

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. 2018-05

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 2-13-104 and, 2-14-113, 2-14-114, and 2-14-116 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), and (c) of Section 2-14-112, Priority of Business, the Plan provides that:

Priority of business. (a) After the call to order of a regular meeting, the board shall give priority to representatives of the Honolulu Fire Department and the Honolulu Police Department to present their reports to the board and community, and respond to inquiries. (b) The board may designate any matter properly placed on the agenda to be a special item of business, which may take precedence over other business. (c) All questions relating to the priority of business to be acted upon by the board shall be decided without debate.

7. With respect to Subsections (a), (b), and (c) of Section 2-14-114, Quorum and Majority Vote, the Plan provides that:

Quorum and majority vote. (a) The presence of a majority of all the members to which the board is entitled shall constitute a quorum to do business. (b) The vote of not less than the majority of the entire membership to which the board is entitled shall be necessary to take any official action, unless otherwise specifically provided by this plan or by law. (c) A board member who is present at the meeting shall be counted for the purpose of determining quorum.

8. With respect to Subsections (a) and (b) of Section 2-14-116, Disclosure, the Plan provides that:

Disclosure. (a) All board members shall promote and preserve the order and decorum of the board's proceedings. (b) The presiding officer of the board or a majority of the board may expel any individual whose conduct at the board meeting is disruptive, disorderly, contemptuous, or improper for the conduct of business at the board meeting.

9. With respect to Subsections (a) and (b) of Section 2-14-117, Order and Decorum, the Plan provides that:

Order and decorum. (a) All board members shall promote and preserve the order and decorum of the board's proceedings. (b) The presiding officer of the board or a majority of the board may expel any individual whose conduct at the board meeting is disruptive, disorderly, contemptuous, or improper for the conduct of business at the board meeting.

10. The Commission finds that there were fifteen members on the Kahaluu Neighborhood Board and that there was less than a quorum present at the May 9, 2018 meeting, which is required to do business at the meeting, pursuant to Subsection (a) of Section 2-14-114 of the Plan.

11. The Commission finds that moving an agenda item to another place on the agenda only requires a quorum vote.

12. The Commission finds that the evidence did not support any violation of Disclosure, as set forth in Subsections (a) and (b) of Section 2-14-116 of the Plan.

13. The Commission finds that the evidence did not support any violation of Subsections (a), (b), and (c) of Section 2-13-104 of the Plan.

14. The Commission finds that the evidence did not support any violation of Disclosure, as set forth in Subsections (a) and (b) of Section 2-14-117 of the Plan.

15. With respect to Subsections (a) and (b) of Section 2-14-112, Priority of Business and Subsections (a), (b), and (c) of Section 2-14-114, Quorum and Majority Vote, and Subsections (a) and (b) of Section 2-14-117, Order and Decorum, there was a motion there was a

motion that (i) the Commission dismiss the Complaint; and (ii) the movement of an agenda item to another place on the agenda only requires a quorum vote. 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.

16. With respect to Subsections (a) and (b) of Section 2-14-116, Disclosure, there was a motion that was seconded to dismiss the Complaint relating to Section 2-14-116 of the Plan. 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 relating to Section 2-14-116 of the Plan.

17. With respect to Subsections (a), (b), and (c) of Section 2-13-104, Standards of Conduct, there was a motion that was seconded to dismiss the Complaint relating to Section 2-13-104 of the Plan. 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 relating to Section 2-13-104 of the Plan.

#### 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 Sections 2-14-113, 2-14-114, 2-14-116 and 2-14-117 and 2-13-104 of the 2008 Neighborhood Plan, as amended, as alleged in Complaint 2018-05.

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.

DATED: Honolulu, Hawaii, March 29, 2019.

NEIGHBORHOOD COMMISSION

By   
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TYLER DOS SANTOS-TAM  
Its Chair