

BEFORE THE NEIGHBORHOOD COMMISSION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of

Kenneth William LeVasseur

Complainant,

v.

Flora Obayashi

Respondent.

COMPLAINT NO. 2018-04

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. KEN LEVASSEUR (“Complainant”) personally appeared.

Respondent FLORA OBAYASHI (“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 June 22, 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 Sections 2-14-113 and 2-14-119 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 July 2, 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 16, 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 Subsections (a), (b), (c) and (d) of Section 2-14-113, Meeting Minutes, the Plan provides that:

Meeting minutes. (a) A board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views expressed by the members and participants. The minutes shall include, but need not be limited to: (1) The day, date, time, and place of the meeting; (2) The members of the board recorded as either present or absent; (3) The time of arrival or departure of any member; (4) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any vote taken and any recusal (and related disclosure) made; and (5) Any other information that any member of the board, during the applicable meeting, requests be included or reflected in the meeting minutes. (b) The minutes shall be publicly available within thirty calendar days after the meeting, except when disclosure would be inconsistent with chapter 92F, HRS; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but for no longer. (c) If quorum is not attained to convene a meeting, the board shall prepare a memorandum for the record of the absence of quorum and the status of the noticed meeting. (d) The board may approve or amend and approve the minutes at a subsequent regular board meeting.

7. With respect to Section 2-14-119, Adjournment, the Plan provides that:

Adjournment. A meeting is adjourned when: (1) A motion to adjourn is adopted; (2) There is no further business on the agenda; (3) The presiding officer adjourns the meeting due to exigent circumstances that require immediate attention.

8. The Commission finds that the minutes of the May 9, 2018 meeting were not adopted by the Kahaluu Neighborhood Board.

9. The Commission has questions regarding the veracity of the draft minutes of the May 9, 2018 meeting.

10. The Commission finds that the evidence supports the return of the draft minutes of the May 9, 2018 meeting to the Kahaluu Neighborhood Board for their review and amendment, if necessary and approval of the minutes of the May 9, 2018 meeting.

11. The Commission finds that the evidence supports adjournment of the May 9, 2018 meeting due to exigent circumstances, as provided in Section 2-14-119 of the Plan.

10. With respect to Subsections (a), (b), (c) and (d) of Section 2-14-113, Meeting Minutes, there was a motion that (i) the Commission has questions about the veracity of the draft minutes of the May 9, 2018 meeting; (ii) the draft minutes should be returned to the Kahaluu Neighborhood Board for review; and (iii) the Kahaluu Neighborhood Board amend the draft minutes, if necessary and approve the minutes for the May 9, 2018 meeting. The motion was seconded. The Commission, with six commissioners present, having heard the arguments of the Complainant and Respondent, after considering all the evidence, adopted the motion by unanimous vote.

11. With respect to Section 2-14-119, Adjournment, there was a motion that was seconded to dismiss the Complaint. The Commission, with six commissioners present, having heard the arguments of the Complainant and Respondent, after considering all the evidence, finds that the Complainant did not meet his 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 dismiss 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

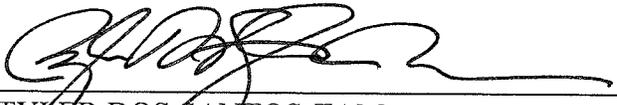
Based on the foregoing, the Commission hereby finds that on May 9, 2018, Respondent Flora Obayashi did not violate Section 2-14-119 of the 2008 Neighborhood Plan, as amended, as alleged in Complaint 2018-04. As to the alleged violation of Section 2-14-113 of the 2008 Neighborhood Plan, the minutes of the May 9, 2018 meeting were not adopted and the Kahaluu Neighborhood Board is directed to review the draft minutes, amend the same if required and thereafter approve the minutes of the May 9, 2018 meeting.

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 dismissed as to Respondent

Flora Obayashi, Member of the Kahaluu Neighborhood Board No. 29, with respect to Section 2-14-119 of the Plan.

DATED: Honolulu, Hawaii, March 29, 2019.

NEIGHBORHOOD COMMISSION

By 

TYLER DOS SANTOS-TAM
Its Chair