

FINDINGS OF FACT

1. The Complaint was filed on December 11, 2009, pursuant to the provisions of Section 2-18-201 (a)(3) of the 2008 Neighborhood Plan.
2. At all times relevant herein, Complainant was a member of Ewa Neighborhood Board No. 23.
3. At all times relevant herein, Respondent Fevella was the Board Chair.
4. At all times relevant herein, Respondent Knauer was a member of the Board.
5. Section 2-18-201(d) of the Plan requires a respondent to file a written response to a recommendation within forty-five (45) calendar days after the date a copy of the complaint was sent to the respondent. The deadline may be extended by the Commission or its designee if the respondent submits valid reasons in writing prior to the response deadline.
6. The response deadline in this matter was February 4, 2010. Respondent Fevella did not request an extension of said deadline, in writing or otherwise, prior to the response deadline and no response was received from Respondent Fevella.
7. A response was received from Respondent Knauer on January 26, 2010.
8. Section 2-18-201(e) of the Plan provides that if a respondent fails to timely file a response, any allegation contained in the recommendation is deemed admitted by respondent.
9. Respondent Fevella failed to file a timely response to the Complaint.
10. Section 2-14-111(c) of the Plan establishes a process for board members to follow to get their items on the agenda for a board meeting.
11. On July 9, 2010, in accordance with Hawaii Revised Statutes ("HRS") Sections 91-9 and 91-9.5, notice of the hearing was provided to the parties via certified mail, return receipt requested.

12. Although Respondent Fevella claimed that he did not receive the hearing notice, he received notification from the postal service of the certified letter and failed to retrieve it from the post office.

13. Respondent Fevella did not intend to avoid service of the certified letter.

14. Respondent Fevella was informed of the hearing several days prior to the hearing date but did not request an extension of the hearing date prior to appearing at the hearing.

15. On December 10, 2009, Respondent Knauer made a presentation to the Ewa Neighborhood Board on board conduct at board meetings.

16. Respondent Knauer had properly requested ten (10) minutes to make a presentation on "Conduct at Board Meetings."

17. The agenda for the December 10, 2009 meeting included an item titled Board Conduct of Members.

18. The agenda did not note that Respondent Knauer would be making the presentation, nor did it indicate that Respondent Knauer requested to be placed on the agenda.

CONCLUSIONS OF LAW

1. The Complaint was filed in accordance with the provisions of Section 2-18-201 of the Plan.

2. The parties were properly noticed pursuant to HRS Sections 91-9 and 91-9.5.

3. This hearing was properly conducted in accordance with HRS Chapter 91 and Section 2-18-203 of the Plan.

4. This matter is properly before the Commission pursuant to Section 2-18-203 of the Plan and the Commission has the authority to review a board and/or board member's action(s) and issue sanctions in accordance with Sections 2-18-203 and 2-18-204 of the Plan.

5. Pursuant to HRS Section 91-10(5), the Complainant has the burden of proof including the burden of producing evidence as well as the burden of persuasion by a preponderance of the evidence.

6. No response to the complaint was filed by Respondent Fevella. Therefore, in accordance with Section 2-18-201(e), the factual allegations of the complaint are deemed admitted by Respondent Fevella.

7. With respect to Section 2-14-111(c) of the Plan, the Commission finds that the Complainant has not provided sufficient evidence to demonstrate that the Respondents failed to properly include an item on the December 10, 2009 agenda. Thus, the Commission finds that Respondents did not violate Section 2-14-111(c) of the Plan.

8. Although the Commission encourages compliance with the Sunshine law, determinations of adequacy of notice under the Sunshine law fall within the jurisdiction of the Office of Information Practices.

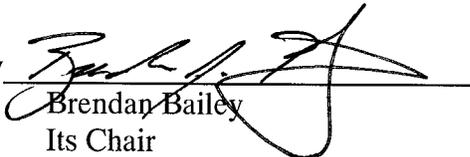
DECISION AND ORDER

Based upon the foregoing, the Complaint filed by THOMAS BERG, on December 11, 2009, is hereby DENIED.

AUG 10 2010

DATED: Honolulu, Hawaii, _____.

NEIGHBORHOOD COMMISSION

By 
Brendan Bailey
Its Chair