

BEFORE THE NEIGHBORHOOD COMMISSION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of

Frances Leialoha Kaluhiwa

Complainant,

v.

Ken LeVasseur

Respondent.

COMPLAINT NO. 2018-02

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

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A complaint hearing was held at a Special Meeting of the Neighborhood Commission on October 22, 2018, at Kapalama Hale, First Floor Conference Room, 925 Dillingham Boulevard, Honolulu, Hawaii 96817. FRANCES LEIALOHA KALUHIWA (“Complainant”) personally appeared. Respondent KEN LEVASSEUR (“Respondent”) personally appeared.

The Commission, having reviewed the Complaint, Response, 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 Complaint was filed on or about May 29, 2018, pursuant to the provisions of Section 2-18-101(a)(3) of the 2008 Neighborhood Plan, as amended (“Plan”).
2. Complainant alleges a violation of the Plan under Section 2-14-118 that occurred on May 9, 2018.

3. At all times relevant herein, Respondent was a member of the Kahaluu Neighborhood Board No. 29.

4. On June 20, 2018, Respondent was notified of the Complaint and was provided the opportunity to respond to the allegations of the Complaint. The Commission received a response from Respondent on August 6, 2018.

5. On September 5, 2018, in accordance with Hawaii Revised Statutes (“HRS”) Sections 91-9 and 91-9.5, notice of the hearing was provided to the Respondent via certified mail, return receipt requested.

6. With respect to Subsection (a) of Section 2-14-118, Discussion, the Plan requires that:

(a) When a board member or person properly before the board wishes to speak, the member or person shall address the chair, be recognized before proceeding, and shall confine remarks to the subject under discussion, avoiding personalities and abusive language.

7. The Commission finds that Respondent did not confine his remarks to the subject under discussion at the meeting in question.

8. The Commission finds that Respondent did not speak at the meeting in question in compliance with Section 2-14-118 of the 2008 Neighborhood Plan, as amended.

9. With respect to Subsection (a) of Section 2-14-118, Discussion, there was a motion that was seconded to sustain the Complaint. The Commission, with six commissioners present, having viewed part of the videos of the May 9, 2018 Kahaluu Neighborhood Board No. 29 meeting, and heard the arguments of the Complainant and Respondent, after considering all the evidence, finds that the Complainant met her burden of proof of proving that the Respondent

violated the Plan by a Preponderance of the Evidence. The Commission, by unanimous vote, adopted the motion to sustain the Complaint.

CONCLUSIONS OF LAW

1. The Recommendation was filed in accordance with Section 2-18-101(a)(4) 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 2-18-103 of the Plan.
4. This matter is properly before the Commission pursuant to Section 2-18-103 of the Plan, and the Commission has the authority to review a Neighborhood Board and/or a Neighborhood Board Member's action(s) and issue sanctions in accordance with Sections 2-18-103 and 2-18-104 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.

DECISION AND ORDER

Based on the foregoing, the Commission hereby finds that on May 9, 2018, Respondent Ken LeVasseur did violate Section 2-14-118 of the 2008 Neighborhood Plan, as amended, as alleged in Complaint 2018-02.

Therefore, it is hereby ordered in accordance with Sections 2-18-101 and 2-18-103 of the 2008 Neighborhood Plan, as amended, that the Complaint is hereby sustained as to Respondent

Ken LeVasseur, Member of the Kahaluu Neighborhood Board No. 29.

DATED: Honolulu, Hawaii, March 29, 2019.

NEIGHBORHOOD COMMISSION

By 

TYLER DOS SANTOS-TAM
Its Chair