

**HAWAI‘I COUNTY BOARD OF ETHICS
MINUTES – REGULAR SESSION**

Wednesday, October 14, 2020

10:38 a.m. to 12:40 p.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

Members and Staff Present:

Rick Robinson, Chair

David Wiseman, Vice Chair

Nan Sumner-Mack, Member

Lawrence L. Heintz, Member

Denise Nakanishi, Member

J Yoshimoto, Deputy Corporation Counsel

Maria Pagala, Secretary

Liza Osorio, Secretary

1. CALL TO ORDER (10:02 a.m.)

Mr. Robinson called the meeting to order at 10:02 a.m.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:03 a.m.)

Due to some technical issues, minutes were not recorded for this portion of the meeting. Public statements were heard from Mr. Jerome Warren and Mr. Michael Last.

3. APPROVAL OF THE REGULAR SESSION MINUTES OF September 9, 2020 (10:10 a.m.)

Board agreed to review the regular session minutes for September 9, 2020 at the next meeting

4. CORRESPONDENCE (10:12 a.m.)

10:12 a.m. a. Inquiry with Parks and Recreation Department representative regarding the anonymous letter from a member of the public dated July 29, 2020 requesting an investigation into an alleged unfair special treatment of an employee in the Parks and Recreation Department.

Due to some technical issues, minutes were not recorded for this portion of the meeting. In summary, Mrs. Roxcie Waltjen responded to the allegations, and stated that she found no evidence and/or documented factual information to support the allegations.

10:32 a.m. *The Board moved to Executive Session, Item 7a.*

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11:00 a.m. *The Board moved back to Regular Session.*

5. NEW BUSINESS (11:00 a.m.)

11:00 a.m. a. Petition 2020-05: Initial review of a petition alleging that three County officers or employees are in violation of Sections 2-53 (Fair Treatment) and 2-84 (a) (Conflict of Interest) of the Hawai‘i County Code.

Mr. Robinson: Ms. Demoruelle this is your petition? Are you there Ms. Demoruelle?

Ms. Demoruelle: Yes sir, can you hear me?

Mr. Robinson: Yes we can. So what I’m going to do is, I’m anticipating that this going to be a closed item, so I’m going to move that down under unfinished business with your other petition, 2020-01 so we can do both of those together if that’s ok with you.

Ms. Demoruelle: Yes I would like them to be joined, thank you.

Mr. Robinson: Okay thank you –

Ms. Demoruelle: But I also would like to address the whole issue of closed meetings if I may.

Mr. Robinson: Okay well let’s do that whenever we get to those, because we have two other petitions that are after that, that are both in open session and then we’ll address yours and we can have that discussion then if that’s okay with you...Is that okay?

Ms. Demoruelle: Yes, I guess so.

Mr. Robinson: Okay thank you Ms. Demoruelle.

11:06 a.m. The Board moved Item 5a to be heard later with Item 6a

11:07 a.m. b. Petition 2020-06: Requests for an informal advisory opinion from County officer to determine whether there

is a conflict of interest to provide services to the County of Hawai'i Civil Defense Agency while serving as a member of a County board or commission.

- Mr. Robinson: That's Mr. John Bertsch. Is Mr. John Bertsch on the line?....
- While we're waiting for them to get on the line, let me just run through Mr. Bertsch's petition initially, he's requesting an opinion of no conflict of interest for providing service to the County of Hawai'i Civil Defense Agency using On Point Global, and it's a registered Hawai'i corporation. He is a member of the Police Commission, he's Chair. He's considered an Officer as a Member of the Police Commission, I know they get a badge and a Police radio, and he's a volunteer commander for the Hawai'i Fire Department. His position with the County is as a volunteer through the Police Commission. We haven't heard from him what his work is regarding his services to the Civil Defense Agency on On Point Global. So hopefully we'll get him online and we can hear from him.
- Mr. Yoshimoto: So Mr. Chairman, while we're waiting, I believe the applicable sections of the Hawai'i County Code would be Section 2-83(c) and 2-85 if Board Members would like to look at that as we consider this petition...
- Mr. Robinson: Have you not been able to get Mr. Bertsch? Okay. While we're waiting, does anyone have any questions regarding this or anyone like to make a motion?
- Mr. Wiseman: Notwithstanding what the code provision states, I don't see any problem with having someone who dedicates themselves to the public interest in pursuing another public interest. I don't see any (?).
- Mr. Robinson: Right.
- Mr. Wiseman: In fact, they would probably both complement each other, the positions he holds.
- Mr. Robinson: Is there a second to that Motion, that there's no conflict of interest?
- Ms. Sumner-Mack: I'll second that.
- Mr. Robinson: Okay, so it's moved by Mr. Wiseman, seconded by Nan Sumner-Mack that there's no conflict of interest. Any further discussion? All those in favor say Aye.

Motion and vote: Mr. Wiseman moved to make a motion that there was no conflict of interest. Ms. Sumner-Mack seconded the motion. All members voted Aye.

- Mr. Yoshimoto: So Mr. Chairman, so to be clear the no conflict –
- Mr. Robinson: No conflict of interest.
- Mr. Yoshimoto: Based on Hawai‘i County Code Section 2-83...
- Mr. Robinson: C.
- Mr. Yoshimoto: (c) as well as 2-85 cause that discusses that disclosure that needs to be made when an officer employee applies for a contract with the County.
- Mr. Robinson: Right.
- Mr. Wiseman: J are you gonna write a little dismissal or...
- Mr. Yoshimoto: Yes, as long I have the bases clear..Mr Wiseman?
- Mr. Wiseman: I request to put in just a very simple sentence of (?) for the public interest.
- Mr. Yoshimoto: Okay.
- Mr. Wiseman: If that’s appropriate, you know, I mean it’s, I don’t know I just find it commendable someone’s holding more than one position and seeking another.

11:14 a.m. c. Petition 2020-06: Requests for an informal advisory opinion from County officer to determine whether there is a conflict of interest to provide services to the County of Hawai‘i Civil Defense Agency while serving as a member of a County board or commission.

- Mr. Robinson: Yeah. The next one is for a Stacy Aguiar. Stacy Aguiar is also affiliated with On Point Global, he is also a managing member as the other fellow was as well. On Point Global being a registered State of Hawai‘i Corporation. And Mr. Aguiar is a member of the Board of Appeals...She, I’m sorry she is a member of the Board Appeals, in a voluntary position and she has the same request in essence as Mr. Bertsch, is that, that there be no, there would be no conflict of interest, her association with that. So does anyone have any questions or there is a motion regarding this?

Mr. Wiseman: Yeah, first of all, what is the corporation she's with, what do they do?

Mr. Robinson: The same as the other, On Point Global...The other, same as the other corporation On Point Global

Mr. Wiseman: What do they do?

Mr. Robinson: I don't know. We would find out if they're here but...

Ms. Aguiar: We, hello, it's, Hi Chair, it's Stacy Aguiar, I've logged on via WebEx.

Mr. Robinson: Oh, Okay, yeah you can tell us what On Point Global is then.

Ms. Aguiar: We do a solutions based software program, and basically, our company was formed because we also run the Emergency Management or Operations side of Iron Man World Championship events and this kind of formed based on various needs that arised out of that program. And that program...and actually here's John Bertsch he just got out of his Fire Commission.

Mr. Robinson: Well we've already dealt with Mr. Bertsch's petition, so you're fine. You're fine Mr. Bertsch.

Ms. Aguiar: Sorry he's my partner for the On Point Global Company and so the question is 'What does On Point Global do?' and I said...

Mr. Robinson: In 25 words or less what does On Point Global do?

Mr. Bertsch: Yeah thanks, we provide IT solutions for safety and security and that's where we received the call from Talmadge. Basically we work integrally with races, predominantly the Iron Man World Championship, where we are able to use technology to track over 3,000 individuals up and down the coast of Hawai'i. And that was a solution that the Civil Defense was looking for, with doing quarantine compliance, was to be able to reassure the community that they were able to do quarantine compliance and they reached out and we were able to provide them with a solution.

Mr. Robinson: Right that's the little dog tag you put on your shoe when you're running right.

Mr. Bertsch: That is one of the solutions, yes sir.

Mr. Robinson: Okay, good. I understand. Anybody have any other questions.

Mr. Wiseman: Ma'am, the appeal board, the Appeals board handles, I guess in the State here they handle appeals from all administrative agencies is that right.

Ms. Aguiar: No, this is just for the Planning and Engineering department, so Public Works and Planning.

Mr. Wiseman: Oh I see...in dealing with IT there could be a potential problem or a conflict in the future but I assume you would recuse yourself if that came about is that right.

Ms. Aguiar: Sure, but I don't – I think the cases that come before the Board of Appeals generally have to do with Building permits or...

Mr. Wiseman: Okay, thank you.

Mr. Robinson: Or bed and breakfast applications or permits.

Ms. Aguiar: Sure, yes.

Mr. Robinson: Jim McCully is your Chair over there right?

Ms. Aguiar: Yes.

Mr. Robinson: Okay great.

Mr. Bertsch: But we don't like to tell people we know Jim.

Mr. Robinson: I know Jim and I understand...Okay so is there a motion regarding Ms. Aguiar's application or petition? Chair would entertain a motion.

Mr. Wiseman: I move to find no conflict in this matter, pursuant to the Code section.

Mr. Robinson: Thank you Mr. Wiseman. Is there a second?

Mr. Wiseman: I second.

Mr. Robinson: Oh okay, seconded by Denise. Any further discussion? If not, all that's in favor say Aye.

Motion and vote: Mr. Wiseman moved to make a motion that there was no conflict of interest. Ms. Nakanishi seconded the motion. All members voted Aye.

Mr. Yoshimoto: You guys voted right?

Mr. Robinson: Yeah, so all that's in favor say Aye, yeah. So we're all done. Okay, thank you.

Ms. Aguiar: Thank you.

11:20 a.m. The Board moved to Unfinished Business, Item 6b.

6. UNFINISHED BUSINESS

12:04 p.m. a Petition 2020-01: Continued review of a petition alleging that a County Officer or employee is in violation of Sections 2-83 (Fair Treatment) and 2-84(a) (Conflict of Interest) of the Hawai'i County Code.

(This was combined with Item 5a)

Petition 2020-05: Initial review of a petition alleging that three County officers or employees are in violation of Sections 2-53 (Fair Treatment) and 2-84 (a) (Conflict of Interest) of the Hawai'i County Code.

Ms. Demoruelle: Ms. Demoruelle we're looking for Mr. Kucharski right now okay?

Mr. Robinson: Ok Ms. Demoruelle are you on the line? Ms. Demoruelle.

Ms. Demoruelle: Yes sir, I am.

Mr. Robinson: Is Mr. Kucharski coming? Oh you're here, okay, okay. You wanna come up here? We have, we're gonna get to that right now. We have Diane Noda appearing for Mr. Kucharski. So this is in regards too...we're gonna ahead now, we were, we're still on open session and we have Petition 2020-05. Initial review of petition alleging that three County officers or employees are in violation of Section 2-83 (Fair Treatment) and 2-84 (a) (Conflict of Interest) of the Hawai'i County Code and then we also have Petition 2020-01, a continued review of a petition alleging that a County Officer or employee is in violation of Sections 2-83 (Fair Treatment) and 2-84 (a) (Conflict of Interest) of the Hawai'i County Code, which is a closed hearing. But before we decide what we're gonna do with these two hearings, Ms. Demoruelle I understand you have some concerns about closed hearings?

Ms. Demoruelle: Yes Chairman I do.

Mr. Robinson: Would you please give us your concerns regarding closed hearings.

Ms. Demoruelle: Thank you very much, I sent in oral testimony earlier that you might have in front of you. And so I'll be referring to that. I'll begin by saying while the Hawai'i Revised Statutes Chapter 92, Section 6. Which is part of the Sunshine Laws for opening meetings, exempts Boards exercising adjudicatory functions such as you do from required open deliberations of public, regular public meeting, the BOE's own rule 4.13c requires a vote to close the meeting and I could read that to you but it basically just says that you'll, only do that vote at an open meeting and that you'll public – that was public announced and that the vote of each member shall be recorded and entered in the minutes of the meeting. Given that boards should government business as openly as possible, unless closure of hearings is needed to protect personally matters such as salaries or (?) family members, as you yourself said in your February meeting, I respectfully request that the BOE conduct as few closed meetings as possible. My particular complaints about failure to timely and actively report the January 2020 raw sewage spill is a public health concern and not at all quote: a personal matter affecting the privacy of an individual. So therefore I ask you to please consider limiting your BOE closed hearings to truly personal matters and that this not be considered such a matter. Thank you.

Mr. Robinson: Okay thank you very much, I've heard you and I understand what you're saying. I think previously we had, Mr. Kucharski had requested a closed hearing. The closed hearing would only be limited to the petitioner and the person you petitioned against, which would be in the case of 2020-01 Mr. Kucharski and the case of 2020-05 would be Dora Beck, Alike DeMello and Eric Takamura. And so, you are asking for an open hearing. But I need to ask Mr. Kucharski and the others, would you prefer to have a closed hearing or an opened hearing?

Mr. Murai: Mr. Chair, this is Gary if I may interject.

Mr. Robinson: Please, please do Gary.

Mr. Murai: I just wanted, just for the sake of clarity and for, to make sure (?) record. I heard you call 2020, Petition number 2020-05, did you also call 2020-01?

Mr. Robinson: Yes we're discussing both of those right now as to open or closed hearings.

Mr. Murai: Okay, so in other words you're consolidating them.

Mr. Robinson: We are consolidating them. I think that would be the best way to address them since they follow similar paths.

Mr. Murai: Okay in that case then, I would suggest that we have a formal motion or a vote on consolidation and stating the reasons for – in this case it would be because it involves essentially the same incident, same set of facts, same petitioner. All we're doing is we're adding new respondents.

Mr. Robinson: Okay. Then we deal with the opened and closed after that correct?

Mr. Murai: I suggest that we deal with the consolidation matter first...

Mr. Robinson: In this case the chair would entertain a motion to consolidated Petition 2020-05 and 2020-01.

Ms. Sumner-Mack: I so move.

Mr. Heintz: Second.

Mr. Robinson: Okay so moved and seconded, is there any further discussion? If not all that's in favor say Aye. Contrary minded.

Motion and vote: Ms. Sumner-Mack moved to consolidated Petitions 2020-05 and 2020-01. Mr. Heintz seconded the motion. All members voted Aye.

Mr. Robinson: Okay now the next item, now the next item since we, and thank you for getting us in that direction...

Mr. Murai: So Mr. Chair, the next matter would be, I understand that we do know that Mr. Kucharski has already requested a closed hearing, he did so some time ago. I have seen Beck, and Mr. Takamura also submit requests for closed hearings as well. I don't (know) DeMello, but whether they did or not it doesn't matter because I think we already have petitioners in both matters, I'm sorry, respondents in both matters, requesting a closed hearing. So I would suggest we take that matter up next.

Mr. Robinson: That's what I'm just getting ready to do.

Mr. Murai: And also, as Ms. Demoruelle pointed out, the Board will be considering the request under Rule 4.13(c) where the Board has to approve or disapprove the request by 2/3rds of the members

present. So in other words I believe there are, counting heads I believe there are five members present. To close the matter you would need four affirmative votes and you also need to announce the reason for closing the hearing.

Mr. Robinson: Okay, so with that I understand that Mr. DeMello is here today, and he's indicated that he would like a closed hearing. Diane Noda's here today, you've indicated you'd like a closed hearing is that correct?

Ms. Noda: Diane Noda, Deputy Director, Environmental Management. I'm not a party to either 2020-01 or 2020-05 but I'm hear as a representative for our Department and for the respondents.

Mr. Robinson: Okay, Mr. Kucharski as the last meeting had requested a closed hearing. Is that correct?

Ms. Noda: Correct. He had submitted the closed hearing request in writing. And actually, hyper technically, perhaps the record would reflect but I have no recollection that for Mr. Kucharski's request for a closed hearing, that there was a 2/3rds vote.

Mr. Robinson: We're gonna get to that.

Ms. Noda: Okay, so I would ask that that be done for housekeeping today.

Mr. Robinson: Right.

Mr. Wiseman: Mr. Chairman I would like to make a motion –

Mr. Robinson: Just a second Mr. Wiseman. So you're Dora Beck? And are you requesting a closed hearing or an open hearing? Closed hearing. And Ms. Demoruelle, you're requesting an open hearing is that correct?

Ms. Demoruelle: I'm requesting an open hearing, yes sir, because it's not –

Mr. Murai: Just Yes or No.

Ms. Demoruelle: No sir, I am requesting an open hearing.

Mr. Robinson: Open hearing okay. We've had both a request for a closed and a request for an open hearing. At this point the chair would entertain a motion to close the hearing both of 201, I mean of 01 and 05.

Mr. Heintz: I'll so move.

Mr. Robinson: Is there a second? It's been moved that we close 01 and 05. Is there a second?

Mr. Wiseman: I'll second.

Mr. Robinson: It's been moved and seconded that we close 01 and 05.

Mr. Wiseman: I'd like a discussion.

Mr. Robinson: Yes.

Mr. Wiseman: Why do we need a closed hearing, this involves government services, etc. Right?

Mr. Robinson: Right.

Mr. Wiseman: So I need to know the basis for moving for closed hearing

Mr. Robinson: Okay. Do you have any response Ms. Noda? For Mr. Kucharski who requested it last time.

Ms. Noda: Mr. Kucharski had submitted his written request for closed hearing in a letter this Board dated September 2nd, 2020 and the reason for this request is that he takes very seriously allegations made against him of unethical conduct and that, this position is that the allegations are meritless and unwarranted attacks on his professional decisions and reputation. And those are the main reasons that he set forth I believe that would be the same position for the 3 respondents in the 05 case as well. Just to point out Mr. Takamura is on the WebEx.

Mr. Wiseman: I would assume the view of his basis of having a closed hearing, that he would want his position out there, he would want it to be open and to show that these are baseless and meritless, allegedly baseless and meritless accusations. Ok that's all I have.

Mr. Robinson: Okay. Anyone else have any items before we vote? Ok all those in favor of having a closed hearing say Aye...Motion failed. So we'll have an open hearing then.

Motion and vote: Mr. Heintz moved to close the hearing. Ms. Nakanishi seconded the motion. No other members voted Aye. Motion to close the hearing failed.

Mr. Robinson: Okay, we'll start...I think Ms. Demoruelle -

Mr. Murai: Mr. Chair, this is Gary Murai again. Before we start, could you give me just a few seconds just to reorient the Board as to where we are at.

Mr. Robinson: Please, I mean we have such a voluminous amount of paperwork in this regarding, I mean it's like this thick.

Mr. Murai: Okay, and that's one of the reasons why I wanted to make sure we all kinda grounded and we're all on the same page. What this is, is an initial review hearing. What the Board is going to decide today is whether the matter should be set for an informal advisory hearing. The Boards gonna look at things like whether this is something that, whether the petition meets all the standards for a hearing. Such as, does it have enough information to render an opinion...Does the petition meet all the requirements of the Board, and this something within the Board's power and authority, you know that kind of thing. So this is not the kind of hearing, well like you said there's voluminous records or documents that have been submitted. I would suggest that we start by looking at the allegations of the petition first. Looking at responses to any and if the Board feels that this matter should be set for a hearing, then we can consider the other documents that have been submitted. Now I recall that the Board requested specific things at its last meeting of Petition 2020-01. I think what the board wanted to know was whether the Department of Health had completed their investigation and if so, what was the result. I think specifically, the board was curious to know whether Environmental Management's estimate of the sewage spill of 70 gallons was accurate or not. So I would suggest as a preliminary matter, the Board, because this is an initial review, we not get into the weeds or into the facts or the evidence of the matter, until the Board decides that we wanna set this is for a hearing. Now, having said that, I think it's up to the board and I guess maybe depending on the time available, whether the hearing is going to be today or at some other meeting date. I also understand that we have some time constraints and that the County Council may be needing the meeting room this afternoon. So that's all I have to say. If the members have any questions about procedural matters, I'll be glad to answer them now. But, or, if I'm mistaken, If I'm wrong about where we are at in the 2 matters I appreciate being corrected.

Mr. Robinson: I think you're spot on Gary as always. I think at this point thought, we really like you say, time constraints, we do have time constraints, and I think that we need to decide do we wanna set this for a formal hearing? Or informal advisory? And if we do, then we put this on the agenda, the combined two petitions on our Agenda

for next meeting and conduct the hearing. Give it the proper time that it deserves instead of trying to deal with things in the 10 minutes that we have.

Mr. Heintz: Mr. Chairman, I didn't find, did we have the results from the Department of Health. That's, I think Ms. Demoruelle was the one who had submitted a request to the Department of Health.

Ms. Demoruelle: Yes sir I did and I also submitted what has come forth from the Department of Health to Mr. Kucharski, that's the Notice of Apparent Violation of Sewage Spills. As I indicated in my letters, them seems to be a potential pattern here of false reporting. The District Court was one of many that was falsely reported, and –

Mr. Robinson: Just to be concise, so you did receive results from the Department of Health.

Ms. Demoruelle: Yes I was provided –

Mr. Robinson: Specific to this one particular spill.

Ms. Demoruelle: No I did not receive anything as yet from on that one particular spill but there is –

Mr. Robinson: Okay, thank you. That was the question.

Mr. Heintz: Mr. Chairman, in our discussion at the last meeting, I'm trying to recall...I raised the point that this Board is not competent to make judgments about the size of the spill. Until we receive such a report from the Health Department, I don't see how we can deal with this. We're not competent to make this decision. Most of the people that are here, that are respondents have all given affidavits of the size of the spill and we have no basis to contest that. We have no competence in that, so until we have a response from the Department of Health, or some competent agency, I don't see how we can move forward, at least that's my thing.

Mr. Robinson: Correct.

Ms. Sumner-Mack: Excuse but, maybe I'm misinterpreting cause I have this, I have this response petition dated October 14, 2020...I don't know, and it's got a lot of information there, statements of fact that I haven't read it, I haven't studied it. I think we just got that.

Mr. Robinson: Is that from the Department of Health?

Ms. Sumner-Mack: It's from the department of health, yeah...So maybe we just haven't had a chance to review it, but we've gotten something from them, is that right?

Mr. Wiseman: Mr. Chairman, I have a motion.

Mr. Robinson: Please, Mr. Wiseman.

Mr. Wiseman: Yeah in lieu of the ongoing discussion here, and the need, I concur with my colleague Mr. Heintz, the need to review the specifics of facts that my other colleague Nan just mentioned she has, we need to review these in the time constraints. I make a motion we continue this, the full hearing, on the calendar.

Mr. Robinson: Okay is there a second to that motion?

Mr. Murai: I'm sorry, one second, just for the sake of clarity, the motion was to continue this initial review or to set it for hearing at the next meeting? We're at the review stage, we still haven't...we have to decide...

Mr. Wiseman: I would defer to counsel of the proper procedure at the this time.

Mr. Murai: Just to re-orient ourselves, we are at the initial review stage, the Board has not yet decided to even set this for a hearing. At the initial review state the Board is gonna look at: 1) Does it have enough information to make a decision today? Or if it does not, or if you're going to set this matter for a hearing where the parties can bring their information, where the Board can request additional information, or was the Board going to decide that this is not a matter within the Board's jurisdiction. Or that the matter is being addressed in another forum.

Mr. Wiseman: Okay thank you, I would clarify my motion, amend the motion, withdraw that motion, make a new motion to continue the initial review hearing.

Mr. Robinson: Okay, is there a second to that?

Ms. Sumner-Mack: I'll second.

Mr. Robinson: Okay so moved, and seconded that we continue this til next meeting to determine if there's, we'll just continue this til next meeting. Any further discussion? If not, all that's favor say Aye. Contrary minded, thank you Ms. Noda.

Motion and vote: Mr. Wiseman moved to continue the initial review until the next meeting. Ms. Sumner-Mack seconded the motion. All members voted Aye.

11:20 a.m. b. Petition 2020-04: Continued review of a complaint regarding the lack of enforcement and/or unequal enforcement of state laws at the Thirty Meter Telescope protest encampment at Mauna Kea Access Road.

Mr. Robinson: You were last here last month as well, and at the time we had, as a board, very similar concerns by the Board of Ethics and it asked the Corp Counsel to submit an application to the County Council, for the Board of the Ethics to retain the service of outside Counsel or an attorney outside of the County, to investigate the lack of enforcement at the Thirty Meter Telescope sight. Very similar and exactly the same as what your complaint is as well I think. You heard us have that discussion previously in various meetings. And we subsequently have gotten an opinion back from the corporation Counsel that, in essence, that this Board has no authority to conduct an investigation at the County, or request outside counsel from the County Council. So we do not have the authority to do an ethical investigation of the lack of enforcement on Mauna Kea as well as that this is really a political question and that the Board of Ethics has no jurisdiction over a political question of this nature. And consequently, the opinion that we got back is a legal opinion from Corporation Counsel. We're not able to release it because currently it's a confidential opinion, and that they will not ask County Council for us to retain outside counsel to do an investigation. So with us having been informed of that, it means that your request for the investigation that we don't really have staff to do it. You've done voluminous amounts of work, and created everything, and I understand that you've also submitted the application out to the State Ethics Board as well. Which I commend you for taking that effort to do. So for us as the Board of Ethics right now, we would not have any investigatory staff to conduct such an investigation since, in essence your request, your petition 2020-04 and the same concern expressed by the Board of Ethics would've required you know the services of independent counsel. So I just wanted to lay that out before we get started.

Ms. Malakaua: So when can we expect that legal opinion to be released?

Mr. Robinson: That's a good question.

Mr. Heintz: That would have to be a decision by the Board and I intend to make a motion that would do so today but haven't done that yet. And I plan to make that motion in open session.

Ms. Malakaua: Okay, thank you.

Mr. Robinson: But the legal opinion, I think if we release it, you know, we as the client, the Board of Ethics as a client, has the ability to make the decision to not have that be confidential, but we would then enter it into the record and it would be available for public consumption. If consumption's the right word. But we haven't done that yet, so I guess getting back to your opinion, your petition, we could go ahead but we wouldn't...our ability to do that in depth investigation, we would not have the staff to do that, the ability to do it.

Ms. Malakaua: Not even a simple reprimand huh?

Mr. Heintz: I don't think that's what he's saying...I don't think that's what Rick is saying, we will hear your petition and we will take up the matter as you address and respond to your complaint.

Ms. Malakaua: So alright. So it just seems as though that our next step is to see what the State is going to do then.

Mr. Robinson: Well, you still have your petition with us, we still can go through and hear it. But as far as doing any investigation or doing anything that would need the depth of clarity that your petition would require, we just wouldn't be able to do that.

Mr. Heintz: Mr. Chairman, I have a question. I take it that this petition that's before us, we would ask which County officers or employees do you think are in violation of the County Ethics Code and performed an ethics violation. Identify which parties, once those parties are identified then they would have an opportunity to respond to your complaint. Also, what are the violations that you are alleging and they will have an opportunity to respond. That's my understanding. We're not...the only thing that's happened with regard to the Corporation Counsel, is he's informed us that we're not conducting an investigation but we're responding to your petition.

Ms. Malakaua: Okay, thank you.

Mr. Heintz: That turns out to be the same issue basically.

Mr. Robinson: Right.

Ms. Malakaua: Okay so in your opinion, do you guys at least have an opinion as to who might be responsible by way of Mayor Kim or Ige in this matter or are they both?

Mr. Robinson: It's kinda just (?) amorphous mass up there...

Mr. Yoshimoto: Right so, to clarify a few things...I heard the chairman basically say that board has no jurisdiction as well.

Mr. Robinson: That's the opinion we have currently.

Mr. Heintz: No jurisdiction to conduct its own investigation.

Mr. Yoshimoto: Okay, but the board is saying that it can hear from the petitioner, because they brought a petition forward, it's just that there's ok...

Mr. Heintz: Mr. Kamelamela's opinion is about our conducting our own investigation.

Mr. Yoshimoto: So, Member Heintz was just asking I think ---

Mr. Wiseman: Mr. Chairman?

Mr. Robinson: Yes?

Mr. Wiseman: In hearing the petition, for the petitioners, depending on what conclusion we reach, we can, even though we can't perhaps go forward with an investigation, we can make our commentary as to what we find, based on the petition itself.

Ms. Malakaua: We did a lot of work like you mentioned, so it's not like just putting you guys out there to start gathering up all this evidence. You have been given this evidence for quite some time now, videos, photos, you name it. So to say that you can't go and do a complete investigation, I'm really having a hard time dealing with this, because this is a violation under both County and State. Ok? And I'm gonna go ahead and I'm gonna read my testimony. Cause I'm not gonna come here and waste my time once again.

Mr. Robinson: No please, go ahead.

Ms. Malakaua: Article 15 of the Hawai'i County Code of Ethics is what supports our MKAR petition, and that was filed on January of 2020. And Section 2-83 of that code, emphasizes importance of fair treatment noting that all property is to be treated as a public trust and that all persons are to be treated in an impartial manor. Impartial

enforcement of the law clearly violates this guideline. Our claims set forth does start out at the top, through the gross negligence of both Governor Ige and Mayor Harry Kim. Because through their inept leadership and support of sedition and chaos non-supporters of this illegal activity were unjustly penalized and we certainly did not pose a threat to that Mauna. Their blatant inaction to uphold laws impartially has also led, to disputes and public discourse which only perpetuated civil unrest. Currently Mike and I are greatly involved in right-wing politics because we felt so strongly that it was time Hawai'i became a two party state. The fox guarding the hen house is no longer working for many Hawai'i residents because many have not only lost patience with the deep political corruption that runs rampant through the veins of Hawai'i, but many has lost complete and utter confidence in our elected officials who are clearly only in it for, to get richer and to pay their retirements, pad their retirements. This pattern and practice of bigotry and misappropriation of property and funds by our elected officials needs to seriously come to a stop. For far too long our leaders have relied on the people to not make humbug, no make waves, well we are making waves and it's called the red tied mega wave. And during these political gatherings there has been a wide range of beautiful multicultural people that have grown closer together through the love for our country, life, police, guns but importantly God. And I can assure you that if the BLM movement is successful in going through with their plan of defunding the police then the people are going to be needed a hell of a lot more than just their guns to protect them. They're gonna be in dire need of God. You know what truly is disheartening about this entire ethic issue? Is that our elected officials can't see just how caring, special and essential all their constituents really are. Our leaders also don't see or hear us out, with our bright and sophisticated ideas on how to move our economy forward, because if they did they would be able to see that their people have so much more to offer then just being just being their states personal ATM machines and/or backdrop to cultural tourism. But unfortunately you take us all for granted. We have tried to and want to put our faith in you. But in return we have only gotten the worst of you. As with every kanaka, great pride comes for the love of their culture. But yet it isn't any different from the same great pride that resides in every patriotic American's heart. The failure of equal enforcement of the law also greatly weakens our American Democracy. Once the protesters start to violate the rights of others in their quest to secure their own rights, Ige and Kim should have both gotten control of the situation. Freedom of speech does not mean, freedom from consequence. Nor is freedom bestowed, its achieved. These unlawful and ongoing violations from our elected officials gives

out a clear message that they could care less about us, of any of us, residing and doing business here. We are all the same. So yes, I am very, very disheartened about what's going on, because political agendas have clearly taken over the rights of the very that they swore to protect and serve. So yes, the flagrant disregard of the rule of law by Governor Ige, Mayor Kim and all supporting and non-profit agencies should be held in ethical violation for their self-serving agenda and dereliction of duty. So do your jobs and look after us, and stop playing on people's fear and guilt. Reprimand those responsible, the Kia'i may see you up at the Mauna but we will see you at the polls, and best believe that we are profoundly aware of which party is trying to bring this Country up, versus party that's bringing us down. As Thomas Jefferson once famously quoted, "When government fears the people, there is liberty, when the people fear the government, there is tyranny. Mahalo. I hurt for our people. We all do. You have all done us wrong. Everyone, through every nation is hurting right now. Your people are crying, they're screaming, because we don't know what else to say or do, to get your attention. We are profoundly hurt. I break down because my heart gives to where Hawai'i is heading and it's not heading in a good direction. And it hasn't been heading in a good direction for a very long time. So you wanna claim that you aren't responsible here, that's crazy. Everyone is responsible, you know what you're responsible for. Misappropriation of funds. Misappropriation of funds. \$15 million dollars for law enforcement was funded out of the general fund. The general fund is a tax payer fund, income taxes, everything else. The law states that basically if the remaining balance for the general fund exceeds 5% for two consecutive fiscal years, then the state shall reimburse the tax payers. Effectively by taking that money and giving it to law enforcement, cheated tax payers out of that refund. So don't think that we don't know what's going on.

- Mr. Robinson: So just to be clear you said \$15 million was funded for law enforcement...
- Ms. Malakaua: Yes, for overtime and law enforcement, \$15 million was allocated for that illegal protesting, which I have always said should have came out of OHA and the protestors funds, not all the tax payer's general fund. Cause that general fund could've been used for this emergency situation without COVID-19 as well.
- Mr. Robinson: Right, ok.

Ms. Malakaua: So yes, we definitely have some violations here, and to just pass it on like we're just going off because we feel as though we weren't being treated fairly, no, it's so much more than that. Ok it really is.

Mr. Robinson: You know, you have to understand Ms. Malakaua we have the same concerns as you, and we had we had requested, from the County Council, you know, funds to hire outside council. Our interest was parallel with yours, so please understand that.

Ms. Malakaua: I do.

Mr. Robinson: Yeah.

Ms. Malakaua: It's just frustrating.

Mr. Robinson: Oh I understand.

Mr. Wiseman: Mr. Chairman, if I can add...

Mr. Robinson: Yes Mr. Wiseman.

Mr. Wiseman: You know, for every grievance of a citizen there's usually an appropriate forum and we've been entertaining this based on a legal opinion, we can't go further. However the State Ethics Commission that you're already involved in, it may be a more appropriate forum to address your grievances you know?

Ms. Malakaua: I agree. We'll just keep going higher and higher until we do get an answer.

Mr. Robinson: Well, if our legal opinion that we received from Corporation Counsel, if we take action on that today and are able to provide you with a copy of that, that's something you can share with the State Ethics when you're there as well.

Ms. Malakaua: And that's Kamelamela's report?

Mr. Robinson: Right.

Ms. Malakaua: Ok. Yeah, well he's part of the issue. There's part of the problem right there. Alright...I think

Mr. Robinson: Wait, wait, wait.

Mr. Heintz: Mr. Chairman, I don't think Mr. Kamelamela's 10 page letter has any relevance at to your petition. And I think this board needs to deal with your petition.

Ms. Malakaua: I believe so too.

Mr. Heintz: And...I think you've got two petitions. All of your complaints having to do with people who are not employees or officers of the County of Hawai'i is in your state complaint. But you have a parallel complaint that applies to the County. Those County people, as I understand it, that's why I asked you, which County officers, and I take it that it's, apparently it's the Mayor. So, just like any other petition, your apparently complaining against the Mayor, and the Mayor can decide, well we'll inform him of your complaint. Does your complaint actually identify the Mayor?

Ms. Malakaua: Yes it does, I do believe ---

Mr. Heintz: Which people need to respond?

Ms. Malakaua: Yes, Yes.

Mr. Heintz: So we need a response (?) with any other petition, for those people to respond to your complaint.

Ms. Malakaua: Exactly and they've ignored it up to this point so I don't know what the problem is.

Mr. Heintz: So it seems to me that...

Mr. Robinson: So we could put their petition, package it up, and send it to the appropriate County agencies and ask them for a response...

Mr. Heintz: To the Ethics Commission.

Mr. Robinson: Would be the Police Commission, would be the...I forget the others that are identified in there...

Ms. Malakaua: We have DHHL, DLNR...

Mr. Robinson: Well...those are state.

Mr. Heintz: Those are State, those are part of you other..

Ms. Malakaua: Okay...

Ms. Sumner-Mack: You've got it all spelled very well.

Ms. Malakaua: Okay, thank you Nan.

Mr. Robinson: I don't have...

Mr. Yoshimoto: Hi Ms. Malakaua, so where in your petition does it mention the County respondents? Could you help me with that? I don't...

Ms. Malakaua: Ok, did I forward you guys all the copies of the letters that we sent to DHHL, and DLNR, and then we also have from Thane Curry, that is in the petition as well where he actually had a meeting them? Section 4 or 5, try may be looking at Section 4 or 5?

Mr. Yoshimoto: Section 4 or 5 of? Ok let me...hold on one second, I just wanna make sure we...

Ms. Sumner- Mack: I don't recall seeing that.

Mr. Yoshimoto: Yes I never saw it, that's why I'm asking the question...

Mr. Heintz: That's from the earlier meetings. Those are your original petitions.

Ms. Malakaua: Yeah.

Mr. Heintz: Now the original petitions...

Ms. Malakaua: We have sets...

Mr. Heintz: Right, on the State one. But you have original one and the original one, and Thane Currie, and other people have testified on the original one. It's been going on for at least six months. That's what's wrong with this body.

Mr. Yoshimoto: Ok so wait, let's focus...I just wanna see where does it state who the respondents are on the County side cause I've never seen it. I may be mistaken, I'm just asking...In your initial letter back in January, I don't recall, help me here, if there is, can you point to me so I can...

Ms. Malakaua: Ok in our original was basically just addressing what was going on up at the Mauna Kea, as far as the illegal dumping, illegal camping with no permits and all of that. As recently we've submitted our last packet that did include the meeting that Thane Currie and folks had with them plus, they also had placed in there the burial ceremony. The illegal bones that they were buried up there and so

forth and so on is also was included in that. If I gotta resend it to you guys I'll do it right now...

- Mr. Robinson: Yeah, let's be clear about one thing, the Burial Council. the human remains is subject to the Burial Council which is part of DLNR which is also a state agency as well.
- Ms. Malakaua: Ok, Thane Currie is online with us, is it ok if he responds to some of the legal questions on the packet? Cause I think it's Section 4 or 5, is where you should be finding that information by the names of the people that we addressed.
- Ms. Aiello: Testing. Mr. Currie you may have unmute your microphone.
- Mr. Currie: Sure, ok so is it ok if...
- Ms. Malakaua: Hey Thane.
- Mr. Currie: Hi....
- Mr. Robinson: Oh so Mr. Currie you're here as well.
- Mr. Currie: Yeah, sorry about that.
- Mr. Robinson: No worries, could you state your name.
- Mr. Currie: My name is Thane Currie.
- Mr. Robinson: Thane Currie?
- Mr. Currie: Yes.
- Mr. Robinson: C-U-R-R-Y. Ok.
- Ms. Malakaua: C as in cat.
- Mr. Robinson: Yeah Currie.
- Ms. Malakaua: C-U-R-R-I-E.
- Mr. Robinson: Go ahead.
- Mr. Currie: Yeah, sure, sure. So apologies if it's a little bit unclear, so Section 5 outlines the, actually itemizes the ethical violations. And you're right that some of them focus on the state. We do mention the County. That plus my separate witness testimony would point

towards the Mayor Harry Kim as the primary person (?) against. I'm sorry if that wasn't very clear. But that's what our intent is.

- Mr. Robinson: Because the County, we only have jurisdiction over the County.
- Mr. Currie: Exactly, understood. Thank you.
- Mr. Robinson: Section 5, that's in the one you're talking about you submitted to the State?
- Mr. Currie: No sir, that's in the..I believe it's filing from, for the County. For your organization, that's attachment A. I think its page 8 where we kinda go through the list.
- Mr. Robinson: Ok just tell us who's on your list then.
- Mr. Currie: Sure, so I mean, the person would be Harry Kim.
- Mr. Robinson: OK. And then who else.
- Mr. Currie: That's primarily who it is.
- Mr. Robinson: Oh...
- Mr. Currie: It's our understanding, still like at the State level there's Governor, Attorney General, DHHL...but with the County it would be Harry Kim.
- Mr. Robinson: Ok. But at the County Level you only address Mayor Kim.
- Mr. Currie: Yes.
- Mr. Yoshimoto: Mr. Chairman if I may, so Ms. Malakaua, so just to be clear then, while it's not stated here in your written documents you submitted to us you wanna amend that to add Mayor Kim as a respondent to your petition is that correct?
- Ms. Malakaua: Yes.
- Mr. Yoshimoto: Ok, I just wanna make sure.
- Mr. Robinson: So we will request a response from Mayor Kim to your petition, to the Ethics Commission.
- Ms. Malakaua: Thank you, I appreciate that.

Mr. Robinson: We are trying to, if anything I blame myself, trying to take what your petition was and then what our request to the County Council was for outside counsel, to an essence. Run parallel, but being the way that it is and we're not gonna get outside counsel, then we have to deal with yours. So we'll ask the mayor's office for a response. Hopefully, there'll be an appearance in person but there may just be a written response.

Mr. Yoshimoto: So Mr. Chairman do you want to discuss this further in executive session today? Or you just want to continue this til next time?

Mr. Robinson: We'll continue the hearing to next time but if, well also we don't want you to drive here just for, you know. So we will be in touch with you and let you know what is happening on our side and if we have a response, we're gonna have...we'll notify you so you can attend next meeting. We don't wanna make you drive for nothing.

Ms. Malakaua: Alright. Thank you. Appreciate that.

Ms. Sumner-Mack: In other words we're going to submit this to petition to somebody, and get it, hope for a response before our next meeting?

Mr. Robinson: Right we're gonna take their petition and we're gonna send it to the Mayor's office, we're gonna say received this petition, can you give a response to this? And you know, it could either be a written response or can be an appearance in person response. One way or the other, we'll get a response. And if the response is we're not gonna respond to you, like we got without request to get outside counsel, then we'll let you know that too. But hopefully we'll get some finality.

Ms. Malakaua: Okay.

Mr. Robinson: But I think your petition to the State Ethics Commission is gonna get a lot more, how would you put it, a lot more consideration. Since there are so many State agencies involved. You have DLNR, DHHL...

Ms. Malakaua: Ag Commerce, and then we have...

Mr. Robinson: And there's discussion between Governor Ige and Mayor Kim, and Mayor Kim said I'll take the laboring oar and try to resolve this.

Ms. Malakaua: Right, and nobodies been doing anything, they just kinda abandoned everybody. Left everybody out there in a moratorium stage, nobody knows what to do with anymore either, you know

so, but it's unfortunate, it's unfortunate what had happened up there it really is. But we've gotta start adhering to our laws, we want to be sure that everybody's getting treated fairly and equally. Regardless of skin color, where you're from, whether you're here, lived here all your life or not. That shouldn't matter, we all cut, bleed the same, no matter how you look at it. So that's one of the biggest reasons why I come before you because racial inequality is not ok.

- Mr. Robinson: Ok we hear you, so you'll be in touch with you.\
- Mr. Yoshimoto: Mr. Chairman, I would recommend that we go to in executive session to talk further about this petition prior to continuance. That'd be my recommendation.
- Mr. Robinson: We're gonna continue this to the next meeting.
- Mr. Yoshimoto: No matter what? Ok.
- Mr. Robinson: We're gonna continue this to the next meeting, regardless but we're also gonna be in touch with you, tell you whats happening.
- Ms. Nakanishi: I do have a question if it's appropriate.
- Mr. Robinson: Yes.
- Ms. Nakanishi: I wasn't up there at all, who was actually enforcing the law up there?
- Ms. Malakaua: Nobody...What happened was, is Governor Ige had decided that he didn't wanna take the responsibility after he placed our Hawai'i state in breach of contract for not upholding a Supreme Court Order. And so the "Kiahi" had decided to take it upon themselves to block a public funded road, and that is against the law itself to be blocking any roads and so it was a clear violation for the rest of us that did not pose a threat to the Mauna, whatsoever. But we were declined access. So what the intention was, is was to provide access for the TMT Construction to go up but that's how the money was used. The money was used for, to have law enforcement to help secure and block the access up the Mauna. So that's where we have a problem.
- Mr. Currie: Denise? I'm very, very sorry, maybe I can answer your question in a more critical sense. So there were both officers associated with the Department of Land and Natural Resources, so DOCARE, but also Hawai'i County present at the Mauna Kea access road. And as

we identified in our filing, that (?) on the same pod of land, Hawai'i County Police Officers did take a roll, or were involved in some enforcement activity... (?) So the Hawai'i County law enforcement did have a role to play in this whole thing. If that's what you're asking.

Mr. Robinson: Okay, thank you.

Ms. Nakanishi: Thank you.

Mr. Robinson: Okay, anything else on this?

Ms. Malakaua: Mike wants to speak.

Mr. Robison: Okay, go ahead Michael.

Mr. Nathaniel: Michael Nathaniel.

Mr. Robinson: Right.

Mr. Nathaniel: Okay, growing up here I learned to appreciate all cultures, since our state is the melting pot of the Pacific. I was also thankful that outsiders referred to Hawai'i as the Aloha State. My Dad Luther, Jr., instilled in us kids the importance of standing up for what is right and to love and respect others. So after returning home from serving, I noticed a major shift in thought and attitude. Instead of sharing the Aloha spirit, that spirit is now overshadowed by a spirit of blindness. History is only informative to others if history is precise in their allegations and research. And by reviewing and searching all angles of events. You cannot allow yourself to be blinded by rumors or false truths. The Morgan Report is a crucial Part of our Hawaiian History but many choose to ignore it. The University of Hawai'i curriculum department admits it does not include the Morgan Report but only allows the Blount Report to be retained through their teachings. The Sovereignty Movement invites this because it aligns with their narrative. And without question, they are using the building of the TMT Project to benefit their own agenda. I am Hawaiian and I do support our culture but I do not support the Sovereignty Movement and/or the Kia'i protestors because I know that our history, like many others, has a checkered past. I also don't hold others responsible for something that occurred long before many of us were even born. I believe in my heart that King Kamehameha the Great, if he was alive today, he would be very disheartened to see how many of his people do not want to excel in this world, by moving forward. And to make matters worse, our elected officials failed to provide equal and fair

protection to all. They allowed for some laws to be overlooked for one group of people while enforcing the law and penalizing others. But they aren't the only ones to blame here. The Kia'i has also failed in assuring an accurate accounting of our Hawaiian history to their own educational programs and worldly personal relationships. If we are going to be teaching Hawaiian history through education then it is imperative that it be taught in a way that tells the whole story and the whole truth. Because in the long run we are only hurting our children by lying to them and not affording them a better understanding of the same. Therefore, for our so-called leaders regarding their biased and unethical actions, they must be held accountable. They have led us down the wrong path resulting in a painful and deep division within our communities, families and our friends. So shame on you. In conclusion I would like to leave with a quote from the Bible Book of Psalms, Chapter 11, Verse 7, which reads: for the Lord is righteous, he loves justice, the upright will see his face. Mahalo.

Mr. Robinson: Thank you...So we're gonna discuss this but we're gonna be back in touch with you. We're gonna send, we're gonna do what we have to do.

Ms. Malakaua: Thank you.

Mr. Robinson: Appreciate your patience with us. I know it's frustrating

Ms. Malakaua: I apologize for getting so emotional.

Mr. Robinson: It's ok.

Ms. Malakaua: We hurt for people, we hurt.

11:56 a.m. *The Board moved back to Unfinished Business Item 6a.*

12:26 p.m. *The Board was still in regular session after discussing Item 5b/6a*

Mr. Robinson: Okay, at this point we've dealt with, we are still in open session, and we've dealt with all 4, or 5 of the petitions that we have today. Is there any other items that anyone has...

Mr. Heintz: Mr. Chairman?

Mr. Robinson: Yes.

Mr. Heintz: I'd like to make a motion. I'd like to make a motion that the Board of Ethics waive its privacy rights regarding the Corporation Counsel's 10-page letter and thereby make that part of the public record.

Mr. Robinson: Is there a second to that motion?

Ms. Sumner-Mack: I'll second that.

Mr. Robinson: Okay it's been moved and seconded. Moved by Mr. Heintz, seconded by Ms. Sumner-Mack that we remove the attorney client privilege from the 10-page letter, or 10-page political opinion from Mr. Kamelamela. And in doing so, as the client then we would enter into our record as the Board of Ethics and then it would be available for everyone's use and hopefully we'd get a copy ourselves to read. So is there any further discussion on that?

Mr. Wiseman: Yes, I'd like to defer voting that motion until, I wanna review the letter again, before we vote.

Mr. Murai: Mr. Chair this is Gary. You know what, I just realized that this is not a matter that I am Corporation Counsel for..

Mr. Robinson: Oh yeah, you can go..

Mr. Murai: Well no, I guess my point is that I think J should be in on this one.

Mr. Robinson: Oh he is, he's here.

Mr. Murai: Oh he's there, okay great, great.

Mr. Yoshimoto: Yeah I just walked in, thank you.

Mr. Robinson: Soon as we saw his glasses and his mask, we switched.

Mr. Murai: So in that case then I will, if I'm pau, I will sign off.

Mr. Robinson: Okay, Aloha.

Mr. Murai: Thank you, take care everybody.

Mr. Wiseman: Okay bye Gary...So again I would like to defer the motion until I have a chance to review the opinion again.

Mr. Robinson: How are you gonna do that?

Mr. Wiseman: Well the same laborious way I did it before, they can put it down to their local council office here at the Civic center.

Ms. Sumner-Mack: I went by yesterday and re-read it, and my strong feeling was that this is exactly the kind of thing that deserves to be given public scrutiny. And we should be scrutinized, just the way anybody else should be. Maybe that's way out in my field but anyway, I did look at it yesterday, I came in...It's easy for me cause I'm just down the block. So, but I did re-read it carefully and I didn't see – I think we should have the right to disclose what we think should be disclosed. Not that we're gonna post it all over the place but...

Mr. Robinson: We're still in open session, okay.

Mr. Yoshimoto: So, Mr. Chairman, just providing my input, prior to the Board making a decision on this matter, I would like an opportunity to consult with the Board in executive session. Just to make sure that the points raised - that the issues are all addressed prior to the Board making a decision on this.

Ms. Sumner-Mack: I think that's a good idea.

Mr. Robinson: And they still want us out of here at 12:30...and it's 12:30.

Mr. Wiseman: They're not gonna start on time.

Mr. Robinson: They're not? Okay..

Mr. Yoshimoto: One more thing on that note Mr. Chairman as far as the time period. I did check with Staff again as far as the time estimate of when this room might be available. The revised estimate is 3 o'clock.

Mr. Robinson: 3 o'clock okay good.

Mr. Yoshimoto: So I just, throw it out there but there's no –

Mr. Robinson: So we can keep going –

Mr. Heintz: No, they're starting at one.

Mr. Yoshimoto: Yeah...no no they're starting at one, they're gonna start at one. But the finish time is a pure estimate cause we don't know how long these discussions take so it could be as quick as an hour or be as long as two or three hours. So there's no way to predict it so, I just wanna throw that out there so...

Mr. Robinson: Well we have a motion and we have a second. We have noted Mr. Wiseman's concern, he wanted to review it one more time. We note you request to confer with us in executive session before we take the vote. Which means we would have to go out of regular session into executive session, get your review and then go back to open session to take the vote and if we can do all that within five minutes. How long do you think you'll need?

Mr. Yoshimoto: Five minutes.

Mr. Robinson: Alright motion to go to executive session.

Mr. Heintz: I so move.

Ms. Sumner-Mack: Seconded.

Mr. Robinson: Moved and seconded, all that's in favor say Aye.

Motion to vote: Mr. Heintz moved to go to Executive Session. Ms. Sumner-Mack seconded the motion. All members voted Aye.

12:30 p.m. The Board moved back into Executive Session

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12:34 pm. The Board moved back into Regular session

Mr. Robinson: Now we're back into regular session. So we've had a motion and then we've had a discussion regarding that motion. We've noted Mr. Wiseman's concern about wanting to review the opinion one more time. So at this point, the Chair would call for the vote.

Mr. Wiseman: I would, based on the discussion, I would make an amendment to the motion that we defer the motion until next hearing when I have the chance to review it.

Mr. Robinson: Mr. Heintz made the motion, and it was seconded by Nan Sumner-Mack. You're making a motion to amend the motion?

Mr. Wiseman: Yes.

Mr. Robinson: Is there a second to your motion to amend?...Not hearing a second.

Mr. Wiseman: Nope, I guess it fails.

Mr. Robinson: Yeah, so at this point I'll ask for the vote. All those in favor...

Mr. Yoshimoto: Hold on, are we in executive session?

Mr. Robinson: No we're back in regular session. So all those in favor of the motion...

Mr. Yoshimoto: Did we bring back everybody?...Oh yeah we gotta bring back the people who wanted to watch the meeting, sorry.

Mr. Wiseman: Was there a response to your question Mr. Chair?

Mr. Robinson: Pardon me?

Mr. Wiseman: I didn't hear anything after you...

Mr. Robinson: Oh yeah we want to ensure that all the people that were – since we're back in public session now, we wanted to ensure that all the people that were there previously, have been notified so they can get online and hear.

Mr. Wiseman: Yeah, very well.

Mr. Robinson: Okay...can we just go ahead and take the vote and close up?

Mr. Yoshimoto: Yeah we gotta get Nancy, cause she wanted to – otherwise there's gonna be a sunshine law...

Mr. Robinson: Okay so...

Mr. Yoshimoto: So let the record reflect that efforts were made to contact Ms. Demoruelle and who else? Who else was on the line? Okay efforts were made to contact Ms. Demoruelle...

Mr. Robinson: Now we have Nancy Cook-Lauer on the line. We tried to connect as many people as we could.

Mr. Yoshimoto: And Ms. Demoruelle, and we were not successful, she's not answering the phone, just so there's a record of it.

Mr. Robinson: Right...And so at this point there's been a motion, there's been a second, there's been discussion. There was a motion to amend the motion that failed for lack of a second. And so now the motion is to remove the attorney-client privilege and allow the memo or legal opinion from Corp Counsel Joe Kamelamela to be released and all those in favor say Aye. We have three Ayes. David?

Mr. Wiseman: I vote No...well excuse me I'm gonna abstain.

Mr. Robinson: Okay.

Mr. Wiseman: You'll (?) my desire to read to the opinion again before I vote.

Mr. Robinson: Okay. So we've had three ayes, one abstention and I'll vote Aye. So four votes yes and one abstention, so noted.

Motion and vote: Mr. Heintz motioned to remove the attorney-client privilege. Ms. Sumner-Mack seconded the motion. Four members voted Aye; one member voted to Abstain.

Mr. Robinson: Any further items for our agenda? The remainder of our agenda, we're going to continue to the next meeting.

Mr. Yoshimoto: Do we need a motion for that or no? Let's vote on that.

Mr. Robinson: So is there a motion to continue the rest of the items in our agenda to the next meeting?

Ms. Sumner-Mack: I so move.

Mr. Robinson: Moved by Nan Sumner-Mack.

Mr. Heintz: Second.

Mr. Robinson: Second by Larry Heintz. All those in favor say Aye. Okay.

Motion and vote: Ms. Sumner-Mack moved to continue the rest of the items on the agenda to the next meeting. Mr. Heintz seconded the motion. All members voted Aye.

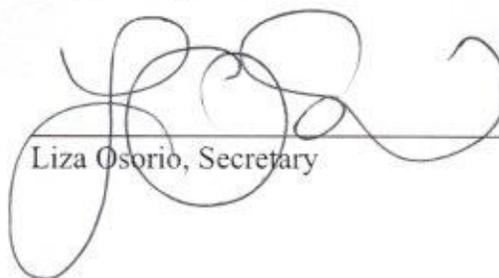
8. ANNOUNCEMENTS

Mr. Robinson announced the Board's next meeting on November 16, 2020 at 10:00 a.m. at the Hawai'i County Building at 25 Aupuni Street, Room 1501 or at another location to be determined.

9. ADJOURNMENT

Mr. Robinson adjourned the meeting 12:40 p.m.

Respectfully submitted:



Liza Osorio, Secretary