, I went to the Board
21 of Ethics and sought advice and they gave me an opinion.

22 So the first question is in regards to 10-4 of the
23 charter where it says, "No former elected, salaried employee,
24 or officer," blah, blah, blah, "cannot appear" -- let's see --
25 "for a" -- "shall" -- "or officer shall appear in consultation

1 before a department or agency in which the officer was last
2 employed." My last appointment was with the department of
3 housing and human concerns, it was not with the planning
4 department. So I spent 7 months as director of housing. So
5 my question is: Can I go to the planning department or any of
6 the boards or agencies that they staff representing a client
7 for compensation? So I think that's a pretty straightforward
8 question.

9 The -- so the second one -- and, again, I -- as a
10 director, I spent a considerable amount of time before the
11 county council and its committees staffing meetings,
12 explaining procedures, supporting affordable housing projects
13 or other matters, legislative matters before the council, and
14 I just want it clear on the record that I am free to represent
15 other clients now in the private sector before the council.
16 The council was not my employer, nor was council services, I
17 personally do not see any restrictions that I should have in
18 taking something before the council. I don't have anything
19 pending, but I just would like that to be clear.

20 And then the third question comes out of the County
21 Code, 2.56, and as I was going through this, the term that
22 caught my eye is I -- in talking about post employment, I may
23 not for compensation in a period of 1 year "assist any person
24 or business in an active representative capacity for any
25 person or business in which the former officer/employee

1 exercised discretionary power." So I have a question on what
2 discretionary -- exercising discretionary power is.

3 And in the course of holding a position like a
4 director, you talk to a lot of developers, you talk to people
5 who want bed and breakfast permits, you talk to -- on a whole
6 host of matters and in the course of those discussions you
7 give advice or you explain what the procedures are for the --
8 for the particular permit. You need to conduct a public
9 hearing, you have to give notification within 500 feet,
10 whatever the case may be. In the case of being the housing
11 director, you would explain the new procedures for affordable
12 housing projects, those kinds of things, and you give advice
13 on, Well, the council usually asks these kinds of questions,
14 so you need to address those. Okay?

15 That, to me, is not exercising discretionary power.
16 I am not in -- I am not telling somebody what they must do or
17 I am not signing a letter, any kind of correspondence, I am
18 not giving direction, you know, Oh, you -- you know, we're
19 only going to allow 45 units and we will only support 45 units
20 in this project instead of the 50 or 60 that you want. You
21 know, where I'm making a decision, where I'm actually
22 materially changing somebody's project or application for a
23 permit, that is where I would believe there would be an
24 exercise of discretionary power, where I'm actually changing
25 the course of what somebody wants to do with their property or

1 a project they want to build.

2 The section goes on, it's a little bit confusing to
3 me, and it says, "unless he first files a sworn affidavit,"
4 that -- I mean, I either did exercise discretion in saying
5 this is -- you shall do this, or I did not, I just gave
6 advice, so I -- the latter part of this probably hasn't been
7 reviewed in decades, as so many parts of our code.

8 But, anyway, that's the way that I see this. I
9 believe I should be free -- I've had a couple of people come
10 to me and say, Will -- you know, during when I was housing
11 director -- what do you think about our project? And I say, I
12 think that's good. I think I would go talk to planning and I
13 would talk to water and I would talk to these different
14 departments. But in -- I can't think of a case where I said,
15 No, this is a bad project, we're not going to support it, or
16 we'll support it if you do these things. You know, it's -- to
17 me, the distinction is clear, if not really easy to describe.
18 In one part I'm really changing the course of something, in
19 the other I'm just simply giving advice as to procedures and
20 who they should talk to. So the one I think I should be able
21 to -- people I just gave advice to, I should be able to help
22 them with their permitting, and the other ones I -- it's clear
23 to me I should steer clear of them.

24 CHAIR MACARIO: Thank you. So early in your remarks
25 you indicated that you thought you knew the answers to two of

1 the three questions.

2 MR. SPENCE: This is the one I don't.

3 CHAIR MACARIO: The third one is the one you don't?

4 MR. SPENCE: Yes.

5 CHAIR MACARIO: Okay. Can you tell us -- just
6 before I open it up to questions -- how you think that
7 Questions 1 and 2 should be resolved.

8 MR. SPENCE: Okay. The first one, I think I -- I
9 believe I should be free to go approach the planning
10 department because the charter, the language of the charter
11 says -- talks about the agency where I was last employed.

12 CHAIR MACARIO: Okay.

13 MR. SPENCE: The planning department was not that.

14 CHAIR MACARIO: Right. What about Question 2?

15 MR. SPENCE: The second question, yes, I believe I
16 should be able to represent somebody in front of the county
17 council or appear before them for -- I don't know what matters
18 might come up, because they were not my last employee -- I was
19 not last employed by them. Excuse me.

20 CHAIR MACARIO: Okay, all right. Thank you.

21 Does any board member have any questions for
22 Mr. Spence? If so, just let me know.

23 MEMBER GADARIAN: Yes, I do.

24 CHAIR MACARIO: Okay. Go ahead, Sara.

25 MEMBER GADARIAN: So can you just give a background

1 on what is your current occupation or what are you engaging in
2 now, now-now?

3 MR. SPENCE: I am -- I have been approached by
4 several developers of affordable housing to engage me as a
5 consultant to help them with their permitting processes, so
6 that may involve -- it may or may not involve approval by the
7 county council and at least the people who've approached me
8 most definitely will involve going before the planning
9 commission. So it's doing consulting much like Mr. Hart was
10 previously doing, those kinds of matters. If that doesn't
11 answer your question --

12 MEMBER GADARIAN: So you're talking about the area
13 that you appear to be working in now is in affordable housing
14 rather than overall planning, countywide planning?

15 MR. SPENCE: Yeah, I -- I don't -- planning often
16 includes permits and entitlements like you would seek. Like
17 the planning commission, they grant SMA permits for
18 developments or the county council will grant legislation
19 for -- for affordable housing, for changes in zoning; all of
20 those things involve planning matters. The general planning
21 like introducing community plans and those kinds of things, I
22 don't see myself involved in those right away.

23 MEMBER GADARIAN: So may I understand that you are a
24 consultant on -- with -- or talking about planning to be
25 engaged in consulting with affordable housing and the director

1 of housing and human concerns, your primary -- among their
2 functions was affordable housing?

3 MR. SPENCE: That's correct.

4 MEMBER GADARIAN: So this is -- I'm wondering
5 whether this defines as being your last -- where you were last
6 employed. So if you are now involved with helping clients
7 with affordable housing projects, you may not be self-
8 answering.

9 MR. SPENCE: Okay.

10 MEMBER GADARIAN: So you would -- in my opinion, you
11 may need guidance on that particular aspect.

12 MR. SPENCE: And, Mr. Chairman, if I may.

13 CHAIR MACARIO: Yeah, absolutely.

14 MR. SPENCE: I understand -- I believe I understand.
15 Yes, if I was helping a landowner obtain permissions, we call
16 them entitlements, permissions to build housing and that
17 application was being processed through the department of
18 housing and human concerns, there is -- it's clear to me I
19 could not -- I could not go to the department of housing and
20 human concerns to say, you know, Please grant this, but
21 that's -- if I'm just helping them write reports and I'm
22 helping them -- and I'm not associated with the project at
23 all, I'm just consulting on the side, This is what you need to
24 do, this is -- and I just help the person so they go to the
25 department of housing and human concerns, I believe I'm not

1 appearing before housing.

2 MEMBER GADARIAN: Thank you.

3 CHAIR MACARIO: Are there any other questions for
4 Mr. Spence?

5 VICE CHAIR COURSON: Yes, Mr. Chair.

6 Mr. Spence, I understand the last day in your
7 position as interim director is March 17th, 2019; is that
8 correct?

9 MR. SPENCE: That's what the mayor said and that's
10 why I put that down there, that's what his press release said.
11 Technically, I think I was off of payroll on the 15th.

12 VICE CHAIR COURSON: All right. Regarding -- I had
13 a -- Question No. 3 regarding the county code states as you
14 have noted on page 2 that "No former officer or employee of
15 County shall for compensation and within a period of one year
16 after termination," so forth and so on, "unless he first files
17 sworn affidavit with the Board of Ethics." Now, this period
18 of one year will expire on or about March 17, 2020; is that
19 correct?

20 MR. SPENCE: That's correct.

21 VICE CHAIR COURSON: The question in my mind
22 regarding Question 3 is the phrase "for compensation." Do you
23 foresee any conflict with Maui County Code 2.56.050.A
24 regarding that between now and March 17, 2020?

25 MR. SPENCE: That's an excellent question. If I was

1 employed by a landowner to help them obtain permissions to
2 build housing and -- I would not -- that, I'm doing that for
3 compensation, obviously, I would not go to the department of
4 housing and human concerns regarding that project and, in so
5 many words, lobby them to approve it. I would avoid doing
6 that. Does that answer?

7 VICE CHAIR COURSON: Thank you.

8 CHAIR MACARIO: Any other questions for Mr. Spence?
9 You have one, Bill? Go ahead.

10 MEMBER CURTIS: Would you consider waiting three and
11 a half months before appearing before the planning department?
12 Just -- and I know the letter of the law does not say that,
13 but it would be -- that would be the one-year period from the
14 planning, would that be a difficulty for what you --

15 MR. SPENCE: I don't know if it would be a
16 difficulty at this time or not.

17 MEMBER CURTIS: 'Cause the letter of the law, as you
18 correctly stated, is your last employment, but I think the
19 intent is to stay away from your previous department for a
20 full year.

21 MR. SPENCE: And I understand the concern there. I
22 will just leave that to the -- for the board to decide.

23 MEMBER CURTIS: Yeah, okay.

24 CHAIR MACARIO: Any other questions?

25 Gary, do you have any questions?

1 MR. MURAI: No.

2 CHAIR MACARIO: Okay. Thank you very much,
3 Mr. Spence.

4 MR. SPENCE: Thank you.

5 CHAIR MACARIO: I think at this point it would be
6 helpful to confer with corporation counsel about some of the
7 legal terminology in the letter, so I'll entertain a motion to
8 adjourn regular session temporarily so that we can confer with
9 counsel and then we'll reconvene. Is there such a motion?

10 MEMBER CLAYTON: So moved.

11 MEMBER GREIG-NAKASONE: Second.

12 CHAIR MACARIO: Okay. Is there a second?

13 All in favor?

14 (Response.)

15 CHAIR MACARIO: All opposed?

16 (No Response.)

17 CHAIR MACARIO: Okay. That carries unanimously. So
18 can we clear the room, please, just briefly. I don't think
19 this will take very long. Thank you.

20 (Pause in proceedings: 1:03 p.m.-1:18 p.m.)

21 CHAIR MACARIO: All right. (Gavel.) Returning to
22 regular session and we are back on Agenda Item 6.c. At this
23 time I will entertain a motion regarding the request for
24 advisory opinion set forth in Item 6.c.

25 VICE CHAIR COURSON: Mr. Chair, I'd like to make a

1 motion to issue an advisory opinion from the board of ethics
2 answering Questions No. 1 and 2 in the affirmative. Regarding
3 Question No. 3, that the board concurs with the definition
4 regarding when discretionary power is exercised as submitted
5 by Mr. Spence in his letter quoting Maui County Code Section
6 2.56.050.A.

7 CHAIR MACARIO: Okay. Is there a second?

8 MEMBER GADARIAN: Second.

9 CHAIR MACARIO: Any other discussion?

10 (No Response.)

11 CHAIR MACARIO: All in favor?

12 (Response.)

13 CHAIR MACARIO: All opposed?

14 (No Response.)

15 CHAIR MACARIO: Okay. That carries unanimously.

16 And, Mr. Spence, we will have a formal written
17 opinion for you -- well, for the board's review next month at
18 our next month's meeting, but generally, as you probably
19 gathered, the board has decided that your initial impressions
20 of how this is going to turn out are accurate and that we're
21 approving you to proceed in that manner subject to the formal
22 opinion coming out at our next meeting. All right. Thank
23 you.

24 MR. SPENCE: I thank the board very much. I will
25 exercise due caution in everything. Thank you.

1 CHAIR MACARIO: Thank you.

2 All right. The next item on the agenda is 6.d,
3 Request for Advisory Opinion 19A-04 dated March 22nd, 2019
4 from Council Chair Kelly King regarding whether the Council
5 Chair's vote on proposed bills and/or amendments relating to
6 the Waikapu Country Town project is in violation of Section
7 10-4(1)(c) and 10-4(1)(e) of the Revised Charter of the County
8 of Maui (1983) as amended.

9 And I see that the council chair is with us today.
10 At this point, Ms. King, would you like to make any sort of
11 introductory remarks? We do have the materials you submitted
12 and are prepared to ask you questions unless you'd like to
13 give us some opening comments.

14 MS. KING: Yeah. I just wanted to correct that I
15 haven't taken any votes yet, so it's not on whether my vote
16 was or wasn't appropriate. It's simply as a prelude as to
17 whether I should take that vote or not. And you have the
18 letter dated April 10th that has the facts on it as far as
19 ownership of the property and our association with
20 Mr. Atherton and -- my husband and mine, and so that's my --
21 and I think that this will be a good precedent for the
22 council's gauge, so I wanted to ask for this opinion because
23 there are sometimes that questions come up on other matters
24 and there's -- there can be statements asking -- you know,
25 asking council members to come before the board of ethics. So

1 if -- whichever way this is decided, it hopefully will be
2 applied and inform future questions. Thank you.

3 CHAIR MACARIO: All right. Thank you very much.
4 Does anyone have any questions for Council Chair
5 King?

6 MEMBER WEISS: I have one question.

7 CHAIR MACARIO: Go ahead.

8 MEMBER WEISS: Thank you for coming in. So I read
9 the whole -- what you submitted, is there any change in the
10 financial position of that piece of property that your company
11 Imua Energy leases that would benefit the project that -- the
12 larger project as it moves forward?

13 MS. KING: No. There's a -- the lease is totally
14 separate from that property and is for a period of ten years,
15 so it will continue whether or not the project is approved.

16 CHAIR MACARIO: Council Chair King, I should also
17 let you know, I forgot to mention this at the beginning of my
18 remarks, there is on our agenda today a complaint by a member
19 of the public that is going to be addressed in executive
20 session that is essentially of the same subject matter that
21 you're here about today. We're not going to be taking
22 testimony on that today, the sole purpose of having it be on
23 the agenda is to decide whether we are going to set it for a
24 hearing at our next meeting. So I just wanted you to be aware
25 that there is a complaint regarding these issues that's on our

1 agenda. I don't think it's going to affect your testimony in
2 any way today, but just so you're aware.

3 MS. KING: Is it a complaint about my vote on the
4 project?

5 CHAIR MACARIO: No. I mean, I don't know that I can
6 discuss the substance of it, we just wanted to make sure
7 you're aware of it because it is on the same subject matter
8 and whether such a vote would be appropriate.

9 MR. MURAI: I think we can let Chair King know that
10 it's not on the matter you are requesting, but it is generally
11 about voting and conflicts of interest.

12 MS. KING: Yeah, I think -- oh, about voting. I
13 understand what you're saying.

14 MR. MURAI: Yeah, but not on this -- this
15 particular --

16 MS. KING: So it's not about the actual project. We
17 have -- we have complaints on almost every project we look at,
18 so...

19 CHAIR MACARIO: Yeah. No, it's a conflict of
20 interest matter.

21 MS. KING: Okay.

22 CHAIR MACARIO: So just wanted to make sure you're
23 aware of that.

24 Did you answer Mr. Weiss's question?

25 Did you finish, Dave?

1 MEMBER WEISS: So the parcel is basically exempt
2 from the larger transaction?

3 MS. KING: Right.

4 MEMBER WEISS: You identified it as being bifurcated
5 from that --

6 MS. KING: Right. That whole section of agriculture
7 that Imua Energy has put in ag. conservation, it's about 9
8 acres, is separate from his actual affordable housing project.

9 CHAIR MACARIO: Okay. Any other questions for
10 Council Chair King?

11 VICE CHAIR COURSON: Yes. Thank you, Council Chair
12 King, for coming. I do have a question on Item No. 7, page 2.
13 The land leased by Imua Energy Maui, Limited Liability is not
14 part of the 496 acres that form the Waikapu Country Town
15 project area; however, the land lies within the roughly 900-
16 acre area south of that project and is proposed to be
17 dedicated as an agricultural conservation easement. Could you
18 clarify that, please? I'm a little bit unclear as to the 496
19 acres and the 900 acres. Are those -- are we speaking about
20 two different --

21 MS. KING: Right.

22 VICE CHAIR COURSON: Completely different parcels of
23 land?

24 MS. KING: Right, right. Two different parcels.
25 The 900-acre parcel is one that Mr. Atherton had worked with

1 the -- when he was working with the community of Waikapu to
2 put this project together, it took him about ten years, and it
3 went back and forth and he made a lot of concessions to the
4 community and one of them was that he would put that 900 acres
5 that is separate from Waikapu Country Town into agricultural
6 conservation. And he's been working with the Hawaiian Island
7 Land Trust to make that agreement so it will be in
8 agricultural in perpetuity and that's -- and our parcel of
9 that 900 is about 114 acres. So that's the parcel that has
10 Bobby Tarantina, Robert Monta, and -- I think those are the
11 other two main farmers and then they sublease parts of
12 their -- their leased property to other farmers.

13 VICE CHAIR COURSON: So if --

14 MS. KING: There's a lot of local farmers in that
15 area.

16 VICE CHAIR COURSON: So if I may, Mr. Chair, then
17 that parcel you are referring to is a part of that 900 acres?

18 MS. KING: Our parcel is.

19 VICE CHAIR COURSON: Yes, your parcel.

20 MS. KING: Yes, but it's not part of that 496 acres.

21 VICE CHAIR COURSON: Thank you.

22 MEMBER GREIG-NAKASONE: And just to clarify, whether
23 this 900 gets submitted into agriculture conservation or not
24 is not a county decision?

25 MS. KING: Right.

1 MEMBER GREIG-NAKASONE: It's a state.

2 MS. KING: It's a decision -- well, it's his
3 decision, actually, and it's a decision that the landowner
4 made.

5 MEMBER GREIG-NAKASONE: Well, to be designated as
6 ag. conservation, he has to go to the state land use?

7 MS. KING: No, no. He's going through the Hawaiian
8 Island Land Trust. Basically the land trust will put -- will
9 buy agricultural easements, they've done this with private
10 landowners. It's what they're trying to do right now with
11 landowners in Keanae. So you still own the land, but make an
12 agreement that you can't ever develop it and they pay you
13 whatever they consider that to be worth to keep it in ag. and
14 that allows you still do farming on it, but you cannot build
15 on it, cannot build any developments.

16 MEMBER GREIG-NAKASONE: So that's not something that
17 they will -- that Atherton will be coming to the county for?

18 MS. KING: No. It's something that he agreed with
19 the community to do so that now the community supports the
20 project.

21 CHAIR MACARIO: Any other questions for Council
22 Chair King?

23 (No Response.)

24 CHAIR MACARIO: I just have a couple.

25 MS. KING: Sure.

1 CHAIR MACARIO: Do you -- it was unclear to me from
2 the letter whether you personally have a financial interest,
3 direct or indirect, in this project. Can you --

4 MS. KING: In the Wailuku Country Town? No.
5 Okay.

6 MS. KING: The housing -- no, I have no personal
7 interest in it.

8 CHAIR MACARIO: Okay. And what about the easements
9 or the land that's subject to your request?

10 MS. KING: That -- you're talking about the project?
11 That is the project.

12 CHAIR MACARIO: Okay.

13 MS. KING: That's what I'm saying, that's the
14 project. I have no financial interest in it.

15 CHAIR MACARIO: Okay.

16 MS. KING: Other than -- I mean, my only interest in
17 it is wanting to see more affordable housing on Maui, that's
18 just how I would be voting on the project.

19 CHAIR MACARIO: Okay.

20 MEMBER CURTIS: So your only financial interest is
21 you happen lease on an adjacent parcel --

22 MS. KING: Right.

23 MEMBER CURTIS: -- from the same landowner?

24 MS. KING: Right.

25 MEMBER CURTIS: Okay.

1 CHAIR MACARIO: Understood.

2 Go ahead, Donna.

3 MEMBER CLAYTON: You mentioned that -- at the
4 beginning that this might influence how other project -- other
5 ideas or something coming up before the council will be looked
6 at and so now that's a big concern to me. So how we look at
7 this, it seems -- to me, honestly, it seems like this is not a
8 problem --

9 MS. KING: Right.

10 MEMBER CLAYTON: -- for you, but I'm concerned about
11 what you're thinking about, how other things would come up
12 and --

13 MS. KING: Well, it would be -- I mean, there might
14 be another situation where another council member is in a
15 similar situation and, you know, rather than hold up the vote
16 so they can go get an opinion, we can say, you know, based on
17 the opinion of my situation, that if you're kind of in a
18 similar situation, so we would assume you don't have a
19 conflict of interest.

20 MEMBER CLAYTON: Right. And that -- that worries
21 me, you know, I would really rather that they come if there's
22 anything that concerns me or concerns --

23 MS. KING: I'm here because, you know, there have
24 been similar situations like this on the council where the
25 council members just decided to vote, 'cause it's really up to

1 the council member.

2 MEMBER CLAYTON: Yeah.

3 MS. KING: If they want to go ahead and vote and
4 someone else complains and they go after the fact, they can do
5 that, but -- you know, so I -- you know, to me, it was -- it
6 was an easy enough thing to just come to the board of ethics
7 and get an opinion, but it's really up to each council member
8 to actually seek that opinion; otherwise, you risk having a
9 complaint afterwards and having to go before the board after
10 you've already taken an action that -- and it may affect going
11 back and saying, Well, now we didn't have enough votes for
12 that.

13 So, you know, I think it's always good to be
14 cautious, but I would hate to have every single thing
15 that's -- you know, if there's a situation that's, you know,
16 fairly similar, just have to hold up other decisions because
17 every single person -- I would hope that the decision would be
18 based on the situation, not who the person is. I mean, I feel
19 like I'm fairly ethical person and, you know, I have a good
20 reputation, but I would hope you would make the decision based
21 on the situation and that you would make the same decision for
22 somebody else even if they don't have a good reputation, that,
23 you know, it would be a fair decision.

24 MEMBER CLAYTON: I think we would, I just -- I was
25 afraid it would never get to us, that was my concern.

1 MR. MURAI: Well, Member Clayton, if I may comment.

2 MEMBER CLAYTON: Yeah.

3 MR. MURAI: What Chair King, you know, has stated
4 about seeking an opinion that would not only assist her --

5 MEMBER CLAYTON: Yeah.

6 MR. MURAI: -- but other council members is actually
7 a fair statement.

8 MEMBER CLAYTON: Yeah.

9 MR. MURAI: Because when the board issues advisory
10 opinions -- well, first of all, the benefit for the requester
11 is that the -- if the requester follows the guidance of the
12 board, then they cannot be subject to a complaint for the
13 action they've taken. But it is true that when the board
14 issues opinions, we do intend for others who may be in the
15 same or a similar situation to be able to rely on our
16 opinions. Like I said, the benefit for the requester is that
17 you get the additional -- I would almost call it immunity from
18 being subject to a complaint. The other thing that the board
19 does not want is for folks to repeatedly come to the board on
20 the same question all the time; otherwise, we'd, you know --

21 MEMBER CLAYTON: Be busy, yeah.

22 MR. MURAI: Yeah. So while we craft our opinions to
23 address the concerns of the requester, we're also mindful that
24 our opinions may be relied upon by others.

25 CHAIR MACARIO: And the other question I had was

1 whether the council has any internal rules on when -- we kind
2 of touched on this already, but when members should or should
3 not vote in situations where there might be potential conflict
4 of interest. Can you speak to that?

5 MS. KING: We do -- in our council rules, there's a
6 section that speaks to conflict of interest and recusing
7 yourself from a vote. It does allow you to deliberate, so
8 even if you -- you up front say, you know, you can't vote --
9 and there's some questions about our former chair, whether he
10 had, you know, conflicts on voting on hotel classes, but he
11 never sought an opinion, but he just voted all the time. But
12 whether or not he would have had a conflict of interest, he
13 would've been able to deliberate and defend his position and
14 then recuse himself from the final vote.

15 CHAIR MACARIO: Okay. Any other questions for
16 Council Chair King?

17 (No response.)

18 CHAIR MACARIO: All right. Thank you very much.

19 MS. KING: Thank you.

20 CHAIR MACARIO: Does anyone feel that we need legal
21 guidance or is someone prepared to make a motion on the
22 request for advisory opinion? Let me -- let me rephrase that.

23 I will entertain either a motion to convene in
24 executive session regarding this matter to consult with
25 corporation counsel, or a motion on the advisory opinion

1 itself.

2 MEMBER GADARIAN: So I'm prepared to make a motion
3 on the advisory opinion itself.

4 CHAIR MACARIO: Okay. Why don't you go ahead, Sara.

5 MEMBER GADARIAN: That based on the facts outlined
6 in the council person's case -- letter and the situation, that
7 the opinion is that she -- she may participate in and vote on
8 the Waikapu Country Town -- on proposed bills relating to the
9 Waikapu Country Town projects or any amendments to those
10 bills.

11 CHAIR MACARIO: Thank you, Sara. So just to make
12 sure I understand, so the motion is to answer her Question
13 No. 1 in the affirmative, she may vote, and, essentially,
14 Question 2 is moot since the answer, if your motion is
15 approved, would be yes. Is that right?

16 MEMBER GADARIAN: That is right.

17 CHAIR MACARIO: Okay. Is there a second?

18 MEMBER GREIG-NAKASONE: Second.

19 CHAIR MACARIO: Any other discussion?

20 (No Response.)

21 CHAIR MACARIO: All in favor?

22 (Response.)

23 CHAIR MACARIO: All opposed?

24 (No response.)

25 CHAIR MACARIO: Okay. That carries unanimously.

1 Thank you again, Council Chair.

2 MS. KING: Thank you very much.

3 MEMBER GREIG-NAKASONE: Chair.

4 CHAIR MACARIO: For the record, Member Nakasone --
5 I'm sorry, I lost -- I'm having a brain fart -- has to leave.
6 Napua has to leave.

7 MEMBER GREIG-NAKASONE: That's going to be in the
8 transcript.

9 (Laughter.)

10 CHAIR MACARIO: That's okay. I've said way worse.

11 MEMBER WEISS: Actually, I suppose we (inaudible)
12 Seabury back in the day, that was like 20 years ago.

13 CHAIR MACARIO: No, no, no. No big deal.

14 All right. Thank you for being here, Napua,
15 appreciate it.

16 All right. Next item on the agenda is 6.e, Lobbyist
17 Registration. We have one from Isaac Moriwake. Is there a
18 motion to acknowledge receipt of that lobbyist registration?

19 MEMBER CLAYTON: So moved.

20 CHAIR MACARIO: Is there a second?

21 MEMBER WEISS: Second.

22 CHAIR MACARIO: Any discussion?

23 (No Response.)

24 CHAIR MACARIO: Hearing none, all in favor of -- oh,
25 go ahead.

1 (Chair conferring with corporation counsel.)

2 CHAIR MACARIO: Corporation counsel has noted that
3 the bottom section of the lobbyist form is not completed.

4 MR. MURAI: Yeah. If you look at the form, our form
5 asks for two things: that the lobbyist certify that he's a
6 lobbyist and then there's an authorization to lobby on the
7 bottom, I guess, which is something his client that he's
8 lobbying on behalf of would fill out. Now, I thought to
9 myself, Well, you know, everyone else does it, but, you know,
10 in our rules, our rules don't require it. However, while our
11 rules don't say you've got to get authority from your client
12 to lobby, in a way -- when the board approves a form, they're
13 also saying this is information we want. So although there's
14 no rule that says you've got to disclose -- you've got to seek
15 authorization or obtain the authorization of your client, the
16 board, whenever they approved this form, said, We want to
17 know. So I'm not saying one way or the other what you should
18 or shouldn't do. I just point it out and my only suggestion
19 is whatever we do, we should -- so that people know what to
20 expect from us.

21 MEMBER CURTIS: Does the second page count as the --

22 CHAIR MACARIO: Yeah. I was going to say the
23 third page of this --

24 MEMBER CLAYTON: The cover letter.

25 CHAIR MACARIO: Or the second page seems to indicate

1 it's from Earth Justice and that their general counsel has
2 approved it, even if it's not signed.

3 MR. MURAI: Even if it's the same person?

4 CHAIR MACARIO: Oh, that's a good point.

5 MEMBER CURTIS: That's a good point.

6 CHAIR MACARIO: I didn't realize that. It talks
7 about there being a copy with authorization to lobby completed
8 by Earth Justice's counsel Kelly McKinsey, but we don't
9 actually see that.

10 MEMBER GADARIAN: It's not attached.

11 CHAIR MACARIO: Yeah. So unless anyone disagrees, I
12 think we should send this back and ask them to either provide
13 the general counsel's authorization or a completed version of
14 the lobbyist registration form.

15 MEMBER WEISS: I agree.

16 CHAIR MACARIO: Okay. So let's amend the motion
17 accordingly. Is there a second?

18 MEMBER GADARIAN: Second.

19 CHAIR MACARIO: All in favor?

20 (Response.)

21 CHAIR MACARIO: All opposed?

22 (No Response.)

23 CHAIR MACARIO: So Cory's going to send this back.

24 MR. MURAI: So we're clear that we're acknowledging
25 receipt of this subject to obtaining that letter from their

1 general counsel?

2 CHAIR MACARIO: I think so, yes.

3 MEMBER GADARIAN: Yes.

4 MR. MURAI: Okay. So once we receive it, this is
5 done.

6 CHAIR MACARIO: Yeah.

7 MR. MURAI: We don't need to bring it back.

8 CHAIR MACARIO: You don't need to bring it back.

9 MR. MURAI: Okay. Great.

10 CHAIR MACARIO: Okay. Next, Item 7, Announcements:
11 None.

12 8, next meeting date here on May 8th in this room at
13 12:30.

14 Is there a motion to adjourn regular session and go
15 into executive session to start matters on the agenda?

16 MEMBER CLAYTON: So moved.

17 CHAIR MACARIO: Second?

18 MEMBER GADARIAN: Second.

19 CHAIR MACARIO: All in favor?

20 (Response.)

21 CHAIR MACARIO: All opposed?

22 (No Response.)

23 CHAIR MACARIO: And that carries unanimously.

24 (Pause in proceedings: 1:41 p.m.-2:44 p.m.)

25 CHAIR MACARIO: (Gavel.) All right. We're back in

1 regular session. Is there a motion to ratify all decisions
2 made in executive session?

3 MEMBER CLAYTON: So moved.

4 CHAIR MACARIO: Is there a second?

5 MEMBER GADARIAN: Second.

6 CHAIR MACARIO: Okay. Any discussion?

7 (No Response.)

8 CHAIR MACARIO: All in favor?

9 (Response.)

10 CHAIR MACARIO: All opposed?

11 (No Response.)

12 CHAIR MACARIO: Okay. That carries unanimously.

13 Just make sure we're done here.

14 Okay. Is there a motion to conclude our meeting
15 today?

16 MEMBER GADARIAN: I move to adjourn.

17 CHAIR MACARIO: Is there a second?

18 MEMBER CURTIS: I'll second.

19 CHAIR MACARIO: All right. All in favor?

20 (Response.)

21 CHAIR MACARIO: All opposed?

22 (No Response.)

23 CHAIR MACARIO: Okay. That carries unanimously.

24 Thank you all.

25 (The proceedings were adjourned at 2:45 p.m.)

