

HAWAI'I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

Wednesday, September 12, 2007 – 10:03 a.m.

101 Aupuni Street, Suite 230

Hilo, Hawai'i 96720

Present: Wayne Joseph, Chair
Ann Lum, Vice Chair
John Dill, Member (arrived 10:15 a.m.)
Tricia Malanka, Member
Lincoln S. T. Ashida, Corporation Counsel (counsel for the Board)
Mary E. Crosson (secretary for the Board)

Others Present: Del Pranke; Alex Achmat; Rene Siracusa; Lori Enriquez; Hunter Bishop; and an unidentified male

1. CALL TO ORDER

The Chair called the meeting to order at 10:03 a.m.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS¹

CHAIR: We have four statements from the public, and I believe they're all on the same issue, which is Communication 2007-90. So would you like to wait till we get to that item on the agenda, or would you like to present your statement now?

PRANKE: I'll present mine now--

CHAIR: --Mr. Pranke?

PRANKE: Sure.

CHAIR: Although we don't have a clock, we'd like to—

PRANKE: --I won't be long.

CHAIR: Good. Thank you.

PRANKE: I will be succinct today--

¹ This portion of the minutes is verbatim.

CHAIR: --Thank you--

PRANKE: As opposed to normal. First I want to thank you all. The Board of Ethics has increased—has improved its ability to be accepted by most of the general public immensely over the last few years. And I appreciate the job that you folks are doing. I want to talk a little bit about the complaint concerning a letter written by Ms. Siracusa, because I believe that it's probably—we talked about this before—but I think this is probably not an ethics issue. I don't think that expressing one's opinion is the—in a letter to the editor—violates any portion of the ethics law, because she wasn't seeking any gain for herself or for anyone else. And pretty much—that's pretty much—that's what ethics is, other than not being able to lobby for several years after you've left office as an officer of the County. So I don't believe that this is the proper forum for the complaint. There may be something to do with the Office of Information Practices, with the Sunshine Law, if it were to be discovered that this was a way of communicating with other commissioners on the Planning Commission about something. But I doubt that that's even enforceable, because I don't think that the County or even the State can write a law that would override your federal civil rights to be able to communicate. So it's probably not something that you even need to consider, I think. And finally—and that's all I have to say about that. I just don't believe that it's proper to come before the Board of Ethics. And finally, I wanted to talk a little about—I know that you're going to talk about the Ethics Guide and things that are ethics. As I said, there's only two things that I can find in the ethics—Code of Ethics—that really apply to much. And one of them is that you not act in some way where you get—that a person who is an officer or employee of the County not act in some way that allows them to have some sort of gain, either financial or otherwise, or that allows someone else to have unwarranted gain. And of course, the part about not being a lobbyist after—for a year after serving. One thing that's not in the Ethics Code that I always thought should be, and I'm bringing this forward to you now in case you have a chance to consider it, is that there's no provision in there for someone who would deliberately lie to someone else either—on an official basis. And I've always thought that that's pretty much the basis of having a transparent government, is that you be able to believe that the person is telling you—what the person is telling you is truthful. And because that's not in there, there's been a couple of instances in the past where ethics violations have been brought forward concerning this but never went very far. I would hope that you get a chance to look at that kind of thing. We all know that there are going to be times when people give out erroneous information, but I do believe that as a board you can tell the difference between a deliberate lie and somebody who erroneously gives out information. That's all I have to say, and thank you very much. If you have any questions, I'd be glad--

CHAIR: Thank you for coming in, Mr. Pranke.

PRANKE: Thank you.

CHAIR: I appreciate it. And the three of you will wait till—

SIRACUSA: --yes—

CHAIR: --till it shows up as an item on the agenda. Thanks. So moving to communications. Members, have you had the opportunity to look at communications--

SECRETARY: --the minutes. I'm sorry—

CHAIR: --Oh, I'm sorry. I skipped over the minutes, approval of minutes from last session. Have you had a chance to look at the minutes?

ACHMAT: I'm not really with them.

CHAIR: Oh. But you still wanted to wait?

ACHMAT: No.

CHAIR: Oh, you wanted to—

ACHMAT: --yes.

CHAIR: Oh, I—sure. You're—

ACHMAT: I'm Alex. Alex Achmat. I'm down today from North Kohala. I'd like to begin by thanking you, councilmembers [sic] for allowing me to speak. I would hope that what I say isn't in any way offensive or comes off as condescending, but at the same time I feel responsible to speak candidly, because I think that's the easiest. And I'm trying to get a couple of ideas across that I hope are going to be simple. I'd like to comment on them and illustrate them mostly from your own agenda minutes. And so--the issue I'm talking about is the role of attorneys in these ethics hearings. I've had the opportunity now to go to two. I went to two events with Emily Nae'ole, and then in November of 2005, I had the opportunity to sit in on the James Arakaki hearing. And both of those events—I came away, I found out I was deeply disturbed and troubled, not just by the behavior of the attorneys, but by the behavior of the committee in allowing them to run, really, your meeting. Starting with the first one, the first one—Arakaki hearing, which was awhile back, and I think Mr. Joseph is the only one here—

CHAIR: --Yeah—

ACHMAT: --who was sitting at that time—

CHAIR: --and you're correct.

ACHMAT: Mr. Arakaki was represented by Brian deLima, and I had brought my son down as part of a civics project from his high school to see an ethics committee meeting. And we were shocked to see him take over the meeting and basically run it. And so, my understanding is, at the end of the day when the ethics committee hears information, their responsibility is to render some kind of informal advisory opinion, but you don't really have any penalties you can enforce on people. You can't put people in jail. You can't really fine people. You might be able to turn them over to another body, another attorney or maybe even law enforcement in the whole County system. But that—you don't really have any kind of responsibility to be a court as such. And so the whole role of the attorneys is very confusing. Mr. deLima's behavior—I'll just outline it for you, because I happened to go this morning and look at it. Mr. deLima spoke for essentially eleven pages of testimony during the hearing. Mr. Arakaki, who he represented, did not say one word. He did not even introduce himself to the panel. He sat there while Mr. deLima handled all questions and handled the entire question of this kind of campaign spending commission question. And I won't belabor, or go over it, but my concern—

CHAIR: --And if I could interject—

ACHMAT: Sure.

CHAIR: I agree one hundred percent with you on the Arakaki matter. I don't believe that that attorney should have had that amount of time, and that it should have been handled differently. I agree with you a hundred percent—

ACHMAT: --but it's a little more egregious than that, and I'll tell you why. At the beginning of that meeting, one of your members, Mr. Karl Kawahara, who because of one member recusing themselves, constituted the key element to make a quorum. At the beginning of that meeting, he announced that he was resigning at the end of the meeting, which was pretty dramatic. And also he informed everyone that we had to rush and make this decision about then-sitting Councilman Arakaki, who by that time I think was a three-time serving person, and at the same time, you know, had been chairman of the committee for a number of times. As a citizen, I would think that a person with that length of experience and responsibility, who is responsible for administering a budget in the millions of dollars, and who has a personal expense of somewhere over a hundred thousand dollars of money that they can distribute, and is a trained professional, should have been able to speak for himself. Why he needed a lawyer to explain to you his understanding of the Campaign Spending Commission rules and regulations, I have no idea. I'm a senior citizen and kind of a concerned citizen. I understand how to work my way through the

Campaign Spending Commission. I understand that the Campaign Spending Commission has really clear, cookbook kind of rules about how you keep records, how those records are supposed to be stored, how frequently reports are to be turned in, what those natures of those reports are. I also know by looking at the records that immediately after an election, that a new cycle of aggregating money begins, that politicians begin to accumulate money for their next run.

CHAIR: Sir—

ACHMAT: --and this (*indiscernible*) a little bit on the Nae'ole thing—

CHAIR: --I must, I must interrupt you again. None of these people were on the Board at that time—

ACHMAT: --Right, and that's why I'm telling you--(*indiscernible, as speaking at same time as Chair*)

CHAIR: --I was—I was the only Board member. I was not the chair, nor was I the vice chair. And I agree with what you're saying.

ACHMAT: Okay. I just want one more—let me finish this—(*indiscernible, as speaking at same time as Chair*)

CHAIR: --No, with Mr. Arakaki, I think we're—I think we're done on that issue. But if you'd like to speak about Mrs. Nae'ole—

ACHMAT: --let me just finish, though, that after lunch—

CHAIR: --because normally we limit these testimonies—

ACHMAT: --okay—

CHAIR: --to three minutes.

ACHMAT: But I was saying, at the end of the meeting, and this is—for the other members, they can go and read these minutes, in the November minutes. At the end of that meeting, it was Mr. deLima who suggested what the motion should be, and that motion was carried.

CHAIR: That I disagree with you on. I was there—

ACHMAT: --You might want to read the transcript. I read it this morning--

CHAIR: --I was personally there—

ACHMAT: --page 24—

CHAIR: --I made the motion. I had laryngitis. I could barely talk.

ACHMAT: Okay.

CHAIR: And—

ACHMAT: --Well, I still see it as--

CHAIR: --But if you'd like to say something about the Mrs. Nae'ole—

ACHMAT: --Yes, I'll go over that section now. You know, that one is a confusion of two issues. One, were certainly the attorneys, who loaded up for tons of materials and exacerbated the kind of drama and the legal side of the event, where really this is not a legally empanelled organization. And so why an elected official would need somebody to speak for them—it's kind of like hiring a lawyer to take your children's driver education class. It's not the license, but just the driver education class. And that's what I'm struggling with. And then, you know, from my point of view, and this is just my perception, is that I thought that Mrs. Nae'ole was treated rather paternalistically, you know, in her testimony, especially the issues about Lucille Chung, in the issues about Lucille Chung and the \$5,000, you know. Nobody asked her whether Lucille Chung had contributed to her campaign or had been a worker in her campaign, or how many people in that network of schools had been workers and contributors to that campaign. I think that would have been an important question.

LUM: I think that wasn't the issue we were looking--we were hearing on. We had two questions we were hearing on.

ACHMAT: Right. (*Indiscernible*) down to a couple of issues. And that goes back to my comments about the campaign spending rules. I know that Ms. Nae'ole is fairly dramatic and very theatrical, and I think that you would be—you would be fooled if you thought that she didn't understand how things work. And the Campaign Spending Commission is very clear about how bookkeeping and rules are to be kept, and receipts and all the rest of that. And that one little book does not count for much. It may be a person's personal notes, but it doesn't count for anything in the reporting structure that the law requires. And so I thought she was a little bit disingenuous there. The other issue is the \$5,000 again went to somebody who contributed to her campaign. And I don't think that necessarily there's a quid pro quo there, but I think it's certainly something that should be put forward openly so that there's no questions. And in fact, you're dealing with similar issues with one of your own members. And the other thing is the sequence, you know. The \$5,000 went to Lucille's school in April. And as I read the transcript, you know, there's possibly shading that indicates that this was okay because of things Emily had seen other people do. And you asked the question, you know, is it common, isn't that common. And also, it turns out that Mr. Yagong did not buy the

refrigerator for that Pahoia place, that it was just an idea. And that as of your last meeting, which was last month, the paperwork has still just been submitted, and it's working its way slowly through the system, and the total is a thousand dollars. And I think that the schools are doing a good job, and I think that they do deserve a refrigerator down in Pahoia, and I'm not trying to hurt the community in any way. But I think that it's important for people who are elected to these responsible positions—and Emily controls the budget. \$300,000 of the taxpayers' money. Now if the Board, you know, thinks that she's not competent enough to be in a hearing, then maybe your responsibility would be to look at that issue rather than trying to pigeonhole and determine the honesty between who said what and who said what. And you know, from the audience point of view, my point of view, I felt like the whistleblower in this case really got short shrift. And the other thing I took offense at were the lawyers voicing their own ridicule at the procedure, including ridiculing things like Hunter Bishop's blog, which is, to me, undemocratic. I mean, you know, people who don't like the news close down newspapers and close off media and outlets of truth. We don't think of those people as democratic, and that was essentially the ridicule that came from the lawyers, that somehow this blog is, you know, unseemly because somebody had dared actually say something. And then later, when Ms. Hale explained how she had worked her way through the system of redress here, at the County offices, and literally nobody could help her. Because of the nature of her employment, she was on her own. And that's when she started foundering and when she went public. So those are the kinds of—that is in a nutshell what I came to talk about. I think it's just inappropriate for attorneys to be attorneys in the sense of representing our elected officials speak before you. I think that those elected officials should speak for themselves. And we as citizens and you as an ethics committee could understand how they are thinking and what they're using to make their judgments and determinations according to the statutes you're trying to impose. Lawyers are hired as hired guns to make sure that the right answer comes up for their clients—not the true answer, not necessarily even the truth. But that the right answer, which is paid for, comes up. And you know, that's one last lingering issue, is who's paying for all the lawyers.

CHAIR: Okay. John--

ACHMAT: Thank you for your time. If you have any questions, I'll be happy to—

CHAIR: Okay. Thank you.

ACHMAT: Did John?

DILL: No. No, thank you.

ACHMAT: Thanks.

CHAIR: Thank you. And the ladies will wait till that other issue comes up, right? And sir? Do you have any testimony?

PRANKE: No—he's my driver.

CHAIR: Oh.

PRANKE: Sorry.

CHAIR: So now we're at the point on the agenda, item 3, approval of minutes.

3. APPROVAL OF MINUTES

Motion and vote: Ms. Lum moved to accept and file the minutes of August 8, 2007. Ms. Malanka seconded the motion, and all members voted aye.

4. COMMUNICATIONS

Communication No. 2007-80: Letter to Lincoln Ashida from Kendall Sharpless, regarding her resignation from the Board of Ethics, dated July 15, 2007.

Motion and vote: Ms. Lum moved to accept and file the letter, and Ms. Malanka seconded the motion. Without further discussion, all members voted aye.

Communication No. 2007-86: Letter to Chair Wayne Joseph from Lincoln Ashida, re the residency of former Board member Sharpless, dated August 13, 2007.

Motion and vote: Ms. Lum moved to accept and file the letter, and Ms. Malanka seconded the motion. Without further discussion, all members voted aye.

5. NEW BUSINESS

a.² *Discussion on Planning Commissioner Rene Siracusa's letter to the Hawai'i Tribune-Herald (Communication No. 2007-90) regarding Linda Berry's opinion on the Ho'onani Pet Supplies store (includes Communication No. 2007-91: letter from Gregory Henderson to the Hawai'i Tribune-Herald published August 22, 2007, regarding Ms. Siracusa's letter).*

CHAIR: At this point, Mrs. Siracusa, would you like to come forward?

SIRACUSA: I most certainly would. I want to start out by saying that I find that it is very significant that the letter I was responding to was never submitted to

² This portion of the minutes is verbatim.

you. The letter that I wrote to the editor was responding to a letter written by a woman named Linda Berry.

CHAIR: Do you have a copy of that?

SIRACUSA: I do.

CHAIR: Could we ask--

SIRACUSA: I would like to submit it and maybe have--give you a moment or two to look it over.

CHAIR: Could we ask Mary to make four copies—

SIRACUSA: Because otherwise, things don't make sense in the file--

CHAIR: --and we could—do we need to recess? Okay. I think sharing it with us would be a good idea.

SIRACUSA: I think it sets the tone for the—

CHAIR: --I personally read it, as I do most letters to the editor.

LUM: But I don't get that paper.

CHAIR: Yeah. But I'm not sure all the Board members have seen it.

LUM: Sometimes I read it.

(Mr. Ashida left the room to make copies of the letter.)

SECRETARY: I think you might need to recess, even if only for a minute—I don't know.

CHAIR: Okay, let's take a short, two-minute recess till Mr. Ashida returns.

(A brief recess was taken while copies of the letter were made and the Board members reviewed it.)

CHAIR: Okay, let's reconvene the meeting. Mrs. Siracusa?

SIRACUSA: I would like to start off by saying that, to the best of my recollection, when I took my oath as a Planning Commissioner I did not give up my First Amendment rights to freedom of speech and freedom of expression. That said, I would like to point out that I wrote the letter to the editor as a private individual. Nowhere in that letter did I say that I was speaking for the Planning Commission or for any organization. Mr. Henderson disapproved of what I had to say, as is his right. I never expect everyone to agree with every letter, and I was very surprised when he responded in

such an angry and vehement fashion. His letter accuses me of all sorts of things, which a careful reading of my letter will show did not exist. He said I called her names. I didn't call her names. Basically, everything that I mentioned about commercial development along Highway 130 and the position of the Planning Department, the Planning Commission, Mainstreet Pahoia, and Malama O Puna were all based on the public record, including the public record from long before I became a Planning Commissioner. There was no secret information that I was, you know, holding back or letting out. And I feel that—my feeling is that this is a democracy. We have one class of citizens. We don't have an aristocracy and then peons. The law is the same for everyone. If I have any agenda at all, it is—as regards Highway 130—it is that I do not want to see it developed into a strip mall. I do not think that there should be commercial development along that highway. And it's my right to have that opinion, and I find that I have opposed—both as a commissioner and before I became a commissioner—attempts to put commercial development on that highway, and I will continue to do so. And I think that's my right as a public citizen.

CHAIR: I agree with First Amendment rights. I mean, I'm a member of the Press Club, and I wouldn't want to be stifled myself. However, when we assume positions within the County of commissioner status, our first—our first goal is to assist the public the best we can. Now, we should always do it in a fair, courteous manner. And I'm not certain your letter did that. I looked at your letter, and it seemed that—it was perceived when I read it, initially, that perhaps you were angry or discourteous and that there was something there. Within our Code of Ethics, I mean in section 2-83(3), it says that officers and employees of the County will discharge their duties in dealing with the public, shall treat all persons in a courteous, fair, and impartial manner. And being a Planning Commissioner means that you need to—need to soften what you say, be more polite in the way that you say it. And people took offense to your letter, and I think that's why I asked that this be put on the agenda, so that we could discuss this and see what the other commissioners felt towards this.

SIRACUSA: I would like to respond to that, if I may—

CHAIR: --Certainly--

SIRACUSA: --and say that—to remind you again that I was not speaking as a Planning Commissioner. I was not in the process of discharging any duties to the Planning Commission when I wrote that letter.

CHAIR: No, I—

SIRACUSA: --I could very well have been writing as president of Malama O Puna, which is a non-profit which has taken a position on that. But I didn't,

because I had not had an opportunity to discuss the matter with my board of directors.

CHAIR: I think anybody that knows any County politics knows that you are on the Planning Commission. I mean, I knew you were on the Planning Commission, and I've never met you before. And I think that's why this letter was received in a negative way, was because of the way you said things—not what you said, but how you said it. And—of course, Linda Berry also had a response just a couple of days ago, I believe, as well. And I made copies of that letter and shared it with the Board members as well. But it's up to the Board to decide.

LUM: I think the difficulty is, when we write something, those of you who are writers more than I, it can take a tone down in black and white that perhaps is or is not intended. But be that as it may, when we are on these boards and commissions, and that was my thoughts all the way in this morning, it's a small place and people know who we are, and they associate us with those things that we—those organizations that we are involved in. And whether we sign as Board of Ethics or Planning Commission or any of these things, our name is still on it. And in that respect, perhaps, as our responsibility to the public, we maybe have to tone our own First Amendment rights a little bit so that we don't get these big flaps. I don't think that—I don't see this is an ethics violation here. I see it as perhaps a cautionary tale that we all have to look at when we're dealing with the public and we're in the public eye in some way. We have a little bit more responsibility to be calmer or—keeping our tones a little softer.

CHAIR: I—if I might, I'd like to hear from Lori Enriquez. No—Mrs. Siracusa, if you don't mind, you could stay right there.

ENRIQUEZ: Aloha. Well, this is the first time I've ever come before you to speak, and the reason why I am here is because I have been watching this whole thing unfold, and all of the letters to the editor, and I watch the blogs. And I live in an area called Kaohe Homesteads. We're a very rural residential community above Pahoa Town. And there was a certain Mr. Henderson—I don't remember if you guys recall the 80-acre parcels along the highway that goes to Leilani Estates. And it just seemed really odd to me that yes, there was this letter written by a Linda Berry, unfortunate circumstances, and it's unfortunate that Rene chose to respond, and maybe the tone of her letter could have been toned down—I think she was giving factual information. And then this letter comes out, and it's "commissioner chastised," is the title of the letter. And I looked at the letter, commissioner chastised, who is this, what is this talking about. And then I started reading it, and this was obviously somebody who was upset and really attacking Ms. Siracusa. And then I turned to the blog, and he says that he has never met this woman. And I would like to give you a copy of that blog, because—it says here, "Now like you, Ms. Siracusa, I do not

know the owner of the pet supply store, nor the letter writer, but show some couth and aloha. That letter coming from a Planning Commission member nonetheless was disgraceful. One [sic] second thought, maybe I'll make that the dismissive, rude demeanors." And then he gets even nastier, and he tells, "Wait, I do see a Weatherford/Siracusa co-counsel for Puna." And he's—"Let's put an order in now for your statues that will commemorate your nastiness. Was this post dismissive or rude? You bet, because you both are very deserving." I read this letter—yes?

DILL: Excuse me. He is who?

ENRIQUEZ: This is this Mr. Henderson—

DILL: --Mr. Henderson, okay.

ENRIQUEZ: --Yes.

LUM: He's writing—

ENRIQUEZ: --this. And I'll give you guys a copy. So I do know that that Henderson project that I'm talking about--my whole community fought that. Rene Siracusa, before she was involved in the Planning Commissioner—as a Planning Commissioner—went along with us to fight those 80-acre parcels that were put up by the Catholic Church property and Kaohe Homesteads. And when I read this letter, I could not help but think that this was this man's attempt at disrailing somebody who speaks for our communities, and as a Planning Commissioner has an environmental awareness that most people on our island do not. And so with all that said, I hope that you will look at all of this and make a decision—not against Rene—if that is what you choose to do, but I think a lesson has been learned. I think that she has heard the words of other people about perhaps her behavior or her being so outspoken, and, you know, that's all it really takes is just to say I made a mistake, I shouldn't have done that, please forgive me. Thank you for your time.

CHAIR: Thank you.

ENRIQUEZ: And I do want to give this—if there's some way we can get this put in the minutes so that--so it's here. Yes.

(Ms. Enriquez handed the blog letter she had been reading from to the secretary.)

CHAIR: Mrs. Siracusa, do you have anything further that you'd like to add or say?

SIRACUSA: Again, I'd like to clarify what Ms. Enriquez was saying, in case you don't understand. I do not know if Greg Henderson, who filed a complaint against me, is actually involved in the family venture called Henderson Timberlands, which I wrote comment letters against on behalf of my

community. And if this is the reason why his letter has been—his letters and postings—have been so rude and—I mean, he accused me of calling names, but he really called some names, and so I don't know if he would—if this was a vengeance opportunity for him, or if there's some other reason for his anger. I believe that this is not an ethics charge. I have always been known as being very outspoken and frank. I'm from New York City, and maybe that's a cultural thing. But I thought I was really tempering it a lot. You should have seen the first draft. I just feel that this whole charge is frivolous, and I can understand that people feel that I should tone it down a bit. I do want to say that it is largely a matter of perception, because obviously Mr. Henderson took great umbrage at my letter, you felt uncomfortable with it, and yet I had nine people in Pahoa come up to me and say thank you, that was a great letter. So you can't please all of the people all of the time.

DILL: I think that's the whole point that we're trying to get at, that it is a matter of perception, and you know, even though you're exercising First Amendment rights and not writing as a Planning Commissioner, people perceive it that way. And that's the thing that we need to bear in mind, all of us who serve on commissions.

MALANKA: I would say I have to agree. I agree with the first speaker—it's not an ethics issue, because you had no agenda for the Planning Commission. I think you're passionate about what you feel for that area, and that's what came across, unfortunately in a negative way. I know that there are times when I've thought about doing something, because—but as a business woman in Kona, I can't necessarily do—I might get a friend involved and ask if they're on the same page, and you know, have them do something. But I think that we do have to hold back some, and lesson learned.

CHAIR: Holding back some—I'm of course the chairman of the Board of Ethics, and I've been tempted many times to respond to a blog or to write a letter stating my opinion, and I always ended up throwing those things away, because as a representative of the County, I have to learn restraint. And oftentimes it's not in our best interest to engage in these types of discussion, especially in written print. I think this might have been better served if you would have called Linda Berry on the telephone and spoke with her. I think it'd have been better served if you wrote a personal letter to her, and—but once you bring it to the attention of the community, and you are a Planning Commissioner—and again, for the record, I don't know Mr. Henderson. He has not brought forth a complaint to this body. I asked that this be put on the agenda. And I thought it was, and I still believe it is, an ethics violation and that we need to treat people courteously in the public, because we represent the County. And I'll stand by that. So from the Chair's perspective, you know, I'd like to see a motion that we investigate this as a possible violation of 2-83, section 3. That's my perception. But, members, it's your decision. If you do look at it in section 2-83, Fair Treatment, again it says while discharging duties

and dealing with the public, shall adhere to the following precepts, and all persons shall be treated in a courteous, fair, and impartial manner. You know, this letter did not deal with the leash law, for example. It dealt specifically with a Planning Department issue, and as a commissioner within the Planning Department, I don't think it should have been written for the media's attention.

DILL: So you're recommending no action be taken other than this Board investigating further?

CHAIR: Yes, I'd like to put it on the agenda—

LUM: --as a complaint—

CHAIR: --next month as a complaint in section 2-83(3), and that we—

LUM: I move that we put this issue of Siracusa's letter to the Hilo Tribune, entitled "Dream or Nightmare," on the agenda as a complaint of section 2-83, Fair Treatment, subsection (a)(3).

MALANKA: I'll second that.

CHAIR: Okay, we have a motion and a second. Do we have discussion on the matter? If not, all in favor signify by saying aye.

LUM: Aye.

MALANKA: Aye.

CHAIR: Aye. No?

DILL: No.

CHAIR: Motion carries, and what we'll do is we'll put it on the agenda for next month and invite interested parties and again ask a few more questions and see if there was a possible violation and then provide an informal advisory opinion.

LUM: I think it's important that people realize that we are—which sections we are dealing with.

CHAIR: 2-83.

LUM: 2-83, subsection 3.

DILL: (a)(3).

LUM: (a)(3), yeah. Officers and employees of the County, while discharging their duties and dealing with the public, shall adhere to the following precepts. And precept number 3 is, all persons shall be treated in a courteous, fair, and impartial manner.

CHAIR: Thank you for coming in, Mrs. Siracusa.

ASHIDA: Mr. Chairman?

CHAIR: Yes.

ASHIDA: Your rules, 5.2 of your rules of procedure, require that prior to the Board initiating its own investigation, to ask for a formal resolution, as we did I think in the Nae'ole case. I prepared a written resolution, which the Board carried by unanimous vote. So I'll have one prepared by the next meeting, for the Board to formally act.

CHAIR: Okay. And then would that mean that this issue would go to the November meeting?

ASHIDA: I don't believe so, I think that—

CHAIR: --or can we agendize this for October?

ASHIDA: I think you would be okay to agendize it for the October meeting. I think you stated on the record the basis upon which the Board is proceeding, specifically the section of the Code of Ethics that is in question. I can make that part of the resolution. The only other question I have is, your rules also state that—I'll just read it. The Board in the resolution may authorize a three-member committee, the Board as a whole, a single member of the Board or the Board's staff, to conduct all or part of an investigation or hold an investigatory hearing. So I guess I need to put that in the resolution, what your preference is. Again, any one of you, three of you, all four of you—

CHAIR: --Possibly five of us—

ASHIDA: --at the time, yes, the staff, which means Mary or I, but we're certainly not volunteering, so I would suggest you let me know what you want to do. In Nae'ole's case I think we did the entire Board—

CHAIR: --the entire Board, right—

ASHIDA: --and in public, and that was I think a good decision, the preference. The thing with doing one member is, you can do the investigation, you know—it's outside of the Sunshine Law. But I think your preference, Mr. Chairman, has always been to—

--CHAIR: --always been to have it before the Board in the public eye, right.

ASHIDA: So I'll leave it to you to give me direction, Mr. Chairman.

CHAIR: Do we need a motion for—

ASHIDA: --Just to be safe, yes.

CHAIR: All right.

DILL: I move that we continue this investigation as a whole Board in public.

LUM: Second.

CHAIR: We have a motion and a second. Any discussion on the matter?

MALANKA: I would just like to say to Ms. Siracusa, excuse me if I'm mispronouncing your name—

SIRACUSA: --I'm sorry, I couldn't hear you.

MALANKA: I just wanted to say to you that although I don't at this point see it as an ethics violation, I'm new to the Board, and that was my reason for going along with pursuing it this way.

SIRACUSA: Thank you for clarifying that.

MALANKA: Sure.

CHAIR: Call for a question [sic], so all in favor say aye.

LUM: Aye.

DILL: Aye.

MALANKA: Aye.

CHAIR: Opposed? So motion carries. Mr. Ashida?

ASHIDA: Yes, sir, I will prepare it.

CHAIR: Thank you. Let's continue with New Business.

b. *Discussion on what proper conduct and inappropriate conduct is for members of the Board of Ethics.*

Mr. Ashida said that he checked with the State Ethics Commission to see if they had a code of conduct for its members, and they do not. Before Paul deSilva resigned from the Police Commission, he'd recommended that police commissioners develop their own rules of conduct and be held to a higher standard.

The Chair stated that was what he wanted, for them to be held to a higher standard and be more aware of certain things.

Mr. Dill also agreed and questioned how to go about establishing it.

Mr. Ashida explained that the County's Code of Ethics is patterned almost identically to the State's code, and was passed in 2002. He suggested that since the Board also will be in the process of amending its rules, it include a section in there on the standard of conduct for commissioners. It would have to be noticed as a public hearing under Chapter 91. He suggested Board members submit written recommendations to discuss.

Ms. Lum stated that she felt they should start at the bottom and deal with the basic questions of what members can and cannot do, and conflicts. Since the population is not large and each of them are at a different place in their liberalness, they need to come from the bottom up.

The Chair explained that the unfortunate incident with former Board member Sharpless prompted this issue, so their code of conduct needs to be clear.

Mr. Dill said the key is that members need to be straightforward and forthright with possible conflicts or perceived conflicts, and the Chair said it even involves whether Board members can write letters to the editor, stating their opinions in public. They need to ask themselves these questions. They want to be perceived by the public as being ethical both as a Board and in their personal lives.

Mr. Ashida said that since the First Amendment was brought up earlier in the meeting, he wanted to explain that it deals with and regulates the content of peoples' expression, but not the manner of their expression. The Board was not promoting censorship, but wanted people to pay attention to the way they express themselves. Since the Board is concerned about the appearance of impropriety, its members want the public to know that their lives are conducted in such a way that no one would have reason to doubt their honesty or ethics.

The Chair asked Mr. Ashida his opinion on whether a code of conduct was worthy of pursuing, and Mr. Ashida said that former Judge deSilva felt very strongly about it, and that he felt it would be a great thing, too.

Ms. Lum said that since recent Board issues involved strong personalities and how people express themselves, this is a worthy project, although it would be difficult to put the code into simple and understandable language.

Motion: Mr. Dill moved to pursue updating and changing the code of conduct for Board of Ethics members, in conjunction with its rules of practice and procedure, in a manner to be determined by the Chair. Ms. Malanka seconded the motion.

Discussion: The Chair stated that the motion is to review the code of conduct and how it affects members of the Board of Ethics.

Mr. Ashida suggested, since the Board values public input, they advertise in the newspaper that they will be considering in October changing its rules of practice and procedure regarding the code of conduct of its members. The public may have input on issues that concern them.

Motion added to: Mr. Dill said he would add inviting the public to his motion, and Ms. Malanka seconded the addition.

Vote: All members voted aye.

c. Discussion on the Sunshine Law

Mr. Ashida stated that he had to leave at 11:30 a.m. for a brief meeting with the Mayor and could return at 12:30. The Chair said they would continue until 11:30, break for lunch, and come back at 12:30 p.m.

Mr. Ashida said that the government needs to do a better job in ensuring that all proceedings are as transparent as possible. The County is fortunate with the current Board of Ethics, as its chair is a member of the Press Club, a freelance writer, and takes Board matters very seriously. Certain County boards make Sunshine Law mistakes, though not maliciously, but they need to know the law.

He explained that as a starting point, the key thing to always keep in mind is the phrase, “board business.” The Office of Information Practices defines board business as matters which are before a board for official action, or are reasonably anticipated to come before a board for official action. Official actions involve making decisions on cases. The key is to always identify whether a matter is board business. If you are not sure if it is board business, then always err on the side of caution. Board business can only be discussed at meetings which have been properly noticed to the public. Board business cannot be discussed outside of such a meeting. Since they plan to have meetings to revise their rules and regulations, they are not allowed to talk to each other about the rules outside of a properly noticed meeting. This is because although the matter is not currently before them, it will be in the near future.

Mr. Ashida further explained that the prohibition on discussing board business is only between members of the Board. If someone like Mr. Pranke should approach one of them outside of a meeting, a Board matter could be discussed with him. They also, on an individual basis, may discuss Board matters with Mr. Ashida. He, however, cannot tell a Board member what another Board member told him, as this would be a serial communication. There are limited exceptions which allow communication, but with the way Mr. Joseph runs the Board of Ethics, they do not need to consider exceptions.

Ms. Malanka asked whether an exception would be if they created a task force of two members to investigate something, and Mr. Ashida said yes.

He said that when the Board goes to lunch today, they have to resist the temptation to talk about what was just shared at the meeting.

Ms. Malanka asked if she could discuss Board business with her husband, and Mr. Ashida said that it is much safer just to keep matters to herself. Mr. Ashida said that he does not discuss board matters with his wife, in case she knows something or someone in a case and could compromise him and his ability to sit impartially. Emails are especially dangerous and should not be done.

Mr. Ashida said that with the Chair's permission, he could do ten-minute presentations on the Sunshine Law for each agenda, rather than one lengthy Powerpoint.

The Chair asked for clarification on whether discussions in executive session are secret and not to be disclosed to anyone. Mr. Ashida said yes, that what is discussed in that session is privileged. He explained that there is a difference between "privileged" and "confidential." Confidential matters are made secret and private by law. Privileged matters are not legally confidential. Privileged means that a person can waive the privilege and have the matters discussed. It would not be prohibited by law. However, there is an obscure provision in the County Code that if a County officer or employee releases information that was supposed to be private, it is an ethical violation. Matters to be discussed in executive session are limited to those of liability, where the County could get sued.

The Chair said that financial disclosures are the main items discussed in the Board's executive session and asked whether what they learn from those disclosures should be confidential. Mr. Ashida said yes, they are not to tell others what they learned from disclosures. That would be an ethics violation.

Motion and vote: Mr. Dill moved to add to future agendas further discussion on the Sunshine Law. Ms. Lum seconded the motion, and all members voted aye.

6. UNFINISHED BUSINESS

- a. *Report on status of Ethics Guide for Hawai'i County Officers and Employees booklet (includes Communication No. 2007-87: Letter to Mayor Kim and Council Chair Hoffmann from Lincoln Ashida, enclosing the Ethics Guide and requesting their favorable approval, dated August 13, 2007.*

Mr. Ashida explained that the Mayor's approval of the Guide had been obtained, but there was a delay in sending it to Council Chair Hoffmann for his approval. The secretary has now done so, and no problems are anticipated.

- b. *Report on status of Board's request to amend Hawai'i County Code Section 2-91.1(c), regarding disclosures of financial interest, by increasing the amount of information provided and reflecting current salaries and market values of assets (includes Communication No. 2006-110: Letter to County Council from former Deputy Corporation Counsel Bobby Jean Leithead-Todd dated December 27, 2006).*

Mr. Ashida informed the Board that its request to update the financial disclosures to reflect current salaries and values passed unanimously. He will be working with the Board's secretary to revise language in the disclosure instruction sheet and will have it sent to all boards and commissions. The changes will become law as soon as the Mayor signs the bill, and he will provide the Board members with certified copies.

As it was 11:30 a.m., the Chair called a recess until 12:30 p.m.

(The Board recessed from 11:30 a.m. to 12:30 p.m.)

The Chair called the meeting back to order at 12:30 p.m.

- c. *Report on status of Board's request for a time limit for incumbents who are seeking reelection in an election year on sending literature using County funds (includes Communication No. 2006-106: Letter to County Council from former Deputy Corporation Counsel Bobby Jean Leithead-Todd dated December 1, 2006).*

The Chair stated that he had initiated Communication No. 2006-106 as a result of the 2006 petition involving Gary Safarik.

Mr. Ashida reported that nothing had happened on this request. He explained that the Council chair is inundated with requests like this, so it may be better for him to draft a bill for submission. In addition to submitting it to Chair Hoffmann, it could be submitted to the Finance Committee chair or the Public Works and Intergovernmental Relations Committee chair. He suggested the latter committee, as it does not receive as many requests as the Finance Committee. In addition, Brenda Ford is its chair, and she tends to be responsible about forwarding things to a committee and has a good relationship with Board of Ethics member Tricia Malanka.

The Chair asked if there would be a problem submitting the bill to all three committees, and Mr. Ashida said there is potential harm if the committees don't communicate well with each other, and Sunshine issues could arise. He said it would be better to target one committee.

- d. *Report on status of Board's request for authority from the Council to fine officials and employees who violate the Code of Ethics (includes Communication No. 2006-107: Letter to County Council from former Deputy Corporation Counsel Bobby Jean Leithead-Todd dated December 1, 2006, and Communication No. 2006-97: Letter to Board of Ethics from Wayne Joseph dated September 21, 2006).*

Mr. Ashida said that he would recommend the same procedure with this issue as with the time limit for incumbents issue. They could possibly take both issues to Ms. Ford as a package.

Mr. Ashida said he held back in drafting the bill, because Ms. Ford's assistant would probably want to retype it to her taste. The Chair said he did not want it to be watered down or changed.

Mr. Ashida asked the Board what it wants him to do: draft the bill or re-send what they sent out previously. It also could be hand-carried to Ms. Ford. He said they need a champion in the Council to push this.

The Chair said that he is more comfortable dealing with Pete Hoffmann than Ms. Ford, as he once did a story on him. He does not know Ms. Ford at all. Mr. Ashida suggested redoing a cover letter and enclosing their earlier requests, and then the Chair could hand-carry the packet to Chair Hoffmann.

The Chair clarified that though they could be grouped as a package, it would be two separate issues he wants discussed. Mr. Ashida said they could be submitted as part of the same bill, as they would be amending the Code of Ethics. A problem is that the Council can be contentious. If the bill affects multiple areas, the Council may agree on one area but not another, and the whole bill would stall. They could request that Chair Hoffmann make it two separate bills when he gives it to his aide.

Mr. Dill asked what Mr. Ashida's feelings were about moving these issues forward. Mr. Ashida said the issue of a time limit for incumbents to send out literature is very political, and they have a campaign advantage in being able to send out, on taxpayer time, literature regarding what they're doing for their community. The Council members may not like the Board's suggestion that they can't use County money to let their constituents know what is going on.

Ms. Lum said it would be a good idea to keep the bills separate, as there would be more chance of at least one of them passing. She said Pete Hoffmann told her he hoped the Board of Ethics would be more proactive, and that's what they are being.

Mr. Ashida said if there is any chance of these issues passing, now would be a good time to move on them, as a majority of the Council members currently may be more in line with the philosophy of the Board on these matters.

Mr. Dill said he has worked with Ms. Ford in the past. She would recognize his name, though they are not close friends. He said it may be helpful to send a letter on their behalf.

Mr. Joseph said they might go through Chair Hoffmann, who will decide what committee. He said if the issues go to Council, he would like all of them to come and testify.

Mr. Ashida said that on the issue of the fine for ethics violations, he felt it was a positive step. However, fining someone constitutes a taking of personal property, and constitutional law comes into play. Their rules would have to be dramatically revised to provide for a hearing, because if they levy a fine on someone, that person has a right to testify against it and to call witnesses. They would also have a right to counsel under our laws.

The Chair asked how the State Ethics Commission deals with this issue, now that they have the power to impose fines. Mr. Ashida said he would follow up and find out. The Chair said he just wants to follow what the State already has in place, and to give teeth to the Board.

Ms. Malanka said she likes the idea of being able to impose a fine for failure to file financial statements.

Motion: Ms. Lum moved to have the Chair package the two issues and to present agenda items 6c and 6d to the Council. Ms. Malanka seconded the motion.

Discussion: The Chair asked Mr. Ashida to draft something up for them, give it to him, and he will make an appointment to talk with Mr. Hoffmann. He would like to fast-track these issues.

Mr. Ashida questioned whether the Board had ever defined what campaign literature is. The Chair said it was the informational letters or reports that Council members send out as an election draws near. Once a Council member declares that he or she is going to run, anything after that should be considered campaign literature. They should not be using County funds to tell people to look at their accomplishments in an election year, as the people they are running against do not have the same opportunity.

Mr. Dill said he agreed. Ms. Lum noted that the definition was in former BOE Chair Williams' letter.

Mr. Ashida noted that Mr. Williams' letter mentioned that the State has a similar rule already in place, so they would not be breaking new ground here. They just would be trying to do what the State already does. He suggested he get a copy of the State's literature on this issue, and the Chair said he would like to see it.

The Chair stated he would like to see this issue put out, so the public would know they are trying to do something. Every time he received campaign literature from a Council member, he always felt here they go, using our funds again because it's an election year. Though Washington, D.C., does this, they have an opportunity to do something about it at the County level. He called for a vote.

Vote: All members voted aye on the motion.

- e. Report on status of Council Bill 132 for an ordinance to amend Chapter 2, Article 15, Section 28-82 of the Hawai'i County Code relating to the Code of Ethics (exempts "Officers" who have been appointed as members of boards or commissions with only advisory powers and functions from filing financial disclosures). (Includes Communication No. 2007-89: Letter to County Council from Lincoln Ashida re Bill 132, dated August 6, 2007.)*

Mr. Ashida reported that Bill 132 passed at the County Council last week, but barely. It was a very contentious issue, both at the Committee and Council levels. As background, members of an advisory board or commission created under the County Charter do not need to file financial disclosures. The historical thinking behind this is that since these boards only make recommendations, which the Council will ultimately decide on, the need to know the members' financial background is not great. This was inconsistent with members of an advisory board created by the County Code having to file financial disclosures. So Bill 132 was drafted to bridge that gap and make it clear that members of advisory boards, whether created by the Charter or Code, did not need to file disclosures.

Mr. Ashida said that Councilmember Bob Jacobson felt everyone should file disclosures, no matter what board or commission they were on. His rationale is that he often listens to advisory boards and takes their recommendations seriously, so he wants to know who is connected to who and who. Mr. Ashida informed him that the Board of Ethics does not disagree with that, but believes that as part of the government, they need to pay attention when they ask for sensitive information. They should not ask for this information just because they can. There should be a need for the information. They do not want to be Big Brother collecting data simply because they can. He said that a few weeks ago a box of voter registration materials was stolen out of the car of an Elections Office employee. The information included social security numbers, dates of birth, etc., provided by people who were registering to vote. There is a responsibility to bear when collecting information like this.

Mr. Dill said he could understand Mr. Jacobson's point, however, if he is listening to these people and taking what they say to heart, as they may have a reason he is not aware of for their recommendation.

Ms. Lum pointed out that Mr. Jacobson would not be able to see the financial disclosures, though, because they come confidentially to the Board of Ethics, whose members need to review the disclosures and determine if there is a conflict. Mr. Dill said at that point, they could advise the proper people of the possible conflict.

Ms. Malanka said it could be a good thing to keep the requirement to file financial disclosures in place. She cited the possible example of a member of the Arborist Advisory Committee owning a forest of ohia trees which a developer wanted to cut and pay top dollar for.

Mr. Dill said that if Council members are going to listen to advice, they need to at least know where the information is coming from, and Ms. Malanka said they can ask questions to get those answers.

Mr. Ashida said that with the bill, it came down to a matter of balance. Though conflicts are possible, on balance the government's need to collect financial information does not outweigh the possibility of a potential conflict. He asked the Board members what they look for when they review financial disclosures.

Ms. Lum said she looks at what committee a person is on and checks if there is anything on the disclosure that might relate to it, such as if a person is in real estate and sits on the Planning Commission.

Ms. Malanka said that she is a realtor, and if she sat on the Planning Commission, a lot of the issues that get through would not have if she had her way. She said that not all realtors see things the same way.

Mr. Dill asked, since the disclosures are privileged, whether it is the Chair's call to disclose the information if the Board felt there might be a conflict of interest. Mr. Ashida said the disclosures are protected by law as confidential, and the Chair does not have the authority to disclose the information. He could share information on a need-to-know basis to alert someone in the County of a possible conflict. However, the financial disclosures should not at any time become public.

Mr. Dill asked whether the Board has the power to reject a disclosure, and the Chair said they are able to question the person disclosing.

Ms. Lum recollected a petition involving a Liquor Commission applicant who wanted an opinion on whether he could be a Liquor Commissioner if he worked for a resort which had a liquor license. The Chair pointed out that the person had come to them for an opinion first.

Mr. Ashida said the bottom line is that they will not be seeing financial disclosures from advisory board members only. Currently, only one board is affected—the Cost of Government Commission, which is advisory and created by the Code.

Mr. Ashida said that on a related matter, the issue of Ms. Sharpless not disclosing her campaign contributions to Bob Jacobson has taken on a life of its own, beyond the Board of Ethics. The Council will be discussing in a committee next week a proposal that each Council member at every meeting have a complete set and copy of every other member's campaign spending report. Though Ms. Sharpless' situation was about her not disclosing a potential conflict, and not Mr. Jacobson, it has caused this reaction with the Council. He said the receipt of a contribution in and of itself does not create a conflict of interest. There are only two circumstances that could create a conflict: One is if you have received funds, and as a result you cannot be fair or impartial; and the second is if you have received funds, you feel you could be fair and impartial, but the appearance of impropriety is so great that it outweighs your ability to serve. If the Council is goes with the proposal about the campaign spending reports, their meetings will be even longer than they already are and more bogged down with political battles.

The members discussed that in Ms. Sharpless' situation, it could have been easily resolved if she had just informed them up front that she had contributed to Bob Jacobson's campaign.

Mr. Dill said they should consider including things like disclosing possible conflicts when they work on revising the code of conduct. He said he is worried about limiting their rights as citizens, however.

Mr. Ashida said the key is making the disclosure. However, the Council is taking it to another extreme. They are saying they need to have each others' reports because they do not trust each other to disclose. It is public record who donates to who and how much, but no one checks every issue. The Council members want to check it for each other.

Mr. Dill asked about the status of the Board's replacement of Ms. Sharpless, and Mr. Ashida said that Marilyn Nicholson was recommended to, and nominated by, the Mayor. She is pending hearing before the Council. She will be available for the October 10, 2007, meeting.

f. Further review and discussion on the Rules of Practice and Procedure of the Board of Ethics.

Motion and vote: Ms. Lum moved to continue this agenda item to the October meeting, and Mr. Dill seconded the motion. All members voted aye.

Motion and vote: Ms. Lum moved to enter into Executive Session, and Mr. Dill seconded the motion. All members voted aye.

7. EXECUTIVE SESSION³

Review of *Confidential Financial Disclosure Forms* filed pursuant to Section 2-91.1(d), Hawai‘i County Code, where personal matters will be reviewed.

Tricia Malanka, Board of Ethics

(Executive Session was entered at 1:10 p.m. Regular Session was re-entered at 1:16 p.m.)

Motion and vote: Ms. Lum moved to accept and file Ms. Malanka’s financial disclosure. Mr. Dill seconded the motion, and the Chair, Ms. Lum, and Mr. Dill voted aye. Ms. Malanka abstained since it was her disclosure.

8. ANNOUNCEMENT

The Chair asked if anyone wanted to discuss other items for the next agenda.

Ms. Malanka said she had three items to ask about, and she did not know if they applied to the Board. The first was about boat slips in Honokohau Harbor. Mr. Ashida informed her that the Harbors Division is part of the State government. Her second item was about foster care, and she was informed that was a State issue as well. Her third item was regarding the Liquor Commission, which is a County commission. She said there is a situation where a restaurant is promoting, via live radio broadcast, that people come and get “jacked up” with its 25-ounce beers for \$5. She said this seemed like a promotion to come and get drunk, and she wondered if the Liquor Commission could get involved.

Mr. Ashida said the Liquor Commission could impose conditions on the liquor license, and he suggested she speak with one of the investigators with the Liquor Control Department, as they will not do anything without an investigation.

Ms. Malanka asked whether, if an investigation were done, the case would ultimately come back to the Board of Ethics. Mr. Ashida explained that the BOE only takes action on issues involving regular County officers or employees.

Mr. Dill said he wanted to thank the Chair for working so hard and leading them so well. He apologized for his tardiness but has a meeting every Wednesday at 9:00 a.m. which involves a lot of people. As a result, he will be somewhat late for the meetings but will get there as soon as he can.

The Chair said he appreciated Mr. Dill’s flexibility, as he and Ms. Lum are retired.

³ Executive Session minutes are separate and closed.

9. **ADJOURNMENT**

Motion and vote: Ms. Lum moved to adjourn, Ms. Malanka seconded the motion, and all members voted aye.

The meeting adjourned at 1:20 p.m.

Respectfully submitted:



Mary E. Crosson, Secretary