

**URBAN DESIGN REVIEW BOARD
REGULAR MEETING
JUNE 17, 2008**

Approved 07-15-08

A. CALL TO ORDER

The regular meeting of the Urban Design Review Board (Board) was called to order by Mr. Anthony Riecke-Gonzales, Vice Chair, at approximately 9:02 a.m., Tuesday, June 17, 2008, in the Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

B. INTRODUCTION OF NEW MEMBERS - DARRYL CANADY, LINDA OKAMOTO (returning), and MARY WAGNER (alternate)

Mr. Anthony Riecke-Gonzales: . . . – since it's after nine o'clock we'll go ahead and get started. So, we have introduction of new members - Darryl Canady, welcome to the Board; and Linda Okamoto - I was going to say, you're not a new member, you're returning; and Mary Wagner - do you prefer Mary or Nancy?

Ms. Mary Wagner: Randy.

Mr. Riecke-Gonzales: Randy - okay. Welcome Randy.

C. RESOLUTION THANKING OUTGOING DEPUTY DIRECTOR COLLEEN SUYAMA

Mr. Riecke-Gonzales: All right, we'll move on to the next agenda item, resolution thanking out-going Deputy Director Colleen Suyama.

Mr. Clayton Yoshida: Good morning, Mr. Chair, members of the Board. Clayton Yoshida with the Planning Department. We have a Resolution for the Board's consideration which reads:

“WHEREAS, Ms. Colleen M. Suyama has served the County of Maui with distinction and with a high degree of professionalism as Deputy Director of the Department of Planning for the County of Maui from January 2, 2007 to June 30, 2008; and

WHEREAS, Ms. Colleen M. Suyama began working for the County of Maui as a Planning Aide on February 10, 1975; and

WHEREAS, Ms. Colleen M. Suyama has been a professional planner with more than 30 years of experience with the County of Maui; and

WHEREAS, Ms. Colleen M. Suyama will be retiring from the County of Maui on June 30, 2008; and

WHEREAS, Ms. Colleen M. Suyama has contributed greatly to the profession of land use planning and the economic development of the County of Maui; and

WHEREAS, during Ms. Colleen M. Suyama's tenure as Deputy Director of Planning, the Department of Planning has strived to improve its internal efficiencies; now therefore
BE IT RESOLVED, that the Maui County Urban Design Review Board hereby commends Ms. Colleen M. Suyama for her dedication and service to the people of Maui County; and
BE IT FURTHER RESOLVED, that the Maui County Urban Design Review Board does hereby expresses its deepest gratitude and appreciation for Ms. Colleen M. Suyama's services and does hereby extend its best wishes in her future endeavors; and
BE IT FURTHER RESOLVED, that copies of this Resolution be transmitted to the Honorable Charmaine Tavares, Mayor of the County of Maui; and the Honorable G. Riki Hokama, Council Chair of the Maui County Council."

And this is available for your signature.

Mr. Riecke-Gonzales: Thank you Clayton.

D. COMMUNICATIONS

- 1. MR. WIL WONG of MAUI EXPOSITION, INC. requesting a Special Management Area Use Permit in order to construct improvements for the relocation of the Maui Swap Meet at TMK: 3-8-007: 040 (portion) and 125 (portion), Kahului, Island of Maui. (SM1 2008/0001) (R. Loudermilk)**

The Board may take action on the project design and matters within their purview.

Mr. Riecke-Gonzales: We'll go on to the next item, communications, Mr. Wil Wong of Maui Exposition, Incorporated, requesting a Special Management Area Use Permit in order to construct improvements for the relocation of the Maui Swap Meet at tax map key: 3-8-007: 040, it's a portion, and 125, portion, Kahului, Island of Maui, SM1 2008/0001. That's Ms. Loudermilk will present for the Planning Department.

Ms. Robyn Loudermilk: Good morning members. What we have for you today is a presentation by Munekiyo & Hiraga, and I have Mich Hirano here representing the applicant, Wil Wong of Maui Exposition. As part of the Special Management Area Use permit, there will be some proposed improvements in the area that we'd like to have be reviewed by this agency. So I'd like to call up Mr. Hirano.

Mr. Mich Hirano: I thank you Robyn. Good morning Vice-Chair Riecke-Gonzales and Board Members. My name is Mich Hirano with Munekiyo & Hiraga, and our firm is assisting the applicant, Maui Exposition, Inc., with a Special Management Area application for the proposed Maui Swap Meet at the Maui Community College Campus.

With me today are Erin Mukai from our firm who is assisting with the power point presentation; Mr. and Mrs. Wil and Cory Wong from Maui Exposition; Herman Andaya from the Maui Community College; and Trisha Higuchi from Austin Tsutsumi who are the project engineers. We'll be available to answer any questions that the Board may have with respect to the project.

We have prepared a power point presentation to provide an overview of the proposed improvements at the swap meet and at Maui Community College. The presentation covers the project's summary that was submitted to the Urban Design Review Board in preparation for this meeting, and it's in your gray binders. But I would just like to go over the information that has been provided and we'll be available to answer any questions that you may have on the project.

The proposed improvements are located in the northern portion of the Maui Community College Campus. It's bounded by Kahului Beach Road to the north – Wahine Pio Avenue to the west, which is one of the main access routes into Maui Community College. There is a driveway into a large parking area that has a capacity for approximately 860 stalls for the Maui Community College Campus. The proposed Swap Meet will be operating on Saturday morning from the hours of 7:00 a.m. to 1:00 p.m., so the use of the parking lot in the Swap Meet will not really conflict with the classes that will be scheduled at Maui Community College which are normally scheduled Monday through Friday.

This is the photograph of the existing drainage basin. The Swap Meet improvements will be carried out within the drainage basin of the community college. The drainage basin currently is approximately 3 ½ acres and the proposed project will expand the drainage basin to the north in an area of about one acre. So the total drainage basin capacity after completion of the improvements will be approximately 4.5 acres. As you can see this is looking sort of to the east – Harbor Lights Condominium borders the property to the east; and to the west is Maui Arts & Cultural Center - that's the building just in the sort of mid grounds of this particular photograph, and you can see the parking lot to the left of the photo.

This is the current site plan for the proposed improvements. As you can see, there's Wahine Pio Avenue on the left hand side of the screen – Kahului Beach Road. There is an existing buffer of kiawe that screens the college campus from Kahului Beach Road. This is the berm of the existing retention basin and the idea is this gray area is the new improved, expanded drainage basin. So it would be basically to grub and grade and extend

the drainage basin out towards the north and then create a berm on the northern portion of the drainage basin and tie into this existing drainage basin. There's a berm that will separate the two. This drainage basin is an off-site drainage basin for the Maui Arts & Cultural Center, so this will not be impacted by the proposed improvements.

Other improvements that will then take place within the basin – there will be asphalt concrete pavement which would provide a new driveway into the drainage basin from the parking lot, and then walkways, paved walkways throughout the drainage basin which will be pathways for people who are attending the swap meet. The vendors then will be setting up into these areas of the basin. There will be another gate on the west side of the basin, as well as, there will be gates on the right side of the basin. This will be the main access into the swap meet site and the drainage basin, so there will be an extension of the pavement from the parking lot into the drainage basin and then the walkways. There will be two information and ticket booths kiosks on either side of the entrance driveway, as well as concrete pad for a ticket booth office for the swap meet operations and administrative staff. And as well then there will be a new gate and fence that would surround the swap meet site for security purposes. This is another driveway that accesses onto Kahului Beach Road. It comes into the Harbor Lights Condominium project as well as the parking area for community college.

Again this is the fencing plan. The fence would be approximately six feet high. It will be a chain linked fence, but there will be columns separated at about 32 feet centers across the front of the swap meet site and the parking lot. And this is just to break up sort of the chain linked fence and provide a little bit of character to the chain linked fence and the kiosks. Again, this is a little site plan of that particular area. What will happen during the swap meet operations when it's open is that there will be some cones put up here, there will be traffic control people for the swap meet to direct traffic in and around the parking area. This area, then, will be coned off so that thru traffic will not be permitted during swap meet. There are the accessible stalls on just the other side the coned off area. And this would just be kind of an apron for people to come into the swap meet. There will be a ticket booth kiosks on either side of the swap meet and then people would come down into the swap meet. The vendors themselves will probably set up very early in the morning. They'll come in the driveway and drive on and put their tents up, their sites up, and then vacate the property. And then there will be the ticket booth and the administrative office for the swap meet operations.

This is just a schematic of the ticket booth. It's approximately four feet by four feet, and eight feet high. And the design of it is just to reflect the existing buildings at the Maui Community College so that it would be in the same color and with the color roof. It's a light-green roof, and just an earth tone stucco finish on the booth. Speaking with the operator, Wil Wong, he thinks that the Community College Carpentry School can make these booths for him. And the relationship between the swap meet and the college is, one, very

complimentary in that the swap meet will also be a venue for small businesses and people who are trying to develop small business programs and have an opportunity to get the experience to be a vendor or sell their merchandise at the swap meet. The lease arrangements between Maui Exposition and the Maui Community College – and this partly the reason for the necessity for the office to be located on the site – is that Maui Exposition will be responsible for maintenance. Not only of the detention basin and the swap meet grounds, but they will also be responsible for maintenance of the driveway entrances and the landscaping around the entrances at both Kaahumanu entrance and the Wahine Pio entrance to the parking to the Maui Community College. And this will require a maintenance crew, probably three to four days a week of maintenance, for two people. So there will be a lot maintenance and activity that will benefit the community college as a whole.

This is the small office that will be located onto the site. It's approximately eight feet by 24-feet. It's a trailer that will be finished out and will be roofed. And again, the finish will be complimentary to the existing buildings at Maui Community College, and the same color schematic. And there's a lot of administrative functions that happens at the swap meet that necessitate the office space. The vendors usually come in and some pre-register and therefore people will be at the site handing deposits to Maui Exposition. They come in on Wednesday mornings, Thursday mornings, and pay their fees and make their arrangements for the Saturday event. So, you know, there will be people operating out of the ticket office on a part-time basis throughout the week. And then the maintenance crew as well will be probably using this for administration and office work.

Again, this is the typically buildings that are at Maui Community College. Or not the typical, but the new buildings, newer buildings. This is the culinary arts building, the Pa`ina Building, which was built a couple of years ago, and opened, and houses the culinary arts instructions. And again, this is some of the information kiosks that are located throughout the campus area. And so the swap meet structures that Maui Exposition will be putting onto the site are similar to the existing architectural features at the newer buildings at Maui Community College.

This is just the rendering of the fence and how it might look with the columns that will be located between each of the fenced sections. And this will just be along the front of the detention basin and the site entrance.

I just want to now just go over a few of the landscape features. Basically the landscape plan is to enhance the existing landscape at the site. As I mentioned earlier, there's a screen buffer of existing kiawe along Kahului Beach Road and the Swap Meet area, college campus. Maui Exposition will be, and has already, planted some of these sea grapes that would be, as well, interspersed and located in these approximate areas. These plants were donated by Kihei Nursery and a lot of the plants also have been propagated at Maui

Community College Agricultural Program. And so they've propagated approximately 200 plants and those are being replanted within the area. Again, there will as well be a sea grape hedge on this portion of the berm and along the top. And these will be trimmed down and kept at hedge level and not allowed to grow into trees, so that there is maintenance, continuous maintenance, being carried out at the site. And as well, then within the basin itself, there will be monkey pod trees that will be planted within the basin to provide shade for the venue and clients and the vendors during the swap meet.

This is a rendering of the sea grape hedge in and amongst the existing kiawe vegetation. I'd just like to point out that Maui Community College has a non-potable irrigation well that use for irrigation, so they don't use the County's potable system. They have a well and provides irrigation for the college campus. And these landscape features will be tapping into and tying into the existing non-potable irrigation system.

Again, these are pictures looking to the west of the existing kiawe buffer. As you can see they're quite mature. They provide quite a thick screen from Kahului Beach Road. And as you go to the site right now, you'll probably see a lot of equipment. There's civic work going on with the County of Maui's infrastructure program that's being done right in front of the Maui Community College site.

And then this is looking to the east. You can see Harbor Lights Condominium in the background, and again quite a thick and high buffer between Kahului Beach Road screening the campus from the roadway and there will be sea grapes planted in between the kiawe buffer.

So that concludes our presentation for the improvements. I think putting it quite simply, it's basically to expand the existing detention basin. However, because of its prominence and because of the arrangements that are made between Maui Exposition and Maui Community College, there will maintenance and enhancement of the area so it won't just be a normal detention basin, but it will function as well as the future Maui Swap Meet site. Thank you.

Mr. Riecke-Gonzales: Does that conclude your presentation?

Mr. Hirano: Yes it does Vice Chair.

Mr. Riecke-Gonzales: Then we'll open it up, actually we'll go around the table, for questions from members starting with Linda.

Ms. Linda Berry: I appreciate your efforts to match the design of the local surrounding architecture, and my questions are is there any foundation for the office? All I see is the shipping container.

Mr. Hirano: It will just be mounted and set on blocks on a concrete pad.

Ms. Berry: And does the retention basin actually holds standing water at times?

Mr. Hirano: It does. Wil has been monitoring it for the past year, and during the heavy Kona storms that we had last year, the detention basin does fill up. It does hold water. The drainage is very good. There's sand underneath. It's Puuone sand so it drains out. Probably within 24 hours to 36 hours it empties and percolates through the sand. And then the ground is fairly dry after that. And there's a good ground cover of grass, so it's not muddy at all. And then the walkways as well will help with that. There is an arrangement between the College and the Maui Exposition that they have an opportunity of four days throughout the year if the conditions are such that there is standing water in the basin, they can move the Swap Meet facilities and venue up onto the parking area. So there will be an area that would be coned off if the weather is conducive, and if there is water in the detention basin. But normally we would expect that the detention basin would be dry.

Ms. Berry: Okay. I'm glad to hear that. I'd also like to know if the standing water will impact the plans that you have for the landscaping?

Mr. Hirano: We don't think so. The plans were reviewed by the agricultural instructor at Maui Community College and they felt that the monkey pod trees would do quite well in that environment.

Ms. Berry: Thank you.

Mr. Hunton Conrad: I have no questions.

Mr. Russ Riley: Are all the planting being irrigated permanently?

Mr. Hirano: I don't believe so. It would be just to establish them, but I think that they'll be okay especially in the kiawe area. That area is not irrigated at all right now, I don't believe so. They'll just do it for plant establishment and then at that point look at it and see if they need irrigation. But the irrigation is there right now within the basin.

Mr. Riley: Are the monkey pod trees permanently irrigated?

Mr. Hirano: I don't know if they will be. Wil?

Mr. Wil Wong: Good morning Mr. Vice-Chair and members of the Urban Design Review Board. My name is Wil Wong. I'm the President of Maui Exposition. To answer the question regarding the monkey pods, there is brackish water between four to eight feet from the retention basin level. And the landscapers that we talked to indicated that once

the root system gets to the brackish water that the monkey pods should be able to thrive in that environment. We already have several monkey pods around the campus that are not being irrigated that are thriving. So initially to get the monkey pods started, we will have to hand water it. But once the root system does get established, I think that regular irrigation would be very minimal if in fact required.

Mr. Riley: I noticed in the brochure that it would be possible to extend the permanent irrigation if needed in the future – the drip.

Mr. Wong: Yes, that's correct, yeah.

Mr. Riley: Four feet is a long time to wait for the roots to go south – to go down. They don't know that the water is there.

Mr. Wong: Yeah, we are working on an irrigation plan with the college regarding their irrigation system right now also.

Mr. Gary Brauner: No questions.

Mr. Riecke-Gonzales: Randy?

Ms. Wagner: I really like the idea of the relationship between MCC and the Swap Meet. I think there's a lot of potential there. The questions that I had, had to do with the pathways and I was wondering if they would be undermined when the thing floods? But I was also wondering if there's any way you could use a pervious type material as oppose to just concrete? I know that there's some materials that percolate the water through and it might be something to look into.

Mr. Hirano: Yes. I'll ask Trisha Higuchi from ATA regarding just – what you say about undermining with the water on the pathways.

Ms. Trisha Higuchi: Good morning. I'm Trisha Higuchi with Austin Tsutsumi and Associates. We're the civil consultants on this project. Right now the asphalt concrete is designed at a six-inch base course and two-inch flat top. We do believe that it will stand up in the rain, and it should do okay. As far as going to a pervious type of walkway, that is possible. It just believe that the asphalt concrete would do better as it would hold in place better and stand up to the water better - not wash away with time.

Ms. Wagner: That's my comments.

Mr. Riecke-Gonzales: Linda?

Ms. Linda Kay Okamoto: No questions.

Mr. Riecke-Gonzales: Darryl?

Mr. Darryl Canady: No questions.

Mr. Riecke-Gonzales: Susan?

Ms. Susan Liscombe: A couple of questions on parking.

Mr. Hirano: Yes?

Ms. Liscombe: There's space there for about 600 cars?

Mr. Hirano: 860 or 825 in the parking lot.

Ms. Liscombe: How many cars are accommodated at the current swap, and not just in the parking lot, in all the areas?

Mr. Hirano: That's a good question. I'll let Wil answer that, but what is anticipated, current sort of volume, there are approximately 200 vendors at the existing site. This site will accommodate approximately 225 vendors. And the number of people would be existing about 3,200 people attend the swap meet on a Saturday, and here, there will be approximately 3,600 people attending. That's what we're anticipate. I'll let Wil talk about the parking as it's impacted at this particular time.

Mr. Wong: Yes, I'll be more than happy to address you questions regarding parking. At the current site, right on site, we have approximately a little over 300 parking spaces. These parking spaces are unmarked parking spaces which is unlike what we will have at the Maui Community College which are marked parking spaces. So what we have at the current swap meet involves parking attendance to help facilitate the parking situation. We previously, and I say previously, had an additional 300 parking spaces off-site on the corner of Kamehameha Avenue and Puunene, but we have since loss that parking lot due to the construction of the Kahului Town Center by A&B Properties. So currently, we're operating with just about 300 parking spaces. We have approximately close to 200 vendors. I would say about 75% of the vendors just park right in the spaces at the vending site. The balance of them do remove their cars and park elsewhere.

The new parking area at Maui Community College would be a great – it would be a very positive situation for us because of its large area. And the college itself does have other parking areas that could be used around campus also.

Ms. Liscombe: Okay because my next question is going to be, if you have water in the retention basin and you're holding the swap meet up in the parking lot area, how many parking spots eliminate from your 600 –?

Mr. Wong: Okay, usually during inclement weather, and when I say inclement weather, and we try to operate – usually it happens about four times a year where we try to operate in a drizzle or light rain. Our sellers and attendance usually drop by about 25% to 30% and the parking becomes – the rotation on buyers is greater during a rainy day because obviously they can't spend a lot of time there. They're running in and out of the rain. So basically the operation kinds of drops down anywhere between 25 to 30% or so. We have less vendors and less buyers. I do want to add that from my experience that we are going to lose at least two events a year due to heavy rain. And I think when you've lived in Hawaii for a long time, you realize how tormenting a Kona storm could be and I think I am well aware of that and I'm quite vigilant of that. I think that I've been reviewing the situation already with my staff that in any event there's a flash flood warning, we need to be more vigilant. I think the other thing I would like to point out is we're not operating next to a stream where it can get swollen. You know, it is a retention basin and if does puddle, it would puddle very slowly.

Ms. Liscombe: Okay, just a couple more parking questions. I noticed that you have indication of handicap parking right in front of your main entrance.

Mr. Wong: Yes.

Ms. Liscombe: I was wondering how many handicap parking spots are you allowing there? And what about access to those spots when you have that area closed off directly in front of the gates?

Mr. Wong: There is another major driveway right along the three buildings, the Pa`ina Building, and I didn't actually get a count of the number of handicap parking stalls that we are going to be allocating, but in any event we would work towards making it accessible to people that have a handicap parking. I will be able to say there will be a greater number of handicap parking spaces than we already have. And the only reason we're coning that particular area off is it's so close to the entrance gate, for liability and safety, we didn't want to have cars going up and down that area of the parking lot.

Mr. Hirano: I'd like to just add that we did an environmental assessment for this project as well because it triggered the use of State lands. Maui Economic Opportunity has a written comment letter. So there's public transportation coming to the site that will be available – public transportation, as well as Maui Economic Opportunity, they have that little bus that will be as well bringing clients and bringing people to the site. So there will be public transportation which would reduce I think the parking requirements.

Ms. Liscombe: I have a couple more quick questions.

Mr. Riecke-Gonzales: Go ahead Susan.

Ms. Liscombe: Restrooms, I found no restroom facilities.

Mr. Hirano: There will be port-a-potties brought in on Saturday's for that just like they're now.

Ms. Liscombe: So they'll be set up somewhere?

Mr. Hirano: They'll be set up in the inside.

Ms. Liscombe: On the retention basin, what's the difference in elevation from the parking lot to the --?

Mr. Hirano: The bottom of the detention basin is approximately six-feet, and the top would be 10 to 12 feet. So I think there's maybe six feet difference, but Trisha, the elevation of the parking lot? Probably around seven feet?

Ms. Higuchi: . . . (Inaudible. Did not speak into a microphone.)

Mr. Riecke-Gonzales: If you could come up by the microphone so we can get you on the record.

Ms. Higuchi: Yes, the bottom of the retention basin is at about a six foot elevation, and the parking would at about 12 foot elevation, so six foot difference.

Ms. Liscombe: Is there going to be a ramp down or stairs down?

Ms. Higuchi: There's a ramp going down from the parking lot down to the basin floor.

Ms. Liscombe: And what kind of an angle is that ramp going to be at? I'm thinking again about handicap accessibility.

Ms. Higuchi: Right.

Mr. Hirano: The slope will be 12 to 1.

Mr. Riecke-Gonzales: Any other questions Susan?

Ms. Liscombe: No. Thank you.

Mr. Riecke-Gonzales: Okay. I have a few questions. The drawing that you had of the chain linked fence with the masonry pilasters, does that get any sort of a hedge where the chain linked fence is?

Mr. Hirano: Will could you come up? I didn't see in the landscape plan any planting along the fence line.

Mr. Wong: Yes, at the present time we're not planning any type of hedge. We're trying to get away from that daily maintenance and we just felt that the concrete columns in itself would add aesthetically to the campus.

Mr. Riecke-Gonzales: Did you look at any other type of fencing other than chain linked? Because aesthetically, usually, we need some kind of screening on the chain linked fence.

Mr. Wong: From the Wahine Pio we are planning a screening, along Wahine Pio which is the continuation of the spider lily hedge. But between the parking lot and the retention basin we don't have any type of landscaping plan for that area.

Mr. Riecke-Gonzales: And then I have a question on the maintenance of the grass. Will that be your responsibility or is that Maui Community College's responsibility?

Mr. Wong: No, it would be our responsibility.

Mr. Riecke-Gonzales: Okay and would that include actually re-grassing when the grass kind of gets worn down, or areas – like right now, it is very green, but I'm just imagining you get a lot of people walking over certain areas then the grass doesn't want to grow there anymore. We would just have to take that into our maintenance consideration when and if that does happen. One of the things that I am thinking about is when we go through our slower periods, perhaps we can rotate the vending area to allow the grass to regrow in areas that are potentially getting bald or worn.

Mr. Riecke-Gonzales: And then I have a question of the civil engineer. Is this in the tsunami zone? Can you show us where the tsunami zone goes and what height it is? Maybe on the landscape plan you can kind of sketch out.

Ms. Higuchi: The current – the flood insurance rate map shows the tsunami zone going from makai of approximately aligned down there.

Mr. Riecke-Gonzales: I see.

Ms. Higuchi: So our retention basin does fall within that tsunami zone.

Mr. Riecke-Gonzales: And what is the height of the z-zone then in the retention basin?

Mr. Hirano: The flood insurance rate map has it in zone A04, and the base flood elevation is eight feet at that particular point. It's also in a V23 zone. There's no base elevation on the V23. That's weight velocity.

Mr. Riecke-Gonzales: Yeah, but, it's all within that area right?

Mr. Hirano: Yes.

Mr. Riecke-Gonzales: So you could get a tsunami lets say four to six feet above existing elevation in that area.

Mr. Hirano: Yeah, if it was wave action, yes.

Mr. Riecke-Gonzales: So what's the mitigation plan if any? I think there are sirens down at that area. I've certainly seen them. But is there like a special evacuation plan that's going to be in place? Because I think I've heard you mention of up to 3,000 people attending this, so let's run through the scenario. You have 3,000 people and the sirens go off. What's in place to get those 3,000 people out quickly, orderly to their cars and away? You know we'd all love to have where the tsunami is coming from Alaska and the sirens go off an you have four hours. But you never know, the tsunami is generated from the Big Island, you have 15 minutes to get 3,000 people out of there. Is there something in place to do that?

Mr. Hirano: There are parking attendants. There are as well security personnel within the Swap Meet site. Wil, could you come up? There are two driveway access.

Mr. Wong: Yeah, first of all, regarding the attendance, when we used that figure 3,600. I just want to point out, they're not all there at a given time. They're there over a six hour period. So potentially let's say we have half of the amount there at any given emergency. We're probably dealing with, I think it would be safe to say, half that amount. We would have emergency plans drawn up because we also usually have a special duty officer on site that has contact – you know, has a cell phone. But we would develop some kind of evacuation plan. Not only for a tsunami but any other type of emergency.

Mr. Riecke-Gonzales: Have you coordinated with MCC? They must have something in place already.

Mr. Wong: I haven't really gone into the particulars of that at that moment, but we should be able to. Like you said, during the week, if they have classes and there is a tsunami warning, they may have something already – some kind of plan already, and I could

discuss that further with them.

Mr. Riecke-Gonzales: Okay.

Mr. Hirano: I'd just like to point out, too, Wahine Pio Avenue, although it does access onto Kahului Beach Road, it also does access onto Kaahumanu at higher grounds. So evacuation routes, there will be security. There's usually a traffic control officer at the events that would direct traffic. So the evacuation route could easier be at Wahine Pio Avenue out onto Kaahumanu Avenue on higher ground.

Mr. Riecke-Gonzales: Okay. Those are all the questions I have. Do any other questions occurred to any of the Board Members at this time? If not, I'll open it up to –

Ms. Okamoto: Anthony, I have just one question.

Mr. Riecke-Gonzales: Yes. Sure.

Ms. Okamoto: When you were talking about the parking lot, you are not in anyway changing the current MCC parking lot?

Mr. Hirano: No. There will be no changes to that.

Mr. Riecke-Gonzales: So then I'll open it up for any public testimony. Do we have any public testimony on this project at this time? Seeing none, public testimony is closed. So we will now go around the opposite way with discussion among Board Members starting with Susan.

Ms. Liscombe: No.

Mr. Riecke-Gonzales: Darryl?

Mr. Canady: No.

Mr. Riecke-Gonzales: Linda?

Ms. Okamoto: No comments.

Mr. Riecke-Gonzales: Randy?

Ms. Wagner: No comments.

Mr. Riecke-Gonzales: Gary?

Mr. Brauner: No.

Mr. Riecke-Gonzales: Russ?

Mr. Riley: No comment.

Mr. Riecke-Gonzales: Conrad? Linda?

Ms. Berry: No comment.

Mr. Riecke-Gonzales: I have a few comments as I usually do. But it does bother me that there's no screening of the chain linked fence. I know I remember – actually it's usually on weekends, I used to take my kids there for they had dance lessons and things like that at MCC. I use to like to walk my dog around that retention basin area, and it's actually a pretty area right now, and I can see when they put the chain link up, that really changes the character as you look out towards the ocean. And it seems to me it would be fairly simple to either, instead of using a chain linked, use maybe one of the white picket fence type materials now or to put a hedge with the chainlink to just you know soften that up a bit. So I would put that out as that's maybe something we want to make as a comment that should be done as part of the project.

And then I think we should have some comments on there for the maintenance of the vegetation – that may be even be a condition of the permit that they do commit maintenance. And it's going to be a little bit of a headache for them. When you get retention basin that floods up, it floods up with mud. And then after the mud is gone, we really want to want to wash down the grass again otherwise you know the mud kind of kills the grass. And I can see if nobody takes responsibility for that it won't be very long before it's really just a muddy sandy bowl.

The other comment I have, and I'm not really sure how to address this because we've never had other projects that have come before us that are actually having a human activity in a tsunami zone. The FEMA people tend to always stress in their seminars that the whole idea here is not to have human habitation in an areas where you have tsunami. Now this isn't human habitation. It's more of a temporary use. So I think that there needs to be something from the applicant that actually shows a written plan, and maybe they even put signs as part of the project at each of the gates that they already have thought out and evacuation plan. So that if there is a tsunami, that the police or the warning center says well you have 15 minutes or less to get out of this area, they're not running around thinking what do we do now? They already have something in place that they know how to get up to, you know, it could be as much as 2,000 people out of these gates. And you know maybe they even have where they're announcing you don't have time to get into your car but we already know where the high ground is and we've marked it out on the signs, this

is where you guys need to go on this path. Because otherwise, I could see that being a real mess. And none of us, I think, what to be responsible where it's like we didn't think of that but we that it's a place that gets tsunamis. So I would put that as a condition of this as well – is that they need to may be – do they go before the Planning Commission after us?

Ms. Loudermilk: Yes they do.

Mr. Riecke-Gonzales: Okay.

Ms. Loudermilk: Yes they do.

Mr. Riecke-Gonzales: So I would put that as a condition that when they present it before the Planning Commission they have some kind of actual plan in place that includes some type of signage that they've looked at the topography and they know where the high ground is, and they know how they're going to get up towards to 2,000 people on a pathway to go up to that high ground when the sirens go off.

Ms. Loudermilk: We would recommend that they work with the MCC to see what they currently have on the campus and what they don't have, and incorporate all of that into the evacuation plan including any types of graphics. I see that similar to like a fire evacuation plan that certain locations, entrance/exit, this is what you need to do, the route you need to take at this point in time should a fire occur or should a tsunami occur.

Mr. Riecke-Gonzales: Okay.

Ms. Loudermilk: Yeah.

Mr. Riecke-Gonzales: All right those are my comments. If we don't have any other comments maybe we could hear a motion from the members.

Mr. Conrad: I move that we accept this plan as proposed with the two comments. One that there's an evacuation plan as part of the permit and that there is some kind of landscape screening in front of the chain linked fence, maybe a continuation of the spider lily hedge or something like. Or it could be one of these vinyl fences, yes.

Mr. Canady: I second the motion.

Mr. Riecke-Gonzales: Thank you. Any discussion on the motion? All right, let's go ahead and take a vote. All those in favor, raise a hand. Motion is carried unanimous.

Ms. Loudermilk: Thank you.

Mr. Riecke-Gonzales: Thank you Robyn.

It was moved by Mr. Hunton Conrad, seconded by Mr. Darryl Canady, then unanimously

VOTED: To recommend approval of the project with the two recommendations as noted.

(Assenting: H. Conrad, R. Riley, S. Liscombe, G. Brauner, D. Canady, L. Okamoto, M. Wagner, L. Berry

Excused: D. Callinicos, E. Nakagawa)

Mr. Hirano: Thank you very much Board Members.

Mr. Riecke-Gonzales: Thank you. Does the Planning Department know how long this orientation workshop will be? Should be take a break first?

Mr. Yoshida: I think it will be about an hour.

Mr. Riecke-Gonzales: An hour. I would recommend then we take a seven minute break and reconvene at 10:00 a.m.

(The Urban Design Review Board recessed at approximately 9:52 a.m. and reconvened at approximately 10:03 a.m.)

E. ORIENTATION WORKSHOP

- 1. Roles and Responsibilities – Chapter 2.26 Maui County Code**
- 2. County Policy Against Discrimination**
- 3. Outdoor Sign Ordinance**
- 4. Corporation Counsel Handbook for New Board and Commission Members**
- 5. The Sunshine Law**
- 6. Ethics**
- 7. Rules of Practice and Procedure**
- 8. Meeting Agenda**
- 9. 2008 Meeting Schedule**
- 10. Special Management Area Rules**
- 11. Country Town Design Guidelines – Paia-Haiku, Makawao-Pukalani-Kula, Molokai, Hana, Lanai City**

Mr. Riecke-Gonzales: . . . – members had to leave early. Hunton Conrad, Russ Riley, Gary

Brauner and Susan all decided that they had to go, but I do believe we still have a quorum. We have five of us, so no others can leave. All right Clayton, if you can go ahead and start our orientation workshop that would be great.

Mr. Yoshida: Good morning Mr. Vice Chair and members of the board. And I'd like to congratulate Mary, Kay and Darryl on their confirmation, and we would like to welcome back Kay after a brief rest of three months. We thought we'd do a new member orientation just so that everybody has a similar base. We do this annually. Essentially this is a nine member Board with four alternate members. And a lot of your responsibilities are in Chapter 2.26 of the County Code, which has been distributed to you. And the purpose is to ensure that the architectural qualities prevalent in a community are preserved. It is deemed that new construction, reconstruction and renovation within a community enhance and complement the existing built environment.

This is a professional Board as there are various requirements from its membership to have at least two registered architects, one registered landscape architect, two registered civil engineers, as well as there is geographic requirements. We need to have at least one member who is a resident of the island of Molokai which is Darryl, and one member who is a resident of the island of Lana`i who is Kay. And this is an unusual Board in that it has four alternate members which consists of two registered architects, one registered landscape architect and one registered civil engineer. And the purpose of that is, you know, Maui is still a small community, though we are growing. And I guess as far as the professionals were some what limited and they may come across a circumstance where a member of the Board their firm may be representing the applicant so they may have recuse themselves. So then we would go to the alternates. So we're, I think, the only board – this is the only board that has alternate members. No other board or commission within the County has alternate members.

We meet on the first and third Tuesday of the month at nine o'clock, here, unless it's a holiday. And the schedule is determined maybe in October of the preceding year. It's important you let the Secretary, Leilani, know if you'll be attending the meeting or not. We want to ensure that we have a quorum and we want to ensure that we have a voting quorum because we have people like Darryl and Kay that have to travel from Lana`i and Moloka`i. So if you can let Leilani know if you can't make a meeting or if you're conflicted out on a particular agenda item so we can ensure that we have enough members here so they could take an action. And in order to take an action, again, you need to have five affirmative votes because this is a nine member Board. Five affirmative votes whether you have five members here or nine members here, you need at least five affirmative votes. And Corporation Counsel probably can go over that a little bit more.

As far as your duties, largely, it's with the Special Management Area Rules. You comment on Special Management Area Permit projects as you did today for the Maui Community

College, where there is above ground construction – as to architectural design, landscaping, lighting, signage and so forth. And your comments are advisory, but they are transmitted to the appropriate Planning Commission having jurisdiction, whether it be Lana`i, Moloka`i or Maui.

We also call upon you to comment on some public projects such as schools, say a new high school and so forth because the public will use it a lot - that you comment on those. And also we have Country Town Design Guidelines developed for the various rural communities in Maui County such as Paia-Haiku, Upcountry, Lana`i City, Moloka`i, Hana, and these kind of give directions as to the architecture, landscape architecture, lighting and so forth that these communities would like to see which are unique to the communities because they are all different. And these are adopted by Rules of the appropriate Planning Commission. And sometimes because architecture is not a pure science, there is disagreement as to whether or not a design is in conformance with the guidelines. And therefore, we bring it to you, the professional Board, to provide your input. Maybe the Department says that we don't think in our opinion that the design meets the approved design guidelines, and the applicant is adamant that it does. So we come to you, the Board, to sort of see if you agree with the Department or you agree with the applicant or you'd like to see some modification on that.

There is one case in which you are the final authority and that is for sign variances. We distributed copies of Chapter 6.13, Outdoor signs of the Maui Code and it lists how large a sign can be, how many signs you can have, but there is a section 6.13.170 of the Code which talks about variances and it talks about bringing the Director bringing the matter before the board for action. You are the Board. If somebody wants to have a sign that's bigger than what's allowed in the outdoor sign ordinance or wants to have more signs than what is allowed, then they can apply for a variance. Although there are criteria they have to meet and you are the deciding body. You are the final authority on the sign variance. The decision of the Board is appealable in that case.

You are governed by your Rules of Practice and Procedure, Chapter 12-101, which we distributed to you. And we do have a list, a check list, which the Board had developed years ago, 1999, of what we're requiring sort of the minimal submittals for SMA applications and also for signs that the Board wants to see. The County does –. It's important also that if you park here in the County parking that you do put in your parking permits on the dash board. We have a very vigilant Maui Police Department here that sees that we don't exceed the maximum amount of time that you're allowed to parking in the parking lot. So if you're here for a board meeting, make sure you have that parking permit visible for the respective County personnel.

Again, your comments on Special Management Area Permits are advisory to the Commission, respective Planning Commissions. The Commissions can and often do

incorporate those comments as conditions of approval for Special Management Area Permit because you are a professional board. I think that's all I have for my portion. James Giroux is a Deputy Corporation Counsel and he has some things to say about the Sunshine Law and about their handbook for new board and commission members.

Ms. Okamoto: Can I ask a question?

Mr. Yoshida: Yes.

Ms. Okamoto: Okay, on the SMA, we make a recommendation, it goes to a Planning Commission. What about the one where the Country Town Business ones – how does that one – is it the same thing? It's our recommendation, does it go to a Planning Commission then?

Mr. Yoshida: Well I believe the Department is the authority for the Country Town conformance, but I think the Department would consider the recommendations of the Board in case where there is disagreement in making the final decision. Sometimes the project is in the SMA. It's in Paia and it's a commercial project in Paia so they need a Country Town Design Review approval and you need an SMA permit.

Ms. Okamoto: But in the Country Town, then it would not need to go back to the Planning Commission as long as it's something that the Planning Department had felt was proper?

Mr. Yoshida: Yes. If it is in conformance with the approved design guidelines, whether it be for Kaunakakai or Paia or for whatever, if it was in conformance, then it wouldn't go back to the Planning Commission. Yes Darryl?

Mr. Canady: My question has to do with conflict of interest in this respect. Coming the community of Moloka'i, would I be in conflict of interest by voting on a plan or against a plan pertaining to Moloka'i's Community Plan?

Mr. Yoshida: I think Corporation Counsel probably can answer that better, but I think it comes down to do you have fiduciary interest in the project? I mean, do you stand to benefit? Or not benefit, if the project gets an approval or disapproved.

Mr. Canady: I understand that part of it. My question was more of a generic question. By being there and involved because I am a resident there, does that constitute conflict of interest in anyway?

Mr. Yoshida: I don't think it does. In fact I think the Board would look toward the member because you folks have geographic representation, they would look to you if it's a Moloka'i project, or they would look to Kay if it's a Lana'i project because you are more familiar with

the area than, for the most part, the other folks.

Mr. Canady: Thank you very much.

Mr. Yoshida: Any other questions? If not, I'll turn it over to Deputy Corporation Counsel James Giroux and he can talk about the Sunshine Law, Ethics, and the Corporation Counsel handbook for New Board and Commission Members.

Mr. James Giroux: Thank you Clayton. Again, my name is James Giroux. I'm with Corporation Counsel. Sometimes I staff this Committee. Your usual attorney is Michael Hopper and he's in Planning Committee today. I guess they've got a big TVR thing going on over there so he's in Council right now and I'm over here and I'm going to do your guys orientation on the Sunshine Law, Ethics and on maybe some Robert's Rules of Order if we get to it.

But the first thing is the Sunshine Law. I want to point we've got two handouts. One is called the "*Open Meetings, A Guide to the Sunshine Law.*" And just to make sure you have that in your packet, and this is published by the Office of Information Practices. And they're the agency that is the administrative authority basically in the area. These are the people we call when we get caught in a conundrum or some situation where we've never seen before.

Also the other handout that is very important – it looks like a memo – it says "*Review of Agendas for Meetings,*" and it looks like – it has a County seal on the top. It's dated February 28, 2003, and it's signed by a Greg Garneau. Clayton, there's extras.

Mr. Canady: We don't have that.

Ms. Okamoto: Wait maybe in that stack.

Mr. Giroux: Yeah, I passed out a packet of things today.

Ms. Okamoto: We gave it back.

Mr. Canady: There it is.

Ms. Okamoto: We have it.

Mr. Giroux: The reason I have to make sure you have this because as part of a settlement with the County between Smith versus Arakawa, the master basically required that the Corporation Counsel actually hands out this packet. And what it is it's basically a treatise by a Professor Van Dyke on the sunshine law and we find it to be very useful in educating

our members as far as their roles and responsibilities to deal with the sunshine law. Now that we have those packets, I'd just like to explain to you what the sunshine law is, and I'm going to read to you basically what the intent of it is. It says "the intent of the Statute is to open up the government processes to public scrutiny and participation by requiring State and County boards to conduct their business as openly as possible. The Legislature expressly declared that it is the policy of the State that the formation and conduct of public policy, the discussions, deliberations, decisions and actions of government agencies shall be conducted as openly as possible." And this is always what we go back to when we run into situations where we're wondering are we violating the sunshine law. And what you have to understand as a committee is that this body, because it's a government body, has to follow the sunshine law, and that's Chapter 91 of the Hawaii Revised Statutes. The basic tenant is that if you're going to have a meeting, you have to have a quorum. You're going to have to have given notice to the public and that you're going to have to minutes to your meetings. And this is the bare minimum that allows the public to actually understand to what your role in government and what decisions you're making and what policies that you're going to be establishing.

Now on top of it – that's in a nut shell – what you have to understand is that within the Sunshine Law, it allows for two people to talk to each, two board members, but you don't want to be discussing board business and you don't want to be trying to get a vote or to get somebody to commit to a position. You can talk to each other about was there going to be a meeting on Friday or did you get the packet or you can talk about those mundane things with another member. But you can't talk about, oh, did you think that the building was too high, too small, too wide – you can't get into that discussion and especially if you're trying to convince the other person that you really do think that building is too high, too wide, too tall, whatever. So you have to understand that you can talk to other members, but not just about board business. And to understand what board business is you have to think about what you're thinking about is it likely to be on an agenda in the future? A lot of times we hear about projects, we know about projects, projects are in the pipeline, but you have to understand that if that project has to come before this Board to get design review or a Country Town review or anything like that, that this is something that you should not be talking about outside of an official meeting.

There are several exceptions to the Sunshine Law. One of them is a crucial one is that you can have an executive session. And usually your attorney will whisper into the Chairman's ear if the conversation is heading towards somewhere where your rights, liabilities or duties are being discussed. And sometimes the attorney has to give you advice in confidence which means that you're headed towards murky water but we don't want to let everybody who can sue you how murky it is. So I have to tell the Chair, "Chair, I advise let's go into Executive Session, and that usually means I have some legal advice to give you, or the attorney does. And according your Rules, you have to have two-thirds vote to go into an executive session. It's what we call the super majority vote. You can't just have the simple

majority which would be five. That raises problems when we don't have complete quorum here or complete participation.

Mr. Canady: Like right now.

Mr. Giroux: Yeah, like right now, we'd have trouble going into executive session, but you have to understand that, that is something that is discussed sometimes in meetings. So you need to understand what is an executive session? Why is it important for me to vote? Or why is it important for me understand why we need to go into one?

The Sunshine Law wants us to discuss as much as possible on the record. So when you go into an executive session, it has to be clear what the purpose is. Sometimes, I've been in meetings where the applicant's attorney just flat out says you know I'm going to sue you guys. So it's like, okay, now we've got to talk about what's your liabilities. You know, why is he saying that? So now we go into executive session, and say, well, here's the criterias. It looks like we've got to look at points one, two and three. After that discussion is done, you can not stray outside of that. You have to stay on point of the purpose of going into the executive session. If the conversation starts going left or right of what is the purpose of the executive session, that opens up that session to be public again. And there is minutes taken, and those minutes can become public. So you want to be very cautious when you go into executive session about what exactly you're talking and remember why you went into the executive session.

When you come out of the executive session is when you should vote. That's when you should vote. And usually by that time you can have some discussion as long as it doesn't disrupt the whole purpose of having the executive session. You know, sometimes you just need to be talking about things about the project, but in executive session, your attorney reminded you, you know, guys need to put all of this stuff on record because this is what protects your decisions. Those are they types of discussions they usually have in an executive session.

Other than the executive session, there are other exceptions. I don't think this body uses the investigative group where less than quorum - two or more, but less than quorum of the body is picked to do a specific investigation. And that body then does their investigation, does a report back to the body, and then at a later meeting, there's discussion about that report. Right now the General Plan Advisory Committee (GPAC) is using that a lot because they have such huge body of work to do that they're trying to break up their work into little parts. And I think the Planning Commission has had - we've used that exception to allow some of the members to go and look at the power plants and the sewer plants on Maui as part of, kind of, an informational tool. But I don't think this body would use it too much because you're usually getting pretty much what you need in the paper work.

Other than that, another issue that comes up in the minutes. Your minutes are public

record. Leilani records us and also what's recorded in put into a transcription. Those should be available, shall be available, within 30 days of the meeting. If you aren't able to adopt them or approve them, they go out, they are published and they are clearly stated that they are "draft." They are draft minutes and that you can later adopt them officially. But they have to be out within 30-days.

Mr. Riecke-Gonzales: Now a quick question on that James because we have it here today anyway is – at the last meeting, where discussing and approving the minutes wasn't on the agenda and there was some question of whether or not we could that. I think at the last meeting we did have an agenda item that was an administrative item. I noticed on this agenda we don't have that. So wouldn't actually be able to discuss there minutes or adopt them.

Mr. Giroux: That's a good question. The Sunshine Law does allow you to change your agenda, and it's very specific on how you can do it. If you are to add anything onto your agenda, you have to have again a super majority vote, the two-thirds votes. And even if you get that vote, what ever you add can not have a significant impact on the public. So, you know, like an internal – if you wanted to put your adopting of your minutes and that's an internal matter. If you wanted to discuss something about, you know, did you want to add maybe a site visit onto your agenda for further discussion, you could get that on the agenda for logistical purposes. Not to talk about the project, but to talk about can everybody – is everybody available two Wednesday's from now - can we get people to go to Kihei to see a project. Those types of things, you can add those administrative type of things to your agenda as long as you get the two-thirds vote and that it doesn't have a significant impact to the public. And again I think we might run into the problem of trying to add because we don't have the super majority of those who are assigned to this committee.

One question I'm asked a lot is what are the consequences of violating the sunshine law? There's several tiers as far as – the Attorney General is the actual official that can enforce the Sunshine Law. However, if the Sunshine Law is broken. Let's say that there's some kind of discussion that happened off the record between two or three members that affected a vote, an action. The first things is that if there is a violation of the Sunshine Law, that action is voidable, which means that the public can actually file a law suit in Circuit Court, ask the Judge to void that action. But there's got to be found that there is a violation. The law has been changed. It use to be a willful violation. Now it's just a violation – if there is a violation.

The second level is that if you're violating the Sunshine Law that you're violating, you know, your ethics. So you could get kicked off the board for violating the sunshine law. It would misfeasance. The reason is that the Sunshine Law also is enforceable by a misdemeanor. You can be incarcerated. I believe it's up to 30-days. And those are the things that you

have to think about when you're conducting or talking about board business.

Ms. Wagner: Just prior to action that you can't talk about it, what after actions been taken?

Mr. Giroux: Well after action is fine because it's no longer board business.

Ms. Wagner: Then it's public business.

Mr. Giroux: Yeah. If it's not going to come back, then it's -. The problem we have with the Planning Commission is some projects we see at the EA/EIS so we have to discuss it and while we're discussing we have to be very cautious about what we say. And then it comes back for a Community Plan Amendment, and then again we have to be cautious of what we say. And then when they get the Community Plan Amendment, it comes back for an SMA. So just because that action is done, doesn't mean that you can then go on and start talking the project because there is a foresee ability that it is going to be coming before you.

Mr. Canady: It could come three or four different times then?

Mr. Giroux: Yeah, at the Planning Commission level.

Mr. Canady: Yeah.

Mr. Giroux: Yeah, so that is something to be mindful of. Any other questions? Again, if there is any questions, Corporation Counsel is always willing to field those types of questions. And if we don't know the answer, we do often call OIP to get their take on things. We try to make our own call and then call them to see if they're on line. But you do have, your attorneys are pretty knowledgeable now of the sunshine law.

The other thing I wanted to talk to you about is your Ethics, and that I believe the information packet for new board commissioners and your orientation for board and commission members has pretty good discussions about your ethic's responsibilities. Because you are a County Board, you come under the Charter as far as our Code of Ethics and that's found on Article 10, Code of Ethics. The important aspect of this is to look at Section 10-4 at your Prohibitions. It can be broken down as far as your conflict of interest. If you have a business transaction or activity or financial interest in a project you have to disclose it and refrain from participating.

The other thing is that this board, I believe files a financial disclosure. No? Okay, we'll skip that then. We'll go straight to gifts. You can not be accepting gifts by applicants if it can be reasonably conceived to be trying to affect your vote or action. And it's very tricky because in Hawaii we always have that gifts of aloha thing. Somebody brings food and I think that as far as culturally sensitive there's an understanding about that. But you can't

push it too far. You must understand that even if it's a small gift. If it's perceived to be trying to influence you, you have to be cautious about receiving it. If anybody does approach you and it seems strange that the gift seems to be of such a value, please notify us, talk to us about it. And if you are worried about it, you can ask the Board of Ethics for an opinion about whether or not you should receive that gift or not. Yeah, the Lexus, the diamond bracelet.

There's another part of our ethics that says you can't disclose any information that you've received as your position that is not a public information. But 99% of the information you receive is public information at the time you receive it anyway. But, again, if there are any questions about that, you can ask us or you can get an official opinion from the Board of Ethics.

Ms. Wagner: So you can't talk among Board Members, but you can talk to the public.

Mr. Giroux: Yes you can. You can actually, you know, I mean if you're at a dinner party or whatever and you're talking to a bunch of professionals, as long as the information you're giving out is not in any way infringing on the idea that these people are going to benefit from information that the public wouldn't otherwise have. But again because of the public disclosure laws in Hawaii, once something is filed with the Planning Department, anybody can go, and as long as they pay for the copies, can get whatever we handed out here – anything – they can get that information.

Ms. Wagner: So you could say, "oh, there's going to be this great project and the land next to us is going to become really valuable. You ought to go and buy that right now."

Mr. Giroux: Yeah, that could be a –

Ms. Wagner: Not that I would do it. I'm just trying to understand.

Mr. Giroux: Yeah, the thing is also too is, you know, because this body mostly makes decisions that are referred to another body for final decision. But you do have some final authority in your job description. And whenever you're dealing with these types of permits, we always look at it that it's possible that we're looking at a property right, and that person has a right to what we call a contested case because they're bringing forth their project, they've got a property interest, and other people may oppose that project, meaning that they can come forward and you know give reasons why that project shouldn't be passed. And when something gets that heated we're in what's called a contested case, and HRS 91 and 92 have guidelines as far as that goes. But the thing to remember is that if anything does get into a contested case, you're taking on a role of a quasi-judiciary function and that you are now taking on the role of judges. You have to have this objective standard, non-partial. And so whatever you say about the project outside the meeting can or will be used

against you. Meaning that if you're the deciding vote – let's say you make a comment at a party, like, "This is a crappy project. The architecture is completely lame. I don't like it." And then somebody overhears that and they're at the meeting, and it just so happens that it's your vote that kills the project. You've got five other members at the meeting, you vote against it. Now you've just raised an issue of should you have voted, should you have recused yourself, because now there's an ethical question about whether or not you had bias going into the meeting without hearing the full information before making that decision. So that's just something to be cautious about. Any other questions?

I guess since we've got time I will touch a little bit –. Wait, another thing I wanted to point out, your Rules are – Clayton touched on this very briefly – as far as conflicts. And your Rules are very unique in any other Board that I've seen. It's under Section 12-101-17 and it's your disclosure of conflicts. I'm going to skip to Section B. It says "whenever a member or an alternate member of the Board or the member or alternate member's firm or employer represents a client who requires board review of an application, the member or alternate member shall not participate in the client's presentation to the Board. The member or alternate member may answer technical questions posed by other members of the Board. But the member or alternate member shall not advocate on behalf of the member or alternate member of the client." And what that's saying is if you read that in the context of the section above that if you're in that situation, you should disclose. You should disclose that I work for that firm, "yadda, yadda, yadda," and that you should not vote in the matter, and you should not advocate in matter, but that you can answer. If you're like the only architect who knows what a gilded roofing is or whatever, you can answer what is that, what kind of roofing is that and what other alternatives are there for that type. Because you're professionals and every professional area has language that is unique to it that other people outside your profession might not use, you can still be used as that type of resource on this Board. So I just wanted to bring that to your attention.

Mr. Riecke-Gonzales: I have a quick question on that because I had thought that it was also that you could ask or answer questions of the Board might ask of you when you're presenting.

Mr. Giroux; First of all you're not suppose to be presenting. But if you're sitting on the Board, another Board Member can turn to you and ask you a technical question.

Mr. Riecke-Gonzales: No, I was thinking more of okay there's a project that went through my office and then I have somebody else in my office who presents it. But then there's a question that the Board asks, and the person I have presenting doesn't have knowledge of that because he doesn't a thorough knowledge of the project as I do, then I can get up and answer the question that the Board had asked.

Mr. Giroux: Yeah. As long as you're not advocating. You're just answering a technical type

of question.

Ms. Okamoto: And as I recall we had one of those and Anthony actually left the table and sat in the audience. Is that what should happen? One time you had.

Mr. Riecke-Gonzales: Yeah, I think one time just sat up here. On that one where I conflict of interest I wasn't actually presenting. It was a signage thing and I had involvement with the project but not with the signage. But I did recuse myself from voting and I just sat up here. Another time it was actually a project through my office so I had somebody else who presented, but I remember I did get a scolding because in answering a question, it tends to be the natural tendency of architects to advocate for their design.

Mr. Giroux: Yeah, lawyers get stuck in that position too. I just wanted to touch briefly on Robert's Rules of Order. I don't know how much discussion or problems you guys have ran into as far as rules of order. What I, as an attorney, usually leave all of those decisions up to the Chair. Sometime the Chair does ask me what should I do in this situation, but the idea is that the Chair should be running an orderly meeting that's efficient and fair. And that means that everybody gets a chance to state their peace but in orderly fashion.

When making a motion, a lot of times you don't have to work so hard. I see Boards working really hard in trying to fashion motions. But a lot of times if the staff has made a report and recommendations, the simplest motion is motion to adopt the recommendations. And what that does is it adopted all of the recommendations and it takes care of all the procedural issues within the recommendations and such. And once that motion is made and seconded, you can have another discussion to change some of things within that recommendation. So you very easily can do a motion to amend – I want to change recommendation #3 or I want to delete it, and get a second. And then if you can get five votes in favor, in affirmative, you can get rid of recommendation #3, in that sense. I see a lot of people trying to struggle because they don't think adopting that, the Planner's recommendation, as exactly what they want. But the understanding is that you can adopt it and then amend it. But it gets it out on the table and a lot times it's easier to work through amendments than it is to try to craft your own motion. You know what I see a lot of times a motion to approve and I want this condition, and then this condition, and then it just turns into a mess.

Ms. Okamoto: We should ask for the planner to read the recommendations before we make a motion.

Mr. Giroux: Right. Yeah. And I'm not advocating a rubber stamp. What I'm saying is that if the idea is that you absolutely don't like what the recommendation is, then you know, a motion – yeah – because basically what it would be, it would be a motion to deny the project. So that's a very easy motion. The hard motions are the ones that you want to

adopt it but there's things you need to tweak, and because of the professional skills that you guys are bringing that you want to – like we had the fence this time. So we motioned to adopt the recommendation and then get a second – it's on the table. Okay I have a motion to amend or add a condition, and I want to add that the fence be shielded by planting – get a second - then five affirmative votes – boom. Your motion to amend is adopted, and then you go back to your main motion, and that amendment now is part of your main motion. So it's a motion to approve as amended, and then that takes care of that motion. It wraps it up nicely. And that way within the recommendation that they're going to transmit to the Planning Commission, so there's a lot of technical stuff within the Planner's recommendation that needs to be in your motion that goes along with that so that your action can be transmitted out of this body.

Any other questions about Robert's Rules of Order?

Mr. Canady: I found myself caught in that situation too many times where you're trying to draft something and it just becomes a –

Mr. Giroux: – it becomes –. Well because planning projects by its nature will have 20 to 30 conditions. So a lot of times just starting with a template helps. If the leaning is that it's going to be approved. If it's not, then try to get the motion to deny on, and if it fails, then you have to understand that you are dealing with a situation where there's just little things within the project that need to be worked out.

Mr. Riecke-Gonzales: This isn't on Robert's Rules, it's actually more on the conflict of interest and that's because you know sometimes projects can last literally for decades out in the working world. So where do they draw the line? Like a lot of times, I'll get approached for a project. I'll do a proposal. I'll actually be trying to get that project. And then let's say I don't get it, and three or four years later, you know, I'm sitting on this Board and somebody else is presenting it. Would that be something that I would say, you know, I have a conflict of interest because I tried to get this project but I didn't. Or there's like a certain time period where I barely remember the project and yet I can see somebody saying if I don't vote the way they want me to, saying wait a minute, the reason he's not voting the way we want him to is because we didn't give him the project.

Mr. Giroux: Yeah, that brings us – ethics is always debatable in the terms of – what you really have to look at is first of all do you have a financial interest? You bid, you didn't get the project, therefore, you didn't get a financial benefit. Now the flip side of that is where I was talking about that you have to be partial – I mean, impartial – and that you don't want to be accused of being biased in any way. And you know, it's foreseeable that somebody could say you've got sour grapes, you didn't get, so that's why you voted against my project. But that in and of itself, those people would have to convince a Court that you really had that much bias against them. And that's pretty difficult in the government sense

– sometimes people, you know, if things get really heated, it will bring a 1983 action. It's a Federal action where somebody abuses their official capacity, or they violate somebody's constitutional rights because of their capacity. That's the kind of complaint that is made. But if you look at the body of law, on how successful these types of lawsuits are, and you find out how very, very, very difficult the standard of evidences to show that somebody who's in a position of authority to make decisions – the amount of malice that has to be shown as evidence of that is pretty high. I mean, when somebody brings that type of lawsuit, they have to know that they're going up against a big hill because to actually show malice, you would basically have to say on the record "You know, you guys never gave me that bid and I bid great on it, and you know what, I'm voting against it." You know, there's that level of evidence. The assumption that just because you lost the bid that you would vote against it is pretty weak. So to say that you're not going to get sued, I can't tell you that. But what I can tell you is looking at the body of law that for them to actually be successful in convincing a Court that yeah you violated their rights because you just didn't get the bid – that's going to be a pretty flimsy lawsuit.

Ms. Okamoto: So for us, the best would be as we come into a meeting, we know what the agenda is, if we have any concerns there might be before the meeting even starts, we would talk with you and say okay here's my situation.

Mr. Giroux: Yeah. The safest thing is disclosure. It's always the safest thing. And if the Board – I think your Rules also say that – make the disclosure then the Board will decide. It says "when a member is deemed by the Board or the Board of Ethics," so the safest thing is always throw it on the table. If you've got a inkling, a red flag or something that says I remember I had something to do with that project. Put it on the table because your other professionals might say, well, so you bid and you loss. Did you benefit from it financially? No. You've got any hard feelings? No. All right, let's go on.

Mr. Brauner: Sometimes losing is better.

Mr. Giroux: Yeah. You'll find out what a mess the project and the investors all went bankrupt.

Mr. Riecke-Gonzales: I have one other question because it came up, I think, in the last year or maybe it was more than a year ago. We had one of the local attorney who, when public testimony came, started testifying on legal matters. And for us, I didn't quite know what to do – maybe I was Vice-Chair at the time – but it was like, do we automatically turn to our legal Counsel at that point? Do we try and stop the meeting and go into Executive Session when someone starts talking to us about something we don't understand?

Mr. Giroux: Yeah, the thing is that you have to take public testimony right. So everybody gets their three minutes. Sometimes an applicant's attorney will want to talk. What you

have to understand is that they have the right to say what they're going to say. If it raises concerns – I think the one you were talking about, they were saying you guys don't have jurisdiction. You can't hear this, you don't have jurisdiction. Well that's when the attorney would talk to the Chair and say do you want me to talk about this on the record, or would you want to go into executive session – just so you guys are comfortable going forward and understand what does jurisdiction mean, first of all, and why do lawyers always yell lack of jurisdiction every chance they get, and what is our analysis of your jurisdiction and your powers and your duties? So it's a perfect segway into going into an executive session because the discussion would be specifically on what is this Board's powers and duties over this permit and whether or not it is rightfully in front of you and can you rightfully discuss the matter and take a vote?

Mr. Canady: And that would be the decision made in executive session?

Mr. Giroux: Well I think the discussion should be thorough enough that you understand what your powers are. I don't think that there needs to be – you want to always avoid voting in executive session. This would be one of the situations where you could just come out of executive session saying, you know, we understand what your position is, we're comfortable with proceeding. You don't have to vote.

Mr. Canady: Thank you.

Ms. Wagner: Does executive session . . .(inaudible) . . .

Mr. Giroux: Actually we stay here and everybody leaves. And then when we're done – actually the only vote is to vote to get out of executive session really. And then when you get out, they'll come back in.

Mr. Yoshida: Thank you. With respect to the minutes, one the issues that the Board has faced on is because you have alternates, it's that the composition of the Board at any one meeting can be different. Like we could have a meeting today and you can have members A, B, C, D, E. At the next meeting, you could have members D, E, F, G, H, I. So for them to approve the minutes from the previous meeting is going to be difficult. And the next meeting, you could have A, B, E, G, H and I, and so you could go on and on and on. So I guess they'll follow – what we has the minutes are produced and circulated; and at the next meeting, the members can make the corrections. I sad window pane, P, A, N, E - P, A, I, N – of course Leilani would never make that mistake – for example –. Because sometimes we get into various types of jargon, architectural jargon, engineering jargon, landscaping jargon, so that's been kind of the policy because we have the four alternates and the composition is never exactly the same. Any other questions?

F. DIRECTOR'S REPORT

1. Registration for the 2008 Hawaii Congress of Planning Officials (HCPO) Conference, September 10-12, 2008 at the Grand Wailea Hotel

Mr. Yoshida: As far the Director's Report, we would just say that our Department is hosting the Statewide Planning Conference this year. It rotates between the four counties and the State. So last year the Big Island hosted. This year we're hosting. Next year the State is hosting. This year's conference is September 10th through the 12th at the Grand Wailea in South Maui. We are planning to have some speakers from the mainland and from off-island. It's normally a good time to get together with your associates from other county jurisdictions. But, I think, we are paying for the Chair and the Vice-Chair. If you're interested in going, let us know. That's all we have to report other than our next meeting is scheduled for July 1.

Mr. Riecke-Gonzales: Along with that though Clayton, I do remember at the last meeting I think we wanted to add an item to the agenda, for administrative adoption of the previous minutes. And so if I could ask Leilani to do that starting on the next agenda. And it doesn't really matter to me whether it's in the beginning or at the end. But I think that was kind of the consensus at the last meeting that, that be kind of a regular agenda item added on. And then I would ask that we administratively adopt the May 6, 2008 meeting minutes that were passed in the packet to everybody. I didn't have any corrections and no one approached me with any corrections, so they'll be adopted as drafted.

The May 6, 2008 meeting minutes were administratively approved.

Ms. Berry: Do you need a motion for that?

Mr. Riecke-Gonzales: No. It's administratively.

Mr. Canady: It is?

G. NEXT MEETING DATE: July 1, 2008

Mr. Riecke-Gonzales: Yes. So then that would be it. So next meeting date is July 1, 2008. Meeting is adjourned. Thank you.

H. ADJOURNMENT

There being no further business brought forward to the Board, the UDRB meeting adjourned at approximately 11:00 a.m.

Respectfully transmitted by,

LEILANI A. RAMORAN
Secretary to Boards and Commissions I

RECORD OF ATTENDANCE:

PRESENT:

Anthony Riecke-Gonzales, Vice-Chair
Hunton Conrad (from 9:00 a.m. to 9:52 a.m.)
Russ Riley (from 9:00 a.m. to 9:52 a.m.)
Susan Liscombe (from 9:00 a.m. to 9:52 a.m.)
Gary Brauner
Linda Kay Okamoto
Darryl Canady
Linda Berry, AIA, Alternate Member
Mary Randall Wagner, Alternate Member

EXCUSED:

Demetrios Callinicos, Chair
Eric Nakagawa

OTHER:

Clayton I. Yoshida, AICP, Planning Program Administrator
Robyn L. Loudermilk, Staff Planner
James Giroux, Deputy Corporation Counsel