

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

Monday, June 9, 2021
10:12 a.m. to 12:45 p.m.
Hawai‘i County Building
25 Aupuni Street
County Council Chambers
Hilo, Hawai‘i 96720

Members and Staff Present:

David Wiseman, Chair
Larry Heintz, Vice Chair
Denise Nakanishi, Member
Kelly Valenzuela
Dalilah Schlueter, Deputy Corporation Counsel
Renee Schoen, Deputy Corporation Counsel, Supervisor
Liza Osorio, Secretary

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

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

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:04 a.m.)

Mr. Aracely: Our testifier is Mr. Chuck Flaherty.

Mr. Flaherty: Aloha Kakahiaka Mr. Chair and members of the Board of Ethics. I’m testifying on Petitions 21-05 and 06, with regard to a Leeward Planning Commissioner. 05 as Board member Amy Self knows she was a part of the Kona Community Developmental Plan; she was Corporation Counsel for the (?) committee and so she’s very familiar with the kinds of difficult issues that we’re facing as far as decisions about roads and what not. But specifically around Palama Nui there’s a lot of controversy with regards to the Mauka Makai connector and the information, the changes that were suggested by the commissioner were simply a reflection of what is the current reality. Makalei drive is a private road, its substandard, it cannot be a County major connector as would be required and so a separate road, further to the North is being planned and proposed so I really don’t see where Mr. Van Pernis had any sort of conflict of interest, he did not stand to gain financially. With regard to Petition 06, 21-06 I just don’t think that the complaint has merit. I think that I provided written testimony and I just don’t think that the complaint has any merit and I’ll leave it at that. That’s my testimony thank you very much.

Mr. Wiseman: Thank you, sir. Any members have any questions?...there being none, thank you for your participation, the members will consider your testimony.

Mr. Flaherty: Thank you.

Mr. Aracely: Up next we have Ms. Cory Harden for testimony.

Ms. Harden: I mostly have comments on information getting out to the public, comments on approval of minutes. Could you please ask staff if they could post video or audio recordings of meetings online. The minutes of your April 12 meeting didn't get posted until two months after the meeting. And if you're trying to do a formal records request for an item that's gonna be discussed again you wouldn't get the documents maybe til after the meeting. When the public can access documents in a timely manner then they can give informed comments that can assist the Ethics Board. Per County Council, it's committees, for Planning Commissions, and for some of the Action Committees they have video recordings available soon after meetings and the State Board of Land and Natural Resources just post their audio recording. Comments on 4a and b, the ethics violations alleged by the Leeward Planning Commissioner, I asked, I tried to get information on the petition items and ended up only getting them yesterday because a friend sent them to me. Also when a group of us filed a petition about a council member maybe a year ago, we couldn't even see the Council member's response until we got into the board meeting and we needed time to review the response, so everybody had to come back for the next meeting. But if you go to a court of law or State and County Panel generally you can get background information and find out what's on the agenda so you can make comments. So I'm somewhat concerned about the Sunshine Law being followed in all this. Last comments on the Planning Director, I have some concerns about the client list, Zendo Kern's client list. It's alphabetized by first letter of each name, so Jane Smith comes under J, and if everybody does it that way, every that sees the document great. But if someone ends up using a last name, you're not gonna find that client. Supposed someone gets married and changes their name or they submit a new project and then I wonder how Planning Department's staff will know it's a former client. So that's everything. Thank you.

Mr. Wiseman: Thank you, your concerns are valid & we will pursue some possible remedies if they're available. Look into the technological abilities we to provide those items at an earlier time before the hearing. Thank you. Any questions from the members? Alright.

Mr. Aracely: The final testifier we have for today Nancy Carr-Smith.

Ms. Carr-Smith: Yes, thank you very much. Thank you for allowing me to provide public testimony. I'm providing public testimony on Petition 2021-05. I've been on the Leeward Planning Commission for the last 5 years and just finished my term. I was chair during the meeting that's referenced in Chair Vitousek's letter to you. As mentioned the applicant Palama Nui requested that Mr. Van Pernis recuse himself. Mark had been very vocal about the project in the previous years and it seemed he was biased and had a pre-determined notion as to what should or should not occur in the area. Mr. Van Pernis responded to Palama Nui's letter by stating I quote, "Your project is located in my district and I am familiar with it." He went on to talk about his free speech how it was a long time ago and how we all have biases of some sort. Near the end of his letter, he said, "With all due respect you have no idea of my present or future position on this application, nor has bias toward the application been shown." It's true that we didn't know his position because he had not disclosed it. From there the applicant said it was fine for Mark to participate and we proceeded hearing the case. As outlined in Mr. Vitousek's letter Mark went on to make recommendations to conditions that benefitted the Makalei Estates neighborhood which at the time none of us knew he was a resident of. After the amendments were made to benefit the neighborhood, he then voted "kanalua" on each of the two agenda items. I think he meant to vote I don't wanna vote. But of course "kanalua" does not mean that, and during our lunch break I spoke with Malia Hall of Corp Counsel for the LPC at the time and she confirmed that the LPC rules don't allow for "kanalua" vote, it's "yes, no or abstain" so it was cleared up when we came back from break by myself and Ms. Hall and we asked Mr. Van Pernis what his vote intention was and he abstained on both items. I found it odd to make changes and then abstain. When the mayor brought up the request to the County Council on May 4th to have Mr. Van Pernis removed from the LPC, I rewatched all of the virtual meetings we had over the last year. There were many times that I had to reprimand Mark for his bad behavior. I had to quote the Code of Ethics a couple of different meetings and I had to ask him to treat people in a courteous, fair and impartial manner as quoted from Section 2-83-3 of Article 15 of the Code of Ethics. There were also previous meetings that I and the applicant both felt that he should've recused himself and he didn't. There are numerous other times that Mr. Van Pernis treated people poorly. There were also many times that myself and Chair Vitousek had to mute the commissioner. It's hard to believe that this could continue on and

that there's no repercussion for this kind of behavior. Other commissioners have no issue with disclosures or recusing themselves, only Mr. Van Pernis thinks that he is above this and I ask you to strongly consider his lack of ethics to be a danger to this important County commission. Thank you.

Mr. Wiseman: Thank you. Any member have any questions?...When you mentioned that he said "This is my district.", what was that referring to? That he lived in the district, in that particular neighborhood? Or just in general, the district area?

Ms. Carr-Smith: Yeah he tends to do that, he's stated that a couple different times you can see in the minutes, you know he feels that he knows the area better than some of us, even though we're all representing the west side of the island. So I took it to mean that, that he knows the area very well but my point was is that he wasn't specific about saying 'Oh I actually live right above it.'

Mr. Wiseman: I see, thank you. Any other questions from the members?...Alright thank you ma'am...before we proceed I'd like to just mention a couple housekeeping mentions that we do have a quorum with members. We have Lawrence Heintz, present, we have Denise Nakanishi, myself David Wiseman and we have Kelly Valenzuela. So we do have a quorum and we welcome Ms. Valenzuela, to her first meeting here, as a new member. Thank you.

3. APPROVAL OF THE REGULAR SESSION MINUTES OF April 12, 2021 (10:16 a.m.)

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

4. NEW BUSINESS (10:19 a.m.)

a. Petition No. 2021-05 Review of a petition requesting guidance as to whether the actions of a Leeward Planning Commissioner is in violation of the Code of Ethics.

Mr. Wiseman: We have heard some testimony from the public regarding that petition. Is anyone else present that wishes to speak? Yes sir?

Mr. Van Pernis: I am Mark Van Pernis and I'm not sure if the item is asking for a (?) or any opinion or something guiding me or just generally?...

Mr. Wiseman: This is the time set for the hearing on this matter.

Mr. Van Pernis: I understand.

Mr. Wiseman: I see that you did indicate that you didn't have enough time, you got the –

Mr. Van Pernis: I'm waiving that pitch. I submitted a written response by mail and by email to Ms. Carvalho and I'd like to know if the board members have seen that and read it.

Mr. Wiseman: Yes we have received it, and I have reviewed it.

Mr. Van Pernis: My position is stated thoroughly in that document and it first raises a question at least from what I see is jurisdiction. The Palama Nui matter was advisory only, advising the County Council on whether or not to pass an ordinance that would further extend the subdivision approval and in terms of the adjoining property, Makalei Estates, it was totally unaffected by anything that took place there. I live approximately a mile or more away and the statement is of my, my written statement covers all areas. But I would first like to know what about the jurisdiction. I'll also point out that Ms. Carr-Smith was the Chairman of the meeting back in 2020 and there was no objection from her or anyone else. I'd also like to point out that the recusal was misstated in Mr. Vitousek's (?) and writings. That's clear in my writing too. So if everyone has thoroughly read my writing, I'll rely on that.

Mr. Wiseman: So in addition to what you stated, you wish to submit on your submissions, on your writings, right? You're submitting on that and with respect to the jurisdiction, we will consider that and review it and discuss it, however at the (?) I don't see any merit to your position that we don't have jurisdiction over Planning, over the Leeward Planning Commission, with respect to ethics.

Mr. Van Pernis: I'm bringing the matter up because see, Code of Ethics, (?) did not receive any rules of Procedure or identification where it gives them. The letter from Ms. Carvalho (?) with that respect, but the Code of Ethics which she(?) did review in detail refers to employees, the officials of the County and only (?) not board members or commission members, So I believe the Code of Ethics is controlling the Board or Commission members. There is an exception where they make a final decision, but in this case it was advisory only, so I think I fit in the exemption and Ms. Carr-Smith and I may disagree on various items but the matter she's referring to (?) a year old. That was (?).

Mr. Wiseman: Thank you we'll take that under consideration. Do any members have any questions?

Mr. Heintz: Yes, just a clarification. The LPC votes on applications, it approves and denies applications. So it is not simply advisory, even this particular action may have been advisory to the County Council, it is a board that approves a disapproves and takes...

Mr. Wiseman: That was my understanding.

Mr. Schoen: Good morning, Renee Schoen, Deputy Corporation Council. To answer your question, you are absolutely correct, the Leeward Planning Commission does provide more than advice, its more than advisory in that it does provide recommendation to Council, it reviews major permits, so I would assert that you do have jurisdiction over members of the Leeward Planning Commission.

Mr. Heintz: Thank you.

Mr. Wiseman: Anything else from any members?

Ms. Schoen: If I, pardon me Mr. Chair, I do note that the petitioner is present and he's the current chair of the Leeward Planning Commission, so if there are other questions with respect to what the Leeward Planning Commission does, I'm sure that he can provide that to this board.

Mr. Heintz: You're talking about Mr. Vitousek?

Ms. Schoen: Yes, correct.

Mr. Heintz: Is he going to present his petition?

Mr. Wiseman: Who are we talking about?

Mr. Heintz: The petitioner, Mr. Vitousek. Michael.

Mr. Wiseman: Yeah, is he present?

Mr. Heintz: That's what I think that you said (Ms. Schoen).

Ms. Schoen: Yes I believe Mr. Vitousek is appearing on Zoom. Mr. Vitousek?

Mr. Wiseman: Okay, and so Mr. Van Pernis, thank you for your statement and we'll take them under consideration. You have anything else to add?

Mr. Van Pernis: Yes I wanna point out that the Planning Commission has (?) permit applications (?) applications such as (?). . . But in this instance, the Palama Nui instance some time ago the matter is purely advisory and I believe a fair reading of the Code of Ethics, it does not apply to that situation. I also am, excuse me here, but I am somewhat confused by exactly what it is that Mr. Vitousek is asking for. At the explanation of why I voted as I did, abstained is contained in (?) explanation, and I know of no rule or procedures that requires if you live within a certain distance of a project, being in a subdivision or otherwise, that you somehow have to disclose that. I was not asked and I know of no other such disclosure. Ms. Carr-Smith has disclosed, made a disclosure in the other (?) matter but no one, including myself, objected to the conflict of interest for her husband, had an interest in (?).

Mr. Wiseman: Okay, thank you Mr. Van Pernis. If there's nothing else, we're gonna proceed to continue with this hearing and hear with the petitioner. . . Is he available? Mr. Vitousek?

Mr. Vitousek: I'm here, yes sir.

Mr. Wiseman: Okay.

Mr. Vitousek: Okay, Aloha Chair Wiseman and members of the Board of Ethics. My name is Mike Vitousek, I'm a current chair of the Leeward Planning Commission, thanks for taking the time today to give us some guidance. I hope that you're all in receipt of the letter that we sent outlining the issue and requesting a Board of Ethics opinion. Just to be clear that we're not alleging any violation, we're just requesting an opinion. I'll briefly summarize the concerns that we have. The Leeward Planning Commission was reviewing an application to amend conditions dealing with the scope and timing of roadway and park improvements of the zoning ordinance, which rezones 725 acres to a project district for mixed-use development known as Palama Nui Development. Commissioner Van Pernis's ability to be impartial was questioned in writing by the development, by the applicant, in advance of the hearing, as they believe that his past published opinions showed a personal biased against the project. At the hearing Commissioner Van Pernis stated that his biased didn't prevent him from being impartial, however he didn't disclose the fact that he lives in the Makalei Subdivision at 72-1173 Ho'opae Road which is immediately adjacent to the project area that was under review. And alongside one of the roadways that was discussed in the application that we were reviewing. Without that information, the commissioners and the applicant didn't object to his continued presence on the

commission to hear the application. During the course of the hearing Commissioner Van Pernis used his position on the commission to request changes to the application that affect the subdivision that he lives in and the private road that he lives on. The changes that were requested had a direct effect on Makalei drive, by requesting changes to the wording and the zoning ordinance eliminating Makalei Drive and therefore making it more difficult that road could ever be dedicated to the County for public use. He also requested language to be removed that dealt with traffic and utilities work and work within the subdivision. You know at the time, the changes seemed pretty insignificant, without the knowledge that they appear to directly benefit the commissioner who is proposing the changes. In an application where his ability to be impartial had already been questioned, I believe that as appointed representatives of the community we have a duty to avoid conflict of interest and to avoid the appearance of conflict of interest. The main concern that I have is the lack of disclosure over where you live and then making changes that affect the subdivision that you live in, I feel like that information if presented at the time, would have been taken into account when the commission was considering whether we believe that the commissioner could remain impartial as was suggested by the applicant. Again we'd appreciate a formal opinion on the matter from Board of Ethics, and if there are any questions please let me know, Mahalo.

Mr. Wiseman: Thank you. One question in Mr. Van Pernis's submissions. He states that he lives far away, I think a mile reference was listed from the project as issue. Is that your understanding Mr. Vitousek?

Mr. Vitousek: According to Google Earth calculations of it, he lives .67 miles mauka of the boarder of Palama Nui project, along Makalei Drive which dead ends at the Palama Nui project.

Mr. Wiseman: Okay, is your position that the project at issue would have had some direct or indirect effect on his property?

Mr. Vitousek: The possibility of, also the change that was requested, requires Palama Nui development to construct the road all the way up to the mauka boundary of Palama Nui property, instead of connecting it all the way to the termination of Makalei Drive. Therefore, leaving a gap between the end of the Palama Nui road and the start of Makalei Drive where the two meet, there'd be a gap in between them and having the gab in between them might conceivably make it more difficult for that road to ever be dedicated for public use.

Mr. Wiseman: I see. Thank you.

Mr. Vitousek: So there for increasing traffic through the neighborhood. I don't know what the overall outcome of the change could be but the main concern was the lack of disclosure.

Mr. Wiseman: Thank you. Any members have any questions?

Mr. Heintz: Yes, I have a question. Mr. Vitousek, on page 3 of your petition, the last paragraph, that reads 'at the time the changes to delete Makalei Drive' that paragraph are you with me? The last sentence says 'But it was not until it was revealed that Commissioner Van Pernis resides in the Makalei Estates Subdivision and did not disclose the fact that he lives in the Makalei Estates, were questions raised that require an opinion from the Board of Ethics.' Can you tell me, are you referring to the November 19th meeting?

Mr. Vitousek: The November 19th of the Planning Commission?

Mr. Heintz: Yes, my question, to put it another way, is that the meeting in which he revealed that he lived in the Makalei Subdivision?

Mr. Vitousek: No, I'm sorry that refers to the meeting of County Council Planning Committee to discuss the removal Commissioner Van Pernis from the Planning Commission. That took place later on.

Mr. Heintz: So I guess the question is, when did he reveal that he lived in the Makalei subdivision? Before or after the relevant vote?

Mr. Vitousek: It was revealed at the April 6th, 2021 Planning Committee Meeting. So it was not revealed to the Planning Commission that Commissioner Van Pernis lives in Makalei until months after the application had already been reviewed and gone through the Leeward Planning process. So it was November 2020 when the application came before the Planning Commission and it was April 6th, 2021 when it was revealed that Commissioner Van Pernis resides within Makalei.

Mr. Heintz: Okay. I'm not that familiar with the area that we're talking about but I have the impression that these are both very large developments or large subdivisions and the fact that Mr. Van Pernis's location is 2/3 of a mile from the development at issue that seems like a longways away to me, but, that this would in any impact or advantage him. It advantages a whole subdivision that's including areas that are 2/3 of a mile away. I'm having trouble

getting my head around that this in any way would advantage him as an individual.

Mr. Vitousek: Sure, and the question that we're looking at is not in the distance away that he lives but in the fact that he's making changes that affect the overall subdivision that he resides in. As a member of the subdivision, like the Homeowners Association that controls the roads, so he would be a likely partial owner in that sense of the roadway within the project we believe that the commissioners would have a duty to disclose that information when they're being questioned on whether they can be impartial in reviewing the application if a road from a new development is gonna direct traffic through your neighborhood that could be an issue for that neighborhood and if you reside in that neighborhood your concerns would be different. And it may end up that there was no issue, Commissioner Van Pernis mentions that Commissioner Carr-Smith disclosed the fact that her husband had an interest in property above an application that we reviewed and it was determined that there was no conflict. But it's that lack of disclosure that raised the concern, not the simple fact that he is within the area by itself but the fact that it wasn't disclosed to the Commission that he resides in a subdivision that he made changes to that affected the subdivision that he resides in.

Mr. Heintz: Thank you.

Mr. Wiseman: Alright thank you. Any other members have any questions? There being none, ok thank you very much for your testimony today, Mr. Vitousek.

Mr. Vitousek: Thank you.

Mr. Van Pernis: Can I (?) answer that question please?

Mr. Wiseman: Okay Mr. Van Pernis, go ahead.

Mr. Van Pernis: Yes, Okay. Although I don't enjoy doing it I do believe I have to correct Mr. Vitousek's representations. I do live on Ho'opae Road. Not on Makalei Drive. I use Makalei Drive as my response (?). You only need to read the ordinances that I referred to in the response. All the ordinances. You'll see that there's no interest whatsoever, by Palama Nui using Makalei Estates roads. There's no possibility, zero possibility that Makalei Estates road, which is a private road which is confirmed by the County in my response in the transcript, there's no affect whatsoever on Makalei Drive by the Palama Nui roads. Palama Nui is obligated to build a bypass

road to Mamalahoa...(?) were supposed to do it by 2005, now the Planning Commission with our opposition has moved that back to 2025. But you can read the ordinances and you can see that the changes that I made, or I suggested, were agreed to by everyone including Mr. Vitousek, and they did not affect Makalei Estates whatsoever. They were drafting corrections where appropriate language were put in some of the provisions but not other provisions. And we(?) just pointed out the other provisions and the county agreed to those changes. So I would invite Mr. Vitousek to point out how it's possible that the construction (?)being easements of record, which (?) and the Makalei is a private road to which Palama Nui had no rights whatsoever. How that could possibly have benefited Makalei Estates, there is no change, no change whatsoever in the rights and obligations of Makalei Estates. Mr. Vitousek I think, may be referring to the whole Palama Nui, originally back in 05 or before to perhaps connect to Makalei Drive. But that was not possible. Makalei Drive was a private road and that wish or desire was eliminated totally by Palama Nui in the ordinances I referred to and in their agreement to build a bypass road on Mamalahoa. So I don't believe there's any effect on Makalei Estates at all.

Mr. Wiseman: Thank you Mr. Van Pernis. I believe all those facts are in your submissions as I recall, however Mr. Vitousek is the need to make a public disclosure, which is usually very harmless to make but saves a lot of problems. In any event, the Board will take this under consideration. Thank you.

Mr. Heintz: Is Mr. Vitousek...

Mr. Vitousek: Chair, if I may, I just wanna add that we also have Planning Program Manager Maija Jackson who's available as a witness if there are any questions of her, she was the staff who presented the application.

Mr. Wiseman: Does she wish to offer any testimony at this time?

Ms. Jackson: Yes Chair if I may?

Mr. Wiseman: Yes, proceed.

Ms. Jackson: So I was the planner at the time that presented the Palama Nui application to the Planning Commission and the time I had some knowledge that Mr. Van Pernis may live in Makalei Estates because he had written letters to the editor in West Hawaii Today, and letters of testimony over the years regarding this project. I

didn't know whether he still lived in Makalei Estates at the time that I presented the application to the Commission. So I think what was unusual, and I've worked with the Planning Commission now for 14 years and what was a bit unusual was Mr. Van Pernis's motion for amendments to conditions is that all of his requests to amend the conditions had to do with Makalei Estates. And Mr. Van Pernis typically asked many questions on each application that we present to the Commission, and his questions have to do with different issues related to the application, like roads water supply and what was unique with this project is Mr. Van Pernis only asked questions related to Makalei Estates. At the time we didn't understand why, and it was only after it was revealed at the Planning Committee meeting half a year later, actually it was, the question was asked of Mr. Van Pernis at the Planning Committee meeting in April, but he never answered the question. It actually wasn't until today's meeting did Mr. Van Pernis confirm that he lives in Makalei Estates. I'd be happy to answer any questions you have.

Mr. Wiseman: Thank you, any questions?

Mr. Heintz: I just have one question for Mr. Vitousek. Since Amy Self isn't here, I'll ask a question that she might ask and that's a hypothetical question. If Mr. Van Pernis had disclosed that he lived in Makalei Estates, do you believe that would've changed the vote in the meeting 6 months later?

Mr. Vitousek: I absolutely...the vote in the meeting 6 months later?

Mr. Heintz: Right in April.

Mr. Vitousek: So the meeting in April wasn't a Planning Commission meeting, that was a County Council Planning Committee meeting. That was a meeting to determine whether Mr. Van Pernis would remain on the Leeward Planning Committee.

Mr. Heintz: Okay can I changed my question? When the vote, the relevant vote was taken, if you would've known that Mr. Van Pernis lived in Makalei Estates, 2/3 a mile away, would that have made any difference in the vote? I know this is a hypothetical question...

Mr. Vitousek: I believe that if Mr. Van Pernis that he resides in the Makalei Estates subdivision, it would've had a substantial change on the discussion related to his ability to be impartial, for that application. I believe that would've had an effect on the discussion that the commissioners would've had. Absolutely, yes.

Mr. Wiseman: Okay, thank you. Anything further from any of members? At this time...I believe we have enough to submit some questions to the Board. And the first issue for the Board members, well with respect.to those who testified this morning, we can't allow back and forth and back and forth and back and forth, it never stops so, I am stopping the testimony at this time. Thank you.

Mr. Van Pernis: I think it's important for me to point out that there is a transcript –

Mr. Wiseman: Mr. Van Pernis apparently you didn't hear what I said. We've heard enough testimony, I'm not gonna allow anymore testimony, back and forth, back and forth, your submission are full and detailed and your statements today add to that, and I think we have enough, so please...

Mr. Van Pernis: I think it's –

Mr. Wiseman: We're not gonna hear anymore testimony at this time...

Mr. Van Pernis: Even if –

Mr. Wiseman: Okay, I'm not hearing any testimony, and we will have to block you off if you insist on continuing...Alright so at this time the board needs to decide the first issue that Mr. Van Pernis raised, which our main issue, which is jurisdiction. Any members wish to comment on it?

Mr. Heintz: Well simply as the point I made earlier is that since the Leeward Planning Commission takes actions, approves, disapproves applications it's not simply advisory, and so we do have jurisdiction. At least that's my motion.

Mr. Wiseman: Motion that the Board has jurisdiction has been made. Do I hear a second?

Ms. Valenzuela: I second.

Mr. Wiseman: Motion made & seconded. All in favor...any further discussion of that?...I would add for purpose of discussion that our legal counsel can confirm whether we're correct or not on that issue. Either now or later on.

Motion and Vote: Mr. Heintz motioned that the Board has jurisdiction. Ms. Valenzuela seconded the motion. All members voted aye. (10:53 a.m.)

Mr. Wiseman: Okay the next issue would be...

Mr. Schoen: Mr. Chair, I don't have any issues regarding the jurisdiction and I believe the next item up for the Board to consider is how the Board would like to proceed today. So whether or not you all have enough information to proceed in order to provide an informal advisory opinion, whether or not you have enough information to do that? To provide that informal advisory opinion or whether you have enough information to dismiss the petition? So that's what I see the board dealing with right now.

Mr. Wiseman: The Chair believes we have enough information to proceed. Does any member not believe we have enough information to proceed?...No? Alright so in proceeding, we need to decide whether we will issue an advisory opinion? Or dismiss the petition.

Ms. Schoen: As the Board's reviewing the documents and such, I guess as I see the petitions is asking for guidance if you will, if you look at the last page, page 4, it does, I think, sum up what the Board would look at and that is whether or not, the failure to disclose is an issue...and then also the removal of language directly related to the subdivision in which the commissioner resides in, raises a conflict of interest. So, in looking at your code provisions, the conflict of interest is stated in 2-84 and then I believe the other operative provision would be 2-83(b) which speaks to an officer or employee using their official position to secure some kind of unwarranted favor or privilege. So I guess the Board will determine whether or not it can move ahead in determining those issues.

Mr. Wiseman: Thank you. The Chair is in favor of issuing an advisory opinion...any discussion? Alright so I'll make a motion that the Board take this under consideration and issue an advisory opinion in consultation with our Legal Counsel.

Mr. Heintz: I'll second.

Motion and Vote: Mr. Wiseman moved to issue an advisory opinion. Mr. Heintz seconded the motion. All members voted aye. (10:57 a.m.)

Mr. Heintz: Mr. Chairman, so are we now to express our view of what that should be?

Mr. Wiseman: Yes.

Mr. Heintz: From the evidence, or the information that we have, I fail to see that there is a conflict of interest here. I think that the question of

fairness is also not clearly demonstrated, and I speak as someone who is concerned about the evidence by employees and officers of the County to disclose adequately. I think there's, people need to be disclosing and recusing themselves much more than they have been in the two and a half years that I've been on this Board. I think this is clearly a case of an appearance of failure of an appearance of fairness but when I look at what's here I don't see that the code as it's currently written is violated. Thank you.

Mr. Wiseman: Thank you Mr. Heintz. Anyone else? Alright, the Chair concurs with the member, my colleague's position and would add that I don't see any conflict. However, it is in the public interest, public needs confidence in the operation of governmental institutions. To have that confidence it needs to not have, not look at something that has an appearance of impropriety, whether or not this does is questionable, however it could be avoided without question. With a simple statement of public disclosure. As a Judge for over 20 years, I always had, and I lived in a small island, it would always come up. I represented this guy 15 years ago, in the interest of public disclosure. There's no conflict, there's no anything, but just instills, it maintains a public confidence in the operation of government institutions, especially in Boards that make decisions. So that's my input. Anyone else wish to comment?...Do I hear a motion?

Mr. Heintz: I thought we already had made the motion.

Mr. Wiseman: We did, to make an advisory opinion, yeah. We did make that motion so...

Mr. Heintz: Right and that we do not see that there's a violation of Section 2-83 or 2-84. But we do believe that if the County had appearance of fairness doctrine in place this would fall under that. And that disclosures are, I would say, are greatly needed. Thank you.

Mr. Wiseman: And I would add disclosures are not withstanding the absence of any code mandate on disclosures to the public, on a public board is indeed encouraged and should be pursued. And our Legal Counsel will prepare...do you have any questions?

Ms. Schoen: I think I'm okay Mr. Chair. Basically this petition is a little bit different in that it seems as though it's not alleging a violation but asking more for guidance. And so therefore, in my mind I was thinking well do you need a motion finding that there is no violation but really you're just issuing the informal advisory opinion that there is none...is that correct?

Mr. Wiseman: Yes.

Ms. Schoen: Okay, thank you.

Mr. Wiseman: Okay, thank you.

Mr. Heintz: Mr. Chairman just for the record I'd like to add that I have submitted to the Board a revision to our Code which refers to the appearance of fairness doctrine. And that will eventually I hope, get before this board to make our revisions to our code.

Mr. Wiseman: By all means, I'm familiar with your submission and secretary? Is your title secretary or clerk? Our secretary will include that on the agenda for the next meeting. And while we're talking about that, as some of us may recall, a former member Ken Goodenow, an attorney here in Kona, he did tremendous substantial recommendations and changes in the procedures and he gave us all thick notebooks with changes, he went to every County, comparison sheets and everything and I'd like to just put on the agenda for...sorta go...parallels Mr. Heintz's...desire to have some changes to review, just put review the status. Cause I'm not sure what the status is. The one who really knows about that status would be Mr. Yoshimoto. So maybe we'll call him...Okay, moving on...

Mr. Heintz: Do we need to vote?

Mr. Wiseman: I thought we did.

Mr. Heintz: We haven't actually voted on...

Ms. Schoen: That's what I was trying to clear up, because there seems to be some confusion I would prefer that the Board vote on the motion.

Mr. Wiseman: And this is the motion to issue and advisory opinion, in particular with respect to the guidance request.

Ms. Schoen: Finding that there is no violation of the Code of Ethics with respect to 2-83(b) and 2-84.

Mr. Wiseman: Yeah. Okay so that's the motion, you can assume that's my motion.

Mr.: Heintz: That motion has been made and seconded.

Motion and Vote: Mr. Wiseman moved to issue an advisory opinion finding that there is no violation of the Code of Ethics with respect to 2-83(b) and 2-84. Mr. Heintz seconded the motion. All members voted aye. (11:04 a.m.)

b. Petition 2021-06: Review of a petition alleging that a Leeward Planning Commissioner is in violation of Sections 2-83 Fair Treatment and 2-84 Conflicts of Interest of the Hawai'i County Code.

Mr. Wiseman: And again Mr. Van Pernis, you are still present and we do have your submissions. This is a different issue however if you wanna add anything you're welcome to do so.

Mr. Heintz: Mr. Chairman I have a question; Shouldn't the petitioner Kathryn Hickey speak first to present their petition?

Mr. Wiseman: I'm sorry, yeah my mistake yes. Yes Ms. Hickey, yes I'm sorry it's your petition you have the right to move forward. You may proceed.

Ms. Hickey: Hi, Thank you. Can you all hear me?

Mr. Wiseman: Yes.

Ms. Hickey: Good morning. Thanks so much for hearing my petition today. My hope with this petition is that this Board will vote to remove Commissioner Van Pernis from his position as a Leeward Planning Commissioner. Throughout my petition I hope you can see that it's really more of a violation of 2-83, I think a3, let me see, yeah 2-83(a)(3). The officers, employees of the County while discharging their duties and dealing with the public shall adhere to the following precepts, all persons shall be treated in a courteous, fair and impartial manner. The conflict of interest I think that Commissioner Van Pernis in his response actually did respond to that thoroughly. He basically just said that our neighbors, Tom and Wendy Mitchell, that he just knew them because he had lived on the island so long and that there was no conflict of interest and if that is correct I have no reason to believe that he's lying so I, if it's alright I would withdraw that part of my complaint at this point. But section 2-83-a(3), that is the meat of my complaint. Throughout my two hearings dealing with Mr. Van Pernis, both September 2020 and then in April of 2021, he was incredibly rude, hostile to me and my husband. He made many claims about our petition that were incorrect and inaccurate in order to paint us in a bad light. And I wanna be very, very clear, I am not making this petition because of how he voted. There were four commissioners who voted with him. He was voting in the majority. This is not at

all about his vote. None of the other commissioners who voted against our application were problematic in anyway in their dealings with me. Also, you know, we have moved on from, this isn't even about the decision at against our application. We've moved on with our business, we've leased out our coffee, we have now...I've transitioned my wedding business off-site to take clients at different venues, not at our farm. So again, this is not about our application. Some of the things that Commissioner Van Pernis said about our application, I mean, I've listed them out but I mean, he said things like he's not there to represent us, that is certainly not fair, impartial treatment, that is not at all courteous towards us. He misstated my testimony many, many, times. He said, and this is probably the rudest thing possible that he could've said to us that if we had been farming properly that we would be able to make a living just from farming and we wouldn't have needed to apply for our wedding venue. I think that this all comes to, if you don't have anything nice to say, you just don't say anything at all. He did not need to say that if we had been farming properly we wouldn't have to apply for a permit for our wedding business. He could just not say that. Already it was obvious that the commission was not going to vote in favor of our application, but yet he felt the need to say mean and rude things to us for no reason even though the tide had already turned. The votes were already on his side, yet he needed to say 'Well if they had been farming properly, they wouldn't even need this, they wouldn't even need this permit.' That is so rude and heartbreaking and disrespectful to an applicant to say that they should just try something different and if they had tried better or harder that they wouldn't even need to be applying for that. Also, part of 2-83a(3) is being impartial and it is clear from both hearings that Commissioner Van Pernis had completely made up his mind before our hearing. All of his interactions with the testifiers and us as the applicants in our representation were just so biased, it's hard to even explain how biased they were unless you watched the hearing. We had a report from the Department of Public Works about, or from the Fire Department, about our fire suppression, this is just one example, and how we would have to use catchment tanks because we're off the grid for our fire suppression. Yet, Commissioner Van Pernis asked multiple testifiers where the fire hydrants were near our project, even though in the application and Maija Jackson who was presenting, she's here too, was presenting our application, had already talked the Fire Department having said that we would need to do a separate fire suppression with catchment tanks. So it's just like he clearly already was against our application and was trying to make it look bad for no reason. I don't know why. And then in our second hearing, he said because

he received documents late that our application should be voted against for that reason. I can quote him in my ethics complaint, I did quote him that he said, 'There's all sorts of new information, new positions that have been mentioned, etc. etc.' Then he said 'there's not enough time and all this new stuff requires the denial and then they can apply again.' If that is not an unfair biased, I don't know what is, he's seeing that he received documents late, and that because of that it requires a denial of our application. He's not impartial, he is not fair and he's incredibly discourteous. I can not even imagine a more discourteous commissioner than Commissioner Van Pernis. I highly encourage you to remove him from this position. Many people have testified for this, many people have said his discourteousness is the problem. I am the only applicant as far as I know who's escalated it to the Board of Ethics, but I just felt it was my civic duty. Again this is not about my application, we are not applying again before the Leeward Planning Commission for anything. We do not have any permit applications in the works that will go before them. I do not have a dog in this fight, other than to protect future applicants from dealing with the...I mean, hostility of this commissioner. He really needs to be removed. I am opened to questions. Thank you.

Mr. Wiseman: Okay thank you Ms. Hickey. Any questions from the members? There being none, just as a side point, sort of trivia, locating a fire hydrant throughout the United States, wherever there's a fire hydrant, in the middle of the road you will see a little blue marker. And this was to prevent, for example, fire engines to a fire and it's covered up by the bush, how do they find the hydrant? Well, they look for that blue marker in the middle of the road and it's on the side of the road that the fire hydrant is on. Okay, thank you.
Mr. Van Pernis...

Mr. Van Pernis: Yes, can you hear me?

Mr. Wiseman: Yes.

Mr. Van Pernis: Thank you. I don't know where to start. The transcript was submitted with my response, my response is thorough, the transcript of the proceedings is included if you all have read that you see that my questions are thoroughly proper and reasonable. It's the job of a commissioner to ask questions, be they pleasant or unpleasant. And I did so, and it's also a commissioner's job to

make

statements to the other commissioners (?) against motions. Ms. Hickey does not differentiate between questions and statements or which argument. I don't believe that her husband testified or at

least I didn't ask any questions so I couldn't have been rude to him. My feelings about the second application which I'm not sure which application she's concerned with cause the first application I asked questions about fire hydrants. That was totally withdrawn. The situation of the one where the Planning Department recommended against the application. Many of my questions explored that area, you'll note from the transcript that my questions were read by the, some of my questions were the Planning Department staff (?) be rude...It's not your job to decide who should or should not be on a commission. And this situation was a majority of the commission and the Planning Director recommended against this (?). My motion, I made the motion, I asked the questions, I made the motion, it was seconded by Mr. (?) and passed 4 to 2. I think it's entirely (?). And you should look at the transcript as well as my statement. I submitted the transcript and it shows that I acted properly as a commissioner. Things had to be said whether their (?) or not. The idea of don't say anything if you can't be positive is not appropriate for a commissioner.

Mr. Wiseman: Thank you Mr. Van Pernis. Mr. Van Pernis how do you respond to the petitioner's comments that you were unrelenting in your rude demeanor to her and questions, the derogatory questions to her? ...Did you hear me?

Mr. Van Pernis: I'm sorry I didn't...

Mr. Wiseman: I asked how do you respond to her allegations that you had a very rude demeanor and asked questions that really went outside the scope of the hearing?

Mr. Van Pernis: I didn't ask questions that went outside the scope of the hearing.

Mr. Wiseman: Well statements, statements perhaps.

Mr. Van Pernis: Or statements. My questions were all of the questions are in the transcript.

Mr. Wiseman: Well how about the farming statement? That you seem to be aware of her farming practice and you criticized her farming practice.

Mr. Van Pernis: I recall a testimony that they were farming coffee (?) and they were farming other crops on other acreage. I referred to Wendy Mitchell and ask explained in my response Wendy Mitchell also testified and I was commenting on her testimony. She gave the information that I commented on.

Mr. Wiseman: Okay, Thank you. Any other members have questions? Mr. Heintz?

Mr. Heintz: Not for either party but I have a question for the Chairman and advisor.

Mr. Wiseman: Ms. Hickey I see you're still there. With respect to removal of a board member, this body has no authority for that, so you have to look elsewhere if you think there's grounds for that.

Ms. Hickey: Okay well I guess I would like the harshest penalty that you are able to offer. And also if it's short of removal that's fine. Also when his removal came up before the County Planning Committee, the County Counselors, which has come up now twice, both times they said well what did the Ethics Board say? What was the decision of the Board of Ethics? So I think they're gonna look to your decision as to whether or not his hostility rises to the level of a violation of 2-83(a)3. So if you can at least give it a firm decision on that, that would be excellent. Also just quickly I just wanted to say there's a lot of talk from Mr. Van Pernis about the questions versus discussion. The meat of my complaint is actually after he made the motion there were no questions, he made a motion, there was a discussion on the motion and that is when he started to go and say the things about how if we've been farming properly we could make a living and if he hadn't received the documents late, so none of that were questions and also he had to be reprimanded during that speech by Commissioner Vitousek. So his discussion, not to questions, were what rose to the level of a reprimand from the chair.

Mr. Wiseman: I see, thank you.

Mr. Heintz: Mr. Chairman...

Mr. Wiseman: Mr. Van Pernis I'll give you an opportunity since there was some, very briefly you can respond...

Mr. Van Pernis: Thank you. The matter of late submission of items by the Hickeys was raised by Mr. Vitousek. That is in the transcript where he complained of last minute (?) I merely reciting in the arguments, statements. The arguments and statements supported the motion, of course were adverse the Hickeys. Because the motion was adverse to the Hickeys, was following the Planning Director's recommendation. So there's, as commissioners, after hearing the

evidence we're entitled to make arguments, have our opinions and speak what we think is appropriate.

Mr. Wiseman: Okay, thank you Mr. Van Pernis. Mr. Heintz you had something?

Mr. Heintz: Yes Mr. Chairman, I am not able to take a position on this issue given the information that we have. Cory Harden mentioned that these meetings are on video tape. If that applies to these meetings then I think we need to see those tapes or at least I would need to see those tapes if I'm going to make any judgment. If not, then the transcripts are available, I think I would need to have at least a link of the information of how to, so I could look at these remarks. So until that information is provided, I'm not prepared to make a decision about Section 2-83.3.

Mr. Wiseman: So as I understand, you wish to continue for further review of this matter.

Mr. Heintz: Yeah so that information's provided then I think that we...

Mr. Wiseman: Can you put that in a motion?

Mr. Heintz: Yeah. I move that we defer this matter until we are able to see the records of the meetings in which the alleged remarks were made.

Ms. Nakanishi: I have a question before we second it. I was just curious if Nancy Carr-Smith or anybody else who was at these meetings would like to add input before we...

Mr. Van Pernis: This is Mark Van Pernis I would just like to point out that I did submit transcript with my response of proceedings.

Ms. Schoen: Mr. Chair, If I may, since there's a motion on the floor I prefer that there be, deal with that and then we can address that member's questions...

Mr. Wiseman: Yes, Robert's Rules requires the motion be dealt with and then discussion. Okay, so there's a motion on the floor to continue this matter for further review of the transcript and/or the video of that hearing that's in question here. So do I hear a second on that?

Ms. Nakanishi: I'll second.

Mr. Wiseman: This matter will be...wait I shouldn't have called for a vote; we need a discussion on it. So now you have the opportunity for discussion.

Ms. Nakanishi: I just, you know because these things get continued and continued and continued, I just wondered if there's anybody else who's on the call who may be at the meetings that could add, have input on the matter.

Mr. Wiseman: Is there anyone on...yes ma'am?

Ms. Carr-Smith: Yes, I'm happy to hear that you want to look further into this because you really do have to look at the video recording of the meetings to see what Ms. Hickey is referring to and I think you'll have a much clearer idea so I'm very happy that you're going to do that. If there's any specific questions I'm happy to answer them but I can back up Ms. Hickey's claims about the discourteous and unfair treatment she received from Mr. Van Pernis.

Mr. Wiseman: Very well, thank you for your input. Any further discussion?

Mr. Heintz: David, Mr. Vitousek is also...

Mr. Wiseman: Mr. Vitousek?

Mr. Vitousek: Yes, I was presiding Chair at the meeting in discussion and I would confirm with Ms. Hickey that I was forced to reprimand Commissioner Van Pernis because of what I perceived to be discourteous behavior and I whole heartedly encourage you to watch the video and that will tell the story.

Mr. Wiseman: Thank you. So no further discussion, we'll vote on that motion now...

Motion and Vote: Mr. Heintz moved defer the matter for further review of transcripts and videos. Ms. Nakanishi seconded the motion. All members voted aye. (11:26 a.m.)

Mr. Wiseman: Motion is carried. This matter will be continued for further review which will include but not be limited to the video of the Leeward Planning Commission. As well as any transcript and I think Mr. Van Pernis did submit a transcript. So we'll look for that.

6. UNFINISHED BUSINESS (11:27 a.m.)

- a. **Petition 2020-08 Review draft informal advisory opinion regarding a petition from a County employee seeking guidance on potential conflicts as the newly appointed Planning Director**

1. Review further communication from petitioner requesting additional guidance.

- Mr. Wiseman: Mr. Kern...good morning.
- Mr. Kern: Good morning Mr. Chair and members of the Board of Ethics, Zendo Kern Planning Director.
- Mr. Wiseman: So are those permits being processed even in your absence?
- Mr. Kern: They sure are, it's becoming an efficient system.
- Mr. Wiseman: Mr. Kern you submitted, in addition to, about your sister, can you elaborate on that a little?
- Mr. Kern: Yeah I just wanted to make sure that the opinion was comprehensive. My sister works with some of my former staff that I have no business relationship with, no financial relationship with. But she does work there, so when we had come up, I said we're clearly gonna recuse myself from any applications in perpetuity. We agreed to any former clients, former employees that a year, and being that she's my sister, she's not really a Land Use Planner, she's more in the business operations, books, accounting and that side of it. But I thought just to be with an abundance of caution wanted to make sure that that was addressed specifically. Or just included in the opinion. So I just wanted to bring it up to you folks.
- Mr. Wiseman: So in other words you sorta wanna add an acknowledgement that your sister works there.
- Mr. Kern: Yeah, so moving forward, it's clear, the first year it's very clear anything I had touched I'm not touching right, clients, etcetera. So we moved passed and lets say, my previous staff that again no longer in business with at all, come and they submit an application and my sister's part of that company. Do I recuse myself because she's my sister or is that not an issue? Does that make sense?
- Mr. Wiseman: Yeah.
- Mr. Kern: It's just a little bit different than a former employee because of relations...
- Mr. Wiseman: So in other words if she's part of a company that goes through frequent planning permits...

Mr. Kern: Correct, correct. So if she's there do I continue to recuse myself? You know, from that company she's associated with, does that not matter?

Mr. Wiseman: How do you feel about it?

Mr. Kern: I feel, what we had put together overall and what we had agreed to seems to make sense for me. I mean, she doesn't, she wouldn't be representing applications directly. I try to be very fair, reasonable all the way around.

Mr. Wiseman: And when she has a position with one of these companies...and doesn't involved in pushing the application.

Mr. Kern: Not so much, no she's not one to do that. I mean she'll obviously drop documents off and stuff but she's more on the back end business side of it...so I'm impartial I'm not attached to it at all, I just wanted to make sure it was addressed at this time so as we move forward and it solidified on how to move forward. But I have no attachment to it.

Mr. Wiseman: Any members have any questions about this? So in other words, let's say she's working for ABC company, they submit an application for permit to the Planning Commission. She drops it off, her name's not on the permit. And this company is one of many that will be submitting permits right?

Mr. Kern: Yeah there are numerous consultants and firms that submit permits.

Mr. Wiseman: So if there was any participation on her part, beyond that sort of clerical matter, then perhaps that would be the time for you to recuse. Any members have any position on this?...we could just acknowledge the fact that a disclosure, which is encouraged, that his sister works for the company that does submit applications to his department.

Mr. Heintz: Does she have any decisional capacity in these submissions?

Mr. Kern: I don't exactly know what they're doing and how they're operating, I haven't been in contact with them that regard. I would venture to assume, let's assume that it would say yes, I think in these cases its better to kind of err on the side of a little bit maybe more than less just for the abundance of caution. But again I don't talk to them, I don't know what those are going on, I talk to my

sister, but it's more like regular things and enjoying a cold beverage or something like that but we don't get into the other stuff.

Mr. Wiseman: It's not gonna be that frequent...

Mr. Kern: Well you know there's not a tremendous amount of consulting firms, so the frequency would be somewhat subjective. It's gonna, that firm that she's with would be multiple times even months in some cases that their applications would be coming in and going through, that currently I don't look at it at all.

Mr. Wiseman: Like you said to err on the side of caution, perhaps a recusal with anything coming from her firm.

Mr. Kern: And that's kinda what I'm here to gauge as where do we go with that and again I'm not attached to it, in any case.

Mr. Heintz: I mean I wouldn't be inclined to say that you should recuse yourself or not be involved in those cases. Just because there's so many cases and so many that have been out there. Without more specifics its hard for me to say.

Mr. Kern: And then I guess that goes into an even greater questions of anybody who has a family member that may work for a firm or an outside party that then does business with the County and if the employees in the decision making capacity, how would they work or react to or respond to those types of things. So it's a bit broader of a question at the end of the day. For me like I say I'm happy to recuse myself but just wanted to bring it up.

Mr. Wiseman: Okay, well why don't we just take that approach. Subject to revisit if you think the need is necessary. I mean she has the only company submitting applicants for example and perhaps that might be a time to revisit. And actually when you recuse yourself it's gonna go to your deputy I guess?

Mr. Kern: Yeah that's right it goes to the deputy, he's handling it just the same way that we're processing and dealing with any types of conflicts now. Which has been working just fine.

Mr. Wiseman: So I think that, better be safe than sorry that we just proceed with a recusal. I think Mr. Zen would recuse himself from many, we'll acknowledge in the draft decision, add to that, that he made a disclosure about his sister, working for a consultant firm that submits applications and to err on the side of caution Mr. Zen will

recuse himself from those applications. And this will be in line with the protocol steps that you mentioned.

- Mr. Kern: Yep.
- Mr. Wiseman: We don't need a motion on that do we?
- Ms. Schlueter: Yes, Deputy Corporation Counsel, Dalilah Schlueter, I guess the question is, is whether the Board right now is voting to add to their findings on Petition 2020-08 or if this will be a separate finding?
- Mr. Wiseman: I would move to add to it, that's something else I wanna add to...
- Mr. Heintz: The existing document, that's a draft, this will be modifying the existing document.
- Mr. Wiseman: Yeah. And at the appropriate place my addition, proposed addition, would be that the in viewing the fact that Mr. Zen came forward voluntarily seeking guidance and advisory capacity, I think that's something that this Board encourages to maintain and nurture the public confidence and sufficiency. As well as commend those initiatives. Something along that line. Okay. Anyone else have any additions?
- Mr. Heintz: Just in a different matter...about the new list that I was just wondering how this compares with the prior list that he gave us, how many additional cases or applicants there were, or roughly.
- Mr. Kern: I don't have the exact number but its probably maybe 2 or 3% change, maybe 10 to 12 I believe. No more than, somewhere in that range.
- Mr. Heintz: 10 to 12 applicants?
- Mr. Kern: Yeah could be a little bit more, could be a little bit less. But it's not, it wasn't a significant change. But the difference is I just wanted to make an abundance of caution to go back through and review. All my old, old records before I got a bit sophisticated with the bookkeeping systems and all the rest of it and there was some found in there. So just wanted to make an abundance of caution those are from some years ago, that those were just put on the list. And the list could be as comprehensive as I could possibly make it. And I want to apologize for not having gone through that on the first go around, no excuses, a lot of stuff going on. A lot of demand, a lot of effort and energy going into things

and therefore I just wanted to make sure I was able to go through that and make sure you guys had the most current list.

Mr. Heintz: Thank you.

Mr. Wiseman: Anyone else?...Sir I'm just curious on, do you get a weekly periodic status report of how many applicants are being submitted?

Mr. Kern: We review the incoming correspondences in mail, so keep a post on it. We have various logs and record keeping and tracking procedures in place whether they be excel spreadsheets or some other stuff we put into place. What we're doing though is we're launching the InterGov system. We'll actually be able to have a lot better metrics and a lot better tracking system at our fingertips cause it'll come in and kinda track out and we can get customized reports. And what not, so yes we do track everything, it's just kind of in different places.

Mr. Wiseman: Thank you. Okay if nothing else, we're gonna adopt the draft decision subject to the additions. We need a motion on that. Okay the chair will make a motion to adopt the informal advisory opinion, subject to the additions which were presented with no objections.

Mr. Heintz: Second.

Motion and Vote: Mr. Wiseman moved to adopt the draft informal advisory opinion subject to additions. Mr. Wiseman seconded the motion. All members voted aye. (11:40 a.m.)

b. Petition 2021-01: Review draft informal advisory opinion regarding a petition alleging that a County officer or employee is in violation of Sections 2-83 (Fair Treatment) of the Hawai'i County Code.

Mr. Wiseman: The chair acknowledges a dissenting opinion to be added to the majority opinion. Did you receive that Counsel?

Mr. Heintz: Mr. Chairman I only gave that to you.

Mr. Wiseman: Oh I see.

Mr. Heintz: I was going to present that at the meeting, I was giving it to you so you could present it.

Mr. Wiseman: Okay. There is a dissenting opinion from Mr. Heintz is requesting this be added to the end of the majority opinion. Any objection to that?...there being none, you wanna add anything to that Mr. Heintz?

Mr. Heintz: Well maybe I should just read it into the record?

Mr. Wiseman: Okay, sure.

Mr. Heintz: There's one editorial change. I guess it's identified as paragraph 15, so that would be page 3. And that's simply, it's a typo spelling of my name, is H-E-I-N-T-Z. Just need to insert an N. I just call attention to the Board that per rule 4-11b any board member who disagrees with the Board's opinion may file a dissenting opinion which will be placed at the end of the majority opinion. So, I'll leave it to others to figure out where that is. I guess it might be 16. And I've given a copy to the Chairman of what my dissenting opinion is and I'll read it: The County Council established a Code of Ethics and a Board of Ethics to interpret and implement that code. The purpose of this institution is to promote the highest standard of ethical conduct in the officer and employees of the County, so that the public may have trust and confidence in the integrity of government, see attached article 14.1a and b, Cory Harden's petition 2021-01 clearly articulates the problem before us. Does a Council or board member or employee violate the Code of Ethics Section 2-83 (Fair Treatment) when they act as Council member Richards did by both serving as a reference for and subsequently voting for candidate Rodenhurst. Members of the County Council urged Mr. Richards to recuse himself, petitioner Harden and numerous citizens testified that by voting, Mr. Richards was not acting impartially but rather that by both serving as a reference and voting, it is reasonable to conclude that he demonstrated prejudice, bias and or invited a concern of a tainted vote. By denying the Harden petition, the Board of Ethics does not promote 'The highest standards of Ethical Conduct's is being exhibited by County government. I therefore dissent from the majority opinion of the board.

Mr. Wiseman: Thank you Mr. Heintz. So that'll be added as a dissenting opinion...any other discussion on that matter?

Mr. Heintz: As read it, I see a typo, I will fix that typo...

Mr. Wiseman: Motion to adopt the informal advisory opinion?

Ms. Nakanishi: Second.

Motion and Vote: Mr. Wiseman moved to adopt the draft informal advisory opinion with the modification of Mr. Heintz dissenting opinion. Ms. Nakanishi seconded the motion. All members voted aye. (11:46 a.m.)

c. Petition No. 2021-03 Review draft formal advisory opinion regarding a request from a County employee seeking guidance on potential conflicts.

Mr. Wiseman: This advisory opinion I believe is with respect to Ms. Campbell? Is that right?

Ms. Schlueter: That's correct.

Mr. Wiseman: I reviewed the decision.

Mr. Heintz: Mr. Chair, just a minor editorial problem on paragraph 26, the 2nd line that reads 'have a conflict of interest as long as she the protocols', I just think that the 'she' needs to be deleted, I think that's just an editorial issue.

Mr. Wiseman: Okay lets delete that as long as there is...something. Gender sensitive. Any further discussion on the matter of petition by Jean Campbell? And again this was a request for an advisory opinion. Any further discussion? There being none, Chair will make a motion to adopt this informal advisory opinion in Petition No. 2021-03. All in favor. Oh we need a second.

Ms. Nakanishi: Second.

Motion and Vote: Mr. Wiseman moved to adopt the draft informal advisory opinion. Ms. Nakanishi seconded the motion. All members voted aye. (11:49 a.m.)

Motion and Vote: Mr. Wiseman moved to go into executive session. Mr. Heintz seconded the motion. All members voted aye. (11:50 a.m.)

11:50 a.m. The Board left regular session.

* * * * *

12:18 a.m. The Board returned to regular session.

7. VOTING ON EXECUTIVE SESSION MATTERS

- a. Review of the executive session minutes of April 12, 2021. (12:18 a.m.)

Motion and vote: Mr. Heintz moved to approve the executive session minutes of April 12, 2021. Ms. Valenzuela seconded the motion. All members voted aye. (12:18 p.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.
- d. 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.

Motion and vote: Ms. Nakanishi moved approve items 7b through 7d. Mr. Heintz seconded the motion. All members voted aye. (12:19 p.m.)

- e. 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. Wiseman: The Chair would make a note that item no. 6, Eric Dennis which was incomplete.

Motion and vote: Ms. Valenzuela moved approve item 7e. Mr. Heintz seconded the motion. All members voted aye. (12:20 p.m.)

8. ANNOUNCEMENTS

Mr. Wiseman announced the Board's next meeting on Wednesday July 14 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

Motion and vote: Ms. Valenzuela moved approve adjourn the meeting. Ms. Nakanishi seconded the motion. All members voted aye. (12:21 p.m.)

Mr. Wiseman adjourned the meeting at 12:21 a.m.

Respectfully submitted:

Liza Osorio, Secretary