

BEFORE THE NEIGHBORHOOD COMMISSION
 CITY AND COUNTY OF HONOLULU
 STATE OF HAWAII

In the Matter of the
 Complaint of
 MICHAEL J. GOLOJUCH, JR.
 Complainant,
 vs.
 KIONI DUDLEY,
 Respondent.

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

This Complaint came on for hearing at a Special Meeting of the Neighborhood Commission held on April 5, 2010, at 7:00 p.m., in Kapolei Hale, Conference Room A, City and County of Honolulu, 1001 Uluohia Street, Kapolei, Hawaii 96707.

Complainant Michael J. Golojuch, Jr., *pro se*, appeared on his own behalf. Jack Schweigert, Esq. appeared on behalf of Respondent Kioni Dudley. Rachel Glanstein and Maeda Timson testified on behalf of the Complainant. Kioni Dudley testified on behalf of Respondent.

The Complaint, the Response and all exhibits provided by the parties were made a part of the record without objection. Additionally, the Commission took judicial notice of the videotape of the July 22, 2009 meeting and without objection made it a part of the record.

Complainant alleged the following violations of the 2008 Neighborhood Plan in his August 11, 2009 complaint:

Violations of section 2-13-101, 2-13-102, 2-14-101, 2-14-117 when Respondent commented in response to the Mayor's representative's 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 was nothing from the board about the signs and the complaints about the signs. Um and I encourage you not to be too overly ambitious to take down every sign that is there an awful lot of them really do serve the community and serve the community well."

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 11, 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. 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, 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. He further reported on 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.

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

11. 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."

12. 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.

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 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 violated section 2-13-102 of the Plan.

10. The Commission further 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.

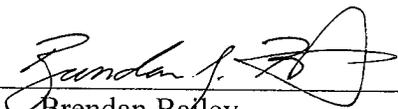
11. The Commission also finds that Dudley did not violate section 2-14-117 of the Plan as he was properly recognized to speak by Timson, and he was not disruptive, disorderly, rude or otherwise inappropriate in stating his opinion regarding the usefulness of signs on public property.

DECISION AND ORDER

Based upon the foregoing, the Complaint filed by MICHAEL J. GOLOJUCH, JR., on August 11, 2010, is hereby DENIED.

DATED: Honolulu, Hawaii, APR 20 2010.

NEIGHBORHOOD COMMISSION

By _____
Brendan Bailey
Its Chair

