

**Hawaiian Paradise Park Owners Association
Minutes of February 18, 2009**

I. Call to Order. President Jeff Spaur called the meeting to order at 6:00 pm.

II. Roll Call.

Board of Directors: Jeff Spaur, President; Frank Annin, Vice President; Dale Watson; Bob Rainie; Randy Dresselhaus; Ken McGilvray, Treasurer; Ron Vizzzone; Kaniu Kinimaka-Stocksedale, Secretary. General Manager Suzanne Mayhew was also in attendance.

Guests: Bobbie Alicen, Erhard Autrata, James W. Brown, June Conant, David Fithian, Jeanne Fuller, Rick Fuller, Michelle Higgins, Barbara Kahn-Langer, Robin Wright

III. Approval of Agenda. The following changes to the agenda were approved:

- Add Neighborhood Watch as an item under New Business.
- Add the Coqui Frog Account as an item under New Business.

In addition, at later points in the meeting the following changes were made:

- Items VIII, “General Manager’s Report,” and IX, “Bylaw Update Informational Report,” were switched.
- Item X.B, “Bond Compliance/Future Planning,” was changed to “Bond Compliance/Future Planning/Budget Approval,” and was switched with Item X.A., “Next Phase of Paving (Continued Discussion).”
- Consideration of the Dexia Proposal was added as an item under New Business.

IV. Owner Input.

Michelle Higgins had two issues she wished addressed.

- The first was the question of the status of the database software conversion. Jeff Spaur stated that there were just a few tweaks left and it would be up and running. Ken McGilvray stated that we had spent about \$8,000 on the project so far out of the \$10,000 budgeted. He said that the biggest problem on which they are still working is ensuring that interest is calculated correctly; this is very complicated and they are working closely with the software developed to ensure that it is done correctly.
- The second question related to how the staff is following up with owners who do not pay road fees on time. Suzanne Mayhew stated that the staff always follows up on unpaid fees.

Bobbie Alicen, referring to the comments during the special meeting that the areas around the mail boxes may be paved during the overlay process, asked how HPPOA was going to address problems with puddling in areas that are already paved, including at the

mail boxes near the fire house, and at 7th and Paradise on the Maku'u side. Suzanne indicated that she would put both of these items on the punch list for the paving contractor.

- V. **Board Appointment to Fill Current Vacancy in District 8.** There still has been no one available to fill this Board vacancy. Several people have declined. No further action was taken or directed at the meeting.

VI. **Approval of Minutes.**

Minutes of the regular meeting of the Board of Directors on January 21, 2009. Dale Watson asked that Suzanne ensure that Ron Nickel is aware of the two changes that had been made in the draft overlay paving specifications. There were no changes to the minutes.

Ken McGilvray moved that the minutes of January 21, 2009, be approved. Dale Watson seconded the motion. The motion was approved unanimously.

Minutes of the special meeting of the Board of Directors on February 11, 2009. Ron Vizzone noted that there was no mention of the allegations of fraud to which Allan Deehr alluded in his statement at the meeting. The Board agreed that there had been no specifics about what kind of fraud was being or had been alleged, so such a statement was probably appropriately omitted from the minutes. The Board did agree that it would address this more specifically later in the current meeting during the discussion of the bond.

Ken McGilvray moved that the minutes of February 11, 2009, be approved. Randy Dresselhaus seconded the motion. The motion was approved unanimously.

- VII. **Treasurer's Report.** Ken McGilvray presented the Treasurer's report. Specific items of note were:

Total Bank Checking/Savings Balances:	\$887,985.20
Total Investments:	\$358,938.54
Total checking/savings and construction bond funds:	\$11,406,204.44

Ken explained that the difference from last month to this month in the checking/savings balances and investments resulted from 3 bonds maturing on January 31, 2009, and the money temporarily being deposited in a money market fund. The funds have since been reinvested. Ken also noted that the UBOC Interest Account – 1092 was zero because we made an interest payment during this period. Ron Vizzone asked where the Coqui Frog funds had come from and asked if those funds could be used elsewhere. Ken explained that they were donations and could not be used for any other purpose.

In discussing the Profit and Loss statement, Ken noted that the road fees received to date this year are shown in line 4010, "Deferred Current Road Fees," because these funds are

to be used for road maintenance in the 2009-2010 fiscal year. Line 4010 will include all road fees paid up to the March 15, 2009, due date. Fees paid after that date, which will incur late payment penalties, will be shown in line 4020. Funds from both of these line items will fold into line 4030 on July 1, 2009, the beginning of the next fiscal year. He noted also that, as reported in the General Manager's report at the January 21, 2009, meeting, the first \$836,282 in road fees collected this year will go directly to the trustee until our debt service is met for the coming year.

The Treasurer's report was accepted.

VIII. Bylaw Update Informational Report. June Conant reviewed a letter she had written to the Board. She said that part of the report from the Bylaws Committee would be a calendar of actions that should be taken by the Board at various points during the year for the Board to be in compliance with Bylaws requirements. Among the items discussed by the board were:

- Only members in good standing are permitted by the Bylaws to vote at General Membership meetings. The practice has been to give voting paddles to all lot owners. The Board agreed that this should be strictly enforced, beginning with the June 2009 General Membership meeting. It was agreed that it probably is not possible to be ready to enforce this by the meeting to be held February 22, 2009.
- There are lots along Highway 130, Pohaku Drive and Pohaku Circle that are not assessed the annual road fees. The Bylaw committee asked if this is a potential source of income even if just a small portion of the road fees are assessed to take care of such HPPOA expenses as insurance and mowing. Suzanne Mayhew said that there was a court case that ruled that, if a lot does not abut an internal road, the lot cannot have road fees assessed.

IX. General Manager's Report. Suzanne Mayhew said that the only report she had for the month was the monthly, "On the Roads" report. She said that Jeff had indicated that HPPOA needed to proceed as it had been regarding implementation of the requirements of the bond and so did not have a report of the "brainstorming" session that had been held. Jeff confirmed that the Board of Directors is advised by paid professionals regarding how it conducts its business, and that they have a fiduciary responsibility to do what those professionals advise.

Dale Watson asked why the equipment hours were not included in the roads report. Suzanne explained that she felt they were not needed as the only use for those numbers was to ensure that maintenance on the equipment was completed as required. Ken McGilvray indicated that he believed that having the equipment hours available was a fair request as the only reason for the association is for the road maintenance, and we should be advised how that is being accomplished. The Board members asked that those numbers be included in the report again going forward.

Dale Watson asked that the "On the Road" report include plans for use of the mower for the coming month as well as a report on what had been done during the prior month. He

indicated that this was something that had been requested at the beginning of this fiscal year.

Dale distributed a copy of a report he developed indicating which roads had been reported as having been graded during the period from November 2007 to December 2008. He said that it shows that far more attention is being paid to maintaining the roads at the top of the subdivision.

Recorder's note: At this point, Suzanne Mayhew left the meeting.

X. Unfinished Business

- A. Bond Compliance/Future Planning/Budget Approval. Jeff Spaur reported that Dexia is preparing to sell the bond. He also reported that there will not be a prepayment penalty included in any addendum to the bond should HPPOA accept Dexia's offer to buy out the bond's call provision. Dexia is willing to have a third party verification of the value of the call provision should we decide to accept Dexia's offer.

Jeff further reported that he had had a conversation with Steven Gortler of Piper Jaffray. During the conversation, Steven said that he was not aware that anything was wrong at this point, that there were no allegations of fraud on the table, and he coached Jeff on how HPPOA can act to retain its BBB+ bond rating. Jeff said that Steven had not known about our research on usage and density of the roads, and Steven asked if we would be willing to provide him with the information. Steven also said that it is important that our income to expense ratio in our current budget be repaired and that HPPOA must maintain an income to expense ratio of at least 110%.

Ken McGilvray presented a proposed revision to the 2008-2009 budget. After an adjustment of line 5566 to \$5,000 instead of \$30,000, Total Road Expenses budgeted would be \$1,745,732.00. Total Road Income would be \$1,950,236.62. The income to expense ratio would be 111.7% (\$1,950,236.62 (income) divided by \$1,745,732.00 (expenses)). Line 5680, Depreciation, would continue to be reported on the Profit and Loss Statement, but below the line, not as an expense.

Dale Watson moved that the revised budget for 2008-2009, as presented by Ken McGilvray, with the change noted in line 5556, "Foreclosures," be approved. Frank Annin seconded the motion. The motion was approved unanimously

Bob Rainie suggested that we provide a copy of the revised budget to the Trustee. Jeff Spaur agreed that this would be done, and we will also report our progress on the paving issues, as well as information about our research on road density and usage. He will write a summary statement with the reports submitted.

- B. Ken McGilvray reported that the inventory of the roads and intersections as discussed at the last meeting was about 70% completed. He explained that each corner of each intersection was noted as needing either an overlay, to be paved, or to have nothing done on it at all.

Ken suggested that, as it will not be until April 1st that we will be selecting a contractor to do the overlays of the main roads, we continue with the paving of side roads in the interim. He suggested that the following sections be paved:

- 1st between Maku‘u and Paradise (1 mile)
- 19th between Paradise and Kaloli (1 mile, which would complete 19th)
- 16th across the park from Maku‘u to Kaloli (2 miles)

Ken further recommended that the “HPPOA Paving Specifications,” as approved by our engineer on 12/6/08 and by the Board on 12/17/08, be used in the request for proposals.

An extensive discussion ensued with the following points being made:

- a. Between 7th (which has already been paved) and 22nd (already paved), 10th seems to be a road that has had more maintenance issues. However, there is not a lot of density on 10th.
- b. Ron Vizzone expressed his opinion that doing the overlays is a deviation from the way that the bond was written. Frank Annin said that the overlays are considered maintenance, and maintenance work can be done under the provision of the bond.
- c. All agreed that the lower part of Paradise is about to fall apart (one report was it would happen within a few months). Now is the time to get it overlaid before it becomes an actual paving project itself. As Paradise deteriorates, Kaloli and Maku‘u are getting more traffic.
- d. There was a question about whether we should just extend Loeffler’s contract or go out for bids from everyone. The consensus was that the bidding should be open to anyone who wishes to bid.
- e. There were differing opinions about how informed the general membership was when the list of the initial roads to be paved was presented. Some felt that the membership believed at the time that all the roads would be paved and so did not care which were done first. Others felt it was clear that we were not going to be able to pave 110 miles of roads with the funds from the bond.
- f. Dale Watson said that he has had positive feedback on the work that has been done so far.

Randy Dresselhaus moved that, using the specifications approved by the Board in December 2008,

- *a request for proposal go out for bids on paving of 1st from Maku‘u and Paradise; 19th from Paradise and Kaloli; and 16th from Maku‘u to Kaloli*

- *that the request be open-ended with the possibility that additional roads could be added at the discretion of the Board.*

Dale Watson seconded the motion. The motion was approved, with Ron Vizzone abstaining.

Frank Annin will spearhead the development of the RFP cover letter, working with Bob Rainie and Dale Watson.

XI. New Business

- A. HPP Township. Kaniu Kinimaka-Stocksdale provided a report on the status of a resolution that is being developed to be introduced to the state legislature, through Rep. Faye Hanohano, to designate HPP as the subdivision to be used in a demonstration project to create a township in Hawai'i. At this point the resolution is still in development, and had to be completed to be introduced no later than midnight of the day of the meeting. Kaniu said that she would report any updates at the March 2009 meeting.

Kaniu also explained that she had not yet worked on the letter requested by Dale Watson, and approved by the Board at its December 2008 meeting. She said that she would like to rework it somewhat to build on what Rep. Hanohano and Mayor Kenoi would like to have done for HPP. She will provide any draft to the board for approval.

- B. Harbor at HPP Coastline. Kaniu Kinimaka-Stocksdale said that she just wished to advise the Board that information is being collected regarding this possibility.
- C. Dexia's Proposal. Jeff Spaur reviewed what needed to be done should we decide to accept Dexia's proposal:

- A trade date would be established
- A third party would determine the value of the call position on that date
- HPP would get 80% of the price that is negotiated

There was an extensive discussion of this, with the following points being made:

- a. Ken McGilvray said that we should make every effort to realize at least \$500,000 should we accept the proposal. Those funds can be put in unrestricted reserves.
- b. HPP is in a good position because Dexia wants to remove the call provision so that the bond is more attractive to a potential buyer.
- c. Dexia should pay our attorney's fees.

Ken McGilvray moved that the HPPOA Board of Directors collectively negotiate the possible sale to Dexia of our bond's call option, assuming that the prepayment option remains intact, for 90% of the premium established by a third party, with

the amount to be realized by HPPOA to be not less than \$500,000 net. Frank Annin seconded the motion. The motion was approved unanimously.

- D. Budget/Finance Committee. Ken McGilvray said that he would like to have some assistance in developing the 2009-2010 budget in the form of a Budget Committee. Once the committee has developed a draft budget, they will have the General Manager review it before it is brought to the Board for approval. Ken noted that both he and Dale Watson will not be here for the April 2009 Board of Directors meeting.

Frank Annin moved that a Budget Committee be established with Ken McGilvray to be the Committee Chair, and that the budget be brought to the Board for its approval in May 2009. Dale Watson seconded the motion. The motion was approved unanimously.

- E. Neighborhood Watch. Ken McGilvray advised the Board that the County Prosecutor's Office had made a \$3,000 grant to HPPOA for funds to be used by the HPP Neighborhood Watch. The first installment of \$1,500, was paid to HPPOA and HPPOA purchased supplies for the Neighborhood Watch. When the second installment of \$1,200 was paid to HPPOA, HPPOA in turn provided that amount to the Neighborhood Watch for it to use. The County Prosecutor's Office advises that this was not an appropriate way to handle the funds as the funds may only be provided to a 501(c)(3) organization. Neighborhood Watch is not a 501(c)(3) organization; HPPOA is. Ken suggested that, if we are going to be handling funds for the Neighborhood Watch, they should be designated a Board Committee.

Besides this issue, there is an issue with the actual organization of the Neighborhood Watch in HPP. There is now a second Neighborhood Watch organization being developed in the Paradise Ala Kai area. Further, this Neighborhood Watch group is being charged the \$5/hour fee to use the library.

Jeff Spaur moved that the Paradise Ala Kai area Neighborhood Watch organization be permitted to use the HPP facilities without charge. Dale Watson seconded the motion. The motion was approved unanimously.

- F. Coqui Frog Funds. Ken McGilvray noted that JoAnne Backman had made her final report as chair of the Coqui Frog committee at the August 2008 Board of Directors meeting. Since that time, there has been no one who has had signature authority for the funds that had been collected for the use of HPP residents to combat the Coqui Frogs.

Frank Annin moved that the Coqui Frog Committee be established as a committee of the Board of Directors, with James Johnson designated as Chair. Kaniu Kinimaka-Stocksedale seconded the motion. The motion was approved unanimously.

Ken McGilvray moved that James Johnson, Maureen Gap, and Ken McGilvray be signatories on the bank account related to the Coqui Frog Committee, and that the account be set up so that two signatures are required on any checks written. Jeff Spaur seconded the motion. The motion was approved unanimously.

XI. Announcements.

- A. The General Membership Meeting will be held Sunday, February 22, 2009, at 3:00 pm, at the HPP Activity Center.
- A. The next regular meeting of the Board of Directors is Wednesday, March 18, 2009, at 6:00 pm.

XV. Adjournment. The President adjourned the meeting at 9:40 pm.

Respectfully submitted:

Robin Messenheimer, Recording Secretary

Kaniu Kinimaka-Stocksdale, Board Secretary

Motions Log

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