

1 MAUI COUNTY BOARD OF ETHICS

2 COUNTY OF MAUI

3 WEDNESDAY, DECEMBER 14, 2005

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8 REGULAR MEETING

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11 Held at the County of Maui Planning Conference Room, Kalana

12 Pakui Building, Wailuku, Maui, Hawaii, commencing at 12:30

13 p.m. on Wednesday, December 14, 2005.

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21 REPORTED BY: JEANNETTE W. IWADO, RPR/CSR #135

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ATTENDANCE

Board of Ethics Meeting, December 14, 2005

BOARD MEMBERS PRESENT:

CAROLINE PETERS BELSOM, CHAIR

ALAN KAUFMAN

HARRIETTE L. HOLT

TAMIO W. IWADO

JOHN PELE

JIM A. STEWART

EXCUSED:

RANDOL LEACH

STAFF PRESENT:

JOHN D. KIM, DEPUTY CORPORATION COUNSEL

LISA KAHUHU, BOARD SECRETARY

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1 BOARD OF ETHICS
2 TRANSCRIPT OF PROCEEDINGS
3 REGULAR SESSION
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5 CHAIRMAN PETERS BELSOM: This is the Maui County
6 Board of Ethics meeting Wednesday, December 14th. We are in
7 regular session. I am calling the meeting to order.

8 Our first order of business is to review the
9 minutes from the November 9th regular session. The Chair
10 will entertain a motion to approve those minutes.

11 MS. HOLT: I so move.

12 DR. KAUFMAN: Second.

13 CHAIRMAN PETERS BELSOM: Moved by Miss Holt,
14 seconded by Mr. Kaufman. All those in favor please say
15 "aye."

16 (A chorus of ayes).

17 Seeing no opposition, the minutes are approved as
18 submitted.

19 We are now in old business, item A, financial
20 disclosures. This is a continuation from our last meeting

21 on Eric Yamashige.

22 Miss Secretary, do you want to bring us up to date

23 on the status on this matter?

24 MS. KAHUHU: Mr. Yamashige, the last question you

25 had for him was you just wanted to be informed when his

1 liquidation was completed, and that's basically what the
2 email said.

3 CHAIRMAN PETERS BELSOM: Are there any questions
4 regarding Mr. Yamashige's actions taken to remove any
5 financial interest from his -- I guess it was his prior
6 partnership in Ron Fukumoto Engineering.

7 Okay, seeing none, it appears that Mr. Yamashige
8 has fulfilled the requirements of the Board of Ethics, and
9 we are able to approve his financial disclosure.

10 Seeing that there is no other old business on the
11 agenda, we are in new business. There are no financial
12 disclosures -- I'm sorry, there are no communication items,
13 other than the following two for which you have received in
14 your packets some additional information. We will take them
15 one at a time.

16 I am not sure how many of you are in the same
17 position that I am. The mailman just delivered my packet as
18 I left the office, although I did have some idea of what was
19 happening. So does anyone need some additional time to
20 review their packets? If not, we will proceed with item 4C.

21 This is a request for an advisory opinion from
22 Councilmember Michelle Anderson regarding possible conflicts
23 of interest pertaining to Warren Suzuki's appointment to the
24 Maui General Plan Advisory Committee, also called the GPAC.
25 Is there anyone here from Miss Anderson's office?

1 MS. KAHUHU: David Raatz is here to answer any
2 factual questions, but he's not representing Michelle, the
3 requestor.

4 CHAIRMAN PETERS BELSOM: The requestor is
5 Councilmember Michelle Anderson, however she is not here. I
6 understand that David Raatz is here from Council Services,
7 is that correct?

8 MR. RAATZ: Yes.

9 CHAIRMAN PETERS BELSOM: Mr. Raatz, would you
10 please come up to the mike? And for purposes of the record,
11 would you please state your name and your position?

12 MR. RAATZ: My name is David Raatz. I'm a
13 legislative attorney in the Office of Council Services.

14 CHAIRMAN PETERS BELSOM: Thank you. And are you
15 appearing at our request, did we request your presence?

16 MR. RAATZ: I was assigned by our office,
17 actually, and the Office of Council Services to attend this
18 meeting and answer any factual questions that the Board may
19 have regarding Councilmember Anderson's request.

20 CHAIRMAN PETERS BELSOM: Thank you, and we do

21 appreciate your being here.

22 Before we proceed with the actual questions for

23 Mr. Raatz, with regard to this matter, as those of you may

24 have seen in Miss Anderson's request, she's asking that the

25 Chair recuse herself from this matter based on the fact that

1 my employer is Kapalua Land Company. Kapalua Land Company
2 is a subsidiary of Maui Land and Pine. Mr. Warren Suzuki is
3 an officer at Maui Land and Pine, and Miss Anderson feels
4 that there may be a potential conflict of interest.

5 The Chair will recuse herself from voting on this
6 matter. However, I believe that there is no potential
7 conflict in my continuing to chair the discussion in this
8 case. If, however, at any time anyone on the Board believes
9 that we're getting into an area where there may be a
10 potential conflict, that is certainly a time in which you
11 may move to have the Chair recuse herself from further
12 discussion.

13 Is there any question regarding that?

14 MS. HOLT: Yes, I have a question.

15 CHAIRMAN PETERS BELSOM: Miss Holt?

16 MS. HOLT: Are you going to simply chair or are
17 you going to comment on any of the material that's before
18 us?

19 CHAIRMAN PETERS BELSOM: At this time I am going
20 to chair, which is to pretty much guide the discussion so we

21 stay on track, which is the function of the chair. If there
22 is any time that there may be some need for clarification on
23 questions or so, I may comment on that. And I may ask a few
24 clarifying questions. But I will not take a position with
25 regard to the matter.

1 MS. HOLT: I suppose it depends on what you are
2 going to be clarifying, but let's see how it goes.

3 CHAIRMAN PETERS BELSOM: Yes, I'm certainly open
4 to anyone making a motion at any time.

5 Mr. Raatz is here to answer questions. The Board
6 members should proceed with whatever questions they have.

7 Mr. Kaufman?

8 DR. KAUFMAN: Thank you. The first question I
9 would have is, is a citizen who regularly appears before a
10 County agency required to register as a lobbyist?

11 Do you want to take them one at a time, or should
12 I hit you with all of them?

13 MR. RAATZ: Madam Chair, I am not in a position to
14 answer that type of question. I'm just here if there are
15 any factual questions about the background of this request.
16 But anything that gets into a substantive nature like that
17 I'm not prepared to answer. I don't think that's my role.

18 CHAIRMAN PETERS BELSOM: That's fine, and you need
19 to clarify that for us as we get to those questions.

20 Mr. Kaufman, do you have another question?

21 DR. KAUFMAN: I am not sure if this will then fall
22 under a question you will be able to answer for me or not,
23 but can you tell me, do members of the General Plan Advisory
24 Committee file financial disclosures?
25 MR. RAATZ: That's another question that I'm not

1 prepared to answer. Perhaps the Board's counsel can answer
2 that question.

3 MR. KIM: With respect to financial disclosures,
4 under the County Code Chapter 2.56.060, Financial
5 Disclosures, Members of Boards and Commissions: "All
6 members of boards and commissions having significant
7 discretionary fiscal power shall file a confidential
8 financial disclosure statement within 15 days after taking
9 the oath of office.

10 The following boards and commissions have
11 significant discretionary or fiscal powers, and there's a
12 list, Board of Variance and Appeals, Charter Commission,
13 Civil Service Commission, Board of Ethics, Board of Code
14 Appeals, Salary Commission, Liquor Control Commission,
15 Liquor Control Adjudication Board, Maui Planning Commission,
16 Police Commission, Government Commission, Maui Redevelopment
17 Agency, Board of Water Supply, Board of Review, Molokai
18 Planning Commission, Lanai Planning Commission, and Public
19 Safety Commission."

20 CHAIRMAN PETERS BELSOM: Mr. Kaufman, does that

21 answer your question?

22 DR. KAUFMAN: It could. For the first part of

23 that, if you could refresh my memory. It says members of

24 boards and commissions that have significant --

25 MR. KIM: Discretionary or fiscal powers.

1 DR. KAUFMAN: Thank you.

2 MR. KIM: And as far as lobbyists, under the same
3 chapter, 2.56.040, lobbyists registration: "Prior to
4 appearing before any executive or legislative body, all
5 lobbyists shall file a certified statement with the Board of
6 Ethics setting forth the name, mailing address, business
7 telephone number, and subject matter of the lobbyist.

8 A lobbyist shall report any change in information
9 contained in the certified statement within 10 days of such
10 change. A lobbyist shall file notice of termination within
11 10 days of ceasing activity as a lobbyist.

12 As used herein, lobbyist means any person who
13 engages themselves for pay or other consideration for the
14 purpose of attempting to influence legislative or
15 administrative action of the County." Pretty broad.

16 CHAIRMAN PETERS BELSOM: And just so we're clear,
17 there are two issues presented by Miss Anderson's letter
18 here. One having to do with Mr. Suzuki serving as a member
19 of the GPAC, and a second one starting in question number 4
20 with regard to being a lobbyist. And so we're clear, those

21 are not the same things.

22 Mr. Helle, did you have a question?

23 MR. HELLE: I'm not sure. I think it's more for

24 John, too, is one of the things that Mrs. Anderson pointed

25 out was she used the term officer of the County. What is

1 the definition of an officer of the County, are we correct
2 in what she said, that a person who is appointed to a
3 commission such as this would be an officer?

4 MR. KIM: I believe we have come to that
5 conclusion, that all boards and commission members,
6 commission members and board members that come out of the
7 County are officers of the County.

8 CHAIRMAN PETERS BELSOM: So I guess the question
9 is, does that apply to an advisory committee member?

10 MR. KIM: There are some boards that just have an
11 advisory capacity, and we consider them officers. They have
12 to conduct themselves in the same way.

13 MR. HELLE: So as a member of this advisory
14 committee, we would consider him an officer of the County?

15 MR. KIM: That's correct.

16 CHAIRMAN PETERS BELSOM: Questions for Mr. Raatz?

17 Sir, just so I'm clear, this letter was sent in by
18 Ms. Anderson dated November 17, 2005. Since that time has
19 Mr. Suzuki been appointed to this advisory committee?

20 MR. RAATZ: Thank you, Madam Chair. Yes, he has.

21 And I would refer the Board to Councilmember Anderson's
22 follow-up correspondence, which I believe you have, dated
23 December 7, 2005. On page 1 of that correspondence she
24 references a transmittal planning committee report number
25 05-161 transmitting the three resolutions that the Council

1 adopted to appoint the members of the Lanai, Maui and
2 Molokai General Plan Advisory Committees, including
3 Mr. Suzuki to the Maui GPAC.

4 CHAIRMAN PETERS BELSOM: Thank you. Miss Holt,
5 did you have a question?

6 MS. HOLT: No. I am about to make a statement
7 based on what we have heard so far with regard to
8 Mr. Suzuki. Is he an officer of the County? Yes. Has he
9 registered as a lobbyist? No. Has he given financial
10 disclosures? No. And he will have advice which might be
11 very meaningful for the general plan.

12 And I would suggest that Councilperson Anderson
13 has raised serious questions, and I would ask our Counsel
14 what we can do about rescinding the appointment based on the
15 ethical difficulties that have arisen.

16 MR. KIM: We have no authority to rescind the
17 appointment.

18 MS. HOLT: What would our action, what would our
19 possible action be then? Of course we would respond to
20 Councilperson Anderson's submissions, and would we then

21 advise Mr. Suzuki what our decision is once the Board has
22 come to a decision? Would that be the likely thing we could
23 do? In other words, respond to Anderson's letter to advise
24 Suzuki what the Board has decided.

25 MR. KIM: I don't think Mr. Suzuki has asked for

1 any advice or otherwise, but you can advise Miss Anderson.

2 MS. HOLT: I see, okay. I may be jumping the gun
3 here because we haven't heard from the other members. But I
4 was just wondering what possible action the Board would
5 take.

6 CHAIRMAN PETERS BELSOM: It appears that this is
7 not unlike any of our other appointments that we review. To
8 the extent that there may be some guidance, some cautionary
9 language that we may be able to place within our response,
10 we can do that. Which is one reason why I asked Mr. Raatz
11 to clarify with regard to Mr. Suzuki's position.

12 If Mr. Suzuki had not been appointed, the Board
13 really doesn't have any jurisdiction over him, because our
14 jurisdiction is over people that are employed or appointed.
15 And if he had not been, then we would probably end the
16 discussion. However, he has been since the initial letter
17 from Miss Anderson, so we are considering the implications
18 from that standpoint.

19 MR. HELLE: I have a question.

20 CHAIRMAN PETERS BELSOM: Sure.

21 MR. HELLE: In the submittal by Councilwoman
22 Anderson, and listing all of the people who have been
23 appointed to the Advisory Commission, after each person's
24 name is an area of the County, which I am assuming -- and
25 maybe you can clarify for me -- that's going to be the area

1 where their expertise or where they're actually an advisor
2 to. Is that what, you know, like behind Mr. Suzuki's name
3 it has Wailuku-Kahului Community Plan. So his involvement
4 would pertain specifically to Wailuku-Kahului?

5 MR. RAATZ: Madam Chair. Actually, that's
6 incorrect. Those designations after the appointees' names
7 indicate the area in which those individuals reside. And
8 pursuant to Chapter 2.80(b) the Council is required to
9 appoint GPAC members from certain areas. But once
10 appointed, all of the GPAC members will have the same right
11 to vote on any matter that comes before them.

12 MR. HELLE: Okay, thank you.

13 CHAIRMAN PETERS BELSOM: Mr. Kaufman?

14 DR. KAUFMAN: I know personally before taking any
15 action one of the things I would like to do is to look at
16 the Board of Ethics opinion regarding Lanai Company
17 management not being able to serve on boards and
18 commissions. I specifically wonder if that opinion goes as
19 far as to say that members of management cannot serve on
20 advisory committees as well.

21 MR. KIM: I believe the opinion said that they
22 would have to, for example, if you were on Lanai and worked
23 for the Lanai Company and were sitting on the Lanai Planning
24 Commission, then you would have to reveal your financial
25 interest once an item was brought before the Lanai Planning

1 Commission by the Lanai Company. And then I think by their
2 own rules, the Lanai Planning Commission rules, they were
3 disqualified from participating but not serving.

4 DR. KAUFMAN: Thank you for that clarification. I
5 was quoting from Mr. McOmber's submission, which may not
6 have been the entire gist of the information which should
7 have been presented. Which makes me think that reviewing
8 the prior opinion would be of importance to this body.

9 MR. STEWART: Without opening Pandora's box, I
10 also recall that decision was largely based on the vast
11 amount of land that they hold and the involvement with the
12 community. It was almost impossible not to have some
13 connection. I think that was a consideration that we gave.
14 You would have to be two percent or whatever that didn't
15 have some involvement.

16 MR. KIM: There were like three or four different
17 opinions issued on similar situations, and one was whether a
18 lessee from the Lanai Planning Commission could vote on,
19 well, he was a lessee of Lanai Company, and whether or not
20 he could vote as a commissioner for the Lanai Planning

21 Commission on items brought before that commission by Lanai
22 Company. And there was enough that they said -- this Board
23 said that was not a conflict.

24 The second was an employee of I believe it was the
25 Manele Hotel. And they said no, there was a direct link as

1 an employee of that subsidiary to Lanai company. So since
2 there was a financial interest, by their own rules he was
3 not able to participate or vote on that item.

4 MR. HELLE: For clarification, those rules were
5 established specifically by the Lanai Planning Commission?

6 MR. KIM: That's correct.

7 MR. HELLE: Not by the Board of Ethics or through
8 the charter?

9 MR. KIM: That's correct.

10 CHAIRMAN PETERS BELSOM: Mr. Stewart?

11 MR. STEWART: Does Chair or Counsel know for
12 purposes of discussion any parallels to Mr. Suzuki's
13 situation where someone with his level of involvement with a
14 corporation does presently sit or in the past has sat on a
15 board with our usual warnings and exemptions and exclusions?
16 Is this unparalleled, or has someone in such a high position
17 been on a board that I know on the surface looks like an
18 area of conflict, but with certain precautions and warnings
19 they have been approved? Is this unparalleled?

20 I don't know, because I have been in and out of

21 the board for several years, but I don't know if anyone can
22 recall any other person in this position with a similar
23 situation.

24 DR. KAUFMAN: Jim, what I would wonder is if from
25 the previous Citizen's Advisory Committees if there were

1 members of Maui Land and Pine on those, and if the situation
2 was addressed at that time or not.

3 CHAIRMAN PETERS BELSOM: For the Board's
4 information, Mr. Suzuki is in the audience. If we care to
5 ask him questions directly, we may do that. I would like to
6 try to finish up with Mr. Raatz and questions directed to
7 him first so that we can release him to his duties. And if
8 you wish, we can call Mr. Suzuki.

9 Mr. Raatz, do you know the answer to Mr. Stewart's
10 last question as to whether or not there has ever been
11 anyone -- is that correct, Mr. Stewart -- of a level of a
12 vice-president in a similar situation?

13 MR. RAATZ: No, I'm sorry, I don't know the answer
14 to that question. I would think our office would be able to
15 look up that information, if the Board would like that
16 researched, and we could transmit that at a later date.

17 CHAIRMAN PETERS BELSOM: Mr. Stewart, do you wish
18 to pursue that?

19 MR. STEWART: It depends where the conversation
20 goes by the end of this meeting. But if we don't get the

21 answers I would say yes, only because I would like a point
22 of comparison. If this is something that is a precedent, if
23 this is something that has precedent that we can base it on.
24 That was my only concern, was for curiosity and conversation
25 purposes.

1 So I would say yes, it would be nice to know that
2 information, if you have it or can acquire it, as far as a
3 similar situation with someone at such a high level. As
4 long as I have been on this Board of Ethics, which on and
5 off has been about five years, I only recall people on low
6 levels, mid-levels at the best, and I am just curious, is
7 all.

8 CHAIRMAN PETERS BELSOM: I do believe we've had
9 people who own their own company who have been in similar
10 situations as officers. Anything else for Mr. Raatz?

11 Mr. Iwado?

12 MR. IWADO: I have a question for John. What is
13 the definition of a lobbyist?

14 MR. KIM: Under Section 2.56.040 of the Maui
15 County Code as used here, "Lobbyist means any person who
16 engages himself for pay or other consideration for the
17 purpose of attempting to influence legislative or
18 administrative action of the County."

19 MR. IWADO: Do you have to register as a lobbyist?

20 MR. KIM: If you meet this definition, you do.

21 MR. IWADO: If you worked for a company like Maui

22 Land and Pineapple you would have to register as a lobbyist

23 in Warren's situation?

24 MR. KIM: I don't know what Mr. Suzuki's situation

25 is.

1 CHAIRMAN PETERS BELSOM: That may be a question
2 you may wish to ask Mr. Suzuki when he takes the microphone.

3 Any other questions for Mr. Raatz before we
4 release him? Barry?

5 MR. HELLE: How much of this was discussed at the
6 Council when they approved Mr. Suzuki? Are we going down a
7 road that's already been covered?

8 MR. RAATZ: Well, at the November 18th Council
9 meeting when the resolutions making the GPAC appointments
10 were adopted, Councilmember Anderson notified her colleagues
11 that this request to the Board of Ethics was being made.
12 And so there is an awareness of that, and there was some
13 discussion about that.

14 CHAIRMAN PETERS BELSOM: Mr. Raatz, were there
15 other members, other names that came up that had similar
16 discussions at the time?

17 MR. RAATZ: I don't believe so, not that I can
18 recall.

19 CHAIRMAN PETERS BELSOM: Any other questions for
20 Mr. Raatz? If not, thank you.

21 MR. RAATZ: Thank you.

22 CHAIRMAN PETERS BELSOM: And we will confirm the
23 information that we will need from your office.

24 MR. RAATZ: Okay, thank you.

25 CHAIRMAN PETERS BELSOM: Does the Board wish to

1 have Mr. Suzuki answer questions as well, since he's here?

2 MR. STEWART: Yes.

3 CHAIRMAN PETERS BELSOM: Mr. Suzuki, if you would,
4 please.

5 (Brief pause in proceedings)

6 And for the record, would you state your name and
7 your position?

8 MR. SUZUKI: My name is Warren Suzuki. I'm senior
9 vice-president of community and government relations for
10 Maui Land and Pineapple Company.

11 MS. HOLT: My first question to Mr. Suzuki is why
12 have you not registered as a lobbyist?

13 MR. SUZUKI: Boardmember Holt, my understanding on
14 looking at the definition of lobbyist, and your Corp
15 Counsel, John Kim, just mentioned that, it's someone who
16 engages themselves to influence an administrative body or a
17 legislative body. I haven't engaged myself as a consultant
18 to do this on behalf of Maui Land and Pine. I'm an employee
19 of Maui Land and Pineapple, and my appearances before
20 Councilmembers has been to provide them with information in

21 clarifying a certain issue that they may have relative to
22 what might be before the Council.

23 MS. HOLT: That's the best definition of a
24 lobbyist I've ever heard. That's exactly what lobbyists do,
25 Mr. Suzuki, they provide information to members of the

1 legislative body or to members of the administrative body
2 about issues that relate to their work. That may be my
3 definition, but it seems to me that even though you are not
4 a private consultant, as an employee of Maui Land and Pine
5 you are expected to make those representations on behalf of
6 the company, is that correct?

7 MR. SUZUKI: I am not sure what you mean by making
8 those representations.

9 MS. HOLT: You are expected to represent Maui Land
10 and Pine to the Council to tell them what your position is
11 or what the company's position is, is that correct?

12 MR. SUZUKI: I am not representing to them what
13 the company's position is. I'm sharing with the Council
14 information relative to a project that we have before them.
15 And if they have any sort of questions that pertain to the
16 request we have before them, I will respond to that question
17 or seek the response to the question and come back to them
18 and provide it to them.

19 MS. HOLT: Thank you, Mr. Suzuki.

20 CHAIRMAN PETERS BELSOM: Mr. Stewart, do you have

21 a question or a comment?

22 MR. STEWART: I guess just for the record, Mr.

23 Suzuki, do you consider your compensation and your job

24 description by definition to fill the duties of a lobbyist?

25 In other words, it says "for pay or other consideration."

1 When you testify before a board on a particular issue on
2 behalf of your employer, you are compensated by the
3 employer. But do you consider that compensation to fall
4 within the guidelines of a lobbyist?

5 MR. SUZUKI: To be honest with the Boardmembers, I
6 am not 100 percent sure. And again, in looking at the
7 definition of how a lobbyist engages himself, you know, I
8 have been an employee of Maui Land and Pineapple now for the
9 last 17 years, going on 18 years. I have appeared before
10 boards and commissions, before the Council, and stated our
11 position relative to a particular bill. So have a lot of
12 people. But I haven't considered myself, you know, as a
13 lobbyist.

14 Maybe I should just share some additional
15 information relative to someone in my position holding prior
16 positions on boards and commissions. I have been a -- I
17 have been a member of both the Board of Variances and
18 Appeals and the Urban Design Review Board. My term with the
19 Board of Variances and Appeals has ended, and I was
20 appointed to Urban Design.

21 So as a member of the Board of Variances and
22 Appeals, I was vice-president of at that time Kapalua Land
23 Company. And most recently as a member of the Urban Design
24 Review Board, senior vice-president of Maui Land and Pine.
25 MR. STEWART: My question, which I will address to

1 our Counsel, is there an issue of exclusivity when you
2 consider a lobbyist? In other words, if you have a job and
3 99 percent of the duties of your job do not involve
4 testifying before the County under that lobbyist realm, and
5 99 percent of your compensation goes to other things, could
6 that occasional testimony really define your entire position
7 as a lobbyist?

8 If I am a self-employed business owner and I have
9 a vested interest in what happens in the committee, and I
10 testify a few times, I have other considerations if not
11 compensation and an interest in what happens. So am I a
12 lobbyist, do I register?

13 I'm wondering if it's related to how many times
14 you appear or what percentage of your total job description
15 does that lobby activity pertain. If it is one percent or
16 two percent or less, I wonder if that changes your whole
17 definition. You might have a business card that says
18 Director of Community Relations but you lobby a couple of
19 times a year. Would that card then have to state that
20 you're a lobbyist?

21 I'm asking what the parameters are, if there is
22 any further information about the content or the amount of
23 time that you spend doing lobby activities.

24 CHAIRMAN PETERS BELSOM: Mr. Kim, do you have a
25 response for him?

1 MR. KIM: I think you have to read, at least the
2 ordinance, with some kind of reasonableness. The statute
3 does not specifically state if it's one percent of your job,
4 twenty percent or thirty percent of your job. It says if
5 you engage yourself. So as I read it, it would be engaging
6 himself for pay or other consideration for the purpose of
7 attempting to influence legislative or administrative action
8 for the County. That's the sole purpose of what that person
9 is doing, and is it for pay.

10 So for example, I'm an owner of a company, and now
11 the County Council wants to adopt a certain type of code.
12 And I decide well, that's going to affect my industry. And
13 I'm the captain of my -- or I'm the president of my company,
14 and I am going to go down there and try to tell them not to
15 adopt this legislation.

16 Do you have to now register as a lobbyist? Or if
17 you feel so passionately about an issue? You are getting
18 paid, but you are actually getting paid because you are
19 running your own industry, your own business. So, no.

20 MR. STEWART: Just to throw this out again for the

21 Board's consideration, a personal example. Some of you know
22 I'm in the security business. The fire department just
23 issued a new fire code. I formed a False Alarm Commission,
24 an alarm committee, lobbied, testified before the Council.
25 I was very involved. It absolutely affected me financially.

1 I never felt I was a lobbyist or the need to register as a
2 lobbyist. I spent a tremendous amount of time, wrote
3 letters, testified to all the Councilmembers. But I guess
4 by definition I should have registered as a lobbyist.

5 CHAIRMAN PETERS BELSOM: Mr. Iwado?

6 MR. IWADO: Who do you register with as a
7 lobbyist?

8 MR. KIM: With the the Board of Ethics.

9 MR. IWADO: Do we have a list of lobbyists for the
10 County of Maui?

11 MR. KIM: Yes, we do.

12 MS. KAHUHU: Yes.

13 MR. IWADO: Can the Board see it?

14 MS. KAHUHU: Sure.

15 CHAIRMAN PETERS BELSOM: John?

16 MR. PELE: I would just like to see how the Board
17 feels about now that we're on the lobbyist subject, I
18 believe -- and I might be wrong, and I will ask Mr. Suzuki
19 this -- in your dealings with the County in his position I
20 believe that all your dealings -- or let me ask you. Were

21 all your dealings that you had as part of your job going to
22 the County Council involved in whatever operations Maui Land
23 and Pine has done?
24 What I'm trying to say is I just need
25 clarification as it's his job, and being that part of his

1 job involves they have to go to the County in their business
2 dealings. I mean I'm sure if they could go on and do their
3 business without going to the County Council they would, but
4 is it not part of his business dealings that they have to
5 present certain things to the County?

6 So I would question if that is actually the
7 lobbyist, as Mr. Stewart said, or not. If somebody could --
8 if you guys can understand what I'm trying to say. He has
9 to do it. He has to go before the County Council as part of
10 the process for whatever his company is doing.

11 CHAIRMAN PETERS BELSOM: Mr. Suzuki, do you wish
12 to respond to that?

13 MR. SUZUKI: Boardmember Pele, from my
14 perspective, part of my broad responsibilities is to monitor
15 what might be occurring at the County. Primarily as far as
16 the County Council. As Boardmember Stewart said, Maui Land
17 and Pine is a company where it's important for us to
18 understand what legislations there might be considered by
19 the County Council and what sort of impacts it might have on
20 us. And during appropriate situations we will provide

21 testimony.

22 And I share the same question in my mind and have
23 with Mr. Stewart, that by me providing testimony on a
24 particular bill, am I considered to be a lobbyist? There's
25 many other people that provide testimony that work for a

1 particular company. Are they all lobbyists? It's something
2 that I struggle with. It's not clear to me relative to when
3 you are considered to be a lobbyist and when you are not
4 considered to be a lobbyist.

5 CHAIRMAN PETERS BELSOM: Miss Holt?

6 MS. HOLT: Maybe for my clarification we can get
7 back to the issue of what difference does it make to a
8 person if they are considered a lobbyist or not. I mean do
9 you have to pay a fee? Do you have to provide testimony in
10 a particular format? In other words, does it matter whether
11 you are called a lobbyist or not?

12 MR. STEWART: It seems like there's some truth in
13 advertising laws. You're just identifying the Sunshine Law.
14 You are identified for what your motivation might be. Is
15 that pretty much -- does the Chair see it that way? You are
16 identified as a lobbyist just so that people clearly know
17 what your motivation is, is that the idea of being a
18 lobbyist?

19 CHAIRMAN PETERS BELSOM: I am going to defer to
20 Mr. Kim for the reasoning behind closed sessions on it, as

21 opposed to my own opinion about it. But generally speaking,
22 in disclosure actions it is so that everyone knows where you
23 are coming from in doing what you're doing.

24 MR. STEWART: That sounds right.

25 MR. IWADO: For an employee like Maui Land and

1 Pineapple it's pretty clear-cut that he's there to represent
2 the company. So I'm just curious about this registration of
3 being a lobbyist.

4 I guess I'm more concerned that if you are on the
5 committee and going to testify after being on the committee,
6 as an individual I don't think everybody has a right to go
7 as an individual, but would you go after being on the
8 committee to represent Maui Land and Pineapple for
9 especially dealing with zoning?

10 MR. SUZUKI: Boardmember Iwado, that's an area
11 where I'm not sure in terms of what the parameters might be,
12 and would hopefully look to the Board of Ethics maybe to
13 provide the parameters. And having the parameters maybe for
14 myself may even help other members of the GPAC, because
15 there may be other boards and commissions that may be
16 involved in somewhat similar types of situations -- maybe
17 not to the extent that I may be, but they may be involved in
18 some situations where they own land in different locations
19 and the decision of the GPAC might have an impact on -- may
20 have a financial impact on whatever their holdings might be.

21 CHAIRMAN PETERS BELSOM: Other comments or
22 questions?

23 MR. STEWART: You know what, just again for
24 purposes of discussion I am going to say what I think
25 everybody is thinking but nobody really wants to say.

1 Whenever there's a board for the County that's involved in
2 any way at all, directly or indirectly, with construction or
3 development there are two entities. There's the entities
4 that are generally pro-development and there's the entities
5 that are generally anti-development.

6 The bottom line is this. When you come from the
7 corporate side you wear a title or a corporate name and you
8 are very easy to identify and it makes it harder to get
9 through the process here. And if you come from the public
10 activist side, even though you may be an individual who just
11 raises money for the cause or part of a larger group, you
12 are generally seen as somebody who is a concerned citizen.
13 Both sides are equal opposites, they both have vested
14 interest on what gets done in the County and they both
15 should be heard.

16 In all my years here I have never seen a public
17 activist brought forward and saying, "We cannot have them on
18 the board because their interest is anti-development.
19 They're going to hurt the economy." They're generally
20 applauded for their civility and interest in the community

21 and whatnot.

22 So I'm throwing that out there as a devil's

23 advocate to please take everything into consideration for

24 the whole. There's both sides to the issue, and both sides

25 are valid and have good points. The corporate side is

1 generally the one with the bull's eye on them, in my
2 opinion.

3 MS. HOLT: No, not necessarily. I was thinking as
4 I read the information about Mr. Suzuki, and Maui Land and
5 Pine being the second largest landowner on Maui, I was
6 thinking why don't we have Alexander and Baldwin people
7 involved in some of these boards and commissions, because
8 they're probably the largest landowner. With Mr. Stewart, I
9 feel that we need to have input from the companies which
10 provide a lot of business, that provide a lot of employment.
11 We need to have input, but we have to have it labeled as
12 such. That's my concern.

13 I like to have them say, "Look, our position is X.
14 Alexander and Baldwin's position is also X, or it's Y," or
15 whatever. But I would like to have that kind of information
16 and have it identified.

17 Mr. Suzuki is obviously well known and known as a
18 representative of Maui Land and Pine. But there may be
19 other people that maybe we should be concerned about who are
20 not being labeled.

21 MR. STEWART: I think it's one of the great
22 ironies in this community is that those who often have the
23 most at stake, the most invested, who may be the most
24 knowledgeable are often the ones shut out because of their
25 obvious connection or maybe conflict of interest. And it

1 would be nice that if we could just have truth in
2 advertising. We know who they are and what their position
3 is, and then the Board can decide if they want to approve
4 them or not.

5 There are people on both sides of every issue. I
6 would say this Board is probably split in those two areas I
7 just described. It's a red and blue country, we have both
8 views. I just think it's nice that the truth be known and
9 everybody be given an opportunity, not just denied because
10 you happen to be in that very industry. You are not on the
11 Liquor Board because maybe you happen to own a bar and/or
12 restaurant. Who is better qualified to know the ins and
13 outs of everything that happens in that industry than
14 someone who has been in it, and the same with
15 construction.

16 CHAIRMAN PETERS BELSOM: The Chair appreciates the
17 comments. We are getting a little far afield from what our
18 jurisdiction is here. The issue before us, as I said
19 earlier, we have two issues raised by Miss Anderson
20 regarding Mr. Suzuki. One is the appointment to the GPAC.

21 And for the Board, the issue is whether there are any
22 cautionary -- there's any cautionary language that we need
23 to present to Mr. Suzuki by way of responding to Miss
24 Anderson. The second issue raised by Miss Anderson has to
25 do with registration as a lobbyist.

1 The most recent conversations are ones that we
2 probably as individuals should take up with the Council when
3 they get to redoing the code again. However, it is not an
4 issue that we can address here. So I'm bringing you back to
5 the issues that we do need to address. We do have other
6 matters on the agenda as well. We have Mr. Suzuki here, so
7 if there are some questions that he would be hopefully able
8 to provide answers for us. Let's try to get those out.

9 Mr. Kaufman?

10 DR. KAUFMAN: I do have a question for you. Miss
11 Anderson quotes the Star Bulletin saying that you are
12 responsible for Maui Land and Pine community relations,
13 corporate communications, and land and water policies. Is
14 that accurate?

15 MR. SUZUKI: Boardmember Kaufman, no. My
16 responsibility right now is in the area of community relations
17 and government relations.

18 DR. KAUFMAN: Is there anything in your job
19 description that specifically mentions lobbying?

20 MR. SUZUKI: No.

21 DR. KAUFMAN: Thank you.

22 MR. KIM: Just to further clarify on what a

23 lobbyist is, I believe that question has been bandied about.

24 The Board does have rules in the rules and regulations. One

25 of them I believe is pretty tight. It says, "A lobbyist

1 shall file a certified statement with the board setting
2 forth number 1, the name, mailing address and business
3 telephone number of the lobbyist; 2, a description of the
4 subject matter of the lobbying; and 3, the name and
5 principal place of business of each person or organization
6 represented by the lobbyist, and a written authorization to
7 act as a lobbyist from each person by whom the lobbyist is
8 employed or with whom the lobbyist contracts. The certified
9 statement shall be in the form or forms prescribed or
10 otherwise adopted by the Board."

11 So from this, I wasn't here, but this was adopted
12 in 1996, so it became effective in 1996. So I believe the
13 Board of Ethics at that time contemplated a more narrow
14 focus of what a lobbyist is, someone who actually lends
15 himself or contracts himself to various groups or various
16 issues.

17 So for example, instead of Mr. Stewart coming
18 before the County Council on the fire code, he would have
19 hired say some other attorney or maybe an attorney to
20 actually go forward and lobby his position with specific

21 legislation. But of course he didn't want to spend the
22 money (laughter).

23 MS. HOLT: Madam Chair, I want you to understand,
24 I don't see anything wrong with being a lobbyist. I think
25 being a lobbyist is being a good citizen. You would only be

1 there to put forth a point of view. So I want you to know
2 it's not a pejorative term in my dictionary.

3 CHAIRMAN PETERS BELSOM: Any other questions or
4 comments for Mr. Suzuki? If not, thank you, Mr. Suzuki.

5 MR. SUZUKI: You're welcome.

6 CHAIRMAN PETERS BELSOM: The secretary has
7 provided the Chair with a list of the 2005 lobbyists,
8 registered lobbyists for the Board, and those include the
9 following four people all from Castle and Cooke: Garrett
10 Corman, Richard Mirikitani, Harry Saunders and Gary
11 Yokoyama. The lobbyist registration is bi-annual.

12 Other questions or discussions regarding the
13 issues before the Board?

14 MR. STEWART: Do we need to draft a response to
15 the Councilmember's concerns?

16 CHAIRMAN PETERS BELSOM: If the suggestion is at a
17 point where we are ready to entertain a motion as to a
18 response to Miss Anderson, the Chair will entertain such a
19 motion at this time.

20 MR. STEWART: Let's see where it goes. I would

21 propose that we draft a response, a motion with our standard
22 warnings involving conflict of interest and issues that
23 directly conflict with matters brought before the County
24 that are affected by -- in any way affect his employer or
25 employment. In other words, the definition of just working

1 for Kapalua Land or Maui Land and Pine does not in itself
2 disqualify you. There are thousands of people that do work
3 for those companies. However, your actions and your duties
4 could disqualify you, and we would warn you to take measure
5 with your – recuse yourself in issues that directly pertain
6 to your employer.

7 I don't know what percentage of the issues will
8 come up that will need to be recused. He could become an
9 inept member because he's recusing himself every meeting.
10 That would be up to the Council to decide. I think we
11 should put that warning forth like we do with other people
12 in similar situations. You can add to that.

13 CHAIRMAN PETERS BELSOM: Rather a long motion, but
14 if anyone is in a position to second the motion, then we can
15 move into a discussion of the motion.

16 DR. KAUFMAN: Second.

17 CHAIRMAN PETERS BELSOM: Thank you. The motion
18 has been seconded. If I can try to synthesize what it is.
19 This is a motion to include the standard warning that the
20 Board gives to appointees of boards and commissions

21 regarding potential conflicts of interest that may arise in
22 the performance of their duties. In this case on the GPAC.
23 And that Mr. Suzuki would recuse himself -- would, first of
24 all, disclose that particular conflict, and then if
25 necessary recuse himself. The floor is open for discussion

1 on the motion.

2 MR. IWADO: I would like to add that he will not
3 testify at any public hearings on behalf of Maui Land and
4 Pineapple.

5 CHAIRMAN PETERS BELSOM: You're saying testify at
6 all?

7 MR. KIM: Or in front of GPAC?

8 MR. IWADO: It would be government.

9 CHAIRMAN PETERS BELSOM: We will let Mr. Iwado
10 finish his thought here, and then we will get responses to
11 that.

12 MR. IWADO: I'm just thinking of any other
13 government entity. Hearings, I guess it would be.

14 MR. KIM: Government hearings?

15 MR. IWADO: Public hearings.

16 MR. KIM: Before which?

17 MR. IWADO: During his appointment period.

18 MR. KIM: So during his appointment period to the
19 general plan and community.

20 MR. IWADO: Regarding zoning related.

21 CHAIRMAN PETERS BELSOM: Correct me if I'm wrong,
22 but I don't believe that -- we can talk about how he can
23 function on a board or a commission, or in this case the
24 Advisory Committee. We cannot regulate anything outside of
25 that. That's outside of our jurisdiction.

1 If I understand your question correctly, or what
2 you wish to add, that would be overstepping our bounds.

3 MR. IWADO: Okay.

4 CHAIRMAN PETERS BELSOM: Mr. Kim?

5 MR. KIM: I would concur.

6 MR. IWADO: All right, I withdraw.

7 MR. KIM: I think we need to just focus on Mr.

8 Suzuki's duties as a member of the Maui General Plan

9 Advisory Committee.

10 CHAIRMAN PETERS BELSOM: Any other comments or
11 questions?

12 MR. PELE: So he would have regulations as far as
13 testifying as a member of GPAC, is that what we want? We
14 want him not to be able to testify as a member of the GPAC
15 at any County hearings or zoning hearings. They just
16 advise, right, this is an advisory committee.

17 CHAIRMAN PETERS BELSOM: So the motion is that
18 when he serves as a member of GPAC and issues come up or
19 matters are brought forth in GPAC, that if he does have any
20 potential conflict with the substance of the discussion,

21 that he needs to first disclose the potential conflict and
22 then, if appropriate, recuse himself.

23 MR. HELLE: I think it's important to clarify what
24 you are referring to is in the process of the GPAC and not
25 involving other issues. If Maui Land and Pineapple is

1 involved in some other project, that that's not part of it.
2 But within the process of the GPAC that if he has -- if
3 issues come up relating to Maui Land and Pineapple, then he
4 would disclose and recuse himself.

5 CHAIRMAN PETERS BELSOM: Is that clear to
6 everyone, that this is a narrow issue? Our jurisdiction is
7 with regard to his actions on the GPAC. The description for
8 the GPAC, just to help us out, is the general plan advisory
9 committees will comment, advise and provide recommendations
10 to the Director of Planning regarding the proposed revisions
11 prepared and recommended by the Director of Planning.

12 So that's the function he will perform. Within
13 the context of that function there may arise situations in
14 which there will be potential conflicts, and it is in that
15 context that he would disclose and then, if necessary,
16 recuse himself.

17 Any other discussion?

18 MR. IWADO: Do we need to bring up the question of
19 the failure to register as a lobbyist?

20 CHAIRMAN PETERS BELSOM: That's a separate issue.

21 Yes, that is a separate issue, and we will address that as
22 soon as we deal with the motion that's on the floor right
23 now.

24 If there's no further discussion, are we ready for
25 the question? All those in favor of the motion to issue our

1 standard warnings regarding conflicts of interest to Mr.
2 Suzuki in his position as a member of the GPAC, please say
3 "aye."

4 (A chorus of ayes).

5 Is there any opposition to the motion?

6 (None).

7 Seeing no opposition, the motion carries. And for
8 the record, the Chair recuses herself from voting.

9 MS. HOLT: Madam Chair, our taking that action
10 will be a response to Councilperson Anderson then?

11 CHAIRMAN PETERS BELSOM: Yes.

12 All right, there is one further issue regarding
13 Mr. Suzuki, and that is the issue of registration as a
14 lobbyist. The Chair will entertain a motion with regard to
15 the Board's position on that.

16 MS. HOLT: I wanted to just encourage him to
17 register, but I don't know if that's a motion or not. It
18 doesn't seem to me there's any downside to registering as a
19 lobbyist. I notice that the people that we have noted, one
20 of the people did appear before us and it had no affect on

21 his testimony. That was Richard Mirikitani.

22 MR. HELLE: Are the people listed on that list for
23 Castle and Cooke, are they actual employees of Castle and
24 Cooke or are they hired outside?

25 MR. KIM: They're employees of Castle and Cooke.

1 MR. HELLE: They are on the payroll of Castle and
2 Cooke?

3 MR. KIM: For example, Mr. Mirikitani is a
4 vice-president of Castle and Cooke, and I believe that
5 Garrett Corman is the president of Castle and Cooke.
6 Mr. Gary Yokoyama is Corporation Counsel for Castle and
7 Cooke. And Harry, I don't know who Harry Saunders is.

8 CHAIRMAN PETERS BELSOM: Mr. Kaufman?

9 DR. KAUFMAN: I'm a little uncomfortable in asking
10 all of our corporate officers to register as lobbyists.
11 They're readily identifiable as corporate officers. Their
12 vested interests are in your face by their titles.

13 It seems to me the intent is simply to register
14 lobbyists, and basically the image that I have is the hired
15 gun who comes into town to get something done for somebody.
16 You want to clearly identify who the people are.

17 I think Castle and Cooke went overboard in
18 registering all their people. Maybe that's a judicious
19 thing to do, but I don't think it's necessary.

20 MR. STEWART: Let me just add I couldn't agree

21 with you more. I would even go further in my position to
22 say that I would not have voted for the previous matter if
23 he were in fact a registered lobbyist.

24 I would find issue with that because that would
25 define him differently than just an employee of the company

1 who does a task for the company. You set yourself aside as
2 a lobbyist. You are identifying yourself, to use your
3 phrase, Allen, as a hired gun, and I would have a different
4 approach. So I would not encourage him to register as a
5 lobbyist, although he's free to do whatever he feels his
6 obligations are.

7 MR. PELE: I agree. I think Mr. Suzuki appears as
8 part of his job and part of his business dealings simply
9 because he has to, not because he wants to. I think that's
10 how the process works in the County. So I could probably
11 understand that most of his doings were just because they
12 have to go through the process of appearing before the
13 County Council. So coming from the island and working for
14 the company that I do, I can certainly empathize with that.

15 MR. IWADO: Do we need to make a motion?

16 CHAIRMAN PETERS BELSOM: Let me just check.

17 MR. HELLE: Madam Chair, for the record, I would
18 just like to thank Mr. Suzuki for putting himself out there
19 and offering his services to the County. As Mr. Stewart was
20 saying earlier, a lot of times when you come from the

21 corporate world you have that automatic bull's eye on your
22 back, and I think people need to be commended for doing
23 that, and I just want to say thank you.

24 DR. KAUFMAN: If we are going to thank people, I
25 would also like to thank, in absentia, Miss Anderson for

1 bringing some very interesting issues before this Board.

2 MR. STEWART: I agree. I guess that's what makes
3 the process work, the yin-yang, both sides.

4 CHAIRMAN PETERS BELSOM: It appears that there is
5 no motion forthcoming with regard to taking any action. The
6 Chair would remind the Boardmembers that there is under our
7 rules a provision by which we may be able to take action, or
8 in this case not to act, and that is, we can refuse the
9 request for this advisory opinion on the issue of a lobbyist
10 based on "the request concerns matters not within the
11 jurisdiction of the Board."

12 If you wish to proceed on those grounds, I believe
13 we would need to do so on a motion. Mr. Kaufman, and then
14 Mr. Iwado.

15 DR. KAUFMAN: I'd really like to provide a motion,
16 but my thinking is that we really ought to look back at the
17 definition of a lobbyist and perhaps ask Counsel to review
18 that.

19 CHAIRMAN PETERS BELSOM: Just for clarification
20 then, are you saying we should hold this matter in abeyance

21 while we do that, or are we addressing lobbyists generally?

22 DR. KAUFMAN: I am not prepared to -- I don't

23 want to hold the matter in abeyance. I think we can deal

24 with it and be done with it.

25 MR. STEWART: Point of clarification. Is the

1 Councilmember requesting of us an advisory opinion on the
2 matter, or can we just let our earlier reaction stand on its
3 own? Do we need to actually refuse the advisory opinion
4 based on the technicality you brought forward, or can we
5 just make a statement or write a letter in response and
6 leave it at that?

7 CHAIRMAN PETERS BELSOM: Ms. Anderson's November
8 17th letter says in part, "an advisory opinion in response
9 to the following questions: Number 4, what is the effect of
10 Mr. Suzuki's apparent failure to register as a lobbyist?"
11 That would be the question we are responding to.

12 MR. IWADO: I think it would be better to have a
13 motion so we respond back to her.

14 DR. KAUFMAN: I will move that it's this Board's
15 opinion that when corporate officers appear in their
16 capacities as corporate officers, they are doing so not as
17 lobbyists per se, but as the representative of their
18 corporation.

19 MS. HOLT: I second the motion.

20 CHAIRMAN PETERS BELSOM: Thank you. Motion by Mr.

21 Kaufman, seconded by Miss Holt. The motion is that the
22 Board respond to Ms. Anderson with a statement that when a
23 corporate officer appears in his or her capacity as a
24 corporate officer, that is not an appearance as a lobbyist
25 but as a representative of their employer.

1 Is there any discussion on the motion? If not,
2 all those in favor of the motion please say "aye."

3 (A chorus of ayes).

4 Is there anyone opposed to the motion?

5 (None).

6 Seeing no opposition, the motion carries. We will
7 issue an appropriate response.

8 Is there any other discussion regarding the
9 request for advisory opinion from Ms. Anderson? If not, the
10 next item on the agenda is item 4d. This is a request for
11 an advisory opinion from Councilmember Robert Carroll, Land
12 Use Committee Chair, regarding possible conflicts of
13 interest for Maui County Councilmembers and/or Land Use
14 Committee members in making recommendations and/or taking
15 action upon a change in zoning request involving property
16 owned by an entity whose sole member is the Employees'
17 Retirement System of the State of Hawaii.

18 Mr. Carroll is present. If the Board is ready, we
19 will ask him to take the mic and field some questions.

20 Mr. Carroll, would you please? And for the

21 record, would you state your name?

22 COUNCILMEMBER CARROLL: Robert Carroll.

23 CHAIRMAN PETERS BELSOM: Thank you. Mr. Carroll,

24 you are a Councilmember and submitted the request that we

25 are now addressing, is that correct?

1 COUNCILMEMBER CARROLL: Councilmember and Chair of
2 the Land Use Committee, of which a request was made by
3 Councilmember Johnson to the committee, which I have
4 forwarded to you.

5 CHAIRMAN PETERS BELSOM: Thank you. Boardmembers,
6 any questions for Mr. Carroll?

7 MR. HELLE: You know, we just got this, some of
8 us, today and some of us last night or yesterday, and I
9 wasn't quite clear on who is actually requesting the change
10 in zoning. Because I thought I read in here where the ERS
11 is actually opposing the change in zoning. Could you
12 clarify that for me, please?

13 COUNCILMEMBER CARROLL: The change in zoning
14 request is -- this is for Kaanapali Golf Course, and
15 there's a request for a change in zoning by them.

16 MR. HELLE: So it's the golf course. But the golf
17 courses are owned by the ERS, right?

18 COUNCILMEMBER CARROLL: The golf course is owned,
19 yes, by ERS. It's the sole owner of the course.

20 DR. KAUFMAN: Question.

21 CHAIRMAN PETERS BELSOM: Let's let Mr. Helle

22 finish.

23 DR. KAUFMAN: Sorry.

24 MR. HELLE: But on item number five it says that

25 the attorney for the ERS represented at the committee's

1 November 21 meeting that the ERS strongly opposes the change
2 in zoning. I am a little confused as to why the owner would
3 submit for a change but oppose it.

4 COUNCILMEMBER CARROLL: The zoning was initiated
5 originally, and I have our staff over here that I think I'd
6 better call forward before I put my foot in my mouth.

7 CHAIRMAN PETERS BELSOM: Miss Nakata, if you would
8 for the record please state your name and your position.

9 MS. NAKATA: I'm Carla Nakata. I'm staff for the
10 Land Use Committee, the Council's Land Use Committee.

11 CHAIRMAN PETERS BELSOM: Thank you.

12 MR. HELLE: So possibly you can clarify who
13 actually is requesting the zoning change?

14 MS. NAKATA: Yes. The zoning change was actually
15 forwarded to the County Council by Councilmember Jo Anne
16 Johnson. We received -- the Council received a County
17 communication number 05-151, wherein Councilmember Johnson
18 indicated that she had been requested by some constituents
19 of the West Maui area who were asking that she pursue a
20 change in zoning.

21 And if I may read from the County communication,
22 wherein she forwarded the draft resolution as well as the
23 draft bill. She says, "The purpose of the draft resolution
24 is to draft appropriate golf course zoning for approximately
25 75 acres of the Kaanapali golf courses and the surrounding

1 area that currently have apartment zoning. I am introducing
2 this resolution at the request of constituents in the
3 Kaanapali area who wish to ensure that golf course property
4 and adjacent open space are not inappropriately converted to
5 residential use because of improper zoning."

6 The Council subsequently referred this County
7 communication to the Land Use Committee.

8 CHAIRMAN PETERS BELSOM: Mr. Kaufman, you had a
9 question?

10 DR. KAUFMAN: It was clarified, thank you.

11 CHAIRMAN PETERS BELSOM: Mr. Carroll or Miss
12 Nakata, do either one of you or are either one of you in a
13 position to advise the Board here as to the ERS and who they
14 are and what they do, and whether Councilmembers are
15 required to participate or not? Do we know anything about
16 that situation?

17 MS. NAKATA: If I may, Carla Nakata. I'm not
18 really in a position to, I guess, state much in terms of
19 what the Employee Retirement System does or doesn't do.
20 However, I did take an opportunity this morning to go

21 through the audio tape of the Land Use Committee meeting on
22 November 21, 2005, which is the opportunity that the
23 committee had to take up this item.

24 Mr. Derek Kobayashi, who is an attorney with
25 Goodsill Anderson Quinn and Stifel, did appear on behalf of

1 the State Employee Retirement System and offered testimony
2 as a member of the public explaining the ERS's position on
3 this agenda item at that time. These are not by any means a
4 formal transcript, and I don't purport to be a very good
5 transcriber, but I do have a set of notes from his
6 testimony, which went about four minutes long.

7 CHAIRMAN PETERS BELSOM: I think the Chair's issue
8 right now is the question of whether or not there may be a
9 conflict of interest in the fact that one of the parties to
10 this issue is the retirement system. And it seems to me
11 that there would be a conflict if someone -- for anyone on
12 the Council who may have a financial interest in the
13 retirement system.

14 But I am not familiar enough with the retirement
15 system to know whether or not that's a voluntary
16 participation kind of thing. Because if it is, then those
17 who do not participate in it do not have any conflict at
18 all. Whereas if they are participants they may have a
19 conflict. But until we understand what that system is all
20 about and the connection between Councilmembers and the

21 system, it would be difficult for us to try to resolve the
22 issue from a Code of Ethics standpoint.

23 Any other questions?

24 MR. STEWART: In that same vein, maybe you can
25 clarify this for me. It says here that there's a formula

1 used, years of service, salary, and a fixed percentage to
2 determine retirement pension. If that formula is
3 systematic, can it be manipulated or adjusted based on a
4 windfall from, for instance, a new development as part of
5 this rezoning, or is it a formula that's just fixed across
6 the Board, regardless of any other entity or investment or
7 windfall? That I think would affect whether or not they're
8 directly going to benefit from a zoning change.

9 MR. KIM: I can answer that question. Your
10 retirement under the ERS is based on years of service times
11 your highest three salaries, but you have to vest. You have
12 to be at least an employee for ten years. With Council
13 people I believe the same holds true, except I believe
14 they're contributory. Part of their salary goes into it.

15 So their rate of payout is a little bit higher
16 than the normal public employee, which is generally set for
17 clerks and typists, 1.25 percent times years of service over
18 ten years, times the highest years of your salary. For
19 elected officials I think it's 2 percent times your years of
20 service after ten years, and your highest three salaries.

21 So the income you get as a retiree does not depend
22 on how well your investments are, going bust or going full
23 blast, it's fixed. So whether or not this piece of property
24 makes a whole bunch of money because of the zoning change or
25 loses money because of the zoning change, it doesn't matter.

1 It will not affect the payout that a person would get.

2 CHAIRMAN PETERS BELSOM: Any other questions?

3 Miss Holt?

4 MS. HOLT: Yes. I must say that this was somewhat
5 difficult for me to follow because I get it: One, there is
6 a potential or there is a proposal to rezone land which is
7 owned by the ERS; number two, the ERS objects; three, is it
8 a conflict for persons who are members of the ERS to vote on
9 that particular issue. Is that what I understand? Okay,
10 just so I'm clear.

11 CHAIRMAN PETERS BELSOM: And those members happen
12 to be Councilmembers, and that's why they fall within our
13 jurisdiction.

14 Mr. Iwado?

15 MR. IWADO: And this is a downzoning that they're
16 seeking, is that correct?

17 MR. KIM: That's correct. They want it from
18 apartment zoning to park, that's correct. And I don't
19 believe the ERS did apply for the zoning, it was the former
20 landowner, who is now in foreclosure, therefore it went back

21 to the ERS. So that's the confusion that set in, the ERS
22 testifying against the downzoning.

23 CHAIRMAN PETERS BELSOM: Mr. Stewart?

24 MR. STEWART: I was just going to say I think as
25 the Board of Ethics we cannot affect or influence the

1 decision in any way of what they do with the land or how
2 it's zoned or anything thereafter. I think our only angle,
3 our only opinion would be what I said earlier. Personally I
4 don't see that any of the benefits, whether it's positive or
5 negative, can affect the retirement program. And therefore
6 the influence of the members is irrelevant, because the
7 formula is set forth. And I think that position alone
8 should be the Board's reaction, because it's really the only
9 thing we can really have any opinion on, as I see it.

10 CHAIRMAN PETERS BELSOM: I will review the issue
11 that is contained in the December 1st communication, does
12 the Maui County Council and/or its Land Use Committee have a
13 conflict of interest that would preclude their
14 recommendations and action upon a change in zoning request
15 involving property owned by an entity whose sole member is
16 the Employees' Retirement System of the State of Hawaii.

17 And the Chair sees that the discussion has come
18 pretty much to an end. Is there a motion on our response to
19 this request for advisory opinion?

20 MS. HOLT: I'd like to offer the following motion.

21 Considering the fact that Maui County Councilmembers, as
22 well as other employees of the State of Hawaii, the Counties
23 of the islands, are all members of the Employees' Retirement
24 System of the State of Hawaii, we do not believe that there
25 would be a conflict in their making recommendations or

1 taking action on the change in zoning. I hope that's not
2 too complicated.

3 CHAIRMAN PETERS BELSOM: No, but I think Mr.
4 Stewart wishes to add.

5 MR. STEWART: Can I add or second? How do you do
6 that?

7 MR. KIM: Second and then add.

8 MR. STEWART: I would second that, and then I just
9 want to add the small caveat that their decisions, whatever
10 way they go, cannot affect the formula. Therefore that's
11 another specific reason for finding no conflict of interest.
12 What she says is absolutely true, but also they have no
13 affect on the retirement formula.

14 MR. HELLE: You can basically say that they have
15 no conflict due to the fact that their actions will not have
16 any impact on the formula.

17 MS. HOLT: It sounds like a bit of rewording.

18 MR. STEWART: Listen to mine, they ramble on
19 forever.

20 CHAIRMAN PETERS BELSOM: We have Miss Holt who

21 proposed a motion, Mr. Stewart with a second with a
22 recommended change to it. It sounds like Mr. Helle would
23 also be in favor of a change.

24 It appears that with the suggestions here, the
25 response that the Board wishes to take is to acknowledge

1 that County Councilmembers are members of the Employees'
2 Retirement System for the State of Hawaii, but that the
3 Board feels that they do not have a conflict of interest in
4 this particular case based on the fact that there may be
5 others that belong to the system. But also that they would
6 not take any action that would directly have an impact on
7 the formula used by the Employees' Retirement System.

8 Is that agreeable that that's the motion?

9 MS. HOLT: I even have a different wording.

10 MR. STEWART: You said "would not take any
11 action." I'm saying whatever action would not affect the
12 formula.

13 MS. HOLT: I was going to start off by saying
14 since the County Council and its members are part of a
15 retirement system over which they have no control, something
16 to that effect.

17 DR. KAUFMAN: I think I see a question in the back
18 of the room.

19 CHAIRMAN PETERS BELSOM: Miss Nakata?

20 MS. NAKATA: Excuse me, Madam Chair. I'm sorry, I

21 don't know if I'm out of order, but I did just want to
22 clarify based on a conversation I had with Allen Nakamoto at
23 the ERS. He did inform me that not all the Councilmembers
24 are automatically members of the ERS, but that they are
25 eligible at their option for membership. I don't know that

1 that has any bearing on the motion, but I just want to
2 clarify that.

3 CHAIRMAN PETERS BELSOM: It may have an impact on
4 how we word the motion so that it really affects only those
5 people currently or at the time of a vote on the matter
6 would hold an interest in the ERS.

7 Okay, we are still crafting this motion here so we
8 understand it and are agreeable to it. Okay, let's see.
9 The motion pending on the floor, and I think Miss Holt, I
10 will ask you to rephrase it for clarification, since we've
11 had some discussion in between.

12 MS. HOLT: Well, should I say since there are
13 members of the Council who may be part of the Employees'
14 Retirement System but whose engagement or whose
15 participation in the retirement system is discretionary, we
16 believe that there is no reason that they could not vote on
17 the change.

18 CHAIRMAN PETERS BELSOM: I think Miss Holt is
19 done.

20 MS. HOLT: Your turn.

21 CHAIRMAN PETERS BELSOM: Actually, it's a second
22 motion that's on the floor. I am assuming that you are
23 withdrawing your first motion, your original motion.

24 MS. HOLT: Yes.

25 CHAIRMAN PETERS BELSOM: This is her second

1 motion. You had seconded the original motion. So if you
2 agree, withdraw the first motion.

3 MR. STEWART: I do, and I second her second
4 motion. And I would add furthermore that since the formula
5 used by the ERS is not or does not fluctuate based on the
6 financial dealings or windfalls of the board, then they have
7 no influence over it, and therefore we don't find it in
8 conflict. That's as succinct as I can be, sorry.

9 MR. HELLE: That's good.

10 MR. KIM: I wrote out, "Councilmembers who
11 participate in the ERS have no conflict in the matter of
12 rezoning as their approved benefits are fixed and not
13 affected by the investments of the ERS."

14 MR. STEWART: What he said.

15 CHAIRMAN PETERS BELSOM: Okay, Miss Holt?

16 MS. HOLT: I accept that as an amendment.

17 CHAIRMAN PETERS BELSOM: Would you withdraw your
18 motion and defer to the suggested motion by Mr. Kim?

19 MS. HOLT: I will make Mr. Kim's motion my motion,
20 thank you.

21 MR. STEWART: I withdraw my second amended and
22 defer to Counsel as well.

23 CHAIRMAN PETERS BELSOM: Actually, in the record
24 will be Miss Holt's motion, Mr. Stewart's second, and the
25 matter is open for discussion.

1 DR. KAUFMAN: Could we hear a reading of the
2 motion again, please?

3 CHAIRMAN PETERS BELSOM: Certainly.

4 MR. KIM: I believe Miss Holt suggested
5 Councilmembers who participate in the State Employment
6 Retirement System have no conflict in the matter of rezoning
7 of the subject property as their accrued benefits are fixed
8 and are not affected by the investments of the Employment
9 Retirement System.

10 DR. KAUFMAN: Gosh, beat me to it by 15 seconds.
11 I have got, "Whereas Councilmembers may or may not belong to
12 the ERS, and whereas zoning changes of property owned by
13 ERS will not affect benefits of members of the ERS,
14 therefore the Board of Ethics finds no conflict with
15 Councilmembers voting on rezoning of the subject property."

16 MR. STEWART: You missed your calling, Alan, you
17 should have been an attorney.

18 DR. KAUFMAN: If you like that version, you can
19 have it.

20 CHAIRMAN PETERS BELSOM: But we need to clarify

21 the record. I know we struggle sometimes for the right
22 language. The motion that's pending is the one that Mr. Kim
23 read into the record. Miss Holt adopted the language as
24 hers in the form of a motion. Mr. Stewart has seconded
25 that.

1 Mr. Kaufman has presented some language. If we
2 wish to adopt it, we do need to vote on the pending motion
3 and precede from there.

4 MS. HOLT: I have no desire to have the motion in
5 my name. If we agree with Mr. Kaufman's motion I will
6 withdraw mine and take Mr. Kaufman's.

7 DR. KAUFMAN: It's your motion, I just wrote it
8 down for you.

9 MR. STEWART: I like the Readers' Digest version
10 myself, and I suggest we should vote on that yea or nay and
11 get to the next subject.

12 CHAIRMAN PETERS BELSOM: For the record, Miss Holt
13 has adopted the language of Mr. Kaufman as her motion,
14 substituting for the original language of the motion, and
15 Mr. Stewart is in agreement that the motion may proceed by
16 seconding. All Boardmembers in favor of the motion as
17 presented please say "aye."

18 (A chorus of ayes).

19 Is there any opposition to the motion?

20 (None).

21 If not, this matter is concluded with no conflict

22 for your group.

23 MR. KIM: With respect to that, Mr. Carroll, do

24 you need an interim ruling?

25 COUNCILMEMBER CARROLL: That would be appreciated.

1 CHAIRMAN PETERS BELSOM: We will get an interim
2 ruling out to you, and it will be followed by a more formal
3 response.

4 COUNCILMEMBER CARROLL: Thank you, and thank you
5 for your time.

6 CHAIRMAN PETERS BELSOM: Thank you very much for
7 coming.

8 The Board is ready to move on to the next item on
9 the agenda, which is our announcements. You should all have
10 received the 2006 meeting calendar. And once again we will
11 remind everyone that we will be having elections for new
12 officers for the Board coming up shortly, so think about it.

13 MR. IWADO: I'd like to know how much more time I
14 have got on the Board.

15 CHAIRMAN PETERS BELSOM: The secretary may be able
16 to advise you.

17 MR. STEWART: When does my sentence end?

18 MS. KAHUHU: 2008. John 2010.

19 MS. HOLT: I'm 2006.

20 MS. KAHUHU: Barry, you're 2007 also. And you're

21 up in 2006, Caroline and Harriette.

22 CHAIRMAN PETERS BELSOM: Miss Holt and I will be

23 leaving the Board.

24 MR. IWADO: You will be leaving?

25 CHAIRMAN PETERS BELSOM: Yes.

1 MR. STEWART: It will be chaos.

2 MS. HOLT: Is there any way we can get you
3 reappointed or urge you to remain?

4 CHAIRMAN PETERS BELSOM: I don't know. But that
5 brings us to the end of the regular session. The Chair will
6 entertain a motion to move into the executive session.

7 DR. KAUFMAN: I think I have got to read it, but
8 we don't read it anymore, so I am going to move that we go
9 into executive session.

10 MR. HELLE: Second.

11 CHAIRMAN PETERS BELSOM: I think we need more than
12 that for the record.

13 DR. KAUFMAN: Yes, to discuss -- I'm really sorry,
14 where is the business, page 3 under New Business. That we
15 go into executive session to discuss financial disclosures
16 and communication items.

17 MR. HELLE: We also have one item, though, on 3a,
18 3b.

19 DR. KAUFMAN: And the further review of the
20 request for an advisory opinion from a Land Use and Building

21 plans examiner.

22 CHAIRMAN PETERS BELSOM: That is the motion. Is

23 there a second?

24 MR. IWADO: Second.

25 CHAIRMAN PETERS BELSOM: All those in favor,

1 please say "aye."

2 (A chorus of ayes).

3 The motion carries.

4 (Whereupon the Board adjourned to executive

5 session).

6 CHAIRMAN PETERS BELSOM: We are back in regular

7 session. Is there a motion to adjourn from the regular

8 session?

9 MS. HOLT: I so move.

10 MR. HELLE: Second.

11 CHAIRMAN PETERS BELSOM: Moved and seconded. All

12 those in favor please say "aye."

13 (A chorus of ayes).

14 We are in adjournment. Thank you very much. Have

15 a good holiday.

16

17 (The proceedings were concluded at 2:20 p.m.)

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1 C E R T I F I C A T I O N

2

3 I, JEANNETTE W. IWADO, Notary Public for the State of
4 Hawaii, certify:

5 That the proceedings contained herein were taken by
6 me in machine shorthand and were thereafter reduced to print
7 under my supervision by means of computer-aided
8 transcription; that the foregoing represents, to the best of
9 my ability, a true and accurate transcript of the
10 proceedings had in the foregoing matter.

11

12 Dated this 29th of December 2005.

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NOTARY PUBLIC, State of Hawaii

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My commission expires 2/5/08

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