

HAWAI‘I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION¹

Wednesday, June 13, 2007 – 10:35 a.m.

Department of Liquor Control – Conference Room

101 Aupuni Street, Suite 230

Hilo, Hawai‘i 96720

Present: Wayne Joseph, Chair
Kendall Sharpless, Member
John Dill, Member
Lincoln S. T. Ashida, Corporation Counsel (counsel for the Board)
Renee N. Schoen, Deputy Corporation Counsel (counsel for the Board)
Mary E. Crosson (secretary for the Board)

Others present: Jason Armstrong, Hunter Bishop, Nancy Burns, Dr. Keola Downing, Kenneth Goodenow, Gwen Kapahu, Gerard Lee Loy, Emily Nae‘ole, Del Pranke, Stanley Roehrig, Amy Self (and others, names unknown)

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1. CALL TO ORDER (10:35 a.m.)

CHAIR: Thank you, everyone, for being patient. We’ll now call the Board of Ethics to order. First item on the agenda is statements from the public, and would you like to give your statement now or when we get to that specific item on the agenda?

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

ASHIDA: Mr. Chairman--

CHAIR: Yes--

ASHIDA: --if I may address the public? Good morning, everyone. My name is Lincoln Ashida. I’m the Corporation Counsel, and I represent the Board of Ethics. Thank you for all being here today, it’s nice to see so many people here. It would be the first time that I cover the Board of Ethics that this many people are here, it’s just my luck I guess. We have two major items on the agenda today, and I surmise that maybe a majority—a number of you are here for those items. If you look at the agenda there, and number 5, petition numbers 07-03, involving Councilmember Bob Jacobson, and the next item, 07-04, involving Councilmember Emily Nae‘ole. Both items appear on the agenda, and under our State Sunshine Law, any member of the public is free to offer

¹ Minutes are verbatim for agenda items 1 through 5 due to the subject matter. For the rest of the agenda, minutes are summarized.

testimony on any item on the agenda. So by all means, please know that you are free to testify on any of those two items. However, I wish to advise you that in speaking with the chairman, there's a significant likelihood that the Board will not hear or decide either of these items, either the petition against Mr. Jacobson or the petition against Ms. Nae'ole today. In other words, like I said, you're free to offer testimony, but perhaps it'll be at another meeting, perhaps a month from now or even inside of that, that the Board will actually convene in public like this to actually take evidence and to hear testimony. So the option is yours. You could testify today, but also know that if you prefer to offer your testimony at the time, on the date, that the Board actually investigates and adjudicates those matters, perhaps you may wish to consider testifying on that day. So knowing that, perhaps, Mr. Chairman, you have the list of testifiers—

CHAIR: --Yes—

ASHIDA: --I take it, and as you call them up you can ask whether they'd like to offer testimony today or wait until the day that the Board actually investigates these cases. Does that sound okay, Mr. Chairman?

CHAIR: That's what I had in mind. Thank you.

ASHIDA: Okay. Go ahead.

CHAIR: Mr. Pranke?

PRANKE: I'll testify today. In going over—my name is Del Pranke, from Hawaiian Beaches. In going over the particular request from the Corporation Counsel for this petition number 2007-04, it came to my attention that this does not meet, as far as I can see, the requirements of the Code of Ethics. The Code of Ethics has one section, 2-86, called informal advisory opinions. And under that section, there are two ways that a petition can be brought to you. And your petition form that people fill out to petition shows how those work. There are actually a subset of ways that that can be done. The inquirer—a person can ask about their own conduct, I'm doing this, can you tell me if that's right. And then the second is that any person can ask about conduct concerning someone else. In this case, Mr. Ashida I'm afraid—my friend Mr. Ashida has parsed the rules a little bit too much. As he's fond of telling us, you have to read the entire law. You can't just take parts of it. When he talked about Article 14, Section 14-5A of the Charter, the Hawai'i County Charter, that's not the Code of Ethics. The Code of Ethics is in the Hawai'i County Code. That's the enabling part. But it says that you--County officials—that you can interpret the Code of Ethics for County officials, etc. And that's true. 286B—I'm sorry. In section 286, you are allowed to do that. But it's in context of either of these two kinds of requests being put in. And then a little later here, in Rule 4.2 of the Rules of Practice and Procedure of the Board, requires that a request for an advisory opinion may be implemented by a third person other than the officer or employee involved in the request. And that's true, too.

That's allowed in the informal advisory opinions. But the way it's being used is incorrect here. It's unclear from these two documents, the resolution and the request for an investigation as to who's asking for this. Mr. Ashida is put on the agenda as the one asking for this. If that's the case, there's a bit of a conflict here, having Mr. Ashida be the attorney for the Board and the attorney for Councilwoman Nae'ole, because that's a conflict. There's just no way to get around it. The Charter says that the Corporation Counsel shall be the chief legal advisor and legal counsel for all officers and employees of the County and all boards and commissions. Now in the past, Mr. Ashida has told us that this has not been a problem because they compartmentalized. But in this case, it turns out, at least for this meeting, he's the attorney for the Board and for Ms. Nae'ole in this case. And so we have to question that, as to whether that's appropriate. But essentially what has happened here is that there is a mixture of these two types of informal advisory opinions, the one asked for by the person about themselves, and the one asked for by someone else. And where this conflict becomes a problem is that if we allow people—officers of the County—to request these informal advisory opinions about other people, then we have a situation where people could go on a witch hunt. Now I know Mr. Ashida and I know his temperament, his personality, his ethics don't allow that kind of thing for him. But if we set a precedent here of allowing this mixture of these two types of requests, then that could be a problem in the future. We don't want to have an informal advisory opinion request coming from an officer of the County unless they have specific information that says I know about this. In this request, we don't have any specific information. All they have is allegations made by someone else. And so this request wouldn't seem to come in under either of those, 286A or 286B. It's neither the person who is asking about—who is involved, asking about this, nor is it someone asking about something that they know about an ethical violation in another situation. This gets to be a problem also in the fact that should the Board consider this and decide that there is no conflict, which I don't see how you can do anything else, because there isn't any information about any specific problem, then that sort of inoculates the councilwoman if some other information should come forward in the future. I don't expect it to, but I'm just saying that down the road this could set a precedent where people would use this kind of thing to inoculate themselves from being charged with an ethical violation in the future, because as the Code of Ethics says, once you've rendered your decision, then that person doesn't have to face those charges. That opinion stands for what the County says has happened. So we have to be careful on that. At any rate, the other thing that I don't approve of here in this, is in the draft of the resolution, limiting the scope and inquiry of the—limiting the nature and scope of the inquiry, because you folks aren't limited by the Code of Ethics. You can investigate as far as you want and as much as you want as far as the Code of Ethics, but you have to—wherever the evidence takes you, you have to follow it. So that I don't think is an appropriate thing to put into a request. It isn't allowed—or it isn't a thing that's allowed in the filing for an informal advisory opinion anyway. I'm sorry, I go on and on here, but—I'm sorry. Essentially my point is that this is an improper request and should be rejected by the

council not on the merits of the case but on the fact that it is not a proper request for an informal advisory opinion. If you have any questions?

CHAIR: Any questions?

DILL: No, Mr. Pranke, no. Thank you.

SHARPLESS: *(Inaudible.)*

CHAIR: Yes, we'll have questions for you, if we can, Mr. Ashida.

ASHIDA: I would like to address those—

CHAIR: --Well, now, let me ask a couple of specific questions. Why didn't Mrs. Barbara Hale herself file a petition?

ASHIDA: I don't know. She's represented by an attorney. It's certainly her right to do so. I would assume that Mr. Strauss, who's a very capable and knowledgeable attorney, would know that that would be an option. The reason that this route was pursued with the Board of Ethics was this, and it sort of ties into one of Mr. Pranke's very important—first of all, Del uses words, always the type that I don't understand, big words, those 37-point words. But on the ethics, on the conflict issue, I'm glad you brought that up, because I think everybody should know that we nipped that in the bud. Early on, we recognized that there may perhaps be a conflict between our office's representation of this Board and the County, as well as the representation of Ms. Nae'ole. So early on, when this all surfaced, when this first surfaced publicly, we contacted Ms. Nae'ole, informed her that it was our opinion that she seek private counsel in this matter, that my office's representation in this matter would be limited to the County and the Board of Ethics, and thankfully, Ms. Nae'ole heeded that advice. She has been represented by Mr. Lee Loy, who is present, and Mr. Roehrig, who is also present. I have not had any personal contact with Ms. Nae'ole since concerning the merits of this case. I've not discussed it with her. So my office clearly is not in conflict with respect to Ms. Nae'ole. She has private counsel. That being said, once Ms. Nae'ole had private counsel and these allegations became public, I did discuss with Mr. Lee Loy the different options and possibilities. One was, she—Ms. Nae'ole herself—I can't speak for Ms. Hale because I haven't spoken to Ms. Hale—one option would be for Ms. Nae'ole to come before the Board, to petition the Board on her own accord or, in what we've done in this case, for the Board to do it. We selected the latter. I'll say to Ms. Nae'ole's credit, her attorney's credit, they have always from the onset said we want her name cleared. We want this matter brought before the Board. That being said, instead of waiting for her to petition, or waiting for Ms. Hale to petition, we had a mechanism within the law, and this is where I respectfully disagree with my friend Mr. Pranke. Section 286B applies. Any person or the Board itself may petition the Board for an informal advisory opinion. That's what we have done here. I am recommending to the Board that you on your own motion petition yourself—you know, petition

yourself for this—eventually to get to an informal advisory opinion. Your rules provide the only way that can be done is through a quote, formal resolution. That's the reason I prepared that written document for you, so there's no question that we're following the proper procedure to get to where we need to go. So I hope that was responsive to your question, Mr. Chairman, but that's the reason why—I don't know why Ms. Hale didn't do it. I know that Ms. Nae'ole probably didn't do it only because I told her attorney that I would be pursuing this route, to which I understand that she readily—again to her credit, readily agreed to this process. And that's why we're here today. And Mr. Pranke, obviously, when he sits in this chair, is going to disagree with me.

CHAIR: Mr. Pranke?

PRANKE: Well, I agree that it is the Board's option to do that, but what we don't know is where did—Mr. Ashida has said this started somewhere. But he's the one that brought this forward, and he is not the Board of Ethics. Now there's nothing in the minutes of the last Board of Ethics meeting that says that anyone asked him to do this. And so, because he hasn't been asked by the Board to do this, if he wishes to bring this, he should bring it as a person, as an individual, not as the Corporation Counsel. There's an important part of that which I talked about before—it's not having witch hunts on other officials by County officials, someone in a less reputable setting who might go after other County officials by filing, having things filed against the—with the Ethics Board—against another person that they might not like. And I think that's an important thing that should be recognized. This is a bad precedent to set in that direction. And—I'm sorry, there was one other thing here that needed—it talked about—and I can't think of, come to it, so I'll let that go, but—

ASHIDA: Is it (*inaudible*)?

PRANKE: Well, that's all right. The point is that this should have been filed by an individual. That's what your Code of Ethics—what the Code of Ethics says for the Board. And it's very important that this be done, because in 284, 286, I'm sorry, of the Code of Ethics, it says that—I'm sorry, missing it—anyway, it calls this the method for investigating violations, possible violations, of the Code of Ethics. The method. And it's not, it doesn't give other options. By keeping this as tight as possible, it makes sure we don't have the possibility of somebody going on a witch hunt. This becomes a secondary way of investigating.

ASHIDA: I'm sorry—Mr. Chairman, my response, briefly. Thank you. Very well, good points by Mr. Pranke. The first issue he raises about me bringing this petition, I'm not bringing this petition. If you read my letter I'm recommending that the Board on its own initiate it. So you three could vote it down today. Just say no, we disagree with Ashida, we don't want to do this, everybody goes home. So I'm not bringing the petition. It's your decision. But that's a very good point Mr. Pranke brings up, so I'm glad we had a chance to clear that up.

Second issue is the witch hunt. That's why the resolution I suggest is important. Under your rules, the resolution will require you to narrow the scope of the investigation to whatever—to exactly—so everybody knows, the public, Ms. Nae'ole, Ms. Hale, everybody knows what specifically you guys are looking at. That actually prevents the witch hunt, prevents people from coming back later—at a later meeting and saying oh, another thing, and another thing. Mr. Strauss—we've communicated with him. He's not going to be here today, but he was given notice that today is the deadline, he needs to get in whatever allegations he wants. I've submitted that to you under separate cover. So actually, the process of the resolution avoids the witch hunt. And again, the reason I even brought this was because of what Mr. Lee Loy indicated—Ms. Nae'ole's willingness, or desire, to want to have her name cleared before this Board. So, you know, had he said, well maybe not, Lincoln, you know, then obviously maybe I would have backed off. I don't know. But again, a big part of why we're here is because of Mr. Lee Loy's—his representations to me about Ms. Nae'ole's desire to bring this forward. That's all I ask. Thank you.

PRANKE: Thank you, and—

CHAIR: --And I just want to say, a couple weeks ago, when I read this story in the media, I recall both parties mentioning they want it resolved in the Board of Ethics. So it doesn't surprise me that it has gotten here. And—

PRANKE: --It doesn't surprise me, either. It's just that I don't believe it's come at the right place. The other part that I forgot to mention here that I wanted to make sure—it says the aforementioned formal resolution process—this is one, two, three, four, the fifth paragraph on the resolution—allows that the Board may subpoena witnesses, administer oaths, take testimony, etcetera. Those things are only allowed in a formal advisory opinion, after having done an informal advisory opinion, and then only if the Board finds—and finds that there's a problem and that the remedy that the Board suggests isn't taken up by the person who is doing this. So this shows that there's a conflict here between the two types of resolutions that I think is a bad precedent to set. If someone with specific information about anything that might have gone on untoward would come forward and file, that would be one thing. But to me, having someone file simply because there are allegations out there, are a mistake. I don't think it's fair to Ms. Nae'ole that this is out there, but she does have redress through the court system, also, which is separate from—a different kind of a situation than this. I'm sorry, I'll sit down and shut up.

CHAIR: Thank you, Mr. Pranke. Dr. Downing?

DOWNING: Aloha kakahiaka, Chairman and members of the Board of Ethics. I'm here to voice my opposition to this petition and request for the hearing, the reason being that we are in a position now where a person who is on the Council is being burdened with all of this to-do, the time spent, the effort towards obtaining legal standing, and so forth. This all seems to me to be very out-of-

place, because even in the whereas's and so forth of this resolution that has been prepared for you, there are no specific allegations. If the person who mentioned the accusations actually spelled out when and where each of these allegations occurred, you would have something to work with. But I urge you to just throw this out for the time being, because until Ms. Hale comes forward with what allegations she is actually making, this basically ends up being—I don't want to call it a witch hunt. I think it's more like a fishing expedition where you don't really know what's out there, you're looking to find something out there, giving her the opportunity to try to come up with some kind of problem. If she had a problem with the conduct, then she should have been able to spell out that, and she should have herself been the person to bring this forward. And in effect, I basically agree for the most part with everything that Mr. Pranke brought forward. This all seems to be a lot of hot air brought forward from the blogosphere, and Hunter is here today. You can request the information from him. Many people on Hunter's blog say things that are totally, you know, in space. They have nothing to do with the reality. And in addition, there are problems with the identity of who's actually posting to the blog. So I feel like this whole thing should be thrown out until some specific accusations can be made by whoever wants to make those and bring them forward to you. It is true that I also would be very pleased to see Councilman Nae'ole's name cleared in the public, but I don't think that it's proper for the Board of Ethics to be the person or the group of people to head up a fishing expedition. This is not what the purpose of the Board of Ethics is, and I don't personally think that anything should be done until specific allegations with the time, the day, the actual body of the accusation, is before you. Otherwise, we have the opportunity to see many, many more of this kind of proliferation of slander or ill will come to the point of being before the Board of Ethics when it really has no place before you.

CHAIR: Any questions? Thank you. These were the only two petitions before me. Was there another petition that I don't know about? If not—

ASHIDA: --Excuse me, Mr. Chairman, if I may. Anybody else sign up for public testimony for any of those two items? There's no response, Mr. Chairman.

3. APPROVAL OF MINUTES

CHAIR: Okay, thank you. In that case, I'm going to continue with the agenda and the approval of the minutes. Do I have a motion to accept and file the minutes from May 9th?

DILL: So moved.

SHARPLESS: Second.

CHAIR: All in favor?

DILL: Aye.

CHAIR: All in favor?

SHARPLESS: Aye.

CHAIR: Aye. Minutes from Executive Session, May 9th. Do I have a motion to accept and file?

DILL: So moved.

SHARPLESS: Second.

CHAIR: All in favor?

DILL: Aye.

SHARPLESS: Aye.

4. COMMUNICATIONS

CHAIR: Aye. Communications. We have communication number 2007-41, letter from Jerome Warren. Have you had the opportunity to look at that?

DILL: Yes.

SHARPLESS: Yes.

CHAIR: I think all we need to do on that as well is accept and file.

DILL: I move to accept and file said document from Mr. Warren.

SHARPLESS: Yes.

CHAIR: Do we have a discussion on this?

SHARPLESS: Yes.

CHAIR: Okay, go ahead.

SECRETARY: Was that a second, then?

CHAIR: Yes, she seconded.

SECRETARY: Okay.

SHARPLESS: The discussion is that I felt—my reading of the letter, that while we all agreed that receiving political capital does not constitute taking a cash bribe, I didn't recall agreeing to that. I also—

CHAIR: --What are you specifically referring to?

SHARPLESS: --I'm reading what his—he's inferring that we all agreed something, in the first paragraph. I don't believe that to be a true and factual statement, per my recollection.

CHAIR: But it's just his statement. It's—it's no reflection on us or on our thinking. That's just what he's putting out there.

SHARPLESS: Okay. Then that's all I have to say.

CHAIR: John?

DILL: No discussion.

CHAIR: Okay. All in favor of accepting and filing this document, say aye.

DILL: Aye.

SHARPLESS: Aye.

CHAIR: Aye. Communication number 2007-42, a letter from Mayor Harry Kim nominating Tricia to the Board of Ethics. We need a motion to accept and file.

DILL: So moved.

SHARPLESS: Second.

CHAIR: Any discussion on that letter?

SHARPLESS: No.

DILL: No.

CHAIR: All in favor, say aye.

DILL: Aye.

SHARPLESS: Aye.

CHAIR: Aye. And communication number 2007-43, Mr. Ashida's letter to Jerome Warren.

DILL: I move to accept and file.

SHARPLESS: I agree. Yes.

CHAIR: And do we have a discussion on this?

SHARPLESS: Yes.

CHAIR: Go ahead. Let's look at Mr. Ashida's letter.

SHARPLESS: I'm sorry, but this is—in the letter, I realize the word smoking gun was part of the conversation. I'm just uncomfortable with this kind of, quote, smoking gun. I don't know if it that's a legal term of the weight of evidence, but in the future I would prefer that these terms, ambiguous terms, not be used.

ASHIDA: Understood.

SHARPLESS: Thank you.

CHAIR: If there's no further discussion, all in favor say aye, on accepting and filing.

DILL: Aye.

SHARPLESS: Aye.

5. NEW BUSINESS

CHAIR: Aye. Okay, now we're down to New Business, and—Ms. Burns, is it all right if we flip-flop and take item number b first, which is the Petition 2007-04? This is the request by the Corporation Counsel, Lincoln Ashida, for an investigation/hearing into the alleged violations of the Hawai'i County Code of Ethics.

- b. Petition No. 2007-04: Request by Corporation Counsel Lincoln Ashida for an investigation/hearing into alleged violations of the Hawai'i County Code of Ethics by Councilmember Emily Nae'ole. The Board will consider a formal resolution pursuant to Rule 5.2 of the Rules of Practice and Procedure of the Board of Ethics, to determine whether an investigation shall be conducted and a hearing held concerning alleged violations of the Code by Ethics by Councilmember Emily Nae'ole. If the resolution is passed, the Board may investigate the matter and hold a hearing immediately thereafter, or may schedule a hearing for a future meeting date.**

ASHIDA: Mr. Chairman, if I may—

CHAIR: --Please—

ASHIDA: --I may advise the Board. As you noted from my previous communication to you, Mr. Strauss, who represents Ms. Hale, had indicated that he will be out of state from today, June 13, until, I believe, the 25th of June. He's in the west coast and not available. He did ask that on behalf of his client, he wished the opportunity for Ms. Hale to appear before the Board personally to further elaborate on her allegations. I did inform him that that decision belonged to the Board, whether to continue the matter or not, but that it was my recommendation to the Board that at minimum they convene today for the purpose of resolving the resolution if in fact, that's the direction the Board wants to go—that at least we can firm up the resolution so the Board has an idea of what the exact scope of this investigation will be. So that is Mr. Strauss' request. I did represent to him that I would make that request and representation to the Board. In other words, he's asking for another day to come back, he can bring his client, and his client can appear before you. I believe that Mr. Lee Loy and Mr. Roehrig are present. They did indicate to me this morning that—perhaps you can inquire with them whether they'd like to address the Board on behalf of their client, who is also present.

CHAIR: Gentlemen, would you like to say something?

LEE LOY: Yes. May I please approach?

CHAIR: Please.

LEE LOY: Thank you. Good afternoon. Or good morning.

ASHIDA: You know, these guys—I saw them with the tie on, so I ran upstairs and put one on.

LEE LOY: May I sit down, sir?

CHAIR: Please.

LEE LOY: Thank you. May I have just a minute—I've got to get something. Mr. Chairman, my name is Gerard Lee Loy. Also present here is my colleague and co-counsel, Stan Roehrig. Present are my clients, Gwen Kapahu and Emily Nae'ole. I represent them in connection with the matters that are being discussed here before the Board. Mr. Roehrig also represents Emily Nae'ole only. He is her—also her political advisor. Gentlemen, ma'am, we are here—I'd like to give you a history. We are here because I asked, on behalf of my client Emily, Mr. Lincoln Ashida to take the necessary steps to come before the ethics committee, because I had read, or had talked to Mr. Hunter Bishop, who had told me that there was an ethics violation alleges, and so forth and so forth. So we wanted—my client told me to do this thing properly. Get it before the public. She wants complete disclosure. Full examination, with cross-examination. Nothing to hide. That's why we're here. Lincoln took it upon himself. He knows how to do the paperwork to bring these things to you. So we are here, with his help, but this was—it's always been my idea that this

was my client's request, Emily Nae'ole's request. So we are asking you to set a date for testimony, if that's where you're going with this, because I, too—we would hope that you would—there's a lot more involved here than this just being an informal process. There are allegations that were made to me on behalf of my client, about this being—there being some kind of employer-employee relationship that can have legal ramifications. So I—in an abundance of caution, I need to be careful about proceeding any further in that area until we get a clearing of some sort about where this is going. So that's why, one of the reasons why, I suggested that we come here. With regard to the allegations, most of what is stated we have briefly read, because I just got it this morning—early this morning, the additional stuff that Mr. Pranke may or may not have been aware of. But we have read it. I've read it with my clients, and based on Barbara Hale's own testimony and opinions in that regard, I am going to be presenting to you, the commission this morning, Barbara Hale, formerly known as Barbara G. Barcena, her criminal abstract, pursuant to rule—

CHAIR: --Let me interrupt you right here, because what we need to do is just find whether or not we want to have formal inquiry into this. And I personally don't want to move any further than that at this point.

LEE LOY: Okay.

CHAIR: And so if I could stop you right there. I personally—I personally am in favor of your request and filing this for another date and saving this for another date.

LEE LOY: But my concern, Mr. Chairman, if I may follow through on that, is I don't know if the allegations that were made to Mr. Ashida—if that is now a matter in the public domain. And if it is in the matter of the public domain at this moment, then my client has a right not only to say that those allegations are scurrilous, but to point out to you and the public the—

CHAIR: --absolutely—

LEE LOY: --credibility—

CHAIR: --absolutely, but not in this forum at this time, until we have decided whether or not we want to pursue this—

CHAIR: --I see—

CHAIR: --formal investigation. I know where you're headed. I know what you're about to read—I've seen it myself, when someone anonymously emailed that to me. And I don't think this is the proper time to discuss this right now.

LEE LOY: Well, okay.

CHAIR: How I would like to move on this—

LEE LOY: --okay—

CHAIR: --is to first decide whether the Board or not will initiate a formal investigation on this topic first. And then I would like to set a date on which we could have this investigation, at which time it would be appropriate for you to bring this before the Board.

LEE LOY: Okay. Sir, in addition—okay. Mr. Chairman?

CHAIR: Yes.

LEE LOY: In addition to that point that I was going to make up with you, and you may be aware of, and other people may or may not be, but in terms of your making, you know—our contention is that these accusations are false. Can I say that?

CHAIR: Absolutely.

LEE LOY: And can I point out why—

CHAIR: --and you've already stated that in your opening remarks, by the way.

LEE LOY: Okay. Can I give you my opinion as to why these allegations are being made?

CHAIR: Not at this point.

LEE LOY: Okay.

CHAIR: I would just like for the Board to decide whether or not we're going to initiate a formal investigation on this matter first, set a date of when this will take place, at which time it would then be appropriate for you to bring in your defense in this matter. We're not hearing the case now.

LEE LOY: Okay. Then may I assist you, then, Mr. Chairman. If you do happen to—and we're hoping—we are hoping that you do allow an investigation into this by the Board. What we're trying to figure out—that's why I brought my calendar, that's why Mr. Roehrig brought his calendar, and I asked Lincoln to bring his calendar. We would like to get a date and time and an idea—we'd like for you folks to say—have us all disclose our witnesses in advance, so we have a straight up allocation of time so that we can present our witnesses, so we know who Barbara Hale has for witnesses, so that this can be done so that we can move on, because the community needs—

CHAIR: --I agree. But can we first do things in order, which is—first, get a resolution passed, a motion passed, that we will investigate this matter, which is step number one. Then set a date, and then we can make a list of witnesses. But we need to do it in that order.

LEE LOY: Do you have any questions of us, sir?

CHAIR: No. I don't.

DILL: No, not at this time.

LEE LOY: Okay.

CHAIR: Thank you. So it would be my recommendation to this Board that we make a motion to initiate a formal investigation into the allegations that have been made against Councilmember Emily Nae'ole, and that we further set a date of July 11th as when we would have or hear testimony in that regards.

DILL: Okay, I move that we—

CHAIR: --Did you want to say something regarding that date?

LEE LOY: July 11th is good for me. My calendar is open except for a court hearing which may go off at 1:00, so that may take a half an hour or so.

CHAIR: Mr. Ashida?

ASHIDA: Yes.

(Unknown): Is that (*inaudible*)?

CHAIR: Yes, it is, Mr. Pranke.

ROEHRIG: I'm open on that date.

LEE LOY: Okay, July 11th, we're open.

CHAIR: Okay, formal resolution—I need a motion.

DILL: Okay, I move that we shelve this issue right now but initiate a formal investigation into this matter regarding Councilwoman Emily Nae'ole and the petitioner, Ms. Barbara Hale, to be dealt with at our next Board of Ethics meeting scheduled for July 11.

LEE LOY: That would be at ten o'clock, sir?

CHAIR: We need to set—

SHARPLESS: Second.

CHAIR: Discussion?

SHARPLESS: Yes—

CHAIR: --yes, at ten a.m.

SHARPLESS: In the wording of the resolution on page two, be it resolved—is that wording that reads in pursuant to Rule 5.2(a), the rules of procedure of our Board, that a hearing and/or investigation be initiated—do the words hearing and/or investigation need to be clarified by the section of informal advisory opinions or Section 2.87, formal opinions? And then in the last paragraph, be it finally resolved, I'm asking—the wording states, shall render an advisory opinion pursuant to Rule 4.9. Is that an informal advisory opinion or a formal advisory opinion? I'm wondering if those words need to be clarified.

CHAIR: Mr. Ashida?

ASHIDA: Yes, ma'am, sir. With respect to Ms. Sharpless' first concern regarding the use of the term hearing and/or investigation, that's directly taken from your Rule 5.2(a). It allows you some degree of flexibility in conducting an investigation/hearing. Mr. Lee Loy today has suggested he would like it to be more formal in terms of—almost like a contested case process, where witnesses are called, sworn in, cross-examination. That's your call, Mr. Chairman. Your rules allow you—as a matter of fact, Rule 5.2(a)—excuse me, 5.4(b), says the hearing will be conducted in an informal but orderly manner. So that affords you a significant amount of latitude to protect, to control the proceedings and allow you to just get to the heart of the matter, get the truth, which is likely what everybody wants. So that language, Ms. Sharpless, came directly from your rules. It is, yes, a hearing, and also an investigation. So it is and/or. With respect to your second question concerning the issuance of an advisory opinion pursuant to 4.9, that—you are correct. It is an informal advisory opinion. However, your rules simply state advisory opinion. But if you read that together with the Code of Ethics rules, as Mr. Pranke astutely—hey, I got a 37-point word, too—

PRANKE: --There you go—

ASHIDA: --pointed out, the process is coming to an informal advisory opinion only after that. If one of the parties then petitions you for a formal, then you go for a formal. But for the most part, it ends right there. So you are correct, ma'am.

SHARPLESS: Thank you.

CHAIR: Are we ready for the (*inaudible*)?

ASHIDA: Wait, Mr. Chairman, if I may interrupt, sir—

CHAIR: --Yes—

ASHIDA: --one more time. Again, the resolution now is alive on the floor, because it's been voted and seconded. Now the key thing here is, if you look at the second

to the last be it resolved clause, where I state the two questions there. Now I gleaned that from what's been in the media so far, what's been referred to as the blogosphere, together with what Mr. Strauss submitted to me yesterday. And from that, I've gleaned that these are the only two questions, legal questions, that the Board will entertain or concern itself with. Now you, of course, are free, based on the information I provided you yesterday, what you've seen to date, to supplement that if you feel that that's necessary. So I wanted you to know that again, this is your motion, your decision. I'm here just to provide you guidance and advice. But once you lock down these two questions, you know, we've pretty much locked ourselves down. And that's all that this Board's going to investigate. So I would just ask that you—ask you to take some time to think about what's been said so far and make sure that those are the two questions that you want—only, the only two questions, that will be asked.

CHAIR: Now, is our motion satisfactory, or—

ASHIDA: --Yes, I think it's satisfactory so far—

CHAIR: --and the focus would be just on those two questions.

ASHIDA: From the information that I've read in the media, from the information Mr. Strauss provided me, those seem to be the only two allegations that are really out there.

CHAIR: Okay. So I'm fine with (*inaudible*). Are both of you ready?

DILL: Yeah--

PRANKE: --I have one question, Mr. Chair, I'm sorry—

CHAIR: --please—

PRANKE: --all right.

DILL: Mr. Chairman, at this time, do you want to clarify, for Mr. Lee Loy and the other parties involved, how we're going to arrange the witnesses—

CHAIR: --We need to—

DILL: --okay—

CHAIR: --we need to vote on this motion first.

DILL: Do you want to add to this motion the place that we're going to be holding this hearing?

CHAIR: That is not necessary.

DILL: Okay.

CHAIR: I will—we need to address the motion right now. And then we can entertain other things. So, everyone understand the motion, which is to initiate an formal advisory investigation, and have it on July 11?

DILL: Yes.

SHARPLESS: Yes.

CHAIR: All in favor, say aye?

SHARPLESS: Aye.

DILL: Aye.

CHAIR: Aye. It's passed. And we will move it to July 11. Now, are there further questions, like a witness list, like you brought up earlier?

LEE LOY: Yes, sir. Okay—I want to play by the spirit of your rules. So I'd like to get a cut-off date for, at your pleasure, you know, so that—I'd like to know, because as someone else pointed out, specifics—date, time, place, what exactly. We're getting allegations that are somewhat general, some of it, and I'd like to know specifically what it is so that I can call people to rebut what was—and the names are wrong. One of these names is a Leilani—some name. Are you telling me—

CHAIR: --No, no, go ahead.

LEE LOY: It's a name from Laupahoehoe, a Leilani Chun. I believe she's talking about a Lucille Chung, the lady from the—from the Police Department, that lady, you know. So I'd like to make sure that we know who these people are because—there's some of the people whose names have been thrown around that we would like to call. And I want to make sure that's enough time—

CHAIR: --That's a reasonable request.

LEE LOY: Right.

CHAIR: Mr. Ashida, can we set a date for, for a witness list, June 30th perhaps?

ASHIDA: June 30 sounds reasonable. That's about two weeks prior. I can notify Mr. Strauss.

LEE LOY: The names of the witness and the nature of their testimony.

CHAIR: Okay, that's a reasonable request.

LEE LOY: Because I'm thinking about bringing one witness from off-island, just because—

CHAIR: --and Mr. Ashida will draw up the—

ASHIDA: I can submit a form of the order for you to sign, Mr. Chairman. We can deliver it to the parties so Mr. Strauss is given fair notice of what you're requiring. Name of witnesses and general nature of their testimony.

LEE LOY: Sir, and we can wait, okay, before we present—but I would like to immediately, if I can, with your permission, present to you a written—you know, because there's a written document and I'm assuming that your record is now a matter of public record. I'm assuming that the letter—am I right or wrong—I'm assuming that the letter that Mr. Ashida received from Mr. Strauss yesterday is now in the public domain. Okay, and he's nodding his head in the affirmative. And because it is in the public domain, Mr. Chairman—

CHAIR: --Yes—

LEE LOY: --that is why it is very—for me, for my client, on behalf—as an advocate for my client, because it goes towards false—false testimony and false evidence before, her prior record is extremely relevant—

CHAIR: --and you may submit that as well. We are not going to discuss it—

LEE LOY: --Okay, can I just give it to you then, and have it part of the public record?

CHAIR: Yes, you may.

LEE LOY: May I approach you and give you the copy—because I just need to make it official. Because it's relevant, because it goes to a history of her honesty, her prior record—

CHAIR: --I know where you're headed with this. I'm familiar with that.

(Lee Loy's cell phone is ringing.)

LEE LOY: Excuse me, judge. Excuse me—I have a bad call. Erase that. See, I won't even look at it.

PRANKE: What forbearing.

CHAIR: You're changing your paddling time today.

LEE LOY: Can I give a copy to you, sir? Is this how we do it, or do I give it to you?

ASHIDA: Mr. Chairman, this is what I would suggest. Any member of the public, or citizens, are always free to submit whatever documentation they want to any government board or commission.

CHAIR: Well, what's the proper protocol?

ASHIDA: Yeah, at any time, regarding any matter. So I would suggest Mr. Lee Loy hand it to Ms. Crosson, our secretary—

LEE LOY: Ms. Crosson?

ASHIDA: Ms. Crosson's there.

LEE LOY: Oh, Ms. Crosson? Sorry, I only know you as Mary.

ASHIDA: She can assign it a communication number, we can do it properly.

LEE LOY: Okay.

ASHIDA: Mr. Lee Loy, is it your intention that that be one of the exhibits—

LEE LOY: --Yes, sir—

ASHIDA: --used at the June—the July 11th hearing?

LEE LOY: Yes, sir. And I'll make an exhibit list, and I'll—

CHAIR: --and since the cut-off is June 30th, can I request that the Board members get all written documents at least one week prior to the meeting, so we have adequate time to review?

ASHIDA: It's good to have Ms. Schoen here, who's a former litigator at the Attorney General's for many years, so she's been slipping me notes of what needs to be done here. Also I think an exhibit list would be appropriate, so at least the Board can keep track of what's being submitted. Ms. Schoen also indicated that perhaps the Board may want to set a time limit for witnesses, because we—you know, as I said, Mr. Chairman, you control these proceedings. Your rules provide it can be as informal, as formal, as you want. But the main thing is you want it to be fair, move it along, give everybody a chance, but you want some resolution. So that might be something you may wish to discuss with your fellow Board members, and of course during that process, you can also remind the witnesses that their testimony needs to be relevant to these two issues only, and not just a general, you know—it should be focused on those two issues. Ms. Schoen, is that about right, or anything else you'd like to add?

SCHOEN: Nothing else.

CHAIR: Thank you.

LEE LOY: So may I ask a question?

CHAIR: Yes.

LEE LOY: So sir, if you folks make an order today, which is fine with me, and direct us to present the exhibit list and the witness list by a certain date, and tell us the scope of how much time people got to testify, which I'm sure that you can amend it at the time of the hearing and go longer in that, so we have a general idea. Because I'm expecting three pages—just looking at how things were said—that this thing has a possibility of going on and on and on and on. So I agree with the idea about limiting, you know, having some kind of handle on time. So if you folks wanted to tell us that, it's fine with me. I mean, I can't speak for Mr. Strauss because he's the accuser. He has the right to make his presentation, but—it's just a suggestion.

CHAIR: Members? Do you have an idea?

SHARPLESS: *(Inaudible)*.

CHAIR: Five minutes? Five minutes more than adequate, Mr. Lee Loy?

LEE LOY: And I have no objection to giving Ms. Hale, because she's the principal accuser, if she wants more time than that, you know.

DILL: Well, we can have the option to amend and extend further.

CHAIR: Is there anything further?

PRANKE: I have one question—

CHAIR: --Mr. Pranke, I'm sorry—

PRANKE: Are we accepting—is the Board accepting this resolution, or are you going to write your own? Because I notice that Mr. Lee Loy said during his testimony that he thought the petition was coming from the councilwoman, and Mr. Ashida told us it was something different. Which kind of goes to what I was saying. I don't have a problem with the thing going forward, but I really think it needs to be rewritten from the Board, because there was nothing on the agenda from your minutes last time that said that you brought it forward.

CHAIR: Mr. Lee Loy?

LEE LOY: Sir, it says it's introduced by the Board. We have no—on behalf of Ms. Nae'ole, we have no problem with you doing it. We have—I just chose the language, you know. I want to cooperate. I just want to make the hearing happen.

CHAIR: Okay. And for the record, we can show that the Board initiated this. If there's nothing further, we'll see you July 11th.

LEE LOY: And the deadline for the exhibit list is June 30th?

CHAIR: June 30th.

LEE LOY: June 30th. Okay.

CHAIR: Thank you very much.

LEE LOY: Thank you, sir.

CHAIR: And again I apologize for the delay this morning.

LEE LOY: And I apologize to you. I wanted—I just needed to, you know—thanks.

CHAIR: Thank you. Let's take a five-minute recess.

A recess was called at 11:32 a.m. The Chair called the meeting back to order at 11:37 a.m.

a. Petition No. 2007-03: Nancy Burns petition alleging violation of Article 15, Section 2-83, Fair Treatment, of the Hawai'i County Code of Ethics by Councilmember Bob Jacobson.

CHAIR: Okay, call the Board of Ethics back to order. And we're now ready to hear petition number 2007-03. Nancy Burns, come up, please. Thank you for being patient. Thank you for letting us adjust this. It's an unusual day for us.

BURNS: Thank you for letting me express my concerns today. My name is Nancy Burns, and I'm a civil engineer. I'm a member of the Tau Beta Pi Engineering Honor Society, the Chi Epsilon Civil Engineering Honor Society, and a committee member of the National Council of Examiners for Engineering on Surveying. I'm a member of the American Society of Civil Engineers, the National Society of Professional Engineers, and president-elect of the Kona-Kohala Chapter of the Hawai'i Society of Professional Engineers. I have worked in the public sector for the County of Hawai'i Department of Public Works and in the private sector for various engineering firms. I have 22 years of experience in the design of drainage systems and other infrastructure.

I filed the complaint due to comments made during County Council committee and regular meetings regarding Bill 51, which amends Chapter 27, Flood Control, of the Hawai'i County Code. So if I could just describe what my—

CHAIR: --Please, please do.

BURNS:

During the March 20, 2007, Councilman Jacobson stated that he knew very little about engineering. At a subsequent Council meeting, the following statement was made by Councilman Jacobson: "It's a crisis situation. Perhaps you saw some of those folks who came in from Brenda's district some months back who were crying and in fear every day about any meaningful rain over two inches. They know they're going to suffer losses. Yet it's nice to say an engineer should have taken care of it, but they haven't. And I think that is why it's in front of us now. And I appreciate your input, but I think we just can't leave it to engineers any more. It's too late."

My commentary is, first of all Mr. Jacobson says that it's a crisis situation. I'm not sure what the definition of a crisis situation is or if Mr. Jacobson has the authority to declare a crisis, but there are some on the island who would disagree with that statement. Secondly, Mr. Jacobson implies that engineers did not take care of the problem in Brenda's district. The fact is that no engineer was ever asked to design drainage for the properties that caused the flooding problem. So to say that engineers have not taken care of a problem that they were never asked to look at is a statement meant only to discredit engineers and make it appear that the cause of flooding is members of the engineering profession not taking responsibility for solving flood problems. Mr. Jacobson was out of line stating that it's nice to say engineers should solve the problem, but they haven't. The fact is that when called upon, engineers have solved many flooding situations on the island. I do not believe engineers were treated fairly in this public statement.

I find it disturbing that in March, Mr. Jacobson claimed to know very little about engineering, and two months later he was sure that the resolution of flooding problems could not be left to engineers. His statements regarding engineers were not fair, impartial, or courteous based on his own admission that he knew very little about engineering. I am troubled that his statements regarding engineers also appeared in the newspaper, further disseminating misinformation regarding the engineering profession.

At another meeting, Councilman Jacobson stated: "People are being flooded out despite the very best intentions and best professional quality of engineers, and that's what we are trying to deal with right now. I understand the need to compromise, but unfortunately, that's what we've been doing here—basically compromising the health and safety of the residents of this island. Engineers don't take the same oath that we do. We have to swear to uphold the constitution no matter what their ethics are, and I'm not impugning that at all. I think, as I'd mentioned earlier, they're very ethical and they do the very best within the limitations of their profession, but we swear to protect the health and welfare of the people of Hawai'i, and I can't compromise on that. If I'm going to err, I'm going to make it on the side of health and safety, and not on the profit of people who are speculating on this or trying to do that. I think we have enough problems with the infrastructure here without trying, you know, to compromise health and safety issues. So I appreciate you coming in, but I think that some of the problems that have been in the past, you know, we've

made and created in the past, which are—I mean, all of us are aware of them. They haven't been dealt with, and yet we continue to make problems. I'd say the stricter approach we can take on this right now. If we need to liberalize at some other point, I'd rather err on the side of health and safety, and that's my position."

Although Mr. Jacobson—this is my commentary on that. Although Mr. Jacobson says he is not intending to impugn engineers, his statements do just that. The Code of Ethics of the National Society of Professional Engineers states: "Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, equity, and must be dedicated to the protection of the public's health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct." Mr. Jacobson stated that engineers do not take an oath to protect public health and safety, which is a misleading statement. According to Chapter 436B, Professional and Vocational Licensing Law of the State of Hawai'i, the licensing of professionals, including engineers, is meant to protect the public health, safety, and welfare. It is fine for Mr. Jacobson to state that he is trying to uphold the constitution and that his reasons for voting for something are to protect public health, safety, and welfare. But it's not okay to make false statements regarding the engineers' duty to protect public health, safety, and welfare. Engineers do not just take an oath to protect public health, safety, and welfare, they are obligated by the laws of the State of Hawai'i and their Code of Ethics. In addition, engineers are held personally responsible and liable for their work. Again, I do not believe that as an engineer, I was treated in a courteous, fair, and impartial manner by Mr. Jacobson, and that it's not fair, impartial, or courteous for him to state that he is not impugning somebody's ethics or code of conduct, and then go on to do just that.

I believe that some of the amendments Mr. Jacobson voted for will jeopardize the public health, safety, and welfare. My testimony and that of other engineers was meant to assist the Council in making informed decisions. Mr. Jacobson's statements maligning engineers were not in the public's best interest.

At another meeting, Mr. Jacobson blamed flooding of the Hawaiian Acres subdivision on work the engineers have done above here for the past 70 or 80 years. When hearing testimony regarding folks not being able to receive loans because of the Chapter 27 amendments, Mr. Jacobson implied that he was not sympathetic, as he had not been able to obtain a loan, and stated that the shoe was on the other foot and the people who had made the decisions to flood other people were now getting to enjoy the benefits of their actions. Mr. Jacobson also referred to bad engineering and bad design in his comments.

My comment on that is, when I researched the flooding problems at Hawaiian Acres, I discovered that in 1938, the Oloa Sugar Company built a large diversion to divert flood waters away from the sugar cane fields into what was then considered wasteland. The Hawaiian Acres website states that the unpredictability regarding this flood channel is due to policy failures as well as other related geological features. The Hawaiian Acres website stated that the housing development was started in 1958, 20 years after the diversion ditch was designed by engineers. It appears that the drainage channel was probably designed appropriately for engineers for its use at the time. Twenty years later, the property was allowed to be developed without resolving the diversion channel issue. I am not certain that this can be blamed on engineers. Some of the problems may have stemmed from decisions made by previous County Councils, Planning Departments, Department of Public Works, and other agencies which allowed zoning to take place without requiring resolution of the diversion channel issue. I don't believe it was fair, courteous, or impartial for him to blame the situation entirely on engineers.

It is disappointing that Mr. Jacobson continues to foster a negative public perception of engineers, and I don't believe this is fair, impartial, or courteous to the engineers in this community who work hard to uphold their obligations and duties to protect public health, safety, and welfare while providing quality projects for the people of this island. The flooding issues we currently face are the result of many contributing factors, and it is a complex issue.

During the Council meetings, Mr. Jacobson has raised some very important issues and concerns regarding flooding, and I believe that if we all work together, we can mitigate a lot of the problems. It is my desire to provide my professional input to Mr. Jacobson and other councilmembers and to help develop a code that protects the public's health, safety, and welfare. It is difficult to do this when Mr. Jacobson continually makes negative, misleading statements regarding the engineering profession. These statements may result in negative consequences to the public whose safety he has sworn to protect. I have the Hawaiian Acres website where I got that information from.

CHAIR: Why wasn't that document made available to us, your—

BURNS: --I just created it last night. I mean—this information was a public hearing. It's all on—I got the videos from the County Clerk's office and these statements that I read from Mr. Jacobson were off of the, you know—

CHAIR: I know for me, I might absorb more if I read it myself.

BURNS: I can submit it in writing—

CHAIR: --and as you were reading, I could maybe only take in a small percentage of what you read, whereas if I had the documents before me, I could better understand it. So is there a way we could have three copies made?

ASHIDA: I can get that for you, sir, or if you'd like to view the DVDs of the meetings that she's referring to, I could arrange that--

BURNS: --the DVDs might be better, because—I mean, you've heard my opinion, and you know what my position is. My position is that we as engineers are charged to uphold public health, safety, and welfare. In listening to Mr. Jacobson's statements, when he says that he is supposed to and that we don't have the same code of ethics. We have the exact same code of ethics. And that's where I have a problem, that he's, you know, telling the public that we're out there for profit, and, you know, we're not—our designs don't consider public health and safety, and our input to the code wouldn't be considering public health and safety. That's what my concern is. That's where my issues are. I don't think it's proper and appropriate for a public official to take a whole group of people and say, you know, to impugn their ethics when saying he's not intending to. I think that's doublespeak and I think that it's not in the best interest of anybody, to state that I'm not intending to impugn your ethics, but you don't have the same ethics as me. You know, it just—it upset me. We deal with the public all the time, and I think that it would be nice if we could all work together to get codes and laws passed that provide—you know, for everybody to give input in a fair and impartial manner, without the Council spitting back nonsense at us—

CHAIR: --And, since I'm a lay person, I'm not familiar with the process that you're talking about. Your interaction with the Council is because?

BURNS: Well, they're proposing to amend Bill 51, which is regarding Chapter 27 of the flood control ordinance of the County of Hawai'i. The Public Works director submitted some amendments that were required to bring the Hawai'i County in compliance with FEMA, the national flood insurance program. Without these amendments being passed by September, we would be in jeopardy of losing flood insurance, which means if we get a hurricane, we get a disaster, we get a tsunami, there's no federal assistance. So the code was originally introduced to make sure we're in compliance and will qualify for flood insurance. The councilmembers introduced a whole lot of amendments, like about 16 or 20 amendments, to this code that are very technical in nature and that probably are not in the best interests of the public from an engineer's standpoint. We had testimony from, I don't know, maybe 30 or 40 people, not only engineers—it was NRCS, National Resource Conservation Service that _____ people. There was Army Corps of Engineers, there was FEMA. There was testimony after testimony. I think there was four committee meetings and one full Council meeting where testimony was provided.

CHAIR: And you're employed by?

BURNS: Myself.

CHAIR: And are you a registered lobbyist?

BURNS: No.

CHAIR: No?

BURNS: No. I was testifying as an engineer that has to use that code in my practice every day. I conduct studies and drainage studies for every single project I do, and so the code was very important to my profession and what I do. And I wanted to make sure that it stayed in line with what would protect public health and safety. That was my reason for testifying.

CHAIR: I see. Question, John?

DILL: Did the Council solicit testimony from engineers to—

BURNS: --Well, Councilman Ford invited the Army Corps of Engineers, the National Resource Conservation Service, and FEMA to present information. It wasn't really testimony, it was—

DILL: --educational.

BURNS: Educational. There was videos of flooding. It was, you know, it was very—it was I think six hours worth of presentation by engineers. And that's where Mr. Jacobson made the statement that he didn't know much about engineering.

DILL: Right.

BURNS: So, I mean—it's fine if he knows what engineers do and how we practice. He's—it's my understanding that he's a nurse. And he has to take a test, and he has to get licensed, so he knows that professionals get registered, get licensed, by this State to protect public health and safety. I don't think that his ignorance of what professionals do excused his saying, oh, I don't really know what the code of ethics, or what engineers' duty to public health, safety, and welfare is. I think it was a statement made specifically to discredit my testimony and the testimony of the other engineers, and I just don't think that that's very ethical or—it's not going to lead to a good code or good policies for this County. I think we all need to work together. And before I submitted this complaint, I did send a letter to the chairman of the Council, asking that he ask his members to treat the engineering professionals with more courtesy. So it's not like I, you know, filed this before trying other ways to try to, you know, make it so that all these statements don't get out and then get printed in the paper.

DILL: Did you get a response from Councilman Hoffmann?

BURNS: No.

SHARPLESS: You wrote a letter. Could we get a copy of the letter?

BURNS: It was actually to Mr. Ashida with a copy to Mr. Hoffmann.

SHARPLESS: And then you did not receive any reply—verbal, written, telephone, email, in response to that letter?

BURNS: Not from Mr. Hoffmann.

CHAIR: And when was that?

SHARPLESS: But did you receive any, from anybody?

BURNS: Mr. Ashida said that maybe the only, you know—he told me about the Board of Ethics’ procedures and, you know, said that, you know, if Mr. Hoffmann didn’t respond that maybe this was an avenue.

SHARPLESS: Okay. Thank you.

CHAIR: And when was that letter submitted?

BURNS: The letter was probably submitted about a month ago, I think.

ASHIDA: It’s been awhile. My recollection is it was a letter to the Mayor, right?

BURNS: Yeah, I copied the Mayor’s Office on it, too. It just—I mean, I just—I’m not trying to make a big deal of this, and I really don’t want Mr. Jacobson, you know, punished or anything. My purpose for doing this is to get him more in control and more courteous to the people. I mean, when somebody testifies that there’s 250 million dollars of loans out there that could—people could go belly up, and he says, well that’s too bad, because I can’t get a loan for my property, I don’t have any sympathy for you. I mean, that’s not courteous, that’s not respectful to the public. And I just, I don’t know, I guess my interest is to work together and create legislation—

CHAIR: But since you initiated that letter, has any of that occurred?

BURNS: No, he continued. The last Council meeting he went on again about this Hawaiian Acres thing and how the engineers above him have created all this flooding. Again a public statement that the engineers have created flooding.

CHAIR: I’m trying to get a timetable in my head.

BURNS: If it had stopped, you know, after—you know, Mr. Hoffmann didn’t have to respond to me directly. He could have just spoken to them and they, you know, change their behavior. But when another statement was made regarding the Hawaiian Acres project that was misleading regarding the role of engineers and the flooding that occurs there, I mean—it’s obvious that he’s going to continue to make it up as he goes along. And I don’t think that’s what our County Council people are supposed to be doing. They’re supposed to be

representing the public, not giving us all of their, you know, opinions about what a profession that he doesn't even know anything about is about. So that's—I just needed, I guess, to vent.

DILL: No, thank you for coming in, and especially considering changes to Bill 51, the Council should be heeding your input, the engineers' input, for such significant changes and so much on the line. Thanks for coming in.

CHAIR: Thank you, but please wait, because we would like—what was your name again? I'm sorry.

SELF: Amy Self, Deputy Corporation Counsel—

CHAIR: --I know that name.

SELF: I'm not related to _____ Self.

ASHIDA: She's a runner.

CHAIR: Yeah, that's the Amy Self I know.

SELF: Oh, yeah, you're the head of the running—Big Dog?

CHAIR: Yes.

DILL: That's what we call him.

SELF: Okay, I'd like to respond to some of the comments that Ms. Burns made. First of all, I did review the tape of the Public Works Committee meeting this morning, early, early this morning, and the Council meeting that she's referring to—the last Council meeting they held. And she doesn't mention some of the other comments that Councilmember Jacobson made, which was—one of the statements he made in response to one of the testifiers was that engineering is an honorable profession. He has said other things such as “no one here is questioning the ethics of engineers,” so my recommendation to you would be, if you decide to proceed with this, is for you to view the tapes yourselves, because you cannot just take it—just take the comments that she has made that she picked out of the tapes, so that you can see what his mannerisms were, how he was—the tone of his voice—because I think once you do that, you'll see that he responded to lots of engineers, not just Ms. Burns. And—but this is not about the whole engineering profession. She is here as an individual. She is the one that filed the complaint, so she should be representing how she thinks that he was not courteous to her, not to the entire profession, because many, many engineers testified at both of those meetings, and none of them as far as I know have filed complaints with the Board of Ethics. So I think you need to review those tapes before you make any decisions. From what I could tell after viewing the tapes, Councilmember Jacobson did not at any time raise his voice. He did not make any personal

attacks on Ms. Burns. It appeared to me, after viewing the tapes, that he was making these comments trying to get, like—trying to get his fellow councilmembers to support the bill, which oftentimes Council members do that, try and get their support for certain bills. But I would suggest that you review these tapes so that you can come to your own conclusions about his behavior, and I don't think that it rises to the level of something that would, you know, be an ethics violation.

CHAIR: I think it's a good suggestion. I think we should, before we make any determination, review those tapes.

BURNS: May I say one more thing—

CHAIR: Yes—

BURNS: --that I've had several engineers call me and ask me if they could support me in this, and I don't know the full procedures here—I don't know if they're allowed to send in written testimony, if they have to appear, because I've never done this before. But I've had at least three say that they're behind me and that they wanted to actually be here today but couldn't, so it's not just me.

CHAIR: I think it would be helpful if you did get a list of people that support you from your profession as well, but I think you're absolutely right, that we need to review those tapes before we can go any further in this.

BURNS: And my other thing about all of his complimenting. He builds us up and then tears us down. And I agree with her. He lobs all these praises on the engineering profession before he goes and discredits, and again, those tactics are just—you know. And the paper picks up the negative part, you know.

CHAIR: It may be easier for us if we just view those tapes and got a better indication of what this matter is all about, and so what I would suggest is that Corporation Counsel make the tapes available to us.

ASHIDA: Sir, I can do one of—

CHAIR: --and this is what I would like, if possible, is that we have the opportunity to view the tapes, if we have enough time, on July 11.

ASHIDA: Yes, sir.

CHAIR: And if we find that there is questionable evidence in there that supports Ms. Burns, then we reconvene in August to settle this petition.

ASHIDA: I'll do that, sir.

CHAIR: And members, okay with that?

DILL: Could we also get copies of your testimony to us then?

BURNS: Yes. And do you need letters from the other—the engineers that have offered to support—

CHAIR: --I think that would be supportive of your petition, so that would be helpful, and written testimony is good. But we need to review those tapes first of all before we can go further in this, and I think because we have such a long schedule already set for July 11th that we would be looking at hopefully resolving this some time in August.

SHARPLESS: I have a question.

CHAIR: Yes.

SHARPLESS: In your—on this form, on this form that brings the complaint to us, the specific provisions on the Code of Ethics in question, Rule 20-5, Rules of Procedure and Organization of the Council, that is a Council document?

BURNS: That's what I—that was my first avenue of seeking some kind of, you know—

SHARPLESS: --Did you refer that to Mr. Hoffmann?

BURNS: Yes.

SHARPLESS: Okay. So Rule 20-5 is not necessarily under the jurisdiction of the Ethics Board, okay?

BURNS: I understand that.

SHARPLESS: Okay. I would like to see a copy of your letter to Mr. Hoffmann, and I just want to clarify that we do, or do not, in this case we do not have jurisdiction over the organization of the Council or their rules of conduct, if they have them.

BURNS: Who has jurisdiction over that rule?

SHARPLESS: I'm not sure. I don't know.

ASHIDA: I think Mr. Goodenow in the back row over there is actually the godfather of all this.

GOODENOW: I'm the Deputy County Clerk.

ASHIDA: Ms. Sharpless—Mr. Chairman, if I may respond to the question.

CHAIR: Sure.

ASHIDA: The Council passes by resolution their rules of organization, conduct, and procedure. If—who has jurisdiction? They all do. The rules are set up so that they can follow them so everybody's on the same page in terms of how items should be processed and what their protocols are. There's no enforcement arm. In other words, if you violate it, you know, there's no provision in there that sets up a sanction, like a public censure or anything like that. I suppose the Council Chair could talk to the councilman and say, hey, you know, you better watch this, what have you. There's also a provision under their rules which allows them to suspend their own rules if the circumstances present themselves that they don't wish to follow their rules or there's a necessity for suspension. They can do that. So to answer your question, I think there's no teeth to those rules.

SHARPLESS: And we're the only ones that have—

ASHIDA: --Yes. So your jurisdiction is limited to the Code of Ethics. I believe what I'm hearing--

SHARPLESS: --Yeah--

ASHIDA: --I believe what I'm hearing Ms. Burns say is there is a provision that all County officers and employees shall treat the public in a courteous manner, etcetera, etcetera—

SHARPLESS: --right, right, okay--

ASHIDA: --that's where our jurisdiction lies.

SHARPLESS: Okay, I can focus on that, but I just didn't want to get into anything that the Council needs to do themselves.

SELF: Can I make one other comment?

CHAIR: Yes.

SELF: I would also suggest that when you're reviewing these tapes, that you listen to all public testimony for those meetings, because there was very passionate testimony given by individuals, families who've lived here all their lives, who actually experienced loss from flooding. And there was a lot of this—there's probably as much testimony from individual members of the public as there was engineers. It was very passionate. People are very fearful of flooding. So this is a very emotional issue. It's not just about engineering. It's a very emotional issue with the public. And if you listen to all of the public testimony, you can kind of put yourselves in the position of a councilmember, and that may guide you in determining how these comments were made and the level that they were made on, because you can't just base it on the testimony from the engineers. You have to—you have to see the whole picture and see what the councilmembers are faced with, what their constituents were

testifying about, so that you can see how he was reacting and what he was reacting to. So that'll give you a broader picture of what was actually taking place during those meetings. Thank you.

BURNS: Can I make a comment?

CHAIR: Just a moment before I lose it—would it be unusual, then, to request a set of five DVDs?

ASHIDA: No, sir, I can get that to you.

CHAIR: And have that in our packets so that we can view them on our own time, because it looks like this will take several hours to get through. And it might be more appropriate if I had it and I could do it in my living room. Then I would also need five copies of everything that she just read before us today, as well as five copies of all the letters that were sent to Mayor Kim and Mr. Hoffmann.

ASHIDA: Yes, sir.

CHAIR: And I think—we want to be as fair and impartial as possible. And you're making a very serious allegation, and if it's true, or if it's not true, we need to know. And I think we're intelligent enough that when we view these tapes, we can come to a general conclusion.

ASHIDA: Mr. Chairman, we'll have those to you as soon as possible. Yes, you may review whatever you want on your own time. Only a caution, of course, is you not discuss it with each other—

CHAIR: --Oh, absolutely—

ASHIDA: --that would be a Sunshine Law violation.

CHAIR: Absolutely. And Ms. Burns, did—

BURNS: Just a comment on the passionate testimony that was given. I think you have to look at—you're right, _____ days to look at this stuff, but there were maybe three or four families during the first meeting that testified. I don't think anybody had any loss of life or any water enter their—enter their houses. There's no dispute—it's mostly—in fact the damage was not even discussed, and it was just testimony that flood waters go by their house. They live in Waiaha which is a _____ of waters. I looked at the topo maps—yup, that's where the water goes, right by their house, and they've lived there forever. And they testified that they've had flood waters go by their house for a long time. So, you know, I agree that they have some flooding issues and flood problems, or what I call drainage issues, and usually they're contained in a _____. The situation it was mostly focused on was a situation called Arionne Farms, and this was, I don't know, a 30- or 40-acre coffee farm which

was built without any permits, without any engineering, without anybody knowing about it. The guy just got a bulldozer, went on his property, and this flooding situation happened. And most of the focus of all of the meetings was that one situation where no engineering was involved, no—you know—we didn't have the opportunity to assist in making sure that it didn't flood. And that's where I thought the unfairness was, was to focus—Mr. Jacobson didn't keep focus on this problem in Brenda's district where the engineers haven't done anything. Well, we weren't contacted. We weren't hired to do anything. You know, so for him to say that we can't be left to take care of the problem because we didn't already, is to me unfair. It's an unfair situation where because one family, or two families, flooded without any input from engineers, that the engineers can't take care of it. And that's what my—

CHAIR: Okay.

BURNS: And you need to look at the last Council meeting where all the testimony was, and that's a separate one.

SELF: I might also add that Councilmember Jacobson was not the only councilmember that was concerned about this. They were all asking questions. They were all making comments about engineers, so, you know, you have to listen to everything and everyone in viewing these meetings.

CHAIR: And that's why we're requesting these—

BURNS: --I would have to agree with that, because at one person, Councilman Jacobson asked one of my clients which of his neighbors he wanted to flood. That's how discourteous, and how I think unfair, was the meetings on the Council's side for this new testimony, so.

CHAIR: Okay, we get the picture. We need time to review these tapes. What I might suggest, then, is when we send out the memos to all the Board members, we ask them to review the tapes prior to coming to the June 11th meeting. We put it on the agenda for June 11th under unfinished business, and discuss what we saw on the DVDs and then go from there. Which means neither of you would need to be here for the June 11th meeting.

DILL: July.

CHAIR: I mean July 11th meeting. And hopefully if we do our homework, we can act on this matter.

BURNS: Thank you.

CHAIR: Ladies, thank you very much. Don't forget to get everything in to Mary, because we'll need copies of that.

BURNS: Okay. I can give a copy of what I read today.

SECRETARY: Yeah, whatever you have, and then I'll make copies.

CHAIR: I know Amy Self, because I see her name in Finisher, and when you submit your entries. That's why, when you introduced yourself, the name flashed in my mind.

SELF: That was a tough run.

CHAIR: Thank you. Thank you, ladies. Okay, can we move to Unfinished Business.

The Board entered into Unfinished Business at 12:10 p.m.

6. UNFINISHED BUSINESS

a. Further review and discussion of draft *Ethics Guide for Hawai'i County Officers and Employees* booklet.

The Chair suggested that this item be deferred until the next meeting, as member Ann Lum was not present, and she was involved in the project and good at proofreading. The other members agreed.

Motion and Vote: Mr. Dill moved to defer the review of the *Ethics Guide* to July 11, 2007, and Ms. Sharpless seconded the motion. There was no further discussion, and all members present voted aye.

b. Further review and discussion of the *Confidential Financial Disclosure Form*.

Ms. Sharpless said she had not been able to proofread the form again. The Chair and Mr. Dill both said the form looked good to them. The Chair, however, said that the form stopped at the letter G on page 2, and he thought there was to be an increase.

Ms. Sharpless said they did agree to an increase, not just for income but for property values.

The Chair suggested continuing this matter until Ms. Lum could be present.

Motion and Vote: Mr. Dill moved to defer both items b and c under Unfinished Business to July 11, 2007, and Ms. Sharpless seconded the motion. There was no further discussion, and all members present voted aye.

7. EXECUTIVE SESSION

Motion and Vote: Mr. Dill moved to enter into Executive Session, Ms. Sharpless seconded the motion, and all members present voted aye.

Executive Session was entered into at 12:15 p.m. Minutes are separate.

Regular Session was re-entered at 12:20 p.m.

The Chair said they had reviewed the financial disclosure forms of Everette Souza, Reiko Ford, and Margaret Tokunaga.

Motion and Vote: Mr. Dill moved to accept and file the financial disclosure forms for Mr. Souza and Ms. Ford, and to send Ms. Tokunaga's back for further information. Ms. Sharpless seconded the motion, and all members present voted aye.

8. ANNOUNCEMENT

The Chair announced that the next regular monthly meeting of the Board of Ethics is scheduled for Wednesday, July 11, 2007, at the Ben Franklin Building at 333 Kilauea Avenue, Second Floor, Hilo, Hawai'i.

9. ADJOURNMENT

Motion and Vote: Mr. Dill moved to adjourn the meeting, Ms. Sharpless seconded the motion, and all members present voted aye.

The meeting adjourned at 12:22 p.m.

Respectfully submitted:

Mary E. Crosson, Secretary