

Orchidland Community Association, Inc.
Unapproved Minutes of the General Membership Meeting
November 27, 2010

Call to Order: The meeting was called to order at 9:10 a.m. by Jerry Gardner.

Directors Present: Jerry Gardner, President; Derek Shimizu, Vice President; Ralph Boyea, Secretary; Fred McConnell, Treasurer; Dennis McCartin, Road Chair; Bill Lupton and Marti Morishige.

Lot Owners Present: Doug Coats, John Henry, Mokihana Kainoa, James and Emily McGhee, Bill Brubaker, Sheila Nakapa`ahu, Nancy Hammack, Janet Mochizuki, Kirstie Goin, Rich Ellis, Don Jacobs, Roger Hawney, Arthur Smith, Sherri Carden, Michele Lindsey, Wayne Carey, Paul Kushlak, Pat and Gary Byrd, Karen Doom, Don Stoner, Barbara Arthurs, Dale Dinsmore, Sharon Landry and Ian Brown.

Introduction: Jerry said that since there is nothing to vote on, the purpose of this meeting is to discuss what the community wants to see happen in Orchidland.

Approval of Minutes: The minutes of April 24, 2010, were approved by acclamation.

Community Lot: Jerry said a lot of work has been done, and we are finally in a position to move forward and get something on the lot. The special use permit is still valid. We want to start with a small maintenance/storage building, approximately 40 feet wide by 60 to 80 feet long, for meetings and records storage. There are several affordably-priced prefab buildings. Costs are estimated at \$100,000, including electricity, septic and plumbing.

Sharon Landry has agreed to head up fund-raising. Most grants require matching funds, so our first step will be to approach our County Councilperson, who has a fairly large discretionary fund account. Sharon added that we have a contractor who has volunteered to build the structure, and asked for more volunteers to donate time and services. She presented a plot map for membership input.

Gary Byrd suggested that we put the lot to work, such as car auctions, to generate funds for development.

Art Smith said a container is not a good environment for storage and longevity of documents.

Wayne Carey said that the County has a responsibility to provide parks, based on population. "We truly have been bypassed." Perhaps this would give us leverage in requesting discretionary funds from the County for expenses such as septic and bathrooms.

Sharon said that the park is the second phase. Our first priority is to provide a meeting space. She added that the container must either be included on the permanent plot plan or removed.

The Planning Committee meets at Sharon's house on the fourth Tuesday of each month, and new members are welcome.

Jerry said we especially need a plumber. Our hope is to build the building for cost, with all volunteer labor.

Road Report: Dennis reported that last March we realized we had some savings from past years and were able to be more aggressive on our sledding project. Materials are recovered from the sides of the road, and the road is crowned. Loads of gravel are also added to build up the road base, which has led to a significant improvement of the side roads.

Some of last year's sledding projects were not completed by July 1 and were carried into this fiscal year. Those areas which remain to be sledded include 35th from Auli'i to Ainaloa, a small stretch of 34th, the upper end of

Orchidland Dr., and the problem area at 37th near Ainaloa.

On the main roads, last year the washout at 39th and Pohaku Dr. was concreted so it is now much safer, and 37th and Pohaku Dr. was also repaired. 35th and Pohaku Place is scheduled for coldpatch paving, and materials have been added to the washout area on 35th. Eventually that area will also have to be repaved.

As the road crew sleds the side roads, they are clearing and adding drains. Swales are needed on the paved main roads where the shoulders are higher than the road, causing water to drain onto the road instead of off of it.

The RMC's intent has been to spend as much money as possible to improve the roads, so that they withstand the winter rains. Once the Community Lot has been cleared, we will bring in calcium carbonate for a binding agent, which will help hold material on the roads.

Dennis said that \$66,000 was spent this fiscal year on the roads. Another \$15,000 has been set aside for an emergency fund. Most of this year's road funds have already been spent, and the Board has identified another \$10,000 in costs. The current MRMA compliance rate is only at 55%. "We need \$150,000 per year to really maintain the roads."

Art Smith said that a neighbor's new driveway is above the level of the road. He asked him to fill in around the driveway to avoid a hazard. He asked the Board to publish the existing road standards more frequently, and added that junk trees are invading 40th Ave. He asked the Board to remove and/or encourage lot owners to remove junk trees that encroach on the roads.

Don Stoner said that also on 40th Ave., his driveway was level with the road, but the maintenance crew dug it out about 6 inches, causing it to crack. High water is now a real problem because of the lowering of the road.

Dennis said that Ilima is next on the paving rotation, followed by the unpaved section of Pohaku Dr. and 40th Ave. going toward Ola'a. The upper ends of Laniuma, Orchidland and Auli'i also are still unpaved. A volunteer project on 40th put down about 10 loads of cinder between Orchidland Dr. and Laniuma St., which made a significant difference.

Art said that the original intent of the paving plan was to pave within a half mile of anyone's property, and the unpaved spur of 40th to Pualani leaves lot owners at the bottom of Pualani more than 1/2 mile from a paved road.

Dale Dinsmore said asked about the lakes on 37th. Dennis said the end near Ainaloa is on the "to-do" list. Dale said the other end is not as bad, but is "too deep for my car."

Roger Hawney said his concern is the completion of paving Pohaku Dr. to 40th, which is being used as a shortcut. "Once we pave that last section of road, it's going to be the Kea'au bypass. Hundreds, if not thousands, of cars will be coming through there, which we will be paying to maintain."

Dennis said that speed bumps may be the answer to slow traffic down. Even on the smaller roads, people are driving 40 miles per hour, and on the main roads they are driving 55 to 60 miles per hour. "I think it's time to approach the County to find out the requirements for speed bumps or speed humps."

Jerry said that Friends of Puna's Future has been working diligently to change the way road taxes are distributed. Taxes are paid on every gallon of gas, and are distributed to the County to maintain the roads. The County counts the private subdivision roads, but does not distribute those tax monies to the subdivisions. FoPF has supported a proposal to allow subdivisions to apply for a share of those funds. Jerry encouraged owners to pay attention to the process. "It's going to be a battle, but it's one we can win."

Art said speed limit signs are needed at the entrance roads, and the speed limits must be realistic or people will not pay attention to them.

Wayne Carey commented that in 33 years, Dennis is "probably as good a Road Chair as this Association has ever had."

Finances: Fred stated that the fund balances as of November 24 were:

Administrative Fund\$12,375.46

Capital Fund\$19,688.77

Community Lot Fund\$ 3,918.94

Paving Fund\$91,618.59

Road Maintenance Fund\$ 7,968.59

Emergency Relief Fund\$15,050.11

Legal Defense Fund\$82,911.25

General Fund\$46,066.64

Fred said the General Fund includes another \$31,000 budgeted for the Administrative Fund, if needed.

Jerry said the Board is considering ways to cut administrative costs.

Wayne Carey suggested that money from the Capital Fund be used for road maintenance, instead of reserving it for equipment purchase when none is planned.

Barbara Arthurs suggested that newsletters be sent electronically to lower administrative costs. She said the files need to be removed from her property, and asked whether they could be scanned and stored electronically. Fred said that would require many hours of work to accomplish.

Policies and Procedures: Jerry said our policies and procedures establish how things are done, so that information can be passed on to lot owners and new Boards. They should be clear and precise, and cannot violate our Bylaws, which are "like our constitution."

The Collections Policy and Procedures were recently rescinded because the Board found that they were in violation of the Bylaws on a couple of points. "It's important to be evenhanded. Whatever the policies are, they have to apply to everyone across the board. We're aware that a lot of people don't have a lot of money, and it's difficult for them to pay the road fees." The rescinded policy offered relief, but it is a violation of the Bylaws to write off fees, and problems arise in determining hardship cases. An alternative to dismissing fees is to obtain agreement from an owner that he will pay his fees when his circumstances change. Such an agreement would exempt him from collections procedures.

The Board also considered allowing lot owners to work off their fees, but this brought up issues of fairness, oversight and liability. "There's sentiment to do something like that, but we ran into lots of problems in trying to implement it. We're not sure how to proceed."

Roger Hawney has worked on the Bylaws and Policy and Procedures committee for several years. He said, "We went through several years of turmoil because of overzealous collections," causing the Board to spend a majority of its time on legal issues. "Personally, I felt the work-trade was a good thing to offer, but I also see the problems." He added that before we can place liens, we must get a judicial determination of the amount owed, which requires the services of an attorney and may cost \$500 per lien or more. With the 6-year statute of limitations, it could cost as much to file a lien as the amount that is owed. The collections policy and the Bylaws both state that the Association can recover attorney fees, but this is not in accord with the Hawaii Revised Statutes.

Roger clarified that relief cannot be relief from fees owed, only relief from the collections process, upon receipt of a promissory note agreeing to pay the fees upon sale of the property or a change of situation. "According to our attorney, if we have a proper agreement with the property owner that says they owe this and will pay on change of situation, that could be sent to the Bureau of Conveyances and attach to the title just like a lien."

He said he is thankful that this Board wants to listen to the membership. "I see going to court as a no-win situation for anybody except the lawyers. My biggest concern is that we can stay out of court and also that we can protect ourselves in the future, so that a future Board doesn't drive us off that cliff as well."

Barbara Arthurs said the Bylaws state that collection of fees may be done "in whatever manner is legal. We need someone who can tell us what is legal." At the time of *OLCA vs. Murakami*, "basically one person cost the Association \$60,000 and a lot of grief at that time. I don't want to ever see that happen again. Please be active; we want to guard against people who will strong-arm or swear at members of the Association."

Fred added that the *OLCA vs. Murakami* countersuit is still not resolved.

Dennis said that at that time we had 40 liens on properties, and all of those had to be removed. He suggested a softer approach, writing letters which encourage delinquent owners to set up payment plans. "Tell us what's affordable to you, and we'll work with you."

Wayne Carey said that the first draft of the collections policy used the term "attorney" 9 times. "We're going to bring attorneys in to do our business as an Association. I personally felt this would land us right back in court."

Fred said, "We really want to do something that will help those who have little. We really want some input and guidance."

Sherri Carden said as a community, it is intuitively obvious we do want to help one another, but we need a policy that is in compliance with Hawaii statutes and our Bylaws. "Let's help those people who can't pay their road fees, so they can still feel like they own the roads and want to help take care of them."

Rich Ellis objected to allowing owners to work off fees, "because we can't afford to absorb that kind of costs. We don't have money to do what needs done now." He strongly supported the idea of payment plans for delinquent owners, and suggested that the next newsletter emphasize how little of the MRMA fees has been collected.

Marti suggested asking artists to paint signs that say, "Have you paid your road maintenance fee?" or "I

paid my road fees,” to make people think about the issue.

Gary Byrd suggested allowing monthly credit card payments. Michele Lindsey said allowing automatic credit card deductions could make it easier for people to pay. Roger argued that monthly payments may drastically increase bookkeeping costs. Jerry said the idea is worth pursuing, because we may be able to set up automatic bookkeeping with QuickBooks, although there may be a charge for taking credit card payments. Wayne said perhaps our maintenance fees can be included in automatic escrow account payments, which banks set up on mortgaged properties.

Ralph said the lien process is still on the table, but we need to determine if it is cost-effective. It may not cost \$500. He asked whether it is fair to be unable to access your property because we do not have enough money to maintain the roads. The chipsealed roads are falling apart, and our Road Managers have said that some are already too deteriorated to pave over the existing chipseal. “We have two court decisions saying we have the right to collect road fees. If we get a third supporting decision, it sets a precedent, and most attorneys won't question it.”

Roger said that the insurance company has refused to defend us against the Murakami counterclaim, and could refuse to cover future counterclaims as well.

Wayne questioned whether, once challenged, the 1992 summary judgment will stand up. “They got the summary judgment because no one was there to defend us.” He added that the purpose of the Association is to serve as a charitable, non-profit organization. “Before 1992, anyone who owned property in Orchidland had the right to vote.” Now members who do not pay their fees cannot vote. Roger said the Bylaws were not updated in response to the 1992 decision. “No government entity can withhold the right to vote for nonpayment of taxes. This issue is probably the single most alienating factor in our Bylaws. I see it as a major discrimination. What authority does the Association have over a non-member?”

Dennis said OLCA is a private non-profit, not a government, organization. He added that there are a number of people living in the subdivision who have lived here since the '60's or '70's, who never voted for the Association. “Many don't want any work done on the roads. Some threaten our road crew and tear up the preparation for paving with their ATV's. I'm sure a great portion of them are not paying their road fees.”

Don Stoner said, “We pay taxes; the County should take care of the roads. Why don't we sue the County?”

Wayne responded, “In the early 1980's, a group from the subdivisions went to the Mayor's office. At that time, Corporation Counsel admitted that it is the obligation of the County or the State to maintain the subdivision's roads, but 'once we open that valve, there's no way to shut it off, and we do not have the resources,' so everybody just rolled over and let them off the hook.”

Ralph said, “I don't mind driving slowly on the road. When the roads are maintained, people drive too fast.” As President, he acted on the will of the community in initiating the 1992 lawsuit. “This brings up the question whether members have the right to change things over time.”

Ian Brown asked why members should pay their fees when they do not know what they are going to get. He said the RMC should have a 6-month and a 5-year plan to accomplish its goals, and stick to it, even when the Board changes. He added that we are less than halfway through the fiscal year, “and we're broke.”

Dale Dinsmore said in the past there was a road maintenance schedule which worked very well.

Roger said that the Board decided to do a lot of road work up front “to gain the confidence of the community,” in the hope that more lot owners would therefore pay their fees. “I don't think it was irresponsible at all.”

Adjournment: The meeting was adjourned at 11:47 a.m.

Respectfully submitted by:

Kirstie Goin, Recording Secretary

Ralph Boyea, Corporate Secretary

Motions Log 11-17-10

The minutes of April 24, 2010, were approved by acclamation.