

COUNTY OF MAUI, STATE OF HAWAII

BOARD OF ETHICS

**ORIGINAL**

MINUTES OF THE REGULAR SESSION

Held at the Corporation Counsel Conference Room, Kalana O Maui Building, 3rd Floor, Wailuku, Maui, Hawaii, commencing at 12:30 p.m., on Wednesday, August 13, 2008.

REPORTED BY: KATHERINE EISMANN, CRR/RDR/CSR #439

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BOARD MEMBERS PRESENT

CHAIRPERSON: ALAN KAUFMAN  
VICE-CHAIRPERSON: NANE W. ALULI  
SECRETARY: JOCELYN A. BOUCHARD  
BOARD MEMBERS: RANDOL LEACH  
REBECCA WOODS  
SHERI-ANN DANIELS  
MICHAEL WESTFALL  
MARTI WUKELIC  
DEPUTY CORPORATION COUNSEL: KIMBERLY SLOPER  
BOARD SECRETARY: KRISTI UEOKA

1 (Wednesday, August 13, 2008, 12:30 p.m.)

2 \* \* \* \* \*

3 CHAIRPERSON KAUFMAN: I think we are close  
4 enough, if we are not exact. So, let's go ahead. And  
5 today is Wednesday, August 13th, and this is the eighth  
6 meeting of the year for the Maui County Board of Ethics.

7 The meeting is called to order. And in  
8 attendance, we have pretty much everybody except --

9 BOARD MEMBER WUKELIC: Gretchen.

10 CHAIRPERSON KAUFMAN: Gretchen is missing.

11 MS. UEOKA: And Sheri.

12 CHAIRPERSON KAUFMAN: Gretchen and Sheri.

13 MS. UEOKA: Both of them are excused.

14 CHAIRPERSON KAUFMAN: The minutes of the  
15 July meeting have been circulated. Are there any  
16 additions or corrections from any members of the Board?  
17 Seeing none, they will be accepted and filed.

18 Public testimony, it appears there is no  
19 public testimony.

20 Under financial disclosures, old business,  
21 we have Gladys Baisa, and I believe our Executive  
22 Secretary had to check on a few things.

23 MS. UEOKA: Specifically, we checked on item  
24 number five regarding the security given column. She  
25 did clarify that it should say mortgage on 143 Auoli

1 Drive. She just apologizes for her bad pen writing.

2 CHAIRPERSON KAUFMAN: Thank you for that  
3 clarification. Is there any motion to accept it with  
4 that clarification?

5 VICE-CHAIRPERSON ALULI: I will make the  
6 motion to accept Gladys Baisa's -- what do you call  
7 these things?

8 CHAIRPERSON KAUFMAN: Financial statement.

9 VICE-CHAIRPERSON ALULI: Financial  
10 statement.

11 BOARD MEMBER BOUCHARD: Second.

12 CHAIRPERSON KAUFMAN: All in favor.

13 (Chorus of ayes.)

14 Opposed.

15 (Silence.)

16 It's accepted unanimously.

17 Under communication items, there are none.

18 And that brings us to new business. And we have the  
19 financial disclosures in front of us.

20 Are there any Board member comments or  
21 questions with regard to any of them? Randol Leach.

22 BOARD MEMBER LEACH: Yes, I do have a  
23 question for Corporation Counsel. On one of the  
24 disclosures, Jo Anne Johnson, I don't know if anybody  
25 else picked this up, but I bet everyone did on the panel

1 here.

2           On item number nine, gifts, my clarification  
3 question is when is a gift actually a gift? If you  
4 regift a gift, does that mean you were in receipt of the  
5 gift initially and have to disclose that?

6           DEPUTY CORPORATION COUNSEL: I think that  
7 the intent of the gift, in item nine, is gifts that the  
8 individual kept or used. So, I wouldn't -- you know,  
9 that came to her for her benefit. So -- but I guess you  
10 are giving me a funny look.

11           BOARD MEMBER LEACH: I kind of thought the  
12 other way.

13           DEPUTY CORPORATION COUNSEL: Okay.

14           CHAIRPERSON KAUFMAN: The other half of our  
15 wonderfully incredibly informative advice team, would  
16 Executive Secretary like to say anything?

17           MS. UEOKA: One second.

18           CHAIRPERSON KAUFMAN: Randol, if it comforts  
19 you, when I saw all gifts donated to others or  
20 nonprofits, my original thought was what a good  
21 Councilperson we have. And then I thought exactly what  
22 you were thinking. How can you track that? How can you  
23 know?

24           VICE-CHAIRPERSON ALULI: Yeah.

25           CHAIRPERSON KAUFMAN: Because what if she's

1 giving that to the developer down the road. Of course,  
2 I use that, because with Jo Anne Johnson, we would  
3 anticipate that would not be an issue.

4 VICE-CHAIRPERSON ALULI: Yes.

5 CHAIRPERSON KAUFMAN: So, if gifts are  
6 given, even if they are disbursed, isn't there still a  
7 necessity to acknowledge their receipt?

8 BOARD MEMBER LEACH: That was my feeling.

9 BOARD MEMBER BOUCHARD: Well, and I can tell  
10 you, as a nonprofit, if we receive a gift from somebody,  
11 they receive acknowledgment for that gift.

12 MS. UEOKA: Excuse me, Chair. Citing our  
13 rules, the Rules of the Maui County Board of Ethics,  
14 Section 04-101-31, which is Contents of the Disclosure,  
15 Item Number 9, Subsection 4, it says gifts which are not  
16 used and which, within 30 days after receipt, are  
17 returned to the donor or delivered to a charitable  
18 organization, without being claimed as a charitable  
19 contribution for tax purposes. That's the description  
20 of --

21 DEPUTY CORPORATION COUNSEL: That does not  
22 need to be.

23 MS. UEOKA: Yeah, does not need to be. It  
24 says the following need not be included as a description  
25 of the type of gift.

1 CHAIRPERSON KAUFMAN: I love the letter of  
2 the law. Thank you for that clarification.

3 MS. UEOKA: And since hers stated a  
4 nonprofit --

5 CHAIRPERSON KAUFMAN: All gifts donated to  
6 others or nonprofits.

7 MS. UEOKA: The Board's call.

8 VICE-CHAIRPERSON ALULI: Can I make a  
9 suggestion, as maybe not a motion, necessarily, but  
10 maybe a point for discussion.

11 I would think, in Jo Anne Johnson's case,  
12 that there wouldn't be any question as to that she'd  
13 take -- doesn't ever take advantage of any of these  
14 kinds of gifts. So -- and I think we are all aware of  
15 that.

16 You know, and I don't know if we can use her  
17 as an isolated case, and say let's, you know, let it go,  
18 or whether we should get back to her and specify --  
19 especially since she said -- she made the written --  
20 wrote in here that it's others, and so there's a  
21 question mark there.

22 If she just had said nonprofits, I'd say  
23 let's let it go. But she's got that others in there,  
24 and so maybe we should question it.

25 CHAIRPERSON KAUFMAN: Thank you for that

1 comment. Any other comments from other Board members?

2 BOARD MEMBER WOODS: Well, I agree with you,  
3 and because others is included, and that doesn't -- what  
4 is others? But at the same time, I'm thinking to myself  
5 that, you know, she disclosed this. How many County  
6 Council members do?

7 And that's something to think about as well.  
8 She's being honest and stating that she has received  
9 gifts and has donated them, so her integrity's in issue  
10 as well.

11 CHAIRPERSON KAUFMAN: Okay. And I'd remind  
12 the Board we have two issues; one is the individual in  
13 question and the other is the procedural issue.

14 BOARD MEMBER WOODS: Right.

15 VICE-CHAIRPERSON ALULI: Uh-huh.

16 CHAIRPERSON KAUFMAN: And that if this was  
17 somebody else who may not be held in the same regard by  
18 others, or even Jo Anne may not be held in high regard  
19 by some individuals on this Board, who are too shy to  
20 speak up. So, I think we need to look at it  
21 procedurally.

22 Would any members of the Board feel it would  
23 be appropriate to simply thank Jo Anne for this  
24 disclosure, and send her a copy of the particular  
25 subsection, and let her know that gifts to nonprofits do

1 not have to be reported, but gifts to others who may not  
2 be nonprofits should be reported, and that we have  
3 accepted her submission pending -- that we will accept  
4 her submission upon notice that the others were only  
5 nonprofits. And if not, then she would need to disclose  
6 that they were, in fact, given to who.

7 Is that correct? Does that meet the letter  
8 of the law that we have heard? I'm looking at  
9 Corporation Counsel now.

10 DEPUTY CORPORATION COUNSEL: Yes.

11 CHAIRPERSON KAUFMAN: Or is that a lot of  
12 work? Can somebody think of a way to get there quicker  
13 without doing it that way?

14 BOARD MEMBER WOODS: Well, I can go ahead  
15 and do that, if you'd like. I can present this -- write  
16 her a letter. Is that what you are asking?

17 CHAIRPERSON KAUFMAN: No.

18 VICE-CHAIRPERSON ALULI: No, no.

19 BOARD MEMBER WOODS: Okay. Sorry. What are  
20 you asking?

21 CHAIRPERSON KAUFMAN: I'm just thinking, as  
22 your Chair, I'm making a suggestion of how we could  
23 resolve this issue as a procedural instance.

24 BOARD MEMBER WOODS: Okay.

25 CHAIRPERSON KAUFMAN: Because whether it's

1 Jo Anne or somebody else, you need to address it. You  
2 are right. Some people never disclose anything,  
3 gifts --

4 BOARD MEMBER WOODS: Right.

5 CHAIRPERSON KAUFMAN: We'll never know.

6 BOARD MEMBER WOODS: Yeah.

7 CHAIRPERSON KAUFMAN: She's disclosed. We  
8 don't have any questions, but procedurally, are we out  
9 of bounds -- I don't think so -- by asking her who the  
10 others are?

11 BOARD MEMBER WOODS: Right.

12 CHAIRPERSON KAUFMAN: If it's her children,  
13 that's potentially an issue. I don't assume it to be  
14 that, but we just need clarity for the procedure.

15 So, I'm looking at Corporation Counsel, and  
16 I'm looking back to our Executive Secretary, whose life  
17 I hate to complicate. And because we get so much  
18 excellent advice from those people who advise us, so,  
19 I'd love to hear any comments.

20 DEPUTY CORPORATION COUNSEL: I think that  
21 because she put the others in there, that does raise a  
22 question.

23 CHAIRPERSON KAUFMAN: Okay. Then let's do  
24 it this way. Let's not write a letter. Let's make a  
25 phone call, like we do typically when there are

1 questions for clarification, and we will simply delay  
2 approval of Jo Anne's until we have clarification. That  
3 is if the others were all nonprofits, we have no problem  
4 with that, because it meets the procedural issues. And  
5 otherwise, she should give full disclosure rather than  
6 partial disclosure.

7           So, there's no vote necessary. The Chair  
8 has just directed our Executive Secretary to acquire  
9 that additional information.

10           Were there questions on any of the other  
11 disclosures other than Don Couch's? Item number one,  
12 his spouse is self-employed but the blank annual  
13 compensation has not been filled in.

14           Okay. So, we will delay that one until we  
15 also have clarification.

16           BOARD MEMBER BOUCHARD: I just had a minor  
17 thing on Nishiki's.

18           CHAIRPERSON KAUFMAN: Which Nishiki? Sorry.

19           BOARD MEMBER BOUCHARD: Just the one this  
20 time, right?

21           VICE-CHAIRPERSON ALULI: No, there are two  
22 of them.

23           CHAIRPERSON KAUFMAN: Kai Nishiki is on this  
24 one, right?

25           VICE-CHAIRPERSON ALULI: Oh.

1 BOARD MEMBER BOUCHARD: There is just no  
2 address, actual business address besides Kihei. I  
3 notice everybody else actually has a P.O. Box or a  
4 street address, so --

5 CHAIRPERSON KAUFMAN: I really appreciate  
6 this Board. You are a great group of people to work  
7 with. Together, all together, we can actually find  
8 everything. Yes, Executive Secretary.

9 MS. UEOKA: I did speak to Kai on the phone  
10 for clarification on other issues. If you notice, I  
11 think on actually her business, item number three, to  
12 find out the value of her investment. And although I  
13 did not specifically ask her for an address, the sense I  
14 received was that it was almost a home-based business.

15 She was hard pressed to give me a value,  
16 meaning it did not appear that she was having huge  
17 amounts of industrial equipment or industrial kitchen.  
18 So, I don't know if that helps at all, but --

19 CHAIRPERSON KAUFMAN: Oh, it really just  
20 makes it so cloudy, because we know that Council is  
21 currently reviewing home-based businesses and what is  
22 legal and what's not legal. I don't want to ask Kai if  
23 she's legal or illegal.

24 MS. UEOKA: All right. I can just merely  
25 ask her for an address --

1 CHAIRPERSON KAUFMAN: Let's just ask her for  
2 an address.

3 MS. UEOKA: -- if you want to defer it to  
4 the next agenda.

5 CHAIRPERSON KAUFMAN: We will defer it,  
6 because we do want all the blanks filled in. We will  
7 simply get an address and not question where that  
8 address is on receipt of the information.

9 So, we have three that have been deferred.  
10 Has the fine scrutinizing eye of the Board detected any  
11 other issues that we need to review?

12 BOARD MEMBER WUKELIC: I have one question.

13 CHAIRPERSON KAUFMAN: Absolutely.

14 BOARD MEMBER WUKELIC: As a new --  
15 relatively new Board member, this is the first time I  
16 have had a group of folks where somebody would fit into  
17 the category of a personal friend. And I'm thinking is  
18 this the type of thing -- I want your advice -- that I  
19 might want to recuse myself from voting for? I mean, I  
20 certainly know them, but --

21 CHAIRPERSON KAUFMAN: I love having  
22 Corporation Counsel right here. The proper procedure is  
23 to disclose the relationship. Whether you need to  
24 recuse yourself depends on issues such as does she pay  
25 you money for services rendered?

1 BOARD MEMBER WUKELIC: Okay.

2 CHAIRPERSON KAUFMAN: Is there a conflict of  
3 financial interest?

4 BOARD MEMBER WUKELIC: Okay.

5 CHAIRPERSON KAUFMAN: That would be the  
6 issue. I have had the same issue where people have  
7 appeared here who I am related to by marriage. I  
8 disclose it, but they can't even remember my name when  
9 they meet me in public, so it's not an issue.

10 BOARD MEMBER WUKELIC: Okay.

11 CHAIRPERSON KAUFMAN: Okay. So, what would  
12 you like to disclose?

13 BOARD MEMBER WUKELIC: I would like to  
14 disclose that Alberta DeJetley and I are friends. I do  
15 not feel that anything within that friendship is in  
16 conflict, but I just want to say it.

17 CHAIRPERSON KAUFMAN: Thank you for that  
18 disclosure.

19 BOARD MEMBER WUKELIC: Certainly.

20 CHAIRPERSON KAUFMAN: Okay. At this time,  
21 the Chair would take a motion to accept the financial  
22 disclosures of DeJetley, DeNaie, Fukuyama, Howden,  
23 Marten, and Medeiros.

24 VICE-CHAIRPERSON ALULI: I second.

25 CHAIRPERSON KAUFMAN: No, you have to make

1 the motion.

2 BOARD MEMBER LEACH: So moved.

3 CHAIRPERSON KAUFMAN: It's been moved by  
4 Randol, and it has been seconded. And the others we  
5 will defer. Oh, all in favor.

6 (Chorus of ayes.)

7 Opposed.

8 (Silence.)

9 Very good. So, we are going to get  
10 clarification on the three then, Couch, Johnson and  
11 Nishiki, Kai Nishiki.

12 Under communication items, there are none.  
13 Under lobbyist registration, there are none. Under  
14 announcements, there are none. We are at the end of the  
15 Regular Session. We need a motion to move in to  
16 Executive Session.

17 Who would like the pleasure of reading the  
18 printed material in front of them? How about our newest  
19 member.

20 BOARD MEMBER WUKELIC: You mean Michael,  
21 don't you?

22 BOARD MEMBER WESTFALL: I will defer.

23 BOARD MEMBER WUKELIC: With reference to the  
24 agenda items listed below, one or more executive  
25 meetings are anticipated. In particular, the Board of

1 Ethics anticipates it will consider the evaluation,  
2 dismissal, or disciplining of an officer or an employee  
3 of the County of Maui, where considerations of matters  
4 affecting privacy will be involved.

5           The Board may also consult with the Board's  
6 attorneys on questions and issues pertaining to the  
7 Board's powers, duties, privileges, immunities and  
8 liabilities.

9           Therefore, pursuant to Hawaii Revised  
10 Statutes, Section 92-5(a)(2) and (4), the following  
11 items may be considered in Executive Session. The Board  
12 may also convene an adjudicary -- you know -- session  
13 pursuant to Section 92-6.

14           And specifically, to address under old  
15 business, financial disclosures and to review and  
16 approve correspondence regarding a request for an  
17 advisory opinion from a former County of Maui employee  
18 regarding post-employment conflicts of interest and,  
19 under new business, financial disclosure.

20           CHAIRPERSON KAUFMAN: Second?

21           BOARD MEMBER BOUCHARD: Second.

22           CHAIRPERSON KAUFMAN: We have a second.

23 Thank you, Jocelyn. Okay. All in favor.

24           (Chorus of ayes.)

25           (Regular session recessed 12:45 p.m.)

1 Reconvened 12:54 p.m.)

2 CHAIRPERSON KAUFMAN: We are now back in  
3 Regular Session. And our next meeting is the 10th of  
4 September, and is there a motion to adjourn out of  
5 Regular Session?

6 BOARD MEMBER LEACH: So move.

7 BOARD MEMBER WOODS: I move.

8 BOARD MEMBER LEACH: You second.

9 BOARD MEMBER WOODS: I second it, yes.

10 CHAIRPERSON KAUFMAN: A move and a second.  
11 We are out of this session. Thank you very much, and I  
12 sincerely mean this is a great Board to work with.

13 (Adjourned, 12:54 p.m.)

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CERTIFICATION

I, KATHERINE EISMANN, CSR 439 in and for the State of Hawaii, do hereby certify:

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

I further certify that I am not an attorney for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

Dated: August 27, 2008

Katherine Eismann  
Katherine Eismann, CSR 439