

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

Wednesday, October 13, 2021

10:03 a.m. to 11:36 a.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

Liza Osorio, Secretary

**1. CALL TO ORDER (10:03 a.m.)**

Mr. Wiseman called the meeting to order at 10:03 a.m.

**2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:06 a.m.)**

Mr. Van Pernis: I hope you’ve all read my letter, this concerns Petition 2021-05. There are, I have seen any draft opinion, apparently it’s private, I think it should be distributed or made available to the public and they can comment on it. The representations of Mr. Vitousek include misrepresentations as my letter refers to the full transcript confirms what I’m saying. This is not just an argument. For instance there was never any possibility of diverting traffic into Makalei Road from Palama Nui and this is confirmed from the Planning Department and the applicant Palama Nui. Mr. Vitousek’s letter implies otherwise. He said at the time over a year ago “I really don’t think this is that big of a deal. This qualifies as (?) up to the boundary and there’s no problem with it”...inaudible...Again I haven’t seen your guys opinion which (?) reference to anything Mr. Vitousek alleges. (?) 2021-06, this you dismissed in September, however in August, by letter, over Ms. Osorio’s (?) as well as the newspaper, it was announced that I had violated section 2-83 of the Ethics code. There was no statement as to what I said that was a violation, (?) referred to in the petition of the Hickeys and that is argument I made on behalf of a successful motion and that is protected absolutely by Section 2-84-d. So, there is no reference to that section either. And (?) your decision of dismissal to be effective, you’d have to resolve this conflict

between 2-83 and 2-84 section D and you have to decide whether we're in a dismissal or a violation. One or the other, it can't be both. So, your job's not done and I think it needs to be done in order to get the completion and respect. Thank you.

Mr. Wiseman: Thank you Mr. Van Pernis. Do any members have any questions for Mr. Van Pernis? Mr. Van Pernis, the members don't seem to have any questions but I have a few comments on your letter. First of all, we don't do anything in secret. Your allegation of us proceeding with a secret draft, in fact, it's quite the contrary with the sunshine law. We can do anything without a consensus if made public. And I don't know where you get this concept of making a draft decision public. Can you imagine, you're an attorney, can you imagine a judge putting out his decision for the public to comment on before it's issued? There's no such provision for that. And second, a further matter is, down below you're getting involved in a whole political discussion with the Mayor and stuff, we don't, those aren't factors for the Board of Ethics to consider and we don't get involved in them. Despite, notwithstanding your theme of lecturing the Board we believe we are taking proper action. So thank you Mr. Van Pernis.

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF AUGUST 11, 2021 (10:13 a.m.)**

Ms. Nakanishi: Page 13, towards the, almost to the middle, below the middle. Councilman Leelay's 'affair' to disclose, I think it's supposed to say 'failure' to disclose. I don't think that part needs to be in the public record like that.

Mr. Wiseman: That'll be corrected. Anything else?

Ms. Self: I have a correction...Page 34, under 6a. It says motion and vote. It says Mr. Wiseman moved to approve the executive session minutes of August 11, 2021, Mr. Wiseman seconded the motion...I don't think he can move & second himself.

Mr. Wiseman: Any further discussion? NO further discussion, all in favor of approval of the minutes subject to the amendments, say Aye.

**Motion and Vote: Ms. Self moved to approve the minutes. Mr. Wiseman seconded the motion. All members voted aye. (10:15 a.m.)**

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

There was no new business.

5. UNFINISHED BUSINESS (10:15 p.m.)

a. **Petition No. 2021-05: Continued review of 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 (10:16 a.m.)**

- Ms. Nakanishi: Mr. Chairman I don't have in my minutes.
- Mr. Wiseman: No it's not...this is..
- Ms. Nakanishi: I have the others but...
- Mr. Wiseman: This is unfinished business..
- Ms. Nakanishi: It says continued review but I don't have it to review. Okay.
- Mr. Wiseman: 2021-05 and 2021-06 are both Mr. Van Pernis. And if you recall we did based on this petition being moot in 2021-06 because he was no longer with the Planning Commission we dismissed that. However we never dismissed the 2021-05, in fact we even made a ruling on that and there was a draft decision that was gonna come out so under Robert's Rules, we can put forth a reconsideration if there's added information or a changed situation, that's one of the grounds, one in several grounds for reconsideration. Since the filing of Petition 2021-05, Mr. Van Pernis is no longer a member of the Leeward Planning Commission. So we should treat that petition the same as we did with 2021-06. So in view of that preface and those prefatory remarks, I'm going to make a motion to reconsider actions on 2021-05. Do I hear a second?
- Mr. Heintz; So Mr. Chairman, we're going to treat it the same way we treated 2021-06?
- Mr. Wiseman: Yes.
- Mr. Heintz: And instead of that we're going to make a general statement about disclosures and recusals. Is that right?
- Mr. Wiseman: That's a different issue, sure.
- Mr. Heintz: But it was related, that's what stimulated that statement is that right?
- Mr. Wiseman: Yeah...

Mr. Heintz: I second your motion.

Mr. Wiseman: Very well. Motion has been and seconded...all in favor?

Ms. Frenz: If we could do discussion first Chair as to your motion to reconsider Petition No. 2021-05.

Mr. Wiseman: Any discussion? I would offer for a discussion that the Motion to Reconsider in order to dismiss the petition, does it have to be a separate motion?

Ms. Frenz: Yes. Yes, we'll deal with the reconsideration first.

Mr. Wiseman: So if there's no discussion we can move on with this subsequent motion. There's no discussion? All in favor?

**Motion and vote: Mr. Wiseman made a motion to reconsider. Mr. Heintz seconded the motion. All members voted aye (10:19 a.m.)**

Mr. Wiseman: Now I would make a second motion with respect to 2021-05 to dismiss the petition and to vacate the rulings that we made on that decision.

Ms. Frenz: And the basis for that Chair, motion to dismiss 2021-05 is that for being moot in light of the fact that Mr. Van Pernis is no longer?

Mr. Wiseman: Yes, it's moot and also for the sake of consistency with 2021-06. And it's moot cause he's no longer a member of the decision. And as you recall we did, the board did come out with a verbal finding on that. So I'm asking, my motion is to dismiss the petition and to vacate that finding...Do I hear a second on that?

Ms. Nakanishi: So moved...

Ms. Frenz: So just to clarified you made the motion and you have your second...any discussion?

Mr. Wiseman: Any discussion on that? Okay. All in favor of the motion which again is to dismiss petition 2021-05 and to vacate the Board's findings or rulings on that decision.

Ms. Frenz: And just before we all, everyone votes. If we could clarify again chair for the record that the current motion before the Board is to dismiss petition 2021-05 as moot and to vacate any findings or decision made by this board on September 13, 2021.

Mr. Wiseman: Yeah, I will incorporate that language into my motion.

**Motion and vote: Mr. Wiseman made a motion to dismiss petition 2021-05 as moot and to vacate any findings or decision made by this board on September 13, 2021. Ms. Nakanishi seconded the motion. All members voted aye (10:21 a.m.)**

**b. Petition No. 2021-06: Review draft Order dismissing petition alleging that a Leeward Planning Commissioner is in violation of Section 2-83 Fair Treatment. (10:21)**

Mr. Wiseman: And again this is for the reasons that we were just elaborating on that he's no longer a member of the Leeward Planning Commission. So any discussion on this?

Ms. Self: We don't have a motion yet...

Ms. Frenz: Chair do we have a motion as to this order for 2021-06?

Mr. Wiseman: Okay I'll make a motion to approve the Order dismissing Petition 2021-06. Do I hear a second?

Mr. Heintz: Second.

Mr. Wiseman: Okay, discussion?

Ms. Self: I have a correction to be made...

Mr. Wiseman: Sure.

Ms. Self: This is on the second page, just before the Order, it says to dismiss petition 2021-11, and then the Order says 2021-06 is hereby dismiss so I think it's the one up above that has to be changed right to 2021-06?

Mr. Wiseman: Yeah, there's a typo, so...

Ms. Frenz: We'll address that Chair. The secretary will make the change.

Mr. Wiseman: Any further discussion? There being none...All in favor approving order dismissing Petition 2021-06 subject to the typo that was just made, say Aye.

**Motion and vote: Mr. Wiseman made a motion approve the Order dismissing Petition 2021-06, subject to amendments. Mr. Heintz seconded the motion. All members voted aye (10:24 a.m.)**

**c. Petition No. 2021-07: Review draft Order dismissing a petition requesting that the County of Hawai'i cease and desist any and all acts to Usurp Jurisdiction over Crown and Government Lands. (10:24 a.m.)**

Mr. Wiseman: This is a matter of Petition by Dwight Vicente. Who as I recall was representing the Hawaiian Kingdom. I'll make a motion to approve this draft order dismissing Petition 2021-07. Do I hear a second?

Ms. Self: Second.

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

Mr. Heintz: Yes, Mr. Chairman...I'm gonna make a general point, I'm in favor of this motion but I wanna make a general point that applies to all three of the matters before us. The reason for the motion to dismiss on all of these says lack of jurisdiction. I don't think that was the reason in each of these. I think we had other, well I think maybe lack of jurisdiction was the case in at least one of these, maybe Mr. Vicentes, but on the others we had other reasons to dismiss. And I just wanna say that our petitions in the past, were very lengthy and detailed basically with a list of particulars explaining everything. And I thought they were sometimes a bit prolix, too involved and unnecessarily repetitive. But I find this format doesn't reveal enough. I think in the case of Mr. Vicente, yes we didn't have jurisdiction over most of the things he was complaining about or petitioning about but I think we need something in between on most of these. So this is not an objection, just a general point of information and concern about how we're drafting these. But I'm in favor of this.

Mr. Wiseman: So if I understand you're in favor of this draft Order however you would like to see more detail in the future.

Mr. Heintz: In the future.

Ms. Frenz: This is Deputy Corporation Counsel Cody Frenz, Board Member Heintz, maybe when we get to the subsequent petition, if you have a specific concern or some guidance we can make those changes and implement those if appropriate in the future. Thank you.

**Motion and vote: Mr. Wiseman made a motion approve the Order dismissing Petition 2021-07 due to lack of jurisdiction. Mr. Heintz seconded the motion. All members voted aye (10:27 a.m.)**

**d. Petition No. 2021-09: Review draft Order dismissing a petition alleging that members of County Council are in violation of the Hawai'i County Code and Hawai'i County Charter. (10:27 a.m.)**

Mr. Wiseman: Do I hear a motion to approve this draft Order dismissing Petition 2021-09.

Mr. Heintz: So moved.

Mr. Wiseman: Been made and seconded. Any discussion?

Mr. Heintz: Just a point of the discussion related to what I said before. The third paragraph, it says Board, vice chair Heintz moved to dismiss the petition for lack of jurisdiction and Board member Amy Self seconded. So the only reason given for our dismissal is lack of jurisdiction, when in fact I believe we had extensive testimony, and discussion and review. We had five council members here, and I think the nub of the issue became that the petitioner's complaint was that the Council violated the code by voting against her solely due to the fact that she was realtor and the testimony and the discussion revealed that there were other reasons. It was not solely. And the part of the code that the petitioner referred to has the words solely based on the profession. And so we had a detailed discussion in which that was clarified and laid out and that's the real reason for the dismissal. The grounds were not established for a violation. Thank you.

Mr. Wiseman: So again, this is consistent with your previous statement that you would like more elaboration on the order. However for this order...

Ms. Self: Failure to establish the grounds on which the petition was filed right?

Mr. Wiseman: Yes...Okay very well, any further discussion? There being none, all in favor of the Order dismissing the petition in 2021-09, say Aye?

Mr. Heintz: As amended.

Mr. Wiseman: As amended, sorry. As amended say Aye.

**Motion and vote: Mr. Heintz made a motion approve the Order dismissing Petition 2021-08, subject to amendments. Mr. Wiseman seconded the motion. All members voted aye (10:30 a.m.)**

- e. **Petition No. 2021-11**: Review draft Order dismissing a petition alleging false allegations made by County employees that were not properly investigated. (10:31 a.m.)

**Motion and vote**: Mr. Heintz made a motion approve the Order dismissing Petition 2021-11. Ms. Nakanishi seconded the motion. All members voted aye (10:31 a.m.)

- f. **Petition No. 2021-12**: Review draft Order dismissing a petition alleging that a County Council member is in violation of the Hawai'i County Code and Hawai'i County Charter. (10:32 a.m.)

Mr. Heintz: I would just like to make the same kind of point that I made before. That the reason for the dismissal was not lack of jurisdiction, but rather involves several things. I was not there the first of the last meeting when it was discussed, in which Mr. Belisario was here, but as I did come in on the last part of it. And it involved things like he did not substantiate his complaint, some of his complaints were I think beside the point. The issue of conflict of interest was not established. So it's more a matter of what Amy said, the petitioner did not establish the basis of the complaint.

Mr. Wiseman: Any further discussion of this matter?

Ms. Frenz: This is Cody again, as I understand, Member Heintz, subject to the change, the motion was to dismiss the petition based on petitioners failure to establish the grounds in which he raised in his petition, is that correct sir?

Mr. Heintz: Yes, that's exactly right.

Ms. Frenz: Okay, understood.

Mr. Wiseman: Okay, I'm sorry is this going forward or...

Mr. Heintz: We're done. We would vote I guess, that's the discussion.

Ms. Frenz: I believe, again sorry for the interruption Chair, subject to the modifications that the secretary will make in the order dismissing petition 2021-12, the board would now vote to approve that order subject those modifications or corrections.

Mr. Wiseman: Very well, that would be the motion. All in favor of that say Aye.

**Motion and vote: Mr. Wiseman made a motion approve the Order dismissing Petition 2021-12, subject to amendments. Ms. Nakanishi seconded the motion. All members voted aye (10:34 a.m.)**

- Mr. Wiseman: Next on the agenda...
- Ms. Frenz: Chair if I could interrupt before you move on in the agenda, I believe that both yourself, Chair, and board member Heintz made reference to wanting to make a new motion to address the matters raised in 2021-05 and 2021-06, is that correct board member Heintz?
- Mr. Heintz: Yes that's right.
- Ms. Frenz: If you wanna proceed with that at this time sir...
- Mr. Heintz: I think what the members have is a...
- Ms. Frenz: Actually I think it would just be a motion at this time.
- Mr. Heintz: So...sorry I'm working on brain lag.
- Mr. Wiseman: I'll make the motion since my name was also mentioned here it's a motion to consider and discuss the draft memo on the board of ethics regarding public disclosure and recusals. Do I hear a second in that?
- Ms. Frenz: As I understand chair, you making a motion is the...just to make sure our record is clear, are you making a motion for the board ethics to consider doing an advisory, informal advisory opinion on its own, for its own purpose, at no request of a petition for example to address a matter that this board finds relevant to other boards and commissions. Is that correct?
- Mr. Wiseman: Yes correct. Do I hear a second on that?
- Mr. Heintz: I'll second.
- Mr. Wiseman: Motion been made and seconded. Okay let's open it for discussion...this came about with respect to as member Heintz stated earlier, with respect Mr. Van Pernis's petitions and we had ample discussions in those and what came about is that we are constantly being hit with petitions that are based on non-disclosures and in some of those cases, whether or not there was a recusal appropriate. And we felt that although we dismissed the two petitions against Mr. Van Pernis, and without involving him

and what we're considering now, by name or even reference, no connection whatsoever, and I think I stated this earlier that I think it's essential to reiterate the fact to boards and commissions and hearing officers, I think the definition is general I think employees and officers but in any event to make a disclosure at the appropriate time. We issued that decision in the Council woman Kierkiewicz, there wasn't a disclosure at the time or there was not the right way...and we need to reiterate some of those essentials so that's what this memo is about. And it would be my preference in future motions perhaps that once this is approved, amended and approved, then it be distributed to all boards and commissions and I would go one step further and put it out in the media as well.

Mr. Heintz: Counsel, so is the, so in order for the board to consider this as a motion, I mean as a statement, and advisory opinion initiated by the Board of Ethics. It has to be put out in the public records so that the public can make comments about it. And so what we are doing right now is trying to polish or develop the draft that we want to put out for the public notice. So for instance, at the next meeting, is that where we are on this?

Ms. Frenz: As I understand it, the Board of Ethics has made a motion and a second and we're discussing the idea that the Board of Ethics would like to put forth an advisory opinion on its own motion to discuss the requirement of disclosures and/or how they relate to potential recusals. We'll add that based on the motion assuming it carries and it is approved, right, following this discussion to our agenda for next month where the public can provide testimony if any as to this topic and we can work on and amend any working draft that would consist of whatever thoughts the Board of Ethics has in an informal advisory opinion. Today is just the motion for that purpose to have a discussion amongst the Board of Ethics and we can move on that at the next hearing following, opening that topic up to the public?

Mr. Wiseman: Is that a requirement, for public comment to be had in this matter?

Ms. Frenz: So we cannot finalize that today, Chair, so we have the motion, the second, we're having a discussion about whether or not the Board as a whole wants to move in that direction. Assuming the Board of Ethics does in fact want to issue its own informal advisory opinion on the topic of disclosures and or possibly recusals, we can add that to next month's agenda and address it at that time with a draft opinion, open to public discussion.

Mr. Wiseman: Very well.

Mr. Heintz: Mr. Chairman, have all the members seen this first draft? Or is it appropriate for us to discuss it?

Mr. Wiseman: It was given to everyone in advance...well if all the members aren't familiar with it then, it's a 3 page document so...

Ms. Frenz: And again, Board this is a new motion that's being brought for consideration. We will not be doing anything with that today, the public has the right and opportunity at the next hearing to discuss or provide input. So we are not taking any action today. It's simply a motion that we will address at the next hearing.

Mr. Wiseman: Alright so...can we come back to this after everyone has a chance to go over it?

Ms. Frenz: Next month we sure can. Yes chair.

Mr. Wiseman: Next month..

Mr. Heintz: You mean, the draft that we have before us is one which Cody and  
I worked on before I left for Canada and I believe David worked with Cody as well, so David and I at least are familiar with this. And then I have just seen it the other day when I got back, this version. Well I guess we move on...

Ms. Self: I'm just wondering if maybe...if an advisory opinion like this from us, would be better to come out, actually get our rules amended? Because we're not even imposing the authority we have because we don't have rules regarding the fines that were, that's the ordinance that the Council passed, what was it 7 years ago or something? So we could do it all in one memo just to alert people that we have amended our rules...this is the action we'll take under the circumstances of whatever. Just explain everything.

Mr. Wiseman: Doesn't the code give us authority?

Ms. Self: No, not for fines. Oh yeah for this yeah...

Mr. Heintz: But this, yeah. I mean we've been dealing with this issue for as long as I've been on the board and this strikes me as a free standing document that's based on an refers to an utilizes existing sections of the code. And it's referenced throughout. I don't, it doesn't involve any changes in existing rules.

Ms. Self: Well is there any way we could shorten it, cause I can tell you right now, nobody's gonna read it if it's this long. I tell ya, I worked for the County for 15 ½ years...especially if it goes to the Mayor's office. You know, nobody reads anything, if it's not...cause they're so busy they don't wanna spend time...

Mr. Heintz: Well I guess maybe I could...I mean this is sort of on the fly here but the bottom of page two there's a paragraph, although the disclosure requirement of section 9-1 focuses on a substantially financial interest to trigger such a disclosure, it is not unreasonable, and is consistent with a high standard...that paragraph it seems to me, is getting the same thing as the paragraph that begins at the top of that page, section 2-91-1 in which with the emphasis added, points out that it's not simply financial interest it's other interest as well and it emphasizes that that passage does talk about that. So I could see that, there's on paragraph that's getting at the same thing in another way I think. And maybe Amy, if there's other verbiage or language here that's repetitive maybe you can you help Cody and give her the input or? Or David or...I mean, that's the one thing that jumps out at me right away. That could be shortened by eliminating that paragraph. That's the only thing...

Ms. Self: Yeah...that could be eliminated.

Mr. Heintz: I mean the thrust of this I think is really dead on and it's a general point and it is addressed to the County Council all Board's and Commissions and it is large concern and I mean I'm willing to support this as it is but I'm also willing to support a shorter version of it.

Ms. Valenzuela: So, this is Kelly Valenzuela. So I'm not an attorney obviously, and I think this is great how it's written but I think just in my opinion, being a local girl, born and raised in these islands, everybody knows everybody. Everybody works for everybody, someone's related to somebody and I feel that to be really clear with something like this if it's gonna involve fines or sometime of reprimand or what were you talking about besides the financial disclosures right? It's kind of like the 10 commandments, I think it needs to be very clear. Not where an attorney can come in and look for a loophole but to be clear to our commission, council members, all of us as commissioners, politicians, County employees. It's sad an unfortunate that we're in a time that there's such a grey area of what's right and what's wrong, and it's really simple. If you have a type of interest and/or an attachment in some way, just very simply recuse yourself. I myself at 62 kinda think I would know what to do when that time would come, unfortunately that's not the case

for other people. So I think it needs to be very specific and very simple. It's kind of like a standard operating manual that you get when you come to a company. But this is it. You know, so if you work for somebody, if you're related to somebody, Hawai'i is very unique. This is not the mainland. It's small and we always ask our kids, what's your last name? We do that for a reason. So I think in case like this, needs to be really simple and specific.

Ms. Self: Another thing I think is we are charged with interpreting the Code of Ethics, so we should break it down as to how we're interpreting the code. Just tell them what we think and it doesn't do any good to just recite the language that's already in the code. They can read the code. I think we need to explain how we're interpreting the code. So that they know what's gonna happen when they come here or whatever. You know?...Break it down, just simply say, how are we gonna interpret this language? We need to decide ourselves I guess.

Mr. Wiseman: Well first all, in this memo, I'm not opposed to shortening it, number one. Number two, there are no fines involved here and what this is, and we're not re-writing, we're not inventing the wheel again. What is in here is basically what every employee and officer is already bound by. So what we're trying to do is to put a bright light on those two issues, the disclosure and the recusal and to remind them. And as far as the code and everything, we go around that. There's some very substantive statements here in my opinion about the high standards of integrity that go along with it. These things are not so much in the code as general principles that go along with doing the right thing let's say. So, I'm in favor. But again it's like a reminder a refresher and I think it does focus on a disclosure and the public disclosure in the, at appropriate times, recusal. A recusal is, I mean outside of any relation. It is really a subjective type test. Supreme court doesn't even have rules for recusal. It's the only court in our country that doesn't. But in any event, the chief justice's wife was a (?) for prolife when he got appointed...in any event, that's my input on this. So again it's a bright light, it's a refresher of these essential principles...For example, if we do a little history, if Mr. Van Pernis, whether or not it was a conflict, and I'm not saying it was or wasn't. But let's say when they were doing that subdivision change in the roads, I forget the project in one of these petitions, it wasn't until five months later he made that disclosure so in other words, the public's sitting here and people are sitting here, and the commissioners, well, the public had no chance to object. Wait a minute, you have an interest there, or maybe it appears you do, maybe there's that appearance of impropriety if you rule on this, they didn't have that

opportunity. So that's all I'm saying that the public disclosure, just to shine the light on it and remind people that are officers and employees that the obligation's already there, it's in the code but we're just reminding you what's there, with this language.

Ms. Self: Well maybe that's what we should say, what you just now said. The Board of Ethics has been receiving all these complaints about blah blah blah this. Therefore, we feel it is incumbent upon our Board of Ethics to remind all public employees and officers to disclose any matter that could be determined as a personal or financial benefit however remotely they may think it is. Or something to that effect so that you're telling them look, you guys need to start disclosing maybe give some examples, you know.

Mr. Heintz: Well I was gonna say, I would think that, I mean I'm hearing two different things here. What we've got here and maybe everybody needs to read it carefully. Is, in the first page and a half, there's references to existing code that shows that this board has the authority to address this issue and secondly that, the code does talk about disclosure about personal interest as well as financial and then on page two, the second half of the page, goes to exactly what I think we're talking about is some rather plain language...let me just read it, it won't take that long, "The Board of Ethics in previous informal advisory opinions has expressed his concern that disclosure of interest and recusal from voting is a matter of great concern and is one which when not adhered to erodes the public trust and confidence in the integrity of government. We urge that all officers of the County err on the side of caution, when in doubt, disclose and when those doubts are shared by others, after disclosure, recuse." And then the second paragraph says basically getting at the same point and I'm trying to, this isn't quite biblical language, but "the Board finds to avoid the appearance of impropriety for the public to have trust and confidence and the integrity of government, officer's must make full disclosure at a formal hearing where they are performing in their official role, the possession or acquisition of any interest, financial or otherwise as might reasonably tend to create a conflict with public interest. The public has a right to know if a member's motive are beyond reproach and that's what David's getting at.

Mr. Wiseman: And for the sake of brevity, what you just read. With footnotes to the code. You know? The code's sections could be it.

Mr. Heintz: Okay, so maybe Cody with some help here we could take, I mean, everything that precedes that is basically setting us up that we're speaking with some gravitas here and some authority and

legitimacy. So if you folks can switch this around, that's great.

- Mr. Wiseman: That says it all really, I'm glad discussion came up so, but that makes sense. That would be three potent paragraphs and then the footnotes could refer to the code sections that obligates them to do that anyway.
- Mr. Heintz: Might be short enough for people to read.
- Ms. Self: I'd take those two paragraphs you just mentioned and move it up under the first paragraph. You have the first paragraph, then you have the second and third one that you're talking about and then ditch the rest. And footnote the sections of the code this relates to.
- Mr. Heintz: So maybe Cody, can you fix it up and run it by Amy and you guys can, because most of this is David and my input what we've got here now and this is what we want is other sets of eyes. What will be effective and will be noticed?
- Mr. Wiseman: And yeah, Cody wouldn't mind doing a 48<sup>th</sup> draft.
- Ms. Self: I'm sorry I just think the shorter the better. I know people in the County, they're not gonna read...
- Mr. Wiseman: Does everyone seem okay with that?
- Ms. Valenzuela: This is kind of a new thing, shortened version, can there be something that's read every time we have a meeting? Before everything starts just as a reminder? Just to say for the record, we'd like to remind you....that way there really is no excuse at the time and sometimes it's a second thinking, like wait a minute, I didn't disclose or I should recuse or I shouldn't say...
- Mr. Wiseman: Well once we finalize the document, we can always put it on public record. Let's remember that not all petitions have those issues. So it wouldn't be applicable. But in general we can always make that statement, at the end of something or other...
- Ms. Self: If there's a petition that day that involves non-disclosure then it would be a perfect time read it.
- Mr. Wiseman: Right. Okay so, that's it? Okay, Cody will work on that.
- Ms. Frenz: So just to get us back on track chair, apologies for interrupting, we've had our discussion, there's no further discussion, we need to vote on the motion for the Board of Ethics to do this informal

advisory opinion about disclosures and possible recusals.

Mr. Wiseman: Okay there being no further discussion on this matter, so we'll now take a vote on the motion to do an advisory opinion on public disclosure and recusals, subject to the amendments that were put forth for our legal counsel to incorporate. All in favor of that say aye.

**Motion and vote: Mr. Wiseman made a motion to do an advisory opinion initiated by the Board of Ethics to discuss public disclosures and recusals. Mr. Heintz seconded the motion. All members voted aye (11:00 a.m.)**

**Motion and vote: Mr. Wiseman made a motion to go into executive session. Ms. Nakanishi seconded the motion. All members voted aye (11:01 a.m.)**

**11:01 a.m. The Board left regular session.**

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**11:30 a.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.)**

**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: There are several items under there and we all received a slightly thick book and I'll entertain any motion, I know many of us are not familiar with what's in this book and need to review it and that's gonna take some time.

Mr. Heintz: Mr. Chair could the legal counsel tell us what they've assembled first just briefly, so that, these have notes and headings but it might help move us along a little bit. Thank you.

Ms. Frenz: Of course member Heintz, so this is Deputy Corporation Counsel Cody Frenz, what we have assembled for each board member is binder, or a, a binder so to speak, it should indicate on everyone's Board of Ethics rule project. It was brought to my attention that the rules need to be, or there a desire and request to modify and amend some of the applicable rules that are relative to the Board of Ethics. What has been compiled are examples of both the Third Circuit, the Island of Hawai'i as well as the other circuits in the state of Hawai'i, the state of Hawai'i in general, some proposed amendments that Mr. Heintz, you yourself were proposing. I believe 10 months ago or thereabout in 2020, some other proposed amendments that were put forth by prior attorney, that is in separate practice at this time. Some additional amendments for the board's review and consideration as well as anything else that may be applicable to the board's consideration when looking overall at the County Charter, the County Code, the Rules of Practice and Procedure for the Board of Ethics. If something that this board wants to amend, we have provided you hopefully, anything and everything you may want to review and or consider and if something else is needed I can make sure to get that to you as well. It is exhaustive, I recognize that it's at least 3 inches thick if not maybe a little more than that for everyone's review. So I'm not sure whether or not the board is prepared to set a special proceeding date at this time or if you want time to review the abundance of material we have provided you today.

Mr. Wiseman: Okay, thank you Cody. I'm in favor of continuing this matter so we can have a chance to review it and then decide on a special session. So I'll make that motion that we defer this matter to the

next meeting, at which time we consider a special session to go over that.

Ms. Frenz: If I could just clarify Chair, is your motion to continue number 7 for one month? Or longer than one month?

Mr. Wiseman: One month.

Ms. Frenz: Okay.

Mr. Heintz: Okay. Second.

**Motion and vote: Mr. Wiseman made a motion to continue this matter to next month to give members a chance to review the material. Mr. Heintz seconded the motion. All members voted aye (11:35 a.m.)**

#### **8. ANNOUNCEMENTS (11:35 p.m.)**

Mr. Wiseman: I have an announcement my term, believe or not, four years is up in December I believe.

Mr. Wiseman announced the Board's next meeting on Wednesday November 10, 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. (11:36 p.m.)**

Mr. Wiseman adjourned the meeting at 11:36 p.m.

Respectfully submitted:

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Liza Osorio, Secretary