

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

Wednesday, November 10, 2021

10:02 a.m. to 12:12 p.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

**Members and Staff Present:**

David Wiseman, Chair

Larry Heintz, Vice Chair

Denise Nakanishi, Member

Kelly Valenzuela, Member

Cody Frenz, Deputy Corporation Counsel

Liza Osorio, Secretary

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

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

**2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:03 a.m.)**

Ms. Aiello: Our testifier is Kristi Van Pernis...Mrs. Van Pernis please go ahead your time starts now.

**(\*Due to technical difficulties, the Board moved on to Item 3 and then returned to Item 2 at 10:09 a.m.)**

Mr. Wiseman: Ms. Van Pernis, we'll come back to you, are you there?

Ms. Van Pernis: Okay, thank you. My name is Kristi Van Pernis and a little bit of background about myself, I've been a broker in charge at McArthur and Company (?). I have also been principal broker for Century 21 all islands, I've been involved in real estate for 35 years. As such I've sat on many boards, which are governed by Robert's Rules of Order. Been on the Board of Realtors governed by Roberts Rules of Order and I've worked with all different types of people and all kinds of committees. I believe an ethics complaint is warranted against Mike Vitousek, and possibly Barbara De Franco. At the very least I will back Mark's testimony up. Only July 15, 2021, Mike Vitousek without any authorization from anyone other than himself placed on the agenda, Leeward agenda, what he called a discussion and recommendation on the Mayor's request, Communication 183 to remove Mark from the Leeward Planning Commission just so he could send a letter to the

August 3<sup>rd</sup> Council meeting. He knew that Mark was on probation through August yet he chose to do this to influence any outcome of the August Council meeting. He then went and met with many council members individually. That is not the issue. I usually do not get involved with my husband's activities. But to me, this was such a blatant offense and set up that I watching as a member of the public was offended. The Planning Commission already has a reputation for playing politics, as does the Planning Department and it needs to conduct themselves in a manner that gives the public confidence. We already know the Mayor called Mark a handicapped person, a jerk, on civil beat. To see me more subversive behavior from the Planning Commission does not give the public confidence. When Vitousek made the motion to take a vote on Mark, he was quoted by Council by section 6-7.5 of the Hawai'i County Charter which states: The Planning Commission's duty is to advise the Mayor and Planning Director and Planning Land Use on Planning and Planning Land Use matters only. Mark was on probation, that matter was to be decided by the Council only. Not by Mr. Vitousek taking an illegal vote and sending as a recommendation to the Council prior to the probation period.

Ms. Frenz:

Ms. Van Pernis you have 30 seconds more...

Ms. Van Pernis:

Vitousek allowed De Franco to read into the transcript. I'm timing myself, Thank you very much. Vitousek allowed De Franco to read into the transcript a letter by De Car and Unger without even giving Mark a copy of this letter in advance. Frankly I could care less if Mark is on the Planning Commission. Mark will always find a way to express himself because he does care about his community. During this meeting, Mr. Kanuha was not even present, yet he was allowed to call in to opine on his vote. This is not how it's done on Robert's Rules of Order. What kind of sham commission is this? (?) Mark from the beginning and make false accusations about Mark on one meeting and whether he should've been allowed to vote on Palama Nui. Something that had no effect on where we live and had already been decided in 2005. Vitousek acted against Roberts Rules of Order by taking a vote about a commissioner. He acted in an openly underhanded manner that violated ethics. He interfered in the due process of Mark's probation. I question his ability as commissioner to be unbiased and to act ethically. And as far as Keith Unger goes, Keith Unger was associated with McCandless Ranch. Mark sued McCandless Ranch because they stole property from a local family. Keith Unger has hated Mark ever since because he lost that. So you might give little (?) to that because Keith Unger only sat in on one meeting. As I said I don't care about Mark being on the

commission or not I just want to say that I think you acted unethically.

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

Mr. Heintz: I have a question for counsel. My question is about the appropriateness of any committee or body to take up as a topic disciplinary matter about their own members? Which I take it, what was at issue here, and legal counsel for, Mr. Vitousek asked legal counsel if it was appropriate for them to do that and my understanding of Roberts Rules would be that it is appropriate for a body to deal with such issues...Can you just help me with that am I correct in understanding that?

Ms. Frenz: I would have to confer with – there is a specific attorney that's assigned to that, Leeward Planning Commission for example, so I'd have to confer with what guidance they gave, that would be a privileged communication between counsel and Mr. Vitousek for example but I could inquire with them and get a more specific answer. But if I understand correctly, Mr. Heintz, you're asking whether or not the specific commission could've handled this proposed or alleged disciplinary action themselves is that correct sir?

Mr. Heintz: Yes

Ms. Frenz: Okay let me, and you're saying that they were told they could? So you're. Are you questioning why...

Mr. Heintz: Yes that's in our...either the complaint by Mr. Van Pernis or in the response by Mr. Vitousek. There's actually the quotation, there's the exchange between their legal counsel, for the Leeward Planning Commission and Mr. Vitousek. And they went – so they went ahead with the issue and I just was trying to confirm that, that a board or a committee, according to Robert's Rules can take up a question of the inappropriateness of, alleged inappropriateness of a member during meetings or whatever, as in the case, the issue here.

Ms. Frenz: Correct.

Mr. Wiseman: Thank you Mr. Heintz, so our legal counsel will look into that.

Ms. Frenz: Yes, my belief Larry, Mr. Heintz is that yes they cannot that that would preclude them however from also bringing their inquiry to this Board as well though.

Mr. Heintz: Yes, thank you.

Mr. Wiseman: Anyone else have any questions for Ms. Van Pernis? Ms. Van Pernis, perhaps I'm missing the transcript, but the one the chairman allegedly put this on the agenda, was there a motion or a vote on it or...he just did it arbitrarily? Or unilaterally? Ms. Van Pernis do you hear me?

Ms. Van Pernis: Are you talking to me or are you talking to Mark?

Mr. Wiseman: No, I'm talking to you...

Ms. Van Pernis: Okay, go ahead.

Mr. Wiseman: My question is, when they allegedly or in fact put this on the agenda, the Chairman did, did he ask for a vote or was there a motion or he just did it unilaterally? Do you know?

Ms. Van Pernis: Yes there was a motion.

Mr. Wiseman: I see.

Ms. Van Pernis: And he did ask for an opinion, and the opinion was given that the Planning Commission was there to advise only on planning matters and planning. Kanuha was not even present when they asked for the motion and then for some reason he was allowed to call in. Somebody called him I guess while the meeting was happening I guess and said 'Oh we need your vote', and he was allowed to call in. It just seemed very improper to me that way it was handled.

Mr. Wiseman: Okay, thank you...Anyone else have any further, questions or discussions?

**3. APPROVAL OF THE REGULAR SESSION MINUTES OF OCTOBER 13, 2021 (10:06 a.m.)**

Mr. Heintz: Mr. Chairman I have an amendment on page, for page 14 of the minutes.

Mr. Wiseman: Yes, go ahead.

Mr. Heintz: In the minutes where I'm speaking, the last two lines, there is a question mark in the minute and the word that should be there is "reproach", R-E-P-R-O-A-C-H. That's my only addition.

Mr. Wiseman: Okay, that will be correct to add that word in lieu of the question

mark. Any further discussion?...Okay, there being none the minutes of October 13, as amended, all in favor say aye. All opposed? The motion is carried, the minutes of October 13, with that one amendment is hereby approved.

**Motion and Vote: Ms. Nakanishi moved to approve the minutes. Ms. Valenzuela second the motion. All members voted aye. (10:08 a.m.)**

**4. NEW BUSINESS (10:18 a.m.)**

**a. Petition No. 2021-13: Petition requesting an Informal Advisory Opinion from a County Employee seeking guidance on potential conflicts as Acting Director of Human Resources.**

Mr. Wiseman: I would state at the outset that there is an error in the agenda regarding the explanation for the petition. The agenda incorrectly identifies the petitioner as the Acting Director of Human Resources. The Petitioner is actually Gabriella Cabanas who is the chair of the Merit Appeals Board, and a former employee of the Human Resources Department. As such the Board of Ethics will continue this petition until next hearing on December 6, and we'll republish this petition with corrected information. This is necessary due to the Sunshine Law of everyone getting proper, valid, reliable notices. Should petitioner want to proceed...

Ms. Frenz: Chair we do have Ms. Cabanas here so we could give Ms. Cabanas...do you have any questions ma'am?...

Ms. Cabanas: Well I was prepared to submit my testimony, so I gather it's gonna be scheduled for December 6?

Ms. Frenz: Yes ma'am, just to ensure we comply with Sunshine Law based on the error in the posting. We'll re-publish that, we apologize for that error ma'am.

Mr. Wiseman: Yeah, the sunshine law is very strict. In fact one time we were already to proceed her but the County Council had pre-empted it without our notice, without our knowledge, we had to move across the hall here and it was a big to do, that right across the hall, 40 feet from here, we had to republish the notice that we were moving over there. So yeah, that's how strict it is. Alright so this will be continued for December 6.

Ms. Cabanas: Alright, I will see you all there.

Mr. Wiseman: Very well thank you.

**b. Petition No. 2021-14: Petition alleging that the Director of Parks and Recreation is derelict in his duties, failing to provide leadership with integrity and obstructing justice.**

Mr. Wiseman: Please state your name.

Mr. Oliva: My name's Karsten Oliva. I have a copy of the trespass notice for everybody, if you need a copy?

Mr. Wiseman: No, we'll just take your oral testimony this time and you have three minutes.

Mr. Oliva: Well I just, went to the pool and swam like always and then I was banned for one year for not doing anything wrong. And I've not given any opportunity to get any due process, petition or anything.

Mr. Wiseman: What pool is this?

Mr. Oliva: Kona Community Aquatics Center?

Mr. Wiseman: They still have hours there right?

Mr. Oliva: They do like 45 minute sessions in the morning. I go always at the same time at 9am in the morning.

Mr. Wiseman: It's mostly just for laps.

Mr. Oliva: Correct. I was accused of harassing staff, I was accused of harassing pool patrons, and I was accused of not following COVID protocol. And I was following all the rules as everybody else.

Mr. Wiseman: Did they give any details on these allegations?

Mr. Oliva: Nope, and no proof. Nobody has any picture or anything of me not wearing a mask or whatever allegation that includes, they just said COVID protocols. I think Derek Simmons, the head lifeguard just has some kind of a power trip and he decided to go off on me.

Mr. Wiseman: The lifeguard?

Mr. Oliva: Yes, I took a training with him and I didn't end up getting the job and he feels like I'm disgruntled because of it. I just mention it once but that's it. And since I go to the swimming pool I don't make any trouble. I just walk in, say Hello, walk out after my swim and that's it.

Mr. Wiseman: Anyone have any questions?

Ms. Nakanishi: Karsten, you're not a lifeguard?

Mr. Oliva: No, I'm certified. I'm on the County eligibility list as far as a job but I never heard anything for a job interview or anything. It's been going on for one year now.

Ms. Nakanishi: So you were in the pool when this happened? Out of the pool?

Mr. Oliva: There was an incident on July 30<sup>th</sup>, we were waiting outside in the line to get entrance, waiting for the temperature checks. Derek came charging out and he starting making all kinds of demands that we need to wear masks and stand by the cones which were not 6 feet apart. And I told him 'Hey, you need to also enforce the rules as far as the no spectators in the bleachers.' And all of a sudden he says you're acting unprofessionally; you're not allowed to come in, I'm gonna call the police.' So I said 'Okay do you want to me to wait for the Police?', he said 'No.' so I left. I went back the following Wednesday, on August 4<sup>th</sup>, I was allowed to enter to swim for 20 minutes, nobody was concerned about me harassing anybody. And 20 minutes later into my swim, 5 police officers come into the pool and serve me this trespass notice. And I left.

Mr. Wiseman: Trespass. The pool was open to the public right?

Mr. Oliva: Yes.

Mr. Wiseman: And you're a member of the public.

Mr. Oliva: Yes.

Ms. Nakanishi: And who's Derek?

Mr. Oliva: Derek Simmons is the head lifeguard at Kona Community Aquatics Center.

Mr. Wiseman: The notice of trespass is it just notice or is there a court document?

Mr. Oliva: The notice (?) trespass for one year, until August 4, 2022. A whole one year ban.

Mr. Wiseman: And who signed that?

Mr. Oliva: By the police officer, and Derek Simmons and I signed it under

duress because there were 5 armed police officers and one was charging towards my lane as they entered and I was scared and I just wanted to comply and get out of there as fast as I could. Cause I've seen YouTube videos where police officers started getting pretty rough of people in pools. I was just cooperating and I left and I haven't gone back since. Now I have to go swim at Konawaena which is a 22 mile round trip which costs me extra gas, extra time.

- Mr. Wiseman: It's a better pool cause I go swimming up there.
- Mr. Oliva: Yeah it's nice and cool and the lifeguards are very friendly, it's a nice atmosphere.
- Mr. Wiseman: Let me ask something, this notice that you got, a trespass, it actually banned you for one year?
- Mr. Oliva: Yes, it says I guess if I step foot into the pool...
- Mr. Wiseman: And it's signed by a police officer?
- Mr. Oliva: Name and badge number, is I think...
- Mr. Wiseman: Okay I don't need a name, but it's a police officer that signed it?
- Mr. Oliva: Yes and the head lifeguard. I guess they were there to witness it or something so they just took it upon themselves to be enforcer, judge, jury and executioner all in one day without me getting any fair hearing or...
- Mr. Wiseman: Did you ever appeal or talk to anyone in charge?
- Mr. Oliva: Yeah I contacted the County leadership and Mr. Messina but I never got a response back regarding this issue. Same with the job interview. Then I got a little bit more sarcastic and then I was accused of harassing them which I didn't really do. I was just being...
- Mr. Wiseman: That's under the County Aquatics division right?
- Mr. Oliva: Yes, which is Parks and Recreation.
- Mr. Wiseman: Anyone have any questions?
- Mr. Heintz: Mr. Chairman...did I understand you correctly that there was an earlier exchange between you and the head lifeguard?

Mr. Oliva: He came out to the waiting line.

Mr. Heintz: Was that the week before?

Mr. Oliva: That was on July 30<sup>th</sup>. It was a Friday.

Mr. Heintz: And at the end of that exchange did he indicate anything to you about no coming back?

Mr. Oliva: No he said I'm gonna call the police and he didn't say why or exactly what he's gonna accuse me of. He made a whole bunch of allegations that was following the pool staff to their homes, like I'm some kind of a stalker, he was saying that I was acting erratically, driving erratically around the parking lot. All kinds of nonsense allegations.

Mr. Heintz: So you didn't have any indication that this was going to happen the next time you came?

Mr. Oliva: Because when I went back on Wednesday the 4<sup>th</sup> of August, I walked up to the gate and I asked Braden one of the lifeguards may I enter and he said yes, they took my temperature, they signed me in. I went to the shower, I took my shower, I walked to my line, I swam 20 minutes unmolested without anybody being concerned of me being a ruckus maker and then the police started walking in. And one police officer was charging towards my lane in sort of a way of I don't know what he was up to and they motioned me to come out and leave the water. I told them okay, they said 'sign this, you can't come back for one year' I walked out. That was it. Without any due process, without any right to appeal or anything.

Mr. Wiseman: Did you attached that notice of trespass to your petition?

Mr. Heintz: No he didn't.

Mr. Oliva: I'm not sure...I think I did probably by email.

Mr. Heintz: No.

Mr. Oliva: No? I have eight copies if you want them.

Mr. Heintz: Yeah, please.

Mr. Wiseman: I would like to see it.

Ms. Frenz: Hang on sir. Our secretary will get them from you.

Ms. Nakanishi: So question, you filed this complaint against Mo Messina but not the lifeguard?

Mr. Oliva: Well I guess as the department head I think he should be taking care of what his employees are doing.

Ms. Nakanishi: Yeah I get that...

Mr. Wiseman: Did you know any of these. Did you have any social acquaintance with any of these people? The lifeguard, etc.?

Mr. Oliva: Just friendly hello and good-bye. I've been going to the pool, I've been living in Kona for 20 years, I've been using that pool on and off for all those years. I've always been cordial with everybody. My father used to come with me he would sit in the shade. He passed away and then I've been going there by myself since.

Mr. Wiseman: Okay, thank you. Anyone else have anything?

Mr. Heintz: Mr. Chairman, do we, I didn't notice, do we have any response from Mr. Messina?

Ms. Frenz: We do not, Director Messina is present, ready to testify.

Mr. Wiseman: I see, okay, thank you...anyone else willing to testify on this petition?

Mr. Messina: Good afternoon, or good morning sorry. Maurice Messina, Director of Parks and Recreation. So it was kinda difficult to repair a rebuttal as I wasn't sure what sections of the Ethics Code I was violating. But it does sound like that this is about the trespass notice. So I'll speak briefly on that. Mr. Oliva said that he hasn't had any contact with anybody about not getting the job that he was, or not being selected as part of the job. I've received about 21 emails from him since then. My staff has been bringing it up to me from the Kona Aquatics Center since I came on Board in December about the erratic behavior of Mr. Oliva, harassing them and yes following them home after work, the emails that I'm receiving from him, they are harassing nature. Calling me all sorts of names, calling my folks all sorts of names. The last time I decided to communicate with him was when he superimposed the face of one of my African American employees on the Statue of David and sent it to us saying that this should be the statue that's out in front of, for when all the cruise ships come back. At that

time I told him that was very unprofessional, please don't do this again. Still though, I did not try to remove him from the pool, I just informed my employees that this is what this person is doing, so just keep a look out. I informed my employees to give him his own lane, give him a lane away from everyone else so that this won't happen again. But just keep letting him swim at the pool. I mean, during COVID I was trying to give every recreational opportunity I could to everyone. Then I received a complaint from a pool patron saying that while he was swimming at the pool, Mr. Oliva was splashing him, splashing his son, was intimidating his son in line. And so, even then, even then I got back in contact with the pool staff and I said 'have you guys warned him that with these actions he can be trespassed?' and they were like 'Yes we warned him but he's not listening to any of us.' So at that time I said okay, what's the closest pool around? I've got a pool 11 miles away. So am I giving him the opportunity to continue to swim at another pool if I remove him from this pool? I can take it with myself, I can take it with me, but I cannot take it anymore with another pool patron. And so that's when I decided to say yes, go ahead and trespass him from this.

Mr. Wiseman: Thank you Mr. Messina...anyone have any questions?

Mr. Heintz: Mr. Chairman, those who testify before the ethics committee are they under any oath to tell the truth? I mean what we have is factual claims here that are inconsistent with one another...and if what I've just asked is not the case, then I would ask that, Mr. Messina's testimony suggests that he has written or electronic records of assertions that might, well, that would at least settle the matter about factuality of claims. So can we get those?

Mr. Wiseman: Mr. Messina, do you have corroboration of...

Mr. Messina: Yes everything's in writing.

Mr. Wiseman: ...the statements you made?

Mr. Messina: Yes I have all of his emails as well.

Mr. Oliva: I've got emails to...I got a lot of allegations –

Mr. Wiseman: Just a moment, just a moment.

Ms. Frenz: Director Messina, do you have, is that each individual and one copy of each, sir?

Mr. Messina: No this is just what I've received, just one copy of it.

Ms. Frenz: Okay.

Mr. Messina: But, if, I would rather though redact the complaint that I received that prompted the trespass, because there's been you know, instances of retaliation against my staff and I do not want to have this person who filed this complaint to be retaliated against as well.

Mr. Wiseman: Well I think, you know, if your statements are corroborated that would be very important for the board.

Ms. Frenz: If I could inquire Chair, would you, is the board asking to see at a minimum an email or several emails and maybe not the initial, the complaint that Director Messina is referring to?

Mr. Wiseman: Yeah we can do that. Mm hmm.

Mr. Heintz: And are there relevant emails from Mr. Oliva's, he says he has emails...but this matter won't be able to be dealt with until we see those from both parties.

Ms. Frenz: So are you, rather than wanted to see Director's emails today are you asking, recommending that the matter be continued for both parties to...

Mr. Heintz: Yeah cause it doesn't seem that we're gonna be able to see these emails from both parties.

Mr. Messina: If you would like I can at least give you the email that stopped my communication regarding back and forth with him, regarding superimposing my employee on the Statue of David and my response to him.

Mr. Wiseman: Okay we can do that but before that I'd like to ask legal counsel, Mr. Messina mentioned what section of the code is being violated for our jurisdiction, do you have any question on that?

Ms. Frenz: Well, Mr. Oliva is the petitioner.

Mr. Wiseman: Yeah.

Ms. Frenz: And he has not specified any particular section of the Code of Ethics. He indicates, see attachment, and then he does not specify as to what specific code section he's referring to, which is I think

Director Messina's confusion, or his confusion in how to appropriately respond since there's no specific cite or reference. It would be outside the scope of my position to provide that on behalf of the petitioner.

Mr. Wiseman: Okay.

Mr. Heintz: Mr. Chairman? I think by inference the section is clearly 2.83 sub area A3, the 'all persons shall be treated in a courteous and fair and impartial manner' under the section fair treatment. I mean he uses the word, a question of, in his complaint... fairness, ensure fairness, integrity, fair treatment. So I think that would be the relevant section.

Mr. Wiseman: Very well. I would like to see the, you say there's one email that's sort of like a summation of...

Mr. Messina: No sir, it's the email that, once he, it's the one where he superimposed the head of, the face of my African American employee on it and my response to him was basically...

Mr. Oliva: (inaudible)

Mr. Wiseman: Just a moment, we'll give you an opportunity, briefly.

Mr. Messina: So that was the last time I communicated with him, even though I kept receiving emails, I told all of my employees do not respond anymore to any emails from him. Cause I was concerned. So I can at least show you that and you can see my response back to him.

Mr. Wiseman: That would be your side, I'd like to see the emails and continue this hearing and you can submit anything further. Is your...

Mr. Heintz: Your time up, yes from both parties.

Mr. Wiseman: Do we need a motion?... Yeah okay, the Chair is making a motion to, in view of the circumstances here and need for the board to review, or to view the written messages, emails, etc. from both parties, we're gonna continue this to December 6<sup>th</sup>...

Mr. Messina: I'm sorry what was it again, the Code Section?

Mr. Heintz: Section 2-83a3.

Mr. Wiseman: In the meantime we'd like any submissions, at least 10 days before the hearing.

Mr. Messina: How many copies?

Ms. Osorio: Just submit one via email...

Mr. Messina: Okay thank you...

Ms. Frenz: So that deadline for any of those submissions would be November 26, 2021, close of business to the Board of Ethics secretary Liza Osorio. Thank you.

Mr. Messina: Okay thank you for your time.

Mr. Wiseman: Okay thank you.

Ms. Frenz: So you making a motion to continue Chair?

Mr. Wiseman: Yes, making a motion to continue this matter til' December 6. Do I hear a second?

Ms. Nakanishi: Second.

Mr. Wiseman: All in favor say Aye...

Ms. Frenz: Need a discussion.

Mr. Wiseman: Any discussion? There being none. All in favor?...All opposed. This matter, petition number...

Ms. Frenz: 2021-14 Chair.

Mr. Wiseman: 2021-14 continued to December 6.

Ms. Frenz: Pleadings will be due Friday, November 26, 2021, close of business.

**Motion and Vote: Mr. Wiseman moved to continue til next meeting, December 6, 2021. Ms. Nakanishi seconded the motion. All members voted aye. (10:40 a.m.)**

Ms. Valenzuela: I have a question Chair.

Mr. Wiseman: Yes.

Ms. Valenzuela: Kona Community Pool, is that under the County or the State?

Mr. Wiseman: You know it's a little confusing, he's County Director of Parks and Recreation.

Ms. Valenzuela: But the Pool is at Konawaena School, which would be State yeah?

Mr. Wiseman: Yeah. But I remember this sort of...cause I used to go swimming out there quite a bit before I had my own pool, they all used to say that there's a break with the Parks and Recreation and the Aquatics Section...we'll move on to 2021-15.

**c. Petition 2021-15: Petition alleging that the Chair and Vice Chair of the Leeward Planning Commission violated Hawai'i County Charter 6-7-5, Quorum requirements, and Ethics Code 2.81, 2.82, 2.83(a)(3), and 2.86(b)**

Mr. Wiseman: Is Petitioner here? Present?

Ms. Frenz: Via Zoom. Mr. Van Pernis you're on mute sir?

Mr. Wiseman: Mr. Van Pernis are you there?...Mr. Van Pernis, do you hear me? We can't hear you. We had the same problem with...previously. Alright well we'll come back to you. Try working on your... We'll come back to you Mr. Van Pernis.

**(\*Due to technical difficulties, the Board moved on to Item 4d and then returned to Item 4c at 11:04 a.m.)**

Mr. Wiseman: This is Mr. Van Pernis that we couldn't hear. Mr. Van Pernis are you there?

Mr. Van Pernis: Do you hear me now?

Mr. Wiseman: Yes we hear you, very good. Thank you. This is a Petition alleging that the Chair and Vice Chair of the Leeward Planning Commission violated Hawai'i County Charter 6-7-5, Quorum requirements, and Ethics Code 2.81, 2.82, 2.83(a)(3), and 2.86(b). Alright Mr. Van Pernis, you know the time limits and etcetera, so you may proceed.

Mr. Van Pernis: Well there's 2 issues. One is the knowing violation of the County Charter, (?) of Council, Mrs. Schlueter, (?) of Council included that the action was needed to (?) was never made. (?) And the other point is that the reference by Mr. Vitousek to a rule, a Planning Commission (?), it did not (?), the other (?) is lack of a quorum and Mr. Kanuha (?) on the matter. But my complaint includes the transcript, there's a clear known violation (?) of the (?) of council on both the quorum matter and the charter matter, and (?) on a

subsequent letter (?)...the damage is done. One vote was changed on the County Council. The BOE, your board, should've rejected not make them political matters. A contrary ruling to this complaint would be that all boards and commissions now have the ability to expand their authority with (?) limit and to influence or decide their membership (?)...all boards and commission members. Thank you.

Mr. Wiseman: Thank you Mr. Van Pernis. We have some of the members, is that...you're here to testify is that correct?

Ms. Frenz: That's our respondents.

Mr. Wiseman: Yeah, respondents.

Ms. Frenz: Ms. De Franco was present, Ms. De Franco? Are you there..

Ms. De Franco: Yes, I am here.

Mr. Vitousek: This is Mike Vitousek, I'm here as well.

Mr. Wiseman: Yes, Mr. Vitousek why don't you proceed.

Mr. Vitousek: Sure. Thank you. Aloha to the Chair Wiseman and members of the Board of Ethics. I hope you've had a chance to review the written response that I prepared to address petition 2021-15. Again I apologize to the Board of Ethics for the length of the response, just like Chair De Franco and I, you're also voluntary board members and I'm sorry this is taking up so much of your time. We do take any accusations of any ethical impropriety very seriously and we have taken the entire process surrounding the removal of the commissioner very seriously. Vice Chair De Franco and I didn't initiate the process that led to the removal of Mr. Van Pernis from the Leeward Planning Commission. That was initiated by Mayor Roth. After it began we really did everything we could to be sure that this process was conducted in a fair, courteous and impartial manner. I believe that the documentation contained within the written statement demonstrates that we thoroughly consulted the Corporation Counsel office to ensure compliance with all relevant rules, codes, charters, policies and procedures while also attempting to adhere to the recommendations made by the members of Hawai'i County Council committee on Planning. Ultimately our support of the Mayor's request to remove Mr. Van Pernis did not benefit any personal agenda of ours. Rather it reflected our opinions that Mr. Van Pernis pattern of behavior was not appropriate for the Planning Commission and was unlikely to change. Although he has been removed from the commission by

the County Council, I'm hopeful that Mr. Van Pernis will continue to provide testimony to the Planning Commission as I believe his perspective is valuable. I hope the written statement adequately addresses all facets of this issue and that this petition can be dismissed so that we can all move on. Planning Department Manager Maija Jackson who is involved in every aspect of the Planning Commission is here to serve as a witness if necessary. If you have any questions at all please let me know, I'm happy to answer them to the best of my ability. Thank you very much.

Mr. Wiseman: Thank you Mr. Vitousek. To begin, what about the quorum, was there a quorum? There's allegations that there was no quorum?

Mr. Vitousek: Yes, as the minutes of the meeting reflect, a quorum was established by the presence of five commissioners at the beginning of the meeting.

Mr. Wiseman: I see. Okay. Do any members have any questions? There being none, we'll hear Ms. De Franco, is that right?

Ms. De Franco: Yes. Hi, can you hear me?

Mr. Wiseman: Yes. State your name please.

Ms. De Franco: Hi, Barbara De Franco, co-chair of the Leeward Planning Commission. And thank you for hearing us today we take all of this extremely seriously. This has been very long, and hopefully beneficial for everybody, process. I sent you letters that I have written to the County Council stating my opinions of what was happening and this is in response to Mark Van Pernis's behavior. Not his vast knowledge of Kona or his ability to understand land law. And were responding to the Mayor's request for Mr. Van Pernis to step down. I was glad that it was put on the agenda cause that's really the only way that we can discuss it because of Sunshine Law, we didn't discuss between ourselves. So finally when it was put on the agenda, we could actually talk about how the rest of the commissioners felt about that. And that was put on the agenda in response to the County Council and the Planning Department, I mean the Planning Committee of the County Council requesting us to do that and telling us that we needed to take care of what was in our backyard at all times. I feel Mike and I know myself we were responding in an ethical way. We listened to advice that we were given of how to do this. It has never been done before. And I think contrary to what Mr. Van Pernis is saying, I think it's gonna have the effect to say that if you're on a commission you do have a responsibility to behave correctly and

respectfully, not only to your other commissioners, but to the people testifying. The people in the Planning Department and Corporation Counsel, this is an important position that we share when we're working in the public that we respect each other and each other's opinion's. So I feel personally that I was following Robert's Rules of Order's by bringing up a motion and I know that we had a quorum and I think it was a, you know it was very clearly stated by his fellow commissioners and by the County Council that bad behavior won't be tolerated and I think that was a good thing. So I'm hoping that you will dismiss this. Thank you.

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

Ms. Nakanishi: I have a question. So the allegation was the quorum didn't exist at the beginning, and am I understanding this right and that Mr. Kanuha was just called to establish a quorum?

Ms. De Franco: No. Mike do you wanna answer that or am I answering this?...The quorum was present at the beginning or we wouldn't have had the meeting at all. This was, this agenda item was at the end of the meeting. So the quorum was present. Mr. Kanuha, because we're all on zoom, could come at any time and he just came at the end of the meeting. And that is not uncommon for people to be late for meetings or to come when they can. And so we had a quorum during the whole thing. Mike do you wanna speak to that?

Mr. Vitousek: No I'd just say that's correct and that's what's reflected in our minutes. If we didn't have a quorum, you know, Corporation Counsel would've stopped us.

Mr. Wiseman: Any other members have any concerns or questions? Okay there being none. Is there someone else to testify? I see someone here.

Mr. Vitousek: Planning Department Manager Maija Jackson is here, we just asked her to serve as a witness to kinda describe how, our treatment of the whole process if you have any questions.

Mr. Wiseman: Do you wish to make a statement ma'am?

Ms. Jackson: Hi, this is Maija Jackson, Planning Program Manager. My division services the Windward and Leeward Planning Commissions. I think that the information that Chair Vitousek provided in his response to the petition accurately describes all of the actions that he and Vice Chair De Franco took regarding the matter with Mr. Van Pernis. They did consult consistently with me as well as their Corporation Counsel to see what type of re-training could be

provided to Mr. Van Pernis, to see what type of reasonable accommodation could be provided to Mr. Van Pernis, and I believe that they carried out their duties as fairly as they could. And I'd be happy to answer any questions that you have.

Mr. Wiseman: Thank you Ma'am. Any questions for this witness? There being none...

Mr. Van Pernis: Can I go please in response?

Mr. Wiseman: Yes, briefly Mr. Van Pernis, go ahead.

Mr. Van Pernis: All of these witnesses, I haven't seen a response by the way, all these witnesses talk about my actions, my actions were justified under a Section of the Ethics Code 2-84d. It's not what I said or when I said it, it's a violation of (?) and a violation of the Rules...inaudible...

Mr. Wiseman: Mr. Van Pernis are you there?

Ms. Frenz: Somehow we've...Mr. Van Pernis is disconnected we're gonna see if he logs back in to finish his testimony or rebuttal.

Mr. Wiseman: Okay we will come back to this matter to let him finish.

Ms. Frenz: Let's just take a recess in place maybe while we wait for the, we might as well finish the Van Pernis matter, petition.

Mr. Wiseman: The board will take a 10 minute recess and return to Mr. Van Pernis.

\* \* \* \*

**The board took a 10 minute recess.**

\* \* \* \*

Mr. Wiseman: Alright we're back on the record after a short recess on this 10<sup>th</sup> day of November. We lost Mr. Van Pernis who was gonna give a short rebuttal. Mr. Van Pernis are you there now? Mr. Van Pernis are you there?

Ms. Frenz: Could you unmute, Mr. Van Pernis?

Mr. Wiseman: He's getting some assistance I think...Mr. Van Pernis, if you can hear me, let us know when you can transmit.

Mr. Van Pernis: Can I be heard now?

Mr. Wiseman: Yes we hear you Mr. Van Pernis. Okay you're here for a short rebuttal you may proceed.

Mr. Van Pernis: Thank you, I appreciate the consideration. The issue is 6.7-5 (?) activities. 6.7-5 does not give any authority for the motion. Secondly, the issue is the quorum and the responses have been, (?) there was a quorum of 4 people of the time of the meeting. And that was not adequate. There was, Mr. Kanuha, did not hear Council, did not hear any of the arguments, did not hear any of the matters, (?) so that disqualifies him. I'm disqualified, this matter concerns me. There's only 3 votes which is not a quorum. (?) Robert rules (?) Chair Vitousek. Mr. Vitousek himself acknowledged that (?) would be necessary (?)...(inaudible)..Complaint all of these various transcripts (?) so Ms. De Franco (?) that I may have mentioned or used, despite the section of the Code 2.84(d) is not the issue. The issue is, is this (?) the jurisdiction of this commission (?) 6-7.5 or is it not. And the next issue is (?) law, a vote of 3 which is less than the (?) necessary. (?) recused herself. I was out. (?) Mr. Kanuha was called in (?)...

Mr. Wiseman: Mr. Van Pernis, I have a question, you heard along with us, the Chair and the Vice Chair saying that they had a quorum. What does your basis say to dispute that?

Mr. Van Pernis: You merely need to look at the transcript, at the time of the vote Armbruster, as my complaint says...

Mr. Wiseman: But aren't there minutes of that hearing that would show that they had a quorum?

Mr. Van Pernis: There are minutes (?) Mr. Vitousek (?). Let me...

Mr. Wiseman: No, no. I'd just like an answer to my question. The minutes do show a quorum who was present, is that right?

Mr. Van Pernis: No. The minutes show (?), there was no quorum of voting for the (?).

Mr. Wiseman: Well I'm asking you, your basis for this in view of what Mr. Vitousek and Ms. De Franco stated that they had quorum. What's your basis to dispute this?

Mr. Van Pernis: The issue is that they had four votes (?) quorum. Armbruster...

Mr. Wiseman: I'm not talking about the votes, I'm talking about a quorum. Votes have nothing to do with the quorum.

Mr. Van Pernis: No, they did not have a quorum if you don't count Mr. Kanuha. They, I assume they claimed there was a quorum...

Mr. Wiseman: Please wrap it up this is getting to be a long rebuttal.

Mr. Van Pernis: I would ask you to read the complaint, (?), the record of the transcript and there is no question about what the facts are. And it is a procedure (?)...

Mr. Wiseman: Alright, thank you Mr. Van Pernis. Is there anyone else who will offer any testimony in this?...Ms. De Franco or Mr. Vitousek, you are still here. I am still concerned with the quorum. The minutes do reflect the quorum is that correct?

Ms. De Franco: Yes they do.

Mr. Wiseman: Okay...

Ms. De Franco: There was a quorum to begin with and all the way through the meeting at the very end of the meeting, this agenda item came and I presented the motion to support the mayor's letter and this is a motion of recommendation. Then it was tabled, it was maybe a little confusing, it was tabled...

Mr. Wiseman: Thank you, we don't need to re-hash that area, I was just concerned with the quorum.

Ms. De Franco: There was a quorum. And the minutes reflect that.

Mr. Wiseman: Mr. Van Pernis, in reading your request to read the attachments and all, rest assure that we have and we'll probably go over them. In reading the attachments, I'd like to point again on your submission attachment of September 24<sup>th</sup>, the very last item, once again you are making innuendos unmerited, unsubstantially merit innuendo that there's some influence of politics in this board. And let me remind you, in repeat what I stated before when you mentioned this. We are not political, we don't consider politics, it has no entrance. There's no space in anyone's head here about politics and dealing in our function here as members of this Board of Ethics. So we resent that on behalf of the board, I'm stating that's a resentful statement, and yeah.

Mr. Van Pernis: May I be heard? (Inaudible)

Mr. Wiseman: I didn't ask for anything, I'm just making a statement. You gave your rebuttal and I'll now turn over to the members if they have any concerns or questions...there being none. Do I have a...

Ms. Frenz: One moment Chair, I believe...do you have something Mr. Heintz?

Mr. Heintz: I'm ready to make a motion.

Mr. Wiseman: Yes, proceed Mr. Heintz.

Mr. Heintz: I move that Petition 2021-15 be dismissed because number 1, while the petitioner claims the Leeward Planning Commission acted beyond its role and responsibilities by addressing disciplinary problems the record demonstrates that the LPC acted with patience, care and support from legal counsel in dealing with this matter and second, the petitioners complaints regarding violation of a quorum rules by the LPC are no substantiated by the record. And third, contrary to the petitioner's complaints the record demonstrates that he has been treated fairly, courteously and with respect throughout this process by the LPC and the County Council. Thank you.

Mr. Wiseman: Okay motion made. Do I hear a second?

Ms. Nakanishi: I second.

Mr. Wiseman: Motion made and seconded. Any discussion? There being none we'll call for a vote. All in favor of the motion dismissing the petition based on the 3 grounds that Commissioner Heintz say Aye. All opposed say Nay. The Chair Votes Aye as well. Motion is passed. The petition is dismissed. Again for the 3 reasons stated that will be in the dismissal order.

Ms. De Franco: Thank you.

Mr. Wiseman: Okay.

Mr. Vitousek: Thank you so much, we really appreciate your time.

**Motion and Vote: Mr. Heintz moved to dismiss the petition. Ms. Nakanishi seconded the motion. All members voted aye. Petition dismissed (11:39 a.m.)**

\* \* \* \*

**The Board continued to item 5**

\* \* \* \*

- d. Petition 2021-16: Petition from a County Program associated with the recovery from the 2018 Kīlauea eruption, requesting Informal Advisory Opinion that the policies and procedures adopted by the Program are sufficient to satisfy the Hawai‘i County Code of Ethics as applied to County employees applying to the Program or that an opinion from the Board is not required pursuant to Hawai‘i County Code Section 2-83(c).**

Mr. Heintz: Mr. Chairman? I have a question for both you and our legal counsel. 2021-16 and 2021-17, can they be taken together as one since the substance of them is essentially the same.

Mr. Wiseman: Yeah that’s a good point and I had that in mind myself.

Ms. Frenz: It would be cleaner to do them separately. So...do them separately. They technically involved different County employees so we should address them separately.

Mr. Wiseman: Petitioner is present. You may proceed. You have three minutes. And state your name please. And you are gonna testify also?

Ms. Campbell: Hi, I’m Jean Campbell, Deputy Corporation Counsel, representing the Kīlauea Recovery Program and this is Douglas Le. So Douglas was going to give you a brief overview and then we’re both available for questions.

Mr. Wiseman: Yeah, I remember you, you were here before.

Ms. Campbell: I was.

Mr. Wiseman: Okay, you may proceed.

Mr. Le: Good morning Chair, members of the Board, I appreciate your time on this matter. My name is Douglas Le. I’m the Disaster Recovery Officer with the County of Hawai‘i. I’m the Petitioner for 2021-16 and here to seek an informal advisory opinion based on our program and I’m happy to lay out what the program is in a very short description and the matters in front of the board. From the 2018 Kīlauea eruption, one of our recovery programs is a voluntary housing buyout program. These are for properties that were inundated or isolated by the 2018 Kīlauea eruption and the County has the privilege of funding from the US Department of Housing and Urban Development (HUD), through its community

development block grant program. Just under 108 million dollars to administer this program where we are acquiring the properties and providing grant assistance to property owners. The value of the acquisition is based on pre-disaster value, appraised market value by real property tax and we are capping the assistance at 230 thousand dollars. Today we have closed out our first primary phase of applications, about 300 applications we received for primary homes. We're currently receiving applications for 2<sup>nd</sup> homes under this current phase and later next spring we will be opening our 3<sup>rd</sup> phase for underdeveloped parcels that were inundated. We're really here to own the fact that we want to be fair but we also wanna be transparent in terms of the administration's program. We are working under our kinda Code of Ethics which I think is really vital to be able to achieve this fairness and transparency. But with the administration of federal funds there are also very specific code of federal regulations that governs issues of conflict of interest. And so we have worked diligently and at the advice if Corporation Counsel to develop policies, procedures and forms to honor both the spirit and the letter of our County Code of Ethics as well as the Code of Federal Regulation as it relates to conflict of interest. And I can go into more detail about the steps we're taking if that would be appropriate.

Mr. Wiseman: Thank you Mr. Le. What is your position again?

Mr. Le: I am the Disaster Recovery Officer...

Mr. Wiseman: For the County?

Mr. Le: For the County. And administratively we fall within the Planning Department.

Mr. Wiseman: I see and this is a, so more or less these petitions you filed to the board are to comply with HUD requirements more or less right?

Mr. Le: Both HUD requirements as well as the Code of Ethics.

Mr. Wiseman: Yes, I see. Okay. Do any of the members have any, do you have anything to add?

Ms. Campbell: No, I think Douglas has given you some good background on the program and as you noted essentially, in an effort to comply with the request from HUD, for a confirmation from the County that we have complied with State and County law. We wanted to present to you folks our policies, procedures and plans that we've put

together and ask for your confirmation that you believe that it also complies with the rules.

Mr. Wiseman: Do any members have any questions?

Mr. Heintz: I guess I have a couple questions. Just a couple questions of clarification. I'm a little bit confused about a couple of things. On the first page of your petition, the 2<sup>nd</sup> to the last paragraph, the one that begins 'to satisfy HUD regulations' that paragraph. The 3<sup>rd</sup> line you say 'by program are sufficient to satisfy the County Code of Ethics or that an opinion from the board is not required pursuant to the County Code Section 2.83(c). Because the purchase of the contracts to be executed between the board and applicants who are County employees are not contracts for goods or services.' But yet, when I go through the whole petition, it sounds like but you are going to treat them as though purchases of land are goods and services. And it would seem that section 2-83(c)(1) is still needed and that's why you are having a disclosure form cause you're having anyone who sells the property to disclose that you'll have a record. So, I was just a little confused it almost sounds like you don't need this section to be met but yet on the other hand you're providing a very clear special form and everything that it will be met. So that's just, I was a little confused, you're nodding yes...

Ms. Campbell: I'll jump in on that one. Yeah as I walked through the Code of Ethics to figure out exactly what applies and what we needed to do. I did kind of come to what felt like a dead end, which was okay if we are talking, this section applies to contracts for goods and service and that's not what this is. But we figured out of an abundance of caution that it was better idea to make sure that everything was in place and even if it didn't apply, it was better as Douglas said we wanted to be open and transparent and you know, and just out of an abundance of caution treated it as if it did apply even though maybe it doesn't. But I did want to recognize to you all that you could say, well, yay, you've done all this stuff, you've provided all these bells and whistles but we don't think it applies. So just as a legal matter I wanted to give you that option.

Mr. Wiseman: Okay. So does, do you, does everyone get the same amount? I'm curious, or is it an appraisal first.

Mr. Le: So the grant assistance through our buyer program is based on 2017 appraised market value, on record with our Real Property Tax Division of the Finance Department. I see, so that tax bill that folks were familiar with or at the time, prior to the eruption is the basis. It is very common for programs like this across the country

to rely upon pre-disaster value because post-disaster there isn't much value that can be of assistance for folks recovering and while we do base it off of that real property tax appraised market value, we are capping the grant assistance at 230 thousand dollars. We landed at that maximum because that is the median value of all properties that were impacted with structures on them. And just to, and at the time, it also felt like with all the different resources folks were tapping into or not tapping into, would be sufficient amount to help people re-house, re-build their lives, whatever the situation may be.

Mr. Wiseman: One of the questions out of curiosity, does the impact have to be total or partial or is there some type of area where, it has to be inhabitable or...

Mr. Le: So it mainly has to be impacted by the disaster event and so in our case the vast majority of the properties that are eligible were inundated or isolated by the lava flow. There are some properties outside of the lava flow that maybe have significant cracks, damage from SO2 and heat from subsurface magma which are the more complicated cases but are few and far in between relative to the vast majority that were inundated and isolated.

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

Mr. Heintz: Did you want...?

Ms. Nakanishi: I just had well a comment, I think that getting this opinion from the Board of Ethics would certainly help avoid future complaints so I think that's a good way to go. And when I look at the forms I was trying to make sure I understood. So E1 is for the applicant and E2 is for somebody else, somebody that worked on the application. Is that what...?

Mr. Le: That's correct. So, the purpose of E1 is to understand whether the situation of the applicant should be looked at relative to our Code of Ethics and also the Code of Federal Regulation. The issue for us really is whether that applicant was an employee of the County, past or current. Form E2 is for our employees or our staff who are working with applicants, doing intake, doing determinations on eligibility or quality assurance, making that call that this is the specific amount of assistance someone can receive. We also felt it was very important given the closeness of our community that there were no specific relationships that needed to be disclosed, and so we're having every staff who essentially touches an application complete this certification.

Ms. Nakanishi: Thank you.

Mr. Wiseman: Thank you. Mr. Heintz?

Mr. Heintz: If there's no other questions or comments, I'd like to make a motion.

Mr. Wiseman: Yes, proceed.

Mr. Heintz: The motion would be that the Ethics Board confirms that the policies and procedures when implemented properly including the use of the conflict of interest disclosure forms and the detailed provisions of sections 3 and 4 of this petition 2021-16 are sufficient to comply with the County Code of Ethics.

Mr. Wiseman: Okay, motion has been made, do I hear a second?

Ms. Nakanishi: I second.

Mr. Wiseman: Okay motion made and seconded. Any discussion on the motion? I would make a motion to amend that, that sufficient, but I would like to replace that sufficient with 'satisfy' the Code of Ethics. Any objection to that?

Mr. Heintz: No objection.

Mr. Wiseman: Alright we need a second on that?

Ms. Frenz: On your motion to amend?

Mr. Wiseman: I'm making an amended, a motion to amend one word but under Robert's we have to have a second...so do I hear a second on that.

Ms. Nakanishi: Second.

Mr. Wiseman: Any discussion on that? No discussion, all in favor of the amended motion Mr. Heintz made with a one word amendment to it say Aye.

**Motion: Mr. Heintz moved to confirm that the policies and procedures when implemented properly including the use of the conflict of interest disclosure forms and the detailed provisions of sections 3 and 4 of this petition 2021-16 are sufficient to comply with the County Code of Ethics. Ms. Nakanishi seconded the motion.**

**Motion and Vote: Mr. Wiseman moved amend the motion, replacing the word sufficient with satisfy. Ms. Nakanishi seconded the motion. All members voted aye. (10:56 a.m.)**

- e. **Petition 2021-17: Petition from a County program associated with the recovery from 2018 Kilauea eruption, requesting Informal Advisory Opinion that the policies and procedures adopted by the Program are sufficient to satisfy the Hawai‘i County Code of Ethics as applied to the Planning Director and Program Manager as applicants to the Program or that an opinion from the Board is not required pursuant to Hawai‘i County Code Section 2-83(c).**

Mr. Wiseman: So Le, again, please.

Mr. Le: So this petition 2021-17, deals with the same program that is covered under the prior petition. Our volunteer housing buyer program, terms and conditions of who’s eligible for the program, the process by which someone does apply, the procedures that we have submitted, including the forms, all apply in terms of the specific case. What is unique about this petition is that we are seeking informal advisory opinion about the case in which potential applicants are employees of the County. But also may exercise responsibility and decision making authority on the program itself. You know, as I think we can appreciate our island community as a tight knit one and when this first came up really on the spirit of being fair to all members of our community and how this eruption impacted them regardless of their employment status, in the case of these two positions, these two individuals were not employed during the time of the eruption by the County, but currently are, do exercise responsibility. And so the additional procedures that we have put in place is to have any review determination and award of assistance to handle along the same policies and procedures as any other applicant, however, out of, outside of the line of any reporting by these individuals. So we’ve identified members of our finance department who will be trained on our policy and procedures are outside of the line of reporting who can fairly and independently process these applications just like any other applicants who would be seeking our assistance.

Mr. Wiseman: Thank you Mr. Le. Any questions on this petition?

Ms. Nakanishi: Sorry I have a question. So the normal process would be that you guys would process the application and then Julie does something with it and does Zendo sign the award, is that what normally happens?

Mr. Le: So we have a staff team that receives applications and works with applicants, they also go as far as doing quality assurance and

quality control on applications. All of this is built into our program design. Customarily, it would be staff level and in this case staff who report to Julie our program manager, who would be interpreting policy, applying our policy and procedures, and making a determination that you know, yes Mr. Jones, you're eligible for \$203,000. As an example. Another person, also under kind of Julie's supervision and I supervise Julie in her role, would also be quality assurance to make sure that all the documents, all the clearances were properly packaged and we can officially without any risk kind of award this assistance. And so, it is the determinations are generally happening at a more of a staff level, and not necessarily kind of a leadership level, in Julie or Zendo's case. Zendo's planning director is responsible for our division and our work as he is any other division of the Planning Department. And so it is that specificity in the line of reporting that we really wanted to take a hard look at and to ensure that everything from A to Z would be fair and independent to put these policy & procedures in place.

Ms. Nakanishi: And the valuations you said are just (?) and 2017 assessment?

Mr. Le: That is correct.

Ms. Nakanishi: So moving it to the tax office doesn't impact that valuation at all?

Mr. Le: It does not. Yeah, and we felt the 2017 appraised market value was important in the way that in our code and charter, those values were set when the budget is set. We cannot go back to 2017 and argue that it needs to be changed. So there's not discretion in that aspect as well.

Mr. Wiseman: Thank you. Any further questions? Okay...the Chair will make a Motion, that the motion to...find that the policies and procedures adopted by the program as spelt out are sufficient and satisfy the Hawai'i County Code of Ethics. Do I hear a second?

Mr. Heintz: Second.

Mr. Wiseman: Motion has been made and seconded. Any discussion? There being none, all in favor of the motion say Aye.

**Motion and Vote: Mr. Wiseman moved to find that the policies and procedures adopted by the program are sufficient and satisfy the Hawai'i County Code of Ethics. Mr. Heintz seconded the motion. All members voted aye. (11:02 a.m.)**

Mr. Wiseman: One...you are with, under the Planning Department?

Mr. Le: Yes, I am and as is my team.

Mr. Wiseman: So this is sort of a citizen question, how is the computer system dealing with all the permits these days?

Mr. Le: Our program is outside of that County's new permitting process. We have our unique challenges with our program but yeah, separate and apart.

Mr. Wiseman: Okay, thank you.

Mr. Le: Thank you so much for your consideration.

\* **The board returned to hear item 4c.**

5. **UNFINISHED BUSINESS (11:39 a.m.)**

a. **Petition No. 2021-05: Review Draft Order dismissing petition requesting guidance as to whether the actions of a Leeward Planning Commissioner are in violation of the Code of Ethics**

Mr. Heintz: I believe there is a typo, an important typo in the 3<sup>rd</sup> paragraph, the section that's cited, I don't think it's the correct one. The section that's cited should be 2.83(a)(3) instead of 2.84...

Ms. Frenz: So Mr. Heintz, just to clarify, 3<sup>rd</sup> full paragraph on the order dismissing Petition 2021-05, where it indicates, at it's duly noticed meeting of August 11, 2021, Board Vice Chair Larry made a motion to find that LPC Commissioner Van Pernis violated section, it should read 2-83, subsection A, subsection 3, is that correct sir?

Mr. Heintz: That's correct.

Ms. Frenz: Subject to that correction, what would the board like to do?

Mr. Wiseman: The chair will make a motion to approve the order, subject to the amendment that Commissioner Heintz made.

Mr. Heintz: Second.

Mr. Wiseman: Motion made and seconded, any discussion? There being non, all in favor of the motion say Aye. All opposed? Motion carried.

**Motion and Vote:** Mr. Wiseman moved approve the order to dismiss. Mr. Heintz seconded the motion. All members voted aye. (11:42 a.m.)

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**The Board moved to item 8.**

\* \* \* \*

**6. EXECUTIVE SESSION**

a. Review of the executive session minutes of October 13, 2021

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

Mr. Wiseman: So this matter is open for discussion. We all received a gigantic notebook that should’ve been in 2 notebooks cause mine broke open. There’s lots of minutes, it is very interesting but it takes time to go through it and I would suspect everyone else needs a little more time to go through it. I’ll open for discussion.

Mr. Frenz: Are you making a motion to continue this matter number 7 chair?

Mr. Wiseman: Yes, I need, I went through the whole thing over a couple of days. But I need some clarification from Counsel on some things. Which I don’t have in front of me now so I would move to continue this matter.

Mr. Heintz: Mr. Chairman, if we could have a little bit of a discussion on how to proceed with matter.

Mr. Wiseman: Alright I’ll withdraw that motion.

Mr. Heintz: There seems to me, several options that I’m open to different ones but...Number 1 is this whole matter has to be a part of open, it’s all an open session and one suggestion has been made is that we have a special meeting in which there’s nothing on the agenda except this and then we just plow or work through it, an alternative seems to me is to divide it up into several pieces and put it early in the agenda and do it in several bits because this is fairly dense stuff and when I looked at the earlier part of the discussions from many years ago there’s a lot of possibilities for quibbling and working

through different language and what's the implication, this and that and the other. So that it might be more sensible to divide in say three or four portion and do it that way rather than try and have a special meeting and just plow through it. Now the bad thing about this second alternative is that David will leave the board before we ever get done. Maybe he's trying to leave the board before we deal with this. But I think it would take several meetings. That's just my idea.

Mr. Wiseman: Yeah I'm confused in going through it. I mean those minutes are very interesting. But then I get to all the proposed and it's, I can't isolate what's really the proposed amendments that Ken did back then and what's not. And I'm also confused with the ordinance, passed by the Council which is a law which allows us to pass fines but then the Charter conflicts with that, is that right? So I'm confused in that, and unfortunately my elaboration on 6 year statute of limitations which I still maintain (?) is ridiculous for this type of complaint, to have someone leave office, retire and then 5 ½ years later he gets a complaint. Come on, it's uncommon, it should be at the most 2 years like a tort. Someone commits a wrong, civil wrong issue, statute is usually two years or sometimes one. So in any event I don't know, I'd like to, a special session of course that would require extra time for all of us. But perhaps we could break it up and take a section at a time.

Ms. Nakanishi: How would that be broken up?

Mr. Heintz: Well someone would just simply say we'll deal with sections A through Z, or another way would be we'll deal with the Charter, the Code, there's three things right? There's the Charter, the Code, and our rules. Now my understanding is that in the last election there was a Charter amendment that authorizes to do the fines. So that has been authorized by the Charter so, I'm not sure what parts of the Charter really need to be changed if it's only the Code of Ethics and the Rules, then the Code of Ethics we can make changes and then those changes go to the Council and the Council has to approve our changes or not. And then finally the third thing is the rules, that's our own problems, we can change our rules without anyone else involved. So we could divide this up into various, couple categories...

Mr. Wiseman: I'd like to further that and suggest that, I know legal counsel has a heavy load on her plate but, if in consultation with your colleague J Yoshimoto who's so privy to the details to all the procedures of these proposed amendments for the last few years, as I recall. In consultation with him if you can sort of pick out items to put on

the agenda, one or two at a time.

Ms. Frenz: Does this Board have a preference whether we are going to be amending the Rules of Practice and Procedure of the Board of Ethics first? Or County Code amendments first? I think that would be the way to start.

Mr. Heintz: It seems, I may be wrong about this but, it seems that we need to do the Code first because the Rules are supposed to be consistent with the Code. If we do the rules first then change the Code then we have to re-do the rules

Mr. Wiseman: Yeah let's do the Code first...Alright so we'll end this discussion with, I'll make a motion that we can continue this discussion, subject to our legal counsel. Listing items of the Code that should be dealt with first.

Ms. Frenz: And would it be agreeable by this Board to put those that work at, near the end of the agenda as opposed to the beginning of the agenda and just deal with our petitions and/or people that are responding to petitions first.

Mr. Heintz: I urge us to put it high on the agenda or this will never get done.

Mr. Wiseman: Well, but, as far as the items on the agenda I don't feel comfortable having all petitioners and witnesses wait while we hash all these things out. I prefer it go to the end of the agenda and it'll still get done at the meeting but...so put it at the end of the agenda. Okay. So that's the motion. Do I hear a second on that? Okay, the motion is to continue this discussion subject to our legal counsel itemizing certain items of the proposed amendments that we will discuss at the next meeting and vote on. Do I hear a second?

Ms. Valenzuela: I second?

Mr. Wiseman: Any discussion on the motion? There being none, all in favor say Aye. All opposed? Motion is carried.

**Motion and Vote: Mr. Wiseman moved continue to the next meeting subject to legal counsel itemizing certain items to be voted on. Ms. Valenzuela seconded the motion. All members voted aye. (12:09 p.m.)**

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**The Board moved to item 9.**

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**8. REVIEW OF ADVISORY OPINION INITIATED BY THE BOARD OF ETHICS DISCUSSING REQUIREMENTS OF DISCLOSURES AND/OR HOW THEY RELATE TO POTENTIAL RECUSALS. (11:42 a.m.)**

- Mr. Wiseman: I didn't see this. This is a new one right?
- Mr. Heintz: It's the one page version.
- Ms. Frenz: Yes.
- Mr. Heintz: My strength today seems to be typos...the second to the last line should read 'consistent with a demonstration of personal integrity' instead of 'or'. That's the only change that I'm recommending.
- Mr. Wiseman: Okay now I would like to add, Commissioner Valenzuela, comment at the last meeting that we request that this, I don't know if it's proper to put it in the, in this advisory or not. But that each hearing, prior to each, at the outset of a hearing, that this be read out to, on the record.
- Ms. Frenz: So Chair, are you asking to include that as a part of this opinion? Or do you want that to be part of a letter requesting attached to the dissemination of this opinion?
- Mr. Wiseman: I think it'd be more appropriate in an attached letter. So I'm favor of the advisory opinion, subject to the typo corrections and with...do we need a motion on that with the letter?
- Mr. Heintz: Mr. Chairman, I will move that we approve this County Board of Ethics notice regarding public disclosure and recusals.
- Mr. Wiseman: Very well, okay I will second that. Any discussion, further discussion on this? There being none, all in favor of this memo being approved say Aye. All opposed say Nay. The memo of County Board of Ethics notice regarding Public disclosures and recusals subject the typographical corrections is hereby approved.

**Motion and Vote: Mr. Heintz moved approve the notice. Mr. Wiseman seconded the motion. All members voted aye. (11:45 a.m.)**

- Mr. Wiseman: At this time I will make a motion with respect to this memo that it be...I'll defer to legal counsel on this. In the code I do see some language that some opinions and publication, published. So I'd

request that a letter be accompanied with this to all boards and commissions that have hearings in the County of Hawai'i. And the letter would state that this should be read on the record at the outset of each hearing. Do I hear a second on that?

Ms. Nakanishi:

Second.

Mr. Wiseman:

Any discussion on that?

Mr. Heintz:

Mr. Chairman I, I really wonder about it being read at every meeting, at the beginning of, we're talking about all committees and boards reading this letter at every meeting just as we have on our agenda at every meeting, basically and it seems to me that we're loading. I mean, I would support that it be read aloud upon receipt at the next of every board. But a bit weary of making this a routine all the time.

Mr. Wiseman:

Well it's not gonna be mandatory, it's gonna be suggested. We can't mandate this to other boards and commissions. So it's gonna be strongly recommended. And otherwise lets consider the practical reality on what's gonna take place if we don't do that, the members of commissions and boards are gonna get this and yeah it's gonna go somewhere.

Mr. Heintz:

Well I think the answer to that is, that when they get it, we request or order that it be read upon receipt to, and made public record, that they've been notified that, our concern about disclosures and recusals.

Ms. Frenz:

Just to clarify, are you seeking that it be, that they consider reading or that they read it at the entry of upon receipt as well as the start of every new board member for example, every new council member for example, once a year for example, I guess I need a little more direction as far as what this board would like.

Mr. Heintz:

Well I guess 2 things, one is suggesting that it be made, that they read it upon receipt at the next meeting and, it be made part of the ethics training conducted by the legal counsel, Corporation Counsel's training for all new board members. That it be included as part of their training. That this training be attached in the packet of materials that they receive.

Mr. Wiseman:

I'm not aware of any training. Is there any training?

Mr. Heintz:

I received such training.

Mr. Wiseman: I didn't.

Mr. Heintz: When you were introduced to this committee?

Mr. Wiseman: If there is such, if that's feasible, Cody?

Ms. Frenz: I can't speak as to that right now Mr. Heintz, but I can certainly draft a letter that I can bring before this board at the next hearing to review and allow each board member that approves it to sign it and disseminate that letter along with our County Board of Ethics notice regarding public disclosure and recusals as amended.

Mr. Wiseman: Okay. That's fine with me. Okay? So...

Ms. Frenz: And that request would specifically be, the letter, would be that each board and or council for example were to read upon – read the notice upon receipt and include it as a part of any training for new members and/or retraining for recurring members for example. Okay.

Mr. Heintz: Thank you.

Mr. Wiseman: Okay...moving back...

Ms. Frenz: Okay so we had discussion, I'm sorry we have a vote on that Mr. Heintz's motion please.

Mr. Wiseman: Yeah. Mr. Heintz made a motion that the letter make reference to reading it to new members and to include it in any training by the Corporation Counsel. Is that good? Yeah...All in favor. Do I hear a second on that? Well it was seconded, I seconded it. Yeah, all in favor say Aye. All opposed? Motion is carried.

**Motion and Vote: Mr. Heintz moved that the letter make reference to reading it to new members and be included in any training by the Corporation Counsel. Ms. Nakanishi seconded the motion. All members voted aye. (11:51 a.m.)**

**Motion and Vote: Mr. Wiseman moved that they enter executive session. Ms. Valenzuela seconded the motion. All members voted aye. (11:52 a.m.)**

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**The Board returned to item 6, executive session**

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**9. REVIEW POTENTIAL 2022 BOARD OF ETHICS MEETING DATES**

**Motion and Vote: Mr. Wiseman moved to approve the 2022 meeting dates. Ms. Valenzuela seconded the motion. All members voted aye. (12:10 p.m.)**

**10. ANNOUNCEMENTS**

Mr. Wiseman announced the Board's next meeting on December 6, 2021 at 10:00 a.m. at the Hawai'i County Building, Council Chambers at 25 Aupuni Street, Hilo, Hawai'i, 96720.

**10. ADJOURNMENT**

**Motion and Vote: Mr. Wiseman moved to adjourn the meeting. Mr. Heintz seconded the motion. All members voted aye. (12:12 p.m.)**

Mr. Wiseman adjourned the meeting at 12:12 p.m.

Respectfully submitted:

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Liza Osorio, Secretary