

MAUI COUNTY BOARD OF ETHICS
COUNTY OF MAUI, STATE OF HAWAII

TRANSCRIPT OF PROCEEDINGS
REGULAR SESSION

ORIGINAL

Held at the Corporation Counsel Conference Room, Kalana
O Maui Building, Third Floor, 200 South High Street,
Wailuku, Maui, Hawaii, commencing at 12:30 p.m., on
November 12, 2008.

Reported by: Tonya McDade
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1 BOARD MEMBERS PRESENT:

2 Alan Kaufman, Chair

3 Jocelyn A. Bouchard, Secretary

4 Randol Leach

5 Rebecca Woods

6 C. Gretchen Guy

7 STAFF PRESENT:

8 Adrienne Heely, Deputy Corporation Counsel

9 Kristi Ueoka, Board Secretary

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

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3 CHAIRMAN KAUFMAN: I would like to welcome
4 everybody to the Wednesday, November 12th, 2008 meeting
5 of the Maui County Board of Ethics. And the meeting is
6 called to order. For attendance, we will note that
7 Kaufman, Bouchard, Leach, Woods and Guy are present.
8 And we do have a quorum.

9 And the other individuals are excused?

10 MS. UEOKA: Yes. I have Nane, Sheri, Michael
11 and Marti all excused.

12 CHAIRMAN KAUFMAN: Very good.

13 The minutes of our October 8th meeting have
14 been circulated. Did any Members have additions or
15 corrections to those? If not, the minutes will be
16 accepted as submitted.

17 There is no public testimony today.

18 Under Old Business, there are no financial
19 disclosures, nor are there communication items, which
20 will bring us to New Business. And we have the
21 financial disclosures of Aoki, Nishiki, Ridao and
22 Tsuhako. Is there a motion from the Board to accept
23 them in all or in part, or are there questions regarding
24 any of the disclosures?

25 MEMBER GUY: I have a question.

1 CHAIRMAN KAUFMAN: Gretchen.

2 MEMBER GUY: On Nishiki, name and location of
3 creditors. Does that have any bearing?

4 CHAIRMAN KAUFMAN: Item?

5 MEMBER GUY: Item Number 5.

6 CHAIRMAN KAUFMAN: Thank you. I noticed a big
7 circle on that on my paper as well, Gretchen. And your
8 question was?

9 MEMBER GUY: It indicates that it's for
10 business, but it's against the property. How does that
11 have bearing, just because --

12 MS. UEOKA: Those are two separate entries.

13 CHAIRMAN KAUFMAN: They're two separate
14 entries. The Countrywide home loan --

15 MEMBER GUY: Uh-huh.

16 CHAIRMAN KAUFMAN: -- which is property. Then
17 what I read as Dowling Company, is that correct?
18 Dowling Company, security given is a business.

19 MEMBER GUY: And the amount is \$100,000.

20 CHAIRMAN KAUFMAN: Correct. That we can all
21 read, it's totally legible. Which brings up the issue
22 of a potential conflict of interest. And in a case like
23 this, it is your Chair's feeling, based on serving on
24 the Board for five years, that it would be appropriate
25 for the Board to provide Mr. Nishiki with a warning to

1 indicate that, if he has a note to Dowling Company for a
2 business loan, this is, obviously, a potential conflict
3 of interest, and, if any items come before Council in
4 which he must vote, that he would need to disclose his
5 potential conflict of interest and to recuse himself
6 from voting on it.

7 Corporation Counsel, could you comment
8 further?

9 MS. HEELY: I have no further comment. I
10 think the Chair is appropriate in its response and
11 suggestion.

12 MEMBER GUY: I don't disagree. I just want to
13 ask, what if he was going to vote against something,
14 would we still recuse him?

15 CHAIRMAN KAUFMAN: When there's a conflict of
16 interest, you are to recuse yourself.

17 MEMBER GUY: Okay.

18 CHAIRMAN KAUFMAN: How you would vote makes no
19 difference, it's immaterial.

20 MS. HEELY: I think the Council Rules may
21 provide something in terms of when conflicts, potential
22 conflicts arise, they have to, for sure, disclose it,
23 and then maybe their Council Chair has the discretion to
24 see whether they have to recuse themselves or not. But I
25 would have to check their Council Rules. I know the

1 Charter is clear in its provision, Section 10-4, that
2 says, when potential conflicts arise, and in terms of if
3 it may tend to impair the judgment, there's language in
4 the Charter about that as well, that they should recuse
5 themselves.

6 CHAIRMAN KAUFMAN: I am so glad we have
7 lawyers.

8 MS. HEELY: And I could check past ethics
9 opinions that are right on point as well.

10 CHAIRMAN KAUFMAN: Exactly.

11 MS. HEELY: Because I know the Board has
12 issued opinions on this before.

13 CHAIRMAN KAUFMAN: Our Executive Secretary
14 will correct me if I am wrong, but I believe we do have
15 a form letter that we've used in the past that is a
16 fairly standard warning, when there is a potential
17 conflict of interest, notifying the individual involved
18 to disclose and recuse. So it would be a standard
19 letter that would go out to Mr. Nishiki.

20 MS. UEOKA: Yes. Is the Board deciding to
21 issue that letter at this point?

22 CHAIRMAN KAUFMAN: It would require a motion
23 to do that. And the Chair will ask for a motion from
24 Gretchen Guy who brought the issue up.

25 MEMBER GUY: I move that the Board of Ethics

1 Committee issue a letter advising Mr. Nishiki of the
2 appropriate steps to take in view of his financial
3 disclosures.

4 CHAIRMAN KAUFMAN: Is there a second?

5 MEMBER WOODS: I second the motion.

6 CHAIRMAN KAUFMAN: Any further discussion?

7 Seeing none, all in favor?

8 (A chorus of ayes.)

9 CHAIRMAN KAUFMAN: Opposed?

10 (Silence.)

11 CHAIRMAN KAUFMAN: Passes unanimously.

12 MS. UEOKA: Excuse me, Chair. Does the Board
13 want to review this letter before it goes out to
14 Mr. Nishiki at the next meeting?

15 CHAIRMAN KAUFMAN: I think we have always
16 reviewed, haven't we? Have we sent letters prior
17 without review?

18 MS. UEOKA: Well, since I've served on the
19 Board as the Secretary, we haven't issued a letter such
20 as this specifically.

21 MEMBER GUY: Does anybody know their
22 installation date? I know it's in January. Isn't it in
23 January?

24 MS. UEOKA: January 2nd, probably, the
25 inauguration. Right soon after the new year.

1 MEMBER GUY: We won't be meeting until January
2 14th.

3 CHAIRMAN KAUFMAN: Don't we have a December
4 meeting?

5 MS. UEOKA: December 10th.

6 CHAIRMAN KAUFMAN: I like the shortened year
7 that you created, Gretchen.

8 MEMBER GUY: I am so sorry. I have nothing to
9 say.

10 CHAIRMAN KAUFMAN: Given that Mr. Nishiki will
11 not be serving or will not be taking his office until
12 after the year, and we'll have a meeting before then, I
13 think we can let the letter go out under the Board's
14 signature at our next meeting.

15 MS. UEOKA: Okay.

16 CHAIRMAN KAUFMAN: I would like to make a
17 qualification to that, though. If, for any reason, we
18 are unable to meet in December, it would be my call that
19 we should send a letter out under the Chair's signature
20 acting on behalf of the Board, and that I think
21 Mr. Nishiki needs to receive notification prior to the
22 first Council meeting. Is there agreement from the
23 Board? There is unanimous agreement from the Board.

24 MEMBER GUY: Unanimous agreement.

25 CHAIRMAN KAUFMAN: We'll so direct our

1 Executive Secretary.

2 MS. HEELY: At the next meeting, I'll have
3 past decisions that had that similar issue, specifically
4 in regards to council members and their voting on
5 certain matters, that there may be a potential conflict
6 of interest, for the Board's perusal.

7 CHAIRMAN KAUFMAN: I believe it came up on
8 Lanai previously. It's the one that comes to mind
9 immediately.

10 MS. HEELY: Okay.

11 MEMBER WOODS: I have a question. It's kind
12 of a situation. I'm not really sure if this will
13 pertain to anything. But, with our agency, you know, we
14 have -- we have donations from Dowling. And, in fact, I
15 am in the process with the County in working out a plan
16 to acquire land which Dowling will do business with us
17 and do the groundwork for us. And I am kind of
18 concerned that if my name is on the letter -- I don't
19 know -- could there be repercussions from him in, you
20 know, a passive-aggressive way?

21 MEMBER BOUCHARD: Not ethically.

22 CHAIRMAN KAUFMAN: I would suggest that you
23 can probably continue to sleep good at night in that the
24 ruling or the warning letter from the Board is addressed
25 to Mr. Nishiki. It has absolutely nothing to do with

1 Dowling Company.

2 MEMBER WOODS: Right.

3 CHAIRMAN KAUFMAN: Totally separate issues.

4 But I would commend you for bringing forward the
5 question to put in front of the Board at this time.

6 If Dowling Company was a County employee, then
7 things would change.

8 MEMBER WOODS: Uh-huh.

9 CHAIRMAN KAUFMAN: But they're a private
10 enterprise. And I see no conflict there at all.

11 MEMBER WOODS: I don't see a conflict with
12 Dowling. My concern is that Wayne Nishiki, if he sees
13 my name on the letter, and he is a County Council Member
14 and -- well, I guess if it has to do with Dowling, he
15 couldn't vote on it, anyway, right?

16 CHAIRMAN KAUFMAN: That's correct. That's how
17 I read it. And, also, being a Council Member, he would
18 know that you're a member of the Board of Ethics and
19 simply fulfilling your duty.

20 MEMBER WOODS: Okay. It's just very touchy.

21 CHAIRMAN KAUFMAN: That's all right. Everett
22 once gave me a free ride on an airplane, and I don't see
23 a particular conflict.

24 MEMBER WOODS: Okay.

25 CHAIRMAN KAUFMAN: It's pretty clear

1 Mr. Nishiki has a loan from Dowling Company. It would
2 be that all he has to do is disclose that and recuse
3 himself from voting. I don't think we need to look into
4 the potential hypotheticals that might arise as a result
5 of that.

6 MEMBER WOODS: Uh-huh.

7 CHAIRMAN KAUFMAN: Also, on that, on Item
8 Number 7, from Mr. Nishiki's, the ownership of property,
9 how the title is held, it says, "mortgage," which does
10 not tell us what is asked for in the item. So item --
11 based on this, I would say we will have to defer
12 acceptance of Mr. Nishiki's until that particular piece
13 of information has been provided to us as well.

14 Are there any other questions regarding any of
15 the remaining three filings, or disclosures? If not, is
16 there a motion to accept the disclosures as Aoki, Ridao
17 and Tsuhako?

18 MEMBER BOUCHARD: So moved.

19 MEMBER GUY: Second.

20 CHAIRMAN KAUFMAN: Very good. All in favor?

21 (A chorus of ayes.)

22 CHAIRMAN KAUFMAN: Opposed?

23 (Silence.)

24 CHAIRMAN KAUFMAN: They have been accepted.

25 And we'll defer acceptance on Nishiki's

1 pending the additional information.

2 No Communication Items or Lobbyist
3 Registration.

4 Announcements. The annual distribution of The
5 High Road from the Hawaii State Ethics Commission has
6 been circulated. Also, the tentative 2009 meeting
7 calendar has been circulated.

8 MS. UEOKA: I, mainly, wanted to know your
9 opinion on the November 2009 meeting. The second
10 Wednesday of the month is Veterans' Day. So we either
11 need to be the first week or the third week. I didn't
12 know if anybody had a preference. I know that's kind of
13 far out, but --

14 CHAIRMAN KAUFMAN: But if we make that
15 decision now, next time, when this form is made in pink,
16 instead of black and white, you'll already have the
17 information. The Chair is going to direct our Executive
18 Secretary to schedule that meeting for the 4th, based on
19 the summation of the dates dividing by three and
20 multiplying by pi, okay, if there are no objections from
21 any of the other attending Board Members. Seeing none,
22 you are so directed.

23 MS. UEOKA: Thank you.

24 MS. HEELY: There's no elections in that year,
25 right?

1 MS. UEOKA: No, there is not going to be any
2 elections in 2009.

3 CHAIRMAN KAUFMAN: Good call.

4 MS. HEELY: And I just wanted to point out, on
5 The High Road, there's interesting notice or information
6 on their workshop/training course, that they put on, the
7 Hawaii State Ethics. It's a different jurisdiction,
8 they're governed by Chapter 84 of Hawaii Revised
9 Statutes, but it's similar in terms of our ethical rules
10 and our Charter provisions. It may be interesting to
11 see if they have information on certain issues that your
12 Board faces routinely. It seems like they notify you on
13 their website that they will be posting more information
14 regarding future workshops. So maybe they'll have
15 documents of their workshop material or workshop
16 material online for, you know, reference later, that we
17 can check if there are.

18 And, Kristi, do you know how often The High
19 Road is published?

20 MS. UEOKA: I think it's quarterly.

21 MS. HEELY: And we always get it, yeah?

22 MS. UEOKA: Yes. Every three months usually.

23 MS. HEELY: Or maybe even if the Board wants
24 to talk about changing one of these via teleconference
25 or in person.

1 CHAIRMAN KAUFMAN: It may come every three
2 months, but my brain only registers once a year. That's
3 good. I think you're right, though. I think I do
4 remember it coming out right after the first of the
5 year.

6 MS. UEOKA: They usually have a January issue,
7 but we don't get it until the February agenda.

8 CHAIRMAN KAUFMAN: Good.

9 MS. HEELY: It's very informative because
10 Corporation Counsel, our office, especially during
11 election time, gets inquiries or requests for legal
12 services in terms of campaigning on County property. I
13 know the Hawaii State Ethics applies to State property
14 and State employees, but sometimes we even refer to
15 their State ethical code as well as their past opinions
16 in terms of rendering our advice to County employees.
17 Like if you are a board or commission member, you
18 shouldn't wear, you know, a candidate's campaign T-shirt
19 on Akaku and the like. This publication is really
20 helpful in terms of how the Hawaii State Ethics have
21 ruled in past issues of campaigning within State
22 property, et cetera.

23 And even we had a -- I digress, but we had a
24 request for legal services come in for the simple fact
25 of wearing a campaign button, whether that -- that would

1 be permitted or not. So that's being researched as
2 well. And we're also researching how the Hawaii State
3 Ethics Commission ruled on that.

4 MEMBER GUY: All right. Well, in view of
5 that, unbeknownst to me, a photo was used in a campaign
6 brochure of my family. And I am not saying I would not
7 have agreed to it had I known in advance, but until I
8 was on Ethics, it hadn't occurred to me. A very
9 prominently displayed photo of my family.

10 MS. HEELY: Well, that's interesting, too,
11 because we also got another request for legal service,
12 which will be published upon it going through the ranks,
13 regarding the specific issue of a campaign brochure
14 where certain County employees were -- pictures were
15 used and then they also used their title in that
16 campaign brochure. So that's gonna to be addressed,
17 whether that's appropriate or not.

18 I know in researching said issue, I saw a past
19 decision that the Board of Ethics addressed certain
20 issues in terms of campaign reference letters. And the
21 Board at that time kind of opined on avoiding using your
22 County title in those instances. But I didn't see
23 anything specific in terms of campaign brochures.

24 CHAIRMAN KAUFMAN: The good thing is we seem
25 to have weathered the most recent election without too

1 much in the way of complaints. And it will be two years
2 until we're going to be there again.

3 Again, I am going back a couple of years now,
4 but, as a rule of thumb, it's a very good idea for
5 Members of the Board of Ethics not to go to campaign
6 functions or to be engaged in political activities with
7 any candidate, regardless of who you might support, only
8 because we don't know what complaints might come before
9 us. And if we're out as individuals heavily campaigning
10 for somebody and a complaint is filed against them or
11 against their opponent, there would be a very obvious
12 potential conflict of interest.

13 I know when I receive requests for
14 contributions, I always say, "I am so sorry, I just am
15 not going to be able to contribute because I am on the
16 Board of Ethics."

17 MEMBER GUY: Well, does that mean I have to
18 disclose every contribution that I've made this past
19 year?

20 CHAIRMAN KAUFMAN: There's no law against you
21 making any contributions at all.

22 MEMBER GUY: Okay.

23 CHAIRMAN KAUFMAN: You can certainly make
24 them. But if you don't want to, you certainly don't
25 have to. Those are a matter of public record. If

1 people are interested, they can bring it up. Think
2 about -- now we're getting into hypotheticals, which we
3 don't address. But think about what would happen,
4 "What, you voted against my request and you donated X
5 dollars to my opponent." There's the potential to --

6 MEMBER GUY: No, no. I get the potential.

7 CHAIRMAN KAUFMAN: Okay. I had sat down my
8 agenda, without which I cannot continue the meeting.

9 I think we're done with our announcements,
10 then, and we need a motion to move into Executive
11 Session. Gretchen?

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

1 92-6. And specifically to address, under Old Business,
2 financial disclosures in the name of three individuals,
3 Darlene J. Endrina, James A. Gomes, Michelle Pescaia,
4 under Old Business; and under New Business, one
5 financial disclosure in the name of Joshua Lindsey.

6 CHAIRMAN KAUFMAN: Is there a second?

7 MEMBER BOUCHARD: Second.

8 CHAIRMAN KAUFMAN: All in favor?

9 (A chorus of ayes.)

10 (Recessed to Executive Session, 12:49 p.m. to
11 1:07 p.m.)

12 CHAIRMAN KAUFMAN: And we're back in Regular
13 Session. And are there any other business items in
14 Regular Session? And if not, is there a motion to
15 adjourn?

16 MEMBER BOUCHARD: So moved.

17 CHAIRMAN KAUFMAN: Thank you, Jocelyn.

18 MEMBER LEACH: Second.

19 CHAIRMAN KAUFMAN: Second from Randol. All in
20 favor?

21 (A chorus of ayes.)

22 CHAIRMAN KAUFMAN: We have adjourned.

23 (Meeting adjourned at 1:07 p.m.)
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CERTIFICATE

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I, TONYA MCDADE, a Certified Shorthand Reporter of the State of Hawaii, do hereby certify that the electronically-recorded proceedings contained herein were taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate transcript of the electronically-recorded 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 concerned with the cause.

DATED this 24 day of NOVEMBER, 2008.



Tonya McDade
Hawaii Certified Shorthand Reporter #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Reporter