

Kalapana Seaview Estates Community Association
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BOARD MEETING MINUTES
January 11, 2012

1. **OPENING CIRCLE** - President Richard Valdez opens the meeting at 5:02 P.M. at 12-7040 Kaiwa Street Kalapana Seaview Estates, Pahoa, Hawaii. Present were board members Treasurer Mark Wyatt, Scribe Linda Willaby, Director at Large Kevin Horton, Clerk Al Melton, director at Large Cynthia Dallou, and Vice President Kyou Gruber Also present were 18 community members. Meeting is being recorded.
2. **MINUTES – December 14, 2011** minutes were read by board members. Mark Wyatt moves that we accept the minutes. Linda Willaby seconds. Motion to accept the minutes passed by unanimous vote except for Kevin Horton and Al Melton who had not yet arrived.
3. **TREASURER’S REPORT**-Mark Wyatt gives the report. Total checks written were \$5,052.10. Total equity is \$38,374.71 plus \$10,300 in mailbox deposits. See attached balance sheet and check detail. There was a reserve study done and it will be posted on the website. The findings were that our annual dues should be \$69.69 to fund our reserve 100%. Our online bank is ING Direct, a savings account, and it is our reserve fund and pays the maximum rate of interest. Bank of Hawaii is our checking account. It is legal to have an out of state bank according to the attorney. The treasurer’s report was accepted.
4. **PAVILION REPORT**-Mark Wyatt gave the pavilion report. The workday will be a painting project and will be 10:00 a.m. Sunday, January 22. The pavilion report was accepted.
5. **OLD BUSINESS** –Before any other business, Richard Valdez presented an answer from the attorney as to how our board meetings should be run.

Q. HRS 421J-5 allows members to participate in any deliberation or discussion. Can they also make motions, second motions, and vote at board meetings.

A. *Non-Board member owners can participate in discussions at a board meeting, unless a majority of the board members vote otherwise. Non-Board member owners cannot make motions, second motions or vote. The only people that can vote, make motions or second motions at board meetings are members of the board. The amendment to the bylaws is superseded by HRS 421J-6. The statute requires that board meetings be run in accordance with the most current version of Robert’s Rules of Order. It provides that only members can make motions (meaning members of the board, not members of the association in the context of motions in board meetings). Richard further stated that condominium law does not apply to us.*

- A. Letter of Endorsement for SPACE and Scott Wills Response.** SPACE has asked the Seaview Board of Directors for a letter of endorsement. Linda Willaby read parts of Scott Wills response as follows: “As Graham Ellis stated, there is **currently no ongoing legal action against SPACE**. There is currently an **Administrative Action in process**. But as Mr. Heflin personally told Graham, we reserve the right to take any and all legal action as needed in the future against SPACE and others as things progress. It’s understood that Graham has again requested the KSECA Board to endorse a letter to the State of Hawaii to allow SPACE to expand on state land. As I have previously advised the KSECA Board, any endorsement of this kind would cause harm to the neighbors of SPACE as well as all the residents and land owners in the upper left quadrant of KSECA. The noise, traffic, parking, and numerous people wandering the neighborhood at all hours would negatively impact property prices, and would otherwise harm or negatively impact these residents. As I previously stated, the neighbors and I would be inclined to hold the KSECA Board of Directors accountable for harm and monetary loss. Others in the community also have threatened to file suit if needed to recoup any losses. Therefore, it is in the best interest of the KSECA Board and all KSECA members for the Board to remain neutral on the endorsement of any requests from SPACE. **Cynthia Dallou** added that when she was reading through Graham’s application to amend the Special Use Permit there were a few numbers that the community should be aware of. Graham estimated that with all

the programs in operation there would be a maximum of 300-400 cars per week coming to SPACE. Cynthia points out that that would be 600-800 trips per week (round trip) for SPACE. **Al Melton** asked if this discussion was related to a motion. No, it is just information related to an issue brought up at the last board meeting. **Kevin Horton** said that Graham will be having an open house with their lawyer and this will be an opportunity to lay out everything in the special use permit and State Land Permit. **Richard Valdez** said that he knows why Al is asking this question related to a motion. The lawyer said technically with a board under 12 members you can allow discussion, but it needs to be reined in by the chair. The Board has not endorsed Graham's proposal as of yet.

B. ANSWERS FROM THE ATTORNEY

1: Our bylaws state that a quorum consists of 12 members in good standing including at least 4 board members. Is this legal representation of 933 lots? If not, what is the legal quorum?

ANSWER: *Quorum is the minimum number of voting members that must be present for you to transact most business. Article III, Section 1.C. of the Bylaws provides that 12 members (including at least 4 board members) constitutes a quorum. There is no law that requires that the quorum be higher. However, HRS 414D-111(d) states that if less than 1/3 of the voting power is present in person or proxy, only those matters that are described in the meeting notice (Agenda) can be voted on by the members. That means that the quorum is in fact 12 members in good standing (at least 4 of which must be board members), but you have to make sure that the notice of the meeting includes everything you want to vote on, because if you don't have a quorum of 1/3 of the voting power, you can't vote on anything that is not in the notice of the meeting. Richard Valdez clarified that that would be 933 less the non- paid up members and then 1/3 of that number (therefore from 200-300 people). From this point forward we have to make sure that whatever is voted on at the AGM is on the agenda which is to be posted at least 5 days before the meeting. Athena wanted to clarify if the membership makes motions at the AGM and if they are recorded correctly in the minutes, then that would be the notice for the next year, and that it can't be voted on until the next AGM. Pat Rocco asked whether this affects us retroactively and if all motions made previously, since the last AGM, will still stand. Richard Valdez said that we are bound to this reading now and previously we acted in good faith. We have to go with this reading from this point forward.*

Jack Hash asked, once again, if we can make dues voluntary. Al says you cannot have voluntary dues when you have communal property. We have attorney letters stating that dues are mandatory. **Athena** said that there have been court cases that back up that where there is common property, then everyone has to pay their share and there are mandatory dues.

2: How does HRS 414D-115 apply to us? Does it allow or disallow **ballot voting**. What are the requirements for ballot voting? Can we discontinue proxies?

ANSWER: *The statute applies to the Association, but since Article V, Section 1B. of the bylaws specifically allows owners to nominate candidates from the floor, you cannot conduct an election by mail ballot under HRS 414D-115(a). There is an argument that a change in the law adopted this year would allow the Association to hold an election by mailed ballots. HRS 414D-104.5 was added to allow a nonprofit corporation to take any action by ballot that it could do at a meeting unless otherwise provided by the articles of incorporation or bylaws. The difficulty is that since your bylaws expressly permit owners to nominate candidates from the floor and there is no simple way to duplicate that process, it is our opinion that you should amend your bylaws to provide for elections by ballot. In addition to following a procedure that would clearly be legal, it would have the benefit of establishing procedures for holding an election by mailed ballot, including how candidates are nominated, deadlines for nomination, etc. Moreover, since you would still be required to hold your membership meeting, you are not gaining much by holding the election at the meeting until an amendment can be adopted.*

3: Can proxies be replaced by ballots?

ANSWER: *Not for the election of directors unless you amend the bylaws. However, if you wanted to, you could have directed proxies. You'd still have to hold the meeting and the proxy holder would vote assigned to him or her, but the owner could direct the proxies to be used however the owner wished-e.g. for the election of certain candidates, etc. The only problem is that issues are likely to come up and the candidates can be nominated from the floor, so anyone directing their proxies won't*

necessarily know what their options are when they give their proxy. It is possible to conduct other membership votes by mail ballot. **HRS 414D-104.5** allows action by ballot when the bylaws or Articles of Incorporation don't restrict the action to a meeting. For instance, it would probably be possible to amend the bylaws by a ballot mailed to all owners.

Cynthia Dallou said that since it was on the previous agenda and we had just been waiting for the answer from the attorney she would like to make a follow-up motion.

Ballot Voting-Cynthia Dallou made a motion that *we vote for a bylaw change that would provide for ballot voting for the Board of Directors. After the bylaw change there would be no further voting by proxy or in person on board of directors. This vote would be conducted at the next AGM. An envelope would be provided in the annual newsletter mailout to return ballots and dues. The board of directors would receive the envelope which would remain sealed and be routed to a reputable third party as determined by the Board of Directors for counting and in coordination with the Treasurer for validation of members in good standing.* Linda Willaby seconded. Pat suggested a friendly amendment to send a question with the newsletter as to agreement with this bylaw change. It was not accepted. This motion will be mentioned in the newsletter which will be the notice and the vote will be at the AGM. Athena says that there are other bylaws that will need to change. Cynthia said she has a list of the bylaws that would be changed as a result of the ballot voting. AI suggested that Cynthia get together with Athena to work this out since Athena was paid by the board to be on the last bylaw committee and thus should be familiar with the bylaws. If ballot voting passes at the 2012 AGM it would be effective for 2013. Cynthia Dallou will meet with Athena Peanut and Pat Rocco informally to iron out details of the bylaw changes related to ballot voting and that will appear in the newsletter and have it ironed out in one week's time which is the deadline posted in last month's minutes for the newsletter. Uschi Snover suggested that an attorney review any bylaw changes.

VOTE: all YES except AI Melton who voted No because he wanted to see the final document

4. Does Condo law HRS514-144 apply to Planned communities?

ANSWER: HRS 514B-144 does not apply to planned community associations. Condo law does not apply to us.

5. Is it legal for two board members to live in the same household even if they are both members in good standing and each own property in their own names?

ANSWER: As long as they are owners of 2 lots, this is permissible (and would be even if they jointly owned two lots). However, HRS 421J-3(b) provides that if they jointly own only one lot, only one of them can be on the Board. There are exceptions for the developer, but the developer should no longer be involved in the Project.

There is no state law that says community members can make motions at board meetings. The lawyer stated that Board meetings will be conducted according to 421J-6 which refers to Robert's Rules 11th edition. The attorney also said that the Board is not required to provide audio or video recordings of board meetings or to make available powers of attorney that have been submitted.

C. BOARD VACANCIES- New directors were nominated for the positions they will serve on the board. AI Melton will be the Clerk until the next AGM. AI Melton nominated Kyou Gruber for Vice President. Mark Wyatt seconded. Vote: Unanimous YES.

UPDATE on Hui O Puna Makai by Athena Peanut. The organization started by Richard Koob which consists on the communities on the Red Road (Kalani, Seaview, SPACE, Puna Palisades, Kehena, and Kaimu). The purpose was to direct development on the Red Road. Richard Koob has a plan for the Village Center. So far there have been 4 or 5 meetings and Athena has attended as a Seaview representative along with Mark Hinshaw. Athena said that Graham Ellis was representing himself as a Seaview representative and calling SPACE part of Seaview. SPACE is separate from Seaview. Richard Valdez said Seaview representatives are not Board positions. Kevin Horton asked the representatives to report back to the board as to a Mission Statement from HOPM. Pat Rocco was seeking support from the community to be a Seaview representative. Linda Willaby explained that each

community gets 3 representatives and HOPM bylaws have not yet been passed. Richard Koob would still need the vote and support of Seaview to pass his projects. Pat Rocco volunteered to be the third representative for Seaview. Al Melton made the motion to have Pat Rocco as a Seaview representative to HOPM. Linda Willaby seconded. **VOTE: unanimous YES. Richard stated that this action did not require a formal motion.**

Richard Valdez asked Athena's husband, Jim McRae, who was taping the meeting, to stop and in the future to please request permission to record. There were complaints about the video recording he did last time. People should know who is recording and where it is going and what use they intend. This is a Board meeting not a public meeting. This is a membership meeting for members of the Association.

NEW BUSINESS:

- A. Al Melton moves that we spend the necessary funds to produce the annual newsletter. Richard Valdez seconds. **VOTE: unanimous YES** Richard suggests a cap. The cap is set at \$2500.
- B. Al Melton moves that we carry over the 2011 ending balance onto 2012 beginning balance. Mark Wyatt seconded. **VOTE: unanimous YES**
- C. Al Melton moves that we approve increase in fees to David Hoffeld .Richard Valdez. seconded. **VOTE: unanimous YES**
- D. Al Melton moves to increase the fee to Ken Young for website from \$75 to \$100 per month. Mark Wyatt seconded. **VOTE: unanimous YES**
- E. **Video recordings**-People are not comfortable with members recording the Board meetings.
- F. **Charles Collins brought a small claim for** unauthorized work he did at the pavilion park 3 years ago for which he received some work credit and now he is wanting to be paid again. He has amended his original claim of \$375 to \$1800. He did nothing except cut down a few trees. We went to mediation and now there is a trial date set for April 30, 2012.
- G. **Geranium** wants to know if the board can do something about the graffiti signs on the phone poles. That is a HELCO or Zoning Dept issue.She should contact them.
- H. **Pat Rocco** asks about the petitions he passed out last month for the speedbump/crosswalk and passed around another petition. He got a call from the Dept of Transportation and they discussed implementing 2 crosswalks and signage such as caution signs, and STOP AHEAD sign.

7. ADJOURNMENT – Linda Willaby moves to adjourn the meeting. Al Melton seconds. **VOTE: Unanimous YES Meeting adjourned at 6:38 pm.**

Next meeting will be Monday February 13 at 4:00 pm. At Mark Wyatt's house, 12-7040 Kaiwa Street.
Minutes are also on our Website at Kalapanaseaviewhawaii.org