

HAWAI‘I COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

Wednesday, October 10, 2007 – 10:00 a.m.

Ben Franklin Building
333 Kilauea Avenue, 2nd Floor
Hilo, Hawai‘i 96720

Present: Wayne Joseph, Chair
Ann Lum, Vice Chair
John Dill, Member (arrived at 10:08 a.m.)
Tricia Malanka, Member
Marilyn Nicholson, Member
Lincoln S. T. Ashida, Corporation Counsel (counsel for the Board)
Mary E. Crosson (secretary for the Board)

Others Present: Linda Berry, William Graham, Laurie Lloyd-Roberts,
Ron Whitmore (arrived at 11:00 a.m.)

1. CALL TO ORDER

The Chair called the meeting to order at 10:00 a.m.

2. STATEMENTS FROM THE PUBLIC ON AGENDA ITEMS

The Chair stated that he preferred the members of the public to wait until the agenda was on Unfinished Business, the resolution regarding Rene Siracusa, to make their statements.

3. APPROVAL OF MINUTES

Regular Session: Ms. Lum said that on page 20, at item c in italics, the word “campaign” should be deleted, as they had meant literature in general. The Chair and Mr. Dill agreed.

Motion and vote: Ms. Lum moved to accept the regular session minutes of September 12, 2007, upon deletion of the word “campaign” on page 20, paragraph c. Ms. Malanka seconded the motion, and all members voted aye.

Executive Session: **Motion and vote:** Ms. Lum moved to accept and file the minutes, Ms. Malanka seconded the motion, and all members voted aye.

4. COMMUNICATIONS

No general communications had been received.

The Chair asked that agenda item 5, regarding Ron Whitmore's petition, be taken up after 11:00 a.m. and that they move next to Unfinished Business. He had previously informed the Board's secretary to ask Mr. Whitmore to come at 11:00 a.m.

6. UNFINISHED BUSINESS

a. Resolution authorizing the County of Hawai'i Board of Ethics to conduct a hearing and/or investigation into possible misconduct by Planning Commissioner Rene Siracusa, pursuant to Rule 5.2(a) of the Rules of Practice and Procedure of the Board of Ethics (Petition No. 2007-07).

Motion and vote: Ms. Malanka moved to adopt the resolution Mr. Ashida had prepared, and Ms. Lum seconded the motion. There being no further discussion on the resolution, all members voted aye.

Mr. Ashida stated that the Chair needed to sign the original resolution, and he would certify it as to the votes of the Board.

The Chair said that since the resolution was now adopted, the Board was ready to hear from the witnesses present. He called upon William Graham.¹

CHAIR: Do you know why you're here this morning, sir?

GRAHAM: Yes, I have a communication from Mr. Ashida's office.

CHAIR: And were there attachments to your communication? Were you able to see the letter written by Rene Siracusa?

GRAHAM: I do have all the materials and the letters. I should have the two letters—the original letter to the newspaper and Ms. Siracusa's response.

CHAIR: And Ms. Siracusa is a member of the Planning Commission?

GRAHAM: That's correct.

LUM: Could we (inaudible) Mr. Graham's position?

CHAIR: Oh—I'm sorry, I took it for granted everyone knew Mr. Graham. Mr. Graham, your title of your position?

GRAHAM: I'm the chairman of the Planning Commission.

¹ The following portion of the minutes is verbatim.

CHAIR: Thank you. And I requested that Mr. Graham come in, only to offer his opinion as the Planning Commission Chair as to that letter that was printed in the Hawaii Tribune-Herald.

GRAHAM: Well, maybe you should talk to me a little more clearly about my opinion or something, or whatever.

CHAIR: Well, as you know, Ms. Siracusa represents the Planning Commission, and she is a member of the Planning Commission. And when she wrote that letter, she discussed what could be determined as Planning Commission business. And did you see anything in that letter that perhaps you feel as the chair maybe should not have been discussed by a Planning Commission member?

GRAHAM: Okay, I think I understand kind of where you're coming from, so let me just try to speak to that general subject. In reading the letter, I didn't feel like she was representing the Planning Commission in any manner. She didn't sign as commission—of the Planning Commission, although she's a well-known person in Puna. Certainly a lot of Puna people probably would know that she is a member of the Planning Commission. That particular business, pet store business she's talking about, is not something that's ever been before the Planning Commission, or as far as I know ever will appear before the Planning Commission, so that as far as our general instructions are, you know, when we join the Planning Commission, the general instructions are you don't participate in any way or speak to any item that's before the Planning Commission. You don't speak to that in a private way, other than in a Commission setting. Any—and that's before the Planning Commission or that you could reasonably expect will soon be before the Planning Commission. So my read of the situation is that she was speaking as a private individual, that she was using her knowledge, which is accumulated through working on the Planning Commission and all that. And obviously she showed that in her letter. And in my own judgment, I wouldn't write a letter for that—in that way, but, you know, I don't feel that she's done harm to the Planning Commission or misrepresented the Planning Commission or even represented the Planning Commission (inaudible). It just, you know, it seems to be a little—it seems to be lacking in tact (inaudible) but I don't see anything more than that.

CHAIR: I see. Well, was this matter ever discussed at a Planning Commission meeting?

GRAHAM: No. It's never been on the Planning Commission agenda. We only discuss what's on the agenda. I'm not aware of it ever coming up on the agenda in the future, either.

CHAIR: And—

LUM: So you didn't feel there was—I don't know your—we have our rules of—

CHAIR: --ethics—

LUM: --ethics, but our other rules of how we act in our meetings. Rules of procedures—you didn't see a violation of your rules of procedures for the Planning Commission?

GRAHAM: I don't, just because I think they generally apply to what we do in the meetings or in reference to an item that will soon be on the agenda or is on our agenda (inaudible).

CHAIR: I see—and I think the only issue here, or the main issue here, is whether or not Rene Siracusa could be considered by the public as a member of the Planning Commission, and thus when she writes a letter such as this, is she then representing herself or is she representing, or representative of, the Planning Commission. And that's not for you to decide, it's really a rhetorical question.

GRAHAM: Sure.

CHAIR: Any further questions for Mr. Graham? That's all I had for you, sir, and I appreciate your coming in.

GRAHAM: I'll stay around, if you need to call me back.

CHAIR: Thank you.

GRAHAM: Okay.

CHAIR: Thank you very much. Now I think Ms. Berry wrote the original letter, so Ms. Berry? And for the record, would you just like to say who you are and if you represent anyone, or—

BERRY: I'm Linda Berry, and I'm representing myself, I guess. My friend, Laurie Lloyd-Roberts, is who I wrote that letter for.

CHAIR: And she's the lady that owns the business—

BERRY: She's the proprietor of the store that was never mentioned in my first letter, nor was the name of the business. I said pet supplies (inaudible) generally. It's a small town, but how the Planning Commission even came into the subject—I wondered about that when I read Rene's letter. My whole letter centered around the financial problems she was having in getting a business loan, and nowhere in that letter did I say anything about even the name of the business. It was just a general letter on businesses in Pahoia having a hard time finding financing. So when I read Rene's letter, I thought it was really malicious. She just went on about this zoning thing, and you know, something totally unrelated to what my purpose of the letter was. You know, I was mad at the banks and mad at the lenders when I wrote that letter, and it was—to me it was way out of context and my whole purpose for writing that letter. You know, it kind of shifted the whole focus onto zoning, and that wasn't what I was about in that first letter. And then by the time I got the pen flowing on the second letter, you know, I really thought that this woman, who I may have met in the past—I've heard of her—not even knowing anything about the subject of my friend's business, launched like she was an expert on my friend's business, and accusing her of going off half-cocked and—I don't know, I was really offended, like wow, this woman, you know, she's got her own agenda going. You know, and that's what my first thoughts were when I read her letter, and then of course I sat right down and wrote her a letter. Because that wasn't the purpose—

CHAIR: You say you've never met her?

BERRY: You know, if I have—you know, I think back years ago when I used to attend things for the County that had to do with the transfer stations and recycling and stuff, I think she may have shown up at a meeting or something. She really sounds familiar, and I've had people describe her, and I think I know who she is. But I don't know her.

CHAIR: Did you know at the time when she wrote the letter that she was a member of the Planning Commission?

BERRY: I got a sense of it, because of the way she was quoting in her—in a sense, quoting—like she named all these different, you know, things, and I thought—and then when I asked somebody, they said, oh, she belongs to all these different—you know, and she's part of the Planning Commission, and I go oh, so now it makes sense, because obviously I must have hit on one of her pet peeves, you know, that she would take my purpose of the letter and completely change it over to something she had a peeve about, which obviously is zoning. I just—I really found it malicious, almost like—she doesn't even know this—I mean, my friend's struggling enough as a small business person to make this thing a go, and here's somebody in the background just working it so it will fail. Well gee, it's not just the lenders, then. So that's—I think, my last little sentence, paragraph (inaudible) I got sarcastic, but I really couldn't help it, in the second letter, thank you so much, Ms. Siracusa, for pointing out the zoning—that was so far from what I had in mind when I wrote the original letter. I just thought it's very interesting how someone can take something, and twist it and bend it and run with it. She did it—good job. So there you go.

CHAIR: And do we have any questions?

LUM: I have a comment on the definition of half-cocked. Everybody—we all seem to be so—the definition of—I'm not defending anything. The definition of the word half-cocked simply means unprepared.

MALANKA: What's that?

LUM: Half-cocked simply means unprepared. It's really not negative. It doesn't mean blasting or angry or anything. It's just—the old Winchester rifles had a little notch that you half-cocked, and that notch would wear and the rifle could go off unexpectedly. That's back to what—the 1700's. So we somehow—I think we (inaudible) but it just means unprepared, so I do think we have to be careful with that word, that it's not—maybe it's the whole tone, but the word itself—

CHAIR: But there's a lot of words in the English language—

LUM: --I know, I know, it's different places—

CHAIR: --that may take on a different context. And I think half-cocked today is—

LUM: --has a negative connotation—

CHAIR: --has a negative connotation.

LUM: I just—I guess (inaudible).

BERRY: She could have used the word unprepared.

CHAIR: That would have been a lot more pleasant.

LUM: Yeah, it means the same thing. Good old language, right? Good old English language. I did have a question, but I think you answered it. You did really intend criticism of the loan business.

BERRY: Yes. And it's not just my friend--

LUM: --that's what I got from your letter—

BERRY: --I have other friends, too, and I know other small businesses that are struggling to try and acquire loans.

LUM: Maybe you all could gather together and take on the banking industry, because I think that's illegal.

(WHO?): Redlining.

LUM: Yeah.

BERRY: Pahoia has these connotations for (inaudible) in the past, but life's changing, and you know, the caliber of people—

LUM: --But that's not what we're here for.

CHAIR: No.

LUM: Thank you.

CHAIR: Any other questions? Okay, thank you very much. Thank you for coming in.

DILL: Thank you.

BERRY: You're welcome.

CHAIR: Ms. Lloyd Roberts? I've got a couple questions for you. Thanks for coming in. Would you like to first start and give your perception?

LLOYD-ROBERTS: Well, I know who Rene Siracusa is.

LUM: But excuse me, wait, may we know (inaudible)?

CHAIR: *Oh, I'm sorry--*

LLOYD-ROBERTS: *I'm Laurie Lloyd-Roberts, the owner of—*

LUM: *--You're the owner? Welcome—*

LLOYD-ROBERTS: *--the store in—yeah. I know Rene, and I know that Rene can have a disposition to be very abrasive—*

CHAIR: *--On a personal level you now her—*

LLOYD-ROBERTS: *--to be very abrasive. And, do I think she could tone herself down? Yes, I do. I understand her dedication to what she views as an issue, you know, and I understand that and I agree with it wholeheartedly. But things also have to change, and there's certain things that have to, you know, work within that to make things work. And so my, you know, my issue was—as I was upset when Linda wrote the first one, having been redlined by the second bank, because my address is 96778, my zip code, that I was—unfortunately, I started the business on credit cards, so that was starting to catch up with me. And so, you know, I was trying to get these loans to—and nobody would (inaudible). So it was very, very rough. So my thing is, on Rene, I talked to her, I'm pono with her. I don't know—should she be punished? Should she be talked to?*

CHAIR: *Well, there's no punishment associated with this, and it's just a matter of if the Board decides there was a violation. But there is no consequence or punishment, other than finding that she was or wasn't.*

LLOYD-ROBERTS: *Yeah. And then like Linda said, I think she took the whole-- Linda's letter, and used it for her agenda, you know, to speak on the issue, which—there is more to it than what she stated. It was, in a way, you know, like targeting somebody and trying to make an example out of them, as opposed to (inaudible).*

CHAIR: *Was it personal? Does she not like you?*

LLOYD-ROBERTS: *No, as far as I know. I mean, last time I talked to her was at the Pahoa Community Bazaar. And I went up to her, actually, to say that, you know, I didn't agree with how she offended me and my friend, and that she could have been a little less abrasive on that level, but that I understood her issues, some of them, and agreed with her, but there's others that I disagree with her. And she proceeded to try to figure out who turned her in. I said I don't know, and that's not an issue.*

CHAIR: *And did you at all find the letter threatening?*

LLOYD-ROBERTS: *Well, it changed the scope of things for me, I have to admit that. You know, one of the things she did say in the letter was that—I really wasn't trying to get around anything, so to speak. When I first opened that business, because it was a pet store and I sold pet supplies as well as feed, and that's ag one, I was told by people that it's not an issue. So I didn't do anything. And then somebody let me know that, yeah, it is commercial so it could be an issue. So I called the Planning Department and spoke to (inaudible), and he sent me*

everything I need to do to apply for a special permit, upon which then I stuck my head in the sand, because it was so overwhelming, and I'm a one-person show at this point. So yeah, I chose to stick my head in the sand. I've now had to take my head out of the sand and apply—that's just where I came from—to start my (inaudible) for a special permit. Questions?

CHAIR: Do we have further questions?

MALANKA: You said that this has changed the scope of things for you. Would you say that that is a positive or a negative?

LLOYD-ROBERTS: Well, it's a negative from the standpoint—the third loan I applied for, that it was not common knowledge that I had no special use permit. So now I'm kind of struggling. I'm going down with the ship.

CHAIR: In that letter Ms. Siracusa put in the newspaper--in your opinion, could it have been handled a different way or a better way?

LLOYD-ROBERTS: Actually, I would have preferred if she had come to talk to me first. I really do. I mean, that's kind of the way of—to me, the islands and the people, you know, we come and talk to each other, you know.

CHAIR: And if she knew you personally, the question would be why?

LLOYD-ROBERTS: I don't think—she knew who I was. We hadn't had any personal contact until that Saturday—

CHAIR: --I see—

LLOYD-ROBERTS: --she knew who I was and I knew who she was. We had not had any—we sat in on meetings, the Mainstreet Board—

CHAIR: --she knew what store it was—

LLOYD-ROBERTS: --Yeah, so she knew who I was. She could have very easily come up to me and—

CHAIR: --and had a discussion with you on the side—

LLOYD-ROBERTS: --and I would have gladly filled her in on the situation.

CHAIR: Did you feel she was a planning commissioner when she wrote that—on the Planning Commission?

LLOYD-ROBERTS: Well, I knew, so my take on it was that she was coming from that, you know, giving information that businesses aren't allowed here, although some of her information was wrong, you know, that this is not allowed. And the fact that she listed a whole bunch of people that were against, supposedly, this—was what was disconcerting to me (inaudible), because that isn't totally true, you know. That was a false statement.

CHAIR: Any further questions, anyone?

DILL: So, to clarify, because she didn't come and talk to you personally and chose to go the route of putting it in the newspaper, do you feel that she was not treating you in a courteous manner or a certain manner as her—as a planning commissioner?

LLOYD-BERRY: Well, as a person, you know, I think those of us who have lived in Hawaii long enough know, you know, certain things and it's like, let's talk about them, you know, before we go, you know—I don't want to use the word slander, because that's before we discredit or bring something to the attention of the public that may not be necessary at that point.

DILL: Okay. Thanks. I don't want to ask you the same question (inaudible) if she's in violation of this code, and that is (inaudible).

CHAIR: Any further questions? If none, thank you very much. I appreciate you taking the time to come in and speak with us.

LLOYD-ROBERTS: Like I said, I was here already.

CHAIR: And now if I could ask all of you to be sure that you read the letter that was submitted by Gregory Henderson. I think the letter articulates very well the way I feel about the letter as well, and if you haven't read it or if you've just skimmed it, if you could take a better look at it. Because I think Mr. Henderson states very clearly what the Hawaii County Code states in regard to this, and I think what we need to then decide is, is Rene Siracusa a member of the Planning Commission and could she have been, under reasonable thought, be considered a member of the Planning Commission when she submitted that letter? Because if you believe that, as I do, then I think you have to find that there was a violation of the Fair Treatment code.

LUM: I will say that Mr. Henderson could perhaps take a page from his October 5th letter and apply it to his own August 22nd letter to the paper. He was really—

CHAIR: --Yes, and Mr. Henderson is a private citizen and doesn't represent the County in any capacity—

LUM: --yes, but, which I think—

CHAIR: --and his letter came after Ms. Siracusa's letter.

LUM: Right. But it does seem to give different standards. It seems to show that you have some standards for some people and not (inaudible).

MALANKA: So we're referring to the section 2-83?

CHAIR: Yes, and--

MALANKA: --(a)(3)?

CHAIR: That's correct.

MALANKA: I think if you take that and read it verbatim, that we have to at least take from that, all persons shall be treated in a courteous, fair and impartial manner. The one word that was not used is courteous. And we could go beyond that, but certainly courteous stands out.

CHAIR: That's a key word.

MALANKA: Absolutely.

CHAIR: Yes.

LUM: There is another word in there, though, that—officers and employees of the County, while discharging their duties and dealing with the public—

MALANKA: --right—

LUM: --shall adhere to the following precepts. So discharging their duties and dealing with the public, do we have to nitpick that and say, well, only when they're discharging their duties do they have to be fair and, what's the other word?

DILL: Courteous.

LUM: Courteous--treating people in a fair and courteous and impartial manner, is it—or is it—while they're discharging their duties and also while they're dealing with the public separately—

MALANKA: You can say and in ,also—

LUM: Yeah.

MALANKA: Yeah, it's a fine line.

DILL: Lincoln, do you have any opinion on this?

ASHIDA: I do. I think that, you know, you have to examine the context of where the allegation came up. First of all, and I wanted to respond to what you said about Mr. Henderson and the double standard. I've been with the County 20 years, 13 of them as a prosecutor. And there were many times when people called me up at home and read me the riot act about why I'm doing this certain thing, or why I'm not doing a certain thing, and there have been times I wanted to say, you know, shut the hell up and hang up, but I just can't do it. I can't do it. You are held—the Code essentially says, County officers and employees, even volunteer commission members, are held to a different standard, and it is a double standard with respect to vis- à- vis the public. And that's the way it is. Also, I think, you know, one thing that's missing in this discussion is—there's a lot of focus—you folks are focusing on the content of the letter. I think as the chairman pointed out last time, his concern, and really what the ethics code talks about—it's not just content. The tone. Now, turning to the specific question that Mr. Dill asked about, the course and scope. Is—you know, was this—I think the question for you and, you know, I

don't vote on this, you do. Your question is really, were the issues being discussed in Ms. Siracusa's letter matters in which—matters which would count, which would be germane to a planning commissioner? For example, if she was talking about--if there'd been a discussion about police service, inadequate police service, clearly in my mind that would be something that would not be relevant or germane to a planning commissioner. But if a police commissioner wrote something like that, then (inaudible). So I think, John, in terms of looking at that definition that Ms. Lum brought up of County officers and employees, while discharging their duties--it's not related to a clock. It's not, you know, 7:45 to 4:30 you can't do this, but after 4:30 you can. It's within the context of—you know, I think, like I said I don't vote, but the question for me would be, did she hold herself, or could it reasonably be inferred that she is holding herself out as a planning commissioner, thereby utilizing the special knowledge or authority that she has by virtue of her position? That's one issue. The secondary and ultimate issue, I think, is looking at the tone. So I don't know if I answered your question or not.

DILL: Thanks.

LUM: I kind of have another question, because it's not so much to me the tone of the letter that bothered me, but that paragraph about—where she lists the Planning Department, Planning Commission, Mainstreet Pahoia Association, the people working on the Puna Community Development Plan and Malama O Puna, all agree that if we permit commercial use along Highway 130, it will eventually turn into an eyesore and a strip mall. So that paragraph is the one that bothers me a lot more than half-cocked and victim-mentality--the tone. But we're not hearing on that, are we?

ASHIDA: Actually, that is—I think maybe perhaps that was why the Chairman asked Mr. Graham to be here—

LUM: --because that's the paragraph that bothers me.

ASHIDA: She made a representation—the plain reading of that is that this is the consensus of the Planning Department, the Planning Commission, of which she is a member.

LUM: That's what I think. By inference, her business (inaudible).

ASHIDA: Correct.

LUM: But I guess that would be tone. Sorry.

ASHIDA: Well, actually, that goes to content, now that you mention it.

LUM: (inaudible).

ASHIDA: You know, I guess—there was some discussion last time, as you recall, about the constitutional right for expression and, you know--that's fine, we recognize that. But the constitution guarantees your right of—it cannot regulate content, but it can regulate tone. Excuse me—the protection of the constitution does not extend to tone, okay. And also, there is—

LUM: --Excuse me—

ASHIDA: --The constitution will protect you in terms of the content of your speech. But the tone of your speech is something which is beyond the protection of the constitution.

LUM: Right.

ASHIDA: And also there is certain authority that when you take upon an office in government, especially an appointed office for which—for example, all of you are, the law does recognize and allow a certain limitation of your constitutional rights. I'll give you an example. When Mayor Kim took office in 2000 and first appointed his cabinet, of which I was a member, he—during the first election season, I think it was when 2002 came along, he told us at a cabinet meeting--he was directing all of us not to be visible in any contested elections in this County. And when he first said that, people were taken aback and said, you know, that means I can't go sign-wave or wear a T-shirt for my friend running for Council or whatever. That's exactly what he was saying. And when I looked at that more closely, you can't do that. The remedy is, if you want to fully express your right to go campaign for somebody, then you go find a job elsewhere. Not on his cabinet. And that's permissible. And again, you know, so that's another factor is—when you take upon appointed positions in government, there are certain restrictions or limitations that can be put upon even your constitutional rights. It's a misnomer to believe that constitutional rights are always there and people can never take them away. That's really a misnomer. People waive their constitutional rights every day. The police go talk to a suspect, read them their rights, and they waive and agree to make a statement. It gets waived every day. So it's really a misnomer to think that they constantly protect you at every stage, or they're always there. There are limitations (inaudible). Sorry for going off on that digression.

CHAIR: No. It's good clarification.

LUM: So I agree with what we're talking about on that fair part. But I don't necessarily—I'm not too worried about the discourteous part. The fairness to me is this, where she said her location is not an appropriate location and where she said it will eventually turn into an eyesore and a strip mall. Those two things are, I think—those two parts of the letter I think have to do with planning information, and I don't think they belong in a letter in the paper.

CHAIR: I agree with that—

LUM: --So I don't know how to—

CHAIR: --but I also believe strongly that it--the tone was far away from being courteous.

LUM: Well I don't know how to word a motion on it.

CHAIR: I think all you need to do is that you make a motion finding Rene Siracusa in violation of—

LUM: --Okay. I move that we find Rene Siracusa in violation of Code of Ethics section 2-83(a), number 3, officers and employees of the County, while discharging their duties and dealing with the public, shall adhere to the following precepts: All persons shall be treated in a courteous, fair, and impartial manner.

CHAIR: We have a motion.

MALANKA: I second.

CHAIR: And we have a second. We are now open for further discussion.

DILL: I just wanted to share. Last month I didn't vote in favor of continuing an investigation, because at the time I felt we might have been over-extending our limitations on what we can rule on, especially since this was a Board-initiated investigation. However, I was looking a little bit more closely at our meeting last month and some of the accompanying documents for this meeting, and I kind of had a change of heart. My feelings reflect a lot of what Lincoln says, that our duties and positions do have a lot more—a higher standard of behavior. Essentially what it came down to was putting myself in the shoes of both parties, and if I was the letter writer and felt very adamantly about something, is this the right avenue to take, and ultimately it was no, for my position as (inaudible). So I just wanted to share my background, of where I'm coming from.

CHAIR: Thank you, John.

LUM: Thank you—because I was not necessarily in favor of the whole thing, but I do think it's the wrong avenue-- that it was the wrong way to do it. And I actually think that Laurie—that she really made the point of—it could have been on a personal basis, not thrown out there (inaudible) the impression that she leaves about a business which I know nothing about. But that—it belonged in a different venue.

MALANKA: And I agree. I'm on a learning curve in terms of being with the Board, but I certainly know that, as a person in business, I can't go off half-cocked or unprepared or any other way you want to put it. But when you bring—you know, the words that Ann pointed out, the Planning Department, the Planning Commission—you start throwing that in there, and forget the fact that you were rude. You actually did start involving somebody else. It's as though she was speaking for them and with that position. I can't do it, she can't do it. So it's the right avenue.

LUM: I would like our opinion to reflect that aspect of it.

CHAIR: Well, I think first we would have a vote, and then we can discuss how we want the opinion. Correct?

ASHIDA: Mr. Chairman, thank you. You know, your agenda has been posted for some time. It met the Sunshine Law requirements in this matter. It was publicly noticed to be heard today. As you know, last time—last month, when this was heard, Ms. Siracusa was specifically notified by mail and she voluntarily elected to come last time. She did provide witnesses and had her day in court, so to speak, and in my opinion was afforded due process. For today's meeting, she was not specifically requested to attend, only because the Board does not have that authority unless the resolution passes. And because the resolution didn't pass until earlier today, the Board was without authority to demand her presence before the Board. So these are your options. You can continue to, on this matter, vote on it today, because like I said, I believe she

was afforded her day in court. Due process was afforded. Or, and this is just up to you, an option—you could continue this to next month's meeting, let her know what transpired today, what your—give her an opportunity to respond or rebut to whatever was presented today. Again, it's not legally required, in my opinion, but it's just something that's out there that I thought I would suggest. And perhaps the Board, Mr. Chairman, collectively will be able to decide how best to proceed.

CHAIR: And might I add that if we were to find a violation did occur, and voted in that manner, that she would have the right to appeal—

ASHIDA: --Yes.

CHAIR: And request a further hearing? So that would be her avenue.

ASHIDA: Yes. And that's a very good point. You're authorized to enter an informal advisory opinion today, and what the Chairman is saying is—assuming you do that (inaudible) a hearing, it appears that there would be sufficient votes to find a violation, she would then have the right under your rules to petition the Board for a formal opinion, which basically is an appeal. So yeah, she does have that opportunity. You are correct, Mr. Chairman.

CHAIR: Thank you. So with that said, do I have a call for the—question? Or do we have further discussion?

(WHO?): (Inaudible) the question.

CHAIR: Oh, thank you, ma'am. A motion was made that we find that Rene Siracusa was in violation of section 2-83(a), subsection 3, of the Fair Treatment code. All those in favor, signify by saying aye.

(Multiple ayes heard.)

CHAIR: Aye. The Chair votes aye. Are there any no votes? Or are there any abstentions? If not, this ends discussion—

ASHIDA: --I will prepare the necessary findings for your signature, Mr. Chair.

CHAIR: Thank you. Could we then discuss like what Ms. Lum said and what we wanted to add in? Ms. Lum?

LUM: I was looking back at her—Ms. Siracusa's—what she said at the last meeting. She did have a chance to be quite clear about her feelings.

CHAIR: (Inaudible). That's okay, take your time.

LUM: I think that she—looking at her testimony, last testimony, last month, she started out to—I took my oath as a Planning Commissioner, I did not give up my First Amendment rights to freedom of speech, but I think that she should—in the opinion, point out that as County employees and workers, we are held to that standard, even when we're not in our meetings,

because of the perception, the public perception, so that we have to be extra careful, especially if we're talking, speaking, or writing about anything that could reflect on our (inaudible). That is the only objection I have to that matter.

CHAIR: Mr. Ashida?

ASHIDA: Yes, sir.

CHAIR: You could add that in, in our explanation of why she was found in violation of that section?

ASHIDA: I will.

CHAIR: Thank you. Any further discussion on this matter? If not, I'm going to continue with Unfinished Business until eleven o'clock, when we will hear New Business.

ASHIDA: Mr. Chairman, perhaps you can thank Mr. Graham—

CHAIR: --Oh, I thank all three of you very much for coming in and taking time to participate in this. Thank you very much.

LUM: And I really do hope you pursue that—

LLOYD-ROBERTS: --I can—

LUM: --(inaudible) zip code—

LLOYD-ROBERTS: --well actually—

LUM: --I thought redlining was out.

LLOYD-ROBERTS: No, they do, but they can also (inaudible). Is there a way I can get a copy of the hearing, where she—

ASHIDA: Sure, you want to see my copy? You can have my copy. (Inaudible.)

LLOYD-ROBERTS: Thank you.

CHAIR: Thank you.

LUM: Thank you for coming.

MALANKA: Thank you.

ASHIDA: Mr. Chairman, I think Marilyn really needs to not talk up so much (inaudible).

CHAIR: Oh, I've heard Marilyn speak up a lot, and I—

LUM: Both of us were lucky enough to come on the Board when all we were doing was reviewing financial forms--

MALANKA: What did I get myself into here?

NICHOLSON: Right in the middle of things.

CHAIR: And I think this in general has been a very exciting year.

LUM: It's been a very exciting year.

ASHIDA: I think you're doing a great job, because you're being proactive. And so many ethics boards are just reactive, which you shouldn't be. You folks are very proactive—

CHAIR: And allow me to commend Tricia as well, for your decision and for your participation on this Board.

LUM: It's not always easy, is it?

MALANKA: I was just going to come to Hilo, sit for half an hour, and go shopping.

LUM: Sometimes get a free lunch.

CHAIR: Okay, let's take a look at Unfinished Business, letter b.

b. Report on status of *Ethics Guide for Hawaii County Officers and Employees* booklet.

The Chair pointed out that both Mayor Kim and Council Chair Hoffmann have signed off their approval of the booklet and asked whether the presses were rolling.

Mr. Ashida explained that he needed input from the Board. Approximately 2,300 copies of the booklet need to be made. The County's Machine Room, which comes under the Council, does large-scale copying, but they are busy and have other responsibilities. It may be more effective if the Council Chair were to ask the Machine Room to make the copies.

Mr. Ashida asked whether it was the Board's desire to actually give a physical copy to each employee. He said the booklet could also be posted on the County's website and its intranet, which is for employees only. If it were posted on the internet and intranet, the Board could send a memo to all departments, asking them to inform all employees that the booklet is now available on line. If someone desires a hard copy, they could contact the Board, who would provide it. Departments and employees should be informed that the Board put the booklet together for their benefit, and that they are expected to know what it says and comply with it.

Mr. Dill said the Board had earlier wanted employees to sign off their receipt of the booklet, so that if something comes up they cannot claim to not know about it.

Mr. Ashida said if the Board feels strongly about having employees sign for the booklet, he would suggest the Board ask the Department of Human Resources about doing this, as it is responsible for distributing County policies and procedures to employees.

Ms. Lum said she did not want the booklet only on the internet. If employees have a hard copy on their desk or bookshelf, they could refer to it easier. There is a generational gap where younger employees are more comfortable reading on the internet than older employees. She asked whether it was a cost issue.

Ms. Malanka said it may be important enough to outweigh the cost issue and that without accountability, there will be those that slip through and will say they never saw it.

Mr. Ashida stated that it is not a cost issue.

Ms. Lum reiterated that she wants to see hard copies of the booklet floating around.

Ms. Nicholson said that when something is on line, it may not seem like a real thing, but it would if people could pick it up and read it.

Mr. Ashida said that with one paycheck every month, employees also receive a County newsletter distributed by the Department of Human Resources. It may be possible to have the booklet go along with the newsletter. He asked how strongly the Board felt about having employees sign for it.

Ms. Lum said it would give more weight to the booklet if employees sign for it, and they would be less likely to toss it.

Mr. Dill said it would be a nightmare to keep track of having employees sign for it, and that it may be more important for new employees to sign for it.

Ms. Malanka asked how employees get their paychecks, and Mr. Ashida said it depends on the employee. Some paychecks are hand-delivered and some are mailed, but the vast majority is via direct deposit.

Ms. Malanka said she was concerned about the accountability issue, and they need to know that something was read.

Ms. Nicholson said if the booklet were on line, it may be possible to buy software which would enable employees to acknowledge that they actually read or received the booklet. However, she is a believer in hard copies. She asked whether there is a checklist of documents to give new employees, and Mr. Ashida said yes. Ms. Nicholson said the booklet should be included on that checklist for new hires. She agreed that having everyone sign off would be a nightmare.

Mr. Dill asked whether they could get Chair Hoffmann to have the copies made, after which the Board could ask the Department of Human Resources to insert it with their newsletter. Also, there could be a blurb in the newsletter about the booklet at the same time, informing the employees that it is enclosed and they are responsible for it.

Ms. Lum said an additional supply is needed to give to new employees and that it should be on the checklist of documents to provide them.

Ms. Nicholson asked whether all board and commission members are to get copies, and Mr. Ashida said yes.

Mr. Dill asked what it would take to get the booklet on the website, and Mr. Ashida said he could take care of that. Mr. Ashida said he just needed direction.

The Chair directed the agenda to new business, as Ron Whitmore arrived.

5. NEW BUSINESS

- a. Petition No. 2007-08: Ron Whitmore is seeking an informal advisory opinion regarding whether he can be a planner with the Planning Department while he is currently engaged as a consultant for a non-profit organization on a matter involving the County's Department of Research and Development.**²

CHAIR: Will you come up and take a seat here, please? And Mr. Whitmore, if you don't mind—I've read your petition, and we all have, but if you could just give us some background on your status and why you're petitioning the Board.

WHITMORE: Sure. Good morning, and first I want to thank you for taking time on your agenda to hear my petition.

LUM: Oh, excuse me, Mr. Chairman, is this a closed hearing with the Board?

CHAIR: Do you need a closed hearing?

LUM: He requested it.

NICHOLSON: He requested a closed hearing.

WHITMORE: I did, at the advice of Corporation Counsel.

CHAIR: But do you need a closed hearing? Look around the room.

WHITMORE: It doesn't look like it. I honestly don't know the difference between a closed hearing and—

CHAIR: --Okay, I'm personally expecting a guest within the next twenty, thirty minutes. Would that bother you?

WHITMORE: No, there's really nothing sensitive about the nature of my petition.

² This portion of the minutes is verbatim.

CHAIR: Thank you.

WHITMORE: *In a nutshell, I am self-employed. I run a one-person consulting firm and have for the last couple of years, and one of my contracts for the last—over a year, has been with the Hawaii Alliance for Community-Based Economic Development, as part of a contract they have with the Hawaii County Department of Research and Development to facilitate the development of some grassroots leadership development programs for leaders in this County. And it's actually through that work that I've gotten to know several people throughout the County and applied for a position with the Planning Department, actually before I initiated my work with HACBED, the non-profit that I have a contract with. And I think it was over a year after I originally submitted my application to the Planning Department, they had a position—a Planner V position open and they interviewed me for it and offered me the position in June. At the time, I raised the issue with Chris Yuen, the Planning Director, about whether or not there'd be any conflict of interest or other issues surrounding the fact that I'd be employed by the County as a planner and be working—not have a contract with the County, but working on a project with a County department as part of the contract I have with the non-profit organization, which then in turn has a contract with a County department. At the time, Chris didn't think there was any issue. We talked about it further with Jane Testa, the director of the Department of Research and Development, and together we kind of—well, it wouldn't hurt, it might be best to bring this before the Board of Ethics to make sure that there is no conflict of interest. There are really two issues, with my reading of the Code of Ethics. There are two sections that are potentially impacted with the situation. One is section 2-84(a)(2), conflict of interest, and the other is 2-85(a), contracts. In my reading of both, particularly with the conflict of interest section, I don't see any conflict because as a planner, I will not be dealing with any of the—specifically, I will not be taking official action directly affecting the contract I have with HACBED, which is part of the work (inaudible) with the County. Regarding section 2-85(a), which is regarding contracts, I don't have a contract directly with a County agency, although it's clear, if you review the contract I have with HACBED, it's clear most of my work is focused on work that HACBED has with the County. There's some shady, gray area there in terms of whether or not money is passing through the non-profit to me (inaudible) direct relationship with the County or not. It's really seen as a three-way partnership between myself and HACBED, and the Department of Research and Development. The three of us work pretty closely together on this project, but my legal relationship is with the non-profit and not with the County. So I guess I'm asking for an informal advisory opinion of the Board of Ethics on whether or not, in either of these two cases or potentially any others you may see, there is a potential violation of the Code of Ethics.*

CHAIR: I have—

LUM: --I have a question.

CHAIR: I have a couple of questions.

LUM: Oh, okay, go ahead.

CHAIR: Do you do any grant writing?

WHITMORE: Yeah, in a fair amount of my work. What I do a lot is--a lot of what I call program development, which is working with entities, usually governmental entities, non-profits, or university units, and helping them move from an idea to a concrete project. And very often in the course of that process, it involves grant development, grant (inaudible).

CHAIR: And so do you write grants to the County?

WHITMORE: Requesting funds from the County?

CHAIR: Requesting funds from the County.

WHITMORE: I never have and don't anticipate doing that, certainly, as part of this contract. I did write--as part of this contract, I did write a grant proposal to the Castle Foundation, which supports some of the work we're doing, but that was again—that was private, to HACBED, to support the work we're doing with the County.

CHAIR: And do you ever lobby the Council?

WHITMORE: No.

CHAIR: And you served in no way as a lobbyist?

WHITMORE: No.

CHAIR: No direct links with Jane Testa in writing grants to Research and Development, requesting County funds?

WHITMORE: No. That's well outside the scope of what I do with HACBED or with the Department of Research and Development.

CHAIR: Those were my questions.

LUM: As a Planner V, I'm not sure exactly what that job—

WHITMORE: I'm learning myself what that means. As I understand it, my principal responsibilities will be related to the General Plan. As you may know, the General Plan was revised and updated in 2005, and it includes a lot of very broad guidance for land use through the County. But it also provides for district-specific community development planning processes, as you may know, that are ongoing in North and South Kona, in Puna, and now in North and South Kohala. So I will—because of my background—that's why I'm hired, primarily, is because my background is in community-based development (inaudible) of planning, for the most part, so I understand the community side of that process very well. I have a lot of experience with it. And so I'll be both responsible for any additional General Plan revisions that may come before the Planning Department and Council. And I'm going to be responsible for developing a template for the General Plan annual reports, which is required as part of I think Chapter 15 or 16 of the General Plan. And then also, as new community development processes are initiated for different districts, and that's mostly likely going to be Ka'u and Hamakua in the near term, I will likely play a lead role in being the Planning Department's liaison with communities as they move through that planning process. I'll also have some responsibilities in that I supervise a

staff member who does a lot of reviews of coastal zone management, special management area and environmental impact (inaudible) statements, but I think that's ultimately mostly a minor part of my duties. Does that answer your question?

LUM: Can you picture a hypothetical situation where you would come into conflict and then you would have to pull back, where these things overlap to the point where you would feel--

WHITMORE: As you may know, there is a working relationship between the Department of Research and Development and the Planning Department around these community development planning processes. As I understand it—and it's changed a bit over time, I think—Planning takes—their principal role and responsibility is to manage the legal side of the community development planning process, helping communities understand what it means to—how they can influence land use developing, land use planning, what the legal side of community development plans look like and how they can impact that in ways that reflect, really, the vision of the communities. And the Department of Research and Development's role, in turn, is really the community engagement side of things. They help lead meetings, get the word out within communities about the opportunity to be involved in the community planning process, help with the facilitation of meetings. So there are likely to be points where I'll be working with the Department of Research and Development because of that relationship, but it won't—it'd rarely have any direct connection to this leadership development program that I'm helping them develop. Obviously, the leadership development program, which is targeting grassroots leaders, many of whom are the same—are also going to be targeted for participation in the CDP processes, and there's going to be some connection there, because what the Department of Research and Development is trying to do is tap those individuals, those residents, who demonstrated a commitment to community improvement, demonstrated an interest in providing leadership roles in their community. They want to provide them with additional support to realize more of their leadership potential, so it's going to be some of the same people that get involved in the CDP processes that are going to in turn be targeted by the Department of Research and Development for leadership development support. But I don't see that as any type of conflict in terms of my roles with the Planning Department or in connection with the Department of Research and Development. They're complementary, but I don't see any area of conflict, potentially.

LUM: The contract that Research and Development--your work with them, is a teaching, training--not so much the content of what they're doing, but teaching them how to?

WHITMORE: What I'm really doing is facilitating the development of their leadership development program.

LUM: Not so much what they're leading, but how they lead?

WHITMORE: I'm helping them design—eventually it will be in place—fleshing out--is there's going to be four main opportunities that are going to be made available to grassroots leaders on the island. One is what they're calling a fellows program, the heart of which will be a series of retreats designed to help people understand what their natural gifts and talents are as leaders, how they can enhance those, what their niche within their community really can and should be in terms of providing leadership, communication skills--really kind of equipping them with a toolbox to be the best leaders they can be in their community. Another, second section, is

going to be what we call customizable leadership development opportunities—things like leadership circles, (inaudible) education, diversity training, things that are really—where the Department of Research and Development is going to—based on their understanding of an organization's need or an individual's need--are going to make recommendations for and create opportunities—special opportunities for people to grow and enhance their leadership skills in a certain way. The third component is going to be training workshops, and the fourth is going to be conferences. I'm simply helping them design what those are going to look like, what they're going to offer to the public in terms of opportunities to grow as leaders. I'm currently not involved (inaudible), although I did mention in my petition that we have been assuming that I would be involved in the implementation phase as well. But again, I won't be doing it—I will be helping them develop a structure within the Department of Research and Development to make these opportunities available to the public.

LUM: Thank you.

NICHOLSON: I have a question. I think your information says it looks like this contract will be extended. So you are anticipating having this—maintaining your consulting position while you're working for the County for some period of time to come?

WHITMORE: Yeah, I really enjoy it. I'm the—at this point, the principal wage earner for my family of four. For financial reasons I kind of need the supplemental income. But the contract that we're currently operating under will expire December 31st, but we've been anticipating that we'd cut a new contract, basically. There is going to be a contract between the Department of Research and Development and HACBED focused on two things—the implementation of the leadership development programs that we've been designing. The second phase is (inaudible) individual and family wealth development asset development, which is kind of a new part in the relationship between HACBED and the Department of Research and Development. And the assumption is that I would again be engaged by HACBED to support the implementation phase of these leadership development programs. But again, it would be in a facilitative role—how to prioritize, how best to do what when, how to make things the most available, the strongest programs (inaudible).

NICHOLSON: But it would be a bit more public involvement role, then, in the implementation.

WHITMORE: No, actually, probably a little less. The way we designed the program is—we convened a design team, people to represent the diversity of grassroots leaders across the County that are the target audience for this program. So they've been—I've been facilitating monthly meetings with this group, and they've been really designing the programs over time. Implementation probably won't involve that level of public involvement. The public involvement will be involved when the programs are actually offered, but I'll have very little to do with the logistics of offering training workshops or arranging the retreats, or anything like that. I'll be helping them think through how to best do that, but their staff I think will be the ones to actually offer those opportunities to the public.

NICHOLSON: I applaud you for being able to do two jobs and--working with the County, and working with R&D at the same time you're working as a planner with the County. It must be fairly challenging.

WHITMORE: Well, I should share with you. It was all part of the negotiations I had with Chris Yuen, because I originally turned down a position because I was not prepared to walk away from the commitments I made to clients. What he allowed me to do was, between October 1 and April of next year, basically work a 32-hour week schedule, because I knew I had this (inaudible) HACBED and I have—actually have a commitment to (inaudible). So my life right now looks like—I get up at two in the morning and I work till about nine or so, and then go to work at the Planning Department from nine-thirty to four forty-five or five-thirty each day, go home and go to bed with my kids at seven. It'll (inaudible) be the same scenario for the short-term.

NICHOLSON: I personally don't see a real conflict here, but I'm a little concerned about maybe a public perception of some conflict, since you're involved in community planning, essentially, with both of these positions. How do you see separating those two personas when you are essentially doing some planning work in both of these positions and representing the County, even though you are a consultant with the other one, while you're doing that?

WHITMORE: Well, by nature I am usually very careful and clear in the different conflicts about what hat I'm wearing. And all the folks who've been involved in this design team for the R&D project all understand that I'm there in the capacity of—I'm there as a result of my relationship with HACBED, the contract I have with HACBED, which has a contract with R&D. And we happen to have a meeting this Saturday, our monthly meeting, and I'm going—at the very beginning of the meeting make it clear, let the people know, that I'm starting a position with the Planning Department. I'll make it very clear that the two different roles I'm playing are distinct and separate, and that I'm not doing the work for HACBED and R&D (inaudible) with the County as a planner, and vice versa. But yeah, so I'm going to have to be vigilant about that, because—I mean, just last week I was at a steering committee meeting for the Puna community development process, and some people who are on that steering committee know me through what I do with HACBED and R&D. Again, in that case I'd be very clear that I'm here as a planner for the County in a certain capacity, in a distinct role. But yes, there is a potential for there to be some confusion on the public's part about which hat I'm wearing at different times.

MALANKA: That was the question that I had, is how do these people know who you are at which function? Because I would think that some of these same people would be involved in both situations, and my actual question is who is involved with your consulting work? Who are the people—if I was to be at one of these groups, who would I be seeing there? Are they people from the public that are trying to learn how to help our communities in this process? Are they people who are trying to develop projects that need to go through the Planning Department? Define it a little clearer for me.

WHITMORE: Well, there's two groups of members of the public that we've been involving in this design process.

MALANKA: And what is it you're designing?

WHITMORE: Leadership development programs.

MALANKA: For the County?

WHITMORE: That the Hawaii County Resource Center, which is part of the Department of Research and Development, will be making available to the public.

MALANKA: Okay, that sounds a little spread out. Can we have it just a little more concise, I guess?

WHITMORE: It's basically (inaudible) those four components I mentioned earlier, the fellows program for community-based leaders, training workshops, a bi-annual conference, and customizing leadership development opportunities like leadership circles.

MALENKA: And these are people that want to lead the County? They want to lead citizens? They want to lead teachers?

WHITMORE: It could be all of the above. It's people who have demonstrated a commitment to improving their community, and R&D, by the nature of the work they do, have relationships with many of the target audience. For example, they have a Healing Our Island project which is focused on drug abuse prevention, so they give contracts away every year to a hundred and fifty-odd organizations, I think, and what those grants are really used for is to build (inaudible) capacity, that very often it's grassroots leaders who are leading those organizations. So those leaders are part of that target audience. The same holds true for the community development planning process. It involves thousands of people in some of these districts in that process, and many of them continue to play leadership roles, whether it's through working groups that have been formed to help develop the actual plans, or the steering committees, or what have you. So it's some of those people who've been involved in this design process as well. There's a design team, which is about, I think, twelve or thirteen people at this point from across the islands. Most of the districts are represented, but like I mentioned earlier, some of them also play a role in activities related to the planning process, the CDP process. And there's also an advisory group, folks who aren't so much the target audience but have a lot of experience with leadership development. They represent the university, foundations, all the branches of government, basically people who are working in a different level that (inaudible) support or provide advice on some of the leadership development programs.

MALANKA: Okay, so these people that are wanting this leadership development, they're going to lead what?

WHITMORE: It could be a neighborhood association, a neighborhood watch, a (inaudible) group, a business association.

MALENKA: And why does the County want to be involved in that?

WHITMORE: Well, it all started with Mayor Kim's election and the idea that he wanted to make government more accessible to residents of the island and to really improve the relationship between government and the community. And he in fact gave that directive to the Department of Research and Development, and in response they developed the Hawaii County Resource Center, whose mission is really two-fold. One is to improve the cooperative relationship between the government and communities, and the second is to build the capacity in both the community and government to provide leadership, make a difference in the islands, but also build the capacity to have a more productive relationship, because many people over the

years have quite frankly been disappointed with the level of accessibility to government, and this entity, the Hawaii County Resource Center, was created to try and address those conditions.

MALANKA: So are we seeing resources for--I think you mentioned along the way, maybe drug rehabilitation centers, child care centers for working folks, what kinds of resources?

WHITMORE: I'm not (inaudible) the types of grants that R&D gives out. It's a lot of different, very small grants, typically one to five thousand dollars, I think.

MALANKA: I see.

WHITMORE: Again, their focus is really on supporting the community-based grassroots groups that are doing some of the stuff that kind of just strengthens the social fabric of the communities (inaudible) drug prevention programs, but they also—in R&D they have an ag specialist, a tourism specialist, a business development specialist, all of who—

MALANKA: --Thank you. This is what I've been trying to—

WHITMORE: --they all give money away to, again, these community-based groups that have projects, whether to enhance the tourist sector, or support economic development, or depending on what the area of specialty is. But I'm not involved or connected to that granting process.

MALANKA: Okay.

CHAIR: I have a couple questions. HACBED is a non-profit?

WHITMORE: (Inaudible)

CHAIR: They hire you as an independent contractor?

WHITMORE: Yes, I'm an independent consultant (inaudible).

CHAIR: Right. And then part of your job is to interact with the County R&D and work with them, but you're really employed by HACBED—

WHITMORE: --Yes.

CHAIR: I know HACBED gets considerable funding from the County. In their budget, I would assume that your salary is paid by those County funds.

WHITMORE: That currently is my understanding. I actually saw Bob Agres—we typically have a meeting once a month both with R&D and HACBED, so—

CHAIR: --So I think one step would be to have HACBED pay you not using County funds.

WHITMORE: That's a possibility.

LUM: I did ask my friendly home CPA his opinion, and his opinion was what money goes into HACBED from all sources, including (inaudible) assets, and while they're thinking and their budgeting may be, we get \$200,000 from the County, therefore, it's like me saying—

CHAIR: --Sure, I know how it works, but--

LUM: --well, this money comes in—

CHAIR: --but when HACBED submits a grant request from R&D, they list in their budget where that money's going to be spent, and we do not—I do not want to see his salary coming from County funds.

WHITMORE: I asked Bob Agres that question yesterday. I wanted to confirm my assumption that the funds they are paying me with are County dollars, and that currently is the situation. He said it probably could be done differently with this upcoming contract we plan on initiating January 1.

LUM: But however he is doing that work with HACBED that's being paid for by the County, he is performing those duties, so shouldn't the money come—

CHAIR: No, the money shouldn't come from the County. As an employee of the County now, he shouldn't be contracting out and receiving any more County funds—at least that's how I view it, and I see that as the major conflict.

WHITMORE: You're looking at section 2-85 here? I have a question about that. Would it—there is a provision under section 3, where the agency, in this case the Department of Research and Development, I assume would post a notice of its intent to enter into such a contract? File that notice with this Board—would it be allowable under that circumstance?

CHAIR: Mr. Ashida, could you give us some advice, please?

ASHIDA: Actually, that section is only applicable to former employees of a specific department. That was written in there to prevent employees who retired getting hired back immediately at a higher contract rate. With respect to this particular case, I would just ask the Board to keep in mind that there is no prohibition against employees of the County having private contracts, even if part of their payment for that contract is derived from the County general funds, so long as there is no recognized conflict of interest under 2-84. In other words, the salient inquiry I think in this case is not necessarily the funding source, but whether, with the two functions that he's performing, both as a County planner and as an independent contractor through a HACBED contract administered through R&D, it constitutes either an actual conflict of interest or an appearance of impropriety which is so great so as to constitute an actual conflict. That should be your question. You know, County employees aren't prohibited from moonlighting, basically, as long as they don't moonlight in the backyard of the department that they work in.

MALANKA: I get the impression that he goes to one of these functions, and he has to distinguish immediately which hat he's wearing, because there are people from --you know,

seeing you at both different groups, and so if you're having to make that distinction right off the bat, you know, this is the hat I'm wearing today, I'm wondering if there is the look of doing double duty, shall we say.

ASHIDA: That becomes an issue only if both capacities require actual substantial decision-making (inaudible) with the County. But I understand what Mr. Whitmore is saying. With respect to his contract with HACBED, he's not in any decision-making capacity. He is simply facilitating. Is that—am I wrong?

WHITMORE: No, you're correct.

ASHIDA: Yeah, he's simply facilitating.

MALANKA: Thank you, yeah.

ASHIDA: So the problem arises, the conflict arises and the need for disclosure—what you're talking about becomes acutely important only in situations where in both capacities he takes official action with respect to the County.

MALANKA: Right. Okay.

ASHIDA: And that's not present in this case.

MALANKA: Thanks for that.

CHAIR: I still don't feel comfortable with him working for HACBED as an independent contractor, and HACBED putting in their budget County money to pay him as a consultant. And in 2-84(c) and (d)—maybe I just don't read well, but 2-84 (c) and (d) is sort of--sort of to me a gray area.

ASHIDA: I don't see it as gray.

LUM: He's not lobbying.

CHAIR: Yeah, but I'm looking at public perception, you know. The average person out there's saying here's somebody that's working as a County planner, that's kind of like double-dipping from the County as a private consultant. But that could be erased and eliminated simply by rewriting the budget and HACBED saying we're going to use other resources to pay his fee.

ASHIDA: I don't think this County—this Board—has jurisdiction over HACBED, that's number one.

CHAIR: I agree.

ASHIDA: Secondly, double-dipping really only presupposes that you're being paid—you're being paid twice for doing essentially identical work, or the same or similar work. Now if he moonlighted as a planner, a private planner, that would be wholly different—that is clearly the type of behavior which this section proscribes, and I think we have to look at the different—

there are two keys in my mind. One, it's a completely different function. And number two, even in this other function, he takes no official action or decision-making with respect to County affairs. I guess, Mr. Chairman, with all due respect, I don't see it as an issue, if you ask for my take on it in terms of interpreting this situation.

CHAIR: I'm just a lay person. I'm just a member of the public, and when I see things like this, I think—it's just a perception that one would get without maybe knowing all the facts or having the legal expertise as you do. And I think the Board should actually help assist to make-- to make County employees do the right thing, or at least look above board. And what I'm saying is, if HACBED would pay him with other funds outside of the County, that would eliminate some of the possible questions by lay people in the public. And yes, I know we don't have the authority, but we could certainly ask that you get HACBED to pay you with other funds. I'm sure they have other funds. In fact, doesn't HACBED—I'm just guessing, wouldn't HACBED have to have matching funds in a lot of the grants they get from the County?

WHITMORE: Yes, as a matter of fact, when I asked Bob Agres when we talked yesterday if that would be an option for this County contract, because part of the contract has to do with asset growth development for individuals and families, they have a lot—that's a large part of their program, and I guess they could potentially use some of those non-County funds for my compensation. So it's possible. This issue is really precisely why I bring this before the Board, because I would appreciate guidance, because it's my preference, my intention—I hope also that it's very clear to the public, the distinct roles I'm playing are very clear. Because I don't want misperceptions.

CHAIR: And you actually want us to say it's okay, and see, in my heart I can't say it's okay.

LUM: Well, I see the Planning Department—it's always that, because in the Planning Department, it's my perception that you—and some of the other departments—you gather people with expertise to—I can't think of some right now, but there are certain departments where you go—wait, this real estate person is on the Planning, and this engineer is on the Planning, and this community development is on the Planning. The old arborist on the tree farm, right? You gather people with expertise to handle a job, which sounds like it's what's happening to you with the County. It's my perception that your contract job is really like a teacher, a trainer, a teacher that's developing curriculum materials, that kind of idea, and your Planning job uses some of that expertise. But you're not training planners, doing the Planning job. I see them separate, and I don't think we can tell people how they get paid and whatnot. So—

CHAIR: No, but we also don't need to rubberstamp it and say it's okay. You know, personally, I'd rather abstain than say this is okay, because I don't feel comfortable with this, just from public perception. And if we're trying to get a better public image, we need to clear up some of the gray areas, I think.

LUM: But if it could be—I don't really see a violation—

CHAIR: --No—

LUM: --But perhaps in the opinion we could say the gray area of County funds is an issue with us. That could be handled. And the advice that Mr. Whitmore should—

CHAIR: --Can we give advice like that, Mr. Ashida?

ASHIDA: You can recommend whatever you want, but Mr. Whitmore has no authority over the source of funds--

CHAIR: --No, we understand. But this will be a public record, and in all good conscience for us, you understand where we're coming from.

LUM: I think that Mr. Whitmore's statement earlier that he would—I will not take any official action directly—I think he's already made the public statement that he's aware that he has to be—the chance that something could come up, that he's made it public that there's a double involvement, he's not trying to hide anything, and that he would be careful about correcting any misperceptions or (inaudible).

DILL: Mr. Whitmore, your position as a Planner V--you said that you initially turned down the job. Is that an appointed position?

WHITMORE: No, Civil Service. It's a Civil Service position.

DILL: So you applied for the job, you were offered the job and turned it down?

WHITMORE: The challenge I was facing was they wanted to hire someone immediately—this was back in June, and I had consulting contracts for more than a hundred percent of my time through—this HACBED contract to December, and another contract through March of next year. And there was no way I could in good conscience walk away from the commitments I'd made to clients to take the job. I was not prepared to do that. So the compromise I was able to work out with the Director of Planning was—he allowed me to start later, October 1, and I used that time to wrap up several smaller contracts I had, and also my clients were very accommodating and helped me reassess and reorganize the work I was doing with them. And so I used the time to do that, to wrap up some of those loose ends with the larger contracts. And then again, as I mentioned earlier, Chris has allowed me to work reduced—basically take unpaid leave for eight hours a week so that I could have more personal time to fulfill my commitments to my clients.

DILL: Okay, so there's no term limits directly associated with your Planner V position.

WHITMORE: No.

DILL: Okay, one other--or more specifically, do you do any work with the Hawaii Island Economic Development Board?

WHITMORE: No.

DILL: All right, thanks. Those were the questions I had.

CHAIR: Anything else?

NICHOLSON: I personally don't see any technical reasons why we could in any way influence his employment. I do see ongoing public perception issues that may come back, and he's obviously very aware of those. And I think all we can do is try to craft our concern about those public perception issues, and I'm not sure the pay is something that would make any difference in the big scheme of things.

CHAIR: Is anyone prepared to make a motion at this point?

MALANKA: Actually, I had a question. I saw some discrepancy, and maybe it was round figures that were being used, but I saw some figures of 40,000 and 50,000. I saw a 97,000, 750, and then 100,000. You know, there were just some discrepancies, and I didn't understand that.

CHAIR: They were different years—

NICHOLSON: --Different contracts—

CHAIR: --and different contracts—

NICHOLSON: --amended contracts.

WHITMORE: Did you also have a copy of the contract between Research and Development and HACBED?

NICHOLSON: Yes.

CHAIR: Yes.

WHITMORE: Because that may be a source—and that's actually a somewhat salient point. The money is not simply passing through (inaudible). It's passing through HACBED to me. HACBED has a role in this project and therefore, that's only a percentage of the funds they're getting from the County that they're directly using to compensate me.

CHAIR: Right. And actually when I requested this, what I really wanted to see was the budget that was submitted to R&D when they had the grant proposal, and that wasn't forthcoming. But the only problem I have with this is the funds used by the County. Because like Marilyn said, there is—he's within legal parameters to do this other position, especially with Chris Yuen being willing to accommodate you and Jane Testa, those people, so I only see County funds as my sticking point.

LUM: I move that we find that Mr. Whitmore has no conflict with the Code of Ethics and his two positions.

NICHOLSON: I second.

CHAIR: We have a motion and we have a second. Any discussion?

DILL: Just that we need to request that he adhere to the statements in his petition, not to take any official action directly affecting my consulting work with either the Department of Research and Development or HACBED, and so on and so forth.

LUM: Do you want to add that to the opinion, add it to the opinion, your concern about the—

CHAIR: Well at this point, we have a motion. And a second, and as the motion is currently, I will abstain.

LUM: So you would like to add in to the motion your concern?

CHAIR: Yes. If you want my affirmative vote.

LUM: So do we amend the motion, or shall we withdraw and start again?

NICHOLSON: I actually like what John said about adding in his language here—

LUM: --Let's withdraw the motion and start again.

NICHOLSON: Let's withdraw.

LUM: I'll withdraw the motion if you'll—I forget which one comes first—the second or the first?

NICHOLSON: I'll withdraw my second.

LUM: I'll withdraw the motion.

CHAIR: So the motion and second has been withdrawn and we're going to start again. Marilyn, you're good at this, Marilyn.

NICHOLSON: Okay, I'll take a whirl at this one. I move that we find no conflict--or no conflict of interest, I suppose is what it is—conflict of interest—

LUM: --conflict with the--

NICHOLSON: --with the Petitioner's continuing to act as a consultant for HACBED, working on a County project, while employed by the County of Hawaii with the understanding that in his positions he takes no--and I'm going to do some quoting right from this last part--that he will take no official action directly affecting his consulting work with either the Department of Research and Development or HACBED, and furthermore, that if possible, he will request—well, it's not if possible—that he will request that HACBED compensate him with non-County funds if it is possible to do so.

DILL: Second.

CHAIR: Now we have a motion and a second. Everyone understand the motion? We're open for discussion. If not, let's vote on the motion as stated. All in favor signify by saying aye.

DILL: Aye.

NICHOLSON: Aye.

CHAIR: Aye. Any noes? Any abstentions?

LUM: I don't think—I'll say aye.

CHAIR: Any noes? Any abstentions?

MALANKA: I'm abstaining.

CHAIR: Okay, so we have four affirmatives and one abstention. Thank you. Resolved?

WHITMORE: Yes, thank you very much, I appreciate your time.

CHAIR: Thank you. Thanks for coming in.

NICHOLSON: Thank you for coming.

CHAIR: And asking for our informal opinion. Mr. Ashida, will you draft something for us?

WHITMORE: Will I get some kind of—

CHAIR: Mr. Ashida?

ASHIDA: Yes.

CHAIR: Will you—

ASHIDA: --I will.

CHAIR: You'll get it. Can we take a five-minute recess?

WHITMORE: Thank you.

The Board recessed from 11:45 a.m. to 11:53 a.m., at which time the Chair called the meeting back to order on Unfinished Business, item c.

- c. Report on Status of Board's request to amend Hawaii 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.**

Mr. Ashida informed the Board that the Mayor signed the bill and that the ordinance is a new provision in the County Code. He instructed the Board's secretary to go ahead and make the changes in amounts on the financial disclosure instruction sheet.

d. Report on status of Board's request for a time limit for incumbents who are seeking reelection in an election year on sending campaign literature using County funds.

The Chair reported that he spoke with Council Chair Hoffmann, who said he would forward the request to a committee as soon as the Corporation Counsel provided the background information.

Mr. Ashida said he would take care of this.

e. Report on status of Board's request for authority from the Council to fine officials and employees who violate the Code of Ethics.

The Chair reported that he spoke with Council Chair Hoffmann, who said he would forward the request to a committee as it was, since Mr. Ashida had written a good brief on it and it was to Mr. Hoffmann's satisfaction. So they will be moving forward on this. He said Mr. Hoffmann seemed receptive and is to keep him informed, and he also said that what the Board of Ethics wants, he will do.

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

Ms. Lum said that in reviewing the State's administrative rules, which Mr. Ashida had forwarded in a September 18, 2007, letter, they look quite similar to the Board's current rules. However, she needs to read them more closely. She has begun to take notes but does not think there will be great changes. She volunteered to start the preliminary draft and present it to the other members at the next meeting for their review and suggestions.

The Chair said he would accept her generous offer and asked for a motion.

Motion and vote: Mr. Dill moved to add the review of Ms. Lum's preliminary draft to the next agenda. Ms. Malanka seconded the motion, and all members voted aye.

g. Ongoing discussion on the Sunshine Law.

The Chair asked Mr. Ashida if there was anything specific to discuss on the Sunshine Law this month, and Mr. Ashida said no.

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

Executive Session was entered at 12:00 p.m.

Regular Session was re-entered at 12:08 p.m.

7. EXECUTIVE SESSION.

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

The Chair stated that the financial disclosures of Myles Miyasato of the Transportation Commission and Christian Alameda of the Planning Commission were reviewed and that Mr. Alameda's disclosure was incomplete on an item.

Motion and vote: Mr. Dill moved to accept Mr. Miyasato's disclosure and to return Mr. Alameda's for completion. Ms. Malanka seconded the motion, and all members voted aye.

The Chair asked if anyone had a request to put something on the next agenda. There were no suggestions.

8. ANNOUNCEMENT

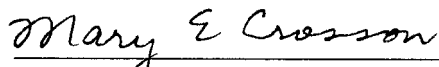
The Chair announced that the next regular monthly meeting is scheduled for November 14, 2007, at 10:00 a.m. at the Ben Franklin Building, 333 Kilauea Avenue, 2nd Floor, Hilo.

9. ADJOURNMENT

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

The meeting adjourned at 12:10 p.m.

Respectfully submitted:



Mary E. Crosson, Secretary