

**Orchidland Community Association, Inc.**  
**Approved Minutes of the Special Membership Meeting**  
**February 23, 2007**

**Call to Order:** The meeting was called to order at 6:45 p.m. by Glenn Pressel, President.

**Board Members Present:** Glenn Pressel, President; Steve Starnes, Vice President; Lisa Tostenson, Secretary; Yen Chin, Treasurer; Jose' Archuleta, Gene Lamkin, Andrew Coyne and Dean Monroe.

**Lot Owners Present:** John Ross, Arthur Varady, Michele Lamkin, Patricia Anger, Dan Lloyd, Susan Gregg, Gerald Akana, Luke Bailey, Lee Strickland, Carlo Amato, Allison Bontote, Summers Stickney, Therese Zeller, Dana Taylor, Pat Utso, Dave Utso, Jan Stickney, Kathleen Furtado, Wayne Carey, Karen Doom, Tegen Greene, D. Widdows, Michael Upham, Timothy Pickering, Bob Ely, Carol Noel, James Bunten, Jim Johnson, and Roger Hawney.

**Facilitators:** Catherine and Rudy were present as facilitators.

**Murakami Court Case:** Glenn explained that in December the judge ruled against OLCA in a foreclosure case. The final decision was received on February 14. OLCA's lawyer has filed for a reconsideration of the case based on a recent decision in Maui which establishes "implied contract." "Implied contract" means that whenever a person buys into a subdivision with common areas, he has a duty to contribute to their maintenance, regardless of whether it is written on the deed.

**History:** Dean explained that in late 2005 the OLCA Board of Directors began pursuing collections of mandatory road fees from owners who had not paid for some time. Lot owners who owed \$1000 or more were placed in the foreclosure pool. In January, 2006, 10 notices of intent to foreclose were sent. In February an additional 11 foreclosure notices were sent; 3 were settled; 4 threatened lawsuits. In March, 15 foreclosure letters were sent; 8 were settled, 5 were forwarded to the attorney for further action, and the first foreclosure suit was filed. Attorney Oda was to be the sole spokesperson on foreclosures for the Association. Several Directors raised questions, including: 1) should OLCA hire a collections agency? 2) was a collections policy written? and 3) was the Board compliant with federal collection laws?

In April an additional 25 notices of foreclosure were sent; 5 went to complaint.

In May Murakami questioned the Board's ability to collect mandatory road fees.

In June the Murakami case went to court, but Murakami did not appear and the judge ruled in OLCA's favor. Murakami's lawyer filed a motion for rehearing, which the judge granted and scheduled for July 6, 2006. A settlement was reached and on July 19 Murakami sent a check for \$5,400, \$942 short of the agreed amount. The Board decided to reject the payment because Murakami had not signed the stipulation agreement to drop the court case; Oda returned the check. On July 28 Murakami's lawyer sent another payment, reserving his client's right to claim reimbursement for the amount tendered. In October the Board voted to give Glenn, Bob Ely and Jerry Gardner the authority to negotiate foreclosure settlements.

In early December the case was decided, and on February 14 a partial summary judgment was filed. On February 22 Stuart Oda filed for a reconsideration based on *Kaanapali Hillside Homeowners Association vs. Doran*.

Bob Ely said that the letters sent were notices of intent to foreclose, not foreclosure actions. Most were settled; 15 to 18 went to the attorney, and 3 or 4 went to court.

**Facts of the Murakami Case:** Yen said that in 2005 the Board began an active campaign to collect delinquent fees, including threatening to foreclose and foreclosure. He said that at one time the Bylaws forbade foreclosure. This policy was changed during a movement to secure a bank loan for paving.

Yen explained that the partial judgment states that Murakami is not required to pay road fees because the 1992 decision is not recorded on his deeds. Most of the deeds which have passed through escrow after 1992 have the decision recorded; it is impossible for the Board to know how many are recorded. Yen said it may be possible to add the 1992 decision to the deeds, at a cost of \$15,000 to \$20,000.

OLCA's lawyer has filed a motion for a reconsideration of the case, which has bought some time on the decision to appeal the judgment. Yen said if OLCA appeals the case and wins, we will not be able to recover any of the legal costs for the appeal, which are estimated at \$20,000 to \$30,000. If we appeal and lose, we may have to pay Murakami's legal fees as well. Murakami has filed a countersuit against OLCA for legal fees, pain and suffering, etc. To date, OLCA has already spent \$20,000 on the case.

**Arguments for the Appeal:** Gene said the Board must ask the question, "What is best for the community?" If OLCA does not appeal, it may become difficult to collect road fees. Before the fees were mandatory, voluntary collections were at about 60 percent. The costs of materials, fuel and equipment maintenance are rising. The membership as a whole has consistently said it wants good side roads and paved main access roads. With the increase in population, the roads will deteriorate and there will be less money for repairs. It may become difficult to fulfill previous commitments to pave the main roads. Better equipment and a storage facility, meeting space and an office are needed, as well. The 1992 summary judgment maintains that "private subdivisions have the right to collect even if the deeds on the lots are silent as to the duty to contribute to the maintenance of the roads." Wayne Carey said that Orchidland lot owners were not represented in the 1992 case. Steve said that Oda responded to that question when Murakami raised it; the only legal point the judge conceded was that the 1992 judgment was not recorded on Murakami's deed.

If OLCA does not appeal, it loses the right to collect fees from Murakami. Other subdivisions have used foreclosure successfully to collect delinquent fees.

OLCA has an increased liability due to worsening road conditions. Also, not appealing could invite further litigation due to OLCA's inability to collect fees.

**Arguments against the Appeal:** Andrew said that the lawyer has stated that OLCA can legally collect mandatory fees from all owners with the 1992 judgment recorded on their deeds. He said it is speculative to say that the roads will decline, since owners who want improved roads will continue to pay. Orchidland cannot be compared to Hawaiian Acres, since our situation is very different. Five main roads abut the highway, and emergency response time is half of that in Hawaiian Acres.

Andrew said if the Board does not appeal, a lawsuit has been threatened that it is not acting in the best interest of the Association, but the opposite could be argued as well.

More than \$20,000 has already been spent pursuing Murakami's debt, much more than OLCA stood to collect. Appealing would cost \$20,000 to \$30,000, with no guarantee that OLCA would win the case.

Andrew added that when foreclosure was added to the Bylaws, it was for the purpose of obtaining a bank loan for paving; members were promised by the existing Board that foreclosure would not be used. If it were, only one owner would be foreclosed against and 'everyone else would fall in line.'

Andrew said the community needs to stand together to help each other. "We are all we have in an emergency." He asked if it is worth spending money on lawyers rather than putting what money we have on the roads.

**Questions:** The floor was opened up for questions, which were answered by Glenn and Steve.

- 1) Are foreclosures for immediate payment or for liens? Glenn: immediate payment.
- 2) Are we open to lawsuits because of the Murakami case? Glenn: There are many opinions on this. People can sue for whatever they want. Do we need to reserve funds for legal defense? The Board must decide.
- 3) Is the Murakami case a test case? Glenn: It may prove to be.
- 4) What was the basis for the summary judgment? Steve: The judge found only one issue valid—that the judgment was not recorded on the deeds. Lot owners had one year to challenge the 1992 judgment as a class action suit and did not.
- 5) How will the information from this meeting be shared? Glenn: website, newsletter, talking to neighbors.
- 6) What percentage of the budget has gone to this case? Steve: some costs were paid last fiscal year, some this year.
- 7) How does Hawaiian Acres not have to pay fees? Glenn: They went through a similar process and decided not to appeal.
- 8) What about old deeds exempts owners from payment? Glenn: don't know
- 9) What about the validity of the 1992 judgment? Glenn: After a lawsuit is filed, it must be challenged with another class action suit; otherwise the judgment stands.
- 10) What do MRMA's have to do with paving? Steve: OLCA collects two MRMA's—road maintenance and paving.
- 11) What about setting up a voluntary fund to help others who cannot pay their MRMA's? Glenn: Good suggestion; the Board will bring it up.
- 12) Is the Maui case a real basis for appeal? Glenn: OLCA's lawyer says there are more similarities than differences.
- 13) Will all the information be brought forth? Glenn: The Board has revealed all the information it has.
- 14) When will we hear from the judge regarding the Maui case? Steve: The reconsideration was filed yesterday; a response will take at least eighteen days.
- 15) What is the Maui case, specifically? Glenn: The appeals court ruled that homeowners are obligated to pay for maintenance of shared areas, notwithstanding whether the encumbrance is written on the deed or title.
- 16) Is paving mandatory? Steve: yes. It was voted on by the membership.
- 17) What fees are OLCA using to pay for this case? Steve: paving fees are for paving only. Legal fees are coming from the RMC contingency fund.

- 18) When did the lawyer return with answers? Dean: gave a timeline based on the minutes. The Board recently questioned the lawyer regarding specific issues.
- 19) Are the collections methods legal? Glenn: We have been told that yes, they are.
- 20) Why were the Board members given power to negotiate in October? Steve: Things that went to Oda, only he worked on. Others in the foreclosure pool were dealt with by Glenn, Jerry or Bob Ely.
- 21) Who hears the appeal and how long does it take? Glenn: Either the appellate or Supreme Court. It could take two to three years.
- 22) What about putting a moratorium on foreclosure? Glenn: The Board already did until the situation is resolved.
- 23) Why not use liens instead of foreclosure? Glenn: OLCA does place liens. Foreclosure is a means to enforce the mandatory fees.
- 24) Is the Maui case similar enough? Glenn: yes.
- 25) Does the attorney make or enforce the law? Steve: Lawyers don't make laws.
- 26) Is the Board following the Bylaws? Glenn: To the best of our ability, but sometimes we make mistakes.
- 27) Who decides whether to appeal the case? Glenn: the Board of Directors.
- 28) When do we have to decide? Glenn: Within 10 to 15 days after the judge refuses the reconsideration, if he refuses.
- 29) When can we get back to being a happy community organization? Lisa: We're here because we want to do the right thing for our community. If you are unhappy, it is time to get involved.

**Adjournment:** The meeting was adjourned at 8:15 p.m.

Respectfully submitted by:

Kirstie Goin, Recording Secretary

Lisa Tostenson, Corporate Secretary