

The Complaint and the exhibits provided by Complainant were made a part of the record without objection. The exhibits provided by Respondent were submitted in accordance with the requirements of section 2-18-203 of the 2008 Neighborhood Plan and were made a part of the record over the objection of Complainant. Additionally, the Commission took judicial notice of the videotape of the August 26, 2009 meeting and without objection made it a part of the record.

Complainant alleged the following violations of the 2008 Neighborhood Plan in his October 2, 2009 complaint:

Violations of section 2-13-101, 2-13-102, 2-13-104, 2-14-101, 2-14-117 when Respondent stated "Madame Chair I would like to make a comment, um Manny, I would like you to remember as you report that that the person who has the complaint is convicted of stealing signs" in response to Complainant's comment regarding illegal signs made to the Mayor's representative

Violations of section 2-13-101, 2-13-102, 2-13-104, 2-14-101, 2-14-117 when Respondent commented in response to the Chair's report on prior complaints against him by allegedly lying and calling Complainant names.

The Commission heard the testimony presented by the parties and witnesses reviewed the videotape recording of the August 26, 2009 meeting as well as the documents and other papers submitted, discussed the matter, and with the advice of counsel, finds as follows:

FINDINGS OF FACT

1. The Complaint was filed on October 2, 2009, pursuant to the provisions of Section 2-18-201 (a)(3) of the 2008 Neighborhood Plan.

2. At all times relevant herein, Complainant Michael J. Golojuch, Jr. ("Golojuch") was a resident of the City and County of Honolulu, and resided within the boundaries of Makakilo/Kapolei/Honokai Hale Neighborhood Board #34.

3. At all times relevant herein, Respondent Kioni Dudley ("Dudley") was a member of the Board.

4. Dudley was duly sworn in as a Neighborhood Board member and subscribed to the oath of office as required by section 2-14-101 of the 2008 Neighborhood Plan.

5. Section 2-18-201(d) of the 2008 Neighborhood Plan requires a respondent to file a written response to a complaint within forty-five (45) calendar days after the date a copy of the complaint was sent to the respondent. The deadline may be extended by the Commission or its designee if the respondent submits valid reasons in writing prior to the response deadline.

6. The response deadline in this matter was November 27, 2009. Respondent Dudley did not request an extension of said deadline, in writing or otherwise, prior to the response deadline.

7. Although November 27, 2009 was the day after Thanksgiving, the City and County of Honolulu was open for business on that date.

8. Respondent filed his answer on November 30, 2009.

9. Section 2-13-101 of the 2008 Neighborhood Plan states the general purpose of the Plan and the neighborhood boards.

10. Section 2-13-102 of the 2008 Neighborhood Plan states the general powers, duties and functions of the neighborhood boards.

11. Section 2-13-104 of the 2008 Neighborhood Plan states the standards of conduct for neighborhood board members.

12. Section 2-14-101 of the 2008 Neighborhood Plan states that each elected and appointed member must subscribe to an oath of office prior to entering upon the duties of their office.

13. Section 2-14-117 of the 2008 Neighborhood Plan requires all neighborhood board members to promote and preserve the order and decorum of a board's proceedings.

14. On May 20, 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.

15. At the August 26, 2009 meeting, in response to Complainant raised an issue regarding illegal signs, respondent made comment to Complainant about being a convicted felon. The

Commission finds that this comment from a Boardmember to a member of the public was improper.

16. At the August 26, 2009 meeting the Chair reported receiving three (3) decisions by the Commission regarding complaint filed by Golojuch against Dudley. The Commission finds that the Chair mistakenly believed that the Board could take action to support or not support the findings of the Commission.

17. The Commission further finds that the Chair appears to have inaccurately summarized the findings of the Commission in all three of the decisions. In addition the Chair informed the Board that she was aware of similar complaints against Dudley pending before the Commission, and that the Board would also be reviewing those decisions.

18. The Commission finds that some of the Boardmembers did not want to discuss the Commission decisions, yet the Chair allowed Complainant and Respondent to comment on the decisions.

19. The Commission finds that regardless of whether Dudley's statements are true or false, he believed his statements to be true and his statements were not necessarily motivated by personal dislike but were made in an attempt to correct the Chair's inaccurate summary of the Commission's decisions.

20. The Commission finds that during Respondents comments he did in fact refer to a Complainant, a member of the public as "nuts".

21. Upon review of the August 26, 2009 Board meeting, the Commission finds that based on the evidence presented that it is necessary to further investigate the matter more and directs the Executive Secretary to review the meetings and actions of the Makakilo/Kapolei/Honokai Hale Neighborhood Board #34 and provide to the Commission a recommendation as to whether a sanctions hearing should be conducted by the commission to consider whether sanctions should be imposed upon the entire Neighborhood Board #34.

CONCLUSIONS OF LAW

1. The Complaint was timely filed pursuant to the provisions of section 2-18-201 of the 2008 Neighborhood Plan ("the Plan").

2. The parties were properly noticed pursuant to Hawaii Revised Statutes ("HRS") sections 91-9 and 91-9.5.

3. This hearing was properly conducted in accordance with HRS Chapter 91 and section 2-18-203 of the Plan.

4. This matter is properly before the Commission pursuant to section 2-18-203 of the Plan and the Commission has the authority to review a board member's action(s) and issue

sanctions in accordance with sections 2-18-203 and 2-18-204 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.

6. The response to the complaint was not filed in a timely manner and was three (3) days late. Therefore, in accordance with section 2-18-201(e), the factual allegations of the complaint are deemed admitted by Respondent.

7. With respect to all allegations regarding violation of section 2-13-101 of the Plan, the Commission finds that section 2-13-101 is a "broad policy statement" of the general purpose and intent of the plan. The general rule of statutory construction is that policy declarations are not a "substantive part of the law which can limit or expand upon the express terms of the operative statutory provisions." Poe v. Hawaii Labor Relations Board, 97 Hawaii 528, 540, 40 P.3d 930, 942 (2002).

8. As such, the Commission finds that section 2-13-101 of the Plan does not impose binding duties or obligations upon any Board member, but instead simply provides a guide for determining the legislative intent and purpose behind the Plan.

9. Therefore, the Commission finds that Dudley did not violate section 2-13-101 of the Plan during the August 26, 2009 meeting.

10. The Commission further finds that with respect to all allegations of a violation of section 2-14-101 of the Plan, Dudley properly subscribed to the oath of office and he did not violate any federal or state laws, any county ordinances, or any provisions of the Plan by his statements.

11. Therefore, the Commission finds that Dudley did not violate section 2-14-101 of the Plan during the August 26, 2009 meeting.

12. With respect to the allegation regarding Dudley's statement about the Complainant with respect to the issue of "illegal signs", the Commission finds that Complainant has failed to provide sufficient evidence to support the complaint that Dudley's statement violated section 2-13-102 of the Plan. Thus, the Commission finds that Dudley did not violate section 2-13-102 of the Plan.

13. The Commission further finds that Dudley's comment to a member of the public concerning his conviction was a violation of section 2-13-104 of the Plan.

14. Furthermore, the Commission finds that Dudley did violate section 2-14-117 of the Plan as his comments were out of

order, contemptuous and improper for the conduct of business at the board meeting.

15. With respect to the allegation regarding Dudley's statement about the Complainant with respect to the issue of the 2004 complaints and resulting Findings of Fact/Conclusions of Law, the Commission finds that Complainant has failed to provide sufficient evidence to support the complaint that Dudley's statements violated section 2-13-102 of the Plan. Thus, the Commission finds that Dudley did not violate section 2-13-102 of the Plan.

16. Therefore, Dudley did not violate section 2-13-104 of the Plan in making a statement about the 2004 Findings of Fact/Conclusions of Law.

17. Furthermore, the Commission finds that Dudley did violate section 2-14-117 of the Plan as his comment that Complainant was "nuts" was unnecessary, rude, and improper for the conduct of business at the board meeting.

18. The Commission also finds that there are mitigating circumstances which must be considered in determining a penalty for Dudley's violations of the Plan.

DECISION AND ORDER

Based upon the foregoing, the Complaint filed by MICHAEL J. GOLOJUCH, JR., on August 11, 2009, is hereby SUSTAINED as to the allegation that Dudley's comment about Complainant's conviction

for stealing signs was unnecessary and motivated by his personal dislike for Complainant, and was out of order, contemptuous and improper for the conduct of business at the board meeting, and therefore did violate sections 2-13-104 and 2-14-117 of the 2008 Neighborhood Plan.

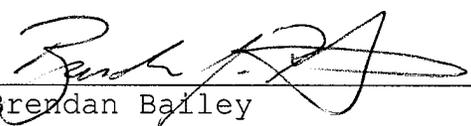
Likewise, based upon the foregoing, the Complaint filed by MICHAEL J. GOLOJUCH, JR., on August 11, 2009 is hereby SUSTAINED as to the allegation that Dudley's comment about Complainant being "nuts" was unnecessary, rude, and improper for the conduct of business at a board meeting and therefore did violate section 2-14-117 of the 2008 Neighborhood Plan.

All other allegations contained within the complaint are hereby DENIED.

It is hereby ordered in accordance with section 2-18-204 of the 2008 Neighborhood Plan, that as a sanction for the single violation of section 2-13-104 and the two (2) violations of section 2-14-117 of the 2008 Neighborhood Plan, Respondent KIONI DUDLEY is suspended from participation on the Makakilo/Kapolei/Honokai Hale Neighborhood Board #34 for a period of thirty (30) days, effective July 1, 2010 through July 31, 2010. In accordance with section 2-18-204(b)(3), any missed meeting date which occurs as a result of the suspension shall be counted as an absence under section 2-14-106.

DATED: Honolulu, Hawaii, JUN 22 2010.

NEIGHBORHOOD COMMISSION

By 
Brendan Bailey
Its Chair

FOF