

BEFORE THE NEIGHBORHOOD COMMISSION

CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of Andrea C. Anixt

Complainant,

v.

Verla Moore, Kela Miller, Norman F. Thompson III, Hans Taala, Larry K. Nihipali, Kerry S. Moea'i, and Gaylene N. Lolofie, Members of Ko'olauloa Neighborhood Board No. 28,

Respondents.

) COMPLAINT NO. 2014-01

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

I certify that this is a full, true and correct copy of the original document on file with the Neighborhood Commission Office, City and County of Honolulu, State of Hawaii.

Boyan K. Min

9/24/2014

Authorized NCO Representative

Date

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

A complaint hearing was held at a Special Meeting of the Neighborhood Commission ("Commission") on May 28, 2014 at 6:45 p.m., in Honolulu Hale, Council Committee Room, 530 South King Street, 2nd Floor, Honolulu, Hawaii 96813. Complainant Andrea C. Anixt appeared and testified on behalf of herself. Respondents Verla Moore, Kela Miller, Norman F. Thompson III, Hans Taala, Larry K. Nihipali, Kerry S. Moea'i and Gaylene N. Lolofie, Members of Ko'olauloa Neighborhood Board No. 28, appeared and testified on behalf of themselves.

The Complainant alleged that at the December 9, 2013 Ko'olauloa Neighborhood Board No. 28 meeting, Verla Moore, Kela Miller, Norman F. Thompson III, Hans Taala, Larry K. Nihipali, Kerry S. Moea'i and Gaylene N. Lolofie ("Board Members" or "Respondents") had rejected testimony that was submitted regarding the proposed resolution under consideration that evening; The Department of Planning and Permitting was supposed to submit more information to the City Council regarding Bill 47, relating to the Ko'olauloa Sustainable Communities Plan, however, only some of the information was given and the Board did not take that into consideration; since the passage of Bill 47, sustainability of the community is at risk and the Board is not taking that into consideration; tourism is projected to double in 2017 and the Board is not taking that into consideration regarding the proposed resolution; that there is no reliable traffic count in the area; and the minutes are not accurate.

The Complainant alleges that Respondents and Board violated Sections 2-13-101 Purpose; 2-13-104(a) Standards of conduct; 2-13-105, Conflicts of interest, 2-13-107(a) Representative capacity of board members; 2-14-116 Disclosure, of the Plan.

The Commission, reviewed the 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 January 20, 2014, pursuant to the provisions of Section 2-18-101(a)(3) of the 2008 Neighborhood Plan, as amended ("Plan").

2. At all times relevant herein, Respondents were members of Ko'olauloa Neighborhood Board No. 28.

3. On January 24, 2014, Respondents were notified of the Complaint and provided an opportunity to respond to the allegations contained in the Complaint. The Commission received a response from Respondents, and at which time, Respondents denied the allegations. Board Member Gaylene N. Lolofie submitted documentation verifying she was off-island on December 9, 2013 and was not at the meeting and did not participate in the vote.

4. On April 14, 2014, in accordance with Hawaii Revised Statutes ("HRS") Sections 91-9 Contested cases; notice; hearing; records and 91-9.5 Notification of hearing; service, notice of the hearing was provided to the Respondents via certified mail, return receipt requested.

5. The Commission finds that a resolution proposed to support Envision La'ie and Ko'olauloa Sustainable Communities Plan was properly placed on the agenda for December 9, 2013.

6. The Commission finds that the Respondents and Board accepted testimony until midnight on December 9, 2013 and every person who wanted to testify on the proposed resolution was given two minutes to speak. No one was turned away or cut short.

7. The Commission finds that upon completion of all the testimony, Respondents and a majority of the Board members voted to support the proposed resolution.

8. The Commission finds that Respondents and Board Members made disclosures of any potential conflicts of interest prior to a vote taken on December 9, 2013 per review of the minutes of the meeting.

9. The Commission finds that Respondent Gaylene N. Lolófie was not present at the December 9, 2013 Ko'olauloa Neighborhood Board No. 28 meeting and did not participate in the vote as she was off-island.

10. The Commission finds that Complainant has failed to present evidence to support her allegations that the Respondents and Board Members did not have sufficient knowledge of the proposed resolution or the community's interest to take a vote

on the matter at the December 9, 2013 Ko'olauloa Neighborhood Board No. 28 meeting.

11. Section 2-13-101 Purpose. This is an enabling and general purpose section of the Plan.

12. Section 2-13-104 Standards of conduct requires any board member to conduct themselves to the highest standards of ethical conduct and shall not use their position to secure or grant special consideration, treatment, advantage, privilege, or exemption to themselves or any person.

13. Section 2-13-105 Conflicts of interest prohibits board members from soliciting or accepting any gift, directly or indirectly, whether in the form of money, loan, gratuity, favor, service, thing or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the member in the performance of the member's official duties. The Plan does not preclude the solicitation or acceptance of lawful contributions for election campaigns. This section also prohibits disclosure of confidential information gained by reason of the member's office or position or to use that information for personal gain or for a board member to engage in any business transaction or activity, or have financial interest, direct or indirect, which

is incompatible with the proper discharge of a member's official duties.

14. Section 2-13-107 Representative capacity of board members is an enabling and general function section of the Plan that requires that each member represent the entire district. Discussion and consideration of public affairs shall avoid private matters or matters under litigation unless it involves policies, processes, or decision-making of government. Boards may reasonably engage in activities that recognize and celebrate the participation, contributions, and accomplishments of persons, agencies and community organizations in the life of that neighborhood area or the community at large.

15. Section 2-14-116 Disclosure. Any board member who knows he or she has a personal or private interest, direct or indirect, in any proposal before the board shall disclose the interest either orally or in writing to the board. The disclosure shall also be made a matter of public record before the board takes any action on the proposal. A member who makes any disclosure shall not be disqualified from participation in the discussion or vote on the matter. A member may choose to be recused. A recused member shall not participate in the discussion or vote.

16. With respect to Sections 2-13-101 Purpose and 2-13-107, Representative capacity of board members, of the Complaint, these are enabling and general functions sections of the Plan and the Commission dismisses the allegations as they are not violations.

17. With respect to Sections 2-13-104, Standards of conduct, 2-13-105, Conflicts of interest, and 2-14-116 Disclosure, of the Complaint, the Commission, having heard the arguments of the Complainant and Respondents, considering all the evidence, finds that the Complainant failed to meet her burden of proof of proving that Respondents violated the Plan by a Preponderance of the Evidence.

18. The Commission further finds that the issues regarding Envision La'ie and the Ko'olauloa Sustainable Communities Plan; that the Division of Planning and Permitting were to submit more documentation to the City Council; and the extent of the increase in tourism in the area brought up during the hearing, although deemed important to the Complainant, are not violations of the Plan.

CONCLUSIONS OF LAW

1. The Recommendation was filed in accordance with the provisions of Section 2-18-101(a)(1) of the Plan.
2. This hearing was properly conducted in accordance with HRS Chapter 91 and Section 2-18-102 of the Plan.
3. 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.
4. 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.

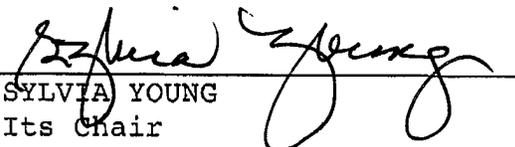
DECISION AND ORDER

Based upon the foregoing, the Commission hereby finds that on December 9, 2013, Respondents Verla Moore, Kela Miller, Norman F. Thompson III, Hans Taala, Larry K. Nihipali, Kerry S. Moea'i and Gaylene N. Lolofie, Members of Ko'olauloa Neighborhood Board No. 28, did not violate any provision of the 2008 Neighborhood Plan, as amended, as alleged in Complaint No. 2014-01.

Therefore, it is hereby ordered in accordance with Section 2-18-101(b) of the 2008 Neighborhood Plan, as amended, that the Complaint is hereby denied and dismissed as to Respondents Verla Moore, Kela Miller, Norman F. Thompson III, Hans Taala, Larry K. Nihipali, Kerry S. Moea'i and Gaylene N. Lolofie, Members of Ko'olauloa Neighborhood Board No. 28.

DATED: Honolulu, Hawaii, September 22, 2014.

NEIGHBORHOOD COMMISSION

By 
SYLVIA YOUNG
Its Chair

