

**Orchidland Community Association, Inc.  
Approved Minutes of the Board of Directors Meeting  
April 28, 2008**

**Call to Order:** The meeting was called to order at 6:40 p.m. by Roger Hawney, President.

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

**Guests:** Greg Gadd, Sherri Carden and Gary Dalton.

**New Director:** Greg Gadd volunteered to serve on the Board.

**Greg Gadd was unanimously elected to the Board of Directors.**

**Owner Input:** Sherri Carden thanked the Board for a “wonderful annual meeting,” filling the potholes, and keeping the Association going.

**Approval of Minutes:** The minutes of March 24, 2008, were approved by acclamation.

**Officers Reports**

**President:** Roger reported that he received two emails from Kwan Sung very early Sunday morning. The first requested that the Board “act in a prudent manner” in approving the X-zyme contract and require “triple damages” if it proves unsatisfactory. The second email three hours later demanded an immediate response. Roger said he will get an attorney's opinion before he responds.

The negotiations with Murakami have failed because an agreement could not be reached. In an executive session on April 19, the Board decided to go forward to court.

Sung's new lawsuit claims “emotional and physical distress from being blocked from a position on the Board” as well as his earlier claims. Roger said Sung was defeated by a vote of the members present at the January Board meeting because “he would not recognize his lawsuit as a conflict of interest” and said he would refuse to recuse himself from executive session meetings regarding the suit.

Early last week Sidney Iyabe contacted Paul Sulla, who took over the Ely/Sung case when Carlsmith/Ball withdrew from the case, to notify him that the Murakami case was proceeding to trial.

**Treasurer:** Yen reported approximatemonthly income, expenses and fund totals as of March 31:

| <i>fund</i> | <i>income</i> | <i>expenses</i> | <i>balance</i> |
|-------------|---------------|-----------------|----------------|
| RMC         | \$1200        | \$ 800          | \$ 33,000      |
| BOD         | \$ 300        | \$3900          | \$ 7,000       |
| paving      | \$2700        | \$0             | \$203,000      |
| capital     | \$ 23         | \$0             | \$ 8,100       |
| Comm. Lot   | \$ 1.17       | \$0             | \$ 3,664       |

There were also \$4500 in uncleared checks. In April \$1000 was paid to Stuart Oda and \$8000 to Sanford's, clearing OLCA's debt.

The proposed 08-09 budget was presented and approved at the annual meeting on Saturday.

**Road Manager:** Andrew reported that Adrian Dalton has signed the Road Manager's contract. The contract pays \$700 monthly, plus \$300 per month for equipment storage. Andrew said it will be up to

the Board and Road Chair to supervise the Road Manager's performance. He added that climate and cost issues can affect the ability to perform maintenance.

**Fred McConnell moved to approve Adrian Dalton as Road Manager. Wes Owens seconded; the motion passed by a vote of 6 for, 1 abstention.**

**Paving:** Andrew said that X-zyme Corporation has secured other contracts, including one with Shipman and another with the quarry in Waimea. Their final proposal is for \$95,000 for one mile or \$85,000 per mile for two or more miles of enzyme paving. Andrew explained that Yamada's estimate is based on 4 inches of basecourse and 4200 feet, not 5280. Nova's estimate of \$60,000-65,000 was also based on 4200 feet. Prorated, this distance would be \$68,000.

The contract includes:

1. 8 inches of materials [clay brought in from Waimea]
2. engineering of the roads, including drainage where necessary
3. a one-year warranty
4. joint inspections with OLCA and X-zyme representatives at 6 and 12 months

The contract requires of the Association:

1. removal of hill and lava protrusions on Auli'i
2. housing three employees while working on the project
3. signing the contract no later than May 15, so that work may coincide with concurrent island contracts scheduled for the last week in May
4. to pay 50% by wire transfer upon signing of agreement and 50% by wire transfer upon completion of the project

Fred expressed a lack of confidence in the company and objected to their "tone of strong arm." He suggested acquiring the enzyme product ourselves. Wes said X-zyme "is the only company which puts it on for you." Andrew said, "Let them make the mistakes."

Roger expressed concern about guarantees and paying up front.

Wes added that the Board agreed previously to pay one-third when they show up, one-third after a substantial amount of work is done, and one-third upon completion.

Fred suggested paying 15% initially for materials and paying through a bonding agent.

Greg said the volcanic ground is very porous and he feels the clay will leach through it after continual heavy rains. Since the product is not proven, he suggested deciding after the company completes its first project in Hawaii.

Dawn said the price will increase if we wait. Andrew said it will probably become \$100,000-\$130,000 per mile. He asked, "If we let them do other projects first, what do we do about paving now?" Yen said, "We can't wait that long."

Gary said that the soil must be right or the road degrades; all the "good" soils are on Oahu and Kauai, although there are some clays "just under the A-line" on this island. He said it is possible to add concrete or polymers to strengthen the road surface. "In China they cover the roads with big rolls of plastic to protect them from rain until the surface dries." He added that asphalt paving could be done by his company for approximately \$120,000 per mile with a cinder base.

Yen said the pertinent questions are: will the product perform and will the company perform. "A 1-year warranty doesn't give us squat if it breaks down in 3 to 5 years." He recommended paving only 4200 feet, which would cost \$76,000 prorated from \$95,000 per mile.

Andrew suggested paying a 15% start-up fee through an escrow account once their equipment is in place. He said he has a guest house where their employees can stay.

**Yen Chin moved to direct Andrew Coyne to continue negotiations with X-zyme Corporation to pave only the 4200 feet originally slated for paving on Auli`i St., at a prorated amount based on \$95,000 per mile. The remainder of the contract shall be the same except that the financial terms shall include an upfront amount of approximately 15% for materials once the equipment is on site, with the remainder to be placed in an escrow account to be paid upon completion of the project. Fred McConnell seconded. The motion passed by a vote of 6 for, 1 abstention.**

Andrew agreed to bring any counteroffers to the Board for discussion and ratification.

**Road Report:** Andrew reported that potholes were filled by the road crew on Pohaku Dr., Orchidland and Laniuma, at which time they ran out of coldpatch.

Gary said another 20 tons was delivered today.

### **Committee Reports**

**Community Lot:** Roger expressed frustration at the attitude of the community at the annual meeting, which appeared to be to “keep people off of it.”

Yen said that companies are not interested in providing liability insurance for the lot only. It would cost approximately \$1000 to add the lot onto road liability insurance.

Roger said that the membership has clearly instructed the Board not to spend more than \$8000 on road liability insurance. A policy would cost in excess of \$20,000, and “once we have insurance people are more likely to sue, because then we have deep pockets.” He asked whether the Board wants to continue meeting here, since a change of location must be announced in the newsletter.

The Board agreed to continue meeting on the Community Lot.

**Design Plan/PCDP:** The Planning Commission will consider the Community Development Plan on May 8; OLCA has been requested to send a letter of support for the Puna Community Development Plan to the Planning Commission before May 7.

Kirstie Goin said primary issues addressed by the plan include protection of Puna's remaining native forest and a large fresh-water aquifer located north of Paha. She asked the Board to request requiring developers in community Neighborhood/Village Centers to comply with each community's approved Design Plan.

**Yen Chin moved to send a letter of support for the Puna Community Development Plan to the Planning Commission, with a proviso to include that developers within a subdivision's Neighborhood/Village Center must comply with the tenets of the Design Plan approved by that subdivision. Wes Owens seconded; the motion passed by a vote of 6 for, 0 against. [Greg Gadd recused himself.]**

**Bylaws:** Roger reported that the amendment requesting a quorum change failed. The wording of an amendment to limit honorary memberships to Orchidland lot owners passed. The membership also approved returning the foreclosure clause to its original wording: “foreclosure shall not be permitted.” The amendment to prohibit family members from serving on the Board simultaneously was sent back to committee for wording changes. The correction of a typing error in Article VII, Section 8, line (d) also passed.

### **Unfinished Business**

**Office Space:** The space should be available by June 1. Three volunteers have offered to help with the move. Dawn asked whether funds need to be allocated to purchase file cabinets.

Yen suggested setting an archive date of 7 years on all OLCA records to reduce the volume.

**Verne Wood's Special Use Permit:** The permit application is on hold. Marie Bricker has offered to assist Roger with the contested case.

Greg Gadd said the development will be downsized to a trade center “for tradespeople to work in,” since they cannot afford to bring water to the lot. He said it is not economically feasible to do a retail development there.

He added that in the past Planning Director Chris Yuen has taken the position of opposing a light at Orchidland Dr. and Highway 130. Gary Dalton said he saw six DOT workers in orange vests taking measurements at the intersection.

Yen asked Greg if he would recuse himself from Board and executive session discussions regarding any potential lawsuit concerning 130 Holding's commercial development on Orchidland Dr., of which he is a partner. Greg agreed to recuse himself.

### **New Business**

**Newsletter:** The deadline for articles will be May 5, and the Lick 'N Stick will be on May 17.

The ballot will include ratification of new Directors, a Bylaws amendment increasing membership meetings to two a year, a special paving assessment of \$100 for one year, and increasing the MRMA's to \$85 per year.

**Adjournment:** The meeting was adjourned at 9:50 p.m.

Respectfully submitted by:

Kirstie Goin, Recording Secretary

### **Motions Log 4-28-08**

**Greg Gadd was unanimously elected to the Board of Directors.**

**The minutes of March 24, 2008, were approved by acclamation.**

**Fred McConnell moved to approve Adrian Dalton as Road Manager. Wes Owens seconded; the motion passed by a vote of 6 for, 1 abstention.**

**Yen Chin moved to direct Andrew Coyne to continue negotiations with X-zyme Corporation to pave only the 4200 feet originally slated for paving on Auli`i St., at a prorated amount based on \$95,000 per mile. The remainder of the contract shall be the same except that the financial terms shall include an upfront amount of approximately 15% for materials once the equipment is on site, with the remainder to be placed in an escrow account to be paid upon completion of the project. Fred McConnell seconded. The motion passed by a vote of 6 for, 1 abstention.**

**Yen Chin moved to send a letter of support for the Puna Community Development Plan to the Planning Commission, with a proviso to include that developers within a subdivision's Neighborhood/Village Center must comply with the tenets of the Design Plan approved by that subdivision. Wes Owens seconded; the motion passed by a vote of 6 for, 0 against. [Greg Gadd recused himself.]**