

BEFORE THE NEIGHBORHOOD COMMISSION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

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CITY AND COUNTY OF HONOLULU  
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In the Matter of the	)	FINDINGS OF FACT, CONCLUSIONS
Recommendation of the Executive	)	OF LAW, AND DECISION AND
Secretary of the Neighborhood	)	ORDER
Commission Office regarding	)	
	)	I certify that this is a full, true and correct
Ewa Neighborhood Board No. 23,	)	copy of the original document on file with
	)	The Neighborhood Commission Office,
	)	City and County of Honolulu.
Respondent.	)	
_____	)	Signature

JUL 13 2010

Date

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DECISION AND ORDER

The Neighborhood Commission ("Commission") scheduled a hearing on the Executive Secretary of the Neighborhood Commission's ("ES") recommendation ("Recommendation") to issue sanctions against Ewa Neighborhood Board No. 23 ("ENB"). The hearing was held at a Special Meeting of the Neighborhood Commission on June 28, 2010, at 7:00 p.m., in Honolulu Hale, Council Committee Room, 2nd Floor, City and County of Honolulu, 530 South King Street, Honolulu, Hawaii 96813. Raenette Gee appeared on behalf of the ES and ENB was represented by Board members Kurt Fevella ("Fevella"), Mitchell Tynanes ("Tynanes"), Tom Berg ("Berg"), John Gollner ("Gollner"), Coby Lynn ("Lynn"), and Steven Knauer ("Knauer").

The Commission, having reviewed the Recommendation, witnesses, exhibits and other documentary evidence presented by the parties; having considered the entire record and files herein; and having heard testimony and considered the arguments of the parties; makes the following Findings of Fact, Conclusions of Law, Decision and Order.

#### FINDINGS OF FACT

1. The Recommendation was filed on January 6, 2010, pursuant to the provisions of Section 2-18-201 (a)(1) of the 2008 Neighborhood Plan ("Plan").
2. On January 6, 2010, at a Special Meeting, the Neighborhood Commission adopted the Recommendation that the Commission initiate a sanctions hearing against the ENB in accordance with Sections 2-18-201 and 2-18-202 of the Plan arising from incidents at the Board's meeting on October 8, 2009, November 12, 2009 and December 10, 2009.
3. At all times relevant herein, ENB was a properly formed and constituted Neighborhood Board pursuant to Chapter 15 of the Plan.
4. At all times relevant herein, Sandra Arakaki ("Arakaki"), Berg, Mary Chanel-Benjamin ("Chanel-Benjamin"), Fevella, Knauer, Celeste Lacuesta ("C. Lacuesta"), Roger Lacuesta ("R. Lacuesta"), Lynn, Marcie Nagata ("Nagata"), and Tynanes were members of the ENB.

5. Fevella was the ENB Chair and Tynanes was the ENB Vice-Chair in October, November, and December of 2009.

6. On November 12, 2009, Glenn Oamilda ("Oamilda") was appointed as an ENB member.

7. On or about January 25, 2010, Nagata resigned as an ENB member.

8. On January 14, 2010, Fevella resigned as ENB chair and Tynanes assumed the temporary chairmanship.

9. On April 8, 2010, Tynanes was elected the ENB Chair.

10. On April 8, 2010, John Gollner ("Gollner") was appointed as an ENB member.

11. On January 8, 2010 all ENB Board members were notified of the Recommendation and provided an opportunity to respond to the allegation in the Recommendation. The Commission did not receive any response from the ENB, and only Berg submitted a response.

12. Berg's response was received on January 16, 2010. However, the response did not address the allegations raised in the Recommendation.

13. On June 10, 2010, in accordance with HRS Sections 91-9 and 91-9.5, notice of the hearing was provided to the parties via certified mail, return receipt requested.

14. At the October 8, 2009 ENB meeting, there were several incidents where a member of the public spoke without being

recognized by the Chair which then led to arguments between various ENB members and the public, between the Board members themselves, and between the ENB members and the Chair.

15. The Chair and the ENB members repeatedly failed to restore order and decorum.

16. At the November 12, 2009 ENB meeting, Oamilda repeatedly spoke without being recognized by the Chair which led to arguments between Oamilda and the ENB members, between the ENB members themselves, and between the ENB members and the Chair. The Chair and the ENB members repeatedly failed to restore order and decorum.

17. At the November 12, 2009 ENB meeting, the Chair incorrectly limited Oamilda to asking one question of City Council Chair Todd Apo, even though Board rules do not limit the number of questions that an ENB member may ask. The ENB members failed to correct the Chair.

18. At the November 12, 2009 ENB meeting, the Chair did not allow a member of the public to testify on an agenda item. The ENB members failed to correct the Chair.

19. At the November 12, 2009 ENB meeting, the Chair did not allow an ENB member to speak after recognizing the ENB member which led to further arguments between the ENB members and the Chair. The Chair and ENB members failed to restore order and decorum.

20. At the November 12, 2009 ENB meeting, members of the public interrupted Berg while he was testifying on a community concern. The Chair and ENB members failed to restore order and decorum.

21. At the November 12, 2009 ENB meeting, C. Lacuesta interrupted a member of the public who had been properly recognized to speak. The Chair and ENB members failed to restore order and decorum.

22. At the November 12, 2009 ENB meeting, the Chair and ENB members failed to restore order and decorum and allowed a member of the public to address comments and questions to the ENB instead of to the Chair.

23. At the November 12, 2009 ENB meeting, Oamilda repeatedly criticized members of the public. In at least once instance, Oamilda's criticism led to arguments between Oamilda and members of the public and Oamilda and other ENB members. The Chair and ENB members failed to restore order and decorum.

24. At the December 10, 2009 ENB meeting, Scott Belford ("Belford"), a member of the public, set up a camera behind the ENB, despite protests from the ENB members and public, and interfered with the conduct of the meeting.

25. At the ENB December 10, 2009 meeting, Oamilda was not recognized by the Chair but continued to speak leading to arguments between Oamilda and the Chair and Oamilda and other

members of the ENB. The Chair and the ENB members failed to restore order and decorum.

26. At the December 10, 2009 ENB meeting, Oamilda called Knauer "granpda," leading to further arguments among the ENB members. The Chair and ENB members failed to restore order and decorum and did not reprimand Oamilda.

27. At the December 10, 2009 ENB meeting, Lynn interrupted Oamilda during the Honolulu Police Department's ("HPD") report leading to further arguments among the ENB members. The Chair and ENB members failed to restore order and decorum.

28. At the December 10, 2009 ENB meeting, Oamilda interrupted Tynanes which forced the Chair to call a recess of the meeting to restore order and decorum.

29. At the December 10, 2009 ENB meeting, a member of the public failed to address the Chair when complaining about Belford's camera. As a result, there were repeated arguments among all the people present. The Chair and ENB members failed to restore order and decorum.

30. At the December 10, 2009 ENB meeting, Knauer said Oamilda was talking through his "okole" which led to additional arguments between Knauer and Oamilda. The Chair and ENB members failed to restore order and decorum.

31. At the December 10, 2009 ENB meeting, Chanel-Benjamin yelled at members of the public. The Chair and ENB members failed to restore order and decorum.

32. As a result of the incidents at the December 10, 2009 ENB meeting, HPD was called to assist the Chair in adjourning the meeting and dispersing the public and participants.

33. HPD informed the participants that the meeting was over because the potential for violence was too great and the officers were concerned about safety.

34. Although the situation has improved since Tynanes became Chair of the ENB, the ENB is still divided and at times dysfunctional.

35. Many ENB members are unfamiliar with the Plan and parliamentary procedure and as a result the meetings continue to be disrupted.

#### CONCLUSIONS OF LAW

1. The Recommendation 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 2-18-202 of the Plan.

4. This matter is properly before the Commission pursuant to Section 2-18-202 of the Plan and the Commission has the

authority to review a Neighborhood Board and/or Neighborhood Board member's action(s) and issue sanctions in accordance with Sections 2-18-202 and 2-18-204 of the Plan.

5. Pursuant to HRS Section 91-10(5), the ES 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 Recommendation was filed by the ENB. Therefore, in accordance with Section 2-18-201(e), the factual allegations of the Recommendation are deemed admitted by the ENB.

7. With respect to Section 2-13-106 of the Plan, the Commission finds that the ES has provided sufficient evidence to demonstrate that the ENB has violated its duty to increase and assure effective citizen participation in the decisions of government and its duty to promote open expression and discussion of ideas by ENB members and the public. Thus, the Commission finds that ENB did violate Section 2-13-106 of the Plan.

8. With respect to Section 2-14-117 of the Plan, the Commission finds that the ES has provided sufficient evidence to demonstrate that the Board has violated its duty to promote and preserve order and decorum of the ENB proceedings. Thus, the

Commission finds that ENB did violate Section 2-14-117 of the Plan.

9. With respect to Section 2-14-118 of the Plan, the Commission finds that the ES has provided sufficient evidence to demonstrate that ENB members and those person's properly called before the ENB to speak have repeatedly failed to confine their remarks to the subject under discussion and failed to avoid personalities and abusive language. Thus, the Commission finds that the members of the ENB did violate Section 2-14-118 of the Plan.

10. The Commission further finds the ENB's inability to maintain order and decorum and its repeated displays of disrespect towards each other and the members of the public has resulted in an atmosphere of disorder and contempt among all persons attending the meetings and significantly impaired the ENB's ability to conduct meaningful public discussion of important neighborhood and island-wide issues.

12. The Commission also finds that there are mitigating circumstances, including the change in the ENB chairmanship and ENB membership, which must be considered in determining a penalty for the ENB's violations of the Plan.

DECISION AND ORDER

Based upon the foregoing, the Commission hereby finds that Ewa Neighborhood Board No. 23 has violated Sections 2-13-106, 2-14-117, and 2-14-118 of the 2008 Neighborhood Plan.

The Commission further finds that the violations committed by the Ewa Neighborhood Board No. 23, rather than promoting open expression and discussion of ideas relative to government and community processes and activities, have materially impaired the Board's ability to serve as a community forum. Additionally, the violations have materially impaired the community's ability to effectively participate in the decisions of government.

Therefore, it is hereby ordered in accordance with Section 2-18-204 of the 2008 Neighborhood Plan, that as a sanction for the Board's multiple violations of the 2008 Neighborhood Plan, the Ewa Neighborhood Board No. 23 is hereby **SUSPENDED** from all operations effective immediately for a period of two (2) months up to and including October 1, 2010.

It is hereby further ordered that all members of Ewa Neighborhood Board No. 23 are required to participate in mandatory training classes, organized by the Executive Secretary and/or her designee, which will be held on August 12, 2010 and September 9, 2010, which are the regularly scheduled Board meeting dates.

It is hereby further ordered that any Board member who fails to attend the mandatory training classes, and does not request an extension of time for good cause prior to the first training session, will not be allowed to return to the Board until such time as the training classes are completed. Any meeting date which is missed as a result of a Board member's failure to attend the training sessions shall be counted as an absence under Section 2-14-106 of the 2008 Neighborhood Plan.

It is hereby further ordered that the Commission shall continue to monitor the operations of the Ewa Neighborhood Board No. 23 for a period of three (3) months after the suspension period is completed. During the three (3) month probationary period, any further violations will result in immediate action to further sanction the Board, up to and including termination of the Board's operations. During the probationary period, the Commission shall periodically review the conduct and operations of the Board and may extend the probationary period and/or issue further sanctions against the Board.

DATED: Honolulu, Hawaii, JUL 13 2010.

NEIGHBORHOOD COMMISSION

By



Brendan Bailey  
Its Chair