

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

Wednesday, March 15, 2023

10:01 a.m. to 1:59 p.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

Members and Staff Present:

Rachel Short, Chair

Erick Allende, Vice Chair

Kelly Valenzuela, Member

Denise Nakanishi, Member

Sylvia Wan, Deputy Corporation Counsel

Kelsie Chang, Secretary

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

Ms. Short called the meeting to order at 10:01 a.m. Present were Rachel Short, Erick Allende, Denise Nakanishi, Kelly Valenzuela, Sylvia Wan and Kelsie Chang.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:02 a.m. – 10:02 a.m.)

Ms. Wan: Uh, Chair, this is Deputy Corporation Counsel Sylvia Wan, there are no members of the public that are currently registered to testify.

Ms. Short: Perfect. Thank you so much. Then, we will move onto our next agenda item which is the approval of our regular session minutes from February 15, 2023.

3. APPROVAL OF THE REGULAR SESSION MINUTES

a. Approval of the regular session minutes of February 15, 2023.

Ms. Short: Did everyone have a chance to review those meeting minutes? Does anyone have any proposed changes or amendments?

Ms. Valenzuela: No, I don't.

Mr. Allende: Nope.

Ms. Short: Would someone like to make a motion to approve the minutes from our February 15, 2023, meeting?

Ms. Valenzuela: I make a motion, to approve minutes.

Ms. Nakanishi: I second.

Ms. Short: Is there any discussion on that motion? Motion passes, all in favor say aye.

Ms. Wan: Wait. I'm sorry.

Ms. Short: Wait. Backup.

Ms. Wan: Backup, um, before you say it passes, you gotta ask for the vote.

Ms. Short: All in favor say aye. All opposed say nay. The motion passes. Caught myself there. Okay.

Motion and Vote: Ms. Valenzuela moved to approve minutes from February 15, 2023; Ms. Nakanishi seconded. All members voted aye. (10:03 a.m.)

Ms. Short: Moving onto New Business. We have petition 2023-03, the review of a Petition from a County Official seeking clearance and guidance regarding a potential conflict of interest.

4. NEW BUSINESS (10:04 a.m.)

a. Petition 2023-03: Review of a Petition from a County Official seeking clearance and guidance regarding a potential conflict of interest.

Ms. Short: Are there any statements from the public in regards to this specific petition.

Mr. Nelson: Well, that's me, I'm the guy who put the petition in.

Ms. Short: Come on up.

Mr. Nelson: Okay.

Ms. Wan: Um, I'm sorry. Just for clarity of record, there are no public statements. However, if the board would like to move on, the board can move on.

Ms. Short: Wait, say that again Sylvia.

Ms. Wan: Um, before every agenda item, uh the chair should ask if there are public statements from the public, I'll just note there are no...

Ms. Short: Okay. So, we can...is every....are there any statements from the public? Is everyone ready to move on to our first petition? Okay. Kosher. So, if you would please come forward, identify yourself, state your name, you'll have five minutes.

Mr. Nelson: Okay. So, uh my name is Sam Nelson, I'm uh newly appointed member of the salary commission. Um, the salary commission sets the salaries for a number of the department heads, and so in my full-time job, I'm a, I'm a, I'm the regional compliance and contracts officer for Hilo Medical Center. I have a relationship you know, interact with one of the department heads that I would need to set the salary for. So, uh, because of that, you know I do have that relationship, I wanted to know kinda flag that, bring that up to the board uh and and kinda talk through you know what's...what's the proper relationship for that. Do I need to recuse myself from talking about salary with that individual or the group or you know how kinda best to mitigate that okay. I...I think it's a defuse enough that...that there's probably no real conflict but, you know I want to bring it to the board and bring it up. Um, so, in my role I guess that the conflict is, in my role as the...uh uh a compliance and contracts officer, I have a, I report to the CEO of Hilo Medical Center and I also report to the...the board, the regional board. Okay, one of the department heads, is a member, it's a volunteer position for that, is a...is a...is a member of that board, so, nominally I kinda work through a number for fourteen people. I work...I worked through the board. Okay. Um, and then occasionally, also, you know I am...I'm in a contracts...we have to get contract approval to issue contracts by the hospital for various works goes through the finance committee and uh so the...the finance...you know...your finance uh officer here is the head of the finance committee that reviews and approves some of these large value contracts that we...that we...that we issue uh for work at the hospital. Um, you know, my direct supervisor is the CEO. I don't work directly for the board and basically if there was any kind of uh you know salary compensation changes for me, in particular, it would come through the CEO not necessarily through the board. Okay. So, I mean it's like I say, it's a fairly defuse arrangement but, it you know, it is there. I...I do think that I could be objective okay. I mean in my current job, I set salaries for you know, I have to review and approve salaries for physicians and a number of different people and issue the contracts and...and kind of work through that. Um, so, you know I've got...I've got of experience and background with that, and I think it can be impartial but, you know it is there so I'm bringing that up. Okay.

Ms. Short: Thank you for your testimony, well under five minutes.

Mr. Nelson: Okay.

Ms. Short: Does the board have any questions for the party at this time?

Ms. Wan: I'll just note uh for the board that you may want to consider questions to flush out the facts of the nature of the relationship to better understand where a conflict may or may not lie.

Ms. Nakanishi: Uh yeah, can you restate how that relationship is because it's kind of confusing.

Mr. Nelson: It is a little confusing...Okay. But I...So, I will...so, basically, I will...I work directly for the CEO of...of the region, East Hawaii region. But then he's the CEO, he works for...and and I actually have a direct reporting relationship to, on a part time basis to the board, the regional board. Alright and so, because I'm the compliance officer, so I have to, you know, I have to basically, I manage compliance plan for the board, and I report to them. So, I basically have direct access to them but there not necessarily, I mean that why like I say, it's a fairly diffuse relationship, there's fourteen of um and uh, and and...they will give guidance to uh you know for compliance issues. I can ask them for resources, uh and uh you know, if they...if they felt that I was not doing my job properly or if there was some change that needed to be done, you know, they would...they would let me know and they would actually ask my boss to...to let me know.

Ms. Short: So clarifying question, you are in a position of power if you will or making authoritative decisions on behalf of this person, is that accurate?

Mr. Nelson: No, I...I..I that person would have an authoritative position over me okay. That's...that's what I'm saying.

Ms. Short: Okay.

Mr. Nelson: Okay. Yeah, so they basically can provide input you know for...I...I...if...if I want to issue a contract, I mean there's a variety of different people that do it. But, if were issuing a contract and the value is over two million dollars, we would have to get regional board approval. So, in order to do that, I would kinda run it through. We'd then run it through the finance committee of the board and then we would say okay, will you approve that? So, Deanna Sako, the you know the finance person

here, she's in charge of that board. Alright, so we would need to kinda show her and say okay we want to issue this contract to so and so, here's why, you know, are you okay with moving that on to the full board? And then, the full board would would kinda approve that or not approve it depending on how they wanted to do it. Um.

Ms. Short: So, what would you say the nature of the relationship is?

Mr. Nelson: Uh, it's...it's...it's um it's a guidance relationship okay. Uh, they would provide guidance uh, it's not a direct supervision, it's an indirect supervisory position I guess that's...that's...that's how I would characterize it okay. Because it is a position of authority over me, okay but, it's not a direct, I don't have a direct, it's not a direct supervision.

Mr. Allende: So, just so you know make sure, I'm on the same page with you. This person that you would be on the commission with, is somebody you would have the ability to help set their salary with?

Mr. Nelson: So, I mean that's basically. No, I would be...So, basically so Dee...you know the finance...I gotta go and get approval from the finance committee and the board for different things or whatever. So, they basically sorta working for them. Okay.

Mr. Allende: Right.

Mr. Nelson: And then I would be setting that person's salary because she...it's a volunteer position for her part okay and uh, so she's...but...but...but I would be you know one of...one of the department heads. You know, I would need to set...set that salary you know, I'm looking at as part of the commission, it's not myself, it's the whole...the whole...group, the whole commission would have to be doing it but, I would be weighing in and uh and so...you know, I could say okay I want to recuse myself, we're going to discuss about her salary, in particular I would say...okay, I...I...don't, I can't deal with that salary directly.

Mr. Allende: Right.

Mr. Nelson: Okay, I can look at all the rest of um. I can look at the general...there's a general increase or whatever. You know that would be...that would be acceptable.

Ms. Nakanishi: Do you feel that you can provide input to her salary without bias?

Mr. Nelson: I...I believe so. Because I mean, the way that...the way that I and then when I approach this to...to...to go onto the salary commission, I say okay...cause basically what we do, you get salary surveys, you look at the data, you kinda compare you know what...what the person's role is verses what...what...what the averages are, what the market rates are. It doesn't, you know...it's not...it's looking at the data, it's not necessarily looking at the individual. Uh, and it's for all...I think for all the department heads it's the same thing, you know.

Ms. Nakanishi: So, it's an objective.

Mr. Nelson: Yeah, to be objective. Based on the data, not based on the position.

Mr. Allende: And then....So, then that way, it's not just you who's the one who's going to be coming up with the number that that person would be paying.

Mr. Nelson: It's not just me, it's the whole commission.

Mr. Allende: It's the whole...yeah.

Mr. Nelson: There's a whole group.

Mr. Allende: That's all...that's why I wanted to make sure. So, when you said you can recuse yourself, it's not just you know weighed upon you and it has to prolong that process. It's something that would be able to be done without you having an input if it needed to be your...you know that was the outcome of it.

Mr. Nelson: That's correct.

Ms. Wan: Um, Deputy Corporation Counsel Sylvia Wan, just for point of clarification, so, what you are suggesting is two-fold. You're saying that if there's a specific discussion regarding Mrs...uh the finance director in the uh specific sense, that you would be willing to recuse yourself if it's regarding a specific conversation regarding her salary and that, in the general sense, um, because it would be general and be applying to all of the directors and administrators, that you felt comfortable in not recusing yourself in a general sense, is that correct? Is that what you're proposing?

Mr. Nelson: That's...that's correct, okay.

Ms. Wan: Okay.

Ms. Short: Thank you.

Mr. Nelson: Okay.

Ms. Short: Does the board have any further questions?

Mr. Allende: None for me.

Ms. Short: Do we wanna have a discussion, make a motion? Kelly please.

Ms. Valenzuela: Real quick question, how often do you think you review contracts of two million and higher in a year?

Mr. Nelson: It's...it's not that...it's not that often. I mean it might be three or four, probably. I mean there's not that many but, you know it's a big one I mean if we're going to do an expansion project or something, uh but, usually if we're going to do an expansion project, there's a lot of...we put it out to bid, we go through the whole process, so it's not...but but yeah...it does happen, like three or four times probably.

Ms. Valenzuela: Okay, thank you.

Ms. Short: Any discussion?

Ms. Valenzuela: No, I'm fine.

Ms. Short: Anyone want to make a motion?

Mr. Allende: Um, let's see. So, I'd make a motion that the...we as a board we don't find any conflict with um you being a part of that salary review process as long as it isn't you on your own, which it's not um, to be involved in that process.

Ms. Short: I would amend that motion to add that you do recuse yourself where you feel called and then where you stated because to me that would make the most sense from an ethical standpoint as you stated. Where you're present for everything else but when that specific person comes up for discussion, that you do recuse yourself. I don't know if the board would be in agreement on that.

Ms. Wan: Um, I'm sorry, I think uh, so were gonna start first with...with Erick Allende's motion initially, we have to wait for a second, there can be discussion in which you can provide your discussion and then if um, you can pose to amend and...and Erick would have

to adopt that amendment. Okay. So, I...I would say that the amendment is not appropriate at this time.

Ms. Short: Got it.

Ms. Nakanishi: Erick, can you restate your...re...repeat your motion.

Ms. Short: Repeat your motion please Erick.

Mr. Allende: Um, yeah. I moved that it wouldn't be a conflict of interest as long as there was more parties involved than just himself involved in those discussions.

Ms. Short: Do I have a second on that motion?

Ms. Valenzuela: I do. I second it.

Motion and Vote: Mr. Allende motioned that it wouldn't be a conflict of interest if there were more parties involved in the discussion; Ms. Valenzuela seconded.

Ms. Short: Do we have a discussion regarding that motion?

Ms. Wan: I believe at this time now you can make your comments.

Ms. Short: Yeah. So, this is where I would just like to clarify that...that does include as you mentioned in here, recusing yourself just during that...when that one person's salary is being discussed. Would the board be in agreement with that?

Mr. Allende: So, I would then amend my um motion to...that's it's not a conflict of interest as long as he recuses himself while the discussion of that particular person's salary comes up for discussion.

Ms. Wan: Specifically.

Mr. Allende: Yes.

Ms. Wan: Okay.

Ms. Short: So, the motion on the floor is....Erick will you....

Ms. Wan: Well, uh, he...I think the amendment needs a second.

Ms. Short: Oh, someone want to second that amendment?

Ms. Valenzuela: I second it.

Ms. Wan: Now, there's a discussion on the amendment.

Ms. Short: Any discussion on the amendment?

Ms. Valenzuela: No.

Mr. Allende: None.

Ms. Short: So, at this time Erick, would you mind restating that motion?

Ms. Wan: So...so, I'm sorry....

Ms. Short: The motion on the floor is...

Ms. Wan: No, so, uh, we gotta vote on the amendment.

Ms. Short: Okay.

Ms. Wan: Then the larger motion would be what it is.

Ms. Short: Then we'll vote on that one.

Ms. Wan: And then you can go back.

Ms. Short: Got it. Okay, so....

Ms. Nakanishi: I...There is sorry...more...it's just as long she is in that dual role. Because she may leave.

Ms. Short: Yeah....

Ms. Nakanishi: You know...

Ms. Short: Yeah....that's a great point.

Ms. Valenzuela: That's a good point.

Ms. Short: That's a very good point. So, would you like to make a new motion to amend the previous two motions of that?

Ms. Wan: Um, I think...I think that's just clarification in discussion.

Ms. Short: Okay.

Ms. Wan: Um because that is discussion, but still, it's discussion towards the same point.

Ms. Short: Okay.

Ms. Wan: So, I think it's just um, if the board is okay with it, I will just add that discussion point as further basis for this amendment.

Ms. Short: Okay, so at this time....

Ms. Wan: Vote on the amendment.

Ms. Short: Were going to vote on the amendment to that motion.

Ms. Valenzuela: I make a motion to vote on this...

Ms. Wan: So, you're calling the question?

Ms. Short: I move to...

Ms. Valenzuela: I move to make a motion to vote yes or on behalf of..

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

Ms. Valenzuela: This first amendment

Ms. Wan: Yes, so the first amendment has been called so now it's a matter of all members saying aye.

Ms. Short: All members in favor of that amended motion say aye. All opposed say nay.

Ms. Wan: Okay so then the...

Motion and Vote: Mr. Allende moved to amend the previous motion and find no conflict of interest as long as Samuel Nelson recuses himself while the discussion of that particular person's salary comes up for discussion as long as she's in that dual role; Ms. Valenzuela seconded. All members voted aye. (10:19 a.m.)

Ms. Short: The amended motion passes.

Ms. Wan: The motion has been amended.

Ms. Short: The motion has been amended.

Ms. Wan: Yes, so the, now the motion on the floor is....

Ms. Short: Okay. So, the motion on the floor is.

Ms. Wan: There is no conflict.

Ms. Short: There is no conflict.

Ms. Wan: Where Samuel Nelson.

Ms. Short: Where Samuel Nelson.

Ms. Wan: Is not a part of the salary view of...um, of Ms. Deeana by himself.

Ms. Short: Is not a part of. Wait say that one more time.

Ms. Wan: So, I'm sorry, I think I'm miss saying. Erick, do you feel comfortable restating your motion with the amendment?

Ms. Short: The motion on the floor is....Take it away Erick.

Mr. Allende: The motion on the floor is that there is no conflict of interest as long as...Sorry...

Ms. Short: Samuel Nelson.

Mr. Allende: Samuel Nelson is not the only one in discussion um with the...

Ms. Wan: Salary commission generally.

Mr. Allende: No, just with...

Ms. Wan: And then....

Mr. Allende: Yes, the salary commission generally um, in regards to...

Ms. Wan: Deeana specifically.

Mr. Allende: Deeana specifically salary. So he wouldn't be a part of the salary discussion about her salary by himself, he would essentially recuse himself and then that way the discussion would continue.

Ms. Wan: And that's as long as Deeana remains in her position...

Mr. Allende: With the dual roles.

Ms. Wan: Yes.

Ms. Short: At this time, were ready to call for a vote. All in favor say aye. All opposed say nay. The motion passes. Thank you very much for your time. Appreciate you doing that, bringing that forward.

Motion and Vote: Mr. Allende motion to find no conflict of interest as long as Samuel Nelson recuses himself while the discussion of that particular person’s salary comes up for discussion as long as she’s in that dual role. All members voted aye. (10:20 a.m.)

Ms. Valenzuela: Thank you.

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

- a. Petition 2023-01: Review draft order dismissing a petition 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: Um, so at this time we’re going to move on to petition 2023-01 review draft order dismissing a petition complaint regarding two Planning Department employees, alleging violation of Section 2-83 and 2-84. At this time, is there any public testimony regarding this petition.

Ms. Wan: Uh, Chair, Deputy Corporation Counsel Sylvia Wan, there is no public testimony at this time.

Ms. Short: Thank you. So, at this time, would someone like to make a motion regarding this petition.

Ms. Wan: I’m sorry, um Chair, were... this is the draft order dismissing the petition, so this draft was provided to the board to review.

Ms. Short: So, we just need to review the draft. Correct. Has everyone had a chance to do that?

Mr. Allende: Yes.

Ms. Nakanishi: I move to accept the draft as presented.

Ms. Valenzuela: I second it.

Ms. Short: All in favor. All opposed. Nay. I didn’t say nay, sorry, I was meaning say nay. All in favor say aye. All opposed say...

Motion and Vote: Ms. Nakanishi moved to approve order dismissing petition 2023-01; Ms. Valenzuela seconded the motion. All members voted aye (a.m.)

Ms. Wan: Uh yeah, so you can just say um, all in favor and...

Ms. Short: Okay.

Ms. Wan: Let the voices speak and then you can say all opposed...

Ms. Short: Perfect.

Ms. Wan: If there's no voices there's no voices.

Ms. Short: Okay, it appears we are unanimous. Petition 2023-01 the review draft order passes.

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

Ms. Short: At this time, we're going to move on to petition 2022-16, it has been brought to the attention of the board of ethics that we have to go back and readdress this so we want to be sure that we can do that. Please note for the record, it has come to the attention of the board that the petitioners for this petition, Ms. Claudia Rohr and Mr. Jaerick Medeiros-Garcia, I hope I said that correctly, uh did not receive the written response respondent Maija Jackson prior to providing their verbal statement at the December 14th, 2022, meeting. To correct this error, the board will allow Ms. Rohr and Mr. Medeiros-Garcia to address the board in regards to the respondent Maija Jackson's written response. At this time, will the petitioners please come to the table and identify themselves.

Ms. Wan: If the board can allow us a moment. There we go.

Ms. Short: Ms. Rohr, can you hear us?

Ms. Rohr: Yes, I can.

Ms. Short: Wonderful.

Ms. Rohr: Can you hear me?

Ms. Short: Yes, thank you.

Ms. Rohr: Okay.

Ms. Short: At this time, would one of you like to address the board in regards to this? Okay. Ms. Rohr, would you like to address the board in

response to...in regards to respondent Maija Jackson's written petition 2022-16?

Ms. Rohr: Yes, but before you time my response, please remember, I sent in an ADA request asking that you repeat all your motions before you vote and then the results and I noticed today that you corrected yourself Chair when you said nay and then you said oh, I shouldn't say nay. Cause I misunderstood that last time because of my hearing disability so, I...I'm asking everyone to please be clear and make simple motions.

Ms. Short: Absolutely Ms. Rohr.

Ms. Rohr: Thank you.

Ms. Short: Thank you for sharing that.

Ms. Rohr: Okay.

Ms. Short: So, at this time we will allow you five minutes. State your name and begin your testimony.

Ms. Rohr: My name is Claudia Rohr, I'm one of the petitioners. Um, I did send in three emails today with the response to Maija Jackson's written response. The board needs to establish some basic facts prior to their decision. Whether Maija Jackson and Alex Roy treated the petitioners unfairly and with bias by affirmatively misrepresenting the facts when they could have said nothing, and not undermine the testifiers. The attached email shows that they did. And then I sent the attachments to the email and the attachment, the email is dated May 5th, 2022, but May 6th. Aloha, attached is the record recorded survey showing the grant of the thirty-foot-wide vehicular access easements 7A and 7B and the parking easement P18 near iron post, highlighted in red. This survey map is found at digital page 69 of the attached combined 2011 recorded easement documents. I have also segregated out the legal description for easement 7-A and 7B. There is no excuse for staff to fame, confusion. The grants of easements are perfectly clear. So, I am asking that you take a moment to have the board provide you with access digitally to those two attachments and try to get the basic facts uh, because neither Maija nor Alex Roy are admitting they were incorrect or whatever they said. But the basic fact would be uh, they admitted I sent in emails before the hearing and I gave them a whole bunch of documentation but, after the hearing I did ask them. Oh, I did send them uh, enough documentation that they should've known that what they had said

was incorrect and they never corrected themselves in the record.
Thank you.

Ms. Short: Thank you very much. And Ms. Rohr, for the record I will just note, we aren't able to um, review the emails you sent in because that would be considered written testimony and you're only allowed to provide oral testimony but, if you would like to take the remainder of....

Ms. Rohr: Why?

Ms. Short: Your time to summarize those emails to share with us, we'd be more than happy to hear you.

Ms. Rohr: Okay. The May 6th email says what I read, uh, and then the, uh, I also talked to J uh assistant attorney general J Yoshimura and he said that my written testimony would be provided to you so, I am going to be stating for the record I believe this is unlawful rule making that I can't respond in writing. Uh, he did say that he would...that it would be provided and it's only uh I believe Sylvia Wong's opinion that I can't respond in writing. Uh, anyway, I still believe you should take a moment to establish the basic facts. So, the...the other email says is the legal description of the easement and the other one is, it's attached to that May 6th, 2022, email to the Planning Department. And then, here's a September 8th, 2011 letter from lead head, uh, BJ lead head Todd, Dear Ms., or to her, I guess, Dear Ms. Todd, this is from Continental Pacific, the developer who gave the easement pursuant to the requirements under the settlement agreement for Board of Appeals and subdivision of Continental Pacific lands, dated April 12, 2002 at 2 condition D or ordinance 550 and 3 SMA major permit 449 and closed for your records and files please find the following. Second amended and restated declaration of vehicular and parking public access, easement recorded on 6-17-2000 as document 2011-095621. I'm not sure why it was recorded in 2000, maybe that's a mistake. Anyway, it says uh, as document 2011-095621 and grant of public access easements recorded on 08-25-2011 as document 2011-136099. This will confirm that the recordation of these public access documents constitute full and final compliance with all public access requirements for the project. Please feel free to contact me or my paralegal uh, should you have any questions yours truly, Steven Lynn, an attorney. So, uh, and then attached to that letter is the recorded....I wish you could see those. It's actually....Has....I can't see what you're seeing, I don't think its up there anymore, hold on.

Ms. Short: Ms. Rohr, you have one minute left just so you know.

Ms. Rohr: I'm gonna show you that this has...see there, it's backwards, but it's in the record because you're recording this, that this is a recorded document. Oh, there's the record date, and uh, but it's...it's a basic tenant that you should take a moment to um get your basic facts and this is not about whether you agree a joke was made or not, I...I take offense to that. This was about whether they needed to speak up at all...and when they did speak, they chose to not be prepared to speak and they misrepresented the legal matter, and it undermined eight people's testimony and it does involve the planning commission because that ordinance 550 came up through the planning commission.

Ms. Short: Thank you Ms. Rohr.

Ms. Rohr: Okay. Thank you.

Ms. Short: Thank you very much for your testimony. We greatly appreciate it. Mr. Medeiros-Garcia, I hope I'm not butchering your name. But would you like to address the board in regards to respondent Maija Jackson's written response, petition 2022-16?

Mr. Medeiros-Garcia: Absolutely. Thank you.

Ms. Short: Thank you so much, please state your name, you will have five minutes.

Mr. Medeiros-Garcia: I'm all good with the way you call my name and uh, so, thank you guys for your guys' time. This been a very long battle that we have been challenged with...with uh things that was already set in black and white, and for me I have...this process is so long, and it shouldn't be because it's dealing with something that is already in charter. Uh, you know it was a long process from the very beginning, in order for this...this community to be developed, this was what had to be done, right. The developer, Continental Pacific, we had an agreement with the community, and this issue that we testified for, were on the agenda but, these two people weren't ready to address our issue that was so important and really just have to look at the facts. So, I get kind of...I don't...like right now, I feel like everything is against us. We're dealing with a big time uh relator that gets his way with everything, he's a bully you know. As we speaking, he's shutting off another access to the shoreline so, you know, I know there's uh relator's on this board right here, and I feel that I'm not going to get a fair call. Like our community is not gonna get a fair call due to similar work, I'm not

sure but, I just feel that this whole thing...just read her letter, that um her apology to us, she's apologizing for not doing her job. Which they did....was uh...they didn't have to do what they did, and I took offense because we all took the time out of our day to try and resolve this issue. She contradicts herself in this letter, Maija's apology letter, saying that she's trying to protect her fifteen year uh job that she had there. Well, this issue has been going on for a long time, you know, like as long as she's been working in the Planning Department, we've always had issues with this place, and it's...it was clear to me that a bias was just not showing up with your documents to handle something that's on the agenda. And then just you know, well, I seen her joke around about it right....for me, I don't think it's funny because this is people's rights. This is our...this is our access. It's illegal what he's doing, clearing the black and white, but yet we still find ourselves with the gate up there with a lock on the gate and we don't have that vehicle access...uh, vehicular access that we were granted years ago. So, I just ask you guys today man, it's all in black and white, what we're asking for...they played around with us over there at the Planning commission, were here, we've been coming in every month for the new year. Can we please resolve this with the right things, man, we just want our access back, it's in the black and white, it's ours, the public I mean. You know, like, it's our right, simple. Like, he shouldn't be doing that, especially when we have the...the patent, land patent, land awards...But yeah, thank you for your guy's time and...

Ms. Short: You still have one minute.

Mr. Medeiros-Garcia: Yeah...it's just exhausting, frustrating. I come here and I...the last time I walked out because that was mind blowing. And I came back again, this time I was like I thought we were done. But thank you guys for bringing us back and uh...I was just waiting for this moment to let you guys know that I seen and ethics violation by two people. One chose not to rebuttal, the other did and we....here we are, she's apologizing for it. And I don't have to accept an apology, because it's bring hardships to us. You know, public servants shouldn't make us feel this way. Thank you guys for your time.

Ms. Short: Thank you very, very much for your testimony. At this time, does the board have any questions for either of them regarding...oh, if you could come back just in case, we have questions for you. Does the board have any questions for either of the parties in regards to their additional statements?

Ms. Wan: Um, I'll just....Sorry, Deputy Corporation Counsel Sylvia Wan, I just want to make the board aware that Maija Jackson is also present on zoom if the board has any questions for Maija Jackson or the petitioners at this point.

Ms. Short: Kelly...please...

Ms. Nakanishi: So, we don't have a copy of this letter he's talking about.

Ms. Wan: The letter that is being reported is the uh respondents written response by Maija Jackson so, you do...you have had that when you...you've had it....it's the exact same thing.

Ms. Nakanishi: Okay. I thought it was something new, okay.

Ms. Wan: That's what the petitioners' statements were supposed to be addressing today was Maija Jackson's written response.

Ms. Nakanishi: Oh, okay.

Ms. Short: Does anyone have any questions for either of them or Maija? Kelly please...

Ms. Valenzuela: Can I make a comment? Or....just.

Ms. Wan: I believe it's....it's just questions at this time.

Ms. Valenzuela: Okay.

Ms. Short: We'll have a discussion. Erick, you have a question?

Mr. Allende: I have a question for...So, what were here to try to figure out is whether or not there was um an ethics violation by these two.

Ms. Wan: That has actually already been decided by the board.

Mr. Allende: Yeah.

Ms. Wan: So, the board has already decided at it's last meeting to dismiss this petition um, because it came to light that Ms. Rohr and Mr. Medeiros-Garcia did not receive the written response prior to their oral statements before the board, um, they were given one more opportunity to address the written statement and if any of that additional information regarding the written statement changes the boards mind, then it is up to the board to decide whether or not any individual member would like to reconsider their vote. So, um

only members who were present and voted at the previous decision of this particular petition, would be allowed to do a reconsideration.

Ms. Short: So, that would be the three of us.

Ms. Nakanishi: So, do we have to make a...a...a...motion to...

Ms. Wan: A motion for reconsideration, yes if you want to change your vote.

Ms. Nakanishi: Okay...so we don't want...I mean, even if we find an ethics violation, it's not going to cure but I and I don't see anything that. So...so what do we have to do if we want to accept it like?

Ms. Wan: If it...if there...if what has been presented today does not change any of the voting members minds to otherwise change their vote, then the decision stands as is.

Mr. Medeiros-Garcia: Those that voted the last meeting, they weren't aware of what's going on of these things. How could they...how could their decision be the decision when we still had a play here, this...this this....

Ms. Wan: It's...it's just your response to the written response.

Mr. Medeiros-Garcia: But it could make a difference in their response if it was in place.

Ms. Wan: I'm sorry, it's inappropriate for the board to have a conversation regarding rules and um application of Roberts Rule's with the petitioners.

Ms. Short: So, I think at this time we can ask them questions and we can continue it that way. So, I guess the question would be, do you feel or believe that Ms. Jackson's written response to you and Ms. Rohr should change the board's previous decision?

Ms. Wan: Uh, I believe that's an inappropriate question because that goes to the heart of the decision before the board and the board members authority to make a decision on a question. Um, if the board members are having more questions and concerns about their roles, responsibilities, um powers and liabilities regarding this, um, you can enter executive session but someone would have to so move so we can...I can better discuss.

Mr. Allende: I move to enter executive session.

Ms. Short: I second.

Ms. Valenzuela: I second.

Ms. Short: Oh, Kelly seconded. Um, is there any discussion regarding moving into executive session? All in favor. Any opposed? The board will now enter executive session to discuss this.

Motion and Vote: Mr. Allende moved to enter executive session to discuss petition 2022-16; Ms. Valenzuela seconded the motion. All members voted aye (10:44 a.m.)

EXECUTIVE SESSION (10:44 a.m. to 11:25 a.m.)

Ms. Short: Okay. So, I'm going...wow...let there...and then there was light. Uh, so, I'm going to call it...bring us back into general session.

Ms. Wan: Motion.

Ms. Short: I'm now going to...

Ms. Wan: Move.

Ms. Short: Move that we re-enter general session. Do I have a second on that motion?

Ms. Valenzuela: I second.

Ms. Short: Any discussion?

Ms. Valenzuela: No.

Ms. Short: All in favor? Any opposed? I would also so move that we take a quick....

Motion and Vote: Ms. Short moved to leave executive session and enter general session. Ms. Valenzuela seconded the motion. All members voted aye. (11:25 a.m.)

Ms. Wan: So, just note motion passes.

Ms. Short: Motion passes. We...let us resume general...were now in general session.

Ms. Wan: Just give...give her a moment.

Ms. Short: We are back in general session. And at this time, I would move that we take a five minute uh recess for restroom break and reconvene at 11:31 a.m. would someone second that motion?

Mr. Allende: Second.

Ms. Short: Erick second. All in....any discussion? All in favor? Any opposed? The motion passes, we will reconvene at 11:31 a.m.

Motion and Vote: Ms. Short moved to take a short recess. Mr. Allende seconded the motion. All members voted aye. (11:26 a.m.)

RECESS (11:26 a.m. to 11:35 a.m.)

Ms. Short: Aloha everyone, at this time it's 11:35 a.m. Chair Rabbi Rachel Short speaking, I'm going to resume our general session of the Hawai'i County Board of Ethics meeting for Wednesday, March 15, 2023, show that all board members are present. Um, we've allowed our members of the public back in, we are back in general session. We are reviewing petition 2022-16. We have asked questions of the parties and based on the additional information would any member like to make a motion to reconsider in order to change their prior vote? I would like to make a motion to change my prior vote. If anyone would like to second that motion.

Ms. Valenzuela: I seconded it.

Ms. Short: So, at this time the board will have a mo...a discussion regarding the motion to reconsider. So, what we heard today, was if we wanted to reconsider this motion based on Ms. Rohr and Mr. Medeiros-Garcia's response to the written statement, the written apology that we saw and it is my belief that based on what we heard today, we do need to reconsider this motion. Any further discussion? So, at this time....

Ms. Wan: You want to ask for a vote.

Ms. Short: Any further....that's what...

Ms. Wan: Okay.

Ms. Short: Any further discussion on this?

Ms. Valenzuela: Not at this time.

Ms. Short: Okay. So, upon completion of this discussion, we will motion for a vote to reconsider. The motion on the floor is the motion to reconsider the prior motion to dismiss petition 2022-16. All those in favor? All those opposed.

Motion and Vote: Ms. Short motioned to reconsider prior vote for petition 2022-16. Ms. Valenzuela seconded the motion. Ms. Short and Ms. Valenzuela voted aye. Ms. Nakanishi and Mr. Allende voted nay. (11:37 a.m.)

Ms. Short: So....Sylvia?

Ms. Wan: So, just clarifying for the record, um, it is Ms. Short and Ms. Valenzuela saying aye and Mr. Allende and Ms. Nakanishi saying nay. The motion does not pass.

Ms. Short: So, the motion does not pass because the board is divided but,

Ms. Wan: For...majority of the members.

Ms. Short: So, for lack of a majority of membership um, the motion fails because we are hung is my understanding. So, with that, the motion fails. So, the dismissal of petition 2022-16 still stands.

Ms. Nakanishi: I would like to reiterate that we do hope you guys prevail and get that...I mean I'm a relator but, doesn't mean that I don't want the...you guys to have your proper access...so, there's another way I could help, rather than on...based on an ethics complaint, I'm all there.

Ms. Short: Thank you. So, at this time we are moving on to petition 2022-13, the continued review of a complaint regarding a planning department employee, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

c. Petition 2022-13: Review of a complaint regarding a Planning Department employee, alleging violation of Section 2-83 (fair treatment) of the Ethics Code.

Ms. Short: Um, are there statements from the public in regards to this specific petition, excuse me.

Ms. Wan: Chair, Deputy Corporation Counsel Sylvia Wan, Chair, there are no um members of the public to testify in this matter.

Ms. Short: Thank you. So, the public testimony for this agenda item is now closed. Um, it has come to the attention of the board that the petitioners for this petition, Ms. Claudia Rohr, did not receive the

written response, respondent Alex Roy prior to providing their verbal statement at the December 14, 2022, meeting. To correct this error, the board will allow Ms. Rohr to address the board in regards to respondent Alex Roy's written response. Ms. Rohr, would you like to address the board in regards to respondent Alex Roy's written response to petition 2022-13? You appear to be muted, Ms. Rohr. I believe we are trying to get you unmuted.

Ms. Rohr: Uh, I'm..I unmuted myself.

Ms. Short: Okay, perfect. Would you like to address the board in regards to respondent Alex Roy's written response to petition 2022-13?

Ms. Rohr: Yes.

Ms. Short: If so, please.

Ms. Rohr: Could you...

Ms. Short: Please state your name and you'll have five minutes to share.

Ms. Rohr: Please give me a moment. Please.

Ms. Short: Okay.

Ms. Nakanishi: Are we allowed to ask what...what response, is it...the October 11th?

Ms. Wan: And he also had a letter.

Ms. Short: Was it this one?

Ms. Wan: No, that's hers. Oh, here.

Ms. Short: This one.

Ms. Wan: Yes.

Ms. Short: This one.

Ms. Nakanishi: Yeah, that's...that...that's what I was asking.

Ms. Short: So, there's two.

Ms. Nakanishi: Oh, there's two?

Ms. Wan: So, it's..it's this..

Ms. Nakanishi: What date is that?

Ms. Wan: That is dated October 11th.

Ms. Short: October 11th.

Ms. Nakanishi: Yeah, that's the one I thought.

Ms. Wan: And mine...mine looks like this but I'm sure yours is in black and white.

Ms. Nakanishi: Oh, it's this ethic.

Ms. Short: Alex Roy, Wednesday, July 7th, 2021, 7:53 a.m. Ms. Rohr, you ready at this time?

Ms. Rohr: I...Yes!

Ms. Short: Okay.

Ms. Rohr: I sent uh, I sent in a letter to the board.

Ms. Short: Uh, please state your name and we'll begin your five minutes.

Ms. Rohr: Claudia Rohr, petitioner. I sent in a formal letter to the board which Sylvia, J..uh, assistant attorney uh, corporation counsel J Yoshimura said would be provided to you. I don't believe that it was. I'm going to read it to you.

Ms. Wan: It was Ms. Rohr. It was forwarded to the board.

Ms. Rohr: Oh, okay. Ms. Wan's March 6th's letter is included for your reference. There is no legal basis to reconsider the vote held on December 14th, in favor of petitioner that carried by a majority of three-person quorum present. I hope I receive confirmation that we all agree that the December 14th vote carried pursuant to Hawaii County Charter Section 13-4(h) and that further hearings on petition BOE 2022-13 will only involve the form of the informal opinion flowing therefrom, and not reconsideration. I attached the letter I received from the Board's Secretary. I then did my research. The charter says, the affirmative vote of a majority of the entire membership to which a board or commission is entitled, shall be necessary to make any action valid except that

in the case of a board or commission which has only advisory functions. The....

Ms. Short: Ms. Rohr. Ms. Rohr

Ms. Rohr: Vote of a majority of those present.

Ms. Short: Ms. Rohr.

Ms. Rohr: Shall be sufficient to make...

Ms. Short: Ms. Rohr, can you hear me?

Ms. Rohr: Action valid. Pardon me.

Ms. Short: Ms. Rohr, can you hear me? This is in regards to addressing his written response. So, we need you to only address uh Mr. Roy's written response, that's what we're allowing you to speak on at this moment. Not on the petition itself but, on Mr. Roy's written response to you.

Ms. Rohr: Let me get that up.

Ms. Short: Thank you for that. Appreciate your understanding.

Ms. Rohr: Basically Alex Roy, uh...I..I...I...uh I still stand by what I just read. Uh basically Alex Roy uh in his email that he attached to his response confirmed that I was the complainant by writing that, I understand you know who did it, uh, I'm not allowed to say. And people often do that. Uh, especially uh when they suspect something, but they want to confirm it. They pretend that they know and then they try to get somebody who's not supposed to say to confirm it. Uh, not only that, but he attached my original complaint which doesn't sound like I'm against the project just that I am asking to go through the same entitlements that the rest of us have to. There basically um, Alex Roy gave them an SMA minor permit to allow two hundred people at anyone time on a residential zoned property, RS 15 right next door to me. And uh that obviously requires a use a permit under the zoning code but in any event that's...that's subject matter is at the Board of Appeals and is going to the Circuit Court. But what I don't like is that she responds by saying oh all those ridiculous complaints, that she calls my complaints ridiculous and somehow uh he writes that all we have to be prepared because there will be a Board of Appeals case like, I'm sorry if they had just done the SMA review, SMA use permit application um assessment correctly, there would be no

Board of Appeals case but in any event uh he convinced them that I was...I was going to litigate and there's uh the other responses what do...can you point me towards information on how to defend against this litigation of my neighbor. You know, I...I'm sorry but he built up this whole atmosphere and made a big deal about it and it had the effect of...of making it seem like I was the cause of delay.....I was the cause of them having to submit more documentation. No, I wasn't the cause it's actually the rules uh, the planning commission rules, and, in any event, I attached the original SMA uh assessment, a use permit assessment application to my petition to show how different it was. It said they were going to build 10,000 square feet of buildings at a price of a...a value of 1.9 million dollars. And instead of uh processing that, he uh he didn't process it. And uh after 60 days under the rules, they're required to send it to the planning commission instead, months later I complained to the planning commission that they hadn't done anything and then they allowed them to withdraw it and submit some kind of new application and then he goes on to say he was....

Ms. Short: 20 seconds Ms. Rohr.

Ms. Rohr: Sorry about the delay and not only that, but when he says I'm going to do everything in my power to get this approved. Uh, it was agreed by Rabbi Short and the then Chair Mr. Heintz that no employee should make statements like that. It's not about me and this matter was already voted on in my favor.

Ms. Short: Thank you very much for your time, Ms. Rohr, appreciate your statement.

Ms. Rohr: Thank you.

Ms. Short: At this time, does anyone on the board have any questions for Ms. Rohr or I'm not sure if Mr. Roy is present.

Ms. Chang: Mr. Roy is present.

Ms. Short: So, at this time, I would like to invite the board to ask any questions to Ms. Rohr or Mr. Roy.

Ms. Nakanishi: Oops, your mics...my mic...How many times have you visited the property next door during this process?

Ms. Rohr: Me?

Ms. Nakanishi: Yes.

Ms. Rohr: I went uh...I stopped by one day and introduced myself and said that I was really happy they were there. I...it...it felt really wonderful that there were people on site taking care of the land and, but I didn't really know what their plans were. One time that's it and I didn't get a positive response, no. But these are not friendly people. You know, I...I...I'm not taking that personally uh, but they keep this project very close to their chest and there trying...and...and uh they chose not to uh let me know what their plans were. And then I went away for months and then noticed that all these students were coming over there. And that's when I filed a complaint saying that now that they're bringing students this should require a use permit. And I had just heard by coconut telegraph that they were planning on using it for a school or outdoor school or whatever uh, but I didn't get that from them. Um, anyway uh, I...I do text them and email them about shared concerns or things that uh I would like them to be aware of. One day, oh, one day I stopped in the middle of the road to stop traffic because they wanted to cross the street and I took the moment to tell them they had left the gas can by the waters edge in the back of the property and they should move it before the tide comes up you know, that kind of thing. I thought I was being a little friendly but uh, they chose to uh...anyway. I did sit down with the Ka 'Umeke Kā'eo's uh...uh kumu the uh the principal and Louisa Lee of Ka 'Umeke Kā'eo's facilities, sister of Kamala Anthony Hui Ho'oleimaluō, who owns the property and we sat down they wanted to know what it would take for me to support their project and this was be...uh, oh and I told them, I said, you know you have to start at the beginning with the EA and...and you need to uh apply for a major SMA permit in uh conjunction with the use permit and I'm against any burning and I'd appreciate it if you wouldn't use herbicides because and uh insecticides near the property line. And they...oh and I said you need to build bathrooms for you know, you bringing two hundred people onto the property at any one time, you know, I object to porta potty's and they sounded like they...they were happy to get a list. But you know, Kamala wasn't there so I wasn't able to repair any relationship with Kamala and I've actually never been closer than 30 feet away from her. She sat back, was nursing a baby the day I went over there, and I tried to talk to her. I called her on her phone, she didn't pick up. I've donated money to Hui Ho'oleimaluō so I would get newsletter and be informed you know uh, I...I've tried different tactics. I'm sympathetic. Uh, I think they have a great program, I think there's some issues and they've actually responded. Ka 'Umeke brings their students over in a bus

now. They come every Wednesday even though there under a NOVO a violation of their own SMA minor permit that Alex Roy approved. Uh, and they promised that they would uh cease all development and activities if they would get four more months to comply with the NOVO before getting fined. And yet Ka 'Umeke comes over every Wednesday but they bring them by bus which helps with my issue of fire protection and tsunami evacuation restriction on Nene Street. That parked car, there were a lot of parked cars every time they had their intersession program which they're holding this week and the planning department knows about it, I've sent them the flyer off of the..off of the website, I've sent videos uh...it...uh there clearly violating and going against their own representations uh...but in any event uh it's hard for people to understand but I want them to get back on track. I want them to know what the actual legal process is for getting this program approved and it means that they have to have a due process hearing where I can make my own you know, how is this affecting my property value having five porta potty's and two hundred people running around you know, of course, it does. Two realtors in the room uh you know, I didn't get a due process hearing because Alex Roy approved a minor permit and they actually segregated the project so they could do that which is against rule 9, the planning department rule 9 anyway, it all comes down to uh Kamala never answers my emails, phone calls, texts. Even when there's like a little emergency over there. They're not there for days on end. One day I found a machete that her husband had left on the roadway and tried to return it, nothing. You know, another day, I wanted to let them know there was an endangered Hawaiian duck sitting on a nest right next to the driveway off of Kalaniana'ole so they would use the driveway off of Nene and avoid the duck nesting and not harass it, nothing. You know, I don't get a response to anything and uh...uh...I'm not keeping secrets, everyone knows exactly what I object to. Anyway, I am not their enemy. I appreciate their program. I've just you know, there's just...uh it's...it's just that they need to get good advice on what legal steps they need to take. And I see....

Ms. Nakanishi: Well, I appreciate your um....

Ms. Rohr: Okay, I'll stop.

Ms. Nakanishi: I appreciate you giving um this legal advice about the steps but so, you have...you are stating that you did give direct...you did interact with them directly about what they need to do. Both with an SMA and the use permit.

Ms. Rohr: Ka 'Umeke. Yeah.

Ms. Nakanishi: Thank you.

Ms. Rohr: Well, Ka 'Umeke uh, Louisa Lee and the um sorry hold on...

Ms. Short: Wait, can I clarify your question, Denise? You're confirming that Ms. Rohr did speak with her neighbor regarding the violation.

Ms. Nakanishi: Either in person or...

Ms. Short: Prior to Alex Roy's message being sent.

Ms. Rohr: No, it was after. It was after. I didn't find out about those messages till I got the record on appeal. And I...I supported my attachments to my petition by giving you the record on appeal listing and so that you would know that...what that email was provided to me at the Board of Appeals and it was after the permit was given and I was trying to get...I was trying to get access to a memorandum of agreement that was a leak in the board minutes but it was a broken link at Ka 'Umeke' s website and they have to allow the public to access their board governing board minutes.

Ms. Short: So, Ms. Rohr...

Ms. Rohr: And when I went to get that....

Ms. Short: To clarify....

Ms. Rohr: When I went to get that was when I met with the principal of Ka 'Umeke' s school and Louisa Lee's sister.

Ms. Short: Ms. Rohr, you have to allow us to ask you questions, okay?

Ms. Rohr: Okay.

Ms. Short: That's what this is for right now. My main question is, prior to this message, that was sent by Alex Roy, on Wednesday, July 7, 2021, at 7:53 a.m. what interactions did you have with your neighbor?

Ms. Rohr: I was walking my dog, I stopped and introduced myself and told them how wonderful it was that they were over there. That I loved the fact that they were taking care of the land and it just made me feel really positive and then I said but you know I don't really know what your plans are. And that's....

Ms. Short: So, my question to clarify...

Ms. Rohr: That's it...

Ms. Short: So, to clarify...so, to clarify...Okay, so to clarify, prior to July 7th did you make any comments to your neighbors regarding them potentially being in violation, operating without a permit or anything along those lines?

Ms. Rohr: No.

Ms. Short: Or being a part of the planning process?

Ms. Rohr: I said...I said I don't know really what your plans are. And they said....

Ms. Short: But did you speak with them at all? Ms. Rohr, did you speak with them at all about the planning process itself, prior to July 7th?

Ms. Rohr: No.

Ms. Short: Okay, thank you. Does the board have any further questions?

Ms. Rohr: It wasn't July 7th anyway. You're getting it wrong. The permit was issued...

Ms. Short: No, I'm talking about the email. Ms. Rohr, what we're addressing right now is the written uh responses from Alex Roy that you stated were not provided to you prior to the previous hearing. So, what we're doing is giving you the opportunity to respond to Mr. Roy's written responses and written responses alone. Correct? So, everything we're addressing....

Ms. Rohr: Wait, he was writing to them during the Board of Appeals case?

Ms. Short: Ms. Rohr...Ms. Rohr...so, that is all we are addressing right now, are the two communications from Mr. Roy that are in front of us and we're giving everyone the chance to address that because you weren't provided them previously. So, at this time we're asking...

Ms. Rohr: And its dated....

Ms. Short: So, at this time we're asking you and Mr. Roy questions regarding those specific written complaints to see if we will entertain a motion to reconsider our prior dismissal. So, we want to be sure that's all we're discussing, okay?

Ms. Rohr: Okay.

Ms. Short: Thank you.

Ms. Rohr: And you're saying that email is dated July 22?

Ms. Short: July 7th, 2021, so, our question or my question I guess....

Ms. Rohr: Ohhhhh...Yes. No, that was the only uh....that was the only uh attempt to uh...No, I didn't discuss....

Ms. Short: Did your relationship with your neighbor's change after July 7th, 2021?

Ms. Rohr: Yes.

Ms. Short: How so?

Ms. Rohr: I had a dead pig, swollen uh with maggots coming out of it dumped in front of my driveway. Uh, they....uh let's see what else...They smoked me out of my...uh...they...they do imu making at 7 in the morning and it fills my house with smoke, and they know it and they're still doing it. And they know it bothers me. Um, uh what else have they done....um...

Ms. Short: Ms. Rohr, I think what we're just trying to clarify is what your relationship was like with your nature...with your neighbor, pardon me, what your relationship was like with your neighbors prior to the communication from Mr. Roy that we're addressing right now.

Ms. Rohr: Uh, basically I let them know that I liked having them over.

Ms. Short: Were they cordial with you at that time?

Ms. Rohr: No...No, they weren't cordial.

Ms. Short: Did you discuss the planning process with them at all?

Ms. Rohr: No.

Ms. Short: Did you...[Inaudible] any indication that you would be raising concerns with their activities to the planning department?

Ms. Rohr: No. The reason why they were suspicious of me was they...they were part. Louisa Lee was part of a...the Leleiwi association that

sued the neighbor on the corner of Oeoe Street who had built this gigantic mic mansion and uh had a vacation rental in it. And they had failed to serve me the Board of Appeals case uh notice and I was within 300 feet, and I intervened in their Board of Appeals case and that's the only...and...and from that...and I basically argued that it...the parking situation was interfering with my fire service. And that's how they knew me. So, they knew that I could write my own lawsuits probably. I have a lawsuit against Hu Honua. We just had this.

Ms. Short: Okay thank you Ms. Rohr, we're getting off topic.

Ms. Rohr: People know about it...

Ms. Short: At this time, do any of the other board members have any questions for Ms. Rohr or Mr. Roy? Do we have any?

Mr. Allende: Good afternoon Mr. Roy, I'm curious about what the um the...the nature of Kama Kamela's uh text to you about the three parcels that were listed. Um, we're those the ones that we're involved in the permit that was going through this process.

Mr. Roy: Um, I'm not sure which parcels you're speaking of but, the project area uh for Hui Ho'oleimaluō was three parcels.

Mr. Allende: Just so for the record, it's the um email from Kamala Anthony sent on Monday, July 5, 2021, to you and uh the subject was a reply for request for information on SMA application. So, that's the ones...the email I was uh um....

Mr. Roy: Yeah, I think that was a clarification uh email. Um, when you're working through a project like this, especially with an applicant who um has limited experience, in you know uh applying for permits, um a lot of times and this is quite common, that an applicant will apply for something much larger than they're ready to move forward on and that was the case um, with...with this project. They were unsure and so, um under the advice of the Director, um, they uh you know withdrew their application, the larger one and...and applied for the...the SMA minor or SMA assessment. Um, and I would just like to clarify, Ms. Rohr...Ms. Rohr is incorrect, I don't approve uh anything uh, all approvals are done by the Director. I have no authority. Um, so everything that I do is vetted typically by both, the Deputy Director and the Director and they decide on how to proceed and uh whether to approve or deny uh SMA assessments um based on um the evaluation of information um, so I just wanted to kinda

clarify...I...I don't have that authority, I...I don't approve anything so, Ms. Rohr is incorrect uh and to keep stating that um among other things.

Ms. Nakanishi: So, is...I have a question...So, is part of your job uh routinely to help people process their applications, is that...

Mr. Roy: For sure, yeah. Um, applicants...because you know most of the time applicants will come to the planning department probably once in their life. So, while a majority of my work say sixty percent involves consultants who of course deal with us constantly the other forty is...is uh what I would call [Inaudible] homeowners who...who don't have much experience. So, um under the direction and...and based on my experience here in Hawai'i we try to take the time to help them um move through some of the hoops of government uh because they don't really understand the process and so, uh in this case they had very limited experience and so there was a lot of confusion on how to apply, what to apply for, um and then you know they weren't really clear on uh the extent of their project over time and so, a lot of times with these types of projects you...you kinda get them to start um so you can keep them moving forward but then, um..um you know they still have to apply for plan approval things like that. Um, so it's a...it's kinda an on going process uh and then thirdly, you know, I've taken upon myself to always help native Hawaiians and the native Hawaiian organization's to do, I spent eight years with DLNR and uh at that time, it was um you know my job to really try to help these communities to be effective and to uh you know kinda get back some of their..their um their lands and some of their uses that have been overtaken by you know B&B's and things like that over time. Um, and so um when I worked for DLNR, it was kind of you know stated like hey you really make sure you take the extra time to help folks like that um because they have limited experience so...I...I've always tried to do that. But again, I...I don't make final approvals and I don't approve of anything so Ms. Rohr's wrong when she says I approve things, I...I actually don't. I don't have that authority. So, that would be the Director.

Mr. Allende: So, um, Mr. Rohr uh...

Ms. Short: Mr. Roy.

Mr. Allende: Mr. Roy, I'm sorry about that. Um, when on April 5, 2022, there's an email that says just know I feel completely 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 you...we get you approval. Since you just stated that you have no power in order to get the approval, how are you referencing that you would get that approval?

Mr. Roy: Uh, that's the Director had stated that they supported this project. So, when we get a project, we go to the Director to kinda...to get their cursory...their kind of...their...their initial recommendation and so it was very clear, made clear to me that the Director supported that project. I was just going...acting off of my director's recommendation.

Ms. Short: Does anyone have any additional questions for Ms. Rohr or Mr. Roy, Erick, please.

Mr. Allende: Ms. Rohr, how many people live behind you um, or on that same street because I know you've voiced concern about uh...uh evacuation and fire, I'm just kinda curious, how many uh parcels or homes or are occupied live on that road? You have to unmute yourself Ms. Rohr.

Ms. Rohr: Okay. Uh, there are three blocks of neighbors that would use Nene Street as a Tsunami evacuation but when I say three blocks, I mean Nene and Kalaniana'ole and the side streets plus everybody in the beach parks that from Koloa Street South, whoever's using Leleiwi Beach Park, Richardson's Beach Park, and then of course we have homesteaders at down...

Mr. Allende: Ms. Rohr I'm kinda curious...

Ms. Rohr: Hundreds of people.

Ms. Short: Ms. Rohr, please let us ask you questions.

Mr. Allende: So, I'm...I'm curious about the two roads that are coming out. But I understand by your statement, you're saying these multiple connecting roads that go to these beach access and beaches but on your particular road, how many parcels/homes that are built and occupied are there?

Ms. Rohr: And you're talking about the tsunami evacuation or the fire protection?

Mr. Allende: Well, it would be for the both.

Ms. Rohr: Well, they're different because for the tsunami there's hundreds of...

Mr. Allende: How many parcels are on your property....on that road that you live on?

Ms. Rohr: Okay. One, two...

Ms. Nakanishi: So, don't you go from Kalaniana'ole to Nene Street?

Ms. Rohr: I...I...I'm counting them. Hold on.

Ms. Nakanishi: She's on the main drag on one side, and then above her there's nobody.

Ms. Rohr: One, two, three, four, five, six, seven, eight. But...but it would be the people to the south of the blockage, for the tsunami and our fire protection comes off of um...uh fire...fire hydrants on Kalaniana'ole and I had my property inspected by informally by the fire department, and I asked them where they would come from, and they said they would bring two pump trucks and connect up right next to Oeoe Street, and then come down Koloa Street with another pump truck connected to the fire extinguisher over on that end so that they would have two pump trucks, two uh fire hydrants working but if they can't get through they need...under the law they need fifteen unobstructed feet and there's...they need I think uh certain amount of paving that will carry the weight of a fire truck which we have I think it's like ten feet. Uh, but anyway uh...uh they can use this road as long as there's no one blocking it, but they can't move over onto the shoulder that's unpaved. They have to just go straight. So, if somebody parks funny...

Mr. Allende: Thank you Ms. Rohr. I was just curious about the...the lot so that I understood something better. Thank you.

Ms. Rohr: A bunch of them are not developed. I just want you to say there's only...

Ms. Short: How many neighbors do you have Ms. Rohr? How many immediate neighbors to yourself, do you have? Immediate neighbors in occupied homes. How many people living on your street.

Ms. Rohr: Two! Two next to me on the South side, one home, one vacation home on Kalaniana'ole.

Ms. Short: So, there's yourself and one other person, one other neighbor who you would consider [Inaudible] permanent residence to live on your road, is that correct?

Ms. Rohr: Yes. Yes. I think there's one on the corner but it's part time but they're not renting it so, I have...They're not...

Ms. Short: How many permanent residents would you identify as your neighbors in your surrounding area?

Ms. Rohr: Two on the South side.

Ms. Short: Including yourself? Or two in addition to you?

Ms. Rohr: I'm a permanent resident. Yes.

Ms. Short: So, there's three total permanent residents in the surrounding area, is that correct? Including...yourself included.

Ms. Rohr: Well, John the lifeguard lives on the other side of Hui Ho'oleimaluō's, the subject property in a house but he accesses Kalaniana'ole and he would not be...his fire and tsunami evacuation...

Ms. Short: Were trying to understand who would be considered neighbors.

Ms. Rohr: I know that.

Ms. Short: To Ka 'Umeke.

Ms. Rohr: It's just John and I. Were the only ones.

Ms. Short: So, just you and lifeguard John.

Ms. Rohr: Yes.

Ms. Short: Is that accurate?

Ms. Rohr: And lifeguard John told me that they never approached him to talk about their project, but they approached him and wanted to know if I would sell out because I was opposing their project. Anyway, there's conversations....

Ms. Short: At this time, does the board have any additional questions for Ms. Rohr or Mr. Roy?

Ms. Rohr: Okay.

Ms. Valenzuela: I do. I have some questions for you.

Ms. Short: Kelly, please.

Ms. Valenzuela: Um, this is Kelly.

Ms. Wan: Ms. Allende you may wanna direct who you're...

Ms. Short: Ms. Valenzuela.

Ms. Wan: Oh, I'm sorry.

Ms. Valenzuela: So, my question is um...

Ms. Wan: Ms. Valenzuela, yeah uh who you're speaking to.

Ms. Valenzuela: First would be for Ms. Rohr. Ms. Rohr, how long have you lived on this property as a resident.

Ms. Rohr: Uh, we finished building our home January of 2000 and I raised my family here. I also uh got a permit for a bed and breakfast which is uh...it's uh...it's mainly a residence and then the B&B is considered a...it's like an auxiliary minor use of the property. It's not the major use of the property so....

Ms. Valenzuela: So, you basically have a STVR on your property. A short-term vacation rental?

Ms. Nakanishi: She got....

Ms. Rohr: No, I have a bed and breakfast permitted by the County of Hawai'i in 2003 and if you read the rules, it says that you have to use it as your permanent residence.

Ms. Valenzuela: Right.

Ms. Rohr: First.

Ms. Valenzuela: Right. Yeah I get that.

Ms. Rohr: And we did that for two years before we applied for that permit to make sure it was clear.

Ms. Valenzuela: Right. So, you have vehicles other than your vehicle going in and out of your property?

Ms. Rohr: In and out but, I have a parking lot with a space for every vehicle. I'm required to have for each room. I have three rooms in my bed and breakfast plus two...we have uh two, four, five, six...six or seven different places to park. No one ever parks on the road and my people, I'm sorry, my guest, always can back up and leave the property uh front first so they can look and check to see if someone's walking along. Uh...uh next door, they back onto Nene, they back onto Kalaniana'ole which is very dangerous.

Ms. Valenzuela: Okay. That's...you answered my question. Um and then for Mr. Roy, yeah. Just out of curiosity, as a local girl I'm not sure about permitting but, are permits required to start an imu?

Mr. Roy: To start an imu?

Ms. Valenzuela: Yeah. I've...I've never heard....

Mr. Roy: I've never...you know that's not uh...

Ms. Valenzuela: It's not required cause it's a culture thing, correct?

Mr. Roy: It's not a structural element. I've never done a permit for an imu per say.

Ms. Valenzuela: Right.

Mr. Roy: Uh...or seen that as a requirement. Um because it's not really a structural element that's cooking...

Ms. Valenzuela: Right.

Mr. Roy: You know somebody...It's like saying do you need a permit to have a....

Ms. Valenzuela: Hibachi

Mr. Roy: Um to grill out on your property...

Ms. Valenzuela: Right.

Mr. Roy: Um...I...I...I've never come across that.

Ms. Valenzuela: Right so...yeah, I was just trying to make a point.

Mr. Roy: Um yeah.

Ms. Valenzuela: So, I do know that as a Hawaiian, an imu starts in the morning, always. So, somebody say could start an imu in the morning on their own property cause it takes pretty much three quarters of the day until you take the pig out.

Mr. Roy: For sure.

Ms. Valenzuela: Okay. Um and then lastly um, actually I'm done. Thank you.

Ms. Rohr: About that imu starting, I wouldn't mind if they started at 8:00 but when they start at 6:45 it's the beginning of the fire they use uh palm frons and coconut fiber and...

Ms. Short: Ms. Rohr, thank you we have to stay on topic.

Ms. Rohr: Okay.

Ms. Short: Does...do any other members of the board have any questions for Ms. Rohr or Mr. Roy.

Ms. Valenzuela: No, I don't.

Ms. Short: Okay. Seeing that there's no um, questions, additional questions of the parties, based on the additional information provided, would any member like to make a motion to reconsider in order to change their prior vote? Just so everyone is aware, uh, Chair Heintz and myself did find um a violation and did vote I guess would be in favor of petition 2022-16 but it was dismissed, merely because of a hung jury situation. So, at this time based on my previous response, I would like to make a motion to reconsider the dismissal of petition 2022-16. If anyone feels so moved to second that motion.

Ms. Wan: Um, I think... So, there was two motions that were heard by the board, there was...so I think you need to restate which specific motion you were um asking to reconsider.

Ms. Short: I am asking to reconsider the motion to dismiss petition 2022-16. Hold please. Um, at this time to continue this discussion, the board is going to enter executive session. Wednesday, March 15th at 12:22 p.m. is now moved into executive session....

Ms. Wan: No. I'm sorry...

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

Ms. Wan: For the purpose of consulting with the board's attorneys regarding the rules, responsibilities, powers and liabilities.

Ms. Short: Yes.

Ms. Valenzuela: I second.

Ms. Short: All in favor? Any opposed?

Ms. Wan: Just for clarity of record, who made the motion?

Ms. Short: I made the motion.

Ms. Wan: Thank you.

Motion and Vote: Ms. Short moved to enter executive session to discuss petition 2022-13; Ms. Valenzuela seconded the motion. All members voted aye (12:23 p.m.)

EXECUTIVE SESSION (12:23 p.m. to 12:34 p.m.)

Ms. Short: Rabbi Rachel Short, so at 12:23 p.m. let the record show that the board is going to enter executive session in order to obtain advice from legal counsel. And we have to keep our mics on for Kelsie.

Motion and Vote: Ms. Short moved to leave executive session and enter general session. Mr. Allende seconded the motion. All members voted aye. (12:34 p.m.)

Ms. Short: At this time, it is my understanding that petition 2022-16 was previously voted on...

Ms. Wan: 13.

Ms. Short: 13 excuse me. Um, in favor by myself and opposition by Ms. Valenzuela and Ms. Nakanishi. At this time based on the additional information provided, would any member like to make a motion to reconsider and change their prior vote? Seeing none, the dismissal of petition 2022-16 stands.

Ms. Wan: 13.

Ms. Short: 13, stands excuse me. That's it. Thank you very much Ms. Rohr and Mr. Roy.

Ms. Valenzuela: Thank you.

Mr. Roy: Thank you.

Ms. Short: At this time, we will move on to our next item of business #6 uh 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.

Ms. Rohr: I'm sorry to interrupt Chair.

Ms. Short: Yes.

Ms. Rohr: I asked...I asked that you make sure that I was able to hear you before you began as an ADA accommodation and whatever you just said, from your executive session till now, I missed it all.

Ms. Short: Okay, so Ms. Rohr at this time no one um is going to change their previous votes, Chair Heintz and I had voted in favor um, Ms. Valenzuela, and Ms. Nakanishi had voted against. One of us would have had to change our previous votes in order for this to be reconsidered, no one did that, so the dismissal still stands.

Ms. Rohr: In December, you and Heintz voted yes.

Ms. Short: Yeah. Ms. Rohr, I'm...I'm agreeing with you unfortunately it is what it is, it would have taken someone to change their previous vote. I stand by my previous vote. So, I've done all I can, the other two members will not...are not changing their votes at this time so there is no motion to reconsider.

Ms. Rohr: Okay but, I want....to register my objection to not taking the December vote as valid based on the Charter.

Ms. Wan: Ms. Rohr.

Ms. Short: Ms. Rohr, it...it's not that. It's that we were a hung jury and that it was evenly divided and if there's a hung jury and it's evenly divided the petition is automatically dismissed. So that dismissal still stands.

Ms. Rohr: That was in January.

Ms. Short: Correct. So...

Ms. Rohr: That was in January.

Ms. Short: So...So...that dismissal still stands.

Ms. Rohr: But in December...Decembers vote still stands also. I'll be taking this to court for a court opinion. Thank you.

Ms. Short: Thank you. Okay. At this time, uh we will move onto item #6 the 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. Did everyone have a chance to review these documents?

6. 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 (12:38 p.m.)

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

Mr. Allende: Yeah.

Ms. Short: Does someone want to make a motion?

Ms. Wan: Well, uh...

Ms. Short: Or do we want to have a discussion, I'm not really sure where we go with this one, Sylvia I'll turn to your guidance and counsel for that.

Ms. Wan: So, for item #6A, um counsel has provided uh legal communication to the board regarding comments that were provided by the legislative bureau under attorney client privilege. Um, if the board wants to discuss any of those comments, we would have to enter executive session. Um, there were...

Ms. Short: Do we want to have a discussion?

Ms. Wan: There was a large number of suggested changes.

Ms. Short: Yes. Does anyone want to make a motion to enter executive session so we can discuss this attorney client confidential information?

Ms. Nakanishi: I'll so move cause this is kind of a lot.

Ms. Short: Do I hear a second?

Mr. Allende: Seconded.

Ms. Short: All in favor. Any opposed? Let the record show that at 12:39 p.m. Wednesday, March 15th we are moving from general session into executive session.

Motion and Vote: Ms. Nakanishi moved to enter executive session to discuss item #6A; Mr. Allende seconded the motion. All members voted aye (12:39 p.m.)

EXECUTIVE SESSION (12:39 p.m. to 1:07 p.m.)

Motion and Vote: Ms. Short moved to leave executive session and enter general session. Ms. Valenzuela seconded the motion. All members voted aye. (1:07 p.m.)

Ms. Short: We are discussing item #6A. Regarding amendments to the rules of practice and procedure of the board of ethics and the Hawai'i County Charter and County code. At this time would anyone like to make a motion in regards to that?

Mr. Allende: I motion that we table that um....

Ms. Wan: For further discussion...

Mr. Allende: Continuing discussion regarding amendments to the rules and practices and procedures of the board of ethics and Hawai'i County charter to the next meeting.

Ms. Short: Do I have a second?

Ms. Valenzuela: I second.

Ms. Short: All in favor.

Ms. Wan: Oh no, discussion first.

Ms. Short: Oh, any discussion to be had? All in favor. Any opposed?

Motion and Vote: Mr. Allende motion to table #6A to next meeting; Ms. Valenzuela seconded the motion. All members voted aye. (1:08 p.m.)

Ms. Short: Let the record show that that motion passes and that will be tabled until the next session. At this time, um, I will make a motion to move us back into executive session again to review other private matters. Do I have a second?

Ms. Wan: Um, it would be for...

Ms. Short: For the review of financial disclosures.

Ms. Wan: And executive.

Ms. Short: And executive session minutes. So, at this time, I will make a motion to move us into executive session to review financial disclosure forms and the previous executive session minutes. Do I have a second?

Mr. Allende: I seconded it.

Ms. Short: All in favor?

Ms. Wan: Discussion first.

Ms. Short: Oh, any discussion? Hearing none, all in favor. Any opposed? The motion so passes on Wednesday, March 15th at 1:09 p.m. let the record show that we are entering executive session.

Motion and Vote: Ms. Short moved to enter executive session to review financial disclosure forms and the previous executive session minutes; Mr. Allende seconded the motion. All members voted aye (1:09 p.m.)

7. EXECUTIVE SESSION (1:09 p.m. to 1:58 p.m.)

- a. Review of the executive session minutes of February 15, 2023.
- b. Review of Confidential Financial Disclosure Forms filed pursuant to Section 2-91.1(d), Hawai'i County Code, by County board and commission members and designated County employees, where personal matters will be reviewed.
- c. 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.
- d. 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: Ms. Short moved to leave executive session. Ms. Valenzuela seconded the motion. All members voted aye. (1:58 p.m.)

Ms. Short: At this time, I will entertain a motion to approve our meetings from executive session on February 15, 2023.

Ms. Nakanishi: The minutes.

Ms. Wan: Don't forget the minutes.

Ms. Short: Would anyone like to motion to approve the minutes from executive session?

Ms. Nakanishi: So, moved.

Ms. Short: Anyone like to second that motion? Erick second. All in favor, any opposition? The motion so passes.

Motion and Vote: Ms. Nakanishi moved to approve the executive session minutes of February 15, 2023. Mr. Allende seconded the motion. All members voted aye. (1:58 p.m.)

9. ANNOUNCEMENTS (1:58 p.m.)

a. The next monthly meeting of the Board of Ethics is scheduled for Friday, April 14, 2023, at 10:00 a.m. at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720.

Ms. Short: And with that said um, our next meeting for the board of ethics will be here Friday, April 14, 2023, at 10 a.m. in this same room at the Hawai'i County Building, Council Chambers, 25 Aupuni St. and we are officially adjourned....May I enter...I move to adjourn at 1:59 p.m. Wednesday, March 15th, do I have a second?

Mr. Allende: Seconded.

Ms. Short: All in favor. Any opposition? We are adjourned. Thank you all very much!

10. ADJOURNMENT (1:59 p.m.)

Respectfully submitted:

Kelsie Chang, Secretary