



1. The Complaint was filed on January 11, 2009, pursuant to the provisions of Section 2-18-201 (a)(3) of the Plan.
2. At all times relevant herein, Complainant was a member of Ewa Neighborhood Board No. 23.
3. At all times relevant herein, Respondent was the Board chair.
4. 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.
5. The response deadline in this matter was July 16, 2010. Respondent did not request an extension of said deadline, in writing or otherwise, prior to the response deadline and no response was received from Respondent.
6. 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.
7. Respondent failed to file a timely response to the Complaint.
8. 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.
9. 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.
10. Although Respondent 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.

12. Respondent did not intend to avoid service of the certified letter.
13. Respondent 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.
14. On November 25, 2009, Complainant requested that the following agenda items be added to the next available meeting agenda:
  1. Status of Complaints filed to Office of Information Practices, Neighborhood Commission Office, and Neighborhood Commission for Finding of Non-Compliance to Sunshine Laws and Standard of Conduct of Chair
  2. Removal of Concrete Jersey Barriers at Oneula Beach Park
  3. Removal of Board Chair and Reorganization of Officers.
15. On December 29, 2009, Complainant requested the addition of a fourth item:  
"Board Member Coby Lynn's Actions to Threaten Physical Harm to an Audience Member and to Destroy Private Property; Action by Board to Condemn the Actions of Coby Lynn.
16. On January 11, 2010, Complainant filed the instant complaint alleging that Respondent violated the Plan by failing to include all four (4) items on the agency for the upcoming January 14, 2010 board meeting.
17. The agenda for the January 14, 2010 board meeting included an agenda item request regarding the removal of the concrete barriers at Oneula Beach Park. The other requests were not included on the meeting agenda.
18. Respondent was concerned that because item Nos. 1 and 4 were potentially volatile topics, if he placed the items on the agenda, he would not be able to maintain control of the meeting and the members would not support or assist him to keep control of the meeting.
19. Respondent also was concerned that inclusion of the items would lead to the meeting becoming violent. Therefore, he did not place item Nos. 1 and 4 on the agenda.

20. Respondent did not place item No. 3 on the agenda because he intended to resign from the Board chair position at the January meeting.

21. Respondent resigned as Board chair at the January 14, 2010 meeting.

22. At the hearing on July 26, 2010, Complainant agreed to withdraw the complaint with respect to the requested agenda item No. 2.

#### 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. Therefore, in accordance with Section 2-18-201(e) of the Plan, the factual allegations of the complaint are deemed admitted by Respondent.

7. With respect to the allegation in the Complaint regarding requested agenda item No. 3, the Commission finds that the Complainant has provided sufficient evidence to demonstrate that the Respondent failed to properly include item No. 3 on the January 14, 2010

agenda in accordance with the requirements of Section 2-14-111(c). However, any such technical violation was made moot by Respondent's resignation at the January 14, 2010 meeting.

8. With respect to the allegation in the Complaint regarding requested agenda item Nos. 1 and 4, the Commission finds that neither item is an appropriate agenda item for a neighborhood board meeting. Neither item is germane to the duties and functions of neighborhood boards. Moreover, neither item is within the jurisdiction of the neighborhood board. Therefore, the Chair's refusal to include the items on the agenda was appropriate under the circumstances. Thus, with respect to item Nos. 1 and 4, the Commission finds that Respondent did not violate section 2-14-111(c) of the Plan by failing to include the items on the January 14, 2010 meeting agenda.

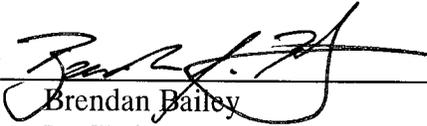
9. With respect to requested agenda item No. 2, Complainant withdrew the complaint after it was demonstrated that the item did appear on the January 14, 2010 meeting agenda.

#### DECISION AND ORDER

Based upon the foregoing, the Complaint filed by TOM B. BERG, on January 11, 2010, is hereby DENIED.

DATED: Honolulu, Hawaii, AUG 10 2010.

NEIGHBORHOOD COMMISSION

By   
Brendan Bailey  
Its Chair