

MINUTES

PUBLIC WORKS COMMITTEE

March 9, 2007

A meeting of the Public Works Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Mel Rapozo, Chair, at the Historic County Building, Room 201, Lihu'e, Kaua'i, on Friday, March 9, 2007, at 10:16 a.m., after which the following members answered the call of the roll:

Honorable Mel Rapozo
Honorable Shaylene Iseri-Carvalho
Honorable JoAnn A. Yukimura
Honorable Bill "Kaipo" Asing, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member

EXCUSED: Honorable Tim Bynum
Honorable Ron Kouchi

There being no objections, the Committee recessed at 10:16 a.m.

The meeting was called back to order at 1:42 p.m., and proceeded as follows:

Minutes of the February 6, 2007 Public Works Committee Meeting.

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Yukimura, and unanimously carried, Minutes of the February 6, 2007 Public Works Committee Meeting was approved.

The Committee proceeded on its agenda item as shown in the following:

PW 2007-3 Communication (2/15/2007) from Mel Rapozo, Public Works Committee Chair, requesting that the Administration be present to give an update and status report on the County's bicycle/pedestrian pathway project which encompasses various segments from Ahukini to Anahola.
[Deferred 3/9/2007.]

There being no objections, the rules were suspended.

MEL RAPOZO, PUBLIC WORKS COMMITTEE CHAIR: It is the intention of the Chair to defer this matter for another... to the next Committee meeting for several reasons and I just want to outline my reasons briefly. I am sure by the time the people see this, they have already saw this morning's *Garden Island* and,

obviously, we made the front page again. A couple of the concerns... first of all, this matter has been up in this Committee for a while. It has gone to the Council then back to the Committee simply because we are waiting for an opinion from the County Attorney. I think this body made it quite clear at the last meeting, the last Committee meeting, that we wanted an opinion from the County Attorney and not from a Deputy, but from the County Attorney personally simply because we've had opposing opinions from that office. So... although I am not at liberty to talk about the actual opinion, I can state that the opinion in my opinion... there are a lot of opinions today, but in my opinion, the opinion that came over was incomplete for several reasons. Number 1, there are no statutory citations, no references to any kind of case law other than the opinion of an individual attorney, Deputy County Attorney. There is no supporting data and as I stated earlier, it is not from our County Attorney or acting County Attorney. It is from the Deputy and it is from Deputy County Attorney Tagupa. So for that reason, I am not really in acceptance with that opinion because it is really not what we asked for. The other concern is the fact that the opinion's confidentiality may have been compromised simply as it is in the newspaper this morning. It talks about the County Attorney's Office and what they have opined. Although the opinion isn't in there, it is quite clear if you read the article of what the opinion states. So that is a grave concern of mine and, for me, it really raises some red flags and I think we need to look into that and I am hoping that we can get this resolved within the next two (2) weeks and that is one of the reasons I am asking for the deferral.

There is also a name... a nominee for the County Attorney that has come across from the Mayor's Office and that will be heard next week here at the Council meeting. At that point, there is a possibility that we will be confirming a new County Attorney next week. In the...and I know that it is quite tough for a new County Attorney to walk into a situation like this, but I think the fact that we have had the opposing opinions and it is really whose opinion works for you. For me, it is real clear. It is real convincing to me now that the Administration has chosen to select the opinion that fits their purpose. In my opinion, again, there is no case law to substantiate the opinion that was provided. But, simply, have chosen the opinion that works for them. In other words, never mind about the shoreline certification laws and the H.R.S. that dictates about the validity of shoreline certifications. We need to get this built, we need to get the contractors back to work, so let's pick the opinion that fits, and I think that is what has happened in this case. So for me, I would like to see or at least discuss the opportunities of having the, potentially, the new County Attorney review the facts and come up with an opinion that we can put to rest once and for all.

In the interim, I would ask and we all read the papers and we all know that we've got the memos from the Administration that the construction on this path has been halted until we can get the County Attorney's opinion and I know that I will be calling Donald up real shortly. But I want to hear from the Administration whether

or not they will continue to not continue the construction and actually wait for a valid opinion to come through prior to going back to construction. So that is my plans so far. I will be suspending the rules because I do want to take public testimony before we go into the discussions and deliberations. I just wanted to preface the meeting with that and having said that, I will suspend the rules and ask if there is anybody in the public that would like to testify. This is public testimony time, so if you have anything to testify, do it now because once we reconvene and start deliberation, I will not be accepting testimony. Mr. Mickens?

GLENN MICKENS: Thank you Mel. You have copies of my testimony and I would like to read it for the record if I might. Since I have testified so many times about the problems associated with this bike/pedestrian path and those problems proliferate as this path moves forward and more sunshine is cast upon it... most of what I could say would be repetitious. So I will limit my testimony to a series of questions and I will certainly appreciate getting answers to them. And, yes, Mel, maybe once in awhile someone will give me an answer, but if the answer is not factual or is incorrect, then I feel I must pursue it.

First, what is the real length of this path? You saw the article in the paper today. I think they mentioned 17. I think I even asked Lester about it and he said, I don't know. He says they tell me 17, I hear 20, I hear 23, so the length of it is still up for grabs and what is the actual route this path that it is going to take. Again, since we have spent about \$12 million on the design and planning stage of this path, shouldn't we expect to have an exact route of where it is going? If proponents of the path can put out propaganda like this brochure that I hold before the camera (had cost a little money) and I don't know who puts it out or anything, but it is the proponents of the bikepath. If they can do that, I think we can certainly find out where the path is going. Of course, the path was originally scheduled to go along the ocean, but problems from within and behind the golf course and objections from condo owners and their attorney have radically changed the route of this path. So where is that route? And remember that these problems have only surfaced with the route from the Wailua River going through Kapa'a and we still haven't addressed any part of the problems that will happen from Nāwiliwili to Ahukini and getting across the river.

When these road blocks take place, how are they corrected and who foots the bill for the new planning and design phase? Since the route has to be chosen, doesn't an EA have to be done? And once and for all, can someone show us documented evidence that segmented EA's are legal? Since illegalities have taken place with the construction of this path and work was stopped as of 2/21, how will these illegal actions affect the federally funded part of the project? Could the Fed's mandate that we give back their funding?

I have copies of Shaylene's letter to Pat Phung, the Federal Transportation Engineer of January 11, 2006 and his reply to her of February 13, 2006. The questions that she asked were (outstanding I thought):

- 1) What approval process is used when Federal funding is allocated to projects such as the Nāwiliwili to Anahola bike and pedestrian project?

- 2) Has the Nāwiliwili to Anahola bike and pedestrian path project been determined to be principally (emphasis added) for transportation rather than recreation? Who made this determination and is it documented? Does 23 U.S.C. 217(i) which states, "no bicycle project may be carried out under this section unless the Secretary has determined that such bicycle project will be principally for transportation rather than recreation purposes (emphasis added) apply to this project?"

I read Phung's reply several times and could never find definitive answers to her questions. I might add that on page 79 of Bill Sweeney's 100 page draft environmental assessment and I think you guys all had copies of it (he was the lawyer for the condo owners who stopped the path from going along the shoreline in front of their property). He used this same Federal guideline section to make his case and win it. I am almost done. Why was no study ever done to get an estimate of the usage of this path before millions of dollars are spent to build it? There are many more unanswered questions, but thanks to Mel, Shaylene and Ron, most of these questions will surface and hopefully will be answered. And since the possibility of fines coming from the contractor get greater by the day, I cannot believe that the Administration or somebody isn't sitting here. We don't have... we (inaudible) two (2), three (3) weeks or a month or something for a legal opinions on this. I can't believe that they aren't in a hurry to satisfy that.

Mr. Rapozo: And the Administration is here today. Donald is here. Any questions for Glenn? If not, thank you.

Mr. Mickens: Thank you Mel.

Mr. Rapozo: Anyone else in the public wants to testify on this matter? Okay, thank you. Donald? Can you state your name Donald?

DONALD FUJIMOTO, COUNTY ENGINEER: Okay, Donald Fujimoto. I am the County Engineer.

Mr. Rapozo: Thank you Donald and thank you for being here. I know we did speak a little bit before the meeting and I guess... let me just start by asking what is your position or the Administration's position as far as the construction, the

schedule? Is it possible or would the Administration be waiting for a County Attorney's opinion or another County Attorney's opinion or "the" County Attorney's opinion, really what we asked for, what the Council asked for prior going back to...

Mr. Fujimoto: There was some discussion this morning about possibly trying to postpone construction until we resolve this matter. The legality issues.

Mr. Rapozo: And what was the result of the discussion?

Mr. Fujimoto: Well, I have not... I did not have any definite direction on that.

Mr. Rapozo: Okay, and who makes that call?

Mr. Fujimoto: Well, I think what was discussed was one week rather than two (2) weeks.

Mr. Rapozo: Okay, and, you know, as I stated, it is my intention to defer this to the next Committee which would be...

Mr. Fujimoto: Two (2) weeks.

Mr. Rapozo: Yes, just shy of two (2) weeks. It will be on the...

Mr. Fujimoto: I can get back to you on that. I am not at liberty to speak for the Administration.

Mr. Rapozo: What I would do because I think that is really the substance of this. I will call for a short recess. If you can talk to whoever you need to talk to because I think that is vital. If we have to use the time here to express our concern or my concern and I can only speak for myself, but then we will do that as well, but I kind of want to... I guess the bottom line is and after reading this morning's article, I want to make sure that the public gets the true depiction of what is occurring. So part of this is, again, I think the attorney's opinion that we received, I am not satisfied. And not so much... we can disagree with the opinion providing that the opinion is structured in a way that the opinion should be. You know, I've seen quite a few opinions and everyone of them clearly shows some legal statutory support and this one doesn't. This one is simply the opinion of an attorney, so I saw Councilmember Yukimura raise her hand, so hang on. You want to say something?

Mr. Fujimoto: Yes, regarding the article, first of all, I wanted to apologize. Apparently, the article, again, was misstated. There were two (2) parts that was... I felt was inaccurate. Well, the first one, I have to apologize to Jim

Itamura. I did not make that statement as far as pushing him in the direction. The second part was, the part about what was approved by the original SMA. I think it was stated rest pavilions. The rest pavilion is what is in question. It is a rest area that was approved pending the design. I think the approval was based on... the rest areas were approved subject to the locations being determined during the design phase. Really, that is really the issues now is the roof of the rest pavilions.

Mr. Rapozo: Okay, thank you. Councilmember Yukimura, you had a question?

JOANN A. YUKIMURA: Yes, I want to know if there are either penalties or loss of money from the work stoppage?

Mr. Fujimoto: Yes, there is. We have to pay the contractor for cost incurred for the suspension and those cost... there is some fixed cost which is the equipment rental rates as well as inherent cost by just not being out there. We (inaudible) cost... like cars running over the base course that they already put in and having to rework that section. Any other reworking cost that might be necessary based on this suspension.

Ms. Yukimura: And do you know what amounts that are per day or...

Mr. Fujimoto: I don't have a firm number on that. I've...

Ms. Yukimura: But there is a clock ticking in terms of cost?

Mr. Fujimoto: Correct.

Ms. Yukimura: So I imagine the Administration is as eager as the... or more eager than the Council to settle the question of legality, so that you can either proceed if it is legal or correct the illegality and then proceed if it is illegal?

Mr. Fujimoto: That is right.

Ms. Yukimura: So what are you doing or have you done to secure that information?

Mr. Fujimoto: I am speaking for Public Works. I think this extends beyond the Public Works Department. We are talking about legal issues and I am not, I guess, I don't have control over this.

Ms. Yukimura: I understand, but you are responsible to request...

Mr. Fujimoto: It has been made.

Ms. Yukimura: To seek a determination about the legality, right?

Mr. Fujimoto: Right, and based on that, we have made a request to the County Attorney's Office.

Ms. Yukimura: Okay.

Mr. Fujimoto: And as Councilman Rapozo mentioned, we did get an opinion or interpretation from a Deputy County Attorney.

Ms. Yukimura: Right.

Mr. Fujimoto: I am waiting to get confirmation from the Administration whether this is something we can...

Ms. Yukimura: Sufficient and something you can rely on.

Mr. Fujimoto: Right.

Ms. Yukimura: Okay, so that is the status right now.

Mr. Fujimoto: Yes.

Mr. Rapozo: Donald, why don't we do that. Why don't we take a recess and I don't know how much time you need. Is five (5) minutes sufficient?

Mr. Fujimoto: Yes.

Mr. Rapozo: Okay, why don't we recess for five (5) minutes and we will be right back. Thank you. The Committee stands at recess.

Ms. Yukimura: 10 minutes.

Mr. Rapozo: Okay, 10 minutes.

Ms. Yukimura: We always go over.

There being no objections, the Committee recessed at 2 p.m.

The meeting was called back to order at 3:15 p.m., and proceeded as follows:

Mr. Rapozo: Donald, I guess if you could come back up and...

There being no objections, the rules were suspended.

Mr. Rapozo: Thank you Donald and on the break... I apologize for the break. I also had some other issues that I had to clear up as well. But just in summary, the Administration and I also did speak to the Mayor as well. So it is my understanding that you folks have agreed to halt pending the receipt of an opinion.

Mr. Fujimoto: Yes.

Mr. Rapozo: Thank you. Any questions for Donald? Councilmember Iseri-Carvalho?

SHAYLENE ISERI-CARVALHO: Yes, I guess prior to going on the break, Donald, you mentioned that and let me give you reference to the article in the paper. I guess first of all, it said that... this was March 1, 2007, Star-Bulletin article by Tom Finnegan that indicated that... a letter from the Department of Public Works and read into the record says that construction stopped February 21 and will not resume except for highway shoulder work until officials with the County Attorney's Office confirm the legality of the construction. And prior to going on break, you indicated that your office received an opinion from the County Attorney's Office, is that accurate?

Mr. Fujimoto: Interpretation, yes.

Ms. Iseri-Carvalho: So when I read this article that came on March 9, 2007, that indicates that the County Attorney's Office, however, has determined the entire project is legal except for the six (6) pavilions. Where was that from? Was that a... an opinion that you received from the County Attorney's Office?

Mr. Fujimoto: Actually, I got an opinion written... I guess opinion from the Planning Director and the Deputy County Attorney just confirmed that letter, that memo.

Ms. Iseri-Carvalho: So the County Attorney confirmed the interpretation of the Planning Director?

Mr. Fujimoto: Correct.

Ms. Iseri-Carvalho: And, so that would have been the County Attorney's opinion I would presume, right? Whether he agreed with the Planning Director or not, irrespective of that, he was giving you a legal opinion and that County Attorney was James Tagupa? Is that right?

Mr. Fujimoto: Correct.

Ms. Iseri-Carvalho: And was that in writing?

Mr. Fujimoto: Yes. It is a one paragraph statement.

Ms. Iseri-Carvalho: And can we have a copy of that?

Mr. Fujimoto: I don't have one with me.

Ms. Iseri-Carvalho: I guess we will call staff because I know somebody had a copy of that letter. And I guess the question that I have, Donald, is that... and maybe this is not for you, I don't know. Did the County... the Acting County Attorney sign off on the letter that was provided to you by County Attorney James Tagupa?

Mr. Fujimoto: I don't believe so. I believe there was only one signature.

Ms. Iseri-Carvalho: Was there anything that you received that confirmed the County Attorney's office position that was signed by the County Attorney?

Mr. Fujimoto: No.

Ms. Iseri-Carvalho: Is it not the policy of the Administration to have signatures by their supervisors as validating the support for any opinion, be it...sometimes, for example, I would bring up, like in your case, if there was something that was done by Doug Haigh who is your Buildings Supervisor or Director... it would also be signed by you approving that statement and it will also be signed by Gary Heu or reviewed by Gary Heu and also signed by the Mayor, is that right?

Mr. Fujimoto: Yes, in correspondence that goes back to Council, it is normally we have three (3) signatures from Public Works (the Division Head, myself and either the Mayor or Gary).

Ms. Iseri-Carvalho: Okay, and there was also a... in that same article that was put in today's *Garden Island*, reference to an opinion that was done by another Deputy County Attorney James Itamura, right?

Mr. Fujimoto: Yes.

Ms. Iseri-Carvalho: So you were familiar with interpretation as well.

Mr. Fujimoto: Yes.

Ms. Iseri-Carvalho: So who was it that gave you I guess the... who was it that decided to you as to which opinion was going to have priority on how the Administration would act?

Mr. Fujimoto: My discussions was with James Tagupa.

Ms. Iseri-Carvalho: Okay, and I guess who was it that said that James Tagupa would be the word of the County Attorney's Office?

Mr. Fujimoto: Again, I am not... I haven't done enough, I guess, correspondence or procedures with the County Attorney's Office to be really familiar with the process, but my experience has been that deputies have been appointed to Public Works for various issues and the deputy's kind of... or the so-called authority when it was assigned to us.

Ms. Iseri-Carvalho: Alright. Okay, and did that letter that came from the Office of the County Attorney's letterhead that was signed by Mr. Tagupa, did that letter indicate in any time that that was attorney client privilege?

Mr. Fujimoto: Not that I know of.

Ms. Iseri-Carvalho: Okay, well, maybe I should say that. No?

Mr. Fujimoto: No.

Ms. Iseri-Carvalho: So was that letter released to *The Garden Island*?

Mr. Fujimoto: Not the letter.

Ms. Iseri-Carvalho: Just the substance of the information that was contained in the letter?

Mr. Fujimoto: Right.

Ms. Iseri-Carvalho: And that was released...

Mr. Fujimoto: My reliance on the legal interpretation is the basis of, you know, my statements.

Ms. Iseri-Carvalho: Alright. So it is your position at this point to halt construction based on what? Because if you received an opinion by an attorney that you can rely on, why would we halt construction?

Mr. Fujimoto: Because, apparently, there is enough so-called additional... since then, I guess some additional issues that have been brought up that is in question I guess.

Ms. Iseri-Carvalho: Alright. And then, I guess, I just wanted to clarify one more thing before we leave on the conservation district use permit process because in the letters, there was admittedly a confirmation that there were unpermitted structures or roofs that were built that was not contained in the SMA permit?

Mr. Fujimoto: Yes.

Ms. Iseri-Carvalho: And that was a violation of the permit, right?

Mr. Fujimoto: The SMA.

Ms. Iseri-Carvalho: The SMA permit, okay. Now, it indicates here that the County Administration will ask the County Planning Commission to approve special management use permits for those rest area pavilions. Did that request occur?

Mr. Fujimoto: Excuse me?

Ms. Iseri-Carvalho: The request to have the Planning Commission review or issue an after-the-fact permit for the illegal construction of the roofs on the rest areas?

Mr. Fujimoto: Yes, I believe we submitted an application to the Planning Department to amend the SMA to consider these structures.

Ms. Iseri-Carvalho: And when did that letter... when was that letter sent to the Planning Commission?

Mr. Fujimoto: I am not sure the exact date.

Ms. Iseri-Carvalho: If we could on the break obtain that information while we wait for the County Attorney to be present because I guess the concern that I have is that you raise... when Councilmember Yukimura raised the issue of whether or not there were fees that were being incurred because of the stoppage of the current work that was done. I understand that the violations had been admitted to back in December and it is now March, so I want to know when the Department of Public Works and when the contractor asked for a review because I know it had not appeared on the Planning Commission's agenda as of yet. Is that

right? And has there been a determination that we, the County, will be responsible for haltage of that construction, the roofs.

Mr. Fujimoto: Okay, it is a little different. On that respect, my understanding is that since the contractor is responsible for obtaining all permits, that this possibly could be their responsibility. That the issuance... until this is resolved could be possibly be solely borne by them.

Ms. Iseri-Carvalho: And that was an opinion that you received by the County Attorney?

Mr. Fujimoto: No, that is, again, just interpretation based on the contract where the contractor is solely responsible for all permits.

Mr. Rapozo: That is the roof, the rest stop?

Mr. Fujimoto: Right, the suspension of just the roof.

Ms. Iseri-Carvalho: Okay, so you are saying, that is your interpretation based on your reading of a legal contract document?

Mr. Fujimoto: Yes.

Ms. Iseri-Carvalho: Have that issue been referred to the County Attorney's Office?

Mr. Fujimoto: No.

Ms. Iseri-Carvalho: Okay, so at this time, you suspect that there might be a possibility that we are not responsible for any fees that may be... or any funds that may be incurred as a result of halting the construction on those permits and not seeking... and I guess my concern is that if we did not seek due diligence in obtaining these permits that is why I really need to know the date that we sent the request to the Planning Commission.

Mr. Fujimoto: It happened right after we found out that there might be this question. After we double checked and found out that possibly... well, it seemed apparent that the roof structures were not included in the original SMA. We did submit a letter to Planning (change side of tape).

Ms. Iseri-Carvalho: ...on an item that is... that has been on our Council agenda as a hot point. Clearly, that disturbs me because if there was any value to what had been put into those structures up until the time it was stopped, clearly with rain and other kinds of conditions, that may have rendered those roofs or

partially constructed roofs not usable for any purpose. So I guess if we can... on the break, if you can get a copy of the letter to us, I would appreciate it. And I think it is really important for us to obtain an opinion and it is unfortunate that the only attorneys that we have is the County Attorney's Office, but obtain an opinion as to liability of not seeking or not obtaining permits for those structures that were constructed and that we should not be liable for any cost if it was not our responsibility (the County), that it was the contractor's responsibility, then we should be seeking damages against the contractor for, you know, not only the public outcry that has occurred as well as the actual financial cost that went in. I mean, I am hoping that we did not pay funding for building of something that was never in the permit to begin with.

Mr. Fujimoto: Right.

Ms. Iseri-Carvalho: And I would like to get confirmation from our office.

Mr. Fujimoto: I would just like to make a distinction right now on what we felt was respon... the contractor's responsibility and what is not.

Ms. Iseri-Carvalho: Donald, I guess, you know, for me, it is not what we think we might be right. I mean, we need to have some legal support for our position, so I understand that you may have a position that it may be the contractor's responsibility, but, really, you know, legally, when it comes to that... our opinions are valueless, I mean, because it would depend on our reliance on the law and what the law says. So, at this time, I don't think it is necessary for you to go into your interpretation of the contract because an interpretation of the contract should be based on an attorney especially our attorney as to what kinds of liabilities we may be facing. Not only in this contract with respect to the structures, but respect to the haltage of the entire project. And then my last question would be, as far as the cost that have been incurred, my understanding that those are reimbursable cost, so how is funding being provided for the construction that has already taken place?

Mr. Fujimoto: Those issues... since it has been brought up has been suspended. I don't... I need to confirm this and I will try to get back to you on that too when I get the information.

Ms. Iseri-Carvalho: I am sorry, what issues have been suspended?

Mr. Fujimoto: The buildings.

Ms. Iseri-Carvalho: Okay.

Mr. Fujimoto: I am not...

Ms. Iseri-Carvalho: But I mean as far as...

Mr. Fujimoto: My understanding is, we have not made payments on those structures.

Ms. Iseri-Carvalho: Okay, but on any structure. What is the payment...

Mr. Fujimoto: I believe there are separate line items for each structure, so the permitted structures have been paid for.

Ms. Iseri-Carvalho: Okay, the...

Mr. Fujimoto: The nine (9) rest pavilions and the progress payments on the comfort station, but I can confirm that during the break, I can also provide you that information.

Ms. Iseri-Carvalho: But it also goes back to begging the question that if it is correct that the shoreline certification...that any building should not... or any construction should not have taken place before we had obtained a survey or redone the shoreline certification. Then, you know, I mean, payment of those are not valid as well. I mean, so...

Mr. Fujimoto: It could be and I guess you bring up a different point of view that the attorneys, during this process, I guess, could also look at that as to what really is our responsibility versus theirs. There is... again, you bring up something, a new perspective of...

Ms. Iseri-Carvalho: And if we can also get... I mean, I would like to see how much cost have been paid already for the bikepath and out of what accounts in the budget has it been paid if it is correct also based on my assumption that these are reimbursable items meaning that we pay upfront and then we provide receipts to the State and Feds or whoever is administering there and then they reimburse us back. So if you could get (inaudible)... I think we asked that question the last time.

Mr. Rapozo: Yes, I believe we did.

Ms. Iseri-Carvalho: And I know that I did not get a response.

Mr. Rapozo: Again, and being that this matter will be deferred, we intend to send over a whole bunch of questions.

Ms. Yukimura: I have a question about a break. I don't know what the break is that's referring to. Are we going to break again to get information right now? Or is the break that maybe Councilmember Iseri-Carvalho referring to, the break between this Committee meeting and our next Committee meeting?

Ms. Iseri-Carvalho: Yes, between now... I want to know today, you know, whether or not... when was the letter that was sent over to Planning Commission on those structures.

Mr. Rapozo: And I have asked our staff to go call right now.

Ms. Yukimura: I just want to... I want to, I guess, object to any long break that we have to take now... if we can get that information...

Mr. Rapozo: We are not taking a break.

Ms. Yukimura: At our next meeting unless there is some urgency that I don't understand.

Ms. Iseri-Carvalho: Maybe I can let you know my urgency.

Mr. Rapozo: ... to our staff because I think it is and I think we need to get it right now, but, again, I think we can do that while the meeting is going on and that is what we are doing. I have asked Peter to call and get that information now.

Ms. Yukimura: Okay.

Ms. Iseri-Carvalho: And then, I guess the questions that I would have would be for the County Attorney.

Mr. Rapozo: Any questions for Donald? No questions. Okay, thank you Donald. Just hang around Donald because... again, like I said, it is my intention to defer this matter to the following meeting. You know, what I do want to discuss in the Committee is the fact that, you know, a couple of the specific issues that we asked at the last meeting... more specifically and I don't have my folder, but the H.R.S... I guess it is 205A-42 which clearly states that the shoreline certification is good for one year. That was asked by this Committee. In fact, I think Council Chair recommended a referral to the next week because of the seriousness and I guess it went from Committee to full Council which is unusual, but we did it because of the seriousn... this Committee felt and this Council felt. That went to the County Attorney in a request that we would get the clear interpretation or an opinion on 205A-42 which was the one year validation or certification as well our County rule pertaining to the applications. I know Councilmember Yukimura you brought up that your position that it could mean

either/or... construction or use... application for use or construction and that was the question you had was to...

Ms. Yukimura: It was a question.

Mr. Rapozo: Right, to determine that and if we haven't gotten that. We have not received that opinion.

Ms. Yukimura: Well, we have received an opinion regarding the setback rules.

Mr. Rapozo: It talks about the SMA and without getting into the opinion, I just want to say and...it does not address the concerns that this Council had.

Ms. Yukimura: Okay, so you are saying that we need that basically.

Mr. Rapozo: Oh yes, I am saying that we need it because...

Ms. Yukimura: I mean I...

Mr. Rapozo: It is, you know, again, there is no legal basis for the opinion that we got. There is nothing in that opinion that points to any kind of statute that addresses the concerns we had. We have that two (2) concerns and I think that is fair concerns, valid concerns that... the bottom line is that we have not received any kind of opinion on whether or not 205A-42 applies.

Ms. Yukimura: Okay.

Mr. Rapozo: Go ahead, we are in discussion.

Ms. Yukimura: Applies to what?

Mr. Rapozo: To our bikepath.

Ms. Yukimura: Okay, so the certification...at the time of application for the SMA permit, the shoreline was... the shoreline certification was within the one year, right?

Mr. Rapozo: Correct, it was valid.

Ms. Yukimura: So if a valid certification was used to do the shoreline setback and the setback rules were appropriately applied, then everything would be okay.

Mr. Rapozo: Under the SMA application rule.

Ms. Yukimura: The SMA application rule?

Mr. Rapozo: Right, yes, the rule says, at the time of SMA application, you have to have a valid shoreline within six (6) months.

Ms. Yukimura: Right, and they had that.

Mr. Rapozo: Correct and there was never a dispute by this Council that that was not...

Ms. Yukimura: So what is the 205A-42 question? I am not quite clear.

Mr. Rapozo: That is the H.R.S. The State laws that states that a shoreline certification is valid for only one year.

Ms. Yukimura: Okay, and as applied to the facts, what are we saying, that it wasn't valid?

Mr. Rapozo: At the time the permits for construction were made, were applied for...

Ms. Yukimura: Right.

Mr. Rapozo: Our shoreline certification was not valid.

Ms. Yukimura: But that is moot if they followed... if it is declared that an application of the shoreline setback laws is okay at time of SMA permit rather than building permit.

Mr. Rapozo: Well, and that is the debate.

Ms. Yukimura: So it all hinges on the question of whether the application of our shoreline setback rules require a certified shoreline at time of building permit, that is the question.

Mr. Rapozo: Correct, that is the question.

Ms. Yukimura: Right.

Mr. Rapozo: And that was not answered.

Ms. Yukimura: Well, it was answered, but apparently not to the satisfaction of some Councilmembers.

Mr. Rapozo: Well, I mean, I don't see where it... and I am not going to go there because it is the opinion, that again, that we are not going to get into.

Ms. Yukimura: That we have to either...

Mr. Rapozo: But the reality is that we have... and I will be honest with you and I think I made my comments quite clear in the beginning of this meeting was that it does not address that. I mean, in fact, when the applications for building or construction was made, it had been probably four (4) years which...

Ms. Yukimura: But that shouldn't matter if the following of the shoreline... of these setback law is met. If the requirements of the setback law is met by application at time of SMA permit.

Mr. Rapozo: And, that is, I guess, one side of the argument and I just tend to disagree. I think... again, I am not going to get into the legal argument here. What I want to see...

Ms. Yukimura: I am just trying to understand what the legal question is to the attorney and how it applies to our understanding of what is legal and not.

Mr. Rapozo: Well, I think, I thought, anyway, that we made it clear at the last meeting when we requested the opinion or two (2) meetings ago that those were the two (2)... I think the two (2) items that were important.

Ms. Yukimura: But I want to say that the shoreline certification, one year validity comes into play only if the application of the setback rule requires it at time of building permit.

Mr. Rapozo: And that is what I had hoped to see in the opinion.

Ms. Yukimura: Well, that is the question you hope to be answered or do you know the answer already?

Mr. Rapozo: No, I am waiting to see what...

Ms. Yukimura: So that is the question that we need to have answered.

Mr. Rapozo: And that is what I had expected to see. Again, I think you sense the frustration in Councilmember Iseri-Carvalho and I don't blame her and you read the newspaper and you read the newspaper saying that the County

Attorney has basically said that it is all okay. I don't think that is accurate. I don't think that the opinion we received was actually a complete one and I voiced my concern as well with the Administration. So, hopefully, we will get that... we will get an opinion that is supported by some legal basis and we just don't have it. I mean, there is nothing in that opinion that cites any specific case that pertains to 205A or our local SMA rules.

Ms. Yukimura: Well, the first threshold is the shoreline setback law and I doubt very much if we will find much case law regarding it, but I think we could be owed or due some treatises on how to interpret language in...

Mr. Rapozo: Well, and I think you go back to the purpose and if you go to the purpose of our shoreline law or our setback law, I think it is quite clear why those laws are in place.

Ms. Yukimura: Yes, but you can't just do it based on practice.

Mr. Rapozo: Well, and I am not. I am asking for the attorneys to do that. I am not going to sit here and tell you what is right or wrong, but, I mean, I think we deserve the respect that if we ask for an attorney's opinion, we get one that is complete.

Ms. Yukimura: Okay.

Mr. Rapozo: And, you know, again, at the end of the day, it all comes down to how you interpret the opinion or how you interpret the law. And, you know, that is why we have courts because you will never have two (2) attorneys agreeing on law that is why we have courts. I mean, that is why we rely on them and not so much a personal opinion, but a legal opinion because we all have our personal opinions on what should be done. I think that, in this case, anyway, it simply was not done in the opinion that we received. And what I don't want to do is... I don't want to debate the opinion on the Council floor. It is not the appropriate place, but on the other side of the coin, I think that we need to have the dialogue to establish what is right and what is wrong.

Ms. Yukimura: I just wanted to be clear about what questions we were asking the County Attorney to respond to.

Mr. Rapozo: I don't know if we can send back over again. I mean, they have already heard it I think so many times. It is those specific questions. The fact that, really, how can we ignore the fact or ignore the rule that really requires a shoreline certification that is less than six (6) months old prior to construction or use. I think that is... at that is my question that I need answered and it hasn't happened. Because if it is simply at time of SMA application, a permit, and if that

is granted at that time and then you don't need another one, then, really, you open the door for any landowner. Once they get that certification and SMA permit to build whatever they want regardless of shoreline erosion, regardless of beach erosion. Five (5), six (6) years, seven (7) years, at what point does it make a difference. And those were the questions that I thought we made quite clear and maybe I am just totally off base with this. But I have not seen, in the opinion that we received anyway, what the answer is to that question.

Ms. Iseri-Carvalho: I have a question. You know Councilmember Yukimura raises a question that the opinion was not to the satisfaction of some Councilmembers and I would like to know who that is if you wouldn't mind saying because I think one of the questions that I read in your letter to me was that you were not satisfied. So if it was you, then say it was you. If it was somebody else that is not satisfied with the opinion, then by all means the public should know which Councilmembers were not satisfied with the opinion as opposed to having this oral. Okay, which was those Councilmembers that didn't like that opinion?

Ms. Yukimura: I mean, I think I said in my memo to all of you that I was satisfied with respect to the answers.

Ms. Iseri-Carvalho: Tentatively satisfied.

Ms. Yukimura: That is correct with the questions asked that we had asked, but I was concerned about some other extraneous parts of the opinion that I didn't feel were appropriate.

Mr. Rapozo: And I agree.

Ms. Iseri-Carvalho: But I have some concerns, so is it that when a County Attorney or Deputy County Attorney gives an opinion, we just pick and choose which parts of the opinion we want and say, well, I am tentatively satisfied with this part and I am not on this part, so can you take back your opinion and give me the part that I like and not the part that I don't like. I guess I have some concerns with that because when you are the County Attorney, you don't work at the will of an individual. I mean, you say your points and whatever points that make... you make your decision, then I think it is only fair that you write out in totality what your opinion is. You don't limit necessarily your opinion to one issue.

Ms. Yukimura: Well, you limit it to the question asked.

Ms. Iseri-Carvalho: Not necessarily. If the... can I finish.

Ms. Yukimura: The thing is that I think if we are going to have this discussion, we need to have it in Executive Session because some of my concerns raised were with respect to the exposure of the opinion.

Ms. Iseri-Carvalho: Well, I think the people have a right to know. It should be out in public. I mean, that is what the concerns were about having transparency in government. I think this is an issue that the public is very concerned about and they want to know all of the relevant issues that surround it and...

Ms. Yukimura: But not if it is...

Ms. Iseri-Carvalho: And I think an open discussion is totally appropriate.

Mr. Rapozo: And I would agree to the extent of the discussion that is not involved in the opinion... the attorney's opinion at this point.

Ms. Yukimura: This whole thing is about the attorney's opinion.

Mr. Rapozo: Right, and, obviously, the cat is out of the bag because it is in the paper.

Ms. Iseri-Carvalho: Well, and...

Ms. Yukimura: Well, I don't know that there was an opinion mentioned in the paper. I mean, I think there was an opinion given on the floor of the Council and I believe it was in open session, that it was legal, right?

Mr. Rapozo: But it says, the County Attorney's Office, however, has determined the entire project is legal except for the six (6) pavilions.

Ms. Yukimura: And that happened in open meeting at one of our meetings if I recall.

Mr. Rapozo: Well, you have to read the entire article because it lays out the foundation of what was said. Well, let's not go there because I do not want to discuss the opinion at this point. If somebody released the opinion to the media, you know, we can deal with that later. That is a question that I am sending across to the Administration is, how, in fact, did the media get a hold of this information. I know... when, we, as the Council request a County Attorney's opinion, that opinion becomes a work product, a attorney-client-privilege between the attorney and this Council and nobody else. So when we have attorneys that issue opinions to us and then at the same time talk about the opinion to others, that is not right, that is simply not right.

Ms. Yukimura: Mr. Chair, do we know for a fact that there was discussion about the opinion that was sent to us or was it from a letter that was just sent to the Planning Director verifying that his actions were legal?

Mr. Rapozo: Well, it is not the letter from the Planning Director that concerns me. It is the...

Ms. Yukimura: No, no, a letter to the Planning Director.

Mr. Rapozo: I am not talking about that one. That is perfectly fine. In fact, the County Engineer did everything we expect.

Ms. Yukimura: That could be the determination that was given to the Planning Director that it was okay to proceed or whatever and that wasn't the written opinion sent to us that was an attorney-client-privilege.

Mr. Rapozo: Well, the opinion from the attorney that drafted the opinion is our work product. That attorney that drafted the opinion for us is our attorney. It is like our personal attorney and maybe I am wrong, I don't know. I am still new at this stuff, but if I retained the services of an attorney, which is what the County Attorney is for us, I do not expect that attorney to be discussing this matter with anybody.

Ms. Yukimura: To my knowledge, the Council and the Administration are not separate parties on this issue.

Mr. Rapozo: Well, there are conflicting opinions.

Ms. Yukimura: Unless we determine to go into court, then we will be on separate sides, but I don't... to my knowledge at this point, we are both seeking an opinion as to the legality of the issue and there shouldn't be a separate opinion for us and for the Mayor.

Mr. Rapozo: But Councilmember Yukimura, we have two (2) separate opinions coming out of that office. So the fact that one...

Ms. Yukimura: One written opinion.

Mr. Rapozo: Well, it doesn't matter. We have two (2) on the record opinions.

Ms. Yukimura: We have two (2) on the record opinions which is why we asked for a written opinion with citations and so forth that would be the opinion that we could rely on.

Mr. Rapozo: Correct.

Ms. Yukimura: Okay.

Mr. Rapozo: So my point is, when that attorney... because of the conflict in opinions and regardless if it is written, verbal or what, the question I pose and, again, I will pose this in written for to the Administration. Who determines what attorney is right? Who determines what attorney is wrong in one office that has two (2) separate opinions?

Ms. Yukimura: Well, the way that I understand it...

Mr. Rapozo: The one that works for you or the one does not work for you.

Ms. Yukimura: It doesn't matter. I thought what we are asking for is an opinion that is based on research and facts.

Mr. Rapozo: Thank you and did you find that in the opinion?

Ms. Yukimura: I found it.

Mr. Rapozo: Really?

Ms. Yukimura: Yes.

Mr. Rapozo: I mean, that is fine. Again, we can sit here and dispute and that is why we have seven (7) people here. I am not going to tell you that I am right, you are wrong, or vice versa, but I feel that had the question been posed to the attorney, it would be a whole different story.

Ms. Yukimura: That is why... I mean, to me, it is outrageous that there were two (2) opinions.

Mr. Rapozo: Yes.

Ms. Yukimura: And that the County Attorney's Office has to internally look at the question, do the research and then come forth with one opinion. So that is what we asked for in the request for a written opinion.

Mr. Rapozo: Right.

Ms. Yukimura: We have received one and there is mixed opinions about whether that was documented enough, so we have to... at some point, the question

is going to be, will it ever be documented enough to the satisfaction of the Council and to a certain point, does it matter because if it isn't, we have to take the Administration to court to find out at the very...

Mr. Rapozo: And that is always an option and not saying that is what my intention is, but I can tell that I am not satisfied with the structure of the opinion that we got and, you know, again, we will be posing some questions up to the County Attorney's Office. I do not want to have the debate on the Council floor especially debate that we don't prepare.

Ms. Yukimura: I agree.

Mr. Rapozo: But, you know, I think that this Council, this Committee should get and I will call it respect because I think when we ask for that and, again, I don't know. I mean, I look at the opinion that Mr. Chun provided this morning and whether we agree or disagree with his opinion, it is an opinion that is backed by some cases. I understand what you are saying, there may be no case law in this matter, but I would say that the Caren Diamond case provides some history. Now, whether or not... I mean, the Caren Diamond decision doesn't substantiate the Administration's position. It doesn't matter, but I think because the concern on this Council when the request was made to the Administration, I think the case was cited several times. I think it should have been in the opinion. If, in fact, the Diamond case does not apply to this in which I think it does. I think if you read the statute... it is quite clear. The Supreme Court makes it quite clear that a shoreline certification is valid only for a year and they wasn't even going to entertain that because, at that point, in time, it was not even a valid shoreline certification. Again, we are not going to agree on the legal issues on this. I am not a lawyer and I know you folks are, but that is why I rely on the County Attorney and we will see what happens. I mean, the Administration has, hopefully, will look at the attorney... look at the County Attorney's opinion and put some substantiating information in there I guess to the satisfaction. I will tell you right now that I am satisfied with it. I make no bones about it. I think it is clear that it is lacking quite a bit of substance in that opinion, so... and I may never be satisfied, but the reality is, it is the prerogative of the Mayor to do what he wants to do. If, in fact, he feels comfortable with the opinion, he can have those guys back to work tomorrow. I am asking as a courtesy, hang on until we get an opinion that has some kind of substance in it and that is lacking. Anyway, Mr. Chair, I saw you grab your mike and the rules are still suspended. I purposely left it suspended because I had expected you to...

BILL "KAIPO" ASING: Well (mike off).

Mr. Rapozo: Right.

Chair Asing: I am not a member of the Committee, but I think we've had enough debate and I thought it was your intent to defer this item.

Mr. Rapozo: It would be deferred. Did Peter or... I do want to get that question answered that Councilmember Iseri-Carvalho had regarding the date that was sent over because I think that is important as we digest what was discussed today.

Ms. Iseri-Carvalho: Committee Chair, I have a question.

Ms. Yukimura: Can we do our other business while we are waiting?

Mr. Rapozo: We could, we could move onto... what is your question?

Ms. Iseri-Carvalho: Well, the question is, you know, I am still waiting for the County Attorney to be present. I do have a presentation, a very short presentation on my thoughts as to why I do not believe that the County Attorney is the party that we should be obtaining this opinion from. I would like to get that part on the record. The second point that I wanted to make... There has been much discussion about whether it is verbal or written and because get two (2) verbals, only the written one counts and I want to know where that is substantiated in the law. There is nothing in the rules or laws that say that it has to be written opinion. All attorneys know that they are bound by rules of ethic, they are bound by Hawai'i Rules of Professional Conduct and they are bound by making statements as officers of the court or officers of the government to make statements that they will be held to. So it is just boggles my imagination when we are talking, well, two (2) verbals don't count and you can have 10 verbals, but let's wait until we get a written, and then a written one comes, it doesn't fully address the issue. Well, we are tentatively satisfied with that, but not really and some people have some concerns about this, so let's not go with that. I mean it really sounds to me to the public that we are searching for one that supports our position. When that one comes on, then we will (inaudible). But until then, let's go get as much County Attorneys that we can even though when you look at Article 8 of our Charter that says, the County Attorney and that is why I am requesting for "The County Attorney" to be present as we had requested for a written opinion as well is that on Section 6.04, Powers, Duties and Functions, the County Attorney shall be chief legal advisor and legal representative of all agencies, including the Council, and (inaudible) officers and employees in matters related to their official powers and duties and he or she shall represent the County in all legal proceedings. He shall perform all other services incident to his office... they don't even provide female genders here. This is how old this document is... incident to his office as may be required by law. So, you know, it is... I am concerned when we begin to pick and choose or so the impression is such that we are picking and choosing. Based upon Charter, I am requesting that the County Attorney be present, number 1, and based on my understanding of the Hawai'i

Rules of Professional Conduct, Councilmember Yukimura discusses, well, you know, it is very narrow. If we only ask this questions, then that is all that they can answer. If they venture farther than that, we are not going to listen to any of that. That is totally, I think, irresponsible. I mean if we are having an opinion from the County Attorney that is giving us information that they believe is accurate for us to make a determination, then we should gather as much information as we can and not just be limited to what they spoke of. We talk of confidentiality and that is why I have this short presentation to go through. The confidentiality rule applies not to merely to matters communicated in confidence by the client, but also to all information relating to representation of their client, whatever (inaudible). And then we read a letter here that I have been provided with to Donald Fujimoto from James Tagupa giving an opinion that doesn't even have signing as a Deputy County Attorney. There is no reference of attorney-client-privilege which is why, I believe, Donald probably discussed what was said in this letter as an official statement of the County Attorney's Office. Nowhere on the letter is it even signed or initialed as even having been reviewed by the County Attorney is supposed to be the chief legal advisor in this matter. There are other confidentiality rules that I feel that would be in appropriate for us to even refer this to the County Attorney, but for the sole purpose of getting special counsel because of what has been discussed and what has also been revealed. I think there are some serious concerns or violation of ethics of Mr. Tagupa in revealing information knowing that he had provided a legal opinion to this Council that varied from that opinion.

It says, again, not only matters communicated in confidence, but all other information relating to that representation. Clearly, his letter dated March 6 that was given to Donald Fujimoto that showed up in *The Garden Island* or portions of it that showed up in *The Garden Island* today was based on information that related to the representation of this Council. So I would like to go through those rules of professional conduct so that it doesn't happen again. I mean, how much more liability are we going to dig ourselves into.

Mr. Rapozo: How long is your presentation?

Ms. Iseri-Carvalho: It is about five (5) minutes.

Mr. Rapozo: Let's do the presentation. We have to take a caption break shortly, so let's do that and then your presentation. Is it, what, PowerPoint?

Ms. Iseri-Carvalho: Yes.

Mr. Rapozo: Is it cued already?

Ms. Iseri-Carvalho: I'd like to just start by saying that it just concerns me that there's these opinions that are flying out or written opinions and

statements being made to various agencies without, it seems, any thought given to these rules that... these are the rules that are adopted by the Supreme Court that are... that govern the actions of all attorneys whether they be governmental attorneys, private attorneys... any attorney that is licensed to practice in the State of Hawai'i including people who are inactive. So these are the rules that we need to abide by. Rule 1.6 regarding confidentiality and I know this is something that has been stated many, many, many times before. But as a matter of going through it, so this is very clear in our mind when we are referring or asking information of County Attorneys that this be on the forefront that a lawyer shall not be reveal information relating to representation. It says, relating, it is not only things that are very specific. This is written to be broadly interpreted. A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation.

In this case, there is a letter by Mr. Tapuga that is written to Donald Fujimoto that appears in *The Garden Island* or portions of it... substantive portions appears in *The Garden Island* on which, in fact, government actions or administrative actions were going to be done. Unfortunately, we were able to discuss as Mr. Rapozo says, asking the Administration to review its decision that it had intended to make in light of what kinds of ramification that we may be facing. Clearly, in this matter, Mr. Tagupa received a request from the County Council on behalf of the Chair asking for an opinion relating to particular legal issues on the bikepath. There was a response that was provided to Mister... Chair Asing that was given to the rest of the clients of Mr. Tagupa. At no time was there ever any consent given by myself and I would hope other people didn't as this matter just showed up today on the agenda item and I just reviewed that opinion maybe a day or so ago by e-mail. So there was no time for any client to consent, especially in my respect, and after consultation. There was no opportunity for consultation because we couldn't have been discussing this matter with issues of sunshine law, it was a posted item and, thus, this morning or this afternoon, there was some discussion. Next.

There are these comments that allow you for interpretation of these rules that a lawyer is very aware of. In fact, this is a course in law that is mandatory that you need to take and pass. The confidentiality rule applies not merely to matters communicated in confidence by the client, but also to all information relating to representation whatever it (inaudible). It also says that that requirement of maintaining confidentiality of information relating to representation applies to government lawyers (and that is why it applies to everyone) and also those lawyers who may disagree with the policy goals that their representation is designed to advance. So despite the fact that they are in that position to give opinions on behalf of the Council and to give opinions on behalf of the Mayor, clearly, that is not the requirement of maintaining confidentiality still must exist and be abided by. Next.

Rule 1.7, regarding conflict of interest. A lawyer shall not represent a client if the representation of that client will be directly adverse to another client unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and to each client consensus after consultation. There is also a section in here that even if it is not directly adverse to another client, 1.7B says, a lawyer shall represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, etc. So this is the concern that although Councilmember Yukimura may seem to believe that there is no adverse type of relationship here. Clearly, I believe, that the concerns that were raised today and many, many other days, there are these adverse issues that have arisen as to the interpretations given by the County Attorney's Office and the interpretations given by the Administration. I could not see a lawyer reasonably believing that the representation on the County Council with one opinion whether it be given by Mister... Deputy County Attorney Itamura versus Deputy County Attorney Tagupa that it did not affect the relationship with our clients. Clearly, those two (2) opinions affected the relationship between the Council as well as the Administration. Any lawyer is prohibited and it says, shall, that is mandatory language. A lawyer is prohibited from representing both clients unless each client consents after consultation.

Again, it is... none of these elements have been provided for. We did not consent. I did not consent. I did not even have any consultation. I did not have a single phone call or any discussion with Mr. Tagupa. He did not even initiate any kind of phone call. He may have initiated phone calls with others... I cannot speak, but as a client on behalf of myself, it says, each client. I was never consulted nor give consent for any of the other opinion to be released.

Loyalty to a client: loyalty is an essential element in the lawyer's relationship to a client. Loyalty to a client is also impaired when a lawyer cannot consider, recommend, or carryout an appropriate course of action for the client because of the lawyer's other responsibilities or interest. When I look at loyalty to a client and we talk about when Deputy County Attorney Itamura was here, I still don't understand how there was a role reversal on who was the attorneys even thought they came from each side. Why one opinion had more precedent than another? But, clearly, there must have been some issue that one would think that someone there was some consideration that potentially, maybe, Itamura was not able to carryout his course of action because of these other administrative responsibilities or interest. And that even had to do with... as we raise another issue about the cost. I mean, you know, let's give... take an opinion that limits the cost of how much penalties we are going to pay because construction is halted. That is also an issue that clearly is one that says, well, can I do it, can I not... there has to be some loyalty issues and if that loyalty client is impaired, then that client, that

attorney, is not able to represent zealously what he is required to do of his clients interest.

Conflicts and litigation: Ordinarily, a lawyer may not act as advocate against a client. The lawyer represents (inaudible) even if the other matter is wholly unrelated. So even if we are talking about other various aspects of the bikepath, there are some that we may have had some, I guess, Council support on some of the parts of the bikepath and some are not. But even in spite of that, I mean, you cannot act in one sense and believe or that there can be an assumption that you are not somehow impaired by your loyalty to the client (meaning in this case, the County Council). Next.

Prohibited transactions and conflict of interest under Hawai'i Rules of Professional Conduct, Rule 1.8B: A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation. Again, there was zero consent and there was zero consultation and, yet, there appears to be information that appeared in *The Garden Island* and appeared on behalf of Mr. Tagupa to Donald Fujimoto of something that I may consider a disadvantage. But because I didn't have that opportunity to even give consent, clearly, that was a prohibited transaction. A general principle, all transactions between client and lawyer should be fair and reasonable to the client. I mean, how can that be fair and reasonable when Mr. Tagupa chooses not to even engage in any kind of consensual discussion nor consultation. And, that, again, would not or should not have taken place because that would have violated the Sunshine rule and that is why it was posted on today's agenda item. And in such transactions, what they suggest in these common rules is that a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the clients disadvantage. I personally feel that that has been done in this case given the information that I was provided to just this morning. But, overall, I think what is very important here is that given these kinds of issues and concerns, a review by an independent counsel on behalf of the client, myself, is often advisable and that is why, often times, stated my position that this should have gone to special counsel from the very beginning. I believe that concludes it. Thank you Committee Chair for allowing me to provide that presentation.

Mr. Rapozo: Thank you. Any... you have a question?

Ms. Yukimura: Comment.

Mr. Rapozo: Sure.

Ms. Yukimura: I think there is possibly a violation if we are legitimately seeing the Council and the Administration as different clients. And I don't believe

myself or the Council is the decision maker in this respect and we need to... I believe Councilmember Iseri-Carvalho is going to seek an opinion on that from those who are under the law deemed to make that decision. So... I certainly will abide by whatever the decision is made, but, you know, an issue has been raised and I think we need to give it to the body that makes the decision about whether there has been a violation of professional ethics and then move from there. I don't think we can assume that there has been a violation nor can we maybe assume that there hasn't been. If the question is raised, it needs to be settled, but not by the Council.

Mr. Rapozo: Okay, we are going to do a tape change. Stay where you are. Thank you for that presentation Councilmember Iseri-Carvalho. I guess it is interesting I guess for the non-lawyers that don't study law and know the ethics of attorneys, but it is actually quite revealing. Anyway, what I am going to ask the Committee to consider is that we... we are going to defer this matter. What I do want to do, though, is ask that we set up an item on next week's agenda, Council Meeting in Executive Session, because I think what has been just presented, brings up some serious concerns that I think needs to be addressed. I am not so sure that it can be addressed. I would ask that we post, Mr. Chair, on both agendas, open and executive.

Chair Asing: That is not a problem.

Mr. Rapozo: Because I think whatever needs to be discussed in open needs to be discussed in the open, but, yet, when we start talking about liabilities and potential... I don't know how you say it, misbehavior, that I believe that belongs in Executive Session. You know, this issue has really grown from something that was relatively simple, I think, and it is just a difference in opinions and I am hoping that we can get resolved relatively soon. We will... the construction will cease until we get the opinion from the County Attorney or an attorney and I think Councilmember Iseri-Carvalho brings up a point. In fact, it is in that, one of that... what is that, ethics, rules of ethics... professional conduct about a third party opinion in a case like this. I guess we will just have to digest what we just heard. I do want to ask the Committee and non-Committee members as well to present... if you have any questions or concerns to get it to me as soon as possible because I do want to get it out as soon as possible.

Ms. Iseri-Carvalho: Maybe if you set a deadline, so for those who are not here and would like to have the opportunity. I don't know when they would film it on Hō'ike... maybe Saturday or so... maybe by Monday. When do you want to get the letter over?

Mr. Rapozo: The meeting is on Thursday.

Chair Asing: What is the timetable for Thursday?

Mr. Rapozo: It is on Thursday, so we are on track to post for Thursday, okay. Monday would be good. If I can get the questions or concerns by Monday, I'd like to get it out to the Administration by Monday afternoon. I think the agenda... as long as it is posted, so that it can contain the concerns by Councilmembers. If we could have two (2) postings just so that we can discuss what we can in open and whatever we need to go into Executive Session, we will have that ability. Does that sound like something the Committee will welcome?

Ms. Iseri-Carvalho: Yes.

Mr. Rapozo: Anymore discussion? Yes?

Ms. Iseri-Carvalho: Yes, Committee Chair, you know, I think I would say that I was quite shocked and probably embarrassed when this article showed up. Embarrassed simply for the reason that the public must believe that our County government is totally dysfunctional. That is the embarrassing part... clearly come across that these kinds of issues that could have been resolved before and instead you have to wake up in the morning and think it is a great morning to be back on Kaua'i after spending a week in Washington, D.C. in freezing cold, that there would be something positive that you could read. And having something like this by the Administration, I think it is another betrayal of trust that they could not discuss this matter. In fact, at our last meeting, I thought it was clear after even having some conversations and some calls from Washington, D.C. to our heads here that this kind of action would not be beneficial for any of us. So, you know, it is a very low point in my career to have this come forward after the many, many discussions that we've had. You know, we had talked extensively on (change tape)... if it is only one sided. I don't know how many times this statement has to be said and each time it feels like we are... or at least I am, you know, consistently let down on the kinds of things that appear in the newspaper before we are even told about it. In this case, the reason why I am quite upset today was because, you know, these are things that fly in the face of ethical obligations of attorneys and, you know, to take it to a whole new level by having it printed in the media.

And, you know, once the media gets a hold of it and it is printed regardless if it is inaccurate or accurate, that no longer becomes the issue. The issue becomes sensationalism and let's try to make this incident as embarrassing as possible for everyone. This is probably one of the most embarrassing things that have happened and, clearly, it almost seems that these kinds of things that have been happening throughout the year is so offensive even compared to me being a public defender and representing people that... or drug dealers or even prosecuting sex offenders and then having to deal with these kinds of things that I think... the reason why it is shocking is because I guess I am naïve enough to believe that I didn't think that

these kinds of things happen. More and more I have been proving wrong, so I hope it doesn't get any lower than this. I think we are at the point where we are scraping the bottom of the barrel in looking at the kinds of problems and the kinds of violations and all because of what, because of ineffective communication or not communicating at all. I remember very distinctly the Mayor's inauguration message about what we need to do and that was in December. It is now three (3) plus months later and we have been sending over communications. I know, I think it is... one of the statements you made, we received responses to one out of four (4) of them that we sent over there. We actually give them the questions that we are going to ask before hand, so that they can be prepared, so that we are on the same page as to where the discussion is going and for the public's benefit too.

I learned while I was in Washington, D.C. that other Councils do not do this. That they do not provide any information. They just send you a letter to show up and you have to face whatever music they have. Well, I can tell you on Kaua'i, every since I have been here, we have never done that. Every time that the people have been called forward, they have been provided some sort of agenda as to where we are going and what are we trying to achieve. Sometimes there is a matter of a few questions and sometimes there is a matter of 40 questions, but I have always learned it is much better to have things up front than to have to face the unexpected. You know, it seems like we provide things up front all the time and what we get in return is the unexpected. You know, that we have to read in the paper things that happen. We have to go to Washington, D.C. and find out that the Mayor had submitted a budget for the bikepath requesting \$5 million and we had never heard a single thing of it. And that this Federal proposal had been sent... letters to all of the congressional delegation who we were going to meet and we had not had a single, single, idea that was going to happen. So it was shocking to be there and not be prepared that we were here on Kaua'i and they knew things that were totally different from what was actually happening on this island.

I talked to Mr. Noyes today and he indicated he was not even aware of it, so it is unfortunate. I don't think it is only us that they are not communicating with, they are not communicating with the people they should be, their own constituents in the community. So I hope this doesn't happen. You know, I have just been so despondent because this continually happens and I don't know how to make it better. But, hopefully, it doesn't get worse than today.

Mr. Rapozo: Thank you. So we took the public testimony upfront. Were you here when we started this meeting?

THOMAS NOYES: I had come at 9:00 a.m. this morning and I left at 11:30 a.m.

Mr. Rapozo: Were you here when we convened this part of the meeting?

Mr. Noyes: I was absent for that.

Mr. Rapozo: Oh, you were absent, okay. Why don't you come up Mr. Noyes.

Mr. Noyes: Thank you Committee Chair Rapozo and thank you Councilmembers for allowing a moment with you. I am Thomas Noyes and I serve as the Committee Chair for Kaua'i Path Organization and I would like to speak on behalf of the Kaua'i Path Committee. Can we agree that we share a common objective regarding the bikepath project and that is to benefit the people of Kaua'i.

Mr. Rapozo: I think that is an agreement by everyone.

Mr. Noyes: We are engaged in building a complex six (6) phase project (Ke Alahele Makālae), the path that goes by the coast that will deliver the maximum benefit to the people of Kaua'i when the continuous connection between Līhu'e and Kapa'a is complete. The Lydgate Park segment, Phase I, is complete, but the second phase is encountering delays and, therefore, additional cost are being incurred. It is crucial that Ke Alahele Makālae just as any other development must be permitted in compliance with regulatory standards and Kaua'i Path Committee urges that support for the path be demonstrated by a resolved to move the project towards a speedy an efficient completion. The Committee recommends that the best way to accomplish this is to seek cooperative solutions to issues arising from this complex project.

Phase II of Ke Alahele Makālae is currently being used despite its incomplete status and the Committee urges all agencies to focus on expediting the completion of this phase through frugality, communication, cooperation, and collaboration. The committee seeks completion, so these public facilities may be used for the intended purposes and the promised benefits to our island will be realized. Thank you.

Mr. Rapozo: Thank you. Go ahead Councilmember Iseri-Carvalho.

Ms. Iseri-Carvalho: Yes, Mr. Noyes, I think the first part of your statement was that the path should be legal, right? Is that something that you think should be compromised with?

Mr. Noyes: I think that all projects on the island should be in compliance with the regulatory standards.

Ms. Iseri-Carvalho: And do you think that those compliance has to be done before completion? Is that what you are saying? (Inaudible) complying issues have to be resolved before completion? Or should we build it and then decide later how to comply?

Mr. Noyes: I think the established procedure should be followed in this case.

Ms. Iseri-Carvalho: And what is the established procedure? What is your established procedure?

Mr. Noyes: My established procedure is to advocate for the completion of the project.

Ms. Iseri-Carvalho: Well, I guess, I just want to be clear because I am not sure what your position is. If your position is that we should do whatever necessary to have the path be legal and in compliance with all County, State, Federal rules, regulations, ordinances, statutes, constitutions, should all of that be done before we complete this bikepath?

Mr. Noyes: The path should be legally compliant.

Ms. Iseri-Carvalho: And if it is not, then should we still continue to build or should we comply before we continue to build?

Mr. Noyes: These are the thorny questions that you need to contend with and find a way to resolve.

Ms. Iseri-Carvalho: Yes, we do, but I am asking as a constituent and as a supporter of the bikepath what your position is?

Mr. Noyes: That our elected officials act in good faith to resolve these issues and move towards completion.

Ms. Iseri-Carvalho: So you are not going to give me an opinion?

Mr. Noyes: I am not in a capacity to render legal opinions, no.

Ms. Iseri-Carvalho: Well, not legal opinions, but whether it has been determined that it has... that there is some violation. For example, we already know and it has been admitted by the Administration as far as the unpermitted roof structures that that is the violation, right?

Mr. Noyes: I have been hearing a lot about what is legal and the ramification of legal opinions today and I am not in a position to go on the record with opinions.

Ms. Iseri-Carvalho: Thank you.

Mr. Rapozo: Thank you. Councilmember Yukimura?

Ms. Yukimura: Mr. Noyes, would your group be willing to secure independent legal analysis of the point that is in conflict about whether the setback... application of the setback laws in conjunction with certification of the shoreline has been met.

Mr. Noyes: I wouldn't feel comfortable speaking on behalf of the group. That sounds like a delicate and potentially costly opinion to obtain. We are operating with extremely limited resources at this point in time, but if you would like to submit a request in writing, I can put that before our committee.

Ms. Yukimura: Well, I mean, it was just a question that occurred to me. I think because it is the stumbling block that I see right now. I think there is... I don't hear too much dispute about the six (6) pavilions or is it nine (9), anyway, regarding the roof that we know was not included in the SMA permit, therefore, it has to go back to the Planning Commission. So the one that is holding us up at this point is that other point about the application of the shoreline setback rules. Today, we saw Jonathan Chun come forward from the community... I mean a community group, the realtors who had weighed in on the legal question through the retention of an attorney, so I just wondered.

Mr. Noyes: At this point, we are not graced with the pro bono services of an attorney and don't have the resources to retain somebody.

Ms. Yukimura: Uh huh, alright.

Mr. Rapozo: Thank you Mr. Noyes.

Chair Asing: I have a question.

Mr. Rapozo: Go ahead.

Chair Asing: And this may seem like a loaded question Mr. Noyes, but I've always wondered, Ke Alahahele Makālae, how were you formed?

Mr. Noyes: In 1990's, then Councilmember Bryan Baptiste convened a Citizen's Advisory Committee to give input on cultural, health, transportation and life style concerns, so that in the design and development of the corridor between Līhu'e and Anahola, those values could be reflected. Over the ensuing period of time, it has been deemed valuable to have input from a body of concerned citizens.

Chair Asing: So you are not a legal entity then? I mean, you know, a Councilmember, myself, can't go out and organize a group and say, you are an

official group. I can't do that as a Councilmember, so, you know, I have some questions on the legality of who picks who to do what? Unless it is appointed by the Mayor or appointed through the Council, you know, the group is not a group that is official and has no standing.

Mr. Noyes: I believe that... may I respond to that?

Chair Asing: Yes.

Mr. Noyes: Thank you Mr. Asing. I would expect that under the tenets of our society, we have the right to congregate and form organizations.

Chair Asing: And I don't have any problem with that. I don't have any problem with that. I mean, I think that is fine, but I think that, you know, the better way to do things is, you know, to have something formal, so that group is... as an example, appointed by the Mayor as an advisory group to do something.

Mr. Noyes: Actually, at this point...

Chair Asing: Or from the Council appointing a group to do something, but there should be some basis.

Mr. Noyes: I have represented myself as the Chair of the committee.

Chair Asing: Okay.

Mr. Noyes: And at this point, we are seeking to file the requisite papers to become a registered non-profit organization which would be independent of any County agency, so that we could help to facilitate projects benefiting both private and public sectors.

Chair Asing: Okay, anyway, I hope you understand where I am coming from and I will give examples. There is, as an example, the housing group that was appointed by the Mayor as an advisory group, so you have the appointment process and the group is formed and that is their function. I think that, you know, that is the way that it should be done and that would have been the better way to do it rather than, you know, I can't go out and pick up people and say, you know, I want you to do this and you become the official body that we are going to give input and this is the direction that we are going to go. I mean, that is not right. That is not the way things are done. In my opinion, I can also... as an example, Councilmember Yukimura, you did the same thing when you did the tax force vacation rental bill. You know, that is not an official group that you get an input from unless it is appointed by the Council. You know, it is not really the way to do it.

Ms. Yukimura: Oh my gosh.

Mr. Noyes: May I respond?

Chair Asing: Yes, go ahead.

Mr. Noyes: I would see our role as, our role models... let me put it... would be organizations such as Hale 'Ōpio or Hospice or any number of non-profit organizations relying on volunteer activity to support beneficial projects for the community at large.

Chair Asing: Mr. Noyes, I don't have any problem with what you are doing, but I think, you know, you need a process and you need to follow the process and all I am saying is, I commend you, I commend the group on trying to do what they feel is right. I commend you, but I think it is unfortunate that the process, the correct process has not been followed and that is bad. That is not the way to do things. So, anyway, that is my opinion. Thank you Tom.

Ms. Yukimura: Well, it is more to the response to the Chair's point.

Mr. Rapozo: Do you have any questions for Mr. Noyes? If not, I am going to release him, okay. Thank you Mr. Noyes.

Mr. Noyes: Thank you.

The meeting was called back to order, and proceeded as follows:

Ms. Yukimura: I want to say that I don't think there is a right or official way to have citizens organized to have some input into decision making processes.

There being no objections, the rules were suspended.

Chair Asing: I don't have any problem with that Councilmember Yukimura. That is not a problem.

Ms. Yukimura: So I think when I asked for the Council's approval of the stakeholder's group, it was because I was acting as the Planning Committee Chair to address an issue that I wanted to use citizens as an advisory group working with the Administration to, you know, help in our decision making fact finding process and I think that is one option. But I know that Representative Mina Morita convened a group that eventually became Apollo Kaua'i. When I came back from a Growth Management Conference as a Councilmember in 1980 and heard about a 1,000 Friends of Oregon, I helped to organize 1,000 Friends of Kaua'i, but they were

not part of an official decision making process, they were just a group of citizens who wanted to address issues, you know, in the community and have some impact. I think Mr. Noyes is correct that, you know, a fundamental constitutional right is the right to assemble and to petition government. So there are many ways for groups to, you know, whether it is the motorcross groups, you know, KPAL or whatever, there are all these different groups and I think it is one of the strengths of our democratic process that we allow... sometimes they are unorganized groups, you know, just loose association, sometimes they are formal non-profits, 501C-3's, sometimes they are groups convened, like the Mayor's bikeways task force that I was on long ago or the Housing Advisory Task Force or the General Plan Citizen's Advisory Committee. Sometimes they are part of an official government process and other times they form in whatever ways they form and they come before us.

Chair Asing: And I don't have any problem with that.

Ms. Yukimura: But you said that you should do something and...

Chair Asing: Well, I think that there is a process Councilmember Yukimura and we have followed process in many instances and in some instances, we don't follow that process and it just bothers me that we don't follow that process.

Ms. Yukimura: And what is the process?

Chair Asing: As an example, what I am trying to say is that, are you saying that one Councilmember can appoint a committee and that committee is now going to head the direction of the bikepath?

Ms. Yukimura: I don't think that is an accurate summary of what happened...

Chair Asing: That is exactly what is happening. One member of the Council appointed members of the public.

Ms. Yukimura: No.

Chair Asing: And now they are directing the bikepath project.

Ms. Yukimura: Council Chair...

Chair Asing: I mean, that is the way...

Ms. Yukimura: I was part of the...

Ms. Iseri-Carvalho: Point of order, can we finish the question and then have responses because I don't think the captioner can record both of you talking at the same time.

Ms. Yukimura: Okay, I have to apologize. I was part of the citizens who responded to then Councilmember Baptiste's vision of this path and it was a continuation of a vision that I had started as first a citizen and then as a Councilmember and then as a Mayor to see more bikeways and pedestrian ways on this island which is a smart growth concept. And I was... Kanani sent me a lot of materials and I got information from the City of Seattle and I turned it over to the group and I was in Honolulu at that time (living in Honolulu) while my daughter went to school there. But it was a call to citizens who wanted to participate. It wasn't an appointment, it was citizens just convening around an issue wanting to work with a Councilmember who wanted to work on this issue and we all put our little input. I couldn't be at all the meetings, in fact, I don't remember being at any meeting because I was in Honolulu. But I got minutes of the meetings, and then I got too busy and, you know, I fell off from it and other citizens were working with... yes, sometimes we have citizens who work with Councilmembers in a variety of ways. So then it evolved I think to, like, you know, the drug summit. We had 300 people and now there is a core about 30 that are still working three (3) years later on the issue and we are not a formally organized group, we are just citizens who are passionate about different issues and we've come together to work and we will work with anybody. And then we sometimes evolve into a formal 501C-3 non-profit, so, you know, I mean, 1,000 Friends of Kaua'i just sued the County... I haven't been involved with them for 20 years.

Mr. Rapozo: Thank goodness.

Ms. Yukimura: But I helped to start them at the very beginning.

Mr. Rapozo: Okay, let's...

Ms. Yukimura: And, you know, we did many important and good things, so I... you know, things evolve, things change and part of democracy is just this. If you read (inaudible).

Mr. Rapozo: Okay, now I am going to draw the line. I think the Council Chair has his opinion, you have yours and I am not getting involved with the group. Now we know the history of how this all got started. I think the Chair is... his concern is the fact that the Ke Alahele Makālae is a very active player in the bikepath and I think all these things that the... would be much better if the Mayor appoints a committee, but I think both of you are correct. Anyway, anymore discussion on the agenda item? The update on the bikepath. If not, I think we have

to take a caption break, so I want to wrap this up right now. Anything else Mr. Chair?

Chair Asing: No, I am fine.

Ms. Iseri-Carvalho: So the questions will be provided by what time? Noon Monday, so you can get those questions out on...

Mr. Rapozo: Yes, if the questions could be presented to staff by noon on Monday, so we can have it prepared and sent over to the Administration by Monday afternoon. Again, this matter will be deferred. This communication PW 2007-3 and we will post a new item for next week's Council meeting pertaining to what we discussed today.

Ms. Iseri-Carvalho: Okay, and then the item... and I guess I don't know how much of a discussion... there are many other portions of the bikepath besides what was discussed today that haven't yet reached the floor.

Mr. Rapozo: Yes.

Ms. Iseri-Carvalho: Will that be a different agenda item or is it...

Mr. Rapozo: No, that will be on PW 2007-3 and that is why we kept it in Committee because there are other issues that need to be discussed. The issues that we will talk about next week in open and executive specifically relates to what we discussed today as far as the opinion (matters related to the County Attorney's opinion).

Ms. Iseri-Carvalho: Alright.

Mr. Rapozo: If nothing further, I would entertain a motion to defer.

The meeting was called back to order, and proceeded as follows:

Upon motion duly made by Councilmember Iseri-Carvalho, seconded by Councilmember Yukimura, and unanimously carried, PW 2007-3 was deferred.

Mr. Rapozo: Let's take a 10 minute caption break and be back at 4:55 p.m.

There being no objections, the Committee recessed at 4:42 p.m.

The meeting was called back to order at 4:57 p.m., and proceeded as follows:

CR-PW 2007-8: on LEGAL DOCUMENT:

C 2007-128 Grant of Non-Exclusive Water Line Easement from Keālia Makai Holdings, LLC, a Delaware limited liability company to the County of Kaua'i, a non-exclusive water line easement, TMK: 4-7-007-02; CPR No. 2 (Lot 27B), and indemnifying the Grantor to provide water service to the subject comfort stations.

[Received for the record.]

CR-PW 2007-9: on Resolution No. 2007- 44 RESOLUTION ESTABLISHING SPEED HUMP AT NEHE ROAD, LĪHU'E DISTRICT

[Approved.]

There being no further business, the meeting was adjourned at 4:59 p.m.

Respectfully submitted,



Lisa Ishibashi
Council Services Assistant

APPROVED at the Committee Meeting held on April 4, 2007:



MEL RAPOZO
Chair, Public Works Committee



EXHIBIT A
HAWAII RULES
OF PROFESSIONAL
CONDUCT

Adopted and Promulgated by
the Supreme Court
of the State of Hawai'i

December 6, 1993
Effective January 1, 1994
With Amendments as Noted

3/1/97 20

Hawaii Rules of Professional Conduct

- **Rule 1.6. CONFIDENTIALITY OF INFORMATION.**

- (a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation.

Hawaii Rules of Professional Conduct

■ **Comment:**

- [5] The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to representation, whatever its source.

- [6] The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Hawaii Rules of Professional Conduct

■ **Rule 1.7. CONFLICT OF INTEREST: GENERAL RULE.**

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

- (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
- (2) each client consents after consultation.

Hawaii Rules of Professional Conduct

- **Comment:**

- **Loyalty to a Client**

[1] Loyalty is an essential element in the lawyer's relationship to a client.

- [4] Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests.

Hawaii Rules of Professional Conduct

- **Comment:**

- **Conflicts in Litigation**

[8] Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated.

Hawaii Rules of Professional Conduct

- ■ **Rule 1.8. CONFLICT OF INTEREST:
PROHIBITED TRANSACTIONS.**
 - (b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.

Hawaii Rules of Professional Conduct

- **Comment:**

- **Transactions Between Client and Lawyer**

- [1] As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage.