

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

Friday, April 14, 2023
10:07 a.m. – 12:48 p.m.
Hawai‘i County Building
25 Aupuni Street
County Council Chambers
Hilo, Hawai‘i 96720

Members and Staff Present:

Rachel Short, Chair
Christopher Ho, Member
Paul Paiva, Member
Sarah Gibbon, Member
Denise Nakanishi, Member
Sylvia Wan, Deputy Corporation Counsel
Kelsie Chang, Secretary

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

Ms. Short called the meeting to order at 10:07 a.m. Present were Rachel Short, Christopher Ho, Paul Paiva, Denise Nakanishi, Sylvia Wan and Kelsie Chang. Sarah Gibbon was in attendance via Zoom.

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

Ms. Short: At this time, I would like to invite any statements from the public either in person or via zoom, right? Oh, excuse me, before we get to that, we have a few housekeeping announcements from Deputy Corp Counsel, Sylvia.

Ms. Wan: Uh, and just for the record, Deputy Corporation Counsel, Sylvia Wan is present as well as, Secretary uh, Kelsie Chang who’s also present. Um, as far as the housekeeping matters, I would just like to remind all board members and all persons that are present, if you could please refrain from talking over one another. Um, basically...basically just let the other person finish before you um decide to interject. The reason is to keep the minutes and the recording clear so that all persons can be understood. Second would be to ensure that your mics are on and close...close to your uh where you’re speaking basically your mouth to ensure that it is properly spoken up again to ensure clarity of the record. And if at this time all persons could put their phones on silent it would be much appreciated. Thank you.

Ms. Nakanishi: That part...[inaudible]...

Ms. Short: So, at this time, the board would like to invite any statements from the public either in person, via zoom. I believe...do we have any...who do we have?

Ms. Wan: Chair at this time, uh we only have one testifier who has signed up. That person has um chosen to make their statement at the time the petition is called.

Ms. Short: Okay.

Ms. Wan: So, that will not be until agenda item #5A.

Ms. Short: Okay. So, at this time, is there...there's no public testimony so we're gonna move on, correct?

Ms. Wan: Yes, there's no public testimony at the top of the meeting. Thank you.

Ms. Short: Wonderful. Thank you. So, moving right along uh to the approval of the regular session minutes from March 15, 2023.

3. APPROVAL OF THE REGULAR SESSION MINUTES

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

Ms. Short: Did everyone on the board have a chance to review those minutes?

Ms. Nakanishi: Yes.

Ms. Short: Are there any amended changes to those minutes? Denise?

Ms. Nakanishi: Oh...I'm pushing the wrong button. Um, there's uh...there are a few things but um, on page 12 at the top, it says "I just feel this who thing" it's "this whole thing". Um, I'm just trying...pick up the substantive one. And then there's um, page...

Ms. Wan: I'm...I'm sorry Ms. Uh Nakanishi, can you restate that, I didn't quite catch it.

Ms. Nakanishi: On page...what? Page 12? I think that was page 12.

Ms. Wan: Yes, can you please just restate.

Ms. Nakanishi: I...on the very top line it says, "this whole...who thing" and it's supposed to say, "whole thing".

Ms. Short: Are those the executive session minutes or the regular minutes?

Ms. Nakanishi: This is the regular minutes.

Ms. Short: I don't see that on page 12.

Ms. Nakanishi: Oh 17 sorry...

Ms. Short: Oh...okay.

Ms. Nakanishi: 17 sorry.

Ms. Short: Thank you for that clarification.

Ms. Nakanishi: And then on 18 it says I said something, but I don't know what this is supposed to say and but that's not what...anyway...maybe somebody else remembers what it's supposed to say.

Ms. Short: On page 17 at the top, the very first line it says, "I just feel this who thing" should be "whole thing".

Ms. Nakanishi: And then um 19...I...I don't know what that's supposed to say. It says under me but....then on page 26 there's um...

Ms. Chang: On 19 what are you?

Ms. Wan: I'm sorry...

Ms. Nakanishi: It...it says I said something but...I...I...I don't remember. It says "okay, so we don't want....I mean even if we find an ethics violation it's not gonna cure...but I...and I don't see anything that...." It...it doesn't make sense but...

Ms. Wan: I...um, sorry Deputy Corporation Counsel, Sylvia Wan, I understand Ms. Nakanishi. I...I will note um just for the board that there we're some clarity issues with the recording for this particular set of minutes. Um, so that maybe because of that.

Ms. Nakanishi: Yeah...and...and I...I'm not sure it was anything substantive so...just we can...

Ms. Chang: So, that is what she stated in the record...recording.

Ms. Nakanishi: Okay...well...

Ms. Wan: Okay.

Ms. Nakanishi: And then on page 26, there...the under Ms. Rohr in the middle, there's...it says "improved", and it should say "approved".

Ms. Chang: I will double check.

Ms. Nakanishi: Um...and then...on page 27 it says, "but there" and it should say "they are"... "they are" not there are. And that's it. That's the one I saw that I thought even mattered.

Ms. Wan: So, um, Ms. Nakanishi just...just as a reminder, um our secretary types the minutes as verbatim as she hears it so, if there are some...I understand the whole "who" might actually be a typo um but as far as um the grammatical structure of a sentence generally, she is typing exactly as she hears it. Um, so there may be some typos that are just related to...

Ms. Nakanishi: I...I...I get so I won't try to point out the ones that I thought we're probably just missed typed and...and substantive.

Ms. Wan: Okay.

Ms. Nakanishi: We changed the...I...I do understand.

Ms. Wan: Okay.

Ms. Nakanishi: That. I...I...also would like to point out that when I got my packet...

Ms. Wan: Oh, I'm sorry for that print job.

Ms. Nakanishi: Not...not only that, I mean...Yeah, it's not acceptable.

Ms. Chang: It's still readable.

Ms. Wan: We'll look at that again.

Ms. Nakanishi: Thank you.

Ms. Wan: Thank you for those comments. So, I'm sorry, just so I'm clear, we've got 17 I believe you said 27 um, I'm sorry where is it in 27 the correction?

Ms. Nakanishi: 27 is one, two, three, four, fifth line down towards the end it says, "but there are" and it should say "they are not".

Ms. Wan: Thank you, and I'm sorry, you had one other one that I believe I'm missing.

Ms. Chang: 26.

Ms. Wan: Was it on 26?

Ms. Nakanishi: Yeah. Under...under Claudia Rohr it says....Ms. Rohr the first line "sorry about the delay"...it...on the second line it says, "my power to get this"...it should say "approved" not "improved".

Ms. Wan: Thank you very much. So, um...so I believe Ms. Nakanishi do you want to make a...a motion in respect to those changes?

Ms. Nakanishi: I...I motion to approve the messages with the changes noted corrections noted.

Ms. Short: You mean the minutes?

Ms. Nakanishi: That's what I said?

Ms. Short: Yeah.

Ms. Nakanishi: Yes, the minutes.

Ms. Short: Okay.

Ms. Nakanishi: Of regular session.

Mr. Ho: Chris Ho, second.

Ms. Short: All in favor?

Ms. Wan: Wait, discussion.

Ms. Short: Oh, wait, is there any discussion of the approval of the minutes pending those changes? No discussion. All in favor. Any opposed?

Ms. Wan: Um, I'm sorry, uh because we have one member on zoom, I believe we have to do a roll call vote.

Ms. Short: Oh, okay. Can she show a hand?

Ms. Wan: She can show a hands but I...it will need to be notified for the record.

Ms. Short: Okay. So, let's do that again and Sarah, if you could please raise your hand to show aye. All in favor. Any opposition? The motion passes, the minutes are approved pending those changes.

Ms. Wan: And uh Deputy Corporation Counsel Sylvia Wan, for clarity of record that's 5 in favor 0 against.

Ms. Short: Yes.

Ms. Wan: Thank you.

Ms. Short: Thank you for that clarification.

Motion and Vote: Ms. Nakanishi moved to approve minutes from March 15, 2023, with the amended changes; Mr. Ho seconded. All members voted aye. (10:16 a.m.)

Ms. Short: At this time, we'll move onto unfinished business, item #4A Petition 2023-03 review draft of Informal Advisory Opinion regarding a petition from a County Official seeking clearance and guidance regarding a potential conflict of interest.

4. UNFINISHED BUSINESS (10:17 a.m.)

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

Ms. Short: Did everyone on the board have a chance to review this?

Ms. Nakanishi: Yes.

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

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, no one has signed up for this particular petition.

Ms. Short: Okay, perfect. So, would someone like to make a motion to approve this?

Mr. Ho: Chair, I would like to make a motion to amend.

Ms. Short: Please.

Mr. Ho: Page 3, sorry...#6 second to last word should be "process".

Ms. Short: Which page again?

Ms. Nakanishi: Right here.

Mr. Ho: Page 3.

Ms. Short: Thank you. Oh.

Mr. Ho: So, the full sentence should read “based on the evidence in testimony presented the board finds that there is no conflict of interest for the petitioner to participate in the salary review process of the Salary Commission provided he is not engaged in the salary review process alone”.

Ms. Short: Would you like to motion to make that amendment.

Mr. Ho: I did.

Ms. Short: To this petition.

Mr. Ho: That’s what I started.

Ms. Short: Do we have a second to that...any discussion on that motion?

Ms. Wan: Well, no you need the second first.

Ms. Short: Okay, do we have a second?

Ms. Nakanishi: I...I second.

Ms. Short: Ms. Nakanishi, thank you. Do we have any discussion on that? At this time, we’ll take a vote, those on zoom as well. All in favor say aye. Any opposed? The motion so passes to amend...wait.

Ms. Wan: 5 to 0. Yes.

Ms. Short: Okay, yes 5 to 0, I was like wait the hand motion. The motion so passes with 5 in favor, 0 opposition to approved petition 2023-03 pending that one change on #6 on page 3. Right?

Motion and Vote: Mr. Ho motioned to amend the draft Informal Advisory for petition 2023-03 pending a change on page 3; Ms. Nakanishi seconded.

Ms. Wan: Uh yes, however, um Deputy Corporation Counsel Sylvia Wan, I believe Mr. Ho's motion was just to amend the draft. So, now I believe there needs to be a motion to approve with said amendment, the draft.

Ms. Short: Okay. Can I have a motion to approve petition 2023-03 pending said amendment.

Mr. Ho: Chris Ho, I move to approve 2023-03 with the amendment.

Ms. Short: Thank you very much. Do I have a second?

Ms. Nakanishi: I second.

Ms. Short: Is there any discussion?

Mr. Ho: Hi. Chris again, uh I just have a quick question, um is there any opportunity to ask a question with regards to what's written in here? Is that where we're at?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, um you can ask a question if...it depends on what it relates to. Um, if it relates to a legal question, then you may want to enter...where the question is directed towards myself, Deputy Corporation Counsel as Counsel for the board. You may want to enter um executive session. It is...if it is a question just as to form or as to something to the board then you can probably ask that now.

Mr. Ho: Then I would have to move that we enter into executive session.

Ms. Short: Okay. We have a motion to enter into executive session. Do I have a second to that motion?

Ms. Nakanishi: I second.

Ms. Short: Any discussion? We'll vote, all in favor of moving into executive session now say aye. Any opposition?

Ms. Wan: I'm sorry...I...I did not see or hear Ms. Gibbon's...

Ms. Short: I saw her hand.

Ms. Wan: Okay.

Ms. Short: Did you, Kelsie?

Ms. Chang: I did not, I wasn't looking.

Ms. Short: Okay. Uh we'll call the vote one more time. All in favor. Any opposition? For the record at 10:21 a.m., Friday, April 14th we are officially in executive session.

Motion and Vote: Mr. Ho moved to enter executive session to discuss petition 2023-03; Ms. Nakanishi seconded the motion. All members voted aye (10:21 a.m.)

EXECUTIVE SESSION (10:21 a.m. to 10:25 a.m.)

Motion and Vote: Mr. Ho moved to exit executive session. Mr. Paiva seconded the motion. All members voted aye. (10:26 a.m.)

Ms. Short: Few moments for housekeeping and unlocking the doors. Perfect. At this time, we'll continue on to item #4B, petition 2022-16.

Mr. Ho: Point of order, we need to finish #4A.

Ms. Short: Oh. Thank you. So, does someone want to make a motion regarding #4A petition 2023-03?

Mr. Ho: Chris Ho, moved to approve petition #4A as amended.

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

Ms. Nakanishi: Denise Nakanishi, second.

Ms. Short: Any discussion? At this time, we will go through one at a time and I'll vote. Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposition? Seeing none, the motion passes 5 to 0.

Motion and Vote: Mr. Ho moved to approve the draft informal advisory opinion for petition 2023-03 with said amendments. Ms. Nakanishi seconded the motion. All members voted aye. (10:27 a.m.)

Ms. Short: Now we will move on to item #4B, petition 2022-16, review draft order dismissing a petition alleging the two planning department employees violated section 2-83 of the Ethics Code.

b. Petition 2022-16: Review draft order dismissing a petition alleging that two Planning Department employees violated Section 2-83 (Fair Treatment) of the Ethics Code.

Ms. Short: Did everyone have a chance to review this order dismissing the petition? Would anyone like to make a motion regarding petition 2022-16?

Mr. Ho: Chris Ho, move to approve petition 2022-16.

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

Ms. Nakanishi: Denise Nakanishi, second.

Ms. Short: Any discussion? Seeing none we will vote one at a time now, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Thank you, any opposition? Seeing none, that motion unanimously passes 5 to 0.

Motion and Vote: Mr. Ho moved to approve draft order dismissing petition 2022-16. Ms. Nakanishi seconded the motion. All members voted aye. (10:28 a.m.)

Ms. Short: Moving on to item #4C, petition 2022-13 review draft order dismissing a petition alleging that a Planning Department employee violated section 2-83 of the Ethics Code.

c. Petition 2022-13: Review draft order dismissing a petition alleging that a Planning Department employee violated Section 2-83 (Fair Treatment) of the Ethics Code.

Ms. Short: Did everyone have a chance to review this order? Does someone want to make a motion regarding this order?

Mr. Ho: Chris Ho, moved to approve petition 2022-13.

Ms. Short: Thank you. Does someone like to second that motion?

Ms. Nakanishi: Denise Nakanishi, I second.

Ms. Short: Wonderful. Any discussion? At this time, I'll call for a vote, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Ms. Wan: I...I'm sorry um, I'm sorry to interject so late but, um I think there needs to be clarity on the motion cause so far Mr. Ho stated approved the petition? I...I just want clarity as...that...that...that it's approving the order dismissing the petition.

Mr. Ho: Allow me to correct my motion. Move to approve...

Ms. Wan: The order dismissing.

Mr. Ho: The order to dismiss petition 2022-13.

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

Ms. Nakanishi: Denise Nakanishi, I second.

Ms. Short: Any discussion? Seeing none, we'll now move one at a time to vote. Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Thank you. Any opposition? Seeing none, the motion unanimously passes 5 to 0. Thank you everyone.

Motion and Vote: Mr. Ho moved to approve draft order dismissing petition 2022-13. Ms. Nakanishi seconded the motion. All members voted aye. (10:30 a.m.)

Ms. Short: Moving onto #5A new business, petition 2023-02, review of a complaint regarding a County Officer of the Leeward Planning Commission, alleging violation of Section 2-83 (Fair Treatment) of the Ethics Code.

5. NEW BUISNESS (10:31 a.m.)

Ms. Short: At this time, I would like to invite um any statements from the public as to this specific petition. It appears we have one person via zoom. Yup. Hang on just one second if you could please um state your name, the reason for your petition, you'll have 5 minutes to then testify.

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

Ms. Short: Oh, excuse me.

Ms. Wan: Clarification chair, this is actually the public testifier so, not the...not the petitioner.

Ms. Short: Oh, excuse me. So that would mean...

Ms. Wan: So, she's just...it would be public testimony on the petition.

Ms. Short: Okay. So, at this time if you would like to offer your public testimony on the petition. 5 minutes.

Ms. Matlock: Thank you. Aloha Kakou.

Ms. Short: You'll have 3 minutes, and if you could please state your name and then begin your testimony.

Ms. Matlock: Yes.

Ms. Short: Thank you.

Ms. Matlock: My name is Janet Matlock, and I am a license marriage and family therapist. My professional experience...

Ms. Short: Could you speak up just a little bit please, sorry.

Ms. Matlock: I am so sorry. Let me see if I can uh put this louder. Does that help?

Ms. Short: Yes, thank you.

Ms. Matlock: Okay, thank you. Um, Aloha Kakou, my name is Janet Matlock, I'm a licensed marriage and family therapist. My professional expertise includes providing supervision, training, and guidance in the area of law and ethics, [inaudible], including their internships.

Um, and I'm speaking to something of the Leeward Planning Commission meeting. Um, at the beginning of every Leeward Planning Commission meeting....

- Ms. Nakanishi: I...I really still can't hear her, sorry.
- Ms. Short: Could you speak up just a little bit more, I'm sorry we're still having a hard time hearing you on this end.
- Ms. Nakanishi: I can't understand everything she's saying.
- Ms. Matlock: I am so sorry, um it's interesting cause I use [inaudible] all the time [inaudible].
- Ms. Short: Maybe you could try removing your headphones? Would that work?
- Ms. Matlock: Does that help?
- Ms. Short: Does that help Denise?
- Ms. Nakanishi: No.
- Ms. Matlock: That won't help? I apologize for this.
- Ms. Short: No worries, I'm sorry that we're having these technical difficulties.
- Ms. Nakanishi: And she's....
- Ms. Matlock: I apologize, I don't know what this is.
- Ms. Short: Um, let's pause her time.
- Ms. Wan: Yes.
- Ms. Short: She hasn't gotten to speak at all, so we'll give you another 3 minutes. Could you read the captions Denise?
- Ms. Nakanishi: No!
- Ms. Wan: I'm sorry, um Ms. Um Matlock is...are you able to identify where your microphone is? Maybe if you could speak into your microphone that would help?
- Ms. Nakanishi: It's not horrible but I'm kinda even...don't even know who she is still in relation to this petition.

Ms. Short: Okay.

Ms. Nakanishi: I...I know she's some licensed therapist but...

Mr. Ho: Sorry, Ms. Matlock, do you happen to have headphone set have a mouthpiece similar to the ones that you've used for the Leeward Commission?

Ms. Matlock: Yes...Yes, I'm doing that right now. I'm using the same one I use professionally so....

Mr. Ho: If you want to hold the microphone maybe in front of your mouth?

Ms. Short: Can you just like hold it up in front of your mouth where it almost feels awkward, I'm sorry to make you do that.

Ms. Matlock: It's okay, I just want to get my message to you.

Ms. Short: Is that better?

Ms. Matlock: Is that better?

Ms. Short: Okay.

Mr. Vitousek: We...We can hear her perfectly on zoom.

Ms. Short: Okay.

Mr. Vitousek: I think the problem might be...

Ms. Short: I think that we can also have the...

Ms. Wan: Denise, you might want to back up and be under a speaker.

Ms. Short: Yeah, the speaker is up here.

Ms. Nakanishi: I...nothing wrong with my hearing but okay.

Ms. Wan: Okay, I'm sorry.

Ms. Short: Okay so at this time, we'll begin that all over again. Thank you for your understanding. The joys of technology. Um, if you could please state your name and you'll have 3 minutes to testify. Thank you so much.

Ms. Matlock: Thank you. Thank you so much. Thank you for this opportunity. My name is Janet Matlock and I'm a licensed marriage and family therapist. My professional expertise includes providing supervision training and guidance in the area of law and ethics to master's level [inaudible] completing their internships. Uh at the beginning of every Leeward Planning Commission meeting I have attended; the chairperson has begun with clearance directions [inaudible] and respect. And this reminder is appreciated. During the Leeward Planning Commission meeting on November 20...17, 2022, the chairperson allowed an applicant's [inaudible] representative to disparage the motives, concerns, and testimony [inaudible] public. [Inaudible] the chairperson then actively supported these statements. What, to my understanding, is supposed to be an opportunity for concerned citizens to offer their insights and ask their questions has turned into [inaudible]. The neighbors were painted as being against a particular family to the point where the local newspaper ran a front-page article titled "Kuakini Subdivision pits Hawaiian families against each other". Rather than considering [inaudible] to hearing the possible legitimate concerns were being expressed. The chairperson instead apologized directly to the applicant. The members of the public having voiced concerns at all. [Inaudible] who volunteer their time, talent, and energy of course, they all have their personal opinions. I can disagree and that is fine. What was breached in this instance was the provision of DE quorum and respect due to all. Not until those few who testimony might've been [inaudible] opinion, better directed to a different application or stated in a different way. [Inaudible] and promoting the personal disparagement of anyone who takes the time to testify results in the diminishment [inaudible] in the public's confidence [inaudible] process. So that's all I have to say. I just want us all to be reminded that we are all...it is important that we all are able to voice our opinions and our concerns without it being personal. So, thank you so much. I appreciate your time, I appreciate your...your service and I would like to thank the Deputy Corporation Counsel for clarifying why I was speaking before the [inaudible] speaking, so thank you for that. Mahalo.

Ms. Short: Thank you very very much for your time. At this time, does the board have any questions for Ms. Matlock? So, does someone want to make a motion regarding this petition? Would be our next move, right? Or do we want to have a discussion?

Ms. Dunn: No.

Ms. Wan: So, um, at this time chair, we would follow the procedures regarding the petition. Um, you can allow, if the board so chooses to decide this matter without hearing from the parties, the board can according to the rules, however, I...my understanding is that both the petitioner and...and the respondent are both available by zoom. So, if the board would like to hear from them, they are available.

Ms. Short: Yes, excuse me, that was my um point of order. So, this concludes public testimony. At this time, we will now allow testimony regarding the petition.

Ms. Wan: From the petitioner.

Ms. Short: From the petitioner. So...

Ms. Wan: Elizabeth Dunn.

Ms. Short: Elizabeth Dunn are you present via zoom?

Ms. Dunn: Uh yes...yes, I am. Can you hear me?

Ms. Short: Yes, thank you. Um Ms. Dunn if you could please state the reason for your petition, you'll have 5 minutes to testify.

Ms. Dunn: Okay. Uh, thank you...um mahalo and good morning, my name is Elizabeth Dunn. Um, I am a uh...a neighbor who lives next to the uh project that we were...that the Leeward Planning Commission was talking about. Uh, the small project uh adjacent...immediately adjacent to the neighborhood where I live, and I received uh public notice in the mail, so I provided comments to the Leeward Planning Commission. I did attend that meeting but um for several reasons I wasn't able to um speak. I got there a little late, I had a physical therapy appointment. Um and just wasn't quite sure how to kinda...see if I could participate. The reason I submitted the petition is because of the comments from the former chair of the Leeward Planning Commission. Um, as Ms. Matlock said, we all have opinions um, and this was a particularly emotional project and discussion about the proposal. Um yet I found the comments from the former chair about him being embarrassed and disappointed by community comments regarding the proposal to be, um, I would say uh inappropriate. That's a little bit harsh, I understand...again I understand we have opinions, but I wouldn't want to be in a public setting and hear that from a...especially a planning commission chair that has the potential to uh squash future public participation on uh projects.

The neighborhood where I live um has a number of vacant parcels around us. We've had development and proposals, we've had development proposals go before the um...the Planning Commission and/or just get withdrawn so, I fully anticipate that in the future I'm gonna be back before the Leeward Planning Commission making comments, submitting written comments and I don't want to feel that my comments are um irrelevant or what was the other word I wrote down. Um, just irrelevant and...and can be dismissed and squashed because that's...because of the...something that a Planning commission chair says. Um, again I understand we all have opinions on projects but to have that kind of statement of embarrassment/disappointed, I thought went too far and to me this was a way to raise the issue and kind of just work through that process of maybe seeing that that...those kinds of words and that language isn't...doesn't become the standard in future public hearings. Um, so that is um...that really in a nutshell is why I submitted the petition. Thank you.

- Ms. Short: Thank you for your testimony. At this time do we have the respondent present as well? Uh chair Michael...I'm going to butcher your last name if I try and do it, so I'll let you say it...Vitousek?
- Mr. Vitousek: Oh, no worries.
- Ms. Short: Is that right?
- Mr. Vitousek: Yeah, you did good! That was good.
- Ms. Short: Okay, thank you.
- Mr. Vitousek: Yeah, that's a hard one.
- Ms. Short: At this time, um if you could please state your name, the reason for your petition, you'll have 5 minutes to testify.
- Ms. Wan: Response.
- Ms. Short: Oh, response to the petition. Thank you.
- Mr. Vitousek: Aloha, um my name is Mike Vitousek I'm uh the former chair of the Leeward Planning Commission. Um, I'm actually termed out. My term on the commission is over. I'm just holding over until they can find a replacement for me. Um, I'm not sure...is it okay if I ask questions to the...the Board of Ethics at this time?

Ms. Short: Generally, no. It's just your testimony. You speak and we listen.

Mr. Vitousek: Okay. Okay. Um, I'm not sure how much you know about the application, but this was an application that was the result of a native Hawaiian family who were the awardees of the land during the Māhele. They were granted the Ahupua'a of [Inaudible] from Kamehameha III and have subsequently over the years sold off portions of it and retained only a 5-acre piece within the Ahupua'a of [Inaudible]. Um, the family was going through a partition action we're they we're splitting up the land amongst themselves because 1 of the co-owners in interest had a tax debt on the property so, there was a lean placed on it so they could do nothing with the property. In order for them to be able to utilize it, they had to separate it. There was a...a court order from the Third Circuit Court, civil # 3CCV-20000325 um, judge Wendy DeWeese ordered um well I'll quote the order "property is owned by various parties as stated above in undivided interest with interest or best partitioned to the owners in kind as mandated by Chapter 668 HRS. It is just an equitable in the interest of all parties that the property be subdivided into 3 parcels along the lines set forth in exhibit A, so that at least some, if not all of the property can continue to be owned by the present owners". The judge further ordered "The County of Hawai'i Planning Department, Department of Public Works and all other relevant government agencies are encouraged to facilitate the commissioner's efforts to subdivide the property in the manner set forth in this order". So, the judge ordered that the property be subdivided so that these Hawaiian families, descendants of the original awardees can keep their land. If they're unable to complete the zoning requirements they're needed, the property would be sold at auction at the courthouse and the money would be distributed to the family. To me, that is an um very significant task that the Planning commission has been asked to help with uh of keeping a Hawaiian family by the original descendants on their property. We took that seriously. Now, I think a number of the testifiers didn't fully understand the reasons behind the proposed change of zone and a lot of them interpreted it to be a proposed development and came into the meeting with very harsh and I would classify as of abusive remarks towards the applicant. I will read a couple of the testimonies and I won't name any names because I have no intention of signaling anybody out but, all of this is public record, it's all available. To start um, "It's shady to me that you even want to go from 5 acres to 1 acre. You want to go from 5 to 1, why? So, you can get away with first grubbing and digging up our bones? All for what, money? This is an emotional issue". It continues "It's sad that you think of money over the survival of your people

that these are lineal descendants coming back, that you'd be thinking of selling off more land when you should be saving your land and thinking of your people. That you're going from 5 acres to 1 acre so you can get out of the SMA. So, you can get a permit and a grubbing permit anywhere...then what? Pay a fine? Well fines should be \$50,000 and prison time and that's maybe the only thing you guys should be thinking about." Another stated "These construction workers and everyone else has no problems removing our bones. But fortunately, that's why we are all here and why I'm here today to stand with the Iwi, the land, the Kanaka, the Kupuna was once here because if they could...if they could, they would tell you guys that enough is enough we don't need any more colonialism on our islands. We want you guys gone already." Another stated "That this is yet another non-pono initiative."

- Ms. Short: That's 5 minutes but the board um can entertain if we would like to hear more?
- Mr. Vitousek: Another indicated...
- Ms. Short: Would we like for him to continue?
- Ms. Nakanishi: Do we need a motion? Yeah, we want...
- Ms. Wan: I...I...I think it would probably be best served if you want to do a motion and...and set a new...new time limit.
- Ms. Nakanishi: I move we allow another 3 minutes for his response.
- Mr. Vitousek: Sure.
- Ms. Short: Do we have a second to the motion to allow him to continue for another 3 minutes?
- Mr. Paiva: Scotty, I second.
- Ms. Short: At this time, we'll take a vote all in favor one at a time, Rachel Short, aye.
- Mr. Ho: Point of order, do we get to have a discussion?
- Ms. Short: Oh, any discussion? Excuse me.
- Mr. Ho: Thank you. Um, Chris Ho...
- Ms. Short: Any discussion regarding that motion?

Mr. Ho: I do. Um, Chris Ho uh so, for the respondent I'm just wanted to ask if the rest of your 3 minutes would be reading statements um that is public knowledge that all of us could have watched a head of time or will you be saying something else?

Mr. Vitousek: Sure. I can say something else for sure. I just wanted to ask if you guys have watched the testimony. That's why I asked if I could ask the question so...I'm...I'm happy to talk about something else.

Ms. Short: Is there any further discussion?

Mr. Ho: That was really where I was trying to for...go with all of this. We're given exactly the time frame in the video to be able to watch it and I don't know about the rest of you, but I spent two and a half hours watching that entire video.

Ms. Nakanishi: Well, I don't know when you got your packet, but I didn't get it in time to watch the video that...

Ms. Short: I did not receive the video either.

Ms. Wan: Deputy Corporation Counsel, Sylvia Wan, I'll just note um that Board Member Mr. Ho took the extra mile and...and found the video on his own accord. The petition itself did not provide a link to this particular video. Um, I also did a little bit of leg work as counsel for the board to identify and locate that video just in case the board wanted to otherwise view it um, again, according to the rules...you...you don't need to in order to make a decision on this petition. If you want to also according to the rules the board can request its staff to provide additional information, that is up for the board to decide.

Mr. Ho: Sorry if I can...Um, I...I'm fine with going along with the extra 3 minutes um due to everything that was previously stated um, I just was trying to get some clarification on where the respondent was going to be going.

Ms. Short: I would like to request that the board receive the video if the board feels that's necessary.

Ms. Wan: Sorry um...

Ms. Short: Or do we need a motion regarding that?

Ms. Wan: Yes. Well first we need to close off this motion.

Ms. Short: This motion. Okay.

Ms. Wan: So, this motion before the board is adding an additional 3 minutes for the respondent to um respond. The board can still ask its questions of...of the petitioner and the respondent if after that, there could be another motion.

Ms. Short: Okay. So, at this time, would someone like to second Ms. Nakanishi's motion to allow the respondent another 3 minutes?

Ms. Wan: Scotty did.

Ms. Short: Scotty seconded the motion.

Ms. Wan: We're in discussion.

Ms. Short: Is there any further discussion? At this time, we'll take a vote one at a time, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposition? At this time, seeing none, the motion passes 5 to 0. We will allow him another 3 minutes. Thank you for your time.

Motion and Vote: Ms. Nakanishi moved to allow respondent for petition 2023-02 another 3 minutes; Mr. Paiva seconded the motion. All members voted aye (10:50 a.m.)

Mr. Vitousek: Okay, awesome. Thank you. Um so the...the testimony was...was difficult. Um, the applicant and the ohana we're...we're visibly upset, they were in tears throughout the meeting. Um, after the completion of public testimony and the presentations by the Department and the applicant, um the commission made a motion to [inaudible] positive recommendation, seconded. During the discussion um, I indicated my disappointment and embarrassment by these statements that were um in my opinion disrespectful to the applicant and um fellow commissioners agreed. Um, one of the commissioners also stated on the record that they were appalled by the statements that

were made. Um, I'll point out that Planning Commission rules of practice and procedure state that the chairperson or vicechair person may limit testimony, which is irrelevant, abusive, disruptive, or unduly repetitious. That's the rule of Planning practice and procedure 1-55, Planning commission rules of practice and procedure 1-59 says that nothing in these procedures shall diminish the responsibility or the authority of the chairperson to maintain order and DE quorum. Um, there was....like a said difficult meeting but I believe that I did my best to maintain order and DE quorum in a fair, courteous, and impartial manner.

Ms. Short: Thank you. Does that conclude your testimony?

Mr. Vitousek: Yes. Thank you.

Ms. Short: Thank you for your time. Um, at this time does the board have any questions for either the petitioner or the respondent? Ms. Nakanishi?

Ms. Nakanishi: So, uh...my...the...the...at the beginning of the meeting cause I haven't seen the video you explained all the background of this application?

Mr. Vitousek: Um in the...in the meeting, yes. There's a...so, the...the way the Planning Commission um procedures work is similar here where you have public testimony but then we have the Planning Department staff do a presentation to um the...the meeting about the application and then you have the applicant do a presentation to the commission about what their intending to do. And then um, you have another opportunity for public testimony and then the commissioners make a decision. Now, in advance of that, in the weeks leading up to it, they provide a...a background report on um the application which in this case was 253 pages which is publicly available on the Planning department website so, any of the testifiers could have access to the court order and to all of the background material. But it's a lot to go through you know. I mean for a...a volunteer board it's a lot for a...a testifier it's a lot um so often times people don't fully understand the full background of a project before testifying on it and...and that was evident in...in the testimony in which testifiers specifically mentioned that they were unaware of the background of the report and that once they realized it was a Hawaiian family trying to keep their land, they dialed back their opposition to the project.

Ms. Nakanishi: Thank you. Ms....Ms. Dunn, did you realize that the circumstances of the petition or the action?

Ms. Dunn: Um yes, I did, and I have a...a few things to add. Um, I'm...I'm...I'm taking a pause cause I'm trying to line up my thoughts. Uh this was a particularly emotional and difficult meeting to participate in. Uh even if I was just watching it from the Planning Commission chambers, um I...I gather there were some folks who did not understand what this project was you know. On the face of it, it's rather small. It's a 5-acre parcel that was gonna be divided into 3 parcels. Um and because of the situation of I guess a tax lien issue and I think a death of one of the property owners, this was...this was the disposition of this parcel. Uh in order for the family members to individually own and...and live on the property. Um I also read the comments that Mr. Vitousek just spoke of, and they are a little harsh. I would never make comments about a person or those kind of issues. Uh when I had commented, I'm commenting on the project itself and I'm also gonna go ahead and say that um I have 40 years of experience being a planning director on the mainland so, I don't come into a situation like this swinging at people or making accusations, I understand what these projects are about and I thought the project and some of the key features were really inappropriate and that's what I focused on in terms of my comments on the project. Um, I think there's also a lot of boiler plate language that comes from a few consulting firms that work on private projects. So, I bristle at that. Um but to...to bring it back down to the issue of comments made at the Planning Commission, I would never have um encouraged my planning chair to make that kind of a statement. We also have yearly training for planning commissioners and I'm wondering if that's something that happens on a regular basis in this County. Um because I think that would give some background to any volunteer commissioner that's appointed on the commission. So, I take some Umbridge with what's been said. Um, I don't make comments that are hurtful about a person. I comment on the project itself and I thought the...many of the comments that were made by the applicant who represented the private property owner were inappropriate and I still believe that the comments that Mr. Vitousek made about being embarrassed and disappointed were equally inappropriate.

Ms. Short: Thank you very much for your testimony. Does anyone have any other questions or would like to hear anything else from the petitioner and respondent?

Mr. Ho: Chris Ho, uh...I have quite a few questions. Um, I guess the easiest one to start with is um to Mr. Vi...Vitousek, did I say that correctly?

Mr. Vitousek: Yup.

Mr. Ho: Okay. Um, I watched that video. That was really really hard. Um, very emotionally taxing um, especially in the beginning parts with um the individuals that...in watching that and hearing what you have just said um brings me to believe that they had no idea what was actually required by law to be done with those. Um and they all had the same theme every single public person that was speaking. I can't speak to those who wrote in testimonies but they literally all had the exact same theme and um it was the flipside to what was actually happening. Um, so the question...my first question is um with the first couple, um, why did you not warn the public testifiers uh when you felt it was getting um inappropriate and out of hand?

Mr. Vitousek: Um my personal strategy uh as Planning Commission chair has always been to give people their three minutes. You know they...they've got their three minutes to...to speak if it's a dual agenda item, then they've got six minutes. I try to give them that, you know, I don't want to limit, I do whatever I can to not limit it. I give them their opportunity to speak during the...the three-minute time that's allotted. Um, once that goes on as...as you saw in the meeting um, they had to try to dial back and...and maintain order but I do always try to give everybody their opportunity to have their say.

Mr. Ho: Okay, thank you. I...I do want to commend you actually on um your de quorum personally during those few that got really heated. Um it's also worth mentioning that the family members were present and participated in the public testimony and tried to explain what was actually happening um that the fact that they were working diligently to keep the property within their family. Um, as far as one of them explaining that um her families' bones were buried and are buried on the property that they're trying to keep. Um, so, yeah that...that kinda was um a lot to deal with. Um, I guess my last question Mr. Vitousek, if you could go back and re-do your statements during that, would you?

Mr. Vitousek: I would not. I...I believe that if this was the only application that I was on the commission for and um I had the opportunity to stand up for a Hawaiian family's effort to keep their land, I would do the same thing again.

Mr. Ho: Thank you very much, I have no further questions.

Ms. Short: Does anyone else on the board have any further questions for the petitioner or the respondent?

Ms. Gibbon: Sarah Gibbon, I do.

Ms. Short: Yes, please.

Ms. Gibbon: Um, I...I did not watch the video um I...I think I would've liked to uh, but I wasn't sure how to locate it. Um but I am curious just to hear what actions you took to maintain order during those testimonies.

Mr. Vitousek: Um basically just call point of order when the applicant...one of the testifiers was out of order and um respectfully asked her to maintain order and to cease what the testimony um it...it took many tries but repeatedly just asking her politely to...to wrap up her testimony. And...this...those...those are fairly common. I mean the meetings...are meetings get pretty heated pretty regularly and so it's something that we're used to. We...we try to do it in a respectful way and I...I think that...that meeting was...was well done.

Ms. Short: Ms. Gibbon, do you have any more questions for either the petitioner or the respondent?

Ms. Gibbon: No, thank you.

Ms. Short: Thank you. I have an um one question for Ms. Dunn and one question for Mr. Vitousek. Ms. Dunn, were you aware of the back story regarding this permit?

Ms. Dunn: Yes, I was. Um, again with my experience and the kind of projects that I worked on, or reviewed staff reports for, you have to understand the details of the proposal. Um, I'm very sympathetic, I'm very empathetic, I understand the...the emotion behind this proposal. Um and this is both good and bad perhaps in my training. Um, I look at things sort of in a...a fashion that focuses on the process and not the person or the instance um because then that...that...that's not the thing that you can review a project by. You're looking at the process um that you have to follow and...and I think that's where this whole project got kind of sideways. It...it was the family and some of the personalities, not necessarily the process of the project and reviewing it in that fashion. Um, I would just like to say that um thank you Mr. Ho for looking at the YouTube video. I wasn't sure that I could include...I um...a video link or...or a link to the video and if I've

known that I could've done that, I would've put that in the petition but that's why I indicated that this uh video is available on YouTube, and I gave the...the time stamp for it. For this particular discussion point.

Ms. Short: Thank you very much Ms. Dunn. Did you testify that day?

Ms. Dunn: Um, I did not as I...I came in late from a physical therapy appointment and I think I had missed the opportunity to speak publicly.

Ms. Short: How late did you enter the meeting?

Ms. Dunn: Half an hour...forty-five minutes. I mean the...the...the item had been introduced; I think that the uh consultant was talking about the project...had spoken about the project and the attorney who was representing the property owner had spoken about the project and I think some other folks might've been testifying or wrapping up. Um so, I...I didn't testify but I...excuse me, I provided a written comment.

Ms. Short: So, you were previously aware of this, that was on the agenda, this item.

Ms. Dunn: Yeah.

Ms. Short: Okay, thank you very much. Um, my next question is for Mr. Vitousek. Mr. Vitousek, what was it that made you call point of order? Can you kind of explain to us um the emotional testimony that you referred to.

Mr. Vitousek: Sure. Um, it was in the uh the beginning testimony. Um, in which the family was accused of...of trying to dig up bones for profit on their land. Um, that testifier, her testimony ran on beyond the...the six minutes that she was allotted because she was testifying on two agenda items and so, she...she didn't stop, she just kept talking and um so I would call point of order and...and ask her politely to stop and she would continue to talk over me and um I just would keep asking her to stop until finally um she did.

Ms. Short: Thank you. Ms. Dunn, were you there during that testimony that he is referring to when he called point of order?

Ms. Dunn: I'll be honest with you, I'm not sure. Um, it's been four or five months uh since then. I...I may have but I...I can't say for sure.

Ms. Short: Do you recall the testimony that he's referring to?

Ms. Dunn: Uh sort of um...

Ms. Short: Do you recall him calling point of order during that time?

Ms. Dunn: Without going back to the video and watching the meeting uh from the very beginning, I...I really can't...I can't speak to that.

Ms. Short: Okay. Thank you. Does anyone else on the board have any further questions for our petitioner or respondent? Ms. Nakanishi...

Ms. Nakanishi: So, just one further respondent...or a question for the respondent um, Denise Nakanishi, so you...your comment was just to the family as...it...you know that you are...you sorry that they had to be...hear all those um negative things. That...that was the purpose for your...that's all you were doing was apologizing to the family for some of the negative testimony, is that correct?

Mr. Vitousek: Correct...Correct. They were...they were visibly upset. They were in tears um, and it was...it would be very hard for them to hear um that they are committing [Inaudible] or they're desecrating um when they're really just trying to keep their families land. So, they were...they were upset by it and I...I empathize with them on that one for sure.

Ms. Short: So, I want to clarify that. You...Oh I'm sorry, Rachel Short, I want to clarify that really quick.

Mr. Vitousek: Sure.

Ms. Short: The statements that are being referred to in the petition, were they the apology like Ms. Nakanishi said, they were aimed at the family, not at the consultants and the construction and the planning department, is that correct?

Mr. Vitousek: Correct.

Ms. Short: Okay. Thank you. Anyone else on the board have any further questions for our petitioner or respondent? Ms. Nakanishi...

Ms. Nakanishi: Um, just...Denise Nakanishi um, just so that we don't have to kick this can down the road you know as we end up having to do so many times so that we can all watch the video, I have a question for one of the board members if it's okay, Chris....Is that okay?

Um, is that your impression is that he was just trying to apologize to the family?

Mr. Ho: Um, yes. He actually was looking directly...if I'm...if you're watching the video correctly, you have one of the family members sitting at the table, the attorney in the middle, the gentleman...is that...I don't know what his role is...

Mr. Vitousek: It's she. Um, she's a...she's the court appointed partition commissioner.

Mr. Ho: Oh, so the one at the end, the...the lady with the dark hair.

Mr. Vitousek: Yup.

Mr. Ho: Okay, perfect. Um, so yes, he was looking directly um at the family member and if I...I mean this me assuming the other family members are sitting behind presumably in the first-row cause that's where they probably would be going. Um, watching that was definitely...I wanted to reach through and apologize. Um, and sorry...I'm a very emotional person so this will probably make me cry. Um, to have public people tell me that I want to dig up my family's bones to sell them, it hurt to the core. And that is...and they stood up and said this is not what we're trying to do. Um, so to sit there and just be um verbally bashed um for trying to keep the land within the ohana was...it was...it was wrong...it was really bad.

Ms. Short: Thank you Chris. Um, my last question...hang on I want frame what I was about to say.

Ms. Dunn: Can I make a comment?

Ms. Wan: She raised her hand.

Ms. Short: Would we? Please...

Ms. Dunn: I...I just want to...because this whole issue of what Mr. Vitousek said in response to the other public comments that were uh very harsh. Um, whether I was there or not, um the...I was definitely there when Mr. Vitousek said that he was embarrassed and disappointed by the community comments regarding this proposal. I took that...I took that as a slam against me, okay. So, if I'm in the meeting whether I speak or not and I've submitted comments, when I hear something like that, given the context of this meeting, it seems very much like a hard push back on me. It could've been

towards the...the property owner but, if you're going to say something like that, a few extra words might be helpful like specifically to the property owner and not feel like it's a broad brush that throws everybody aside when you're making a comment on a project. I think we've all learned over the last couple of years in public discourse that words are important and how you say them and when you say them, and the meaning are all very critical. So, I didn't submit this petition as a pissing match with anybody. I...I know it was a difficult meeting, but I don't want to be in another meeting and hear this kind of language from anybody, any planning commissioner and if I do, uh then I'm going to make a statement right then and there because I...this is not how public meetings should go. You can be...it can be heated but it shouldn't get to the point where you feel like it's a WWE match.

Ms. Short: Thank you for your statement. Um, I have two questions for Mr. Vitousek. The first one being just to clarify for the record, the statement you made that is in question of that day, you were apologizing directly to the family. You were not addressing anyone else in the room, is that correct?

Mr. Vitousek: Correct.

Ms. Short: My other question, you have mentioned that you had to call point of order, multiple times, and that...that um meeting became very emotionally charged within a short amount of time, would you consider any of the statements that you heard from the public that day to have been abusive towards yourself or anyone else on the commission?

Mr. Vitousek: I...I consider them mainly to be abusive towards the applicant. Um, you know there will be...I...I don't know if that meeting, I...I don't recall anything that was particularly abusive towards the planning commission um...public testimony uh directed towards the planning commission doesn't bother me, you know I've got...got thick skin, I'm not worried about that. Um but the applicant, member of the public trying to do this um to keep their land in the family, it bothered me to...to have them attacked in that way and I...I think I very politely and respectfully um indicated that, that was not okay, that I was disappointed with those comments and...and if the chair can't say that their disappointment by comments that are offensive, abusive to applicants then I...I don't know how else we can run a meeting.

Ms. Short: Thank you for that clarification. Does anyone at the...on the board have any further questions at this time? Mr. Ho please...

Mr. Ho: Uh Chris Ho, Mr. Vitousek, just to clarify um an earlier statement that you had made, you are termed out as chairperson for the Leeward Planning Commission is that correct?

Mr. Vitousek: Correct.

Mr. Ho: And currently your role in there is just an intermediary until such time is...the position itself is filled, correct?

Mr. Vitousek: Correct. So, I'm uh...I'm a holdover meaning they couldn't find a replacement for me. Um so the...the longest I could possibly stay is...is July but, uh apparently, they have put in a replacement who's going to confirmation shortly so, I may not even be at the next meeting so, once I'm out of the commission in the next month or two, the...you know I'm not a...not a County Official anymore.

Ms. Short: Thank you for that. Mr. Ho...

Mr. Ho: Chris Ho, question to Corporation Counsel, with regards to this particular instance, um if we...because the individuals technically not...how...

Ms. Wan: So, Deputy Corporation Counsel Sylvia Wan, it appears that the board is going to ask a legal question, um and ask for legal advice from counsel so, if you'd like legal advice from counsel, we would have to enter executive session.

Mr. Ho: Chris Ho, move to go into executive session at 11:15 a.m.

Ms. Short: Do I have a second to move into executive session at 11:16 a.m.?

Ms. Gibbon: Sarah Gibbon, second.

Ms. Short: Okay. Uh for our petitioner and respondent at this time we'll put you in the waiting room while we enter executive session. Any discussion to be had? At this time, we will vote, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Wan: And I'm sorry, just for clarification of record, the reason why we're entering executive session is so that the board may consult with its attorney regarding its rules, responsibilities, liabilities, powers, I believe that's everything. Thank you.

Ms. Short: What Sylvia said so, at 11:16 a.m. please show for the record that the board has officially entered executive session.

Motion and Vote: Mr. Ho moved to enter executive session to discuss legal matters regarding petition 2023-02; Ms. Gibbon seconded the motion. All members voted aye (11:16 a.m.)

EXECUTIVE SESSION (11:16 a.m. to 11:22 a.m.)

Motion and Vote: Mr. Ho moved to leave executive session and enter general session. Ms. Nakanishi seconded the motion. All members voted aye. (11:22 a.m.)

Ms. Short: So, we go back Sylvia? We go back to here. Or we go here?

Ms. Wan: So, um at this point yeah you can clarify whether they have any other questions...

Ms. Short: Okay.

Ms. Wan: If they don't, you can ask if they have any motions.

Ms. Short: Okay. So, at this time does the board have any further questions for our petitioner or respondent? At this time would anyone like to make a motion regarding this petition?

Mr. Ho: Chris Ho, I would like to move that this petition be tabled so that, actually....I'm just going to leave it at that and I'll say what I want to say in my discussion. So, I move that the petition, I'm sorry what number are we?

Ms. Short: Uh 2023-02.

Mr. Ho: 2023-02 be tabled until the next meeting.

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

Ms. Gibbon: Sarah Gibbon, I'll second.

Ms. Short: Any discussion?

Mr. Ho: Chris Ho, um rational for the tabling is so that all members of the board can have the opportunity to visually watch um what was discussed in here.

Ms. Short: Any further discussion?

Mr. Paiva: Yes, this is Scotty and I'm...I'm...I'm one of the board members who really would wanna watch that um video in its entirety so I can um have a better understanding on what...the emotions that took place.

Ms. Short: Any further discussion? So, with that said, we have a motion on the table. I'm going to slightly amend your motion, correct me if I'm wrong. Um, to table petition 2023-02 with a request from Deputy Corporation Counsel Sylvia Wan that the video to what's referenced here be sent to all members of the Board of Ethics for us to review prior to the next session.

Mr. Ho: I approved the amendment.

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

Ms. Nakanishi: Denise Nakanishi, I second.

Ms. Short: Any discussion? At this time, we will take a roll call vote...

Ms. Wan: And just to clarify, um right now were talking about amending the original motion, you can take a roll call vote on amending...

Ms. Short: Okay.

Ms. Wan: The original motion...

Ms. Short: A roll call vote to amend the original motion to table 2023-02 so that all members of the Hawai'i Board of Ethics may receive and review the video in question, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposition? Seeing none, the motion passes 5 to 0. We will amend the motion to table petition 2023-02 so that we may all watch the video sent to us by Deputy Corporation Counsel. At this time, we will vote on the motion to table petition 2023-02.

Ms. Wan: As amended.

Ms. Short: As amended. Any discussion? We will now take a roll call vote, Rachel Short, aye. Oh, was there discussion? No. Okay. Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposition? Seeing none, the motion passes 5 to 0. Um, petition 2023-02 will be tabled and that motion will be amended.

Motion and Vote: Mr. Ho motion to table Petition 2023-02 to the next meeting with amendment; Ms. Nakanishi seconded the motion. All members voted aye (11:25 a.m.)

Ms. Wan: Yeah so, it'll be tabled. Deputy Corporation Counsel, Sylvia Wan, the petition 2023-02 will be tabled to the next meeting.

Ms. Short: Thank you for that clarification.

Ms. Wan: With instructions to Deputy Corporation Counsel.

Ms. Dunn: May...may I ask two quick follow up questions?

Ms. Short: I'm sorry we're closed for...at this time.

Ms. Dunn: Okay but this is sort of a...a procedural...two procedural questions, they're very quick. What...what date are you talking about, and do I need to attend?

Ms. Wan: Uh, Deputy Corporation Counsel Sylvia Wan, responding to the petitioner the next date which will be...which is also in the announcements on the agenda would be May 10, 2023, at 10 a.m.

Ms. Dunn: Okay. I don't...I only printed up a couple of pages I'm sorry if it was in the back part of the agenda. I don't have it. Um, do I need to attend?

Ms. Wan: Generally speaking, if your petition is on the agenda and you would like to be able to respond to any questions from the board, it may be behoove you to attend.

Ms. Dunn: Okay, I just...I'm just clarifying that's all.

Ms. Wan: Okay. Yes.

Ms. Dunn: May 10th at 10 a.m., got it.

Ms. Short: Okay. Thank you very much.

Ms. Dunn: Okay thank you.

Ms. Short: Thank you both for your time very much, we'll see you at the next meeting.

Ms. Dunn: Okay, thank you.

Ms. Short: Um, moving onto agenda #6, continued.

Mr. Ho: Chair, sorry.

Ms. Short: Please...

Mr. Ho: Uh I would like to move to enter into a five-minutes recess.

Ms. Short: Thank you, you remembered.

Mr. Ho: At 11:27.

Ms. Short: Do we have a second for that motion?

Mr. Paiva: Second.

Ms. Nakanishi: Denise Nakanishi.

Ms. Short: Any discussion? We'll take a roll call vote, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposition?

Ms. Wan: None.

Ms. Short: Seeing none, the motion passes 5 to 0. At 11:27 we are entering a recess. We will resume at 11:32 a.m. Thank you very much everyone.

Motion and Vote: Mr. Ho motion to take a five-minute recess; Mr. Paiva seconded the motion. All members voted aye (11:27 a.m.)

RECESS (11:27 a.m. to 11:35 a.m.)

Ms. Short: Aloha everyone, Chair Rachel Short, resuming our meeting calling back to order at 11:35 a.m., we are in regular session of the Hawai'i County Board of Ethics meeting for April 14, 2023. At this time, we are moving on to agenda item #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.

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 (11:36 a.m.)

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

Ms. Short: Item #6A is the continued review of the recommended changes from the Legislative Review Board regarding the Hawai'i County Code February 2022 Amendments. I know we do have two new board members. So, has everyone had a chance to review the recommended changes up for...

Mr. Paiva: Scotty, yes.

Ms. Gibbon: Sarah Gibbon, yes.

Ms. Nakanishi: Denise Nakanishi, yes.

Ms. Short: Mr. Ho...

Mr. Ho: Chris Ho, yes.

Ms. Short: Okay. Would someone like to make a motion regarding this item?

Ms. Wan: Deputy Corporation Counsel, Sylvia Wan, just to clarify for the board, um this particular...the materials that have been provided to the board for this particular item um, does include attorney client uh communications. If the board would like to further discuss the recommendations and the legal ramifications within the recommendations, um that would need to be heard within executive hearing...uh sorry, within an executive session. Um, if the board otherwise has motions on matters to otherwise take action on those recommendations um that can be heard in general session.

Mr. Ho: Point of clarification, what exactly are we motioning with this? Do we have approval authority on this or is it more a hears what's happening kind of thing.

Ms. Wan: So, these particular suggested changes originated with the board um, they were provided in a bill form to the legislative review bureau. The legislative review bureau provided input regarding legality on different issues as well as legal ramifications on different issues. Um which necessarily implicates the roles, duties, responsibilities, liabilities of the board as well as the County. So, further discussion is need in that vein, that would need to occur within an executive session.

Ms. Short: I uh...Rachel Short, Chair, 11:38 a.m. I would motion that we move into executive session to further discuss these changes. Would someone like to second my motion?

Ms. Nakanishi: Denise Nakanishi, I second.

Ms. Short: Any discussion to be had? At this time, we will vote, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposition? Seeing none, the motion passes 5 to 0.

Motion and Vote: Ms. Short moved to enter executive session to discuss item #6A; Ms. Nakanishi seconded the motion. All members voted aye (11:38 am.)

EXCUTIVE SESSION (11:38 a.m. to 12:05 p.m.)

Motion and Vote: Mr. Ho moved to exit executive session and enter general session. Ms. Short seconded the motion. All members voted aye. (12:05 p.m.)

Ms. Short: We are now in regular session. Do I have a motion from anyone regarding our continued discussion to the amendments to the rules of practice and procedure of the Board of Ethics and the Hawai'i County Charter and County Code?

Mr. Ho: Chris Ho, before I make my motion are we going to unlock the door?

Mr. Paiva: Good job sergeant.

Ms. Short: You're getting your steps in.

Mr. Ho: Exercise today.

Ms. Short: That's what I'm saying. Earning that Don's Grill. Okay. Mr. Ho...

Mr. Ho: Um, Chris Ho, move to reject...

Ms. Short: Yes.

Mr. Ho: The amendments submitted for item #6A, continued review of the recommended changes for the legislative review board regarding Hawai'i County Code February 2022.

Ms. Short: I will second that motion. Any discussion?

Mr. Ho: Did I word it correctly?

Ms. Short: Seeing no discussion. At this time, we will vote, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposition? Seeing none, the motion passes 5 to 0 and the Hawai'i County Board of Ethics rejects uh the amendments to the rules of practice and procedure of the Board of Ethics on the Hawai'i County Charter and County Code.

Motion and Vote: Mr. Ho motion to reject #6A; Ms. Short seconded the motion. All members voted aye. (12:07 p.m.)

Mr. Ho: Chair if I may...

Ms. Short: Please.

Mr. Ho: Point of privilege. Just asking for staff when we have um petitioners submit and then they put down that it's...like the one that we just had, um YouTube for Leeward County Council on the date um can we just re-check with them to possibly get a link from them rather than us having to research and figure out where it is, if we can ask them for....the petitioner to actually write down or submit the link?

Ms. Wan: Deputy Corporation Counsel Sylvia Wan, I understand the logic in which this request is coming from however, I do...the way that the rules are set, the request for additional information has to be heard and approved by the board and so, the staff doesn't have the authority to solicit or request additional information ahead of time.

Mr. Ho: So, would be dependent on the petitioner to as I believe Ms. Rohr did in our February meeting, where she provided the weblink. Um, is there an a....

Ms. Wan: Yes, of her own volition.

Mr. Ho: Right.

Ms. Wan: Because um, as a matter of practice, the staff does not...how do I say this....we do not tell the petitioners what information to provide or how to provide outside of the petition form and the guidance provided within the petition form.

Mr. Ho: Is there opportunity to adjust for 21st Century technology. Um, on the petition form to possibly provide like example?

Ms. Nakanishi: I mean she did note it.

Ms. Wan: She noted it um...

Ms. Nakanishi: So, why can't she...

Ms. Short: But it's not up to Sylvia to say you mentioned this YouTube video, give us this YouTube video. It's what I hear you saying.

Ms. Wan: The...the...yes.

Ms. Short: You don't have the authority to do that.

Ms. Wan: I...um, okay. So, the...the problem/concern is...is that the staff of the board does not have the authority to enter into the providence of the petitioner and how they want to present their case.

Ms. Short: It would be up to us. Like we did today to say you referenced this YouTube video, we need to motion to give us this YouTube video.

Mr. Ho: So, what I'm hearing is upon receipt of the email confirming the agenda, as well as the attachments for the agenda, it's the board members responsibility to go through, review should we need more um, then we would email or contact you? Or do I have to wait until the board meeting cause if we have to wait until the board meeting, I'm sorry but that's unacceptable, not on your part but on our part to be able to give an appropriate response to the individuals submitting.

Ms. Wan: Yes.

Mr. Ho: Because we lack the necessary information.

Ms. Wan: Um...

Ms. Short: Can I say something here...

Ms. Wan: Okay so, I...I'm just going to note that we're getting a little off topic and...cause we're off of agenda items.

Ms. Short: Yes.

Ms. Wan: I do understand we're you're going. Um, this is a matter um...actually since we're under recommendations for changing of rules I'm going to say that this still falls under #6A although it's tangential because it's not what was before the board. What you are requesting requires a change of the rules and procedures of the

Board of Ethics. And in order to effectuate that, it would have to be that this board vests that power within...

Ms. Short:

Yeah.

Ms. Wan:

A board member, the Chair would be the likely person to have that communication to direct the...the staff to...to ask for additional materials before we have the hearing. Otherwise, in order to comply with Sunshine, that request would have to be heard at an open meeting.

Ms. Short:

So, if I'm clarifying what I'm hearing is that as it stands right now, what happened today has to happen where they come before us, and we say we can't properly hear your petition because you referenced a video here and we can't come to a vote or a decision without seeing that video. What I'm hearing Sylvia say is that one of the rules or amendments we could propose would be that if we as the board receive something referencing a video or document or something that is not included in that petition, that would help us better serve and decide, the board could authorize the chair to request those necessary items mentioned in the petition to Corporation Counsel to then get from the petitioner or respondent.

Ms. Wan:

Um, the only...the only caveat to that would be its not a board discussion, it would have to be a decision by the Chair.

Ms. Short:

Okay.

Ms. Wan:

Um if you want to [inaudible] that. So, if you want to discuss this further, I would say that this would be more appropriately provided as an agenda item.

Ms. Short:

Okay.

Ms. Wan:

And then we can discuss it better.

Mr. Ho:

I would love to submit it as an agenda item.

Ms. Short:

Yeah.

Mr. Ho:

I don't know how to do that.

Ms. Short:

Can that be an official submission for....to put this on the next agenda?

Ms. Wan:

You can...

Mr. Ho: What is the procedure or/and process to have a board member submit? Do I petition?

Ms. Wan: No. You...you could um...you could message the staff...

Mr. Ho: Okay.

Ms. Wan: To add and then you can provide us what the parameters are so that we can provide that to the board. It would also become a part of the packet, the board packet.

Mr. Ho: Understood. Thank you very much.

Ms. Nakanishi: So, to...to that end and part of the continuing discussion about the materials for petition was filed February 15th and yet we get this information on Wednesday that had that. You know...I mean we...cause now we end up kicking the can down the road as I said, another month so that we can go back in and hopefully review that. Um, I don't know...I just don't....

Ms. Short: I think Ms....

Ms. Nakanishi: They....we got to cut this stuff off somehow I...we gotta figure out how...you know, they gotta have everything to us 10 days ahead and the packets need to be um available 7 days ahead or something so that we can properly prepare for our meetings because I'm always rushing around and staying up all night trying to go through this stuff and there was just no time to watch a 2 hour video that we had the information February 15th.

Ms. Wan: So, the board had the information on February 15th however, according to the rules we have to afford an appropriate...and we have to afford 20 days in order for the respondent to respond in writing which would then have to be provided also to the petitioner which is why it was on...

Ms. Nakanishi: Say that again please. What do you have to do within 20 days?

Ms. Wan: The respondent. So, the board receives the petition, a copy of the petition is provided to the respondent.

Ms. Nakanishi: To the respondent...

Ms. Wan: The respondent is afforded 20 days to provide a written response right, and so based on that timing will determine and the amount of time we need in order to get a board packet together for the board

will determine when that petition is gonna be heard. So, yes um the staff had that petition from February but, we could not provide that to you ahead of time.

Ms. Nakanishi: Well, 10....20...20days...

Ms. Wan: Like, we...we couldn't provide it to you back in February basically.

Ms. Nakanishi: But 20 days would've been mid-March so...and now...

Ms. Wan: Yes, and we had...

Ms. Nakanishi: Here we are mid-April.

Ms. Wan: Yes, which is why it's on...which is why it's on the April agenda.

Ms. Nakanishi: Yeah. But we gotta figure out how to get this stuff earlier or we just end up...

Ms. Wan: And...and that's kind of the nature of the bureaucratic based to a certain extent.

Ms. Nakanishi: So, potentially we're going to walk into every meeting and say I didn't have time to read this stuff? I got it 2 days ago.

Ms. Short: It sounds to me like this will be come an agenda item to be discussed at our May Board of Ethics meeting?

Ms. Wan: Okay.

Ms. Short: Okay. Everybody kosher to move on. At this time, uh 12:16 a.m. I would like to entertain a motion to move us into executive session.

Ms. Wan: For?

Mr. Ho: Chris Ho, oh...

Ms. Short: For the review of the executive session minutes and financial disclosure forms.

Ms. Wan: Thank you.

Mr. Ho: Chris Ho, second.

Ms. Short: Any discussion? Roll call vote, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: At 12:16 a.m. Friday, April 14, 2023, the Hawai'i County Board of Ethics is officially in executive session.

Motion and Vote: Ms. Short moved to enter executive session to the executive session minutes and financial disclosure forms; Mr. Ho seconded the motion. All members voted aye (12:16 p.m.)

7. EXECUTIVE SESSION (12:16 p.m. to 12:45 p.m.)

- a. Review of the executive session minutes of March 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.

Motion and Vote: Ms. Short moved to leave executive session and enter general session. Mr. Ho seconded the motion. All members voted aye. (12:45 p.m.)

Ms. Short: Now that the door is unlocked and we are back in regular session, are there any proposed or amended changes to the executive session minutes from March 15, 2023?

Mr. Ho: I move to approve the executive session minutes for, excuse me, of March 15, 2023.

Ms. Short: Is there a second to that motion?

Ms. Nakanishi: So, moved. I second. Denise Nakanishi.

Ms. Short: Any discussion to be had? Seeing none, we will now call for a vote, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposed? Seeing no opposition, the motion passes 5 to 0 and the Hawai'i County Board of Ethics has officially approved the executive session minutes from March 15, 2023.

Motion and Vote: Mr. Ho moved to approve the executive session minutes of March 15, 2023. Ms. Nakanishi seconded the motion. All members voted aye. (12:46 p.m.)

9. ANNOUNCEMENTS (12:47 p.m.)

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

Ms. Short: Closing out with announcements. Uh the next monthly meeting of the Hawai'i County Board of Ethics will be Wednesday, May 10, 2023, 10:00 a.m. here at the Hawai'i County Building, Council Chambers, 25 Aupuni Street, Hilo, Hawai'i 96720. At this time, would someone like to motion to adjourn the Hawai'i County Board of Ethics meeting?

Mr. Ho: I move to adjourn the Hawai'i County Ethics committee meeting, sorry not committee, Board of Ethics at 12:47 p.m.

Ms. Short: Board of Ethics. Someone like to second that motion?

Mr. Paiva: Scotty, second.

Ms. Short: Any discussion? At this time, we will take a roll call vote, Rachel Short, aye.

Ms. Nakanishi: Denise Nakanishi, aye.

Mr. Paiva: Scotty, aye.

Mr. Ho: Chris Ho, aye.

Ms. Gibbon: Sarah Gibbon, aye.

Ms. Short: Any opposition? Seeing none, the motion passes and we officially conclude and adjourn the Hawai'i County Board of Ethics meeting for Friday, April 14th at 12:48 p.m. Thank you very much everyone.

Motion and Vote: Mr. Ho moved to adjourn the Hawai'i County Board of Ethics meeting; Mr. Paiva seconded the motion. All members voted aye. (12:48 p.m.)

10. ADJOURNMENT (12:48 p.m.)

Respectfully submitted:

Kelsie Chang, Secretary