

MAUI COUNTY BOARD OF ETHICS

COUNTY OF MAUI

REGULAR MEETING

ORIGINAL

Held at the County of Maui Planning Conference Room, Kalana
Pakui Building, Wailuku, Maui, Hawaii, commencing at 12:30
p.m. on Wednesday, March 12, 2008.

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

1 ATTENDANCE

2 Board of Ethics Meeting, March 12, 2008

3
4 BOARD MEMBERS PRESENT:

5 ALAN KAUFMAN, CHAIR

6 NANE W. ALULI, VICE-CHAIR

7 JOCELYN A. BOUCHARD, SECRETARY

8 RANDOL LEACH

9 VINCENT R. LINARES

10 SHERI-ANN DANIELS

11 C. GRETCHEN GUY

12
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14 STAFF PRESENT:

15 ADRIANNE HEELY, DEPUTY CORPORATION COUNSEL

16 KRISTI LYN UEOKA, BOARD SECRETARY

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BOARD OF ETHICS
TRANSCRIPT OF PROCEEDINGS
REGULAR SESSION

CHAIRMAN KAUFMAN: I'll call to order the regular session of Wednesday, March 12, 2008, the Maui County Board of Ethics. And the minutes of the previous February 13th meeting have been circulated. Are there any additions or corrections?

BOARD MEMBER LEACH: I'll move we accept the minutes.

CHAIRMAN KAUFMAN: Let me make a note that on page 16, line 18 the word "detail" should be "deal," D-E-A-L, and that's the only correction noted by the Chair.

MS. HEELY: The evil eye chair.

CHAIRMAN KAUFMAN: I just actually read the minutes, that's all. And with that addition or correction we can accept the minutes. I was speaking to a parliamentarian on Robert's Rules the other day, and minutes don't have to be moved and accepted, they only have to be accepted. So they will be accepted with the single correction.

I notice we have a number of individuals, but I don't know if any of them are providing public testimony. None of them are, thank you.

1 We have a reading of the resolution for our
2 exiting board member, Vincent Linares.

3 BOARD MEMBER LINARES: Which was a surprise.

4 CHAIRMAN KAUFMAN: I'm sure a joyous one, however.
5 And Resolution of the Maui County Board of Ethics.

6 Whereas, the Maui County Board of Ethics was
7 established by the Charter of the County of Maui in 1977;
8 and

9 Whereas, since January 2006, Vincent Linares has
10 served as a member of the Maui County Board of Ethics; and.

11 Whereas, Vincent Linares served the Maui County
12 Board of Ethics with dedication and provided valuable
13 guidance in serving the needs of the employees and people of
14 Maui County;

15 Whereas, Vincent Linares' term of office expires
16 on March 21, 2008; now, therefore,

17 Be it resolved, by the Maui County Board of Ethics
18 that it does hereby express its deepest gratitude and
19 appreciation to Vincent Linares for his service during the
20 past two years and does hereby extend its best wishes to his
21 future endeavors; and.

22 Be it further resolved, that copies of this
23 resolution be transmitted to the Honorable Charmaine
24 Tavares, Mayor of the County of Maui, and the Honorable G.
25 Riki Hokama, Chairman of the Maui County Council.

1 So we have a motion or we have a resolution. Are
2 there any other parliamentarians here? I don't know that we
3 need to, do we approve resolutions?

4 MS. HEELY: I think there's the signature line for
5 you.

6 CHAIRMAN KAUFMAN: And we will need to sign it.
7 We will pass it around. And is there a motion to pass this
8 resolution?

9 BOARD MEMBER LEACH: So moved.

10 CHAIRMAN KAUFMAN: Thank you, Randol. And a
11 second?

12 BOARD MEMBER ALULI: Second.

13 CHAIRMAN KAUFMAN: Thank you. All in favor?

14 (A chorus of ayes)

15 CHAIRMAN KAUFMAN: Very good, the resolution has
16 been passed.

17 BOARD MEMBER LINARES: Can I leave now?

18 BOARD MEMBER ALULI: On the 31st of March.

19 CHAIRMAN KAUFMAN: And Vinnie, in addition to the
20 board, I want to personally thank you for your participation.
21 It's definitely been very helpful.

22 BOARD MEMBER LINARES: Thank you.

23 MS. UEOKA: Mr. Chair, sorry, I also have for
24 Vinnie a certificate from the Mayor and a letter from the
25 Mayor of thanks, which I will be presenting to you.

1 BOARD MEMBER LINARES: Oh, thanks.

2 MS. HEELY: Did you want to read the letter for
3 the record.

4 MS. UEOKA: Do you want me to read the letter into
5 the record?

6 CHAIRMAN KAUFMAN: Please, I'd love to hear it.

7 MS. UEOKA: "Dear Mr. Linares,
8 Congratulations on a job well done. On behalf of
9 the people of the County of Maui, please accept my deepest
10 appreciation and gratitude for your dedication and service
11 on the Board of Ethics. Your efforts and contributions have
12 made a positive difference.

13 I truly believe that it is important for citizens
14 to play an active role within both our community and
15 government. The process of recruiting and selecting
16 nominees to the various Maui County boards and commissions
17 has given me a greater appreciation for volunteerism and
18 community service. I would like to commend you for your
19 willingness to devote your time, energy, resources, and
20 insight to the betterment of Maui County.

21 Once again, thank you very much for doing your
22 part to make our County the best that it can be. I hope
23 that your experience has been rewarding and worthwhile.

24 Sincerely, Charmaine Tavares, Mayor, County of
25 Maui."

1 CHAIRMAN KAUFMAN: Thank you.

2 BOARD MEMBER LINARES: Thank you.

3 CHAIRMAN KAUFMAN: Well, I think she got it right,
4 Vinnie.

5 BOARD MEMBER LINARES: I hope so.

6 CHAIRMAN KAUFMAN: Under old business we have the
7 financial disclosure of Roy Hiraga.

8 MS. UEOKA: Chair, per our last meeting and
9 discussions, I added to items three and six under Nature of
10 Organization Or Business, "Real estate investment holding
11 company" to clarify KBN, LLC's nature of business.

12 CHAIRMAN KAUFMAN: Very good. Are there any
13 questions from any of the board members? If not, then that
14 was already moved to accept pending the clarification. So
15 it has now been clarified and it is now accepted.

16 Under communication items we have a letter to the
17 Maui County Board of Ethics dated March 3, 2008 from Douglas
18 Levin, the Salary Commission Chair regarding a request for
19 clarification of Advisory Opinion number)7A-6.

20 Are there any comments from any board members
21 regarding the clarifications that are being asked for? And
22 is Gretchen coming today, do we know?

23 MS. UEOKA: I did not hear from her. I was trying
24 to get in touch with her by email and I was not successful,
25 and I didn't get a chance to call.

1 CHAIRMAN KAUFMAN: That's okay, no problem. My
 2 only concern is it would be nice to have the entire board
 3 here for this, and Gretchen specifically, because I know she
 4 brought up at our last meeting some questions. And I think
 5 that this board can certainly address those as well today,
 6 even in Gretchen's absence, but it would just be nice if she
 7 was coming. And Mr. Levin is not here.

8 MS. UEOKA: Mr. Levin declined to attend. I
 9 invited him.

10 CHAIRMAN KAUFMAN: Speak of the devil and an angel
 11 appears. Gretchen, we'd like to welcome you to the Board of
 12 Ethics meeting today, and I want to thank you for your
 13 increased punctuality this month as opposed to last.

14 BOARD MEMBER GUY: No kidding.

15 CHAIRMAN KAUFMAN: Gretchen, we just came to the
 16 business item regarding the request for clarification from
 17 Mr. Levin, and I had made a few comments and "Boy, is
 18 Gretchen coming today?" So your walking in at this timing,
 19 it's very well timed, Gretchen, thank you for being here.

20 So Mr. Levin has asked for clarification. And
 21 with regard to the wording in the last paragraph on page 2
 22 of your opinion you state, "To avoid the appearance of
 23 conflicts of interest, to recuse himself from voting, should
 24 a vote be necessary, even in the event of a tie."

25 And he questions, I recall from our discussion,

1 that I should recuse myself from votes on those specific
2 county employees named in the Maui Visitor -- Maui Vacation
3 Rental Association lawsuit, namely the Mayor, Planning
4 Director, Corporation Counsel, and their deputies. However,
5 your wording appears to state that, "I should recuse myself
6 from voting on all employees. Please clarify."

7 Obviously the question becomes how deep we are
8 going to cut with this, and does the board need to clarify,
9 or does it wish to simply leave it as the original opinion
10 stated. Do any of the board members have thoughts that they
11 would like to share?

12 BOARD MEMBER LEACH: Just a question. What was
13 our intent with our wording, was it to cover all tie votes
14 or just ones pertaining to this question that was in the
15 letter?

16 CHAIRMAN KAUFMAN: I believe that my recollection,
17 and referring to the minutes, would show that Mr. Levin is
18 correct that when we discussed this we referred specifically
19 to those individuals.

20 But just to be the devil's advocate, the question
21 could be presented, might Mr. Levin's vote in any position
22 be potentially tainted simply because he would be dealing
23 with individuals who the Mayor has appointed. And might his
24 vote, whether it's for or against, be potentially tainted,
25 because he might be desiring to establish himself in

1 someone's eyes as being helpful rather than being
2 obstructive. And I would put that in front of the board for
3 its consideration.

4 MS. HEELY: Chair, if I may, for clarification,
5 the task before the Salary Commission, and they are meeting
6 this Friday on the 14th, is to decide and vote upon all
7 director's and deputy director's salaries. So that's more
8 than just the Mayor, Planning Director and Corporate
9 Counsel, right. So we have the Water Director, and all the
10 directors within the county, the County of Maui.

11 CHAIRMAN KAUFMAN: And even though the lawsuit
12 specifically mentions the individuals by their position, we
13 should keep in mind that anyone who has been appointed by
14 the Mayor could still potentially -- if you are trying to
15 avoid the appearance of conflict, if the Mayor has appointed
16 this individual he could be, not that we think he is, but he
17 could be trying the either hurt or help his position in
18 terms of the lawsuit that he may or may not be involved in.

19 MS. HEELY: They also are tasked with voting on
20 the Police Chief and Fire Chief and Liquor Commissioner's
21 salaries.

22 BOARD MEMBER LINARES: Sticky wicket.

23 CHAIRMAN KAUFMAN: I can speak for myself, if the
24 members of the board would want me to speak up, since none
25 of you are jumping to the table. I'm actually most

1 comfortable with the wording in the resolution as it stands
2 personally, because no matter how Mr. Levin votes, should he
3 have to vote he will come under intense scrutiny.

4 As the Chair, I don't think anyone in this room
5 questions that he can in fact impartially Chair the
6 meetings, but should he be in a position where he has to
7 vote he would certainly be scrutinized. And no matter which
8 way that scrutiny went, he should not vote, even as Chair,
9 in the event of a tie, in my humble opinion.

10 If he were to not be the Chair he would be
11 recusing himself from the vote and it would make sense to me
12 for him to recuse himself from all votes were he not the
13 Chair, in which case it would make sense for him to resign.
14 But as Chair and impartially conducting the meetings, as is
15 his obligation, he can simply not vote. So I think he can
16 avoid a conflict of interest simply by his position of being
17 the Chair.

18 BOARD MEMBER BOUCHARD: I guess the only thing
19 that I would add to that that I noticed was that it
20 specifies here that the business transaction activity, et
21 cetera, direct or indirect. So that was really the only
22 thing I was coming up with that might back your opinion that
23 the other votes are indirectly related.

24 CHAIRMAN KAUFMAN: Exactly. Because even though
25 they're not directly involved in the lawsuit, they're going

1 to be the Mayor's appointees. So there would be the
2 perception of conflict if it came down to it.

3 BOARD MEMBER GUY: That was the best I could come
4 up with.

5 CHAIRMAN KAUFMAN: Well, if that's the case, then
6 the second point is, what happens if the lawsuit is dropped
7 or settled?

8 BOARD MEMBER BOUCHARD: You know, I was trying to
9 find the original letter, because I didn't think his
10 original letter focused on the lawsuit, it just mentioned
11 that -- I thought it was more the whole TVR thing. I didn't
12 have the original letter, so I don't know if somebody does.

13 MS. UEOKA: I can read the section in which he
14 speaks about the lawsuit. It says, "Now the MVRA has filed
15 suit in Federal Court seeking damages from the County as
16 well as an injunction against enforcement. While I would
17 not be a direct beneficiary of any damages, as mine and my
18 wife's own operation is currently permitted, I still support
19 and serve this organization."

20 BOARD MEMBER BOUCHARD: So the letter was focused
21 on the lawsuit, which is why he brought up the concerns,
22 because there was a lawsuit, or was it simply because there
23 was an issue with TVR's in general? That was my
24 recollection, that the lawsuit sort of enhanced that issue,
25 but wasn't the sole focus of the potential conflict.

1 MS. UEOKA: Do you need me to read the whole
2 letter, would that be better?

3 BOARD MEMBER BOUCHARD: It would be helpful to me.
4 Sorry.

5 MS. UEOKA: "Dear members,

6 I am respectfully requesting an opinion on the
7 appropriateness of my continued service on the Maui County
8 Salary Commission.

9 Previously I requested and received an opinion
10 regarding my service as Treasurer of the Maui Vacation
11 Rental Association. At that time the MVRA was primarily
12 involved with lobbying council, the Planning Department, and
13 the Mayor's office for fair and equitable legislation for
14 our industry. To summarize your opinion at the time, you
15 agreed that the self-imposed restriction I adopted against
16 personally lobbying individuals whose salaries I helped
17 establish was sufficient to avoid any conflicts of interest.
18 Based on your opinion, I continued to serve both the County
19 and the MVRA in other ways.

20 Now the MVRA has filed suit in Federal Court
21 seeking damages from the County as well as an injunction
22 against enforcement. While I would not be a direct
23 beneficiary of any damages, as mine and my wife's own
24 operation is currently permitted, I still support and serve
25 this organization.

1 I raised this concern with a representative from
2 the Corporate Counsel's office at the regularly scheduled
3 Salary Commission hearing on November 9th, and she opined
4 that there was nothing in the County Charter that would
5 preclude my service. However, I felt it appropriate to also
6 obtain your opinion on this potential conflict of interest.

7 Your time and attention to this matter is greatly
8 appreciated. I look forward to working with you again
9 regarding this. With warmest aloha, Douglas Levin, CPA,
10 Salary Commission Chair."

11 CHAIRMAN KAUFMAN: Thank you. Jocelyn, okay?

12 BOARD MEMBER BOUCHARD: It's clearer, thank you.

13 CHAIRMAN KAUFMAN: To further offer opinion with
14 regard to the second item, is what happens in the event the
15 lawsuit is settled or dropped? I don't know that that would
16 change much simply because the perception of conflict, or
17 were he to vote, there's always going to be -- the vote will
18 always be tainted because it could be assumed that he's
19 voting this way or that way because of the involvement
20 that's there.

21 BOARD MEMBER ALULI: At this point hasn't that
22 suit been dismissed? It was the federal law suit that
23 they're talking about, right, that was filed by the MVRA,
24 and that was dismissed, wasn't it?

25 MS. HEELY: Yes, and the court gave the MVRA a

1 deadline to file an appeal. So I'm not sure if they met
2 that deadline yet or not.

3 CHAIRMAN KAUFMAN: Would any of the board members
4 like to make a motion then that we basically recommend to
5 Mr. Levin that he in fact recuse himself from voting, as was
6 outlined in the original opinion, and that it not be limited
7 just to the Mayor, the Planning Director, Corporation
8 Counsel, and their deputies.

9 BOARD MEMBER LINARES: So moved.

10 BOARD MEMBER GUY: Second.

11 CHAIRMAN KAUFMAN: Any further discussion? Can we
12 add to that also that the second point be addressed as well,
13 that is, that the suit being dropped or settled does not
14 affect this opinion. And is that accepted?

15 BOARD MEMBER LINARES: As a furthermore.

16 CHAIRMAN KAUFMAN: As a furthermore, yes. Okay,
17 all in favor of that furthermore?

18 (A chorus of ayes).

19 CHAIRMAN KAUFMAN: And opposed?

20 Silence. There are none. And then all in favor
21 of the original motion?

22 (A chorus of ayes)

23 All opposed?

24 (None)

25 We have unanimity of the board. We have a

1 question. Yes?

2 MS. UEOKA: How are we going to be responding to
3 Mr. Levin, will it be by letter from the Chair with regard
4 to this?

5 CHAIRMAN KAUFMAN: Another advisory opinion. He
6 asked for clarification, correct?

7 MS. UEOKA: Yes.

8 CHAIRMAN KAUFMAN: For that we don't necessarily
9 need another advisory opinion. I think we can simply do
10 that with a letter.

11 BOARD MEMBER LINARES: Basically what we're saying
12 is we reiterate what the letter said, that's all.

13 BOARD MEMBER ALULI: We're saying that the opinion
14 that he was originally given we are going to abide by.

15 CHAIRMAN KAUFMAN: And just to help the Chair,
16 when letters come from the Chair, does the Chair write those
17 letters or is there assistance from Corporation Counsel and
18 the executive secretary?

19 MS. UEOKA: I will help draft the letter and send
20 it for your review.

21 CHAIRMAN KAUFMAN: Thank you for that
22 clarification.

23 MS. UEOKA: You're welcome.

24 CHAIRMAN KAUFMAN: The next item on the agenda is
25 the review and approval of an Advisory Opinion from an

1 employee of the Department of Public Works regarding
2 part-time employment conflicts of interest. (07A-7)

3 BOARD MEMBER LEACH: I move that we accept the
4 Advisory Opinion 07A-7.

5 BOARD MEMBER DANIELS: Second.

6 CHAIRMAN KAUFMAN: We have a motion on the table.
7 Thank you for the rapid first and second. Is there any
8 discussion of the Advisory Opinion as it was written?
9 Seeing none, all in favor?

10 (A chorus of ayes)

11 Opposed?

12 (None)

13 The Advisory Opinion has been accepted, and that
14 will circulate around the table, and I ask each of you here
15 to sign.

16 Under new business -- I missed that. Is your name
17 not there, is that what you said, Gretchen?

18 BOARD MEMBER GUY: Yes.

19 CHAIRMAN KAUFMAN: You can still sign, please do.

20 We have the financial disclosures under new
21 business of Bal, Hiromoto, Molina, Morrison, Okuma,
22 Pontanilla, Tavares, and Villarosa. Is there a motion to
23 accept all or some of those?

24 BOARD MEMBER GUY: I move to accept all as
25 presented.

1 BOARD MEMBER LINARES: Second.

2 CHAIRMAN KAUFMAN: There was a first and a second.
3 Was that from Vinnie?

4 BOARD MEMBER LINARES: Yes.

5 CHAIRMAN KAUFMAN: Is there any discussion about
6 any of those items? For what it's worth, your Chair did not
7 notice anything on any of those items. If there's no
8 further discussion, all in favor of accepting.

9 (A chorus of ayes)

10 Opposed?

11 (None)

12 They have been accepted.

13 There are no communication items. We have two
14 lobbyist registrations from Kido and Reimann, and those will
15 be accepted.

16 And under announcements we have the update on the
17 status of appointment of new board members.

18 MS. UEOKA: Yesterday the policy committee met and
19 acted on our three vacancies. One vacancy will be to
20 replace Peter Soman with Michael Westfall for a term
21 expiring March 31, 2010. And the other two vacancies are
22 due to Vinnie's end of term, and that will be replaced by
23 Marti Anne Wukelic.

24 BOARD MEMBER LINARES: From Hana.

25 MS. UEOKA: And Gretchen will be re appointed

1 because her term was so short, so she went for automatic
2 reappointment.

3 BOARD MEMBER GUY: Really? I could have been
4 done.

5 MS. UEOKA: I don't know if you had a choice in
6 the matter. So all of these appointments had to be acted on
7 by the end of this month, and I'm sure that I will be
8 hearing from the Mayor's office very soon with new member
9 packets, and possibly be able to get them in for the next
10 meeting in April.

11 CHAIRMAN KAUFMAN: What a wonderful thought.

12 MS. UEOKA: And then we will be whole.

13 CHAIRMAN KAUFMAN: For at least a year. Okay,
14 very good. I appreciate that.

15 Is there a motion to move into executive session?
16 Vinnie.

17 BOARD MEMBER LINARES: With reference to the
18 agenda items listed below, one or more executive meetings
19 are anticipated. In particular, the Board of Ethics
20 anticipates it will consider the evaluation, dismissal or
21 disciplining of an officer or employee of the County of
22 Maui, where considerations of matters affecting privacy will
23 be involved. The Board may also consult with the Board's
24 attorney on questions and issues pertaining to the Board's
25 powers, duties, privileges, immunities and liabilities.

1 Therefore, pursuant to Hawaii Revised Statutes
2 (HRS) Sections 92-5(a)(2) and (4), the following items may
3 be considered in Executive Session. The Board may also
4 convene in Adjudicatory Session pursuant to HRS Section
5 92-6.

6 CHAIRMAN KAUFMAN: And specifically to address --

7 BOARD MEMBER LINARES: And specifically to
8 address --

9 CHAIRMAN KAUFMAN: Under new business, financial
10 disclosures.

11 BOARD MEMBER LINARES: Under new business,
12 financial disclosures, communication items B, and C, a
13 request for an Advisory Opinion from a member of the Maui
14 Planning Commission.

15 CHAIRMAN KAUFMAN: Thank you for the motion,
16 Vinnie. Is there a second?

17 BOARD MEMBER BOUCHARD: Second.

18 CHAIRMAN KAUFMAN: Very good. And as soon as -- I
19 guess we can vote. All in favor of moving into executive
20 session.

21 (A chorus of ayes)

22 Opposed?

23 (None)

24 (Whereupon the Board went into Executive Session).
25

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

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

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

Dated the 23rd day of March, 2008



NOTARY PUBLIC, State of Hawaii

My commission expires 2/5/12