

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

Wednesday, January 11, 2023

10:07 a.m. to 11:33 a.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

**Members and Staff Present:**

Larry Heintz, Chair

Denise Nakanishi, Member

Kelly Valenzuela, Member

Rabbi Rachel Short, Member

Sylvia Wan, Deputy Corporation Counsel

Kelsie Chang, Secretary

**1. CALL TO ORDER (10:07 a.m.)**

Mr. Heintz called the meeting to order at 10:07 a.m. Present was Sylvia Wan and Kelsie Chang. Larry Heintz, Denise Nakanishi, Kelly Valenzuela and Rabbi Rachel Short was in attendance via Zoom.

**2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:09 a.m. – 10:17 a.m.)**

Ms. Wise:

Thank you madame, Mr. Chair and madame Wan, and the rest of the members of the Ethics Planning Commission. I come forward today um to raise just a concern. I was one of the testimony submissions on that Windward Planning Commission, May 5<sup>th</sup> meeting in regards to this special management area request that was done. I read in the paper whether it is accurate or not, it alleged that two of the employees of the County, one Mr. Alex Roy and two Ms. Maija Jackson, had displayed themselves in an unprofessional manner in open meeting, in regards to the reports that we submitted on that item. I do understand that the commission does not handle that item specifically but, it does handle the professionalism and the ethics and their conduct when they're within professional business. So, I am very concerned if Mr. Roy and Ms. Jackson did present themselves in a less than professional manner. I do understand based on what I read, that it was based on not being ready. I myself am a professional and even when I am not ready for whatever the task is in front of me, we have certain ways of conducting ourselves in language, in demeanor, in the way that we posture to the public, to let them know that were taking their considerations to be treated fair,

impartial and that were not creating some type of separation or even the presentation that we don't have equality. So, I am very concerned. I asked that this committee definitely look at the video, definitely look at the transcripts, and if it does warrant that there is a violation, that you guys precede in a manner that has been descriptive for other members that are in these professional seats. I also, I also represent the Pepekeo community development corporation, I'm the president. I been part of this board from 2003, so this actual issue that is underlying, um I know it very well. So, if our planning director and Ms. Jackson conducted themselves in an impartial manner, I expect that there be some remedy. Thank you so much for this testimony.

Mr. Heintz: Thank you Ms. Wise. Is there another commentor?

Ms. Wan: Yes Chair, we have three other commentors in no particular order. The first is Keoni Payton. This is also for item #6C.

Mr. Heintz: Is this person on, is Mr. Payton, or here he is in person. Okay, thank you.

Mr. Payton: This button right here?

Ms. Wan: Yes, um your three minutes will commence once you state your name. One second. Once you state your name, your three minutes will commence. Yes, please press the button so you can be recorded.

Mr. Payton: Okay. My name is Keoni Payton. And now can I start? Okay. So, um, first off, ignorance of the law is not an admissible defense, just like they state that. Um, so on record, I'm going to demand that Alex Roy finally give us an answer. Why is the fishing community being denied access? Also, since this is about ethics, what part of noncompliance is ethical? Because he's given our president the run around several times. We're still waiting for an answer. So, how is that okay with you guys? Um, I mean a simple road closure which I was denied of before, because I didn't give public notification. The public, notification of 30 days. I don't know if it was on your behalf or who was it but, I just found about this meeting, I'm very unprepared, or else you guys would of got a earful. I was just notified yesterday. I got a lot of things going on in my personal life so, I've made it my duty to come and testify on Makahanaloa's behalf here. And um, okay and after that, what will be done? What will be done about this? How will Mr. Roy, if you don't, if you're not doing your job, see I have a small business, within my small business if my employees don't do their job, they

are suspended or terminated. We want, we're demanding, the Makahana Loa board is demanding that we see some type of um, by you guys, by his bosses, by the state, that he be reprimanded somehow. To discourage this kind of acts. Um, yeah, I mean, is it, do you guys just get to, it's a ethics, it's an ethics violation and do you guys just get to bypath ethics on your convience? Pretty upsetting but um, okay, so, I would like a response on that, and I'm done.

Mr. Heintz: Thank you. Do we have another testifier?

Ms. Wan: Yes Chair, our next testifier is Debbie Nakasato for item #6C.

Ms. Nakasato: Hello, thank you. This is Debbie Nakasato, um, I'm here on behalf of Makahana Loa fishing association. I was here when they had the last meeting, I came with my kids, my twins, they were so eager to testify. And at the end to see that we're kind of like made fun of and laughed at, it it wasn't a good feeling. Neither was it for them, they were like was it, what's going on? Is this a joke? And it's not a joke, this is serious for us. This is where we live, breathe, grew up, it's everything to us. So, stop, stop pushing us around, not hearing our words, and making like there's no feeling that goes there. It's spiritual, were connected, it's everything to us. So just please hear our voice, leave us alone, let our footprints remain there, let us be able to do what we do there. You know, we grew up there so, just please respect our words and it wasn't nice to be made fun of. Thank you.

Mr. Heintz: Thank you. Next testifier.

Ms. Wan: Chair, our final testifier is Jaslee Medeiros-Garcia. I'm sorry, also for item #6C.

Ms. Medeiros-Garcia: Hi my name is Jaslee Medeiros-Garcia, and I was here the last meeting and please hear our voices because Makahana Loa's very special. Thank you.

Mr. Heintz: And thank you Jasey. Um, the meeting's that the testifiers were present at, I believe was the Planning Commission meeting's. Not the Board of Ethics meetings. Is that right? I don't remember any of these people being before the Board of Ethics. If that's correct? Two before the Planning Commission meetings.

Ms. Wan: I will note that those particular members once they sat in the audience, they nodded yes, in affirmative.

Mr. Heintz: Thank you. Are there any other testifiers for any other item on the agenda?

Ms. Wan: That concludes the testifiers that have registered today.

Mr. Heintz: Thank you very much all of you. We will move to the next item on the agenda which is communications.

### 3. COMMUNICATIONS (10:18 a.m.)

a. Comm 2022-03: Continued review of communication from Hopie Louise Dietz Cermelj re: Election Fraud

Mr. Heintz: Yes, member Short.

Ms. Short: I will be recusing myself from this part of the discussion. So, I am going to turn off my video at this time.

Mr. Heintz: Um, I have a question about that. What the review here would be, I would make motion that this communication, it's not a petition for an informal advisory opinion, what this is, this is a communication to the board, it's not in a form of a petition or a complaint but rather, it's a communication, so we received that information, for our file. That's the question I have, if that's the case, do you still need to recuse yourself? Otherwise, if you need to recuse yourself then I believe we do not have a quorum.

Ms. Short: If there's additional discussion that needs to be had or ethical purposes, I need to recuse myself.

Mr. Heintz: Okay, I don't believe there is for simply receiving the communication as part of recognized as part of our record.

Ms. Short: If all were doing is accepting it into the record, I can be present for that. If any additional discussion, I need to recuse myself.

Mr. Heintz: Are any other members going to wonder or engage in additional discussion over receiving this communication? Kelly apparently not, Denise apparently not. I have nothing further to say other than simply that we will receive this communication. So, if that's correct then, Rachel, you're not recusing yourself, is that right?

Ms. Short: Then it's fine.

Mr. Heintz: Sylvia, are we okay then?

Ms. Wan: Yes. If no members are recusing themselves from receiving the communication, the Board can go forward with the motion and accepting the communication.

Mr. Heintz: Do we have a second for this motion?

Ms. Valenzuela: I second it.

Mr. Heintz: Thank you Kelly. All those in favor of the motion please say aye.

**Motion and Vote: Mr. Heintz moved to approve communication; Ms. Valenzuela seconded. All members voted aye. (10:21 a.m.)**

Mr. Heintz: All members vote in favor of receiving this communication for the record. Thank you. Sylvia, do we need to do anything else on this issue or can we move to the next item on the agenda?

Ms. Wan: You can move to the next item Chair.

Mr. Heintz: Thank you.

**4. APPROVAL OF THE REGULAR SESSION MINUTES OF DECEMBER 14, 2022 (10:21 a.m.)**

Mr. Heintz: Item 4 is approval of the regular session minutes of December 14, 2022. These minutes were received electronically. I believe yesterday. Is there? Have, have the members been able to see the minutes? Have all the members been able to see the minutes? Denise has not been able to see the minutes. We are in the same position, I think, with regard to a motion. Is that right Sylvia? That we cannot accept the minutes then, but rather we need to table this matter of accepting the minutes?

Ms. Wan: Yes, that would be appropriate to table it to next meeting. Until all members could review the minutes.

Mr. Heintz: I just want to say that the members and have said that they need this material more than 24 hours more than 48 hours in advance. We've been saying that for months. I recognize that Kelsie is a new secretary, and for whatever reason were not getting things with advance notice. We even have members of the public one of the testifiers today saying that they haven't received notification of the meetings. Apparently not posted in time.

Ms. Wan: I'm, I'm sorry Chair.

Mr. Heintz: Sylvia, I am not done with my comments. I'll recognize you in a moment. I simply want to say that I do not see that this board can function with inadequate conveyance of the relevant information to the members, and the public, and whatever reason that why that is, I do not know. I suspect that, just the demands are too great on the parties at the Corporation Counsel Office. Now, I just want to make that as part of the public record that I have that concern. Now Sylvia, go ahead.

Ms. Wan: I'm sorry Chair, I just wanted to make two points of correction. The notice of the agenda was filed timely. It was available on the County website, it was also posted on the County, so notice was adequately provided pursuant to our Sunshine Laws. Also pursuant to our Sunshine Laws, the minutes do not need to be ready but for 40 days after the prior meeting. So, these minutes that were done before this meeting was before that particular deadline. So, I do appreciate what you're saying, those discussions are better had administratively and not in the meeting that doesn't address a specific agenda item. Thank you.

Mr. Heintz: I just want to register a difference of opinion, if an item is on the agenda, item #4 for approval of the regular session of the minutes, and the members have not received the minutes. The items should not be on the agenda in the first place.

Ms. Wan: Duly noted.

Mr. Heintz: Do we have a motion to table the approval of the minutes till the next meeting of the Board of Ethics?

Ms. Valenzuela: I make a motion.

Ms. Nakanishi: I second.

Mr. Heintz: Okay it's been moved and seconded to table the minutes to the next of the December 14<sup>th</sup> meeting to the February meeting of the Board of Ethics. And we have a second. Is there any discussion? All those in favor of tabling the minutes?

**Motion and Vote: Ms. Valenzuela moved to table the approval of December 14, 2022, regular session minutes to next meeting; Ms. Nakanishi seconded. All members voted aye. (10:25 a.m.)**

Mr. Heintz: We have unanimous consent to table the minutes. Thank you very much members. We will move to the next item, new business.

**5. NEW BUSINESS (10:26 a.m.)**

a. Annual nomination of the Chair and Vice Chair of the Board of Ethics.

Mr. Heintz: The new business, #5a is annual nomination of the Chair and Vice Chair of the Board of Ethics. We will take them in the order that they're listed here. So, do we have a nomination for a name to be placed in nomination for chairman of this Board of Ethics? Kelly?

Ms. Valenzuela: If I can just say something. I think we should wait until everybody's in place, cause I think they're still in the process of bringing in new members to my understanding unless I'm wrong on that. But I don't think you know, until we have everyone in place, then I think at that time we should go for the chair and vice chair instead of doing it at this time. That's my comment.

Mr. Heintz: Thank you. Other members have a comment at this point?

Ms. Nakanishi: That would make sense if you're willing to continue.

Mr. Heintz: Well, actually relevant to this, my personal view, because I don't believe the Board of Ethics should continue to meet until we have five members appointed. I'm sorry, seven members appointed, and I will as a as a member of the community, convey that to the mayor's office. But this is, in my view, dysfunctional. I don't believe we should continue to table matters and just have them go on for months. We are dealing with matters that go back to October and so we've got one motion to table this, this, the election of the nomination of members for chair and vice chair and I would like to make a substitute motion that the Board of Ethics does not hold another meeting until there are seven members that are appointed to the board. Is there a second to that motion?

Ms. Wan: I'm sorry, I think we need to resolve one motion first and then the next.

Mr. Heintz: This is a substitute motion.

Ms. Wan: Did Kelly's motion have a second?

Mr. Heintz: Can the secretary report whether there was a second to Kelly's motion?

Ms. Wan: I don't think we saw a second to either motion at this point.

Mr. Heintz: Okay. So, there's no second to the, so there is no first motion. So, there's not substitute motion. I'm making a motion and the motion is that the Board of Ethics does not hold meetings until seven members are appointed and I will, my reasons for that if it's needed and if there is second. Is there a second for that motion?

Ms. Nakanishi: I second.

Mr. Heintz: There's a second to the motion. Is there a discussion?

Ms. Nakanishi: I think we need to limit. Put a time limit on it. Not just an indefinite.

Mr. Heintz: Oh I see, until in other words to what I'm saying is that until there are seven members appointed. They shouldn't be trying to conduct meetings and what you want to say is you want to modify that motion for what? Two months or three months or and we notify the Mayor's office?

Ms. Nakanishi: Right

Mr. Heintz: And the reason here is simply that.

Ms. Nakanishi: Or sooner.

Mr. Heintz: Sector conduct our business.

Ms. Wan: Chair, May I provide a point of information. The mayor's office has recently nominated a new member for the Board of Ethics. Mr. Christopher Ho, he is to be, his nomination is to go before the County Council on January 24<sup>th</sup>.

Mr. Heintz: January 24<sup>th</sup>, that would be our sixth member.

Ms. Wan: Yes.

Mr. Heintz: That's really good news.

Ms. Wan: And just also as a point of order, I'm not clear on whether the Board of Ethics has the authority to just, to do what you're proposing. I would have to look into the legality of that particular issue.

Mr. Heintz: You're saying a motion, this motion.

Ms. Wan: I'm just saying, as originally stated, to not meet until you have a full seven members, I'm not sure if the board overall has that particular authority. But as to the proposed modification that has not yet been seconded, you can move to a certain time.

Mr. Heintz: To a time, certain. So, the time certain is, if I understand Denise, correctly, that would be one month or two months.

Ms. Short: The nominations coming for the new member next week before Council Sylvia, is that correct?

Ms. Wan: That is correct. I would just note that we do have quorum today so this, this particular board can hear matters today.

Ms. Short: It's my understanding that were just talking about tabling the chair, the nomination for a new chair and vice chair until we receive our sixth member, is that accurate?

Ms. Nakanishi: Yes.

Mr. Heintz: Um.

Ms. Wan: Thank you for that clarification. I was getting confused.

Ms. Short: At least that's my perspective. Correct me if I am wrong, please chair.

Mr. Heintz: Um. I believe you're mistaken. Um, I believe that we don't have a motion regarding appointment, nominations for chair or vice chair because we didn't have a second on that and so then we had my motion to delay um having conducting meetings of the Board of Ethics until seven members and that's been changed to six, I'm sorry until seven members are present and that's been modified to until and now were trying a time certain and that time certain would be one month. And in which case one month would mean that there would be no, well yeah, there would be no January, I mean February meeting. If this motion were seconded. Has yet or I'm simply clarifying for member Short what is on the table right now. Rachel is that now make.

Ms. Short: Yeah, I understand. But it sounds to me like we would have our sixth member by our February meeting if I'm correct.

Mr. Heintz: Yeah, but my motion is for a full membership of seven.

Ms. Short: Your member, your motion is for seven members?

Mr. Heintz: Yes. All members. I said that's what my motion is and it doesn't have a second. It's for one month.

Ms. Wan: Okay, I'm I'm sorry, I do have a I do have a point of order. I do have a point of order cause I was able to find within the BOE rules, 1.15 regarding meetings. It says that the board shall hold its regular meeting on the second Wednesday of each month in the meeting room of the Hawaii County Council, unless a special meeting is called, and the chairman has announced the date, time, and place of special meeting prior to the adjournment of the regular meeting. Otherwise, a special meeting can only be, can, I'm sorry, can be called only as provided in section 13-20C of the charter. So, according to the Board of Ethics Rules, what you're proposing would not be allowed because it states that the Board shall hold its regular meeting on the second Wednesday of each month. So, therefore, the only reason why we would not hold the meeting is if the Board does not have quorum.

Mr. Heintz: Thank you Counsel. Given that additional information, I withdraw my motion. My opinion though is clear to the group. Thank you. Now were back to a motion about, does anyone want to make a motion about the annual nomination of chair?

Ms. Short: I would make a motion that we table the nomination of a new chair and vice chair until are, Rabbi Rachel Short for the record. I would make a motion that we table the nomination of chair and vice chair until our February meeting when we have a sixth new Board of Ethics member.

Mr. Heintz: Thank you, is there a second?

Ms. Valenzuela: I second.

Mr. Heintz: Okay, we have two seconds. Kelly and Denise both second that motion. Is there any further discussion? Seeing none, all those in favor of the motion please say aye.

**Motion and Vote: Ms. Short moved to table to February's meeting; Ms. Valenzuela and Ms. Nakanishi seconded. All members voted aye. (10:36 a.m.)**

Mr. Heintz: It will be noted that all members voted for the motion to table until next month, for the motion of the nomination of chair and vice chair. We will move on to item #6, unfinished business.

**6. UNFINISHED BUSINESS (10:37 a.m.)**

- a. Petition 2022- 12: Continued review of complaint regarding a Deputy Prosecutor, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

Mr. Heintz: It is my understanding and I'll ask Sylvia to report on this, that, this petition is being withdrawn by mutual agreement of the petitioner or complainant and respondent. Sylvia will you just bring us up to date where we are on that.

Ms. Wan: I will just note for the record, that both of the parties had disclosed a code, a closed hearing. So, the information I will provide will be limited as far as identity. The petitioner and respondent will. Primarily the petition asked to withdraw in accordance to a settlement reached with the respondent.

Mr. Heintz: Thank you. So, that still leaves us with the item. The petition is being withdrawn and so, do we need to take a formal action about the withdrawal? Does there need to be a motion that the Board.

Ms. Wan: I believe the Board can just acknowledge the withdrawal.

Mr. Heintz: We can simply acknowledge this withdrawal is like a communication, okay. Do any members have any questions or comments on this point? I have another question for seeing none. I have another question for legal counsel. Is it appropriate for any member to comment about this issue in the public meeting at this time without identifying the parties?

Ms. Wan: If any of the comments go to the any of the facts or the parties, or in any way, shape, or form, could identify the parties, then no it would not be appropriate.

Mr. Heintz: Would it be appropriate for such a discussion to take place in a closed meeting or in executive session?

Ms. Wan: You could however, the limited item before the Board now is the withdrawal of the petition.

Mr. Heintz: Does that mean that there could be no comments about whether the Board felt that it was appropriate to initiate an investigation of this issue on its own?

Ms. Wan: I think that would have to be a separate matter that the Board would have to bring up. As stated previously.

Mr. Heintz: And could be agendized at the next meeting.

Ms. Wan: Yes.

Mr. Heintz: And that could be brought up in executive session to do that or can it just be done by any member?

Ms. Wan: Um, because were dealing with the confidential information rights of these two parties, I would caution the Board of Ethics from going forward, especially considering the expressed intent of the parties to withdrawal the petition.

Mr. Heintz: Thank you. Um, so where we would be then is we could have that discussion in executive session.

Ms. Wan: Would you like to go into executive session now?

Mr. Heintz: No.

Ms. Wan: Okay.

Mr. Heintz: I would hold the opportunity to have that discussion when we get to executive session. I think we have a little business we want to complete. Thank you, that's the end of my question about this matter. So, we have a motion. Oh no, so we now have a motion, we need a motion to simply acknowledge the withdrawal of petition 2022-12.

Ms. Valenzuela: I make a motion.

Mr. Heintz: Thank you Kelly. Is there a second.

Ms. Nakanishi: I second.

Mr. Heintz: Thank you. Any discussion? Seeing none and hearing none. All those in favor of the motion please say aye.

**Motion and Vote: Ms. Valenzuela motion to acknowledge the withdrawal; Ms. Nakanishi seconded. All members voted aye. (10:41 a.m.)**

Mr. Heintz: That'll be recorded that all members vote approval of withdrawal or recognition of the withdrawal of petition 22, 2022-12. So, we will now move to item #6b.

b. Petition 2022-13: Continued review of complaint regarding a Planning Department employee, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

Mr. Heintz: Sylvia, can you, Counsel Member Wan, could you help me for a second. This is the item that we voted to approve at the last meeting, however, because we didn't have all three votes approving it, it didn't meet the quorum requirements. Similarly, today would be the same issue, unless we have a unanimous vote, for whatever action or whatever motion we put forward. This item would have to be tabled. Is that correct?

Ms. Wan: Just to clarify, the motion that was announced as carrying for petition 2022-13, did not in fact, carry, because it required a majority of the entire membership, so that even though there was a quorum, there wasn't a majority of the entire membership voting in a particular direction to either pass or not pass that particular motion. So, because it did not have the majority of the membership voting in favor of the motion, Pursuant to 13-4h of the Hawaii County Charter, that motion did not pass. In other words, it failed so for those particular. For this particular petition, it is still open for, new motions and further discussion on those motions.

Mr. Heintz: Thank you. Now we have four members present. Do any of those members want to make a motion regarding petition 2022-13?

Ms. Wan: I'm sorry, just as a point of order Chair, I think we need to clarify um since we have an additional member who is not present at the last meeting. Whether the additional member would be able to attest that they listened and reviewed the entire preceding including the written submissions and feels properly informed to vote on the matter.

Mr. Heintz: Thank you, Kelly, I believe she's speaking to you.

Ms. Valenzuela: I believe I'm informed, and I did watch the transcript, and did read through the stack that I got of information in regard to this case.

Mr. Heintz: Okay. If that's the case then, do any members want to add to the discussion that we had, we recognize that all members are aware of the material that we've looked at so far. I noticed that one member has disappeared, who's that just me?

Ms. Wan: No chair, all members are still present, and I would just know as a point of order we do need a motion first and a second before we can open discussion, thank you.

Mr. Heintz: I think I've meant to I think I called for a motion. Is there a motion to carry on? Is there a motion regarding petition 2022-13?

Ms. Nakanishi: I'll make a motion that there was no ethical violation involved in the complaint or relative to the compliance.

Mr. Heintz: Okay, is there a second to that motion? Seeing none. The motion. There is no motion. Is there a different motion anyone wants to make?

Ms. Valenzuela: I'm sorry, I didn't, I didn't hear Denise's motion. Can you repeat it Denise?

Ms. Nakanishi: I'm sorry, I just made a motion that there was no ethical violation related to the complaint.

Ms. Valenzuela: I second that motion.

Mr. Heintz: Okay it's been moved and seconded that the complaint in petition 2022-13 does not involve a violation of Section 2-83 Fair Treatment of the Ethics Code. That's my understanding of the motion. Is there a discussion of this motion? I'd like to just make a couple of points about this motion. I believe our minutes and the record on the last meeting would indicate that there was a violation of fair treatment that that there is adequate evidence in the record that Mr. Roy's manner in which he dealt with this issue, showed bias or was inappropriate, lacked fairness and this was supported by Ms. Rohr's testimony and emails, which she cited. Do you recall in the record that in my discussion with Mr. Roy about some of the unfortunate language that he used, which he acknowledged as well. That it and the long record of emails, indicated that this is not impartial treatment. I also take the point that Denise board member Nakashima made at the meeting that he did not specifically name Ms. Rohr as the neighbor, but from the record it was very easy, and Mr. Roy acknowledged that they were speaking about Ms. Rohr, even though he never specifically disclosed her name and I think Denise is about that one when I looked through the record. Rachel had comments and made the previous motion at the previous meeting, in which she thought there was lack of fairness or a violation of fair treatment. So, that's so I'm inclined not to vote in favor of this motion, because it seems to me that the record supports the opposite conclusion. Any other discussion?

Ms. Short: I would echo what chair said. I still do have reason to believe based on those emails that there was some unethical activity so, I

would not feel comfortable voting that there wasn't an ethical violation.

Ms. Nakanishi: I have concerns that, you know we got this record, the email string from Ms. Rohr and we don't have any way to know if it's the real complete record, how she's got the record. I don't know that the neighbor wasn't there to testify all theses. I don't see anything but then we don't know what the in-person discussion was. It's just I just didn't think it rose to the and unethical. To an ethics violation, or unfair treatment.

Mr. Heintz: I have a question. Sylvia, can you help us here? When respondent, Mr. Roy had an opportunity to see all the materials that Ms. Rohr provided, namely, that train of emails, and so on. And in his response, he actually refers to some of the language in those emails. So are we correct to infer that he saw that and did not respond to some of the other things. I mean, the thrust of the of the whole bunch of emails is pretty clear to me but.

Ms. Wan: Okay, so just to ask to answer the specific question as to whether the respondent received the petition and the submittals from the petitioner. It is standard practice for the Board of Ethics to provide the petition as well as the exhibits to the respondent, so that they have an opportunity to adequately respond. That is, as far as I can comment on that.

Mr. Heintz: Thank you. Um, Denise, does that help in any way? Or does that progress the discussion?

Ms. Nakanishi: I mean, it doesn't change my opinion. I just don't think it rises to the point of unethical, an ethical violation. I mean there's, its there seems to be an ongoing conversation, and he's just trying to push the, the application forward as he should be doing but, I mean there is one comment that maybe you know that there's a neighbor and blah blah blah but, doesn't identify her, and I just think you know it was common knowledge anyway so.

Mr. Heintz: Okay, any other discussion of this? So, if I understand correctly what the motion that we are voting on, if I call the question, it is that the Board of Ethics does not find that, that petitioner in petition number 2022-13 demonstrates or evidence, and the record does not support that there was a violation of section 2-83 fair treatment and the ethics code.

Ms. Short: I'm not on board with this motion chair. I want to make it very clear.

Mr. Heintz: Okay, well, we haven't, I'm just saying what the motion is, and then we will vote. And in order for this motion to carry, it has to be unanimous. That's my understanding, is that right counselor Wong?

Ms. Wan: Because there is only a quorum present, which includes four individuals. And right now, the majority of the membership, which would be four individuals, would need to vote in favor in order for a motion to carry.

Mr. Heintz: Okay, so now I'm ready to call the vote. All those in favor of the motion, please say aye! There are two ayes and all those against the motion. Oh, I know, Kelly and Denise are voting for this motion. All those oppose to the motion please say nay or raise your hand.

**Motion and Vote: Mr. Heintz motion that the Board of Ethics does not find that, that petitioner in petition number 2022-13 demonstrates or evidence, and the record does not support that there was a violation of section 2-83 fair treatment and the ethics code; Ms. Nakanishi seconded the motion. Ms. Nakanishi and Ms. Valenzuela voted aye (10:54 a.m.) Ms. Short and Mr. Heintz voted nay (10:55 a.m.)**

Mr. Heintz: Two nays, the motion fails. Yes, I'm sorry, Sylvia.

Ms. Wan: And the nays are yourself Mr. Heintz and Ms. Short.

Mr. Heintz: That's correct. In order for a motion to pass, it needs all four. Is there a substitute motion, or our second new motion?

Ms. Short: I, I, my motion from last time still stands the sentence here about doing anything to get approval and naming her as a neighbor still to me is very unethical.

Mr. Heintz: So, it it reveals that she's not impartial.

Ms. Short: Correct.

Mr. Heintz: That he's biased, or that he's favoritism.

Ms. Short: Correct.

Mr. Heintz: I prefer treatment.

Ms. Nakanishi: And where is that in the record? I don't recall.

Mr. Heintz: If you read that.

Ms. Short: In the emails where it says I'm trying to do whatever I can believe me; I'll do whatever I can to get her this approved. I never expected your neighbor to be so difficult.

Mr. Heintz: And disturbed, yes.

Ms. Short: And disturbed. Just know I feel very uncomfortable making you go through this process, and I apologize for not being more comprehensive early on. I just never thought anyone would be as difficult and disturbed as your neighbor. Know that your project is on the top of my to-do list, and I will not rest until we get you approval.

Ms. Nakanishi: And that's my exact thing I'm looking at, it doesn't name her, it's just supposition on our part that he's talking about who he's talking about there's already. It's not like there's no evidence.

Mr. Short: He acknowledge already that they had a conversation where he said it was her.

Ms. Nakanishi: Where's that?

Ms. Short: Isn't that what he told us? My understanding in his testimony.

Mr. Heintz: Well, he certainly did in my discussion with him, and the questions that I raised about disturbed, and that he was talking about her, and that they were talking about her. This is this is unintelligible if we believe the record shows that they're not talking about Ms. Rohr. I mean he's a he's acknowledged that.

Ms. Short: And my thing is, it doesn't matter if it's Ms. Rohr or anyone else in the public, this isn't an appropriate way for a county official to be speaking.

Ms. Nakanishi: That, that may be true, but the complaint came from an individual.

Ms. Short: And favoritism. But that's what the Board of Ethics is supposed to do. Is make sure that our County.

Ms. Nakanishi: And she's alleging that. It came from her; it didn't come from the community at large.

Ms. Short: But the communities come forward and seconded her concerns, many of which we've heard even today.

Ms. Nakanishi: We didn't hear anything on this petition today.

Ms. Short: Or last time, excuse me.

Ms. Nakanishi: I don't know, we only heard the two people.

Ms. Wan: I'm sorry, just a point of order, as far as the testimony that was provided previously, as to the prior petitions. All of the testimony that we've had thus far from public members between these two petitions that involve Ms. Rohr, all of the testimony has been on petition 2022-16.

Ms. Short: Not 13.

Ms. Wan: Not 13.

Ms. Short: Understood. Thank you for the clarification, Sylvia.

Mr. Heintz: That's the, you were talking about today's testimony.

Ms. Wan: As well as last meeting's testimony. All of the public testimony last meeting was also for 2022-16.

Mr. Heintz: Okay, but the whole meeting discussion by the petitioner and the respondents was about 2013. That's what we're talking about. Thank you. I, I guess the the question is, Denise is suggesting that since other members of the public did not come forward upon this petition, that that somehow bears on the property or force of this petition, is that what you're saying Denise? I'm not sure?

Ms. Nakanishi: No, Rabbi Short was saying that yeah it's not ethical, because it was it's unfair treatment, in general and the petition is from a specific individual and I don't see in the record where he named the individual. I mean sometimes you have to in in trying to do your job, you have to kind of, take, oh sorry. You have to just move forward in the best way you can, and again, I don't know that we have the complete record. We have some emails, we don't, I don't know where she got them. We don't have any of the conversations that took place in person. So, I I'm just very hesitant to find a public member who's just trying to do their job in violation of the code of Ethics based on what we have in front of us.

Mr. Heintz: Okay, thank you. Any further discussion of Rachel's motion? I believe we have Rachel's motion from the previous meeting, and I'm seconding that motion, and so we're discussing that motion

and so this is the motion to find that there is unfair treatment, and we, unless there's more discussion, we will vote on that motion. Are we all on the same page here? Okay, do we have any further discussion of Rachel's motion? The motion that petitioner Rohr in her petition 2022-13, and the materials that she provided, and our discussion as the found in the minutes of the last meeting. And interactions with the respondent and the petitioner demonstrate that there was unfair treatment or a violation of Section 2-83, fair treatment of the Ethics Code. And are we ready to vote? Any further discussion? Kelly, did you want to say something? I can't tell.

Ms. Valenzuela: No, not at this time.

Mr. Heintz: So, we will now vote all those in favor of the motion that I just stated. Please indicated by raising your hand and saying, aye!

**Motion and Vote: Mr. Heintz motion that the Board of Ethics finds that the respondent demonstrates there was unfair treatment or a violation of section 2-83; Ms. Short seconded the motion. Ms. Short and Mr. Heintz voted aye (11:03 a.m.) Ms. Nakanishi and Ms. Valenzuela voted nay (11:04 a.m.)**

Mr. Heintz: Rachel Short and myself vote aye. All those opposed please raise your hand or indicate. There are two votes against, Kelly and Denise. The motion fails. Is there any further motion? Is there any other possible motion?

Ms. Short: Can I ask Corp Counsel a question real quick?

Mr. Heintz: Yeah, sure.

Ms. Short: What would be the appropriate movement forward in this case, where it is clear that we have enough for quorum but there is a clear divide?

Ms. Wan: So, at this point, because the Board, a majority of the Board cannot come to a consensus, the best point of action is to continue this petition until you have additional members who can be present, and the emotions can be entertained anew.

Ms. Short: Okay. So, then this would be table till our February meeting, when that next member joins.

Ms. Wan: That is correct.

Ms. Short: Okay. Mahalo for the clarification.

Ms. Wan: However, there would need to be a motion to table.

Ms. Short: So, I will make that motion. I will motion to table petition 2022-13 until the February meeting, when we have an additional member to the Hawai'i County Board of Ethics.

Mr. Heintz: We have a second? Kelly is seconding the motion to table this petition until the next meeting. If I remember understanding correctly, we will need at least one of the Nay votes to change at that next meeting in order for us to deal with this issue next time. Okay, I just want to make sure that everybody understands that. So, this it's been moved and seconded that this be tabled to the next meeting. All those in favor, please say Aye.

**Motion and Vote: Ms. Short motion to table this until February's meeting; Ms. Valenzuela seconded the motion. All members voted aye (11:05 a.m.)**

Mr. Heintz: Unanimous.

Ms. Wan: And I'm sorry Chair, just a point of clarification, even if the votes stay the same as present, there is still a Board Member, Allende, who is not present today as well as the new member. So, it really, the vote could really go either way.

Mr. Heintz: Thank you. That's right, I stand corrected. Thank you very much. I been forgetting Ericks absence. Okay, thank you. So, we now.

Ms. Wan: I'm sorry, I know you voted already but you forgot to call for discussion before the vote. I just.

Mr. Heintz: Oh, for Christ's sake.

Ms. Wan: I'm so sorry.

Mr. Heintz: I apologize for not calling for discussion. Are we through with this item now? Yes, Kelly.

Ms. Valenzuela: Just for discussion purposes, cause I notice that we're being filmed, or taking pictures of.

Mr. Heintz: Yes.

Ms. Valenzuela: No, we as commissioners sit here on a volunteer basis. We take time out of our day. We read all this stuff, we don't get paid, we do the best we can and, in my opinion, any time there's an ethical

violation, that's a serious matter, and I need to just make sure that I have all the information, not some of the information, not some of the public or maybe. You know, people from the public need to know way ahead of time so that they can testify, because we're here to serve the public whether you're a commissioner on a volunteer basis. This is in my opinion, or government worker. Right, you're paid by the taxpayers for government worker, and for in our case we're on a volunteer basis. We take time out of our day, take the day off, and we sit through these meetings. As a local girl wanting to serve my community, I just feel like, in order to best give everybody, the respect and honor that they deserve, I would feel much more comfortable having and making sure all the information is out there, everybody has enough time to do it, not just last minute stuff being slapped together. Number one, and then number two, having a full Ethics quorum. The amount of people that are supposed to be here. We have Ericks not here, and I've been missing. I've been in the hospital in the mainland and now we have a new member coming, so I think the best thing why I voted the way I just voted is because I want to be able to give fair share to both sides to hear everything, and a bunch of different views put together I think is the best outcome for the public. So, that's just my spiel.

Mr. Heintz: Thank you.

Ms. Wan: And just as a point of clarification, your comments are going to the motion of tabling this to the next meeting.

Ms. Valenzuela: Yes.

Mr. Heintz: I, I certainly believe that all the members agree with the sentiment that Kelly just expressed. I also would simply add that this item as been aired, and this information has been available, and on and agendaized since October. Thank you. Let's move to item number 2022-16. Are we okay to move that Sylvia?

Ms. Wan: I'm sorry, because we were out of, we, we kind of did things out of order, I think you need to just clarify that the votes are still unanimous after given the discussion.

Ms. Nakanishi: At what point do we recognize that Ms. Rohr, who's had her hand up?

Ms. Wan: My understanding procedurally is, we're not at a point to take any statements.

Mr. Heintz: That's right, and I don't see Ms. Rohr, for whatever reason. And in any case this motion fails, and we're moving on to the next item, the next item is petition 2022-16.

Ms. Short: Wait, Chair, I think the motion passes.

Ms. Wan: I'm sorry.

Ms. Short: To table to the February meeting. That motion passed.

Mr. Heintz: I'm sorry, that motion passed of course to table.

Ms. Wan: And we're just reconfirming that after the discussion, all the members are still voting in the same direction. I see a nodding of the head by Ms. Short. I'm seeing an affirmative by Mr. Heintz, a nodding of the head by Ms. Valenzuela, Ms. Nakanishi. Okay, everybody's in the affirmative. Thank you.

Mr. Heintz: We now move to petition 2022-16.

c. Petition 2022-16: Review of complaint regarding two Planning Department employees, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

Mr. Heintz: Okay.

Ms. Short: Chair, I just want to clarify, this is who we heard testimony regarding today, correct?

Mr. Heintz: Yes, the three members of the general public, and Sylvia, let's see to review. We heard this petition last meeting. We heard testimony from the petitioner. We heard testimony response from the respondent. We members asked questions of Ms. Rohr and Mr. Alex Roy and Ms. Jackson I believe. Petitioner and Two Respondents. And again, I guess it becomes to and at one point in the discussion, I believe it was Denise raised the point that, until we also could see the video of the meeting, that she didn't feel happy with voting and so we tabled until this meeting. Is this a fair description of where we are? Thank you.

Ms. Wan: There's just one other point. The Board exceeded their usual procedures and allowed rebuttal by the two petitioners. Once again so the petitioners got a total of a ten-minute time, ten minutes in order to speak to the Board. And so, to ensure fairness and due process, the two respondents should also be allowed the opportunity to speak as a rebuttal for an additional five minutes.

Mr. Heintz: I believe that that additional time was in response to questions from members of the Board. And I believe that Mr. Rohr, Roy at least indicated that he had no further comments to make.

Ms. Wan: No, no that was for.

Mr. Heintz: But I have no.

Ms. Wan: I'm sorry.

Mr. Heintz: I'm sorry, I'm speaking. I have no difficulty with allowing Mr. Roy, or Ms. Jackson, to make additional time, take additional time to comments. We are continuing are discussion at this point. Thank you.

Ms. Wan: No, I think you're, I'm thinking you're mixing up 2022-13 for 2022-16. I did provide an email to everyone just because the Board provided the petitioners specifically five-minute rebuttal. The Board would need to provide the respondents with the five-minute rebuttal and that was that was not done by the Board.

Ms. Short: Can I ask a question?

Mr. Heintz: Certainly.

Ms. Short: It was my understanding that we all said that we wanted to see this video of the meeting that day for the meeting that's in question. Where the laughter and those things occurred, I have yet to receive that video. I don't know what we need to do to ensure that everyone here on the Board of Ethics gets that video because to me that's the most imperative part of this, is seeing with our own eyes what happened at that meeting that day.

Ms. Wan: I will, just as a point of order note that that particular link to that video was in the petition. I also as the Boards Counsel, let the Board know and also provided an additional link to that particular video in a December 22 email.

Mr. Heintz: Okay, so not all members have seen the video. Is that correct?

Ms. Short: That is correct. I still.

Mr. Heintz: So, are members willing to proceed with one member, not having seen the video, or has Kelly and Denise seen the video?

Ms. Valenzuela: I did see it on the link that she sent me.

Mr. Heintz: Okay.

Ms. Nakanishi: I did see it, but I think she should see it.

Ms. Short: I just now saw it. Sorry, guys, I missed this one. It was the January third records at Hawai'i County. No. Hang on.

Mr. Heintz: You haven't seen that video?

Ms. Short: I'm still am not seeing it in my emails. So, if it could be resent to me, so I could watch it, I would feel way more comfortable with that.

Mr. Heintz: Okay, and I'm getting this the indication from all the members that we don't want to deal with this unless all members have seen the video and that includes Erick and the new member for next time. So, Sylvia, can we make sure that Erick and the new member also know to look at this video and review all this testimony. Otherwise, we're going to be right where we are continuing to table the topics like this. Which I mean, these people have been sitting, dealing with these issues since 2005 I think. In any case. So, if that's the case then, do we have a motion to table petition 2022-16 again?

Ms. Short: I'll motion to table 2022-16 until all Board of Ethics members are able to view the video of the meeting from that day.

Ms. Nakanishi: I'll second it.

Mr. Heintz: And Denise seconds. And is there any discussion? No further discussion indicated. Kelly, I'm sorry.

Ms. Valenzuela: I'm sorry, I just want to say that I think in fairness to our folks that are testifying, and they came before and here today again today, I think that all of us, everybody should see the video. And you know, make sure that we all see the information that's brought fourth, and then we take a vote then.

Mr. Heintz: Okay, any further discussion. Seeing none. All those in favor of the motion to table petition 2022-16 on review of a complaint regarding two planning department employees alleging violation of Section 2-83, please indicate by saying Aye, or raising your hand.

**Motion and Vote: Ms. Short motion to table until all Board of Ethics members can view the video; Ms. Nakanishi seconded the motion. All members voted aye (11:17 a.m.)**

Mr. Heintz: Okay, that'll be recorded that all four members present vote to table this motion, I mean petition. Thank you.

**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 (12:24 p.m.)**

Mr. Heintz: Let's, time is the clock is running so let's try and move to item #7A.

a. Continued review of the recommended changes from the Legislative Review Board regarding the Hawai'i County Code February 2022 Amendments.

Mr. Heintz: This is item #7A. And a just a general comment about how to proceed on this item. I think there to help us we have; we have a message from John Hendrix.

Ms. Wan: Yes.

Mr. Heintz: To Kelsie and it is and it lists and goes.

Ms. Wan: I'm sorry, Chair, Chair.

Mr. Heintz: Can I finish?

Ms. Wan: No, because I think you're, I think you're starting to step into some confidential area that it can only be heard in executive session. Because these are, there are attorney client communications. So, it will, if you're going to discuss it, we need to speak about it in executive session.

Mr. Heintz: So, item #7A should be in the executive session instead of out here in the general session.

Ms. Wan: Yes if you're going to discuss what was the comments that were provided, yes.

Mr. Heintz: Well, I don't see how we can do with this without doing that. So, let's move to executive session. Is there a motion, Kelly?

Ms. Valenzuela: No, I'm so sorry could I just take a one-minute break and I'll come right back.

Mr. Heintz: We will take a recess. How about that?

Ms. Short: Can I just remind; I will have to exit the meeting in ten minutes.

Mr. Heintz: Yeah, I understand that's why I was trying to move on. So, wait a minute.

Ms. Short: So sorry Kelly, I mean fifteen max.

Ms. Valenzuela: It's just a bathroom break.

Mr. Heintz: Go ahead. We will resume when Kelly returns.

Ms. Valenzuela: I'll be back in like two minutes.

Mr. Heintz: And we will resume in executive session.

Ms. Wan: Well, we would have to have a motion. We would have to have a motion and a vote to get into executive session. So. But we can take short recess.

Mr. Heintz: I'm moving into executive session. Do we have a second Kelly? Kelly is seconding. All those in favor say Aye.

**Motion and Vote: Mr. Heintz motion to go into executive session; Ms. Valenzuela and Ms. Short seconded the motion. All members voted aye. (11:20 a.m.)**

Mr. Heintz: We're in executive session. Unanimous. Executive session and we will resume soon as Kelly gets back, and I'm going to run as well.

Ms. Short: I need to, too. But I don't think I have time.

Ms. Wan: Ms. Short, can I just have a clarity as far as your understanding of the record? So, we entered into executive session and now we're taking a recess?

Ms. Short: We entered into a recess and then we're entering into executive session when we return from the recess, right?

Ms. Wan: I don't think that's, I don't think that's correct. I don't think that's procedurally correct.

Ms. Short: What did we do? I thought that's what happened. That we we're taking a recess and then going into executive session after.

Ms. Wan: Yeah, I don't think that's, I don't think that can happen. That's procedurally can't happen. So, I think we're in an executive session and then there's a recess while we're in executive session.

Ms. Short: Okay fair, call it.

Ms. Wan: I will sort it out later. Thank you.

Ms. Short: Yes, yeah absolutely. I have to pee too, but I don't think I can make it.

**RECESS (11:20 a.m. to 11:22 a.m.)**

Ms. Valenzuela: Sorry, thank you.

Ms. Short: Thanks Kelly.

Ms. Valenzuela: My surgery on the mainland was that was for my kidney. So, I drink a lot of water, and yeah.

Ms. Short: Makes sense. Makes sense.

Ms. Valenzuela: Can you guys see me?

Mr. Heintz: Kelly, I don't see Kelly or Denise.

Ms. Wan: No, I don't see Kelly or Denise either. So, are we back from recess yet, no?

Mr. Heintz: They returned. Soon as Denise returns, we will go to executive session.

Ms. Wan: I, I think technically we're already in executive session.

Ms. Valenzuela: Yes.

Mr. Heintz: Yes.

Ms. Short: And so, my understanding is procedurally we went into executive session, and then you called a recess.

Mr. Heintz: Yeah. The recess now is over, because everybody is and we are in executive session, and I'm saying we need two documents in front of ourselves.

**Motion and Vote: Mr. Heintz motion to end executive session for item 7A and move to go into regular session; Ms. Nakanishi seconded the motion. All members voted aye. (11:30 a.m.)**

Mr. Heintz: Goodbye Rachel, we are in general session.

Ms. Short: Thank you everyone.

Mr. Heintz: We got a.

Ms. Wan: No No, can you please hold on for just a few more.

Ms. Short: Okay.

Mr. Heintz: We're going to vote on, what? To table item #7A to the next meeting.

Ms. Short: I'll second that motion.

Mr. Heintz: Okay, and all those in favor please say Aye.

Ms. Wan: I'm sorry, discussion.

Ms. Short: Oh.

Mr. Heintz: Is there any discussion? None. Thank you very much. It's past and we now are in general session, and goodbye.

Ms. Wan: No, no I'm sorry, I'm sorry. There wasn't a vote.

Mr. Heintz: Oh, for God. I'm gone!

Ms. Short: Aye! Everyone, right?

Ms. Valenzuela: I make a motion to table it until the next meeting.

Ms. Short: I second that motion. All in favor.

Ms. Wan: Well before we say all in favor, you have to say discussion and then you can call the vote.

Ms. Short: Is there any discussion?

Ms. Valenzuela: No, I have no discussion.

Ms. Short: All in favor.

Ms. Wan: Denise?

Ms. Short: Do I need to motion to table the other, the following agenda items?

Ms. Wan: I'm sorry I didn't see Denise's vote.

Ms. Short: Oh, Denise, your vote. Okay.

**Motion and Vote: Ms. Valenzuela motion to table item 7A to next meeting; Ms. Short seconded the motion. All members voted aye. (11:31 a.m.)**

Ms. Short: Do I need to make a motion to table the other agenda items as well?

Ms. Wan: Yes.

Ms. Short: Okay I make a motion to table all following agenda items 7A, 8A, B, C, D, E, 9 announcements until our next meeting. Do I have a second for that motion. Or is there any discussion on that motion?

Ms. Wan: You need a second and then discussion.

Ms. Short: Is there a second to my motion to table all remaining agenda items? Denise second, any discussion?

Ms. Nakanishi: Yes, are these forms available at the Corp Counsel so we can go ahead and review them.

Ms. Wan: Yes, everything is available for you at Corp Counsel.

Ms. Short: And will we be in person for the next session?

Ms. Wan: Theoretically, I will have to get back to you, administratively.

Ms. Short: Okay. So, everyone in favor of tabling all remaining agenda items until our next meeting. Second?

Ms. Valenzuela: I second.

Ms. Short: All in favor. Any discussion? Okay.

**Motion and Vote: Ms. Short motion to table all following agenda items 7A, 8A, B, C, D, E, 9 announcements until the next meeting; Ms. Valenzuela seconded the motion. All members voted aye. (12:45 p.m.)**

Ms. Short: Can we adjourn at 11:33 a.m.?

**10. ADJOURNMENT (11:33 a.m.)**

Ms. Short: Thank you everyone for your understanding.

Ms. Wan: Thank you.

Ms. Valenzuela: Thank you. I do have a question just for the record, just because I don't know. So, why are we not meeting in person?

Ms. Wan: Um Kelly, you can give me a call offline and I can explain to you.

Ms. Valenzuela: Oh okay, alrighty.

Ms. Wan: Thank you.

Ms. Valenzuela: Thank you.

Respectfully submitted:

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Kelsie Chang, Secretary