

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved as circulated 8/26/16

Board/Committee:	BOARD OF ETHICS	Meeting Date	June 17, 2016
Location	Mo‘ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 1:33 p.m.
Present	Vice Chair Mary Tudela; Secretary Maureen Tabura. Members: Michael Curtis; Calvin Murashige Staff: Deputy County Attorney Nicholas Courson; Boards & Commissions Office: Support Clerk Barbara Davis		
Excused	Chair Ryan de la Pena. Member Brad Nagano		
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Vice Chair Tudela called the meeting to order at 1:00 p.m. with 4 members present.
Approval of Minutes	<p><u>Regular Open Session Minutes of April 15, 2016</u></p> <p>Following a request for clarification of Attorney Courson’s comment on “workers who do side things” it was explained that it referred to people who do “side jobs/things” so the minutes stood as approved.</p>	Mr. Curtis moved to approve the minutes as circulated. Mr. Murashige seconded the motion. Motion carried 6:0
Request for an Advisory Opinion	<p><u>RAO 16-004 Letter dated 6/1/16 from Kanani Fu, Housing Director, requesting an Advisory Opinion on whether there is a conflict with her position and being a participant in the Homebuyer Loan program administered by the Housing Agency</u></p> <p>Vice Chair Tudela asked Ms. Fu to share anything compelling or noteworthy from her perspective that she might not have covered in her written submittal.</p> <p>Ms. Fu stated she is currently the Housing Director for the County of Kaua‘i and began that role on March 1, 2016. Prior to her capacity as the Housing Director she was a participant in the County of Kaua‘i’s homebuyer loan program in 2011, which is open to Kaua‘i residents and is</p>	Mr. Curtis moved to accept Ms. Fu’s report and find that currently it is not a conflict of interest. Mr. Murashige seconded the motion for discussion.

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	<p>targeted towards home ownership. Ms. Fu and her spouse were participants who went through the program and when they became home-buyer ready they applied and received a loan for their primary residence. The loan is administered through the Housing Agency. When it came to her attention while filing her financial disclosure she wanted to ensure there was no conflict of interest or a perception that it could be a conflict of interest since she administers the Housing Agency now and directly supervises those that administer the home buyer loan program.</p> <p>Mr. Murashige asked Ms. Fu if there is anything she can do in her current position as the Housing Director that would in any way impact her current loan from the Housing Agency.</p> <p>Ms. Fu said the loan can be impacted if the interest rate is to change and her loan is a fixed interest rate for 15 years. (The program) is based on Administrative Rules set by the Housing Agency in addition to guidelines that need to be followed on the Federal regulations as they administer the moneys to the County. The interest rate is set by the Housing Agency. Her contract is a fixed loan for 15 years and then a balloon payment is due. If (the Housing Agency) wants to change any of that it has to be through the Admin Rules which is an unlikely scenario.</p> <p>Mr. Murashige said speaking hypothetically if their Agency were to decide to change the interest rate would it be something the Agency does unilaterally or would it have to go through a confirmation process approved by some higher authority.</p> <p>Ms. Fu said the Administrative Rules would have to go through a formal public hearing process. The Agency does vet their Administrative Rules through the SBBC and because it involves Federal they have to vet it through the Federal. There are different agencies and formal procedures to</p>	

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	<p>go through in order to change Admin Rules which ultimately has to be signed off by Ms. Tanigawa, the County Clerk and with approval by the Lt. Governor (sic).</p> <p>Mr. Curtis said even if that were to happen would that affect her fixed loan. Ms. Fu said it could potentially because the Admin Rules can be tailored so you get grandfathered in or take what occurs to be better.</p> <p>Attorney Courson asked if all this did happen would it apply to all loans or is there any scenario that would apply in which Ms. Fu could change only her loan.</p> <p>Ms. Fu said no. They have to base it on the source of funding, but it could affect only a certain amount of people that stay under that funding source.</p> <p>Attorney Courson said Ms. Fu could change rules for loans attached to a funding source but cannot change the rules for one specific loan.</p> <p>Ms. Fu said it has to be the funding source.</p> <p>With no further questions, Vice Chair Tudela explained the Board would deliberate on the question to which Ms. Fu was advised she could go or stay because it was open session.</p> <p>Mr. Curtis and Mr. Murashige both said they had no issues.</p> <p>Attorney Courson said to make sure he is on the right point he would analyze it as the only potential conflict seems like it could arise from §20.02 E which is <i>use his official position to secure a special benefit privilege or benefit for himself or others</i> and the Board's questions demonstrated that Ms. Fu is not in a position to secure a special benefit as any benefit would</p>	

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	be applied to a class. Members of the Board concurred.	Motion that the Board finds there is no conflict carried 4:0
Disclosures	<ol style="list-style-type: none"> 1. <u>Jo Ann Shimamoto (Salary Commission)</u> 2. <u>Russell M. Wong (Charter Commission)</u> 3. <u>Juno-Ann A. Apalla (Candidate for County Council)</u> 4. <u>Gary A. Pacheco (Liquor Control Commission)</u> 5. <u>Chad K. Pacheco (Fire Commission)</u> 6. <u>Michael T. Martinez (Fire Commission)</u> 7. <u>Richard S. Fukushima (Candidate for County Council)</u> 8. <u>Ross K. Kagawa (Candidate for County Council)</u> 9. <u>Melvin F. Rapozo (Candidate for County Council)</u> 10. <u>Arthur J. Brun (Candidate for County Council)</u> 11. <u>Wallace G. Rezentes (Managing Director)</u> 12. <u>Arryl J. Kaneshiro (Candidate for County Council)</u> 13. <u>Gary L. Hooser (Candidate for County Council)</u> 14. <u>Mason K. Chock (Candidate for County Council)</u> 15. <u>Ashley S. Uyeno-Lee (Deputy Prosecuting Attorney)</u> 16. <u>JoAnn A. Yukimura (Candidate for County Council)</u> <p>Mr. Curtis said as a realtor they cover themselves with everything with disclosures, but when they make a decision they don't give an opinion about why. When you give an opinion about why it gives people leverage to argue against you. That is an attorney's approach and perspective to where a realtor's approach is if you don't say anything they can't grab anything to argue against your decision.</p> <p>Attorney Courson said in the nature of government we want to be transparent about why we are deciding what we decide. Mr. Curtis said he votes one way or the other without an opinion behind it and perhaps the decision of the Board can be a decision without an opinion behind it and rest on the judgement of the members. Attorney Courson said they are</p>	

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	<p>certainly free as a body to move in that direction. Mr. Curtis said so Attorney Courson’s last comment in the last motion was out of place. Attorney Courson said it would be if that is the direction they wish to move in; prior Boards have wanted to express a basis for their opinions. Mr. Curtis asked why because if there is an appeal it gives the appellant a hook and a reason for an appeal. A decision without an opinion is a decision resting on itself and stands for itself. For instance this last discussion the Attorney read rules that are already relevant to everybody into the decision and the discussion. Staff stated that is part of the rules to which Mr. Curtis agreed saying you don’t have to state it.</p> <p>Attorney Courson said you may open yourself to an argument that the decision was arbitrary and capricious and while you have wide discretion if you give no decision at all it is very likely to be overturned from a legal point of view. Mr. Curtis said arbitrary and capricious are attorney words and may be the hook that allows a challenge.</p> <p>Mr. Curtis said Mason, Mel, Chad Pacheco, Gary Pacheco, and Apalla have sole proprietor interest in businesses that they indicate there is no income from. Mason has 100% interest in the business but no income. Mel has his legal services business and no income, Chad has 10% interest in a business and no income, Gary has 100% interest and Apalla has 25% interest in Fashion Week and they indicate no income from these 100% sole proprietorships. If Mel’s legal business is out of business and received no receipts last year then he received no income. Mason disclosed he had income from the County for his business that he has 100% interest in but no income and so he is questioning the active businesses disclosed and the no income reported.</p> <p>Vice Chair Tudela said she is waiting for legal counsel’s review but from</p>	<p>Ms. Tabura moved to accept disclosures 1 through 16 and deem them complete. Mr. Murashige seconded the motion.</p>

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	<p>the Board’s perspective they approve them and deem them as complete as in nothing has been omitted. Vice Chair Tudela said Mr. Curtis is questioning that there is information missing from those because of the 100% ownership of a business with no income indicated. Mr. Curtis felt there was inconsistent information on the forms that he perceived.</p> <p>Asked if this had ever come up before Staff said not as long as they declare whether they are making money or not. Mr. Curtis said they heard from Mason that his business has a contract with the County. Vice Chair Tudela said she wants a legal response to the responsibility of the Ethics Board as to accepting them as being complete – not specific to the data provided by the individual.</p> <p>Attorney Courson said the only thing he is prepared to clarify at this point is that the past practice of this Board has been to simply deem complete. If the Board wants him to revisit whether or not that is right – he has never looked into in but just knows that has been the practice. Mr. Curtis said he perceives an inconsistency in the information provided.</p> <p>Ms. Tabura remembered concerns in the past which Vice Chair Tudela thought it was because they were incomplete. In the disclosures Mr. Curtis has put forward they are all complete in that there is a zero under income so we have been given the information and Vice Chair Tudela did not see that as an issue because it is possible to have a business, to have a license and no income. Mr. Curtis agreed it was possible but he said they know that Mason Chock has a contract with the County for his business. Vice Chair Tudela called for the vote.</p>	<p>Motion to accept disclosures 1 through 16 and deem as complete failed 2:2 (Nay-Curtis; Tabura)</p> <p>Mr. Curtis moved to receive disclosures with the</p>

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	<p>Asked how the Board would like to handle those specific disclosures Attorney Courson said it would depend on the result of the research and if it is the purpose of the Board to check if they are complete, then they are complete. If it is the purpose of the Board to move actively to investigate inconsistencies then they will cross that bridge then. Vice Chair Tudela said the first step is for counsel to look at all the documents to make sure there is a clear understanding of what the Board's role is for acceptance of disclosures and bring that information to the Board next month.</p>	<p>exception of 3, 4, 5, 9 and 14. Mr. Murashige seconded the motion. Motion carried 4:0</p> <p>Mr. Murashige moved to defer disclosures 3, 4, 5, 9, and 14 until legal advice is received from counsel. Mr. Curtis seconded the motion. Motion carried 4:0</p>
Announcements	Next meeting: Friday, July 15 at 1:00 p.m.	
Adjournment		<p>Mr. Curtis moved to adjourn the meeting at 1:33 p.m. Mr. Murashige seconded the motion. Motion carried 4:0</p>

Submitted by: _____
 Barbara Davis, Staff Support Clerk

Reviewed and Approved by: _____
 Mary Tudela, Vice Chair

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