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The Office of Information Practices (OIP) is authorized to resolve complaints concerning compliance with or applicability of the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Ms. Patricia Tummons
Editor, Environment Hawaii
Board: Agribusiness Development Corporation
Date: June 30, 2016
Subject: Description of Meeting Location (S APPEAL 14-14)

REQUEST FOR OPINION

Requester seeks a decision as to whether the Agribusiness Development Corporation of Hawaii (ADC) violated the Sunshine Law by its alleged failure to adequately describe the location of its meeting of October 30, 2013.

Unless otherwise indicated, this decision is based upon the facts presented in Requester's letter to OIP dated October 30, 2013, and attached materials, and the ADC's letter to OIP dated November 18, 2013, and attached materials.

QUESTIONS PRESENTED

1. Whether the ADC's Notice of Meeting listing a location with no specific street address for its meeting of October 30, 2013, met the Sunshine Law's requirement to provide public notice of the location of every meeting.
2. Whether the Sunshine Law requires a board to post signs for the public to follow in order to find the location of a meeting on the day of the meeting.

BRIEF ANSWERS

1. No. While the Sunshine Law does not necessarily require a meeting notice to provide a street address for a meeting location, the description of the location in the meeting notice must be sufficiently detailed to reasonably allow a member of the public to actually find the meeting location. In this case, the ADC's Notice of Meeting for its meeting held October 30, 2013 failed to adequately describe the meeting location, with the result that at least one member of the public was actually unable to find it. This failure violated the Sunshine Law's requirement that a board give written public notice of every meeting including "the date, time, and place of the meeting." HRS § 92-7(a) (2012).

2. No. Section 92-7(b), HRS, requires posting the notice of a board's meeting at the meeting site "whenever feasible," but nothing in this requirement suggests that a board must post signs directing members of the public to the meeting site, such as maps or guideposts with the use of arrows. Further, because the Sunshine Law's notice requirement only requires posting of the meeting notice at the meeting location when "feasible," a board may not even be required to post the notice of its meeting at the meeting site for a particular meeting. HRS § 92-7(b).

FACTS

The ADC's filed Notice of Meeting for its meeting of October 24, 2013, listed the meeting's location as:

Hawaii Agricultural Research Center (HARC)
Conference Room
Kunia Drive
Kunia, Hawaii 96759

The Notice of Meeting did not include a map of the area or any further directions. The agenda also listed several of what the ADC described as "anticipated field trips" with addresses, including one to Pa'ina Hawaii, LLC, but Requester's complaint only addressed the regular meeting location.

At the scheduled meeting time, Ms. Teresa Dawson, an Environment Hawaii reporter, was at the Hawaii Agricultural Research Center (HARC) facility sitting outside a room that she had been told by a custodian was a conference room. After waiting for some time after the meeting was to have begun, she concluded that no meeting was being held at that location, and she returned to her office and telephoned the offices of ADC and HARC to ask where the meeting was. No one answered the ADC line. She reached an employee at HARC, who asked whether she had not received the map HARC provided to ADC staff, and gave her directions to the meeting location. However, she was unable to locate the meeting site

following those directions. After further exploration of the area and further directions from the HARC employee, Ms. Dawson finally found the actual meeting site, which was attached to the Pa'ina Hawaii facility rather than the HARC facility, two hours after the meeting time and after the meeting had already concluded. According to Ms. Dawson, she was informed by an ADC employee still in the meeting room that the ADC staff had obtained directions to the site from HARC and disseminated those to all board members.

DISCUSSION

Requester contended that the ADC's failure to post any signs directing members of the public to the meeting site violated the Sunshine Law's requirement to post the Notice of Meeting at the meeting location whenever feasible. HRS § 92-7(b).

The ADC did not argue that its Notice of Meeting alone was adequate to allow Ms. Dawson to find the meeting location. Rather, its argument appears to be that Ms. Dawson could have found the meeting location through further effort. ADC asserts that its board members and staff and two other members of the public found the meeting, one of whom (like Ms. Dawson) had driven to the HARC facility apparently listed as the meeting location and then followed directions by HARC staff. ADC also argued that Ms. Dawson could have called the board's office prior to the meeting to ask for further information about the location. The ADC further claimed that it is difficult to describe a meeting location that lacks a specific street address, for which reason it was considering procuring a banner with its name on it that could be posted on rural roadways or buildings.

The Sunshine Law clearly requires that a board give written public notice of every meeting, including "the date, time, and place of the meeting," HRS § 92-7(a), but does not further specify the level of detail that must go into stating a meeting's location. The Sunshine Law, however, requires in section 92-3, HRS, that board meetings "shall be open to the public and all persons shall be permitted to attend any meeting" unless the meeting is closed by law. It further requires in section 92-1(2), HRS, that "provisions requiring open meetings shall be liberally construed." OIP thus concludes that it is incumbent on a board to describe a meeting location in its public notice with sufficient detail to reasonably allow a member of the public to actually find the meeting location.

Here, Ms. Dawson clearly made a reasonable, and indeed persistent, effort to find and attend the meeting, and she still was not able to locate it in time. The question is not whether it would have been possible for her to find the meeting if she had contacted the ADC for additional information ahead of time, or if she had looked harder when at the site. Finding a meeting location should not be an endurance test. Similarly, the fact that another person was more successful than

Ms. Dawson in finding it based on directions from a HARC employee after initially showing up at the wrong location does not prove that the agenda description was adequate, and it is unknown whether any members of the public less persistent than Ms. Dawson tried, and failed, to find the meeting site. Indeed, the fact that the ADC's own members and staff required directions and a map to the meeting location should have indicated to the ADC that the description of the meeting location on the Notice of Meeting was not adequate by itself to allow a member of the public to locate the site without further directions.

In many situations, the best way to describe a meeting's location will be by listing a street address, a building name if applicable, and a room number, but based on the ADC's assertions, those options were not available in this case. OIP does not find that a street address is a requirement to adequately describe a meeting's location. However, the fact that a board's meeting location lacks a street address, or is otherwise difficult to briefly describe, does not excuse the board from its obligation to adequately describe the meeting's location. A board seeking to hold a public meeting at a location with no street address or for which the street address is inadequate (such as a meeting within a large complex all of which shares a single address) could consider including a site map or directions to the meeting location in its meeting notice so that a member of the public seeking to attend the meeting can reasonably find the meeting location.

In this case, however, the ADC took no steps to compensate for the lack of street address in describing its meeting location.¹ OIP finds that the ADC's Notice of Meeting for its meeting held on October 30, 2013 failed to adequately describe the meeting location, with the result that at least one member of the public was actually unable to find it. This failure violated the Sunshine Law's requirement that a board give written public notice of every meeting, including "the date, time, and place of the meeting." HRS § 92-7(a).

As to the ADC's lack of signage at HARC indicating the meeting location, OIP does not agree with Requester that signs indicating the meeting location are required by the Sunshine Law. Section 92-7(b), HRS, requires posting the notice of a board's meeting at the meeting site "whenever feasible," but nothing in this requirement suggests that a board must post signs directing members of the public to the meeting site. Rather, a board's obligation to ensure that members of the public are reasonably able to locate the meeting site is expressed in section 92-7(a), HRS's requirement that the Notice of Meeting describe a meeting's location, as discussed above. Further, because the posting requirement only applies when "feasible," a board may not even be required to post the notice of its meeting at the meeting site for a particular meeting. HRS § 92-7(b). It would likely have been

¹ For instance, ADC could have compensated for the lack of street address by attaching the map provided by HARC to the Notice of Meeting.

“feasible” for ADC to attach a copy of its Notice of Meeting to the door of the room it was meeting in; however, OIP is without any facts to verify whether this happened, and Requester’s complaint was only that there were no signs to follow at HARC. Thus, OIP does not find a violation of section 92-7(b), HRS, based on the ADC’s failure to post signs leading to the meeting location. However, the ADC’s own idea to voluntarily post a banner outside of rural meeting sites will undoubtedly be helpful to assist members of the public in locating such meeting sites and avert similar complaints in the future.

Requester asked OIP to void all actions taken by the ADC at its meeting of October 30, 2013, as a remedy for its deficient notice, or at the very least order ADC to make the tapes of that meeting available for immediate review. The ADC argued that the actions taken at the meeting were not so significant as to merit voiding them, and asserted that the meeting tapes will be made available upon request.

While OIP has found that the insufficiency of the description of the meeting location in the Notice of Meeting resulted in at least one interested member of the public being excluded from the meeting, OIP is without authority to void any final action taken by a board, and thus need not consider whether such a remedy would have been appropriate in this case. See HRS § 92-11 (permitting a “suit to void any final action” taken in violation of sections 92-3 and 92-7, HRS, which must be brought within 90 days of the action). As described below, Requester must seek to void a board’s final action by filing a lawsuit in court.

RIGHT TO BRING SUIT

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.

This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint with the circuit court within thirty days of the date of an OIP decision in accordance with section 92F-43. HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP

unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES

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APPROVED:

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