

BEFORE THE NEIGHBORHOOD COMMISSION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of	)	COMPLAINT NO. 2012-08
Michelle Matson	)	
	)	FINDINGS OF FACT, CONCLUSIONS
Complainant	)	OF LAW, AND DECISION AND ORDER
v.	)	
	)	I certify that this is a full, true and correct
Diamond Head/Kapahulu/St. Louis	)	copy of the original document on file with
Heights Neighborhood Board No.	)	The Neighborhood Commission Office,
5,	)	City and County of Honolulu.
	)	
Respondents.	)	<u>Niobe A. Velasco</u>
	)	Signature
	)	<u>01-28-14</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 August 26, 2013, at 5:30 p.m., in Honolulu Hale, Council Committee Room, 530 South King Street, 2nd Floor, Honolulu, Hawaii 96813. Michelle Matson (Complainant) appeared on behalf of herself, Barbra Armentrout, Victoria Mathieu, Barbara Miller, Laura St. Denis, George Waialeale, George West, and Linda Wong (Respondents) appeared and represented themselves as members of Diamond Head/Kapahulu, St. Louis Heights Neighborhood Board No. 5.

The Commission, having reviewed the 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 Complaint was filed on August 23, 2012, pursuant to the provisions of Section 2-18-201(a)(3) of the 2008 Neighborhood Plan, as amended ("Plan").

2. On July 12, 2012, at a Regular Meeting of the Neighborhood Board No. 5, the complainant alleges a violation of the neighborhood plan under Sections 2-14-113 and 2-14-123.

3. At all times relevant herein, Respondents Mathieu, Miller, St. Denis, Waialeale, West and Wong were members of the Neighborhood Board No. 5.

4. Respondent Armentrout is a current member of Neighborhood Board No. 5.

5. On August 31, 2012, Respondents and other Board members were notified about the Complaint and provided an opportunity to respond to the allegations Complaint. The Commission received a response from Respondents Michael Cain, Paulette Manfredi, Victoria Mathieu, Bryn Villers, and Linda Wong.

6. On August 9, 2013, 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.

7. The Complaint alleges that on the date set forth in paragraph 2 of this Findings of Fact, the Respondents violated the following sections of the Plan: 2-14-113 and 2-14-123.

8. Section 2-14-113 of the Plan requires that boards keep written minutes of all meetings and describes the items that shall be included in the minutes including the substance of all matters proposed, discussed or decided and any other information that any member of the board, during the applicable meeting, requests be included or reflected in the meeting minutes. It also states that the board may approve or amend and approve the minutes at a subsequent regular meeting.

9. Section 2-14-123 of the Plan outlines the duties of the board officers including the chair, vice chair, secretary and treasurer.

10. The complaint alleged that at the regular meeting of the Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board No. 5 on July 12, 2012, the board failed to recognize and accept substantive factual changes and corrections to the May 10, 2012 regular meeting minutes. It further alleged that the board failed to add a report into the record at the April 12, 2012 meeting as requested and failed to include substantive information and factual corrections for the May 10, 2012 meeting

minutes as requested by a board member. Finally, it alleged that the June 14, 2012 meeting minutes were not discussed.

11. Complainant testified as to the claims in this Complaint. Complainant also submitted additional information for the Commission to consider.

12. Respondent board members Barbra Armentrout, Victoria Mathieu, Laura St. Denis, and Linda Wong testified in opposition to the claims in the complaint. Additional information was received from Respondents Armentrout, St. Denis, and George West.

13. The Commission reviewed all the evidence submitted, including the meeting minutes for the July 12, 2012 board meeting.

14. According to the meeting minutes for the July 12, 2012 board meeting, the Complainant's changes to the May 10, 2012 meeting minutes were presented to the board and voted upon. The board voted against the Complainant's changes and voted to approve the May 10, 2012 meeting minutes as written.

15. According to the meeting minutes for the July 12, 2012 board meeting, the approval of the June 14, 2012 meeting minutes was deferred due to time limitations.

16. Although the meeting minutes shall give a true reflection of the matters discussed and the views expressed at

the meetings, it is not required to be a full transcript nor a "recording" of the meeting.

17. The Neighborhood Plan allows the board to approve or amend and approve meeting minutes at a subsequent regular board meeting. Meeting minutes must be approved by a majority vote.

18. At its July 12, 2012 meeting, the Diamond Head/Kapahulu/St.Louis Heights Neighborhood Board No. 5 properly reviewed, discussed, and voted to approve the meeting minutes of its May 10, 2012 meeting.

19. No evidence of misconduct or procedural defect was produced which would nullify the board's vote.

20. Absent any evidence of misconduct or procedural defect, the Commission will not overturn the majority vote of the board to approve the meeting minutes as written.

21. With respect to the allegations, the Commission, having heard the arguments of the Complainant and Respondent, considering all the evidence, finds that the Complainant failed to meet her burden of proof of proving that Respondent board violated the Plan by a Preponderance of the Evidence.

#### CONCLUSIONS OF LAW

1. The Complaint 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 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 upon the foregoing, the Commission hereby finds that the Complainant, Michelle Matson, failed to establish by a preponderance of the evidence the allegations contained in Complaint No. 2012-08.

Therefore, it is hereby ordered in accordance with Section 2-18-101(b) of the 2008 Neighborhood Plan, as amended, that the Complaint is Denied.

DATED: Honolulu, Hawaii, January 27, 2014.

NEIGHBORHOOD COMMISSION

By Sylvia Young  
SYLVIA YOUNG  
Its Chair