

BEFORE THE NEIGHBORHOOD COMMISSION
CITY AND COUNTY OF HONOLULU

In the Matter of the)
Complaint of)
WILLIAM RACOMA,)
Complainant,)
Against KOOLAULOA NEIGHBORHOOD)
BOARD NO. 28,)
Respondent.)

) Complaint #0903-28-3
) 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.

) Barbara Hama - Alslan
) Signature
) **DEC 07 2010**
) Date

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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 November 22, 2010, at 7:00 p.m., in Honolulu Hale, Council Committee Room, 2nd Floor, City and County of Honolulu, 530 South King Street, Honolulu, Hawaii 96813.

Complainant WILLIAM RACOMA ("Complainant"), *pro se*, appeared on his own behalf. Board member Junior Primacio was represented by Jonathan S. Durrett, Esq. Board members John Elkington, Norman Kaluhiokalani, and Kela Miller were represented by Aaron M. Shumway, Esq. Board members Les Steward, Moana Kalua'u, Richard Fale, Dottie Paddock, Dee Dee Letts, and Creighton Mattoon, *pro se*, appeared on their own behalf.

The Complaint, the Response, and all exhibits provided by the parties were made a part of the record without objection.

Complainant alleged in his August 5, 2009 complaint that Respondent Koolauloa Neighborhood Board No. 28 ("Respondent Board") violated the Sunshine Law and the 2008 Neighborhood Plan ("the Plan") by providing improper notification of a special meeting, failing to take minutes of a special meeting, not having a designated chairperson at the special meeting, not allowing all members of the public to participate in a discussion or to ask questions of presenters, and for some members, having a conflict of interest.

The Commission heard the testimony presented by the parties and witnesses and reviewed the exhibits 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 5, 2009, pursuant to the provisions of Section 2-18-201 (a)(3) of the Plan.
2. At all times relevant herein, Complainant was a resident of Koolauloa Neighborhood Board No. 28.
3. At all times relevant herein, Respondent Board was a properly constituted Board under the 2008 Neighborhood Plan ("the Plan") and Section 14-101 of the Revised Charter of the City and County of Honolulu ("RCH").

4. At all times relevant herein, Junior Primacio, John Elkington, Norman Kaluhiokalani, Kela Miller, Richard Fale, Moana Kalua'u, Dee Dee Letts, Creighton Mattoon, Dottie Paddock, and Les Steward were members of the Board.

5. Board members Junior Primacio, John Elkington, Norman Kaluhiokalani, Kela Miller, and Les Steward filed timely responses to the Complaint on September 25, 2009.

6. Section 14-101, RCH, provides that the purpose of the neighborhood boards is to "increase and assure effective citizen participation in the decisions of government."

7. Section 2-13-102 of the Plan provides that general powers, duties, and functions of the neighborhood boards include increasing and assuring effective citizen participation in the decisions of government by providing opportunities for public input and interaction and acting as a public and informational forum on community and governmental issues.

8. Section 2-14-111 of the Plan requires that a Board provide written public notice of a meeting.

9. Section 2-14-113 of the Plan requires a Board to keep minutes of all meetings.

10. Section 2-14-116 of the Plan requires a Board member to make appropriate disclosures with respect to any personal or private interests.

11. Section 2-14-123 of the Plan describes the duties of the officers of a Board including the chair and the vice-chair.

12. Section 92-3 of the Hawaii Revised Statutes ("HRS") requires that all Board meetings shall be open to the public and that the Boards shall afford all interested persons the opportunity to provide both written and oral testimony on any agenda item.

13. On October 26, 2010, in accordance with Sections 91-9 and 91-9.5, HRS, notice of the hearing was provided to the parties via certified mail, return receipt requested.

14. On November 4, 2010, a revised notice of hearing was provided to the parties via certified mail, return receipt requested.

15. On July 30, 2009, Respondent Board held a special meeting to review and consider a presentation by Envision La'ie.

16. The meeting notice and agenda was filed with the City Clerk on July 17, 2009.

17. The meeting notice and agenda included the following item "Comments, Question and Answer Period."

18. Prior to the start of the meeting, members of the public were asked to place their names on a sign-up sheet if they wished to provide oral testimony.

19. At some point, either prior to the start of the meeting or during the meeting, the sign-up sheet was removed from an area which accessible to the public.

20. Board Chair Primacio opened the meeting and informed the public that they needed to sign up on the sign-in sheet in order to speak. He also stated that because of the one-hour time constraint, all members of the public who wished to speak but couldn't, should write their questions or comments on a piece of paper with their name on it and submit it to the Board secretary. He further noted that the Envision La'ie team would answer the questions in writing and have it available at the next Board meeting.

21. Upon conclusion of the opening remarks, Chair Primacio passed the gavel to Board Vice-Chair Fale. Thereafter, Fale conducted the meeting through agenda items 2 and 3.

22. After Envision La'ie completed its presentation, Vice-Chair Fale opened the floor to community members. He reiterated that those who signed up would be given three minutes to speak.

23. Prior to end of the allotted hour, Vice-Chair Fale attempted to end public testimony even though there were still people who did not testify even though they had signed up to do so.

24. However, in order to allow the remaining public members to testify, the Board passed a motion to extend the time for testimony.

25. Throughout the meeting, the Board attempted to strictly limit the time for public testimony to one hour.

26. At the end of the extended time period, there were still approximately 21 members of the public who wished to provide oral testimony.

27. The Board then entertained a motion to support the Envision La'ie project.

28. Upon further challenge by the public and some Board members, the Board then voted to allow the remaining 21 public members to provide testimony.

29. Throughout the meeting, the Board repeatedly stated that all written comments would be accepted and reviewed by the Board.

30. At the request of Board member Mattoon, members Kaluhiokalani, Miller, Steward, Elkington, Kalua'u, and Fale disclosed personal and professional relationships with certain entities that were involved with Envision La'ie.

31. Thereafter, prior to receiving and/or considering the written testimony, the Board entertained a motion to support the Envision La'ie plan. The motion passed by a vote of 7-4.

32. Minutes of the meeting were thereafter prepared by Board secretary Miller and provided to the Board for approval.

CONCLUSIONS OF LAW

1. The Complaint was filed in accordance with the provisions of Section 2-18-201 of the Plan.
2. The parties were properly noticed pursuant to Sections 91-9 and 91-9.5, HRS.
3. This hearing was properly conducted in accordance with Chapter 91, HRS, 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 and/or 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 Section 91-10(5), HRS, 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. The Commission finds that Respondent Board provided proper notice of the July 30, 2009 special meeting by filing a notice and agenda with the City Clerk on July 17, 2009, which was more than six calendar days prior to the date of the meeting as required by Section 2-14-111 of the Plan. Therefore,

Respondent Board did not violate Section 2-14-111 of the Plan or Section 92-7, HRS.

7. The Commission further finds that Respondent Board kept and prepared minutes of the meeting in accordance with Section 2-14-113 of the Plan. Therefore, Respondent Board did not violate Section 2-14-113 of the Plan or Section 92-9, HRS.

8. The Commission further finds that Respondent Board did not violate Section 2-14-116 of the Plan. All Board members who had a relationship with entities affiliated with Envision La'ie made proper disclosures prior to voting on the Envision La'ie plan. Moreover, insufficient evidence was presented to demonstrate that any Board member engaged in any business transaction or activity or had a direct or indirect financial interest which was incompatible or interfered with the proper discharge of his or her official duties.

9. The Commission further finds that Respondent Board did not violate the Plan by allowing the Vice-Chair to run portions of the meeting. Section 2-14-123(c)(1) of the Plan provides that the Vice-Chair shall, among other duties, assist the chair with conducting meetings. At all times during the meeting, either Chair Primacio or Vice-Chair Fale conducted the meeting.

10. The Commission further finds that Respondent Board did commit a technical violation of Section 92-3, HRS, by limiting testimony on an agenda item without prior Notice, requiring

people to sign up before allowing them to testify, by not allowing oral testimony to be presented, by requiring written testimony then not considering it prior to taking a vote. However, the Complainant failed to provide sufficient evidence to demonstrate that the conduct of the Board was willful or intentional.

11. The Commission further finds that although the Board's violation of Section 92-3, HRS, was not willful or intentional, it undermined the specific purpose of the neighborhood board system, as stated in Section 14-101, RCH, and Section 2-13-102 of the Plan, which is to increase and assure effective citizen participation in the decisions of government and to provide the community with a forum to discuss community and governmental issues.

DECISION AND ORDER

Based upon the foregoing, the Commission hereby finds that Respondent Board has violated Section 92-3, HRS, and the 2008 Neighborhood Plan.

The Commission further finds that the technical violation committed by the Koolauloa Neighborhood Board No. 28 is so serious and deleterious to the integrity of the neighborhood board system that sanctions are appropriate under the circumstances.

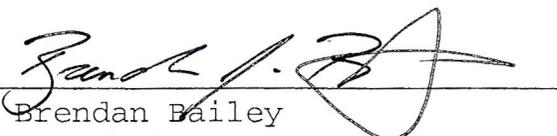
Therefore, it is hereby ordered in accordance with Section 2-18-204 of the 2008 Neighborhood Plan, that as a sanction for the Board's violation of Section 92-3, HRS, and the 2008 Neighborhood Plan, a letter of reprimand shall be issued to Koolauloa Neighborhood Board No. 28.

It is hereby further ordered that in as much as the Board's July 30, 2009 vote to support the Envision La'ie plan was made in violation of Section 92-3, HRS, and the 2008 Neighborhood Plan, it is considered to be null and void.

It is hereby further ordered that should it choose to do so, the Board shall hold another meeting relating to Envision La'ie plan to allow all members of the public who wish to provide either oral or written testimony to do so. After all testimony has been accepted, reviewed, and considered by the Board, the Board may then re-vote on the Envision La'ie plan.

DATED: Honolulu, Hawaii, DEC 07 2010.

NEIGHBORHOOD COMMISSION

By 
Brendan Bailey
Its Chair