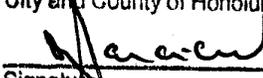


BEFORE THE NEIGHBORHOOD COMMISSION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of the	)	COMPLAINT NO. 2012-09
Recommendation of the Executive)	
Secretary of the Neighborhood	)	FINDINGS OF FACT, CONCLUSIONS
Commission Office regarding	)	OF LAW, AND DECISION AND ORDER
)	
Kimo Kelii, Member,	)	I certify that this is a full, true and correct
Nanakuli/Maili Neighborhood	)	copy of the original document on file with
Board No. 36,	)	The Neighborhood Commission Office,
	)	City and County of Honolulu.
)	
Respondent.)	
_____	)	Signature
	)	<u>FEBRUARY 13, 2013</u>
	)	Date

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

A complaint hearing was held at a Special Meeting of the Neighborhood Commission on December 13, 2012, at 7:00 p.m., in Honolulu Hale, Council Committee Room, 530 South King Street, 2nd Floor, Honolulu, Hawaii 96813. J. Thomas Heinrich appeared on behalf of the Executive Secretary and Respondent represented himself.

The Commission, having reviewed the Recommendation, witnesses, 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 Recommendation was filed on September 24, 2012, pursuant to the provisions of Section 2-18-101(a)(1) of the 2008 Neighborhood Plan, as amended ("Plan").

2. On September 24, 2012, at a Regular Meeting, the Neighborhood Commission adopted the Recommendation that the Commission initiate a complaint hearing against the Respondent in accordance with Sections 2-18-101 and 2-18-102 of the Plan arising from incidents at the Nanakuli/Maili Neighborhood Board No. 36 meeting on April 17, 2012.

3. At all times relevant herein, Respondent was a member of the Nanakuli/Maili Neighborhood Board No. 36.

4. On October 3, 2012, Respondent was notified of the Recommendation and provided an opportunity to respond to the allegations in the Recommendation. The Commission did not receive any response from the Respondent.

5. On November 28, 2012, 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. The Recommendation alleges that on the date set forth in paragraph 2 of this Findings of Fact, the Respondent violated the following sections of the Plan: 2-13-104 and 2-14-117.

7. Section 2-13-104 of the Plan requires board members to perform their duties with the highest standards of ethical conduct and hold their offices or positions for the benefit of the public.

8. Section 2-14-117 of the Plan requires board members to promote and preserve the order and decorum of the board's proceedings and authorizes the presiding officer of the board or a majority of the board to 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. The complaint contained six (6) specific allegations: (1) At the 3:04:45 point of the meeting, Respondent violated Section 2-14-117 by interrupting a resident speaking during the "Residents/Community Concerns" agenda item; (2) At the 3:09:00 point of the meeting, Respondent violated Section 2-14-117 by interrupting a resident speaking during the "Residents/Community Concerns" agenda item; (3) At the 3:10:35 point of the meeting, Respondent violated Section 2-14-117 by interrupting a resident speaking during the "Residents/Community Concerns" agenda item; (4) At the end of the meeting, Respondent violated Section

2-3-104 by making verbal personal attacks against audience members; (5) That Respondent attempted to use his position as the chair of the Board's education committee to remove another committee chair for misconduct and that he placed the misconduct allegations in the education committee minutes; and (6) That the Respondent made a complaint to an audience member's employer in an attempt to intimidate and retaliate against the audience member.

10. A meeting of the Nanakuli/Maili Neighborhood Board No. 36 was held on April 17, 2012. Respondent was present at the meeting.

11. As is usually done, the meeting was videotaped to be shown on 'Olelo TV's community access channel.

12. A review of the videotape shows that at the meeting on April 17, 2012, Respondent repeatedly interrupted speakers during the "Residents/Community Concerns" portion of the agenda and was belligerent, argumentative, rude, repeatedly ignored the Chair, and obstructed the Chair's efforts to restore order and decorum:

a. At approximately 3:04:31, an audience member raised concerns about the minutes of the education committee. Respondent immediately interrupted the speaker. The Chair made two attempts to stop the Respondent but he ignored the Chair and directed comments to the speaker. When the Chair attempted to correct the Respondent's behavior, Respondent became belligerent, argumentative, disruptive, and rude and

repeatedly resisted the Chair's requests to stop his behavior and allow the speaker to continue with her testimony. Eventually, the Chair was able to restore order and the speaker was allowed to finish her statement.

b. At approximately 3:08:00, an audience member raised concerns about the minutes of the education committee meeting. Respondent immediately interrupted the speaker and began shouting at her and arguing with her. He was belligerent and argumentative. The Chair attempted to restore order, but the Respondent ignored the Chair.

c. At approximately 3:09:40, an audience member raised concerns about the Respondent's actions. Respondent immediately interrupted the speaker and began shouting at her. He was belligerent, argumentative and repeatedly ignored the Chair and resisted attempts to restore order. He made insulting, personal comments to the speaker.

13. As a result of Respondent's actions, the Chair was forced to adjourn the meeting.

14. Even after the meeting had been adjourned and the speaker was walking away, the Respondent continued to yell insulting remarks at the speaker. He also yelled at other audience members. Respondent was belligerent, argumentative and rude.

15. With respect to allegations 1, 2, and 3, the Commission, having viewed the tape recording of the meeting, finds that Respondent's actions violated Section 2-14-117 of the Plan.

16. The Commission further finds that Respondent's conduct as a whole violated Section 2-13-104 of the Plan. Respondent failed to hold his office for the benefit of the public, failed to recognize that the public's interest is his primary concern, and failed to faithfully discharge the duties of his office regardless of his personal considerations.

17. With respect to allegations 5 and 6 regarding the education committee minutes and attempts to intimidate and retaliate against a community member, the Commission finds that the Executive Secretary failed to provide sufficient evidence to support the allegations.

CONCLUSIONS OF LAW

1. The Recommendation was filed in accordance with the provisions of Section 2-18-101(a)(1) 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 2-18-102 of the Plan.

4. This matter is properly before the Commission pursuant to Section 2-18-102 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 2-18-102 and 2-18-104 of the Plan.

5. Pursuant to HRS Section 91-10(5), the Executive Secretary 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. No response to the Recommendation was filed by the Respondent. Therefore, in accordance with Section 2-18-101(e) of the Plan, the factual allegations of the Recommendation are deemed admitted.

7. Based on the record, the Commission finds that the Respondent violated Sections 2-13-104 and 2-14-117 of the Plan.

8. The Commission further finds that the Respondent's conduct was egregious and was disrespectful to the speakers, the Chair, the other Board members, and the Community and created an atmosphere of disorder and contempt such that it significantly impaired the Board's ability to conduct meaningful public discussion of important neighborhood and island-wide issues.

9. The Commission also finds that there are mitigating factors which must be considered in determining a penalty for the Respondent's violations of the Plan, specifically, Respondent's statements at the hearing and his offer to apologize to the speakers demonstrated that he is remorseful about his conduct.

DECISION AND ORDER

Based upon the foregoing, the Commission hereby finds that the Respondent Kimo Kelii has violated Sections 2-13-104 and 2-14-117 of the 2008 Neighborhood Plan, as amended.

The Commission further finds that the violations committed by the Respondent, rather than promoting open expression and discussion of ideas relative to government and community processes and activities, have materially impaired the ability of the Nanakuli/Maili Neighborhood Board No. 36 to serve as a community forum.

Therefore, it is hereby ordered in accordance with Section 2-18-104 of the 2008 Neighborhood Plan, as amended, that as a sanction for the Respondent's violations of the 2008 Neighborhood Plan, as amended, Respondent is hereby suspended from participation on the Nanakuli/Maili Neighborhood Board No. 36 for a period of sixty (60) calendar days, from the date of this Decision and Order. 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 of the 2008 Neighborhood Plan, as amended.

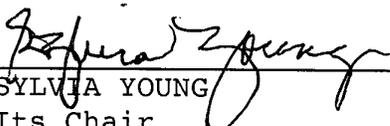
It is hereby further ordered that upon his return to the Board at the conclusion of his suspension, Respondent shall make

a public apology to the speakers, the Chair, the other Board members and the Community for his inappropriate conduct.

Respondent is warned that such conduct in the future may subject him to further sanctions up to and including removal from the Board.

DATED: Honolulu, Hawaii, February 13, 2013.

NEIGHBORHOOD COMMISSION

BY 
SYLVIA YOUNG
Its Chair