

**Orchidland Community Association, Inc.
Approved Minutes of the Special Membership Meeting
November 10, 2007**

Call to Order: The meeting was called to order at 10:30 a.m. by Roger Hawney, President.

Board Members Present: Roger Hawney, President; Wes Owens, Vice President; Lisa Tostenson, Secretary; Yen Chin, Treasurer; Andrew Coyne, Road Chair; and Dawn Spurrell-Robinson.

Lot Owners Present: Bo Rodehn, Trina Parry, Karen Doom, Nancy and Norm Hammack, James Moulds, Kirstie Goin, Joyce Gay, Don Jacobs, Rich Ellis, Sandra and David Aasve, Jose Archuleta, Ralph Boyea, Trevella Williams, Bob Ely, Shule Nakapaahu, Dale Sims, Steven Starnes, Jerry Gardner, Jim Bunten, Jan Stickney, Kathleen Furtado, Makaila Meeks, Dale Dinsmore, Art Smith, Patricia Hoban, Don Robinson, Gaila Vidunas, Margaret and Oscar Barbo, Sharon and Dennis McCartin, Greg and Lucy Gauthier, Evelyn and Richard Patterson, Ole Fulks, Victor and Carolyn Coloma, Sherri Carden, Ramona Kan Hai, Surgee Sally Gunter, Glenn Pressel, Michael Upham, Taj Gunter, Klalter Kan Hai, Robert deVeer, Daniel Widdows, Roberto Morales, Richard Killmer, Tegen Greene, Donovan Akau, David Hahn, Dennis Preble, Therese Zeller, Pansy Perreira, Connie Cappos, Ardena and Joey Pagan, David Melnikov, Tom and Rena Lodge, Joseph Lipinski, John and Elisabeth Fallis.

Troy Kindred cancelled his presentation.

Approval of Minutes: Trevella Williams moved to approve the minutes of April 28, 2007, as written. Greg Gauthier seconded; the motion passed unanimously.

Board Introductions and Reports:

President: Roger introduced himself and stated that this is the first meeting ever to be held on the Community Lot.

He said that Jon Olson, Chair of the Puna Community Development Plan (PCDP) Steering Committee suggested to the Board the possibility of obtaining funding for a park and community center, and asked for volunteers for a Park Committee.

Roger said he received a phone call from a state official who told him “not to reveal anything about this phone call” concerning the rules governing road maintenance laborers. He is searching for documentation of a court ruling stating that although the Association must use licensed contractors for paving, it can hire unlicensed contractors for road maintenance, and said, “If anyone knows where this document is, please let us know.”

Carl Okuyama of Sure Save, Inc., has offered OLCA an office space free of charge for ten years, across the street from the Wiki-Wiki on Orchidland Dr. Roger asked for volunteers to help with moving the files and records after the first of the year.

Vice President: Wes introduced himself, and said that he is also the new webmaster. He said the Board “is trying to listen to who lives here and get the roads maintained,” and

encouraged members to communicate with the Board and attend RMC and Board meetings, which will now be held on the Community Lot.

Treasurer: Yen reported that the debt to Sanford's for road materials has been paid down. Karen Doom said \$18,834 is still outstanding.

Yen added that the legal situation is costing "thousands of dollars."

Road Chair: Andrew said there is a legal situation which has "ceased and desisted" the community's road maintenance efforts. He said that most of the equipment is running and a crew is ready to work, but the Board is still trying to figure out our legal situation. Yen explained that he spoke to our insurance agent and learned that since an operator who uses equipment provided by the Association must be treated as an employee rather than an independent contractor, any insurance bought to cover an independent contractor would be void. In the past OLCA was able to hire a road crew through the employment agencies, but they no longer cover heavy equipment operators. Hiring them as employees involves the expense of workman's compensation insurance and further administrative burdens.

Jerry Gardner suggested that OLCA buy materials for lot owners to spread. Andrew said there is still the question of whether the owners would use their own equipment or the Association's.

Victor Coloma suggested that owners volunteer to help until the legal issues are sorted out.

Roger and Andrew invited owners interested in road issues to attend the road meeting, which will be on the Community Lot at 6:30 p.m. the second Monday of each month.

Susie Garfield suggested moving meetings to Blane's in case of heavy rain.

Other Directors: The President introduced Dawn and Lisa.

Volcano: Dale Sims asked about the situation with the lava flow. Wes said, "There is no immediate danger. It is moving very slowly, and right now it has gotten about as close to Kalapana as it did in the eighties." He said there are live videos online; he will put a link to them on the website.

Bylaws: Roger said that the current Bylaws Committee has twelve members, but has been inactive.

Second Reading: An amendment to Article VI, Section I, which currently reads: *"The annual meeting shall be held in April of each year."* to provide for two membership meetings each fiscal year, was proposed and read at the April, 2007, membership meeting. It received a second reading.

Ole Fulks moved to accept an amendment to the Bylaws, Article VI, Section 1, as follows: *"The semi-annual meetings shall be held in April and November of each year.*

Each member will be mailed a meeting notice and Association newsletter at least 30 days

prior to the meetings." **Greg Gautier seconded; the motion passed unanimously.**

The proposed amendment will be put on a ballot to be sent to the membership for final approval.

Quorum: The Bylaws provide for eleven Directors, but right now there are only six. Since six are required for a quorum, each Director must be present at every meeting.

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Roger suggested changing the quorum to a percentage of number of current Directors. He added that with only six volunteers, they are all overworked, and filling the Board is the biggest issue facing the Association at this time.

Yen suggested a maximum required quorum of six. Tegen Greene suggested also setting a minimum of four.

Oscar Barbo asked whether directors are liable for lawsuits. Roger said the Board does have liability insurance to protect them, and Directors are also protected by law, except for malicious, fraudulent or purposeful wrong actions.

Oscar Barbo moved to accept the following wording of a proposed amendment to the Bylaws, Article VII, Section 6:

"A quorum for a meeting of the Board of Directors shall consist of 2/3 of current Board members, with a required maximum of six and minimum of four."

David Aasve seconded. The motion passed by a vote of 31 for, 12 opposed.

The proposed amendment received its first reading; the second reading will occur at the April, 2008, membership meeting.

Ralph Boyea counseled caution, because "the Board has a lot of authority. Believe me, four people can do a lot of damage in a very short period of time." He said a meeting can be held as a committee of the whole and business conducted without a quorum.

Roger said the Board is in the position of not being able to approve funds when a quorum is not present. He added, "We wouldn't be faced with this if we had a full Board."

Sherri Carden asked whether a lot owner can proxy a volunteer who lives in the community but is not an owner. Roger said the Bylaws do not allow for proxy votes; Board eligibility is dependent on lot ownership.

Taj Gunter said individual expertise needs to be diversified among the Directors. Roger said, "We can't afford to be selective." Wes said anyone who owns a lot is eligible, so hopefully the Board will be diverse.

Legal Situation: Roger said "the lawsuit could offer some definition for the Association if this issue plays out. However, because of how the countersuit was handled, our Directors are not indemnified, which makes us all very nervous, because none of us had anything to do with starting this whole process, and if we continue pursuing this foreclosure, the repercussions could fall on us. Also, regardless of what happens on the foreclosure suit, the countersuit stays there." The countersuit "is about how things were done" regarding collection of delinquent fees.

A year ago the judge ruled against OLCA in the foreclosure suit; it was reopened to hear the argument of implied obligation. Roger said Oda makes a good argument for implied obligation, based on the change of ownership in 2001. However, because Mr. Murakami bought his property long before the Association existed, and only transferred the title to his heirs in 2001, the judge may feel that implied consent does not apply.

The Board has been trying to settle the lawsuits, because far too much money is being paid to attorneys. Also, the foreclosure issue was added to the Bylaws "under false pretenses," to allow OLCA to apply for a loan.

Glenn Pressel asked what happened to the reconsideration of the suit, and what settlement was offered. Yen responded that the judge agreed to amend the complaint instead of the

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reconsideration, so the case was reopened. Roger added that Oda submitted a request for both, and the judge agreed to hear the argument on implied obligation. Yen said the settlement process was initiated by the other side, but was stopped when a new suit was filed to interrupt settlement discussions.

Steven Starnes said that as President he had feedback from two attorneys concerning foreclosures, and "anyone who went in the foreclosure pool was given ample opportunity to go onto payment schedules to pay their delinquent fees before it ever went to the attorney." He added that most owners did agree to payments. Also, he explained that

although paragraph 4 of “A Synopsis of our current legal situation as of 11/01/07” [handed out at the meeting] states that “Stuart Oda, Steven Starnes and Bob Ely were there representing OLCA” when the Murakami foreclosure case was heard by the court on December 1, 2006, that Mr. Oda was OLCA’s representative; he and Bob were merely silent spectators—“We were represented by our attorney; we weren’t there representing Orchidland.”

Roger said the fact that bothered him was that the community and new Directors were not informed of the hearing, but a former Director was informed and present.

In response to a question, Steven said that foreclosures were based on “length of delinquency and amount owed.” Owners who had not paid since the fees became mandatory in 1992 owed between \$1000 and \$1500 per lot.

Tegen Greene asked Bob Ely to explain why he is suing his neighbors and listen to what they have to say.

Trevella Williams said Ku`akahi Mediation came to the last meeting she attended, and she was impressed with everyone’s response and respect. She said, “Let’s let back to that respect and beware of falling into the blame game. Everyone is just a volunteer and they’re doing their best, and we need to remember that.”

Susie Garfield said that she fell behind on her fees a few years ago following an auto accident, and she received a letter threatening foreclosure when she only owed about \$385.

Steven said letters were sent threatening to place liens for amounts between \$300 and \$400. Susie stated, “I was threatened with foreclosure.”

Ralph Boyea asked what the countersuit is about. Roger said it mentions eight charges, including wrongful foreclosure, slander of title, and punitive damages for egregious, malicious approach.

Yen said Murakami responded to the foreclosure suit with a countersuit; the third suit is Bob Ely and Kwan Sung’s suit against OLCA to intervene in the settlement of the first two suits.

Greg Gauthier broached the question of ethics regarding foreclosure, and noted that the liability the countersuit places on the Board does not help in the recruitment of new Directors.

Roger said that the reason given to the community for including foreclosure in the Bylaws was for the purpose of obtaining a loan for paving; if they had been asked whether to use it against lot owners, they might have voted differently.

Bob Ely said he filed for a temporary restraining order to stop the settlement of the case because of the current financial situation and condition of the roads. He added that

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Roger, who is negotiating the settlement, “has an agenda” and “does not support mandatory fees.” He filed the suit because he wants to know what the settlement agreement will look like before it is signed.

[Since Bob has filed a lawsuit against the Association, the Directors recused themselves from responding directly to Bob’s comments.]

Steven Starnes argued that the counterclaim is not a separate lawsuit; they did not report it to the insurance company because the claim was filed in response to a suit OLCA had initiated, and therefore they did not think it would be covered.

Kirstie Goin said that the previous Board may have believed the “counterclaim” or

“countersuit” to be only another filing in the foreclosure suit, but the insurance company has treated it as a separate lawsuit. Since it was filed against OLCA, not just the Directors but all Orchidland lot owners are liable.

Roger added that the only reason the insurance provider gave for not covering the countersuit was that it was not reported to them until 14 months after it was filed.

Ralph Boyea argued that a TRO is not a lawsuit. Lisa stated that a lawsuit preceded the restraining order.

Ralph said he was on the Board when the decision was made to require mandatory road fees. They looked into what Paradise Park was doing and approached Stuart Oda about this issue, which led to the class action suit resulting in the 1992 summary judgment. He admitted that those who bought before the 1992 judgment could argue that they do not owe mandatory fees because they did not agree to them, adding that the community needs to weigh the cost of requiring mandatory fees and decide whether the amount collected is worth the cost. He said, “Without mandatory fees, our roads could look like Hawaiian Acres’.”

Roger said, “The Board wants to put an end to this, and settlement seems to be the fastest way.” Even if OLCA wins the foreclosure case, an appeal could be filed; the *Ka ‘awapali* implied consent case went to the Supreme Court at a cost of over \$300,000.

James Moles said he also was on the Board with Ralph many years ago, and Oda told them then that Paradise Park was using both liens and foreclosure. Now the same issues are being brought up again. He stated that “the Murakamis should pay in full.”

Andrew said that the Board acts according to what the membership wants, regardless of their personal opinions. For example, he worked for days on the Orchidland Dr. paving project, even though he personally does not support paving.

Roger said he keeps hearing, including in Bob and Kwan’s lawsuit, that his stated objective is to change the Bylaws to make the road fees voluntary. “I have never, ever said that, and I challenge anybody to come up with minutes, recordings, anything that says that I ever said that. I did not say that; I have never said that. My position all along has been that when people make agreements, those agreements should be abided by. You shouldn’t buy a piece of property and have somebody else come in and change the rules that you negotiated at the time you bought your property.” He said that people who bought in the past six years have it in their deeds, and there is no question that they have mandatory fees. “I’m not going to change that—there’s no way I can change that. I can’t change the Bylaws by myself. I can’t do any of this. These things that they say I have

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stated as my objective, maybe it sounds like that—I’m sorry, untrue, every single one of them, and I challenge anybody to come up with some substantiation of these allegations toward me.”

Kirstie suggested that because the collections issue has been recurring and there are seven outstanding lawsuits—including four foreclosure cases which were filed and are waiting for a determination on the Murakami case—that the community ask for and participate in a court-ordered *ho ‘oponopono* process to resolve all the lawsuits at one time and permanently establish the Association’s policy on delinquent fees.

Don Robinson said that money that should be going to the roads is being spent on lawsuits, and that the individuals who are responsible for the lawsuits “should be liable for them, not this Board or all of us. None of us agreed to take the road money and spend

it on lawsuits.”

Ole Fulks said, “I don’t know legality, but I do know morality. I think it would be very illegal to see any of my neighbors kicked out of their homes because they are poor.” He supported the concept of *ho ‘āpono*, and “talking story with people who owe money.”

Nancy Hammack added that when she was on the Board, “We used to talk to people and find out their situation.”

Tom Lodge broached the subject of the fairness of the process, since “we don’t have any procedures in hand.” He supported settlement of the case. He added that the language in a lawsuit can be very threatening; his mother almost had a heart attack when his parents were served with a suit.

Jim Buntun refuted the statement that “Roger Hawney has an agenda or is not thinking about the community at large.”

Carolyn Coloma asked whether there are policies and procedures for all of these issues. Roger said no; the policies and procedures were being worked on for foreclosure, but were never approved. He said they also were based on Hawaii Revised Statutes 421(J) for planned community associations, and OLCA is not a planned community association, because the subdivision existed before the Association was created.

Yen stated that the vast majority of the Board’s time this past year has gone into the Murakami lawsuit and foreclosure.

Roger suggested forming “a good-sized committee to band together with other communities” and become a political voice, because the county, state and federal governments all have a share of responsibility for allowing the substandard subdivisions to exist in the first place.

Kirstie said the Planning Committee determined that the simplest way to accomplish this is to put a binding initiative on a ballot requiring the County to take responsibility at least for the main roads of all the substandard subdivisions.

Gaila Vidunas argued that “it would be a waste of time, because it would go to an islandwide vote, and I don’t think the rest of the island is going to agree to this.”

Bob agreed with the need to make an effort to get the County to take over the roads. He said, “We pay the same taxes everybody else does, we have the same tax rates, and we don’t get benefits.”

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Dan Widdows asked the pros and cons of receivership.

Roger responded that a management company steps in and takes control, at considerable cost to the lot owners. He reiterated that getting more help on the Board is the most important issue.

[The meeting recessed at 1:15 p.m. A potluck meal was shared, and the meeting reconvened at 1:48 p.m.]

Community Input:

Mailboxes: In response to a question, Wes said that the mailboxes on Orchidland Dr. will be moved to the Community Lot’s easement soon, depending on approval from Honolulu. Extra slabs will be poured in case the post office decides to release additional boxes.

Carolyn said that she would be willing to pay for a mailbox in Orchidland. Wes said they tell everyone it’s a two-year wait for a box.

ho 'apronono. Roger said over the break this suggestion received considerable community support, but he does not know if it “will fly in the legal system,” but he will recommend it to our attorney. He added that lawsuits are “not so much about making a case as outspending your opponent. That doesn’t make it right. We should not be able to take your money and use it against you. We are trying to avoid spending any more money on attorneys.”

Ole suggested using *ho 'apronono* on an individual basis with lot owners who owe the Association money.

Kirstie said the main purpose of *ho 'apronono* is to resolve conflict in the community; once a clear resolution is determined, everyone is bound by it and the issue can never be brought up again.

Wes said that the Murakamis want damages because they feel that they have been wronged, and he suspects that most of the community would not agree to paying them. Although he likes the concept, he doubts that the Murakamis would agree to it.

Roger said several people have suggested that the Board take action against Bob to recover damages. He argued that it is a long, hard road with more money going to attorney’s fees, and it might not be successful. He added, “What kind of statement does it make, that we are willing to sue our Directors?”

Lisa added that it would be hard to prove. Yen said, “We live in a world that is not just;” if we try to seek out revenge, “it will be bad, bad juju for us.”

Trevilla suggested using court-appointed mediation rather than *ho 'apronono*, because it is a similar but simpler process.

Roger responded that the Board was trying to negotiate either a settlement or mediation, but the last lawsuit stopped the process. Yen said settlement was more expedient, and the time and energy for mediation were not available. He said mediation is still a possibility.

Road Fees: Lisa said the Board’s request for a \$10 increase was turned down, and costs have continually increased. She asked residents to support the Board and dispel rumors. Yen added, “Even if everybody paid their \$65, we couldn’t do all we need to do.”

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Paving: Andrew said there is about \$70,000 for paving; Auli`i is the next increment to be paid. Paving Orchidland Dr. from 39th to 41st cost \$182,000, and oil has gone from \$75 a barrel to \$98, so the next increment could cost over \$200,000.

Karen Doom said she has made deposits recently, and more paving checks are in the mail she has received and not processed.

Ely and Sung’s Lawsuit: The stated reason the suit was filed was because the Board did not provide documents by 10 a.m. on a Monday morning which were requested the previous Friday afternoon. Wes added that most of the documents were already available on the website.

Roger said that the attorney assigned to the case by our liability insurance is Sidney Ayabe from Honolulu. His objective is to resolve the foreclosure, countersuit and Ely/Sung at the same time. The only problem with that is the four outstanding suits, and “if we’re going to get another injunction slapped on us if we try to resolve them with settlement.”

Road Maintenance: Ole said years ago the roads were better maintained.

Andrew said last February 80% of the roads received materials and were graded and rolled, and were in good shape at that time. The road crew received a cease and desist

order from the State, and “we are faced with the legality” of insuring equipment operators. Also, our grader needs repair, and more money is needed. Six years ago a load of materials cost \$130; now one load is over \$400. Andrew said, “It’s not a friendly job that I have, adding “It’s the most frustrating, humiliating, embarrassing situation I’ve ever been in in my life.”

Victor said that education is needed, since \$65 only maintains about 12 feet of road.

Policies and Procedures: Andrew said the policies and procedures need to be finalized and in so place there so there are no legal questions.

Roger said the practice which has been in place since 1992, which worked just fine, was that liens were attached to properties once their delinquencies reached a certain amount. “You’re never going to get 100% compliance.” The owners that don’t pay moves around, but the percentage seems to stay constant, and “the money will come in down the line.”

Yen said that historically OLCA could count on a 75% compliance rate, and the annual budget is made based on this amount. Although he reported a compliance rate of only 50% at last April’s membership meeting, that was found to be incorrect due to an error in our new Records Keeper’s accounting system; actually we had 80% compliance.

Karen said as of right now, compliance is at about 68%, and we will probably be between 75 and 80 percent by the end of the year.

Yen said foreclosure is both labor intensive and a very distasteful task. “The price of liberty is eternal vigilance. If you want to prevent this in the future, you have to be there in numbers.”

Don Robinson commended the Board for the work they are doing.

Orchidland Trade Center: Verne Wood has applied for renewal of his special use permit for the development, which will be located at the corner of Orchidland Dr. and

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34th. OLCA has filed for standing in a contested case to require the developer to comply with the community’s newly-adopted Orchidland Design Plan 2007. This plan give design guidelines for commercial developments and states, “Developers shall provide (or cause the State or County to provide) a stoplight or roundabout at the intersection of Orchidland Dr. and Highway 130 and a lighted crosswalk across Orchidland Dr. within the Neighborhood Center.” All developments within the Village Center must share the cost of infrastructure improvements.

Kirstie urged all Orchidland owners and residents to attend the charrette planning meeting required by the Design Plan to provide an opportunity for community input to the developer before the County approves the special use permit.

Adjournment: The meeting was adjourned at 2:50 p.m.

Respectfully submitted by:

Kirstie Goin, Recording Secretary

Lisa Tostenson, Corporate Secretary

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Motions Log 11-10-07

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Oscar Barbo moved to accept the following wording of a proposed amendment to the Bylaws, Article VII, Section 6:

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