

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as circulated 3/18/16

Board/Committee:	BOARD OF ETHICS	Meeting Date	February 19, 2016
Location	Mo'ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 1:58 p.m.
Present	Chair Ryan de la Pena; Vice Chair Mary Tudela; Secretary Addison Bulosan. Members: Calvin Murashige; Brad Nagano; Warren Perry; Maureen Tabura Staff: Deputy County Attorney Nicholas Courson; Boards & Commissions Office: Support Clerk Barbara Davis; Administrator Jay Furfaro		
Excused			
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair de la Pena called the meeting to order at 1:00 p.m. with 7 members present.
Approval of Minutes	<u>Regular Open Session Minutes of December 18, 2015</u>	Ms. Tabura moved to approve the minutes as circulated. Mr. Nagano seconded the motion. Motion carried 6:1 (abstain-Tudela)
Communication	<p><u>BOE 2015-22 Proposed Charter amendment from the Board of Ethics on 11/13/15 to the Charter Review Commission regarding Article XX for the Kaua'i County Charter</u></p> <p style="padding-left: 40px;"><u>a. Section 20.02 E was received for the record by the Charter Commission and will not be moving to the ballot</u></p> <p>Staff explained the Charter Commission felt this proposed amendment was not clear enough and it did not explain "undue detriment". The Commission was initially going to ask the Chair or the Attorney to come forward at their upcoming meeting to clarify the terminology, but subsequently felt with so many proposals possibly going before the voters they would not move this forward.</p> <p>Attorney Courson said to clarify, when he looked at various other Codes of Ethics there is the idea of detriment, but it is so difficult to explain that he did not see it done anywhere by the Charter. It was done by a code where</p>	

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	<p>they could really explain what was meant. The reason he picked “undue” as a qualifier was if anything was ever done bad to anyone, whether it was due or not, we would be in violation of the Code of Ethics so he could not just say detriment. In trying to clarify this it was becoming so long it would not belong in something like the Charter. If the Board wants to explore the concept of prohibiting detriments it would be better done through Ordinance and asking the Council to adopt it. Mr. Perry asked if that would be in conformity with the Charter. Attorney Courson said the Charter allows the Council to supplement via Ordinance, so they could as long as it is not in contradiction to anything. Mr. Perry asked if the statement the Council can enact Ordinances was not under the section on Disclosures. Attorney Courson said that was a very good point, but to the extent it is read that way that is strict constructionist viewpoint, but so too are the “Penalties” under the Disclosure section with the concept the Mayor, the Council and the Board of Ethics being responsible for enforcement of provisions. Attorney Courson suggested to clean that particular portion up might be a worthy goal the next time they can get something on the Charter noting he did not think it was the intention to bury all that stuff under Disclosures.</p>	<p>Mr. Perry moved to receive BOE 2015-22. Mr. Murashige seconded the motion. Motion carried 7:0</p>
<p>Disclosures</p>	<ul style="list-style-type: none"> a. Louis Edmund Abrams (Planning Commission) b. Mary Kathleen Hertog (Police Commission) c. Sherman Shiraishi (Board of Water) d. Kevin Thomas Mince (Police Commission) e. Karen S. Matsumoto (Civil Service Commission) f. Ted K. Blake (Open Space, Public Access) g. Dorothy Roberts Bekeart (Board of Review) h. Althea K. Arinaga (Kaua’i Historic Preservation Review Commission) i. Shoshana Rachel O’Brien (Deputy County Attorney) 	

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	<p>j. Anne Karen Schneider (Kaua‘i Historic Preservation Review Commission)</p> <p>k. Kipukai L.P. Kualii (Candidate for County Council)</p> <p>Chair de la Pena noted there were two disclosures requiring clarification for either missing income or potentially incomplete income (h. and f.)</p> <p>Mr. Perry suggested at some future point adding the requirement on the Disclosure form to specify the State for which the TMK is listed as the street address may not be indicative of which State the property is located in.</p>	<p>Mr. Perry moved to receive disclosures a. through e., g., and i. through k. and deem them complete. Ms. Tudela seconded the motion.</p> <p>Motion carried 7:0</p>
<p>Request for an Advisory Opinion</p>	<p><u>RAO 16-001 Request from Angela Anderson, former Planning Commissioner, as to whether there is a conflict for HILT (Hawaiian Islands Land Trust) in which she is the Kaua‘i Island Director to enter into a contract with the County of Kaua‘i to assist with facilitating acquisitions for the Open Space Program</u></p> <p>Ms. Angela Anderson was present to give background information to the Board and answer any questions they might have. Ms. Anderson explained she was representing herself in terms of her former position and to make sure everything was clear. Ms. Anderson serves as the Kaua‘i Island Director for HILT (Hawaiian Islands Land Trust) in which there is an Executive Director and they are a non-profit so the ultimate decisions are made at the Board level. Ms. Anderson said her correspondence was out of an abundance of caution and to make sure there is full disclosure. Ms. Anderson’s previous position was on the Planning Commission for the past two years and she stepped down at the first Planning Commission hearing in January (2016). The Hawaiian Islands Land Trust is an organization she has worked with in varying capacities as a volunteer, served on their Island Council, and did pro bono work for them. They are a non-profit that does</p>	

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	<p>land acquisitions for conservation. HILT was approached by the County about the possibility of serving in a role of assisting them in facilitating open space acquisitions. Because of her former role she wanted to make sure as they proceed in going forward with that potential contract that all the requirements are met. Her assumption was that the County would make sure that whatever their end process was, was correct, but she requested the Advisory Opinion to make sure they move forward in a transparent way.</p> <p>Ms. Tabura said with Ms. Anderson having been on the Planning Commission do they not have any interaction with the Open Space Commission. Ms. Anderson said she is clear in terms of the direct relationship. The Planning Commission can make recommendations. Prior to serving in her role at HILT there was a question regarding a public access and because the recommendation from the County Attorney was that was not a condition they could put for that particular permit but if the County wanted to explore doing some sort of easement we could refer it over to the Commission. In terms of Ms. Anderson's experience that was the only direct involvement where (the Planning Commission) referred things to the Open Space Commission, and that occurred at a different time than when she served in the capacity of Kaua'i Director. She was aware there could be potential conflicts in terms of her role as Chair this last year and in a situation where HILT owned a conservation easement she would recuse herself from those situations. That was very clear to her.</p> <p>Mr. Perry stated that Ms. Anderson cited a couple of Articles of the Charter and the Code of Ordinances in her letter and she is not a present employee or officer or board member. It seems like the question is the subject matter of the contract. It may involve §§20.03 B and 3-1.8. Subject matter of the contract is from the Code and in the matter with which the contract is directly concerned and he asked Ms. Anderson to elaborate on that – what is</p>	

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	<p>the subject matter of the contract.</p> <p>Ms. Anderson said she would have to give a caveat because her background is in law and she is a practicing attorney however, for her role with HILT she is not an attorney and is not representing them in a legal capacity. In terms of exactly what that entails that is where any gray area we are here to make sure that this particular contract, which would move forward, would not fall under that and she did not believe it did. The subject matter of the contract – and again the contract has not been finalized and is on hold prior to getting the Advisory from the Board – is about facilitating the acquisition of specific parcels so that is determined by the Open Space Commission. The Open Space will hear testimony or take public input and provide a list of areas that are priorities for acquisition. The role that HILT would play would be to assist the County in negotiating those transactions. The reason why HILT is in a good position to do that is because this is the work that HILT does. The purpose of our organization is to be able to either purchase properties in fee or have conservation easements on property. We hold those conservation easements and ensure the conservation values that have been set aside as being important for those areas that we monitor those and make sure that development is not happening on those parcels. We have a model where we primarily do conservation easements and that is something that is fairly new to municipalities, which is why we would assist that. A lot of times rather than do a fee simple property acquisition it can be a conservation easement. We can help in terms of what would be appropriate or give input into going forward if there are a limited amount of funds and how to best leverage for the biggest bang for the conservation here on Kaua‘i.</p> <p>Mr. Perry asked what the present role was of the Planning Commission and the Open Space program. Ms. Anderson said she was unsure what that role is for the Planning Commission. There has not been, in her experience, any</p>	

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	<p>oversight she is aware of from the Commission and she has never appeared before Open Space. From her part because she took this position with Hawaiian Islands Land Trust she was aware she could not go before the Open Space Commission so purposely did not get involved in any matters, not that any matters came before her but she chose not to get involved in those matters for that reason.</p> <p>Chair de la Pena called for a motion.</p> <p>Attorney Courson asked the Board to articulate the logic for the basis of their decision. Mr. Nagano said Ms. Anderson no longer represents the County of Kaua'i and he does not see any conflict with her being involved in the County and HILT. Ms. Tabura said there is a one year provision and they cannot participate for one year. Chair de la Pena said Ms. Anderson recused herself from the subject matters that would be under that one year provision. Mr. Perry said she is no longer an employee and the subject matter of the contract is not directly involved. Ms. Tabura said she is not an employee or Planning Commission officer anymore but with the proposed contract or the relationship with the County does it look like she would benefit? Attorney Courson did not think the prohibition was as simple as if you worked or served for the County you can't do anything with the County for one year. It really does matter (inaudible) what the subject matter is versus what her role was and if there is no overlap in the (inaudible) within the year that should not matter.</p>	<p>Mr. Nagano moved that the Board find there is no conflict. Ms. Tudela seconded the motion.</p> <p>Motion carried 7:0</p>
<p>Executive Session</p>		<p>Attorney Courson cited that the Board would go into Executive Session pursuant to the Hawai'i Revised Statutes for ES-001 and ES-002: BOE 16-001 as fully described on the posted agenda.</p> <p>Mr. Perry moved to go into Executive Session at 1:40 p.m. Ms. Tudela seconded the motion.</p>

SUBJECT	DISCUSSION	ACTION
		Motion carried 7:0
Return to Open Session	Ratify Board of Ethics actions taken in Executive Session for items: ES-001 and ES-002	The meeting resumed in Open Session at 1:55 p.m. Mr. Perry moved to ratify the Board's actions taken during Executive Session. Mr. Nagano seconded the motion. Motion carried 7:0
Announcements	<p>Next Meeting: Friday, March 18, 2016 – 1:00 p.m.</p> <p>Mr. Bulosan announced his resignation as of March 15, 2016, from the Board of Ethics. Looking at the timeline and the nature of 2016 and holding his position at the Pacific Chiropractic Center and being consistently solicited to be part of things that might be in conflict with the Board of Ethics he is taking the safe route and removing himself from the Board so he does not find himself in sticky situations. Mr. Bulosan stated he has enjoyed being on the Board and wished he could stay.</p> <p>Mr. Furfaro stated that Mr. Mike Curtis has been identified as a candidate to replace Mr. Perry and will be going before Council in the next week.</p>	
Adjournment		Chair de la Pena adjourned the meeting at 1:58 p.m.

Submitted by: _____
 Barbara Davis, Staff Support Clerk

Reviewed and Approved by: _____
 Ryan de la Pena, Chair

() Approved as circulated. () Approved with amendments. See minutes of _____ meeting.