

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

Wednesday, September 13, 2021

10:09 a.m. to 2:17 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

Dakota Frenz, Deputy Corporation Counsel

Dalilah Schlueter, Deputy Corporation Counsel

Liza Osorio, Secretary

1. CALL TO ORDER (10:09 a.m.)

Mr. Wiseman called the meeting to order at 10:09 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 some public testimonies were not recorded. However a few of their statements were provided post meeting via e-mail.

Ms. Harden (e-mail): First, I’m impressed by Ms. Asis’ background and her valuable contributions to the community. However, the facts do not support three claims in her July 1 petition. Her first claim is that “Councilmembers Inaba and David stated outright they rejected me due to my occupation as a realtor...” and that David, Inaba, and Villegas all indicated they voted no because Ms. Asis is a realtor. This is not borne out by the video of the April 7 Council meeting. Ms. David raised concerns about Planning Commission members who “are in the business of real estate and that sort of thing.” But then she added “I think we need a more diverse variety of people...just to balance it out.” Mr. Inaba, Ms. Villegas, and Mr. Kaneali’i-Kleinfelder did not say anything about Ms. Asis being a realtor. Also, a West Hawai‘i Today article states: “Dissenting council members said their no vote stemmed from a concern that the commission, charged with scrutinizing rezoning and land use applications, was stacked too heavily with developers, leaving little voice for those more attuned to environmental, historical and

cultural issues.” Rejected Leeward Planning Commission nominee files ethics complaint against Council members, West Hawai’I Today, August 12, 2021. The article also says Ms. David “pointed to the state Senate’s recent rejection of a qualified white male for the Intermediate Court of Appeals, with senators saying there needed to be more diversity on the judicial panel. Gov. David Ige subsequently nominated a woman of Native Hawaiian ancestry.” Ms. Asis’ second claim is that she “was not even invited/ allowed to be in the Council meeting where I was voted against” and “had no opportunity to speak for myself”. What chair Ashley Kierkiewicz actually said at the March 17 Planning Committee meeting was “you do not need to be joining us when we confirm your nomination.” Other nominees have attended Council meetings after being told they didn’t have to. Ms. Asis had access to information regarding concerns that potentially might derail her nomination. When she appeared March 17, a testifier spoke opposing her nomination. And before the April 7 meeting, there was additional, publicly available written testimony with concerns. One letter suggested 17 specific questions for Council to ask regarding Planning Commission rules and Community Development Plans. Granted, Ms. Asis was given the impression that the confirmation was a done deal—but that was from by Ms. Kierkiewicz, not by the Council members named in today’s petition. Ms. Asis’ third claim is that only one of Mr. Inaba’s constituents testified against her, but it was actually two—Janice Palma-Glennie and Chuck Flaherty. In summary, Ms. Asis’ claims are not supported by the facts, and you should deny this petition.

Ms. Funakoshi:care and consideration. The issues that contribute to the final decision of each member, the commission needs to be balanced and diverse, it needs to represent the residents of this island and not just special interest. Does the County council have to say yes to every person who gets nominated? Is diversity and equal fair representation also not important? Regarding the Hawai’i County Charter Section 13-4, the decision to reject Ms. Asis’s appointment was not based on occupation alone. When watching the April 7th meeting back, the references to Van Pernis’s removal was not solely regarding Ms. Asis’s profession, but about public input for the need for a diverse LPC. We need champion for the people, on the commission that has knowledge of our culture, our land and the importance and protection of it and its resources. We need someone who has deep ties to this land and understand our resident community here on the leeward side. In regard to Article 15, of the Hawai’i County Charter I have never seen any of these council members treat anyone in an uncourteous or unfair manner. They are always courteous, even when in disagreement. I’ve seen

Councilman Inaba be patient and respectful even in the face of a threat. I've seen Chair David take the time to talk with community members regardless of the stress on her time or position on her the issue. Regarding the Code of Ethics, section 14-1, I feel that it directly applies to all of these council members mentioned in the petition, due to the fact that we as a community have complete trust and confidence and the integrity of these particular elected officials. They do not make decisions that are influenced by special interest or even the executive branch. Their decisions standalone based on the concerns of their communities as their job requires them to do and as they have done in this situation. Please consider denying this petition. The grounds for the petition are weak at best. These County council members did their jobs and stayed true to their communities and to their values. Mahalo so much for your time and consideration.

Mr. Wiseman: Thank you ma'am. Do any members have any questions? I do have a question or concern...The fact is you mentioned of course how very important in selecting people to represent various facets of the island, however when it comes to confirmation, doesn't the committee play an important in what's your position on the fact that the committee voted 8 to 0 to confirm her?

Ms. Funakoshi: I believe maybe they didn't have all of the information or maybe the public wasn't able to speak with them in regard to their concerns before they were made aware of the nomination of Ms. Asis. But once they were made aware of the nomination, then they had time to research the background, research the values, research her experience and I have nothing against her, I don't know her, I really, I don't know any of the councilmembers, I just, I know their work, and I support and appreciate what they've done for our community.

Mr. Wiseman: Okay, thank you very much for your input ma'am. Do any members have anything further based on my question? Okay there being none, thank you we'll take this under consideration.

Ms. Funakoshi: Thank you.

Mr. Wiseman: Thank you Ma'am. Do we have another speaker?

Mr. Araceley: Thank you Chair, the next speaker is Mark Van Pernis. Mark if you could please unmute your mic and provide your testimony you have those three minutes starting now.

Mr. Wiseman: Mr. Van Pernis?...we can't hear you.

Mr. Araceley: Chair we can always come back, if you'd like to.

Mr. Wiseman: Very well, was he present do you know?

Mr. Araceley: It seems like he was, but we can come back and try after our next testifier.

Mr. Wiseman: Okay very well, let's move to the next one.

Mr. Araceley: Thank you Chair, your next testifier is Peter Sur. Peter if you could unmute your mic and provide your testimony you can also allow your video to show, you have three minutes starting now.

Ms. Sur: Chair, I'm unable to start video, can the host enable?

Mr. Araceley: I will do that now. Thank you Peter.

Mr. Wiseman: Yes go ahead, proceed please, Mr. Sur.

Mr. Sur: Aloha Chair and board members, My name is Peter Sur, and this testimony is in opposition to Petition 2021-12. I have worked in the office of council member Sue Leeloy from December 2016 to January 2021 as legislative assistant. I am here to defend the council member who is my friend and so much more against the despicable lies that this petitioner has been spreading, with no evidence except what he admits is school girl gossip, petitioner tries to defame this councilmember and her innocent daughter. The petitioner is using this board as a platform to spew baseless conspiracy theories against a public servant who through it all has shown the honor and dignity that this petition lacks. I've seen the council member's name be dragged through the mud for four years but she takes it and keeps going, because the rift to her reputation is a cost of public service that she willingly endures. But she didn't sign up for this. Separate yourself for a moment from your opinions about the council members politics and look at her also as being a victim of domestic abuse. Who called police on her husband twice fully aware of the public scrutiny that would follow. I believe they are working through it, but by filing frivolous complaints, the petitioner continues to cause victims of the council member's husband to relive the trauma of their attacks and this petitioner is asking you to be complicit and slapping open wounds that have yet to heal. Consider now the basis for the petition. The operative components of County Charter Section 14-3a requires a disclosure of any interest that might reasonably tend to create

conflict with a public interest. My former boss has too much class to restate the petitioners arguments in all its ugliness but I will try. Simply stated, petitioner asks you to find that a council member should've declared that she influenced a building division official to influence the legislative research brand, the division chief and the public works director to draft a bill that vetted by Corporation Counsel and by dozens of builders, contractor, architects, realtors and honest drafters. That was amended and passed by the County Council and signed by the Mayor to benefit her daughter, or is it more likely that a disgruntled individual who's business benefits from barriers to affordable housing remaining in place and exposed his own lack of knowledge about the construction codes in a telephone conversation with a council member during the last term and then felt the need to abuse the board of ethics process to embarrass the same council member, you be the judge. Chair you have two conclusions to reach today, the first is to recognize how hurtful it is even to place this petition on today's agenda. The 2nd is to dismiss petition 2021-12 for being totally devoid of merit and to tell this petitioner that his lies are beneath the dignity of the board and he is wasting your time. Thank you.

Mr. Wiseman: Thank you Mr. Sur. Do any members have any questions for the witness. Okay there being none, thank you for your input and we'll take your testimony under consideration...alright I see Mr. Van Pernis is back, Mr. Van Pernis can you test your audio...it's not working...Go ahead Mr. Van Pernis.

Mr. Van Pernis: I refer to my email responses of September 6th and 8th...(?) has been provided to you. To fully understand this matter and carry out your responsibilities, the Board must read those and answer questions on the record. Because your staff Ms. Osorio and Counsel Ms. Schlueter...

Mr. Wiseman: Mr. Van Pernis, I'm gonna interrupt you here because we are not gonna be answering questions. You have a right to state your concerns in your statement.

Mr. Van Pernis: The questions are stated in (?) testimony. And I'll ask you to consider them during your deliberations. I'm not asking for answers (?)...

Mr. Wiseman: You can go ahead and make your statement if you want...

Mr. Van Pernis: Okay...because Ms. Osorio and Ms. Schlueter have stated that in order not to violate the Sunshine Law, everything must take place only in the agendized proceedings of the board. I'm putting out

that the board's letter to me last May 24th, did not, did not indicate any rules to be accessed (?) the 4th paragraph of that letter. I've not seen any preliminary opinion. Is there one? (?) I was not informed of what it's arrived at. The West Hawai'i Today newspaper in a front page article on August 4th, reported that a ruling had been arrived at (?) quote Chairman Wiseman and Vice Chair Heintz as if this ruling is final. If so, why is it on the agenda now as only a draft? (?) Violations of the Sunshine Law as to the newspaper (?)...Does the board have any jurisdiction over (?) Section 2-79a1 and a2 of the ethics code (?) does not...Amendment to the Code would be necessary (?) jurisdiction. Does (?)...The board has not identified any questions or statements that supposedly were not nice. In the newspaper, If the newspaper is right statements made to Planning Commission for the mulching which passed were the only statements (?). These are protected from any (?) by Section 2-83d. Are any offensive statements pointed out by the board ruling? The commission transcripts were available for that, has the board seen it, it's ruling...2-83d. (?). In support of the motions? Has the board pointed out the standard for niceness?...

Ms. Schlueter: This is a timer, that was 3 minutes.

Mr. Wiseman: We'll give you some more time Mr. Van Pernis. Go ahead, you may continue for a few more minutes.

Mr. Van Pernis: Thank you very much. Has the board considered the standard for niceness (?) not covered by 2-83? (?)....And if so what speech? There's not been (?) due process of care procedures and standards. (?) newspaper report of (?) a correction made (?)...this is an important matter and some refer to it as (?) of planning commission (?). Also appears that BOE's has been incomplete without consideration of section 2-83d, the conclusions or the difference between questions and statements (?) indication of any standards without (?)...

Mr. Wiseman: I'm sorry what was that last one? Comment on what?

Mr. Van Pernis: Petition 2021-05...

Mr. Wiseman: That's completed. You had ample time to speak on that and you did speak on it.

Mr. Van Pernis: Well I'm talking about the request for an advisory opinion.

Mr. Wiseman: All right is there anything else Mr. Van Pernis?

Mr. Van Pernis: Just a comment on that request.

Mr. Wiseman: Well go ahead, make it brief.

Mr. Van Pernis: There's no public report of what the decision is, I don't know what it is. But I hope it's (?)...That it (?). Also covers all the other subjects like...

Mr. Wiseman: Thank you Mr. Van Pernis.

Mr. Van Pernis: Let me finish by saying that I think (?) Mr. Vitousek, which occurred about a year after the event took place (?) he said there's no problem (?) and finally that the application for an opinion was meant to support the argument of revoking my membership of the planning commission was not a sincere application.

Mr. Wiseman: Thank you for your testimony. First off, just a quick response to a couple of things. We haven't spoken to the newspapers, we haven't been interviewed in any petitions, with respect to yourself, so what they report is, I can't comment on what they report. The veracity of it and we don't give out preliminary decisions, like draft decisions to the public or the petitioners so I just wanna make those, cause you stated the newspaper three times...and we don't speak to the newspapers at least not in your case.

Mr. Van Pernis: Let me point out that this is West Hawai'i Today, August 4th, front page article, announcing, and I quote, the ruling of the Planning Commission and it quotes you Mr. Wiseman, and quotes Mr. Heintz as (?) statements in (?)...

Mr. Wiseman: Well again, it's a newspaper, it's not an official record. Thank you Mr. Van Pernis, we'll take your testimony under consideration. Do any members have any questions for Mr. Van Pernis? There being none, we'll proceed on the agenda.

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF AUGUST 11, 2021
(10:37 a.m.)**

Motion and Vote: Ms. Nakanishi moved to approve the minutes. Ms. Valenzuela seconded the motion. All members, excluding Mr. Heintz who was not yet present, voted aye.

4. NEW BUSINESS (10:38 a.m.)

a. **Petition No. 2021-12: Review of a petition alleging that a County Council member is in violation of the Hawai‘i County Code and Hawai‘i County Charter.**

Mr. Wiseman: Is the petitioner here to speak on that?

Mr. Frenz: Chair, they’re gonna be brought in, one moment.

Mr. Belisario: Joe Belisario, Hawai‘i Design Group petitioner. Ethics petition 2021-12.

Mr. Wiseman: Yes, Mr. Belisario, you may proceed with your testimony.

Mr. Belisario: Yes, I’d like the Board of Ethics...First I’d like to say in response to the public testimony that was offered. Two words stand out to me disparagement and lies. I believe my petition clearly indicates disparity and the lies are the solution to those are the truth. And I believe my petition at this point identifies that truth that Ms. Lee Loy did not disclose her daughter’s employment as an ESOP employee. And it did violate the Code of Ethics and the procedures of the County Council in my petition. I think the records and documents I’ve provided clearly indicate that. I think the, I recommend that this be looked more forward into and not be rejected without merit cause it does hold merit. As for Mr. Tanaka, that is a personal issue that I find very hard to bring forward and I’d like the Ethics board to know that Neal Tanaka worked for me for 12 years at Hawai‘i Design Group, so as far as to his character, his training, before he came to the County, he spent 12 years by my side...

Ms. Frenz: Mr. Belisario, you’ll need to get closer to the Mic.

Mr. Belisario: Okay...So the main agenda item is really not the affair, there is ramifications I think that should be looked at as far as how that impacted the two persons involved and how it impacted the legislation. Or the possibility of the unknown. The truth of whether, that was, the truth in the affair or not is really none of our business but the fact is that we do have a council woman in a leadership position working together with an acting deputy building chief. Which I have known for 12 years. It’s unfortunate but that incident was publicized, it was public, whether or, whatever the truth bears it could have an impact on the DPW director, assistant deputy director. How that influence could be discovered is something that, again, I’m not sure if the ethics commission investigates, again this is a new endeavor for me and I’ve been watching the County, I’ve been here 40 years, I’ve

through a lot of Mayors, a lot of directors, a lot of code changes, a lot of rule changes and my connection between the codes is through me and to my clients and the citizens of our County. And I, at Bill 179 I felt that it was time for me to step up. And what I have observed over the last 5 years, 4 to 5 years has been somewhat disturbing. I did bring to light one code out of Bill 179 that would, had definitely ended my career as a draftsman. And as far as being a draftsman, draftsman have not been consulted at all on this matter. Certain ones will, certain ones won't. I have been ex-communicated from the County, I'm not even getting e-mail returns and proper communications as allowed by the County Charter. So today, aside from the affair we are looking at the fact that if Ms. Lee Loy was supposed to disclose, per the County Charter and the Board of Ethics, her daughter's involvement with HPM. I think there's enough merit in my documentation to make grounds to move it forward. I believe there's enough evidence here at this point, and these are not my words, these are their words, these are their minutes. I'm just citing the code, and citing the, of course you all know the ramifications of this particular incident for this particular person. However I do realize that the outcome of this ethics hearing will have impacts and the impacts will be to bills or deliberations that she took part of, if it's found that she did not disclose properly, and that's sort of where I stand on this. I've been told we're supposed to follow the code and follow the law, and I spent 40 years here in Kona on the Big Island, and I've been watching the waves and the troughs of attitudes, favoritism, retribution, of which now if risen to the point that I'm here before your commission and I am just discovering and exploring this committee's purpose and whether or not I will be filing further ethics complaints...

Mr. Wiseman: I believe your time has passed...can you just sum up please? Any summation you wanna make.

Mr. Belisario: My summation is basically this, the documentation that I have put forward definitely does support my allegation. As to the non-disclosure, of Ms. Lee Loy's daughters ESOP employment with HPM which definitely does violate the rules of procedure, Rule 11 and Hawai'i County Charter. And I'll summarize and leave it at that.

Mr. Wiseman: Okay, thank you very much Mr. Belisario. Any members have any questions for the witness?

Ms. Self: I do... Which section of the Housing Code are you referring to? Chapter 11?

Mr. Wiseman: Was there an answer to that question? I didn't hear it.

Ms. Nakanishi: 14-3a?

Mr. Belisario: Yeah 14-3a?

Ms. Self: You referred to Chapter 11 of the County Code...

Mr. Belisario: Actually it was Chapter 11 of the Rules of Procedure...

Ms. Self: Housing Rules?

Mr. Belisario: County Council Rules of Procedure...

Ms. Self: Oh the County Council, okay. Nevermind...

Ms. Nakanishi: So your company, you're a draftsman. That's your company that you do? So just, explain to me how Ms. Lee Loy's daughter, that disclosure affects the new building code. How is she gonna benefit, how is the Council person gonna benefit from the daughter's employment?

Mr. Belisario: It's not a matter of benefiting directly, but it is a requirement of the Hawai'i County Code and the Rules to disclose anyone that has interest in it and (?) a child.

Mr. Wiseman: I can't hear anything.

Mr. Belisario: Sorry about that. No it is a County code and a requirement that a written disclosure shall be given to the authority in charge. In addition I believe that, and I'm coming off of memory here, that in addition, if disclosed then it should be orally stated at the time of each vote and none of that through the minutes of Bill 179 or Bill 44 was executed. So it's a matter of the code, the code saying that she was supposed to disclose. It's not how her daughter benefits or how the council woman benefits. The statement or the language and the law doesn't ask that. The law says that she must disclose in writing to the authoritative jurisdiction. Or to the council members, in some shape or form, via disclosure. I'm not a council person, I'm not sure that, that's how it's done. But I've ascertained that it was not done. And it's a simple point of law, and a simple point of language, one was supposed to do X, and that was not done. And that has ramifications per the County Charter, per the County Code and the HRS. And I ask this Ethics commission to look at it by the letter of the law and by nothing else. I'd like to add that this

complaint is, this entire ordeal of the building codes has had everyone and the County Council, I use the term...

Mr. Wiseman: Excuse me Mr. Belisario...Commissioner Self was your question answered? Cause it seems as if the witness is starting to elaborate more on his general testimony...you asked a specific question, if we got an answer from that we can move on.

Ms. Nakanishi: I think that's fine.

Mr. Wiseman: Okay, thank you Sir. Any other members have any questions? There being none, thank you for your input Mr. Belisario, we'll take this under consideration...

Mr. Belisario: Thank you.

Mr. Wiseman: Any other speakers on behalf of Petition 2021-12? There being none...we'll move into unfinished business...and we'll take up petition 2021-09....

Mr. Self: Chair we have another testifier...this is the response from Ms. Lee Loy, council member Sue Lee Loy...

Mr. Wiseman: I see, very well. Council woman you may proceed.

Ms. Lee Loy: Thank you Chair. Aloha, members of the Ethics Board. Sue Lee Loy respondent to Petition 2021-12. Thank you for the opportunity to provide a brief introduction and a summary of a reply that I provided to this body. While I did find it challenging to reply to the written response, I was able to glean out relevant sections of the Charter and the Ethics Code and provided factual responses in my reply. I'll give you a high level summary of my reply. But I wanted to start with how I evaluate legislation that comes before me. First and foremost, what is paramount is the question. Is it fair, is it good for the community and how does it comport with other statutory requirements. In summary I'm gonna ground this body with a solid history of the construction codes and it's legislative mandates, provide confidences that there was no substantive financial interest or gain and there was no conflict with the public's interest or trust. I serve as the Chair of the Committee of Public Works and was approached by the previous administration to assist with bringing all of our construction codes into compliance with the mandate charted to us by Hawai'i Revised Statutes 107-28. Keep in mind from as far back as the 70s, factory build and construction codes have been part of our County. Bringing the code into compliance was not simple. The task

included a phased approach, consolidating six different parts of our construction code that was housed in 3 different areas of our County code which would then set the foundation to assist us with transitioning into an electronic single permit process. Complex and comprehensive is an understatement. 1) the Petition takes issue with a single company that provides building plans, supplies and materials, island wide. The petition asserts that the legislation was specifically designed for this company's housing plans. Finally, the petition further asserts that through my daughter and her employment with this company there was substantial personal and financial interest to me. My reply: No. Nowhere in this entire legislation from as far back as the 70s is this company's name mentioned or given exclusive rights. The housing type known as factory built was part of our code from as far back as the 70s and was entered in as Chapter 61 of that respective code and was available for anybody to use across the island and even the state. My daughter is an adult and she doesn't live with me. The construction codes and the applicability to all persons, businesses, contractors and professionals performing construction. There is nothing unique to the company my daughter works for or how she earns her income. Through the use of these codes which is no different than any contractor, any plumber, any electrician, any draftsman or any architect. I kindly request that this petition be dismissed. The petition provides absolutely no basis for my alleged substantial, financial enrichment, interest or personal gain. Amounting to no conflict, and amounting to no disclosure required. I understand as a public servant we are subject to scrutiny and complaints. We have to have thick skin. However, to string and distort information to cast a false light on my daughter or malign HPM, a company that has served our community with core values, like hard work, integrity and knows the true meaning of Ohana is uncalled for. Lastly the petition points to gossip and publicly shames me. I was a victim. I had the courage to call for help. I will respond to this and find it highly offensive that this process has subjected me again. I understand you have a tough job to balance many parts of this code, respective guard rails while ensuring that the public has a well-balanced objective policy maker working on legislation. I trust this helps the board with determining the merits of this petition and provides a bright line of understanding of the sensibility and the use of the work I have advanced on the Hawai'i County Council. I stand ready for any questions and can provide any additional evidence required. Thank you for your time.

Mr. Wiseman:

Thank you council woman. Do any members have any questions or concerns?

Ms. Self: Would you be available to answer questions during our discussion on the petition?

Ms. Lee Loy: Yes.

Ms. Self: Okay, thank you.

Mr. Wiseman: Okay thank you council woman, we'll be entertaining your testimony under the review of the petition and take that into consideration. Thank you ma'am. So moving on, unfinished business...

Ms. Frenz: Chair Wiseman...the petitioner is asking to make a rebuttal statement. Are you gonna allow that?

Mr. Wiseman: Okay I'll allow a rebuttal, 3 minutes.

Mr. Belisario: Joe Belisario, Hawai'i Design Group, Petitioner. Ethics Petition 2021-12. Again, I am a woman's advocate, I understand the issue was a very personal one. Again I did not bring it into the public eye at the time that it was done in concert with was being done but the issue before you today is Hawai'i County Section Code 14-3, the disclosure of interest. That is the point at hand here. The four corners of this document and the language here clearly says lines out what is supposed to happen and with other responsibilities of our elected officials. When that is superseded, myths, on purpose or not, I believe that at this point, it still didn't happen. It's a requirement of law and did not happen. As far as the HRS 107-28, that also has not happened. We have not followed the state mandate 107-28 and we've missed, we're the only County that has missed multiple code adoptions, and this hearing today is based on Councilwoman Lee Loy's failure to disclose but this County council has been up against, had their nose up against the chalk board. We need to step back and take a look at the bigger picture here. I've been here 40 years, there's a bigger picture here, not just HPM and Ms. Lee Loy and the good work. And I will say one thing, Ms. Lee Loy is that I have been watching and aware of the great work that you've done in our community and I applaud you for that. The issue before us today with the building codes, there is a larger picture and If I'm to bring that larger picture to this body or any other body then 40 years I've been here, this community has treated me well, and I have somehow found myself 2 years later sitting before you and I'm not at home drawing plans right now, I'm engulfed in this right now, as a personal payback to my community. So I would ask you to set aside the emotions and set

aside the tragedies and look at the points of law and the County Code and the County Charter...

Mr. Wiseman: Thank you Mr. Belisario your time is up.

Ms. Self: I have a quick question... You keep referring to the Council Rules but this body does not enforce Council Rules. The Council has to do that. So if you approach the Council about disclosure cause that's their job to decide whether something should be disclosed or not.

Mr. Belisario: I did an OIP request for government records and I have received those records from the County Clerk's office and disclosures were not added in there. They said they had none to give me. So I don't know about County Council, but the County Clerk gave me the records and the minutes and the disclosure was not made. It's a point of law that I feel that I need to stand on because it was missed. I can't be able to, I don't have the resources available that the Councils have or the Public Works Director has or their employees, I am just one guy and I got 40 years of experience and I can see where it's going awry.

Ms. Self; But again, Council Rules are enforced by the County Council, that's what you're referring to is the County Council Rules but they enforce their own rules, we can't enforce their rules.

Mr. Belisario: Well I'm bringing forth the violation of an active complaint naming not more than, not only that rule but others and I would look at my complaint as a whole and take those complaints as whole by the letter and compare them to the letter of the law and leave the emotion and the, out of it as this point. If there was a requirement that was supposed to be done and it was not done was it ethically not done? Was it ethically, was it ethical to miss? In this I think there is an impact here and to a bigger picture and again I apologize to council woman Lee Loy it was never my intent to bring any pain upon her, to have her relive her experience.

Mr. Wiseman: Anything else commissioner? Commissioner Self?

Ms. Self: No.

Mr. Wiseman: You have anything further for the witness?

Ms. Self: No.

Mr. Wiseman: Okay thank you Mr. Belisario. A very timely quotation, I think 18th century, maybe Ben Franklin, each house is master of its own rules and that's to this day, the rule with respect to legislatures and councils, etc.,...in any event, moving on...

Ms. Frenz: Chair Wiseman do you have a motion, on the current petition.

Mr. Wiseman: Yeah...do we have a...motion?...On the current motion, it's dismissal or we'll take it under advisement? Counsel?

Ms. Nakanishi: I'd like to make a motion to dismiss, I just don't think there's a strong enough nexus between the two issues.

Ms. Valenzuela: I second her motion.

Mr. Wiseman: There's been a motion made and seconded to dismiss the motion. We'll open it for discussion. Anyone wish to chime in on the basis of dismissal, etc.?

Ms. Self: I'm a little confused because, there are two issues that he included...so I don't know if it was in two petitions I can't remember now, I read this stuff late at night, but there was one about the mother and daughter buying a house and that somehow was in the petitioner's opinion unethical and the other thing was the daughter's job HPM which I find even further disconnected but anyway, here's my opinion for the building code issues with the daughter's job at HPM. The only thing that would possibly apply would be, and this is in the ethics code, 2-91.1g where it says 'any member of the council who knows he or she has a personal interest direct or indirect and any action proposed or pending before the council shall immediately disclose such interest.' I mean I guess to me I'd probably disclose if it was my 4th cousin involved or something, you never know, just to void situations like this. That would be my advice to just disclose, disclose, disclose. It doesn't hurt anything, and then the council members can decide whether there is a conflict or not and then not have the council member vote or discuss but I find it highly...the daughter is independent, working as an adult in a job and I just don't see the connection at all. Personal interest I guess but I mean jeez, you can't expect a council member to dictate what their kids, where their kids can and cannot work, so that's why find that one to be not credible. And the other issue about the housing, without more information I don't know that I could even make a decision on that when I wouldn't...

Mr. Wiseman: Thank you, anyone else wish to discuss this matter?

Ms. Valenzuela: It's Kelly...

Mr. Wiseman: I'm sorry, go ahead...

Ms. Valenzuela: I just pretty much wanna make a statement more in what we just talked about in echoing what Amy says but you know the Board of Ethics, although I'm new as a commissioner on this board, I've been on other boards, and there's such a fine line right? What's very disheartening and sad is we're living in a time right now that mudslinging just seems to be an everyday thing. And though none of us are perfect, bringing someone's affairs and or personal information really is irrelevant and none of any of our business, and it's sad. I believe Sue Lee Loy as a council woman has done a lot from what I've seen, perfect probably not, I'm not perfect, I don't think anybody else here is, but also what is more important, we live on an island, Hawai'i island. Many of our kids are gonna work and be employed with people that we know or did drawings with or did real estate with and it's very difficult sometimes to start pinpointing things like that out, but also to bring in all the rubbish, all the 'opala, information with it, and so at this time, I stand with my folk. Thank you.

Mr. Wiseman: Thank you commissioner.

Ms. Nakanishi: I'd just like to make one comment cause it feels kinda funny and related, and I've been here, not 40 years but close and the joke is this County, when did you work for HPM, not did you ever work for HPM, so it's kind of a hard one to sort out if you use that as a test...

Mr. Wiseman: Okay, thank you. I'd like to make a statement. I concur with Commissioner Self, with respect to disclosures. Disclosures is a very simple act, I mean any commissioner, Kelly as well, any simple act, I mean any simple connection, I can recall numerous instances in my former profession on the bench, you know, 'Okay, I'd like, in the interest, in the public interest I'd like all parties to know, I went to high school 20 years ago with this person or this person 10 years ago was my client, does anyone have a problem with that?' And 99 percent of the time there is no problem and things proceed but you made the public disclosure, it doesn't take much and I think at the appropriate time, if we reach a consensus on the appropriate, timely decision we can sorta mention that as what they call dictor in some, that all boards and commission should really follow that simple practice of disclosure. And that's all I have on that. But I also agree with all the personal

ramifications, stuff that's really not relevant to the petition that was brought it, you know that's, that is, that does fit the definition of mud-slinging as the commissioner stated. Not necessary. It's not good for anyone. In any event, any more discussion on the motion? Okay there being none, we're ready to vote on the motion.

Motion and Vote: Ms. Nakanishi moved to dismiss the petition for lack of jurisdiction. Ms. Self seconded the motion. All members (except Member Heintz, as he was not yet in attendance) voted aye. (11:17 a.m.)

5. UNFINISHED BUSINESS (11:18 p.m.)

a. Petition 2021-09 Review of Petition alleging that members of County Council are in violation of the Hawai'i County Code and the Hawai'i County Charter. (11:18 a.m.)

Mr. Wiseman: Just for point of information this is a petition where we did hear the five counselors, four or five I forget, at the last hearing in August. And that time we granted the request of the petitioner who had to go off island, we granted the request to continue it to hear her testimony. Is that correct, Liza? Or Counsel?

Ms. Frenz: That's correct.

Mr. Wiseman: Very well. Okay so at this time if the petitioner is ready to proceed we can do so. Is the petitioner, please state your name ma'am and you may proceed.

Ms. Asis: Good morning everybody my name is Dana Asis, I am the petitioner, I first of all thank everybody for their time, being here today. I thank all parties for their agreement to postpone this from today from last month as you mentioned I had a family emergency and appreciate that everybody understands why that took precedence for me. I won't read my petition over again, I think it's fairly straight forward on it, there was a unanimous 8-0 motion to move me forward in my petition for Leeward Planning Commission. Chair David was absent, I believe it was excused that day. At the end of that I was told to not attend the County Council appointment where it would be my second reading. As you understand in COVID days, you were not allowed into events if there isn't a purpose for you to be in there. I did watch it, again was not provided a zoom link to it for the same reason of that. So I did not have the ability to address any concerns that would have been brought forward on my behalf. Given that I feel that to go from a unanimous vote to a majority vote against me with no questions posed to me before or after about my credibility, about

my ability to absorb information from all different parties of all different walks of life and whatever different ideas brought forward that it does not seem as though it was a fair vote, if there had been questions, given the circumstances it seems to me that it would've made perfect sense for somebody to postpone the vote until they had the opportunity to ask me about my character, about how I would critical think, about how I would approach individuals from different mindsets on it. I also have a concern about the fact that on numerous occasions, I was called out simply because of my occupation. And again going back to the County charter, which is what the members of this community have voted on, the County charter is one of the tenants of this County. It's been voted on by the members of the community. It explicitly states that an occupation cannot be a basis, sole basis for dismissal of somebody. I know that people say that it was bad feelings, of course there are some bad feelings involved in it, I'm a real estate broker, every other year at the very least we are required to take ethics trainings. Discrimination is something that we take very seriously about what we do and we are very cautious whether you like the client or not you have a fiduciary responsibility to listen to absorb their information and to work under those auspices of the best of our ability to work for them. So of course there is a personal piece to it. Professionally and longer term though, I've waited before I filed this petition because I watched the same individuals and the same concerns be brought up about the person who came after me, Shauni Armbrust was essentially brought, the concerns in some of the negative votes were because we worked for a developer, her occupation. I went back and looked at Mr. Lim, who now sits on the Windward Planning Commission, and saw that some of his negative votes were also due to the fact that he worked for HPM. So, there is a personal piece of this. I wasn't given my fair due say in this, but there also is a longer term concerning pattern to me that members of our County Council are not open to presuming that people based on their occupation are able to make a fair and just decision. So I stand here before you today asking that you, hopefully you have read thoroughly through my petition, asking that you understand where I'm coming from on this. If I had been grilled on this and was not the correct candidate for it. No hard feelings, hopefully somebody else that can better serve our community can move forward in that capacity. But again, the ability, to not have been given that opportunity to speak for myself, to listen to every party involved, seems to me as though it was unfair & discriminatory in practice.

Mr. Wiseman:

Okay, very well. Thank you ma'am for your testimony. Do any members have any questions or concerns for the witness?

Ms. Self: I just have one. You said that you didn't have the opportunity to respond because they told you you didn't have to show up the next time but you could have shown up right?

Ms. Asis: I was watching, yes.

Ms. Self: But you couldn't speak, is that it?

Ms. Asis: I was not invited it. It was, to paraphrase a statement that was made, it was apparently a common practice that when you're unanimously voted in in the first one there's no need to attend the next hearing, the second hearing. Therefore it took, this is a new process to me, therefore I took what the chairs words were to heart, I watched it via zoom. But no I was not, had I known that there would've been concerns and I had the opportunity by all means I would've been there.

Ms. Self: Okay, thank you.

Mr. Wiseman: Yes I have a question. When, subsequent to your nomination, did you submit or did they request certain documents, the committee. Did the committee request or did you submit to them certain, resume, or whatever they needed?

Ms. Asis: I filled out the application, initially, when I applied for the commission. Subsequent to that no, I did send an email to the entire body, all 9 council members asking for the ability to understand their concerns and questions, perhaps to address them. Most of them chose not to reach back out to me. The one individual that did give me the courtesy call, Councilman Inaba did call me, we had a very fair conversation I felt, I appreciate his reaching out to me and the statement that was provided to me was essentially that I was a realtor.

Mr. Wiseman: Very well, any further questions or concerns?

Ms. Frenz: Commissioner, I just wanna make it clear that Commissioner Heintz has now joined us, he's present. **(Joined in person at 11:23 p.m.)**

Mr. Wiseman: Welcome Commissioner Heintz.

Mr. Heintz: Thank you David. I have questions. Hello. My first question is actually connected to board member Self's question about your ability to not showing up to the general meeting, and council

member Inaba made that point in his remarks, but I wanna just say that the tradition and that Council member Kierkiewicz told you there was no need to show up, I've had a similar experience, that I think this is sort of blaming the person who had no reason to believe that they should show up. And so I think that you're not showing up is not certainly an appropriate thing to be concerned about. So I guess that's not so much a question but a comment. The 2nd thing I would like to raise and pardon me I'm a little breathless, I've been dealing with Hawaiian Air all morning, the Airline...going through this material, if I understand correctly you were nominated for this position, and then your nomination was either withdrawn or ran out of time or something and then you were re-nominated. Is that right?

Ms. Asis: I can answer to the best of my ability, so the original reading, correct, there apparently is from the time that the mayor nominates a candidate, there is a stop watch that happens I don't recall the exact dates of that. The original hearing, the unanimous 8-0 happened, the next available time I was on the County Council, which would be the 2nd hearing of that, that is when I was voted against 4-5, I did speak with one of the other council members who voted against me and had a conversation about my fair and just ability to speak on my behalf, she then went to the County clerk's office to see if it could be re-read and re-introduced and was told that based on when that happened which I believe is a Wednesday or Tuesday that the expiration of the original nomination expired on that Saturday so there was not time to get it due the Sunshine law, back on the agenda and re-done again. I did have a conversation with the Mayor's office who said they had renominated me and actually provided me with documentation to that effect. And I was not privy to the conversations beyond them So I won't make any speculation all I know is it moved no further.

Mr. Heintz: So this question may actually be more appropriate to Council person David or whoever...with regard to that first nomination, so there was a like a 45 day deadline or something that was missed, or couldn't be acted, did the council actually vote against the nominee or was it just a matter of time expired and so...

Ms. Asis: The first nomination was for me, the second one was against me, majority against me...

Mr. Heintz: I'm not talking about the Planning Commission and then the Council but rather what I'm talking about is initially when you were nominated and then there was a technical problem of or procedural problem of not getting your nomination processed in

time. So your nomination either, I guess my question is did it just die or did was it voted against, the initial one... Council person David, you maybe, could you just answer that real briefly? Just a couple sentences.

- Ms. David: Mahalo and good morning. Yes the, one the 2nd hearing, the council took official action and voted against the nomination.
- Mr. Heintz: And with regard to that one, that initial one. Did you have an opportunity to answer questions or did the members of the council ask questions that time?
- Ms. Asis: I was not posed any questions during the whole process other than from the one council member of district I would've represented.
- Mr. Heintz: Okay thank you.
- Ms. David: Thank you, Mahalo.
- Mr. Heintz: That's all, my questions.
- Mr. Wiseman: Okay thank you commissioner. Anyone else have any questions?
- Ms. Nakanishi: I guess the burning question is what changed between the first, the planning commission and the County Council confirmation? In the eyes of the County Council, I don't know who answers, Maile?
- Ms. Frenz: Are there any other questions for our petitioner at this time?
- Ms. Valenzuela: I have one question for you and this would be importance of wording, for the second one, were you told you don't have to come back or were you told as you just said don't come back?
- Ms. Asis: I would have to go back and look at the exact verbiage that was utilized but the insinuation was there was no need to come back? I did actually have a conversation with the County Clerk's office after that to understand the process again this is all new to me, and was told that that is an unwritten practice that if you are not posed any questions and if you're unanimously voted in that there is no need to come back? Again given the fact that it was COVID, even if I showed up, again we were waiting outside, just even today, prior to being in here, because of limitations of things you're not allowed into open. So maybe that's part my assumption when I say not allowed to but the insinuation was there that I shouldn't be there. It was common practice.

Ms. Valenzuela: Thank you.

Mr. Wiseman: Any further questions or concerns? There being none, thank you for your testimony and...is there anyone else wish to make any comments on this petition?

Ms. Self: We have respondents, we have the council members here to respond.

Mr. Wiseman: Yes. They may do so.

Mr. Inaba: Aloha Kakahiaka, Holeka Inaba, Councilmember District 8 North Kona. I don't wanna rehash my thoughts from the last meeting. But in response to your question, what changed, I got email testimony the evening before the council meeting and we have live testimony during the council meeting that day where Ms. Asis's nomination failed. That's part of the process right, we get testimony before Council and before Committee to help us and help inform our decision making. Like I said last time, there are multiple reasons and Ms. Asis's profession is not the only reason why I voted no, and I'm speaking for myself, I don't wanna put words in the mouth of my colleagues but we got testimony and are responsible to vote based on the Charter as well as the testimony provided by our constituents, that what we're voted in to do and that's what I did that day. So that's all I can say that's why my vote changed.

Mr. Wiseman: Thank you councilman. Does anyone have any questions for the councilman?

Mr. Heintz: Yes I have a question David. Actually this question I've actually already asked to all the members of the Council, all 4, 5 of you...It's the same question that's in the minutes on page 19...it's the question that is eluded to in most of your remarks about why you changed your vote and the expression that was used is 'in light of the events that happened last night.' Council Inaba tells us there was additional testimony but it sounds like there was a meeting or maybe another department or committee meeting in which there was considerable testimony that was dynamic or lively that indicted that there was need of greater diversity, and so on and I was trying to run that down and each of you had a chance to respond to that last time but the responses, I don't know if I didn't make my question clear enough there's reason to believe that what it was that caused this change, correct me if I'm wrong but at the same time, Mr. Van Pernis's, there's a vote at some level to deny him, there's a concern that he doesn't represent the realty

community, that occupation, he actually does represent some real diversity, he's a very different person and it sounds to me like that might have been connected now if that's the case it sounds like there's a back and forth between the Mayor's office and the Council? I just wonder if that's what it's all about or if it's about twenty members of the community testifying in a couple of meetings before that and I went and watched, I saw at least an hour of it where people were concerned about having other kinds of people on the board and I just wanted to give you an opportunity to clarify that for me cause it was kinda talked around as opposed to just laid out. Thank you.

Mr. Wiseman: Thank you commissioner...

Ms. David: Chair can I respond please?

Mr. Wiseman: Yes, go ahead Ms. Councilwoman.

Ms. David: Thank you. And thank you for that question and I think I can only speak for myself I was not here at the first committee meeting like you noted, and on the second one as we were going through committee meetings, you are correct it was the major discussion on the administration's request to take Mr. Van Pernis off the Planning Commission and of course that generated a lot of public input and sentiment regarding the fact that Mr. Van Pernis was perceived to be a very community advocate and that knowing the agenda on the following day would be considering Ms. Asis, and that's why I think I said given whatever the issues were discussed the day before. That was what I was referring to because it totally linked up the fact that the people were testifying and associating the Leeward Planning Commission and how important that was. And for me my position was that there needed to be diversity and I know you folks already seen my testimony and what I would like to say right now is that unfortunately I really, really feel for Ms. Asis but like I said at that meeting at the Council it wasn't known how the vote was gonna be, at all and so procedurally when I said the Council took action, they officially took action and whatever could have been done was not done. So what I'm saying is, the people that were advocating for Ms. Asis and voted for her, they had an option to ask for a recess and say because this is such a change, maybe we should take a recess and call Ms. Asis. I mean that's a procedure that we could entertain and so, that didn't happen and I would venture to also say that if I was sitting and listening to all these negative conversations about me if I was being appointed I would be calling the Council's office and saying 'can I say something? I would like to patch in.' So, for me, aside

from all these personal, I regret, yes? This is personally hard on anyone, but in my 16 years being on this Council or working in this, I have never seen an administration resubmit a nomination that the Council took action on. And that is my whole point is whatever could've been done and this separation of powers I really, really believe in, because it's not like I didn't consider the administration's resubmittal, that resubmittal raised a lot of procedural questions and for me it was discussions with the County Clerk and with Corporation Counsel because that action alone raised the separation of powers issues that I really believe that we need to adhere to. So whether it was ethical or not, in my report I have laid the things that I really believe procedurally that we are responsible for under the charter, has been met. And I'm really sorry for this chain of events but for me the authority of this body and the authority of the administration is very clear and if we go over that boundary for whatever reason, for someone's personal hurt which I understand, we as community leaders are bound to respect and obey the charter and our rule and that's why I refused when the administration brought forth, I did agendize her, it was not my decision alone. It was made after we sat and discussed whether the council took official action and whether that action could be taken back and I didn't believe there was & I met with the Mayor and it's like I know Ms. Asis just has, you folks in this prior hearing, talking about personal issues and a lot of personal issues were raised in Ms. Asis's petition but for me I have to stand by the fact that we, it is our authority to make decisions when we hear and we sit up there after we hear the discussion and our decision is ours alone to make as council members. And so the issue that I'm talking about is to have a re-do on an appointment that someone might feel that they were personally harmed because they were told one thing and something else was done. Well then if we're talking equitable and fairness then I don't see council member Kierkiewicz here, I don't see council member Kimball here, she voted no as well and so when you go outside your separation of powers jurisdiction in my mind, then you make decisions based on personal issues which for me does not belong here and it's very difficult to try to stay focused when all these other issues, personal or otherwise is being tossed out there and trying to maintain some equity and fairness. So, you have my statement, it has not changed and I feel really, I really wanna say before I end, that I'm very sorry and I can relate to Ms. Asis not being here because of her father's illness but I just wanna say to her that I understand her situation the last time, because my 90 year old dad is in the hospital right now with a very life threatening infection so I know what she felt. So all I can do is explain to you my position as a

council member and as council chair and I really respect our duty to follow the charter. Thank you.

Ms. Villegas: Aloha. Rebecca Villegas, Hawai'i County Council member representing District 7. I first off have a question for Corp Counsel I'm hoping you can answer for me. One of the things that was mentioned in the complaint and by Ms. Asis is that the Charter states that an applicant would not be discriminated against based on their employment, and as you've all heard we've already said that that wasn't the case and the primary reason for her not being confirmed, however my question comes as to even the validity of that applying to council members, versus in the process of becoming, the process is you put in an application to serve on a board or commission, correct?

Ms. Frenz: My apologies Ms. Villegas, I'm here as the attorney for the Board of Ethics, I wouldn't be able, this wouldn't be the time for you to ask questions, you can testify as a respondent but I sincerely apologize, I can't answer your questions, that's not my role today.

Ms. Villegas: Okay no worries, sorry my apologies on that. So that becomes my question because to me and perhaps Ms. Self you could help, you have lots of legal history and experience but to me that part of the charter applies to when an applicant puts in their application and the mayor's office reviews those applications, they cannot discriminate against an applicant based on their career or job choice, correct?

Ms. Self: Correct. I haven't looked at that part of the charter recently but...

Ms. Villegas: It's very basic, it basically just says the applicant won't be discriminated against, based on that. So for me, even beyond this hearing, which is painful for all of us, I would love for some clarification. I think it would behoove all of us to have a better understanding that that is what that applies to as opposed to the Council in general deciding which is within our rights and parameters for any reason to approve or disapprove somebody once nominated by the Mayor's office. But the Mayor's office cannot discriminate against them by not nominating them.

Ms. Self: I can tell you that for Planning Commission, it goes through an even more processes. It starts with a committee; I don't know who it is now in the Planning Department but they put together a list of candidates, of applicants that they've already gone through and decide whether or not...

Mr. Wiseman: Can you speak a little louder please?

Ms. Self: The planning department, they have a committee of people who put together a list of applicants ----

Due to technical difficulties, the ending portion of the hearing on this petition was not Recorded.

Motion and Vote: Mr. Heintz moved to dismiss the petition for lack of jurisdiction. Ms. Self seconded the motion. All members voted aye. (12:20 p.m.)

* * *

The board took a short lunch break (12:20 p.m.)

* * *

The board returned from lunch at 1:00 pm.

c. Petitioner 2021-06 Review of draft Informal Advisory Opinion regarding petition alleging that a Leeward Planning Commissioner is in violation of Section 2-8 Fair Treatment.

Mr. Wiseman: I just want to acknowledge, I've been informed that there was a chat for Mr. Van Pernis that he would like to add additional testimony for our deliberations on both of these petitions and the petition 2021-05 we closed all testimony on that. Mr. Van Pernis has had ample, ample opportunity including reference to that this morning. In the June hearing we let him go beyond, beyond the time limited and we have all these submissions, I'm not going to allow any more testimony on 2021-05. We have a draft decision that we voted on, it's up to the commissioners at this time to review it and see if it meets with their approval. With respect to 2021-06, and I think we'll take up that one first and view what is going to follow. And what's going to follow is that Mr. Van Pernis has been, he's no longer on the Leeward Planning Commission as of about 2 weeks ago I believe, In lieu of that, I'd like to make a motion to reconsider our opinion on 2021-06 and dismiss the petition as being moot because he's no longer a commission member and I would like to do that without affecting already subject to approve our final version on 2021-05.

Mr. Van Pernis: This is Mark Van Pernis...

Ms. Schlueter: Can everybody pause for a second? This is Deputy Corporation Counsel Dalilah Schlueter, procedurally if there's gonna be, Chair Wiseman if you're gonna do a motion to reconsider and a different

motion to dismiss we should be doing one motion at a time, voting our second discussing, and then voting. So I'll let you decide how you want to...

Mr. Wiseman: What's going on?

Ms. Schlueter: Chair you commented on making a motion to reconsider and you also commented a motion to dismiss, it would be more appropriate to one motion at a time?

Mr. Wiseman: Are we active or what's happening?...IT can you hear me?

Ms. Schlueter: Yes we can hear you Chair...

Chair had technical issues with his connection...

Mr. Wiseman: Let's see we left with a my motion to reconsider 2021-06 and in lieu of the recent events, to dismiss the petition. Is there any second on that?

Ms. Schlueter: Chair can we have two separate motions, one to reconsider and then once that passes then you can discuss the action?

Mr. Wiseman: Yeah sure...that'd be more appropriate. Okay so the motion I'm making is to reconsider our opinion on 2021-06. Do I hear a second on that.

Ms. Nakanishi: I second.

Mr. Wiseman: Motion's been made and seconded. Any discussion?

Ms. Nakanishi: My discussion is can we do that?

Mr. Wiseman: Yes you can always reconsider something.

Ms. Self: Cause the point of the thing is over now.

Mr. Wiseman: I'm sorry?

Ms. Nakanishi: Question was the decisions already made, can you go back and reconsider, that was the only question I had.

Ms. Self: Well I think...

Ms. Nakanishi: It's already been published even right?

Mr. Wiseman: No. It hasn't. Not that one.

Ms. Self: I'm not sure that a motion for reconsideration is the appropriate motion because under Roberts Rules, what is that, you're supposed to, you're required to make a motion the same day that you discuss it...isn't that it? She's looking up Roberts Rules right now...

Mr. Wiseman: That's on a motion, but we're dealing with reconsideration...

Ms. Self: I know reconsideration though; I don't think he can do that...

Mr. Wiseman: Well I don't think it's bound by Robert's Rules, it's just bound by procedures...a motion for reconsideration in almost any hearing venue or judicial venue is always, always allowed...But I'll defer to legal counsel since there is some concern that may not be appropriate. I believe it is.

Mr. Heintz: David? Can we accomplish what you want to accomplish, simply by when it comes time, to deal with this petition to simply vote it down? And then there would be no action on the matter...and then you could make a section motion to dismiss the petition because the matter is moot. Would that, I mean...

Mr. Wiseman: That's in effect what's happening...

Mr. Heintz: That's what you want to accomplish?

Mr. Wiseman: Yes. I remember the last hearing we sort of took a vote on it. And that's what I'm asking to be reconsidered. So we reconsider the vote and then make a motion to dismiss it based on it being moot. That's how I see it anyway. But again I'll defer to our legal counsel on this...in the mean time I'll make a suggestion that we let our legal counsel review this and let's switch over to review and action on the 2021-05. You should all have a draft decision, does anyone need more time to review that.

Ms. Frenz: One moment Chairman, we need to finish this before we move on. Hang on one second sir.

Ms. Schlueter: Chair after reviewing parliamentary procedure, Roberts Rules of Order, Rule 37-1 specifically allows for a motion to be reconsidered, the purposed of reconsidering a vote is to permit, correct hastily, ill-advised or erroneous action or to take account added information or a changed situation that's developed since the taking of the vote. Theres further grounds but I think the changed situation that has developed since the taking of the vote may apply here.

Mr. Wiseman: Right. Okay so again I'm deferring to legal counsel and Roberts Rules was applicable and we can reconsider cause this is definitely a change of circumstances cause the rules, one of the many grounds for reconsideration. So we can go forward with that. Okay so, based there was a second to the reconsideration, we opened...did we pass the motion? I need to refer back.

Ms. Schlueter: There's a motion on the floor by yourself Chair, to reconsider.

Mr. Wiseman: Okay let's start from there...do I hear a second on that?

Ms. Nakanishi: I already seconded.

Mr. Wiseman: Okay there was a second, all in favor say aye? (**All members voted aye**)...Okay lets open it for discussion...and my motion, I'll start the discussion, based on the fact on information and belief, Mr. Van Pernis is no longer on the Leeward Planning Commission as of about 2 weeks ago, and therefore our decision on this one which hasn't been drafted yet, would be moot. So I'm asking to reconsider...

Ms. Nakanishi: So did he resign? What happened? I mean are we sure before we do this?

Mr. Wiseman: I don't know...

Ms. Schlueter: Just for information, yes that is correct, Mr. Van Pernis was voted by the County Council to be removed and he has been effectively removed from the Leeward Planning Commission. To my knowledge he does not sit on any other council or board at this time.

Mr. Wiseman: So, and again this is a motion for reconsider and we'll go the next step like commissioner Larry said, of dismissal or other action. Okay, any further discussion? There being none, this is voting on the motion to reconsider our decision of August 11th I think, on 2021-06. All in favor say aye...

Motion and Vote: Mr. Wiseman moved to reconsider the decision made on August 11th, 2021. Ms. Nakanishi seconded the motion. All members voted aye. (1:23 p.m.)

Mr. Wiseman: Based on that I would move to dismiss this petition based on the fact that it is now moot. Since we have verified information that he has been, he is no longer on the Leeward Planning Council.

Ms. Self: I second.

Motion and Vote: Wiseman moved to dismiss the petition. Ms. Self seconded the motion. All members voted aye. (1:24 p.m.)

Mr. Wiseman: Any discussion on the matter?

Ms. Schlueter: Chair the vote was already taken. So the discussion would be moot at this time.

Mr. Wiseman: Okay, motion dismissed based on the vote reconsidering 2021-06 petition is here by dismissed.

b. Petition 2021-05: Continued review of a draft informal advisory opinion regarding a petition requesting guidance as to whether the actions of a Leeward Planning Commissioner are in violation of the Code of Ethics.

Mr. Wiseman: This is the one you all have a draft decision that's been worked on. And I would like to discuss this while you're reviewing it. As the members may recall there was a draft, initial draft decision, it was available at the last meeting and I felt it necessary, I made a statement to the effect that disclosures and a couple other factors should really be...we should really sort of reiterate was we did in the Kierkiewicz decision about sending a message to all County boards and commissions. With legal counsel it was redrafted and if the members could review that if there's any concerns and if not we can vote on it.

Mr. Heintz. Mr. Chairman? I also had as you may recall to our last meeting, a change to section 11 and the Corporation Counsel representative at that time, gentleman I forget his name, Logan? Or something ...Sinclair. With regard to section 11, I interacted with him and he asked me to send the language, the editorial changes which I may...and they're in our minutes and he agreed to them but I noticed that the changes didn't get made on section 11, page 4 of the latest draft.

Mr. Wiseman: Let me check that...

Mr. Heintz: And I can read to you what it should read. But are we okay? Page 4, Section 11? So the way it should read is 'at the LPC Commissioner Van Pernis stated that his place of residence or familiarity with the area didn't prevent him from being impartial.' In other words, just strike the word bias and put in a neutral descriptor and the rest of the change it goes on 'but he did not disclose the fact that he lives in the Makalei Subdivision

2/3 of a mile from the project area that was discussed in the application under review.’ And that 2/3 is taken right from the testimony as opposed to living adjacent. Section 11 as it is in here, I don’t think it’s at a fair, neutral or accurate description.

Mr. Wiseman: Yeah I do remember vaguely remember your input in that and I was agreeable to that. I don’t know perhaps it fell down on my end, I don’t know, working with Counsel. In any event I have no problem with that and if none of the members have any problem with that, Legal counsel can add that in, in the final document and if there’s nothing...if anyone else has any concerns about this or need more time to review it, we can accommodate that, if not we can vote on it subject to that one change.

Mr. Heintz: Mr. Chairman, if the other board members are happy with the new version I could go along but I must confess that I did not receive a copy of this except electronically and that wasn’t until I have left town and I had a rather demanding weekend so I must say that the changes that you drafted are extensive and I wanted to review them carefully. I can tell you that I have quickly read them and I agree with the sentiment and the idea of...because it does broaden things quite a bit...I agree..

Mr. Wiseman: Okay by all means, you can take time and go over it again. You wanna do it today? Or...

Mr. Heintz: I’ve been up since what I wanna do today is take a nap...I mean this is the kind of thing..I wouldn’t be happy...I don’t think I could carefully go through it today. But if the rest of you have gone through it and are happy with it, I’m willing to just abstain. I can tell you that I agree with the general substance I just haven’t carefully looked at it.

Mr. Wiseman: Okay.

Mr. Heintz: I just don’t wanna to delay...

Mr. Wiseman: Yeah I understand it would be another month...Okay do any other members wish to express their position on that? We can go forward today with that one change...Anyone else need more time to review it?...Okay if there’s...

Mr. Heintz: Well let me just say on my reading of it I think the changes that are being made really involve a controversy about what is the scope of the ethics board and I prefer the broadening that Chairman Wiseman is catching here but I know it is an issue that some

people say that there's particular sections and the stuff he's talking isn't in a particular section and some of the stuff he's talking about is what I was calling to have added, now I want to add those things, it's just like this kind of like saying it's the case already and I'm gonna end up wanting this to be the way David has it but I think it's kind of a mish mash.

Ms. Schlueter: From what I'm hearing, I don't think it would be, and just as Counsel, it sounds like we need to be a little bit more precise before we vote on this. As counsel I'm gonna recommend that you continue the vote out another month. I know it's another month but it seems like this is an important topic to the board and it may be appropriate to make sure that it is correct and reflects the boards accurate findings before moving on.

Mr. Wiseman: Well I'll defer to legal Counsel's position. However I'd like to know if let's say Commissioner Heintz goes home and over the weekend or so he comes up with some things. He's open to, there's not restriction under the law for him to communicate with you, is that right about changes he wants to make?

Ms. Schlueter: That's correct chair, each member can communicate with Counsel for purposes of communicating with Counsel and to further correct the draft of the draft opinion, it's just a matter of the Board can't deliberate on the matter as a whole. Since it's a decision that has been made it's a matter of accurately reflecting the actions that were taken.

Mr. Wiseman: Okay, well in view of that, we could...(?) legal counsel's position and view of accommodating commissioner Heintz, I'll make a motion that we defer action on this subject to any suggested amendments that any member can make directly with our legal counsel and we defer that action until the next meeting, which is October...do we have a date? Is there a date...

Ms. Frenz: October 13th.

Mr. Wiseman: October 13. Okay. Do I hear a second on that motion to defer action on this decision 2021-05 until October 13th, during which time any member can review it and make any suggestions through our legal counsel.

Mr. Heintz: So the person I would interact with is...Cody?

Ms. Frenz: Yes.

Mr. Heintz: And just full disclosure, I won't be here October 13th. I'll be here shortly thereafter but I could interact with you & you could represent to the board what I, if I had anything to say?

Ms. Frenz: So you can forward me corrections, additions or modifications and I'll implement them and they'll be shared with the board.

Mr. Heintz: Thank you Cody, I'll interact with you on this.

Mr. Wiseman: Okay I still need a second on the motion.

Ms. Valenzuela: I second.

Motion and vote: Mr. Wiseman moved to defer until the next meeting . Ms. Valenzuela seconded the motion. All members voted aye (1:36 p.m.)

Mr. Wiseman: Motion carried, any discussion? Okay there being none...all in favor...well we already voted on the motion right?

Mr. Heintz: Yes.

Mr. Wiseman: Alright this matter draft decision 2021-05 on Mr. Van Pernis deferred until our meeting on October 13th and prior to that time, any member is free and open to discuss their concerns or modifications, etc. with our legal counsel.

Ms. Schlueter: Chair Wiseman, and the board, we need a motion to go to executive session.

Mr. Heintz: I so move.

Mr. Wiseman: Sorry...say again.

Mr. Heintz: I move we go into executive session.

Mr. Wiseman: Motion has been made to go into executive session, I hear a second? I'll second.

Motion and vote: Mr. Heintz moved go into executive session. Mr. Wiseman seconded the motion. All members voted aye (1:76 p.m.)

1:37 p.m. The Board left regular session.

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1:53 p.m. The Board returned to regular session.

6. VOTING ON EXECUTIVE SESSION MATTERS

- a. Review of the executive session minutes of August 11, 2021.**

Motion and vote: Mr. Wiseman moved to approve the executive session minutes of August 11, 2021. Mr. Heintz seconded the motion. All members voted aye. (1:58 p.m.)

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

Motion and vote: Mr. Heintz moved to approve item 6b. Ms. Nakanishi seconded the motion. All members voted aye. (1:59 p.m.)

- c. 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.**

Motion and vote: Mr. Heintz moved to continue item 6c. Ms. Valenzuela seconded the motion. All members voted aye. (2:00 p.m.)

7. CONTINUED DISCUSSION REGARDING AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE OF THE BOARD OF ETHICS AND THE HAWAI‘I CODE. (2:01 p.m.)

- a. Correspondence dated December 4, 2018 from Ken Goodenow.**
- b. Review proposed amendments by Board member Larry Heintz.**
- c. Request discussion from Corporation Counsel on status of proposed amendments, and suggestions on the next steps regarding said amendments.**

Mr. Wiseman: I know for the benefit of new members and legal counsel I will make a statement. Ken Goodenow was the chairman at the time. He was very active, he was the solo practitioner attorney doing mostly family law, and he took this burden by himself to lay out a whole spreadsheet on the codes of the County of Maui, Kauai and Oahu. And he laid em all out and compared em with ours and made pros and cons and it was a massive undertaking, I don't

know how in the world he ever did it. But he did it and he came out with a lot of suggestions and there was ample discussions and several hearings, this went on for a while. And I'll defer to my colleague Larry, do you have a full set of all his suggestions Larry or just the memo?

- Mr. Heintz: I have a full set and I have discussed this with J but I need to discuss it again with Cody and any member might do the same.
- Mr. Wiseman: I'd like to get a full set. So Cody perhaps you could make that request for me.
- Ms. Schlueter: Chair, yes our office has a full set and we can absolutely get a copy to you. That's a great request, we will make sure that a full set of the recommendations from prior chair Ken Goodenow are provided to each one of the Board members.
- Mr. Wiseman: Yeah that'd be great. He did a remarkable job on laying it all out for us. I don't know how he did it. In any event, so do I hear a motion on this? We'll defer action or just continue this matter?
- Mr. Heintz: Yes I make a motion to defer til next time.
- Mr. Wiseman: I'll second. Motion made and seconded to continue our discussion in review of the proposed amendments – any amendments to the rules of practice and procedure.
- Ms. Self: Second.
- Mr. Wiseman: It's been seconded, okay all in favor say Aye...
- Ms. Nakanishi: I think we're backwards...I thought a discussion was made about doing that, taking on this portion in a special session? Versus keeping it on the agenda, because of the complications?
- Mr. Wiseman: Yes we should to an executive session.
- Ms. Nakanishi: A special session.
- Ms. Schlueter: If I can assist here, I would suggest that we take these, we create a working document through my office, put a word document together, something that everyone, all of the members can review and that we schedule a special session solely to deal with the rule making because it can be an arduous task and it could make these meetings very long. So that would be the recommendation. So recommendation would also be to keep the agenda item on your

agenda so that it does not fall of the wagon here so that once we have that working document that that special session is scheduled and moved forward.

Mr. Wiseman: Yes I like that plan and vote for it, is everyone else...

Mr. Heintz: Could we put a goal or hopeful date of by this November?

Ms. Self: Before we can even start discussing the rules you have to decide looks like Kenny made changes to the code so we have to agree on what's gonna be submitted to Council and see if they'll pass it before we even get to the rules. The rules are supposed to implement what's in the code. So we've got to get that done first. And then we can work on the rules.

Mr. Wiseman: I'll ask Larry, Larry didn't we do something with the Charter to get permission from them or some consensus that what we were doing was okay with them? Do you recall that?

Mr. Heintz: All I recall was that we were waiting for the November election that they approved and that was the electric. But we didn't ever act. This has been on for over a year...

Ms. Self: If you're gonna do Charter amendments, you've got to get that done soon so that can be put on the ballot, cause that gets voted on and then the Code changes go to Council for them to decide whether they even wanna bring it up or not. And you cannot, I wouldn't even bother toughing the rules except for that one ordinance that was passed by Council giving us the authority to impose fines, that's already in there, we could change our rules, amend our rules to include that to implement that. But any other change to the code I wouldn't start changing the rules until you start getting these things done with Council cause they may not even wanna do it.

Mr. Heintz: So the changes that I'm suggesting are to the Code and Mr. Goodenow I think has both Charter and Code changes is that right? So when we go through that we'll discover that and sort it.

Ms. Schlueter: Yes that's my recollection, Mr. Goodenow recommended both Charter and Code and there's also within these documents discussions of updating the rules of practice and procedure to also implement, implementation all the way across so that items like penalties, additional enforcement options that may be available to this board are implemented and are in line with what this board, with both the ordinances and this board intends. And just to throw

one more thing out there for the rules of practice and procedure, they are subject to HRS chapter 91. So once this board decides on an updated rules of practice and procedure. We'll also need to go through chapter 91 hearings and public comment.

- Mr. Wiseman: And you can lay all this out for us in a memo with the proposals right?
- Ms. Schlueter: That's correct we'll make sure and guide you through the legal process of that.
- Ms. Self: The memo I have from Kenny Goodenow just had code changes, doesn't have any charter changes, that must've been done with some other memo I guess.
- Mr. Wiseman: Again, I suggest if you haven't already, J, your colleague J, he has a total handle on this. Okay?
- Ms. Frenz: Yes chair, thank you.
- Mr. Wiseman: Okay so we need a motion to continue this?
- Ms. Nakanishi: So moved.
- Ms. Self: Second.
- Mr. Wiseman: Moved and seconded to continue this matter. All in favor say Aye.

Motion and vote: Ms. Nakanishi moved to continue. Ms. Self seconded the motion. All members voted aye. (2:04 p.m.)

- Mr. Wiseman: I would amend that motion to continue it and have the input from legal counsel as she suggested. So all in favor of that amended motion say Aye..
- Ms. Schlueter: Chair to proper parliamentary procedure there'd be a motion to amend. Well excuse me since you've already voted it's even more challenging you'd have to reconsider to open that vote. Then a motion to amend and then re-go through that vote...as a suggestion to ease this maybe that this be the chair's request in direction to it's secretary to add that item to the agenda.
- Mr. Wiseman: So the motion is to reconsider that matter. All in favor say aye. Any opposed? None. Any discussion?...There being no discussion we'll continue this matter to the October 13th meeting. And the Chair will direct the secretary to work with legal counsel in this

matter to have her input with a memo in advance of the meeting as discussed.

Ms. Nakanishi: Chairman?

Mr. Wiseman: Yes, what did I miss?

Ms. Nakanishi: I have a question before we adjourn. So is there already in existence some timeline by which we must cut off public testimony or? All the stuff that's supposed to be available to both the public and us? Because we got stuff this morning that the public certainly didn't have any chance to review and we got people driving from Kona. It just seems like there should've already been something somewhere that says, must be cut off at some point.

Mr. Wiseman: That has been a concern raised by various people and it is a concern that has to be addressed. The sunshine law really complicates things with this matter. As soon as we make change of date, in fact one time we had to change the hearing venue from where you are now to across the hall in another room because there's a council that pre-empted it and they didn't tell us or something like that. And there was a whole process we had to go through to inform everyone of this change of venue. So their not problems but I'm sure they can be worked out and a lot of it's clerical, a lot of it's administrative...I think our staff is doing a great job and is aware of but, these concerns have to be addressed. So I'll just leave it like that and I don't think there's any specified timeline. People should get their testimony and everything to prepare at least a few days before. So I'm all in favor of that.

Ms. Valenzuela: And if I can just chime you know I know that we're concerned about the public. But I'm gonna speak for myself and maybe my other fellow members. Because this is a volunteer position, I personally, I'm not retired, I work three jobs, so in order for me to be able to read through everything, drive over here from the other side of the island, and to do it correctly, with integrity and everything like that, I feel, and I'd love to know where we would begin to that, to make a timeline cut off. Period. If it's not submitted 48 hours in our hands it's not gonna be heard on this agenda and it's gonna be motion to the next agenda. Because last minute stuff, I'm driving, so I get here and I flip through something I just feel that that's not fair to the public or to myself and as all of us we're super busy and I love doing this and I'm honored but I just want to do it in a timely manner so...somehow wherever we go to I think it should be at least a 48 hour...

Mr. Wiseman: Well you're being generous with 48 hours; I'd like a little more. We had a problem...sometimes I would get the whole package. I'm not gonna read all this stuff on the computer and for a while the package was coming the day I left to drive over to Hilo. Fortunately Liza's corrected that quite a bit I'm getting the package a couple days before now, in the mail. So that's good but we definitely need to do something and I'll defer to our counsel as to whether or not our rules...when does stuff have to go out to the public or when does testimony have to be submitted. I'm not aware of any time tables on those...so we need to look into that for sure.

Ms. Schlueter: At this time our currently public notice indicates that all written testimony must be provided by the public by 12 noon the day before the meeting. So it does not provide significant time for some of these later testimonies and our secretary Liza does try and put out a board packet a few days before to try and capture most of that and then you'll get later submissions. If you'd like our office can take, there are specific rules, I don't have it in front of me so I don't wanna misstate. But we can double check exactly what our requirements are. How far we can cut it off? As far as submissions? As far as oral testimony of course as we all know we can not cut that off, we do have the availability to limit it to their three minutes. But we'll verify what those cutoffs are and if necessary, if there's any wiggle room or if there's anything to vote on, Liza can place it on the agenda for further discussion.

Mr. Wiseman: I'm just gonna suggest to everyone that we keep this on the table and try to improve it this time...Okay. I think we're at the end of the agenda.

8. ANNOUNCEMENTS (2:16 p.m.)

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. Nakanishi moved to adjourn the meeting. Ms. Self seconded the motion. All members voted aye. (2:17 p.m.)

Mr. Wiseman adjourned the meeting at 2:17 p.m.

Respectfully submitted:

10-15-21

Liza Osorio, Secretary