

Kalapana Seaview Estates Community Association
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BOARD MEETING MINUTES

November 9, 2011

1. OPENING CIRCLE - President Richard Valdez opens the meeting at 5:03 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. Also present were 28 community members. It was announced that Mark Hinshaw had resigned and the President exercised, per the bylaws, the appointment of a new board member to bring the board members back up to a quorum of four. Kevin Horton was appointed to replace Lorn Douglas.

2. MINUTES – October 12, 2011 minutes were read by board members. Mark Wyatt moves that we accept the minutes. Linda Willaby seconds. Motion passes by unanimous vote.

3. TREASURER'S REPORT-Mark Wyatt gives the report. Total checks written were \$1793.41. Total equity is \$41,804.56 plus \$10,400 in mailbox deposits. See attached balance sheet and check detail. The treasurer's report was accepted. The audit will be posted on the website. Mark Wyatt read the audit report. There was a clarification by Linda Willaby that according to our bylaws Kalapana Seaview Estates Community is a community-directed nonprofit association incorporated in the state of Hawaii. We do not have IRS status as a 501(c) (3) organization. Mark Wyatt adds that we are only a State nonprofit organization not a federally recognized nonprofit. We pay \$300 per year in property taxes on the parks-the lowest rate. In response to why annual dues were raised, Mark Wyatt brought up the possibility of having a *reserve study* done to determine how much money we should have on reserve for future expenses and maintenance. We should take a straw vote to spend about \$1300 to have a reserve study done.

4. PAVILION REPORT-Mark Wyatt gave the pavilion report. Mark mentioned the work party signup which will be painting mostly. There must be at least 5 people to sign up and a board member present at the work party. A member wanted to get credit for some work he did in the past for which we had no record. He became loud and order had to be called. The broken toilet was replaced, the tank was drained, the pump was turned on so the new toilet would work. We did not buy water. Mark and Richard donated their labor, wood, and paint to build the trash receptacle. It needs to be painted. No bids have been put out for the freebox yet because it has not been decided what will be done. Charles Collins made a speech and threatened to sue the board for the use of herbicides in the park. Herbicides are not used in the park. He became loud and aggressive, as did Christina Hazzard, and order had to be called by the President.

5. RED ROAD UPDATE-Athena Peanut was not ready to give the update as she did not go to the last meeting.

6. POSTAL CENTER REPORT-the authorization was sent to Mazie Hirono Oct 20, 2011 giving her permission to inquire on KSECA's behalf about a possible reimbursement of funds spent on mailboxes.

7. OLD BUSINESS

A. Willy Kamalamalama resigned at the October 12 board meeting, Frank Musacchio resigned in October, and Mark Hinshaw resigned November 9. New directors will need to be appointed to serve out the remaining term of the officer they are replacing. Kevin Horton is now on the board until the AGM. Pat Rocco moves that when there is a board position vacated a replacement should be appointed within 30 days. Richard Valdez seconds. **Motion passes** unanimously.

B. Linda Willaby moves that previous motion regarding inclusion of discussion of two signatures on checks be struck since the discussion had already been included in the minutes. Mark Wyatt seconds. Passes unanimously. Linda Willaby moves that previous motion regarding inclusion of discussion on bulldozing at the pavilion park be struck as the discussion had already been included in the minutes. Mark Wyatt seconds. Richard Valdez abstains. Mark Wyatt, Linda Willaby, Kevin Horton vote for. Motion passes.

C. Voting committee formed by Frank Musacchio at the October 12 meeting and that he was to chair has been dissolved. Frank had felt the situation was becoming argumentative and that there was not positive emotion and the committee was not going the way he had envisioned. He resigned from the board. Frank had envisioned the use of a ballot for everyone to vote in the privacy of their home and proxies would be eliminated. The meeting that Frank was to have chaired never happened. Linda Willaby moves that Frank's voting procedure committee be dissolved. Mark Wyatt seconds. Motion passes unanimously.

D. Audit-The audit has been done

E. Requirement of two signatures on checks. Richard states that our bylaws require two signatures and it is being done. Mark Wyatt states checks will only be issued on the 15th and 30th of the month and require a second signature. So don't show up at my door early wanting to get paid. Leave a bill and you'll get paid the 15th or the 30th.

F. Christina Hazzard's motion at October 12 meeting regarding real estate sign height. Christina wants to postpone this discussion.

G. Athena's list of questions for Attorney-**Richard Valdez** states his questions for the attorney:

1. In regard to amending the articles and bylaws, does condo law apply? Condo law states that a true copy of the bylaws has to be recorded or else they are not applicable. Bylaws may be amended at any time by vote or written consent of 67% of the legal owners. Athena adds- unless the bylaws state otherwise.

2. Our bylaws state that a quorum consists of 12 members in good standing including at least four members of the Board of Directors. Is this legal representation of 933 lots? If not, what is a legal quorum? The Hawaii Non Profit Act states that unless 1/3 or more of the voting power is present in person or by proxy the only matters that may be voted on at an annual meeting or regular meeting are those matters described in the meeting notice. That is why the agenda was closed at this meeting.

3. Membership voting rights-as it stands our bylaws say you have to be a member in good standing. Is this legal?

4. Is it legal to assign the same maintenance fees if a member owns one lot or multiple lots even though each lot has 1/933 of the commonly owned parks? In our original covenants it calls for up to \$5 per month per lot. These covenants follow with the land in perpetuity. We have two lawyer's letters on file addressing this. Athena says that if there is property in common then all assessments are mandatory and this follows a circuit court decision. Pat Rocco asks how much are the attorney fees. Mark Wyatt answers \$150 per hour. At this point Mark Wyatt had to ask Joann Jamieson to stop switching off the lights. Pat Rocco says that items in the covenants still continue as a basis and who is questioning this, and why should we have to ask an attorney for "something that is a done deal"? Mark Wyatt states that we are just trying to please the audience. So let's strike this question for the attorney. No money has been spent on an attorney so far. We have retained a lawyer, but no questions have been asked of the lawyer yet. We have heard the community's questions and we are presenting the board's questions now. Christina Hazzard became disruptive and abusive to the board members and had to be cautioned that she was out of order. It is the board's decision whether or not to go ahead with the questions to the attorney.

5. KSECA currently invests in a **money market account** with an online bank that has no office

in Hawaii. Is this legal to have a bank account that is an out of state bank as Athena brought up in a question regarding HRS 514B-149? Laurie Laughlin says she is a 99%er and will not invest in any mutual funds. A money market account is not the same thing as a mutual fund. Richard has to ask Sabine to refrain or he will have to ask her to leave. Athena discusses applicable law and the fact that there is not as much guidance for planned community associations as there is for condo law and nonprofit law and that is why it is important to get these questions answered by a lawyer. She allows that much of the operation procedures of the current board have been inherited from previous boards and from a time when there were very few people and very few expenses. Raymond Dallou says that these questions need to be answered by an attorney. He says that he hears from people that the board is breaking the law. He answers them that we need to get an attorney and see if they are breaking the law. These same people then say no, they're spending our money. Ray says you cannot have it both ways. Graham Ellis states that things were different before and there was not this nitpicking that is in evidence today at our board meetings. Rules and regulations don't make communities they break communities.

6. Need to find out more about regulation relating to ballot voting. Athena says it requires only a bylaw amendment. Richard Valdez does not read it this way and wants clarification. Cynthia Dallou says that for issue voting we can have mail out ballot, but for voting for directors we need to clarify that we can vote by mail out ballot for directors. Raymond Dallou states that when people accuse the board of doing something illegal, it is slander. Stop saying that or get an attorney. It can't be both ways. Richard Valdez wants to caution people on slander. Some people are walking the line on slander specifically in writing and we may have that issue addressed in the future. Watch what you write and say publicly.

Harry asks if the board has any plans to put buildings in the park or community kitchens. No. Helen Noble asks if we have chosen a lawyer. Yes, we have chosen Ekimoto & Morris. They are the only condo and association lawyers who did not request a retainer. They charge per hour. Helen says that she heard of someone who called the lawyer and was told that they specialize in delinquencies. Richard said that they specialize in association and condo law and while delinquencies may be part of what they do it is not what we are interested in contacting them about. Richard states that he would like to cut the number of questions for the attorney in half. **Helen Noble moves that we try mediation before we hire a lawyer and put a two month limit on it.** Richard Valdez seconds. Richard Valdez states that a mediator will not be able to answer our legal questions. Pat Rocco agrees that mediation won't solve our problems because there is no legal standing. He thinks we should be able to resolve our own problems. Cynthia Dallou states that only an attorney can answer specific legal questions. Richard Valdez states that in mediation you do not get your question answered and says that the problem with mediation is that they don't always apply the law and it costs \$200 per person. They try to find a solution whether it is legal or not. Pat Rocco calls the question on mediation. All against. Motion fails. Richard Valdez moves that we table the attorney questions for more discussion at the next meeting. Linda Willaby seconds. **Motion passes** by unanimous vote. **Kevin Horton moves that once we finalize the list of questions for the attorney, the list will be made public and open for comments at least 7 days before the next board meeting.** **Motion passes** by unanimous vote. Richard Valdez reminds the members that it was not the board that suggested consulting an attorney.

8. NEW BUSINESS

A. Seaview Community Association Business Office Proposal. **Cynthia Dallou moves that the community consider building a Seaview Homeowners Association office to be located at the pavilion park and staffed by an impartial third party business manager on a part time basis.** Discussion: Mark Wyatt mentions that this has been brought up before. We looked at getting a management company for our association. It was \$1800 base fee per month plus other charges and therefore more than we could afford. Richard mentions that

regarding the membership list that was recently requested, he reduced the copy fee to 19 cents a page.

Cynthia goes on to say the staff person could manage phone calls, mail, accounting and bill paying, dues paying, etc. Association communications, notices, meeting minutes etc. could be posted at the office rather than the front park mailbox site. She suggests it could be a 14 ft by 14 ft structure at the freebox site and that the freebox could be a shed addition to the building. Her estimated cost to build is \$15,000. **Motion passes** unanimously. Athena agrees that an office is necessary, but not a salaried employee because of the cost. She suggests contract labor. Carolyn Redman remarks that Richard states that the board does more than park maintenance and it would be good to have an office. Raymond Dallou says that all other community associations in the area have an office. David Snover says show me a community association that only has \$50 a year fees. Kevin Horton sates that he understands the desire to keep to keep the government from getting bigger. He thinks that building an office will create more transparency, voice being heard and representation. Don't look at it just from the financial viewpoint. This is an alternative to being in someone's house. Mark and Richard mentions that they have an office in their home as did Mark Hinshaw. They have donated two computers and a printer. They pay for their own internet connection. All the bookkeeping and accounting is done on a computer. It took several months to learn our quickbook system. Pat Rocco says that where there is an office there is a feeling of efficiency. He strongly recommends an office. Linda Willaby calls the question. Vote is unanimous. Motion passes. Straw vote of members present show 11 for 5 opposed.

B. Kalapana Seaview website. There is old information on the website. Some is outdated. For instance there is no 10 year plan. Recently some advertisements have been posted. Richard apologizes for the delay in posting, but the information had been misplaced. Athena thinks our website needs to be rewritten and brings up the Leilani Estates web site. **Christina moves that we appoint a committee of two or three people to look into the internet website as** to its cost and usefulness to Seaview. Mark Wyatt seconds. Pat Rocco thinks that the website looks fine, but let's keep it local. At least the outdated parts need to be changed. Richard wants a minimum of 5 people. Athena, Christina, Cynthia, Linda Willaby and Kevin Horton were appointed to the committee. **Motion passes unanimously.** Cynthia is appointed to chair the website committee. Athena mentions that this will be an ad-hoc committee. The committee can take recommendations.

C. Community Garden. Noah had asked that this be added to the agenda, but left the meeting before he could discuss it.

D. Pat Rocco discusses the open meeting of November 3 and feels that a lot was accomplished. The minutes from that meeting have been presented to the board of directors. Ballot voting and proxies were discussed at the open meeting among other things.

9. ADJOURNMENT –Mark Wyatt moves that we adjourn. Linda Willaby seconds. . Meeting adjourned at 7: 11 p.m by unanimous vote.

The December 14, 2011 meeting will be held at Mark Wyatt's house at 5:00 pm.
Minutes are also on our Website at Kalapanaseaviewhawaii.org