

HAWAI‘I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

Wednesday, May 08, 2024

10:03 a.m. – 1:29 p.m.

Hawai‘i County Building

25 Aupuni Street

County Council Chambers

Hilo, Hawai‘i 96720

Members and Staff Present:

Rachel Short, Chair

Paul Paiva, Member

Denise Nakanishi, Member

Lisa Fukumitsu, Member

Dakota Frenz, Deputy Corporation Counsel

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

Ms. Short called the meeting to order at 10:03 a.m. Present were Rachel Short, Lisa Fukumitsu, Denise Nakanishi, Paul “Scotty” Paiva, and Deputy Corporation Counsel Dakota “Cody” Frenz.

Ms. Short:

Good morning everyone. I’m Chair Rachel Short. This is the Board of Ethics meeting for Wednesday, May 8th, 2024. Our meeting is being held both in person and here at the Council Chambers as well as virtually using the Zoom platform. Um, before we get going, I would just like to remind everyone that under the HRS 92-3 of the Sunshine Law, this board may remove any person who willfully disrupts a meeting to prevent or compromise the conduct of that meeting. All persons appearing before this board are reminded to conduct themselves in a courteous manner. I’d also like to review some protocols very quickly with our Zoom participants. All cameras must be turned on at all times during your hearing. One person speaks at a time with no side conversations. Please mute your device when you are not speaking to improve audio quality for all and for Zoom participants, raise your hands and wait for recognition by myself before speaking to ensure we make a clean and clear record. Prior to speaking, everyone please state your name so that all parties know who is speaking and speak, slowly, clearly and close to your microphone. We would ask that everyone please limit distractions and turn off your mobile phones and other devices at this time. And as a general reminder for all our Board of Ethics members, please state your name before speaking throughout the hearing today. I’d also like to now

introduce the rest of the Board of Ethics. Um... If we can go down the line and state our names. I'll go first. I'm Chair Rachel Short.

Ms. Nakanishi: Denise Nakanishi. Member.

Ms. Fukumitsu: Good morning. Lisa Fukumitsu. Member.

Mr. Paiva: Morning. Scotty Paiva. Member.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS (10:05 a.m.)

Ms. Short: Thank you all for being here this morning and for donating your time to serve our community. At this time we will take statements from the public on agenda items. Public testifiers can testify now or just prior to the agenda item that they wish to testify on. Uh... DCC our Corporate Counsel over here, Cody, will keep time. Everyone gets three minutes. At two and a half minutes, Cody will announce such time remaining. Do we have anyone signed up to give public testimony at this time?

Mr. Frenz: Any public testifiers in person? Any public testifiers on Zoom? Not at this time chair.

Ms. Short: Thank you very much, Cody.

4. UNFINISHED BUSINESS (10:05 a.m.)

a. Petition 2023-10: Review of a Petition alleging County Employees violated the Hawaii County Ethics Code.

Ms. Short: At this time, I would like to call a petition out of order moving to item 4a under unfinished business due to a conflict of interest. We are calling this out of order because Cody has to recuse herself and we have Corporation Counsel from Maui present via Zoom. At this time, we are calling petition 2023-10, the continued review of petition alleging County Employees violated the Hawaii County Ethics Code. I would like to state that we received a letter, um, from the party requesting a continuance at this time due to a conflicting matter. So are we still asking that this be postponed? They can make appearances? Ok. Yah. We'll call this item at this time. If you could please just state your name for the record.

Ms. Kawauchi: Good morning, Chair, Chair person.

Ms. Short: Please move your microphone in front of you. Thank you so much.

Ms. Kawauchi: Good morning, Chair person Short and all of the members of the commission. My name is Jamae Kawauchi. I'm appearing today on behalf of my client, Mr. Chadwick Fukui. Mr. Fukui is present and he is seated to my right. I did request a continuance based on a hearing schedule that I have in Third Circuit Court and but the hearings have now concluded so we could move forward but I may have another basis to ask for continuance. I'm not sure if um with my understanding of who may be recusing themselves today if you're going to be short on quorum.

Ms. Short: You are exactly right. Um, Scotty will be recusing himself from the matter at which point we will not have quorum to be able to hear this petition today.

Ms. Kawauchi: Um. I would ask then that the commission continue this matter to the June hearing. Um... On the basis that proceeding today would not be possible due to a possible uh recusal of one or more board members in this matter.

Ms. Short: Thank you.

Ms. Kawauchi: The meeting date of the next meeting would be what date ma'am?

Ms. Short: June... June 12th.

Ms. Kawauchi: Um... Let me check my calendar. Mr. Fukui, are you free on June 12th? June 12th.

Ms. Short: Oh. I would just like to bring awareness to the fact that our Corporation Counsel is present via Zoom as Cody has recused herself for this matter and it sounds like Scotty is recusing himself for this matter. Corp Counsel, do we have quorum with the three of us to be able to vote to continue this or what does that look like?

Mr. Rowe: Hi. This is Deputy Corporation Counsel Caleb Rowe. I'm uh Corporation Counsel from the County of Maui. I've been asked to step in on this matter. Um... I believe that because there is a lack of quorum we can automatically uh continue it without having to take a vote on it.

Ms. Short: Ok. So at this time, we will be continuing petition 2023-10 to our June 12th Board of Ethics meeting.

Ms. Kawauchi: Um... Madam chair. I wanted also just to advise that Mr. Fukui is scheduled for surgery. It's possible that that may be a date that he

is scheduled. As soon as I know that then I will advise the board through the Office of Corporation Counsel and Mr. Rowe.

Ms. Short: Thank you. We appreciate you keeping us informed.

Ms. Kawauchi: Thank you.

Ms. Short: And good luck with your surgery.

Mr. Rowe: And chair this is, this is uh Caleb again. I have a similar uh conflict um in for the June meeting that I had for this meeting in that our own Board of Ethics meet at 12:30 so my only request is I am available but I would just ask again that it be taken out of order uh like it was today.

Ms. Short: Absolutely. So what I'm hearing is that we can table petition 2023-10 to our June meeting pending that you are not in surgery and at that time we will call it out of order again and allow it to go first so that our Corp Counsel present via Zoom can attend.

Ms. Kawauchi: Thank you, madam chair.

Ms. Short: Thank you. Thank you very much for your time.

Mr. Rowe: Thank you.

3. APPROVAL OF THE REGULAR SESSION MINUTES (10:10 a.m.)

Ms. Short: Give a minute to switch back Corp Counsel. Moving right along to agenda item 3a, the approval of the regular session minutes of April 12, 2024. Do we have any public testimony regarding the approval of minutes. Did everyone have a chance to read them? Do we have any changes? If not, I will entertain a motion to approve them at this time.

Ms. Nakanishi: Um chair. Member Denise Nakanishi. There is one uh typo and it changes the context uh the meaning of this sentence on page 17 and it says to console with the board instead...

Ms. Short: Oh consult.

Ms. Nakanishi: Yup.

Ms. Short: So we would need to make a note to change console to consult. Were there any other changes that anyone found? At this time,

would someone like to make a motion to approve the minutes with that change being made in them?

Ms. Fukumitsu: Board member Fukumitsu. I make a motion to approve the regular session minutes with the proposed changes.

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

Ms. Nakanishi: I'd second.

Ms. Short: Any discussion to be had? Seeing none I'll call for a vote. All in favor, please say aye.

All members say aye in unison

Ms. Short: Any opposition please say nay. Hearing and seeing none, we so approve the regular session minutes of April 12th, 2024, given that one change from console to consult. Thank you very much everyone.

Motion and Vote: Ms. Fukumitsu moved to approve the regular session minutes with the proposed changes from April 12, 2024; Ms. Nakanishi seconded. All members voted aye. Motion passed. (10:11am)

3. APPROVAL OF THE EXECUTIVE SESSION MINUTES (10:11 a.m.)

Ms. Short: Moving right along to agenda item 3b, approval of the executive session minutes of April 12th, 2024. Is there any discussion to be had regarding the approval of those minutes? If not I will entertain a motion to approve thus minutes.

Ms. Fukumitsu: Board member Fukumitsu. I make a motion to approve the executive session minutes of April 12th, 2024.

Ms. Short: Thank you very much. Would someone like to second that motion?

Ms. Nakanishi: Denise Nakanishi, member. I second.

Ms. Short: Any discussion to be had? Hearing and seeing none, I'll call for a vote. All in favor please say aye.

All members say aye in unison

Ms. Short: Any opposition, please say nay. Hearing and seeing none, the executive session minutes are thus approved.

Motion and Vote: Ms. Fukumitsu moved to approve the executive session minutes from April 12, 2024; Ms. Nakanishi seconded. All members voted aye. Motion passed. (10:12am)

4. UNFINISHED BUSINESS (10:12 a.m.)

b. Petition 2024-05: Continued review of a Petition from a County Employee seeking clearance and guidance regarding a potential conflict of interest.

Ms. Short: Moving along to agenda item 2024-05, the continued review of a Petition from a County Employee seeking clearance and guidance regarding a potential conflict of interest. Do we have any statements or anyone present to appear regarding that petition?

Ms. Frenz: No public testimony as to this petition? Any public testifiers on Zoom? Seeing none chair, you can proceed.

Ms. Short: K. Do we have a motion or any discussion to be had regarding agenda item 2024-05. I'll give everyone on the board a moment to find this petition. Just to make sure we are on the same page. Does everyone have petition 2024-05?

Ms. Nakanishi: Yes.

Inaudible

Mr. Manini: Morning.

Ms. Short: Thank you very much Mr. Manini. Do we take... Uh, Mr. Manini, if you would please state the reason for your petition then you'll have five minutes to testify.

Ms. Frenz: Just to clarify... So sorry chair. Mr. Manini has done so at our previous hearing...

Ms. Short: So I thought.

Ms. Frenz: ...um, so this is a continued hearing... This is DCC Cody for the record and um also for uh everyone's information, I've provided opinions of similarly situated petitioners requesting guidance from the Board of Ethics going back to the mid 1970's that involve requests for side work involving the same department or something closely situated so that you have historical information for this um continued discussion and consideration. Additionally, this board asked to bring Director Pause and the uh...

Mr. Manini: Building Chief.

Ms. Frenz: ...Building Chief. Thank you, I didn't want to get that wrong, Ms. Sonomura who are both present uh to provide additional information, background, maybe scope, and answer some questions that this board may have. Unfortunately, we don't have um, also noting for the record is Kelly Valenzuela, Chirs Ho, and Erick Allende are excused. Mr. Board member Allende had a lot of great questions for DPW purposes so unfortunately he won't be here to ask those. But maybe, let me, does the board have questions for uh Mr. Manini or would you like to hear from Mr. Pause and/or Ms. Sonomura, where are we at in that regard?

Ms. Short: Do we have any further questions for Mr. Manini at this time?

Ms. Fukumitsu: Board member Fukumitsu. I did not.

Ms. Nakanishi: Board member Denise Nakanishi. I would like to hear from the supervisors.

Ms. Short: Absolutely. Do we have any questions for Mr. Manini before we call them though? Scotty, any questions?

Mr. Paiva: No. Paiva. No.

Ms. Short: Ok. So at this time, Mr. Manini, you are excused and we'll call upon um, Cody if could you help me with the names?

Ms. Frenz: Ms. Sonomura and Mr. Pause.

Ms. Short: Thank you so much. Thank you both very much for being here with us today. We really appreciate it. Uh petition 2024-05 speaks to people who are employed by the County doing side work and we had some questions I believe we wanted answered because we recognize this is a large decision, you know, for County employees and for the ethics. Member Nakanishi, I believe you had some questions.

Ms. Nakanishi: Um... My question is... Member Denise Nakanishi. Um. Do you have an internal policy already for situations?

Ms. Sonomura: Julann Sonomura, Building Chief. No we do not have any written policy.

Ms. Nakanishi: Oh. Thank you. I got ***inaudible***. I mean I I do understand that there are other people in your departments that do have side work. You have an Engineer that does wastewater systems. Um. On the

side. So it would seem to me that there should be some kind of internal, but we'll get there.

Mr. Pause: If I may um. Steve Pause. I'm the Director of Public Works. Um. I think your reference might have been to me actually. Um. So uh I do uh septic system design which is under the authority and review...

Ms. Nakanishi: Sorry. Not just you. There's...

Mr. Pause: Ok. But it... But its under the review of the Department of Health. Um. It is not an internal, um. Nothing within the County grants approvals or does reviews of um of designs for individual wastewater systems. I just wanted to clarify that. Thanks.

Ms. Short: So there currently isn't any policy in place with the County regarding work on the side doing a similar position to the County pays you to do? Is that correct?

Ms. Sonomura: Yes. That's correct.

Ms. Short: Ok. Do any other members have any questions...

Ms. Frenz: Let me... Let me ask some questions because I understand what their questions were last month and the person asking them isn't present today...

Ms. Short: Thank you.

Ms. Frenz: Let me... Let me um lobby some of those your way. So maybe we could ask first of all Director and um Chief, do you support or are you... what.. what's your... what's your take on your employees being able to do side work on non-County time, non-County property to make a living. Is that something you're opposed to? So that's one question. The other one was looking at possible safety uh parameters that DPW could implement such as ensuring that they never approve their own work. That a supervisor for example um is not uh doing the side work and then expecting his uh subordinates to approve his work which would definitely be a conflict under 2-84 of the County Code. Uh... are there other safety parameters DPW would like or is DPW strictly opposed to it where I think the board was trying to better understand uh initially they thought maybe we could have only uh one supervisor do the approvals but if there is only one supervisor and everyone's doing side work, that one supervisor is going to have a lot of approvals to do and takes away the work from the actual inspectors right? So if

you have inspectors doing the inspections their thought initially was well if all the inspectors are doing side work, we'll just have the supervisor approve their work but then the inspectors are doing no work, right? So, that's not a reality and one of their questions was how many parties are we even talking about? How many electrical engineers, how many supervisors, what are the realities of being able to implement safety parameters such that it wouldn't burden um their colleagues, burden the supervisor because I'm not sure if having a supervisor have to then do all approvals is realistic for DPW. Um. And are there... if this board were to consider granting an employee the ability because they understand has far reaching potential ramifications for every department because there are a lot of other departments that have requested the same in the past. So because it's so far reaching, are there, if the board were to entertain granting this request saying there are no conflicts provided A, B, C, D, E, and F, what would those look like to DPW in a perfect world, if any. So I think that's some of the questions they had last month for now.

Ms. Short: Thank you very much, Cody.

Mr. Pause: So there was a lot of uh questions there to untangle. Um. What I'd like to first start with, and I'm gonna ask um Building Chief Sonomura to actually walk you through the organization of Building Inspector, the Building Inspectors and in what their roles and responsibilities are. I think that might be a good starting point to explain how all of this works if you don't mind. Julann.

Ms. Sonomura: Sure. The building division has offices in both Kona and Hilo and it is for most part equally divided as far as the inspection goes. Erm.. for example we were have uh building a building inspector and three building inspectors un under that supervisor and it would be duplicated in Kona as well and so the island generally geographically if you look you know north and south, that's the division of the island. Plumbing is the one supervisor and three inspectors for each side and electrical I believe is one supervisor and four, four or five inspectors under them. Um. The supervisor inspector oversees what his staff does but he doesn't actually duplicate any of their tasks and their duties so this is the inspection unit. As I understood uh Ms. Frenz, she's also asking about plan review? Or is this limited you your just limiting to...

Ms. Frenz: I, I think the specific ask for this particular petition is for an inspector to do electrical work...

Ms. Sonomura: Ok.

Ms. Frenz: ... on his off time, his or her off time right so basically I'm an e... I'm an electrical um inspector and I want to do electrician, electrical work outside whether that includes the submission of plans, the pulling of, of permits for example so from start all the way to finish with the exception of clearly not approving or inspecting his or her own work. What are the realities in that sense?

Ms. Sonomura: Ok. So right now we are uh we have a vacancy in the electrical engineer position so both supervising electrical inspectors do plan review. And I would say most of their time is spent in the office doing plan review as opposed to being out in the field.

Ms. Short: Is there any policy in place that if an inspector does do something on the side that they are not responsible for inspecting their own project?

Ms. Sonomura: There is nothing in place. We just have past practices and this is where I think the board's decision today will have a huge impact on the way we do business.

Ms. Short: Mm hmm.

Ms. Sonomura: Um my understanding is past practices without any reference to any document, any decision had been an unspoken rule where you can not do any work which is why when we had ethics training from our Corporation Counsel, Mr. Manini said hey wait a minute, you know reading the exact language that we have in the ordinance and its talking about official acts. Why would they be prohibited from uh doing the side work and that's why I believe we are here today. So we don't have anything other than past practices.

Ms. Short: Ok. Thank you for that clarification. I believe um this board is well aware that the decision we are making not only impacts your department and many employees but many many other County department and employees and their livelihoods and their families livelihoods and everything so we just wanna be 100% sure that we understand the policies based on the decision we're making so that if we do make the decision it has a positive impact for all so thank you.

Ms. Nakanishi: Sorry. Um...

Ms. Short: Please.

Ms. Nakanishi: Board member Denise Nakanishi. Um. I'd kind of like to make a motion, not, I mean would, I'd like to move this be continued given the additional uh information that we've received and also that the members that are not here had the questions, these were their questions. ***Inaudible*** Sorry to ask you to come back but that would be my motion.

Ms. Short: Calling for um discussion on Denise's motion. I would like to say we did receive this this morning. This is those past practices, those unspoken words that she's referring to. In addition I know board member Allende is very very versed and understanding in this and so were board members Ho. I would appreciate um, I hate to ask you to come back but if we could have time to review this and also to ensure that our other board members who have a better understanding of how this system works could be here I think would be helpful. Any further discussion?

Mr. Paiva: Yes. Member Paiva. But since you're here and I'm here, um I would like to ask a few questions...

Ms. Short: Please.

Mr. Paiva: If that's possible.

Ms. Short: Please.

Ms. Frenz: So just a point of order because I want to make sure so do did you, it sounded like you were saying you you wanted to make a motion. Did you make a motion or...

Ms. Nakanishi: I made a motion.

Ms. Frenz: Or were you going to table it. Ok. Are you withdrawing it or do you, cause if not you didn't vote on that. And you need a second.

Ms. Nakanishi: I need a second.

Ms. Short: Does someone wanna second that motion?

Ms. Nakanishi: ***Inaudible*** ... do discussion.

Ms. Short: If someone seconds the motion we can still continue discussion which I believe we can ask...

Ms. Frenz: No. You need...

Ms. Short: more questions during. No.

Ms. Frenz: You need... to handle your motion.

Ms. Short: Ok. So is there a second to the motion...

Ms. Nakanishi: To continue the matter.

Ms. Short: Hearing and seeing no second, that motion is quashed. Yah. Failed.

Ms. Nakanishi: Yah.

Ms. Short: So at this time we will allow member Paiva to ask any questions.

Ms. Frenz: If I could, I just want to clarify one thing that I think, I I just want to clarify factually so that we're, you guys are all on the same page. Um... board member Short, when you raised the past practice documents, I don't think that is what Building Chief Sonomura was referring to. I think she meant internally within their own system their past unspoken, undocumented past practices that they don't do side work and what you're referring to are actual filed opinions that I've provided this board from going back to the 1970's so I just wanted to clarify you guys are talking about I believe two different things is that right?

Ms. Short: Is that accurate?

Ms. Frenz: Ms. Sonomura?

Ms. Sonomura: Yes. That's correct.

Ms. Frenz: Ok. Thank you.

Ms. Short: Ok. Ok. Thank you for that clarification, Cody. Member Paiva.

Mr. Paiva: I'm member Paiva. Good morning. Thanks for taking time out of your busy schedule to assist us in this very important decision. But since we have you here and I'm here, um you didn't answer the question as far as what you folks felt as far as um an employee doing outside work, uh, an employee, one of your staff members doing um related work outside of the County time and business. How do you folks feel about that?

Ms. Sonomura: I actually have mixed feelings about that. Um. From a personal perspective when you consider the situation, there may be an appearance of some sort of conflict of interest. But when I was

researching this topic in preparation for today, the uh ordinance is very clear. It talks about official duties, official acts done and how that may or may not affect their side jobs and because it's consistent it's not just Hawaii County with that interpretation or that rule or law, its consistent, it's in the County Charter and its also in the State laws. So I don't know. I think maybe what um Deputy Corporation Counsel Frenz has provided, you would have more information that I am able to offer you. Um. It's it's a difficult one. It's a difficult one. Um. As far as how we would monitor, I think um Corporation Counsel asked about how we would be able to monitor and control that. It's uh area we haven't even explored yet because we have not done it. We do have electronic processing so when a contractor requests an inspection, its time stamped and the assigned inspector appears on the electronic record so as far as any kind of historic um lets say we were heading down this path and someone filed the petition saying hey there's a conflict of interest, I believe we do have the records and the data to do that research. Whether or not we're staffed to do that depending on you know how many complaints come in is another question. So at this time, I understand Mr. Manini is interested in activating his contractors license to do these jobs. I do not know how many other people um have that same interest. But when you think about it, I believe one of these um opinions was for someone, an electrician asking to be able to wire families homes. So if his brother was building a house and to save money he said hey can you come help me wire the house. The ordinance seems to be written to allow it but past practices says you cannot help out your brother. Even if you have the skills and the license to do it, that past practices where the decision from a previous board prohibited that. So, you know whereas you have a skill and a talent and uh licensure to help family and friends, they're being told they cannot. So I have a lot of mixed feelings about this. I appreciate that the board is looking at it for a clear definition. Thank you.

Mr. Pause:

Steve Pause. Director. Public Works. I would pretty much echo what Chief Sonomura said. Um. I, I think everybody should have the ability as, as she mentioned to help and to go out and earn an honest living. Um. I think that we would need to put uh policies and procedures in place and as Julann points out, um we are, we are challenged by staffing to to do anything extra right now. Um. These folks all work together. All the inspectors sit in the same area. They all work together. They all interact. The basis of of doing their work is pretty much uh communicating with each other. Um. I would have a concern, I I think um I think Julann brought this up as well of of the optics of um how do how do we

how do we put up bright lines between folks so that the general public doesn't look at us is um having a bunch of people who are all just kind of taking care of each other. The optics are something that I that I am concerned about. Um I I think it could be over, over com... um um but as she also mentioned um we are subject to endless countless complaints and everyone of them has to be investigated um I I could see this as being another area where the public would pick up on the potential or the optics of how this looks um and just start you know filling our our inboxes with more complaints so that's my concern cause that's a very real staffing challenge um of of coming up with a ways to kind of provide that protection now having said that um I have confidence in the people that work here uh that they're all ethical and that um you know it wouldn't be necessarily something that I cause me to lose sleep at night um but again the appearance there is is really what we are we are looking at more than anything.

Ms. Short: Thank you very much.

Mr. Paiva: No um I still I have some things on my mind.

Ms. Short: Please yeah member Paiva.

Mr. Paiva: Um. I have too much red lights here. Um. So can you can you explain to me what the conflict would be cause I don't really understand his role. He's the inspector so if he does electrical work outside of the County so that's like wiring and hooking up lights and someone else would do the inspection where where's the conflict?

Mr. Pause: If I didn't quite state it right I'll I'll try again it's an appearance of a conflict. His peer, person he works with, who um next door cubicle would be inspecting his work. I I again, I have confidence in the people that they are honest and forthright and there shouldn't be a conflict but it lends I mention the word optics. It lends the appearance that there could be a conflict.

Mr. Paiva: But in Hawai'i everybody know everybody. Everybody related so there's always an appearance of of conflict. So there really isn't a conflict with him doing wiring work and versus his County inspectors position.

Mr. Pause: My first comment would be um he would be under the same scrutiny as anyone else who has an electrical electricians license whose doing work and it has to meet code.

Mr. Paiva: Okay, thank you.

Ms. Sonomura: I would just like to add that as building inspectors we we rely on them to inspect quality of work, correctness of work, meeting code for the entire County and I think their level of standard and training is high and I believe that our inspectors are are out there advocating for public safety and health so I don't think they would intentionally cut corners where and do something incorrectly and put friends and families or even business relationships at risk. I'd like to believe maybe I'm naïve. I'd like to believe they're doing it honestly and correctly and that they're very qualified to do it correctly.

Ms. Short: Can I piggy back on your question real quick unless you have another one.

Mr. Paiva: Yes, another one. Um. You know Hawaii is expensive, cost of living is high um would it be um do you see it as a problem if your employees are not able to supplement their income that they'll leave the County and we be short on personnel staffing. Do you see that as a problem, maybe?

Ms. Sonomura: I do see it as a problem but I believe the problem of compensation for work performed is a Human Resources issue and not a question of ethics so if we could separate the two. We have lost employees before because they they're prohibited from doing this type of additional work to supplement their income. Um. The request that we have with the Human Resources department is entirely separate, but you know our people for what they do are not quite compensated enough to live comfortably.

Mr. Pause: And I would echo that again I I completely one hundred percent agree that um that that is one of our biggest challenges.

Mr. Paiva: Okay, thank you. That's it for me.

Ms. Short: Thank you, Scotty. Um. Kind of piggy backing on one of his questions, I have a few. The first being you spoke to the optics and the appearance of it being unethical, which I understand right, appearance is a big part of everything to employees and to the general public. If there were clear parameters, cause it's my understanding that there isn't anything in place right now it's all just kind of unwritten rules and things from the past. If there were clear parameters in place when it came to County employees doing side work, if you will, do you believe in any capacity that would

overcome some of the optics and maybe also ease some of your employees feelings about this situation.

Ms. Sonomura: No. I think if we had procedures and policies written out, we had uh for example you know able to check history and follow up it's a kind of also a matter of capacity whether or not we can do all of that. Um. Also because we haven't done it of course we would draft uh procedures that we thought we could work with and it would evolve. It would be a living document so as we come across situations we didn't foresee or anticipate we would be able to amend that and move forward. So it sounds like you know its if you're willing it might be something that we could try and see how it pans out because for us especially because we have the electronic processing system so everything is recorded down to when the inspector accepted the inspection, made the schedule when he completed, all his inspection notes would be recorded. Um. Procedures could be right now we do most of our inspections are on rotation so that you don't do the same geographic area but it might be you know if the uh the crews are willing you know inspectors are willing to cooperate they're all unanimous and wanting this they might switch it up. You know you do the first uh rough inspection someone else comes in and does a double wall to to alleviate that. So yes there are creative ways to address this.

Ms. Short: So that leads to my next questions. You guys do have systems in place that if you know some policy were to state, obviously if you're an inspector you don't sign off on your own stuff, you don't ask subordinates to do that, you can ensure that those policies were upheld.

Ms. Sonomura: Yes. I believe we could.

Ms. Short: K. And then my next question, do you guys currently have any safety parameters in place when it comes to your employees doing this type of work on the side?

Ms. Sonomura: Uh can you qualify safety as our occupational safety and health?

Ms. Short: Yes. Both. So safety of the County, safety of the people that their serving and their own personal safety. So I'm assured that the County has parameters in place right that when your inspectors are going out, there are certain safety guidelines that must be adhered to. Is there any sort of parameters in place for anyone doing side work who then brings things to the County?

Ms. Sonomura: I believe work that's done uh side work is not within our jurisdiction.

Ms. Short: Right.

Mr. Pause: And just to add to that um I think you're talking about are you talking about like physical safety like...

Ms. Short: Physical safety

Mr. Pause: Not getting hurt...

Ms. Short: Yup. Exactly.

Mr. Pause: So obviously HIOSH, um Hawaii OSHA um is ultimately the folks that do that level of enforcement at any sort of building or construction site so um there those rules would certainly apply.

Ms. Sonomura: And if I may add on to that, so I had this discussion just this morning. The contractors in charge of the job site. So if our inspectors were to go to a job site and found an unsafe condition the job site is not prepared and ready for the inspection. It's unsafe they are to leave. Right.

Ms. Short: Thank you for that clarification.

Ms. Nakanishi: Board member Nakanishi. Um when duh um. Sorry. Oh so when somebody makes a complaint for example is there a standard of burden of proof on the person complaining? Like do they have to point out what the problem is with the inspection or they just make a general complaint about there being a conflict of interest. Or you you don't is that just not covered cause your policy.

Ms. Sonomura: We have not, I have not seen complaints about conflict of interest likely because there people honoring the past practices. I would imagine if we were to receive complaints, it would come in the written form and it should be specific enough that we can do an investigation.

Mr. Pause: And um we do receive from time to time uh specific complaints about specific personnel. About inspectors, about um you know people in the field um and we have to investigate those and and they come from a wide variety uh of of accusations um I won't mention any of them specifically but um but they all are investigated. We have a general policy to investigate all of those complaints especially when it involves uh our people.

Ms. Nakanishi: And and you know what... As a realtor, I have a brokers license but my work is um reviewed by another broker because I want them to review my work so you know a peer review is not uh an impossible uh thing to monitor. It can be fine.

Mr. Pause: It also speaks, it also speaks to training as well and you know we do have uh fairly, um fairly intense training where you know new inspectors will go out with the experienced inspectors and from time to time um we also do refreshers when it comes to that as well so.

Ms. Short: Do you guys do any sort of um looking into whether or not someone is doing side work or not when you choose to hire them as an inspector?

Ms. Sonomura: I don't believe we ask specifically if they have or they related to a side business. Um a lot times when the qualifications and the resume it will state you know what their past practices are and I would imagine if they had reported their RME for a contractor during the interview we could ask if its an ongoing uh business and if their still relied upon for their license.

Ms. Short: Ok. But there isn't a specific you know part of the criteria?

Ms. Sonomura: That's correct. No.

Ms. Short: Ok. Thank you. Do any of our other members...

Ms. Frenz: A few more questions... This is...

Ms. Short: Please, Cody.

Ms. Frenz: DCC Cody. Uh. In light of some of the commentary here this might be helpful to the board. Other than DPW and Planning, do either of you know who else uses EPIC such that there is an electronic system hypothetically assuming it works the way it should work right for accountability purposes to ensure that you're not inspecting the very work that you're also installing for example, is it just those two departments if you know.

Mr. Pause: So, so during the multi-agency review process, so once it goes, once it gets past land use which is planning, it then goes into multi-agency review for for um for permit applications so DEM would be using EPIC um to review whether or not um say it's a residence or business should be hooked up to a sewer. Um our engineering

division would be using uh EPIC as well for issuing grading permits and uh such. Fire would be using EPIC to complete their review specifically for non-residential. Anyone else.

Ms. Sonomura: Department of Health.

Mr. Pause: Uh well DOH we've mentioned which is a state agency. They would be completing a review as well for um individual wastewater systems.

Ms. Sonomura: These are the reviews. Um a lot of the agencies have asked to joined EPIC but as you know we're we're still trying to get it configured and set up so until we do that, um for example DEM is not going to be doing any inspections through EPIC yet at this time.

Ms. Frenz: Um. Another question that I have um for the board, for you guys to maybe help the board, there's been a lot of talk as there always is and as they will see in some of the older opinions about an appearance of impropriety. Right the optics, the appearance of impropriety and frankly that's just not in the code right? Uh and that's why it's gray because while it may look bad, smell bad, it may not actually be bad and that's where it can get really tricky right. The code is what it is and it speaks for itself and that's where the confusion in and trickiness comes from. So I believe uh Building Chief Sonomura indicated that uh, two things I wanted to follow up on. You said well you can try it and see how it went right? Like a a living document see how it goes. Either it works or it doesn't work and maybe um fine tune it or just doesn't work at all. Um was your thought to try that in the interim and continue continue this particular petition or have an outcome for example on this one that maybe provided the opportunity subject to recall or reconsideration. Uh or and if so um or alternatively actually if no, to not try that now since the board has already indicated in in sounds like they intend to make a motion after asking you both all of their questions here today to request that you come back next month in hopes that are more informed and um the rest of our body can be present to ask questions. Would that be sufficient time for DPW to come up with some and when I say safety parameters, I'm talking internal checks and balances for conflict purposes not physical safety so such as you already touched on the different levels of inspection. How that could be broken up. Would that be enough time for DPW to come ready with some, if yes, you may not saying that you agree right but if this board were to consider approving it DPW would want the following as protocols that could be implemented into an informal advisory opinion by this

board should they go that way. I don't know how they're gonna go right but that allows them to call out things that you can thereafter implement in a memorandum or whatever you do within DPW to ensure compliance with a potential opinion. So, I know those are two kind of connected but different questions.

Ms. Sonomura: To be frank, we are so short staffed that I cannot foresee having anything ready by your June meeting. It may take a significant amount of time but I have um the way we would come up with procedures would be collaboratively with the inspectors themselves. It wouldn't just be us coming up with this saying. We'd be uh leading it, a discussion and you know collaboratively coming up with procedures so that's gonna take time when you involve other inputs. So I would, if we were going to head down this path, I would ask that we have the authority to do that, you know uh the board is authorizing us to explore this and to come up with something and I'm thinking maybe I want to say six months.

Ms. Frenz: And that's, the reason why, this is DCC Cody, the reason why I asked that question is is that something this body wants to consider today or do you just want to ask both of our our you know friendly witnesses who came to shed light and guidance to just come back in June and have further questions with the rest of your board members. I wanna, because times there there times valuable like everyone elses right and to keep bringing um back in I hate to further burden already busy schedules like you guys so I'm just trying to think if you're heading in that direction wh, I wanna be work smart in that sense.

Ms. Fukumitsu: Uh Board member Fukumitsu. I feel for my purpose I wanted the supervisors here today for us to talk about, identify conflicts, issues, problems. Um. Our role is to make an opinion or a ruling on the the code itself so as far as I'm concerned, I'm I think I'm ok with not having, you know I feel like I've gotten my questions answered and I'm kind of ready to move forward.

Mr. Paiva: Member Paiva. Me also, If we're gonna continue this and um for our next meeting with uh additional board members present.

Ms. Nakanishi: Board member Nakanishi. You know uh it seems like every other month at least we have a similar issue that comes up. Um sometimes that pattern is slightly different but it, this comes before us a lot and um it would be good if we could um get some clear direction and I don't know if we'll ever get there but we need them as much information as we can about past practices and so yah that's why I made the previous motion that...

Ms. Fukumitsu: I have a question though.. I mean in regards to policies and procedures is that within the scope of what we're doing here or is actually that within the department and their Human Resources and union right, our job here is to rule on this petition.

Ms. Frenz: This is DCC Cody. That's... that's correct. Your your jurisdiction is limited right. There kuleana is their department. How they implement an opinion that you may or may not render and ensure compliance with it, um, is going to be up to them to do right within all of the working relationships they have within their bargaining units um and collective bargaining agreements. Your job as the board is to interpret the code and apply it to the facts before you. Um. Understanding the realities of that implementation is important I think because you don't want to, and one of the concerns that we've discussed is burdening and already burden department in a way that just makes it unrealistic. Um and problematic right? So that's why we wanted, you guys wanted to have them here to ask them some questions so I guess what I'm trying to further gather from those of you present today is uh if you're going to be issuing or considering issuing an opinion and you have a lot of information you still need to read right, do you need anything else from from Building Chief Sonomura and Director Pause. That's what I think is critical so we you know...

Ms. Short: I'm going to piggy back on what you said Cody to answer your question. The understanding in our review of this petition is kind of like Denise just said, we see a lot of petitions of this nature. So the decision that we're going to make on this petition, being it an informal advisory opinion doesn't only impact their department. It impacts all the departments cuz just you, like you just said optics, appearance whatever so whatever we do for building and public works now we're doing for every department within the County. So I believe that's why the board is taking this so seriously because we have an understanding that we, this is this is a big decision when it comes to moonlighting or side work if you will that affects all of the County's employees and all these divisions even if it is just them in this interpretation of the code.

Ms. Sonomura: Right.

Ms. Frenz: This is DCC Cody. Let me just note that you have the ability when the time comes, if and when you're ready to to limit it because, and that's why I asked uh the witnesses about EPIC...

Ms. Short: Right.

Ms. Frenz: Right? Because there are the, hypothetically the system in it of itself would provide them the information for the check and balance process and they would have to work on an implementation that not every other department would have.

Ms. Short: Yes.

Ms. Frenz: ... so it may not be and I'll address that you know as your legal guidance um as broad reaching. It may not be as broad of a stroke because they have a system that not every other department has.

Ms. Short: And it's that EPIC system?

Ms. Frenz: That is correct.

Ms. Short: K. Correct.

Ms. Frenz: So.

Ms. Short: So yah.

Ms. Fukumitsu: Right. Thank you. So that was my reasoning for having you here today so if we do render an opinion, my thought was to get feedback from you on if the opinion were to um support Mr. Manini, what parameters right? Cuz we could build in some of those parameters in that opinion if it goes in that direction and I wanted your feedback on just sort of like that base line foundation of what that would look like.

Ms. Frenz: This is DCC Cody. Let me clarify, I think what she's, she's looking for some specifics Ms. Sonomura and Mr. Pause so for example the informal advisory opinion would include the facts, the code interpretation and applying those two together in that it would come out with a conclusion right? You either can or cannot for the following reason and if you can you can with the following exceptions or limitations and that's what the guidance that I think they will need if they were to make that decision such as you can never approve your own work and I wanna make sure because DPW speak is very different from Board of Ethics speak and I wanna make sure that the opinion properly articulates the correct terminology such that it what they mean means the same thing to you. I wanna make sure that talking apples and apples and they don't say one thing and you guys interpret it differently so getting guidance from the actual people that are going to be forced to implement it I think is a huge benefit both to them but also to you

guys to make sure they don't potentially bite off more than you can chew. If that make sense right? But it's not too wide ranging and not specific enough to really be able to ensure you can carry it out.

Ms. Sonomura: I'm sitting next to you and I'm thinking ok to keep it simple, if you would just say that you don't inspect your own work and just leave it at that. I...

Ms. Short: Or subordinates work? Would that be helpful?

Ms. Sonomura: Uh. Yah.

Ms. Frenz: The code speaks of that already...

Ms. Short: Oh it does.

Ms. Frenz: ... that way we don't violate the code.

Ms. Short: K. Just making sure. So your simple solution would be to say that no one inspects their own work if they were doing side work.

Mr. Pause: I, I think that would be the simple solution. Um and I've been sitting here thinking about this. Um. I think what you're asking us for, not to come back with policies and procedures because Ms. Sonomura said that would take six months and she was being optimistic I think. Which is unlike you but um but I do believe that between now and next month, we can come back with guardrails. I think that's really what we're talking about.

Ms. Frenz: That's what I asked.

Ms. Short: That... and that's what I asked...

Mr. Pause: You didn't say...

Ms. Short: Yah.. Not, not...

Ms. Frenz: I didn't say guardrails. You are absolutely correct Director Pause. Your language is impeccable always.

Ms. Short: I do agree that I don't believe we're asking for some sort of working document or policy that would take six months but if we were to continue this so that more of our board members could be present during that time, respecting your time is extremely valuable and asking you to come back, we recognize is a big deal. Would you be able to bring us maybe just like a bullet-proof, one

page, what or bullet point one-page whatever, simple simple this would help with concern to EPIC, the system and the code.

- Mr. Pause: I would think that that's not an unfair ask.
- Ms. Short: K. So at this time would someone like to maybe make a motion to continue this so that they can come back to use with maybe some sample policies and procedures that would inform us in making this decision and so also that more of our board members may be present.
- Ms. Frenz: If maybe we should clarify first of all if that date works or if a two month period would be more realistic for DPW.
- Ms. Short: Thank you, Cody. Would June 12th be realistic for you both to come back? Does that timeline work?
- Mr. Pause: Yah. That that should work just fine, chair.
- Ms. Short: Thank you. Does that date work for you? K. Would anyone like to make a motion to continue petition 2024-05 to next month so that they can prepare some things for us to come back with for them to come back with.
- Ms. Nakanishi: I'll try again. I'd like to make a... Board member Nakanishi, I would like to make a motion that we continue this 2024-05 until June.
- Ms. Short: Would someone like to second that motion?
- Mr. Paiva: Member Paiva, I second.
- Ms. Short: Thank you. Any discussion to be had? Hearing and seeing none, I'll call for a vote. All in favor please say aye.

All members say aye in unison

- Ms. Short: Any opposition, please say nay. Hearing and seeing none, the motion so passes. Petition 2024-05 will be continued to our next Board of Ethics meeting at which time you guys will come back with the requested information. Thank you so much for your time.

Motion and Vote: Ms. Nakanishi moved to continue petition 2024-05 to the June meeting; Mr. Paiva seconded. All members voted aye. Motion passed. (10:58am)

- Mr. Paiva: And thank you both for coming and joining us today.

Ms. Short: Yes. Thank you so much for your time.

Mr. Paiva: We really appreciate and need the assistance, thank you.

Ms. Frenz: Thank you Mr. Manini, you as well. Thank you, sir.

Ms. Short: Yes, thank you very much Mr. Manini. Appreciate your time. Moving right along to agenda item 4c the continued review and update of the board of ethics rule of practice and procedures. We do not have an update yet, DCC Cody is still working on the draft so I would ask for someone to make a motion to please continue this matter. The continued review and update of the board of ethics rules of practice and procedures agenda item 4c. Would someone like to make a motion to continue that?

Ms. Fukumitsu: Board member Fukumitsu, I make a motion to continue the review and update of the board of ethics rules of practice and procedures to our...

Ms. Short: June.

Ms. Fukumitsu: June meeting.

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

Mr. Paiva: Member Paiva, second.

Ms. Short: Thank you, Scotty. Any discussion to be had? Hearing and seeing none, I will now call for a vote. All in favor please say aye.

All members say aye in unison

Ms. Short: Any opposition, please say nay. Hearing and seeing none, the motion to continue, review, then update the board of ethics rules of practice and procedures until our June meeting here so passes. Moving onto agenda item number 5, new business. At this time we will be calling petition 2024-02 the review of the petition alleging a county employee violated the Hawai'i County Ethics Code. Do we have any public testimony on this agenda item?

Motion and Vote: Ms. Fukumitsu moved to continue the review and update of the Board of Ethics rules of practice and procedure to the June meeting; Mr. Paiva seconded. All members voted aye. Motion passed. (10:59am)

Ms. Frenz: Anybody testifying publicly for this matter? Other than the petitioner? No. Any testifiers on Zoom? I see none chair.

Ms. Short: K. We have no public testimony at this time. So with that said can we please get the respondent to come up to the mic and state your name for the record please.

Ms. Nakano: Um Joleen Nakano.

Ms. Short: Thank you and are you requesting an open or closed hearing at this time?

Ms. Frenz: Sorry just to clarify it's the right that lies with the respondent not the petitioner under our rules.

Ms. Short: Oh.

Ms. Frenz: Ms. Nakano doesn't have that right.

Ms. Short: Oh.

Ms. Frenz: It's the respondent. So we can have her state her name.

Ms. Short: Okay.

Ms. Frenz: And then we can clarify with our respondent if that person is seeking a closed hearing.

Ms. Short: Okay, so we're calling the respondent instead of the petitioner at this time?

Ms. Frenz: Yes.

Ms. Short: Okay, sorry about that.

Ms. Frenz: ***Inaudible***. There was some confusion.

Ms. Short: Yeah, sorry about that.

Ms. Nakano: I go back?

Ms. Short: Yeah, we'll call you in just a second. Sorry for the confusion. Can we get the respondent to come up to the mic and state your name for the record please. Thank you, Cody.

Ms. Sonomura: Hi, Julann Sonomura, building chief.

Ms. Short: Thank you and are you requesting an open or closed hearing at this time?

Ms. Sonomura: Closed hearing.

Ms. Short: If it's closed, would you please explain to us why you would like a closed hearing.

Ms. Sonomura: I'm requesting a closed hearing because there's confidential personnel information that will be brought forth today that I don't think the public should be privy to.

Ms. Short: Would someone like to make a motion for this to be a closed hearing so that that information can be kept confidential and private.

Mr. Paiva: Member Paiva, I make a motion that we do it in a closed session in request by the respondent.

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

Ms. Nakanishi: I'll second, board member Nakanishi.

Ms. Short: Any discussion to be had? Hearing and seeing none, will call for a vote in this time. All in favor of a closed hearing on this petition, please say aye.

All members say aye in unison

Ms. Short: Any opposition, please say nay. Hearing and seeing none, petition 2024-02 will be held in a closed hearing. At this time we will allow...

Motion and Vote: Mr. Paiva moved for a closed hearing; Ms. Nakanishi seconded. All members voted aye. Motion passed. (11:02am)

The Board entered closed session for Petitions 2023-02, 03, and 04.

The Board entered open session.

Ms. Short: So. **Bangs gavel** 1:28pm Wednesday, May 8th, Chair Rachel Short. I am hereby recalling uh the convening of the Hawaii County Board of Ethics. We are back in open session. Uh we are going to be skipping moving into open session merely because we will lose quorum after the

conclusion of this. So moving onto agenda items announcements 7A. The next monthly meeting of the Board of Ethics is scheduled for Wednesday, June 12th, 2024 at 10am here at the Hawaii County Building Council Chambers, 25 Aupuni St. Hilo, HI 96720. At that time we will be hearing um the information we requested and the petitions that have been continued. At this time, I will entertain a motion to adjourn.

Ms. Fukumitsu: Board member Fukumitsu. I make a motion to adjourn.

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

Ms. Nakanishi: I second.

Ms. Short: Any discussion to be had? Seeing none, I call for a vote. All in favor, please say aye.

Unanimously says aye

Ms. Short: Any opposition, please say nay. Hearing and seeing none, at 1:29pm Wednesday, May 8th, this concludes our Hawaii County Board of Ethics meeting. Thank you everyone for being here.

Bangs gavel

Motion and Vote: Ms. Fukumitsu made a motion to adjourn the Hawai'i County Board of Ethics meeting; Ms. Nakanishi seconded the motion. All members voted aye. (1:29pm.)

Respectfully submitted:

Stacie Okuda, Acting Secretary

Emarie Carvalho, Acting Secretary Assistant