



Complainant alleged the following violations of the 2008 Neighborhood Plan in her August 7, 2009 complaint:

Allegation #1

Violation of sections 2-13-101, 2-13-102, and 2-14-117 when Respondent stated “It will be interesting to see if he keeps time on anybody except moi” after Complainant announced that Mike Golojuch would be serving as timekeeper for the Board meeting;

Allegation #2

Violation of section 2-14-117 when Respondent “argued with the Chair to talk about a member he nominated who declined the nomination” and then stated in his comments regarding the nomination that “Community looking for new, bold leadership; Community wants a functioning Board; he should not feel he is turning against those who supported him that is on the Board; if he does not (Troy Cullen) will not show a functional leader on the most dysfunctional Board on the island.”

Allegation #3

Violation of section 2-14-117 when Respondent “went over the prescribed speaking time limit and Chair told him his time was up.”

Allegation #4

Violations of section 2-13-101, 2-13-102, 2-14-117, 2-14-101 when Respondent commented in response to the Mayor’s representatives report regarding illegal signs that “I would just like to remind you that the request about the signs was from an individual in the audience, there is nothing from the Board about the signs and the complaints about the signs. And I encourage you not to be overly ambitious to take down every sign that there is because an awful lot of them do serve the community well.”

Allegation #5

Violation of section 2-14-117 when Respondent stated in response to the Chair’s report regarding pending complaints against Respondent, “Madame Chair, I have no idea what you are talking about...Ladies and Gentlemen, you have to understand the Neighborhood Commission once they get complaints, they just never get them out. I think these are from the Golojuch family.”

Allegation #6

Violation of sections 2-14-117, 2-12-101, and 2-13-102 when Respondent interrupted the treasurer's report, questioned the selection of the timekeeper, and argued with the Chair about the timekeeper.

Allegation #7

Violation of sections 2-14-117, 2-13-101, and 2-13-102 when Respondent objected to the Chair naming Mike Golojuch to be the OMPO representative.

The Commission heard the testimony presented by the parties and witnesses, reviewed the videotape recording of the July 22, 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 August 7, 2009, pursuant to the provisions of Section 2-18-201 (a)(3) of the 2008 Neighborhood Plan.
2. At all times relevant herein, Complainant Maeda Timson was a resident of the City and County of Honolulu, and the Chair of the Makakilo/Kapolei/Honokai Hale Neighborhood Board #34.
3. At all times relevant herein, Respondent Kioni Dudley was a member of the Board.
4. Section 2-13-101 of the 2008 Neighborhood Plan states the general purpose of the Plan and the neighborhood boards. 5. Section 2-13-102 of the 2008 Neighborhood Plan states the general powers, duties and functions of the neighborhood boards.
6. 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.
7. 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.

8. On March 18, 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.

9. At the July 22, 2009 meeting, Timson appointed Mike Golojuch, Sr. as the trial timekeeper for the Board.

10. Timson looked towards Dudley and asked him "Do you have a problem?" She then waited for a microphone to be passed to Dudley and for his response to her question.

11. Dudley then stated "Madame Chair, It will be interesting to see if he keeps time on anybody except moi."

12. Thereafter, the Election of the Board Chair agenda item, Timson recognized Dudley to speak and stated "nomination only and speeches after."

13. Dudley then nominated Troy Cullen ("Cullen") for Board chair and specifically reserved the right to make a speech after.

14. Cullen declined the nomination and nominated Timson instead.

15. Timson then asked for other nominations and recognized Dudley to speak.

16. Dudley stated that he had nominated Cullen and noted that he reserved the right to speak.

17. Timson stated that Cullen had declined the nomination.

18. Dudley then stated that Cullen's declining the nomination did not negate his right to make a nomination speech.

19. While Dudley was speaking, Timson interrupted him and attempted to speak over him.

20. Timson then stated that once the nominations are done, Dudley could do his speech. Timson then asked for further nominations and not receiving any, Timson told Dudley that he could "go ahead and say what you want to say..."

21. Dudley then made his nominating speech. In his speech, he stated, "I think the community is looking for new, bold leadership and I think they think of him as a leader. They gave him the most votes. I think the community wants a functioning board, one that will take on the problems that affect the community. Major Cullen may shy away from this as too self-serving, but in actuality, it would be serving the community. He might see it as turning on those who supported his candidacy, but in actuality he got two hundred more votes..."

22. The timer then went off and Timson cut off Dudley by saying "Time's up."

23. At which point, Dudley stated that Board Organization does not have time limits and paused for a response from Timson. When he got no response, he repeated the statement that Board Organization does not have time limits and then stated that he would continue.

24. Timson then replied that there are time limits and if Dudley read the agenda which had been the rules of speaking for a number of years. She then instructed Dudley to "go ahead and wrap up" so they could move on.

25. Dudley thanked the chair and then continued with "He might see it as turning on those who supported his candidacy, but in actuality he got two hundred more votes than those who did support him who are now on the board. He needs to look to the wishes of those 200 constituents, those 200 community members who also voted for him. The Community would be very disappointed if this natural leader who can take the Board to new heights instead chose to become a follower perpetuating a dysfunctional leader in the most dysfunctional board on the island. Thank you."

26. Timson then admonished Dudley, told him to keep his personal comments to himself and said he was violating the neighborhood plan.

27. Later in the meeting, during the presentation by the Mayor's representative, the representative noted that the Department of Planning and Permitting was thanked for having signs removed from public property along Makakilo drive. There was also a request to remind the churches in the area not to put up signs on public property and that the churches were notified by phone not to post the signs. He also noted that an inspector would follow-up to insure that the signs were not put-up again.

28. At the end of the Mayor's representative's report, Timson asked if there were any questions then recognized Dudley to speak.

29. Dudley stated, "Mr. Lanuevo, I'd just like to remind you that the request about the signs was from an individual in the audience. There was nothing from the Board about the signs and the complaints about the signs and I'd encourage you not to be too overly ambitious to take down every sign that's there. An awful lot of them really do serve the community and serve the community well."

30. During the Chair's report, Timson stated that she wanted to appoint Mike Golojuch, Jr. to be the Oahu Metroplitan Planning Organization ("OMPO") representative. She then asked if there were any objections, to which Dudley stated that he would like to object. Timson then recognized Dudley by saying "Go ahead."

31. Dudley then began stating his opinion that he believed the Board chair was supposed to be OMPO representative and that the Chair was supposed to appoint an alternate for when the chair cannot attend the meetings. Timson repeatedly interjected and interrupted Dudley during his testimony. She then prevented Dudley from further speaking by making a speech of her own.

32. Upon conclusion of Timson's speech, Dudley asked to finish his objection and stated, "I think this should be somebody who is on the board and I think that it is an official position, and I think that that person should be somebody who is a Board member."

33. Later in the Chair's report, Timson reported on a communication received from the Neighborhood Commission regarding the status of complaints against the Board from 2004 and specifically noted that it involved Dudley and that the complaints had been sustained and would be addressed at the next Commission meeting.

34. Dudley then stated, "Madame Chair, 2004?" Timson replied by saying that the violations involved violations of order and decorum, belittling and that it got mailed to him.

35. Dudley responded by saying, "And Madame Chair, I must say..." to which Timson replied "yes" and allowed Dudley to make a statement.

36. Dudley then stated "...I must say I've heard absolutely nothing about this whatsoever, there's been nothing sent to me whatsoever and I have no idea in the world what you're talking about, but I'm happy to have those complaints there. Ladies and Gentlemen we have to understand that the Neighborhood Commission, once they get complaints, they get in the system and you just never get 'em out. I think these are from the Golojuch family but I don't remember where they are from."

37. At the end of the Chair's report, Timson moved on to the next item on the agenda, the Treasurer's report. Whereupon, Dudley asked to go back to the Chair's report and waited for a response from Timson.

38. When Timson did not respond and tried to move on, Dudley again asked to go back to the Chair's report. Timson then looked at Dudley and paused and allowed him to make a statement.

39. Dudley stated, "I'd like to, I haven't seen anything at all about why this gentleman is sitting here tonight with his beep, beep, beep that's been going on from the beginning of the meeting, you know its just incessant practically. I'd like that to be brought up at the next meeting, because you know we really ought to vote on whether or not we're going to have this disturbance and we ought to have a chance for the entire board to vote on it, I'd like to have it on the agenda for the next meeting, please."

40. During Dudley's statement, Timson interrupted him and attempted to speak. At the end of Dudley's statement, Timson made her own statement. Dudley then interrupted Timson and asked again to place the matter on the following month's agenda.

41. Board Member Charlie Zahn ("Zahn") was then recognized by Timson and stated that he recalled Dudley previously had the Board agree to a timekeeper. When Dudley denied this, Timson stated "No it was not" and then stated that they "weren't going to argue" and if there were any objections to the timekeeper besides Dudley. Dudley then interrupted and speaking over Timson, asked again to place the matter on the agenda.

42. A colloquy between Timson and another Board member ensued about the timekeeper position. At the end of the colloquy, Dudley stated, "Madame Chair, this is a way of perpetuating someone on the Board who was not elected to the Board. You know, your old gang, they've gotta give up. You know when you're not elected, you have to leave."

43. Upon hearing "Madame Chair", Timson paused, acknowledged Dudley and allowed him to continue speaking.

#### 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 HRS sections 91-9 and 91-9.5.

3. This hearing was properly conducted in accordance with Hawaii Revised Statutes (“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. 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).

7. 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.

8. Therefore, the Commission finds that Dudley did not violate section 2-13-101 of the Plan during the July 22, 2009 meeting.

9. With respect to the first allegation regarding the appointment of the timekeeper, the Commission finds that Complainant has failed to provide sufficient evidence to support the complaint that Dudley's statement after the appointment of the timekeeper violated section 2-13-102 of the Plan. Thus, the Commission finds that Dudley did not violate section 2-13-102 of the Plan.

10. The Commission further finds that Dudley did not violate section 2-14-117 of the Plan. Dudley was not disruptive or disorderly in making the statement regarding the timekeeper. Dudley had been recognized by the Chair to speak. Although his statement may have been unnecessarily sarcastic, it was not rude or otherwise inappropriate.

11. With respect to the second allegation regarding the nominating speech for Cullen, the Commission finds that Dudley did not violate section 2-14-117 of the Plan when he made his nominating speech after Cullen declined the nomination. Although the Chair was correct that once the nomination was declined, the nominating speech should not have been allowed, the Chair expressly permitted Dudley to make his nominating speech and acknowledged and recognized him to speak. Dudley's speech stated his opinion about the state of the Board and was not disruptive, disorderly, rude or otherwise inappropriate.

12. With respect to the third allegation regarding speaking beyond the time limits during the nominating speech, the Commission finds that Dudley did not violate section 2-14-117 of the Plan. Although Timson correctly noted that there are time limits for the agenda item on Board organization, Timson then recognized Dudley, gave him permission to continue speaking, and allowed him to finish his statement. Although Dudley was overtime, he was not disruptive, disorderly, rude or otherwise inappropriate.

13. With respect to the fourth allegation regarding Dudley's statement about removal of signs on public property, the Commission finds that Complainant has failed to provide sufficient evidence to support the complaint that Dudley's statement about the signs violated section 2-13-102 of the Plan. Thus, the Commission finds that Dudley did not violate section 2-13-102 of the Plan.

14. The Commission further finds that Dudley did not violate section 2-14-117 of the Plan as he was properly recognized to speak by Timson, and he was not disruptive, disorderly, rude or otherwise inappropriate in stating his opinion regarding the usefulness of signs on public property. The Commission also finds that Dudley did not violate section 2-14-101 of the Plan as 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 stating his opinion regarding the signs. Moreover, Dudley's statements did not encourage anyone to expressly or specifically break the law.

15. With respect to the fifth allegation regarding Dudley's comments in response to the Timson's report on the 2004 complaints to the neighborhood commission, the Commission finds that Dudley did not violate section 2-14-117 by making statements regarding the complaints. Dudley was not disruptive or disorderly in making the statements and the statements were not rude and were fairly innocuous.

16. With respect to the sixth allegation regarding Dudley's comments about the timekeeper which were made during the treasurer's report, the Commission finds that Complainant has failed to provide sufficient evidence to support the complaint that Dudley's statement about the timekeeper made during the treasurer's report violated section 2-13-102 of the Plan. Thus, the Commission finds that Dudley did not violate section 2-13-102 of the Plan.

17. The Commission further finds that Dudley's comments walk a fine line between complying with order and decorum and being belligerent. However, the Commission finds that Dudley's initial statements, specifically requesting that the timekeeper matter be placed on the next agenda, although perhaps not appropriate at that time, do not rise to a violation of section 2-14-117 of the Plan. However, the Commission also finds that Dudley's final comment, about perpetuating someone who was voted off the Board, was argumentative, made out of turn, and therefore did violate section 2-14-117 of the Plan.

18. With respect to the seventh allegation regarding Dudley's comments about the appointment of the OMPRO representative, the Commission finds that Complainant has failed to provide sufficient evidence to support the complaint that Dudley's statement about the OMPO representative violated section 2-13-102 of the Plan. Thus, the Commission finds that Dudley did not violate section 2-13-102 of the Plan.

19. The Commission further finds that Dudley did not violate section 2-14-117 as he was properly recognized to speak by Timson, and he was not disruptive, disorderly, rude or otherwise inappropriate in stating his understanding and opinion regarding the selection of the OMPO representative.

20. Finally, the Commission finds that Chair Timson bears some responsibility for much of the behavior of which she now complains by acknowledging Dudley and allowing him to speak even though she has already determined that his request is not appropriate or out of order. Chair Timson is further complicit in the breakdown in order and decorum that occurs at the meetings as she repeatedly interrupts Dudley and becomes heated and argumentative herself.

DECISION AND ORDER

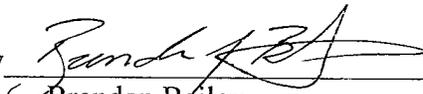
Based upon the foregoing, the Complaint filed by MAEDA TIMSON, on August 7, 2009, is hereby SUSTAINED only as to the allegation that Dudley's comment about perpetuating someone who was voted off the Board was inappropriate, argumentative and made out of turn, and therefore did violate section 2-14-117 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 2-14-117 of the 2008 Neighborhood Plan, a letter of reprimand will be issued forthwith to Respondent KIONI DUDLEY.

DATED: Honolulu, Hawaii, APR 20 2010.

NEIGHBORHOOD COMMISSION

By   
Brendan Bailey  
Its Chair

