

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

Wednesday, January 13, 2021
10:00 a.m. to 12:01 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
Larry Heintz, Member
Denise Nakanishi, Member
Malia Hall, Deputy Corporation Counsel
Liza Osorio, Secretary

1. CALL TO ORDER (10:00 a.m.)

Mr. Robinsons called the meeting to order at 10:00 a.m.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:00 a.m.)

Mr. Robinson: Statements from the public on agenda items. I understand that we have some people on the phone would like to make statements to the Board of Ethics before we start our meeting today. We will ask that you limit your comments three minutes. At the end of three minutes there will be a bell that will ring to notify you of that and we just ask that you follow the rules and only talk for three minutes. So who is first to speak?

Ms. Aiello: Thank you Mr. Chairman. Our first testifier is Kona Moran.

Mr. Robinson: Kona Moran, okay go ahead please.

Ms. Aiello: If you could unmute your microphone.

Mr. Moran: Yeah sorry, I was just hear to, just to watch the proceedings, not to testify.

Ms. Aiello: Okay thank you sir.

Mr. Robinson: The next on the agenda, I mean the next person to testify is?

Ms. Aiello: Stephen Bell.

Mr. Robinson: Stephen Bell?

Mr. Bell: Can you see and hear me?

Mr. Robinson: Can we see you?

Mr. Bell: Can you see and hear me?

Mr. Robinson: I can hear you...

Mr. Bell: Can you see me?

Mr. Robinson: Oh I see you up there kind of. You're this disembodied voice though from this distance.

Mr. Bell: Yeah gotcha, gotcha. Okay. My name is Stephen Bell. I'm a retired physician and I live in Kohala Ranch. First of all, let me state that I do know Mr. Kern personally and I have no personal animus toward him. In fact, according to his supporters he is nice guy and I'm sure that is correct. However, I have found that I have no other choice but to speak out about Mr. Kern's activities in his role as a Planning Consultant and how his actions has to have impacted me, have left me with serious questions about his ethics and his character. What I have to say brings me no pleasure. I refer you to my written testimony, which I sent to you yesterday and which I asked very specific questions about Mr. Kern's previous activities. Unfortunately the three minutes I have will not allow me to go into all of those questions. I have no dog in this fight other than to be left alone and enjoy my retirement in peace and quiet without being constantly harassed by illegal short term vacation rentals in my community. I was not looking for this conflict but it was thrust upon and the other neighbors by Mr. Kern and his clients. As I indicated in my letter, Mr. Kern represents 10 STVR owners in Kohala Ranch who have been operating illegal and frequently troublesome STVR's here. In my opinion is activities in this matter have been questionable to say the least. As one anecdotal example, when one of his clients who was operating an illegal STVR apparently asked Mr. Kern in 2019 to intervene with a neighbor of mine who was rightfully objecting to Mr. Kern's clients, continuing unlawfully renting of an adjacent STVR property that was adversely impacting her quality of life, Mr. Kern tried to put a guilt trip on my neighbor in an email by imploring her to be "uncompassionate" and to "think about innocent bystanders". He himself showed no compassion to the plight of my neighbor. I believe you have my neighbor's testimony. This is one example,

this one example show's how Mr. Kern's ethics and priorities are confused. Mr. Kern chose to interject himself into a private matter and to lean on a private citizen in an attempt to try to silence her and her objections to an unlawful activity that was impacting her quality of life and by using disingenuous arguments to try to manipulate and sway her.

- Mr. Robinson: Mr. Bell...That was the end of your three minutes.
- Mr. Bell: Can I just give my final paragraph?
- Mr. Robinson: Please if you can wrap it up quickly we have lot to go through.
- Mr. Bell: I know you do, this is a very complex issue, there are a lot of issues –
- Mr. Robinson: So if you could wrap it up quickly?
- Mr. Bell: Okay. I have several other examples but time limits me here. We have been told by Mr. Kern's supporters that we are now supposed to believe that he will turn over a new leaf and suddenly start being open minded, objective and fair as Planning Director. I am not convinced of that especially since his past activities have indicated otherwise and there have been red flags all over the place.
- Mr. Robinson: Okay, Thank you Mr. Bell, thank you very much. Okay who's next on our agenda? Or next on the public agenda, statements?
- Ms. Aiello: Mr. Chairman, our next testifier is Tiffany Hunt.
- Mr. Robinson: Tiffany Hunt. Ms. Hunt are you on the phone?
- Ms. Hunt: Hi, can you see me? Can you hear me?
- Mr. Heintz: Yes.
- Mr. Robinson: From this distance you're just a disembodied voice. Oh there you are.
- Mr. Wiseman: Mr. Chairman, I have one short question for Mr. Bell.
- Mr. Robinson: Okay, Mr. Wiseman.
- Mr. Wiseman: Mr. Bell, when you allege that there were illegal STVR's, is that due to them not being certified under the new process that went into effect couple years ago? Or why do you claim they're illegal?

Mr. Bell: Mr. Wiseman, who are you, If I may ask?

Mr. Wiseman: I'm a board member here.

Mr. Bell: Okay thank you. Those activities have been illegal in Agricultural zone, Kohala Ranch, forever. We're Agricultural zoned ---

Mr. Robinson: Thank you Mr. Bell. I think we're familiar with 205...Thank you very much. Ms. Hunt if you could go ahead.

Ms. Hunt: Aloha. I have submitted a number of pages of written testimony to this body which I hope helped shine light on the lack of qualifications and questionable ethics of Zendo Kern and my overall concern for the prospect of him serving as our Planning Director. However I would like to share with the ethics board, my personal experience with Zendo. Back in 2012 I briefly served as a chairperson to his campaign until I realized it conflicted with my own newswriting and reporting. After Zendo was elected to the County Council in the 2012 election, he nominated me to serve as a planning commissioner. During that nomination process, I realized I had registered to vote in the wrong district. I confided in Zendo this fact and asked for him to withdraw my nomination so I could update my voter registration. During the course of Zendo's Council term, our personal relationship deteriorated. I stayed true to my journalism, writing critically about Zendo's generally poor performance as a Council member. When it came time to pull nomination papers for the 2014 election, I opted to run for Council district 5, thinking I would be challenging Zendo's re-election. He opted not to seek re-election. Instead he chose to settle the score with me by using his power and influence to convince police and prosecutors to make a voter fraud case against me. Twisting and contorting confidences that I had shared with him when I had declined the Planning Commission nomination. Zendo even went before a grand jury and perjured himself, falsely claiming I wanted to see Fred Blas defeated in the 2012 election against Greggor Ilagan. The Ethics Board is welcomed to seek out police reports and my grand jury indictment to corroborate this testimony. Zendo misused our criminal justice system in an attempt in an attempt to smear my reputation and put me through financial ruin. I am just so thankful for my supportive family that has helped me to defend myself and clear my name. I tell you my story as difficult as it is to come forward with it in order to shine light on Zendo's propensity to use our criminal justice system as a weapon. Having observed and experienced Zendo firsthand, I come before you with serious concerns that Zendo will treat his position as Planning Director similarly. I generally question his ability to treat the public fairly

and equitably at the same time that I question his ethics, his credentials and his technical expertise to effectively serve our County as Planning Director. And I yield my time to whoever is going over. Mahalo.

Mr. Robinson: Thank you very much Ms. Hunt. Who's next? Jeanette?

Ms. Aiello: Our next testifier Mr. Chairman is Tom Berlein.

Mr. Robinson: Tom Berlein? Mr. Berlein.

Ms. Aiello: Mr. Berlein, please unmute your mic.

Mr. Berlein: Good morning, my name is Tom Berlein, and I'm here to testify regarding Mr. Kern's suitability, ethical suitability for this appointed position. I've submitted at least two if not three written summaries of my investigation into his background. Because I just learned of this meeting yesterday morning, I haven't had the opportunity to fully investigate what I believe to be as a gross misrepresentation of his past experience and past affiliations. Nowhere in his resume or any disclosure I've been able to find to the public has he mentioned his affiliation a company called Mind Mastery. Which is a company that he formed here in Hawai'i and obtained a business license which was ultimately permanently revoked. Nor does he disclose his association with a group called the Neurolinguistic Programming, or Programmers. That troubles me mildly. But going back in history, I question with respect to his qualifications and his candor to the citizens of this County, whether he actually holds a diploma from high school. I've not seen a copy of it. I urge you the board to request he produce a copy of that diploma. My investigation suggests that the institution he refers to as having graduated from, and if I can find it here on my computer. It would be the American Homeschooling College Prep Curriculum. So I assume that the school is American Homeschooling, there's no such entity presently listed on the internet and going back to the archives I could find it. So I think that's something you all need to inquire into. When we take another look at his resume he indicates as education, the Hawai'i Commerce of Planning Officials Conference. And I submit to you that that's more of a social network gathering than any type of educational opportunity. Certainly, it would no way provide the training he needs to administer the staff and the budget that his position requires. If you take a look at the 14 companies that Mr. Kern has owned and operated, I've sent a list to you all that highlights the status of those companies. What is telling about the fact that he is actually owned and operated 14 different companies

in this history and I believe the majority of maybe as many as 9 have had their licenses terminated and revoked. That none of those relationships are disclosed on his resume or anywhere in the public record that I can find. I encourage, I urge this Board when they have the opportunity to inquire of Mr. Kern to ferret what relationships still exist. As far as the public relationship – public information is concerned he’s still affiliated with four ongoing companies while he’s being paid in excess of \$150,000 or as I said, maybe \$137,000 by the citizens of this County while he still has his private relationships. And last –

Mr. Robinson: Okay Mr. Berlein your time is up if you could wrap it up real quick.

Mr. Berlein: I’ll wrap it up. Please ask Mr. Kern about the \$60,500 loan his company Tie Aloha pursued and received from the Federal Government to cover the payroll for this company Tie Aloha. There’s gotta be documentation and I’m terribly concerned that his signature is going to affirm the truth of information that is actually false. Thank you for listening to me and for reviewing my written comments.

Mr. Robinson: Thank you Mr. Berlein.

Ms. Aiello: Mr. Chairman our next testifier is Cory Harden.

Mr. Robinson: Cory Harden. Are you on Cory?

Ms. Harden: Can you hear me?

Mr. Robinson: Yes.

Ms. Harden: Yes. So thank you folks on the board for your volunteer service. I have a couple concerns. One is: How often will Mr. Kern have to recuse himself from working on projects he was involved in, in the past. I think Jeff Darrow suggested that as Deputy Director he’ll fill in when Mr. Kern has to recuse but why do we want someone trying to run the Planning Department basically with one arm tied behind his back. My second concern is, Mr. Kern seems philosophically at odds with the Planning Department. Mr. Kern worked on a number of projects which drew fire from the community and were opposed by the planning department he wants to run. For reasons such as non-conforming with the general plan and community development plan, inappropriate use of agriculture land, inadequate infrastructure and school capacity, traffic safety concerns, noise and light pollution, invasive species

and impact to archaeological sites. And I wonder if he should be running Planning Department when he has demonstrated he's at odds with the regulations which he would be tasked with enforcing. And I see the rooster agrees with me. Thank you for considering these issues.

Mr. Robinson: Thank you Ms. Harden I have a lot of roosters running around my house too.

Ms. Aiello: Mr. Chairman we have one final testifier this morning, Claudia Rohr.

Mr. Robinson: Claudia Rohr.

Ms. Aiello: Claudia please unmute your microphone.

Mr. Robinson: Ms. Rohr are you on the phone?

Ms. Rohr: Yes, no. I'm on my ipad, I have video.

Mr. Robinson: Okay. There you are, now we see you.

Ms. Rohr: I'm here because I object to everyone overlooking the word 'and' in the Charter where it says 'or five years administrative experience and training'. I don't believe any of the things that are listed in Mr. Kern's application which I received a copy of, qualifies as training. I personally have three college degrees, two of which are in landscape architecture and landscape architecture requires some planning courses. Even so, I would say that planning, the Planning Director is the County's Planner. And it does require training and, I think Mr. Kern needs to look at his own qualifications and understand that the public will be challenging him and that ignoring the charter is actually a misdemeanor, it's no small thing. I don't understand why Mayor Roth would overlook this but the word 'and training' is important. I don't even believe that being on boards is administrative experience, I think it's more quasi-judicial experience, it's more decision making and the Planning Department has always done the administrative side of the Planning Commission. So they're just making decisions based on recommendations of the Planning Department who has fulfilled the regulatory roll in presenting the application for the Planning Commission to decide on. But I think Mr. Kern needs to look deep within himself whether he wants to be challenged. We just went through four years of having a present that we all issues with.

Mr. Robinson: We're at the County level Ms. Rohr. Not at the national level.

Ms. Rohr: Do we wanna go on subjecting our citizens to governance, or this would be more like regulatory government. So do we want to subject our citizens to that? And Mr. Kern I hope you look within yourself and make this hard decision yourself. It would be best if it came from you.

Mr. Robinson: Thank you Ms. Rohr. Your time is up. We appreciate your comments.

Ms. Rohr. Thank you.

Mr. Robinson: Okay thank you. Is there anyone else who had signed up to testify?

Ms. Aiello: No Mr. Chairman that was it.

Mr. Wiseman: I'd like to make a statement before we move forward.

Mr. Robinson: Okay.

Mr. Wiseman: The citizens who have testified this morning you need to be reminded the Board of Ethics is very limited in what they may consider. And consideration is really for conflicts of interest. Most of the testimony I heard was qualifications, business dealings, character, etcetera, and that's really for the Mayor or the County Council to consider. Thank you.

Mr. Robinson: Thank you Mr. Wiseman, you're absolutely spot on. I appreciate you making that point.

Mr. Bell: This is Stephen Bell, I have an objection to that point, please read our written –

Mr. Robinson: Thank you Mr. Bell. We've already closed the public comments. So thank you very much. And we have received and read all of the information that has been provided to us. So thank you.

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF December 9, 2021
(10:22)**

Motion and Vote: Mr. Wiseman moved to adopt the minutes. Ms. Nakanishi seconded the motion. All members voted aye.

4. NEW BUSINESS

- a. Petition No. 2020-08: Request for an informal advisory opinion from a County employee seeking guidance on potential conflicts as the newly appointed Planning Director. (*Closed hearing requested*)

Mr. Robinson: Now the item here is “closed hearing requested”. Mr. Kern would you come sit up here please? Mr. Kern you’ve requested a closed hearing.

Mr. Kern: Yes I did.

Mr. Robinson: Why do you want a closed hearing? I would think if you’re applying for a public position you’d wanna open it.

Mr. Kern: I’m open to being open. I don’t know, there was just a box there to check and I thought a closed hearing was we were just gonna talk and I’d be able to kind of express to you what the concerns were what was going on. But it being open is fine with me.

Mr. Robinson: Okay. Any board members have any concerns about that, if we make this an open hearing instead of a closed hearing? Okay...

Ms. Nakanishi: David Wiseman, are you saying something?

Mr. Wiseman: Yeah, Mr. Kern. Your nomination has to go through County Council, has it gone through yet or not?

Ms. Aiello: Yeah I can answer that question. It was on the Planning Committee agenda, it’s postponed currently.

RR; Okay.

Mr. Wiseman: What was the answer? I’m sorry...

Mr. Robinson: It was on the Planning Committee meeting last week?

Mr. Kern: Last Tuesday, the fifth.

Mr. Robinson: Last Tuesday, the fifth and then it was scheduled now for next week on the 19th.

Mr. Wiseman: I see, thank you.

Mr. Robinson: Okay. There was comment and then I guess rescheduled, no vote was taken.

Mr. Kern: No vote, no real discussion.

Mr. Robinson: Now I'll allow you to give us your reasons in your petition of why you feel there would not be conflict of interest and how you can be fair and impartial on all matters and I see that everyone, I think on the Board has a copy of your petition is that correct? So Mr. Kern we'll give you the floor so please go ahead.

Mr. Kern: Thank you Mr. Chair, Members of the Board of Ethics, County Council Staff...So in an abundance of caution and just trying to be really above board, I thought having a seat in front of the Board of Ethics would be the prudent thing to do to seek guidance. Other folks that I have talked to in other counties have done things similar so I thought to be beyond reproach this would be the avenue to do that. Happy to be here, I'm happy to have this and no problem doing it open to the public. I'm gonna refrain from getting into discussing what was brought up and in the testimony that's not really what I'm here to do. I'm here to seek guidance from you folks. So, as most of you know I've been in private sector, I've been in public sector the last over five years I've been in private sector doing planning consulting. So we represent clients for various land use applications and land use matters and we primarily have dealt with the Planning Department and the Building Division, but primarily Planning. I've had employees, had a firm, all of that stuff. So prior to getting this position, once I found out that I was gonna be selected for this position, I terminated all my agreements with every single client that I had prior to actually taking the position on the seventh. So we sent out the letters of termination, I still have the entity that, that I was running that business with but that, it won't be actually doing any business. It'll just be sitting there basically on ice, basically filing zeros on its GE tax return. So, I won't be doing any type of planning consulting, I have no interest in any type of consulting, I have no entitlements that I'm seeking. I have nothing in any of those manners. What I do have is I have a desire and a passion to serve my community. I've done that throughout the years as a planning commission member, three and a half years as a volunteer member such as yourselves. I never missed a meeting, three and a half years, 2 years as chair. I don't miss meetings. I do, I have a passion for that. Coming into this position, I have a passion to serve our community. I feel like I have a very unique skillset with being born and raised here, having a business background, having spent time on the Council, time on the Commission. I feel like I'm really well suited for this position. So I looked at every potential conflict of interest that I thought maybe there and basically eliminated those. Now there was applications that maybe I dealt with that were in process or applications or applicants that I had

been working with that now were - now that was terminated. So, what the plan was is to have anything that I might have dealt with in that matter, go to the Deputy Director and they handle it. I don't look at it, I don't give guidance on it, I don't give direction on it, that's already happening. And Jeff Darrow our Deputy Director is fully handling that, staff's aware of that, that's been the directive. I've had you know, the first week, one of the staff members almost started to bring up something that I had worked on, and I said 'Nope, don't talk to me about it, I don't wanna hear about it, bring that up with Jeff.' So he's kind of been the – even before he was Deputy, he's been the conflict guy if you will, so I send it over to him, he handles it, and I don't touch it. So what I'd appreciate is any further guidance from you folks, an opinion, further dialog around this. But I just, I don't see how I'm conflicted out in any way? But again, open to, open to whatever guidance there may exist.

Mr. Robinson: That's your presentation?

Mr. Kern: Yes, quite honestly, I've been in front of the Board of Ethics one time for a different reason. That was, there was no problem. I'm not really exactly sure what we're doing here other than me saying 'Here is my situation, here is how I'm handling it, what guidance can I get from you folks.'

Mr. Robinson: Let me be clear what you're doing here. You submitted a petition to us to ask for an informal advisory opinion as to whether or not there would be any conflicts or any appearance of conflicts in your serving as a Planning Director. In your petition we've read it, you've given us information, we allow you to do a presentation. Now our Board will ask you questions and express our concerns which you will respond to and then we will make a decision.

Mr. Kern: Great.

Mr. Robinson: So that's what you're doing here.

Mr. Kern: Sounds great.

Mr. Robinson: So, at that point if you're through, that's why I asked if you're through I would ask any Board members if they have questions for Mr. Kern.

Mr. Kern: I believe I covered all of the elements and I'm happy to answer any questions.

Mr. Robinson: Okay.

Ms. Nakanishi: Mr. Chairman?

Mr. Robinson: Yes?

Mr. Wiseman: I have a question Mr. Chairman.

Mr. Robinson: Well let's start with Denise and then we'll go to David and then we'll go to Larry.

Ms. Aiello: Pardon me, Mr. Chairman? Can I just say something real quickly?

Mr. Robinson: Go ahead.

Ms. Aiello: This is Jeanette, I've been helping with the technological stuff. For those commissioners that are on the WebEx. I just need to let you know that we need you to mute your microphone in between because if you don't then the view that we see on the screen is gonna be impacted so that's why we're muting you in between so that we can see the other people full screen instead of you when they're speaking.

Mr. Robinson: Okay.

Ms. Aiello: Thank you.

Mr. Robinson: Okay Denise, go ahead.

Ms. Nakanishi: I just wanted to make, I need to recuse myself, for personal reasons, but nothing negative at all. But I need to recuse myself.

Mr. Robinson: Oh so, you're recusing yourself from any participation in this decision?

Ms. Nakanishi: Yes.

Mr. Robinson: Okay. I understand we've had that quite often in the past when we've had ethics requests and Board members have had to recuse themselves for various reasons. We never asked for the reason to, we just asked that in the recusal that it's noted. You're still allowed to stay and listen to the meeting but you just would not be able to vote. Okay Denise?

Ms. Nakanishi: Yes, thank you.

Mr. Robinson: Okay. Mr. Wiseman?

Mr. Wiseman: Yes...Okay yeah Mr. Kern. I notice that there were several companies you listed, or didn't list, in one (?) with respect to the nomination. Is that true or not? I mean are they companies that should be revealed that you may have conflict with if they came up to the Planning Commission?

Mr. Kern: There were some old LLC's that I had that basically went defunct that were maybe just like holding a property or just, that were just there. I listed all of the current companies that I was working for on my resume within my financial disclosures that I had sent in that lists a couple other companies but not that I'm received income or anything.

Mr. Wiseman: I see. Okay, thank you.

Mr. Kern: You're welcome.

Mr. Robinson: Mr. Heintz?

Mr. Heintz: Yes, Mr. Kern...on your petition, under section two, provide the section Code of Ethics that you think might be relevant. I just want to suggest to you that, or bring to your attention that I believe there are a couple more sections that you should just be aware of that I think could become germane. And those, I'll just add them to your existing list. Which, so there would be Section 2-91.1g and 2-91.2. I've, I just call your attention to those. The, I'm adding 2-91.2 because of remark you made just a moment ago. It's the section about post-employment. So it may look like I'm getting ahead of myself but what I would be, where it would become germane, is if you were appointed to this position, and then left this position and then became involved in planning developments and so on, that for one year that section is relevant to conflicts of interest and that you are barred from that except for working for the County. Okay so in other words, it could bar you from such activities in the County of Hawai'i for one year unless you are working as a consultant to the County, that's what I wanted to bring to your attention, are you aware of that?

Mr. Kern: I realize that and I've actually become acutely aware of that, that that's already in place now, as it is because technically I am the Planning Director select. So in the event I was not to carry on with that, I would have that year time. Anyways, so I'm in a very interesting position.

Mr. Heintz: Okay I just wanted to..

Mr. Kern: I appreciate, I really do appreciate it that.

Mr. Heintz: Okay. Another thing I want to point out about your, or raise about your application, under section 3, you say see attached, a complete statement of the facts and then there's an attached paragraph. Okay, that attached paragraph, I'll just read the germane point. 'I previously operated in a planning and project management firm, Kern & Associates, which represented various clients for a multitude of land use applications', okay that, the first sentence. What I would suggest, and ask of you is, a more specific statement. And let me just suggest some language here to know what I'm asking for. I would ask that you provide an exhaustive list of the projects that you have been involved with in planning and project development firms and companies that have or may come before the Planning Department. So there's an exhaustive list, so that it is open and public and in writing, ones that you probably should, at least others could look at, to recuse yourself. I've had this concern because in the short time that I've been on this body, the questions of judgement of conflict of interest and when to recuse oneself, some of our public officials are not the best judges in their own case about when they should. And one should always err on the side of caution and recuse or offer to recuse rather than not doing so. So I just want, that's why I want you to do this and I think it's very important, we're very concerned, our charge as an ethics committee is for open and fair government and to help promote trust in citizenry. I want to, and so that's why I'm very concerned about this. I also want to just, for all my members, all the members, I'm just one of the members of the board, but a great deal of testimony is coming in, probably still as we sit here, I received testimony this morning that I have not had a chance to look at. I'm telling you that I look at this as fast as I can. But this is what I haven't looked at and I also know that I did start to look at this, and on my cell phone, there's testimony that isn't in print form yet. And I haven't had a chance to look at. So I just wanna let you know that I need a lot of time to look at all of this material. I am not inclined to give you, or anyone, advice that your petition is addressing, namely the problem, the question of, that you're raising in part four. The question about recusing and conflicts of interest. I think that's a very open question and I'm not willing to take a position yet.

Mr. Kern: I fully understand.

Mr. Heintz: That's not a question, but it's a statement.

Mr. Kern: And I understand where you're coming from with that and happy to provide the – work on that list and get that list out to you folks and I've always erred on the side of caution. That way I rather recuse myself you know, in those ways than not.

Mr. Heintz: Thank you.

Mr. Kern: Thank you.

Mr. Robinson: Mr. Wiseman do you have any further questions for Mr. Kern?

Mr. Wiseman: No I don't, not at this time.

Mr. Robinson: Okay. Mr. Kern, I've work with and known the Planning Directors for the past 45 years or so here in the County and seen them drift between public service and private service, go back and forth, and the concerns that we've heard from so many people via email or via testimony this morning, are real concerns that they have a perception that there could be the wink and the nod in the Planning Department. I know that we have the State Land Use Commission which gives us the four designations with the three separate ones, or four, for conservation. I know we have the County General Plan; I know we have the Regional Plans and I know we have the Planning Commission. So hearing those concerns and knowing the Planning process, do you understand the concerns that all of the people who have testified and written testimony have as to how there could be the quote 'wink and nod' which gives preference to someone and not to someone else?

Mr. Kern: I do understand those concerns. I think most folks that actually know me, know that I'm very fair even across the board. So even some of these folks, any of these folks that were saying things that may not necessarily agree with or care for, they came in I'd treat em the same. Whether it's somebody that I know, don't know. When I had my time as the Chairperson, I was somewhat known for 'three minutes was three minutes was three minutes.' Whether I knew you, whether I liked you, whether you're my grandma, three minutes was three minutes, it was done. So, my philosophy has always been to treat people fair, treat people how I would wanna be treated. Treated people how I would want a family member to be treated. So I don't really believe in the 'nod wink' situation. I've – being born and raised her I know folks that dirt floors and I know folks that have nice homes and everywhere in between so I just wanna treat people fairly. That's always been thing. I believe there's a lot of good checks and balances within the Planning

Department too especially when it comes to entitlements or serious decisions. The Planning Director generally makes recommendations whether it's a use permit, special use permit, shoreline setback various, SMA Majors, these are major land use applications. Or whether it be rezoning or state land use boundary amendment. The Planning Commission has the decision on a good number of those and the County Council has a decision on a good number of those. So there's somewhat of a perception that because I might know somebody that I would just give them the nod and the wink and they could go ahead and do something. That's not the case. Furthermore I have a large number of staff that care very much about the Big Island as well, they're also looking. They also see what's happening. This is more. I'm born and raised here. Do you, would you think for a minute that I would go and do something like that? Don't know me, but I could tell you right now I wouldn't do that, that just doesn't make sense. I try to be very logical, very pragmatic, I'm a common sense guy, so for me to do that, knowing full well that I have all these eyes on me to do that? I just wouldn't do that, it's just not my thing. I've worked very long and very hard to get to this place. Came from very modest means, and grateful to be here, but I do, I have no doubt that I can treat people fairly, impartially. I feel like I showed a good skillset for that on my time as a Planning Commissioner and my time as County Council. And all the way through. I mean, even when I was representing clients and the Director wasn't giving me a decision that I liked, I didn't get upset about it. I was like 'Ok, that's your prerogative, let's just work through this.' I don't like to take things personal, therefore I just like to treat people very, very fairly. Regardless.

Mr. Robinson: Okay, cause I do know for the Planning process that there are a lot of eyes that look over your shoulder at the County Council level, at the public level and all the commission hearings. You know we now have a Windward and a Leeward Planning Commission, everything has to go through that, so there's a lot of oversight there and I just – if you are confirmed, think about all the people who are gonna be submitting ethics complaints about various decisions you may make that they think are unethical. But that's just something to think about.

Mr. Kern: It is something to think about I mean I began thinking about some of this, prior to even knowing I would get this position. It's interesting because often times we say, Why don't more, you know good folks get into these positions right? And or, it's always challenging and so here I am stepping up and it's obviously there's a fair amount of people that aren't happy about it, there's a lot of

people that are happy about it, but knowing that you're gonna take some heat, that's part of the process, that the eyes are there. I obviously will operate at the highest level and try to avoid any of those types of complaints. Having Jeff Darrow as a Deputy Director is really amazing. I'm not sure if you folks know Jeff but he's been in the Planning Department for many, many number of years, former police officer, former enforcement, Planning VI, Manager, so he's really great. So when are things that are potential conflict, I can turn it over to him, he's more than capable to handle that and he knows that there's a wall there.

- Mr. Robinson: It's kind of interesting he went from Police to Planning. I always found that interesting.
- Mr. Kern: Some of us love planning.
- Mr. Robinson: Yeah. Any other board members have any questions for Mr. Kern?
- Mr. Heintz: Mr. Kern, there was quite a bit of oral testimony this morning, about half of it I don't think was germane to your petition. But there was testimony that is germane to your petition namely about, the question about, of conflicts of interest. The possible judgment with regard to recusing yourself. Do you have any comments about, in response to any of the points that any of those individuals or any of that testimony we've heard this morning, do you have any comments about any of that?
- Mr. Kern: Sure. So if there, again, if an application I was involved in, were still being processed, I just won't touch. It's not something that I'll touch. So one of the testifiers was directly related to a STVRs. Those I've, my company processed a lot of Short Term Vacation Rentals, during Bill 108, this is what we did. Some of them were smooth, some were more conflicting. The issue that was brought up around this one, it's honestly, it's out of my hands, it hasn't been my situation, there's activity going on in that, that I'm no longer part of and haven't been a part of in lead role for a long. I've packaged and processed the applications and submitted it.
- Mr. Heintz: Now you're talking about the one that Mr. – Dr. Bell just brought up?
- Mr. Kern: Correct.
- Mr. Heintz: Okay. So when I look through this material I'll know which one you're talking about.

Mr. Kern: Yeah, and I've communicated with folks in the community at times and I've emailed and I've tried to find middle ground and find resolve, it's part of what we do as a consultant, it's part of what I'd do if I was an attorney or something like that, so I think that's part of the process, never do I try to go negative on somebody in that way. But again those, that situation's really, it's in another realm. Another testifier is very personal, I think we'll just leave that as it is cause I don't think it relates to this. As far as the bringing up around Tie Aloha, I have no ownership in Tie Aloha, at all. I was an RME for that company, VP, but no relationship there so this whole loan situation I had no part of that at all. I think we discussed the company situation briefly. Ms. Harden's concern about how often I'd need to recuse myself, based on, I'm gonna have to recuse myself some, it's part of the process. I also think that me recusing myself on some of those is because I've had a tremendous amount of experience on the private side working through things, what leads well to actually serving as Planning Director and processing and operations within the Department so I feel like that's a balance there again the Deputy Director being able to take those over. I don't see it, and shortly, those will fall off. Right, that's not an ongoing thing cause I'm not doing anything privately. So the ones that were there, the ones that I had worked with, shortly, those will no longer be there.

Mr. Heintz: And those will be on the list that I asked for you to provide?

Mr. Kern: Absolutely. Yep.

Mr. Robinson: And you would be providing that list to the Board of Ethics?

Mr. Kern: Sure.

Mr. Robinson: Cause you submit annual disclosures; we've had other employees who've submitted disclosures with substantial list of clients that they'd had previously that they recuse themselves from as well. That's a lot of work. Just so you're aware.

Mr. Kern: To get the list?

Mr. Robinson: Well, you know it's like, you push a button for account receivables, and then everybody that was, when you had a company, that you had an account receivable from, you would have to recuse yourself from anything dealing with any of the projects they may have.

Mr. Kern: Correct, and I pretty much have that list together so I can just make sure that it's complete. So again that's the list that I've used for my disclosures in the past as well, previously sat on the Water Board, so I'd disclose all those things as well. So yeah, that's not a problem. And these, I'd disclose clients that I represented or worked with.

Mr. Heintz: Thank you.

Mr. Robinson: And when I talked about State Land Use, County General Plan, Regional Plans, Planning Commission, the one thing I forgot to add was the Board of Appeals. Cause every decision you make, if someone doesn't agree with, they can appeal to the Board of Appeals.

Mr. Kern: That's right, and there's General Plans, there's Community Development Plans, There's Chapter 205, I mean there's a lot of framework around that, and what I've seen, in my short time of sitting in this position as Planning Director select is there's a lot of really great talented people in the department that are working really hard. And a lot of what we're working on is you know, administrative matters, keeping things moving, answering the questions, it's a great department. It's like I say, as you say, there's a lot of checks and balances there, and I think with the mindset that I have of treating people fair on an island I think I'll do a really, really, really good job.

Mr. Robinson: Okay any Board members have any further questions for Mr. Kern? Mr. Wiseman?.. Mr. Wiseman?

Mr. Wiseman: No, no I don't have any more questions. Thank you.

Mr. Robinson: As this point the Chair would entertain a motion regarding this application. I shouldn't say application, I should say this petition.

Mr. Heintz: Mr. Chairman I, just suggest that we defer until we have an opportunity to go through the written materials and the testimony. I don't know if that would mean we'd have to go to the next meeting or, or not. What are our alternatives. I mean I'd like to act as soon as possible...

Mr. Robinson: Yeah we could either take a recess and review the rest of this material or we could postpone it to our next meeting and allow us the time in between now and our next meeting to review all of the material, or we could just go ahead and make a decision without

reviewing the material. But I get the impression we'd all like to review the material.

Mr. Wiseman: I would second Larry's motion.

Mr. Robinson: So, what would you prefer to take a recess and review the various correspondence we received or just to defer this to our next meeting, which is scheduled for February 8th? What would you prefer?

Mr. Heintz: Well I don't believe I have time to do that today, because not only is it all this, but there are things I noticed on my phone this morning that are not in here.

Mr. Robinson: So would you be ok with that Mr. Wiseman, deferring it to our next meeting February 8th?

Mr. Wiseman: Yeah I would move to defer to February 8th.

Mr. Heintz: I have a question, is there a problem with it being deferred that long for Mr. Kern?

Mr. Kern: I don't believe there's any problem with that on my end. Again I sought this out, I wanted to get your folks opinion on it, so I don't think so.

Mr. Heintz: That is my motion then that we defer until the next meeting.

Mr. Wiseman: Right, I will second that.

Mr. Robinson: Okay, so it's been moved and seconded that we defer decision on this petition until the next meeting which is scheduled for February 8th.

Ms. Hall: When would you like Mr. Kern to provide the Board with the List? Do you have a deadline for him? A deadline would be helpful just on our side to put the information together for you guys ahead of time so we don't run into this situation again.

Mr. Robinson: Yeah, no that's a very good point.

Mr. Wiseman: I would request on or before January 25th.

Mr. Robinson: Yeah, if you would do that Mr. Kern. Before January 23rd. Or how about the end of January? Give us a week.

Mr. Kern: Yeah I was gonna offer up the end of January if that's fine. If the 23rd is critical I'm sure I could make that work, it's...

Mr. Robinson: Let's just say the end of January that'll give us a week to review the list and we can read additional correspondence we got, any additional research we may need to do, we can do. And then we'll continue this to February 8th. All those in favor say aye. Motion carried. Thank you Mr. Kern. Appreciate it.

Mr. Kern: Thank you all very much and have a wonderful rest of your day.

Motion and Vote: Mr. Heintz moved to defer the decision on the petition to February 8th. Mr. Wiseman seconded the motion. All members voted aye. (10:58 a.m.)

Mr. Heintz: I have a question I guess for the Chairman and for Corporation Counsel, all this material that we have, and the stuff on my phone. Is that all part of the public record?

Mr. Robinson: Yes

Ms. Hall: Yes, it will be included. A lot of the stuff that you got in this morning is late, so technically you know we include it as a courtesy but I know that guys all review it and I think that's great. But technically yeah you wouldn't be found to review before you make your decision. But it's always best to review everything that we can get. yeah.

Mr. Heintz: Because even one of the testifiers today indicated that people didn't know about this hearing, some people, until two days ago and that's why we're getting a lot of stuff late. It was in the paper just last week. This may generate more information is all. Thank you.

Mr. Robinson: Liza we got four emails from you today. Is that additional testimony, over what we got, all the printed stuff?

Mr. Heintz: Some of it is.

Ms. Osorio: I think yeah, it's up until we started the meeting, we have that extra packet. I think that there's one or two more that came in after.

Mr. Robinson: Okay.

Ms. Osorio: Yeah, I'll get that to you guys.

Mr. Robinson: Okay. Thank you Mr. Kern, thank you very much for your time. Appreciate it. Alright, Aloha.

5. UNFINISHED BUSINESS (11:02 a.m.)

- a. Petition No. 2020-04: Review draft informal advisory opinion of a complaint alleging the lack of enforcement and/or unequal enforcement of state laws at the Thirty Meter Telescope protest encampment at the Mauna Kea Access Road.

Mr. Robinson: We have a draft informal advisory opinion which I think all of the Board members have received, correct?...And has everyone had a chance to review this?

Mr. Heintz: I have Mr. Chairman.

Mr. Robinson: Mr. Wiseman?

Mr. Wiseman: Yes I have.

Mr. Robinson: And Denise?...Denise?

Ms. Nakanishi: Yes.

Mr. Robinson: Yes. Okay. At this point is there any further discussion regarding this informal advisory opinion. I think it was drafted very well and hit all the points that we had from those voluminous meetings that we had and so if there's no questions, that Chair would entertain a motion to approve this so we can sign it and be done.

Ms. Nakanishi: So moved.

Mr. Robinson: Okay. Is there a second?

Mr. Heintz: I will second.

Mr. Robinson: Okay so it's been moved and seconded that we approve the informal advisory opinion. Is there any further discussion? If not, all those in favor say Aye. Okay motion carried. We'll sign this and it will be conveyed to the appropriate parties.

Motion and Vote: Ms. Nakanishi moved to approve the Informal Advisory Opinion as drafted. Mr. Heintz seconded the motion. All members voted aye. (11:04 a.m.)

Ms. Malakaua: Thank you.

Mr. Robinson: Did you folks wanna say anything?

Ms. Malakaua: Just that we appreciate you taking on this petition of ours and we just are happy that we still have some leaders that are able to uphold the laws equally. And we just appreciate the time and manner in which you took to also address the State. I don't know if that's gonna make any much of a difference but, at least we just needed to make it known that we were very much concerned citizens, regarding how our laws are being implemented. And so we're glad that you guys gave us the opportunity to address this manner in which we were able to get some sort of resolution so thank you.

Mr. Robinson: We wrote a letter to the State Ethics Commission.

Ms. Malakaua: Yes we have that.

Mr. Robinson: So you have that so you've seen that. So, we'll see what they do.

Ms. Malakaua: Right. Okay.

Mr. Robinson: So it was clearly stated it's a State issue.

Ms. Malakaua: It is, it is a State.

Mr. Robinson: So we thank you for your perseverance.

Ms. Malakaua: Okay thank you. God Bless America.

Mr. Heintz: I would just like to make a comment. I am not happy with how long this took and part of the problem is some of the bureaucratic hurdles that this board seems to be forced to go through. Part of the problem is the Covid has made the technical changes made. Part of the problem was the Corporation Counsel's letter that I think added another three months to this process and I just want to say that I'm not happy with how long this took. I just want to share that with you. You folks have made a lot of trips here.

Mr. Robinson: Yes, a lot of trips.

Mr. Wiseman: Welcome to government.

Mr. Robinson: Mr. Wiseman? Welcome to government?

Mr. Wiseman: Welcome to government, and in most cases any government.

Ms. Malakaua: Well, thank you again. We appreciate it.

Mr. Robinson: Okay. And if you could let us know if you ever receive anything from the State Ethics Commission. Thanks again, Aloha.

b. Selection of Board of Ethics Chair and Vice Chair for 2021. (11:07 a.m.)

Mr. Robinson: I guess I'm in a hold over status from the County.

Mr. Wiseman: Aren't you holding over until another month or two?

Mr. Robinson: Yeah, I'll stay as long, until they find some replacements and then I think I'm limited to three months. So I'll still hang around. Although I did get asked to serve on the Police Commission, so, that'll be the 5th commission I've done.

Mr. Heintz: And you don't have the sense to decline?

Mr. Wiseman: I would move to continue the status quo until at least next meeting. It's fine with me if there's a second.

Mr. Heintz: I'll second that. The only reason not to do that is to give the new chair, the opportunity to perform as chair in front of you. So you can make comments. Barring that, I will second motion that we Rick continues as chair until he no longer is serving in a contemporary capacity. And the moment he leaves, we'll elect David as chair.

Mr. Robinson: Okay so moved and seconded, to continue status quo, pending Mr. Wiseman's appointment. So all those in favor say Aye.

Motion and vote: Mr. Wiseman moved to continue status quo. Mr. Heintz seconded the motion. All members voted aye. (11:09 a.m.)

Mr. Robinson: At this point is there a motion to go into executive session? In the executive session we will review the executive session minutes of December 9, 2020, which we have to approve in the public portion of the meeting. We will also review these confidential financial disclosure forms. Which we have looks like about 37 to review. I think after Mr. Heintz review the ones here they're sent to Denise and Mr. Wiseman for their approval.

Mr. Wiseman: Yeah I signed a bunch a the Mayor's office last week.

Mr. Robinson: Okay.

Mr. Heintz: I have a question Rick, while we're still in the public session, the letter that we had sent to the...I don't have a copy of it, it's like 20 pages long that I've read on the electronic..

Mr. Robinson: The Ethics Commission?

Mr. Heintz: Yeah to the Ethics commission. Is that part of the public record?

Mr. Robinson: Yes, that is part of the public record right Liza?

Ms. Osorio: Yes (inaudible.)

Mr. Robinson: To the State Ethics Commission?

Mr. Heintz: The whole 20 pages with Kamelamela's letter, and the minutes, all of that?

Mr. Robinson: Yeah that should be part of the public record.

Mr. Heintz: And we're not going to review that. That's been sent. I've read it and I have no problems with it.

Mr. Robinson: We went back and forth, J and I went back and forth. That's what we came up with. Based upon the Board's approval to write that at the last meeting and we went ahead and sent it off.

Mr. Wiseman: Okay so I move to go into executive session.

The Board left regular session (11:11 a.m.)

* * * * *

The Board returned to Regular Session (11:57 a.m.)

6. VOTING ON EXECUTIVE SESSION MATTERS

- a. Review of the executive session minutes of December 9, 2020

Motion and vote: Mr. Wiseman moved to approve the executive session minutes of December 9, 2020. Ms. Nakanishi seconded the motion. All members voted aye. (11:59 a.m.)

- b. Re-review of *Confidential Financial Disclosure Forms* filed pursuant to Section 2-91.1(d), Hawai'i County Code, By County board and commission members and designated County employees, where personal matters will be reviewed.

- c. Re-review of *Confidential Gifts Disclosure Statement* filed pursuant to Section 2-91.4, Hawai‘i County Code, By County board and commission members and designated County employees, where personal matters will be reviewed.
- d. Review of *Confidential Financial Disclosure Forms* filed pursuant to Section 2-91.1(d), Hawai‘i County Code, By County board and commission members and designated County employees, where personal matters will be reviewed.

Motion and vote: Mr. Heintz moved to approve financial disclosure items B and C. Mr. Wiseman seconded the motion. All members voted aye. (12:00 p.m.)

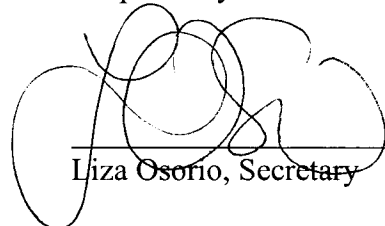
7. ANNOUNCEMENTS

Mr. Robinson announced the Board’s next meeting on February 8, 2021 at 10:00 a.m. at the Hawai‘i County Building, Council Chambers at 25 Aupuni Street, Hilo, Hawai‘i 96720.

9. ADJOURNMENT

Mr. Robinson adjourned the meeting at 12:01 p.m.

Respectfully submitted:



Liza Osonio, Secretary