

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

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

**Members and Staff Present:**

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

**1. CALL TO ORDER (10:12 a.m.)**

Mr. Wiseman called the meeting to order at 10:12 a.m.

**2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:15 a.m.)**

Ms. Aiello: Our testifier, Mr. Chairman, is Chuck Flaherty.

Mr. Flaherty: Good morning. Aloha Kakahiaka. I’m testifying on Petition 2021-01 with regard to the application of Mr. Rodenhurst and having Council member Richards as a reference. So two bells were rung here. One was the County Council member Tim Richards agreeing to allow his name to be used as a reference in his official position instead of a private citizen. The second is County Council member Tim Richards not recusing himself and voting in favor of Mr. Rodenhurst’s nomination to be the Director of Public Works. Applicants provide references to potential employers in order to better secure special consideration or treatment of an application relative to other applications for jobs. A synonym for special consideration or treatment is preference or biased. Mr. Rodenhurst has many successful prominent people within the community to use as references. The only explanation that we can see of why Council member Richards gave Mr. Rodenhurst permission to use him as a reference was to seek special consideration for Mr. Rodenhurst’s application and then to his nomination as well. I believe both the County Charter and Code of Ethics were violated. I’ve made references in my written testimony to specific provisions within those and I urge the Board of Ethics to take

appropriate action. Thank you very much. I also wanted to note that I submitted late testimony on Petition 2020-08. Thank you very much and have a good day.

Mr. Wiseman: Thank you. I have one question, are you aware of any letter of recommendation that Mr. Richards wrote on behalf of Mr. Rodenhurst?

Mr. Flaherty: No sir. Quite frankly I was going on the testimony that was provided to the County Council. So, I myself have to admit I have not seen that actual document. I have not requested that document and if it doesn't exist than obviously my testimony is moot, so...

Mr. Wiseman: Thank you sir.

Mr. Flaherty: Thank you.

Mr. Wiseman: Before we proceed I would like to just welcome a new member, of the Board here, Ms. Amy Self. Whose present today and also the presence of not so new, but fairly new, Denise Nakanishi. Of course we have member Larry Heintz and I am David Wiseman, Vice Chair, acting as chair. We'll call the next member of the public, who wishes to make a statement.

Ms. Aiello: Thank you Mr. Chairman, Mr. Medeiros can you hear us now? You'll need to unmute your microphone.

Mr. Medeiros: Yes, I can hear you.

Ms. Aiello: Okay go ahead.

Mr. Medeiros: Mahalo members, thank you for this time. My name is Jaerick Medeiros-Garcia. Today, because of Mr. Ikaika Rodenhurst, the vote to confirm Ikaika was invalid, we all know that. It's very obvious what's going on here. Councilman Tim Richards should have recused himself, he knows that we all know that. He didn't do it. Richards was listed as a reference on Ikaika's resume. That is an ethics issue. Our community, our County is depending right now on you folks, the Ethics members. We really need you folks to do your part and do what's right. The fact that this shouldn't have been confirmed, is very concerning. It is very mind-boggling to know that we have a Mayor that is allowing this thing to happen, so for me and my community, Pepe'ekeō, 96738, I'm very involved with my community, I see what's happening, there's a lot of things that's going on against our odds. We need, we really depend on guys to make this right. We are dealing with a Mayor

that is an attorney, right? He was our lead attorney for the County, Prosecutor, he's finding every single way he can, to go around the community. He's doing everything he said he wouldn't do. And this is one of them, this is a very important change that you guys must take into consideration that these guys need to be removed because of Mr. Tim Richards, our councilman, who hasn't been doing what his constituents want. Who has been going against everybody, these guys are in it (inaudible), and I'm telling you guys, we really need you guys' help right now. It's unwarranted, due to advantages, (inaudible) treatment, four out of nine councilmen decide to confirm him. The other, two councilmen brought it up, questioned Richards being listed, asked for him to recuse himself, he didn't. This is where we need you guys most, members of the Ethics Committee. Thank you guys for you guys' time. Mahalo.

Mr. Wiseman: You have a few seconds left if you wanna summarize.

Mr. Medeiros: Well you know, it is important. The communities, our island, we need the right people in the director's seat. It's very important. I mean, with this guy Rodenhurst, both guys, Rodenhurst at DPW and Zendo in the director's seats. These guys are going against what our (inaudible) is really about.

Mr. Wiseman: Thank you sir, thank you for your testimony.

Mr. Medeiros: Thank you, Mahalo.

Mr. Wiseman: We'll call the next member of the public who wishes to make a statement.

Ms. Aiello: Thank you Mr. Chairman, I believe this is our final testifier this morning. Janice Palma-Glennie. Please go ahead Janice.

Ms. Glennie: Thank you commissioners, board members. If you can hold on for one second hear, okay, I'd like to speak to two of the items today. The first one is regarding the Petition about Ikaika Rodenhurst being Director of Public Works. I'm testifying in support of the Petition regarding the conflicted appointment of Ikaika Rodenhurst as Director of Public Works. Like the petitioner I believe that it is this bodies kuleana to advise County Council that the vote which confirmed Director Rodenhurst was invalid due to Council member Richard's unwillingness to recuse himself. Without his vote, Director Rodenhurst would not have been confirmed. I have many concerns regarding this appointment including Director Rodenhurst lack of experience and possible conflicts of interest

due to campaign contributions awarded to him in his recent bid for County Council. I testified to those concerns at his confirmation hearings. During Council discussion I was stunned to hear that a council member was given as reference for a person who's appointment to a board or commission they'd be voting on, and when asked to recuse himself Mr. Richards refused. The petitioner and others both explain better than I can, the legal basis for this petition, however my support of it seems bonafide especially after being the hearing regarding Mr. Rodenhurst's appointment. Doing research into his resume and then hearing about the sudden departure of the seasoned person in Public Works, from whom the less experienced Mr. Rodenhurst said he would learn the ropes. I urge the Board of Ethics to agree with the Petitioner that Council member Richards and Director Rodenhurst violated County laws and rules when Council member Richards gave the new director reference for his application and didn't recuse himself from the vote on Mr. Rodenhurst's nomination. I appreciate your time in that matter. I'd also like to speak to, I think it's 2020-08, regarding the Planning Director. A March story in the West Hawai'i today opened by saying "Zendo Kern represented clients as a client before the Leeward Planning Commission on a re-zoning application and then as Planning Director signed off on a plat map for the (inaudible)". Mr. Kern's first conflict came before he was even sworn in as Planning Director which is no surprise since our island communities are very small. It's with a heavy heart that I testify at this and Council hearings against a young professional man, not because he couldn't continue to do well in the private sector but because he's the wrong person for the powerful public position he now hold and I feel obligated to continue to state the obvious. There seems to be no reasonable way that Mr. Kern can do the job he was narrowly appointed to do without continued conflicts. As many members of the public testified too five to four confirmation votes, to depend upon an already financially strapped Planning Department to spend the extra time needed to make sure every applicant and application are treated fairly and have the oversight of an unbiased Director seems wasteful and potentially impossible under our County's current fiscal and employee deficit. And with the names of Mr. Kern's former clients being kept confidential, how can the public ever feel confident that projects and permits are being reviewed properly when all they have to go on is good faith. After several years working as a consultant for clients often hoping to circumvent laws like the vacation rental bill it's more than likely Mr. Kern will continue to have extraordinary challenges protecting those laws into new positions. And even if he could meet that challenge, public confidence and knowing that matters are being handled fairly to uphold those laws and protect

public lands, neighborhoods and quality of life will remain thin if there's no more than a promise more conflicts won't occur. The most simple logical action would be for the Mayor with public and County blessing to replace this Planning Director with one of the less controversial and more experienced people who applied for the job. But short of that, it's imperative that the names of the Planning Director's past clients be made available to the Public. That's the only way to ensure the public's best interest is and remains the Planning Director's and Departments top priority. My other concern is the Director's potentially illegal freeze on nominees and for (inaudible) community development plans, though I'm not sure if that's part of what this board is meant to be considering at this time. In any case it's not an exaggeration to say the decisions we make today will affect future generations. When the decisions a Planning Director makes will as well. Mahalo very much for your time and consideration.

Mr. Wiseman: Okay, Thank you ma'am...Is there anyone else from the public who would like to make a statement?

Ms. Aiello: I have no more people on the list Mr. Chairman.

Mr. Wiseman: Thank you.

**3. INTRODUCTION OF TWO NEW BOARD MEMBERS: AMY SELF and KELLY VALENZUELA (10:26 a.m.)**

**4. APPROVAL OF THE REGULAR SESSION MINUTES OF FEBRUARY 8, 2021 (10:27 a.m.)**

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

**5. NEW BUSINESS (10:29 a.m.)**

**a. Petition No. 2021-01 Review of a petition alleging that a County officer or employee is in violation of Sections 2-83 (Fair Treatment) of the Hawai'i County Code.**

Ms. Harden: I have a brief statement, is this the time to go over it?

Mr. Wiseman: Yes, it is. In fact, for your information, Mr. Richards is in the chambers. You may proceed.

Ms. Harden: Alright, thank you. I do wanna thank you folks first for your volunteer service. Also wanna note that I do respect both Mr.

Richards and Mr. Rodenhurst, and I'll just briefly review what I sent in earlier. Originally I said, asked the Board to direct Mayor Roth to remove Director Rodenhurst. But instead I ask that you advise County Council that the vote that confirmed Director Rodenhurst was invalid because Council member Richards did not recuse himself. If he had recused, Director Rodenhurst would not have been confirmed. The Ethics code says no officer or employee shall use or attempt to use their official positions to secure or grant unwarranted privileges, exemptions, advantages, contracts or treatment but Council member Richards of course was listed as Council member on Rodenhurst's resume, thereby using his official position to secure an advantage, contract or treatment. So was this unwarranted? At the time that Mr. Richards signed on, he didn't know the two vetting meetings hadn't happened yet. You can get skeletons come out of the closet in such meetings. So in abundance of caution, Mr. Richard (?) signed on as a reference. After he signed, he could've corrected the error by recusing himself but he didn't and he could've asked the Board for an informal opinion, there was time to do that. On the questions on whether the appointment was unwarranted, that's relevant information. 4 of 9 Council members voted against confirmation, including the Council chair. Public testimony included concerns about conflict of interest for Rodenhurst from campaign donations. One meeting Council chair David asked how Director Rodenhurst's ability to manage private construction projects was equivalent to what is needed to manage a government department with multiple divisions and about 400 employees. All the while thinking about governmental requirements. It turned out, when she asked, he had not been the sole person in charge of every project on his resume. Another Council member said that Rodenhurst lacked the administrative experience required by the Charter. Since he had only supervised fewer than six employees. Another Council member pointed out Public Works has six subdepartments and 368 employees and pointed out that just supervising employees in private practice is very different from being a government administrator, and he asked (?) experience with employees under collective bargaining, and Mr. Rodenhurst does not have experience with that. Another Council member pointed out that Rodenhurst presented four different resumes, one lacking dates for several events. The Council Chair said based on her interpretation of the County Charter, she would not support Mr. Rodenhurst. Also questions were raised about Mr. Richards (?) as a reference and one Council member asked Mr. Richards to recuse himself but he decided not to and he voted. And that was raised at two meetings by Council members. At the last meeting, Deputy Corporation Counsel Renee Schoen said there was no problem but

she was citing Section 284 of the Code of Ethics, whereas this petition cites a different section which is 283. And after that opinion, Council Chair David we've been the opinion of Corp Counsel anything further goes to another agency, Board of Ethics. And so here we are. And lastly the Ethics Code says this article shall be liberally construed to promote high standards of ethical conduct in County government. So if you folks rule that there is no problem, it seems (?) that all nine Council members could list themselves as references in their official capacity on someone's resume before there's any vetting meetings and before concerns are raised by the public or known and (?) vote to confirm the nominee. And that's all, and thank you for your consideration.

- Mr. Wiseman: Thank you Ms. Harden. Are you aware of any written recommendation that the Council had from Mr. Richards?
- Ms. Harden: Not aware of one.
- Mr. Wiseman: And are you aware of any control Mr. Richards had over Mr. Rodenhurst's resume?
- Ms. Harden: I'm not aware of any. Of course his name appeared on the resume so you'll have to figure out if that qualifies as control.
- Mr. Wiseman: Alright. You don't know if he put his name on someone else's resume do you?
- Ms. Harden: I don't know if he put his name on anyone else's resume.
- Mr. Wiseman: Alright thank you ma'am.
- Mr. Wiseman: Mr. Richards, do you wish to make a statement?
- Mr. Richards: Thank you. Appreciate the Board's time today and coming before and discussing this. My family's been here a long time and we've known a lot of families over the years. Mr. Rodenhurst's family and mine go back three or four generations and I did get to know him and feel very honored to be listed a reference as I'm sure the Board realizes when someone uses you as a reference it can be a two-edged sword. I have been used in a reference where it didn't come out very well for the person. Actually there's been a couple of those. So I'm here, I think part of the conversation is concerning the conflict of interest, and there is none. As I read the charter I don't see where there's a conflict of interest here. I think it's interesting that we as Council members are trying to find the best people and to find the best people what we try to do is we have to

know them. And over time, when I say time, we're talking years and generations, you get to know people and who they are. I didn't know Mr. Rodenhurst prior to going through this but he had contacted me to ask how I handle my professional life, I'm a veterinarian, balanced with a public life. So then when I connected the name, that's how we started a friendship. There's been nothing other than a very professional working as a Council member with a Director, through all of this, I don't see where I've breached anything. One of the interesting things is I spoke to Ms. Harden because she contacted me, and I said you know here's the paradox, being listed as a reference, I'm acknowledging that I know Mr. Rodenhurst. Completely transparent, and under the sunshine law we're supposed to be as completely transparent. So if I'm understanding it, if I didn't list myself but I still know him that would've been okay. I said, but I'm being more than completely transparent cause I'm stating upfront publicly that I know the individual so I find a paradox here. I would continue to support the people I believe are good for the job and I will not support people I don't believe are good for the job. So, sir I think that kinda summarizes it pretty much.

Mr. Wiseman: Following up on my other questions, Mr. Richards. Did you write any letter of recommendation for him?

Mr. Richards: I did not.

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

Mr. Heintz: Good morning Mr. Richards. I have a couple of questions.

Mr. Richards: Sure.

Mr. Heintz: One is, when did you first meet Mr. Rodenhurst?

Mr. Richards: I don't exactly remember when, I know contacted me when he was exploring the job.

Mr. Heintz: Okay, so you met him in, you didn't know him or meet him personally until he was being considered or he was considering applying for this position?

Mr. Richards: I may have talked to him prior to that, I quite frankly didn't keep track of it. I haven't known him for a year if that's the question. Maybe in the fall sometime. I don't...yeah cause he did contact me about how do you balance public life and professional life, so we had a conversation about that.

Mr. Heintz: Okay...Normally when, or at least from my experience with the University, when a person is listed as a reference, it isn't simply an expression that they're known by the party, but that they're recommending that party or that they are...it's a positive that they're listed so I just wanted to make that point. Another question I have for you is, it's unclear to me what the individual Council members right is with regard to the right to vote or recusal because at least two members of the Council in either the committee or at one point or another, asked you to recuse. Now is that a decision that each individual member of the Council have as an absolute right whether or not to recuse themselves or can the Council as a whole make a decision on whether or not a member needs to recuse himself?

Mr. Richards: I'm probably gonna venture into a little bit of grey waters here and Corp Counsel may need to help me out on that one. Long story short, if you are in the chambers you are voting. You do not have the ability to recuse unless there's mitigating circumstance that you believe should be, take front and center. It has been explained previously to me by Corporation Counsel that we are elected to make decisions going forward. And we are to vote what we believe is the right way to go and I give it a lot of thought, if we were to recuse our vote on uncomfortable situations so we're not taking a position that can trigger a lot of problems for the County as a whole because we are elected to make decisions. And so, there is a possibility to recuse but it's not a hard and fast policy and so it doesn't really come where the Council makes a decision whether or not someone's gonna recuse themselves or not cause they're voting on whether or not they can vote. That comes from Corporation Counsel and I did seek advice from Corporation Counsel and under the terms and Ms. Harden referred to it, there is no conflict of interest per our charter that is there and I believe in candidate as being the best thing for our County going forward. So I wanted to fully support this candidate.

Mr. Heintz: Okay I have another point that I'd like to ask you about. In looking at the petition and hearing your remarks and the Corporation Counsel referred to the conflict of interest section. But the petitioner is not talking about a conflict of interest. In fact, there's no claim of a conflict of interest. The petitioner is saying that there's a problem of fairness and so the difficulty is that you are both a reference and then later you're voting. And so there's a different section of the Ethics Code that seems germane. And I've been on the Ethics board now for about 2.5 years but one of the things that I have noticed and we had many different cases in

which the whole issue of conflict of interest or appearance of a conflict or a fairness or the idea of someone who's biased or has expressed a view or is used as a reference then votes anyway. And I've heard the expression "we're on an island, so we know all kinds of people" but what I'm concerned about is the judgment of Council members, we've had at least three cases since I've been on the Board where they have not recused themselves when they, in the judgment of others, even other Council members, members of the community and we've heard testimony today, that there's an appearance of unfairness or an appearance of bias. And I'd like you to understand or speak to that because you seem to keep thinking that there's no conflict of interest and that's actually conceded. I don't see that there's a conflict of interest here, but there is a problem of fairness. And the appearance of fairness. And the Board the purpose of the Code of Ethics is if I can just read to you, in Chapter 14, "Elected and appointed officials and employees shall demonstrate the highest standard of ethical conduct so that the public may have trust and confidence in the integrity of their government and what we're hearing in terms from the petitioners is that's what the problem is. They are losing the sense of trust and confidence in their government because decisions are being made when it appears that it's unfair. I'm sorry for going on but I wanna make it clear and I'd like you to see the difference between those or comment.

Mr. Richards:

And I do. I appreciate that and I do see the difference. There is no conflict of interest, there's no financial gain, I acknowledge that. And then I'd guess you'd call it the 'public trust' of coming forth and as a commission as a Council member, I think I will again revert back to what I said earlier about we are elected to make decisions coming forward. And I actually see it as an honor to be a reference for someone coming forth, looking through a lot of commissions that we approve for everyone, there are other Council members that are recommended or used as references in those coming forth. Now if we're talking about one being compensated versus a non-compensated, okay I guess I can hear what you're saying. But on the point on that one, Council members are still used as references on other boards and commissions and so, if we have a policy for the County where we are looking at saying 'lets just keep this squeaky clean' and I don't know if you dis-allow or prevent Council members from being a reference for anyone, I'm good with that. But I think we need to have again, a leveled playing field so we understand what the rules are going into this. Borrowing your statement about being on an island, part of what we do is we know people and we know good people to work with and that comes through reputation and knowing how people work

and work ethic, etc. And so, I can see the quandary that the Board of Ethics here would look at this and understand. For me the paradox is that other Council members have been used as other references in other Boards and I don't see a difference here, because I think these things are all the same. They're a point of trust and a point of responsibility. Whether you're compensated or not I don't think that should be a determining factor. And so, I hear you sir and I, this is a little bit of a conundrum here...I don't disagree with you on that one. Ultimately what I want to do is take this County forward and I will do whatever I can I think that's in the best interest of the County and the public to go forward, and like as I stated early on we are elected to make decisions sometimes they're not popular decisions but we're elected to make those decisions and I would not be being true to myself and my supporters if I didn't stay in and try to make the hard decisions when they're called for. So I don't know if that answers the question but I understand what you're saying, there is a conundrum here and I'm empathetic to it but I think I followed suit with what I was doing and again coming back from the Sunshine Law standpoint, completely transparent. I know the guy.

Mr. Wiseman: Okay. Mr. Richards?

Mr. Richards: Yes?

Mr. Wiseman: Did Mr. Rodenhurst ask your permission to list you as a reference.

Mr. Richards: You know I figured that question would come up and I'm gonna say yes he did. Because I think knowing him as a courtesy, he wouldn't do that without my knowledge and I didn't see it as an issue at the time.

Mr. Wiseman: Alright. And then at the Council hearing, did you make, you say you made a disclosure or?

Mr. Richards: Well I didn't say publicly that I know him, at least I don't recall me saying it in those so many words but I did say that to Ms. Harden on the conversation and obviously if I'm listed as a reference I do know the individual. And so, I...and that's when this thing came up.

Mr. Wiseman: And does the Council, I don't imagine they have any policy guidelines set out for the members on recusal?

Mr. Richards: No, I do not...I know that we've had this conversation, we meaning in Council and with the Clerk, and very clear you vote.

And that's why our rules are set up, that if you're in the room you're voting and if you don't say anything it's a automatic yes. That's why if you're watching.

Mr. Wiseman: And that's common throughout most institutions, even the court, the judicial system, they don't, there's some recusal statutes and rules, however most of its by case law. Except for the U.S. Supreme Court they don't have any recusal monitors whatsoever.

Mr. Heintz: Mr. Chairman, may I?

Mr. Wiseman: Yes, Mr. Heintz.

Mr. Heintz: On this particular point, I realize Self wants to talk, but on this particular point in an earlier case that we dealt with, one of the Council members, the question about recusal came up and when Mr. Chung was chairman, he told the person they didn't need to recuse and so would I be right if he would've said Council member you need to recuse yourself that the Council member would have to recuse himself? In other words does the chair have the decision or does the body as a whole have the decision? Or does a decision remain with the Council member?

Mr. Richards: My understanding it remains with the Council member and we do it in consort with Corporation Counsel and advice upon Corporation Counsel. At that time I received advice from Corporation Counsel and they saw no reason for me not to proceed.

Mr. Wiseman: And of course, if the members themselves could take a vote on if they wanted to, if they felt a member should recuse himself and he wasn't and not withstanding Corporation Counsel's admonition to recuse, so the Council could make a motion to take a vote on it, couldn't they?

Mr. Richards: I don't think I'm qualified to answer that question.

Mr. Wiseman: Okay, alright, never mind. Ms. Self you have some questions?

Ms. Self: Yes thank you. Obviously, in a situation at Council if you have a financial interest in petitions or something that's being voted on, you would of course recuse right?

Mr. Richards: Correct.

Ms. Self: Okay that's the main time they would have to recuse. Okay I have a question, when Mr. Rodenhurst listed you on his resume as a reference, did he ask you whether he should put it down as Council member or just put your name, were you consulted on that?

Mr. Richards: I don't think that, I don't recall that question. And yeah, I don't recall that questions and also I don't think that was listed... Well I know I didn't say please list me as councilman or something like that. I know I didn't say that, just put my name. So I don't think that was any part of the conversation.

Ms. Self: Okay so you didn't know how he had you listed?

Mr. Richards: No.

Ms. Self: Okay. And then the other thing is, if you had not been listed as a reference, would your vote have been the same?

Mr. Richards: Yes.

Ms. Self: Therefore the result at Council would've been the same, correct?

Mr. Richards: Correct.

Ms. Self: Thank you.

Mr. Wiseman: Any other members have any questions? Ms. Nakanishi.

Ms. Nakanishi: So what you're really saying is that you have to make, each Council member has to make their own judgment initially, while you're sitting there taking the vote because certainly if you go by the conflict of interest rule there would've been another Council member who would've had to recuse himself right?

Mr. Richards: Concerning Mr. Rodenhurst? If there's a conflict of interest concern, that's pretty well articulated by our Corporation Counsel and...

Ms. Nakanishi: I know that test, you passed that test..

Mr. Richards: Yeah, and so if that comes forth...sorry I believe it was the appearance of impropriety. One of the things that you know I'm very happy to discuss this, I did recuse myself on a vote for people coming on to the Board of Ethics because this was a pending deal and I said you know, I don't wanna get stuck in that one. So I recused myself on that because there's an action that's coming

before the Board that involves me, so I think it's best, even though there's not pressing issue other than the apparent possibility of impropriety. So, I said it's best just stay out of those waters. And so coming forth with that, the decision is basically within the individual as I understand it, in conversation with Corporation Counsel to identify whether or not we have an issue, and then we go forward from there. And this is in their records, I came before, I asked for an informal opinion of this Board when we were voting on the vacation rental deal because I had a vacation rental I said, how does this work? And at the time the opinion I received was, you're making a decision on the County wide deal, so whether it affects you or not, we're looking at the greater picture, and so do not recuse yourself and so I did not recuse myself on that vote. So, I think part of my decision process is based upon conversations with Corporation Counsel and then the scope of what we're looking at and like I said, the policy, there's no clear policy saying that we cannot be used as a reference and on a personal note I consider that an honor, to be used as a reference. So does that answer appropriately?

- Ms. Nakanishi: Yeah basically. Do you know if there are any other Council members that ask Corp Counsel for an opinion about whether they can vote or not?
- Mr. Richards: I do not and there's a little bit of a sunshine law issue there since we're talking about voting. So we're pretty sticky about that. Which is why sometimes we look like we've never heard of an issue when we get into Council cause we haven't.
- Ms. Nakanishi: Thank you.
- Mr. Wiseman: Thank you Mr. Richards. Any other questions from the members? There being none, Ms. Harden would you like to...any reply based on Mr. Richards statement...briefly?
- Ms. Harden: Yeah a couple of things. Mr. Richards is saying he's being very transparent in his actions as being listed as a reference but you don't have to list as a reference to be transparent about your support for someone. You can just say you (?) them. Also I'd like to reiterate that we're not talking about conflict of interest or talking about Sections 283 regarding using official position to secure an advantage, contract or treatment, unwarranted. So it's not conflict of interest it's 'Are you as a Council member using your Council member position to get some preferential treatment for somebody?'. And when you're listing as a reference you do it because you want the person to be well regarded to get some

preferential treatment. I have a couple other things. I wonder if Mr. Richards could say a bit more about how his name got on there. I heard some Board members ask did Mr. Rodenhurst ask Mr. Richards permission to put him on as a reference? I wonder if he could say a bit more about that.

- Mr. Wiseman: Ms. Harden I asked that question and I remember his answer, he was unclear of how or when that happened. He couldn't recall any details about it.
- Ms. Harden: My question is...okay let's see when Mr. Richards saw he was listed in his capacity as Council member on the resume, he could've in the Council meeting say that's not right I need to just be listed perhaps as a person....My main concern is that we're talking about Section 283 the unwarranted preferential treatment so Thank you.
- Mr. Wiseman: Okay thank you Ms. Harden...Okay, discussion among the members?
- Ms. Hall: I guess a Motion for Action if they are ready to decide?
- Mr. Wiseman: Do I hear any Motion to defer this or discuss it and take some action or...?
- Mr. Heintz: Mr. Chairman, I believe that this issue raises a much larger question about the Board of Ethics needs to assist County officers and employees on this whole question of fairness and so, and guidance about when to recuse and when not to recuse and is this the appropriate time to discuss and explore that topic generally? I mean the topic, what I'm getting at is it's much broader than this particular instance. I think this instance brings up the question, the problem is people need to recuse themselves, not only due to conflict of interest but, questions of fairness and appearance of fairness. There are institutions like the university, one cannot sit on a committee to vote for someone and also be a reference for the person. You're just barred, one thing excludes you from the other. And what we have is members, other Council members, members of the community believe that this is that what Mr. Richards did was impartial. That it implied a bias, it implies a prejudgment. And the Council members and the community need some guidance on that and so, the ethics committee needs to talk about clarification because this all seems to pend on section 283B. And it's a question of by the fact that he gave himself as a, allowed himself to be a reference, that that implies a judgment approval of the person. And then the person is considered and then he votes as opposed to

recusing himself. And so I think we need to talk about the whole role of the appearance of fairness.

Mr. Wiseman: Yeah I would submit that be a good topic but not at this time, perhaps. The problem I have is if someone, we're open for discussion now, if someone has, well experience I'm familiar with is there was some unprincipled litigants who used to go around and talk to all the best lawyers on the island, I used to live on. And then when they brought a case those lawyers could not represent the other side. And it was to no will of their own. A simple phone call sometimes can raise that level. Recusal is, in most instances, a subjective decision. I'll reserve other comments for later. Do any other members wish to...do we have a Motion to open this for discussion and action now? Do you wish to defer?

Ms. Self: I have...When you look at section 283B it has the first paragraph then it has examples. It says including but not limited to the following, one, two, three, four, but these are examples of what, it's explaining what the paragraph means and I'm having a hard time determining what the treatment is. I mean, who's receiving a treatment in all of this? Mr. Richards certainly isn't receiving anything. And Mr. Rodenhurst, I don't know that he received, I mean you've got nine members at the vote to confirm someone, this is one vote out of 9 votes. So, it doesn't look like it's not seeking of employment or contract for services for one's self or other, that's not it. Accepting or receiving or soliciting compensation, or other, that's not it. Soliciting, selling or otherwise engaging in a substantial financial transaction of the subordinate, or a person, that's not it. Using County property, facilities, time, equipment or personnel for private, that's not it.

Mr. Heintz: May I interrupt?...But what is says it's not limited to that list. And you could add to the list and I think the petitioner is saying what is it is, but for Mr. Richards vote, he, Mr. Rodenhurst would not have secured this position. The vote would've been 4/4 and he would've been denied and this a...so what has been gained is he, Rodenhurst has gained the position due to Richards's vote and Richard's vote is tainted. You and I are friends...

Ms. Self: It would've been the same.

Mr. Heintz: No it would not have been the same. It would've been a tie vote and a tie vote, the nomination does not go forward. So and what is considered that the vote is tainted or biased or pre-judged or not impartial. Other jurisdictions have rules that specifically bar and it would list this. And I'm willing to talk about those but I guess

because of my familiarity with other institutions which would specifically bar a reference from also voting on an issue. There are whole institutions which bar such things and I think our rules are fairly vague in terms of giving you guidance.

- Ms. Hall: Sorry excuse me, I just wanted to remind the Board that we're not thinking about other institutions rules and explanations, we're thinking about our own County Code of Ethics. So let's try and keep the discussion focused on that and also if we could get a Motion to continue this discussion that would be the best. Thank you.
- Mr. Heintz: Can I respond to that? Part of my point is what needs to be clarified and worked on and fixed is our rules. Our rules need to be looked at and need to be expanded.
- Mr. Wiseman: Okay but well the point that Counsel made is the Motion, procedurally we do need a motion to continue discussion on this matter.
- Ms. Hall: And I'll add that the discussion of the rules would be another agenda item for a future meeting.
- Mr. Wiseman: Okay Ms. Self.
- Ms. Self: I move to deny the petition.
- Mr. Wiseman: Is a motion to deny the petition. Do I hear any second on the Motion?
- Ms. Nakanishi: Second.
- Mr. Wiseman: Motion has been made and seconded. We'll open that for discussion. Mr. Heintz..
- Mr. Heintz: You want to speak first?
- Ms. Self: Okay I guess what I'm saying is that, had Mr. Richards not been listed as a reference the vote would've been the same. His vote didn't change one way or the other. And so, because someone lists you, that's one item out of a whole resume and the vote's gonna be the same regardless of whether he's listed as a reference or not because by him being listed as reference it shows the whole Council that he knows this guy. So, actually it's more transparent that he did list him as a reference.

Mr. Wiseman:

Mr. Heintz?

Mr. Heintz:

I agree with that but I wanna speak further. And what I wanna speak about is the appearance of fairness doctrine and the guidelines on how public officials should conduct themselves. Let me just, I'm going to quote from one of the MRS guidelines for local government and government success and I'm reading from the document. "Public officials should make official decisions and take action in a fair and equitable manor, without being affected by bias, or personal prejudice taking into account only the merits of the matter and respecting the rights of affected citizens." The State of Washington –

Ms. Hall:

Sorry board member, again I have to remind the commission that, this isn't, we're not introducing other institutions or states codes we're focusing on our code. I apologize, if you would like to have a more broad discussion about your actual rules or what the Code of Ethics means here, then that needs to be done at a later date at another meeting.

Mr. Heintz:

I'm speaking against the motion. Okay, the motion that's on the floor and the reason I'm speaking against the motion is part of the purpose of this body is to help the citizens and the members of the community have faith and confidence in the integrity of the government of the actions that we're making, and what is problematic here is that members of the council themselves, members, the petitioner and testifiers believe that the...a Council member in this case Mr. Richards, by voting in this circumstance, raises questions about fairness, bias, prejudice, tainted (?), whatever language you wanna use, so I'm gonna vote against this motion because the...as sort of meager as our own specific section is, it does raise the question that the vote is unwarranted. In other words, half the people who voted, voted against, based on qualifications. Mr. Richards vote is in question because of the fact that he made the previous reference. He allowed himself to be a reference, okay? That's why the whole issue is in doubt and is problematic. Thank you.

Mr. Wiseman:

Thank you Mr. Heintz. Anyone else care to make a statement? No? I have, I concur with Ms. Self's statement. The fairness Mr. Heintz mentioned, I can relate to that and appreciate it. If there's an appearance of impropriety that's used, that term whether the level of, the appearance raises to the level of impropriety such that it affects a public's confidence in the operations in government. I don't see that it does. And we have with respect to Board member Heintz statement about the rules and necessity following up and

furthering any guidance or rules with respect to recusal. You may recall, Larry, that we had a Council member a year ago or so here, had a financial or other conflict of interest and I believe the decision we issued on that one, finding ruling in favor of the petition, was sort of instructions to the Council, with respect to recusal matters. So, we can look into that. In any event, if there's no further discussion, we can take a vote.

Ms. Hall: Yes, sorry, just for clarification for my own purpose, with your vote to deny the petition, are you saying that basically that the Board is not accepting the petition at all for review? Which I would say we kinda have reviewed or would it be more of a Motion to Deny meaning that you guys are finding that there's no violation of the Code of Ethics, in that sense?

Ms. Self: Well it's weird because, which person is the petition against? Is it Rodenhurst or is it Mr. Richards? But I would say, I would move to deny the petition that there's been no violation of the Ethics Code.

Mr. Wiseman: I would also point out that many of the testimonies we've received believe that the Board of Ethics can reverse situations, can reverse confirmations, have the Mayor withdraw an appointment, a nomination, etcetera. We don't have that authority and again I concur with Ms. Self's statement on the denial. So all in favor of the denying the petition say Aye?

Ms. Self: Aye.

Ms. Nakanishi: Aye.

Mr. Wiseman: Aye. All opposed?

Mr. Heintz: Aye.

Mr. Wiseman: Alright, three to one, petition is hereby denied.

**Motion and vote: Ms. Self moved to deny the petition. Ms. Nakanishi seconded the motion. Three members voted aye, one voted nay. Petition was denied. (11:16 a.m.)**

Mr. Wiseman: With the caveat that we should follow up, referencing that last decision we put out on the Council member, about a year ago, or more. Let's expand on that and try to accommodate member Heintz's concerns with getting more out there, more guidance on recusals. I have a 48 page court decision on recusal where a judge refused to recuse himself and I was appointed to handle that. So

I'm well familiar with recusals. Okay thank you, anything further in this matter?

Ms. Nakanishi: Yes, I do wanna thank Ms. Harden cause she's vigilant. Thank you.

Mr. Wiseman: Yes Ms. Harden, compliments to you, and exercising that vigilance which is so important in the community.

Ms. Harden: Thank you for your consideration. And thanks to Mr. Richards for showing up in the middle of budget hearings.

Mr. Richards: Thank you Ms. Harden. We don't always agree, but thank you.

\* \* \*

**Motion and Vote: Mr. Heintz moved to take agenda out of order to hear Petitions 6a and 5b first. Ms. Self seconded the motion. All members voted aye.**

**6. UNFINISHED BUSINESS (11:20 a.m.)**

**a. Petition 2020-08 Continued review of a request for an informal advisory opinion from a County employee seeking guidance on potential conflicts as the newly appointed Planning Director.**

Mr. Wiseman: We have the director here, Mr. Kern, is that right?

Mr. Kern: That's correct, Zendo Kern.

Mr. Wiseman: I believe all the members have a letter from Mr. Kern dated April 8<sup>th</sup>, 2021. We respect to this petition. Do you wanna make any statements first Mr. Kern? Or we just proceed with the letter?

Mr. Kern: I'm happy to make an opening statement if that's okay with you?

Mr. Wiseman: Briefly please.

Mr. Kern: Yeah briefly. I just wanna say a Good Morning, Mr. Chair, members of the Board of Ethics. Good to be back here, hopefully to get some resolution in this. I did prepare this letter. I apologize for not getting it a little bit sooner. But just basically wanted to set up what I have in place and what the questions and then seek any further guidance from you folks on anything else that we could put in place. To avoid the appearance of impropriety. Thank you.

Mr. Wiseman: Thank you. I have one concern here, in your letter the protocols listed, seem very fine to me. However number 6 seems to be in conflict with everything else.

Mr. Kern: Sure, number 6, I've put in there just a stop gap, you know what I mean as good as anything that we try to have in there in the event there was anything, I'm really trying to be really, really diligent. You know, especially for the mishap to happen on the 10<sup>th</sup> when we first got in there. Where I'm looking at it, just again, an extra diligence, that's all.

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

Mr. Heintz: I have some questions about prior to your later letter. Couple of matters that were still pending with regard to his petition, the initial...May I go back to those at this time?

Mr. Wiseman: Yes go ahead Mr. Heintz.

Mr. Heintz: Mr. Kern, you provided us with the list of clients right? And the one question I have is, for some reason I have the impression that there's a request that this list be kept confidential or private or not, and that's a decision that the Board needs to deal with. And then I have another question about 'is this list complete?' so you wanna take these one at a time or how are we gonna do this?

Mr. Wiseman: Yeah, Mr. Kern can answer those.

Mr. Kern: I can respond to a certain degree for sure. When we submitted the list, when I submitted the list of formers clients at the time, the uncertainty of the confirmation was paramount. And with a lot of the negativity that's coming around on that, I didn't want the list to go public, not get the appointment, undue burden and hardship and potentially attacks to former clients. That was the primary concern there I was kinda like 'well if I don't get confirmed, what's really the point?' Right? To a degree so that's why...

Mr. Heintz: Okay so you have no objection to this being public?

Mr. Kern: I don't, I actually think it probably would be anyways, I do have obviously the concerns that I share is there are some various people that don't care for me. I have concerns about other people getting attacked around that. But that's a separate matter.

Mr. Heintz: Okay. So, do I need to make a motion?

Mr. Yoshimoto: Right, so either it is or it isn't. I'm sorry I got lost there.

Mr. Heintz: So I would move that the list that he's provided be open and public.

Mr. Kern: I am, fine with that, again I do have concerns so hopefully people just respect previous clients and if they have attacks that they can bring them just directly to me.

Mr. Yoshimoto: Okay so, Board member Heintz, so then...

Mr. Heintz: So if he's in agreement, then...

Mr. Yoshimoto: We don't need to take any action...

Mr. Heintz: Then there's no action needed because this is a public list.

Mr. Yoshimoto: Right because this is an open hearing, yes.

Mr. Heintz: Okay. The second question I have, in some of the testimony, there's been a list of the different companies that you've had and have and I noticed all of these are from the Zendo Kern Planning Consultants, Kern Associates okay? And am I correct that you have three other companies WKL enterprises, Kern Kuhara Adventures and Tie Aloha, Inc. as open companies, and I guess my question is, would there be any possible former clients that might bring matters to the Planning Department so that the list would need to be, include from these clients, these companies as well.

Mr. Kern: Sure I am happy to answer that. As far as Tie Aloha goes, I have no ownership in there so that's a (?) point, I was the RME for that, more of just a managerial standpoint in that and no there wouldn't be any potential clients even in that in my work there that would potentially conflict. The other one with WKL and Kern Kuhara, those are basically the same entities if you will, they're separate entities but for the same purposes. And it has nothing to do with this type of activity. There would be no clients on there as well.

Mr. Heintz: There will be no clients that might bring issues...

Mr. Kern: I've never had a client with any of those LLC's it's just for a different purpose related to real estate.

Mr. Heintz: Thank you.

Mr. Kern: And those are put on m disclosure statements as well that get reviewed every year.

Mr. Heintz: Thank you.

Mr. Wiseman: Any other members have any concerns? In your letter listing down the protocols, one through five or one through six. To the employees, the people who received I guess applications and stuff, are they aware of the list of, I mean are these protocols, are they aware of those?

Mr. Kern: Yes. They are aware of these. Everybody that needs to be aware, anybody that wants to further be aware, yes it's definitely a discussion that we have. And if it pleases the Board also Deputy Director Jeff Darrow is happy to come over and give any, you know, not testimony, but give his opinion on how it's working, what's working etcetera. He's across the street, he can come over in five minutes if that would be helpful. So everybody who needs the list, has the list, anybody that would request the list within the department would also get the list.

Mr. Wiseman: So Planning Department, it has intake people who intake the application right?

Mr. Kern: Correct.

Mr. Wiseman: I can imagine there are only a handful of them.

Mr. Kern: Correct. They have the list.

Mr. Wiseman: Would you have any problem, especially since these are now public, your former clients, of these intake people having the list of those names.

Mr. Kern: They have the list. They've had the list as soon as, I think even prior to getting confirmation they've had the list. We wanted to get protocols in place ASAP. But again whether or not I got confirmed was the reason for that. So they have the list and those lists are in their possession and they're reviewed against anything that comes through. And on that note, I've check, I've touch base with them. Cause I have, I'm always concerned about bandwidth, time, efficiency, those are really big in my world, so, hey how's it working, is this a burden? Is this troublesome? And the feedback has actually been really positive. It's not slowing me down, it's not a big deal, it works quite well, so, I'm not receiving any negative

complaints. I'm not getting any heartburn around it, and it doesn't seem to be slowing things down at all.

Mr. Wiseman: Alright, in any event, I have nothing further. Any of the members have anything further?

Ms. Self: I was looking at the list of short-term vacation rental applications, it's quite extensive, six pages, have those been completed or are all of these still in the process of being completed?

Mr. Kern: I would say that probably in the 95 to 98 percentiles were all completed. The ones that wouldn't have been completed would've been ones that would've been appealed based on some type of decision and I have no involvement whatsoever, the Deputy Director handles any of those lingering ones. But yeah, otherwise it's probably even in the 98 percent majority.

Ms. Self: Okay so we're not looking at a whole lot of things out of that, that you wouldn't be able to sign right?

Mr. Kern: That's correct.

Ms. Self: And what about the list of your former clients, is there still a lot of outstanding projects?

Mr. Kern: To my knowledge, not so many, and I'm not seeing any of them. So I can't really tell the flow. Something that we did do, was as you can see, so I have former employees that are still doing land use work with no relation to me, I recuse myself from even seeing any work that they're doing on, so that flow I'm not privy to. But they were in various stages, a lot of those were wrapped up and then certain ones were not, I mean, even to the point I put on the ones I didn't actually go in front of the County with, that we just engaged with, I never even went to the Planning Department, I never went in front of a Board or anything, just hey, we engaged, I put you on the list.

Ms. Self: Alright, you're still gonna have work to do right? Just not do it all.

Mr. Kern: I have a tremendous amount of work to do. The way that we've kind of parceled this out right now is I'm very much focused on operations, personnel, interGov, things of that nature. Jeff Darrow, our Deputy Director, he's primarily working on Land Use stuff, working on appeals issues, so even if it's something that I'm not conflicted out, I'll see it, but I'm not really in the day to day of those so much. He's focusing more on those and again I'm very

higher level working on operations and InterGov alone would be a fulltime job, doing lava recovery and the rest of it. It's working quite well.

Ms. Self: Okay, great. Thank you.

Mr. Heintz: Member Self's question raised other questions for me. I unfortunately can't seem to locate your most recent letter, but as I recall, there's, I think you asked something about how long should you recuse yourself or not deal with any of these matters. Is that right?

Mr. Kern: Yes actually its asked multiple ways.

Mr. Heintz: Okay, so that brings me to this question. So there's the matter of lets say one of these parties, that their particular matter has gone all the way through the system. But they may have another property that they bring up next month and so that's, do you see that you are not to be involved with that case, a new petition as well? Because that's somebody you've represented?

Mr. Kern: So yes, currently what I've done and this is where I wanna get some feedback from you folks, is I've kinda treated it as if I was in a public practice before and you take the year off. So I've thought any project, any client and any previous former like employee, I wouldn't touch for at least a year. So I'm not touching anything and kinda what I want the feedback from you folks. So obviously a project is quite specific and that's relatively straight forward. I'm not touching the project this year, next year or the following year. But when it comes to potential client that's doing multiple things, where does that, how long do I recuse myself for that?

Mr. Heintz: And is there any guidance in existence on how long a person in this position should have a hands-off policy? Do we have anything?

Ms. Self: Well I can just speak to the way attorneys are treated and it would just mean that, like for instance went to work at Corporation Counsel, I came from private practice. I had worked on a lot of land use cases prior to going there. Well, every case I'd worked on I could not touch. I mean, there was a wall set up between me and that case and that was, no matter, I mean, some of these cases went on for years. So I would say that, it didn't mean that a new case I'd never worked on before in private practice, I could get those right? So I would say that any project, I think it's based on the project, any project that, he's currently working on prior to being the

Planning Director, he would not be able to touch, there should be a wall set up and I think it's already been set up. Laserfiche is what we use in the County and it has a particular firewall for that sort of thing. But I wouldn't say that that would keep him from approving or denying future applications from the client that he worked with before. Because he never had any involvement in that project. So, I mean cause that's a lot of clients.

Mr. Heintz: Right, there's nearly 400 here. But that's where I think we need to give him some guidance because we don't want it to come back later where we had an opportunity to give you some guidance and you get blind-sided because we didn't. And there are gonna be people who are gonna say Oh, I can even imagine myself saying, Ah....But you are gonna be biased because you've dealt with this person before. And so if we're to give guidance we should be thinking about that.

Mr. Wiseman: Yeah I agree, and member Amy pointed out that any projects you were working on hopefully those will be finished, eventually and you won't have any roll with that. But with respect to the client themselves, any new matters, I don't see any problem with that. I mean if we take an analogy to non-compete agreements, you work for a barber shop and you sign a non-compete agreement, it has to be within a reasonable time within a reasonable area, you can't restrict that person for the rest of his life so...Only attorneys cannot divulge a client's information for the rest of their life. But other than that, I don't see any problem. That would be the guidance I would go along with.

Mr. Kern: If I could clarify that? It's basically a project vs. a person or an entity conversation then and if it's a project then that's gonna be based on a TMK I never touch those as long as I am in this position. And If it's a person issue, that's not an issue.

Mr. Wiseman: So no further questions..

Mr. Heintz: It's grayer And the reason it's grayer is, okay I'm the person, he's been my representative, and we put two projects, two properties through and there's three more coming. And we haven't gotten around to it yet and now you're Planning Director and I now put forth two more properties. And we worked together happily for quite some time.

Mr. Kern: Sure, and that's why I kinda did a self-impose, so when you serve on a Planning Commission or a County Council, or even as this position, you can't represent a client in front of an agency for a

year, right from a government body. There's basically a year cooling off period. I did like a self-imposed situation there as far as with clients, and granted I'll appreciate the feedback. But that was my thinking, projects was clear, but just to really be as above board as we possibly can be and have the appearance and everything else that we're really trying to hold here. I told myself, like I'll just hold off for at least a year on those, former employees and former clients, just to give it that space. I'm open to doing that, if you folks say you know, not to, I still may do it, but these are the touch points that I'd really like to have a good understanding around.

Mr. Wiseman: Thank you. No further discussions I'll entertain a Motion to, for Counsel to prepare some guidance based on what we've discussed.

Ms. Self: I'll make a motion on what you just said.

Mr. Wiseman: Okay. And we'll go with Corp Counsel, the protocols you listed.

Mr. Yoshimoto: So to make the record clear, the motion is basically to find that in the circumstances, or details, the protocol will be established as based upon the letter that was submitted by the Planning Director right?

Mr. Wiseman: Yes.

Mr. Yoshimoto: And, in terms of...

Mr. Wiseman: The input clerks will have a list of the former clients.

Mr. Yoshimoto: Okay, and then in terms of future applications, right? As long as the Planning Director was not directly concerned or had under active consideration those type of applications, new projects, they're okay. There's no waiting period.

Mr. Heintz: With there also one year his own, one year time limit for any client as opposed to project that he had.

Mr. Kern: That's what I have, and you folks can agree to that or not agree to that.

Mr. Wiseman: So there would be a caveat that we would urge Mr. Kern to adopt that policy.

Mr. Yoshimoto: And you're okay with that?

Mr. Kern: Yeah I am just fine with that, I mean that was a self-imposed thing that I thought was just prudent and kinda followed suit with other protocols in place.

Mr. Yoshimoto: So one year moving forward from your appointment? Okay, cause that's like the reverse of the post-employment right basically?

Mr. Kern: Exactly.

Mr. Wiseman: Okay so it will be the motion.

**Motion and Vote: Ms. Self moved that protocols would be established based upon the letter that Mr. Kern provided to the Board. Mr. Heintz seconded the motion. All members voted aye, except for Ms. Nakanishi who was recused. (11:44 a.m.)**

\* \* \* \* \*

***11: 44 a.m. The Board took a short recess and then returned to New Business, item 5b.***

\* \* \* \* \*

**5. NEW BUSINESS (11:49 a.m.)**

**b. Petition 2021-03: Review of a petition requesting an informal advisory opinion from a County Employee seeking guidance on potential conflicts.**

Mr. Wiseman: Okay Ms. Campbell, you can proceed and make any statement you wish.

Ms. Campbell: Thank you for hearing my petition. I suspect it's fairly straight forward, I'm not sure I have a lot to add. I was mostly looking for guidance from this body to make sure that both my personal life can proceed, being processed by the County in various ways. And that I can serve the County position as Deputy Corporation Counsel and make sure that everything stays clean and straight, and I'm doing everything properly that I need to do on behalf of the County, to be able to do my job.

Mr. Wiseman: Thank you. Has your supervisors, are they aware of this?

Ms. Campbell: Yes. Yes. Before I even took the position I discussed the one that I was aware of at the time. The subdivision application I submitted, I don't know, months before I even considered taking this job. So that was a pending thing. I spoke to the Corporation Counsel about that, while we were talking about my taking the position. So she was well aware of that one. The other one, the PONC application I

did not submit and I wasn't aware of it, until just a few days before I took the job.

Mr. Wiseman: Like most good law offices, especially the Corporation Counsel which thinks very high, of course, they have some protocol to put in place to protect any conflict with you.

Ms. Campbell: We do, and most of it is actually on the Planning Department side. Because they're the ones who are processing things on their side and so anything, we don't expect anything to be submitted to our office, having to do with either of the two matters, that affect me personally. Should there be something unusual that needs to come in, yeah it would be submitted to somebody other than me in our office.

Mr. Wiseman: Alright, and the clerks in the office are aware of this?

Ms. Campbell: Yes, and at the Planning Department and at PONC.

Mr. Wiseman: Okay, any members have any questions?

Mr. Heintz: I just have a, I'm curious, is this the same property as written about, that Zendo inadvertently signed off on?

Ms. Campbell: Yes. Yes.

Mr. Heintz: Okay, just curious.

Mr. Wiseman: Yes Ms. Self?

Ms. Self: I think may have to recuse myself because Jean and I are very good friends, we went to law school together and I'm actually the one that suggested she apply for her position at Corporation Counsel.

Mr. Wiseman: Thank you. Board Member Self will recuse in this matter. Any other concerns?....Mr. Heintz?

Mr. Heintz: On the third page, or 2<sup>nd</sup> attached page, the PONC application, there are four stages right? And if I'm understanding this correctly, the first one is "the committee members evaluate applications received, rank the applications and submit the ranking to the Mayor, the 2<sup>nd</sup> stage is that the Mayor makes recommendation to the County Council, the 3<sup>rd</sup> is the Council Member from the District in which the property is located will make a resolution and go ahead with any purchase which is then voted on the County

Council, and then the 4th one I take it is the key one, once a resolution passes the County Council, the PONC attorney will then assist the committee and the committee staff with the transactional work and consummating the deal with the landowner.” Okay, and in this case the landowner is you.

Ms. Campbell: Yes.

Mr. Heintz: And so you’re not involved in the step four? Is that what you’re asking?

Ms. Campbell: Yes. So that PONC application was submitted by somebody else. I wasn’t the one who submitted it. If it goes through all of the other steps, and it does get approved to be a purchase by the County, then again someone else in our office would handle that on behalf of PONC. Right now I am assigned to represent PONC, but obviously it would be inappropriate for me to be both the land owner and negotiating with myself. And so yeah, that one, if it gets to that point, then someone else in our office would be assigned to handle that transaction.

Mr. Heintz: So you’re only talking about Step 4 or the whole application process, if, all together?

Ms. Campbell: Whatever guidance you have I’m happy to follow. So if you think there’s additional guidance beyond just excluding myself from the final step, I’m happy to follow whatever this board thinks is appropriate.

Mr. Heintz: This again is related to the other issue about appearance of fairness and impartiality and how one, representing legally and a petition that involves some of your own property, I would recommend a complete clean break. If indeed your property comes before, because we’re gonna run into the same issue I think.

Ms. Campbell: I guess the follow up question that I have is at the PONC committee meeting where my property will be considered, can I show up as the landowner and advocate on my own behalf?

Ms. Self: Yeah because she’s still a member of the public, as long as she’s not at that meeting as a Deputy Corporation Counsel...

Mr. Wiseman: I thought you were recused?

Ms. Self: Sorry...

Mr. Wiseman: But yes, I would say that of course you can represent your own property. You can analogize that to any other situation in life. If you ever go to court, I mean, anything. I don't see any problem in that.

Mr. Heintz: And you wouldn't be in a decision making roll anyway.

Ms. Campbell: Exactly.

Mr. Wiseman: These steps, I'm not clear in those four steps, if they all involve steps that your property would go through?

Mr. Heintz: Yes, the whole thing.

Mr. Wiseman: I would like to see you step aside, would that be a problem.

Ms. Campbell: No, no. And actually I think frequently, I know Amy shouldn't speak to this entirely, but Amy previously was the Corporation Counsel for the PONC committee and so she can probably speak more clearly than I can at this point about how that process works. I don't think that the Corporation Counsel frequently even attends their evaluation meetings.

Mr. Wiseman: This is the new Corporation Counsel?

Ms. Campbell: That would be me. I think generally the committee's Corporation Counsel is not at their evaluation meetings and so the way, and again I apologize for the complications of this, I'm new to the position obviously, there hasn't been an evaluation with PONC since I've been on board. But my understanding is that the committee meets, I'm available if they have legal questions about their evaluation process but that I'm generally not at that meeting, so I'm not, whoever the attorney is whether its me or another attorney in the is not involved in any way in the evaluation process that's just the committee looking at all of the applications that they get, comparing them against their checklist of factors that they look for and then they rank all of the applications they get, the more boxes you can check off, that add weight to the value of your application for lack of a better way to articulate that. You move up the priority list or you move down the priority list, and that job is the committee alone, and I don't believe they generally get legal input on that process? Unless I suppose there's a particular legal question that they have. And so again I don't think that the attorney, whoever their attorney is, whether its me or anyone else attends those meetings I think we're just generally available during that time period if they need to reach out to us and ask a question.

Mr. Wiseman: Thank you...Any other members have any concerns?

Mr. Heintz: So I'll move that the petitioner completely recuse herself if her property comes before, as a PONC application.

Mr. Wiseman: Do I hear a second to that motion?

Ms. Nakanishi: Second.

Mr. Wiseman: Motion made and seconded that petitioner recuse herself from any matters involving her personal property that's in process. Other than that the rest of the protocols stated her appear fine to me so we can adopt those.

Mr. Yoshimoto: So that would be included with the motion.

Mr. Wiseman: Yes.

Mr. Yoshimoto: If you can state that.

Mr. Wiseman: Included with the motion are the protocols that the petitioner has stated that are self-imposed with supervision from her supervisors.

Ms. Campbell: Thank you.

**Motion and vote: Mr. Heintz moved to that the applicant completely recuse herself should her property come before PONC. Ms. Nakanishi seconded the motion. All members voted Aye. Except for Ms. Self who was recused from this petition. (12:01 p.m.)**

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***12:02 p.m. The Board returned back to Unfinished Business, agenda item 6b.***

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**6. UNFINISHED BUSINESS**

**b. Petition No. 2021-02 Review draft formal advisory opinion regarding a petition from a County employee to determine whether there is a conflict of interest to work for another employer.**

Mr. Yoshimoto: So Mr. Chairman, while you're looking at that. I have a question for Board Member Self since she was not involved in that matter but if she has reviewed the record then she's able to vote on this if after reviewing the record she's comfortable in approving the informal advisory opinion. So we'll leave it up to her.

Ms. Self: Yes I have reviewed everything that was sent to me.

Mr. Wiseman: Yeah I remember this. Okay we hear a motion to vote on this? To approve the draft informal advisory decision?

Mr. Heintz: I so move.

Ms. Nakanishi: Second.

**Motion and vote: Mr. Heintz moved to that the draft informal advisory opinion be approved. Ms. Nakanishi seconded the motion. All members voted Aye. (12:02 p.m.)**

c. Election of Chair and Vice Chair for the Board of Ethics 2021

Mr. Wiseman: So, we take nominations, any nominations for the chair?

Mr. Heintz: I move that Mr. David Wiseman be Chair of the Ethics Board.

Ms. Nakanishi: Seconded.

**Motion and vote: Mr. Heintz moved to nominate Mr. Wiseman as Chair. Ms. Nakanishi seconded the motion. All members voted Aye. (12:04 p.m.)**

Mr. Wiseman: I will nominate Lawrence Heintz as Vice Chair.

Ms. Nakanishi: Seconded.

**Motion and vote: Mr. Wiseman moved to nominate Mr. Heintz as Vice Chair. Ms. Nakanishi seconded the motion. All members voted Aye. (12:05 p.m.)**

**Motion and vote: Ms. Nakanishi moved to go into Executive Session. Mr. Heintz seconded the motion. All members voted Aye. (12:06 p.m.)**

**12:06 a.m. The Board left regular session.**

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**12:42 a.m. The Board returned to regular session.**

**7. VOTING ON EXECUTIVE SESSION MATTERS**

**a. Review of the executive session minutes of February 8, 2021**

**Motion and vote: Mr. Heintz moved to approve the executive session minutes of February 8, 2021. Ms. Self seconded the motion. All members voted aye. (12:43 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.**
- c. **Review of *Confidential Financial Disclosure Forms* filed pursuant to Section 2-91.1(d), Hawai‘i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.**
- d. **Review of *Confidential Financial Disclosure Forms* filed pursuant to Section 2-91.1(d), Hawai‘i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.**

**Motion and vote: Ms. Self moved to defer approval of the financial disclosures to the next meeting. Mr. Heintz seconded the motion. All members voted aye. (12:44 p.m.)**

**8. ANNOUNCEMENTS**

Mr. Wiseman announced the Board’s next meeting on Wednesday May 12, 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**

Mr. Wiseman adjourned the meeting at 12:45 a.m.

Respectfully submitted:

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Liza Osorio, Secretary