

HAWAII COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

May 18, 2005 – 10:00 a.m.

Liquor Department Conference Room
101 Aupuni Street, Suite 230, Hilo, Hawai'i 96720

Present: Reeve Williams, Chair
Karl Kawahara, Vice Chair
Kerry Inouye, Member
Wayne Joseph, Member
Amy G. Self, Deputy Corporation Counsel
Mary Crosson, Secretary

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CHAIR: It's ten o'clock, or almost ten o'clock, and let the record show that the meeting will proceed. And do we see any members of the public walking in the door? None present. If not, we'll go right into the minutes. So the minutes of the April 12, 2005, Regular Session are in your possession. Have you all had a chance to review these copious notes? Bless your heart, Mary, for wading through all this stuff, a ton of it.

KK: You know, I have a question, maybe from the legal standpoint. Is verbatim notes in the minutes a requirement now of the County?

CHAIR: Or can you summarize?

AGS: No, I think some—

KK: --I asked that before.

AGS: I think there are some boards that do summarize. I can get back to you on that.

KK: Yeah, well.

AGS: You're wondering if you could—if they could just start summarizing so that—

KK: Of course, it can be dangerous.

CHAIR: It could be dangerous. I mean, a little editorial discretion would be good, perhaps.

KK: Yeah. You know, I brought this up several years ago, and I thought Pat told us, Pat or somebody told us, that it was—I think it was optional. But, I just wanted clarification on that, because—did I say some of these things here?

CHAIR: You know, that always surprises us.

KK: Well, I don't know what the others feel.

AGS: I'll find out and get an answer to you on that.

CHAIR: Well, if you have reviewed these minutes, are there any additions or corrections?

KK: And if I may ask the secretary, the blanks mean that you didn't get the word, or whatever, it's inaudible or whatever?

CHAIR: Right.

KK: So I guess we have to speak louder into the mike, or—

MC: Yeah, even moving these silly-looking microphones closer, you know.

CHAIR: They'll all think you're the American Idol contestant, with a microphone. Are there any additions or deletions, or suggestions or subtractions?

KK: I move for adoption.

CHAIR: Second?

KI: Second.

CHAIR: All in favor?

KK: Aye.
KI: Aye.
WJ: Aye.

CHAIR: That's the Regular Session that are adopted. The Executive Session is next on the agenda. Have you had a chance to review that?

KK: Yes.

CHAIR: Any additions or corrections? Comments? May I hear a vote to adopt and file?

KI: I move that we adopt and file the minutes of the Executive Session.

WJ: I'll second.

CHAIR: All in favor?

KI: Aye.

WJ: Aye.

CHAIR: The Chair votes aye. Did you already vote? Are you voting on the Executive Session minutes?

KK: No. I think, like Wayne last time, when he didn't vote for something, as he wasn't present at it.

CHAIR: You were present—oh that's right, you left early, that's right. Let the record show that Mr. Kawahara abstained and everyone else voted to adopt and file. Moving on to number 4, item 4, Communications, we have from Corp Counsel Lincoln Ashida, to Maui Corp Counsel Brian Moto, thanking John Kim for serving as special counsel that day, and we're talking about the *pro bono* work of attorneys. Any motions to adopt and file?

KI: I move that we adopt and file.

CHAIR: Any second?

WJ: Second.

CHAIR: All in favor, please, all in favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: The chair votes aye. Unfinished Business, the heart of the matter. There are several petitions here for informal advisory opinions regarding Barbara Lively, Ronald Thiel, and Lincoln Ashida, and then

we have a bill to talk about. So, Petition No. 2005-01, approval of the Informal Advisory Opinion regarding petitioner Barbara Lively. As you recall, we've had two meetings with Barbara. She's employed as a council aide, clerical aid for Councilman Bob Jacobson, and as a sideline has a contracting business for _____ under the direction of R & D, but with some confusion as to her supervision. So we have a fairly lengthy and complicated Informal Advisory Opinion here, which was necessitated because of the involvement with that. Are there any comments about that? I mean, you had some issues with some of this—maybe with the Lincoln Ashida one, I guess, yeah.

WJ: Yes, and those were resolved.

CHAIR: Okay. So, any comments or discussion on Barbara Lively's Informal Advisory Opinion, which was drafted I guess by Bobby Jean, yeah? Did Bobby Jean put this together?

MC: Yes.

CHAIR: Do you have this thing, Amy, did you see this?

AGS: No, actually I didn't.

CHAIR: It's pretty involved.

AGS: I read what was in the minutes on this.

CHAIR: I guess the real deal was, is there a potential for abuse, when she is like getting paid for two things at one time. So, I guess the legalese is such here that—and she will get a copy of this. I presume she'll get a copy of this. Do you know about that Mary, will she get a copy of this?

MC: Yes.

CHAIR: And we've asked her to sort of stay in touch in case things change, because she's so fluid with her job situation here and her contract, and her contract renewal. So I personally am satisfied with this, if you are. So is there a move to submit this Informal Advisory Opinion for signature, and approve and sign this?

WJ: I'll move to accept this as written.

CHAIR: Okay.

KI: Second.

CHAIR: Second. All in favor?

WJ: Aye.

KI: Aye.

KK: Aye.

CHAIR: The Chair votes aye. So moved. So I need to sign that and give it to Mary.

(The Chair signed the Informal Advisory Opinion.)

CHAIR: Okay, the second order of business is Petition 2005-02, approval of Informal Advisory Opinion regarding petitioner Ron Thiel. Another guy is moonlighting while in the employ of County business. However, he's doing consulting work at the moment in Alaska and in his capacity as a supervising engineer, not in traffic engineering, although the caveat is that he's applying for a position as a County traffic engineer, or—I think it's the County's traffic engineer, in which case, he may want to come back and see us again, if he does get that job, because then everything changes, right. So, has there been a chance to review this Informal Advisory Opinion? You see in the findings of fact, that he has an application in with the Department for a traffic engineer. On this page 3, findings of fact, he's employed as an engineer, he has an application in with the Department, all work done in Alaska, intermittent. My own thought on this is that once—if he were to be selected as the traffic engineer, we may want to hear the pros and cons on that again, *pro forma*, because if he is our traffic engineer and he's a traffic engineering consultant elsewhere, in the state or out-of-state, it may not be a violation of the Code of Ethics, but it would certainly open it up to scrutiny as—I don't know. Any sensitivity on that from anybody else?

KK: If that happens, it happens. We can—

CHAIR: --or imagine if Lincoln Ashida were going out and being a consultant just on the side at the Corp Counsel's in the state of Washington. Would that be—

AGS: That's a violation of our ethics code—

CHAIR: --as attorneys—

AGS: --yes, as attorneys.

KK: We can not take any voluntarily action, I mean, until it's brought to our attention by someone else. If he does get that job, and there is a complaint against it, or if he wants another advisory opinion, then we render one.

CHAIR: Okay. The point I guess I was getting at, is that in this advisory opinion on Ron Thiel, there's no mention made of—if he gets the job, come back and see us, but we've told him that informally, so—is there a motion to submit to approve, to sign?

KI: I'll make a motion that we submit for approval and signature.

CHAIR: Any seconds on that?

WJ: Second.

CHAIR: Any further discussion on that? All in favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: The Chair votes aye.

(The Chair signed the Informal Advisory Opinion.)

CHAIR: And number 3, the approval of Informal Advisory Opinion regarding petitioner Lincoln Ashida, which went on and on. Mr. Kawahara and Mr. Ashida, having a little dueling match there.

KK: It's like you're on *Candid Camera*.

AGS: You're the teacher?

KK: Yes.

CHAIR: Taught him well.

KK: Half of Hilo were my students.

CHAIR: This one looks like a monograph. It looks like an academic piece. Footnotes, wow. He even addressed the *de minimis* requirement for you, Karl.

KK: He did?

CHAIR: He did, there it is. See the footnote on page 3.

KK: I thought he said he didn't know.

CHAIR: Well, he found out, or someone found out. Bobby Jean found out. *Barron's Law Dictionary*, there it is. Third Edition. So that's as far as the turning point, *de minimis*. So are you amply satisfied with that, Wayne, or is that okay for you? All right, do we have a motion to accept and sign this Informal Advisory Opinion?

KI: I make a motion that we submit and send forth for approval and signatures.

KK: Second.

CHAIR: Further discussion? None? All in favor?

KI: Aye.

KK: Aye.

WJ: Aye.

CHAIR: The Chair votes aye. Approved.

(The Chair signed the Informal Advisory Opinion.)

KK: If I may just make an editorial comment here. These were all voluntary submissions, so they're relatively uncontroversial. So, it's kind of just *pro forma*. Am I using the right term, *pro forma*?

CHAIR: Go look in the *Barron's Law Dictionary* and check that out.

KK: I never went to law school, so I don't know. So it's relatively easy.

CHAIR: All right, and we also have the status of Bill 37, amending Chapter 2, Article 15, Subsection 2-91.1(d) of the Hawai'i County Code relating to financial disclosure forms. There the issue was—get us all on one long form, and counsel said that is still floating in the County Council.

AGS: It was passed by the Council on April 6, and the effective date is today, April 18.

CHAIR: That was a month ago.

AGS: Pardon me?

CHAIR: Or is that May 18?

AGS: I'm sorry—April 18. It was effective April 18.

CHAIR: A month ago today.

AGS: Right.

CHAIR: Okay, so no more short forms, henceforth. So our procedure will be, send them back, send the long form and do the whole drill. Very good. We don't need to take any action on that. It's duly noted—I guess it's duly noted by all. Okay, moving on to Item 6, New Business, to review the financial interest statements of Joel, Wayne, Paul Mann, and Melvin Morimoto. Only Wayne is in attendance. Do you want it in Executive Session, private session?

WJ: No.

CHAIR: Moving forward. All right, so we'll conduct business in the private section, in the private session, I'm sorry. Here's two for you guys, and one for you, and I'll do the middle one.

AGS: I'm sorry, are you doing the one that's not—

CHAIR: We're doing Joel Gimpel, Wayne Joseph, Paul Mann, and Melvin Morimoto. We're doing all this in Regular Session. Boy, these real estate evaluations continuously amaze me.

KK: Why didn't I get one of these forms to fill out?

CHAIR: Yourself? You need one.

KK: Yeah, why didn't I get one?

CHAIR: Mary, would you please send Karl a long form.

KK: Am I exempt from it?

CHAIR: No, you're not.

KK: I don't have anything to disclose.

(Financial interest statements being reviewed.)

CHAIR: Our Board is five, so a quorum is three. Yeah, one, two, three. I'm looking ahead to the June meeting. Unless you're open to maybe meeting earlier. Of course, if we have a new member, it'll be academic, if we get a new member. I'd really be grateful if you would follow up—

AGS: Yeah, I will—

CHAIR: --and get back to me on that.

AGS: Okay, I sure will.

CHAIR: I know that there are plenty of urgent fills required in boards and commissions across the front, but the issue here is that this lady's been on the train for five months. That's—you know, I just don't want to see her walk away from us and be no longer interested.

KK: May I ask, I think I asked before, what is our interest in this, basically? What are we looking for?

CHAIR: Conflicts of interest. If you're in the Water Commission, and maybe you're a developer, or water hauler, in another subdivision, you know, somewhere, so forth.

KK: I think I asked that question before—

CHAIR: Pretty obvious, though, eh?

KK: Yeah. So what do we do about it if—

CHAIR: Flag it.

KK: Pardon?

CHAIR: I think we would flag it. I would flag it.

KK: I pointed it out once, that it seemed like some conflict, but they didn't do anything about it. That's okay, all right.

CHAIR: Was I on the Board?

KK: No, no, it was way, way back. That's okay.

CHAIR: Let the record show that on New Business, Item 6, we have reviewed the financial disclosures on Joel Gimpel, Wayne Joseph, Paul Mann, and Melvin Morimoto, and in one moment we'll vote to accept and file, as having no conflicts of interest. Okay, do I have a motion to accept and file?

KI: So moved.

CHAIR: Second?

KK: Second.

CHAIR: All in favor?

KI: Aye.
KK: Aye.
WJ: Aye.

CHAIR: Okay, now we need to move into Executive Session to review the financial disclosure statements of the following four individuals—

MC: Let me stop the tape, I've got to change it.

CHAIR: She's got to deal with her technology.

AGS: Someone needs to move--

KI: I move that we move into—

CHAIR: Okay, the tape's still running, right?

MC: Right.

CHAIR: So a motion was made to move to Executive Session, the motion was made, is there a second?

WJ: Second.

CHAIR: Mr. Joseph. All in favor, aye?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: We'll move into Executive Session. I'm sorry.

(Moved into Executive Session at 10:22 a.m.)

(Returned to Regular Session at 10:31 a.m.)

CHAIR: So, let the record show that we have filed, in Executive Session, and have returned to open session, where we are now, and we are on Item 8, an announcement, namely next months' meeting, regularly scheduled for Wednesday, June 8, at 10:00 a.m. However, Wayne has notified us that he will be leaving on June 8, that day, until July 11. Would you look at the calendar and see what July looks like? We'll have two, possibly two conflicts there.

WJ: July 11 is a Monday.

CHAIR: It's a Monday, okay.

KK: So you're leaving?

WJ: Yes.

CHAIR: And will you actually be able to make the July meeting on Wednesday, the 13th?

WJ: July 13?

MC: And we have no new petitions that have come in, so I don't know if there's going to be much to discuss—

CHAIR: --We'll just schedule for June 8, and we'll see what's happening.

MC: Okay.

CHAIR: Okay? Maybe Amy can fire up the Corp Counsel to get us a new member, and we'll have a little assurance.

KK: I'll be gone on July 13, also.

CHAIR: Oh, you won't be here.

KK: I'll be in Mount Rushmore.

CHAIR: Getting your face carved in stone?

KK: Chief Crazy Horse, we'll see all those things. Yeah, that's July 13, I won't be here.

CHAIR: Okay. So let's schedule June 8, regular meeting as scheduled, and we'll adjust as needed, and depending upon where we're at on June 8. And we'll deal with the July meeting when the time comes.

KK: Just for the record, I'd like to thank the Chair and whoever else is responsible for accommodating me for this meeting today.

CHAIR: You're welcome.

KK: I feel so important and grateful.

CHAIR: You are. We wouldn't proceed without you. We're going to have to address the July meeting separately, later. All right, do we have a motion to adjourn? Or is there any further discussion?

AGS: I have an answer to your question. Under the Code of Ethics, Section 2-91.1, financial disclosures and disclosures of interest. The only financial disclosures that are open to the public are for all candidates for elective office, all elected officers, administrative heads of the County agencies and their first deputies, and the managing director and deputy managing director.

CHAIR: That explains that.

AGS: So all other financial disclosure statements are required to be filed—all other ones filed under this section shall be confidential and accessible only by action of the Board of Ethics. So the ones that did not—they can choose to have it discussed publicly or in Executive Session. So the

ones who are in Executive Session are confidential because they are not officers or they are not elected officials or managing director employees.

CHAIR: So now if someone in that capacity chose to have his held in Executive Session, would we just deny the request? If the managing director says—

AGS: --yeah, it has to be made available to the public.

CHAIR: So we just say sorry, you have to be held in the open session?

AGS: Right.

KK: So those that are looked over in Regular Session, they're still confidential?

AGS: No, they're not confidential because it's in open session.

KK: I see.

AGS: They haven't chosen to keep it confidential.

KK: If someone from the audience says they want to see Mr. Brown's thing, that—

CHAIR: Browne was in the Executive Session, so—

KK: --not Browne, not Browne, I'm talking about Mr. X, anybody who's in Regular Session.

CHAIR: And he's an officer of the government—

KK: --No, he's just a regular person, like yourself. Then that person has the right to see that? If they chose to go the regular route, it's still confidential, according to what she read.

AGS: Well, all the financial disclosure statements shall be accessible only by the Board of Ethics.

KK: The question is, why do they select Executive Session or Regular Session? Why do they have that option?

CHAIR: I thought she just answered that question.

KK: No.

WJ: I agree with him. It's still a gray area, because what he's saying—is it still confidential in open session? Because the way that's worded is, if you're not elected, then it's all closed, right, regardless of if it's in Open Session or Executive Session. At least that's the way I interpret it by the way you read it.

CHAIR: Could you read that section again, please?

AGS: It lists all the financial disclosure statements of the following persons shall be public record and may be reviewed for inspection by the public during office hours of the county clerk, so it wouldn't be like they could just do it here, but—I think if someone—it's their privilege to have it public or not public. If they choose to have their financial disclosure public—

CHAIR: --as you did—

AGS: --then it can be done in Open Session. But if they choose not to, then it has to be in the Executive Session. I believe it would be confidential unless they waived that. But I'm going to check on that. I agree it's not completely clear here.

KK: You might have somebody say, "I'd like to see Mr. X's," can we do it?

CHAIR: You refer it to the county clerk.

AGS: No.

CHAIR: No, the county clerk. You petition the county clerk.

KK: Oh, okay, well.

AGS: It could only be public if it's—you'd have to go there and request from the clerk the information. And I don't know if they could do that anyway.

CHAIR: _____.

KK: They should make it real clear, so that if someone from the public asks us, then we can have an answer. I just wondered why—why we have these two categories here. Those are confidential—

CHAIR: Moo la mi, which is Korean for “I don’t know.”

KK: Sometimes you wonder if it’s—those that have asked for Executive Session, do they have something to--

CHAIR: --hide.

KK: I didn’t want to use that word, you used it.

CHAIR: Let the record show I used the word. All right. Well, without any further discussion, is there a move to adjourn?

KI: I move to adjourn.

CHAIR: Any second on that?

WJ: Second.

CHAIR: And all in favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: So adjourned.

(Meeting adjourned at 10:40 a.m.)

Respectfully submitted,

Mary E. Crosson, Secretary

NOTE: Blank lines indicate inaudible words or voices on audio tape recording.