

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

Wednesday, August 11, 2021
10:04 a.m. to 1:52 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, Member
Amy Self, Member
Sinclair Salas-Ferguson, Deputy Corporation Counsel
J Yoshimoto, Deputy Corporation Counsel, Section Chief
Liza Osorio, Secretary

1. CALL TO ORDER (10:04 a.m.)

Mr. Wiseman called the meeting to order at 10:04 a.m.

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

Due to technical difficulties the beginning of the meeting, as well as Ms. Nancy Carr-Smith’s statement was not recorded. But her statement was provided post meeting via e-mail.

Ms. Carr-Smith: Good morning and thank you for allowing me to provide testimony today two of your agenda items. My name is Nancy Carr Smith and I am speaking on behalf of myself as a former member of the Leeward Planning Commission. First, on agenda item 5a, which is your continued review of whether or not a Leeward Planning Commissioner violated Section 2-83 of the Code of Ethics, that being Fair Treatment. As I am sure you have heard, the Leeward Planning Commission voted at their July meeting to make a recommendation to the County Council to support removal of Mr. Van Pernis from the Leeward Planning Commission. Four of the 6 commissioners voted to recommend removal. There was one abstention from a new commissioner and Mark voted no. In addition, and most importantly the County Council Planning Committee voted on August 3 to support the Mayors request to have Commissioner Van Pernis removed from the Leeward Planning Commission. Five of the 8 Council members voted to remove, and one was absent. Mr. Van Pernis’s behavior has been front and center for many people to review, and I certainly hope

that you folks took the time after your previous meeting, to review the video of the meetings that Ms. Hickey referred to in her request. The behavior speaks for itself and the people who have had to put up with this bad behavior over the past year and a half have had enough, and it really is time to put a stop to this person being in the position of representing the County/Community. I would think that if you watched the video, you would see for yourself that Commissioner Van Pernis definitely treated Ms. Hickey unfairly. In terms of your Agenda item 4c which has to do with some County Council members voting against an applicant that the Mayor had recommended for the Leeward Planning Commission, because of her profession. Some people don't seem to understand that Realtors have a natural interest in planning, permitting and land use. The Planning Commission is a good fit for Realtors, because they tend to have a level of understanding of the subject matter that some others may not. Some people automatically think that Realtors are only interested in development which is simply not true. Realtors also have a natural tendency to be drawn to your Board of Ethics, because ethics is a value that our industry is driven by, so again, we understand it. I agree that if County Council members did vote based on the applicant's profession, as I believe they actually said on the record, then I think they should be reprimanded only so that it doesn't happen again. Thank you for listening.

Mr. Wiseman: Thank you for that very informative and up-to-date current status of the situation. Do any members have any questions?...There being none I'm sure this matter will be up for discussion among the board members. Thank you ma'am.

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF June 9, 2021
(10:11 a.m.)**

Mr. Heintz: Page 29 of the minutes, line 19, where I'm speaking. On line 19 which begins "subsequently voting for the candidate Rodenhurst", that line, the beginning of the next sentence, "the" should be deleted and "members" should be capitalized. And then line 24, the line that begins "demonstrated prejudgment" should be 'comma, bias and or invited a concern of a tainted vote. And then on line 26, the 2nd to the last word on that line "it" should be removed. Thank you.

Mr. Wiseman: Very well. The staff will take note of those amendments, make the appropriate changes. Also on the page I'm looking at, which is dated April 12, which should be June 9, is that correct...I was not

Vice Chair, I was Chair, so that would have to be changed.

Ms. Self: This is Amy, I will not be voting because I wasn't here at the last meeting.

Mr. Wiseman: Okay very well.

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

4. NEW BUSINESS (10:14 a.m.)

- a. **Petition No. 2021-07: Review of a petition requesting that the County of Hawai'i cease and desist any and all acts to Usurp Jurisdiction over Crown and Government lands.**

Mr. Wiseman: Mr. Vicente, you can go ahead, you filed a substantial document but you can go ahead and make a short statement, you are limited to a few minutes.

Mr. Vicente: Good morning my name is Dwight Vicente, I'm representing the Hawaiian Kingdom. The history that's before us is a convoluted history, dating back to 1875 with the so-called reciprocity treaty, or treaty of reciprocity, done by three U.S. citizens, Fish, Allen & Carter. It's not based on Article 2, Section 2 of the U.S. Constitution. The treaty is based on the North West ordinance of July 1787, this is a non-law because with the adoption of the U.S. Constitutions September 1787 it was reduced to Article 4 Section 3 Clause 1 and 2. 2 reads that the congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the U.S. The belonging meaning prior to September 1787. What they did was they've been applying em, you can go back to President Monroe in 1820, he appointed John C. Jones as the agent for the U.S. And he sent over the missionary family and the U.S. Navy as part of this colonial policy. As matter of fact, he was one of the three stooges that wrote the Northwest Ordinance which is a plan, it is called the Jefferson, Monroe and Dane plan. And it was only a Plan dealing with the Ohio River Valley and this dates back to the Continental Congress, where the Continental Congress had promised the individuals that fought in the Revolutionary War, they would pay em with homestead on Indian Land in the Ohio River Valley. So that's why that plan is in effect. But it's limited to the Ohio River Valley. What they did was they extended to the 1875 Reciprocity Treaty. And that's how the U.S. took over. Given the U.S. Citizens that were here under a fake treaty, rights as if they were in the

Ohio River Valley. I think the word is “comity”. They ask to participate with the Kingdom’s Government, the right to vote under the 1887 Bayonet Constitution which they forced upon King Kalākaua. With that, they also amended the treaty to include a lease for Pearl Harbor which is invalid under Article 1, Section 8, Clause 17, which limits it to the 13 States. Under Article 1, Section 2, Clause 3, of the U.S. Constitution. U.S. Military bases are within the U.S. not under that Article 1, Section 2, Clause 3. Not beyond in a foreign country. They cannot even do it by a treaty. So what the County Charter does...

Mr. Wiseman: Mr. Vicente, excuse me. Can you finish your summation? Your time is limited.

Mr. Vicente County Charter, Section 1-2 Geographical Limits, they say that the whole island is the County of Hawai‘i which is not true. The 1898 Joint Resolution limits it to the 1,750,000 acres of crown and government lands that was illegally ceded to the US by the Banana Republic of Hawai‘i. Now the Hawaiian Homes Commission Act which is based on the North West Ordinance is limited to the 1,750,000 acres only and it’s in Section 4 of the Admission Act. The State of Hawai‘i was created to administer the Hawaiian Homes Commission Act which is the 1,750,000 acres only so the County Charter cannot even go beyond that. There’s no authority to even go beyond the joint resolution, no amendment. And then you have the...

Mr. Wiseman: Mr. Vicente, your time is running out, can you just close your statement please.

Mr. Vicente: So the land laws here is based on the 1840 Hawaiian Kingdom Constitution and the 1840 Mahele which lands are crown and government lands as the title, and the sole owner. And all lands are subject to native rights. The County Council and the Planning Department doesn’t recognize native rights to the land. That’s all lands...

Mr. Wiseman: Thank you. Is that your summation?

Mr. Vicente: I’m gonna reserve the rights to this kingdom.

Mr. Wiseman: Alright, very well. Mr. Vicente I have a question, by what authority do you claim to represent the Hawai‘i Kingdom Jurisdiction?

Mr. Vicente: I'm a member of the Kingdom. We are within the Hawaiian Kingdom. By the way I forgot to say that this meeting is not being on the ceded land, Hawaiian Homes. It's being held...

Mr. Wiseman: But you claim that you represent them, usually attorneys represent someone, someone else. What authority did anyone authorize you to make this petition or represent them?

Mr. Vicente: As a member of the Hawaiian Kingdom, I have the ability and the liability to protect this Kingdom.

Mr. Wiseman: I see. Tell me, what section of the Hawai'i County Code of ethics do you claim was violated?

Mr. Vicente: There saying things that are not true...

Mr. Wiseman: But we, the Board of Ethics has a very narrow mission here. We deal with County Employees, Elected Officials of the County, to see if they're in compliance or any violation of the County of Ethics. We cannot go outside that. I mean, your presentation, verbal and written was very enlightening. It's very informative on the history of Hawai'i, and the background, but we cannot deal with that. It seems like you might have a case in court for the courts to decide, but the Board of Ethics, it seems like its outside of our jurisdiction. Unless you cite a specific code section then we can consider that.

Mr. Vicente: Well the code, what I'm dealing with is first of all, the County is limited to Hawaiian Homes so they have to operate under the Hawaiian Homes Commission Act of 1920 as amended in 1921. The Hawaiian Kingdom which you're usurping power over right now, even having this meeting in the Hawaiian Kingdom, raises some not only ethical but criminal acts that you're involved in.

Mr. Wiseman: But you are petitioning the Code of Ethics for something. I mean, you're petitioning this Board. Pursuant to the Code of Ethics, which we're in a quandary as to what Code Section you are, bringing this forward. At this time I'll ask, any other members have questions or concerns?

Mr. Heintz: I guess my question is, I'm sympathetic with the view that Hawai'i was forcibly, the Hawaiian Kingdom was forcibly overthrown by the U.S. Government, during its colonial period. And so if I'm understanding your thinking, this petition is against the Federal Government of the United States, it is against the Governor and the Hawai'i State Government. It is against the County, the Mayor and all officers of the County of Hawai'i. Is against the members of

this board and it, again if I'm following, then we have no jurisdiction to do anything. Including, response to your petition. Am I understanding that right?

Mr. Vicente: Your questionable jurisdiction is limited to the Section 4 Admission Act Compact which is the Hawaiian Homes Commission Act, and the lands that the Crown and Government lands that was illegally ceded that they re-branded as Hawaiian Homes. So by going beyond that limit, you're in violation by usurp and jurisdiction.

Mr. Heintz: Okay, so are all the parties I listed in violation, because, since the overthrow?

Mr. Vicente: They're not operating under the U.S. Constitution, I believe you even, you took an oath to the U.S. Constitution but if you read the Steinbeck's first message in the 1950 Constitution Convention, he stated the creation of the State of Hawai'i is based on the Northwest Ordinance of July 1787, so you cannot take an oath to the U.S. Constitution because you're not there. You're under the Northwest Ordinance. Which actually, has no force and effect of law once the U.S. Constitution was adopted on September 1787. Because as it reads, Article 4, Section 3 Clause 1 and 2 deals only with the Northwest Ordinance mainly, and then all the property that they acquired prior to September 1787. So there's no amendment to the U.S. Constitution. Nor does the Northwest Ordinance carry over. One of the strangest things I think the Continental Congress is still existence today because they last met, that I read, was in the year 1800 and the U.S. constitution was already in effect so they secretly meeting as I understand even til today.

Mr. Heintz: Thank you Mr. Vicente.

Mr. Wiseman: Any other members have any questions?...Mr. Vicente, have you ever filed a case in court regarding these issues?

Mr. Vicente: The courts here, as Sai v. Clinton and Sai v. Trump, the political question which dates back to the Continental Congress, there is no jurisdiction for the Courts, even the State Courts doesn't have jurisdiction, only over Hawaiian Homes. And the U.S. Courts doesn't have jurisdiction except for applying the North West Ordinance beyond its limits.

Mr. Wiseman: How do you know they don't have jurisdiction have you tested that?

Mr. Vicente: Well the U.S. Constitution limits its jurisdiction.

Mr. Wiseman: No but that's your interpretation. Courts interpret the constitution and if you haven't gone to court with this, it's only your opinion what would exist.

Mr. Vicente: Well the constitution doesn't give the court's jurisdiction over the Continental Congress. There in absolute congress. The only way to get rid of the Continental Congress is with the barrel over the gun as stated in Declaration of Independence.

Mr. Wiseman: Thank you Mr. Vicente. Any other members have any questions?...There being none. Okay thank you for your testimony Mr. Vicente. At this time, do I hear any motions from the members? There being none, the Chair will make a motion to dismiss this petition based on lack of jurisdiction.

Ms. Self: Second.

Mr. Wiseman: Motion has been made and seconded. Any discussion? There being none, we'll call for vote. All in favor of dismissing this petition for lack of jurisdiction say Aye. Petition 2021-07 is hereby dismissed. Mr. Vicente, I wish you luck in your challenges that you stated and thank you for your time.

Motion and Vote: Mr. Wiseman moved to dismiss the petition for lack of jurisdiction. Ms. Self seconded the motion. All members voted aye. (10:28 a.m.)

b. Petition No. 2021-08: Review of a petition requesting an informal advisory opinion from a County Employee seeking guidance on potential conflicts.

Mr. Salas-Ferguson: Chair, we just had some information from Mr. Hansen. Our staff just called him and he actually would like to withdraw.

Mr. Wiseman: Oh he's going to withdraw. Very well. Okay we'll consider petition 2021-08 at the request of the petitioner that it is hereby withdrawn.

Petition withdrawn (10:33 a.m.)

c. Petition No. 2021-09: Review of a petition alleging that members of the County Council are in violation of the Hawai'i County Code and Hawai'i County Charter.

Mr. Salas-Ferguson: Chair I think you can begin with the petitioner's request to postpone, or request for continuance.

Mr. Wiseman: Ms. Asis are you there?

Mr. Salas-Ferguson: Chair, the petitioner submitted a written request via email to continue this til September.

Mr. Wiseman: What was the basis of the request?

Mr. Salas-Ferguson: Chair we have email that was forwarded to all of the board members, does somebody have the email I can read it...Board member Heintz has it.

Mr. Wiseman: Yeah I haven't seen it. I did recall seeing the email come in but I haven't...

Mr. Heintz: I can briefly summarize if you like. The petitioner is on the mainland due to a medical problem with an immediate - close family member and she felt that it was inappropriate for her to deal with this by zoom when she's with her family...serious health problems.

Mr. Wiseman: Thank you. Petitioners request for continuance...

Mr. Salas-Ferguson: Chair because the petitioner was able to submit that request for continuance I believe that procedurally this Board should hear the respondent's opinion on that request as well? Before making a decision to grant it or not.

Mr. Wiseman: Are the respondents present?

Mr. Salas-Ferguson: There's three of them.

Mr. Wiseman: Yes, by all means, we should hear from them on the, and this is just on, not on the merits now, just on the continuance request...Please state your name and proceed, give us your position on the continuance.

Mr. Inaba: Aloha, Holeka Inaba, I'm one of the respondents to this petition. I represent North Kona on the County Council and I believe Ms. Asis's petition and the corresponding letter kinda gives her insight as to what her concerns are, there's...I believe seven pages to that application that would give you folks more than enough information to make a decision today. We're here from Kona and I ask that we take this matter up, or at least allow us to share our stance and our mana'o on this petition today.

Mr. Wiseman: Thank you. Ma'am do you have anything to add?

Ms. David: Aloha Chair Wiseman, yes I do. Mahalo for this opportunity. I do also believe that given the statements of the petitioner in her seven page document does lay out here petition quite well and I really feel, as does Mr. Inaba that, we are here and if you would grant us the permission to say our, state our position here today. Whether you proceed with a decision or not or postpone, I think it would be a good thing for you folks to hear us today. Thank you.

Mr. Wiseman: Thank you. I would defer to our legal counsel if we could hear testimony from them without the petitioner being present.

Mr. Salas-Ferguson: Chair before we do that, Councilmember Villegas I believe would like to say something.

Mr. Wiseman: Oh, by all means, yes proceed Councilwoman.

Ms. Villegas: Aloha commission members, thank you for being here today. It's a big job that you have, sitting in these positions and taking into consideration, ethics complaints and all of the expansive issues that that covers. I just wanted to say that I concur with the opinion of my colleagues and ask that we take this petition up today. You have three council members before you who drove from Kona, we've taken time to prepare our statements and our taking this seriously. And we ask that in the interest of County resources and this time that we are undergoing such challenges that we be allowed to and that you in your wise judgment consider taking this case today regardless of the participation of the petitioner and that we be allowed to state our case and we be able to move forward as there are so many dire circumstances facing our County at this time and it is our truest intentions to serve our constituents and our community so thank you for taking that into consideration.

Mr. Wiseman: Thank you councilwoman.

Mr. Salas-Ferguson: And Chair there is one more respondent online that would like to speak to that motion. Councilmember Kleinfelder.

Mr. Wiseman: Yes, councilwoman you may proceed.

Mr. Kanealii-Kleinfelder: Aloha Board of Ethics, this is Matt Kanealii-Kleinfelder, Councilmember for District 5 in Kona. I concur with my fellow

colleagues and I believe a lot of time and energy has gone into getting us here today and many of us have very tight schedules and we moved a lot of appointments to be here today. So, I concur with my colleagues and I'd like to see some forward movement on this rather than a continuance. Mahalo for your time.

Mr. Wiseman: Thank you councilman...Is there anyone else?

Mr. Heintz: Mr. Chairman? This is Larry Heintz. I have a question for our legal counsel...If we move ahead and hear from the County Council members on this initial petition and this initial petition is charging a violation of 2-83a3 I believe which is a problem of not being treated fairly, fair and impartial treatment and really central to her charge is that when she was nominated for that commission she was not, she was voted unanimously to be approved and then at a subsequent meeting of the council in which she was advised that she needn't be there, there was a subsequent vote that went against her, which is unprecedented and she had no opportunity to testify, which is the core of her complaint. And if now we consider, we do not allow her to postpone her request so that she does not make the presentation and yet the respondents, and I have questions for the respondents as well as the petitioner, we would be repeating the offense of not treating her fair and impartially. And I am sympathetic with the four members of the County Council who traveled and changed their schedules but it seems to me that we would be piling a violation upon a violation. And so I am loathe to not approve a postponement especially given her medical reason and I guess so my question is am I missing something here or is this, is this would be unfortunate for us to move ahead and not allow her to be postponed without hearing her. Thank you.

Mr. Salas-Ferguson: Thank you for that, this is Sinclair Salas-Ferguson, Deputy Corporation Counsel, for the board for today. The board has a few options, they could take testimony from the respondents today and continue it to next week, and allow the petitioner to state their case and give an opening statement. Or the board could continue or the board could hear it today. But I think, that could be a good middle ground, letting the respondents, since they prepared everything today if they have opening statements and present their case and then we continue it til next month to allow the petitioner to present her case and then go from there. I think that could be a good middle ground.

Mr. Heintz: So if I understand you correctly, we would not act on this today but we would make use of our Council members who are present to hear them and the petitioner would then have access to that

response and she would be able to at that time deal with it. I have no objection to that.

Mr. Wiseman: Yes, and I would like to chime in here. We have some special circumstances here with the petitioner off island for medical reasons and we have four council members, three present and one by zoom, ready to testify and give their opinion and court trials that I'm familiar with, if there was a witness that couldn't be present, testimony is preserved, and you can take that out of line or out of schedule and then preserve it and then the other party would have every opportunity they would have if they were present. So at the, in weighing the factors here, the inconvenience and the importance of these Council members work, to make another trip and come over here just to give their opening statements, I find that harsh recourse. So I am in favor of, with all the proper protocols of due process protections for the petitioner to have that, have them allow their testimony today, preserve it with a schedule to be set next, I guess next month's meeting. And the petitioner could, we'd make sure she gets everything, transcripts and all from today. And she could come forward and give her testimony. So we wouldn't be making any decision whatsoever today, except to grant a continuance and grant the council members opening statements today. Anyone else have any...

Ms. Nakanishi: Mr. Chair, I have one question, and as a realtor I am very anxious to hear this, but I do wonder if she was offered the opportunity to join us by zoom?

Mr. Salas-Ferguson: She was. She declined.

Ms. Nakanishi: Okay.

Mr. Wiseman: That actually adds strength to our position of going forward today on a limited basis. So I would, Chair would make a motion to grant a continuance...

Mr. Salas-Ferguson: Chair, sorry to interrupt you but I believe board member –

Mr. Wiseman: Oh, more discussion, okay. Go ahead, okay.

Ms. Valenzuela: I think in fairness to the email that...

Mr. Wiseman: Can you, I can't hear you.

Ms. Valenzuela: Can you hear me now? I think in fairness to her, with Zoom, according to her, I believe she's on a plane. If you read the email,

and it's her father, and its congestive heart failure. So in fairness, I just, it's kind of hard to be on a plane over the ocean on Zoom.

Mr. Wiseman: Yeah good point. Any further discussion on this? Okay there being none, the Chair would make a motion to grant the continuance for good cause and to allow the Council members present and by Zoom to give their opening statements and to preserve those for our petitioner, to make sure she get em in time for the next hearing. Do I hear a second?

Ms. Self: Second.

Mr. Wiseman: Any further discussion?...There being none, all in favor of the motion say Aye.

Motion and Vote: Mr. Wiseman moved to grant the continuance for good cause and to allow the Council members present and by Zoom to give their opening statements. Ms. Self seconded the motion. All members voted aye. (10:38 a.m.)

Mr. Wiseman: So we will proceed. The petitioner's statement and testimony will be scheduled for the next board meeting on September 13, at 10:00 a.m. In the mean time we can proceed and hear the council members testimony. So whoever would like to proceed first, please go ahead...

Mr. Inaba: Chair sorry I think they're verifying that the next meeting date is correct.

Mr. Wiseman: Well that's on the agenda, it says September 13th.

Mr. Salas-Ferguson: The next meeting is September 13.

Mr. Inaba: Okay, I'll proceed...

Mr. Salas-Ferguson: Sorry to interrupt you, Chair one more technical thing, a question for the respondents whether they want this in open or closed session?

Mr. Inaba: I believe the petitioner requested an open session and we're fine with that.

Mr. Salas-Ferguson: Chair Wiseman?

Mr. Wiseman: Yes, sorry. Yes you may proceed, this will be in open session.

Mr. Inaba: Okay. Thank you again, Holeka Inaba. Mahalo Board of Ethics members for being here. I'm here to share the truth on the

complaint before you today and some of the complaints before us overlap all four of us and some are addressed, individually at certain council members, so to start of I'd like to point out that Ms. Asis has listed Article 12 from the County Charter in her complaint and according to the rules of practice and procedure of the Board of Ethics, the rules help to carry the administration of the Code of Ethics in Chapter 2 Article 15 as was stated in an earlier petition today as well as County Charter Article 14. So I'm humbly asking that the complaint citing Article 12 of the Charter not be considered as that complaint falls outside the scope of this body's purpose and this leads us to discuss the fair treatment that Ms. Asis is alleging she didn't receive. And in her complaint states that she was posed with zero questions regarding her ability to serve on the commission and she also states that she was not invited or allowed to participate in the council meeting where her nomination failed. And I think it's important to point out here, prior to this issue that's before you today. It was common practice for chairs of the various council committees to say you do not have to appear at the Council hearing in two weeks if they receive unanimous support in the committee. This doesn't prevent however a nominee from appearing at council. Everyone is provided with the link, we've had numerous nominees come before us, receiving unanimous approval in the committee hearing and still appearing after being told that same statement. So, Ms. Asis made a decision not to appear and as a result, I wasn't able and we weren't able to ask her questions. So she's created this situation by not appearing and then submitting this petition in my opinion, shows her failure to take ownership of her own actions or lack thereof. I'm really troubled by this attacked on my character and the character of my colleagues because she chose not to appear and not present us the opportunity to ask questions. Sadly these faceless claims are causing our County resources, us, and you folks, to be expended unnecessarily and I really thank you folks for your service to our community and humbly ask that you dismiss this petition when you folks hear it, based on this mana'o I shared today. Mahalo.

Ms. David: Chair do I proceed?

Mr. Wiseman: Yes, please proceed councilwoman.

Ms. David: Thank you. I'm gonna take a little longer because I think my role was a little bit more complicated and involved so please bear with me while I read my statement. Aloha honorable Chair Wiseman, Vice Chair Heintz, and Board members Nakanishi, Self and Valenzuela. I'm respondent Maile David, Council Chairperson and Council member representing Council District 6 which comprise

the District of North and South Kona, Ka'ū, and Volcano Village. I would like to thank you folks for this opportunity to respond to the allegations in the petition and response I would like to say that I'm going to do this in accordance with the manner in which the petitioner outlined the code and charter references. So, regarding reference to Hawai'i County Code, Chapter 2, Article 15, the Code of Ethics, the Fair Treatment section, that all persons shall be treated in a courteous, fair and impartial manner, as well as the Charter provision in Article 12, that covers boards and commissions, that says basically notwithstanding any other provision, no person, shall by reason of occupation alone, shall be barred from serving as a member of any board or commission. I believe my decision was made in a fair and impartial manner, and not based solely upon petitioner's occupation. And I just wanted to note that at committee, I myself was on Oahu for a family medical emergency, so I really can appreciate Ms. Asis's position on this. The statements made at the 04-07-21 Council meeting, I based on the review of the March 17th, 2021 video of that planning committee meeting. The statements made by the petitioner and also the public testimony comments. And while I appreciate petitioner's personal desire to sit on the Planning Commission, on the Leeward Planning Commission, I stated, I believed a more diverse representation was necessary, especially for the Leeward Planning Commission. So my statement, the statements that was offered by petitioner and Planning Committee level, and hearing those statements affirmed my desire for a potential candidate that would voluntarily express an understanding of our unique host culture and recognize the importance of protecting and preserving Hawai'i Island's unique cultural and natural resources and our land use decision making processes. Equally important, in your consideration of the merits of this petition, is Hawai'i County Charter, Article 13, Section 13-4b, which states that members shall be appointed by the Mayor and confirmed by the Council. And also Charter Article 3, the legislative branch of the Council of which it's powers and functions state that the County, the legislative powers shall be vested in the County Council. Our primary function would be legislation and public policy and that is to be separate and distinct from the administration of County government. The separation of powers issue I believe is critical in deciding this matter. The Charter provision contained in subsection b above was accomplished when Mayor Roth nominated petitioner for appointment to the Leeward Planning Commission. So then on March 17th 2021, when the Planning Committee forwarded as noted with a positive recommendation, her nomination to Council for final consideration and confirmation. So the recommendation was a positive one but the final decision was to be made by the full

council on April 7th. So at that meeting, confirmation failed with four Aye votes and five no votes. I state that any procedural recourse that could have been entertained within the authority and discretion of the authority, the Council, did not occur. So therefore once the Council took action and the votes noted for the record, petitioner's nomination failed and was officially concluded on April 7th. Now we move to the April 30th, resubmittal of petitioner's nomination by Mayor Roth, and that resubmittal raised procedural concerns whether resubmitting the same nomination after Council took official action, could even be brought before the Council. I've had discussions with the County Clerk, with Corporation Counsel, and an in depth review of our process and procedures, the Charter rules and as well as Robert's Rules of Orders and I believe those considerations is what guided the decision that resubmittal of petition renomination was not proper once official action was taken. While I don't disagree the events experienced by petitioner may seem unfair, however given the specific guidelines and rules that govern the legislative body not willing and will not take part in establishing an arbitrary and unprecedented process that is not authorized in the County Code nor the County Charter. That was a suggestion, I wanted to note. And I did not, I also for your information met with Mayor Roth to discuss these issues that we have. And I wanna be very clear, the personal statements that a fearless Mr. Inaba says to attack our credibility, I have never nor will I ever use anyone or any issue for personal political gain, nor as a means of political retaliation or any underhanded means to get what I want. In my nearly two decades of service in the legislative branch, six years a legislative assistant to former Councilmember Pilago, two years as a Deputy County Clerk, and my fourth and final two year terms, sitting on this Council, as well as 30 years legal experience and a community advocate. People that know me know, I have consistently advocated for open government and have been a staunch supporter of governments obligation to follow the law and procedures to ensure transparent and open government and fair treatment to all. I'm sorry, but this is very difficult for me to maintain. But I will read on, lastly petitioner's reference to Hawai'i County Charter, Article 14 Code of Ethics, she notes section 14-1-b and 14-4-c. And that's the section that says that elected and appointed officers and employees shall demonstrate the highest standard of ethical conduct so that the public may have trust and confidence in the integrity of the government. And also that all persons be treated in the fair, courteous, impartial manner. It's my position that the provisions of the above sections B & C, have been satisfied. And the Code of Ethics was not violated. The Council carried out its duties and exercised its rightful authority under the law. Council

member's respective statements were not conveyed in the disrespectful, unfair or impartial manner. The negative votes to confirm the nomination of petitioner were not solely based on petitioner's occupation. Council members should not be subject to ethical violations for expressing and or justifying their opinions and or position. While I surely empathize with petitioner, I respectfully disagree that the Council's action was in violation of due process. But rather contend that the Council acted and performed its duties within the scope and authority under the law. And with respect to my comment to petitioner that I believed a more diverse representation was needed on the Leeward Planning Commission, I would like to direct this Board's attention to the Honorable Governor Ige's recent nomination to the Intermediate Court of Appeals. Perfectly qualified individual, however, the State Senate rejected that nomination stating the need for more woman, more native Hawaiians and more trial experience. That's diversity in action, in my opinion. I also note for the record, that petitioner's request, that the Board of Ethics consider removal of myself as Council Chair is inappropriate as that authority falls under the provisions of Article 12, removal of elected officers, Chapter 1 Recall and Chapter 2 Impeachment, and not the Board of Ethics. In conclusion I respectfully request the board consider these statements contained in my presentation and recommend dismissal of Petition 2021-09. Mahalo nui loa for your favorable consideration of this request. And I really thank you for your indulgence in having me express my position in this matter. And I'm done. Thank you.

Mr. Wiseman:

Councilwoman....

Ms. David:

Yes Chair?

Mr. Wiseman:

You may proceed...oh I was muted but I did thank you for your presentation and your presence here today.

Ms. David:

Thank you very much.

Ms. Villegas:

Thank you. My name is Rebecca Villegas, and I represent District 8 which includes portions of North and South Kona, on the Hawai'i County Council. In light of the great testimony already presented by my colleagues on the Council, I have decided to just essentially say that I concur with their statements. I believe that they have accurately and succinctly outlined the portions of our laws that are appropriate to consider based on this complaint as well as those that are not appropriate or relevant to consider under these circumstances. I also trust in the nature of common sense and

all of us understanding what entails behaviors that would be more aligned with these kinds of accusations and none of those behaviors occurred during our County Council vote. I also wanna recognize for certain members of this commission that are real estate agents and real estate brokers, the propensity and for this to hit home for you folks, and I get that for, a vast number of my personal friends and professional colleagues work within that industry, a respectable, necessary, well-educated and astute practitioners of land law and that practice. But I do concur with the statements of my colleagues that that was not the sole concern and it does reside in the responsibility and the kuleana of us in our roles to decide and to, for me, prioritize a diverse representation of our community on the Leeward Planning Commission. And under those circumstances the decisions were made, the person was not confirmed, attempts were made to re-present the petitioner and that was denied and then ethics violations were filed. So in light of the broader picture as opposed to the more detailed legal circumstances that apply, I ask that you look at the broader spectrum and the time frame of what happened here. And we as humans, it's within our nature to not enjoy and I have empathy for Ms. Asis and especially for her father now and I hope that things go well with her family. This is a really stressful time for many of us and family members health especially but I urge you today to take into consideration the legal, factual details that have already been presented to you. And then also take into consideration the broader circumstances of this particular petition and make your decision based on best information possible and to dismiss this petition. Thank you for your time and your energy, and your willingness to participate in this facitive government because it's not easy, so mahalo.

Mr. Wiseman: Thank you Councilwoman. Thank you for your testimony and your presentation, and presence here today. Do we have a council person, council man?

Mr. Kanealii-Kleinfelder: Aloha, I thank you for your time, I do concur with my colleagues as far as their statements and I'll retaining my right to provide testimony at the next meeting when the petitioner is present.

Mr. Wiseman: Thank you Councilman.

Mr. Kanealii-Kleinfelder: Mahalo.

Mr. Wiseman: Do any members have any questions? I have one for any...with respect, anyone can answer it, Councilman Inaba perhaps. With respect to a renomination, it's not uncommon for governments to have a statute that prohibits renomination, is there anything like that, that came about? In that area, Councilwoman David, you testified on that issue.

Ms. David: Chair, I don't believe we have any provision because if there was one I think it would've been utilized in this instance.

Mr. Wiseman: I see. Okay. Thank you. Any other members have any questions?

Ms. Valenzuela: I have a question. First of all thank you guys for taking time out of your schedule, busy schedules, traveling, that whole thing, I appreciate that. But who is it that would make a customary statement, if a person is voted unanimously that they don't have to attend the next meeting and I guess probably the reason I'm asking that for myself even, was I was voted on this particular commission and I know who I was told to say no need come to the next meeting, so I just, in fairness to all of us, who makes that statement and is it customary that they don't come to the next meeting?

Mr. Inaba: I'll answer that question since I brought up that point. It is, it was commonly said by the Chair of that committee upon a unanimous approval in the committee not to come. So in this case, being that it was the Planning Committee it was Chair Kierkiewicz of the Planning Committee. Since this issue, we don't say that anymore, it doesn't say that - it was never said that you don't have to or you can't appear it was you don't have to. So, like I said, it's not required but we have had many nominees come before the Council even after receiving unanimous approval and being told that in the committee.

Ms. Valenzuela: Thank you.

Ms. David: Excuse me, could I just add to that?

Mr. Wiseman: Yes.

Ms. David: Thank you Chair. Maile David again, what Mr. Inaba represented is true, and that was one of the issues that were really discussed intensely with Corporation Counsel, with the County Clerk, in determining whether there was a legal method of bringing it forward as a renomination. And that question was there's no rule that was established to state that when people get confirmed,

appointed. However, as a matter of courtesy because sometimes, in my eight years, they would say, you know, I really cannot be here when the council takes this up, could I, you know, is this adequate that I appear in committee, I answered all your questions, so it was just a human nature, accommodation is what I recall, but nothing set in stone. It was totally up to, you know, good intentions sometimes result in something like this where we are faced with unprecedented issues but, what we really have to focus on is what our role is and what are required to do under the law. So, that's all I have, thank you.

Mr. Wiseman: Thank you, any further questions in this matter?

Mr. Heintz: Yes I have questions for, I guess several members can respond. In the petition, Chair David, Counselor Kleinfelder, Ms. Villegas, are all identified as referring to due to the events of last night, or what we saw yesterday, or the events of last night...as precipitating the change from a unanimous vote in favor to a 5-4 no, I was puzzled by what that referred to and I would like you to speak to it but I went through and found a meeting of the Planning Commission of August 3rd and I thought well is that what it refers to but that was like two nights before and the most remarkable thing in that meeting that seemed germane was that at least an hour of that meeting the Planning Commission received rather strong testimony from a wide diversity of members of the Kona community objecting to, well actually they basically wanted more diversity on these commissions. And the major issue of course was Mr. Van Pernis and it looks like these are definitely linked. But was that what you were referring to or was it something else that happened the night before? In other words that expression is what makes one think that it was more than just the occupation of the individual, but it was some other things that were going on in the few nights, and I just need that filled in. I was gonna ask her...

Mr. Inaba: Sorry, Chair David, I'd just like to say, because we were grouped in one petition, some of these concerns as the one you just stated don't apply. So I never mentioned anything about it so it might be other Council Members and I won't be responding to those questions and I just wanna point that out cause there's all kinds of pieces going on here, some applying to some, some applying to all.

Ms. David: Thank you. May I? And I'm glad you brought that up, and the reference to that was the public testimony as you state regarding the Planning Commission and their role as the Leeward Planning Commission and the back and forth and the split opinions, is what, I can only speak for myself, is what I was remembering how

important a position on the Leeward Planning Commission would be and that's why I made my decision that we need some more diversity. So I believe, I'm not sure what she's referring to. And certainly it's not retaliation, you know, that accusation is something that I really personally take offense to because retaliation has never played any role at least in my duties, as a council member. So I don't do that, and that's all I have to say.

Mr. Wiseman: Thank you councilwoman. Any further questions or concerns from the members? Councilwoman you had something to add.

Ms. Nakanishi: Yeah, talk about diversity, I'm wondering, on the Leeward Planning Commission, I'm wondering what the job (?) is now. I don't know of any other realtors on there? I don't know any other, I think maybe there's a planner, I'm not sure, do you know?

Ms. Villegas: Offhand, and first off if I could just finish answering, take a turn just to answer the question prior.

Ms. Nakanishi: Yes, sorry.

Ms. Villagas: No, worries. It kinda all comes together, what my understand- part of my job is to represent the constituents of my district and their concerns. And I have been bombarded, with concerns by members of district 7 about the pattern of nominations, and then some of the issues that had to do with Mr. Van Pernis and that meeting that happened prior. And as that all comes together and seeing the bigger picture and listening to those voices of which, it's my job to represent, that is and became my great concern that day. And my greatest responsibility I feel is to represent my constituents and after the Leeward Planning Commission and so many testifiers were there that day and the number of emails and phone calls and social media posts and all the amazing ways that people have to get in touch with us now, I felt that being the vote that most represented my constituents in my district. And I'm sorry your question again? Oh the current make-up –

Ms. Nakanishi: Diversity.

Ms. Villegas: The diversity of our Leeward Planning Commission. There were a number of positions that had been vacant for a while and so there have been a number of different people brought forward. I know for myself one of the challenges was that there had been some disparity and discrepancies that people brought forward that actually didn't live in districts and then there was people put forward and pulled back and so there had been a pattern in those

months of some challenges sitting in our positions. Understanding, and having, being able to know that what was presented before us was completely accurate. And we all make mistakes, I live in a glass house but it also created some challenges around confidence in what was happening. I do know that we have a representative of, with some experience in planning, but that works for a construction company. We have a professional surfer and business owner, we had a retired lawyer and land management kind of, well some might call him an expert after all the years of participation in land management issues on the west side, we have gentleman who now works for a development corporation but is also highly educated in some land use and cultural issues. I've got up to four, they might be able to help me. We've got another person who worked in the real estate industry...and I apologize that I'm going five out of nine I think there are five out of seven or eight. So in the interest of having a broader selection of industries, and occupations, and with, and I'll say this cause I hear it constantly, the current climate on the west side of the big island, and the influx of real estate speculation and buying up and people feeling a bit lost and people feeling very vulnerable to being displaced in the district I represent, it created a heightened sense of concern to make sure that we have a strong, balanced and equitable representation of the leeward side of the island on our Leeward Planning Commission and taking into context all of those things that are happening which do affect the way that we have to look at and represent our communities I feel that that is just and equitable and part of our job, however hard that may be. So, thank you.

Mr. Wiseman: Any further questions or concerns?

Ms. Self: I have a question Chair, this is Amy. So, are there other realtors on the Planning Commission? I thought you said there was one? Is that what you were saying?

Ms. Villegas: I believe Ms. DeFranco has worked in...Barbara DeFranco, and once again going back to Ms. Asis's lack of confirmation. My vote in opposition to her confirmation was not solely based on her occupation. It was based on a broader representation and reflection of the desires of my community and my district and how they wanted to be represented on the Leeward Planning Commission.

Ms. David: As far as the question regarding diversity I can only speak to what my feelings were at the time and like I said in my testimony, diversity to me, is very important for someone that has been around this island, knows this island and what has transpired especially with respect to development on the leeward coast

because there's a lot of historical knowledge about what has happened and how we can do better when we sit on planning commissions, and so my only wish when I use, when I said, I look forward for more diversity is someone with those qualities that can, is first in the culture, the place, and also a community advocate in land use planning and that's my idea of diversity and a woman probably, so...

Ms. Self: I have another question, so that wasn't hashed out during the first meeting, during the committee meeting, because usually you get all this stuff hashed out during the committee and then when you go to council, it's much smoother.

Ms. David: I semi have an answer for that, I was on Oahu during committee.

Ms. Self: Oh okay so you weren't at that meeting, okay I'm sorry.

Ms. David: That's why it's kind different having all four respondents here, we have different positions depending on the what the questions are. Thank you.

Mr. Inaba: Ms. Self...

Ms. Self: I have a question for you too...

Mr. Inaba: I can answer that question since we were there. If I recall correctly there was no testimony in opposition of Ms. Asis' nomination in committee, but there was opposition on the council day, and we received email testimony prior to the council meeting and that's what I referred to in my statement explaining my vote that day in the council that we had received testimony and that got me to change my mind and like I said it was unfortunate that Ms. Asis was not there so we could ask questions, but that's the process and we received testimony and we are responsible to our constituents. And that's why I voted how I did based on the testimony that I received for the council meeting.

Ms. Self: Okay, but she...I'm just reading from her petition, it says that she received a phone call from Councilman Inaba, who re-stated that it was nothing personal but it was due to the fact that she was realtor.

Mr. Inaba: Yes, so I can answer that, one of the major reasons but not the only reason and that's what I explained to her on the phone.

Ms. Self: What were the other reasons?

Mr. Inaba: A lack of diversity, we don't have good representation in my opinion at the time of a native Hawaiian perspective and I'm really, really keen on making sure that we have those perspectives represented. I'm honored and grateful so serve on this role as a native Hawaiian and I would appreciate to see and know that we have that same representation in a commission who hears land use applications prior to us. And that's why I voted no.

Ms. Self: Okay, thank you.

Mr. Inaba: And I do wanna point out Chair, if I may, there are timestamps listed in that petition and if you chose to go and match the time stamp with what she summarizes in that petition, it's not accurate. So it says in the petition, at least for myself, that I voted no strictly based on her being a realtor, I never said that, so there's actually inaccurate statements in that petition and I would suggest that you folks at least be able to see what was said versus what is alleged in this petition.

Mr. Wiseman: Okay, thank you Councilman. Yes councilwoman.

Ms. Villegas: Aloha thank you for affording me just one more comment. I appreciated your question about who would normally make the statement about, if I remember correctly, cause when I was first elected I had to chair the first committee on our first day, and had my, essentially the things to follow and I believe it said you are not required to attend the meeting at council however you may if you chose to do so. I suppose one of my questions here and it may just be something for you to take into consideration is that Chair Kierkiewicz is not listed on this ethics complaint and yet it directly, the complaint itself directly relates to the statement made, and the confusion for the petitioner and yet we did not make that statement in that meeting. I'd also like to point out that there were five members of the council that voted in opposition of the appointment on confirmation of Dana Asis and the fifth member of the Council that voted in opposition was also not listed in this petition of potential or claimed ethics violation. So for myself I see some disparity and discrepancies that call into question just the nature and validity so I just ask that you take those things in consideration. I also just had another quick question because as I looked up at the board here I saw the chat going through with conversations and I see that Ms. Pomai is making comments about the current compilation of the Leeward Planning Commission, we have Nancy Carr-Smith making, who was also a testifier earlier and so I wondered what the parameters are for a chat happening and its public or what's going on there...

Mr. Wiseman: Yeah, I saw that also and our IT person should somehow put a block on that. We are only entertaining people who come before us through Zoom at a requested time and place or in person.

Ms. Villegas: Well I have questions and that concerns me that there are conversations going on between petitioners who've asked for us to be held accountable on an ethics violation and the person who brought forward...it disappeared.

Mr. Arcelly: Sorry I just wanted to say something, I wasn't aware, and maybe they were talking when I was waiting, but I can't see the screen.

Ms. Villegas: I got you, cause I sit there too so you can't see that.

Mr. Salas-Ferguson: Chair I can address that concern very quickly, so I was just informed that yeah there were people chatting on the chat box, our staff just closed and so it's not appearing anymore...

Ms. Villegas: However it was?

Mr. Salas-Ferguson: That's correct, I didn't see it myself but...

Ms. Villages: But it was for the public to see?

Mr. Salas-Ferguson: Let me check.

Mr. Kanealii-Kleinfelder: Point of personal preference, if I may.

Mr. Wiseman: Go ahead.

Mr. Kanealii-Kleinfelder: I was able to screenshot the chat that was being ran by Pomai Bartolome from the Mayor's Office as well as Nancy Carr-Smith, one of our testifiers today. So if needed I have the information, Mahalo.

Ms. Villegas: With that I don't know what protocol or process is but I oppose, that feels really unjust and unnecessary and unethical...

Mr. Wiseman: The board will not be considering any chat...

Ms. Villegas: Yes but the rest of the public sees it and that's inappropriate especially for a member of the administration to be tallying in their opinions. I don't feel that's appropriate and I know from sitting up

there that we all have access to forms of communication with the outside world, outside of this room. So I can, I don't know what to say, I contest. That's not cool. So thank you.

Mr. Wiseman: Thank you.

Ms. David: Thank you Chair.

Mr. Wiseman: Any other concerns or questions?

Ms. David: I just have a comment if I may?

Mr. Wiseman: Sure.

Ms. David: Yes and I really wanna thank, who brought up the chat room? Oh okay, but I just want it for the record, I saw something that was blocking the picture of Chair, but just for the record, that incident that we were just told about the chat room, I mean I understand social media, chat goes on all the time. But I think it's totally inappropriate for a member of the administration to be joining in and commenting in that manner. And I just wanna state that for the record and also note that a lot of these little things are responsible for I believe why we're here today. And so I just need to make that very clear, that it's very upsetting. Thank you very much.

Mr. Wiseman: Thank you councilwoman. And for the, just to put everyone at ease, the board can only consider what comes before it, through an official means. Chats are not official and the board will not be considering any chats if they become aware of it.

Ms. Self: Chair I'd like to say something. This is Amy Self. I want you to know, I was merely note taking, I'm not part of any chat. Yeah, I understand. I just wanted you to know I'm not doing anything like that. Thank you.

Ms. Nakanishi: Remember way back when, I did have a question. And deferred to Maile David. So I know when I came before this board I was definitely told I did not need to show up and it was the custom so for her to suddenly get this idea that she should show up would've been outside the norm. I mean she had the opportunity and people do, but I was definitely told, I did not need to show up, it was just a rubber stamp. So once it, that, you got to the point where she was, the vote was gonna be taken and not in her favor. Is there a vehicle to allow her to come back in at that point?

Ms. Inaba: Yeah as councilmembers if you are on the prevailing side of a vote, in case there are five of us, somebody could call for a reconsideration of the vote that was taken. We were past, or we were going to be past the 45 window in which the...we were at the point at the end of the window in which the council needed to take action, we have a 45 day window from the point at which the Mayor submits a nomination, to take action and we were at that point. I do wanna point out that I did receive an email from Mayor Roth I believe two days after the council hearing where nomination failed, listing all of the three sections that are in the petition before you. So all three sections, from the Charter and the County Code of ethics were used as means to request a reconsideration vote from me, and those are the three sections in the petition before you today. And I'd be happy to submit that email to you folks prior to the next meeting. And sorry, you know, if may, if corporation counsel is able to speak to whether or not Article 12 of the Charter is within the scope of...because we keep mentioning this profession, but the profession argument being forth by Ms. Asis relates to article 12, the rest of them are from Article 14 of the County Charter and from the County Code of Ethics. So I'm trying to be very clear there's correlations here between the argument and which section of the code or charter are being mentioned. And I don't want things to be considered that are not within the Code of Ethics.

Mr. Wiseman: Thank you councilman. Our legal counsel can look into this at a later time, if it's relevant to the issues. With respect to someone not showing up, it's not uncommon for many venues and official venues and forums around the country to waive any personal presence and to conduct the hearing in the absence of argument or presence. I'm just adding that and I don't know if there's any statute or rule. In many places, it's done by rule. A forum can hold a hearing without presence, and without, make a decision without argument...Okay any other further questions or concerns?

Mr. Salas-Ferguson: Chair, one more thing. Sinclair here, does the board, would the board like for respondents to appear at the continued hearing as well?

Mr. Wiseman: I think that would be their option, they can do so by Zoom...or in person I mean it's really at their option.

Mr. Salas-Ferguson: Okay.

Mr. Wiseman: Okay. Okay there being nothing further, this matter is continued to the board's next meeting at September 13th at 10:00 am. The

people present in opposition to the petition are welcome to join in person or by Zoom.

Mr. Salas-Ferguson: Chair I'm sorry again, it's me again, Sinclair. Just so it's clear for the respondents, if they're not here and if the board has questions of them then they would be waiving that opportunity to respond to any questions that may be presented at the continued hearing.

Mr. Wiseman: Thank you. Alright, and the board's staff will make sure that the petitioner get's a transcript in time for the next hearing, in time for review. Anything else before we move on to the next petition? There being none, on behalf of the board we thank the councilmembers present and through Zoom for coming here and informing us of their positions. Thank you.

Mr. Salas-Ferguson: And Chair I'd suggest maybe right now would be a good time to take a break.

Mr. Wiseman: Okay, absent any objection we'll stand in recess for 10 minutes.

Mr. Salas-Ferguson: Chair, maybe, lunch break maybe? 30 minute lunch break?

Mr. Wiseman: Okay we'll resume at 12:30 today.

Mr. Salas-Ferguson: 12:15 okay?

Mr. Wiseman: 12:15 is good. Okay we'll set a recess to 12:15.

11:42 a.m. The Board took a 30 minute recess

* * * * *

12:15 a.m. The Board returned from recess.

d. Petition No. 2021-11 Review of a petition from a County employee alleging false allegations made by other County employees that were not properly investigated.

Mr. Wiseman: Is the petitioner present?

Mr. Dela Cruz: Yes sir.

Mr. Wiseman: And state your name please.

Mr. Dela Cruz: Yes sir, my name is Keoni Dela Cruz. I wasn't a County employee, I was a contractor of the County under Animal Control Services.

Mr. Wiseman: Yes, okay now you're welcome to make an opening statement and summarize your petition, you have a few minutes.

Mr. Dela Cruz: Okay so in documentation to the committee there, the complaint is that the manager for the organization that was contracted, her and other employees that were let go, wrote statements in a email to the Police Department and the Mayors office without any type of investigation which, had the Mayor and the Police Department notify the president of the organization for Hawai'i Rainbow Rangers to have me terminated and I had no written reprimand or anything on the allegations that they had put against me. And now, after the contract was terminated in the end of July, the people who made the complaints are now working as Animal Control. But we don't know if they're County because of a lot of the animal control officers were let go and these animal control officers now have County badges, the ID card badges from the Police Department and they're telling the animal control officers that (?) by the Corp Counsel, we have no idea about that, cause none of us, were not terminated cause we never received a notice of termination of our contract from the County or anybody. We were never let know, they never let us know if we could continue employed or what's going on.

Mr. Wiseman: Okay, let me ask you, the people who terminated you, who were they?

Mr. Dela Cruz: The Hawai'i County Police Department.

Mr. Wiseman: Oh it was the police department. So you had a contract with them?

Mr. Dela Cruz: That is correct, the contract was through the County of Hawai'i and the Hawai'i County Police Department.

Mr. Wiseman: I see. Anything further? You submitted on your statements...

Mr. Dela Cruz: So yeah my charges are 2-83 Fair Treatment, 2-84 Conflicts, and 2-85 for the contracting. So the fair treatment is you know, those of us that you know, we were let go without any kind of cause and then this other group that made these emails to the Police Department and the Mayor's office without any investigation or any cause that was investigated to find out if there's any merit or truth, those guys are working right now and I lost about \$6,000 as a contractor because of the allegations that these guys made that I still haven't been paid yet, through the County.

Mr. Wiseman: I see, do any members have any...

Mr. Dela Cruz: Apparently...she says she's the director of operations, Regina der-Serano-Derdaro...Derdaro-Serano. She's the one who spearheaded all this and she was with Animal Control and she had meetings with the mayor's office and apparently they've known each other for a long time when she was with the Mayor's or with the Animal Control or the Humane Society. And they contract her and other people that worked with her, and the rest of us, even if we asked, you know like 'oh hey can we come over with you guys' there like 'oh no you know we're contracted through this other...' and there was no proper hiring, no job announcements, no background, no nothing, you know, there was no fair treatment of any of us to come on board. We were all just let go...And actually when I was, the one time I was told they had to let me go, I was specifically told, this was by Mary Rose-Craigsman, that the reason why they let me go was cause the Mayor, Mayor Mitch Roth and the Police Chief said that they had to terminate me or otherwise they were gonna terminate the contract. And I asked for that documented in writing and I haven't received anything yet...And I requested, and I did request the meeting with the Mayor online, and I was ignored and I didn't even get a response from the Mayor's office to meet with him about it.

Mr. Heintz: Mr. Chairman, I have a question. So who is that should be the respondents on this petition? Is it the Mayor, is it the Police Chief, is it this other person...who...I don't...and also somewhere in this documentation you indicated that there may be a defamation suit, you were gonna take legal action?

Mr. Dela Cruz: Yes. Well there is a defamation because of what was stated about me, my name, and even one of the Police Officers, a sergeant that had mentioned my name and said oh yeah this is a person who did this allegation but I was never written up, I was never sat down and talked to or anything like that, it was just an email that went to the police and I'm sure it went to the mayor's office and the only thing they said was I'll get rid of him, there was no background, there was no sit down and investigate, nothing. You know you can't do that to people. It's a violation of my civil rights.

Mr. Heintz: So Mr. Chairman, or Legal Counsel, this sounds like an appropriate issue for the courts, and if that's the case, would the Ethics Board be involved in this? I mean if we do something, it's still gonna have to go to be resolved and dealt with in the courts right? That's the question.

Ms. Self: So can I ask a question, this is Amy?

Mr. Wiseman: Yes go ahead.

Ms. Self: Okay so Mr. Dela Cruz, you were working for a company that was providing a service for the County right?

Mr. Dela Cruz: Yes ma'am that is correct.

Ms. Self: Okay, so have you filed a grievance with your employer?

Mr. Dela Cruz: They are no longer my employer as of the termination of the contract I no longer work for them.

Ms. Self: I know but it seems like your, it seems like your remedy would be to go against your former employer..

Mr. Dela Cruz: Because the people that I have the issue with are no longer with this, the Rainbow Rangers, they are working for the County now, as contractors. They are the ones who, sent the emails and defend my name and character.

Ms. Self: And so your former employer is a contractor and they got the contract with the County for the Humane Society right?

Mr. Dela Cruz: No ma'am. Their contract was terminated and the other people that were fired or resigned from the Hawai'i Rainbow Rangers are now contracted through the County. The ones exact, same ones who wrote the emails to the County.

Ms. Self: And they were your employer? I'm not understanding who's your employer.

Mr. Dela Cruz: The one, okay. The one who sent the email to the Chief of Police, she was a manager for the company and she had resigned and when she resigned and the others that are with her that were fired from Hawai'i Rainbow Rangers, they all work for the County right now, as I understand under contract.

Ms. Self: Okay but the company that you worked for....

Mr. Dela Cruz: Is a non-profit yes.

Ms. Self: Okay, what's their name? What's the name of that company.

Mr. Dela Cruz: The Hawai'i Rainbow Rangers.

Ms. Self: Okay. That's your former employer right? They fired you.

Mr. Dela Cruz: That is correct.

Ms. Self: Okay, that's the company that you need to be filing against. We don't have any control over that situation.

Mr. Dela Cruz: Okay.

Mr. Wiseman: Mr. Dela Cruz, point of clarification. In the beginning you said the police fired you.

Mr. Dela Cruz: The police (inaudible) my understanding of what I was told is the police department, the mayors (inaudible) a meeting (inaudible) and we brought all this up to the County...the unfair ways we were treated and we're, all of us were let go and they canceled the contract. But nothing was done, nobody asked the Chief of Police or anything about it, nobody asked the Mayor's office about it, so you know that's really...

Mr. Wiseman: But you were not under employment of the County at all.

Mr. Dela Cruz: I was contracted. It was, I was a contractor.

Mr. Wiseman: You're a contractor so...

Mr. Dela Cruz: Yes.

Mr. Wiseman: If you were fired...

Mr. Dela Cruz: It's a difference being a contractor than it is being an employee. I wasn't an employee of the this company I was a contractor. So the right thing to have done, if they cancelled the Rainbow Rangers contract, my contract wouldn't have been terminated, I would've been automatically contracted for the next animal control contract that they hired to come in and do services. Not just have somebody come in and say oh we're gonna terminate this contract for this company but these guys who worked for this organization we're gonna hire them but we're not gonna hire the others. That's where you go in unethics. That's where you get into the unethical.

Mr. Wiseman: Well the board of ethics here we're limited...

Mr. Dela Cruz: Right that's why I'm asking you to contact the Mayor's office and contact the Chief of Police to find out what was done. Why, why,

what was the reasoning for them saying they were gonna terminate me?

Mr. Wiseman: You mean the contract?

Mr. Dela Cruz: My contract, me, why did they want me fired? Is it because of these allegations without any merit? You know.

Mr. Wiseman: Well you only get fired if you're an employee but you had a contract which would be termination right?

Mr. Dela Cruz: Right but that's the difference between being told you're gonna terminate a contract, I was specifically told I was fired and I was specifically told I was fired because of the Mayor and the Police Chief. So...I can understand your guy's position and I'm asking you guys to look into it. So..

Ms. Self: But who fired you? Who fired you?

Mr. Dela Cruz: The president of the organization. Mary Rose Craigsman and the director of operations Lev Yardborro and they specifically told me when they let me go they said we have to let you go because the Chief of Police and the Mayor said we had to let you go.

Ms. Self: Okay but what I'm trying to get at is, the non-profit had the contract right, you didn't personally have the contract, you weren't a contractor, you were an employee of the non-profit right?

Mr. Dela Cruz: I was not an employee I was a contractor. There's a difference between an employee and a contractor.

Ms. Self: I understand that but who had the contract with the County?

Mr. Dela Cruz: The contract was under the Hawai'i Rainbow Rangers Rainbow Friends.

Ms. Self: And what was your position with that group?

Mr. Dela Cruz: Animal Control Officer. Working for doing the job of animal control for the County of Hawai'i. Under the rainbow rangers.

Ms. Self: Well you wouldn't be an employee of the County you would be an employee of the non-profit cause they're the ones that hired you right?

Mr. Dela Cruz: They hired me but the County was paying for the services.

Ms. Self: But yeah that's what I mean, the County was paying Rainbow, whatever they're called, Rangers.

Mr. Dela Cruz: So this is the thing, I don't understand the clarification, I mean if that's the way that I gotta go through lawsuit then, I'm gonna have to do that way because you know, nobody's understanding what I'm trying to say. Yet the people who came in, you know they're saying, oh they got corp counsel, they're wearing police ID badges which would tell me they're employees of the County right now...

Mr. Wiseman: Mr. Dela Cruz, my understanding is that you worked for this private company that had a contract with the County, and then you got fired from the private contract based on what you claim were allegations that you were dealing with.

Mr. Dela Cruz: That is correct, yes that is correct.

Mr. Wiseman: But you never heard this directly from any County official, you heard this from...

Mr. Dela Cruz: I have the e-mails, in black in white that I forwarded to Corp Counsel when I filed this complaint. It specifically went to the Chief, went to the Police Department, and was never, I was never notified of em. Because we even did our training through the Hawai'i County Police Department. Eight hours of training that we did with the Police Department.

Ms. Self: Sorry, you have emails from the Police?

Mr. Dela Cruz: I have an email to the Police up the chain of command to the ranks. Yes I do.

Ms. Self: And what's the substance of that email?

Mr. Dela Cruz: Allegations of Sexual Harassment, carrying a firearm, threatening to shoot people and theft...

Mr. Wiseman: And these complaints went to...

Mr. Dela Cruz: But you're saying they went to your employer. They went to the Police Department and the Police Department talked to the person that's in charge of the contract, Mary Rose, and told her if they didn't fire me that they were gonna pull the contract. And that's what happened the end of July.

Mr. Wiseman: I see, so your employer spread these, what you claim to be, false allegations against you, to the police department.

Mr. Dela Cruz: No, no no...that's a negative. No, the manager, the person who was the manager at the time of these letters, and the people that were fired from this organization sent the emails to the Police Chief so the contract could be terminated and that's exactly what happened.

Mr. Wiseman: Okay, thank you.

Mr. Dela Cruz: Yeah it's a touchy matter because you know it involves the County.

Mr. Wiseman: You say it involves the County, that's what we're trying to get at –

Mr. Dela Cruz: Right because the County – what I'm trying to say is the Police Department and the Mayor's office should not be involved in Human Resources issues with the company that's contracted with them. But that's exactly what happened. They became involved, there were all these complaints that were made by these former employees, including myself of what they said happened to me that I never did, I was accused of it and they made their decision to terminate the contract for that because they said they got too many complaints.

Mr. Heintz: Mr. Chairman, I have a question for Legal Counsel...the questions is, I have read through these two packets of information, and it strikes me as the nature of this complaint, and the parties who are, including the Police Department and the Mayor's office and there's allegations, the people who did the firing, the people who resigned, that in order to deal with this, and resolve this, if the ethics committee is gonna deal with it, this would have to be dealt with a the level of a formal hearing, putting people under oath with investigations of all these claims and counterclaims. From my understanding of the rules of our body, we do not have investigators, and resources and we have never in the three years that I've been dealing with this body to conduct a formal hearing and I just wanted some advice. I, this strikes me as something that's something that's beyond our ability and resources and it's gonna have to end up in court with sworn testimony and so on and it isn't like I'm trying to get out of this, except this just seems to me that on it's face, this is not something that we're equipped to dela with and I just want your advice.

Mr. Yoshimoto: So board member Heintz, Deputy Corp Counsel J. Yoshimoto. To answer your question, initially the Board needs to determine whether it has jurisdiction right, what is the code of ethics violation. And also preliminary just as we're talking on the record, the petitioner requested a closed hearing but I'll note for the record that the closed hearing request is for the respondents and so right now we're proceeding in an open hearing unless this is an objection stated otherwise I think Mr. Dela Cruz is okay.

Mr. Dela Cruz: Yes that's fine.

Mr. Yoshimoto: That's okay? Okay. So initially yes the board needs to establish first or Mr. Dela Cruz as to who are the respondents in this petition, then the board can decide how to proceed along those lines. In terms of the formal hearing process, you're correct we have not had a formal hearing, as I read the code, the code basically states that if an officer employee fails to comply with the informal advisory opinion, then the board in its discretion may proceed to a formal hearing. So the recommendation would be that we, if we're gonna do anything, start with the informal hearing. So that would be the next steps in terms of whether the board wants to first determine whether it does have jurisdiction given the issues are being raised and I would suggest further discussion on that not, and then deciding you know whether it needs to proceed and if so how.

Mr. Heintz: If we proceed at the level of an informal hearing, does all this testimony, is it all taken under oath? Or is that only at the formal level, with legal representation. I mean because that's where it's gonna end up anyway it appears to me.

Mr. Yoshimoto: Right so, in the informal hearing process, our procedure does not include taking the oath, meaning putting someone under oath, to basically affirm that they're telling the truth so no, that doesn't happen at the informal hearing.

Ms. Self: Could I bring something up. Speaking of our jurisdiction, if you look at the definition section, under section 2-82, the definition of an employee means: we have jurisdiction over employees. So the definition of an employee is, means any person except an officer employed by the County or any agency thereof but the terms shall not include an independent contractor...so this, we don't have jurisdiction over this, this is a contractor, he's not the contractor, he's working for the contractor, and the contractor fired him.

Mr. Dela Cruz: But you have jurisdiction over the Police Department and the Mayor's office, is that correct.

Ms. Self: That's correct, but...

Mr. Dela Cruz: Because that's what I'm trying to get to the bottom of this, is I'm trying to find out is why did the Police Department and why did the mayor's office talk to the person who contracted me to have me terminated.

Ms. Self: But this is a contract issue, this is an issue between the County and the Contractor. So you need to be filing a complaint I guess in court against your former employer, which would be the contractor of the County.

Mr. Wiseman: Mr. Dela Cruz...

Mr. Dela Cruz: But then I would also include the County.

Ms. Self: Well go ahead, but....

Mr. Dela Cruz: Is that correct?

Ms. Self: But we don't have jurisdiction here.

Mr. Wiseman: Mr. Dela Cruz, there are many businesses whether it's government or private who determine what basis they should continue or terminate a contract on. What I'm gathering here that you had other's who allegedly gave the police and others false, damaging information that you claim, about you...

Mr. Dela Cruz: Yes, yes.

Mr. Wiseman: And they don't have to do an investigation, they're dealing with a contractor, if they wanna believe it, they believe it, good by contractor. And you're a contractor. If I have a gardener working for me and someone starts telling me all sorts of things about him, I don't have to investigate, I can just believe it or not, if I believe good bye gardener. So I mean that's how I, I know I'm simplifying this, but that's not how I see this. I don't really, I'm doubtful about jurisdiction with respect to this matter. Any other members have any questions?

Mr. Dela Cruz: Okay, I see.

Ms. Valenzuela: This is Kelly, sorry. I think you know, my fellow commissioners were right, I mean, you know, while we sympathize with what's going on with you, this definitely would not be in our jurisdiction, cause our jurisdiction is pretty limited in that, County employee and or County official, when it comes to a contract, that's another entity. That's like a third party. And then regards to whether it's the Mayor or Chief of Police, hearsay, not having something...

Mr. Dela Cruz: Well that's the thing I don't understand, not to cut you off but why would the Police Department tell us we were for them.

Ms. Valenzuela: Yeah, I'm not sure of that, because from what I understand you know, if you work for the Police Department, you're a County employee, you have 21 days sick leave, 21 days' vacation...but you're a County employee, it's a little different under the County. But in a contract, which they have many, I'm sure, diverse types of contracts, our jurisdiction does not apply. I believe to that. What I understand. Thank you.

Mr. Wiseman: Any other members have any concerns or questions? If there is none, if any members wanna go into executive session, discuss this with Counsel, otherwise I'll entertain any motions on this matter, which could include dismissing the petition, continuing the petition for some reason, or issuing an informal advisory opinion, which doesn't seem relevant.

Ms. Self: I move to dismiss the petition.

Mr. Wiseman: There's been a motion to dismiss the petition do I hear a second?

Mr. Heintz: Second.

Mr. Wiseman: I'll open this to discussion, any discussion on the motion?...Okay no discussion. All in favor of dismissing the petition based on lack of jurisdiction say Aye. Motion is passed and the petition 2021-11 is hereby dismissed.

Motion and Vote: Ms. Self moved to dismiss the petition due to lack of jurisdiction. Mr. Heintz seconded the motion. All members voted aye. (12:45 p.m.)

Mr. Wisman: Mr. Dela Cruz thank you for your presence and testimony here. Like another member mentioned perhaps this is a proper subject for the court if you feel you were wrong. I know mentioned defamation...

Mr. Dela Cruz: Okay, thank you sir.

Mr. Wiseman: Okay, good luck, thank you.

5. UNFINISHED BUSINESS (12:45 p.m.)

a. Petition 2021-05 Review draft informal advisory opinion regarding a petition requesting guidance as to whether the actions of a Leeward Planning Commissioner are in violations of the Code of Ethics.

Mr. Wiseman: At this time we're gonna review, a draft advisory petition. And this is the one from the, we have two from the Leeward Planning Commission. One was a continuation to today, so we could obtain transcripts and perhaps a video and the other one is to review a draft informal advisory opinion where the chairman of that commission requested our guidance.

Mr. Heintz: Mr. Chairman, I wanna suggest an amendment to the petition that's regarding the Michael Vitousek, chair of the Leeward Planning Commission.

Mr. Wiseman: To the petition or are we talking about the draft opinion...

Mr. Heintz: The draft advisory opinion, page 4, section 11...would you like me to just read what I...So section 11 reads, 'At the LPC, Commissioner Van Pernis stated that his bias didn't prevent him from being impartial' that's the section. What I would suggest is that the word bias be crossed out, and instead it read Van Pernis stated that his place of residence and familiarity with the area didn't prevent him from being impartial, but he did disclose the fact that he lives in the Makalei subdivision...and then it should read 2/3 of a mile from the project area that was discussed...

Mr. Wiseman: Just a moment, Mr. Heintz, as I recall, he didn't make that disclosure until a few months after the hearing.

Mr. Heintz: I'm leaving that in...that doesn't change, what does change is that we take out the word bias describe this neutrally, and also that was part of the record that he lived 2/3 of a mile from the project area, that was discussed in the application under review. This section 11 as written is both, well is neither objective nor is it accurate in reflecting our minutes in which Mr. Vitousek and Mr. Van Pernis agreed that it was roughly 2/3 of a mile.

Mr. Wiseman: Yeah I agree with that.

Mr. Heintz: Thank you, that's the only change that I'm suggesting. Thank you,

Mr. Wiseman: Well, I have several including some substantial inclusions I would like to make, in other words, coming from a point of view that the Chairman was asking for guidance. We've had several cases involving public disclosure and claimed recusals, request for recusals, and the public disclosure is such a vital, is such a vital, you can't avoid having public disclosure among public officials who are held to a higher standard than its citizens. His participation in this hearing, without making that disclosure leaves a lot to be desired in my opinion, and I think we need to send a real strong message which this draft decision does partially but not enough for me. The one I like and I requested council to provide me with a copy of it, was the one we did with the council woman, where we put in some very strong language near the end and I think that needs to be reiterated, if not modified somewhat, in this. I'll tell you the language that I'm talking about, it's at the very end, I don't have a hard copy, so I have to just find it here...

Mr. Heintz: That's the Kierkiewicz....

Mr. Wiseman: Yes...

Mr. Heintz: Under conflict of interest on page 10, is that what you're referring to?

Mr. Wiseman: There's an informal advisory opinion which is what this is

Mr. Heintz: Section 37?

Mr. Wiseman: Yeah, 37...it can be modified to fit the circumstance here. I'd like to...

Mr. Heintz: 37 through 40?

Mr. Wiseman: Yeah if there's no problem with the members, I'd like to not now, but subsequently submit some proposed language. And I need to ask, is it Sinclair or J? Sinclair you're back right...

Mr. Salas-Ferguson: That's right, Sinclair here.

Mr. Wiseman: Sinclair tell me under this sunshine law, which I find so restrictive and so, it really has everyone back peddling, I think. But in any event, am I allowed for example to submit some proposed language to insert in a draft, this draft decision in particular. Like in a few days next week and circulate among the members and give it to you?

Mr. Salas-Ferguson: You can, I think the best thing to do would be to, if you wanna draft this, you can draft it, send it to us and we'll put it on the agenda next September.

Mr. Wiseman: Yeah see that's the problem, the agenda next month...so it's another month. That's what I find so distracting and so backward you know with moving forward and that's why I'm saying, that's why I'm asking if we do a meeting and everything has to be public so we can't do a conference among ourselves and discuss this in the near future.

Mr. Salas-Ferguson: Sorry Chair, the sunshine law requires that all board business be conducted in the meeting, yeah so I think the easiest thing to do would be to if you want to add things to this, you can add it and then put it on the agenda...next month.

Mr. Wiseman: Can't the members, if they would agree for me to submit some modifications to you?

Mr. Salas-Ferguson: What was the question, say it again?

Mr. Heintz: My understanding is that David, you could draft a modification and share it with one other member and then you could submit that and modify the draft and at the next meeting that would be the draft, and it could be dealt with. So at least you would have run it by somebody familiar with these kinds of things, like I hope it's Amy or someone.

Mr. Wiseman: Yeah, okay, I'm not going to...

Mr. Heintz: I mean, do you have such a draft?

Mr. Wiseman: Right now, no I don't

Ms. Self: Do you have your modifications right now?

Mr. Wiseman: The modifications would be what I referred to in the other informal advisory decision. Under conflict of interest.

Mr. Heintz: Yeah paragraph 37 through 40.

Mr. Wiseman: Yeah, subject to modifications to fit this case...

Mr. Self: If you could read your modifications right now, then we could vote to amend it according to what modifications you've made.

Mr. Wiseman: Okay, I would start with the disclosure, which is number 29...But you see they're talking about the counsel and I would in lieu of that, it should be any board or commission. Or government entity...I think the board has the responsibility to make this a very general statement to any public official, dealing with the public to maintain and nurture the confidence that the public needs. I mean, anyone looking at this case, even though we can't pinpoint the violation or the ethics code. When Van Pernis, you know anyone looking at this, I mean if we use reasonable person objective, objectivity, rather than his subjective thing that benefits (?), it doesn't matter whether he did or not, the possibility is what's important. And that possibility, that's where the appearance of an impropriety comes in. In any one, if you want up to 9 out of 10 people in given this circumstance, look he was on this board, he made changes to it, he never told anyone how this would affect his property until much later. Any reasonable person is gonna have a problem with that, I think that's what we wanna get to, the disclosure, the need for public disclosures. So that's my concern.

Mr. Heintz: So David, and Legal Counsel, if you would make those corrections, share it with, you can share it with one member of the Board, and then have it edited and placed in the draft for our next meeting and then we can vote at that meeting.

Mr. Wiseman: I was just trying to avoid another month. But that's how it is. I'll do that, I'll make...

Mr. Heintz: Well we have to approve it at a public meeting, so if it can't be made today it'll be approved at the next meeting. And you'll have all the changes made.

Mr. Wiseman: Okay thank you Larry. Alright I'm gonna modify that decision and I'll submit it to...and who do I submit it to now.

Mr. Salas-Ferguson: So Chair, another attorney in our office, so I'll get that draft in word format and we'll send it to you and then you can make your suggested edits and then you can send it to Liza.

Mr. Wiseman: And also the decision I think should be modified with the supplemental information we received today from Nancy Carr? That he has been removed from the commission?

Mr. Salas-Ferguson: Chair, the committee voted to remove him but the full council hasn't voted to remove him so he still on the commission. They'll be voting on that on the 18th.

Mr. Wiseman: I see okay thank you...Okay so we'll take up that other Petition, that's 2021-06.

b. Petition 2021-06 Continued review of a petition alleging that a Leeward Planning Commissioner is in violation of sections 2-83 Fair Treatment

Mr. Wiseman: Just to refresh everyone that was the hearing we had where Mr. Van Pernis himself was testifying, and several others and we decided that it was necessary for us to see the transcript, in the video, in the video transcripts. Larry did you get the video transcripts?

Mr. Heintz: Yes, I did and I'm willing to make a motion on this.

Mr. Wiseman: Yeah so that's where we are now. Okay, so, okay Larry, we'll entertain your motion.

Mr. Heintz: My motion is simply that Commissioner Van Pernis, violated section 2-83a3 and I'm quoting from the relevant part. All persons shall be treated in a courteous fair and impartial manner, end of quote from the code and I guess that's the end of my motion

Mr. Wiseman: I will second the motion.

Mr. Heintz: I just wanna say that I reviewed all the testimony and I think Mr. Van Pernis has a gruff manner and I have also reviewed some of the planning commission, other meetings and he persists in that way. And that certainly raises a problem of courteousness if not the other two. Certainly courteousness, and that's all that's really relevant in my view. I think people have to have a bit of a thick skin but there's a problem here of courteousness. And he violates that.

Mr. Wiseman: Thank you, I also researched and reviewed several documents and hearings regarding the petitioner and I agree there's a notion of civility as it's referred to, there's quite a substance of articles on this issue especially in the court system. Our civility in courts must be had, especially among the administrator of commissioners and board members. And I always end up with two words, I used to use, very simple: be nice. In any event, that's my input. Anyone else have any comments on the motion? Discussion?

Mr. Salas-Ferguson: I just have a Chair this is Sinclair; I just have a question in anticipation of me drafting something for the Board. The motion is a violation of 2-83(a)(3) Courteousness. The alleged violation, as it is still right now, occurred on what date, or dates?

Ms. Hickey: I can answer that, I'm the applicant, or the petitioner. It was two dates, September 21, 2020 and April 15, 2021.

Mr. Heintz: Yeah the record of our earlier discussion and Ms. Hickey's petition has all that information and we also have reviewed the transcripts.

Mr. Salas-Ferguson: So the motion encompasses those two hearings. Just wanted to clarify that thank you.

Mr. Nakanishi: I have a question though, what is this post-it note he sent, I can't read it. Why is it here? I mean, I have it in my packet. I can't read what it says. On June 4, 2021, something got postponed and...I don't know if its important cause I can't read it.

Mr. Wiseman: I'm not aware of that post it but I don't think it would have any bearing. We've heard ample testimony from him and others. Okay any further discussion? There being one, I'll call for a vote. All those in favor say Aye.

Motion and Vote: Mr. Heintz moved that the Board finds Commissioner Van Pernis, violated Section 2-83a3 Fair Treatment Clause. Mr. Heintz seconded the motion. All members voted aye, except for Ms. Self who did not vote due to absence at the last meeting. (1:06 p.m.)

Mr. Heintz: Mr. Chairman, I just wanna make it clear that we don't have a fine or any penalty being attached to this motion. This Board has not done that even though we could do that. But I just wanna make it clear that I don't think it's necessary. I think that these issues have been brought to everybody's attention. We are saying that he has violated the ethics code and the matter is being dealt with by the planning commission and by the Council, both planning committee and the full council. And they're addressing this in another manner, I don't think any other punitive or fines or any other actions are appropriate that's why I did not include them as part of my motion. Thank you.

Mr. Wiseman: We might wanna consider putting in there that we do not levy any fines or (?). I'll leave that to legal counsel.

Motion and Vote: Mr. Heintz moved to go into executive session. Ms. Nakanishi seconded the motion. All members voted aye. (1:09 p.m.)

1:09 p.m. The Board left regular session.

* * * * *

1:24 p.m. The Board returned to regular session.

6. VOTING ON EXECUTIVE SESSION MATTERS

- a. Review of the executive session minutes of June 9, 2021.**

Motion and vote: Mr. Heintz moved to approve the executive session minutes of June 9, 2021. Mr. Wiseman seconded the motion. All members voted aye, excluding Ms. Self as she did not vote due to absence at last meeting. (1:25 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. 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. Wiseman moved approve items 6b through 6c. Ms. Valenzuela seconded the motion. All members voted aye. (1:26 p.m.)

- d. Review of *Gift Disclosure* filed pursuant to Section 2-91.5(a), 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: Mr. Heintz moved approve item 6d. Ms. Nakanishi seconded the motion. All members voted aye. (1:27 p.m.)

7. CONTINUED DISCUSSION REGARDING AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF ETHICS AND THE HAWAI‘I CODE.

Mr. Wiseman: For several of our new members, a little history on this. One of our former members who was acting chair before he stepped down, Kenneth Goodenow, an Attorney, did an amazing job on amendments. He obtained the Code of Ethics Rules & Procedures from the different counties, he listed em, he compared each on in an easy viewable format. Pros and cons and suggested what we follow are modified and adopted. He did an amazing job; I don't

know how he did it but he did it. And then it went to limbo for a while and he left. And so I need to hear from Legal Counsel. Sinclair are you up on this or just talk to J about this, I know J is very up on it.

Mr. Salas- Ferguson: J and I talked about it but did you have any specific questions about it?

Mr. Wiseman: I'm more concerned with the status. It got very confusing the whole going back and forth and so on. So that's where I'm at. I'd like to know the current status of the amendments and the official, the amendments under consideration at this time.

Mr. Salas- Ferguson: So, you know generally, it's kind of a funny thing to talk about the status, they're kind of...we'll let J talk about this.

Mr. Yoshimoto: Okay, so board members the status is that we still need to have the amendments, the proposed new rules for the board of ethics, that needs to be vetted by the board. I would recommend that we keep separate the proposed amendments to the code and the charter so that they don't get mixed together. Otherwise what I'm saying is that that the rule amendments mainly were to make sure that there's a process in which the board can administer penalties given the fact that the charter was amended during this past election to expressly permit the board to do that and as some of you recall back in 2008 the council also voted enact provisions within the code to allow for penalties and fines to be assessed by the board if certain steps were followed. And the main concern is to make sure that there is a chapter 91, contested case type hearing format that would have to be followed before the assessment of any fines. That would be their due process right. Right now we do have a draft of the rule amendments and so my suggestion is that that proposal be presented to the board for its review and consideration and if the Board wants to make any amendments there; we can do it as such.

Mr. Wiseman: Member Larry Heintz, submitted some amendments too. So J you're saying that this will be submitted to us and we can review it at the next meeting is that right?

Mr. Yoshimoto: I don't know about next meeting because I remember meeting with Larry, Mr. Heintz as well talking about amendments, so one suggestion could be is with the Board's approval, that I continue those discussions with Mr. Heintz if he so chooses or if not we can just submit them to the board, have the Board consider it and then move forward with the rule adoption process. Or any other board member who's interested in participating in that process as well,

and another option that would be still on the table to is that if two members of the board wants to work collaboratively then we could form that permitted interaction group that's allowed under the sunshine law.

Mr. Heintz: You're referring to my proposed amendments. That have been around since December of 2020.

Mr. Yoshimoto: No, actually no, sorry.

Mr. Heintz: But they have been, they were on the agenda, earlier this year. And I mean they've been around...people have already seen it I take it. We haven't considered it..

Mr. Yoshimoto: So these amendments, that's for discussion by the board. What I'm referring to are the rules of procedures that the board needs to enact in order to make the 2008 amendments of the council go into effect. So what I'm suggesting is that we separate the tracks so that we do the rules first or whatever order the board wants to go forward and in terms of say like the amendments to the charter, the board can make a recommendation, but of course that's for the voters to decide. That's for the council to determine whether they wanna place it on the ballot voters to consider. In terms of code amendments again the Board has the authority to again to make recommendations to the Council for Code Amendments so those to me are separate and apart of each other. Those are now three different tracks, cause you're talking code, charter, and then rules. So what I'm talking about is we need to get our rules done.

Ms. Self: I think that is what we need to focus on as a board because we can not oppose fines until we have rules to implement it. So let the county council do their legislation. Let's focus on our rules, I'm trying to figure out, which section of the code, allows the fines other than for non-disclosure.

Mr. Yoshimoto: So there was an ordinance, there was a bill passed in 2008 that expressly added provisions to the code, contingent upon the Board of Ethics rules being amended also allow for that process.

Ms. Self: Has it been codified into the code?

Mr. Yoshimoto: It has not been placed into the code because it doesn't go into affect until the Board amends its rules.

Ms. Self: Oh no wonder I didn't see it, okay.

Mr. Yoshimoto: I apologize Ms. Self, but yes so you, haven't received, I don't think the 2008 bill. We can provide it to you. Other members may have gotten it.

Ms. Self: Okay, that's where the confusion is. Because without rules you can't implement it.

Mr. Wiseman: So J, you'll be providing us with those rule amendments right?

Mr. Yoshimoto: Yes I can, as long as we're ready to go. Mr. Heintz is pulling out a packet that I think is what I was recalling about he and I meeting on this matter in the past.

Mr. Heintz: Yeah I mean I have notes and worries...

Mr. Yoshimoto: So that was my suggestion that Mr. Heintz and I with the consent of the Board, meet again to go over those rules or we could just do it as a board, that's up to the board.

Ms. Self: What's the ordinance number so I can go look it up...

Mr. Heintz: Ok that's fine with me that you and Heintz go over the proposed rules...and we'll get a copy for the next meeting to go over right.

Mr. Yoshimoto: Yes.

Mr. Heintz: 08-57.

Mr. Wiseman: Is that it? That our counsel with member Heintz will go over the procedural rule amendments?

Mr. Heintz: Okay, can we also deal with the proposed code by Mr. Goodenow, and also my proposed changes?

Ms. Self: Changes to what?

Mr. Heintz: To the Code of Ethics?

Mr. Wiseman: The Code of Ethics as I recall, I had several concerns and I don't know, as of 2019, they weren't accommodated, for example filing a complaint within 6 years. You may recall my opposition to that term 6 years. That's still in the draft I have and that would a deal breaker for me.

Mr. Heintz: Do you have section that your, where that, problem....

Mr. Wiseman: No, this is my concern, what I have, I'd have to go through the file cabinet drawer which is all filled up with Board of Ethics stuff.

Mr. Heintz: Okay so it's section 2-86b, the 5th line...the petition or complaint shall be filed within 6 years...you want that number different.

Mr. Wiseman: No. two years.

Mr. Heintz: So if we change six to two you would be happy.

Mr. Wiseman: With that, yeah.

Mr. Heintz: This is Goodenow, memorandum dated 15th of April 2019. Proposed Code Amendments.

Mr. Wiseman: That's what I'm looking at.

Mr. Heintz: So you want that six changed to a two.

Mr. Wiseman: Yeah six years is a ridiculous term to file a complaint. In law, as we know it's six years for a contract, and two years for personal injury or torts and other causes of actions have different terms but six years, I mean just picture this scenario, I'll repeat it as I stated before of an employee, leaving a job and over five, six years later, he's gonna get a complaint of something he did back when he was working. 4, 5, 6 years ago. It's not right. It's not fair...it defies equity as far as I'm concerned.

Ms. Self: Plus if you can file a claim against the County it's a two year limit, statute of limitations.

Mr. Heintz: Two years is fine with me. So if we change that to two. Are there any other changes?

Mr. Wiseman: Yeah in the same section, upon receipt of the complaint...we have to get squared away, through all the amendments there's petition, complaint, complaint, petition. Is it a petition or complaint. Consistency, I mean they both have the same effect, but consistency, we have to be consistent here. And I'm not sure I'll defer to legal counsel, which term they wanna use there...but anyways, just some consistency.

Mr. Heintz: I think he has provided consistency, throughout.

Mr. Wiseman: No, I'm reading upon receipt of the "petition" is crossed out, "complaint" is added. The board and then down below in C it says

any petition or complaint and throughout other sections they're using them interchangeably. And then in number one under 'upon receipt of the petition complaint, the board through it's chairmen...' and this is asking someone if they want a closed hearing. I prefer language not given that option. I prefer language that the hearing shall be open unless for good cause, other procedure is requested, something like that. I mean again this goes, as far as the principle, the closed hearings are very very rarely granted and it has to be for good cause. And then in number three in that same section, the board may investigate...I remember we had ample discussion on this issue and I'm not in favor of investigation by the board. Do we have staff, we don't even have a budget, took me a year to get a coffee maker, to come down to the board. Do we have any staff? Who's gonna investigate, this is, to me it's beyond our parameters. Beyond our mission...and then going in Subsection C, there's a typo in number three. And again petitioner/complaint, petitioner/complaint...And I don't know if we have anything else here...

Mr. Salas-Ferguson: No just a side comment on the petition/complaint. The charter says complaint, I'm assuming that's where it's coming from. I don't know how to...

Mr. Wiseman: Alright, whatever, again I defer to council but I'm just saying that we should be consistent whether it's complaint or petition you know...also in the question for counsel, in the rules for disclosure...

Mr. Sala-Ferguson: What rule or code, cause we're...

Mr. Wiseman: I need more time to refresh myself and go over these again. So once I get a copy on this then...

Mr. Salas-Ferguson: I mean just from a...

Ms. Valenzuela: If I can speak for a second...

Mr. Salas-Ferguson: Yeah, board member has a...go ahead.

Mr. Valenzuela: I'm just speaking as a non-attorney, we're not in a court room, and this isn't court and so I'm saying, if the word is petition or complaint, this is a complaint. We are a commission, we're not in a court room...but here I mean, this had that we're wearing, I rather kind of, not stay away from the legalese, but just use our County Code, the Ethics, just stay with what I'm given, instead of moving into the real legalese of stuff. And that's just my opinion.

Mr. Wiseman: Yeah that makes sense, I'm not, I'm just concerned with this inconsistency and again I'll defer to Counsel on this so...

Mr. Salas-Ferguson: Yeah you know I think from a practical stand point, this is Sinclair, just you know, speaking practically. This is, you guys are kinda looking at three different bodies of law, the Code, the Charter and the Rules. I think it's probably best to focus on one at a time.

Mr. Wiseman: I agree with that, I'd like to go through the rules first. Do a real thorough job and a good job and take up the others. Okay, so J you'll be working with Larry and provide a copy before next meeting, proposed rule amendments?

Mr. Yoshimoto: Yes, as long as Mr. Heintz is...

Mr. Heintz: I'll be available.

Mr. Wiseman: Very good. Anything else?

Mr. Heintz: Are we going to deal with the changes that I've been proposing?

Mr. Wiseman: Yeah of course.

Mr. Heintz: Okay great.

Mr. Wiseman: If nothing else, I'll entertain a motion to adjourn.

Mr. Heintz: I'm sorry I mean today David.

Mr. Wiseman: No I can't do it today. I have to leave, I just had my five grandkids come over, who I haven't seen for a long time.

Mr. Heintz: That's fine. I just wanna put it on record that I drafted these proposals and submitted them to the members of the Board on December 6, 2020 and they've been on the agenda and off the agenda, over and over again. They're very simple and very straight forward. They have, if they were in effect, we would've been making decisions quite differently than we have, and I just am urging people that we need to deal with this sooner rather than later. I'll be off the board in two years, thank you.

Mr. Wiseman: I have, the problem I have, I don't have any problem with the amendments, which I looked over and I remember discussing those with you two, just one or two typos in it. But my problem is I'd like to take up the rules first and then the code, cause even under the code or rules, I'm not sure, like the disclosure interest and

stuff. Like for example the duty to execute that you have, yeah that's fine with me I don't have any problem with that.

Mr. Heintz: And what about the failure to discharge, which is the duty to execute. It's..

Mr. Wiseman: Yeah I like that, uh huh.

Mr. Heintz: And then the manner of discharge and then the section on appearance of fairness doctrine.

Mr. Wiseman: That's one I'd wanna have some more input in.

Mr. Heintz: Okay and then finally, the revision of the code of, the revision of the oath of office. As it is now when an employee or elected official of the County of Hawai'i, they solemnly swear to defend the Constitution of the United States and the Constitution of the State of Hawai'i. And that they all faithfully discharge their duties. But what I wanna is the Charter of the County of Hawai'i. And right now when we pledge our oath, we don't pledge to follow the Charter of the County of Hawai'i. And if you recall, Mr. Kamelamela pointed out that the previous mayor didn't have to follow the Charter, and their duty to do so, they never took an oath to do that. So this would correct that and then if he avoids his duty, failing to execute.

Mr. Wiseman: Right, yeah that makes sense. Just for point of information, the oaths that have under god, that was added by George Washington, that was not a constitutional oath. He added that in and everyone sort of followed that afterward. In any event, if we're gonna continue, Larry I'm gonna turn this over to you as Vice Chair cause I have to leave, there's some quality time I'm missing here.

Mr. Heintz: Okay...well maybe we can do this next meeting, but maybe we can put it higher on the agenda so we can deal with it and get it done with.

Mr. Wiseman: I'm with on these...

Mr. Heintz: I would prefer that the whole body...

Mr. Salas-Ferguson: Correct me if I'm wrong, but couldn't they do a special session just to address these type of rules and amendments and everything that way, we don't run out of steam and people gotta go.

Mr. Heintz: Yeah cause I know I start burning out after 5 hours...

Mr. Wiseman: Okay, is there a special session possible, I'm all for it. So Counsel can look into it and get consensus to the members and we can do that, take up these amendments.

Mr. Heintz: Thank you.

Mr. Wiseman: Okay, in the meantime I'm gonna entertain a motion to adjourn...

Mr. Heintz: So moved.

Ms. Nakanishi: I second.

8. ANNOUNCEMENTS

Mr. Wiseman announced the Board's next meeting on Wednesday September 13, 2021 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. (1:52 p.m.)

Mr. Wiseman adjourned the meeting at 1:52 p.m.

Respectfully submitted:

Liza Osorio, Secretary