

Orchidland Community Association, Inc.
Approved Minutes of the General Membership Meeting
April 26, 2008

Call to Order: The meeting was called to order at 9:15 a.m. by Roger Hawney, President.

Directors Present: Roger Hawney, President; Wes Owens, Vice President; Yen Chin, Treasurer; Andrew Coyne, Richard Patterson, Fred McConnell and Dawn Spurrell-Robinson.

Lot Owners Present: Trina Parry, Nancy Hammack, Karen Doom, Earl Yoshimura, Brooks and Wanphen Maloof, James Bunten, Robert De Veer, Wayne Salcedo, Paul Panet, Bob Ely, Bob Jones, S. V. Neel, Gary and Marie Bricker, Tegen Greene, Gifford Nakapaatty, Vicki Patterson, Ben Martin, Tessie Hopson, Dean Monroe, Art Smith, Bill and Ampai Lupton, Bud Turpin, Teri Fritz, Barbara Arthurs, Marti Morishige, Sherri Carden, Joseph David LaRocco, Melia Goodenow, Luke Bailey, Victor Coloma, Daniel Widdows, Michael Upham, Arnold Westphal, T. Zeller, and Gary Dalton.

Board Vacancies: President Hawney announced that the Board has three empty seats, with the possibility of more by the new fiscal year. He said that continuity is served by new Directors working with the current Board and asked for volunteers to serve as interim Director for the remaining two months.

Approval of Minutes: Robert De Veer moved to approve the minutes of the membership meeting of November 10, 2007, as written. Andrew Coyne seconded; the motion passed.

2008-2009 Budget: Treasurer Chin presented the proposed budget for the 08-09 fiscal year based on a projected 75% participation rate, which to date has not been achieved for the current fiscal year. He warned that the budget is “very lean.” He added that he wished we had more money to put onto the roads, but the legal situation, including a new lawsuit with which the Board was just served, requires maintaining a contingency fund of \$15,000 to cover the deductible on the Board’s liability insurance. Also, currently the Records Keeper is being paid to file OLCA’s records; to reduce this line item expense, volunteers are needed to help with the filing once the new office is available.

Road Report: Andrew Coyne, who is no longer Road Chair, reported that the position is open to volunteers. He added that the debt to Sanford’s for materials has been paid in full and some funds still remain in the RMC account for the remainder of the fiscal year, thanks to Yen’s tight budgeting.

He said that Orchidland has 40 miles of road, 8 miles of which are paved and 32 miles of gravel. The Association’s annual income from mandatory road maintenance assessments (MRMA’s) is \$125,000 per year at 75% compliance. The administrative fund currently requires \$45,000-\$55,000 of that to cover operating and ongoing legal expenses, leaving only \$70,000-\$80,000 for road maintenance.

Andrew explained that materials costs have more than doubled in the past three years. One load, or twenty tons, of 1 ½-inch minus basecourse now costs \$425 and covers about 250 feet of road. The grader and roller, with operators, cost \$105 per hour. Since OLCA's grader is beyond repair, the Road Maintenance Committee (RMC) is renting a grader with operator. One mile of gravel road requires approximately 20 loads for 3 inches of materials and 12 hours of grading/rolling, totaling \$9,360. To add materials, grade and roll all of the Association's roads once would cost \$312,000, not including mowing easements or weed-whacking corners, which costs an additional \$2400 each time and should be done every three months.

The RMC has approved hiring Gary Dalton for Road Manager at \$8400 per year, plus \$300 per month for storing equipment on his property. Andrew said that the equipment—roller, Kubota tractor, and dump truck (which did not pass inspection and will require considerable funds to bring up to standard)—will be stored there to facilitate access and repairs.

Andrew asked for volunteers to shovel gravel into potholes to be graded and packed by the road crew, as well as volunteers to take responsibility for mowing the easements and weed-whacking corners near their homes. Twenty tons of coldpatch was delivered yesterday for filling potholes in the chipseal, so it will be on hand as needed. He added, "This is our subdivision; the County isn't going to help and the State isn't going to help, so we have to take care of it ourselves."

Paving: The RMC and Board are in contractual negotiations with X-zyme Corporation to pave from 38th to 40th on Auli'i using an enzyme product which molecularly bonds soil and cinders to the lava underneath it to form a surface stronger than concrete, at one-third to one-half the cost of asphalt paving. The contract will be discussed at the Board meeting next Monday night.

In response to a question, Andrew said that yes, the enzyme product should be able to be used to repair potholes in the chipseal.

Resignation: Andrew announced that as of next Monday night he will step down from the Board. "This is not in response to the lawsuit; I actually planned this a couple of weeks ago." He said he is spending so much time dealing with the road hotline and emails that "I am forgetting about my own life."

Yen acknowledged Andrew's hard work for the Association over the past several years.

Member Comments: Tegen Greene said, "It is not accurate to say we have \$80,000 for the roads." She said the actual amount is more like \$40,000. Yen explained that the RMC budget includes road manager, equipment storage and other expenses. Roger said that although administrative fees have increased in the past few years, the road fees have not.

Jim Bunten said that only about ten miles of gravel road actually need materials and grading; we can just repair those areas which need it rather than grading all the roads.

Lot owners also expressed concern about the washout at 39th and Pohaku and trees which fell on 38th Ave.

MRMA Increase: Luke Bailey asked Roger to clarify the difference between the MRMA and the paving assessment for the benefit of the members. Roger explained that the MRMA is currently \$65 per year, and any increase must be approved by a vote of the general membership. The paving special assessment, which last year was \$100, is voted upon each year by the membership, and can be spent only to pave the roads according to the existing paving rotation. He said there has been some debate whether or not the

paving assessment is mandatory, but the Bylaws state that special assessments are a 'voluntary donation,' although "it is a fee that we all vote on and we need." Roger added that even if an increase in the MRMA is approved, it will not go into effect until fiscal year 2009-2010.

Yen said that last year the presentation "may not have been the best," since it asked whether the MRMA should be increased, and 55% responded 'no.'

Art Smith suggested giving the Board the power to increase the fees by 10% each year.

Roger said this proposal would require a Bylaws change.

Marti Morishige suggested increasing the MRMA to \$120, because "\$10 each month is no big deal."

Bob Ely said he feels that \$85 is more likely to pass than \$100 or more. Luke Bailey added that an increase in the MRMA has a better chance of passing if no paving assessment is requested the same year.

Brooks Maloof asked whether the commercial fees would increase, also. Roger said that our commercial development fee amounts are currently under dispute. Roger is negotiating to resolve this dispute with the developer. Also, the Board of Directors set a cap on increasing the commercial fees when they originally were approved.

Victor Coloma moved to raise the mandatory road maintenance assessment (MRMA) to \$100. Robert De Veer seconded.

Barbara Arthurs moved to amend the motion from \$100 to \$85; Arthur Smith seconded. The amendment passed by a vote of 41 for, 13 opposed.

The motion as amended passed by a vote of 54 for, 0 against.

Budget Approval: Yen said that the \$85,000 budgeted for the RMC includes \$8000 for road liability insurance, but it is unlikely that insurance can be purchased for that amount. He said the Board has received quotes for \$20,000, which would "seriously jeopardize our ability to maintain the roads." Roger added that the membership clearly instructed the Board at last year's membership meeting not to spend more than \$8000 on insurance. Marti Morishige suggested raising the transfer fees, adding that Ainaloa charges \$300. Tegen Greene said that transfer of properties usually results in increased traffic on the roads.

Roger said the Board could look into the legalities of raising the fees, but some complaints have already been received about the \$100 transfer fee, which was increased from \$25 about a year ago. Wes added that the amounts are really insignificant.

Tegen said that \$300 per month for equipment storage would pay for a steel building on the Community Lot. Dawn said that the fence on the lot was stolen within a week.

Andrew added that the equipment would "disappear." Also, if it is at Gary's property, it can be maintained more easily.

Barbara Arthurs moved to approve the 2008-2009 budget as presented; Bob Jones seconded. The motion passed by a vote of 56 for, 0 against.

[President Hawney called a break at 10:50 a.m. The meeting resumed at 11:10.]

Paving Assessment: The paving assessment began at \$50 per year, and for the past two years it was approved at \$100 per year.

The next paving increment after Auli'i will be the remainder of Ilima St. The rotation then returns to Pohaku Dr., followed by 40th Ave., Laniuma, Orchidland Dr., and back to

Auli'i. After all the main roads are paved, the chipsealed segments will need to be addressed.

Melia Goodenow said that she is opposed to asphalt paving because it brings more traffic from “people who don’t live here, and takes away from the lifestyle I want to live.” She added that Orchidland Estates is “one of the last rural places in Hawaii.”

Art Smith moved to continue with the paving program with a special assessment of \$100 for one year. Barbara Arthurs seconded; the motion passed by a vote of 44 for, 3 opposed.

Bylaws Committee: Roger reported that the Bylaws Committee has met for several months. Marti Morishige read the proposed Bylaws changes, which were voted on by the membership present.

1. Article VII, Board of Directors. Section 6 QUORUM, which reads “A quorum, for a meeting of the BOD shall consist of six (6) BOD members.” Proposal to amend to read “*A quorum for a meeting shall consist of 2/3 of current board members, with a required maximum of six and a minimum of four.*”

This proposal was originally introduced to resolve the issue of attaining a quorum when the Board membership had been reduced through resignations to only six members. However, Robert’s Rules of Order allow a Board, in the absence of a quorum, to “use such measures as necessary to attain a quorum.” After considerable discussion, the proposed amendment failed by a vote of 8 for, 42 opposed.

2. Article III, Membership & Votes, Section 1, line 3. Proposal to delete the following line: [An honorary membership may be appointed by the BOD. Such membership will be subject to full payment of the annual road maintenance assessment and shall be allowed full voting rights for one lot.] Section 1, line 4. Proposal to insert the word *Orchidland*: “Owners of *Orchidland* lots exempt from MRMA’s shall be made members upon full payment of the annual MRMA.

Dean Monroe moved to approve the wording of the amendments to Article III. Marti Morishige seconded; the motion passed by a vote of 46 for, 0 opposed.

3. Article IV, MRMA & Collection, paragraph 2. Proposal to change “Foreclosure proceedings and/or any other remedy available to the association pursuant to law against seriously delinquent property owners and their lots shall be permitted” to: “*Foreclosure proceedings against delinquent property owners and their lots shall not be permitted. This shall not, however, bar any other remedy available to the association pursuant to law.*”

Roger stated that the foreclosure clause was added to the Bylaws as a means of obtaining a bank loan for paving, and the community was promised in a newsletter at that time that it would not be used to foreclose on delinquent lot owners. Once used, it has cost the Association a lot of money in lawsuits. The proposed amendment returns Article IV to its original wording.

Bob Ely said that the general membership voted for foreclosure, and it is a “very powerful tool to get people to pay.” He added that it gives the Board flexibility, and the Board can make decisions on a case-by-case basis.

The wording of the amendment was approved by a vote of 41 for, 7 opposed.

4. Article VII, Board of Directors, Section 2. Number and Qualification of Directors. Proposed addition: “*Only one (1) immediate family member, domestic partner or household member shall be allowed to serve on the board at any one time.*”

Wes Owens moved to send the proposed amendment of Article VII, Section 2, back to the Bylaws Committee. Bob Jones seconded; the motion passed by a vote of 35 for, 0 opposed.

5. Article VII, Board of Directors, Section 8. Removal. Proposal to correct a typographical error as follows: “d) A quorum (as defined in Article VI, Section [delete 6, insert 3] is present at a special membership meeting called for this purpose.”

The proposed wording of this amendment was approved by a vote of 36 for, 0 opposed.

Those amendments whose wording was approved received a first reading; after a second reading at the next membership meeting, they will go onto a ballot for membership approval.

During the discussion of legal issues later in the meeting, Kirstie requested that the Bylaws Committee also consider an amendment requiring that any motion which changes OLCA’s policies or procedures be read at one Board meeting and receive a second reading and vote at the next month’s regularly-scheduled Board meeting, “so that everybody has at least a month to consider it.”

[The meeting adjourned for lunch at 12:15 p.m. It reconvened at 12:45 p.m.]

Planning Committee Report: Kirstie Goin, committee chair, reported that a park planning meeting was held last January which resulted in three proposals: 1) to develop the Community Lot with an Activity Center, picnic area and children’s playground, hopefully funded partially by meeting FEMA standards for an emergency shelter; 2) to ask the County to develop a County park in Orchidland; and 3) to develop a “serene” park to serve as connectivity between Orchidland Estates and Hawaiian Acres, as proposed by the Puna Community Development Plan (PCDP), with a meandering, possibly gravel connecting road with walking trails and natural areas for meditation, community tai chi, etc.

On January 29 Kirstie, volunteer Vicki Patterson and Greg Braun, PCDP Steering Committee’s liaison to Parks and Recreation, met with Director Pat Englehard, Pam Mizuno and James Komata of Hawaii County Parks and Recreation Department to request a County Park in Orchidland. Pat informed us that the County cannot help us develop our Community Lot, because they do not develop parks on private land. However, the level of service for County parks in Hawaii County is 3 to 5 acres of park for every 1000 population, giving Orchidland the right to up to 15 acres of parks. A

neighborhood park consists of approximately 5 acres with perimeter fencing, a playing field, pavilion, and playground equipment. A regional park is about 15 acres, with several playing fields and other facilities. [Shipman Park in Kea`au is an example of a regional park.] She recommended that we enlist a friendly realtor and “go shopping.” Realtor Marti Morishige showed us the adjacent lots for sale in the subdivision. The most promising was three 2-acre lots on Melia St., two fairly level and open, with the third heavily wooded in large ohia, which would make a pleasant picnic and natural area. We emailed Pat, Pam and James and arranged a meeting in late March with Councilman J Yoshimoto to request funding to purchase the properties.

J agreed to assist us by requesting funding in the County’s budget to purchase the park. Unfortunately, the forested lot has since sold, leaving only two 2-acre lots. Two other 4-acre parcels have also been identified as possible locations, and Pat has assured us that they can use a 4-acre parcel if 5 acres is not available.

Roger, Vicki Patterson and Kirstie met with Mayor Kim last week, and Parks and Rec Director Englehard attended this meeting, also. The mayor told us there is no funding available for emergency shelters, so we will have to find another means of developing our Community Lot. However, he assured us that his administration will assist us in acquiring a County park.

The County Council recently passed approval to use the Geothermal Asset fund to purchase land for parks in lower Puna, which includes Orchidland Estates. Pat emailed a request to Chris Yuen, County Planning Director, for instruction on how to proceed in this process.

Vicki Patterson has agreed to keep the Board apprised of where we are and what is needed, including notifying volunteers to appear at County Council meetings when the budget request is considered for approval. Kirstie asked volunteers to sign up to assist this process.

Roger said we were told to go shopping, but no funds were available. He said it is important to acquire the funding first. He added that Friends of Puna’s Future was formed with the intent to band together with community associations in an attempt to present a more unified voice to the County, and encouraged residents to participate. The May newsletter will include a request for lot owners willing to sell property for the purpose of developing a County park.

Melia Goodenow said County parks are open to the general public, allowing them onto our private roads. Also, drugs and crime could present problems for our community. Marie Bricker said that our children deserve a park, and land will become less available in the future. She honored the committee for their efforts.

Roger suggested the possibility of a special assessment to acquire funds to develop the Community Lot. We suggested a committee be appointed to develop a cost assessment. A member suggested that the lot could be used as a site for a local farmer’s market and rented for personal events.

Dean Monroe said that liability insurance would have to be purchased first.

Yen said that insurance companies are not willing to issue a policy just for liability on the Community Lot. Fred said that “you can seek to reduce exposure and have as much insurance as you wish, but any individual can file a suit against any group or individual. Prevailing at court is another matter.” He added, “If this lot is intended for use and is used within the scope of that intention, it should be okay.”

Health Dept.: Roger was informed by the Health Department that it is our *kuleana* to deal with dead animals in Orchidland after they have put lime on them. Roger questioned whether the Board can assign road fees for this purpose. The health inspector said if we do not do this, they will issue a citation, and if we do not pay it they will take us to court. Roger said he hopes this does go to court, because he would like for a judge to rule on this issue. Meanwhile, the Board will send a letter to the Mayor, County Council, State and Federal representatives concerning this issue.

Flooding: Mayor Kim said if the zoning is changed in the flood area, building permits may not be issued. Our councilman's advice was to purchase flood insurance before the rates increased; neither offered to assist in actually alleviating the flood problems.

Mailboxes: Wes reported that the Kea`au postmaster has new mailboxes to replace the ones which exist on Orchidland Dr. and has received permission to move them up to the Community Lot. OLCA has no money for concrete to pour the slab to put them on, but the Postmaster assured Wes that because of the safety issue of the current location, the post office should provide concrete. The plan is to pour more concrete than needed, so when new boxes become available, there will be pads to put them on. Wes added, "All that is guaranteed is that if you already have a mailbox down there, you will have one up here."

Wes said it has not been determined whether the slabs will be located on the easement or within the lot. He said the Association cannot justify use of road fees to pave a portion of the lot for this purpose.

Tegen suggested changing the existing fence so that the location is safe.

Rob De Veer volunteered to serve on a committee to plan where the mailboxes will be located.

Commercial Development: At a recent community meeting sponsored by the State Department of Transportation, Yen stated the Board's position to "oppose further development on Orchidland Dr. until there is traffic control at Orchidland and Highway 130." He said the DOT's current plan to create a 4-lane highway from Kea`au will "just move the bottleneck to Shower Drive."

Marie Bricker said she has volunteered to serve on a task force to work with the DOT in addressing resident concerns regarding Highway 130. Tegen suggested that residents give their concerns to Marie to take to the task force.

Website: Wes Owens has done an excellent job in updating our website at www.orchidland.org. An email list is being developed to alert residents of important issues and upcoming special meetings. Lot owners can sign up at a link on the site, or mail their information—name, TMK and email address—to OLCA, P.O. Box 280, Kea`au, Hawaii 96749.

Neighborhood Watch: Roger said that neighbors already watch out for one another in many areas of the neighborhood. There has been little interest in developing a Neighborhood Watch in Orchidland in recent years.

Tegen said it is good to have one person in the police department who is contacted regarding all suspicious or illegal activities in Orchidland.

The Community Policing Officer for our area is Sherwin Taka; his phone number is 966-5835. The Community Policing Coordinator is Andrew Burian, who can be reached at 961-2350.

Legal Issues: Roger said that although the current Board has tried valiantly to reach a settlement with the Murakamis regarding the foreclosure suit filed by the Association in 2006, it has failed to do so. “We fought to get this solved in the best interest of the Association, but we were too far apart in damages because of the amount spent on legal fees on both sides.” A court date will probably be set for June.

In response to the original suit, Alan Murakami filed a countersuit listing 7 counts, including wrongful foreclosure and requesting punitive damages. This countersuit was not reported to the insurance company by the previous Board; when the current Board learned of it at the beginning of this fiscal year, the insurance company informed them that it would not cover the suit under the Board’s liability insurance because the suit had been filed in the previous year.

In December, 2007, the judge ruled in the Murakami’s favor regarding the original suit. OLCA’s attorney, Stuart Oda, filed for a reconsideration based on a recent case regarding ‘implied consent,’ which reasons that real estate with areas held in common are the mutual responsibility of all lot owners. This is the issue which Judge Nakamura will rule on. Roger said, “It is sad to see Orchidland pushing forward with a foreclosure on such arbitrary grounds. At the same time, I’m going to be happy to get a judge’s decision on this and get at least a little bit of clarity on how much power OLCA has in this regard.” During the settlement negotiations, Bob Ely, the Director who initiated the foreclosure suits and the subject of a community petition calling for a special meeting to remove him from the Board [who instead resigned before the meeting was called], and Kwan Sung filed an injunction which interrupted the Board of Directors’ settlement negotiations with the Murakamis. The insurance company appointed another lawyer, Sidney Ayabe, to deal with this injunction, which could cost OLCA up to \$15,000—the deductible fee on our current liability policy.

Five members of the Board were served today with a follow-up suit filed by Kwan Sung. The suit states “Chikwan Sung, individually and on behalf of all shareholders of Orchidland Community Association, Inc., plaintiff...” Dawn said, “This states that we are suing ourselves.” Roger urged all lot owners to read the lawsuit, Civil #08-1-0116 in the Third Circuit Court of the State of Hawaii. Sung’s attorney is Paul Sulla. His telephone number is 808-962-0025; fax 808-962-0024.

Roger said that a few months ago Sung asked to join the Board, which the Board and community saw as a conflict of interest because he would not accept that he could not participate in executive sessions at which his suit against the Association would be discussed. The community members present at the meeting voted not to admit Sung to the Board, “and he is suing us for that.” The suit also states that the Board has been acting in secrecy. Both suits have put a lot of demands for documentation on the Board. The Ely/Sung suit requested the entire QuickBooks data back-up file, which includes the personal information of every lot owner in Orchidland. The Board responded that this request was inappropriate.

Roger said, “This [the legal issue] is what has been consuming our time and money.” Gary Bricker asked why the community is responsible for actions taken without prior notification to the community.

The collections and foreclosures were approved by the Board. Roger said, “We did have a complete Board changeover after that, and because of that.”

Yen said that in a representative democracy, the Board has specific powers to act on behalf of the people who elected it. “I have some responsibility because the Board was representing me, and I wasn’t paying attention.” He added that 90% of his time has been spent on legal issues.

Wes said members are needed to become involved and attend meetings.

Yen reported the new suit to the insurance company as soon as he was served. The question remains whether they will handle it as a continuation of the earlier suit or as a new lawsuit; the difference is that the Association is required to pay the first \$15,000 of lawyer’s fees in each separate suit.

Roger said, “We are suing ourselves to keep ourselves suing ourselves.”

Adjournment: The meeting was adjourned at 3 p.m.

Respectfully submitted by:

Kirstie Goin, Recording Secretary

Motions Log 4-26-08

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