

HAWAII COUNTY BOARD OF ETHICS

MINUTES – REGULAR SESSION

October 12, 2005 – 10:00 a.m.

Elections Office Conference Room

25 Aupuni Street, Room 105a, Hilo, HI 96720

Present: Reeve Williams, Chair
Karl Kawahara, Vice Chair
Kerry Inouye, Member
Wayne Joseph, Member
Bobby Jean Leithead-Todd, Deputy Corporation Counsel
Mary Crosson, Secretary

Also Present: William E. Smith (observer)
Jay Yoshimoto (observer)
James Frankel (petitioner)
Sidney Fuke (respondent)
Jason Armstrong (of the *Hawai'i Tribune-Herald*)
Rod Thompson (of the *Honolulu Star Bulletin*)

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CHAIR: Let the record show that the Board of Ethics meeting will come to order. It's ten o'clock and all members are present, and we have members from the public. Do we have statements from the public on specific agenda items? If so, would you like to start this side and work your way right across and introduce yourself and tell us your concerns or your purpose for being here.

FRANKEL: My name is David Frankel. I have three petitions, that we'll be discussing this matter _____ wait until we get to—

CHAIR: --Let's wait.

BLT: There's no mics set up down there, so—

CHAIR: Yes.

YOSHIMOTO: Hi, I'm Jay Yoshimoto with the Legislative Research Branch. I'm just here observing.

CHAIR: Okay.

SMITH: William Smith, Deputy County Clerk, observing.

CHAIR: And –

ARMSTRONG: Good morning, Mr. Chair. My name is Jason Armstrong, and I'm a reporter with the Tribune-Herald newspaper. I'm here as _____.

FUKE: My name is Sidney Fuke. I'm a planning _____ consultant, the subject of the third petition. _____.

CHAIR: Sure, sure. We'll get right to that. Before we take on the new business, have you all had a chance to review the minutes of the August session? We last met in August, no September meeting, so just take a look at the regular session, regular minutes, the regular session, are there any corrections or summaries or changes, or, the regular meeting of August. In the new business area there's some items that need to be clarified on some financial statements, which we'll get to in this meeting later on. Any questions or comments? Regular session only, I'm looking at. If there are no comments, do I have a move to accept and file, a motion to accept and file?

WJ: I'll make the motion.

CHAIR: Seconds?

KI: Second.

CHAIR: Favor?

WJ: Aye.

KI: Aye.

KK: Aye.

CHAIR: The Chair votes aye. So _____. In the executive session, did you have a chance to—there's a few items there. Corrections, additions?

KK: I move to accept.

CHAIR: Seconds?

BLT: I have a comment, I think, from the minutes.

CHAIR: The executive session, you're talking about?

BLT: The executive session. Based on the fact that I don't see anything in these particular minutes that would prevent disclosure, because I don't see any personal information that is in the minutes. The concern I have is that I noted that you moved to accept and file the forms in executive session. That was inappropriate. In executive session, you can review, you can discuss, but you cannot actually make a decision in executive session. You have to come out of

executive session and make the motion to accept the forms outside of executive session.

CHAIR: Duly noted. Duly noted, counsel. Thank you. In the future we'll follow protocol.

KK: I restate my motion in that we accept the minutes of the executive session as—

BLT: Well the minutes are accurate. I'm just saying that prospectively, you need to—

KK: --_____ your information, and it won't happen again. Does anybody want to second that?

WJ: Second on that.

CHAIR: All in favor?

KK: Aye.

WJ: Aye.

KI: Aye.

CHAIR: Chair votes aye. Moving right along to the new business. I'd like to move right up to Petition No. 2005-07, and put that ahead of the agenda, since David Frankel and Mr. Fuke are here, and Mr. Fuke, would you like to step forward and come to the microphone, please, and state your case here. While you're doing that, let's all turn to that section where Mr. Frankel impugns a lobbying, a lobbyist—I guess essentially it's a lobbyist—charge. Let me find it. Hang on Mr. Fuke, let's get organized a second here—let me get organized, at least. Okay, we've all had a chance to look at the _____ from David Frankel. It talks about Mr. Fuke.

KK: Is there where Mr. Fuke is involved, 2005-05?

CHAIR: 2005-07.

MC: We jumped to 07.

CHAIR: We jumped to item "c" on your agenda.

KK: Oh, you were moving—

CHAIR: --yeah, to accommodate the public.

KK: Okay.

CHAIR: And that where David Frankel wants us to suggest that Mr. Fuke comply with the lobbyist registration provisions of the Code.

FRANKEL: _____.

CHAIR: David, do you want to come forward, too? Have a chair next to Mr. Fuke here. Let's talk about this. How about we let you go first, and you can reiterate your concern as it's set forth here.

FRANKEL: My real concern is that there's been really no implementation or enforcement of the lobbying law. When I went to the County Clerk's office in August, excuse me in September, to see who was registered, I was shocked to see really, no one's been registering. Well, one or two people a year, and the people who are at the Council lobbying all the time for those of us who've sat there, see at the Council on a regular basis, have not registered. Mr. Fuke was the easiest illustration of the problem simply because over a time period, over a six-month time period, he was far more visible than any other lobbyists. But there are many others. What I have asked for is that essentially you not only ask Mr. Fuke to comply with the law but that you provide some advice to the County Council in terms of what they need to do to assist you in ensuring that the law is complied with, because they're there all the time. They can easily recognize who a lobbyist is, and they should be—they're in the best position to ensure that the law is complied with.

CHAIR: What is that law?

FRANKEL: Well, it's Section 2-91.3 of the Hawai'i County Code, which is modeled after State lobbying law, and it essentially requires lobbyists to meet certain definitions to register with the Council and report on their expenses.

CHAIR: Okay, let me just say at the onset that we—I don't believe any of us are familiar with that Code right now. We haven't seen that Code. So, right up front we need to do our homework on that, so clearly we won't be taking a position on this today, since we have not been provided with a copy. We can seek counsel on that, if you have a copy of that.

FRANKEL: It's in your Code of Ethics.

BLT: It should have been in your binders that were provided—

CHAIR: --the binders?

BLT: Because there should be a copy of the Hawai'i County Code and—

CHAIR: --so I'm the one that's—because I look at that and I thought, well what is the lobbyist registration law. I didn't think to go to my Code of Ethics, because I didn't realize it was cross-referenced there.

FRANKEL: It's just one of the _____ of the Code of Ethics.

CHAIR: Okay.

BLT: If I may, Mr. Chairman, when I became aware of this, what I did is—trying to be pro-active in anticipating that this was going to be coming forward on the agenda,

I took the liberty of contacting the County Clerk's office and informing them of the complaint, or the petition, and asking them to take action to comply with the lobbyist registration, so, the reason that Mr. Smith and Mr. Yoshimoto are here is they are updating the forms and they are also updating procedures to notify people who—they are looking at putting a notice on the agendas, having a lobbyist registration form on the table where the public signs up to speak, and then the other part of that is that the law is broader than just the County Council. This could also apply to the Planning Commission, to Board of Appeals actions, possibly Board of Water Supply. So we are going to be—once they have revised those forms, we'll be taking them and distributing them to other County departments and agencies so they're available when members of the public show up and sign up to testify on matters that the Boards and Commissions are administering. And on behalf of our office, I'd like to thank Mr. Frankel for bringing that to our attention.

CHAIR: Well I second that, and thanks for the initiative in _____ and getting the action moving on this. Clearly, that's _____ missing piece there. I have a question, it's actually stuff like—who is a lobbyist, for the definition?

BLT: The definition, and I think this is where Mr. Fuke has sent a letter to you. The definition in the County Code of a lobbyist is found in Section 2-91.3(a), subsection 6. A lobbyist is defined as any individual engaged for pay or other consideration who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. There are a couple of exemptions within the Code for what a lobbyist is—if someone's testifying on their own behalf, does not have to register as a lobbyist. Federal, State, or County officials testifying in their official capacity do not have to register. Elected officials, again in their official capacity, do not have to register. And newspapers who publish editorials or are taking a position on issues and urging passage or defeat, they are not required to register as a lobbyist. And any attorney authorized to practice law, who's representing a client's interest, he is not required—he or she is not required to register. And the other people are—when an agency or Council invites someone to come and testify on a particular matter because of their special expertise in any area, and so they're there at the invitation—they don't have to register.

CHAIR: It pretty well covers a lot of things—

BLT: If you want this in writing, I can do it, but I looked at Mr. Fuke's letter, I looked at the law, and it seems clear to me that—because Mr. Fuke, as I understand his job—he does spend time attempting to influence legislative or administrative action by communicating with the County Council, with the Planning Commission, that that comes under the definition, because the definition is fairly broad. I know that Mr. Fuke thinks of it as he was hired to process an application, but part of that is communication and urging people to try and vote in favor of that, so I would believe that my evaluation of the Code and the language, and also I did look at codes from other jurisdictions, I did look at the lobbyist requirements

at the State legislature, and I feel that Mr. Fuke is covered. Now if he were an attorney, he could be doing the exact same work that he's doing and he's not required to register, if he were an attorney.

CHAIR: I guess that's your career path, huh? Next step.

BLT: And furthermore, in my evaluation of the Code, it appears that you have to do a separate registration for each separate client, and you also have to file a separate six-month report for each client if you exceed that expenditure amount. And then when you no longer represent that client, then you need to also notify the County.

CHAIR: Let me say that I—before she just did that beautiful summary—I pretty much arrived, by her criteria, I pretty much arrived at the same conclusion myself, so I don't know, is planning consultant business getting more complicated. Would you like to speak on your behalf here?

FUKE: And I appreciate her comments, as well as Mr. Frankel. I don't think that Frankel intended to direct his comments to me—I think he's using me more as an—

CHAIR: --an example—

FUKE: --as an example. And as a result, like—the conclusion that the Board reaches has widespread implication. It applies not only to people like in my profession, but people who go before any boards or agencies, or even for that matter, as it's defined right now, come—any administrative, administrator. If you go look for the chief—the Director of Public Works, for example, and have your construction plans reviewed by a civil engineer. If you go before the Tax Appeals Board and try to help someone else, for compensation, that would also be covered, because it's an administrative agency. So it's—and the only person that would be exempt would be if you're a lawyer. But ironically, you know, like whatever you do, it's the same thing as what a lawyer would do. And so I can't understand the distinction. But be that as it may, whatever the Board decides, you know, we'd have to all comply with that, and certainly we'll comply. What I kind of wanted to just share a little bit more on this, because I spent this morning just trying to prepare. Let me just go through it. You know, I'm not here like necessarily to advocate whether people in my profession, or people who go before boards and commissions, or go to any administrative agencies or before the County Council, to say that, you know, you should or should not be considered a lobbyist. You know, that's obviously an interpretation that this Board would have to make. But, I wanted to explain what I do, what other people like in my profession do, and from that you can kind of hope and make a decision like whether we're covered or not covered. In terms of like what I do, and give you just generally my background. I've got a masters in urban planning from the University of Illinois. I worked for the County Planning Department for over 13 years, and eight years of which was as Planning Director. And over the last 20 years, I served as a planning consultant. And now, what exactly is planning consultant? It ranges—it's all applicant-driven. So you may have, for example, a simple situation is what happened over two months ago. You have this old, kind of elderly couple that

wants to put up an additional farm dwelling on his or her property. They need to get—they need to write an application. They need to justify why a farm dwelling application is needed. And so they ask me. So, you know, I know the process. And so I write the application and I process the application. I have interaction with the staff, I have interaction with—as needed, with the planning director or the deputy planning director, to discuss the situation, to discuss the application. And in the end I get compensated, you know, like whether in this particular situation, whether it's a \$300 gift certificate from Long's or Safeway, whatever have you, it's in excess of \$250, and so technically, you have to do it. I've also gone before like, Tax Appeals Board, where people want to make a case that their property should be assessed at a lower value because it's agriculturally zoned, and so on and so forth. I have to prepare the petition, and you know I get compensated for that. I'm not a lawyer, you know, but I do like—I do have an understanding of the process. I do have an understanding of what some of the land use implications are. There are other people who also do that, too. You know, there are people like—you know, in large engineering firms, for example, like _____, what have you. They prepare construction plans that are needed for the review and approval by different agencies, whether it's Public Works Department or the Water Department, and that's all needed as part of your subdivision approval process. And they must interface with the staff. They must also at certain points interface with the director, who makes the decision, who signs off on it, and they get paid. They get paid for it. And so the question is like, then, are they then subject to the ethics requirements, too, you know. Because I would think that under the broad definition, they probably would. Then I was just going to pass these out. These are just illustrative of how—you know, what a typical rezoning application looks like. And what it is, it's like--_____ an application form, I'll just direct you to that. And if you look at the applicant—you know the applicant signs off on it, the land owner has to sign off on it, and then you have like their agents. And like in this situation here, whether it's a lawyer or myself, or like any other person, they would serve as an agent. And see, then, like the last column. Who is the correspondence supposed to go to, the original and the copies, and so you indicate like who they go to. You look at the back page, and it says these are all of the things you need to do before a rezoning application can be filed. And a lot of times you have people that come in and feel like wow, this is overwhelming, I can't do it. And so they seek out people like myself, or they seek out people like—who are attorneys, who are conversant in the land use process, and then they ask, can you do it? And so, what I do is then I prepare applications like what I just shared with you, which would then kind of _____ to discuss the potential environmental effects, you know, of the nature of the project, and try to look at the general plan and related codes and try to justify why this project should or should not be allowed. And if you go on—you said the Board's not going to render a decision today—but as you go through the literature, you'll find that there are correspondences between the department or different agencies and myself. And they all get packaged together. And so there is definitely a public disclosure relative to my role as an agent or representative of the applicant, and everybody knows that—that this application, for example is Janice Oshiro. She's the owner of Floral Mart, and she wants to have her property rezoned. And she doesn't know, she's _____, so she asks

people like myself, you know, to assist her on that. And so then, it is true, as what Ms. Leithead-Todd is—if you look at the definition of the Code, you know at some point I'm going to have to interface with all these guys who make the decision or make the recommendation. And I have to communicate. But the question is like, does the communication—you know, is my sole job communication on a generic level, or is the communication on an applicant-specific basis? And I would say that—if I have no application before the County Council, if I have no application before an agency, I'm not there. What I'm trying to do also, I'm trying to get a better understanding of the legislative history behind this lobbying requirement, and I didn't look at the State law. All I did was I just looked at the—when the County Council passed this legislation back in 1984, _____ 1984, the registration requirements. And if you look—it's very shallow. It doesn't say why—who—you know, it doesn't make any definition of who a lobbyist is, who is, and why. You know, it just made some minor corrections, and they just passed the ordinance, so I have no idea as far as like, why—and then I figure like, well, it may be in reference to the State law. And then if you ask yourself who are those guys who must register, or who register at the State level? And you have people who represent HELCO—I have a list. There are people that represent the American Savings Bank, Kahala Beach, Kaiser Health Foundation, the Gas Company, Bishop Museum, Board of Water Supply. And so you look at what—who are these people, who are these individuals that are registering? And second, if you ask yourself like—at the legislature, do they consider applications? They don't. They consider broad definitions, and here at the County Council level, you know, if there are, like legislation relating to, like the public legal access—the Public Access Trust Fund, you know, where there was a lot of _____ by, for example, the Sierra Club and other entities, you know, that's a generic legislation. You have on the other hand situations where people want to amend the solid waste code, you know the tipping fees, or what have you, and you have people who will get paid to represent interests on a generic level. But those are all _____. They're not like an application for a change of zone by Janice Oshiro, for residential to commercial, and it's very specific. And that's what I'm there for, on all of these specific legislation. I'm not there, like to lobby on whether certain bills, you know, broader bills, you know, should or should not be passed. If there's no application, there's no reason for my being there. And so I think that the measure _____. But on the other hand, the law is structured, the ordinance is structured, so that it covers everybody, then I say like, well, if it covers me then it should also cover, like, all of the civil engineers that have to have construction plans reviewed and approved, all of the surveyors that also prepare things—that any person that interfaces with an agency or the County Council, to testify, or makes presentations before the County Council, directly or indirectly they're trying to influence, on behalf of their clients, the passage of certain legislation. Sometimes you have lobbyists who are there to try to say, don't pass it, you know, paid people, paid individuals or paid firms, to say like, I don't want things to change. But in our situation—situations like applications, we're trying to prevail upon decision-makers to basically see it in the way that the application has.

CHAIR: Well stated, and I think we all understand exactly where you're coming from, and that you made a great point, a great education for all of us. Correct me if I'm wrong, Board, but I don't think we're going to arrive at any opinion, or any advisory opinion today. We have to do some homework for this—certainly I do, if we get into the lobbying law. And I think it's instructive in that it's—the lobbying law may need to be looked at, and the definition of who is a lobbyist. We may need to look at the language of that. I'm inclined to go that way. I certainly recognize the good work you do. It's an enigma for me right now, _____, and we need to think this out better. David?

FRANKEL: I want to respond in two ways. First of all, Mr. Fuke is correct that this registration requirement is similar, if not virtually identical, to the State requirement, and before the State level they do register. All kinds of folks—whether they're lobbying at the legislature or administrative agencies. In fact, when I was paid as a lobbyist for the Sierra Club at the State level, I registered as a lobbyist, and one of the bills I supported was a bill to eliminate at the State level the unjustified exemptions for attorneys. So, if Mr. Fuke—I'd be more than happy to join Mr. Fuke in lobbying to eliminate this exemption that lawyers benefit from. And I'm a lawyer—

KK: Attorneys wrote the law.

FRANKEL: That's right, that's right, and it is not appropriate. But in any case, you can do two things. One, you have to interpret the law as it is now, and two, you can make suggestions of changes to the County Council. Well, so—I will support you if you guys propose a change. The last point I want to make is—Mr. Fuke seems to draw a distinction between laws that have specificity to an individual and those that are more generic, and I think it's fairly important to know that we know to know information about both. Okay? When the trust of public land supported a change in the law to allow for property tax revenues to the extent of land acquisition, the lobbyist registered. He's one of the only people that has complied with the law. When—and that's a law that has some generic, over board implications. When _____ proposed a massive and _____ in Mayor Kim's mind—inappropriate development at Ooma, it's a specific piece of legislation, and it concerns a lot of people. And we deserve to know how much money the applicant is spending lobbying to get this measure passed. This is public information. It's in the law. And that's the kind of thing that needs to be disclosed. So regardless of whether it's generic legislation or specific applicant _____ legislation, all the information needs to be disclosed. It's the law.

CHAIR: Well perhaps both of you could help us in a positive way to work out a win-win change to the legislative language, because clearly he's an established, respectable business man—(TURNED TAPE OVER) _____ of engineers, people who are making the proposals for the new solid waste—you know, biogassification process, and so on. Do they all become lobbyists, right? I think maybe we do need to have some common sense accommodation here, and I think—I'm going to ask Bobby to be the focal point, or Pat O'Toole, as the case may be. The two of you are Corp Counsel, and clearly we need an attorney for some help on this, and

we'll get involved in that process, too. But any input that either or both of you could make to suggest a way to make this a practical law—

FRANKEL: I don't see why there's any practical difficulties. People comply at the State level. People have been ignoring the law at the County level. The only practical implication is—people who haven't been complying need to comply. They just need to disclose.

CHAIR: Have you looked at the other counties, to see what's going on in the other counties?

FRANKEL: I have not. All I'm familiar with is at the State level. I'm a little familiar with City and County of Honolulu. I know they have a similar registration requirement.

CHAIR: _____.

KK: Well first of all I'd like to make public the fact that I know Mr. Fuke quite well. In fact, we both golf on the wrong side, which is why I actually know him even better. But what both of you have referenced to—maybe is the _____ of the law. Unfortunately there are laws that are open to different interpretations. As far as I know, in the history of our country, in the history of our world, that's what courts are set up for—to interpret laws that are interpreted differently by different people. You can have a law as clear as daylight to you, and yet to someone else it means something different. And so we have cases backed up in our courts to try to determine what the law really means. Now, having said that, here we seem to have a difference of opinion as to what the lobbying law really means. My question to Mr. Fuke is, what would it be to you to register as a lobbyist? I mean, does it, in spite of the law, in spite of maybe some of the _____ of the law, and Ms. Leithead has said that she has informed the various departments to be more specific about things—but you, personally, if you registered as a lobbyist, would that mean a great hardship for you in your work?

FUKE: Absolutely not. But the only thing, Karl, that I'd like to point out, is that if the decision is that people like in my profession would have to register, then—and you're using the law to say that this is why I have to register—then I would interpret that law, I would say that law has to be generically applied to all individuals or companies that appear before any agencies that require approval. And that means like, even for a building permit, like an architect. That architect needs to have their plans in—for your home, for example, that architect needs to have that plan reviewed and approved by a number of agencies, and during the process, they have to interface with the decision-makers. And they get—and certainly they'll have to be compensated more than \$250. So essentially what I'm saying is, if I have to register, and I have absolutely no problems in having to register, then I would say that each—the individual or companies that interface with the government that have received more than \$250 in a six-month period would also have to apply. And that applies not only to the County Council, anybody who appears before the County Council, but it also has to apply to all the

administrative agencies. What I'm trying to make earlier is that absent any specific guidelines on the County level, if you look at the State level, the State level situation is not when they, when they pass law and you have all of these people going and registering. They're not registering for specific applications. They're registering to either protect their general interests or to advocate general interests on a generic level, whether it's like _____. It's a generic thing, it doesn't apply to an individual. But on the other hand, for example, when the public land trust law was being considered, and if you have an individual that's representing maybe Kamehameha Schools, or Campbell Estates, or whatever have you, and don't want to have that law passed, and they hire me or someone like me to say, stop that law, or to advocate, make certain changes, then I would consider under that certain case that you are definitely a lobbyist, because you are now not handling an application, you are dealing with a generic type of legislation that has broader implications, as opposed to dealing with an existing ordinance that you have, and then you have to kind of have it like, have it go through the process. So, that's my interpretation.

CHAIR: _____, David, do you concur with that? I mean, with this generalization, that if him, then architects, engineers, and the rest of the professions that deal with the County, either discretionary or legal law _____ decisions?

FRANKEL: _____. Again, there are two roles that you play. One is implementing the existing law as it's written. The second is making suggestions to change existing law to the Council. But—wearing that first hat, the law provides that if there—if a lobbyist is attempting to influence legislative or administrative action, if that person is covered by the definition, then yes, they have to register, as simple as that. If they don't fall under that definition, they don't have to.

CHAIR: And the second instance?

FRANKEL: In the second instance, whether every architect should be included, I would not like to see a blanket exemption for architects like lawyers have. I'd like to see fewer exemptions. I'd like to point out that the Code of Ethics begins with a provision that says, provisions of the Code should be liberally construed to promote ethics in government, and I think that should guide you in terms of, you know, if there's a question of being over-board or over-narrow, you go over-broad. Might it be appropriate to provide an exemption for people who are dealing with getting a building permit? Maybe. I don't have—

CHAIR: --or a rezoning action?

FRANKEL: No. Rezoning is a legislative matter, and you know, this is—Sidney and I violently disagree on this matter. I mean, it's a completely incorrect paradigm to suggest that a zone change is a ministerial action. It requires legislation. It is a discretionary decision by law-makers. It is a change in the law. What an applicant does when they come for a zone change is, they're asking the public to change our law to conform to their conduct, rather than conforming their conduct to existing law. A zone change is fundamentally lobbying. A plan for a building

permit is, under the broad definition, potentially covered. It may be appropriate to cause an exemption for that. I don't know how many people are involved. But the law is as it is, and that's what you have to go by.

CHAIR: Bobby?

BLT: Mr. Chairman, I'd like to point out that there is already an exemption in the law for ministerial matters that require administrative action. There is case law before the Hawai'i Supreme Court that defines processing things like building permits as ministerial in nature. So it would not be as broad an application as Mr. Fuke indicates. However, there is the potential, and I think that perhaps you may want to ask us to research and write an opinion on this—

CHAIR: Essentially we do—

BLT: But when it's—the question is if you have someone like Mr. Fuke who's processing an application. In his capacity of processing that application, he then hires a botanist to do a flora and fauna analysis. He hires an archeologist to do an archeological study. He hires or works with whoever the engineer is working on a particular project. And he may show up at the Council and at the Council meeting, although he is the agent and representing the client, he may in fact have the engineer there to answer engineering questions. He may have the botanist there. And I think because there are actions before Planning Commission, where some of these issues were _____, and so you may have all of these other people that are there not so much to urge the passage, adoption, or amendment of a particular measure, but they're there because of their expertise. They were hired and they're there to answer questions about their reports that they have filed. And so the question would be is, whether the law is so broad that all of those other people that are then hired by someone like Mr. Fuke, who's the point guard, so to speak, are covered under that law. And I don't have a definite answer on that. I did not look at that particular issue. I did take a look at the issue of the building permits before today's hearing.

FUKE: I think the major _____ if you look at the definition of the lobbyist _____, it says that for one thing, you have to get paid for consideration no more than _____ in excess of \$275 in a six-month period. Now it says, like, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. And I think that, as I mentioned earlier—because absent any guidelines from the County level, if you look at the State level, you know—at the State level you don't have any applications, unlike at the County level, you do have applications. And applications by law have to be either process administratively, or applications that must be required by law, legislative action. And so I think the distinction is that you know, people like myself or Greg Mooers (?) or _____, you prepare and you process. Sometimes you have, on the other hand, you have individuals or corporations that are hired not to prepare and process but just are there to influence. They're just there to influence. And so, if they're walking the halls of the legislature or at the council, and you know, they're just walking around. You

don't know who they're representing, necessarily. But if you're asking me, I'm going to say, yeah, I'm representing today Janice Yashiro, and no one else. And if I don't have any reason to be there, I'm out of there. And that's why like, for the most part, people like in our profession, we don't go and testify on the general plan amendments, you know, like any amendments—for me, anyway. I don't make it a practice to go before the boards and commissions or the County Council and say, like, the zoning code should be amended to say this and this and this. I don't make testimony. The way I deal with it is like, you just passed a law, and then I'll have to just deal with it. Because otherwise I feel like it's going to be a personal conflict to say I want to influence in one way or another. So I don't testify, and you can look through like 20 years in legislative history, you know, on the records. I haven't testified on any legislation dealing with other than applications.

CHAIR: Members of the Board, do we have any further—have any questions or—

KI: --Yeah, I have a question. Okay, according to your petition, if I read this correctly, you're using Mr. Fuke kind of like an example and not—not like condemning—

FRANKEL: --well, in using him as an example, I'm hoping that the _____ will instruct him to—

KI: --not only him, though, everybody. You're speaking about everybody.

FRANKEL: Yup.

KI: So in other words, we're looking at an amendment to this law?

FRANKEL: No.

KI: No?

FRANKEL: You're not looking to—my letter doesn't talk about an amendment—

KI: --No, no, no, no. Not to this particular thing, but amending this to where anybody that wants to speak in front of Council needs to register as a lobbyist?

FRANKEL: No. What—no, no, no, no. I'm—okay, first my letter has to do with existing law. I did say today, I would support changes to the law, for example, getting rid of the attorney exemption. I'm not saying you should require people to register who aren't paid. For example—I mean, the way the law _____. So in terms of changing the law, the only thing I think I mentioned was getting rid of the attorney exemption. There may be other things that should change as well, but that's sort of a different matter.

CHAIR: Kerry, you want to pursue that?

KI: Well, it's not really only Mr. Fuke, then.

FRANKEL: No.

FUKE: I think that, well from my perspective, as I mentioned earlier, you know, whatever the Board decides, so be it. In answer to Mr. Kawahara's question earlier, I'd say if I'm registered—it's no big deal I got to register, you know. The _____ more like a sidebar, is that if I'm covered under this net, you know, based on your interpretation of the existing law, then the net is so wide that it'll cover a whole bunch of other people that go before boards and commissions and administrative agencies. And then, too, as your counsel indicated, there may be certain ministerial things that can be exempted. But on the other hand, there are so many other discretionary decisions that are made by administrative agencies, whether they deal with variances, whether they deal with a farm dwelling permit, whether they deal with granting you an exemption before the Tax Board, or they could also deal with a liquor license—they're all discretionary areas, so all I'm saying is that the net is so broad that all of these individuals, you know—whatever the Board decides, you have to be very careful to make sure that all of these—not only the legislative bodies, legislative body, rather, but all of the administrative agencies and their administrators are made fully aware and that the general operating community—people who vote for boards and commissions and administrative agencies, are made aware of what this requirement is.

CHAIR: Well, I think you're quite right. Any further line of inquiry from the Board?

KK: Well, I don't think we'll make a decision in regards to you specifically, because that was not correct _____. So I don't, you know—some of the parts of your letter were kind of troubling to me, and you got your reply for Corporation Counsel, I think—

FRANKEL: If you can _____ that up, let me respond—

KK: --no, your implication in the last paragraph.

FRANKEL: Right. Well, I think Lincoln is wrong. I think you have to go—when you're a public official, you have to act according to an appearance of conflict standard. And I'm sorry—Lincoln is out of line to suggest that I'm out of line. I don't—it's not going to get to that stage. Mr. Fuke said he will abide by whatever decision you make. But if he didn't, there is—it is problematic. You have to understand that our Code of Ethics needs to be interpreted and implemented into the highest standards of ethical conduct. The prosecutor has discretion about whether to bring a case or not, and it is troubling to the public. That's all I'm pointing out. We're not even going to get to that level. Mr. Fuke's agreed to comply. I'm sorry—I think Lincoln has failed to appreciate the significance of an appearance of conflict. It is an appearance.

CHAIR: Well, without getting bogged down in that, I think we need to—if it pleases the Board, I would suggest that we defer this action pending further research. We're

blessed to have Ms. Leithead-Todd as counsel, because she's been—she's well experienced in planning, in the County Council, and legal research pursuant to planning.

BLT: Just to clarify. In the request to do additional research, I would probably also want to cover not just the definition of lobbyist, but also exactly what types of expenditures are required to be reported, and that's because I got the incorrect—perhaps from Mr. Fuke—that the \$275 figure was based on compensation, and it is not. It is based on actual expenditures. So it would be things like if you take a council member out to lunch to discuss proposed legislation, and you paid for the lunch—

CHAIR: --\$20 worth—

BLT: --then that's an expenditure, and it would be—if you had \$27 lunches and there were ten \$27 lunches--\$27 _____, so that you got to that, and that's how you get to that \$275. So I would cover that, too, and that's because there is a difference between the County Code and some of the requirements in the State, and I did look at some opinions on how you add up the five hours, because it—the five hours is only when you are actively meeting with someone to influence them and speak to them, so they've had some specific calculations in terms of that, so it may be that in some of—cases, Mr. Fuke can make a judgment call that he doesn't have to register for a particular application, because he's not going to hit the five hours and he's not going to expend \$275.

WJ: I have a question, because it says any individual engaged for pay.

BLT: Who spends more than five hours in a month or \$275 in any six-month period.

WJ: Or \$275.

BLT: Yes. So if he spends five hours—

WJ: --If you're engaged for pay, wouldn't you then be a lobbyist?

BLT: Not necessarily.

WJ: But that's how I interpret this.

BLT: You can be engaged for pay to do paperwork, but if you never contact County officials to urge passage or defeat—

WJ: --wait a minute, I understand that—

BLT: --and the pay or other consideration is qualified by who spends more than five hours in any month or expends \$275. So in other words, you could be hired for some matter, but if you didn't—like let's say today's hearing, because there isn't a requirement that you be represented by an attorney here, or—and you know,

let's say Board of Appeals, there's no requirement that you be represented by an attorney, and you have one matter before the Board, and if somebody comes to represent you, and you're going to pay them. But that entire matter before the Board takes less than five hours, and you have that one appearance, you don't have to register. If you don't take anybody out to lunch, you know, you're entire dealing with the County took less than five hours, and I looked at some of the rationale and some of the discussion on the State level when they made amendments, and part of it was the reason that there are these qualifications in terms of when you have to register, is that they did not want every single person who ever appeared at any time to have to register. So they wanted someone who's actually spending a certain amount of time or a certain amount of money. So in other words, if my brother has an application, I'm not there as his attorney, so I have to—you know—if he's going to pay be a hundred bucks to process stuff for him, and I make one appearance on his behalf, and that's it, and it's less than five hours, and I don't take anybody out to lunch, I don't have to register as a lobbyist.

WJ: But this is my question. Okay. The same scenario. You get \$100, and it took you five and a half hours. And you didn't take anyone out to lunch.

BLT: Then you hit that plateau. You took five and a half hours in—

WJ: --that's what I was getting at. It's just pay plus more than five hours, or the \$275.

BLT: Yeah. And it's pay plus the \$275. Pay or consideration plus five, or pay or consideration plus \$275. But if you're doing it manuahi, if you're doing it free, you don't have to.

WJ: I got it. I got it.

CHAIR: In your research—so, some typing up of the definition of ministerial functions, I mean that needs to be certainly looked at. And then so, I—Board, would you feel comfortable in making a decision today, or do we need to—

KK: You know, Mr. Chairman. I don't know what decision you're referring to.

CHAIR: Well Mr. Frankel wants us to decide—

KK: --We have made the decision that she'll do research. Mr. Fuke in this case is only an example and not—we're not going to rule anything on Mr. Fuke.

FRANKEL: I think you're incorrect about that. You're extrapolating more from my statement than I said. I said it's an example, but you still need to make a ruling—

CHAIR: --on what? He needs to register as a lobbyist or not?

FRANKEL: Whether he needs to register as a lobbyist.

KK: That's not what you asked.

FRANKEL: In fact, I would like to ask—

KK: Let me give one example, Mr. Sidney Fuke. You didn't ask us to—

FRANKEL: --paragraph four, I would like to ask that you inform Mr. Fuke that he would comply with the provisions of the Code and provide information he has failed to provide for years. In addition, you should remind the County Clerk and members of the County Council that you need their assistance in reminding lobbyists to comply with the law.

KK: Okay, we have done that. We have done that part—

FRANKEL: You said that's already taken care of. But you still need to resolve this. Mr. Fuke is waiting for you to make a decision, so you do have a decision to be made.

KK: Okay, I stand corrected. I have that underlined—

CHAIR: Again, are we ready to make _____.

KK: No, I had asked pointedly awhile ago if it would be too much of a problem for him to register, and he said no, and so what if he does register as a lobbyist? Does that resolve your problem as far as Mr. Fuke is concerned?

FRANKEL: Yes. I think—

KK: --if he complies with whatever provisions of the present interpretation of the law?

FRANKEL: Right. It's probably a prudent exercise for you folks to go through and come up with a written opinion as sort of a guide to others, but you don't necessarily have to do that. I think it's helpful, but you know, if he goes ahead and registers and information is filed, you _____ could just say okay, this case is moot. It's within all possibilities.

CHAIR: _____. So in your judgment call—

BLT: --you could also, in response to Mr. Frankel's letter, rather than doing a formal opinion, you could ask me to draft a letter on your behalf to be sent out to the County Council and the County Clerk, who's actually the one responsible for the lobbyist registration, as well as other boards and commissions, citing the reference to the County Code and informing them of the need to have lobbyists and then asking the Clerk's Office to provide those forms and registration forms to the various County boards and commissions. And then in the meantime, I will do some further research to address the issue of ministerial, or what is or is not an expenditure that must be reported, and get that back to you for your next meeting. But in the meantime, I think you can ask, and basically—because I did it informally. You may want to formally have a letter, that I would draft and then

you would approve to the form of the letter, or you could just tell me to go ahead and have the Chair sign on behalf of the Board—a letter basically asking the Clerk and County boards and agencies to comply with the law and having people register. And then next time we can start dealing perhaps more with who is or is not a lobbyist, because that one—I think you need to address whether Mr. Fuke is within the definition of a lobbyist.

CHAIR: After we do the research.

BLT: I will do the research, and then I guess at the next meeting we can make a determination. But in the meantime, if you direct me to, I'll send that letter out.

CHAIR: It sounds like a wise course of today. Do you have a sense of that, Board, on that? If that is a good course, then I'd like to hear a motion to defer—

FUKE: I'd just like, if I can understand what you're just saying, _____, that there would be no decision made relative to people like in my position at this point in time. You're going to do some additional research?

CHAIR: Yeah, there's loopholes in the law.

FUKE: Correct, yeah. I'd like to also suggest that—you know, if and when those—a determination is made and you know, and subsequent guidance be provided to the legislative as well as administrative agencies, that there be specific clarification on certain issues, like, you know, for example, what you raised—like is it \$275 or five hours, and then you know, five hours, is it like you attend a Council meeting and sometimes you're sitting down there all day, and then you go before the Council only for five minutes. I mean like, you know, and making sure that that five hours is like five hours of interacting time, and whether the interacting time is before a public setting, before the Planning Commission, or before the County Council, or does that five hours relates to one-on-one interaction or two-on-two interaction, like, with a particular decision-maker, and I think those kinds of things need to be clarified.

CHAIR: Those are good—good suggestions. Do you want to add some more to—

FRANKEL: Well, just so you know, I did file—this is probably ten years ago with the State Ethics Commission-- _____ waiting around, and the Ethics Commission said no, waiting around doesn't count. I disagree with that interpretation. I think it should count, because the person's being paid to sit around and wait and it's the kinds of—I think it promotes disclosure so the public knows how much _____ or whatever it is, is spending to get a decision. Members of the public wait around all day, sacrificing their time, and they should know if someone's being paid from the other side. I think the spirit of the law requires that. I understand that the State Ethics Commission has disagreed. You guys are free to make your own _____.

CHAIR: Likewise a good suggestion. I think we'll dig into this in some depth. And again—(TAPE ENDED – NEW TAPE INSERTED)

KK: I'd sure like to take another crack at, you know, this last paragraph here. Are you implying that if a person gives \$5 to a campaign, it's slightly problematic, whether it's the mayor's campaign, or governor's campaign, or what? Isn't that why you set a _____ the law sets a plateau, "x" amount of dollars?

FRANKEL: Let me answer that question. There's a difference between the mayor and the prosecutor. The prosecutor has sole discretion to take enforcement action, and I think—I think it's—

KK: --so he shouldn't receive any--any campaign contributions, then.

FRANKEL: I have to say it is potentially trouble. We don't let judges collect money. Our state is a _____ state. We don't elect judges. In other states they do. I think it's quite—

KK: --which is problematic.

FRANKEL: Quite problematic. I think the same issues arise when you're dealing with a prosecutor, because of the issue of prosecutorial discretion. You know, it's an issue that's beyond what we're here to discuss today, but I do think it is problematic, because of the—you know, you look at the people who have discretionary authority in government are appointed. _____. They haven't received campaign contributions. The planning director, who makes discretionary decisions, whatever, planning commission members. It is problematic when the person who's in charge of enforcing—they collect money from someone that they were to enforce against, whether it's—you know, if I'm a kidnapper or robber or whatever and I'm giving money to the prosecutor, you know, everybody's heads would just—woe, you know. Anyway.

CHAIR: Well, I think we're running far astray here. I think we need to have a motion made to defer action pending further research and continue with counsel, a closer reading of the law in regards to the _____ and involving the County Office of the County Clerk. Then we should meet again to discuss _____ registering as a lobbyist and other matters, other persons, other professions, other people having dealings with government, County government. Do I have such a motion?

WJ: I'd like to make a motion to defer to the next meeting and have the Corporation Counsel write up recommendations.

CHAIR: Any seconds?

KI: Second.

CHAIR: Any further discussion? All in favor?

WJ: Aye.
KI: Aye.
KK: Aye.

CHAIR: The Chair votes aye. Motion is carried. Thank you very much.

FUKE: Thank you.

CHAIR: We appreciate the information and the education. Next item on the agenda. I'm going to reverse _____ so we're going to move up to number "b" in New Business, 4b, Petition 2005-06, David Kimo Frankel seeks a decision regarding interpretations of the law as it relates to financial disclosure forms, informing the public and government officials of the interpretation, and better guidance on the form. Please refer to Mr. Frankel's letter dated September 7, I believe.

WJ: That's 05?

CHAIR: Yeah. We're on Petition 5, Petition 2005-06. Numero 6. Okay, David Frankel's letter of September 7, inquiry written pursuant to the County Charter, Section 451[sic.: Section 14-5(a)] which authorizes the Board of Ethics to interpret the Code of Ethics for members of the public. Disclosure—financial disclosure forms. See that letter? Okay, and we have supplementing that a letter from Mr. Les Kondo, right, Director of Office Information Practices.

FRANKEL: I don't think that's _____.

CHAIR: I'm wrong. That's not—this is a stand alone issue here, a stand alone issue here. Now we, members of the public, we do review financial disclosure forms and Mr. Frankel has concerns in your own words, which somewhere, as you know, were—

FRANKEL: --sure. You know, I looked through the forms that were upstairs _____, and I was struck by two things. It doesn't appear that folks are including their spouses in the disclosure form, and the form that people fill out, to me is not particularly consistent with the law. And my interpretation of the law is that you are supposed to include your spouse's information on that, and that is the interpretation of the State Ethics Commission. The second issue is that of mutual funds, whether that information has to be disclosed. I think the law is pretty clear that it does. I think as a policy matter, that kind of information is not necessary, but, you know, we're operating with what the law is, and because the forms are not clear now, just to give you a little aside, when I was on the Environmental Management Commission, I had to fill out the disclosure form. The first year or two, I didn't include that information and reading the application, what struck me is that it wasn't asked. And then after a year or two, I looked at—instead of looking at the application I looked at the law, and the law, it was very clear to me that that information is to be provided, so I went ahead and corrected, but—I mean, it's very unclear to people filling out the application that they're supposed to include—

FRANKEL: So again we have a legal issue here, as much as anything else. I tend to agree with you personally, I tend to concur with your first observation. Spouse should be up front there. Whether someone knows, needs to know if you're doing business or working for the County, whether you inherit your grandfather's farm in Vermont worth, you know, \$300,000 is pretty moot, or whether it's some mutual funds or _____, it's pretty moot as it pertains to County business. So maybe—is there any discussion among the Board on this issue, _____? Ms. Leithead-Todd, you're probably in the lead position on this one, as well—

BLT: --I took a look at the State, the State law on financial disclosure as well as the County Code provisions, and I note that the language is substantially different in terms of what is required and whether you are required to disclose the interest of spouses and children. Whether there is no specific provision in the County Code on reporting spouses and children, in the State's law, there is specific language that states that, though there's an exemption for candidates for State elective offices, candidates for State elective office are only required to provide their own financial interest, but for all other persons, they're required to state, in addition to the financial interest of the person disclosing, the financial interest of the person's spouse and dependent children.

CHAIR: State law.

BLT: That's the State law. The County Code provision is different. That language is not there. So for me, and I did not do a further analysis, I guess there were two issues on this. One is whether the State law on financial disclosure which may apply to people running for office, which would be the County Council members, may require further disclosure on those forms than the County Code may require for other people, and so I have not reached a conclusion on that but did not have a chance to take a look at that because there is separate language. But when you are evaluating what the codes and provisions mean, and especially since so much of the County Code provisions were basically borrowed from the State, the absence of the language in the County Code that specifically says that you have to disclose your spouse and your children, and the fact that that language is in State law and the drafters of the County Code are aware of that language, and the fact that I also recall back in 1993 or 1994 discussion on the County Council when they were looking at disclosure statements and the discussion up on whether they should require disclosure of the financial interest of spouses and dependent children, and this was—in that time I believe the discussion was not so much on the context of the financial disclosure but they were doing the gift disclosure law, and there was some discussion about it and the County Council discussed and reached a conclusion that they did not want to require disclosure of spousal interest, and my recollection is, one of the council members who was most concerned about it happened to be Keola Childs, who was married to a Greenwell at that time, and he was very concerned about having to disclose any interest that his wife had because they were substantial, and they had that discussion on the Council and they elected not to require in the gift disclosure section the spouse, and they were also looking at the other Code, so I can't give you a definitive answer on that, but

I would suggest that the difference in State and County language is something that you would want to take a look at in rendering a decision on whether you had to disclose that or not. And again the State law may impact some County people as people running for office, because the language in the State law seems to carve out an exemption for State electives and I'm not sure if State electives includes County Council members. I'd have to take a look at that a little bit more. So I don't think it's quite as simple as Mr. Frankel puts it out. I think you really need to do an analysis of what the intent of the County Code is.

FRANKEL: May I respond a little bit? Bobby Jean, I'll refresh your memory a little bit. In 2002, you authorized a bill that became Ordinance 02-109, and the purpose section is, the purpose of this section is to amend the County Code of Ethics to follow the language contained in the State Code of Ethics.

CHAIR: I remember that.

FRANKEL: And it specifically changes the sections relative to disclosure. Now, Bobby Jean is correct in identifying that there's one section different between—

CHAIR: --State and County.

FRANKEL: State and County, and I, you know, mentioned that in my letter. There are two plausible explanations. One is, the Council made a conscious decision. But this is not when Keola Childs was on the Council, so I do not believe, and I've asked to look at the legislative history, and there is none. I believe, based on my experience at the Legislative Auditor's office that more likely the Legislative Auditor's office made an error as it was—is prone to do, and did not copy the thing. But even that aside, if you look at how the Code is constructed, first of all, it's supposed to be liberally construed to promote high standards of ethical conduct in County government, that's Step 1. Step 2, a financial interest is defined as interest held by individual, the individual's spouse, or dependent children. So we already have in the definition of financial interest spouse's information. Furthermore, the disclosure of financial interest shall state the financial interest of the person disclosing, quote, whether held in the person's name or by any other person for the person's disclosing use and benefit.

CHAIR: Where's this cite in the law?

FRANKEL: This is Hawai'i County Code 2-91.1(c), which is part of the Code of Ethics. So my—I hope I don't get in trouble here, but you know, the money my wife has in her account is for my use and benefit, just like the money I have in my account is for her use and benefit. And—I mean that's, legally, we can joke about it, but when you submit your disclosure form, granted the County Code is not clear as the State law, the provisions that are in there liberally construed have got to mean that I've got to include information about my spouse. So, you know, if my spouse has business that comes before the County, if it's a public disclosure form, people should know about it. If it's not a public one, you guys should be able to look at it and make some judgments.

CHAIR: I know I agree with that. I don't know about, if we need—there's still a glitch, there's still a glitch, though, because you're reading into it, it doesn't clearly state that in the law right now, and so we do need to clean that up. That's a piece of staff work we need to do.

BLT: And that amendment—and Mr. Frankel has spurred my recollection—there was a specific amendment in the gift disclosure to include the spouse or dependent child, but that change was not put in the financial disclosure. So that's why I'm saying that it's a little more complicated, because you have—when you have language in one section that is not in another section, you have to assume that the people who enacted the law had a reason for not having that same language, and that's why I'm saying I think it requires a little bit more research and taking a look at it.

CHAIR: Any discussion on that one point alone, _____, that should be the case. Wife should be on there too—

KK: --what about siblings?

CHAIR: For example, if you're running for—siblings?

KK: Do you include siblings, because siblings would be in the same—

FRANKEL: --No, I don't think siblings. Dependent children you would, but not siblings.

KK: But they could have an impact, too, _____.

FRANKEL: Well, again there's a difference between the policy of whether that should be what the law requires. I don't believe the law requires siblings.

KK: No, no, I'm not saying. I'm asking you, you would include siblings, too, since you're a liberal interpreter of the law—

FRANKEL: --I don't think so. You know, I can think of certain circumstances where, you know, my brother's doing something and that should be disclosed, but on the other hand, a lot of brothers don't like each other, you know. I don't know. I don't think so, because you don't know enough about your brother or sister's financial interests, and let's say you decide to run for County Council. I don't think that means your brother has to disclose his financial information. The connections aren't—you know, you don't have a joint checking account.

BLT: Mr. Chairman, if I can interject. I do know that on the Council, although it may not be filed as part of a financial disclosure, that council members have regularly, when—because there is a requirement that they have to disclose potential conflicts of interest, when they've had some matter in front of them that might impact a spouse, a wife—a spouse, wife—child, that they have declared that, like voting on HGEA pay raises, and people disclose the fact that they had a spouse

who was an HGEA employee and that approving this would impact the spouse's pay. I think they've also disclosed if a wife was an employee of a business that happened to have a matter in front of them. That doesn't disqualify them, so that's a separate issue. But I know that they do disclose that publicly there. I don't know that if it's as broad as financial disclosure, because the definition of financial interest here in the Code does not seem to include things like savings accounts. If you look at it, it's ownership interest in a business, creditor interest in an insolvent business, an employment or prospective employment, ownership interest in real or personal property, a loan or other debtor interest, a directorship or officership in a business. It doesn't include savings _____ in the definition of financial interest. That's why I'm saying it's a little more complicated in terms of analyzing what is required to be disclosed, because the language is different in one section, the definition, and also the use of the word financial interest, I think you also have to look at the context in which that is used. I know on the Council, it's been used in terms of disclosure in terms of hey, you know, my wife's working there, my husband works there. It doesn't prevent them from voting, but they disclose so people can judge whether they have an interest, which is usually the purpose behind financial disclosures, is so you can take a look and see whether people have an interest in acting a certain way. But I notice that financial interest here doesn't have stocks, bonds, other than real or personal property, and I'm not sure whether you would say that personal property extends to savings accounts, stuff like that. So it's not enumerated there. So to me it's a little murky.

CHAIR: Board of Ethics board members, how do you feel about that, personal savings, _____, bonds, savings bonds, piggy banks, as it pertains to disclosure, you and your spouse. Do we go there, do we need to go there? Do we need to recommend that? Would that _____ conflict of interest for a prospective planning director or council member or mayor, what have you? Is that an issue?

WJ: It's an issue that I don't want to raise.

CHAIR: Nor I. I think clearly, Mr. Frankel, again artfully uncovered a loophole here that we need to visit, revisit, and that's to get our State and County codes consistent vis a vis the spousal interest, and I believe before we render an opinion, render an opinion formal or informal, we need to do the homework, _____, and then go back to revisit that. Does that sound like a reasonable course of action?

KK: I've got a question about that letter, the last request of the—Mr. Frankel, I would ask you to, and I'd like to know, if we are a body that's supposed to do, number one, make an official decision as to the correct interpretation of the law. Is that a function of the Ethics—

BLT: --as to the Ethics Code, yes. As to the Ethics Code, as to financial disclosures, you are the body that makes determinations on the interpretation of the law and the application of the law. You are basically a semi-adjudicatory body in the way that you act in terms of rendering decisions, and this is within your sphere of authority.

FRANKEL: You are the court. We were talking about the courts, you are basically the court.

KK: Yeah, I'm, it seems to be a function _____ court.

BLT: Well, part of it is because under the County Code, you can provide these advisory opinions, both informal and formal, and also you can render decisions upon petitions that have been filed by members of the public. And in this case you have a petition that has been filed by Mr. Frankel, asking you to render a determination as to the specific provisions of the County Ethics Code, and that is within your jurisdiction.

KK: I was more under the impression that we render advisory opinions, which is, in my interpretation, not interpreting the law per se.

CHAIR: It doesn't have binding authority. We have no legal binding authority.

BLT: On formal opinions you do.

CHAIR: Oh, formal opinions.

BLT: _____. See basically, it's kind of like if somebody doesn't abide by your informal opinion, you do have authority to basically follow through on that and refer them for further action, because it is a violation. There are, within the Code, certain actions that you can do.

CHAIR: All right. So I'm looking for a motion to defer action pending _____ on compatibility, State and County, primarily affecting the spousal interests, so we can then be armed, take action, and come back to Mr. Frankel at a subsequent meeting, and—

BLT: --and Mr. Chairman, please forgive me for interjecting. I just want to make sure that our office knows what we're being asked to do.

CHAIR: Yes.

BLT: Mr. Frankel also raised the issue of whether County employees who file financial disclosures have to list their—basically, their deferred compensation and where it is _____ defer a portion of their income through Island Savings Plan and the moneys invested in a mutual fund—whether that's something that has to be listed on their financial disclosure.

CHAIR: Well, earlier we said we're looking primarily at spousal interest and property, not to include—not to include savings, investments, as far as _____. In that—that is, now, if your source of income is as a registered lobbyist, clearly that's, that's a fact bearing on the problem, I should think.

KK: In your research, I wonder if, you know, if revealing a spouse's financial situation might impinge on privacy laws with banks and other institutions, and not comply—I also belong to a credit union board and they're very strict on what can be—

BLT: You can't disclose, but this is whether the husband or the wife—

KK: --No, well I was just wondering aloud if we might be creating a privacy laws—

WJ: Well we're not getting into savings accounts.

CHAIR: No we're looking at—so we're talking real property and—

BLT: --I think there's a question being raised whether personal property, which is defined as a financial interest, would include savings and stocks and bonds _____.

CHAIR: _____ industrial securities, that sort of thing.

BLT: If I understand Mr. Frankel's question, he does want us to look at those issues, whether that has to be disclosed.

FRANKEL: Right. And as I said, the way, I think the law requires that mutual funds be disclosed. I don't think, I don't think it's particularly useful information, but you guys can decide that.

CHAIR: Yeah. And I personally feel like it's not essential. But remuneration, spousal property, so can we defer action on this? Is there a motion? _____.

WJ: Sure, I will make a motion to defer this to the next meeting, and in the mean time get more information from the deputy corporation counsel.

CHAIR: Seconds?

KI: Second.

CHAIR: All in favor—any discussions? Further discussions? All in favor?

WJ: Aye.

KI: Aye.

KK: Aye.

CHAIR: The Chair votes aye. Deferred. Third point. New Business 4(a), 2005-05, requesting an informal advisory opinion on the County Code regarding Council Member James Arakaki's receipt of gifts to his legal defense fund. I'll refer you to Mr. Frankel's letter of September 6. He spells it out quite clearly and comprehensively, his interest, the law, statement of facts, statement of position, the case law is put in there. And connected to this petition is a letter from, a

memo from Patricia O'Toole from—actually from, I'm sorry, from Mr. Arakaki saying that he cannot be present today and nor will his, nor will his counsel be present today. They're at a campaign finance—a campaign spending commission hearing in Honolulu on this same issue that's occurring today.

FRANKEL: Well I thought so, too, except that the meeting's actually tomorrow.

BLT: No, it got moved back to today.

CHAIR: It was.

FRANKEL: Really?

BLT: Yes. According to the most recent letter.

CHAIR: Yeah. But you can certainly check on that for us.

FRANKEL: Well, I assumed it was today, and then Jason Armstrong said, hey, it's not today, it's tomorrow, and then I looked carefully at the agenda and it's tomorrow, but maybe there was a typo on their part, I don't know. I do believe they do meet on Wednesdays.

CHAIR: We're informed that that meeting is occurring today and that he is on the agenda. Also, I want to refer you to some late information that just came in this morning, which basically is an affidavit from Mr. Arakaki's counsel, Mr. Brian De Lima, Esquire, that challenges me and my _____ bias and provides a copy of the damning article in the Tribune-Herald, which was a story about this. Highlighted was the fact that I felt that money buys access and influence, quote, that developers have a vested interest in having a friend in court, Arakaki's the guy, greatly bothered by that, and so he challenges my right to preside and render any input in this process. Once again, I turn to my right. Should I at this point conflict out to Mr—our Vice Chair?

BLT: If—I think that it would probably be better to have the Vice Chair rule over this before we have any discussions over this.

CHAIR: I do, too.

(TURNED TAPE OVER)

(NOTE: Chair Williams referred to as “RW” for the rest of this Petition, and Mr. Kawahara is “Chair” for this Petition.)

FRANKEL: _____ using to recuse yourself?

RW: Well, let me find De Lima's letter. This was handed just this morning. This is an affidavit of Brian De Lima, representing James Arakaki on this petition, and there's a date on this of—the date of this affidavit is dated the tenth day of October, right? And it says I, Brian De Lima, being personally sworn, says that your affiant is an attorney duly licensed to practice law, he represents Arakaki in the above-entitled petition, he's informed and of the belief that Williams, the Chair of the County Board of Ethics, is the Chair, and attached hereto as Exhibit A is a true and correct copy of a news article that appeared in the Hawai'i Tribune-Herald on August 24, specifically in which Mr. Jason Armstrong, specifically quoting certain statements Mr. Williams made about Council Member Arakaki. And those statements you are familiar with. Your Affiant believes that Mr. Williams' public comments about Mr. Arakaki, his client, are prejudicial toward Mr. Arakaki. He further believes that based upon my public comments, it would not be fair toward Mr. Arakaki should I preside over the Board of Ethics meeting involving Arakaki. As such, he respectfully requests that I remove myself from considering or deliberating and that I be disqualified from presiding and deliberating on the petition herein.

FRANKEL: So basically, you're saying because there's an appearance you might be biased and prejudicial, you're going to recuse yourself from the deliberations?

RW: Well, I mean, I certainly have opinions on Mr. Arakaki's acceptance of these gifts, that's quite true. And that became public information. And since we don't want to make a mockery of the Board of Ethics, I think the only ethical thing for me to do is to recuse myself on this issue.

FRANKEL: Okay. And I also have raised an issue of the bias and prejudice of the Corporation Counsel's Office because of the relationship the office has had with Mr. Arakaki for over a decade. I don't know if—probably you need to talk to Lincoln about that, or is there any decision on your guys' part?

BLT: We've sent a letter to ODC, asking for guidance on the—our office's official position is that it's not a conflict and that we don't have to recuse ourselves from this, and in fact, I'm not—or rather our office is not the one who will actually make the decision on Mr. Arakaki's petition.

FRANKEL: Right.

BLT: And, I would say that in terms of the recusal, I don't have—I looked for it this morning, I couldn't find it—our rules that govern the Board, and I think there is a provision in there on people being able to challenge, and I was looking for that and I didn't have it in the materials. I'll take a look at that and make sure that we have some kind of letter or memo on that for the next meeting.

RW: I would say, too, _____ what she just said, essentially it's this Board, independent of the Corporation Counsel. I think we largely rule on the facts and

evidence here. I think that if it turns that we are passing the ball to Corp Counsel, then you might have an issue, a _____ issue there, but I think that as _____ this Board will be able to stand on its feet in this matter. However, since Mr. Arakaki's not here today, nor is his counsel here today, so it's pretty clear that there's not going to be any opinion rendered today, but we can proceed procedurally with what you've raised so far.

CHAIR: I have a couple of questions. Number one, is that—what is a quorum here, three?

BLT: Three.

CHAIR: Okay. Yeah. Because we're short one member already.

RW: That's another issue.

CHAIR: If he's recused and any one of us is missing for whatever reason, we won't have a quorum.

RW: Well we're working on getting a fifth member.

CHAIR: My other question is, as I recall, correct me if I'm not—isn't this matter being pursued in the courts right now, there is a suit?

FRANKEL: No.

RW: No.

FRANKEL: That headline of the Hawai'i Tribune-Herald is incorrect. Jason was on vacation at that—

CHAIR: What article was that?

FRANKEL: Chris Loos wrote it. I had to _____ an e-mail.

CHAIR: That was incorrect?

FRANKEL: Yes, the headline was incorrect there. The story was pretty—it was a little jumbled. The story—

CHAIR: --there is a story.

FRANKEL: --yeah, with the Council lawsuit, that is not—the headline is inaccurate. What I did, I had filed two matters. One is the petition before you, and the second is a—petition is not the right word—but the effect is, petition with the Campaign Spending Commission.

CHAIR: _____.

FRANKEL: So those are both—they're both administrative matters, they're both administrative agencies. So let me give you a little context. And I understand that Arakaki's not here, and hopefully I'll be available at the next meeting, but if I'm not, I just wanted to give you this context. What we have is two laws, and let me step back and give you the analogy. I'm driving down the road, coming to a meeting, and I'm late. And I'm coming up to the intersection. The speed limit is 35 miles per hour, the light is green, but the Don't Walk sign is flashing, and the light turns to yellow. So I speed up and I make it through the intersection before the intersection turns red. A cop comes over and says to me, you were going 50 miles per hour in a 35 mile per hour zone, and I said, oh, but officer, I didn't go through the red light. I sped up so I wouldn't have to go through the red light. Well, my excuse is no good. I've got to comply with both laws, both the red light law and the speeding law. We have an analogous situation here. We have a campaign spending law and a gift law. The campaign spending law requires that certain campaign contributions be disclosed. I filed a complaint with the Campaign Spending Commission, because I believe those requirements were not met. At the same time, we have the gift law, the County gift law. Now if Mr. Arakaki says, well, the Campaign Spending Commission says this is okay, that's fine. That only concerns the Campaign Spending Commission. It has nothing to do with the County Code, and the County Code is a separate law, just like the speeding law is separate from the traffic light law. So in any case, I filed two different—we'll call them petitions. Now the basis for this petition here before the Board of Ethics is that the gifts that Mr. Arakaki received are not allowed to be received, that the Code prohibits them. Now our Code regarding gifts is modeled after the State law. The State law is very clear. You can give a box of chocolates, you can give a token of aloha, but you can't do more than that, and that's what we have here. The—if you look at the opinions of the State Ethics Commission, it is very, very clear. You cannot be giving gifts of more than a box of chocolates. In fact, when an airline upgraded a legislator, even though there's no pending legislation before the legislature, it was inappropriate, and here we're talking about gifts of thousands of dollars for people who have business before—

CHAIR: I'm not sure if we should be listening to this right now. I have nothing against you per se, but without the quote, defendant here to listen to what you're saying, to rebut, I'm not sure if we should be. I would like to hear what your viewpoint is, but—

FRANKEL: --understood. I think under Chapter 92, I'm entitled to provide my input, and I will hopefully come back. What I would like to ask you today is, please don't let Mr. Arakaki delay this, because delay is in his interest. And so I'd like you to make sure that he attends the next meeting, look—if you need to change when you meet, you should, before the end of this meeting, decide when your next meeting is, because generally the Campaign Spending Commission meets on Wednesdays, and I would assume that they will not complete all their business today. You know, we've dealt with other matters today, and things defer. But I don't want to be in a position where Mr. Arakaki's continually postponing—

CHAIR: --You are inferring some character implications here—

FRANKEL: --No, all I'm saying is that—

CHAIR: --I am not for Mr. Arakaki or against. I wish you wouldn't infer those things in front of—we should prohibit him from delaying tactics—that's not—if he has a legitimate reason, he has a legitimate reason.

FRANKEL: --that's why I told you to look—

CHAIR: --I don't think we should look into his character, that part, that he wants to get away from something and so he's delaying it for his own advantage.

FRANKEL: Well, that is why I told you—

CHAIR: --I'm trying to be completely neutral in this, but—

FRANKEL: --That is why I told you to look at the schedule of the Campaign Spending Commission.

CHAIR: Don't tell us. I realize you're an attorney and I'm just a former school teacher. I cannot keep up with your knowledge of facts and verbiage, but please.

FRANKEL: My request is you look at the schedule of the Campaign Spending Commission so that you do not schedule your next meeting at the same time as theirs, because it is likely that these matters for them will also be continued. I am very conscious of the fact that if this drags on, you will lose your authority to do anything about this matter, and that's why delay is not a good thing. So, I am just putting this Board on notice that—not to let things drag out.

CHAIR: You know, I don't want to appear to be fighting you on an issue, because I'm supposed to be neutral, and—but I have human feelings, like anybody else. And I'm not—I don't want to have my conversation with you here to influence later decisions, and oh, Kawahara, he's against me, that's why he voted against me or for me or whatever. It gets difficult sometimes, so I would ask you to tone down your inferences and implications, if I may. If not, I would step down from _____ the vice chair, and I would be chairing this Board next time, if he is excused—

RW: You are chairing it. _____.

CHAIR: And, you know—okay, enough said. You understand where I'm coming from?

FRANKEL: I do.

CHAIR: Okay.

WJ: Could I say something, Mr. Chairman?

CHAIR: Well, right now—

RW: Well I've recused me—

WJ: He's _____ to chair this—

RW: --You're it.

CHAIR: --from this particular—

BLT: --Yes, so you're in charge right now.

CHAIR: Okay. Yes.

WJ: I'd just like to go on record. Mr. Arakaki knew these proceedings were going to happen today, and unfortunately he's not here. Unfortunately, his counsel isn't here, he could have provided us with written communication at this meeting. I personally appreciate the information being given by Mr. Frankel, and I welcome the opportunity at the next Board meeting for Mr. Arakaki and his counsel to be here, and he knows the next meeting is scheduled for November 9, is that correct?

MC: Yes.

WJ: And we definitely want to pursue this matter.

CHAIR: Thank you. Do you have any—

KI: I just want to say, I back him up on that.

CHAIR: Any other matters on this?

FRANKEL: Well, I have a court hearing on November 9. I will not be here, but that should not stop you from proceeding. I've given you lots of information, so yeah, I will not be here, and if you find out—I would suggest that at some point you call a recess and have staff investigate whether Campaign Spending Commission's meeting November 9, and if they are, you can change your meeting date. I don't know what your rules provide, but—

RW: We can change the date.

FRANKEL: It would be—anyway.

KI: Okay, just as far as changing the meeting date, I will be gone November 10.

CHAIR: So will I.

WJ: State championships on Maui, I mean on Kauai for—

KI: --from November 10 through November 21st or 22nd, whatever is a Monday.

RW: How's your schedule like one to eight, November.

CHAIR: I'm Chair now, so—

RW: I can't help myself!

CHAIR: I didn't know I was, but I guess _____.

KI: Prior to November 9 there's not a problem, but from November 10th through about the 22nd.

WJ: November 10th I leave for Kauai myself.

KI: Just a heads up.

CHAIR: Okay.

WJ: But I think Mr. Arakaki should make every attempt to make our meeting on November 9, and sufficient notice has been given? Does he know that our next meeting is November 9?

KI: I think in a communication, he said—if I may add this. This is a letter from Brian De Lima to Patricia O'Toole, and it says, it appears that we will be available to attend the next scheduled meeting date of November 9, 2005.

WJ: I remember reading that as well.

CHAIR: _____. Okay. Now, Mr. Frankel, this is very important to you, and you don't feel that you need to be here, or have you someone representing you to be here?

FRANKEL: No. I'd love to be here. I have a conflict. I also don't want to see things delayed, so I would rather you guys here—I'm so confident in the facts and the law and what I've written, that I don't see how you can possibly not _____ go to the next stage.

CHAIR: Yes?

RW: _____ reschedule when they can both be here. Is it written in stone about November 9?

KI: I'm available through the 8th.

CHAIR: Is it—what about _____. Three weeks, two weeks?

BLT: Well, officially _____ the Sunshine Law that we would get out a little earlier than that. I think we have—is it 15 days for noticing the people who have to

respond, but I think the main thing is if you want us to try and reschedule, I think you should ask Mr. Frankel if he's available on the 8th and then ask us whether we can arrange it?

CHAIR: The 8th is not good for me.

BLT: Okay.

CHAIR: It just came to my mind.

WJ: I would like to stay with the 9th, and I understand your position quite well. And I just need to hear Mr. Arakaki.

CHAIR: Okay, we'll have it on the 8th—I mean the 9th.

WJ: Is a motion necessary to--

CHAIR: --no, it's a regular—

WJ: --move this matter to the 9th?

KI: It is scheduled for the 9th.

WJ: No, this matter?

CHAIR: Oh, okay, yeah, yeah. I guess a motion is in order to defer this matter, like we deferred all the other things. So, do I hear a motion to that?

WJ: Motion to defer until November 9 to hear Mr. Arakaki.

CHAIR: Moved by Mr. Joseph that we defer Petition No. 2005-05 to November 9th.

KI: Second.

CHAIR: _____. Are there—is there any discussion here?

FRANKEL: Well the other matter you need to resolve is you've seen the letter to Office of Information Practices. I raised a concern—I was afraid that this meeting might be closed, and I believe Office of Information Practices has asked you whether you intend to close the meeting with Mr. Arakaki that would have been today, or I guess it'll be November 9, so I want to know, and the press wants to know, whether the meeting is going to be open to the public or closed.

BLT: My understanding is that Mr. Arakaki has not requested a closed hearing, so absent a request by Mr. Arakaki, there really isn't a need for the Board to determine if the meeting will be open. It would only be if Mr. Arakaki requested a closed hearing that you would have to decide whether in fact the hearing would be closed or not.

CHAIR: Does he have to do that a certain time?

BLT: My understanding from Ms. O'Toole's relaying to me her conversation with Mr. De Lima—of course we're getting into hearsay here—is that her understanding is that they are not going to be requesting a closed hearing.

CHAIR: Okay. All those in favor of the motion?

WJ: Aye.

KI: Aye.

CHAIR: The Chair votes aye. Motion carried. So is that _____.

RW: Do we need a motion to have the Chair back again?

BLT: You just got to put on the record that you—

RW: Okay, let's let the record show that _____ to chair this meeting, that 4(a) was just heard under Chair—new Chair, Mr. Kawahara, and that Mr. Frankel was notified of the next meeting date. Okay, moving right along, item 4(d), disclose of financial interest statements filed pursuant to 2-91, County Code. And we have here a statement of Mr. Curtis, which is a _____ over from the last time, if you recall, missing only item 4, which was completed. And I'll pass that around. _____ missing item 4 _____. Mr. Kerry Inouye. _____, but he didn't show up what his spouse made. _____. Mr. Kawahara, my goodness, the chickens come home to roost here. Ditto, the same comment.

(NOTE: "Chair" now refers to Mr. Williams, and Mr. Kawahara is again "KK.")

WJ: Can I ask you something? Is Kerry military, too—you're military, too?

KI: Yeah, but I'm not collecting yet until—

CHAIR: --you're Guard?

KI: Well, Guard and active _____.

CHAIR: Double dipper, double dipper.

KI: No, no, I don't mean that.

CHAIR: _____, the Iraq war. _____.

WJ: All of you are retired?

CHAIR: I am. He is. This guy could have been. Oh, yeah, we're all retired. No job like no job—

WJ: --just waiting on me.

CHAIR: You'll figure it out one of these days.

BLT: I've got 15 years to go.

KK: _____ for later.

BLT: It's having kids.

KK: You know, if we do find—if we think something is amiss on this—

BLT: --yes, then you can follow up and send a letter to them and asking to explain it.

KK: No, I don't mean that. I don't mean like a typographical but a procedural error. But let's say a person owns, you know, a question about what he or she has as an asset, you think, you know, might be a conflict. Do we have the authority to question that, or are we just noting—

BLT: --No, you have the authority to follow up on financial disclosures if you think that you need further clarification on whether something presents a conflict of interest, because the whole purpose of the financial disclosure is to try and show you're disclosing, and for some people it can present problems. I think most of the time it doesn't. But that's what you're looking for. Let's say you have someone on the Planning Commission, you—and they have lots of property. So you may want to follow up and make sure that anything doing with their property, that they're going to recuse themselves. But that would—they have to disclose that on the commission, but you want to look at that. The Liquor Commission, you know, you might want to look at if they own—like the Liquor Commission, if they owned a liquor business, then they probably shouldn't have been appointed, because if they're in competition with some of the people that they have to render decisions on, then that would flow through on every single decision they make. So those are some of the kinds of things that you would look at. But theoretically, that should have been caught way before the Mayor appointed somebody, because those are the red flags, and theoretically the Council would have looked at that. _____. But let's say someone's appointed, and they acquire interest in something. And you've got a—you're on the Liquor Commission, and you just acquired interest in a bar, you're not supposed to do that. So that's the kind of thing that you might—you know the red flag that you would look at.

KK: Okay. Well, _____. You know, you look here, you're reading over, and I've been initialing them on the basis that okay, I know the existence of this document. But—and I've questioned in the past, hey this guy is on the Water

Board, and he was a member of the Water Department before, etcetera, and I was told that that has nothing to do with that person's ability to be on that Board. And I was under the impression that if someone from the public wanted to file a complaint against that person, then we would determine whether, you know, that person—

BLT: --somebody asking whether their prior employment with, let's say the Water Department—

KK: --yeah—

BLT: --presented a conflict of interest with them being on the board. I think you have the authority to initiate that kind of an inquiry—

KK: --yeah, that's what I wanted to know. So we have to file this petition like—

BLT: --but theoretically, you know, some of that stuff has already been asked when they were—because they have to be confirmed by the County Council, and so they're asked about _____, but if you think that there's something that is a concern, you have the right to raise that. Because it may be that, you know, hey sometimes when people are reviewing it at the Council, they may not be looking at it in the same light that you would. That's why we have an Ethics Board, who is to take a look at those issues.

KK: They probably—they're just glad to have the bodies, and they don't care too much about what the bodies are about. I mean, especially now, but, I just wanted to know that as a point of law, _____ because I didn't—

BLT: --well if something raises a red flag with you, you have the right to follow through on it. I think we did that a year ago, when there were gift disclosures from the County Council, and it was like, somebody was going to China, somebody else was going to Vegas—(TAPE ENDED – INSERTED NEW TAPE)—how come this guy is paid, you know, the value is \$3,000 trip to Vegas, to some conference, and we didn't know what the conference was, and we didn't know who was paying. So the Board asked and we followed up, and then they supplemented the information by—and disclosed enough information so the Board could then take a look at whether that was an improper gift, because you have the authority to tell people they've got to give it back.

KK: _____.

BLT: Yeah, you do. You have the authority, if somebody has listed an improper gift, to rule that it was improper and order them to give the gift back.

KK: Well, I guess one of the reasons I wanted to know, when I initial this thing here, am I saying this thing is okay, as far as I can see it's okay? Or, is it, yeah, I've noted—

BLT: --you're initialing that you've see it, because they're required to file. You're not saying that it's necessarily okay.

KK: That's the part _____.

BLT: But if you want to follow up, you have to do an independent letter asking for more information.

KK: So if some day somebody says, oh, your initial's there, you knew this, how come you didn't bring it up before, you know.

BLT: Um hmm.

CHAIR: Okay, so let the record show that we've reviewed the disclosure of financial interest statements for George Curtis, Board of Appeals; Kerry Inouye, Board of Ethics; and Karl Kawahara, Board of Ethics; and do we have a motion to file?

KI: So moved.

WJ: I'll second.

CHAIR: Any discussion? No discussion. All in favor, aye?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: Chair votes aye. Moving right along to Communications, five, Communication number a, 2005, memorandum from Lincoln Ashida regarding new application forms. You've all seen that? Motion to accept and file?

KI: Move to accept and file.

CHAIR: Seconds?

WJ: Second.

CHAIR: All in favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: Chair votes aye. Number 5(b), memorandum from Diane Noda, rules about mailbox numbers and house numbers and so forth, a procedural issue, a house-keeping issue. You've seen this, reviewed it—

KK: --not necessarily. I went and checked my mail box, and I'm in violation.

KI: I am, too.

CHAIR: Me, too.

KK: It's got to be on both sides.

BLT: Both sides of the mailbox, and on your house.

KI: Why? Why?

BLT: It's for emergencies, and police to be able to find and respond, and it's part of the law.

KI: What's the—what if I don't do it?

CHAIR: You go to jail.

BLT: Theoretically, I guess it's a misdemeanor. I don't know how much enforcement—I think as long as you've got one highly visible sign—

KI: --this is the thing. It's my thing, I guess. But it's—maybe this is not the time and place. But it's my mailbox, I bought it, and you know—

KK: --actually, it's not. The United States mail—

BLT: --it actually belongs to the U.S. Postal.

KK: To the United States Postal Service.

KI: Really?

BLT: They have jurisdiction. That's why people cannot put other things inside U.S. mail in there.

CHAIR: You can't get your Trib delivered to your mailbox.

BLT: But yeah, I know that feeling.

CHAIR: Take down the mail box.

BLT: I think Mr. Inouye is still basically informing you—

KI: --So move to accept and file.

CHAIR: Okay, motion.

WJ: Second.

CHAIR: In favor? Second—all in favor, aye.

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: And number 12, the High Road publication, dated December, 2005. And some good information there on ethics. Move to accept and file?

KI: Move to accept and file.

CHAIR: Seconds?

WJ: Second.

CHAIR: All in favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: Moving right along to Executive Session.

MC: We have to move to go to Executive Session.

BLT: And you have to state why you want to go into Executive Session.

CHAIR: In order to review the—

KI: --I move that we go into Executive Session to review the financial interest disclosure statements for the three individuals listed on our—

WJ: --Second.

CHAIR: All in favor, aye?

KI: Aye.

WJ: Aye.

KK: Aye.

(Moved into Executive Session at 12:05 p.m. Returned to Regular Session at 12:10 p.m.)

CHAIR: I'd like to have a motion to accept and file the financial disclosure forms of Len Losalio and Larry Yoshiyama.

KI: I move that we make a motion to accept and file the three, two—

CHAIR: Is there a second?

WJ: Second.

CHAIR: And all in favor?

KI: Aye.

WJ: Aye.

KK: Aye.

CHAIR: The Chair votes aye. And let the record show that Mr. Watanabe's form will be returned for completion _____. Okay, we're back in Regular Session, and all that needs to be done is to make an announcement about the next regular monthly meeting, which we decided to keep at Wednesday, November 9. I'll attend that meeting. I am recused to perform that function only, as we rule on Mr. Arakaki, so I can preside on all but Mr. Arakaki's hearing.

KK: _____ in the past, I've brought up the fact that when we have these sessions, a whole bunch of these people are, you know, familiar to me, and like Mr. Yoshimura—he has the job that I have now—I mean, I had once, and he was a former student, and his friends, and all that kind of stuff. Brian De Lima is my personal friend. I knew him from student. We worked together and all.

CHAIR: _____.

KK: I'm asking, and this has happened in the past, one, in another case, and I brought this out, and the defendant—not defendant, the plaintiff _____. I told him that I knew the Corporation Counsel, this and that, and he said it's all right for me to sit as chair. Then after we rendered a decision, he said I want him off there, you know. He wanted a re-hearing because he thought that I was biased against him. But I just wanted to know—

BLT: --He lost the opportunity to—

KK: --He lost it. And he wrote a personal letter to the Corporation Counsel, to say that I was not—you know, he wanted a re-hearing without me as the chair. But I wanted, you know, I wanted to clarify—

BLT: --the fact that you—this is a small community.

KK: I know.

BLT: And particularly if you've been a teacher, if you've been in any type of job that required you to interact with a significant number of people, at any given time anybody on the Board is going to have somebody in front of them that they know.

It's a small Board. The only time that it really becomes an issue is if you have a conflict of interest, if you have a financial conflict, if you had something that rises to the level of personal animus that it makes it impossible for you to be unbiased. Those are the kinds of situations in which you would have to recuse yourself. Or the situation today, where it looks—it looked as if there was pre-judgment of a case before the case was heard. So, you know, those are the only kinds of situations. But, hey, it's a small island. You're going to know people. It's just like the judges. Every time Judge Hara has a case, he knows every attorney, because before he was a judge he practiced law, and there's no way that he can step down just because he knows the attorneys. And so—that's a given, and that's what this Board is, and then basically, you are trusted, when you were appointed by the County Council, to be fair and impartial. You took an oath to that effect, and that's part of your job. And so most of the time, you know, it's not an issue just because you know people. It's only if—like I said, some guy shows up and he sued you, and you know, you guys duked it out in court. That might be a case in which, because—and not because you couldn't render an unbiased opinion—it might be that it would raise doubts over the decision, because you had some prior involvement, and so in that kind of situation it's better to recuse yourself rather than raise any issue over the decision. The difficulty here is you only have four. And we're down to three when one person's recused, so we really need to try and get a fifth member for you.

CHAIR: Could you ask Lincoln to follow up on Ann Lum.

BLT: Okay.

KK: You know, the minutes would show that he abstained voting on that issue. And I questioned you—and Pat was here at that time—

CHAIR: --on the Arakaki—

KK: --and I questioned you, why did you abstain, and you said, well it's a matter of principle, you think—

CHAIR: --well because I didn't—

KK: --you didn't show exactly—

CHAIR: --yeah, because as I said there was an ethics violation there, a conflict of interest.

KK: Yeah. And now it really is—your opinion really, it was a matter of, you know, of basically—of recusing yourself. But—

BLT: --But it has more to do with not having a situation in which you render a decision, and someone says that the decision was tainted by bias or pre-judgment. It's just like judges have to be very careful. When they have a case in front of them, they have to be very careful not to say, before hearing the evidence, that they already

think somebody did something wrong. So that's, you know, but hey, you live and learn. We're human.

CHAIR: Moving right along, do we have a motion to adjourn?

WJ: Before we adjourn, would it be appropriate to send Mr. Arakaki a formal letter requesting that he be here on the 9th?

CHAIR: That's a good idea.

BLT: Just send a letter informing him that the matter has been deferred and that it's set for the 9th—

CHAIR: --and further informed that I've recused myself.

BLT: Yeah. And, you know, that we expect to see him.

WJ: Okay. Who's going to do—draft that letter?

CHAIR: _____. That's why she's our staff attorney. She gets paid by the word.

WJ: Does that require a motion?

BLT: No, I think that you just tell me, because that's informing him, and—

WJ: --will you do that for us?

BLT: We will do that, we will write a letter to Mr. Arakaki—

CHAIR: --Mary will call me, I'll sign it and it'll go.

BLT: I'm going to have Karl sign it.

CHAIR: Fine.

BLT: Just to cover bases, okay?

CHAIR: That's fine. Very good.

WJ: I'd like to make a motion to adjourn.

KI: Second.

CHAIR: All in favor?

WJ: Aye.
KI: Aye.
KK: Aye.

CHAIR: The meeting is adjourned.

(Meeting adjourned at 12:20 p.m.)

Respectfully submitted,

Mary E. Crosson, Secretary

NOTE: Blank lines indicate inaudible words or voices on audio tape recording.