

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

Wednesday, February 15, 2023

10:03 a.m. to 11:57 a.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

Members and Staff Present:

Rabbi Rachel Short, Chair

Erick Allende, Vice Chair

Christopher Ho, Member

Denise Nakanishi, Member

Sylvia Wan, Deputy Corporation Counsel

Kelsie Chang, Secretary

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

Ms. Wan called the meeting to order at 10:03 a.m. Present was Rabbi Rachel Short, Erick Allende, Christopher Ho, Sylvia Wan and Kelsie Chang. Denise Nakanishi was in attendance via Zoom.

2. NEW BUSINESS (10:03 a.m.) – Called out of order (#4a on agenda)

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

Ms. Wan: Due to the recent resignation of the Board of Ethics Chair, I will be acting chair to the extent of facilitating the board in electing its new chair and vice chair. To that end, I will be calling out of order, agenda item #4a. Which is the annual nominations of the chair and vice chair of the Board of Ethics. I will just not for the record there is a quorum present. I will now go ahead and open the floor for potential motions for nominations of chair and vice chair. Does anyone have a motion?

Ms. Short: I'll nominate myself for chair. Rabbi Rachel Short, I will nominate myself for chair.

Ms. Wan: The motion on the floor is from Ms. Rabbi Rachel Short, motion is to nominate Ms. Rabbi Rachel Short for chair. Is there a second?

Mr. Ho: Second.

Ms. Wan: I will note, second by Christopher Ho. Now opening up for discussion. Would anyone like to discuss?

Ms. Nakanishi: Um.

Ms. Wan: Recognizing Ms. Nakanishi on zoom.

Ms. Nakanishi: Yeah, so, Rabbi Short, I know you're new to this form, and I feel like I'm new and I, I don't know that I would be qualified. So, can you explain your qualifications.

Ms. Short: Oh, absolutely! I already share and run our nonprofit for meeting. So, I am familiar with Robert's Rules of Order, and I guess my desire to step up is more so that I don't see anyone else doing it, and we obviously need a chair. So, being already in a leadership role, and familiar with meetings such as this one, I feel confident to at least give it a shot.

Ms. Nakanishi: Thank you.

Ms. Wan: Is there any further discussion? Seeing none. Shall we call the call the question. Motion on the floor is to nominate Ms. Rabbi Rachel Short as chair. Shall we please call the vote.

Ms. Nakanishi: Do we have a second?

Ms. Wan: We did have a second. The second was..

Ms. Nakanishi: Oh, yeah, Erick, okay.

Ms. Wan: Mr. Ho, yes, we can go ahead and vote.

Motion and Vote: Ms. Wan motion to nominate Ms. Rabbi Rachel Short as chair for the Board of Ethics; Mr. Allende seconded. All members voted aye. (10:05 a.m.)

Ms. Wan: So, we have four ayes and 3 non votes and that we have an absence and two vacant seats. The motions passes, and Ms. Rabbi Rachel Short is chair. At this point in time, there is also the nomination of vice chair. Will there be any nominations, is there any motions regarding nominations for vice chair?

Ms. Nakanishi: I would like to nominate Erick if he'll do it.

Mr. Allende: Thank you, Denise.

Ms. Wan: There is a motion to nominate Erick Allende as vice chair. Is there a second to that motion?

Ms. Short: I will second that motion

Ms. Wan: Ms. Rabbi Rachel Short has seconded that motion.

Mr. Ho: Point of order, you need to accept.

Ms. Short: Oh, yeah.

Mr. Ho: You need to state that you accept.

Ms. Wan: I'm sorry, Mr. Allende, do you accept that nomination?

Mr. Allende: I accept the nomination.

Ms. Wan: Okay and so we have a second by Ms. Rabbi Rachel Short. It is now open for discussion. Is there any comments? Anyone like to make discussion? Ms. Rabbi Rachel Short your mic is on. Seeing no discussion, I'm going to call the motion to a vote. Please all say aye who are in favor.

Motion and Vote: Ms. Wan motion to nominate Erick Allende as vice chair for the Board of Ethics; Ms. Short seconded. All members voted aye. (10:07 a.m.)

Ms. Wan: It appears that it is unanimous. All four votes aye, three non-votes, one absent and two vacant seats. The motion passes, we currently have our chair as Ms. Rabbi Rachel Short and vice chair as Mr. Erick Allende. At this point, it appears that there needs to be little bit of reshuffling so that the chair may take over. Can I please have a motion for a short recess.

Mr. Ho: Moved to go into a two-minute recess.

Ms. Wan: Motion by Christopher Ho for a two-minute recess. Is there a second?

Mr. Allende: Seconded. I second it.

Ms. Wan: Erick Allende seconded the motion. Vote? All those in favor. And I see Ms. Denise Nakanishi raising her hand in affirmance. At this point, it passes. We'll enter a two-minute recess.

Motion and Vote: Mr. Ho moved to go into a two-minute recess; Mr. Allende seconded. All members voted aye. (10:08 a.m.)

****RECESS 10:08 a.m. – 10:10 a.m.****

Ms. Short: Aloha, everyone! Thank you for that brief recess. Just a reminder we are here for the Board of Ethics and under HRS 92-3 of the

Sunshine Law, the board may remove any person who willfully disrupts a meeting to prevent or compromise the conduct of that meeting. All persons appearing before the board, are reminded to conduct themselves in a courteous manner. At this time, I believe I'm going to defer to Sylvia for who we have here to testify. Oh, I gotta call the meeting back to order. Do we have to call back to order?

Ms. Wan: Yes, you do.

Ms. Short: Okay, sorry about that. So, we are now calling this meeting back to order.

Ms. Wan: And our chair is now...

Ms. Short: And our chair is now myself, Rabbi Rachel Short.

Ms. Wan: Thank you.

3. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:12 a.m. – 10:15 a.m.)

Ms. Short: So, we are called to order, and we are going to begin taking statements from the public in person, and by zoom. Just a reminder, each person will be given three minutes for each item on the agenda, subject to modification um, by myself. After your public testimony is concluded, please state my public testimony is now concluded, and at this time I'm going to refer to Sylvia who has the list and the sheets of who will be testifying before us today. Thank you.

Ms. Wan: First we have public testifier Mr. Lawrence Rose, who will appear on zoom. He is going to be testifying about petition 2023-01. Just a second while our clerk allows your mic to be unmuted.

Mr. Rose: Good morning!

Ms. Wan: Good morning, if you could please state your name for the record, you will have three minutes to testify. I will let you know when you have thirty seconds left. You may start at any time.

Mr. Rose: Thank you. My name is Lawrence Rose. I'm a resident of South Kona, Big Island. This testifying is regarding the petition mentioned, though I do not have a copy of that. My understanding is, it concerns the conflict of interest with our current county planning Director Zendo Kern, and I have a specific comment

about a project in my area. July 2022, I became aware of grubbing and grading activity in Opihihale, South Kona. It was visible from the highway, and I conducted a little due diligence with the county epic permitting system. Discovered there was a seven-acre grubbing and grading permit. The applicant was John Pepin of land planning Hawai'i, and then contacted land planning Hawai'i, spoke to John Pepin, and he volunteered that his company, of which he was a principal was the restructured Zendo Kern consulting. And he stated that there were firewalls in place to prevent any conflict of interest, but he would not specify with those firewalls were. Upon further research, I discovered from DCCA that Katrina Kern, immediate family member of Zendo Kern and John Pepin, who was Deputy Director under Zendo Kern and County Planning, were the principles of land planning Hawai'i and as applicant for this seven-acre grubbing and grading permit, we're stewarding it through the county planning process. There were a number of issues that came up almost immediately. It's a three hundred twenty-four-acre parcel. The website for the landowner states it will be a luxury housing, resort development with commercial aspects of a large resort hotel, for instance, and yet the county only had this seven-acre grubbing and grading permit, so that was of concern, and it appeared that as the applicant and planning Hawai'i might be conflicted because of John Pepin, Katrina Kern and of potential connection with Zendo Kern. Um, there, I supplied to Kelsie Chang a very quick attachment that it had to do with the DLNR commission on water resource management. The property owners had applied for several well applications...

Ms. Short: You have thirty seconds remaining.

Mr. Rose: And um, department of planning, of course, was one of the signoffs required with this permit, and it was signed off by employee of Zendo Kern. That's it.

Ms. Short: Thank you for your testimony.

Mr. Rose: You're Welcome.

Ms. Wan: Board, I will just note for the record that the two other submissions I received for public testimony are actually the petitioners for 2022-16 and 2022-13. I have just tried to inform the petitioners that because their petitioners, they are not, they cannot both stand as a petitioner and a member of the public on the same matter before the agenda. The petitioners have already submitted their input to this board on a prior hearing date, so that concludes their ability to provide input regarding those two petitions. So, I'm just

letting the board know that that. And at this point I have let the petitioner know that we will not be accepting public testimony on a matter in which she is the petitioner, as at that particular, for that particular petition, she's not a member of the public, she is the petitioner. So, at this point chair, I believe it is appropriate that we move on in the agenda.

Ms. Short: Knowing that your previous statements are on record, we have access to all those videos, and you have been heard. It sounds like we are gonna have to continue moving on merely because you guys are the petitioners at this moment, and not members of the public. But thank you for being here today, really appreciate it, and we have heard you. Ms. Rohr, we can't, we can't do that I'm sorry we have to keep moving.

Ms. Rohr: She did not send us the answer....

Mr. Ho: I would ask that Ms. Rohr either be removed or remain silent while she's in here.

Ms. Short: Did you hear the request Ms. Rohr? We would ask that you either dismiss yourself or remain silent to allow us to continue our meeting while you're in here. Thank you for your understanding. So, with that said, I believe that concludes our statements from the public, and we're now going to move on to the approval of the minutes from the last session. So, did all board members have a chance to review the session minutes of December 14, 2022? Is there anyone who has not had a chance to review?

4. APPROVAL OF THE REGULAR SESSION MINUTES

a. Approval of the regular session minutes of December 14, 2022

Mr. Ho: Hi! Christopher Ho, I have reviewed, Um I would like to submit an amendment before they are approved, for both, and I have page numbers to coincide with that.

Ms. Short: Would you like to Sylvia what those are?

Mr. Ho: I would love to.

Ms. Short: Wonderful, thank you!

Ms. Wan: Let's take them each in turn. So, if you can, let's please do a motion to amend for the first one in turn, which is December 14th.

Ms. Short: Okay.

Mr. Ho: So, moved to do December 14th. Approved. Sorry, let me start that over again. Christopher Ho, moved to approve regular session minutes for December 14th, 2022.

Ms. Short: So, wait, do you have an amendment or no?

Ms. Wan: With amendments?

Mr. Ho: With amendments but I need to move to approve it first and then get a second before I can go into....

Ms. Wan: That's fine

Mr. Ho: Making some amendments.

Ms. Wan: You can amend, once you're in discussion, that's correct.

Ms. Short: Okay, so, make your motion.

Mr. Ho: I did.

Ms. Short: Okay, someone will second?

Mr. Allende: Seconded.

Ms. Short: Okay. So, the minutes for December 14th, 2022, are approved given the proposed amendments.

Ms. Wan: So, open discussion. So, you have the motion now, you have the second, now open discussion.

Ms. Short: Oh. Is there any discussion on the approval of the minutes?

Mr. Ho: There is.

Ms. Short: Please.

Mr. Ho: Christopher Ho, I'd like to move to amend the minutes for December 14th page 24. Replace Ms. Heintz with Mr. Heintz.

Ms. Nakanishi: Christopher, is that all because there was a bunch of those.

Mr. Ho: I'm sorry, try that one more time.

Ms. Nakanishi: If you're done, then I have some others.

Mr. Ho: Yes, that was the one that I have for this particular one.

Ms. Nakanishi: Okay, page 9, there's a towards the top, there's something about practice and procedure room 9. I don't know what that's supposed to say but I know it's not room 9. And then below that this sounded like a funny joke to chair out. I don't know what that means, chair out. I don't know what that word supposed to be, and there below that, there's unsworn fault. It should be false statements. 2, 3 rows below that. And then page 10. No. Disregard that. Page 11 towards the top, it says, or about one third of the way down the last director. When I call my director Michael, that sentence is somehow not complete. I don't know what it's supposed to say. Got some others. I think the rest of them are typos.

Mr. Ho: Chair, do we have a second for the amendments?

Ms. Short: Does anyone want to second the amendments that have been proposed?

Mr. Allende: Seconded.

Ms. Nakanishi: I'm sorry, there is one more that's a little bit important. Page 16, it talks about the planning director, Chris Ewen, and his name is not Ewen it's Yuen.

Ms. Short: So, I believe...

Ms. Nakanishi: And then Jeff Darrow is referred to Jeff Barrow.

Ms. Short: So, I believe at this time we have a motion to approve the minutes from December 14, 2022. Give those amendments that have just been discussed. Any discussion? The motion passes.

Ms. Wan: Well no.

Ms. Short: So, I'll say I.

Ms. Wan: So, you close the discussion, then you call for a vote.

Ms. Short: Okay, so, at this time I would like to call for a vote if there is no discussion to be had. All in favor, say aye. All opposed say nay.

Motion and Vote: Mr. Ho moved to approve minutes from December 14, 2022, given those amendments that have been discussed; Mr. Allende seconded. All members voted aye. (10:23 a.m.)

b. Approval of the regular session minutes of January 11, 2023.

Ms. Short: The motion is so passes, wonderful. At this time, I would like to entertain a motion to approve the regular session minutes from January 11, 2023.

Mr. Ho: Christopher Ho, moved to approve the regular session minutes for January 11, 2023.

Ms. Short: Would anyone like to second that motion?

Ms. Nakanishi: I can second.

Ms. Short: Any discussion?

Mr. Ho: Yes.

Ms. Short: Please..

Mr. Ho: Um, Christopher Ho, I have some amendments to these minutes as well. Page 4, in the section where it's Mr. Heintz, Um yes member Short, sorry it's more grammatical the teacher in me, the S should be capitalized as this refers to a person.

Ms. Short: Thank you.

Mr. Ho: Page 6, in the motion that written motion to vote Ms. Valenzuela moved and insert the word to in-between moved to table. Page 11, this is more of a question. Well, I can't really ask the question in the middle of my amendment. The word choice with Ms. Wan, I will just note for the record that both of the parties had reclosed. I believe there's a different word for that.

Ms. Wan: That should be disclosed.

Mr. Ho: And then finally page 21, also Ms. Wan again, towards the bottom three from the bottom, I'm sorry because we 're out of we. I believe that's time looking at context clues.

Ms. Short: Any? Do I have any further discussion regarding the approval of the minutes from January 11, 2023? Are we ready to take a vote?

Ms. Wan: No, you need to do the second to the...

Ms. Short: Oh, who would like to second the motion to the amendments?

Mr. Allende: I'll second them.

Ms. Short: Thank you Erick.

Ms. Wan: Now discussion.

Ms. Short: Any further discussion to be had regarding those minutes?

Ms. Wan: The amendments.

Ms. Short: The amendments to those minutes excuse me. If there's no discussion to be had, I will go ahead and call for a vote. All those in favor say aye. All those opposed say nay.

Ms. Wan: Unanimous.

Motion and Vote: Mr. Ho moved to approve minutes from January 11, 2023, given those amendments that have been discussed; Mr. Allende seconded. All members voted aye. (10:27 a.m.)

Ms. Short: The motion passes unanimously, given those amendments those minutes are so approved. We are moving on.

5. NEW BUSINESS (10:27 a.m.)

- a. Petition 2023-01: Review of complaint regarding two Planning Department employees, alleging violation of Section 2-83 (Fair Treatment), and 2-84 (Conflicts of Interests) of the Ethics Code.

Ms. Short: The next order of business is Petition 2023-01 regarding two Planning Department employees, alleging violation of section 2-83 fair treatment, and 2-84 conflicts of interest of the Ethics Code. I believe at this time; we would open up to public testimony regarding this petition?

Ms. Wan: Yes, that is correct Chair. However, at this time, there are no other public testifiers signed up for this particular agenda item.

Ms. Short: Okay, so, at this time, I would ask our board if we have any questions for anyone present or we skip that.

Ms. Wan: Well, um, you can ask the board if they've received the petition and if they're in a position to consider it today.

Ms. Short: Okay. Has everyone on the board had a chance to receive and review petition 2023-01.

Ms. Wan: As well as the responses?

Ms. Short: As well as the responses? Has everyone watched all testimony if they were unable to attend those meetings?

Ms. Wan: This one is the very first time were hearing this one.

Ms. Short: Oh, this is the one we heard today. Is there any discussion to be had on this?

Ms. Rohr: Where is the copy for the public?

Ms. Chang: It hasn't been heard yet so....

Ms. Wan: Per rule it's confidential until it's heard.

Ms. Rohr: Put it over there.

Ms. Chang: It needs to be heard first.

Ms. Rohr: No, it doesn't.

Ms. Short: Ms. Rohr if you can't sit quietly to allow our meeting to continue, I will have to ask you to leave. Okay. Does our board have any questions have any discussion? Does someone want to make a motion for this? Please Erick.

Ms. Nakanishi: So, I do have a question. We're doing 2023-01, right?

Ms. Short: Correct.

Ms. Nakanishi: Um, so we have previously met and discussed and approved all the um procedures that are mentioned in this petition.

Ms. Wan: That is correct.

Ms. Short: That, that is correct.

Ms. Nakanishi: I see Mr. Van Pernis is on here. Is he going to comment or not time or?

Ms. Wan: It's so, it's up to you guys to decide if you want to have a hearing or entertain a motion at this point for good cause. So, it's up to you guys.

Ms. Short: So, Ms. Nakashimi. Um, it's my understanding that at this time, if we would like to have a hearing and hear from him again and continue our discussion, we can so choose to do so, if not, we will entertain a motion on this petition.

Ms. Nakanishi: Nakanishi.

Ms. Short: Nakanishi, sorry. Would we like to have a hearing on this petition? Would someone like to make a motion to handle this petition?

Mr. Ho: Chris Ho, I move to hear the petition.

Ms. Short: So, Mr. Van Pernis, are you still with us via zoom?

Mr. Ho: Sorry, point of order, we would need a second.

Ms. Short: Oh, yeah! Would someone like to second that motion to hear the petition? I will second that motion.

Ms. Wan: Okay, open for discussion.

Ms. Short: Is there any discussion on that motion?

Mr. Ho: I'll speak to my motion. I wanted to hear from the individual's reading documents is kind of two dimensional and until you can actually have the conversation and hear the statements from the individuals, you can't really gauge what is actually going on. So, that was the main rationale.

Ms. Nakanishi: So, my comment would be as presented, we've already...this questions have already been asked and answered by this body. I'm not sure what I would be interested to know what's different than what's already been decided other than that, I would have to say we need to dismiss it.

Mr. Ho: So, if I may um, I guess just some clarification as being the very very junior member of everyone present. This is a brand-new petition, is it brining in the exact same people, with the exact same issue in the exact, same problem as previously heard cause if it's not, it is a brand-new petition that deserves every respect and rate, that petitions should deserve.

Ms. Nakanishi: I think that was my question.

Ms. Wan: Deputy Corporation Counsel, Sylvia Wan, I'll speak to that particular issue. I will note in the respondent's response, they had referred to a specific order that was brought down by this particular body, and I was able to locate that order, however, that order was not attached to the information that was provided to the board. Facially, it does appear from the response that this issue may have already been decided, but I do understand that the Board currently doesn't have the old order in front of it. So, if the board would instead, you have basically a two different options at this point, you can hear from the parties today and move to continue to read that order which would make sense considering that the response is saying that this order was already, this particular issue was already decided in a previous order, so that's one or two, you can move to continue at this point, to get a copy of that order which I can provide as deputy, as your staff of this Board of Ethics and um, you can then decide this petition at the next meeting. It is really up to the board to decide how you would like to handle this particular matter.

Ms. Short: Yeah, I would um like to hear from the public testimony today and then also some motion to be sent that previous decision just so everyone is heard fair. So, that would be my desire, I'm not sure how the rest of the board feels about that.

Ms. Wan: And Deputy Corporation Counsel, Sylvia Wan, I will note that there is within the Board of Ethics rules, that the board can consider a depict a petition just based on the filings alone. However, I do understand um that the petitioner and one of the respondents is present today if you wanted to hear from them in person but, I will note that our rules does allow for this board to decide on filings alone.

Ms. Short: I would motion that we hear from the partitioner and the respondent today, as well as being sent the previous order to review since they're already here and I agree with your statement that a lot of times it's better to hear something than it is to read it. So, I personally would make that motion. If I have a second?

Mr. Ho: Point of order.

Ms. Wan: I'm sorry, point of order, I believe we already have a motion on the floor, which is to hear the testimony today, and I believe was there a second to that motion, cause in this discussion I have missed it.

So, if there isn't a second, I believe now would be a good time to have that second.

Ms. Short: Yeah, I will, I will second that motion.

Ms. Wan: Okay, you did. Oh, I'm sorry.

Ms. Short: No, I did.

Ms. Wan: Okay, so then there was the motion, there was a second, there was a lengthy discussion.

Ms. Short: Yes.

Ms. Wan: Now, it appears, if there's no more discussion...

Ms. Short: We'll hear public testimony.

Ms. Wan: Well, no, vote.

Mr. Ho: Vote.

Ms. Short: Oh, we will vote. Okay, so, the motion, is that we hear the petitioner and respondent speak today in addition to being sent, the previous documentation regarding...

Mr. Ho: Point of order. No, just the op, just to hear.

Ms. Short: Just to hear.

Mr. Ho: Correct.

Ms. Short: Okay. So, the motion is that we will hear from the petitioner and the respondent today. All in favor say aye. All opposed say nay.

Motion and Vote: Mr. Ho moved to hear the petitioner and respondent speak on behalf of petition 2023-01; Ms. Short seconded. All members voted aye. (10:36 a.m.)

Ms. Short: The motion so passes. At this time, we will hear from the petitioner and responder on petition 2023-01, who are present via zoom.

Mr. Ho: Point of order, I heard us say aye but I...

Ms. Short: She raised her hand.

Mr. Ho: Oh, okay sorry.

Ms. Short: Yeah, yeah.

Ms. Wan: Okay, so at this point, you can hear from the petitioner first, who is on zoom.

Ms. Short: Okay.

Ms. Wan: He will be given five minutes according to our general procedure. And I will just note for the record, that one of the respondents is not present today.

Ms. Short: Okay.

Ms. Wan: Only one is present and they're located in chambers.

Ms. Short: Okay. Um, Mr. Van Pernis, I hope I'm saying that correctly. Please correct me if I'm not.

Mr. Van Pernis: Can you hear me?

Ms. Short: Yes. Will you please state um the reason for your petition, state your name and testify. You'll have five minutes.

Mr. Van Pernis: I have submitted email writings, a total of um, four. [Inaudible...] Statements of the respondents, I would ask whether all of those statements are before you.

Ms. Short: Yes, they are.

Mr. Van Pernis: Alright, then, that basically my testimony, with the following exceptions, I reluctantly named Mr. Darrow as explained in my last [Inaudible...]. And petition, response with Mr. Kern, I'm not aware of that ruling that he's referring to in the informal advisory opinion. [Inaudible...] various cycle situations [Inaudible...] and refers to protocol, which I assume is a firewall agreement. I haven't seen that either, and then he says [Inaudible...] in compliance of that. Um, he....Okay but, the president shows that the this board has rule on was there the referral to his loyal staff is adequate, and he also says that he has disclosed [Inaudible...]. Mr. Rose for instance refers to a, some sort of a water well situation where Mr. Kern has [Inaudible...] for his family. My position is that there is inadequate consideration by this board of feature [Inaudible...] disclosure of all clients and potential clients as has to take place, and that the firewall agreement has to be in place if it's

appropriate at all. Each time, one of those conflicts *[Inaudible...]* it can't be no *[Inaudible...]* are possible. *[Inaudible...]* by the Corporation Counsel there's lots of person on this I think you've been misled in terms of the firewall agreement and that the failure to disclose and there's other disclosures, for instance, is that *[Inaudible...]* rose, which I was unaware of but, then shows existing conflicts. I think that future conflicts have to be disclosed *[Inaudible...]* and firewall agreement is written at that time independently. And uh *[Inaudible...]* has never taken place *[Inaudible...]* as the *[Inaudible...]* is not true. It's only *[Inaudible...]* cause according to *[Inaudible...]*. I bring this complaint on behalf of myself and others who are afraid *[Inaudible...]* from Mr. Kern. Thank you.

Ms. Short: Thank you for your testimony. At this time, I would like to invite the respondent up. Please, state your reason, your name and you have five minutes to testify. Thank you.

Mr. Darrow: Aloha Chair Short, and member of the Board of Ethics. My name is Jeff Darrow. I am currently the Deputy Planning Director for the County of Hawai'i Planning Department. Um, I've received the petition, naming me as a respondent in regards to what appears to be a conflict of interest or fair practice. Um, in December of 2020, just before our director was appointed, he has approached the Board of Ethics, and requested guidance on potential conflicts. The board had issued an advisory opinion. It was issued on June 14, 2021, and it gave guidance uh to the director, uh to myself as well as to our staff. Um, the majority of the order was good for one year. After one year, the director was able to work with clients that he had previously worked with as long as he was not involved in a specific project. Additionally, he was not to work with the company that um his sister currently is employed by which is land planning Hawai'i and referred to by Mr. Lawrence Rose. His name is John Pipen, and Katrina works with Mr. Pipen. Uh if I could correct the record, Mr. Rose had said that Mr. Pipen was, Zendo Kern's Deputy Director, that's incorrect. He's never worked with the county, he just took over Zendo's previous uh company, and changed the name to land, planning Hawai'i. Um, since then we have at the time that the director had submitted that he had submitted an extensive list of clients as well as projects to the Board of Ethics, as requested by them, and those have been um with our staff, and whenever any of those um now that the client list has uh passed one year, as long as the project uh is not part of a previous project that the director is working on, he can uh he can work on those but, anything that there is a conflict or an apparent conflict, it will come directly to me, and he is not involved in that

at all, and that includes any correspondence, any planning commission applications, any county council application, and that's the way we've been operating for the past two years. I think that's all I have to say. I would like to say that originally when I did receive the petition, um it mentioned that it named me as the respondent, I looked through all the material and I didn't see any reference to my name just basically the director and the entire staff. It was as if, the petition was stating that if the director has conflicted, the entire staff is conflicted and that would be extremely difficult if that was the position held by um the board and I don't believe that is. Uh, but at this point, um, I stand to answer any questions you may have.

Mr. Allende: Where is this property actually at, just because of the email we received, I'm just trying to figure out what the the um petitioners actually talking about.

Mr. Darrow: Is that the one reference as Kona three?

Mr. Allende: Yes, that'll be correct.

Mr. Darrow: This is an application that's before the planning commission at this time. Zendo Kern is conflicted, because that was his previous client as well as he worked, representing them on this project so, I have been completely working on that. Uh, we provided a recommendation to the planning commission, and it went to the planning commission for one hearing, and it's been deferred at the request for the applicants to um appear before the cultural resource commission as well as provide more information for that project.

Mr. Allende: Thank you for that. But I meant like the physical location of this property, that....

Mr. Darrow: It is um, in between, it is just next to Kona Vista subdivision. Um, let's see, um I mean it's in the heart of Kona but, it's up more Mauka above Queen K.

Mr. Allende: So, it's by Lako Street.

Mr. Darrow: Correct but, it would be a little bit north from there. So, it would be the adjoining two large parcels just to the north of Kona's Vistas, which is the residential subdivision to the north of Lako Street.

Mr. Allende: Okay, and yeah. And are you folks already building on that property?

Mr. Darrow: No, this is this is an application from Kona three LLC to the planning department to request. They're requesting a time extension on their rezoning ordinance which has previously lapsed, and so we um did our background and recommendation report, and provided that to the planning commission, and that's where it's currently at in the process. Once it's through the commission, it will be forwarded up to the planning um, I'm sorry, the Hawai'i County Council, with either a favorable or an unfavorable recommendation, and ultimately it will be their approval or denial.

Mr. Allende: Thank you very much. Um, the only reason why I ask is, I live in that area as well but, there's a structure already being framed on there. It looks like, and I'm just trying to figure out where it may be or is that an adjacent parcel.

Mr. Darrow: I believe that's an adjacent parcel just in the north of that. Oh, I could be wrong, it might be a part of a church that's being built in the area. I'm my understanding is there's no structures on this property.

Mr. Allende: That's just why I'm just checking to see what's what process.

Mr. Darrow: Thank you.

Ms. Short: Do any other board members have any questions for the parties, the petitioner, the respondent, either one while they're still present, please.

Mr. Ho: So, just so I'm fully clear with what was provided as well as your statements here, when it comes to conflicts of interest, with regards to Mr. Kern, everything that is surrounding that particular entity, goes directly to you with you having the final say, not having him have the final say.

Mr. Darrow: He would um, at this time, if it's just the entity and not a project that he's worked on in relation to that entity, he's of able, because that one year has passed, he's able to work on projects um related to that. This particular project, that Kona three LLC is conducting, he had worked on that previously so, he is completely conflicted. He doesn't, he doesn't uh doesn't get involved, we don't talk about it, he's completely separated from it. No material is forwarded to him on that.

Mr. Ho: Okay, so procedurally, um the box, box, sorry my bad. The buck would stop with you with regards to this particular instance.

Mr. Darrow: Correct.

Mr. Ho: Thank you.

Ms. Short: So, I just want to clarify that. You have the final decision-making power, in this right now, is that correct?

Mr. Darrow: Um if I could clarify....

Ms. Short: Please...

Mr. Darrow: Ask the planning director, or the deputy planning director or the director, we, um because this is not an administrative matter, it's actually a matter that goes before the commission and the council, all we are is a recommendation body, we recommend either approval or denial after we do a review.

Ms. Short: So, who is making that recommendation from your department?

Mr. Darrow: It would be myself.

Ms. Short: So, Mr. Kern is not a part of that recommendation at any capacity?

Mr. Darrow: Absolutely.

Ms. Short: Okay. Thank you for that clarification.

Mr. Darrow: Thank you.

Ms. Short: Do any other board members have any other questions for our petitioner, respondent that are here today?

Ms. Nakanishi: I think I'm probably, or maybe Kelly was also on the board at that time, but the list that Mr. Kern provided was really it was pages and pages. So, I just wanted to make sure you guys understood that he was not trying to pull back as far, I did I did recuse myself, but, as far as I can tell, he was providing everything.

Ms. Short: Do we have any further questions? Please.

Mr. Ho: Hi! Me again, junior member. What are our options counsel?

Ms. Wan: So....

Ms. Short: I believe at this time; we entertain a motion, correct?

Ms. Wan: Uh, deputy corporation counsel, Sylvia Wan, at this point in time it does appear that you have had input from your petitioner and your respondent. You've also had filings from your petitioners and your respondents. Um it does appear that there are no longer any questions before the parties at this time, or for the parties at this time. So, at this point it would be. It would behoove the board to make a motion on how to proceed with this particular petition. So, as I stated before, I will just note the record had mentioned that there was a previous informal advisory opinion for a previous petition 2020-08, according to the within the rules of the Board of Ethics, the board can instruct staff that being myself to provide you with that opinion if you think that would better inform your decision on this petition. You'll also have the ability pursuant to the rules to make a decision at this time if you feel so informed.

Ms. Short: Thank you for that Deputy Corp Counsel. Um, so it sounds like at this time we can either entertain a motion to move in some direction. We can decide what we want to do with this petition if we would like to table it until we receive the 2020 filings or we can make a motion to act on this now. I will now hear feedback from the board regarding this matter.

Ms. Nakanishi: I would like to move that it, this petition be dismissed because it falls under our previous ruling.

Mr. Ho: Second.

Ms. Nakanishi: Or advisory.

Mr. Ho: Chris Ho, second.

Ms. Short: Is there any discussion on that motion? I'm now going to call that motion for a vote. All in favor say aye. All opposed say nay.

Motion and Vote: Ms. Nakanishi moved to dismiss Petition 2023-01 because it falls under previous ruling; Mr. Ho seconded. All members voted aye. (10:53 a.m.)

Ms. Short: The motion so passes. Thank you so much for your time.

Mr. Darrow: Thank you.

Ms. Short: Both of you.

Ms. Wan: And the petition is dismissed.

Ms. Short: Uh, the petition is dismissed. Petition 2023-01 has officially been dismissed. At this time, I would request we take a short recess for a bathroom break if I could have a motion for that.

Mr. Ho: Moved to take a brief five-minute recess starting at 10:54 a.m. ending at 10:59 a.m.

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

Motion and Vote: Ms. Short moved to a five-minute recess; Mr. Ho seconded. All members voted aye. (10:54 a.m.)

Ms. Short: We are officially in recess; we will reconvene at 10:59 a.m. Thank you everyone.

RECESS (10:54 a.m. to 10:59 a.m.)

Ms. Short: Aloha everyone, Rabbi Rachel Short, recalling this meeting to order at 11:02 a.m. on Wednesday, February 15, let the record reflect that everyone on the board is present, minus those who are not present previously. Um, at this time, we are going to continue onto item #5A, under unfinished business, petition 2022-13. The continued review of complaint regarding a planning department employee alleging violation of section 2-83 (fair treatment) of the Ethics Code.

6. UNFINISHED BUSINESS (11:02 a.m.)

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

Ms. Short: At this time, I believe we can open it up for statements from the public.

Ms. Wan: Well, we've already done that. Um, chair, I will just note that on this particular petition 2022-13, um, the board has decided this particular petition. I do understand that it was continued to the agenda um, in error. I will note by Deputy Corporation Counsel's suggestion in error so, um if the chair would allow, I can explain what is the status of this petition at this point.

Ms. Short: Yes, please.

Ms. Wan: Okay, so at this point, um, I'm just going to reiterate for the record, this particular body the board has already entertained two different motions on this particular matter on January 11, 2023. The board

examined and weighed the record and filed and brought forward two motions. The first motion was by board member Denise Nakanishi, she moved to find that the record does not support a violation of the Hawai'i County Code fair treatment, section 2-83. For that particular matter, there were two votes in favor, two votes against, and three non-votes in that there was one absent and two vacant. Subsequent to that motion, since it failed, there was a motion um, to find that Alex Roy had violated the county code of ethics fair treatment, section 2-83. That particular motion there were two votes in favor, two votes against and three non-votes, one being absent and the other two vacant positions. That motion also failed for a lack of majority in support of the motion. Uh, due to a lack of majority of membership voting in the affirmative for a particular finding, and that being the only two possible findings for that particular position, as required by Hawaii County Code, section 13-4 (h) an informal advisory opinion cannot be rendered by this body and therefore, because there is a lack of finding, the petition 2022-13 is dismissed by procedure. Due to a lack of finding.

Ms. Short: Do we wanna have any discussion on that? But it sounds like it's already been dismissed.

Ms. Wan: It's it's done.

Motion and Vote: Ms. Wan dismissed petition 2022-13 by procedure due to lack of finding from January 11, 2023, meeting.

Ms. Short: Okay, so is everyone on the same page about that? That petition has been dismissed. We will now move on to unfinished business, item #5B.

b. Petition 2022-16: Continued review of a complaint regarding two Planning Department employees, alleging violation of Section 2-83 (fair treatment) of the Ethics Code.

Ms. Short: Petition 2022-16, this is a continued review of a complaint regarding two Planning Department employees, alleging violation of Section 2-83 (fair treatment) of the Ethics Code. At this time, do we open it up public testimony, is that correct? Or continue our discussion?

Ms. Wan: Well, the... There are no public testifiers currently registered for that particular petition.

Ms. Short: Okay.

Ms. Wan: I will note the only two members who had signed up were the petitioners for that petition who have already presented their testimony for this particular petition at a previous date, I believe it was the December's date.

Ms. Short: Okay. So, has everyone on the board because I know we have a new member, had a chance to review that testimony?

Mr. Ho: Chris Ho, the new member. I have. I've watched it at nauseum, backwards and forwards.

Ms. Short: So, at this time it sounds like we're ready to entertain a motion regarding petition 2022-16. Since all testimony has been heard, and all attachments have been reviewed. Would anyone like to make a motion regarding petition 2022-16?

Ms. Nakanishi: I can make a motion, but I would like to make a comment ahead of the motion if it's appropriate. Um, it seems to me there is a problem with this access issue, and it's been dragging on too long. Yeah, it doesn't seem like something that need to involve an ethics question. And I did review um the video several times. I don't agree with the assessment that there was any joke but, so I would like to move the petition be dismissed.

Mr. Ho: Chris Ho, um I, if I may um, procedurally, you cannot make a motion in the middle of discussion. Um, if you're the person discussing it. Um, so if you would like, I would be happy to make that motion for you, or someone else since I literally just started the conversation.

Ms. Short: I believe that will have discussion after a motion.

Mr. Ho: Right but if she stated a question during that time while she has the floor...

Ms. Short: Got it.

Mr. Ho: A motion by herself could not be made.

Ms. Short: Okay.

Ms. Nakanishi: Yeah, it my my my discussion was um just a side to because I'm concerned about the petitioners' rights and the public's rights. And it was just a comment on the side so. Had nothing to do with the petition.

Ms. Wan: I understand and and Mr. Ho is correct, there needs to be a motion first, which would need to be seconded and then the discussion can be open. Um, so at this point, I guess I'm gonna leave it to the Chair as far as calling for a motion.

Ms. Short: So, at this point, I will call for a motion if someone would like to make a motion regarding petition 2022-16.

Mr. Ho: Chris Ho, move for petition 2022-16 be, sorry I just had a brain fart.

Ms. Wan: Dismissed.

Mr. Ho: Dismissed, thank you.

Ms. Short: Do I hear a second for that motion?

Ms. Nakanishi: Can I second?

Ms. Short: Yes.

Ms. Nakanishi: I second.

Ms. Short: Thank you for your second. Is there any discussion to be had? With no discussion, were gonna go ahead and entertain the motion to dismiss petition 2022-16. All in favor say aye. Aye. All opposed say nay. Nay. At this time, I would just like to echo Denise's sentiments on the record to our petitioners who are here today that we do understand that there's an issue here, and that we want you to be advocated for but, unfortunately it just doesn't appear that it's an ethical issue. So, thank you for your time and your testimony.

Motion and Vote: Mr. Ho moved to dismiss petition 2022-16; Ms. Nakanishi seconded the motion. All members voted aye (11:09 a.m.)

Ms. Wan: I'm sorry.

Ms. Rohr: Did you say nay? Repeat what you said for my hearing.

Ms. Wan: Ms.

Ms. Short: The motion passed Ms. Rohr.

Ms. Rohr: I thought I...

Ms. Short: It's been dismissed.

Ms. Rohr: Heard you say nay....

Ms. Short: No, we all said aye.

Ms. Rohr: Oh, I'm sorry.

Ms. Short: Thank you for that. Um, at this time we're going to move on to #6, continued discussion regarding amendments to the rules of practice and procedure of the Board of Ethics in the Hawai'i County Charter and County Code, so we have the continued review of the recommended changes from the legislative review board regarding Hawai'i County Code February 2022 amendments. Has everyone present on the board had a chance to review that?

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 (11:10 a.m.)

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

Mr. Ho: Chris Ho, if I'm going to be honest, no.

Ms. Short: So, would you like to make a motion to table this till our next meeting till you have a chance to review?

Mr. Ho: I would so make that motion.

Ms. Short: Rabbi Rachel Short I will, we'll make the motion, and I'll second.

Ms. Wan: So, just for clarity of record, um, member Ho has made the motion to table item #6A to next month's meeting and it was seconded by Ms. Short.

Ms. Short: Correct. All in favor say aye.

Ms. Wan: Discussion.

Ms. Short: Oh, is there any discussion to be had?

Ms. Nakanishi: Um, can we ask questions at this point or we gotta wait till the next one?

Ms. Short: I believe we can....

Ms. Wan: The, the questions would have to be related to the motion which is currently on the floor which is to table this item to next month's meeting.

Ms. Nakanishi: Then no.

Ms. Short: So, any discussion?

Mr. Ho: No.

Ms. Short: If no discussion to be had, I will now call for a vote. All in favor say aye. All opposed say nay. Nay. Oop, nay. I don't know why I said nay, sorry. I mean aye.

Ms. Wan: So, there's unanimous....

Ms. Short: Yes, unanimous vote.

Ms. Wan: In favor and no nays.

Ms. Short: No nays. Unanimous vote that we will table item #6A till next month's agenda following everyone's review.

Motion and Vote: Mr. Ho motion to table this to next month's meeting; Ms. Short seconded the motion. All members voted aye. (11:11 a.m.)

Ms. Short: I will now go ahead and move us into executive session I believe.

Ms. Wan: Motion for executive session.

Ms. Short: Can I have a motion to still move our board into executive session?

Mr. Ho: Chris Ho, moved to go into executive session at 11:12.

Ms. Nakanishi: I second.

Ms. Wan: I, I'm sorry, uh the motion would need to state the reason for going into executive session, which I believe in this instance, it's for the determination and consideration of confidential information.

Mr. Ho: I will rephrase my motion. Chris Ho, moved to enter into executive session for the purposes of minutes, and as well as confidential financial disclosure forms that have been submitted for review.

Ms. Short: Do we have a second?

Ms. Nakanishi: I second.

Ms. Short: Okay, any discussion?

Mr. Ho: Point of clarification Counsel, do I also need to include the gift disclosures? Cause that's also within that, is that considered part of....

Ms. Wan: You can just say the entirety of agenda item #7.

Mr. Ho: Okay, if anyone is in opposition to me, just having that statement that was just shared, to kind of....

Ms. Wan: Amend your motion.

Mr. Ho: Thank you.

Ms. Short: Any discussion? With that said, I will entertain a vote. All in favor say aye. All opposed say nay. At 11:13 a.m. the Board of Ethics is now moving into executive session due to reviewing confidential matters.

Motion and Vote: Mr. Ho moved to enter executive session for the purposed of minutes, and as well as confidential financial disclosure forms that have been submitted for review; Ms. Nakanishi seconded the motion. All members voted aye. (11:13 a.m.)

8. EXECUTIVE SESSION (11:13 a.m.)

Ms. Wan: Okay. And just give us a moment so we can physically transition into executive session, thank you.

Ms. Short: Yup. We'll take a short recess for two minutes until 11:16 a.m.

RECESS (11:14 a.m. to 11:16 a.m.)

- a. Review of the executive session minutes of December 14, 2022.
- b. Review of the executive session minutes of January 11, 2023.
- c. Review of Confidential Financial Disclosure Forms filed pursuant to Section 2-91.1(d), Hawai'i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.

- d. Continued review of Confidential Financial Disclosure Forms filed pursuant to Section 2-91.1(d), Hawai'i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.
- e. Continued review of Gift Disclosures filed pursuant to Section 2-91.5(a), by County board and commission members and designated County employees, where personal matters will be reviewed.

Motion and Vote: Mr. Ho moved to leave executive session. Mr. Allende seconded the motion. All members voted aye. (11:55 a.m.)

Ms. Short: Um, first item on the agenda back in regular session is the approval of the executive session minutes from December 14, 2022. Do I have any discussion or amendments or a motion to approval those minutes.

Mr. Ho: Moved to approve the minutes from executive session uh, December 14, 2022.

Ms. Short: Do I have a second for that motion? I will second that motion. Any discussion? All in favor say aye. All opposed say nay. The motion so passes.

Motion and Vote: Mr. Ho motion to approve the executive session minutes of December 14, 2022. Ms. Short seconded the motion. All members voted aye. (11:56 a.m.)

Ms. Short: Next item on the agenda is the approval of the executive session minutes from January 11, 2023.

Mr. Ho: I move to approve the executive session minutes for January 11, 2023.

Ms. Short: Thank you, do I have a second?

Ms. Nakanishi: I second.

Ms. Short: Thank you. Any discussion? All in favor say aye. All opposed say nay. The motion so passes and the executive session minutes from January 11, 2023, are approved.

Motion and Vote: Mr. Ho motion to approve the executive session minutes of January 11, 2023. Ms. Nakanishi seconded the motion. All members voted aye. (11:56 a.m.)

Ms. Short: Moving on, to our final agenda item uh announcements #8A.

9. ANNOUNCEMENTS (11:56 a.m.)

- a. The next monthly meeting of the Board of Ethics is scheduled for Wednesday, March 15, 2023 at 10:00 a.m. at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720.

Ms. Short: Our next monthly meeting of the Board of Ethics will be Wednesday, March 15th at 10:00 a.m. here in the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i. At this time, I will conclude our meeting.

Ms. Wan: Uh, adjourn.

Ms. Short: Oh, may I have a motion to adjourn?

Mr. Ho: Moved to adjourn.

Ms. Short: Do I have a second?

Ms. Nakanishi: I second.

Ms. Short: Second, so we are adjourned at 11:57 a.m.

Mr. Ho: Vote.

Ms. Wan: You just, you need the vote.

Ms. Short: Oop, sorry, any discussion?

Ms. Wan: No, no discussion on adjournment, just a vote.

Ms. Short: No discussion, let's vote. All in favor say aye. All opposed say nay.

Ms. Short: We are so adjourned at 11:57 a.m. Wednesday, February 15, 2023. Thank you all very much for your time.

10. ADJOURNMENT (11:57 a.m.)

Respectfully submitted:

Kelsie Chang, Secretary