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MAUI COUNTY BOARD OF ETHICS

STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS

REGULAR MEETING

Held at the Planning Conference Room, Kalana Pakui Building, 250 High Street, Wailuku, Maui, Hawaii, commencing at 12:32 p.m., on August 14th, 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  
WILLIAM CURTIS, JR.  
DAVID WEISS  
GERALDINE LEWIS

STAFF PRESENT:

DEPUTY CORPORATION COUNSEL: GARY MURAI  
COMMISSION SECRETARY: CORY-LYNN VICENS

1 (August 14th, 2019, 12:32 p.m.)

2 \* \* \*

3 CHAIR MACARIO: (Gavel.) All right. Calling the  
4 August 14, 2019 meeting of the Maui County Board of Ethics to  
5 order. The first item on our regular session agenda is Review  
6 and Approval of the July 10, 2019 minutes. Is there a motion  
7 to approve those minutes?

8 MEMBER CLAYTON: I move to approve the minutes.

9 CHAIR MACARIO: Thank you, Donna.

10 Is there a second?

11 MEMBER GADARIAN: I second.

12 CHAIR MACARIO: Okay. Any discussion?

13 (No response.)

14 CHAIR MACARIO: Hearing none, all in favor?

15 (Response.)

16 CHAIR MACARIO: All opposed?

17 (No response.)

18 CHAIR MACARIO: Okay. That carries unanimously.

19 Next item, Public Testimony. Do we have any public  
20 testimony today?

21 MS. VICENS: Chair, we do not.

22 CHAIR MACARIO: Thank you.

23 Next item, Old Business, a, Financial Disclosure  
24 Statements: None.

25 B, Communication Items: Review and Approval of

1     Advisory Opinion No. 19 A-7 from Cy Fukagawa, Real Property  
2     Appraiser III, dated July 1st, 2019 regarding Board's  
3     direction in order to avoid potential conflict of interest  
4     with a part-time job pursuant to Article 10, Section 10-4 of  
5     the Code of Ethics.

6             Is Mr. Fukagawa here today?

7             Yes, sir. Would you mind just coming up real  
8     briefly? You can either go to the podium or the -- or the  
9     table, whichever is more convenient for you.

10            So good afternoon. Thank you for coming in. We  
11     received your materials. Do you have any sort of additional  
12     information you can provide about the nature of the work that  
13     you propose to do and what it is that you do for the county in  
14     your full-time job?

15            MR. FUKAGAWA: Sure. Yeah. So, actually, it was  
16     recommended by my administrator Marcy Martin to seek an  
17     opinion from the board of ethics to see if it's okay or  
18     allowed for me to pursue a real estate salesperson's license  
19     with which I would represent buyers and sellers in the  
20     marketplace, the local real estate market, as well as my  
21     full-time job as a real estate appraiser for the county. So I  
22     wanted to seek an opinion if that was ethically allowed or  
23     okay.

24            I have a -- my supervisor couldn't be here today.  
25     He did write a letter of recommendation approving,

1 potentially, me pursuing obtaining a license.

2 CHAIR MACARIO: Okay. Did you bring that letter  
3 with you?

4 MR. FUKAGAWA: Yes.

5 CHAIR MACARIO: Okay. Would you mind passing that  
6 to Cory, please.

7 CHAIR MACARIO: What is your supervisor's name, sir?

8 MR. FUKAGAWA: Kyle Shimizu.

9 CHAIR MACARIO: Thank you.

10 So just for the record, I'm going to read this.  
11 It's dated today, August 14.

12 "To Whom It May Concern:

13 "For the past three years Cy Fukagawa has worked as  
14 a real estate appraiser here in the real property tax  
15 department under my supervision. Cy has proven himself to be  
16 responsible, dedicated and reliable.

17 "Approximately one month ago Cy approached me to ask  
18 if it was okay for him to consider pursuing a real estate  
19 license. His reason was to have the potential to make a  
20 supplemental income to better support his family. My  
21 understanding is that he would be a real estate salesperson  
22 representing buyers or sellers outside of work hours, which I  
23 approved.

24 "I am confident in his abilities to fulfill his  
25 current duties as an appraiser without the real estate

1 salesperson's tasks impacting his work. I can personally  
2 recommend him to pursue this path while having no conflicts of  
3 interest with his decision" -- "position.

4 "Signed, Kyle Shimizu."

5 Thank you for bringing that.

6 At this time I'd like to open it up to the other  
7 board members to see if anyone has any questions for  
8 Mr. Fukagawa.

9 MEMBER GADARIAN: Yes, I have questions.

10 So what -- what -- are you interacting with  
11 individual parcels as an appraiser or are you -- as your job?  
12 Are you going out to appraise different parcels in Maui  
13 County?

14 MR. FUKAGAWA: So the nature of our work is mass  
15 appraisal as opposed to an individual appraisal which is done  
16 in the private sector. For instance, when you get a refinance  
17 or when you go to purchase a house or a condo, the banks  
18 require a real estate appraisal which is done in a private --  
19 so it is a very specific appraisal of that specific property.  
20 To answer your question, we don't do that. We take -- we do,  
21 however, take individual sales that occurred in the  
22 marketplace within -- you know, we take the whole -- we take,  
23 actually, one year's worth of sales and apply it to that  
24 neighborhood, so to speak. So it's not an individual  
25 appraisal, if that answers your question.

1           MEMBER GADARIAN: Yes. So I -- I think the concern  
2 would be if you are trying to get a listing or sale on a  
3 property with your knowledge of -- of that and the -- and the  
4 owners, if that would overlap on to your job.

5           MR. FUKAGAWA: I don't think so and my supervisor  
6 agrees with me on that. Because of the nature of our work, we  
7 take -- we don't just use one sale and apply it to everyone,  
8 we take the whole batch of sales and we try to take out the  
9 outliers and try to smooth it out and then we apply that  
10 benchmark, as we call, to that specific neighborhood, so it's  
11 not like a single property would determine the outcome of the  
12 mass appraisal that we do.

13           MR. MURAI: Rachel had a question.

14           CHAIR MACARIO: Rachel, why don't you go ahead,  
15 'cause I saw you raise your hand. Thank you.

16           MEMBER PHILLIPS: Thanks.

17           I have a couple questions regarding whether or not  
18 you would be involved in, say, if somebody were to appeal  
19 their taxes. Would you be involved in that process at all?

20           MR. FUKAGAWA: It depends on -- we have specific  
21 areas, but it does happen to fall in my area, then, yes, I  
22 would have oversight or influence on that opinion.

23           MEMBER PHILLIPS: And then also exemptions. When  
24 people apply for certain exemptions, are you responsible for,  
25 you know, determining whether or not they would be entitled to

1 an exemption?

2 MR. FUKAGAWA: If you're referencing the homeowner  
3 exemption, no, I would not have a -- it is handled by a  
4 different department, so no.

5 CHAIR MACARIO: Dave, did you have a question?

6 MEMBER WEISS: I think Rachel just covered it.

7 CHAIR MACARIO: Okay.

8 Go ahead, David.

9 VICE CHAIR COURSON: Yes.

10 Thank you for coming. My question is: Are you  
11 seeking a salesperson's or a broker's license?

12 MR. FUKAGAWA: A salesperson's, so I'd be under a  
13 broker, a broker's license.

14 VICE CHAIR COURSON: And so if successful, will you  
15 be affiliated with an existing company?

16 MR. FUKAGAWA: Yes. I'd have to choose one. I  
17 haven't done that, I haven't even pursued the exam. This is  
18 kind of like a pre-step. I'm not sure if I will, frankly,  
19 pursue it. This is just something that I wanted to seek and  
20 see if it would be permissible, first, and then next I have to  
21 do my due diligence on the business end of things and see if  
22 it's worth pursuing.

23 VICE CHAIR COURSON: Thank you.

24 CHAIR MACARIO: Is there a sort of geographic region  
25 that you would focus on in this new position? For example,

1 Maui County?

2 MR. FUKAGAWA: Yes.

3 CHAIR MACARIO: Hawaii generally? What would it be?

4 MR. FUKAGAWA: Maui County specifically.

5 CHAIR MACARIO: Okay.

6 MR. FUKAGAWA: Just -- probably just Maui.

7 MEMBER WEISS: Your appraisal is basically to find  
8 the tax assessment for that neighborhood?

9 MR. FUKAGAWA: Yes.

10 VICE CHAIR COURSON: Tax assessment and real estate  
11 appraisal for a sale is completely different, so yeah.

12 MR. FUKAGAWA: Yeah.

13 CHAIR MACARIO: Okay. Any other questions for  
14 Mr. Fukagawa?

15 Go ahead, Bill.

16 MEMBER CURTIS: So as I understand it, your job,  
17 you're looking at previous sales information that's already  
18 occurred and it's not really giving you any specific -- is  
19 there any specific knowledge that you have in your county  
20 position that would be an advantage to you as a realtor over  
21 other realtors or are you looking backwards rather than --

22 MR. FUKAGAWA: I don't see how it would --  
23 personally, I don't see how it would benefit me. The only way  
24 I can see it benefiting me is that I have specific knowledge  
25 on how the taxes are calculated and the process that's behind

1 it to explain to a potential buyer, 'cause a lot of times they  
2 don't understand. Based on the nature of my work, I get a lot  
3 of questions, so that tells me they don't understand the full-  
4 on process or, you know, the details that go into the case, so  
5 to speak, so in that sense, I would say I have perhaps an edge  
6 knowing the process in which we derive the values and then how  
7 the bill is calculated. But in terms of having insider  
8 knowledge on --

9 MEMBER CURTIS: Ability to influence.

10 MR. FUKAGAWA: -- certain properties, ability to  
11 influence -- because we actually -- if I was, say, in the  
12 planning department, perhaps I would have a leading edge  
13 because they're the first to know of upcoming developments, so  
14 to speak. But in our department, we're actually the last to  
15 know, because we get the building permits after they're  
16 completed.

17 MEMBER CURTIS: Okay.

18 MR. FUKAGAWA: So we actually are last -- well,  
19 actually, we are behind the market in that sense. So I  
20 wouldn't have market-specific knowledge, I don't believe, that  
21 would benefit me.

22 CHAIR MACARIO: So if we were to say that this is  
23 not a conflict of interest or that you can procedure under  
24 certain conditions, how would you go about separating your  
25 county job and time spent doing that versus what you plan to

1 do in your personal side business, if you will?

2 MR. FUKAGAWA: Yeah. So, of course, I'd not do it  
3 during business hours. If I absolutely had to, I'd have to  
4 request vacation, which would have to be approved by my  
5 supervisor ahead of time. But I don't foresee me doing that.  
6 Taking calls, for instance, during work hours or doing  
7 showings or -- as I just talked about, everything would be  
8 done either after-hours or on the weekends or on holidays so  
9 that there is no muddying up, so to speak, of time commitment  
10 to the county in my full-time job.

11 CHAIR MACARIO: Okay. Thank you.

12 Gary, do you have any questions?

13 MR. MURAI: No.

14 CHAIR MACARIO: Okay. Any other questions for  
15 Mr. Fukagawa?

16 (No response.)

17 CHAIR MACARIO: All right. Thank you very much,  
18 sir. Appreciate your time.

19 MR. FUKAGAWA: Thank you.

20 CHAIR MACARIO: So I'd just remind the Board that  
21 Mr. Fukagawa has asked us for an advisory opinion on whether  
22 he can proceed in this fashion and if so, under what  
23 conditions. So at this time I'll entertain a motion from  
24 anyone as to what they think the outcome should be and then  
25 we'll have discussion based on that motion.

1 MEMBER CLAYTON: I move to permit him to move  
2 forward with the exam and work in the field of real estate.

3 CHAIR MACARIO: Okay. So it would be, essentially,  
4 a motion to provide an advisory opinion that he can proceed in  
5 the manner that he's requested?

6 MEMBER CLAYTON: Yes.

7 CHAIR MACARIO: Okay. Is there a second?

8 MEMBER GADARIAN: Second.

9 CHAIR MACARIO: Any discussion on that?

10 MEMBER WEISS: I don't know if it's discussion, but  
11 just as advice, I was -- have been a real estate broker for  
12 over 30 years, I don't practice really any longer, but people  
13 want information right away. If you have a listing or you're  
14 in the middle of a sale or there's an appraiser or there's,  
15 you know, an inspector or, you know, somebody there; they're  
16 going to want information right then and your clients will  
17 expect you to answer the phone. That's the only comment I  
18 want to make.

19 CHAIR MACARIO: That's a good comment.

20 Rachel, do you have any -- I know you're in this  
21 business yourself.

22 MEMBER PHILLIPS: Yeah. The same, I would agree  
23 with David. It's going to be -- it will be hard to separate  
24 the time. It's not a 9:00 to 5:00 sort of job, you'll get  
25 call during the day.

1 I guess the only thing I would say is if it were to  
2 come up that you were representing a property in an appeal  
3 that you had some kind of interest as a representative of one  
4 of the parties, that I would recommend that you recuse  
5 yourself in that particular case. I don't know how that would  
6 work, but just --

7 CHAIR MACARIO: Well, we could certainly include  
8 that in the advisory opinion, that in the event he becomes  
9 aware of a potential conflict, he should certainly disclose it  
10 and likely recuse himself. We've used that kind of language  
11 before, right, Gary?

12 MR. MURAI: Mm-hmm.

13 CHAIR MACARIO: Okay. Any other discussion on --

14 MEMBER CLAYTON: I'm sure -- I'm sure you probably  
15 already are thinking this way, but you wouldn't -- your  
16 contact info for your clients would not include your work  
17 phone number; right?

18 MR. FUKAGAWA: Yeah.

19 CHAIR MACARIO: Yeah. We've had that problem  
20 before, so make sure --

21 MEMBER CLAYTON: Yeah. You want to be sure not to  
22 include your work phone number or --

23 MR. FUKAGAWA: Just a personal cellphone.

24 MEMBER CLAYTON: Yeah, it would have to be, so that  
25 you wouldn't receive any calls at work and --

1 MR. FUKAGAWA: The only time I would take it to  
2 answer that would be during lunch, my lunch period, which is  
3 unpaid. So I could return calls at that time or after --  
4 before or after work.

5 To touch on the appeal situation, if that situation  
6 did come up, I would ask my supervisor to have another  
7 appraiser handle it so there would be no potential conflict or  
8 what could appear as a favorable or not favorable outcome.

9 CHAIR MACARIO: All right.

10 MEMBER WEISS: I think one other thing that we've  
11 come -- that's come to this board before is that using your  
12 county position in like advertising or a website for your real  
13 estate, included in your information about you that you're a  
14 tax -- you know, you work for the county, leave all that out.

15 MR. FUKAGAWA: Disclosure.

16 MEMBER WEISS: Yeah, you just don't want to use that  
17 as a reference point.

18 MR. FUKAGAWA: Oh, sure, sure. Like a sales --

19 MEMBER WEISS: Yeah, just like promotional -- we've  
20 seen that.

21 MR. FUKAGAWA: I'm sure. I wouldn't.

22 MEMBER CLAYTON: Yes.

23 CHAIR MACARIO: All right. Any other discussion?

24 (No response.)

25 CHAIR MACARIO: All right. Hearing none, all in

1 favor of -- you have something, Gary?

2 MR. MURAI: I just wanted to -- before we take a  
3 vote, I just wanted to clarify. You know, I know that Board  
4 Member Clayton has made the motion and -- because I need to  
5 write this up, I just wanted to make sure that I understand  
6 what the board's -- what the board is voting on. My  
7 understanding based on what I've heard is that the board will  
8 be voting to -- on whether or not -- as Board Member Clayton  
9 says, her motion was a finding that Mr. Fukagawa's  
10 potential -- potentially becoming a real estate salesperson is  
11 not incompatible with his -- with his duties as a county  
12 employee. And as Mr. Fukagawa has pointed out himself, he's  
13 aware that all work -- all work done in his outside business  
14 interests must be done on his own time, not using county time  
15 or county resources. And that should any of his clients or  
16 prospective clients be involved in any kind of appeal, like,  
17 let's say, an appeal of a real property tax appraisal, that he  
18 must disclose his relationship and also, as he suggested, he  
19 would have his supervisor appoint someone else to handle the  
20 appeal. Did I capture --

21 MEMBER CLAYTON: Yes.

22 MR. MURAI: -- the board's sentiment correctly?

23 CHAIR MACARIO: I believe so, yes.

24 MR. MURAI: Okay.

25 CHAIR MACARIO: All right. With that clarification,

1 all in favor?

2 (Response.)

3 CHAIR MACARIO: All opposed?

4 (No response.)

5 CHAIR MACARIO: Okay. That carries unanimously.

6 Thank you again, Mr. Fukagawa.

7 MR. FUKAGAWA: Thank you. Would I receive something  
8 in writing?

9 MR. MURAI: So, Mr. Fukagawa, what's going to happen  
10 is -- well, you already heard what the board has orally ruled.  
11 By the next meeting a written opinion will be drafted and  
12 you'll probably get it in about a month.

13 MR. FUKAGAWA: Sounds good. Thank you all.

14 CHAIR MACARIO: All right. The next item on the  
15 agenda is Item 4.c, Informal Hearing on Complaint No. 19-03 by  
16 a member of the public against a County official. And it  
17 appears as though the parties are here today. Is that  
18 correct?

19 Yes. Okay. Seeing some nods, I'm going to assume  
20 that's a yes.

21 Okay. So it seems to me that the first thing we  
22 have to do for this agenda item is to have the board decide on  
23 the complainant's request to amend the complaint to include a  
24 violation of Section 10-4-1(d) of the Charter of the County of  
25 Maui Code of Ethics, which provides "use county property or

1 personnel for other than public activity or purpose." I think  
2 that should be "use of the county's property or personnel for  
3 other than public activity or purpose."

4 So in preparation for this informal hearing, we  
5 consulted with corporation council, who advised that there,  
6 frankly, is no rule requiring that we agree to amend or  
7 prohibiting an agree to amend, so we have some discretion  
8 here. Recall that the requested amendment would cover the  
9 subject matter of the respondent allegedly using the resources  
10 of the county via I think it's the council services attorneys  
11 office to provide a response to one of the prior letters in  
12 the case.

13 And so I don't know if you want to give us any  
14 guidance on this, Gary, but it seems to me that the thing we  
15 should be considering is if we allow the amendment, we can  
16 theoretically resolve this matter completely today. If we  
17 decline to allow the amendment, then the complainant will have  
18 the option of filing a new complaint, which would require  
19 everybody to come back again for that complaint. So I think  
20 those are the main two options, unless I've misstated that,  
21 Gary.

22 MR. MURAI: No. I think -- Mr. Chair, I believe  
23 you're correct. As chair stated, you know, our rules are not  
24 explicit regarding things like amendments of complaint, but  
25 what I suggest the board consider is the fact that this is an

1 informal hearing where there are no rules of evidence, there's  
2 no rules of procedure like you would see in court. So the  
3 main thing the board needs to consider is if the board decides  
4 that you will accept the complainant's supplemental  
5 submissions and amend the original complaint and hear  
6 everything today, that's something that's within your  
7 discretion.

8 The only countervailing, you know, issue would be,  
9 you know, whether the respondent has had enough time to, you  
10 know, look at the new allegations and had sufficient time to  
11 address those.

12 But, Matt, I believe there are two, two amendments.  
13 There was one -- an earlier email and I can't find it off the  
14 top of my head, but --

15 MS. VICENS: Which one?

16 MR. MURAI: Ms. Schaefer had submitted the complaint  
17 in March of 2019 and there was a subsequent email soon  
18 thereafter.

19 MS. VICENS: So Ms. Schaefer --

20 MEMBER CURTIS: Tab 4?

21 MR. MURAI: Yes.

22 MS. VICENS: The original complaint, is that what  
23 you mean?

24 MR. MURAI: Oh, yeah, yeah. That's right. And it's  
25 -- in the members' packets, it's an email dated April 3rd,

1 2019, and it is --

2 MS. VICENS: Item No. 4.

3 MR. MURAI: Item No. 4 in your -- in your binders.  
4 As well as the more recent email that chair had referenced  
5 regarding use of county -- county property or county  
6 resources.

7 CHAIR MACARIO: So, Gary, I'm fairly confident that  
8 we have already agreed to accept the first amendment at a  
9 prior meeting.

10 MR. MURAI: Oh, okay. Okay.

11 CHAIR MACARIO: Because the original complaint, as I  
12 recall, was regarding conduct that occurred in 2017 --

13 MR. MURAI: Okay.

14 CHAIR MACARIO: -- which was outside the statute of  
15 limitations. But then the complainant supplemented that with  
16 an email that we then at a past meeting agreed to consider as  
17 an amendment to the original complaint.

18 MR. MURAI: That sounds familiar. Your memory's  
19 better than mine, Chair.

20 CHAIR MACARIO: So I think there is, if I'm not  
21 mistaken, just the one current pending request for an  
22 amendment.

23 MR. MURAI: Okay.

24 CHAIR MACARIO: And so at this point I think what  
25 would be -- before we have a discussion about it, would be to

1 give the respondent, Chair King, an opportunity to provide any  
2 response that she might have to that limited issue. Not the  
3 substance of the complaint, but whether the board should  
4 consider amending the complaint to include that new  
5 allegation.

6 Do you have any response to that, Chair King?

7 MS. KING: I do, yes. I think the complaint about  
8 using a county official for a complaint against a county  
9 official's official business is moot. And I've talked to corp  
10 council about this because they -- or not corp council, our  
11 council services attorney, who says they've often done this  
12 for other council members before. So the complaint came in  
13 against myself in my official duty, not in my private --  
14 private activities, so it was -- it was appropriate for our  
15 council attorney to advise on that.

16 CHAIR MACARIO: Let me just interrupt you for a  
17 second there. I probably didn't ask a good question. My  
18 question really is not your response to the allegation, but,  
19 rather, your response to whether you have sufficient  
20 information and sufficient notice at this point to respond to  
21 that additional allegation, should we include it in the  
22 complaint, or would you --

23 MS. KING: No, I haven't had a chance to respond.  
24 And I guess what you're asking is for a response relative to  
25 the attorney's time to advise?

1           CHAIR MACARIO: Basically, if I can distill it to a  
2 different question is: Are you prepared today to defend  
3 against this new requested amendment or would it be your  
4 position that the board should decline to amend -- decline to  
5 agree to amend the complaint to include that for now and then  
6 leave it up to the complainant to decide whether she would  
7 like to --

8           MS. KING: Well, I think that would be wise, because  
9 I -- you know, if I had more time, I could actually get the  
10 attorney to write the letter that -- you know, in his  
11 statement to me, because that was one of the questions I asked  
12 him, is it all right to use your -- your time to advise me on  
13 this since it was a complaint against my work as a council  
14 member and they're there to advice council members. So that's  
15 what I would do if you put it off and I'll have him write the  
16 letter to you folks.

17           CHAIR MACARIO: Okay. So, Fellow Board Members, I  
18 think we can interpret Chair King's response as being she does  
19 not believe that she has sufficient notice to respond to that  
20 allegation or would like more opportunity to respond. That  
21 doesn't mean that we're -- that's binding on us, but that's  
22 her position.

23           MR. MURAI: Do you want to ask Ms. Schaefer --

24           CHAIR MACARIO: Yeah. Ms. Schaefer, do you have --  
25 I mean, obviously we've received your materials, but would you

1 like to add something?

2 MS. SCHAEFER: Yes, I would.

3 CHAIR MACARIO: Go ahead.

4 MS. SCHAEFER: Is it all right -- can you all hear  
5 me if --

6 CHAIR MACARIO: Well, it's better if you either come  
7 to the table or the podium, either way.

8 MR. MURAI: Ms. Schaefer, if -- maybe you could -- I  
9 know it's difficult, you've got some mobility problems, but if  
10 you'd like to set yourself up at the table in front, that --  
11 yeah. You can remain there.

12 MS. SCHAEFER: Sure. Should have stayed off that  
13 skateboard.

14 So what I -- what I would like to say is the past  
15 practices -- I went back to the various opinions -- the  
16 opinion that is cast on -- the various opinions that have been  
17 issued by the board of ethics and one of them concerned then  
18 Council Chair Mike White and the Maui Visitors Bureau. There  
19 was a complaint filed and -- about Mike White voting, because  
20 he is general manager of a hotel in Lahaina, that he was  
21 charged that he had a conflict of interest by a member of the  
22 member public and then a formal complaint was submitted to the  
23 board of ethics. I remembered that and I remembered that Mike  
24 had a private attorney and I called him and asked him why was  
25 that and he said because he was advised by corp council that

1 because it was related to his private job, his job as manager,  
2 it was not related to his position as a -- as a council  
3 member, that he needed --

4 CHAIR MACARIO: Can I interrupt you? I'm sorry,  
5 Ms. Schaefer. I've got -- we're all suffering from the same  
6 problem, which is that we're kind of focused on a very narrow  
7 issue right now.

8 MS. SCHAEFER: That's the point I'm making.

9 CHAIR MACARIO: Okay.

10 MS. SCHAEFER: And I'm right at the end of it.

11 CHAIR MACARIO: Okay. Good.

12 MS. SCHAEFER: I appreciate it.

13 CHAIR MACARIO: I apologize.

14 MS. SCHAEFER: So what he was advised was that  
15 because it was private, it was related to his private job,  
16 that he could not use any county resources and he did have  
17 a -- have his own private attorney. I think that's directly  
18 parallel to what we're talking about here. And the fact that  
19 this is related not to Miss King's legislative job, it's  
20 related to her wearing the hat of Pacific Biodiesel and  
21 Pacific Biodiesel, therefore, should -- I suppose it could go  
22 either way, but now you've got a double standard. Is it --  
23 for one similar case are you going to say you have to have  
24 private council and for the next one with the very same kind  
25 of circumstances that it's all right to use the county's

1 resources?

2 CHAIR MACARIO: All right. Thank you. I don't know  
3 that we need to clarify, do you?

4 (Conferring with corp council.)

5 MR. MURAI: If I may.

6 CHAIR MACARIO: Yeah. Go ahead.

7 MR. MURAI: Ms. Schaefer, I -- as the chair was  
8 trying to articulate earlier, you know, the only issue  
9 regarding the use of, you know, the council services attorneys  
10 that's on the table right now is whether the -- your original  
11 complaint should be amended to include your recent allegation  
12 because -- and what -- what the chair is trying to elicit from  
13 you is a response to Ms. King's position that it should not be  
14 heard today because she needs more time to address it or to  
15 rebut it.

16 So if the board decides to take it up today, it will  
17 all be handled today. If the board decides to deny or if  
18 the -- if the board decides that it is -- if the board agrees  
19 that Ms. King needs more time to address it, then it'll be  
20 heard on another day. So, in other words, that's the issue,  
21 not whether -- we're not getting to the substance or we're not  
22 getting to the -- whether anything -- any ethical rule was  
23 violated at this moment. The only issue at this moment is  
24 whether it should be all consolidated and heard today or  
25 whether that one issue of using county resources or county

1 personnel should be heard on another day. In other words,  
2 Ms. King says, I need more time because the -- she needs for  
3 the attorney to write a letter.

4 MS. SCHAEFER: It seems to kind of compound the  
5 error, if you think about it. The complaint is using county  
6 resources and she needs more time to use more county resources  
7 because she's going back and using county staff. So if  
8 Ms. King needs more time, that's fine. I'll be back, I will  
9 resubmit the complaint. I believe it's an issue that needs to  
10 probably be permanently clarified, so I have no problem with  
11 that. It seems logical, though, to hear it today all at once.

12 MR. MURAI: Okay. Thank you.

13 CHAIR MACARIO: All right. Okay. With -- now that  
14 the complainant and respondent have both weighed in on that  
15 issue, does any board member wish to make a motion on whether  
16 we should --

17 MEMBER CURTIS: Make a motion to defer the new  
18 complaint to a later time.

19 CHAIR MACARIO: Okay. So the motion is to deny the  
20 request for the amendment and to defer it for some future time  
21 if and when the complainant decides to bring a new complaint.  
22 Is that right, Bill?

23 MEMBER CURTIS: Yes.

24 CHAIR MACARIO: Okay. Is there a second?

25 MEMBER CLAYTON: Second.

1 CHAIR MACARIO: Any discussion on that?

2 MEMBER GADARIAN: Run through that one again,  
3 please.

4 MEMBER CURTIS: Sure. We'll consider everything  
5 we've talked to up to date today.

6 MEMBER GADARIAN: Yes.

7 MEMBER CURTIS: We're only excluding the brand-new  
8 complaint --

9 MEMBER WEISS: The amendment.

10 MEMBER CLAYTON: The amendment.

11 MEMBER CURTIS: -- as far as today.

12 CHAIR MACARIO: Yeah, that's my understanding of the  
13 motion. So just to clarify --

14 MEMBER CURTIS: That's what I'm trying to --

15 CHAIR MACARIO: Yeah. The request from the  
16 complainant, Ms. Schaefer, is that we amend her prior  
17 complaint to include the new allegation that the county  
18 resources were used. Chair King has objected to that request  
19 for an amendment, saying she needs more time to respond.  
20 Commissioner Curtis has brought a motion saying, Okay, we'll  
21 hear everything except for that new allegation and then the  
22 complainant can decide whether she wants to bring an  
23 allegation in the future.

24 MEMBER GADARIAN: So the motion is that we would  
25 hear everything today that was originally presented?

1 CHAIR MACARIO: Originally -- well, yes, the --  
2 essentially the issue there would be whether commissioner --  
3 or Chair King committed a violation of the board of ethics by  
4 the discussion in the county council about the biodiesel  
5 issue. What would be excluded is her response to one of the  
6 letters where she used a -- apparently, a council services  
7 attorney to assist her, that part would be delayed for future  
8 proceedings if the complainant or someone chooses else to  
9 bring it.

10 MEMBER CURTIS: The other option is to hear  
11 everything today.

12 CHAIR MACARIO: Right. But the motion on the table  
13 is to separate them.

14 MR. MURAI: And, Mr. Chair, if I may. So the record  
15 is clear, we are referring to Ms. Schaefer's July 17th, 2019  
16 letter. It is tabbed as Document No. 16 -- I'm sorry, 17 in  
17 your materials.

18 CHAIR MACARIO: Okay. So before -- before we have a  
19 discussion, David, there's been a motion to defer and to deny  
20 the amendment, is there a second to that motion?

21 MR. MURAI: Donna did.

22 MEMBER CLAYTON: I seconded.

23 CHAIR MACARIO: Oh, I'm sorry, I missed -- I missed  
24 the second. Okay. So any discussion?

25 MEMBER GADARIAN: To deny the amendment.

1 CHAIR MACARIO: Right.

2 VICE CHAIR COURSON: Yes, Mr. Chair. Just some  
3 clarification, the motion, then, is to defer the hearing on  
4 Complaint No. 19-03 and --

5 MR. MURAI: No, no, no.

6 VICE CHAIR COURSON: That is not correct?

7 CHAIR MACARIO: Well, I think that is the word that  
8 Commissioner Curtis used, but I don't think we can actually do  
9 that.

10 MR. MURAI: No.

11 CHAIR MACARIO: I think it's essentially to deny the  
12 amendment at this time.

13 MEMBER CURTIS: Yeah, to deny the amendment.

14 VICE CHAIR COURSON: Okay. That's where I wanted  
15 clarification because I -- my understanding was that Bill  
16 moved to defer Complaint No. 19-03, but that is not the case.

17 MEMBER CURTIS: No. I'm sorry, I misspoke. It's to  
18 defer the amendment.

19 VICE CHAIR COURSON: The amendment. Thank you.

20 CHAIR MACARIO: And, again --

21 MEMBER WEISS: Essentially the amendment in lieu of  
22 a new complaint.

23 CHAIR MACARIO: Yes.

24 MEMBER WEISS: So hear everything else, but if the  
25 complainant wants to reintroduce it not by way of amendment,

1 but just as a way -- by way of a new complaint.

2 CHAIR MACARIO: Yes. And, again, we're not  
3 suggesting that that should or should not happen, but I think  
4 the motion is that we will not address it today.

5 MR. MURAI: So to be clear, the board in -- the  
6 action the board is taking in regard to Ms. Schaefer's  
7 July 17, 2019 is to decline to hearing that, the matters  
8 raised in that letter today, and we will leave it to  
9 Ms. Schaefer to resubmit it if she so choses. And it would  
10 probably be, you know, identified as a separate -- a new  
11 complaint, 19 dash whatever.

12 MEMBER WEISS: That's what I understood.

13 MR. MURAI: So we are hearing 19-03 today, it's just  
14 that the allegations regarding misuse of county resources will  
15 be for another day. Is that clear?

16 MEMBER GADARIAN: Yes.

17 VICE CHAIR COURSON: Yes.

18 CHAIR MACARIO: Thank you. You said it much better  
19 than I could have.

20 All right. Any other discussion on the pending  
21 motion?

22 (No response.)

23 CHAIR MACARIO: Hearing none, all in favor?

24 (Response.)

25 CHAIR MACARIO: All opposed.

1 (No response.)

2 CHAIR MACARIO: Okay. That carries unanimously.

3 Okay. So with that, we will proceed with the  
4 informal hearing on the balance of Complaint 19-03 and I think  
5 what we will do first is give the complainant, Ms. Schaefer,  
6 an opportunity to make an opening -- any opening remarks you  
7 might like to make or if you'd like to rely on your materials  
8 which we, of course, reviewed. Again, the only caution I  
9 would give again is that we're not going to be discussing the  
10 county property component today, so just the council testimony  
11 issue.

12 Go ahead.

13 MS. SCHAEFER: Thank you. I brought this -- this  
14 issue came up in 2017 and the original complaint was filed  
15 related to 2017. It doesn't -- in 2017 there was a discussion  
16 for a -- a recommendation for a biofuel tax and it was denied  
17 after some discussion at the council that I thought was  
18 substantially representing -- Mrs. King was substantially  
19 representing her private business interests. Appropriately  
20 so, the complaint was invalid in terms of the evidence that I  
21 had submitted was 2017 and the statute of limitations had run.

22 But about six days after I submitted the original  
23 complaint there was testimony at the budget hearings about the  
24 mayor's proposed 12 cent biodiesel road tax and in that  
25 hearing, while Ms. King did say she would recuse herself from

1 voting, she then proceeded to make some substantially personal  
2 comments related to her business. And I -- I have attached  
3 the transcript which clearly points out she says things like  
4 that there are -- it would cause -- it would cause us to lose  
5 money, it would cause us possibly to shut down our -- our  
6 pumps, we would lose -- we'd probably lay off a couple of  
7 employees. It was very, very specific as it related to her  
8 business. And she says, I take this very personally. She  
9 said it would probably cost a lot of people -- or cost a  
10 couple of people their jobs. As the only biofuel supplier in  
11 the state of Hawaii, it clearly is representing her business.

12 On -- so I submitted that testimony. Then again in  
13 May at the regular council meeting Ms. King said, If I were  
14 not involved personally, I would vote the same way. I thought  
15 that -- she said if I was not involved personally, that she  
16 was showing her -- that she was conflicted in the matter.

17 In her -- she provided written testimony and in that  
18 testimony she cited council rules and she cited Council Rule  
19 C, but she didn't cite Council Rule D, which says that, "an  
20 abstaining member shall be permitted to participate in  
21 discussions of matter provided that member shall refrain from  
22 advocating the member's interest on which the abstention is  
23 based for any discussion. So even council rules would  
24 preclude her discussing personal aspects of the business.

25 Her testimony speaks for itself. She addressed

1 potential lost income, lost customers, employees, and she  
2 brought in her specific --

3 MR. MURAI: Excuse me. Ms. Schaefer, when you're  
4 referring to something that you're reading, for the benefit of  
5 the board, could you tell us like the -- you know, which  
6 document it is? Because we have -- all of the members have  
7 your documents in front of them. So if you could refer  
8 them --

9 MS. SCHAEFER: Certainly.

10 MR. MURAI: -- as like refer to, you know, "my  
11 letter dated" whatever.

12 MS. SCHAEFER: All right. The information that I am  
13 quoting from is from my letter, but the attachments. For  
14 instance, the transcript of the hearing is Exhibit A. Oh,  
15 that's the -- excuse me, is Exhibit B.

16 MEMBER CURTIS: So tab 15 has the council language  
17 on page --

18 MR. MURAI: No, no. Ms. Schaefer only -- only your  
19 exhibits are tabbed. That was -- Cory did that for your  
20 benefit.

21 MEMBER CURTIS: Oh, okay. Okay.

22 MR. MURAI: So, Ms. Schaefer, you'd have to help us  
23 out a little bit.

24 MS. SCHAEFER: Okay. So would you like for me to  
25 go -- go back in terms -- and start from the beginning because

1 the essence --

2 MR. MURAI: No, no, no. I'm sorry. No need to  
3 start from the beginning, just if it's --

4 MS. SCHAEFER: The council --

5 MR. MURAI: Yes.

6 MS. SCHAEFER: Okay. Got it.

7 The council rules are Exhibit D, page 9.

8 MEMBER CURTIS: Yeah. Our tab 15.

9 MEMBER LEWIS: 15?

10 MS. VICENS: The tab that we're -- she's referring  
11 to in your packets is tab 21, those were documents that  
12 Ms. Schaefer submitted on August 5th.

13 MEMBER CURTIS: So tab?

14 MS. VICENS: 21.

15 MEMBER CURTIS: 15 is the council rules.

16 MS. SCHAEFER: I'm sorry. I don't have the tabs, so  
17 I can only give you the exhibits.

18 MEMBER CLAYTON: Right, right.

19 MR. MURAI: No. That's our -- that's on us,  
20 Ms. Schaefer.

21 MS. VICENS: Ms. Schaefer, the public book is right  
22 near you there and the tabs are listed in there.

23 MR. MURAI: Oh, good idea.

24 MS. SCHAEFER: Okay, all right.

25 MEMBER GADARIAN: Very good.

1 MS. SCHAEFER: So I think that the rule D, if you  
2 are -- if you're doubting -- is 15, you said?

3 MEMBER CURTIS: That's another tab in here, is the  
4 council's rule. Page 11 of our tab 15.

5 MS. VICENS: Tab 15 are documents that Chair King  
6 submitted on 7/10. Ms. Schaefer submitted her documents,  
7 they're all together. The cover page she's referring to as  
8 Exhibit D --

9 Rule 9, Ms. Schaefer, is that what you said?

10 MS. SCHAEFER: Yes.

11 MS. VICENS: So tab 21, Exhibit D, Rule 9.

12 MEMBER LEWIS: I found it.

13 MEMBER CURTIS: I was looking at the same page in a  
14 different tab. It's your Exhibit D.

15 (Multiple speakers.)

16 THE REPORTER: Guys.

17 MR. MURAI: One second. Order.

18 Folks, we -- only one person can speak at a time,  
19 this is being transcribed, so...

20 CHAIR MACARIO: All right. Sorry for the  
21 interruption, Ms. Schaefer. Are you concluded with your  
22 remarks or would you -- do you have more to say?

23 MS. SCHAEFER: No. I kind of got discombobulated.

24 CHAIR MACARIO: Okay.

25 MR. MURAI: Yeah. I'm sorry if I --

1 MS. SCHAEFER: No, that's all right. No. I want --  
2 I want you all to be able to see the correct documents that are  
3 being referred to.

4 So I think the most important document in this is  
5 the transcript of the minutes of the meeting in March, which  
6 is page 13 of 21. It's actually page 38.

7 MEMBER CURTIS: Okay. Got it.

8 MS. SCHAEFER: Okay?

9 And in regards to the council rules, if -- even if  
10 the council rules allowed discussion of a private --  
11 representing a private business, the charter does not, it  
12 prohibits it, so... The charter always trumps any other  
13 rules.

14 I think at one -- the only other thing I'd like to  
15 add is that the concern here is simply that there be a very  
16 clear -- a clarification, a good clarification of what  
17 constitutes representing your private interest as a member of  
18 the council -- as any elected official, I won't exclude the  
19 mayor, so... And that doesn't -- apparently, that doesn't --  
20 isn't clear, even though back in July of 2018 when the  
21 discussion of diesel fuel taxes were up and --

22 Ms. King asked Chair Hokama about whether she had a  
23 conflict and whether she could vote and he responded, "Ask  
24 corp counsel."

25 And corp counsel responded, "In general, ethical

1 mirrors" -- "ethical matters, we recommend get an opinion from  
2 the board of ethics. As long as council rules, I leave it to  
3 the body."

4 She did not seek an opinion, she never has sought an  
5 opinion for this clarification. That's it.

6 CHAIR MACARIO: All right. Thank you, Ms. Schaefer.

7 Okay. Chair King, would you like to respond to the  
8 complaint?

9 MS. KING: First let me -- thank you for having me.  
10 First let me respond to that last statement because that was  
11 inaccurate. I have the minutes here from that meeting in 2018  
12 with Mr. Hokama chairing that meeting and he basically  
13 mentioned, "Rule 7 of the council conflict area repeats" --  
14 "repeats that Mrs. King can participate in discussion, but  
15 will not be able to vote specifically."

16 And I asked him if we should take a break, and it  
17 was myself that asked him, "Should we take a break and get  
18 corp. counsel's opinion?"

19 He said, "No. I know the council rules even if you  
20 don't." And that's in the -- I think I gave you these minutes  
21 before.

22 MEMBER CLAYTON: Yeah.

23 MS. KING: And Chair White said, "He said you  
24 could -- he said you could, you know, discuss it. He said you  
25 could vote on the -- you could make the motion on the diesel

1 fuel" -- "on the biodiesel fuel."

2 So the statement that Chair Hokama, the committee  
3 chair, had asked for a ruling from corp counsel is not true.  
4 He actually overrode my request for an opinion from corp  
5 counsel and said, "I know the rules, I'm the chair, I'm  
6 telling you you can -- you can make the motion." So he was  
7 the one encouraging me to make the motion on the diesel tax  
8 and that's the reason -- and he --

9 I talked to Chair Hokama, he said he was going to  
10 submit something to the board of ethics to find out if we were  
11 okay with all of it, 'cause I guess he thought about it. And  
12 I reminded him that if he was going to make a charge, it would  
13 basically be against the chair of that committee, because the  
14 chair urged me to make those -- make the motion and I was just  
15 following what the chair and what the body -- the chair of the  
16 committee, the chair of the council had said in the  
17 background, and other council members were saying.

18 So I was not allowed -- you know, I -- I suggested  
19 to take a recess and ask corp counsel and I was denied the  
20 recess. So I believe -- so I think the point that Ricky  
21 Hokama was making was that it's up to the -- the protocol is  
22 up to the chair of the committee, whether they allow certain  
23 discussions or not. And so as a member of the committee, you  
24 know, I was not -- you can't override what the chair -- the  
25 procedure that the chair opts to take.

1 CHAIR MACARIO: All right. Thank you. Did you have  
2 a response to the allegations regarding your more recent  
3 testimony which I think is in April of this year that --

4 MS. KING: Chair, I --

5 CHAIR MACARIO: Specifically that those comments are  
6 in violation of -- I think the complainant referenced Rule  
7 9(d), which -- and I'll just read it for the record.

8 "Abstaining member's participation: An abstaining member  
9 shall be permitted to participate in the discussion of the  
10 matter provided that the member shall refrain from advocating  
11 the member's interests on which the abstention is based during  
12 the discussion and further provided that the member shall not  
13 attend any executive meeting on the" -- "on the matter." What  
14 is your response to the complainant's suggestion that your  
15 commentary in April of this year violated that council rule?

16 MS. KING: Okay. I don't believe it did and I think  
17 if it did, it was incompetent upon either the chair of the  
18 committee or corp counsel who attended to make that statement,  
19 though, to -- you know, to state that I was going overboard.  
20 A lot of my -- if you read through the minutes, a lot of the  
21 testimony that I -- or a lot of the comments I made were in  
22 response to other council member's questions. So, you know, I  
23 was willing to answer questions because I have personal  
24 knowledge of what was going to happen. The fact that I did  
25 state, as Ms. Schaefer said, that I would be saying the same

1 things whether I owned the company or not, because I do have  
2 concerns about Maui County, because I knew one of the things  
3 that would happen if this tax went into effect -- it wasn't  
4 just people losing their jobs, but it was what -- it was a --  
5 kind of a technical issue.

6 And it was hard to try to relay all of the technical  
7 information in that meeting because I don't think everybody is  
8 capable of assimilating it in a short response, but, you know,  
9 my worry was that this was going to cause -- that looking at  
10 this in a vacuum, this kind of a tax in a vacuum, was going to  
11 cause a whole series of negative effects on the county, one of  
12 which has happened already, which is Pacific Biodiesel has  
13 stopped processing grease traps. October 1st that's all going  
14 to start going into the landfill again.

15 And so I was trying to explain to the -- to the  
16 council members that you can't just look at this in a vacuum,  
17 you have to look at the fact that the fuel is being made from  
18 the used cooking oil and the waste -- waste trap was being  
19 picked up as part of that whole model and if you don't look  
20 at -- and you can't just -- if you look at things in the terms  
21 of just user pays, then you're going to lose a lot of the  
22 benefits that are happening in another area and so -- so I was  
23 concerned that that was going to happen, that, you know, other  
24 benefits that we have throughout the county that affect our  
25 environment are -- are going to go away if this happens.

1           It was a really difficult -- it was difficult  
2 because so there's many technicalities. One of them has to do  
3 with what's happening with the composting operation and that  
4 contract and, you know, now that contract is going to be going  
5 away after a year and so all of that material is going to go  
6 back into the landfill, which really breaks my heart. And I  
7 had had a call from our -- our recycling coordinator, Hana  
8 Steele, who was really worried about it, urging me to talk to  
9 people in the county and go talk to DCM. And I said, "I'm not  
10 going to do any of that because I don't want to be in  
11 conflict. I will answer questions at the council if they ask  
12 me about it."

13           And it kind of relates to -- and I can't recall if I  
14 said in that particular statement or the year before, but if  
15 you look at things in just terms of user pays, we wouldn't  
16 have a bus system, because our user fees don't pay for the bus  
17 system. We wouldn't have a golf course, because our golf  
18 course fees don't pay for the golf course. We would probably  
19 start charging for things like the tennis courts and the  
20 swimming pools. And we've had council members propose that  
21 before, that if you look at just what it costs to operate  
22 something and not the peripheral benefits, we should charge  
23 people for the cost of operating. I don't believe that and I  
24 think it's in the best interests of the county to look at  
25 situations holistically. We want to take care of our elderly

1 and our handicapped and that's why we have a paratransit that  
2 costs us hundreds of thousands of dollars a year.

3 And so my explanation was -- you know, my concern  
4 for the county is that if you attack this company in this  
5 area, the -- it's actually costing money to pick up all the  
6 grease, process all the trap grease, so, you know, the only  
7 choice is to stop doing what's costing money because it was  
8 being supplemented by being able to sell the fuel with the  
9 lower tax or with the zero tax. So that was my concern and I  
10 think I -- you know, I thought about it, actually, before I  
11 made those statements and I felt obligated because I would say  
12 those same things, knowing that -- knowing what I knew,  
13 whether I owned a piece of the company or not. So I think it  
14 was -- it would have been -- it would have been an egregious  
15 thing to not answer those questions that council members had,  
16 not discuss those issues, and then let worse things happen,  
17 because, actually, there are other -- you know, had they gone  
18 further, there are other things that would have fell apart at  
19 the county level.

20 So, you know, it's hard when you -- when you have  
21 knowledge from -- I mean, part of why people elect you is  
22 because of your private life, you know, what you know, your  
23 knowledge that you've gained from your experience throughout  
24 your life, and if you don't bring that experience to bear in  
25 decision making, I think that's -- that's probably negligence

1 right there.

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

3 So that we can keep this going, I think the best  
4 thing for me to do next is to ask if anybody has any questions  
5 first for the complainant, Ms. Schaefer. And if so, I'll ask  
6 her to address those. And if not, we'll move on to Chair  
7 King.

8 Does anyone have any questions for Ms. Schaefer?

9 (No response.)

10 CHAIR MACARIO: Hearing none, does anyone have any  
11 questions for Chair King?

12 (No response.)

13 CHAIR MACARIO: Hearing none, thank you both very  
14 much.

15 Okay. So --

16 MS. SCHAEFER: May I just make two points.

17 CHAIR MACARIO: Sure.

18 MS. SCHAEFER: First of all, the discussion related  
19 to Ricky Hokama and what happened in 2017, there was no  
20 biodiesel tax on that agenda, there was no tax proposed on  
21 that agenda. Well, it was zero, so --

22 CHAIR MACARIO: Okay. Again, we're not talking  
23 about -- we're not -- we're not addressing what happened in  
24 2017 here today.

25 MS. SCHAEFER: No.

1 CHAIR MACARIO: We've already --

2 MS. SCHAEFER: I understand, but she made reference  
3 to that and it -- actually, that was 2018.

4 CHAIR MACARIO: Okay.

5 MS. KING: There was a proposal by the mayor --

6 MR. MURAI: Wait, wait, wait.

7 CHAIR MACARIO: Hang on. Let me just do one at a  
8 time, please.

9 Why don't you finish, Ms. Schaefer, and then --

10 MS. SCHAEFER: Yeah.

11 CHAIR MACARIO: -- I'll ask Chair King to respond.

12 MS. SCHAEFER: And the second issue is that it  
13 relates to the greater good of the county. There's a letter  
14 in your packet from Maui Disposal, which is their principal  
15 customer, as she testified. On page 41 of the minutes she  
16 said, "I can tell you that they are" -- referring to Maui --  
17 Maui Disposal, "that they will stop if the diesel goes up one  
18 penny and they're very cost conscious." So the problem would  
19 end up -- and biodiesel was in its infancy, petroleum was  
20 going up and it was easier for them if petroleum was higher.  
21 The point is, is in the letter, if you read the letter from  
22 Maui Disposal, they say, they would prefer no tax, but they  
23 would be willing to accept a three-cent tax on biodiesel.

24 CHAIR MACARIO: All right. Thank you.

25 Chair King, do you have a response?

1 MS. KING: Yeah. That was a new person at that  
2 company and we actually -- my husband ran that letter by his  
3 boss and they were not very happy with it.

4 But I do have a -- the part -- the mayor's budget  
5 here from 2018 where he proposed a 23 cents on biodiesel. I  
6 think what Ms. Schaefer is looking at is what was posted after  
7 the council voted it down to zero. So it was not accurate for  
8 her to say that the mayor didn't propose a tax, that there was  
9 no tax proposed, because it's here in the proposed budget.

10 CHAIR MACARIO: All right.

11 MS. KING: Which I can give to you. But, I mean,  
12 that's 2018, so that's still beyond the scope of the statute  
13 of limitations.

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

15 Okay. So at this point, Members of the Board, I  
16 think what we've been asked to do, again, is to respond to the  
17 complaint specifically that -- as I understand the complaint,  
18 and I don't mean to put words in Ms. Schaefer's mouth, but it  
19 appears as though the substance of the complaint is that  
20 although Chair King properly excused herself or recused from  
21 voting on the topic, that the discussion that she engaged in  
22 in the council chamber violated Rule 9(d), which, again, says  
23 that "any abstaining member shall refrain from advocating the  
24 member's interests on which the abstention is based."

25 So with that background, at this point I'll

1 entertain any motions that any board member may have on how to  
2 respond to the complaint.

3 MEMBER PHILLIPS: So, Matt, I guess I have a  
4 question. So would that rule fall under the board of ethics?

5 CHAIR MACARIO: It's a good question, Rachel, and I  
6 think the answer is yes.

7 But, Gary, go ahead and...

8 MR. MURAI: Well, this board does not interpret or  
9 enforce the rules of council; however, you'll also note that  
10 the rules of council also reference, you know, the board of  
11 ethics. I think the following rule that follows that says  
12 that, you know, the -- I forget what it says exactly, but  
13 these rules are interpreted like through the lens of the Code  
14 of Ethics. So it may be a fine distinction, but I -- I don't  
15 believe that this board would enforce the rules of the  
16 council; however, this board does interpret the Code of  
17 Ethics, so we would be applying whatever the relevant  
18 provision of the Code of Ethics is to the -- to the conduct  
19 that is complained of.

20 CHAIR MACARIO: And just to provide some further  
21 detail on that, I think what Gary's referring to is Rule 26 of  
22 the council rules, which provide that "The prohibitions stated  
23 in Article 10, Code of Ethics shall be incorporated herein and  
24 made a part hereof." So essentially the council rules  
25 incorporate the Maui County Code of Ethics. And, again, just

1 so -- so that I can remind everybody what it is we're doing  
2 here, what -- at the end of the day we will be issuing an  
3 advisory opinion. It is not a sanction, it is not a penalty,  
4 per se. Our goal, as I understand it from Gary, is to provide  
5 guidance for future conduct by all individuals involved.

6 So with that said, does anyone have a motion on this  
7 complaint? Please?

8

9 (No response.)

10 CHAIR MACARIO: I don't know that I can make one.  
11 Can I?

12 MR. MURAI: I --

13 VICE CHAIR COURSON: Counsel.

14 MR. MURAI: Go ahead.

15 VICE CHAIR COURSON: Chair, I will attempt to draw  
16 upon Section 10-4(c) in my motion.

17 CHAIR MACARIO: Okay. Go ahead.

18 VICE CHAIR COURSON: Which would be that -- that  
19 Chair King would be issued a letter from the board of ethics  
20 advising our concern that she is engaging in any business  
21 transaction or activity or have a financial interest, direct  
22 or indirect, which is incompatible with the proper discharge  
23 of her official duties and which may tend to impair her  
24 independence of judgment in the performance of the office of  
25 the -- of her official duties.

1 CHAIR MACARIO: All right. Thank you, David.

2 Is there a second?

3 MEMBER WEISS: I'll second.

4 CHAIR MACARIO: Okay. Any discussion?

5 MEMBER GADARIAN: Yes.

6 CHAIR MACARIO: Go ahead, Sara.

7 MEMBER GADARIAN: I would ask if the maker of the  
8 motion would like to add 10.4.4, which was having to do with  
9 "Officers and employees of the county shall not appear on  
10 behalf or represent private interests before any county  
11 agency." That's my thought, if you want to add that in there,  
12 if it appears that the -- that was -- the original complaint  
13 did reference 10.4.1(c) and 10.4.4. I think we should respond  
14 either -- you have narrowed it to one aspect and perhaps we  
15 should either discuss or respond to what the complaint alleged  
16 regarding 10.1.4.

17 CHAIR MACARIO: 10.4.4?

18 MEMBER GADARIAN: 10 point --

19 CHAIR MACARIO: 10-4.

20 MEMBER GADARIAN: 10 -- sorry. 10-4.

21 CHAIR MACARIO: Subsection 4.

22 MEMBER GADARIAN: 4.

23 MR. MURAI: Well, Board Member Gadarian, if you  
24 wish, you may make a motion to amend Vice Chair Courson's  
25 motion by including this section.

1 CHAIR MACARIO: Would it be helpful, Sara, to have  
2 corp council provide some guidance as to the extent to which  
3 that subsection may apply here? My only thought --

4 MEMBER GADARIAN: It would be, yes.

5 CHAIR MACARIO: -- in asking that question is  
6 Subsection 4 seems to talk about, you know, appearing on  
7 behalf of or representing private interests. Well, obviously,  
8 Chair King is a council member and is required to do that. I  
9 just don't know if this section applies.

10 Gary, do you have any --

11 MR. MURAI: Well, what this section regards is  
12 representing a private interest before a county agency. In  
13 other words, you know, being retained or hired or representing  
14 someone against -- in front of a county agency or against the  
15 interests of the county. But it also says that a county  
16 officer or employee shall be not be precluded from advancing  
17 or bringing their own grievances or their own complaints that  
18 are personal to them before the county or any of its agencies.  
19 So, you know, in other words, it's a -- you're either  
20 representing someone else or you're representing yourself,  
21 which is okay to represent your own -- your own interests.

22 MEMBER GADARIAN: Openly, yes.

23 MR. MURAI: That's the only way to do it.

24 CHAIR MACARIO: Yeah. So with that clarification,  
25 Sara, do you wish to make a motion to amend the original

1 motion?

2 MEMBER GADARIAN: No. I think we should consider --  
3 go back to just considering 10.4.1(c) and consider 10.4.4 --  
4 10-4(4) separately, because there were two charges made in the  
5 original complaint, so we are addressing the complaint. So  
6 either we're -- sorry to muddy it, but I think we should act  
7 one way or the other on the original complaint, the two  
8 sections that were cited by the complainant.

9 CHAIR MACARIO: Okay. So it sounds like we're still  
10 on the original motion.

11 Is that --

12 MR. MURAI: Sounds like.

13 CHAIR MACARIO: -- your understanding, Gary? Okay.

14 MEMBER WEISS: Chair. Oh, go ahead.

15 MEMBER GADARIAN: Go ahead.

16 CHAIR MACARIO: Go ahead, David.

17 MEMBER WEISS: I don't know if this is the  
18 appropriate time to -- because these advisory opinion letters  
19 are to do two things: They directly address the complaint,  
20 they also set precedent, so they'll be used somewhere down the  
21 line. And I don't know if we can include it in there or if  
22 this is going beyond our scope, that regarding abstention and  
23 advocating, that I think if you've been asked to abstain on an  
24 issue because there's a conflict, that anything other than a  
25 complete -- unless the abstaining member is against the

1 measure completely, anything else is -- other than that is  
2 advocating. That's what I -- I went back and looked at the --  
3 my minutes and I got mixed up on unless you are proponent or  
4 unless you are promote -- or providing testimony against that  
5 measure, anything other than that is advocating it. So that's  
6 where there's kind of a gray area in there, I don't know if  
7 include that in the advisory letter to say in future, you  
8 know, for using this for precedent, that unless -- if you are  
9 abstaining and you're doing anything other than opposing the  
10 measure, then you're essentially advocating for it. I don't  
11 know if that helps to clarify it down the road.

12 CHAIR MACARIO: I sort of lost my council rules.  
13 Sorry about that. I don't know where they are.

14 MR. MURAI: Here.

15 CHAIR MACARIO: Ah, yes. Thank you.

16 Yeah. So I'll just sort of -- since we're in the  
17 discussion phase, sort of explain my feelings on this, the  
18 motion. I agree with the vice chair that some guidance needs  
19 to be provided along the lines that once a council member has  
20 abstained from participating in the voting, yes, they are,  
21 obviously, permitted to participate in the discussion, but the  
22 language of Rule 9(d) has a pretty significant exception,  
23 which is that you can't advocate your own interests in that  
24 discussion. In my reading of the transcript, it's a gray  
25 area, but I was concerned by some of the comments, including

1 potential people losing their jobs, income lost to the  
2 business, things of that nature seemed a step beyond a pure  
3 discussion and went into advocating. And so, again, while  
4 this is not a punitive measure, I do think that it would be  
5 helpful for us to provide some guidance going forward to the  
6 types of testimony that would be considered by us to be a  
7 violation of the board of -- of the Code of Ethics. Again,  
8 we're not charged with enforcing council rules, but since the  
9 council rules do incorporate the Code of Ethics, I think we  
10 kind of have to provide our guidance on that. So that's how I  
11 feel on the topic.

12 MS. SCHAEFER: Chair, can I ask a question?

13 CHAIR MACARIO: I think we've moved -- we've moved  
14 beyond that point.

15 Haven't we?

16 MR. MURAI: Yeah. We're in discussion.

17 CHAIR MACARIO: We're in discussion at this point.

18 MEMBER CLAYTON: My concern is that we're not being  
19 clear enough. You know, we get so careful in our language  
20 that if I was on the council trying to figure out what the  
21 heck we mean, you know, by that, it's still gray, you know.  
22 It's gray, so how can we be really helpful to people so they  
23 don't have to spend time coming before us.

24 I don't -- I'm not sure, but I think as she was  
25 responding to questions, which is interesting to me, I hadn't

1 honed in on it -- I too agree that it sounded very specific to  
2 her personal business and that concerned me, but then when  
3 you're responding to questions and how -- and she's the only  
4 business in the state of Hawaii, how can it not be personal?  
5 So I find it's -- it's just troubling to me to figure out how  
6 to be specific. I don't -- I would like to discourage  
7 comments like she made because I think that's in -- against  
8 the -- the rules, but I just don't know -- I can see where she  
9 would feel like, I'm the only one that can answer this and we  
10 need information here.

11 MR. MURAI: Just for the sake of clarity --

12 MEMBER CLAYTON: Yeah.

13 MR. MURAI: -- when you say "she" --

14 MEMBER CLAYTON: I mean Kelly King, yeah.

15 CHAIR MACARIO: Yeah.

16 MEMBER CLAYTON: Sorry.

17 CHAIR MACARIO: And that's definitely a valid point  
18 and --

19 MEMBER CLAYTON: Yeah.

20 CHAIR MACARIO: I don't think anybody here is  
21 commenting on the value of having biodiesel, I mean --

22 MEMBER CLAYTON: Right. No, no.

23 CHAIR MACARIO: -- we may all disagree on that.

24 MEMBER CLAYTON: Yeah.

25 CHAIR MACARIO: You know, certainly that's a

1 separate issue. The only issue we're deciding today is  
2 whether these comments are potentially inappropriate, and if  
3 so, what guidance can we offer?

4 MEMBER CLAYTON: Right.

5 CHAIR MACARIO: And we can write a letter that will  
6 say, you know, These specific comments are inappropriate. In  
7 the future people can use those going forward as guidance,  
8 but --

9 MEMBER CLAYTON: And in the future maybe they would  
10 say, I'm -- what would they say? I mean, so we get a question  
11 from another council member or something, and then they would  
12 say, "According to the ethics, I'm not allowed to respond to  
13 that," or what? I mean, what -- really, what do you have  
14 people do?

15 CHAIR MACARIO: I know it's other hard thing.

16 MEMBER CLAYTON: You know, I don't --

17 CHAIR MACARIO: There's only so much we can do.  
18 Right?

19 MEMBER CLAYTON: Yeah.

20 CHAIR MACARIO: We can -- we can provide --

21 MEMBER CLAYTON: Well, I don't know, maybe Gary can  
22 say. I mean, what can we do to really guide people, you know?

23 MR. MURAI: Well, I guess this is not necessarily  
24 legal advice, but more of an opinion.

25 MEMBER CLAYTON: Yeah.

1 MR. MURAI: You know, if you are considered an  
2 expert --

3 MEMBER CLAYTON: Yeah.

4 MR. MURAI: -- or have a particular skill or  
5 knowledge --

6 MEMBER CLAYTON: Yeah.

7 MR. MURAI: Or, well, let's say it's a technical  
8 skill. I believe there are ways of responding to questions  
9 that are responsive to the question, but are -- may not be  
10 considered advocacy. If the statement was, you know, intended  
11 to influence or persuade or was unsolicited, then that's one  
12 thing. If it was in response to a question from a fellow  
13 committee member or council member, I believe there are ways  
14 that you can respond, answer the question, without appearing  
15 to advocate one way or the other.

16 MEMBER CLAYTON: That's true.

17 MR. MURAI: And I realize that it's difficult; easy  
18 to say, but difficult to do. But, you know, as we -- as we  
19 all know from our work, the guidance we give and, indeed, the  
20 rules that we follow, the Code of Ethics we follow are largely  
21 aspirational, you know. They don't come with really clear-cut  
22 guidelines, you know. And as Matt and -- you know, and as I  
23 have said to this board before, you know, the purpose or the  
24 intention of this board is to -- is to educate and to guide,  
25 you know. Any time you try to give really clear, black-and-

1 white answers, I guarantee you, you will -- someone will come  
2 with another example, "What about this?" or "What about that?"

3 MEMBER CLAYTON: Yeah. That's true.

4 MR. MURAI: So, anyway, I'm sorry, Donna, I'm not  
5 answering your question very well.

6 MEMBER CLAYTON: No, I get it. I get it.

7 CHAIR MACARIO: All right. Any other discussion on  
8 the motion?

9 MEMBER GADARIAN: Yes.

10 CHAIR MACARIO: Go ahead, Sara.

11 MEMBER GADARIAN: So to follow more on that vein in  
12 that we judge on the public perception of what's right or  
13 wrong when elected or other officers act. So we're putting  
14 forward -- because we're chosen as members of the public,  
15 putting forth our opinion of whether these actions are  
16 appropriate under the -- under the Code of Ethics or if they  
17 should be -- say that these are not in accordance with the  
18 Code of Ethics and we're guiding you as to how we, the public,  
19 see the matter.

20 CHAIR MACARIO: One other thing I'll add is that  
21 this could be a good opportunity for the council to amend its  
22 own Rule 9(d) to provide its own members with further guidance  
23 on what is or is not considered advocating a member's  
24 interest. It doesn't necessarily have to come from us, but  
25 it's certainly something they could do as well.

1 Any other discussion?

2 (No response.)

3 CHAIR MACARIO: All right. Gary, do you have  
4 questions or discussion? Because I know you're going to have  
5 to write this, so...

6 MR. MURAI: Well, that's true, and just to recap, so  
7 I know where we're -- I know where we're at: What's on --  
8 what's on the floor right now is a motion by Vice Chair  
9 Courson. Vice Chair Courson has cited Section 10-4(1)(c) of  
10 the Code of Ethics, which prohibits a county officer or  
11 employee from engaging in any business transaction or activity  
12 or have a financial interest, direct or indirect, which is  
13 incapable with the proper discharge of their official duties  
14 or which may tend to impair their independence of judgment in  
15 their performance of their duties, so that's the section of  
16 the code that Vice Chair Courson motion invokes.

17 What I would like to ask the board is: If there is  
18 a finding, you know, of a conflict with this rule, what the  
19 board would suggest as a remedy or a cure? Because when the  
20 board finds that a county officer or employee's outside  
21 business interests are incompatible with their -- the  
22 discharge of their official duties, we -- sometimes the board  
23 will give them guidance as to how they can ameliorate or cure  
24 that, that problem. Sometimes, as the board has done with  
25 other -- like, for example, we've advised directors they need

1 to divest themselves of their outside business interests.

2 Now, one thing that the board may need to consider  
3 is that the role of council members are different from that of  
4 full-time employees; in other words, county directors or  
5 deputy directors. And because council members are not  
6 considered full-time county employees, they are allowed to  
7 have -- in fact, they're often required, you know, because  
8 council pay is not -- often not enough to support a family,  
9 they often are required -- they often -- they always have  
10 outside business interests. So I would ask the board in  
11 rendering its decision to consider what the guidance would be.  
12 It may be unfair in applying it to a council member to say you  
13 have to get rid of your business, but I urge the board to  
14 consider what the -- what the -- what a council member, not  
15 just Ms. King, because as the board has stated, you know,  
16 other council members may want to rely on the board's guidance  
17 as well, what should they do to -- to cure the -- the  
18 potential conflict?

19 MEMBER WEISS: My suggestion would be that if you're  
20 abstaining, then recuse yourself from discussion all together.  
21 And if there is expert testimony needed, send somebody else in  
22 and -- because the difference, again, between advocating and  
23 not advocating -- unless you completely oppose it, basically  
24 the fact is you're advocating for it. So maybe make a clear  
25 break and if there's an ethical issue that's asking you to

1 abstain from a vote, maybe you should abstain from the  
2 discussion and, again, if there's somebody -- somebody else  
3 from the company -- for this specific company could have come  
4 in and answered those technical, scientific questions and then  
5 it -- clearly there's a -- there's a line drawn when you can  
6 discuss and -- and it takes the advocate versus non-advocate  
7 question off the table.

8 CHAIR MACARIO: Yeah. For me, at least, Chair  
9 King's personal business interest is not incompatible with her  
10 job as a council person. To me, the only thing that causes me  
11 some pause is the advocating of that interest in the  
12 discussion phase. And so I don't -- I don't think any of us  
13 are contending that Chair King needs to divest herself or  
14 whatever it is that you're saying, I just think there's --  
15 there's got to be some guidance on the extent to which you can  
16 advocate your business interest in a discussion, even when  
17 you're not voting.

18 Go ahead, Bill.

19 MEMBER CURTIS: So if I'm correct, this originally  
20 started off with Mr. White advocating on the behalf of the  
21 hotel industry relating to hotel taxes?

22 MS. SCHAEFER: Yeah.

23 MEMBER CURTIS: Now, the reason why --

24 MS. SCHAEFER: You're asking me?

25 MEMBER CURTIS: -- yeah, why the decision -- because

1 previously he voted on hotel taxes and didn't that set a  
2 precedent where the council could talk about their industry  
3 and then is --

4 MS. KING: May I.

5 MR. MURAI: Are we -- are we allowing --

6 CHAIR MACARIO: No. You know, I -- I'm sorry, Bill,  
7 I don't thinking we're inviting questions -- answers at this  
8 point, but --

9 MEMBER CLAYTON: But you can ask Gary, yeah.

10 MEMBER CURTIS: That's --

11 MS. KING: That is where --

12 MEMBER CURTIS: So I think my only point was I think  
13 that should be factored into this opinion.

14 CHAIR MACARIO: Okay. Yeah, that's fair.

15 MEMBER CURTIS: 'Cause that was discussed.

16 MEMBER CLAYTON: The precedent for that.

17 MEMBER CURTIS: That the precedent of that is --

18 MEMBER CLAYTON: Yeah.

19 MEMBER CURTIS: -- in addition to this --

20 CHAIR MACARIO: Right.

21 MEMBER CURTIS: -- should be something we should  
22 factor into this opinion.

23 MEMBER CLAYTON: And what was the outcome of that?

24 MEMBER CURTIS: The -- from what I understand, he  
25 worked in the hotel industry, but he was one of many, many

1 hotels and so he was advocating for the community as a whole,  
2 not specific to himself.

3 MEMBER CLAYTON: Oh, mm-hmm.

4 MEMBER CURTIS: Whereas this is a different -- she's  
5 the sole industry for that particular -- and so that's why  
6 they're zeroing in more on this than they were on the hotel.

7 CHAIR MACARIO: Okay. Be that as it may, Gary, do  
8 you have any clarifying questions about the board's -- I mean,  
9 I know we haven't voted yet, but before we do that, any  
10 questions about things that we should consider before voting  
11 on this motion?

12 MR. MURAI: No, Mr. Chair. I think the board has  
13 discussed this fairly thoroughly. I -- and from what I'm  
14 gathering, just -- I realize the board has not voted yet, but  
15 it seems that the motion that is on the floor -- I'm afraid --  
16 I don't put words in anyone's mouth, but that the board  
17 finds -- would find that the statements by the chair amount to  
18 advocacy and that -- well, and that that is where it became  
19 problematic.

20 Is that a fair statement?

21 CHAIR MACARIO: I believe so.

22 MEMBER CURTIS: Yeah.

23 MEMBER CLAYTON: Mm-hmm.

24 MR. MURAI: And that in the -- in the proposed or  
25 the potential advisory opinion, the guidance would be that if

1 a board member -- I mean, if a council member needs to  
2 abstain, that they should also abstain from -- well, they need  
3 to abstain from advocacy, but as Board Member Weiss has  
4 suggested, they should avoid even discussing the matter  
5 because that may risk -- it's so difficult to draw the line  
6 between discussion and advocacy.

7 Is that a fair statement?

8 MEMBER WEISS: Fair.

9 CHAIR MACARIO: And I would also invite the council,  
10 in our opinion --

11 MR. MURAI: Yeah.

12 CHAIR MACARIO: -- to amend its own rule to kind of  
13 provide its own members with greater guidance.

14 MR. MURAI: Better guidance.

15 CHAIR MACARIO: Yes, David.

16 VICE CHAIR COURSON: I would like to concur that  
17 that's the -- that clearly states the essence of the motion  
18 that I brought before the board and with the clarification  
19 that David -- that David gave as articulated by council is  
20 clearly the intent of the motion that I made and I would like  
21 to see that incorporated in the letter.

22 MEMBER CLAYTON: That satisfies my desire for clear  
23 guidance.

24 CHAIR MACARIO: Yeah.

25 MEMBER CLAYTON: Yeah.

1 MR. MURAI: It's really -- you know, at some level  
2 the council's got to police itself, you know. We can sort of  
3 provide guidance, but I think further guidance on Rule 9(d)  
4 would be a good idea for the council at take up.

5 Yes, Sara.

6 MEMBER GADARIAN: I'm back to nitpicking that the  
7 motion that was -- that's on the table addresses 10-4(1)(c)  
8 that no officer may engage in any business transaction or  
9 activity or have a financial interest which is incompatible  
10 with the proper discharge of their official duties or which  
11 may tend to impair their independence of judgment in the  
12 performance of their official duties. But I'm still going to  
13 No. 4 with -- which represents officers, full-time employees  
14 appearing on behalf or represent private interests except for  
15 petitions for redress or grievances.

16 MEMBER CURTIS: Didn't we discuss a council member  
17 is not a full-time employee?

18 MR. MURAI: Well, but they are officers of the  
19 county.

20 MEMBER CURTIS: They are officers. Okay.

21 CHAIR MACARIO: So, Gary, do you have any suggestion  
22 on how to deal with the fact that the pending motion is just  
23 on 10-4(1)(c), but the complaint also references 10-4-4?

24 MR. MURAI: Well, the board could explicitly deny  
25 any -- deny the portion of the complaint that alleges a

1 violation of subparagraph 4 or the board could just not take  
2 it up and just not take action on it. It's up to you, it's up  
3 to the board what it chooses to do.

4 MEMBER GADARIAN: Well, sorry, so I --

5 MR. MURAI: I'm sorry.

6 MEMBER GADARIAN: I'm wondering how the action --  
7 actions of Ms. King, Councilperson King shows in 10.4(c),  
8 engaging in any business transaction or activity or have a  
9 financial interest, direct or indirect, which is incompatible  
10 with the discharge. So it would be saying that the person has  
11 to divest themselves of that -- those interests if you're  
12 going just to (c). If you're talking about the next one,  
13 which is representing -- representing a private interest.

14 CHAIR MACARIO: Sara, I would just -- my own view of  
15 it is the appropriate word in 10-4(1)(c) would be activity. I  
16 would say that you're not supposed to engage in any activity  
17 which is incompatible with the proper discharge of your  
18 duties. And by activity in this case I would say it would be  
19 the advocacy of your personal business interests in what  
20 should be a county decision.

21 MEMBER GADARIAN: Good. That would be a way to  
22 explain it.

23 CHAIR MACARIO: That's my -- that's how I would --

24 MEMBER GADARIAN: Use those words to explain it.

25 CHAIR MACARIO: -- ask Gary to write it.

1 MEMBER GADARIAN: Thank you.

2 CHAIR MACARIO: He'll come up with his way of  
3 writing it, but that's sort of how I view the issue.

4 MEMBER GADARIAN: All right. Then we don't have to  
5 discuss the other -- the other part of the complaint.

6 CHAIR MACARIO: (Telephone interruption.) Oh,  
7 shoot. I'm so sorry. I'm supposed to pick up my kids, but I  
8 won't today. I apologize.

9 Okay. So if I'm hearing you correctly, Sara, then  
10 it sounds like you're no concerned about Section 10-4  
11 Subsection 4 and that we need not address it?

12 MEMBER GADARIAN: Yes.

13 CHAIR MACARIO: That 10(1) --

14 MEMBER GADARIAN: Our interpretation of it, yes.

15 CHAIR MACARIO: 10-4(1)(c) adequately responds to  
16 the complaint and gives us the opportunity to provide the  
17 guidance necessary?

18 MEMBER GADARIAN: Thank you.

19 CHAIR MACARIO: All right. Any other discussion on  
20 the motion?

21 (No response.)

22 CHAIR MACARIO: Hearing none, all in favor?

23 (Response.)

24 CHAIR MACARIO: All opposed?

25 (No response.)

1 CHAIR MACARIO: Okay. That carries unanimously.  
2 Let's be in recess for a few minutes and give Sandra  
3 a chance to rest her fingers. (Gavel.) Thank you very much  
4 everyone.

5 (Pause in Proceedings: 2:01 p.m.-2:10 p.m.)

6 CHAIR MACARIO: (Gavel.) All right. Back on the  
7 record after our short recess. The next item on regular  
8 session agenda is 5.a, Financial Disclosures: None.

9 5.b, Communication Items: None.

10 5.c, Review and Approval of Advisory Opinion  
11 No. 19A-08 from William Spence, former County Planning  
12 Director, dated July 17, 2019, regarding potential conflict of  
13 interest.

14 Mr. Spence is not here today? It doesn't appear as  
15 though he is.

16 MS. VICENS: Chair, he did respond when he was  
17 notified and the agenda sent to him that he would be  
18 attending, so I don't know why he's not here today.

19 CHAIR MACARIO: Yeah. 'Cause the agenda says  
20 "Review and Approval of Advisory Opinion," but, really, it's a  
21 new request.

22 MR. MURAI: Right.

23 CHAIR MACARIO: Right?

24 MR. MURAI: It's a new request, so -- yeah, we  
25 didn't catch that when we did the agenda, but I do believe

1 that it is sufficient for us to -- at least the review part.

2 CHAIR MACARIO: Okay. So if Mr. Spence is not here,  
3 should we defer this to a future meeting or should we --  
4 'cause we're not going to have an opportunity to ask him  
5 questions and I'm concerned about that. I don't know.

6 MR. MURAI: You know, I'd leave it to the board. If  
7 the board has questions, then, by all means, we should invite  
8 Mr. Spence. And maybe -- I say this because I'm very familiar  
9 with -- you know, having advised many county departments,  
10 including departments that Mr. Spence has been the director  
11 of, I understand what he's saying and the board may want --  
12 unless the board has questions, the board may want to consider  
13 whether it can just go ahead and issue the advisory opinion  
14 today.

15 CHAIR MACARIO: Okay. Well, let's -- let's try  
16 that, at least.

17 So Gary and I talked about this request and  
18 apparently there -- you can probably explain this better than  
19 I can, but there is precedent, as I understand it, for this  
20 request and it kind of came in the form of former  
21 Councilperson Don Couch. Is that right?

22 MR. MURAI: Right.

23 CHAIR MACARIO: Am I thinking of the right one?

24 MR. MURAI: Right.

25 CHAIR MACARIO: Okay. Maybe you can just educate

1 us.

2 MR. MURAI: The way I viewed this is -- well, I --  
3 factually, as I understand Mr. Spencer's request, he's saying  
4 that the mayor has assembled a panel of directors, you know,  
5 of -- directors of the department of public works,  
6 environmental management, planning, and housing. And I think  
7 what the concept is, as Mr. Spence describes, is kind of like  
8 appearing before a clearinghouse; in other words, instead of  
9 him -- instead of developers or the consultants having to go  
10 to different offices and different directors, they'll meet all  
11 at once, everyone will hear the same thing at the same time  
12 and from the county's side, you know, make better or more  
13 coordinated decisions. In other words, the different  
14 departments know what the other departments are being told,  
15 they know what the other departments are doing, and -- that's  
16 the impression I get. I -- that's about all I know about it,  
17 what -- is what Mr. Spence describes.

18 Mr. Spence is concerned that he knows that he may  
19 not appear before the department of housing for a period of  
20 one year because that's the department he was last employed  
21 at. He's asking, Well, now that the mayor has assembled this  
22 panel, if the director of housing is on this panel, do I still  
23 have a problem or can I still appear before this panel?

24 And as chair had mentioned, the board had addressed  
25 something similar to this before and while it's not a

1 straight, you know, analogy, the opinion that I recall was one  
2 where Councilmember Couch had come to the board and said, I'm  
3 a council member and I'm also a director, I'm on the board of  
4 directors for the Boys and Girls Club. When the Boys and  
5 Girls Club appropriation comes up, may I vote on it? And  
6 he -- when he came to the board and he explained how it comes  
7 up, what he said was, Well, I'm not voting on Boys and Girls  
8 Clubs' direct appropriation. The way the council handles that  
9 budget item is it's lumped together as a youth services  
10 appropriation; in other words, it's an appropriation that goes  
11 to all the youth organizations that the county funds. In  
12 other words, not just -- it's not just Boys and Girls Club.

13 And what the board analogized it to is when the  
14 council votes on the entire budget, it -- you know, because  
15 the budget is so wide ranging, people are bound to have -- or,  
16 you know, there's a greater likelihood of potential conflicts  
17 popping up. If it was something that was -- came up, you  
18 know, affecting your organization directly, it's easy to say,  
19 Okay, I shouldn't -- I shouldn't vote on this one; but what  
20 the board of ethics did at the time, says, Well, because, you  
21 know, your organization's appropriation is bundled with all of  
22 these other appropriations, just like how you can vote on the  
23 entire budget, you may vote on the youth services  
24 appropriation.

25 So when the chair and I discussed this, that's what

1 I -- you know, that's what popped up in my mind as this being  
2 similar to. In other words, the -- you know, the --  
3 Mr. Spence would not be appearing before the director of  
4 housing, he would be appearing before the mayor's committee,  
5 of which the director is a member of. So I'm not sure whether  
6 the board will find that helpful or persuasive, I'm not  
7 suggesting the board has to follow suit; I just remembered  
8 that as being something that was similar. Now, the facts are  
9 not totally squared because this is -- well, it's a little bit  
10 different.

11 CHAIR MACARIO: So I guess the next question is  
12 whether anybody feels that they would want to or need to ask  
13 questions of Mr. Spence directly such that we should postpone  
14 this to a future meeting, or whether you have enough  
15 information to act on it. Does anybody feel like they need to  
16 ask questions?

17 MEMBERS: No.

18 CHAIR MACARIO: No? Okay. Hearing none, is there a  
19 motion on how to respond to this request for an advisory  
20 opinion?

21 MEMBER GADARIAN: I -- Chair.

22 CHAIR MACARIO: Sara.

23 MEMBER GADARIAN: I move that we issue an advisory  
24 opinion and respond to his questions as -- as presented with  
25 the view that his conclusions are appropriate.

1 CHAIR MACARIO: Okay. So let me just see if I can  
2 reword that. So, again, the questions from Mr. Spence in his  
3 July 17 letter are: May I appear before this working group?

4 No. 2. If I cannot appear, may I sit and observe?

5 And No. 3 -- it seems to me that if -- since we're  
6 answering Question No. 1 in the -- well, the motion indicates  
7 we're answering Question No. 1 in the affirmative, then we did  
8 not have to answer Questions 2 and 3.

9 Is that correct, Sara?

10 MEMBER GADARIAN: That's correct. He cannot appear  
11 before -- oh.

12 CHAIR MACARIO: Yeah. I think your motion is that  
13 he can appear; right?

14 MEMBER GADARIAN: He can.

15 CHAIR MACARIO: Right.

16 MEMBER GADARIAN: Yes, he can appear.

17 CHAIR MACARIO: So we don't need to answer  
18 Questions 2 and 3, if I'm understanding your motion correctly.

19 MEMBER GADARIAN: Yes.

20 CHAIR MACARIO: Okay. Is there a second on that  
21 motion?

22 MEMBER CLAYTON: Second.

23 CHAIR MACARIO: Okay. Any discussion?

24 (No response.)

25 CHAIR MACARIO: Gary, do you have any questions on

1       how to write this?

2                   MR. MURAI:  No, I think I understand.  I think I  
3       have an idea.  I also want to -- before the board votes on it,  
4       another thing that I want to comment on that I found somewhat  
5       relevant is that looking on page 1, the second-to-the-last  
6       paragraph of Mr. Spence's request, he also noted that what  
7       happens as a result of meeting with this committee or this  
8       panel is that applicants and departments go away with the  
9       understanding of the county's position and what issues need to  
10      be addressed in a more formal application process.  So I'm not  
11      sure whether the board thinks that's -- that's persuasive, but  
12      what I took away from that was that this is not a decision-  
13      making panel, it's more of an information sharing kind of --  
14      information exchange kind of thing and when all the directors  
15      go back to their offices, their staffs will still continue to  
16      process the applications or the requests as they normally  
17      would.

18                   CHAIR MACARIO:  Okay.  Thank you.

19                   Any other discussion on the motion?

20                   (No response.)

21                   CHAIR MACARIO:  Hearing none, all in favor?

22                   (Response.)

23                   CHAIR MACARIO:  All opposed?

24                   (No response.)

25                   CHAIR MACARIO:  Okay.  That carries unanimously.

1 Gary gets the pleasure of writing that. Thank you.

2 Item 5.d, Request For Formation of a Permitted  
3 Interaction Group (PIG) to discuss and review revisions to  
4 Maui County Board of Ethics Financial Disclosure Statement  
5 form and instructions for calendar year 2020. This item was  
6 added to the agenda at the request of Board Member Gadarian.

7 Sara, do you want to give any sort of introduction  
8 as to what it is that you're requesting?

9 MEMBER GADARIAN: Yes. I would like to re-form a  
10 committee to discuss and present revisions to the financial  
11 disclosure statement, particularly -- particularly regarding a  
12 number of misleading parts of the forms that we found after  
13 many, many employees and applicants were -- were confused.  
14 Not to revamp the whole thing --

15 CHAIR MACARIO: Right.

16 MEMBER GADARIAN: -- but, essentially, try to have  
17 an update that is -- that the form is more self-explanation.

18 CHAIR MACARIO: All right.

19 MEMBER GADARIAN: Self-explanatory.

20 CHAIR MACARIO: Right. In past years we typically  
21 had three people on these committees. Is that right, Gary?

22 MR. MURAI: Well -- right. If I may take a second,  
23 Mr. Chair, to explain what a -- what we're doing, is that this  
24 board is subject to the Sunshine Law; in other words, every  
25 time we meet, we have to set up an agenda, you know, the

1 public comes, they can provide testimony, not -- but what the  
2 Sunshine Law also allows is the formation of permitted  
3 interaction groups or temporary interaction groups where you  
4 are not subject to the need for a -- you know, a public  
5 meeting, agenda, minutes, and that kind of thing.

6 We've done this before where we've formed this  
7 committee which was tasked with reviewing and revising our  
8 financial disclosure statement to make them better as far as  
9 collecting information, so this -- the acronym is TIG or PIG.  
10 So if we form this PIG, then it can be anywhere from two to  
11 four members; in other words, more than one, but less than a  
12 quorum. They can go on and if the TIG or PIG is approved,  
13 then they will meet independently of the rest of the board, do  
14 their work, make their recommendations to the board as a whole  
15 at a subsequent meeting, and then we put it on agenda for a  
16 vote. So, in other words, the public will get their  
17 opportunity to see what the subcommittee did and then they'll  
18 have a chance to weigh in if they want to and then the board  
19 can adopt, reject, amend, or whatever the case may be, so --  
20 anyway, I'm sorry --

21 CHAIR MACARIO: I think that with that background,  
22 we first need a motion to form this item --

23 MR. MURAI: Yes.

24 CHAIR MACARIO: -- for this entity; right?

25 MR. MURAI: Yes.

1 CHAIR MACARIO: Okay. So is there such a motion?  
2 It sounds like, Sara, you would --

3 MEMBER GADARIAN: I would -- my motion is to form  
4 the permitted interaction group to discuss and review and  
5 present revisions to the Maui County Board of Ethics Financial  
6 Disclosure Statement for 2020.

7 CHAIR MACARIO: Thank you.

8 Is there a second on that?

9 MEMBER CLAYTON: Second.

10 CHAIR MACARIO: Okay. Donna seconded. Any other  
11 discussion? We should as part of the discussion figure out  
12 who's going to be the suckers that are going to do this?

13 (Laughter.)

14 CHAIR MACARIO: I know I've done it one year, Sara's  
15 done it twice, I believe, but, Sara, you might be an  
16 appropriate candidate to do it again if you're available --

17 MEMBER GADARIAN: Yes.

18 CHAIR MACARIO: -- and interested.

19 MEMBER GADARIAN: I would like to --

20 CHAIR MACARIO: This is something you feel strongly  
21 about, so --

22 CHAIR MACARIO: -- go out -- go out with a -- with a  
23 good form, if possible.

24 CHAIR MACARIO: Am I allowed to participate in this  
25 as chair?

1 MR. MURAI: Sure.

2 CHAIR MACARIO: Okay. I'll do if nobody else wants  
3 to.

4 MEMBER GADARIAN: Bill, would you like to  
5 participate again?

6 MEMBER CURTIS: Certainly.

7 CHAIR MACARIO: Anybody else who would like to take  
8 on the role?

9 (No response.)

10 CHAIR MACARIO: Okay. So Bill, Sara, anybody else  
11 so I don't have to? I will if --

12 MR. MURAI: Well, you know, the number is two to  
13 four, between two and four.

14 CHAIR MACARIO: Well, then, I will recuse myself. I  
15 have enough --

16 MR. MURAI: Yeah, Matt has got enough on his plate.

17 CHAIR MACARIO: Okay.

18 MEMBER GADARIAN: Rachel?

19 MEMBER PHILLIPS: I don't mind. I am a little  
20 worried about my time --

21 CHAIR MACARIO: Time commitments.

22 MEMBER PHILLIPS: -- commitments right now.

23 CHAIR MACARIO: That is the issue. It typically  
24 doesn't take a lot of time and you can do a lot of it via  
25 email, but --

1 MEMBER GADARIAN: Via email.

2 MEMBER PHILLIPS: Okay. Sure.

3 CHAIR MACARIO: Not to put pressure on you, but it's  
4 really not as bad as it might sound, so...

5 All right. So it sounds like the motion has been  
6 seconded, the discussion appears to be that Sara, Rachel, and  
7 Bill would be the members of the PIG. Any other discussion?

8 (No response.)

9 CHAIR MACARIO: All in favor?

10 (Response.)

11 CHAIR MACARIO: All opposed?

12 (No response.)

13 CHAIR MACARIO: Okay. That carries unanimously.  
14 Thank you so much, Folks, for agreeing to do that.

15 Next item on the agenda, 5.e, Lobbyist Registration:  
16 We have one from George -- is it Gough? I don't know how it's  
17 pronounced exactly, but...

18 Is there a motion to acknowledge receipt of the  
19 updated lobbyist registration from Mr. Gough?

20 MEMBER CLAYTON: So moved.

21 CHAIR MACARIO: Is there a second?

22 MEMBER GADARIAN: Second.

23 CHAIR MACARIO: Any discussion?

24 MEMBER GADARIAN: Well, this is a change --

25 CHAIR MACARIO: Yes.

1 MEMBER GADARIAN: -- in lobbying from Monsanto to  
2 the Bayer Company.

3 MEMBER CLAYTON: Yeah.

4 MEMBER GADARIAN: Very interesting.

5 MEMBER CLAYTON: Well, they bought out Monsanto.

6 MEMBER WEISS: They bought out Manson.

7 MEMBER CLAYTON: It's all the same now.

8 CHAIR MACARIO: Yeah. I don't think our rule is to  
9 approve or deny, just to acknowledge receipt. Right?

10 MEMBER GADARIAN: Just noting the name change.

11 CHAIR MACARIO: It is interesting, though, I would  
12 agree.

13 MEMBER CLAYTON: Yeah.

14 CHAIR MACARIO: All right. Any other discussion?

15 (No response.)

16 CHAIR MACARIO: Hearing none, all in favor of  
17 acknowledging receipt of the updated lobbyist registration of  
18 Mr. Gough?

19 (Response.)

20 CHAIR MACARIO: All opposed?

21 (No response.)

22 CHAIR MACARIO: Okay. That carries unanimously.

23 Next item, Announcements: None.

24 Item 7, next meeting --

25 MEMBER GADARIAN: I'm sorry. You didn't have a

1 recorded announcement, but I have an announcement to clarify  
2 something that was brought up earlier in that it was stated  
3 that Ms. King was supposed to receive a cautionary letter and  
4 I did find in the minutes that there were actually two  
5 different council people who were supposed to receive in 2019  
6 cautionary letters about their outside interests and it was  
7 stated earlier that no such letter went out, so...

8 CHAIR MACARIO: Well, before I respond to that, is  
9 it okay for us to be having this conversation?

10 MR. MURAI: It's not an announcement, so --

11 MEMBER GADARIAN: No. Sorry.

12 MR. MURAI: Why don't we handle it -- well --

13 CHAIR MACARIO: I just don't want to run afoul of  
14 the Sunshine rule, so...

15 MEMBER GADARIAN: Yes. Okay.

16 MR. MURAI: Yeah. You know, I think that's a  
17 discussion that -- well, I think, Sara, you can speak -- you  
18 can speak to staff, me or Cory, about it later.

19 MEMBER GADARIAN: Okay. As the secretary. Thank  
20 you.

21 MR. MURAI: Yeah.

22 CHAIR MACARIO: Okay. So next item is Next Meeting  
23 Date and Discuss Next Meeting Business: The next meeting will  
24 be September 11, 2019 here at 12:30. Does anybody have any  
25 business they want added to next meeting's agenda? I usually

1 don't ask that question, but it's a good one, good reminder  
2 occasionally. Any such new business that we should add?

3 (No response.)

4 CHAIR MACARIO: All right. Hearing none, is there a  
5 motion to adjourn regular session and proceed to executive  
6 session?

7 MEMBER WEISS: So move.

8 CHAIR MACARIO: Is there a second?

9 MEMBER GADARIAN: Second.

10 CHAIR MACARIO: Okay. All in favor?

11 (Response.)

12 CHAIR MACARIO: All opposed?

13 (No response.)

14 CHAIR MACARIO: That carries unanimously. (Gavel.)

15 (Pause in proceedings: 2:30 p.m.-2:40 p.m.)

16 CHAIR MACARIO: Is there a motion to ratify all  
17 decisions made in executive session?

18 MEMBER WEISS: So moved.

19 CHAIR MACARIO: Is there a second?

20 MEMBER GADARIAN: Second.

21 CHAIR MACARIO: All in favor?

22 (Response.)

23 CHAIR MACARIO: All opposed?

24 (No response.)

25 CHAIR MACARIO: That carries unanimously.

1           And, finally, is there a moment -- motion to adjourn  
2 our meeting today?

3           VICE CHAIR COURSON: Chair, so move.

4           CHAIR MACARIO: Is there a second?

5           MEMBER GADARIAN: Second.

6           CHAIR MACARIO: All in favor?

7           (Response.)

8           CHAIR MACARIO: All opposed?

9           (No response.)

10          CHAIR MACARIO: That carries unanimously. Thank you  
11 so much, everyone.

12          (The proceedings were adjourned at 2:40 p.m.)

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