

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

Monday, February 8, 2021
10:00 a.m. to 11:11 a.m.
Hawai‘i County Building
25 Aupuni Street
County Council Chambers
Hilo, Hawai‘i 96720

Members and Staff Present:

David Wiseman, Vice Chair
Larry Heintz, Member
Denise Nakanishi, Member
J Yoshimoto, Deputy Corporation Counsel
Liza Osorio, Secretary

1. CALL TO ORDER (10:08 a.m.)

Mr. Wiseman called the meeting to order at 10:08 a.m.

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

Mr. Wiseman: First item on the agenda, will be statements from the public. Do we have any members of the public who are here to testify today?

Mr. Yoshimoto: Mr. Chairman, this is J Yoshimoto, we do not have any testifiers today.

Mr. Wiseman: Okay.

Mr. Yoshimoto: One correction Mr. Chairman. We did receive email testimony, but no live testimony to be provided.

Mr. Wiseman: Is someone going to present that?

Mr. Yoshimoto: No, we can proceed.

Mr. Wiseman: Okay the chair acknowledges emails of testimony that were submitted, as stated by Counsel, and we’ll take that under consideration at the appropriate time.

3. APPROVAL OF THE REGULAR SESSION MINUTES OF January 13, 2021 (10:10)

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

Mr. Wiseman: We have some corrections, proceed Mr. Heintz.

Mr. Heintz: I'll just cite the page and make the correction. On page 2, roughly halfway down the page, the word 'no' should be inserted in the line that reads I have dog in this fight, we want 'no dog'. Just put a 'no' in there. On page 3, the third time that Mr. Bell speaks, the third line, there's an expression 'turn over a new' and that should be 'leaf'. Page 6, the fifth line, 'have the opportunity to inquire if Mr. Kern, to ferret, instead of fair. Page 11, Mr. Kern speaking, 'Yes quite honestly I've' and the word 'been' should be there, just been left out I think. Page 13. There's always more corrections when Mr. Heintz speaks. The fifth line of Heintz, where it reads 'and those I'll just add *them*' and continuing that same line, would we simply omit 'which' or whatever that is. Okay? Page 14, Heintz again speaking, half way down the page, 'I've had this concern because in' and it should be *the* instead of *a*, the short time that I've been on this body. Page 20, Heintz speaking on page 20, the first time, towards the end of the first line, 'because *not*', rather than 'no'. And page 21, the 2nd time that Heintz speaks, the 3rd line '*it* was in the paper' rather than '*I* was in the paper'. I guess you can tell I'm an old philosophy professor. Retired. Thank you.

Mr. Wiseman: Ok, the staff will take note of those corrections and make them. With those corrections, can we vote on a motion to approve the minutes?

Mr. Heintz: I move.

Motion and vote: Mr. Heintz moved to approve the minutes. All members voted aye. (10:14 a.m.)

4. NEW BUSINESS (10:15 a.m.)

- a. Petition No. 2021-02: Request for an informal advisory opinion from a County employee to determine whether there is conflict of interest to work for another employer. (*Closed hearing requested*)

Mr. Yoshimoto: Mr. Chairman this is J. Yoshimoto, Mr. Malson is here. We know he requested a closed hearing so we'll ask him to come forward to the microphone.

Mr. Heintz: I just have a question about the closed hearing. I'm puzzled why we want a close hearing or why Mr. Malson would want a closed hearing.

Mr. Wiseman: I suggest we ask the petitioner. That's what we did with the last one, Mr. Kern I think. Is he present?

Mr. Malson: Yes I am.

Mr. Wiseman: Could you state your name? Cause it's handwritten..

Mr. Malson: Hi, yes good morning my name is Laine Malson, spelling L-A-I-N-E M-A-L-S-O-N.

Mr. Wiseman: Ok. To begin with here, you're allowed three minutes to submit a summary of your testimony. At the end of the three minutes there'll be a bell to ring to notify you that the three minutes is up. Before we begin, why did you request a closed hearing?

Mr. Malson: I wasn't sure whether to open or close, so I just went with close, sorry it's my first time in front of the Board.

Mr. Wiseman: Okay. J, I'll defer to legal counsel how we'll proceed on this.

Mr. Yoshimoto: Yes, so Mr. Chairman, the Board would need to make a determination as far as the basis for going into closed hearing. Normal protocol would be there's some type of privacy interest or something that's confidential. So maybe if we can ask the petitioner if there are any privacy concerns or any kind of confidentiality related to his petition he can state so.

Mr. Wiseman: Mr. Malson, public events and public government operations always favor open hearings. To have a closed hearing like in court, there has to be some reason. I understand the form that you checked off gives you that option, private or closed, but do you have any specific reasons why this should be closed hearing?

Mr. Malson: No I don't.

Mr. Wiseman: Alright, so we'll proceed with an open hearing.

Mr. Heintz: Mr. Chairman I'd just like to note, we've had this problem before and this might be a matter that our forms should be revised or there should be some instructions to the petitioners in the future, that default is an open hearing. I don't know if we could do something like that. Thank you.

Mr. Wiseman: Yes, I concur with that and I think we will, perhaps our legal counsel J, perhaps you can look into that? Cause I haven't seen a form but I understand that from the last petitioner we were in a

similar situation where we asked him why he wanted a closed hearing and he said, 'well the form just said closed or open, so I just checked closed.' And I think the form should be for an open hearing please state a specific reason such as privacy, confidential matters, something like that. Or perhaps we can look into changing that form?

Mr. Yoshimoto: Ok, yeah we can definitely do that Mr. Chairman. So just for the record for this one hear, we should note for the record that the Board decided to have this hearing in open session, so that would require a motion just so the record's clear that the Board did make a decision. So Mr. Heintz...

Mr. Heintz: I'll make a motion that the hearing be an open hearing at the request of the petitioner after consultation with what the understanding is.

Mr. Wiseman: Do I hear a second on that motion?...I'll second it.

Motion and vote: Mr. Heintz moved to have an open hearing. Mr. Wiseman seconded the motion. All members voted aye. (10:20 a.m.)

Mr. Wiseman: Okay Mr. Malson, you may proceed with your three minutes.

Mr. Malson: Good morning Board, I recently got hired as part-time Golf Course Starter with the County. I'll start next week on the 16th and I currently work for BEI Hawai'i. We do have some of the County contracts. I am an outside sales representative, so It's basically just account maintenance. I was in charge of the Aquatics contract, sorry not the contract but the Aquatics account. I had given that account up once I got confirmation that I will begin with County. So I currently don't have any County accounts under my portfolio. I'm just hear in front of the Board just to get the okay that it's gonna be okay to work for the two parties, two entities.

Mr. Wiseman: As a Golf Starter, I play golf once in a while. You go down the golf carts and just get people on the move is that right?

Mr. Malson: Yes, so I'll be sitting in the office, the starters office, I'll be helping the Marshal. But it's more getting people out on the course, making sure that they tee times are held up to standard and the golfers are gonna be safe.

Mr. Wiseman: Okay. Any other members have any questions?

Mr. Heintz: None.

Mr. Wiseman: With their being none, Okay thank you Mr. Malson. Our legal counsel J, what's our procedure now this is for an informal advisory?

Mr. Yoshimoto: Yes Mr. Chairman so it looks like based upon the petitioner's representations there are no conflicts of interest at this time. I would suggest that the Board issue an opinion consistent with the facts as stated now, and also with some guidance that he should be fine so long as he complies with the provisions of the code of ethics involving conflicts of interest and fair treatment.

Mr. Wiseman: Very well. Do I heard motion to issue a decision to determine no conflict in this matter?

Mr. Heintz: I so move.

Mr. Wiseman: There's been a motion made by Mr. Heintz to declare that there is no conflict with respect to Mr. Malson's petition (?) working as a golf course as a Starter. Do I hear a second?

Ms. Nakanishi: I second.

Motion and vote: Mr. Heintz moved declare there's no conflict. Ms. Nakanishi seconded the motion. All members voted aye. (10:23 a.m.)

Mr. Wiseman: I assume legal counsel will prepare something on this.

Mr. Yoshimoto: Yes Mr. Chairman, so just for Mr. Malson's information, an opinion will be drafted. It will be reviewed at the next meeting in March. You're welcome to attend, but you're not required to. You'll also receive a copy of that Informal Advisory Opinion.

Mr. Wiseman: Mr. Malson, the Board thanks you and appreciates your pursuance of an opinion with respect to this, and taking the matter as a matter of caution to proceed with your vocations. Thank you and good luck.

Mr. Malson: Thank you.

5. UNFINISHED BUSINESS (10:25 a.m.)

- a. Petition No. 2020-08: Continued review of request for an informal advisory opinion from a County employee seeking guidance on potential conflicts as the newly appointed Planning Director.

Mr. Wiseman: As you all may be aware that, subsequent to the last meeting when we heard Mr. Kern, the petitioner here testify, the Hawai'i County Council did approve his nomination. So he is officially now the Planning Director. Our role in this matter was to run parallel to that having no effect (?) and Mr. Heintz at the last meeting just to sum up, you requested we continue to today because you wanted to see more, some of the several alleged people he did business with in his private business is that right?

Mr. Heintz: Yes, I did not have an opportunity to read all the testimony. This packet which I have now gone through, and I've done that. And he has submitted the extensive and exhaustive, I guess, list of people that he's dealt with, that might come before the County Planning Commission.

Mr. Yoshimoto: Mr. Chairman if I may, sorry to interrupt, so for the record Mr. Kern is outside and he's available. However there is an issue because currently right now as I understand it we only have two board members that are able to hear this matter, and we need three members to have a quorum to address anything on this issue. So I would recommend...

Mr. Wiseman: (?) Ms. Nakanishi has recused, right?

Mr. Yoshimoto: That's correct Mr. Chairman.

Mr. Wiseman: So we will have to continue this matter until next meeting and can someone inform Mr. Kern, can a staff member just tell him what's going on.

Mr. Yoshimoto: He's outside and he can hear the proceedings so we will advise him as to the next meeting.

Mr. Wiseman: Okay, very well. So this matter, this petition of Mr. Kern, 2020-20 will be continued for good cause for the next hearing which is?

Mr. Yoshimoto: It would be March 10th Mr. Chairman and also just a quick correction, the petition is actually 2020-08. The Agenda was in error, just so the record is clear.

Mr. Wiseman: Okay, very well.

b. Selection of the Board of Ethics Chair & Vice Chair for 2021 (10:28 a.m.)

Mr. Wiseman: Is this on for today J?

Mr. Yoshimoto: Yes Mr. Chairman, it's still on our agenda. However, of course you do have the discretion to defer this, as you know there's two new incoming members to the Board of Ethics that's subject to official confirmation by the Council. So, if that goes through then we would have two new members for March.

Mr. Wiseman: I would prefer to defer. Do we need a motion? Yes we do.

Mr. Heintz: I move that we defer the decision for the selection of the Chair until our next meeting, March 10th.

Mr. Wiseman: And the Vice-Chair.

Mr. Heintz: And the Vice-Chair.

Motion and vote: Mr. Heintz moved to defer selection to next meeting. Ms. Nakanishi seconded the motion. All members voted aye. (10:29 a.m.)

Mr. Wiseman: Do I hear a motion to adjourn into executive session?

Mr. Heintz: I move that we adjourn and go into executive session.

Mr. Yoshimoto: So actually, we're not adjourning the meeting, we're just...

Mr. Heintz: We're just going into executive session. Thank you.

Mr. Yoshimoto: Pursuant to HRS 92-5a2, 92-5a4 and 92-6a2.

Motion and vote: Mr. Heintz moved to enter executive session. Ms. Nakanishi seconded the motion. All members voted aye. (10:31 a.m.)

The Board left regular session (10:31 a.m.)

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The Board returned to Regular Session (11:07 a.m.)

6. VOTING ON EXECUTIVE SESSION MATTERS

- a. Review of the executive session minutes of January 13, 2021

Motion and vote: Mr. Wiseman moved to approve the executive session minutes of January 13, 2021. Ms. Nakanishi seconded the motion. All members voted aye. (11:07 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 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.

Mr. Yoshimoto: With respect to the confidential financial disclosures, my understanding is the rest of the Board members would also still need to review those, so I would recommend that the disclosures indicated on today's agenda be continued to the next meeting. With the exception of the disclosure filed by Council Member Heather Kimball, my recommendation with respect to that is that her disclosure be forwarded to the County Clerk's office where it needs to be filed.

Mr. Wiseman: Very well we'll follow that procedure. Incidentally when is our disclosures due, do you know?

Mr. Yoshimoto: Would be January 31st Mr. Chairman for all officers and employees of the County. So that can still be sent in.

Mr. Wiseman: I see, okay.

Ms. Nakanishi: So J, all the new appointees will be due already?

Mr. Yoshimoto: The new appointees would need to file I believe within 20 days of their appointment and then there after the 31st of January every year. As well as disclosure when you exit your position as well.

Ms. Nakanishi: Just trying to figure out how to consolidate the review process but doesn't look like that's possible.

Mr. Yoshimoto: Yes, that's correct, unfortunately, it depends when they get on board.

Mr. Wiseman: Okay...

Mr.: Yoshimoto: So with respect to the disclosure filed by Council Member Kimball, if the Board would entertain a motion to send that to the County Clerk's office, that would be appropriate.

Mr. Heintz: I move that Council member Kimball's disclosure be forwarded to the County Clerk's Office.

Motion and vote: Mr. Heintz moved to forward Council Member Kimball's disclosure to the County Clerk's office. Ms. Nakanishi seconded the motion. All members voted aye. (11:10 p.m.)

7. ANNOUNCEMENTS (11:10)

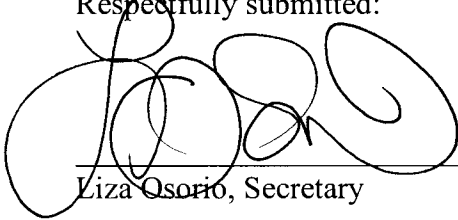
Mr. Wiseman announced the Board's next meeting on March 10, 2021 at 10:00 a.m. at the Hawai'i County Building, Council Chambers at 25 Aupuni Street, Hilo, Hawai'i 96720.

9. ADJOURNMENT (11:11)

Motion and vote: Mr. Heintz moved to adjourn the meeting. Ms. Nakanishi seconded the motion. All members voted aye. (11:11 p.m.)

Mr. Wiseman adjourned the meeting at 11:11 p.m.

Respectfully submitted:



Liza Osorio, Secretary