

BOARD OF ETHICS
COUNTY OF MAUI, STATE OF HAWAII

TRANSCRIPT OF TAPED PROCEEDINGS
REGULAR MEETING

ORIGINAL

Held at the Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui, Hawaii, commencing at 12:35 p.m. on January 9, 2008.

TRANSCRIBED BY: LYNANN NICELY, RPR/RMR/CSR #354

A P P E A R A N C E S

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CHAIRPERSON	ALAN KAUFMAN
BOARD MEMBERS:	JOCELYN BOUCHARD
	RANDOL LEACH
	VINCENT LINARES
	REBECCA WOODS
	C. GRETCHEN GUY
CORPORATION COUNSEL:	ADRIANNE N. HEELY, ESQ.
EXECUTIVE SECRETARY:	KRISTI LYN UEOKA

1 CHAIRPERSON KAUFMAN: This is Alan Kaufman and
2 I'm calling to order the Wednesday, January 9, 2008
3 meeting of the Board of Ethics. And we will note
4 that we have present Sheri-Ann, Jocelyn, myself,
5 Rebecca Woods, and Randol Leach, as well as our
6 executive secretary and corporation counsel.

7 The first order of business are the minutes of
8 the December 12, 2007 meeting. Are there any
9 additions or corrections to the minutes? If not,
10 the Chair will accept a motion from the floor to
11 approve the minutes as they were submitted. Randol,
12 did you make that motion?

13 MEMBER LEACH: I move that we accept the
14 minutes.

15 MEMBER BOUCHARD: Second.

16 CHAIRPERSON KAUFMAN: So Jocelyn made the
17 second, very good. We have time for public
18 testimony. We have a member of the public here, but
19 I believe that will be on a separate subject rather
20 than for Public Testimony.

21 Under Old Business, there are no financial
22 disclosures, no communication items. Under New
23 Business, there are no financial disclosures.

24 Under Communication Items, we have a letter to
25 the Maui County Board of Ethics dated December 3,

1 2007, from Harry Saunders, III, president of Castle
2 & Cooke Resorts, LLC, regarding the termination of
3 lobbyist registration for Jarvis Chun. And we also
4 have a letter to the Maui County Board of Ethics
5 dated December 17, 2007, from Richard C. Botti,
6 president of Hawaii Food Industry Association,
7 regarding the termination of lobbyist registration
8 for Edward Thompson.

9 Next we have a request for an advisory opinion
10 from a commission member regarding a potential
11 conflict of interest between his status as a Salary
12 Commission member/current chairman and his support
13 of and service to the Maui Vacation Rental
14 Association.

15 EXECUTIVE SECRETARY: Chair, we have Mr. Levin
16 to come and testify. Should we bring him to the
17 podium?

18 MR. LEVIN: Aloha. My letter that I sent
19 should be fairly self explanatory, what I see is
20 attached as part of the documentation here. This is
21 the second time I've appeared before you asking for
22 an opinion. The first one was a few years back when
23 I served on essentially a lobbying organization.
24 Since then, that organization has sued the county.
25 Just a little bit more details about that case, some

1 of which appeared in today's newspaper, if you read
2 the article on the front page regarding Charmaine's
3 news conference yesterday. The case was dismissed,
4 but the MVRA is considering an appeal and/or
5 otherwise.

6 Other pieces of information to add to this is
7 that January 16th, in a few days, I think it's
8 Wednesday of next week, we're having officer
9 elections and I won't be running for treasurer
10 again, although if they ask me to become a director
11 I might consider that.

12 And I'm not sure what else to add to this
13 except that I sent them, you know, a major portion
14 of setting and establishing salaries for the mayor,
15 the planning, and the corp counsel, all of which I
16 filed with this lawsuit in one way or another. And
17 although I spoke with corp counsel, who happens to
18 be in the room today, at one of our meetings in I
19 believe November, and her initial opinion was that
20 there wasn't an issue, I just chose to come in front
21 of you folks and make sure that this was -- my
22 continued service is either blessed or discussed in
23 the public record so that there wasn't any issues in
24 the future.

25 MS. HEELY: Just to clarify, and correct me if

1 I'm wrong, Salary Commission Chair Levin, when we
2 did discuss that at the meeting, I did read the
3 Salary Commission rule on disclosure of conflict
4 which states, "A commission member shall promptly
5 make full disclosure to the commission of any
6 conflict of interest that exists concerning any
7 matter that may be affected by an action of the
8 commission. When a member is deemed by the Board of
9 Ethics to have a conflict of interest, that member
10 shall be disqualified from voting in all actions
11 relating to that matter." I think I read that out
12 loud at your meeting and hence Mr. Levin said he
13 wanted an opinion from the Board of Ethics, hence
14 his letter. Because I think the facts are a little
15 bit different in regards to this and I didn't know
16 much about the Maui Vacation Rental Association case
17 versus the County which was pending, and we did pull
18 up the past decision of the Board of Ethics which
19 will find that there was no conflict or potential
20 violation of the Code of Ethics in regards to the
21 facts relating to that previous decision.

22 CHAIRPERSON KAUFMAN: Do any members of the
23 board have any additional questions? But simply for
24 clarification, the Chair would like to know, you
25 have a fully permitted vacation rental; is that

1 correct?

2 MR. LEVIN: Yes. We are one of I believe we
3 have in the county 23 bed and breakfast permits
4 [inaudible].

5 CHAIRPERSON KAUFMAN: That being the case,
6 regardless of how the lawsuit turns out, whatever
7 the results of that lawsuit are, it will not have a
8 direct effect, economic effect, on your business; is
9 that correct?

10 MR. LEVIN: No, it will not.

11 CHAIRPERSON KAUFMAN: Thank you. Do any other
12 members of the board have a question? Would you
13 like a written opinion? Yes, the board will be
14 providing you with a written opinion and I think
15 we'll be able to do that fairly expeditiously. You
16 don't need it before next month, do you?

17 MR. LEVIN: No, not at this time. We may be
18 approving salaries at the next meeting. Honestly,
19 that's a little optimistic. We probably would be
20 reviewing the January 1st salaries for most of the
21 deputy directors sometime in February would be a
22 better guess. And as Chair, I don't vote unless
23 there is a tie anyway, but I do participate in
24 discussions.

25 EXECUTIVE SECRETARY: Just to let you know, our

1 next Board of Ethics meeting will be February 13th
2 and at that point would be the earliest that the
3 board would be able to sign the advisory opinion
4 with regard to your request.

5 CHAIRPERSON KAUFMAN: Very good. Unless you
6 have any other questions, I would like to thank you
7 for being here today.

8 MR. LEVIN: Is this something that you're going
9 to discuss amongst yourselves or are you going to do
10 that in Executive Session?

11 CHAIRPERSON KAUFMAN: We're going to continue
12 to discuss it and you can stay in the room while we
13 discuss it if you would like.

14 MR. LEVIN: Thank you very much.

15 EXECUTIVE SECRETARY: Chair, I would like to
16 present to you some written correspondence received
17 by the Board of Ethics from the Mayor today with
18 regard to this request for advisory opinion.

19 CHAIRPERSON KAUFMAN: And I will read this into
20 the record so the other members of the board can
21 share with me at the same time.

22 The letter is from the Office of the Mayor and
23 it is addressed to myself and it says: "Dear Chair
24 Kaufman. My office has received information that
25 raises concerns regarding the ability of Doug Levin,

1 who presently serves as the Chair of the County of
2 Maui Salary Commission, to impartially participate
3 in salary discussions for the positions of Mayor and
4 County Department Directors and Deputy Directors.

5 "Section 10.4, item c, of the Prohibitions
6 sections of the Charter of the County of Maui
7 states: "No officer or employee of the County shall
8 engage in any business transaction or activity or
9 have a financial interest, direct or indirect, which
10 is incompatible with the proper discharge of the
11 officer's or employee's official duties or which may
12 tend to impair the officer's or employee's
13 independence of judgment in the performance of the
14 officer's or employee's official duties.

15 "It is important to note that Mr. Levin serves
16 as the treasurer of the Maui Vacation Rental
17 Association. My concern is based on an e-mail
18 Mr. Levin sent to a member of my staff that states
19 the following: "In case you haven't seen the e-mail
20 below in reference to a Chamber of Commerce e-mail
21 asking members to take action and protest the
22 administration's efforts regarding transient
23 vacation rentals, I'm mailing it to you. When the
24 Chamber gets involved with this, you know the
25 community does not support her on this issue. At

1 this point I don't believe the Mayor is going to
2 blink. However, just in case reaching out like this
3 has any benefit, if she actually backs off on the
4 100 percent enforcement rule, I'm almost certain
5 that I could get the Maui Vacation Rental
6 Association to back off the appeal of or refile of
7 the lawsuit. This might also include some positive
8 comments about working with the Mayor and applauding
9 her for listening to her constituents and realizing
10 the benefits TVRs have to the community."

11 "In a subsequent e-mail message he sent, the
12 following remarks were included among comments
13 regarding legitimate Salary Commission business:
14 "I'm presuming the recent Chamber of Commerce
15 position and my e-mail of last week were
16 insufficient to get the Mayor to shift her position
17 relative to TVRs. Please let me know if that
18 changes."

19 "Mr. Levine's communications indicate that he
20 may have a financial interest in the vacation rental
21 industry that may tend to impair his independent
22 judgment in deliberations that the Salary Commission
23 engages in. I request that the Board of Ethics
24 review his status as a member of the County of Maui
25 Salary Commission and take any appropriate action

1 necessary. Very truly yours, Charmaine Tavares,
2 Mayor, County of Maui."

3 If anyone was hoping for a short meeting today,
4 I think that has been dispelled.

5 Do any members of the Board of Ethics wish to
6 comment on the request for the advisory opinion or
7 on the Mayor's letter regarding that request?

8 As your Chair, I would like to note that I own
9 a vacation rental on the island of Hawaii and the
10 Board of Ethics does not deal in hypotheticals. If
11 there are no vacation rentals on this island, my
12 vacation rental will likely do more business. It
13 might be in my own self interest for vacation
14 rentals on Maui to be shut down. It certainly will
15 not hurt my business on the Big Island. And in the
16 interests of full disclosure, I need to disclose
17 that I do have a vacation rental in a different
18 location. I suggest to you that it being on the Big
19 Island is not going to create a conflict of interest
20 for your Chair. However, as Chair, I do not vote
21 unless there is a tie and I will abstain -- I will
22 participate in discussion and as your Chair I will
23 abstain from voting.

24 Would any members of the board like to comment?
25 Gretchen. Randol, do you have something to say?

1 MEMBER LEACH: Yes. This is a question for the
2 Chair. Is it possible that Mr. Levin could come to
3 the podium again and we could ask him some
4 questions?

5 CHAIRPERSON KAUFMAN: Mr. Levin, would you take
6 the podium, please.

7 MEMBER LEACH: You probably have a comment on
8 the letter or what we're looking at. Do you have a
9 response that there could be a possible conflict of
10 interest if you're looking at the salaries of the
11 Mayor and department chairs that are somehow related
12 to this issue?

13 MR. LEVIN: As you can see from the letter,
14 it's really very difficult at times for me to
15 balance my concerns with the MVRA as well as my work
16 for the county. I try. And in my work on the board
17 and commissions I do read minutes for the last year
18 or so not to let that persuade my thinking and
19 stuff. I have continuously been on the record that
20 I believe that the salaries for most of the members
21 who serve the county are low, that salary inversion
22 is an issue for many of them, and I continuously and
23 regularly fought for raises for many of the members,
24 irregardless whether they were serving for or
25 against the county.

1 This particular letter was not directed at the
2 Mayor. And I actually kind of went back and forth
3 when I wrote the first one and the second one. I'm
4 not denying any of the statements that were made by
5 the Mayor, by the way. I actually went back and
6 forth myself about whether or not it was appropriate
7 to ask an executive assistant of the Mayor or make
8 these comments.

9 In my original agreement with the ethics
10 committee, I agreed not to directly lobby the Mayor
11 or the -- or any of the council members, and I've
12 never actually brought the topic up in front of the
13 Mayor or any of the council members since that
14 agreement.

15 In this particular case, I was sort of -- I
16 don't know, if there was a means for those two
17 groups to come together and reach a reasonable
18 resolution without fighting, I was sort of just
19 throwing a trial balloon out there in hopes that
20 maybe someone who sort of feels, you know, feels --
21 who serves both of these organizations could somehow
22 bring them together in a way that allowed them to
23 reach a reasonable settlement, you know. And when
24 I'm balancing that against am I sort of breaking the
25 rules, I'm sort of in a gray area, I wasn't really

1 sure.

2 As you can see, as I work in these two bodies,
3 I keep running into these sort of conflicts. I
4 really do want to serve the county as best I can.
5 We've worked very hard as chairman of the Salary
6 Commission to get away from a sort of a periodic
7 assessment when people came to us on the commission
8 and actually create a model that allowed us to
9 compare salaries to their peers, to industry, to
10 Consumer Price Index and all this stuff. And I've
11 been key in developing that model and allowing the
12 Salary Commission to work in a more effective and
13 competent way and I think that work has been
14 recognized and rewarded by the county over the last
15 few years. But this issue just keeps coming up.

16 If the lawsuit ever gets filed and I'm no
17 longer the MVRA treasurer or director, you know, my
18 actual participation in the MVRA other than keeping
19 the books is actually quite light because of what's
20 going on. But you can see that I run into these
21 conflicts all the time. I'm not sure I always
22 resolve them in the best possible way. That's why
23 I'm sort of here asking for guidance today.

24 MEMBER GUY: Mr. Levin, would you be -- you
25 know, whenever somebody extracts part of a letter,

1 sometimes the meaning is lost. Could you comment on
2 the extraction that says, "This might also include
3 some positive comments about working with the mayor
4 and applauding her for listening to her constituents
5 and realizing the benefits TVRs have to the
6 community." What were you intending with that
7 statement?

8 MR. LEVIN: This gets tricky, too, because when
9 we work on the Salary Commission, especially when we
10 take up council salaries, there is a very great deal
11 of political -- for want of a better word -- spin
12 that comes with something. In other words, what I'm
13 basically saying is if she capitulated, we're not
14 going to go, "See, we told you so," and make quotes
15 or comments for the press that would make the mayor
16 look weak. In other words, we're trying to say
17 let's come to the table and work together as a team
18 and reach a reasonable resolution. When we offer
19 positive comments like that, we're just saying hey,
20 we understand how things play out and we want to
21 make sure that if there is a resolution reached,
22 that we can do so in a way that doesn't negatively
23 impact the mayor or something else like that. We're
24 not trying to -- we're looking for a win-win instead
25 of something else. That's all I'm really trying to

1 accomplish there.

2 It's very hard, as you can see, I'm sort of a
3 political novice, but I sort of learned some things.
4 Again, I'm not sure what's -- at this particular
5 time I sent these because -- and I was sort of in a
6 rush that morning because I sent these because I got
7 this e-mail from the Chamber of Commerce which was a
8 broadcast e-mail to the entire membership of the
9 Chamber -- if any of you are in the Chamber, you
10 probably got it -- basically asking us if we had a
11 contact with the Mayor's office, to reach out and
12 say something. That was essentially my reach out to
13 somebody I knew with the Mayor who I worked with on
14 the Salary Commission. Okay.

15 CHAIRPERSON KAUFMAN: I think it may help the
16 board to review our previous opinion on this
17 subject. And what I would point out that when we
18 looked at the applicable law, the very first portion
19 that we quoted was Section 10-4, Section 1-C, which
20 is exactly what the Mayor has quoted in her letter.

21 However, we then went on to quote Section 4,
22 and I'll refresh your memory. It says, "Officers
23 and full-time employees of the county" -- and
24 remember that Mr. Levin is an officer of the county
25 because he serves on the Salary Commission -- "shall

1 not appear on behalf of or represent private
2 interests before any county agency, provided that no
3 officer or employee shall be denied the right to
4 appear before any agency to petition for redress or
5 grievances caused by any official county action
6 affecting such person's personal rights, privileges
7 of property, including real property, provided that
8 members of boards and commissions may appear on
9 behalf of private interests before county agencies
10 other than the one on which such person serves and
11 other than those agencies that have the power to
12 review the actions of the agency on which such
13 person serves, were to act on the same subject
14 matter as the agency on which such person serves,
15 provided further that without changing the
16 prohibitions and rights stated above, the council by
17 ordinance may prescribe further standards,
18 conditions, and guidelines concerning the
19 representation of private interests before county
20 agencies."

21 Does that help clarify for members of the board
22 where we are? My understanding, and I'll turn to
23 corporation counsel here, would focus on the portion
24 that says, "No officer shall be denied the right to
25 appear before any agency to petition for redress or

1 grievances caused by any official county action
2 affecting such person's personal rights, privileges,
3 or property including real property."

4 On my reading, that would seem to say that
5 Mr. Levin does have a right to address to the
6 mayor's executive assistant or to any other branch
7 of the mayor's office because it is a matter that
8 could potentially affect his personal rights and
9 real property, even though he is fully permitted.

10 In fact, the action will probably keep his
11 vacation rental very, very busy because of the other
12 ones that are being shut down. So he may be writing
13 this letter contrary to his own personal financial
14 wellbeing.

15 Corporation counsel, can you comment on your
16 understanding of the law as it applies to this
17 opinion?

18 MS. HEELY: It is what it states. Section
19 10-4, paragraph 4, regarding no officer or employee
20 shall be denied the right to appear before any
21 agency to petition for redress or grievance caused
22 by any official action. The question then becomes
23 did he appear or via the e-mail or the fax before
24 you, before the agency and what the definition of an
25 agency is. That's what I would look at.

1 It goes on to say, though, that members of
2 boards and commissions may appear on behalf of
3 private interests before county agencies other than
4 the one on which such persons served and other than
5 those agencies that have the power to review the
6 actions of the agencies on which such person serves.

7 So it's solely up to the board in terms of
8 their negotiations of how they feel [inaudible]
9 factual scenario compared to the previous opinion.
10 And I did discuss with Salary Commission Chair Levin
11 specifically 10-2, paragraph 5, which says if any
12 officer or employee or former officer or employee
13 obtains an advisory opinion from the board and acts
14 in accordance with the opinions of the board, the
15 officer or employee shall not be held liable for
16 violating any of the provisions of this article.

17 CHAIRPERSON KAUFMAN: Thank you very much,
18 corporation counsel. Any additional comments from
19 members of the board?

20 MEMBER LINARES: I agree with your
21 interpretation.

22 CHAIRPERSON KAUFMAN: The reference was to the
23 Chair's reading of the materials in front of us.

24 Gretchen, are you ready to speak? I'm seeking
25 comment right before I try to provide a synopsis or

1 move the body forward. Please speak.

2 MEMBER GUY: I think -- and this is just an
3 opinion -- that the critical piece here is in a
4 subsequent e-mail message he sent, the following
5 remarks were included among comments regarding
6 legitimate Salary Commission business. When the
7 Salary Commission business -- in other words, the
8 purpose of the e-mail was to discuss things that
9 came under his purview as an officer, he also
10 included a political note that wasn't salient to
11 commission business and that's where I think the
12 issue comes up [inaudible] your officer position
13 with your personal trust interest.

14 CHAIRPERSON KAUFMAN: Can any member of the
15 board or our corporation counsel tell us where
16 within our regulations it specifies that you can't
17 do stupid things? For the record, I concur it
18 should have been separate.

19 MS. HEELY: Just going back to the first
20 section in that the Mayor cited in her letter as
21 well as the Charter, 10-4-3, I think what she's
22 requesting the Board of Ethics to consider is
23 whether or not those actions may tend to impair
24 Chair Levin's independence of judgment in the
25 performance of officers' or employees' official duty

1 as Salary Commission Chair, et cetera.

2 Also, take into consideration paragraph C,
3 10-4.C, and that's for your interpretation. And
4 Chair Levin was correct in saying because I guess
5 the MVRA lawsuit not being refiled or redismised
6 next week, this whole issue may become moot. But
7 shall it go on, that may bring up another issue. I
8 know the board ruled that they have 45 days to
9 deliberate and make a decision and you gave an
10 inclination that you can expedite that. I know the
11 Salary Commission is meeting this Friday and I also
12 remind Chair Levin and all the other board members
13 that despite receiving an opinion from the Board of
14 Ethics or not, you can always voluntarily recuse
15 yourself from a particular action should you not sit
16 well with it.

17 MEMBER LINARES: I have a question. The letter
18 from the Mayor, who wrote it? Did the Mayor write
19 it or was it signed by the Mayor? Ask corporation
20 counsel. Is this based on legal opinion that she
21 got before she wrote it?

22 MS. HEELY: Her assistant -- one of her
23 assistants dropped it off.

24 MEMBER LINARES: The reason I'm asking is if
25 we're talking about legality of ethics and we're

1 sitting here challenging whether that's right or
2 not, did this letter pass muster legally through the
3 mayor's office? I mean, I need to know that in
4 order to know the validity of this. Is this a
5 personal opinion or is this a legal argument?

6 EXECUTIVE SECRETARY: Just to inform you, the
7 Board of Ethics only received the communication
8 directly from the Mayor's office. There was no
9 other details provided to us. She submitted this in
10 lieu of, I would assume, being able to comment,
11 speak herself. So we don't have any --

12 MEMBER LINARES: I guess my question is
13 [inaudible] challenging a ruling or she sites such
14 intent for, has she gotten an opinion that that's
15 indeed the violation?

16 CHAIRPERSON KAUFMAN: Vinnie, the Mayor doesn't
17 -- I don't believe the Mayor needs to have
18 corporation counsel -- anybody can file a request
19 for an opinion or provide information to the board.
20 It doesn't have to pass legal muster. All that the
21 Mayor did was point out to us sections of the Code
22 of Ethics with which each of us should be intimately
23 familiar already.

24 So whether it went to corporation counsel or
25 not I don't think will be important for us in our

1 deliberations on this subject.

2 Are there other members of the board with
3 additional comments or points that they care to
4 make? Our executive secretary?

5 EXECUTIVE SECRETARY: Vinnie, this might clear
6 things up. Also, I think she submitted this
7 communication after reviewing the agenda; she saw
8 what was coming up on the agenda and she just
9 submitted the communication. That's how she found
10 out that this was going to be heard at the Board of
11 Ethics. They post the agenda online and she
12 submitted.

13 MEMBER LINARES: I'm just wondering why she
14 didn't cite the other section as well. That's all.
15 There is probably logic behind whether -- I'm just
16 wondering.

17 CHAIRPERSON KAUFMAN: Everyone remember to
18 speak into the microphone. I know it complicates
19 what is normally a fairly fluid process, but we
20 really need to try and make sure that all of the
21 comments and conversations are recorded. That is an
22 obligation that we have to the public.

23 Jocelyn.

24 MEMBER BOUCHARD: Just to seek some clarity
25 here. Am I understanding that, Adrienne, when you

1 mentioned that you thought maybe your interpretation
2 of the letter or I don't know if this is more of
3 what Gretchen had mentioned in terms of does
4 subsequent e-mail including those comments within
5 legitimate salary business may be the example of an
6 impairment of judgment, is that what I'm kind of
7 understanding as a concern or -- because I kind of
8 would see that concern and then I don't know if that
9 is superseded by the fact that he has a right to
10 represent himself and that's what I need some
11 clarity on.

12 CHAIRPERSON KAUFMAN: Well, I'm the Chair, so
13 I'll kind of tell you where I'm heading with this
14 one, all my friends who are sitting there. It would
15 seem to me that the Mayor does raise an interesting
16 point under the prohibitions section, 10-4-C.
17 However, Section 10-4 goes on and gives the right to
18 the individual to do what he has. So I would lean
19 more heavily on the aspect of having people free to
20 speak on items that are going to personally affect
21 them.

22 However, I also know that this board frequently
23 desires not just to meet the letter of the law but
24 also the spirit and we try to encourage individuals
25 appearing before us to avoid the appearance of

1 conflict.

2 And where I would be going with this in terms
3 of my own personal thinking is simply to say that
4 the board would see no conflict of interest.
5 However, because there may be the appearance of
6 conflict of interest, to encourage the Chair of the
7 Salary Commission to disclose, as he has, that he is
8 with the Maui Vacation Rental Association and to
9 voluntarily recuse himself from voting even in the
10 event of a tie.

11 Now, this is not the wisdom of Solomon sitting
12 here at the head of the table. I really want other
13 members of the board to contribute and to share
14 their ideas. And just because I talk more than you
15 doesn't mean I know more. I'm not that good a
16 comedian.

17 Good, Sheri-Ann.

18 MEMBER DANIELS: I think I feel a little bit
19 muddled still yet because I think the letter from
20 the Mayor leaves open to interpretation, especially
21 us kind of getting blips of an e-mails. So, I mean,
22 it leaves us to interpret what the e-mail could have
23 perceived to mean.

24 I think the other thing that kind of for me
25 raises some flags is that, you know, it's Salary

1 Commission, her salary and other departments and
2 deputy directors. And I'm kind of leaning toward
3 it's her salary that I think she's more concerned
4 about in his involvement with the visitor rental
5 association.

6 I am going to really side with the Chair's
7 recommendations. And also even if Mr. Levin is no
8 longer a director or even on the board, that he
9 should still recuse himself because I think the
10 appearance, even if he's not involved in MVRA, is
11 still going to lead people to think that he might
12 have interests.

13 CHAIRPERSON KAUFMAN: Question for corporation
14 counsel. When this body makes a recommendation or
15 encourages an individual to recuse himself, he still
16 does not have to, obviously. Where does that leave
17 him in case an additional complaint is filed in the
18 future? We know that when they follow the letter of
19 our opinions, that they are absolved of all guilt.
20 But if we leave it open like that, where are they?
21 I would hate to make an opinion that leaves the
22 individual flapping in the wind in the future.

23 MS. HEELY: Mahalo, Chair. It's difficult to
24 answer hypotheticals like that, given that you don't
25 know what this factual scenario may be at the time.

1 Assuming that -- and the board is well familiar that
2 the Board of Ethics has issued an opinion in the
3 past and it was questioned by a departmental head of
4 a certain member that he was in violation of that
5 not following the spirit of the Board of Ethics
6 opinion and it was brought back before you by that
7 departmental head or whoever may be seeking guidance
8 from the board. So it's difficult to answer your
9 question.

10 MEMBER LINARES: I don't think we can predict
11 the outcome of our decision or recommendation.
12 Whatever happens happens. And then whatever happens
13 on the basis of that comes back to us if it needs
14 to. The decision can't be based upon what the
15 outcome will be if the particular person doesn't
16 follow our recommendation. That's his choice and
17 other people's choices. Ours is to deal just with
18 this particular situation. So I wouldn't consider
19 that in my decision, which is that I agree with you,
20 with your initial synopsis of the situation.

21 MEMBER LEACH: I'm trying to make this simple.
22 On the Salary Commission, there's probably more than
23 one person that owns a TVR. So we're looking at a
24 broader picture because that's what this is really
25 saying that there is a financial interest.

1 And just because you disagree with what the
2 Mayor is doing on the TVRs, or it could be another
3 issue, you're always going to have a financial
4 interest one way or another from the planning
5 commission the way you look at it. So I think we're
6 kind of nit picking a little specific item of the
7 TVRs which is really could affect more than one
8 person. I think the reason they're on the
9 commission is they have impartial judgment and just
10 like ourselves here that I think we're trying to
11 make something more out of what it is, basically.

12 And another analogy would be if a planning
13 commission or Salary Commission person is a Democrat
14 and the Mayor is a Republican, they're going to have
15 a little friction to begin with and it's their
16 professional judgment that I'm interested in.

17 MEMBER LINARES: I have a question that
18 pertains to myself in relation to this. I write
19 many letters to the newspaper. And many of those
20 letters actually have a definite political sense.
21 How does that affect my -- it's the same thing. I'm
22 on this board, I'm a commissioner, and I'm making
23 statements which could or not could not be against
24 the Mayor or anybody else in the county. I have a
25 right to do that, don't I, as a citizen, which

1 exceeds my service on this board as being objective.
2 So I think that falls into this area as well. I was
3 just thinking, my god, all those letters that I
4 write. And I just wrote one recently that took the
5 Mayor on about the travel business. So do I have to
6 recuse myself today?

7 CHAIRPERSON KAUFMAN: We're not going to put it
8 on the agenda at this point in time, Vinnie.

9 EXECUTIVE SECRETARY: I would like to point out
10 to the board, just to keep you on track, that the
11 advisory opinion request was from Mr. Levin. So
12 please consider that he's bringing it to the board,
13 not -- and the Mayor did submit communication, but
14 she did not request advisory opinion on his actions.
15 So that might help you focus a little bit more.

16 CHAIRPERSON KAUFMAN: What would we do without
17 you? I would feel very strongly that Section
18 10-4-4, giving the individual the right to speak,
19 would weigh more heavily -- I would hate to see
20 individuals muzzled simply because they sit on other
21 boards and commissions. You still have a right to
22 speak. Rather than suggesting that an individual
23 recuse himself, we might point out that he might
24 choose to so do, but I don't see anything in this
25 advisory opinion that has been asked for today that

1 wouldn't simply be what was presented previously.
2 Okay.

3 If anybody disagrees with the Chair, please
4 feel free to -- it won't be the first time in my
5 life. Are there any other comments, any part of
6 this that you feel needs further discussion? I
7 don't want to cut conversation short.

8 I believe what the board -- and I'm speaking
9 for the entire board at this point when I say that
10 it's the sense of this body that we will reaffirm
11 the previous advisory opinion that was presented to
12 Mr. Levin and suggest to him that if he should
13 choose to recuse himself in the future, that he may
14 have fewer headaches. We will need a motion. Not
15 quite in that language, though, and the Chair does
16 not make motions. Do you want to make a motion,
17 Vinnie?

18 MEMBER LINARES: Yes, but I don't have the
19 language. But I would agree with what you stated in
20 the motion. I don't think I can paraphrase it.

21 CHAIRPERSON KAUFMAN: Vinnie, I understand that
22 you made a motion to reaffirm the Board of Ethics'
23 previous advisory opinion that was rendered to
24 Mr. Levin and point out that he may desire to avoid
25 the appearance of conflicts of interest to recuse

1 himself from voting should a vote be necessary --
2 should his vote as chairman be necessary.

3 MEMBER LINARES: I think that's a very good
4 summary --

5 CHAIRPERSON KAUFMAN: Of what you moved. Very
6 good. Is there a second to the motion?

7 MEMBER DANIELS: Second.

8 CHAIRPERSON KAUFMAN: Thank you very much,
9 Sheri-Ann. Any further discussion? Seeing none,
10 all in favor? Opposed? Motion is passed
11 unanimously.

12 Would you like that opinion rendered more
13 quickly?

14 MR. LEVIN: No, I think the opinion is -- the
15 corp counsel sitting here will also be at our
16 meeting on Friday. She'll be able to also share the
17 results of your opinion.

18 I want to take a moment and thank you for
19 carefully considering the situation and providing me
20 with continued guidance on this and just let you
21 know that your commission works very much like my
22 commission. Thank you very much for your service to
23 the county just like me. Thank you.

24 MEMBER GUY: I don't know if this is an
25 official opinion, but because you're very interested

1 in a win-win situation, you might want to go clean
2 that communication out there where it was muddy. In
3 other words, whoever you directed it to, you know,
4 whether it was Salary Commission business and then
5 the talk about TVRs, you know, just because you're a
6 win-win guy.

7 MR. LEVIN: [Inaudible] I'll touch base with
8 her. I apologize for making [inaudible]. That was
9 clearly an error on my part and I apologize to the
10 commission as well as the county for that. It was
11 very obvious when you pointed it out. Thank you
12 very much.

13 CHAIRPERSON KAUFMAN: Thank you, Mr. Levin.

14 Going down through the agenda, the next item is
15 Lobbyist Registration. There are none.

16 Announcements. The 2008 Board of Ethics
17 meeting calendar has been circulated and everyone
18 now has a copy.

19 And that is going to be the end of the regular
20 session agenda. And we need a motion to move -- we
21 need to -- Kristi, yes.

22 EXECUTIVE SECRETARY: Would you like to go
23 through the attendance today? I have to report that
24 Nane was going to attend, but he had an emergency to
25 attend to and informed me before the meeting. So is

1 it all right for us to mark him excused as absent?

2 CHAIRPERSON KAUFMAN: Absolutely.

3 EXECUTIVE SECRETARY: Also, I got an update
4 from our resigning member, Peter Soman. I'm still
5 trying to track down his resignation. I finally got
6 in touch with him today and he said that he
7 submitted it before the end of the year. And the
8 person that handles it in the Mayor's office has
9 retired, so a new person is dealing with this and so
10 I'm going to be tracking down that letter to make
11 sure that it is in progress so that we can get our
12 final position filled.

13 CHAIRPERSON KAUFMAN: Thank you for your
14 diligence, Kristi. One more thing?

15 EXECUTIVE SECRETARY: Do we mark him, Peter
16 Soman, absent or excused?

17 CHAIRPERSON KAUFMAN: We'll mark him absent.

18 EXECUTIVE SECRETARY: Thank you, Chair.

19 CHAIRPERSON KAUFMAN: Randol Leach.

20 MEMBER LEACH: One question, Mr. Chair. In
21 reading the last paragraph from the Mayor's letter,
22 she's requesting that the Board of Ethics review
23 Mr. Levine's status as a member of the Salary
24 Commission and take appropriate action.

25 Under protocol, do we need to send something

1 back to the Mayor that we've addressed her letter?

2 MS. HEELY: I think when the board issues their
3 written opinion, it's typical that the board lists
4 what they considered in rendering their opinion so
5 that could be included as well as the public
6 testimony of Chair Levin. I would possibly CC the
7 Mayor a copy of the advisory opinion to Levin.

8 CHAIRPERSON KAUFMAN: Do we have a motion to
9 move into Executive Session?

10 MEMBER BOUCHARD: With reference to the agenda
11 items listed below, one or more executive meetings
12 are anticipated. In particular, the Board of Ethics
13 anticipates it will consider the evaluation,
14 dismissal or disciplining of an officer or employee
15 of the County of Maui, where considerations of
16 matters affecting privacy will be involved. The
17 Board may also consult with the Board's attorney on
18 questions and issues pertaining to the Board's
19 powers, duties, privileges, immunities and
20 liabilities. Therefore, pursuant to Hawaii Revised
21 Statutes Sections 92-5(a)(2) and (4), the following
22 items may be considered in Executive Session. The
23 Board may also convene in Adjudicatory Session
24 Pursuant to HRS Section 92-6.

25 [Executive session convened.]

1 CHAIRPERSON KAUFMAN: Our next regular meeting
2 is February 13, 2008, and it will be right here. Is
3 there a motion to adjourn out of Regular Session?

4 MEMBER LINARES: So moved.

5 MEMBER GUY: Second.

6 CHAIRPERSON KAUFMAN: Vinnie Linares moved and
7 Gretchen Guy seconded. All in favor? Opposed? The
8 meeting is adjourned.

9 [Concluded at 1:25 p.m.]

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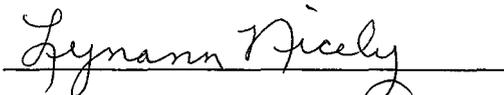
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C E R T I F I C A T E

I, LYNANN NICELY, C.S.R., do hereby certify:

That I was acting as shorthand reporter in the foregoing matter; that the proceedings were transcribed by me from tape recording in machine shorthand and were thereafter reduced to print under my supervision by means of computer-assisted transcription; that the foregoing represents, to my best ability, a true and accurate transcript of the proceedings had in the foregoing matter; that pursuant to HRCP 30(f)(1) the original will be forward to noticing counsel for retention.

I further certify that I am not attorney for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption. Dated on 2/4/08.



LYNANN NICELY, RPR

Notary Public, State of Hawaii

My commission expires: 1/24/10