

Approved

COUNTY OF KAUAI
Minutes of Meeting
OPEN SESSION

Approved with amendments 4/12/19

Board/Commission:	BOARD OF ETHICS	Meeting Date	March 15, 2019
Location	Mo'ikeha Building, Liquor Conference Room 3	Start of Meeting: 1:00 p.m.	End of Meeting: 2:40 p.m.
Present	Chair Dean Toyofuku, Secretary Susan Burriss. Member: Mary Tudela, Ryan de la Pena Also: Deputy County Attorney Maryann Sasaki. Boards & Commissions Office Staff: Administrator Ellen Ching and Administrative Specialist Anela Segreti.		
Excused	Vice Chair Mia Shiraishi, Maureen Tabura,		
Absent			

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Toyofuku called the meeting to order at 1:00p.m. with four members present which constituted a quorum.
Approval of Minutes	<u>Open Session Minutes of February 15, 2019</u>	Minutes of February 15, 2019 accepted.
Communication	<u>BOE 2019-04 Substantive Disclosure Information</u> Discussion on disclosure information and question on responsibility of Board of Ethics. Ms. Sasaki stated that it is the Boards responsibility to review for substantively review for ethical conflict and not just proof read. Ms. Tudela asked for clarification in understanding what she is looking for as far as a conflict of interest when she is uninformed about most of what is on the form. Chair Toyofuku read Charter Section 20.05, D4, Board of Ethics, Disclosures. Discussion lead to looking at disclosures in categories and to seek counsel advisement	

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	<p>when questions arise. As well as to looking at making and/or adopting rules to existing rules, redesigning form (Disclosure Statement); adding explanations in each section.</p>	<p>Mr. de la Pena moved to defer BOE 2019-04. Ms. Tudela seconded the motion. Motion carried 4:0.</p> <p>Mr. de la Pena withdrew his motion and moved to defer BOE 2019-04 substantive disclosure pertaining to the revision of the disclosure statement form. Ms. Burriss seconded the motion. Motion carried 4:0.</p>
	<p><u>BOE 2019-05 Possible conflict of interest and recusal dated February 19, 2019, from Luke Evslin relating to Bill #2733, a bill for an ordinance amending zoning designation in Kapahi, Kaua'i (Baird Family Limited Partnership, applicant) (AZ-2018-1).</u></p> <p>Chair entertained motion to approve to receive communications BOE-2019-05</p>	<p>Mr. de la Pena moved to receive communication BOE 2019-05. Ms. Tudela seconded the motion. Motion carried 4:0.</p>
	<p><u>BOE 2019-06 Possible conflict of interest and recusal dated February 19, 2019, from Arryl Kaneshiro relating to Agenda Item C 2019-44, dedication deed by Grove Farm Land Corp.</u></p>	<p>Ms. Tudela moved to receive communication BOE 2019-06. Ms. Burriss seconded the motion. Motion carried 4:0.</p>

SUBJECT	DISCUSSION	ACTION
	With no objections Chair moved RAO 2019-01 to after BOE 2019-08 and Disclosures to now.	No objections
Disclosures	<ol style="list-style-type: none"> 1. Lyle Tabata – Deputy County Engineer 2. Adam Roversi – Deputy County Attorney 3. Ellen Ching – Administrator, Office of Boards and Commissions <p>Ms. Tudela stated that no source of income was provided in Section III for #1.</p>	<p>Ms. Tudela moved to accept 2 & 3 as submitted. Mr. de la Pena seconded the motion. Motion carried 4:0.</p> <p>Ms. Burriss moved to return #1 for incomplete Section II & III. Mr. de la Pena seconded the motion. Motion carried 4:0.</p>
Business	<p><u>BOE 2018-17 Explicit recommendation on the steps to be taken at the Charter level and the administrative level to improve the existing countywide disclosure requirement coupled with a fine schedule</u></p> <p>Ms. Sasaki stated that she did not write a report and wants to discuss with Board the fine schedule nuances. She read an example of a fine schedule encouraging compliance.</p> <p>Ms. Tudela stated that she prefers that there be no discretion about fines and that there be solid boundaries.</p> <p>Ms. Sasaki quoted from the Charter re: penalties.</p> <p>Ms. Tudela requested clarification of whether Board would be responsible for final penalty or fine schedule but not involved in specific cases.</p> <p>Discussion of need for a draft to see if the options to implement a fine schedule for anyone that is not disclosing as they should. Looking at the whole section and fine schedule and clarifying it. Want the fine to match the offense. Board requesting advice</p>	

SUBJECT	DISCUSSION	ACTION
	<p>and counsel regarding options that they may have to implement a fine schedule and what is the correct vehicle, Board of Ethics Administrative Rules, Charter Amendment.</p>	<p>No action</p>
	<p><u>BOE 2019-07 Discussion regarding outside employment request form.</u></p> <p>Ms. Ching recapped the discussion of last meeting regarding the form, HR form, Building division form, where did it come from. Ms. Ching handed out memos from the prior Acting Director of Personnel Services and former Mayor Bernard Carvahlo related to the form regarding outside employment. Comparing forms from memo and form that Mr. Fujimoto completed forms are identical except at the bottom where the HR form handed out says employing department action: approved or refer to Board of Ethics and form completed by Mr. Fujimoto says approved-disapproved or refer to Board of Ethics. HR is saying that form from them is what was handed out to employees, the other is the Public Works form. Section 20.02 is the basis of the form.</p> <p>Questions arose regarding why Mr. Fujimoto appearing before the Board when request came from Mr. Tabata and why was Board of Ethics reviewing. Ms. Ching researched and found that memo from former Mayor Carvahlo and Section 20.02. HR form amended by Public Works, policy stands.</p> <p>Chair Toyofuku stated that the memos clarify why the Board of Ethics reviews for conflict.</p>	<p>No action</p>
	<p><u>BOE 2019-08 Review Advisory Opinions RAO 13-006 and RAO 18-004</u></p> <p>Ms. Ching recapped discussion of prior meeting regarding Mr. Fujimoto's statements that for "fair and equal treatment" that a favorable decision was given to a prior individual of higher level of authority than he (Lyle Tabata) and therefore Board discussed reviewing that and see if any correlation to his decision.</p> <p>Members discussed both request, Mr. Tabata's and Mr. Fujimoto's. Discussed minutes</p>	

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	<p>of 10/19/18 open meeting in regards to interview with Mr. Tabata. Confirmed that Mr. Tabata was RME for Kauai Veterans, Trucking vs. Construction. They did not get to detail with Mr. Tabata as did with Mr. Fujimoto.</p> <p>Ms. Tudela suggested that there is a conflict with an RME.</p> <p>Ms. Ching handed out information on definition of what an RME is and does.</p> <p>Discussion of how he can do work of RME off County time as the only employee.</p> <p>Ms. Burriss inferred that there is no circumstance under which someone who is an RME for a construction company would not have a conflict of interest in regards to any duties vis-a-vis his County Employment.</p> <p>Ms. Ching went over handouts, Hawaii Administrative Rules, RME (Responsible Management Employee) definition, highlighting that they are an employee, not a consultant, they are the licensed contractor qualifying the company as a licensed contractor. As the principle employee they are the signing authority and ultimately responsible.</p> <p>Discussion of revising, revoking or amending the prior decisions with guidance of Counsel. Pointed out there are two decisions for Mr. Tabata, but could revoke the first which could than make second invalid. To be safe could revoke both.</p> <p>Ms. Tudela stated that she is comfortable with a decision that says if you're going to be an RME we find an inherent conflict and you cannot be an employee of the County. Suggest should revoke both and make another decision that makes if you're an RME than you cannot, and vote that in, and then answer Mr. Fujimoto and say this newly in acted provision does not allow...</p>	

SUBJECT	DISCUSSION	ACTION
	Request to Counsel for review regarding revoking prior opinions.	Ms. Tudela moved to defer BOE 2019-08 to consider revocation. Mr. de la Pena seconded. Motion carried 4;0
Request for an Advisory Opinion	<p><u>RAO 2019-01 Request for Advisory Opinion dated January 9, 2019, from Lyle Tabata Regarding Donald Fujimoto’s outside employment.</u></p> <p>Discussed that deferral decision is based on consideration of revocation on BOE 2019-08 will set precedent on RAO 2019-01.</p>	Ms. Tudela moved to defer RAO 2019-01 to review additional material and to receive counsel’s advice. Ms. Burriss seconded. Motion carried 4:0.
	<p><u>Executive Session Minutes of February 15, 2019.</u></p> <p>Ms. Tudela corrected spelling of her name the second time it appears.</p>	Ms. Burriss moved to adopt the Executive Session minutes with addendum for the spelling. Motion carried 4:0
Executive Session	There was no Executive Session	
Announcements	<u>Next Meeting: Friday, April 12, 2019 – 1:00 p.m., Mo‘ikeha Building, Liquor Conference Room 3</u>	
Adjournment		Mr. de la Pena moved to adjourn the meeting, Ms. Burriss seconded. Motion carried 4:0 Chair Toyofuku adjourned the meeting at 2:40 p.m.

Submitted by: _____
 Anela Segreti, Administrative Specialist

Reviewed and Approved by: _____
 Dean Toyofuku, Chair

() Approved as circulated.

(X) Approved with amendments. See minutes of 4/12/19 meeting.